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**0013 Laws Relating to Children: Commitment Procedure Proposed Juvenile
Procedures Act Relinquishment and Adoption**



LEGISLATIVE COUNCIL

REPORT TO THE

COLORADO GENERAL ASSEMBLY

LAWS RELATING TO CHILDREN

COMMITMENT PROCEDURE

PROPOSED JUVENILE PROCEDURES ACT

RELINQUISHMENT AND ADOPTION

RESEARCH PUBLICATION NO. 13

1954

LEGISLATIVE COUNCIL
OF THE
COLORADO GENERAL ASSEMBLY

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The Legislative Council, which is composed of five Senators, six Representatives, and the presiding officers of the two houses, serves as a continuing research agency for the legislature through the maintenance of a trained staff. Between sessions research activities are concentrated on the study of relatively broad problems formally proposed by legislators and the publication and distribution of factual reports to aid in their solution. During the session the emphasis is on supplying legislators on individual request with personal memoranda providing them with information needed to handle their own legislative problems. Reports and memoranda both give pertinent data in form of facts, figures, arguments and alternatives without these involving definite recommendations for action. Fixing upon definite policies is, however, facilitated by the facts provided and the form in which they are presented.

*Resigned

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Law

LAWS RELATING TO CHILDREN
"

**COMMITMENT PROCEDURE
PROPOSED JUVENILE PROCEDURES ACT
RELINQUISHMENT AND ADOPTION**

**Colorado Legislative Council)
" Research Report
" No. 13**

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FOREWORD

This study is a continuation of the Legislative Council's work in the general area of children's laws undertaken as a result of the passage of House Joint Resolution No. 11, 1953 Regular Session. (Pellet) This resolution instructed the Council to make a study of child welfare in Colorado, giving particular attention to the needs of children which can be controlled by legislative enactment. The first step taken by the Council was the compilation of a comprehensive Index of Children's Laws published as Research Report No. 2. The report in the following pages comprises a more detailed study of some of the more urgent children's problems which can be helped toward solution by legislative enactment.

To study the problem, the Council appointed Senator Martin Molholm as chairman of a special council subcommittee, which consisted of Representatives Elizabeth Pellet and Albert Davis, Mr. Pierpont Fuller, member of the Board of the State Children's Home, Marie Smith, Director of Child Welfare Services, Judge Harold Lutz of Jefferson County and President of the Colorado County Judges Association, and Professor Homer Clark, Jr., the University of Colorado Law School. This subcommittee was in turn divided into three study groups. Representative Pellet was chairman of the group which concerned itself with health and welfare, Professor Clark was chairman of a group which evaluated a proposed code of juvenile procedures advocated by the County Judges Association, and Judge Lutz was in charge of studies concerning guardianship, adoption and relinquishment.

The study group headed by Representative Pellet which consisted of Marie Smith and Pierpont Fuller, decided in its early meetings to limit its field of study to methods of committing children to state institutions. Particular emphasis was placed on the commitment procedures followed

with regard to mentally retarded children. This committee held a number of meetings during the course of its studies and heard testimony from the following persons:

Representative Rena Mary Taylor, State Board of Public Institutions; Miss Betty Poertner, Superintendent, Girls Industrial School; Mr. C. F. Soelberg, Superintendent, Boys Industrial School; Mr. Harry Tinsley, Warden, Colorado State Penitentiary; Mr. James Thomas, Warden, State Reformatory; Dr. F. H. Zimmerman, Superintendent, Colorado State Hospital; Mr. J. Price Briscoe, Director of Public Institutions; Dr. Ward Darley, President, University of Colorado; Dr. Francis Manlove, Dean of Department of Medicine, Director of Medical Center, University of Colorado; Dr. Hebert Gaskill, Director of Psychiatric Services, University of Colorado, Medical Center; Dr. James A. Galvin, Associate Professor, Director of Psychopathic Hospital; Mr. Kenneth Joos, Acting Superintendent, State Children's Home; Dr. A. C. Sudan, Superintendent, State Home and Training Schools; Mr. James Hinds, Administrative Officer, State Home and Training School - Ridge; W. Williams, Director, State Planning Commission; Mr. Earl Kouns, former Director, State Department of Public Welfare; Dr. E. M. Sunley, University of Denver School of Social Work; Dr. Bradford Murphey, Past President, Denver Area Welfare Council; Mr. William Robinson, Committee on Mental Health, Colorado Bar Association; Hon. David Brofman, County Judge, Denver County; Hon. Phillip Gilliam, Denver Juvenile Court Judge; Mr. Arthur H. Bernstone, Legal Advisor and Referee, Denver Juvenile Court; Mrs. C. F. Holmes, vice president, Denver Chapter National Association for Mentally Retarded Children; Miss Jane Woodhouse, Denver City Attorneys Office; Mrs. Paul Thompson, Committee of Children's Laws, Colorado League of Women Voters; Mrs. Ware, Colorado Council of Parent Teachers Associations.

In addition, a Legislative Council staff member and Miss Marie Smith visited each of the state children's institutions and made a detailed study of the records of those children which had been committed over the preceding four month period.

The committee under Professor Clark, which consisted of Judge Lutz and Representative Davis, also held a number of meetings to evaluate a proposed code of juvenile court procedures. The principle efforts of the committee were to act as a liaison between all of the various groups interested in the problem and to attempt to harmonize conflicting points of view. This the committee succeeded in doing, and as a result there will be presented to the 40th Colorado General Assembly, a code of juvenile court procedures which has the substantial agreement of the Court Judges Association, the League of Women Voters, the Colorado Council of Parent-Teacher Associations, and the State Welfare Department.

Among the persons whose testimony was heard by this group were: Mrs. Paul Thompson, Committee on Children's Laws, Colorado League of Women Voters; Mrs. Robert Gee, Colorado League of Women Voters; Mrs. Ware, Colorado Council of Parent-Teacher Associations; Mr. Guy Justis, Director, State Department of Public Welfare; Professor Albert Menard, University of Colorado Law School (representing Colorado Bar Association Committee on Mental Health); Judge Phillip Gilliam and Mr. Arthur Bernstone of the Denver Juvenile Court.

Judge Lutz was given the responsibility for evaluating the laws of Colorado dealing with adoption, relinquishment, and guardianship. This area, while not given the over-all space in the report as some other fields, is nonetheless an important one. Judge Lutz presented his views to the full committee, which concurred in his recommendations. The over-all

problems in regard to adoption and relinquishment required less basic research since the Colorado Statutes on the matter have only been fairly recently passed or amended.

The study was prepared by Harry S. Allen, Senior Research Analyst of the Council.

HIGHLIGHTS

	<u>Page</u>
Persons have been committed to the State Home and Training Schools at Ridge and Grand Junction, which are erroneously thought of as exclusively children's institutions, who are 40 or 50 years of age, and a number of the population resident at those two specific institutions are eligible for old age assistance.	1
... the statute defines a dependent and neglected child as one under the age of 18, but the same chapter of the statute sets up the State Home for Children as a receiving agency for dependent and neglected children and specifies that children only up to the age of 16 years are to be admitted to the institution.	3
In all of the statutes relating to the commitment of children no specific authorization exists for the court to make use of counselling and examination services outside of its jurisdiction	5
Procedures for the commitment of mentally defective children do not differ from the general commitment of mentally defective or otherwise mentally incompetent persons. The statute providing for commitment was originally passed in 1909, and set up what is known as a "Lunacy Commission."	7
The statutes of Colorado provide little flexibility in transferring inmates between the various institutions. This is particularly true with regard to children.	9
...such terms as "mental defective," "mental incompetent," "idiot," and so on are used in the statutes to limit the choice of the court in making commitments, but at the same time the words themselves do not refer to the medical and mental problems which each of our state institutions in the field are presumed to treat.	12
Experience in other states as well as in Colorado indicates that the problems of delinquency, dependency and mental retardation are very often interrelated, and commitment procedures, therefore, must be flexible enough to allow an overall program to be followed.	16
...every court in the state handling children's cases should be able to develop and have available the quality and quantity of social and other services that are necessary to the specialized nature of the work it undertakes;	17
...mental retardation is at times a factor in delinquency cases. Our present procedures do not always take this into account.	19

HIGHLIGHTS (continued)

	<u>Page</u>
An examination of the admittee records over the last four months at Golden and Morrison indicates a number of cases, particularly at the Girls' Industrial School, which might easily be classified as dependency rather than delinquency cases, and could have been handled accordingly.	20
The records of the children sent to state institutions indicate that virtually no precommitment examination of children is ever made in most counties.	21
...the Superintendent of the Golden School indicates that 12½% of the boys in the institution might be classified as mentally retarded.	29
In order to provide for better commitment procedures this committee makes the following suggestions for legislative consideration:	
1. That the state create, on a small scale, a diagnostic center. This center, with a relatively small appropriation could be set up on an out-patient basis, using the staff facilities of the Colorado University Medical center for diagnostic work, and some facilities at the State Children's Home for housing of the children. Such a center set up on this basis would, in the opinion of the administration of the medical center, require the addition of perhaps the equivalent of 3 additional full time staff members. It would also require some small scale remodeling in the infirmary of the State Children's Home in order to provide security type facilities for a limited number of cases. Thus, under the system proposed, the Colorado General Hospital would provide diagnostic services on an out-patient basis and the children would be housed in the State Children's Home. It should be pointed out that in most cases diagnosis would not require more than three to five days. It should also be emphasized that this center would not be a treatment center; the children would be merely diagnosed before final commitment.	41
That the administrative code of Colorado be changed so as to permit transfer of children between all children's institutions.	42
That the lunacy laws of Colorado be amended to provide accurate definitions of mental illness and mental retardation so that realistic petitions may be filed and proper commitments made. It is further suggested that no commitment of children be permitted under the "lunacy commission" procedures, but that adequate psychiatric diagnosis be required at the diagnostic center before final commitment.	43
That serious consideration be given to placing an upper limit on the age of patients at both Ridge and Grand Junction.	43

HIGHLIGHTS (continued)

Page

...the subcommittee studying this problem (adoption) recommends that the adoption and relinquishment statutes be consolidated into a single law, thus providing a uniform procedure under which children are relinquished for adoption and placed for adoption.

58

At the same time it is recommended that the statute be amended to provide that no adoption may be approved by the court unless consented to by a child placing agency which is licensed by the State Board of Standards and Child Care, the State Children's Home, or a public welfare department.

58

CORRECTIONS

Page 35, line 2. The figure 11 school districts should read 21 school districts.

Page 38, line 10. The statement, "and between both of these institutions and..." should read, "and between all of these institutions and..."

Page 57, line 3. The statement, "The intent of this statute was to insure that..." should read "The intent of this statute was to insure that children relinquished for adoption go through a licensed child placing agency."

CHAPTER I

EXISTING COMMITMENT PROCEDURES FOR CHILDREN

The word "children" has no uniform definition in Colorado law.

A dependent or neglected child must be one under the age of 18. Children are defined as being under 16 in regard to commitment to the State Hospital. The criminal statutes of Colorado provide for regular criminal prosecution, in some instances, against children as young as ten. Persons have been committed to the State Home and Training Schools at Ridge and Grand Junction, which are erroneously thought of as exclusively children's institutions, who are 40 or 50 years of age, and a number of the population resident at those two specific institutions are eligible for old age assistance.

Commitment procedures for children involve a number of specific statutes and separate citations within the laws of Colorado (see Index of Laws Relating to Children, Legislative Council Report #2), and there is a lack of uniformity and consistency in regard to the methods by which children are handled and committed to our various state agencies responsible for their care and treatment. A description of the commitment procedures generally practiced for each of the state institutions follows:

State Children's Home

Chapter 22 of the Colorado Revised Statutes deal with the process of committing dependent and neglected children. Such children are defined in Article 1-1 of the Chapter as "any child under the age of 18 years who is dependent upon the public for support, or who is destitute, homeless or

or abandoned, or who has not proper parental care or guardianship, or who in the opinion of the court is entitled to support or care by its parents where it appears that the parents or parent are failing or refusing to support the child." The article goes on to further define dependent or neglected children as those "who are living in immoral or depraved circumstances, or with immoral or depraved persons, and whom the court feels the guardianship of the state would serve the best interests of."

Jurisdiction of such children is placed in the county court, or in the case of counties having a population of 100,000 or more, in the juvenile courts. Cases involving dependent or neglected children may be brought to the attention of the county or juvenile court by a petition of a resident of the county in which the child resides, by petition of two of the three members of the Board of County Commissioners, or by petition of an official of the State Board of Child and Animal Protection. Upon receiving a petition filed by any of the above individuals or agencies, the court is required to hold a hearing, at which time witnesses and interested parties are heard. Juries may be requested in such hearings by those interested in the case, or they may be ordered at the discretion of the county or juvenile judge. If, on the basis of the facts established at the court hearing, the judge finds that the child is in fact a dependent or neglected child as defined in the statute, he may order the following alternative commitments:

1. 'The child may be committed to the State Children's Home.
2. The child may be committed to guardianship, adoption, or otherwise as seems best for its moral and physical welfare.

3. In cases involving dependency only the judge may continue the residence of the child at the home of its parents, and enter an order requiring the County Commissioners to pay for the maintenance and support of the child in its home,

It should be noted that while the statute defines a dependent and neglected child as one under the age of 18, the same chapter of the statute sets up the State Home for Children as a receiving agency for dependent and neglected children, and specifies that children only up to the age of 16 years are to be admitted to the institution. The benchmark of 18 years of age for dependency is established in Chapter 22-1-1, of the Colorado Revised Statutes, while the age limit of 16 for the State Home for Children is established in Chapter 22-4-1, of the Colorado Revised Statutes.

Boys' and Girls' Industrial Schools

Commitment of delinquent children to either the Boys' or Girls' Industrial Schools is made in accordance with the procedures outlined in Chapter 22-8-1, of the Colorado Revised Statutes. The statutes on delinquency apply only to those children who are under 18 years of age, who are not inmates of a state institution. Such institutions may, however, under the statute, petition the county court or juvenile court to take action in cases involving their inmates. A delinquent child is defined as follows: "Any child under 18 years of age who violates any law of the state, or of any city or village, or who is disorderly, immoral, or incorrigible, or who knowingly associates with thieves, vicious, or immoral persons, or who is growing up in idleness or crime." The statute further defines delinquency as applying to persons who visit various

types of gambling places, places where intoxicating liquors are sold, or who is guilty of rowdyism or disorderly conduct on the public streets, or loiters without being on any lawful or proper business, or who wanders about railroad yards or tracks, or jumps onto any moving train, or who is guilty of disorderly or immoral conduct or uses vile, profane or indecent language." An interesting paradox in the law is that the counties are required to pay for the support of girls at Morrison, but not for boys at Golden.

The delinquency statutes do not apply to persons over 16 years of age who have committed crimes of violence punishable by death or imprisonment for life. Court procedures involving juveniles are considerably more flexible than normal procedures involving judicial processes. A jury may be requested by persons interested in the case or ordered by the judge. All actions in the juvenile court or the county court in cases involving children must originate through a petition. The courts have wide latitude in committing juvenile delinquency cases. Article 22-8-11, of the Colorado Revised Statutes, provides that the court may use any of the following alternatives in committing juveniles:

1. Commitment to care of a probation officer, allowing the child to remain at home, but reporting to the probation officer for counselling and guidance at periodic, stated intervals.
2. Place the child in a home other than that of his parents subject to investigation and supervision of the probation officer.

3. Commitment to Morrison or Golden as the case may be for detention and correction.
4. Commitment to a private institution caring for dependent or neglected children. Such private institutions are required under the statutes to be inspected annually by the State Division of Welfare or the Bureau of Child and Animal Protection before receiving children. Commitment of children to an institution under the delinquency statutes is on an indeterminate basis, and release is conditional upon approval of the governing board of the institution.

In all of the statutes relating to the commitment of children no specific authorization exists for the court to make use of counselling and examination services outside of its jurisdiction. While a few courts do make use of such services, since there is no prohibition against them, the specific authority and the specific request that they do make use of diagnosis prior to commitment is absent from Colorado Statute.

Buena Vista

Commitment to the State Reformatory at Buena Vista is made under the criminal statutes of Colorado rather than under the children's laws. Chapter 39-1-10, of the Colorado Revised Statutes provides that all male persons between the ages of 16 and 21 shall, upon conviction of a felony for the first time, be sent to Buena Vista. Persons over 21 and not over 25 may be sentenced upon first conviction to Buena Vista or Canon City at the discretion of the trial judge. Persons over 21 who have been convicted of crimes, the

penalty for which is life imprisonment, or have been convicted of first or second degree murder, and voluntary manslaughter, must arbitrarily be sentenced to Canon City. It should be noted, however, that many persons committed to Buena Vista have previous records of conviction.

All sentences to the reformatory at Buena Vista are indeterminate, and release is dependent upon action of the parole board. No person, however, may be confined at the institution for a period of time longer than the length of time the sentence would normally be for the offense he has committed.

Ridge and Grand Junction

Commitment of mentally retarded children to the two State Homes and Training Schools at Ridge and Grand Junction is made under the general statutes relating to "insane and other mental defectives." Differing mental abnormalities are defined in Chapter 71-1-1, of the Colorado Revised Statutes as follows:

The term "insane person" shall be construed according to the statute to include "idiots, and any person so insane and so distracted in his mind as to endanger his own person or property, or the person and property of another if allowed to go at large. The phrases incompetent, mental incompetent, incapable and feeble minded shall be construed to mean any person who, though not insane, is by reason of old-age, disease, weakness of mind, feebleness of mind, or for any other cause incapable, unassisted, to properly manage and take care of himself or his

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property." These definitions were set up in the laws of 1909, and have remained unchanged since that time, and are at considerable variance with modern medical and psychiatric definitions as indicated in Chapter II.

The present definition contains medical contradictions of terms in regard to idiocy and insanity that have led to some misunderstanding of the proper institutions to which persons should be committed.

Under the laws idiots are to be treated as persons acceptable to the Colorado State Hospital. Medically, however, the term "idiot" refers to a basic mental deficiency and thus such persons should be committed to either Ridge or Grand Junction. This conflict is particularly a matter of concern where children are involved since children may not be committed to the State Hospital except if committed under an interstate compact.

Procedures for the commitment of mentally defective children do not differ from the general commitment of mentally defective or otherwise mentally incompetent persons. The statute providing for commitment was originally passed in 1909, and set up what is known as a "Lunacy Commission." The procedures for commitment are as follows: Whenever a petition is presented to a county court, stating that a person is insane or mentally defective, as defined in the statutes, the county court is required under law to impanel a lunacy commission which is supposed to consist of two physicians. There are provisions whereby a lunacy commission, however, may consist of one physician and one other person, providing there are not two reputable physicians resident in the county. The lunacy commission is required to report on the person for whom there is a petition

filed in the four following areas and answer these questions:

1. Is the person complained against in such mental condition as to endanger himself or others if allowed to go at large?
2. Is the person by reason of old age, or for any other reason, unable to care for himself and his property without assistance?
3. Does the person have any personal property or real estate?
4. Is the person so mentally deficient as to be unable to care unassisted for himself?

Upon receiving the report of a lunacy commission covering these areas, the court, depending upon the findings of the commission, may take any of the following actions:

1. Commit the person to the Colorado State Hospital or to a suitable private institution. If commitment to a private institution is made at the request of a relative or interested party, the county is not liable for the support and maintenance of the individual at such institution.
2. Commitment to the State Home and Training School at either Ridge or Grand Junction. There is no age limit at which persons may be committed to either of these two institutions.
3. Cases involving senility only, in which there is no mental incompetence or feeble-mindedness, but merely an inability of the person to care for himself, may be committed to the custody of relatives.
4. Children under 16 years of age may not be committed to the Colorado State Hospital, if there is room for such persons at either Ridge, Grand Junction, or the Colorado Psychopathic Hospital. The Attorney General of Colorado has ruled that the intent of this statute is to prevent

commitment of children under 16 to the State Hospital at Pueblo.

Under the laws of 1909 which established the State Home and Training School for mental defectives, the institution was given a dual purpose. The first was to provide "mental, moral, physical education, and training of feeble-minded children." The second purpose was "the treatment and care of persons so mentally defective as to be incompetent to care for themselves."

Thus, while these institutions are thought of primarily as children's institutions, they are legally, and in fact, institutions for the care of feeble-minded adults, as well as mentally retarded children. The age distribution of the populations at Ridge and Grand Junction as found on Tables 1 and 2 amply bear this out. It will be noted that at Grand Junction 35 persons are in the age group eligible to receive old-age assistance. Both Ridge and Grand Junction have limited powers of parole. Under the statutes they may parole inmates to relatives or family for a period of not to exceed three months, providing the superintendents of such institutions feel that the parole would not be harmful to the inmate himself.

Transfer Between Institutions

The statutes of Colorado provide little flexibility in transferring inmates between the various institutions. This is particularly true with regard to children. The Administrative Code of Colorado which is contained in the Colorado Revised Statutes Chapter 3-11-6, gives the Governor, as head of the Department of Public Institutions, the following authority to transfer inmates:

CENSUS OF RESIDENT POPULATION AT RIDGE AND GRAND JUNCTION

CLASSIFICATION AND AGE

TABLE 1 -- GRAND JUNCTION

	<u>Idiot</u>	<u>Imbecile</u>	<u>Moron</u>
Under 5 years	6	3	1
5 to 9 years	42	14	8
10 to 14 years	37	17	19
15 to 19 years	25	20	17
20 to 24 years	18	16	19
25 to 29 years	15	16	16
30 to 34 years	18	10	9
35 to 39 years	18	17	15
40 to 44 years	19	18	21
45 to 49 years	12	13	13
50 to 54 years	5	15	14
55 to 59 years	5	8	7
60 to 64 years	7	8	3
65 to 69 years	2	4	4
70 to 74 years	2	4	0
75 to 79 years	0	0	0
Totals:	231	183	166

TABLE 2 -- RIDGE

	<u>Epileptic</u>	<u>Unclassi- fied</u>	<u>Idiot</u>	<u>Imbecile</u>	<u>Moron</u>
Under 5 years	0	0	7	2	1
5 to 9 years	0	1	19	10	2
10 to 14 years	5	0	26	14	4
15 to 19 years	1	0	29	20	7
20 to 24 years	2	0	24	19	10
25 to 29 years	4	0	18	31	5
30 to 34 years	4	0	11	25	5
35 to 39 years	1	0	12	17	5
40 to 44 years	0	0	3	3	1
45 to 44 years	0	0	0	5	0
45 to 49 years	0	0	0	5	0
50 to 54 years	1	0	0	5	0
55 to 59 years	0	0	1	3	1
60 to 64 years	0	0	0	2	0
65 to 69 years	0	0	0	0	0
70 to 74 years	0	0	0	0	0
75 to 79 years	0	0	0	0	0
Totals:	18	1	150	156	41

1. Inmates may be transferred by the Governor from Buena Vista to Canon City if the inmate at Buena Vista has lied about his age and has been convicted of an offense which would normally cause commitment to Canon City if older than stated, or if he has been so incorrigible at Buena Vista that the warden feels commitment at Canon City is proper.

2. Inmates may be transferred from Canon City to Buena Vista upon recommendation of the warden. This is usually confined to cases where the warden at Canon City feels that an inmate has been a model prisoner, and the warden at Buena Vista feels that such inmate can be valuable in the education and instruction program of the State Reformatory.

3. Inmates may be transferred from either of the two above institutions to the Colorado Psychopathic Hospital or the Colorado State Hospital at Pueblo if such persons become insane after commitment.

4. Inmates may be transferred between Ridge and Grand Junction and from either of these two institutions to the Colorado State Hospital.

No other transfers of inmates between institutions operated under the authority of the State Department of Public Institutions are authorized under the Administrative Code or other sections of the statutes of Colorado.

CHAPTER II

ANALYSIS OF COLORADO COMMITMENT PROCEDURES RELATING TO CHILDREN

Any evaluation of commitment procedures in Colorado relating to children must be based on an integrated view of the entire problem, rather than an analysis of separate laws pertaining to differing areas of children's problems.

General Evaluation of Commitment Laws

Speaking before the "Governors Conference on Colorado Problems Relating to the Aged and Aging, Mentally Ill, Mentally Retarded and Mentally Defective" held in Denver in January, 1954, Judge Howard Ashton, County Judge of Boulder County, raised a number of questions in regard to Colorado statutes which bear repetition here.

Judge Ashton first raised the question of the proper definition of terms in the statutes dealing with mental problems. The point was made that the county courts, in making commitments have no alternative to commitment on the basis of recommendations of the lunacy commissions. This being the case, Judge Ashton observed that it was important that the statute be correct in setting up the proper definitions of mental difficulty. If the lunacy commission finds that the "person is so mentally defective as to be unable to care for himself" then the court has no choice but to commit the person to Ridge. The point here made by Judge Ashton is that such terms as "mental defective," "mental incompetent," "idiot," and so on are used

in the statutes to limit the choice of the court in making commitments, but at the same time the words themselves do not refer to the medical and mental problems which each of our state institutions in the field are presumed to treat.

The following table compares definitions in Colorado statutes with current medical definitions.

TABLE 3

COLORADO STATUTES¹

CURRENT MEDICAL DEFINITIONS²

Mental Deficiency:

Term is used but not defined in Colorado Statutes.

Primarily a defect of intelligence existing since birth, without demonstrated organic brain disease or known prenatal cause. Includes only those cases formerly known as familial or "idiopathic" mental deficiencies. The degree of intelligence defect will be specified as mild, moderate or severe and the current IQ rating, with the name of the test used, will be added to the diagnosis. In general, mild refers to functional (vocational) impairment, as would be expected with IQ's of approximately 70 to 85; moderate is used for functional impairment requiring special training and guidance, such as would be expected with IQ's of about 50 to 70; severe refers to functional impairment requiring custodial or complete protective (or custodial) care, as would be expected with IQ's below 50. The degree of defect is estimated from other factors than merely psychological test scores, namely, consideration of cultural, physical and emotional determinants, as well as school, vocational and social effectiveness. The diagnosis may be modified by the appropriate qualifying phrase, when, in addition to the intellectual defects, there are significant psychotic, neurotic or behavioral reactions.

Idiot, Idiocy:

According to Colorado law, the term "insane person" is to be con-

Term not used in current official diagnostic classifications. Term was formerly used to designate

COLORADO STATUTES (Cont.)

strued to include idiots, without further definition.

Imbecile:

Not used in Colorado statutes.

Moron:

Not used in Colorado statutes.

Mentally Retarded:

Not used in Colorado statutes.

Feebleminded, Feebleness of Mind, Weakness of Mind:

Used in Colorado statutes but not defined.

Insane Person:

By Colorado statute, the term is to be construed to include idiots and any person so insane or distracted in his mind as to endanger his own person or property or the person or property of another or others, if allowed to go at large.

Mental Incompetent:

According to Colorado statute, the phrases "incompetent," "mental incompetent," "incapable," and "feebleminded" shall be construed to mean any person

CURRENT MEDICAL DEFINITIONS (Cont.)

severe mental deficiency.

Formerly used to designate moderate mental deficiency.

Formerly used to designate mild mental deficiency.

Not specifically defined in medical books.

Not used in current classification terminology, but sometimes used synonymously with mental deficiency.

Not used in current classification terminology. Psychiatric Dictionary, by Hinsie and Shatzky quotes Weihofen, as follows: "For a branch of learning which consists largely of definition, the law is strangely lax in the use of the word insanity. Unfortunately, the word has no technical meaning either in law or in medicine, and it is used by courts and legislators indiscriminately to convey either of two meanings: 1) any type or degree of mental defect or disease, or 2) such a degree of mental defect or disease as to entail legal consequences."

Not used in official medical classifications. Considered a strictly legal term.

Mental Incompetent (Cont.)

who, though not sane, is by reason of old age, disease, weakness of mind, feebleness of mind, or from any other cause, incapable, unassisted, to properly manage and take care of himself or his property, and by reason thereof, would be likely to be deceived or imposed upon by artful or designing persons.

Another statutory defect which Judge Ashton noted was the anomaly of allowing Ridge and Grand Junction to not accept persons, if in the judgment of these two institutions there is no room, but requiring the Colorado State Hospital to accept all patients over 16, regardless of space.

Judge Ashton concluded his observations with these remarks: "I think we do have some problems of definition."

One further problem exists insofar as commitment of mentally ill or retarded children is concerned and that is that the statutes are written principally to the adult rather than the children's problems. For example, the statute states that in some types of commitment the person to be committed must be given a copy of the complaint in lunacy. While this may be appropriate in the case of some adults who have mental competence in one area while lacking it in some other, it is not applicable at all to children. This merely points up the problem of attempting to solve the problems of the mentally ill or retarded child and the adult in the same statute.

In regard to parole of the mentally ill or mentally incompetent child there is a serious problem. Legally, parole may be granted from the two institutions at Ridge and Grand Junction for only 90 days. There have been cases of longer periods of parole by administrative actions. While the entire question of patient parole is principally a matter involving the training of inmates and changing the philosophy of our institutions from custodial to training, nonetheless, parole powers can be used to correct those cases where mistakes in commitment may be or have been made. The superintendent of the state mental hospital now has the authority to, by administrative action, grant parole to his patients for an indeterminate period. The same authority is needed in the state homes and training schools for mental defectives.

Experience in other states as well as in Colorado indicates that the problems of delinquency, dependency and mental retardation are very often interrelated, and commitment procedures, therefore, must be flexible enough to allow an overall program to be followed. On this point, a report on mental health activities in California has this to say:

"Antisocial behavior in children and youths is frequently a symptom of personal social maladjustment; in essence, a mental health problem."³

Speaking of the problem of mentally deficient lawbreakers, a comprehensive New Jersey report made this observation: "As the superintendents of our state correctional institutions have stated, the presence of mentally handicapped individuals in prisons and reformatories not only impedes the entire training routine for the normal population, but further retards the handicapped individual himself."⁴

Testimony by the superintendents of Colorado's two industrial schools amply bears out this statement.

In regard to proper commitment procedures, a study prepared by the United States Children's Bureau in cooperation with the National Probation and Parole Association and the National Council of Juvenile Court Judges is appropriate. The study, in discussing the jurisdiction which courts handling children should have, says that (1) every court in the state handling children's cases should be able to develop and have available the quality and quantity of social and other services that are necessary to the specialized nature of the work it undertakes; (2) there should be specialized and essentially uniform handling of all similar cases affecting parent, child or community child relationships within a state.⁵ Some further guidance in the evaluation of proper commitment procedures may be found in the Standard Juvenile Court Act advocated by the National Probation and Parole Association which has been adopted in part as a recommendation by the Colorado County Judges Association for enactment in Colorado. In Section 18 of the "Model Act," dealing with the area of commitment, the following statements are found: (a) "The court may cause any child concerning whom a petition has been filed to be examined or treated by a physician, psychiatrist or psychologist, or for such purposes may place the child in a hospital or other suitable facility." (b) "Whenever the court shall commit a child to any institution or agency, it shall transmit with the order of commitment a summary of its information concerning the child..."⁶

Mr. E. N. Roselle, Superintendent of the Southbury Training School for Mentally Retarded Children in Connecticut, and one of the fore-

most experts in the field, lists proper diagnosis as the "first and foremost" on a nine-point program in the care of mentally retarded children. Speaking at a conference on the subject in Denver on September 1, 1954, Mr. Roselle said:

"...first and foremost of these nine points, we must have in our states adequate diagnostic and guidance clinics... Just what is the diagnosis and prognosis of the child, what can be done for him. We need to find out just what the capacity of these individuals are, what their tendencies are, it is fundamental that we find out what they are."

These, then, are the major guideposts by which modern commitment procedures are measured. (1) An understanding of the relationship between delinquency, dependency, and mental illness or retardation. (2) Availability to the court of specialized social and diagnostic services. (3) Uniform handling of cases involving children throughout the state. (4) Latitude for the court to commit children for physical, psychological or mental treatment. (5) Transmittal by the court with commitment of a complete summary of all data on the child to the institution to which the child is assigned.

The laws relating to the commitment of children in Colorado will therefore be evaluated in terms of each of these five standards.

Relationship Between Dependency, Delinquency, and Mental Illness or Retardation

As pointed out in the previous description of existing Colorado commitment procedures, laws relating to children are largely unrelated, and are found in varying sections of the statutes, and each phase of commitment procedure is largely unrelated and different from every other phase. Mentally retarded children, for example, are committed only through the process of a Lunacy Commission procedure, which was established in Colorado just past

the turn of the present century. More will be said about the use of a Lunacy Commission in commitment of such cases later in these pages. The point to be emphasized here is that mental retardation is at times a factor in delinquency cases. Our present procedures do not always take this into account. A child who is brought to the court as a delinquent may in fact be, and often is, as the records indicate, a retarded child or a child suffering from mental illness, but the commitment procedures are compartmentalized, operating under different statutes, and for the most part, proper analysis and evaluation of the child is not made prior to committing him.

An examination of the records of children committed to the following state institutions was made: Buena Vista, Ridge and Grand Junction, Golden, Morrison, State Children's Home. At each of these institutions, the records of children committed for at least the last four months, and in some cases going back as far as three years, were examined. This examination disclosed a number of instances in which children were committed as delinquency cases, but mental retardation was a dominant factor involved, as was often subsequently determined at the institution. For example, one case record at Buena Vista had this notation on the commitment papers: "Appears to be mentally retarded." Another Buena Vista commitment paper had this notation: "Mentally retarded. Should be sent to Buena Vista." At the time of these commitments to Buena Vista, the persons involved already had substantial police records, including previous commitments to the Boys' Industrial School and some involvement in other court incidents. Perhaps at this stage of their development the best interests of society could only be served by committing the respective individuals to the State Reformatory. It does appear,

however, that proper commitment procedures and treatment might have discovered these conditions at an earlier point and thus saved Colorado the expense of treating, of harboring, and of apprehending these persons, and, as a corollary, perhaps made useful citizens out of these particular cases.

An even closer relationship exists between dependency and delinquency cases. An examination of the admitee records over the last four months at Golden and Morrison indicates a number of cases, particularly at the Girls' Industrial School, which might easily be classified as dependency rather than delinquency cases, and could have been handled accordingly. The statutes themselves in defining dependency and delinquency overlap in some areas. The United States Bureau of Prisons in commenting on Colorado's penal system made the following observation: "Juvenile female offenders are handled at the Morrison school. While a serious question may be raised as to whether the majority of the girls committed there might not better be handled in the community as dependency, neglect and delinquent cases, there is little reason to question the adequacy of the Morrison school to handle the younger female juveniles and adolescents."⁷

It appears, therefore, that one weakness in the present commitment procedures is a lack of correlation between these areas: delinquency, dependency, and retardation. The report of the U. S. Bureau of Prisons in its study made at the request of the Governor, further noted that: "Colorado's sentencing procedures are cumbersome, varied, and often unrelated to the realistic protection of the state or the needs of the offender." This same

criticism could be equally applied to the entire area of committing children, whether they be delinquency, dependency, or mental retardation or illness cases.

Availability to the Court of Specialized Social and Diagnostic Treatment

"The almost complete absence of adequate, verified case histories and diagnostic information precludes the realistic classification, training and treatment of individual cases." This is the conclusion reached in a study made by the Federal Bureau of Prisons of Colorado's penal system. The statement in its entirety applies to the commitment of children. Outside of Denver, there is no regularly established diagnostic center upon which the courts may draw for such analysis and evaluation, and even in the Denver area diagnosis is not uniformly made.

The records of the children sent to state institutions indicate that virtually no precommitment examination of children is ever made in most counties. The tables which follow indicate the results of the study made of the cases admitted to Colorado's children's institutions over the last four months. The items tabulated represent areas of information which are normally included in a good precommitment study. It will be noted that in no institution are there available complete records of the child to serve as a guide in their handling of the particular inmate problem. This study found that in many cases nothing was sent to the institution regarding the child except the commitment paper, and at times even the commitment paper was not filled out in its entirety, in violation of legal procedure.

TABLE 4

ANALYSIS OF PATIENTS ADMITTED TO RIDGE

July-October, 1954

Number of questionnaires:	16
Age range, at time of approval:	3 years to 18 years
	10, or the majority, were between 5 years and 10 years (inclusive)
Sex:	11 male, 5 female
Length of time between approval and admission*	
same month	2
one month	3
two months	<u>1</u>
in less than one year	6
over a year, but less than 1-1/2 years	4
two years	2
two years but less than three years	3
three years	1
Family Background included	16
(some only small amount)	
Medical History included	8
Psychological	1
Psychometric	1
Social History included	5
Partially	2
School History included	2
Developmental History included	2
Continuing Family Responsibility	
Family pays	4
Family plans to pay	5
Family unable to pay	2
Family finances unknown	1
Family not paying	4
Composition of Lunacy Commission	
2 doctors plus 2 laymen	1
2 doctors plus 1 other	1
1 doctor plus 2 others	1
1 doctor plus 1 other	1
No doctor plus 2 laymen	1
No information	11

*Many judges do not commit until there is
actually an opening

TABLE 5

ANALYSIS OF PATIENTS ADMITTED TO GRAND JUNCTION
1951-1954

Number of questionnaires:	43	
Age range, at time of approval		2 months to 49 years
23 (or one-half the total number) was		3 years to 11 years incl.
Sex	29 male	14 female
Length of time between approval and admission*		
	same month	3
	one month	5
	two months	6
	three months	6
	four months	3
	five months	1
	six months	2
	Seven months	1
	eight months	2
	eleven months	1
	in less than 1 year	30
	over a year but less than two years	5
	unknown	9
Family background included	6	
Partially included	24	
Not included	13	
Medical History	13	
Psychological Report	6	
Psychometric report	2	
Social History	10	
School History	8	
Developmental History	2	
Continuing Family Responsibility		
Family pays	12	
ADC	1	(Payment comes to Inst.)
OASI	2	(Payment comes to Inst.)
No payment	28	
Composition of Lunacy Commission		
2 doctors	5	
1 doctor, 1 nurse	1	
1 doctor, 2 others	1	
1 doctor	1	
	8	
No information	35	

*Many judges do not commit until there is an opening

TABLE 6

ANALYSIS OF COMMITMENTS TO GIRLS INDUSTRIAL SCHOOL

July-October, 1954

Number of questionnaires:	34
Age range, at time of admission:	12 years to 17 years
11, or one third, were 15 years old	
19, or over half, were 14 and 15 years	
Length of time between commitment and admission	
same day	21
one day	3
three days	2
no information re date of commitment	6
no information re date of admission	5
Family Background included	14
Medical History included	4
Social History included	6
School History included	2
Developmental History included	26
Reason for commitment	
incorrigible	16
no reason given	3
delinquent	6
manslaughter	2
runaway	5
shoplifting	2

TABLE 7

ANALYSIS OF COMMITMENTS TO BOYS INDUSTRIAL SCHOOL
July - October, 1954

Number of questionnaires: 42

Age range, at time of admission: 10 to 16 years

Length of time between commitment
and admission: same day - all

Family Background included	19
Medical History included	13
Social History included	15
School History included	14
Development History included	13

Reason for commitment

larceny	1
burglary	11
assault	5
no reason	2
stealing	6
"wanted to come"	1
tampering with	
automobile	2
runaway	2
armed robbery	1
delinquency	6
parole violator	2
shoplifting	1
incorrigibility	2

TABLE 8

ANALYSIS OF COMMITMENTS TO BUENA VISTA

Number of questionnaires:	25
Age range, at time of admission:	16 to 23 years
	1 not given
	7 were 16 years of age (the largest number in any one year's age)
Length of time between commitment and admission:	
same day	18
same month	3
date of admission not given	3 (date of commitment was given)
neither date of commitment nor date of admission given	1
Family Background included	17
Medical History included	18
Social History included	17
School History included	17
Continuing Family Responsibility	4
Reason for commitment:	
burglary	10
robbery	3
parole violator	2
larceny	1
grand larceny	2
rape	1
incorrigible	1
no reason given	3
forgery	1
delinquency	1

TABLE 9

COLORADO STATE CHILDREN'S HOME

Number admitted during last 4 months:	151
131 infants not studied	
Number of questionnaires	<u>20</u>
Age range, at time of admission:	2 to 14 years
Sex:	13 male 7 female
Admission apparently same day as commitment (Commitment date is only one given)	
Family Background included (but very limited)	13
Family Background not included	7
Family Association not included in any cases	
Medical History included	6
Medical History not included	14
Social History included	1
Social History not included	19
School History not included in any cases	
Developmental History included	3
Developmental History not included	17
Continuing Family Responsibility - none	20

The absence of analysis and diagnosis of children prior to commitment has resulted in some questionable commitments of children being made to all of the state's institutions. In order to determine whether or not faulty commitment procedures pose any particular problem at our institutions, the Legislative Council requested the superintendents of the Girls' and Boys' Industrial Schools for a statement in regard to the problems at their respective institutions resulting from a lack of diagnosis. The statement of the superintendent of the Girls' Industrial School follows:

"In answer to your request about my feelings of managing an Industrial School for delinquent girls combined with mentally retarded children plus psychotic children, I have this to say -- it can not be done!

"These are my reasons for the above statement:

"1.) For the retarded child, special treatment and so-called 'privileges' denied our other girls must be given to them for they can not comprehend or recognize rules and regulations. This can not be understood by the rest of our student body and then we have trouble. Most of our personnel is not trained in handling retarded children and some of them make it hard on these particular children because they do not know how to treat them. They, the retarded children, make extra work for the untrained personnel and the child suffers, which is not fair in my opinion. These children should have special treatment and guidance as well as discipline and should be in an institution where they can receive it. They may be delinquent because of their retarded condition but apparently their families did not know how to cope with this situation, so the child took the road of least resistance and became delinquent because he or she could be used by more intelligent delinquent children. Therefore it is my belief that the child when found delinquent, should first be diagnosed and fully studied before being placed in the wrong institution.

"2.) This same theory holds good for the delinquent psychotic child such as the schizophrenic, and the maniac-depressive -- both of whom we have had in our school and without facilities for handling them. They, in the cases we have had, usually have a high IQ and cause no end of trouble

in this type of institution. They definitely need specialized treatment which we have no way to give them. When we take them to a mental hospital where they are helped temporarily, and they have to come back to us where there are few professionally trained people to carry on the work that has been done for them, all the good work previously done is thrown away and not carried through. The child suffers and our money is thrown down the drain.

"Hoping this explains to some degree my thinking on this very critical problem now existing in all our penal institutions."

The Superintendent of the State Industrial School for Boys at Golden provided an analysis of the I. Q. distribution of his inmates and a statement as to the problems he encountered. The statement by the Superintendent of the Golden School indicates that 12-1/2% of the boys in the institution might be classified as mentally retarded. Classroom progress is necessarily slow, much remedial work is necessary, and the older boys of low I. Q. cannot be in the classroom with the smaller boys of low I. Q. A complete statement as to the situation at Golden follows:

"It can be seen from the table on I. Q. distribution that 12-1/2% of the boys in the institution might be classified as mentally retarded. Classroom progress is necessarily slow. Much remedial work is necessary in all grade levels; older boys of low I. Q. can't be in the classroom with the little boys of low I. Q., so they are spread, more or less, throughout the grades. However, the serious cases, as shown in the study of boys discharged do not all come from the low I. Q. group.

"Of the cases most urgently needing referral for psychiatric attention: (1) some were sent for observation before commitment; (2) some were committed to the School with the recommendation or request that they be referred for examination. The severity of their problems was generally recognized and the Industrial School was the only place for commitment.

"The cases presented in the special study were selected on the basis of boys discharged before they reached the age of eighteen because their type of problem made them unsuitable for care in our institution, considering their own needs and the welfare of other boys. They are not the total number of boys who have needed psychiatric care and special counselling; nor is the number referred to Psychopathic Hospital the total number in need of such attention.

"We have been able to take care of urgent cases through appointments with the Mental Hygiene Clinic and the Psychopathic Hospital at Colorado General Hospital."

TABLE 10

I. Q. DISTRIBUTION AT STATE INDUSTRIAL SCHOOL FOR BOYS
GOLDEN, COLORADO

From August 1954 Population Analysis

110-130	12	70-79	36
90-109	85	50-69	26
80-89	49		

Note: Surveying similar tables from month to month indicates above is typical distribution.

These statements, plus an examination of the records themselves, indicate that a serious problem exists in Colorado in regard to a lack of proper diagnostic evaluation of children prior to commitment to any of our state institutions. The examination of the cases admitted to the Homes at Grand Junction and Ridge do indicate that in some instances children have been committed as mentally retarded children, where perhaps other problems were involved. In one case it was noted that the child had hearing difficulty, and it may have been that the difficulty with the child was principally one of not being able to hear speech and therefore not being able to learn how to talk, rather than actually any physical damage or injury to the brain. Other instances

were brought to the attention of the study group where children with I.Q.'s as high as 105 were inmates of the State Home and Training School for Mental Defectives. In other cases, there were children at this Home who were questionable mentally retarded cases. While the number of these is not large in relationship to the overall population at these two institutions, and while it is certainly true that in many, many instances commitment to the State Homes for Mental Defectives is the obvious answer to a particular situation, it is equally true that in some cases there are borderline situations which might best be committed in some other fashion, or perhaps handled in the public school training program for abnormal children, authorized by the 1953 Session of the Legislature. Such cases can be discovered only through complete psychologic examination of the child prior to his commitment to the institution.

Uniform Handling of Cases Throughout the State

Commitment must, in the final analysis, always depend on the judgment of one person. This is the essence of our judicial system. Nonetheless, many states and modern authorities feel that it is possible to establish procedures and standards so that a uniformity in the handling of children's cases and in the commitment of like individuals can be achieved throughout a state. Examination of the cases committed to our institutions indicates a lack of uniformity in committing children for cause in Colorado. This lack of uniformity is almost directly related to the absence of proper diagnostic facilities in most parts of the state. It was found, for exam-

ple, that one child had been committed to the Home for Mental Defectives who might more properly have been committed to Golden or still more likely have been given counselling, both to himself and to his parents, as a behavior problem. There was serious question as to whether this particular persons was a mentally retarded child rather than a delinquency situation. In other cases children have been sent to the State Industrial School at Golden, where in fact the situation indicated committment to either the State Home or Training School.

There is a lack of uniformity in the procedures used to commit children. The laws of the State of Colorado require that commitment to Ridge and Grand Junction as mental defectives must be done only on the basis of a Lunacy Commission composed of two doctors. Analysis of the commitment records does not indicate that this procedure has always been followed. While it may have been, there are many cases, as indicated in Tables 4 through 9, where the composition of the Lunacy Commission was unknown as far as the official legal records sent to the institution were concerned. While all counties still use the Lunacy Commission, some counties, notably Denver, commit children as mentally retarded cases only after a more thorough psychologic and physical examination, both by medical doctors and psychiatrists. A great deal of difference in the handling of cases also exists in relationship to the person who is bringing the action. Examination of the records indicates that in those cases where the Welfare Department has been responsible for initiating the procedure, generally speaking some social, psychologic and medical examination has been made of the child. This is more

nearly true in Welfare Department cases than is not, though this too varies between the counties. Another area where there is a lack of uniformity in handling the cases is in the reasons for commitment. In one county a child may be committed as a delinquent, whereas in some other county the same fact situation causes the child to be committed under the dependency statute. It is also interesting to note that some judges view offenses with considerable more severity than do others.

These facts indicate a considerable lack of standards throughout the state to serve as a guide to the committing judges. With an almost complete absence of psychologic and medical evaluation of the children, with an antiquated statute for committing the mentally retarded, with a vast difference in facilities between the heavily populated areas such as Denver and the more sparsely populated sections of the state, it can hardly be expected that other than a lack of standard procedures would prevail in regard to the problem.

Latitude for the Court to Commit Children for Physical,
Psychological or Mental Treatment

Broadly speaking, the statutes do permit the courts to exercise this latitude in the commitment of children at the present time. The principal difficulties are (a) a lack of adequate diagnostic facilities with which to determine the need in many instances, (b) an absence of proper institutions where

such children can be committed, and (c) a lack of clearcut statutory authorization. In the case of children requiring long-term mental treatment but where there is no case of actual mental retardation, there is at present no facility within the State of Colorado to which such children may be sent. The statute, as interpreted by the Attorney General permits the Colorado State Hospital to refuse admittance to children who are under 16 years of age. There are sound medical and psychiatric reasons for not treating such children in an institution which is primarily for the treatment of adult persons. Discussions with Dr. Zimmerman, superintendent of the State Hospital, indicate that proper treatment of juvenile mental cases at his institution would require construction of a special building and school, physically removed from the remainder of the institution. Land is currently available at the Colorado State Hospital grounds for such construction, but personnel at the State Hospital indicates that until such time as a facility especially adapted to the needs of children is constructed, medical judgment precludes admittance of such cases to the State Hospital.

Children may be sent to the Colorado Psychopathic Hospital in Denver for treatment, but not for long-time care. The net result is that very often there is no alternative but to commit children who are not actually mentally retarded but who are in need of mental care to either Grand Junction or Ridge, or sometimes Golden, as retardation or delinquency cases.

The State Legislature in 1953 did create a program for handling exceptional children within the public schools. Under this program as authorized in House Bill 108 of the 1953 Legislative Session, special education for

handicapped children, special education classes for educatable mentally handicapped children were held in 11 school districts throughout the state, and a total of 369 children were in attendance. The districts which as a result of the state action in providing some funds for the employment of specially equipped teachers to handle these children were Littleton, Denver, Pueblo, La Junta Boulder, Jefferson County, Sterling, Del Norte, Delta, Grand Junction and Loveland.

Table 11 shows the cost and enrollment of this program in 1953-1954.

The beginning of this program in the State of Colorado offers a sound start in training within the public schools those mentally retarded children who are educatable and whose home situation is such that they may be left within their own environment without undue danger or hardship to other members of the family. Enlargement of this type of program would provide at least a partial answer to the problem faced by the courts throughout the state in committing some types of retarded children.

Transmittal by the Court of a Complete Summary of All Data on the Child to the Institution

In this benchmark by which commitment procedures may be evaluated, the processes followed in Colorado fall far short. An examination of the commitment records of all children sent to state institutions over the last four months reveals that in very few cases is there anything like a complete record of the child. Most institution heads will say that they get the child, the commitment paper, and nothing else, and this is amply borne out by examination of the records. Commitment by the courts in Denver usually does include a psychologic

TABLE 11

COST AND ENROLLMENT OF CLASSES FOR MENTALLY HANDICAPPED

<u>Town</u>	<u>District Number</u>	1953-1954		<u>State Reimbursement</u>	<u>Per Cent of Total Cost Paid by State</u>
		<u>Number Enrolled*</u>	<u>Cost to Districts**</u>		
Arapahoe County					
Littleton	6	17*	\$ 4,866.58	\$ 190.88	3.9
Cherry Creek	5	8	2,729.14	1,600.97	58.7
Englewood	1	3	620.83	286.70	46.2
Fort Logan	75	3	1,222.52	779.19	63.7
Petersburg	23	2	565.44	354.33	62.7
Boulder County					
Boulder	3	10*	4,866.58	873.19	17.9
Fairview	5	1	502.01	67.80	13.5
Delta County					
Delta	J-50	15	2,664.83	370.63	13.9
Denver County					
Denver	1	148*	60,746.94	15,271.11	25.1
Jefferson County	R-1	29	11,430.15	3,170.92	27.7
Larimer County					
Loveland	2	7	3,275.00	852.11	26.0
Logan County					
Sterling	12	15*	4,125.93	543.27	13.2
Atwood	60	1	400.00	248.21	62.1
Harding School	73	1	400.00	248.21	62.1
Padroni	91	1	250.00	212.05	84.8
Mesa County					
Grand Junction	51	12	3,026.30	755.50	25.0
Otero County					
La Junta	11	10	4,133.91	1,162.13	28.1
Phillips County					
Haxtun	7-J	1	550.00	398.21	72.4
Pueblo County					
Pueblo	60	96	41,023.75	12,378.18	30.2
Rio Grande County					
Del Norte	C-7	10	3,026.99	700.23	23.1
Weld County					
Stoneham	110	1	400.00	248.21	62.1
	TOTALS:	369	\$ 150,826.90	\$ 40,712.03	26.3

*Includes non-resident students enrolled from Arapahoe, Boulder, Logan, Phillips, and Weld Counties.

**This is not total actual cost, but cost based on salaries of teachers and supervisors of special education, textbooks and supplies, transportation, psychological services.

or mental evaluation, a medical record, and, if the child has been on probation or investigated for possible probation previous to commitment, the report of the probation officer and his findings are always included in the information sent to the particular institution. In most counties, however, such information is not available and is therefore not sent. In numerous instances examination of the records fails to even distinguish as to the type of offense for which a child is being committed. A number of commitment papers for people sent to Golden and Morrison will have noted as the reason for commitment such vague general statements as "Juvenile Delinquency" or "Growing Up In Idleness." These general statements indicating nothing about the background, the environment or the nature of the child himself are the only guides which an institution receives when a person is committed. Such sketchy backgrounds provide no real basis for the institutions themselves to handle each case on the individual basis which it deserves to be handled.

SUMMARY

1. Colorado statutes relative to the commitment of children are unrelated and oftentimes ill-defined as to the nature of the offense for which the child is to be committed.

2. There seems to exist an urgent need for better facilities for use of the courts throughout the state in diagnosis, evaluation and examination of children prior to commitment to state institutions.

3. Greater flexibility is needed in Colorado commitment procedures. This is borne out by the fact that some children have been questionably committed, as indicated by a comprehensive examination of the records of those children who have been sent to various state institutions within Colorado.

4. A clearer definition is needed of such things as dependency, delinquency, mental retardation, and mental illness in the statutes of Colorado. At the present time the definitions are, particularly in regard to mental cases, ill-suited to the amount of knowledge now existing in this area of medicine. A classification of mental retardation is urgently needed within the Colorado statutes.

5. Broader authority to transfer inmates between institutions seems to be indicated within the state. At the present time such authority is limited largely to transfers between Ridge and Grand Junction, and between Buena Vista and Canon City, and between both of these institutions and the State Hospital in Pueblo. Authority should be granted, under proper safeguards to transfer inmates between all state institutions as the particular situation requires.

6. Serious consideration should be given to a statute which would place an upper limit on the age of people retained at the two Homes at Ridge and Grand Junction. It might be advantageous to more properly commit such persons as are over a specific age but are mentally retarded to custodial care at the Colorado State Hospital rather than having custody of such persons at the same institution to which young children are sent for care and training.

7. The statute permitting the county court which has principal jurisdiction in cases involving children to use expert advice and counsel in the fields of medicine, psychiatry and psychology should be strengthened and made more explicit to give a legal foundation to practices which at present already exist in a few courts throughout the state and which, if proper facilities were available, would undoubtedly exist in other areas as well.

FOOTNOTES -- CHAPTER TWO

1. Chapter 71, Colorado Revised Statutes.
2. American Psychiatric Association, Diagnostic and Statistical Manual, Mental Disorders, 1952.
3. One Problem, A Report of the California State Mental Health Coordinating Committee, 1954.
4. Mental Deficiency in New Jersey, Commission to Study the Problems and Needs of Mentally Deficient Persons, 1954.
5. Standards for Specialized Courts Dealing with Children, U. S. Children's Bureau, 1954, p. 22.
6. A Standard Juvenile Court Act, National Probation and Parole Association, 1949, pp. 26-27.
7. Report from James V. Bennett, Director, U. S. Bureau of Prisons, to Governor Dan Thornton, October 18, 1954.

CHAPTER 3

RECOMMENDED CHANGES IN COMMITMENT PROCEDURES

The problems of properly caring for children lie in two basic areas -- the method by which children are committed to the institutions and the types of programs at the institutions themselves. It is with the first area that this study has concerned itself. While recognizing that the second area may be a problem, there are immediate problems of properly committing children, even within the present framework of the state institutions for children.

The findings that children have, as a result of improper precommitment diagnosis, been sent to institutions which are not suited for them, cannot be overlooked. It is also evident from the close analysis made of the records of children sent to the various institutions that the agencies receive virtually nothing in the way of personal histories to assist them in properly handling specific individuals. This by itself is an important deficiency in the present procedures used in committing children. In other words, even if there were no errors being made in the assignment of children to various institutions, a need for proper diagnosis would still exist to help make the present institutions function more effectively for each individual.

The head of virtually every state institution caring for minors has testified that this lack of information about the child presents a serious handicap in their handling of the person after commitment. It seems evident, therefore, that improved diagnostic and classification procedures are an urgent need even within the framework of the present state children's institutions and their program of activities. It is the overall recommendation

ot this committee, therefore, that better pre-commitment evaluation of children be provided as part of the laws relating to the assignment of children to state institutions.

In order to provide for better commitment procedures this committee makes the following suggestions for legislative consideration:

1. That the state create, on a small scale, a diagnostic center. This center, with a relatively small appropriation could be set up on an out-patient basis, using the staff facilities of the Colorado University Medical center for diagnostic work, and some facilities at the State Children's Home for housing of the children. Such a center set up on this basis would, in the opinion of the administration of the medical center, require the addition of perhaps the equivalent of 3 additional full time staff members. It would also require some small scale remodelling in the infirmary of the State Children's Home in order to provide security type facilities for a limited number of cases. Thus, under the system proposed, the Colorado General Hospital would provide diagnostic services on an out-patient basis and the children would be housed in the State Children's Home. It should be pointed out that in most cases diagnosis would not require more than three to five days. It should also be emphasized that this center would not be a treatment center; the children would be merely diagnosed before final commitment.

2. That, since the City and County of Denver, has for the most part been able to provide diagnosis to the children committed from the county, the initial diagnostic procedures be limited to counties having fewer than 100,000 population. It is recognized that the eventual goal of such diag-

nostic services is to make them available to all parts of the state, but it is also recognized that with limited funds available, these services should first be made available to those areas in which the greatest need exists.

3. That, in view of proposals which are being advanced by the County Judges Association for a new juvenile procedure law which would instruct the county courts to make use of expert diagnosis, that commitment to the diagnostic center be a matter of discretion with the County Judges. It is the belief of the study committee that virtually all county judges would welcome an opportunity to make use of better diagnostic facilities, when such become available. For this reason no compulsion is recommended at this time, except in cases involving mental problems.

4. That the administrative code of Colorado be changed so as to permit transfer of children between all children's institutions. That is children could be transferred between Golden or Morrison and Ridge and Grand Junction and the State Children's Home. Proper safeguards must be established to prevent shifting of children on administrative decision alone. It might be possible to require evaluation of all children in the institutions to be diagnosed prior to transfer, and have such transfer approved by the county judge making the original commitment.

5. That the lunacy laws of Colorado be amended to provide accurate definitions of mental illness and mental retardation so that realistic petitions may be filed and proper commitments made. It is further suggested that no commitment of children be permitted under the "lunacy commission" procedures, but that adequate psychiatric diagnosis be required at the diagnostic

center before final commitment. In this area alone, pre-commitment examination would be required.

6. That serious consideration be given to placing an upper limit on the age of patients at both Ridge and Grand Junction. Taking a number of custodial cases of advanced age from the institutions and transferring them for care to the Colorado State Hospital would, apparently work no serious problems, either financial or program wise, on the state hospital. Removing patients of advanced age from Ridge and Grand Junction would however allow more children to be treated.

PART II

PROPOSED CHANGES IN COLORADO JUVENILE COURT PROCEDURES

PART II

PROPOSED CHANGES IN JUVENILE COURT PROCEDURES

As part of the study of laws relating to children the Legislative Council undertook an investigation of the laws dealing with children in the courts. It was immediately apparent that "the woods were literally full of people" doing similar studies. It was therefore felt that the council could make its best contribution by coordinating the efforts of the respective private groups concerned with the problem.

The principal groups involved in this effort were: the County Judges Association, the League of Women Voters and the Colorado Council of Parent Teachers Association. In addition the mental health committee of the Colorado Bar Association was also engaged in studying the possibilities of revising the mental health laws of the state. Their efforts are principally concerned with adult problems. However, liaison has been maintained with them.

In view of the interest of each of these groups, a subcommittee consisting of Professor Homer Clark, Jr., of the University of Colorado Law School, chairman, Judge Harold Lutz, of Jefferson County and president of the Colorado County Judges Association, and Representative Albert Davis was appointed. Mrs. Paul Thompson, chairman of the children's laws committee of the League of Women Voters, Mrs. Ware of the Colorado Council of Parent Teachers Associations, and Marie Smith, Director of the Child Welfare Division of the State Welfare Department, attended the meetings and assisted in the work. This group succeeded in substantially reconciling the divergent points of view with which each of the groups

began the study. The outside groups were principally concerned with passage of "The Standard Juvenile Court Act" as proposed by the National Probation and Parole Association. The Judges Association were in favor of many sections of the act, but felt that it was impossible to provide for the specialized juvenile courts on the statewide basis the act calls for.

In addition there was some disagreement over specific features of the act proposed by the County Judges Association as a juvenile procedures law in Colorado. For example, the proposed Judges law provided, as do current Colorado Statutes, that children over the age of ten may be subject to criminal prosecution. The League of Women Voters and the Parent Teachers Associations felt that the age should be 16, which figure was finally agreed upon.

There was also some disagreement over the interpretation of certain parts of the act. For example some felt that the language of the proposal permitted the court to block the filing of petitions in children's cases. These items were each clarified or rewritten to the apparent satisfaction of all concerned. The County Judges Association will present to the 40th session of the Colorado General Assembly a proposed juvenile procedures act, which as a result of meetings held under the auspices of the Legislative Council has the apparent agreement of all concerned.

While the act itself is agreeable to all parties, there still remains a question over the lack of a requirement in the law that County

Judges possess legal and technical qualifications. It was the feeling of the League and the PTA that county court judges, since they have specialized powers dealing with children, should also possess special qualifications. The county judges association, on the other hand, pointed out that in many counties, there are no legally trained people available for judgeships. The issue of qualifying county judges as lawyers is still unresolved. The county judges association, through their president, Judge Lutz, did however indicate a willingness to consider qualifications for judges in counties above a specified population level.

The code as it will be presented by the county judges association is not a complete children's code. For example, it does not cover cases of mentally retarded or mentally ill children. It does not cover cases of dependency, outside of the court. It is, as the title indicates, principally a revised code of juvenile court procedures. In this regard the proposed code modernizes the definitions of delinquency and dependency, and eliminates much of the archaic language now in the statutes. It also gives the county court direction in using modern diagnostic facilities, when such are available.

The proposed law also directs that the courts shall forward a summary of all data it has on a child to an institution when the child is committed. This is a step forward and would tend to correct one of the weaknesses in present commitment procedures.

One of the major departures in the proposed law is that, if passed, the county court will then have exclusive jurisdiction in all cases involving

children. This step is approved by the League as well as the Parent Teachers Association. The proposed code also gives to the County Court and its probation officer powers exercised by the Humane Society. In those counties having more than 100,000 population the juvenile court will have the exclusive court jurisdiction in children's cases.

A detailed summary of the present court procedures and the one proposed by the County Judges Association follows. This summary was prepared by Professor Homer Clark, Jr., of the University of Colorado Law School.

CHANGES MADE IN PRESENT LAW BY THE PROPOSED

JUVENILE PROCEDURES CODE

PROPOSED CODE

1. Jurisdiction: Age - 18, from conception on. Sec. 4: Children over 16 may be transferred to criminal court in felony cases.
Child who:
 - a) Who has no parents or guardian
 - b) Who has no parents or guardian willing or capable of control
 - c) Who has no parents or guardian actually exercising proper control and who needs control
 - d) Who is neglected as to proper or necessary support or education
 - e) Neglected as to medical, psychiatric, psychological or other necessary care
 - f) Abandoned
 - g) Whose home is unfit due to cruelty, neglect, depravity of parents, guardians or custodian
 - h) habitually truant

PRESENT STATUTES

- Age 18, from conception on. Ch. 33, Sec. 1, 53, not applicable to crimes of violence punishable by death, if child over 16. Dependent children as follows:
- a) Dependent on public for support
 - b) Destitute, homeless or abandoned
 - c) Who has not proper parental or guardianship
 - d) Where parents are failing or refusing to support the child
 - e) Habitually begs or receives alms
 - f) Found living in a house of ill fame
 - g) Living with vicious or disreputable persons
 - h) In unfit home because of neglect, depravity or immorality of parent or guardian

PROPOSED CODE

- i) Persistently or habitually disobeys proper parental orders
- j) Beyond the control of parent
- k) Deports himself so as to injure morals or health of himself or others
- l) Found in disreputable place
- m) Associates with vagrants, vicious or immoral persons
- n) Alleged to have violated state or federal statute, or local law or municipal ordinance except traffic laws
- o) Occupation, behavior, condition, environment or associations injure or endanger his welfare or that of others

Children over 18 who came within n) above before being 18, and who are now under 21

Children must reside or be found within the county.

- p) To determine custody or guardianship of any child, whether or not fitness of the parents is involved
- q) Adoption of minors
- r) Termination of parental rights
- s) Judicial consent to marriage, when that is required
- t) County court has exclusive jurisdiction in children's cases but may transfer to district in criminal actions

PRESENT STATUTES

- i) Whose environment is such or about whose custody a controversy is such as to warrant the state in assuming guardianship in the interest of the child

Delinquent children, as follows:

- j) Who violates state law or city or village ordinance
- k) Disorderly, immoral or incorrigible
- l) Growing up in idleness or crime
- m) Willingly associates with thieves, vicious or immoral persons
- n) Knowingly visits or enters a house of ill repute
- o) Knowingly patronizes or visits any policy shop or gaming house
- p) Drinks intoxicating liquors, or visits house where they are sold
- q) Patronizes or visits any public pool room or bucket shop
- r) Guilty of rowdyism or disorderly conduct about vacant streets
- s) Loiters about vacant lots or public streets
- t) Wanders about any railroad tracks or jumps on any moving train, or enters yards, car engine, etc.
- u) Makes indecent proposal
- v) Habitually uses vile, obscene, vulgar, profane, indecent language
- w) Disorderly or immoral conduct in any rooming house, vehicle, automobile, garage, barn, public place, school, moving picture

PROPOSED CODE

2. Transfer: Other courts shall transfer if in criminal case against a minor in another court, if crime committed before age 18.
3. Juvenile court retains jurisdiction until child becomes 21, unless discharged, including time child is in public institution for temporary care and observation.
4. Court may transfer to other court if child 16 or older commits a felony.
5. Investigation and Petition:
 - a) Person informs court
 - b) Preliminary investigation
 - c) Informal adjustment or formal petition filed.
6. Summons to parents or persons having custody, requiring child to be produced. Parent or guardian shall be personally served if not in custody of the child.

PRESENT STATUTES

house, place of worship, place of entertainment

33-3 speaks of "child in his county," meaning in the county of the person filing the complaint

- x) Adoption: Ch. 4, handled by county courts
 - y) Relinquishment: 33-43
 - z) 33-22: Court may appoint State Humane Society guardian of child under 14 who is without a guardian, abandoned or treated with gross and habitual cruelty, or is deprived of liberty.
46:200: General jurisdiction of the juvenile courts
2. No corresponding section
 3. No corresponding section
 4. 48-4: Infant under 10 can't commit a crime. 33-59 allows juvenile court to direct child to be kept in proper custody until information filed.
 5. Dependent child: 33-3: Begun by petition of officer or person residing in county. Verified. 33-55: Delinquent child: By petition, also by "reputable person" having knowledge. Verified.
 6. Dependent child: 33-4: Citation if parents reside in county to be served on them. If parents reside outside county, or if endorse on

PROPOSED CODE

Court may make all necessary orders for production of the child, or for restraining any acts detrimental to the child, pending action.

7. Manner of Service of Summons: In general same as rules of civil procedure, except that time limits are shorter: Two days' notice.
8. Witness Fees and Expenses: May tax costs against the county.
9. Failure to obey summons is contempt.
10. Voluntary appearance of parents gives jurisdiction, but they shall have opportunity to be heard.
11. Apprehension and Release: Taking into custody is not arrest. Officer to notify parents or guardian, unless impracticable, and release child on parents' written promise to produce. If they fail, summons may be issued.

If child not released, may be placed in custody of probation officer, to come before court at time designated, or in custody of other person appointed by the court, or taken to court immediately (within 48 hours).
12. Pending final disposition, child whose custody has been assumed by the court may be released to parent, guardian, custodian, probation officer or other person.

If not released, to be detained in such

PRESENT STATUTES

petition consent to have the child adjudged dependent, no service.

Delinquent child: 33-55: Petition by reputable person, verified, service on parent or guardian if living in county, if not or if consent, no service of citation.

7. 33-4: Two days' notice

33-5: Six days' notice
8. 33-57: Fees may be taxed and collected under certain conditions.
9. 33-58: Failure to obey summons is contempt.
10. No corresponding section
11. 33-58: No incarceration of the child unless necessary to insure attendance in opinion of judge or sheriff. Verbal or written promise of parent or guardian to produce may be accepted. No child under 14 to be put in jail or lock-up.
12. 33-58: No incarceration unless necessary to insure attendance. No child under 14 to be put in common jail or lock-up.
33-63: May commit child to probation officer pending hearing, or to suitable family home, or to state

PROPOSED CODE

place of detention as court shall designate.

13. Detention Without Warrant: Officer may immediately take child into custody, where violating law or ordinance, or fugitive from parents or justice, or is in such surroundings as to endanger his health, morals or welfare.

Officer to report the taking into custody to court immediately, and case to go on as above. Records of child to be kept separate.

14. Detention Accommodations: In counties under 100,000, detention homes to be set up under court's supervision, or may arrange with existing institution to take care of children.

15. Hearing: Broad powers to the judge, can order medical, psychiatric exam, use probation officer's report, social worker's report, inquire into background, home, history, associations, etc. Trial is with or without jury.

District attorney or county attorney to appear on behalf of the petition.

16. Decree:
- a) Requires finding of facts as to jurisdiction.
 - b) Can place child on probation in his own home. "Probation shall mean case work services during a continuance of the case."
 - c) Can place him in custody of a suitable person.
 - d) Can levy a fine of \$300 and require restitution.

PRESENT STATUTES

industrial school, or to any institution.

13. No such provision.

14. No corresponding provision.

- 33-5: Dependency hearings. Judge may bring in the child, investigate the facts, ascertain the causes of dependency. District or county attorney to appear at request of court.

33-54: Child has right to demand a jury, or court can order one.

33-56: District attorney or deputy to conduct cases.

16. 33-6: May commit dependent child to state home, or such other disposition of the child as seems best for its moral and physical welfare.

33-63:

- a) May continue the hearing.
- b) May commit the child to a probation officer and allow it to

PROPOSED CODE

- e) Can commit to proper public institution, public agency, or private agency or home.
 - f) Can commit to custody of suitable person.
 - g) Above to be indeterminate, but not beyond the 21st birthday.
 - h) May require medical or psychiatric treatment, may place child in hospital for the purpose.
 - i) Such other care and treatment as the court deems best.
 - j) Parents or person having custody of the child may be ordered to do or stop doing any acts required or forbidden by law, where for child's welfare.
 - k) May dismiss the petition.
 - l) No adjudication to be considered a crime. No civil disabilities.
17. In placing a child, court shall wherever practicable, select a person or agency of the same religious faith as the parents, or the child.
18. Court may order parents to provide payment for support, care, medical treatment of the child ordered by the court, within parent's ability, and after hearing.
19. Adult Jurisdiction:
- a) Original jurisdiction (not exclusive) to try adult charged with acts which cause a child to come in need of care of court.
 - b) Paternity cases
 - c) Desertion, abandonment or failure to support.

Child, adult charged, or other person concerned must reside in the county, or be at the time present in the county.

PRESENT STATUTES

- remain in its own home.
- c) Place child in suitable family home.
- d) Place child in state industrial school.
- e) Place child in any institution in the county for care of children.
- f) Place child in any state institution.

Institution board of managers to have control of the child.

Child cannot be committed beyond age 21.

17. No corresponding provision.

18. No corresponding provision.

19. 33-43, 44, 51: Juvenile court has jurisdiction over persons causing or contributing to dependency, neglect, delinquency.
20-1 to 6: Paternity cases, before Justice of Peace. Reputable person resident of the county files petition, no requirement as to child's residence.

48-275: Unlawful to permit life or health of child to be endangered, or to abandon child, or wilfully and negligently deprive of necessary food, clothing or shelter, or in any other manner injure the child.

PROPOSED CODE

Misdemeanor to do or omit to do any act which causes need of care or protection of the court. Trial by court or jury.

20. Procedure in adult cases: Procedure in children's cases to apply so far as practicable, and when not inconsistent with law.

Court may suspend sentence, place Def. on probation, and make such order as is for the best interests of the child. Bond and sureties may be required.

20. A

- 1) Support: Dependent relative may file petition for furnishing of support. Parent, guardian or public official interested may file. No need to make prior demand.
- 2) A father liable to support minor child if able. If not, or dead, mother liable, if able.
- 3) Parents or step-parents of a dependent minor who has been a resident of the county at any time during preceding 12 months liable to support him. Court to apportion contributions.
- 4) Step-parent of minor child legally chargeable with support if likely to become a public charge, if knew of the child at time of marriage.
- 5) Minor means under 18.
- 6) Procedure: Summons to issue on petition, warrant if necessary to insure attendance. Bond available.
- 7) Orders: Court may
 - a) Order support of dependent;
 - b) Include specific items of support in the Order;
 - c) Require weekly payments;
 - d) Make orders run til further orders, except no order to support a minor can run beyond 18;

PRESENT STATUTES

48-278: Justice of the Peace has jurisdiction of this offense.

33-67: Misdemeanor to contribute to delinquency of a child.

20. 33-46: Court may require Def. to do or omit to do any acts complained of in petition. May put Def. on probation, or require bond.

33-47: Def. has right to jury trial.

20. A Ch. 161A - Uniform, etc. Support:

Gives direct right against party liable for support, either by minor or by public official if county has had to support the minor. Also interstate provisions. Includes wife as well as child.

83-1 to 10: Criminal actions for nonsupport when husband acts wilfully.

124-1, 2, 3: Requires relatives of poor persons to support them. County can also recover for support furnished. Husbands and wives not included in list of relatives who must furnish support.

56-39: Alimony and support orders of other states may be enforced in Colorado

PROPOSED CODE

- e) Make order of protection, as to molestation, visitation, give proper attention to care of the home;
- f) Award custody, except may not place child in institution or agency otherwise than as provided in the act;
- g) Determine manner of payment of support;
- h) Require security;
- i) Release on probation person committed for non-support;
- j) Remand for up to 5 days for investigation person charged with non-support;
- k) Order physical or psychiatric examination;
- l) Send process in any county;
- m) Make any order necessary to carry out provisions of this section.

21. Termination of Parental Rights:

- a) When in proceeding under Sec. 5, it appears that parents have abandoned, or child is born out of wedlock, or parents have habitually refused to support, may transfer child to permanent care of agency, institution or person, pursuant to 15-B, and may terminate all parental rights.
- b) Rights of one parent may be terminated without affecting rights of the other.
- c) On application of parent, parents or mother of child born out of wedlock, court may order transfer of the child, and termination of rights, if finds in best interest of child.
- d) All orders in writing and conclusive after 6 months from date of entry.

22. Contempt powers.

23. Court to keep records; records to be published except by authority of court order. Misdemeanor to violate.

Name or picture of any child not to be published except by authority of court order. Misdemeanor to violate.

PRESENT STATUTES

21. 33-6 on disposition of dependent children now is assumed by the courts to allow termination of parental rights.

33-43(1) to (8) now provides for voluntary relinquishment of parental rights, after parents advised of the effect of their action. This is not repealed by the Proposed Code.

Colo. R.C.P. Rule 107

33-53: Names, etc. not to be published except by court order.

33-54: Names and identities not to be disclosed in reports made by courts.

PROPOSED CODE

PRESENT STATUTES

- | | |
|---|--|
| 24. Appeals by interested party as provided by law. | 33-76, 77, 78: Prohibits publicity, photographs of children involved in delinquency, contributing or dependency or any other case for correction or protection of children. Court may enter order forbidding publishing of any proceedings in such a case. |
| 25. Cooperation of public officials. | 46-213: Appeals and writs of error to Supreme Court. |
| 26. Construction: Liberal. | 46-165: Appeals to district court from all final decrees of county court. |
| 27. Not to conflict with other acts relating to crimes. Court may dismiss and transfer to proper court for prosecution of crime. | No corresponding provision. |
| 28. Fees cannot be taxed unless child proceeded against in accordance with this act, or where court directs criminal prosecution. | 33-67: Liberal construction.
33-13: " " |
| 29. Repealer. Repeals only sections in Art. 33. | 46-200: Gives coordinate jurisdiction with district and county courts as to crimes where person is under 21, or in contributing cases.

33-58: About the same. |

RELINQUISHMENT AND ADOPTION

The third major area of concern to the committee was that of relinquishment and adoption of children. Colorado's present adoption law was passed in 1935 and amended in 1949 and 1951. The General Assembly declared in the first section of the act that the act is necessary and desirable

from several viewpoints including that of "protecting the adopting parents, by providing them with information about the child and his background, and guaranteeing them an undisturbed relationship with the child from and after the time of adoption." To supplement the adoption act the General Assembly enacted a relinquishment law in 1949 which had as its intent insuring that children who are voluntarily relinquished for adoption by either a mother or father or both, are placed with a licensed child caring agency, the State Home for Children or a public welfare department for subsequent adoption.

These two statutes, which were intended to be supplementary to each other, in fact are in conflict, and both are in conflict with the dependency statute which provides a third method by which children may be placed for adoption. Under the dependency statutes, a child may be brought before the court for adoption. If the court proceeds under the dependency statute, instead of either the adoption or relinquishment statute, it has the option of placing the child directly with any family it chooses. Thus there are three separate methods by which children may be placed with adoptive parents as follows:

1. The child may be declared a dependent child and placed by the county court as the court best sees fit.
2. The child may be voluntarily relinquished by either or both of his natural parents. The intent of this statute was to insure that child-agency. However, the statute included a phrase which says, "The court shall award the custody of the child to whomsoever

it shall see fit." This phrase has had the practical effect of nullifying the intent of the act.

3. A child may be brought to the court under the adoption statutes, and the parent or parents who are giving up the child may consent to the adoption. If such consent is obtained it is not necessary under the laws as interpreted by the court to have further approval of a social agency.

To eliminate these conflicts and loopholes in the law, the subcommittee studying this problem recommends that the adoption and relinquishment statutes be consolidated into a single law, thus providing a uniform procedure under which children are relinquished for adoption and placed for adoption. At the same time it is recommended that the statute be amended to provide that no adoption may be approved by the court unless consented to by a child placing agency which is licensed by the State Board of Standards and Child Care, the State Children's Home, or a public welfare department. Such an amendment would eliminate the possibility of by-passing the investigative social agencies through the dependency statutes, and would at the same time provide the protection to the child and the parents which was the legislative intent when the original laws were enacted.

By requiring approval of a social agency prior to adoption, possible "black markets" in babies could be eliminated, since no direct arrangements between the natural parents and the adoptive parents or an intermediary would then be possible.

Guardian and Ward

There is one other area dealing with the commitment of children, which can lead to evasion of the adoption regulations, and is in conflict with other statutes. In the laws dealing with Guardian and Ward, there is a section, enacted in 1895, which permits the transfer of children by a deed or will, without reference to a court. The statute, still in force, provides that upon the death of either parent, the surviving parent may transfer the custody of child by a deed. In the case of death of the surviving parent the child may be willed. Information presented to the committee indicates that on rare occasions this process has been followed.

All of the significant portions of guardian and ward statutes have been incorporated into other sections of the law, and to further remove any possibilities of evading the adoption procedures, the subcommittee recommends that this section of the guardian and ward statute, Chapter 152-17-3, CRS, be repealed.