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0111 Proposed Colorado Children's Code

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state law
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no. 111

Report to the Colorado General Assembly:

PROPOSED
COLORADO CHILDREN'S CODE

COLORADO LEGISLATIVE COUNCIL

RESEARCH PUBLICATION NO. 111

LEGISLATIVE COUNCIL

OF THE

COLORADO GENERAL ASSEMBLY

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Vincent Massari	Allen Dines, Speaker
L. T. Skiffington	Richard Gebhardt
Ruth Stockton	Harrie Hart
Robert L. Knous, Lt. Governor	Mark Hogan
	John R. P. Wheeler

* * * * * * * *

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 sessions, 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 the form of facts, figures, arguments, and alternatives.

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ROOM 341, STATE CAPITOL
DENVER, COLORADO 80203
222-9911 - EXTENSION 2285

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Rep. Harrie E. Hart
Rep. Mark A. Hogan
Rep. John R. P. Wheeler

November 29, 1966

To Members of the Forty-sixth Colorado General Assembly:

As directed by the terms of House Joint Resolution No. 1009 (1966), the Legislative Council is submitting herewith its report on Laws Relating to Children. The report contains a revision of the children's laws of Colorado, as presently contained in Chapter 22 of the Colorado Revised Statutes, 1963, and certain recommendations concerning the function of the Colorado State Children's Home.

This report was submitted to the Legislative Council on November 28, 1966, at which time the report was adopted by the Legislative Council for transmission to the General Assembly.

Respectfully submitted,

/s/ Senator Floyd Oliver
Chairman

FO/mp

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LETTER OF TRANSMITTAL

November 28, 1966

Senator Floyd Oliver
Colorado Legislative Council
Denver 2, Colorado

Dear Senator Oliver:

Transmitted herewith is the report of the Legislative Council Committee on Laws Relating to Children pursuant to House Joint Resolution No. 1009 (1966). This report contains a revised Children's Code for Colorado, with explanations thereof, and certain changes in the function of the Colorado State Children's Home under the provisions of the revised Code.

Sincerely yours,

Representative Ben Klein
Chairman
Committee on Laws Relating
to Children

BK/mp

FOREWORD

This study was made under the provisions of the House Joint Resolution No. 1009 (1966), passed at the second regular session of the Forty-fifth General Assembly. This resolution directed the Legislative Council to appoint a committee to resume study of children's laws and child welfare in Colorado. The resolution pointed particularly to the need for additional study and work on the revision, codification, and amendments to the children's laws, so that a complete revision could be made. To be included in the study were:

(1) the needs of children which can be controlled or improved by legislative enactment, including in particular those children who are dependent, neglected, or delinquent, and children otherwise requiring special care;

(2) the laws affecting children, including the operation and effect of existing laws; and

(3) juvenile probation services and court services for handling juveniles.

Members of the committee appointed pursuant to this resolution included: Representative Ben Klein, chairman; Representative Jean K. Bain, vice-chairman; Senators D. Paul Bradley, A. Woody Hewett, and Anthony F. Vollack; and Representatives Joseph V. Calabrese, Charles J. DeMoulin, Daniel Grove, Tom Jordan, and Jerry L. Yost. Senator Floyd Oliver, chairman of the Legislative Council, also served as an ex officio member of the committee.

The committee is especially grateful to the members of its Advisory Committee for their cooperation and assistance. Advisory Committee members were: Judge Ted Rubin, Denver Juvenile Court; Mrs. Lucille Beck; Frank Elzi, Denver City Attorney; John Hargadine, Director of the Juvenile Division, Boulder District Court; Mylton Kennedy, Director, Youth Services Division, Department of Institutions; Mrs. Kathleen Littler; Mrs. Elizabeth Pellet; James Rogers, Denver District Attorney; Miss Marie C. Smith, Director, Division of Children and Youth, State Department of Welfare; Mrs. Phyllis Stare, League of Women Voters; and Mrs. Rena Mary Taylor. Professor Homer Clark, University of Colorado Law School, served as legal consultant to the committee. In addition to members of the Advisory Committee, the following persons assisted the committee by reading and commenting on portions of preliminary drafts of the revised code: Dave Williams, Referee, Denver Juvenile Court; Tom Nelson, Assistant Attorney General, State Department of Public Welfare; and Goodrich Walton, Executive Assistant, Division of Youth Services.

Harry O. Lawson, Senior Research Analyst, was assigned primary responsibility for the staff work on the revised code, assisted by Mrs. Elizabeth Dodd, Research Assistant, and Miss Clair T. Sippel, Secretary of the Legislative Reference Office.

November 28, 1966

Lyle C. Kyle
Director

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Colorado State Children's Home

Findings

1) The Colorado State Children's Home is presently serving as a home for approximately 120 children, under sixteen years of age at the time of commitment, who were committed to the Department of Institutions or to the Home as being dependent or neglected.

2) Increasingly, it is being used to provide group care to multi-problem teenage children who cannot live in their own homes and who cannot function adequately in foster home placement. These are troubled children, with emotional problems but not of a degree to require commitment to a psychiatric facility, often with mild mental retardation, and usually with a history of educational difficulties.

3) The role of the Home in providing the kind of sheltered, controlled environment needed by these children has not been clearly defined.

4) Without clear directives as to its purpose, the Home has been unable to provide the staff and psychiatrically-oriented program needed by these children and previously recommended by the Department of Institutions and the 1964 Legislative Council Report to the Colorado General Assembly.

Recommendations

1) The Colorado State Children's Home should continue to operate under the Division of Youth Services of the Department of Institutions and be renamed the Colorado Youth Center.

2) In accordance with the definitions and provisions of the revision of Chapter 22, the Colorado Youth Center should provide care, supervision, counseling, and treatment for, and be responsible for the education of, children committed to the department as children in need of supervision.

3) Such children between ten and twelve years of age should be accepted without reference to any waiting list; however, older children should be accepted only as there is available plant and program capacity. Children who are neglected or dependent would not be accepted at the Center, but would be placed in foster homes or other suitable facilities by the courts or the Department of Public Welfare.

4) Sufficient staff and specialized program should be developed to meet the particular needs of the mutli-problem children

committed to the Center. The program should be psychiatrically oriented to provide a treatment plan for each child, dealing on a day to day basis with the child's behavior and problems in the group and in the community. The aim should be toward mature, responsible, socially acceptable behavior, and placement away from institutional supervision at the optimum time. To this end, additional funds should be made available for increased professional staff and remodeling and replacement of facilities. The following additions to the staff and facilities are recommended:

Staff

1 Special Education Teacher II (P.E. and Shop)	$ 6,204
4 Social Workers (These would replace 4 Senior Case Aides.)	4,800
1 Recreational Assistant	5,628
1 Principal Resident Supervisor	5,628
3 Sr. Resident Supervisors (for 10 p.m. to 6 a.m. coverage)	13,896
2 Sr. Clerk Stenos	8,604
Psychiatrist (increase from 6 to 20 hours per week)	14,000
Psychologist (increase from 8 to 20 hours per week)	6,000
	$ 64,760
Estimated increase in operating costs	1,500
Capital outlay to implement the additional personnel	3,750
	$ 70,010

Capital Improvements - Fiscal 1967-68

Remodeling to accommodate increased special education needs	$ 30,000
Replacement of Howe by a new cottage to house 10 boys and 1 counselor	70,000
Replacement of Lincoln by a new cottage to house 10 boys and 1 counselor	70,000
	$170,000

(This is the current portion of a projected capital improvement program.)

Revision of Chapter 22, C.R.S. 1963

Findings

1) Most of the articles in Chapter 22 were passed originally over 50 years ago and have had only piecemeal revision since. Although providing some useful changes, these amendments have also produced an accumulation of conflicting and inconsistent statutes.

2) Recent United States Supreme Court decisions and developments in the behavioral sciences have led to a reexamination of juvenile court philosophy, particularly concerning the need for due process safeguards.

3) Articles concerning children are scattered throughout the Colorado statutes, making cross reference difficult. For instance, adoption is covered in Chapter 4, relinquishment in Chapter 22; the training schools are authorized in Chapter 105 and placement of children and transfer between institutions in Chapter 3; Chapter 22, which is purported to be a children's code, also contains the Aid to Dependent Children and Child Care Acts, which should be in Chapter 119 with the other welfare laws.

4) Lack of precision in procedural statutes has resulted in various courts and police departments developing their own procedures for handling particular kinds of cases. These procedures have resulted in inconsistencies in the disposition of children's cases, according to where the children happen to live or have been in trouble. The level of services for children available throughout the state also varies from area to area.

5) Current definitions of delinquency and neglect and dependency tend to merge. A child may be committed to a training school as a delinquent who has not actually broken any law and who is, more accurately, beyond the control of his parents because of parental neglect or inability. In several states which have recently revised their children's codes, such children are differentiated from those who have violated laws and are termed "children in need of supervision."

6) The regulations on the transfer of children between the various institutions, subject of Council concern since 1954, have allowed some children committed as delinquent in civil proceedings to be held in penal institutions, although they have committed no crime and have allowed some who are actually mentally ill or deficient to be placed in training schools as delinquents.

Recommendations

1) The revision of Chapter 22, found on pages 24a to 209 of this report, should be enacted as the new "Colorado Children's Code." Comments and explanations of the specific provisions of

this revision will be found at the beginning of each article and opposite the sections of the draft. The purpose of this revision is to provide a modern children's code which is designed to:

1) compile and integrate in one chapter, to the greatest extent possible, all laws concerning children;

2) eliminate overlapping, conflicting, ambiguous, archaic, and superfluous provisions;

3) unify court procedures for the handling of all types of children's cases;

4) straighten out present statutory conflicts and legal problems concerning institutional commitments and transfers;

5) provide and guarantee due process safeguards in all stages of juvenile proceedings and in institutional placements and transfers;

6) make proceedings as uniform as possible between the Denver Juvenile Court and the juvenile divisions of the district courts outside of the City and County of Denver;

7) eliminate conflicts between the adoption and relinquishment laws;

8) replace the present archaic paternity and contributing proceedings with modern paternity and support laws;

9) clarify the role of the State Children's Home (referred to in the revision as the Colorado Youth Center); and

10) clarify and limit the definition of delinquency to the commission of acts which constitute law violations, add a new category to cover truancy, incorrigibility, etc., develop new and clearer definitions of neglect and dependency, and provide modern and clearer definitions of other terms commonly used throughout Chapter 22.

2) Amendments to other portions of the statutes, necessitated by the revision of Chapter 22, should be enacted, including those on pages 210 to 214 of this report.

3) Funds should be provided to cover increased state aid to probation services, employment of one or more hearing officers for the Juvenile Parole Board, and increased professional staff and remodeling of facilities at the Colorado Youth Center.

The Division of Youth Services estimates that budget increases to implement increased state aid to probation services would be, for fiscal 1967-68:

Present budget (73 full-time counselors)	$175,200
Increase (12 additional full-time and 16 part-time counselors)	109,800
Total	$285,000

Estimates of increased funds necessary to implement changes in the function of the Colorado Youth Center are found on page 8 of this report.

4) Planning should be initiated which will lead to additional group care facilities for children in need of supervision, half-way houses for parolees, and a central diagnostic and evaluation center for the examination of all children committed to the Department of Institutions.

COLORADO STATE CHILDREN'S HOME

Historical Perspective

Legislation establishing the Colorado State Children's Home was enacted in 1895. It was known as the State Home for Dependent and Neglected Children and for many years served as a home for needy, abandoned, or orphaned infants and children. The function of the Home began to change as welfare programs concentrated on helping needy families keep their children in their own homes. Foster home care for infants and young children who had no suitable homes became the preferred placement, and the courts committed fewer young children to the Department of Institutions. In 1963 the commitment law was amended as to the Children's Home to allow only dependent and neglected children seven years of age or older and under sixteen to be committed to it.

Present Population

As of April 1, 1966, the range of ages of children living in the Home was as follows:

AGE	BOYS	GIRLS	TOTAL
8 years	1	0	1
9 years	0	0	0
10 years	3	2	5
11 years	7	0	7
12 years	4	3	7
13 years	8	4	12
14 years	12	7	19
15 years	15	4	19
16 years	19	11	30
17 years	3	5	8
18 years	3	1	4
19 years	2	0	2
	77	37	114

Present regulations permit commitment to the Home of children over seven and under 16; however, they may continue to live at the Home until they are 21 if they wish. In addition, 206 children under the jurisdiction of the Home were at that time living in other institutions, foster homes, with relatives, or similar arrangements.

For the most part the children now being cared for at the Home are teenagers who, having had traumatic experiences, cannot function adequately in foster home placement and need group care. Most have emotional problems but not of a degree to necessitate commitment to a psychiatric facility, and they also may be mildly, but not profoundly, retarded. Children from the Home presently attend the public schools, but most of them need additional special

education of a remedial nature. Generally, these children have been sent to the Home by the courts simply because there is nothing else to do with them. They are too disturbed for the facilities the Department of Welfare can provide; their families do not want or cannot cope with them; their communities have found their behavior difficult to tolerate, although they may have broken no law. Rejected, mistreated, and poorly disciplined, they have come to the Children's Home in need of a sheltered, controlled group living experience.

Committee Recommendation

Proposed Function

If the function of the Home can be legally recognized as what it has in fact become -- a group care facility, serving multi-problem children in a sheltered, controlled situation -- a program can be developed to provide the special individualized care these children need. It is not seen as providing intensive individual therapy, but rather a group oriented treatment environment in which the child can learn to function as a responsible, effective member of the group and, eventually, of society.

Change in Name

Because of the changing population and functions of the institution, the Committee has recommended that the Colorado Youth Center would be a more appropriate name than the Colorado State Children's Home.

Population Composition

Under the revision of the children's laws, the Colorado Youth Center would receive children 10 years of age or over and under 18 committed to the Department of Institutions as "children in need of supervision." As defined in the recommended revision, "children in need of supervision" include habitual truants, runaways, those beyond the control of their parents, or whose behavior may be a danger to themselves or others. Children who have violated laws generally are not included in this category, but are termed "delinquent."

Population Maximum

The population at the Center should not exceed 120. Therefore provision is made for a waiting list for children 12 years or over whose acceptance would tax the program or facilities. Depending on the waiting list, and capacity of plant and program, the Center could also accept some delinquent children and some

parolees. No other facility of the Division of Youth Services can accept children under the age of 12 so those of that age requiring institutional care must be accepted by the Center, regardless of waiting list.

The committees of the Legislative Council concerned with the care of children have been aware of the changing nature of the population of the Home and resulting changes in needed staff and program for some years. The 1964 Legislative Council Report, Institutions for Juveniles, recommended additions to the professional staff of the Home as a means of providing a psychiatrically oriented program at that time, but only minor changes have been made.

Program Expansion Needs

The Division of Youth Services, at the request of the Children's Laws Committee of the Legislative Council, has prepared an estimate of additional staff needed to provide treatment program improvements in line with the use of the Home as a Center for children in need of supervision. Additional staff needed are:

Position	Cost
1 Special Education Teacher II (P.E. and Shop)	$ 6,204
4 Social Workers (These would replace 4 Sr. Case Aides)	4,800
1 Recreational Assistant	5,628
1 Principal Resident Supervisor	5,628
3 Sr. Resident Supervisors (for 10 p.m. to 6 a.m. coverage)	13,896
2 Sr. Clerk Stenos	8,604
Psychiatrist (increase hours from 6 to 20 hours per week)	14,000
Psychologist (increase hours from 8 to 20 hours per week)	6,000
	$64,760

In addition, there would be a need for an additional $1,500 in operating costs and $3,750 for capital outlay to implement the additional personnel. The total budget increase would be $70,010.

New Construction

In addition, construction of replacement cottages for Lincoln and Howe, each to house ten boys and one counselor, is being requested by the Division of Youth Services at about $70,000 each, and remodeling of the multipurpose recreation center is requested at an estimated cost of $30,000 to provide increased classrooms for special education. These amounts are being requested for the capital construction budget of the Department of Institutions for

fiscal 1967-68. These capital construction requests are part of an ongoing plan which would renovate or replace four other buildings by the end of fiscal 1970-71.

REVISION OF CHAPTER 22: COLORADO CHILDREN'S CODE

Introduction

Laws relating to children have been a continuing concern of the Legislative Council. Since its establishment in 1953 the Council has studied and made recommendations concerning a variety of programs and facilities for the care and treatment of juveniles within the state. The second publication of the Council was an index of children's laws, followed, in 1954, by a report on commitment procedures, relinquishment and adoption, and a juvenile procedures law, prepared by the County Judges' Association with coordinating assistance from the Council. Although not a complete children's code, the recommendations of that year would have provided uniform procedures for courts dealing with children, and they would have eliminated some of the inconsistencies of the statutes concerning commitment to the various institutions for juveniles, as well as conflicts between the relinquishment and adoption articles. Although a few of the recommendations have since been incorporated on a piecemeal basis, the juvenile procedures law in toto has not been adopted.

Facility and Program Changes

Subsequent Council attention to children's laws has been directed largely to programs and facilities for the care of children, and important improvements have been made in the past ten years. A division of juvenile parole was established; the state has given financial aid to the courts in providing improved probation services; a children's diagnostic center was initiated on a small scale; conservation camps were built; encouragement was given to local communities in establishing more services for mentally ill, retarded, and delinquent children; the foster home program of the welfare department was expanded; and judicial reorganization transferred juvenile jurisdiction to the district courts outside of Denver.

Recent Studies

Because statutory changes came in response to particular situations and programs, in 1964, the Council again became concerned with the need to develop a unified, consistent, modern children's code. As a preliminary to this task, students of the University of Colorado Law School, under the direction of Professor Homer H. Clark, Jr., prepared an Index to Colorado Children's Laws for the Council.

This year, the Children's Laws Committee continued its consideration of facilities and programs specifically related to the present and future functions of the Colorado State Children's

Home. Major effort was directed to preparation of a revised children's code, as had been recommended by the Council in 1964, and authorized by House Joint Resolution No. 1009 (1966).

Juvenile Court Philosophy

English Origins

In early England a child over 14 who came before the court was subject to the same criminal penalties as an adult. Lengthy prison terms or death could result from minor violations of law. Between seven and 14 the child was presumed to be capable of criminal intent, although this presumption was rebuttable. Below seven years of age the child could not be found guilty of a crime, because he was legally incapable of intent.[1] Retribution was the controlling philosophy, and any leniency was based on mercy rather than a concept of rehabilitation, for adult and child alike.

Establishment of Juvenile Courts

The early English approach was imported into the United States, and it remained virtually unchanged until very late in the nineteenth century. By the time the first juvenile courts were established in 1899 in Illinois, Colorado already had passed legislation designed to protect children who were mistreated in institutions in which they were being cared for, and the old bastardy act required payment of damages which were to be directed toward the child's care and education. Denver's juvenile court was a pioneer effort along with those in Chicago and Cleveland.

In 1903 the Colorado General Assembly provided for the punishment of adults found to be "contributing to delinquency." It was an attempt to safeguard youths who, presumably because of physical, intellectual, or emotional immaturity, were unable to look after themselves. This protective measure was hailed as one of Judge Ben Lindsey's greatest contributions, and all but two other states eventually patterned statutes after Colorado's pioneer effort.[2]

1. "Juvenile Delinquents: The Police, State Courts, and Individualized Justice," Harvard Law Review, Volume 79, Number 4, February 1966, p. 775.
2. Chute, "Fifty Years of the Juvenile Court," 1949 National Probation and Parole Association Yearbook, 1, 5 (Bell, ed.)

Parens Patriae in America

This changing attitude toward court treatment of juveniles also found a precedent in English law where, under the concept of parens patriae, the state had long provided for the protection of unfortunate children. In England this protection was commonly limited to the authority of courts of equity to manage children's property on their behalf.[3] In America, at the turn of the century, the juvenile courts were looked upon as a great social experiment. It was intended that rehabilitation would be substituted for punishment. Instead of matching sentence to offense, the court was to look upon misdeeds as symptoms of basic disorder and attempt to help the child learn how to live in society without coming into conflict with the law. The judge and the child were to "talk it over" and informality prevailed. Somehow the court and the state were to provide for each youngster the care and guidance of a wise and loving parent.

Due Process Safeguards in Juvenile Cases

The creation of juvenile courts during the first decade of this century and the adoption at the same time of legislation concerning delinquency, dependency, and neglect showed society's growing recognition that children who get in trouble with the law should not be treated as hardened criminals. Rather than punishment, the objective was rehabilitation and protection. To achieve this objective and to safeguard children from public labeling as criminals, procedures in juvenile actions differed considerably from those in criminal actions.

As a consequence of this social agency oriented approach within a legal setting, most of the usual due process safeguards were largely ignored. They were felt not to be necessary, as the proceedings concerning children before the court were not considered criminal. Further, protection from the state was thought unnecessary, because the state was pursuing the juvenile's ultimate benefit.[4]

While this new legislation changed society's approach to children in trouble, accompanying legislation dealing with acts of commission or omission on the part of parents and other adults which contribute to a child's delinquency or dependency was comparatively harsh and punitive. Although this legislation was aimed in part at correcting the behavior of adults, it was primarily punitive, providing fines and jail sentences. In general,

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3. Welch, Thomas A., "Delinquency Proceedings - Fundamental Fairness for the Accused in a Quasi-Criminal Forum," Minnesota Law Review, Volume 50: 653, March 1966, p. 653.
4. Ibid., p. 654.

these statutes -- especially those pertaining to contributing to delinquency -- were so vague and all inclusive that they could be applied even in the most dubious or obscure circumstances.[5] (see also p. 16)

During the half century which followed the inception of the juvenile court philosophy, it was widely adopted throughout the country. Without question, the intent of the legislation adopted to implement the philosophy was laudable. However, the facilities available to the court in carrying out its promise of the care and guidance of a wise parent were inadequate in quality and quantity. The major attention of those interested in the welfare of children was therefore directed to improve facilities for their care. While modifications were made, these generally were adjustments to new developments and knowledge in the medical and behavioral sciences. Consequently, the range of rehabilitation and treatment became broadened and somewhat more sophisticated, as more skilled professional personnel of various disciplines were employed by the courts and institutional facilities, programs, and procedures were improved and expanded.

Growing Concern over Due Process: Problem

Major concern over the legal framework and procedures in juvenile cases has been a relatively recent development, however, although many authorities, particularly those with legal training, have for some time questioned the lack of due process safeguards.

A number of recent nationwide studies and several articles in law reviews and other professional journals have been directed at due process, or its absence, in juvenile proceedings. The following aspects of juvenile proceedings among others have been scrutinized.

1) police and court intake screening procedures and so-called unofficial probation

In this connection, one nationwide study found:

> In most cases, a juvenile who is taken into custody will never see a judge. He will be released after a nonappealable screening process administered by individuals without legal training; he will not be represented by counsel, nor are the screening officials likely to acknowledge a right of silence. The result of the screening may be the creation of an official record of

5. Geis, Gilbert, "Contributing to Delinquency," Saint Louis University Lawy Journal, Volume 8:59, 1963, p. 67.

contact with the police or court or both, and possibly a substantial interference with the juvenile's liberty. This basic process is in use, in one variant or another, in virtually all cities. It is broken down into two stages, the first administered by the police and the second by "intake" departments attached to the courts.[6]

2) detention

This aspect of the juvenile process includes the length of time confined without coming before the court or without a petition being filed, the place of confinement, and conditions or circumstances for release or retention.

3) right to counsel

Are the juvenile and other parties to the proceedings informed of the right to be represented by counsel? At what stage in the proceedings is such information given? Is there any provision for court-appointed counsel?

4) explanation of charges and right of cross-examination

Are the juvenile and his parents given a written statement containing and explaining the specific charges? Is there an opportunity for the juvenile, his parents, or counsel to ask questions of witnesses, probation officers, or others who prepared social studies and other documents considered by the court?

5) standard of proof

What standard of proof is used? Is determination of delinquency or neglect based on a preponderance of the evidence, on clear and convincing proof, or on proof beyond a reasonable doubt?

6) probation

Is the juvenile given a written statement, as well as an explanation, of the conditions of probation? Are such conditions reasonable or arbitrary and punitive? Can probation be summarily revoked, or is the juvenile given a hearing?

6. "Juvenile Delinquents....," op. cit., p. 776.

7) safeguards on institutionalization

Can a juvenile be committed to a penal institution; under what circumstances? Can he be transferred to a penal institution by the state institutions department or authority; under what circumstances?

Adults in Juvenile Courts

The legal rights of adults, as well of those of juveniles, in juvenile proceedings have been the subject of concern particularly where parental rights may be terminated as a consequence of a court finding of dependency or neglect. In addition, attention has been directed to the broad, vague definitions of delinquency found in the laws of many states, including Colorado. Such definitions encompass such vague terms as "incorrigibility" and make it possible for a youngster to be labeled delinquent for almost any kind of socially disapproved behavior no matter how minor, such as a five or ten minute curfew violation.

Reason for Concern

This increasing concern over due process in proceedings which could deprive a youngster of his freedom or terminate all rights of his parents should not be construed as an attempt by "do gooders" to make it easier on juveniles who commit criminal and other anti-social acts, nor should it be construed from the other extreme as an attempt to limit and formalize the rehabilitative approach to juveniles in trouble. Rather, it is the recognition that a juvenile court is not a social agency, but a part of the judicial system and as such should operate within a legal framework that guarantees a fair hearing and protects the rights of all who appear before it. The emphasis on due process in juvenile proceedings has been heightened by the increased attention given due process in criminal cases by the United States Supreme Court and other appellate tribunals.

The legislative provision and guarantee of due process protections is not incompatible with basic juvenile court philosophy, rather it provides the proper legal framework. All of the most recent juvenile and children's laws revisions in other states have provided legal protections at the various stages in juvenile proceedings, including New York (1963), and Illinois, Utah, and Hawaii (all 1965). (These recent revisions and the model juvenile and family court acts were used as references in the revision of Chapter 22, and specific provisions concerning due process are discussed in the comments relating to the various sections of the revision.)

Contributing to Dependency and Delinquency

Although, as mentioned earlier, Colorado has been praised for its early passage of contributing to dependency and delinquency legislation, the revision of Chapter 22 contains no "contributing" articles, as such.

It should be noted that at the time the juvenile court idea was developed, the only public administrative agency was the "poor relief" official, and protective casework services in the modern sense were unknown. In this social framework the Colorado contributing to delinquency statute was indeed an advance.

Examination of the ways in which such statutes have come to be used in the past few years has led authorities writing in the field and the Standard Juvenile and Family Court Acts to discard them as failing to meet the standards of "essential fairness."

Contributing to Delinquency

Assuming that the primary objective of "contributing to delinquency" statutes is the prevention of delinquency, rather than punishment should delinquency occur, such statutes, generally, may be criticized both on grounds of efficacy and of legality.

Studies of court records such as that made by Judge Paul W. Alexander of Toledo, Ohio, provide no evidence that punishing parents has had any effect whatsoever on curbing delinquency.[7] Rarely will a year in jail improve a parent-child relationship already strained beyond parental control, and many studies indicate that the threat of punishment of the parent for the misdeeds of the child may give a child hostile to his parent a potent weapon and compound the problem.

A charge brought against a person other than a parent under a "contributing to delinquency" statute is frequently a lesser offense to which the person might plead guilty, rather than the specific charge which may be a felony. Appelate records indicate the regular use of such statutes throughout the country for sexual offenses, including statutory rape, particularly involving relatively young men and underage females.[8]

"Contributing to delinquency" statutes provide few clear indications as to just what actions will be punishable. Vague definitions of delinquency have clouded applicability in many

7. Sol Rubin, Crime and Juvenile Delinquency, p. 36. 1961.
8. Gilbert Geis, op. cit., p. 75.

states. It would be well to note the yardstick "...it is reasonable that a fair warning should be given... in language that the common world will understand, of what the law intends to do after a certain line is passed. To make the warning fair, so far as possible the line should be clear."[9]

Provisions of Revision

In line with this reasoning, the revision of Chapter 22 provides a criminal action, in 22-3-20, against an adult charged with inducing, aiding, or encouraging a juvenile in a violation of law constituting delinquency. Definitions are precise as to acts for which the adult may be proceeded against.

Under 22-3-10 of the revision, improvements in the conditions under which a child shall live may be required specifically by court order or conditions of probation, upon the adjudication of a child as delinquent, one in need of supervision, or neglected or dependent. Under such conditions it would be clear just who has done what and who is to do what, and the services of the probation department or any other agency designated by the court would be available to assist the parties in carrying out the orders.

Dependency and Neglect

The issue of dependency, and often of neglect, is that of non-support, because paternity has not been established, because the parent is unable to provide adequately for the child, or because the parent, though able, is unwilling to provide support.

Under Article 6 of the revision, proceedings may be brought in the juvenile court to determine the paternity of a child, and, if it is so determined, an order of support may be issued. Contempt proceedings may be instituted for noncompliance.

Finding a person guilty of contributing to the dependency of a minor does not solve the problem of the parent who through no fault of his own is simply unable to support the child adequately. Upon adjudication of a child as a dependent, the revision provides for the casework services and financial help of the Department of Public Welfare.

Willful neglect or non-support are handled in two ways in the revision. An order of support, either under Article 3 or Article 7, and regular or temporary orders of protection may be issued, or the parents' rights in the child may be terminated and

9. Holmes, J.; in McBoyle v. United States, 238 US 25, 27 (1931)

a guardian appointed. Criminal non-support action would still be available under Article 1 of Chapter 43.

A statute on contributing to delinquency or dependency would provide only a vague and inadequate duplication of remedies which are available more specifically in the revision.

Children's Legislation in Colorado: Present Laws

Origins

Colorado was one of the first states to adopt legislation protecting children and establishing the juvenile court as the way of handling youngsters in trouble. Colorado's first delinquency statute was adopted in 1903, shortly after Illinois passed legislation creating the first juvenile court. Legislation providing criminal penalties for contributing to the dependency or neglect of a child was adopted in Colorado 1905.

These acts were followed by legislation in 1907 and 1909 which created the Denver Juvenile Court, covered dependent and neglected children, provided for the use of masters or referees in juvenile proceedings, and provided procedures for civil actions in contributing to dependency and delinquency.

Three articles in Chapter 22 had their origin prior to the turn of the century, and two of these have been changed little if any since adoption: Article 3, providing for the removal of children from institutions and other local facilities taking care of children when the children were being mistreated or otherwise improperly cared for; and Article 6, providing criminal proceedings in paternity cases. Article 4, establishing the State Children's Home, was adopted in 1895, but has been amended substantially in recent years as the function of the Home began to change. All that remains of it is the first section, which establishes the Home and sets limits on admissions.

Two other articles which are part of the body of law pertaining to children before the courts, although presently in another chapter, also had their origin prior to 1900. Article 1 of Chapter 105, establishing what is now the Lookout Mountain School for Boys was adopted in 1881, and Article 2 of Chapter 105, establishing what is now the Mount View Girls' School, was adopted in 1897.

The present adoption (Chapter 4) and relinquishment (Article 5 of Chapter 22) laws are relatively recent; both were passed in 1949. The two most recent additions to Chapter 22 are Articles 13 and 14. Article 13 was adopted in 1963 and provides for reports to law enforcement agencies by physicians, hospitals, and similar facilities concerning the possible nonaccidental infliction of

injuries on children. This act was one of the first of its kind in the country. Article 14 covers the establishment of detention facilities outside of the city and county of Denver and provides for voluntary agreements among counties and judicial districts for the construction and use of such facilities. This measure was one of the several required to implement the judicial reorganization amendment adopted in 1962.

The remaining two articles of Chapter 22 might more appropriately be placed in Chapter 119, Relief and Public Welfare. Article 11 provides for aid to dependent children, and Article 12 for the licensing of child care and placement agencies and facilities by the state and county departments of public welfare. Conversely, Article 20 of Chapter 39, establishing the Juvenile Parole Division (adopted in 1959) might more appropriately be placed with the main body of children's laws in Chapter 22.

Previous Revisions of Children's Laws

Colorado's laws relating to children have generally been revised on a piecemeal basis, when changed at all. In few instances, an entire article was either revised or added to Chapter 22, but changes, in the main, have consisted of fragmentary amendments to correct a specific problem, while leaving as much of the existing language as possible intact.

This tendency to piecemeal revision has persisted even during the past ten years when more attention than ever before has been given to laws, programs, and facilities for children before the court or requiring state care. This approach has been followed largely because of the failure of the General Assembly to adopt S.B. 217 (1955). This bill, already commented upon, would have replaced most of Chapter 22 with a unified body of law on dependency, delinquency, neglect, and contributing.

Piecemeal amendment has not been necessarily bad, and a number of needed changes have been made which otherwise probably could not have been accomplished. The undesirable consequence, however, is a body of law:

1) which is scattered throughout a number of chapters of C.R.S. 1963, making easy reference difficult and the relationship between statutes hard to determine (for example, 22-8-11 provides for commitment to the Department of Institutions, 105-1-7 and 105-2-2 provide for the boys' and girls' schools, and institutional transfers are covered in 3-11-3);

2) which has overlapping, conflicting, and ambiguous provisions (for example, the conflict between institutional commitments contained in articles 1 and 2 of Chapter 105, and the provisions of 22-8-11; there is no need for commitment to be covered in both places);

3) which in places is a peculiar combination of modern language and drafting style mixed in with the phraseology and drafting format used at the turn of the century (for example see Article 1 of Chapter 22); and

4) which in places contains a number of superfluous and expired provisions (for example, 105-1-19 which refers to a building fund mill levy which expired in 1960).

Format of Revision

Disposition of articles in present Chapter 22. To provide a modern, unified Children's Code, it was necessary to design an entirely different format than that presently contained in Chapter 22. In addition, two articles were transferred from Chapter 22 to Chapter 119, Relief and Public Welfare, and four articles were transferred to Chapter 22. The articles transferred out are Article 11, Aid to Dependent Children, and Article 13, Child Care Act (licensing of child placement and care agencies and facilities). Transferred to Chapter 22, but in somewhat different form, are Articles 1 and 2 of Chapter 105 (boys' and girls' schools); Article 20 of Chapter 39, Juvenile Parole Division; and Article 1 of Chapter 4 (which is all of Chapter 4), Adoptions.

Two of the remaining articles of Chapter 22 have been eliminated entirely: Article 2, Penalty for Neglect (criminal proceedings in contributing to dependency), and Article 3, Removal from Institutions, and provisions of the other remaining articles have been either eliminated or rewritten and transferred to new articles under the new format. The following table shows how the present articles of Chapter 22 have been handled in the revision.

TABLE 2

Disposition of Present Articles in Chapter 22 in the Revision of Chapter 22

Article	Disposition
1. Dependent and neglected children.	Dependent and neglected children are covered in the first three articles of the revision. The first covers general provisions, such as jurisdiction, definitions, etc.; the second covers custody and shelter care; and the third, petition, adjudication, and disposition.
2. Penalty for neglect.	Eliminated.
3. Removal from institutions.	Eliminated.

Article	Disposition
4. State children's home.	Renamed Colorado Youth Center and combined with other institutions in Article 8 of the revision.
5. Relinquishment of children.	Revised and combined with adoption (also revised) as Article 4 of the revision.
6. Paternity proceedings.	Replaced by a new paternity statute as Article 6 of the revision.
7. Contributing to dependency or delinquency. (civil action)	Replaced by 22-3-10 in the revision, which provides for court orders of protection, in addition to other disposition alternatives in juvenile cases. New paternity and support proceedings in Articles 6 and 7 of the revision eliminate need to bring such actions under old Article 7, as has been the general practice. 22-3-20 provides criminal action against adults aiding actual law violation.
8. Delinquent children.	Delinquent children (and children in need of supervision) are covered in the first three articles of the revision, along with dependent and neglected children. Probation service provisions have been revised and combined with detention facilities in Article 5 of the revision. Contributing to delinquency (criminal action: present 22-8-14) has been redefined and limited in 22-3-20 of the revision.
9. Chancery proceedings.	Rewritten and covered by 22-1-10 of the revision, providing for referees' qualifications and duties.
10. Protection of children at trials.	Incorporated in part in Article 1 of the revision, remainder as applies to criminal cases added to Article 39.

Article		Disposition
11.	Aid to dependent children.	Transferred to Chapter 119, Relief and Public Welfare.
12.	Child care act.	Transferred to Chapter 119.
13.	Reporting of nonaccidental injuries inflicted.	Becomes Article 10 of the revision.
14.	Detention facilities for children.	Revised as part of Article 5, Probation Services and Detention Facilities of the revision.

The new format of Chapter 22 contained in the revision is shown in Table 3.

TABLE 3

Format of Revised Chapter 22

Article		Comments
1.	General provisions	This article applies to all of Chapter 22 and includes: short title, declaration of purpose, definitions, jurisdiction, venue, right to counsel and jury trials, hearings, referees, court records, appeals, and other general provisions.
2.	Temporary custody, detention, and shelter.	This article covers taking children into custody, duties of police, notification, restrictions on police records, and detention and shelter care, including hearings, time limits, restrictions, and release.
3.	Petition, adjudication, and disposition.	This article covers: 1) petition initiation, form, and content in children's cases; 2) summons, issuance, contents, service, failure to appear; 3) appointment of guardian ad litem; 4) adjudicatory hearings to determine whether child neglected, delinquent, etc.; procedures for mentally ill or deficient chil-

Article	Comments
	dren; 5) transfer hearing for juveniles to be transferred to district court for criminal actions; 6) dispositional hearing and orders of disposition for the children adjudicated in various categories; 7) new hearings and modification of orders and decrees; 8) probation terms, release, and revocation; 9) continuing court jurisdiction; 10) contributing to delinquency; and 11) several related matters.
4. Relinquishment and adoption.	Revision and combination of present statutes, including transfer of adoption provisions from present Chapter 4.
5. Probation services and detention facilities.	Organization of probation services, state aid to probation, establishment and operation of juvenile detention facilities, joint agreements.
6. Paternity proceedings.	Initiation of proceedings, petition, summons, hearing, orders, failure to comply enforcement, etc.
7. Support proceedings.	Hearing, orders of support, enforcement of orders.
8. Institutional facilities and transfers.	This article conveys general authority of the Department of Institutions for establishing various types of facilities for children. Separate sections provide for the facilities already established and their purpose, including the boys' school, the girls' school, Colorado Youth Center, and the two camps at Golden Gate and Lathrop state parks. In addition, it provides for the reception, evaluation, and placement of children committed to the department and also for institutional transfers. 3-11-3 will be amended to coincide and refer

Article	Comments
	to the appropriate provisions of this article on examination, placement, and transfer.
9. Juvenile parole division.	This article replaces Article 20 of Chapter 39 and revises juvenile parole board and division procedures.
10. Reporting of nonaccidental injuries inflicted on children.	Present Article 13 of Chapter 22 becomes Article 10 with slight revision.

ARTICLE 1

General Provisions

General Comments

Instead of entirely different articles covering neglect, delinquency, etc., each with its own definitions, provisions for petitions and notice, hearing procedure, and dispositions as is presently the case, the revision of Chapter 22 attempts to provide for the various juvenile proceedings on an integrated and uniform basis to the greatest extent possible.[10] In keeping with this approach, the first article of the revision contains general provisions applicable to the whole chapter, making it unnecessary to have duplicate sections in other articles, unless exceptions are required.

10. (Where exceptions are required, they are carefully cross-referenced to avoid confusion and possible conflict.)

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22-1-1. Short title. This chapter shall be known and may be cited as the "Colorado Children's Code".

22-1-2. Declaration of purpose. (1) (a) The general assembly hereby declares that the purposes of this chapter are:

(b) To secure for each child subject to these provisions such care and guidance, preferably in his own home, as will best serve his welfare and the interests of society;

(c) To preserve and strengthen family ties whenever possible, including improvement of home environment;

(d) To remove a child from the custody of his parents only when his welfare and safety or protection of the public would otherwise be endangered; and

(e) To secure for any child removed from the custody of his parents the necessary care, guidance, and discipline to assist him in becoming a responsible and productive member of society.

COMMENTS

Present Chapter 22 has neither a short title nor a declaration of purpose because of the way it is organized.

The declaration of purpose in 22-1-2 is based in part on the Standard Family Court Act and is somewhat similar to those in the new (1965) Illinois and Utah juvenile codes and the 1965 Hawaii Family Court Act. It places emphasis on keeping the child in his own home whenever possible, and on removing him from parental custody only when his welfare or public safety requires. It also stresses the rehabilitative purposes of court supervision or institutional placement.

PROPOSED DRAFT

(2) To carry out these purposes, the provisions of this chapter shall be liberally construed.

22-1-3. Definitions. (1) As used in this chapter:

(2) "Juvenile court" or "court" means the juvenile court of the city and county of Denver or the juvenile division of the district court outside of the city and county of Denver.

(3) "Child" means a person less than eighteen years of age.

(4) "Adult" means a person eighteen years of age or over, except that any minor eighteen years of age or over under the continuing jurisdiction of the court, or who is before the court for an alleged delinquent act committed prior to his eighteenth birthday, or concerning whom a

COMMENTS

Section 3 contains 28 definitions which apply throughout revised Chapter 22. There are no uniform definitions in present Chapter 22, because of the way it is organized.

(2) The definition of "juvenile court" or "court" is in keeping with the objective of making the Denver Juvenile Court and the juvenile division of the district court as uniform as possible. Many of these definitions are taken in part from the Standard Family Court Act and the new Utah, Illinois, and Hawaii codes.

(4) The definition of "adult" is written to make it clear that the court in certain circumstances may have the same jurisdiction over those between 18 and 21, as it has over children under 18.

petition has been filed for his adoption other than under 22-4-16, shall be referred to as a child.

(5) "Parent" means either a natural parent of a legitimate child, or a parent by adoption, or the mother of an illegitimate child. A child born to a woman married at the time of its conception is presumed to be the legitimate child of her husband.

(5) The definition of "parent" includes the phrase "mother of an illegitimate child rather than, "mother of a child born out of wedlock" to make sure the father of a child born out of wedlock who later legitimizes the birth will not be excluded from the definition of parent.

(6) (a) "Legal custody" means the right to the care, custody, and control of a child and the duty to provide food, clothing, shelter, ordinary medical care, education, and discipline for a child and, in an emergency, to authorize surgery or other extraordinary care. Legal custody may be taken from a parent only by court action.

(b) For purposes of determining the residence of a child as provided in 123-21-2 (2) (c), guardianship shall be in the person to whom legal custody has been granted by the court.

The definitions in subsection (6) through (11) deal with the various kinds of custody and guardianship and actions related thereto.

(7) (a) "Guardianship of the person" means the duty and authority vested by court action to make major decisions affecting a child, including, but not necessarily limited to:

(b) the authority to consent to marriage, to enlistment in the armed forces, and to medical or surgical treatment;

(c) the authority to represent a child in legal actions and to make other decisions of substantial legal significance concerning the child;

(d) the authority to consent to the adoption of a child, when parental rights have been terminated by judicial decree; and

(e) the rights and responsibilities of legal custody, when legal custody has not been vested in another person, agency, or institution.

(8) "Residual parental rights and responsibilities" means those rights and responsibilities remaining with the parent after legal custody, guardianship of the person, or both have been vested in another person, agency, or

institution, including, but not necessarily limited to, the responsibility for support, the right to consent to adoption, the right to reasonable visitation unless restricted by the court, and the right to determine the child's religious affiliation.

(9) "Deprivation of custody" means transfer of legal custody by the court from a parent or a previous legal custodian to another person, agency, or institution.

(10) "Commit" means to transfer legal custody.

(11) "Termination of parental rights" means the permanent elimination by court order of all parental rights and duties, including residual parental rights and responsibilities.

(12) "Detention" means the temporary care of a child who requires secure custody in physically restricting facilities pending court disposition or an execution of a court order for placement or commitment.

Subsections (12) and (13) distinquish between detention and shelter and have specific application in Article 2 of the revision.

(13) "Shelter" means the temporary care of a child in physically unrestricting facilities pending court

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COMMENTS

disposition or execution of a court order for placement.

(14) "Child placement agency" means an agency as defined in 119-8-2 (d), C.R.S. 1963, as amended. If such agency is located in another state, it shall be licensed or approved as required by law in that state.

Subsections (14), (15), and (16) relate terminology used specifically in Chapter 22 to similar definitions in the child care act transferred to Chapter 119. These definitions also require child placement agencies, foster care homes, and child care centers located in other states which may be used by the Colorado courts to be licensed or approved as required in their home state. Proposed 119-8-2 (d), as amended, is presently 22-12-2 (d).

(15) "Foster care home" means a facility as defined by 119-8-2 (b), C.R.S. 1963, as amended. If such facility is located in another state, it shall be licensed or approved as required by law in that state.

Proposed 119-8-2 (b), as amended, is presently 22-12-2 (b).

(16) "Child care center" means a facility as defined in 119-8-2 (c), C.R.S. 1963, as amended. If such facility is located in another state, it shall be licensed or approved as required by law in that state.

Proposed 119-8-2 (c), as amended, is presently 22-12-2 (c).

(17) (a) (i) "Delinquent child" means any child ten years of age or older who, regardless of where the violation

Delinquency is presently defined in 22-8-1 (2) as follows: "A 'delinquent child' is

occurred, has violated:

(ii) any federal or state law, except state traffic and game and fish laws or regulations;

(iii) any municipal ordinance, except traffic ordinances, the penalty for which may be a jail sentence; or

(iv) any lawful order of the court made under this chapter.

(b) This definition shall not apply to crimes of violence punishable by death or life imprisonment where the accused is sixteen years of age or older.

(c) The provisions of subsection (17) (a) (ii) of this section notwithstanding, the term "delinquent child" shall include any child under sixteen years of age who has

defined as any child under eighteen years of age who has violated either once or more than once, any state law or municipal ordinance, other than state traffic or game and fish laws or regulations or municipal traffic ordinances, regardless of where the violation occurred; or who is habitually truant from school; or who is beyond the control of his parent, guardian, or other lawful custodian to the extent that his welfare or that of others is seriously endangered."

The definition in subsection (17) limits delinquency to actual law violations, or violations of court orders. Truancy, incorrigibility, etc., would place a child under subsection (18) "in need of supervision."

Subsection (17) (b) is an attempt to clarify the difference between delinquency and criminal prosecution for crimes of violence.

Subsection (c) provides for transfer of the cases of serious traffic offenders who are too young to be handled effectively by the county court.

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violated a traffic law or ordinance, if his case is transferred from the county court to the juvenile court.

(18) (a) "Child in need of supervision" means any child:

(b) who is an habitual truant from school;

(c) who has run away from home or is otherwise beyond the control of his parent, guardian, or other custodian; or

(d) whose behavior or condition is such as to endanger his own or others' welfare.

(19) (a) "Neglected or dependent child" means a child:

(b) whose parent, guardian, or custodian has abandoned him or has subjected him to mistreatment or abuse;

(c) who lacks proper parental care through the actions

COMMENTS

Under 22-1-4 (b) (iii) the court may refuse to accept jurisdiction.

This definition (subsection 18) covers a number of grounds which constitute delinquency, although not actual law violations, under the present definition. It is used in California, New York, Utah, Illinois, and Hawaii (and possibly other states). By providing this intermediate category, there is no need to broaden the scope of dependency or neglect by judicial interpretation to cover youngsters whose acts do not justify the stigma of delinquency. Consequently, it should limit the term "neglected child" to those who actually fit that category. The use of this intermediate category should also aid proper and appropriate disposition.

"Dependent" or "neglected" child is presently defined as follows in 22-1-1 (1):

"For the purpose of this article, the words 'dependent child' or 'neglected child' shall mean any child under the age of eighteen years who is

or omissions of the parent, guardian, or custodian;

(d) whose environment is injurious to his welfare;

(e) whose parent, guardian, or custodian fails or refuses to provide proper or necessary subsistence, education, medical care or any other care necessary for his health, guidance, or well-being; or

(f) who is homeless, without proper care, or not domiciled with his parent, guardian, or custodian through no fault of his parent, guardian, or custodian.

dependent upon the public for support; or who is destitute, homeless 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 parent or parents, where it appears that the parent or parents are failing or refusing to support or care for said child; or who habitually begs or receives alms, or who is found living in any house of ill fame, or with any vicious or disreputable persons, or whose home, by reason of neglect, immorality or depravity on the part of its parents, guardian or other person in whose care it may be, is an unfit place for such child; or whose environment is such, or about whose custody a controversy may be such, as to warrant the state, in the interest of the child, in assuming or determining its guardianship, or in determining what may be for the best interest of said child."

(20) "Adjudicatory hearing" means a hearing to determine whether the allegations of a petition under 22-1-4 (1) (b), (c), or (d) are supported by preponderance of the evidence.

The definitions in subsections (20) and (21) apply in Article 3. Two hearings (which may be telescoped as part of one hearing), the first to determine the validity of the

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(21) "Dispositional hearing" means a hearing to determine what order of disposition should be made concerning a child adjudicated as delinquent, in need of supervision, or neglected or dependent, as defined in this section. Such hearing may be part of the proceeding which includes the adjudicatory hearing, or it may be held at a time subsequent to the adjudicatory hearing.	petitions and the second to determine disposition, are part of the procedures set forth in the new juvenile codes in other states and also in the standard acts. Colorado has no such provision or definition at present.
(22) "Protective supervision" means a legal status created by court order under which the child is permitted to remain in his home, or placed with a relative or other suitable person, and supervision and assistance is provided by the court, department of public welfare or other agency designated by the court.	The use of "protective supervision," as defined in subsection (22), in later sections reduces the number of words needed to set forth various disposition alternatives. This definition is also found in the new juvenile codes and standard acts.
(23) "Receiving center" means a facility used to provide temporary detention and care for children by the department of institutions, pending placement in a training school, camp, or other facility.	The definitions set forth in subsection (23 through (28) apply primarily to facilities established and operated by the Department of Institutions. They represent an attempt to substitute fairly clear and concise definitions for terms which are often used interchangeably in present statutes.
(24) "Group care facilities and homes" means places other than foster family homes providing care for small	

groups of children.

(25) "Training schools" are institutions providing care, education, treatment, and rehabilitation for children in a closed setting.

(26) "Conservation camps" means facilities providing care and treatment for children in which constructive employment in conservation projects is a part of the rehabilitative program.

(27) "Diagnostic and evaluation centers" means places for the examination and study of persons committed to the custody of the department of institutions.

(28) "Half-way houses" means group care facilities for children who have been placed on probation or parole under the terms of this chapter.

22-1-4. Jurisdiction. (1) (a) Except as otherwise provided by law, the juvenile court shall have exclusive original jurisdiction in proceedings:

22-1-4 sets forth all of the juvenile court's jurisdiction in one place rather than scattered throughout several articles as is presently the case.

(b) (i) Concerning any delinquent child;

Subsections (1)(b), (c) and

(ii) As defined in 22-1-3 (17) and in 22-1-3 (4); or

(iii) As defined in 22-1-3 (17) (c), except that the court may refuse to accept jurisdiction in such care.

(c) Concerning any child in need of supervision, as defined in 22-1-3 (18).

(d) Concerning any child who is neglected or dependent, as defined in 22-1-3 (19)

(e) (i) Concerning any adult:

(ii) who induces, aides, or encourages a child to violate any federal or state law or municipal ordinance, or

(iii) who willfully abuses, ill-treats, neglects, or abandons a child who comes within the court's jurisdiction under other provisions of this section, so as to cause the child unnecessary suffering or serious injury.

(f) To determine the custody of any child or appoint a guardian of the person or other guardian of any child who comes within the juvenile court's jurisdiction under provisions of this section.

(d) are cross-referenced to the appropriate definitions so that it is clear what is meant by the terms "delinquent," "in need of supervision," and "dependent or neglected." The reference in subsection (b) to 22-1-3 (4) covers persons between 18 and 21 who are alleged to have committed a delinquent act prior to age 18.

Subsection (1) (e) (ii) refers to the limited form of contributing to delinquency provided in 22-3-20 of the revision. Subsection (1) (e) (ii) makes clear that adults are subject to court orders of protection as provided in 22-3-10 of the revision.

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COMMENTS

(g) To terminate the legal parent-child relationship, including termination of residual parental rights and duties, as defined in 22-1-3 (8).

(h) For the issuance of orders of support under article 7 of chapter 22.

(i) To determine the paternity of a child and to make an order of support in connection therewith.

(j) For the adoption of a person of any age.

(k) For judicial consent to the marriage, employment, or enlistment of a child, when such consent is required by law.

(l) For the treatment or commitment pursuant to chapter 71, C.R.S. 1963, as amended, of a mentally ill or mentally deficient child who comes within the court's jurisdiction under other provisions of this section, except in the juvenile court of the city and county of Denver.

Subsection (l) gives the court jurisdiction to proceed under Chapter 71 concerning mentally ill or mentally deficient children, as provided in 22-3-7 of the revision. An exception is made for the Denver Juvenile Court, as mental health jurisdiction is given constitutionally to the Denver Probate Court, requiring a transfer from juvenile court of children thought by the court to be mentally ill or deficient.

(m) Under the Interstate Compact on Juveniles, article

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8 of chapter 74, C.R.S. 1963, as amended.	
(n) In proceedings pursuant to 123-20-9.	
(2) The court may issue temporary orders providing for protection, support, or medical or surgical treatment as it deems in the best interest of any child under its jurisdiction prior to adjudication or disposition of his case.	Subsection (2) provides for temporary orders in situations where action on behalf of the child must be taken before there has been time to dispose of the case completely.
(3) (a) When a petition filed in juvenile court alleges that a child sixteen years of age or older committed an act which would constitute a felony if commited by an adult, if, after full investigation and a hearing, the juvenile court finds it would be contrary to the best interests of the child or of the public to retain jurisdiction, it may enter an order certifying the child to be held for criminal proceedings in the district court. The hearing required in this subsection shall be held pursuant to the provisions of 22-1-7 and 22-3-8.	As can be seen from subsections (3) (a) and (b), it is the intent of the revision that all children come before the juvenile court, except those who commit crimes of violence and are above sixteen years of age. At the present time the district attorney has the option on youngsters between 16 and 18 of filing a petition in delinquency or an information charging a crime and bringing criminal proceedings. The standard acts, the new codes, and most authorities feel the determination of whether criminal charges should be filed should be up to the juvenile judge, as is provided in the revision.
(b) A child shall be charged with the commission of a felony only as provided in subsection (3) (a) of this	If the court is to make this

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section, except for crimes of violence punishable by death or life imprisonment where the accused is sixteen years of age or older.

(4) (a) Nothing contained in this section shall deprive the district court of jurisdiction to appoint a guardian for a child nor of jurisdiction to determine the custody of a child upon writ of habeas corpus or when the question of custody is incidental to the determination of a cause in district court, provided that:

(b) if a petition involving the same child is pending in juvenile court or if continuous jurisdiction has been previously acquired by juvenile court, the district court shall certify the question of custody to the juvenile court and

COMMENTS

determination, it is important that a proper procedure be established with due process safeguards. Subsection (3) (a) is the first of three sections concerning transfer proceedings, and the other two are cited therein. Due process safeguards are doubly necessary in light of a recent U. S. Supreme Court decision which questioned the validity of the particular waiver procedure employed. (Kent v. U.S., 86 S. Ct. 1045 (1966))

Subsections (4) and (5) clarify the jurisdictional relationship concerning custody between the juvenile court and the district court (or between the juvenile division of the district court and other divisions of the district court).

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(c) the district court at any time may request the juvenile court to make recommendations pertaining to guardianship or custody.

(5) Where a custody award has been made in a district court in a divorce action or another proceeding and the jurisdiction of the district court in the case is continuing, the juvenile court may nevertheless acquire jurisdiction in a case involving the same child, if he is dependent or neglected or otherwise comes within the jurisdiction set forth in this section.

22-1-5. Venue. (1) Proceedings in cases brought under the provisions of 22-1-4, except 22-1-4 (1) (j), shall be commenced in the county in which the child resides or is present, or in which an alleged violation of law, ordinance, or court order took place.

22-1-5 sets forth venue in all juvenile cases in one place, including exceptions. At present venue is scattered over several articles. Subsection (1) makes it possible to file in the county of residence, where the child is present, or where the alleged violation took place.

(2) (a) When proceedings under 22-1-4 (b), or (c) are commenced in a county other than that of the child's residence, the court in which the proceedings are

Subsections (2) and (3) then establish some priorities among these alternatives, and in part follow the changes in venue in delinquency and

initiated shall immediately notify the court in the county where the child resides and shall transfer the case prior to adjudication, if the court in the county where the child resides so requests within ten days after receiving notification.

(b) When a case is not transferred under subsection (2) (a) of this section, the court in which the proceedings were initiated may transfer the case prior to disposition to the court in the county where the child resides.

dependency cases adopted in 1965. The 1965 amendment to 22-8-3 re venue in delinquency cases provided in part that the petition may be filed "either in the county of the residence of the child alleged to be delinquent or in the county where the acts of juvenile delinquency allegedly occurred if the county of residence fails to act within ten days." Subsection (2) (a) accomplishes the same result in a slightly different way, by providing that if the petition is filed in a county other than that of the child's residence, that court shall notify the court in the county where the child resides, which court shall have ten days to request transfer of the case. This change from the procedures in the 1965 amendment to 22-8-3 is necessary because of changes in how a petition is filed under the revision as compared with the present law. (See 22-3-1 of the revision.) Under 22-3-1 of the revision no petition may be filed without preliminary investigation and a decision by the court as to whether a filing is warranted. Consequently, if the 1965 amendment to 22-3-8 were

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(3) When proceedings under 22-1-4 (1) (d) are commenced in a county other than that of the child's residence, the court in which proceedings were initiated may, on its own motion, or on the motion of any interested party, transfer the case to the court in the county where the child resides, if it finds that the transfer would not be detrimental to the best interests of the child.

(4) A court transferring a case under subsections (2) or (3) of this section shall transmit all documents and legal and social records, or certified copies thereof, to the receiving court, which shall proceed with the case as

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followed, it would be possible for the court in the county of residence to decide that the matter could be disposed of through informal probation without a petition, and a petition also to be filed in the county where the alleged violation took place, because no petition had actually been filed in the county of residence within 10 days.

Subsection (3) follows closely the 1965 amendment to 22-1-3 which provides in part: "When a petition is filed under this section in the county where such child is present and his residence is in another county, the court, on its own motion or on the motion of any person interested, may order the case transferred to the said county of residence in the event it finds that said transfer can be made without interference with the best interest of the child."

if the petition had been originally filed or the adjudication had been originally made in that court.

(5) In proceedings brought under 22-1-4 (1) (j), the petition may be filed in the county where the petitioner or petitioners reside, or where the county department of public welfare or licensed child placement agency having legal custody or guardianship of the person to be adopted is located.

Subsection (5) provides for venue in adoption cases. The present provision for venue in adoption cases is in 4-1-2.

22-1-6. Right to counsel - jury trial. (1) (a) At his first appearance before the court, the child, his parents, guardian, or other custodian shall be fully informed of their constitutional and legal rights, including the right to be represented by counsel at every state of the proceedings.

(b) (i) If the child or his parents, guardian, or other custodian requests an attorney and is found to be without sufficient financial means, counsel shall be appointed by the court in proceedings;

22-1-6 (1) makes it clear that the child, his parents, or guardian have the right to be represented by counsel and shall be so informed at their first appearance before the court. The right to counsel is found only in 22-1-2 in present Chapter 22 and there is no statutory provision for court appointment or payment in an instance of indigency when counsel is requested. Subsection (1) also provides that the court may appoint counsel on its own motion if it finds it in the best interest of the child or other parties to the proceedings.

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(ii) under 22-1-4 (1) (b) or (c), or (iii) under 22-1-4 (d), when the termination of parental rights is stated as a possible remedy in the summons, as provided in 22-3-3 (1).	Similar provisions are found in the standard acts, and the new Utah, Illinois, and Hawaii codes.
(c) The court may appoint counsel without such request if it deems representation by counsel necessary to protect the interest of the child or of other parties.	
(2) If the child and his parents, guardian, or other custodian were not represented by counsel, the court shall inform them at the conclusion of the proceedings that they have the right to file a motion for a new trial, and that if such motion is denied they have the right to appeal.	Subsection (2) provides another safeguard by requiring that the child, his parents, etc., be informed by the court of the right to a new trial or to appeal when they are not represented by counsel. This provision is also found in the standard acts and the new Utah, Illinois, and Hawaii codes.
(3) Upon the request of the court, the district attorney shall represent the state in the interest of the child in any proceedings brought under 22-1-4 (b), and the county attorney shall represent the state in the interest of the child in any other proceedings.	The present dependency statutes provide that the county attorney shall appear on behalf of the petitioner upon the request of any petitioner or the court (22-1-5 (2)). 22-8-4 presently provides that the district attorney may appoint a deputy to conduct cases in delinquency as deemed necessary by the court.

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(4) (a) (i) A child, his parent or guardian, or any interested party may demand a trial by a jury of not more than six, or the court on its own motion may order such a jury to try any case:

(ii) In adjudicatory hearings under 22-1-4 (1) (b), (c), or (d); or

(iii) In determining the paternity of a child under 22-1-4 (1) ~~(i)~~.

(b) Unless a jury is demanded, it shall be deemed to be waived.

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Subsection (3) provides that on court request, the district attorney shall appear in delinquency cases and the county attorney shall handle other cases.

Present statutes permit jury trials in dependency and delinquency cases and in civil actions in contributing to dependency or delinquency. Jury trials in present criminal actions on contributing are a matter of right, as are jury trials in paternity proceedings, because the present statute makes this a criminal action.

There have been very few jury trials in juvenile matters in Colorado, and the standard acts and new juvenile codes in other states do not provide for them on the grounds that juvenile cases are civil proceedings and the nature of the juvenile court relationship to children before it does not lend itself to full scale adversary proceedings, such as are involved in jury trials.

Because jury trials have been traditionally provided in juvenile cases in Colorado,

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22-1-7. Hearings - conduct - record - publicity. (1) The rules of evidence as provided in rule 43, the Colorado rules of civil procedure, shall be applicable in all proceedings under 22-1-4, except those brought under 22-1-4 (1) (e) (ii), and except as otherwise provided in this chapter. Hearings shall be held before the court without a jury, except as provided in 22-1-6 (4), and may be conducted in an informal manner. The general public shall be excluded, and only such persons admitted, including persons whom the parents or guardian wish to be present, as have a direct interest in the case or in the work of the court. Hearings may

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they have been included in subsection (4). They are limited to proceedings in delinquency, in need of supervision, neglect or dependency, and the determination of the paternity of a child, and provide for a jury of no more than six, emphasizing that these are civil proceedings. A jury trial is a matter of right under the new contributory to delinquency statute (22-3-20), because it is a criminal action.

22-1-7 sets forth general provisions which apply to all hearings conducted by the court. Certain additions and exceptions will be found in sections in subsequent articles which provide for a particular type of hearing or which pertain to a particular type of action.

Subsection (1) specifies that the rules of evidence provided in the Colorado rules of civil procedure apply, except in contributing to delinquency which is a criminal action. It also provides that hearings may be informal and that the general public shall be excluded. There are somewhat

may be continued from time to time as ordered by the court.

similar provisions in present chapter 22 applying to hearings in dependency and delinquency.

(2) A verbatim record shall be taken of all proceedings which might result in the deprivation of custody, as defined in 22-1-3 (9). A verbatim record shall be made in all other hearings including any hearing conducted by a referee, unless waived by the parties in the proceeding and so ordered by the judge or referee.

Subsection (2) covers the taking of records in hearings, and sets forth the conditions under which a verbatim record may be waived.

(3) When more than one child is named in a petition alleging delinquency, need of supervision, or neglect or dependency, the hearings may be consolidated, except that separate hearings may be held with respect to disposition.

Subsection (3) permits separate hearings to be held when more than one child is named in a petition.

(4) Children's cases shall be heard separately from adult cases, and the child or his parents, guardian, or other custodian may be heard separately when deemed necessary by the court.

Subsection (4) requires children's cases to be heard separately from adults' cases, and permits the court to hold a hearing for a child separate from that of his parents or guardian. A separate hearing might be desirable in a case where the parents petition on the grounds that the child is beyond parental control.

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(5) (a) The name, picture, place of residence, or identity of any child, parent, guardian, other custodian, or any person appearing as a witness in proceedings under 22-1-4 shall not be published in any newspaper or in any other publication, nor given any other publicity, unless for good cause it is specifically permitted by order of the court.

(b) Any person found to have violated this provision shall be in contempt of court and may be fined a sum not to exceed five hundred dollars or committed to the county jail for a period not to exceed thirty days.

22-1-8. Social study and other reports. (1) (a) Unless waived by the court, the probation department or other agency designated by the court shall make a social study and report in writing in all children's cases, except:

(b) if the allegations of a petition filed under 22-1-4 (b) are denied, the study shall not be made until the court has made an adjudication as provided in 22-3-6; and

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Subsection (5) is taken from the present 22-8-1 (4), and there are similar provisions in the standard acts and new juvenile codes.

22-1-8 (1) provides that a social study shall be made in all cases unless specifically waived by the court. If the allegations of the petition are denied, however, a social study would not be made until the court holds the adjudicatory hearing and sustains the petition. (If the petition is dismissed, no study is required, thereby saving time and conserving the court's probation staff manpower.)

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(c) the study and investigation in all adoptions shall be made as provided in 22-4-11.

(2) For the purpose of determining proper disposition of a child or for establishing the fact of neglect or dependency, written reports and other material relating to the child's mental, physical, and social history may be received and considered by the court along with other evidence provided that the court, if so requested by the child, his parent or guardian, or other interested party, shall require that the person who wrote the report or prepared the material appear as a witness and be subject to both direct and cross-examination. In the absence of such request, the court may order the person who prepared the report or other material to appear if it finds that the interest of the child, his parent or guardian, or other party to the proceedings so requires.

COMMENTS

Subsection (1) is also cross-referenced to the investigation required in adoption proceedings (22-4-11) to eliminate any seeming conflict between the two sections.

Subsection (2) specifies the circumstances under which social studies and related material may be used by the court. It also provides for cross-examination, if requested, of the person or persons preparing the social study and other material. Such a provision is considered a necessary part of due process in juvenile cases, even though they are civil in nature. Subsection (2) goes further in this respect than the new juvenile codes (except Hawaii's) which leave it up to the court as to whether to comply with a request for cross-examination.

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22-1-9. Effect of proceedings. (1) No adjudication or disposition in proceedings under 22-1-4 shall impose any civil disability upon a child or disqualify him from any civil service or military service application or appointment or from holding public office. (2) No adjudication, disposition, or evidence given in proceedings brought under 22-1-4 shall be admissable against a child in any criminal or other action or proceeding, except in subsequent proceedings under 22-1-4 concerning the same child.	22-1-9 is similar to the present provisions of 22-8-1 (3) (b), except it is more precise in its wording and follows the new Utah and Illinois Codes concerning the effect on civil and military service.
22-1-10. Referees - qualifications - duties. (1) The judge or judges of the juvenile court may appoint one or more referees to hear any case or matter under the court's jurisdiction, except where a jury trial has been requested and in transfer hearings held pursuant to 22-1-4 (3). Referees shall serve at the pleasure of the court, unless otherwise provided by law. (2) Every referee first appointed on or after the	22-1-10 replaces article 9 of present chapter 22 concerning masters or referees in the juvenile division of the district court outside of the city and county of Denver and modifies 37-19-11 which provides for referees in the Denver Juvenile Court. It requires referees either to be lawyers or county judges. County judges are included here to be consistent with 37-13-5 (3), which was included in the judicial reorganization

effective date of this act shall be licensed to practice law in Colorado, except that county judges may be appointed to serve as referees, as authorized by 37-13-5 (3) C.R.S. 1963, as amended.

(3) Referees shall conduct hearings in the manner provided for the hearing of cases by the court. Prior to conducting a hearing, the referee shall inform the parties that they have the right of a hearing before the judge in the first instance, if any of them so requests.

(4) At the conclusion of a hearing, the referee shall transmit promptly to the judge all papers relating to the case, together with his findings and recommendations in writing, and the referee shall advise the parties before him of his findings and recommendations and of their right to request a hearing before the judge. Such rehearing shall be on the record of the hearing before the referee. The rehearing shall be held if a request is filed within five days after the conclusion of the hearing before the referee. If a rehearing before the judge is not requested or the

implementing legislation, so that county judges would be available in emergency situations in multi-county judicial districts when the district judge (or judges) is in another part of the district.

Referees can hear all matters, subject to review by the judge, except jury trials or transfer hearings. The remainder of 22-1-10 follows the standard acts and the new juvenile codes in providing how hearings are to be conducted by referees and the procedure for judicial review.

right to review is waived, the findings and recommendations of the referee, when confirmed by an order of the judge, shall become the decree of the court. The judge may, on his own motion, order a rehearing of any case before a referee.

22-1-11. Court records - inspection - expungement. (1) (a) Records of court proceedings shall be open to inspection by the parents or guardian, attorneys, and other parties in proceedings before the court, and to any agency to which custody of the child has been transferred, except as provided in 22-4-4.

(b) With consent of the court, records of court proceedings may be inspected by the child, by persons having a legitimate interest in the proceedings, and by persons conducting pertinent research studies, except as provided in 22-4-4.

(c) Probation counselors' records and reports of social and clinical studies shall not be open to inspection, except by consent of court.

22-1-11 (1) provides the conditions and circumstances under which court records may be open for inspection and who may inspect such records. Probation records and social and clinical studies may be open for inspection only by consent of court. An exception is made for relinquishment and adoption records for which more stringent confidentiality has been provided in 22-4-4.

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(2) (a) Any person who has been adjudicated under 22-1-4 (1) (b) or (c) may petition the court for the expungement of his record and shall be so informed at the time of adjudication. Such petition shall be filed no sooner than two years after the date of termination of the court's jurisdiction over the child, or two years after his unconditional release from parole supervision, if he had been committed to the department of institutions.

(b) Upon the filing of a petition, the court shall set a date for a hearing and shall notify the district attorney or anyone else whom the court has reason to believe may have relevent information about the petitioner.

(c) (i) The court shall order sealed all records in the petitioner's case in the custody of the court and any such records in the custody of any other agency or official, if at the hearing, the court finds that:

(ii) the petitioner has not been convicted of a felony or of a misdemeanor involving moral turpitude and has not been adjudicated under 22-1-4 (b) since the termination of

COMMENTS

22-1-11 (2) provides for the expungement of juvenile records under certain circumstances. There is no such present provision in Chapter 22. Both California and Utah have expungement provisions. California, however, does not allow expungement until five years after the court's jursidiction over a juvenile is terminated, which is considered by some authorities to be too long a waiting period for the elimination of the record to do the juvenile much good. Neither Utah nor California require notification that a petition in expungement may be brought. Subsection (2) (a) requires that the child be informed of his right to petition for expungement in accord with the provisions of this section at the time that he is adjudicated a delinquent or in need of supervision.

The purpose of an expungement petition is to give a juvenile who stays out of trouble after release from the court's jurisdiction or from the Department of Institutions an opportunity to erase the record, so it will not hinder him in his adult life.

the court's jurisdiction or his unconditional release from parole supervision.

(iii) no proceeding concerning a felony or a misdemeanor involving moral turpitude or a petition under 22-1-4 (b) is pending or being instituted against him; and

(iv) the rehabilitation of the petitioner has been attained to the satisfaction of the court.

(d) Upon the entry of an order to seal the records, the proceedings in the petitioner's case shall be deemed never to have occurred, and the petitioner may properly reply accordingly upon any inquiry in the matter.

(e) Copies of the order shall be sent to each agency or official named therein.

(f) Inspection of the records included in the order may thereafter be permitted by the court only upon petition by the person who is the subject of such records, and only to those persons named in such petition.

Subsection (c) is designed to assure that only juveniles who have not been or are not in further trouble with the law will have their records expunged.

22-1-12. Appeals. An appeal from any order, decree,

22-1-12 provides that appeals

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or judgment may be taken to the supreme court by writ of error as provided in rule 112 of the Colorado rules of civil procedure, except that appeals taken pursuant to 22-3-20 shall be as provided by the Colorado rules of criminal procedure. Initials shall appear on the record on appeal in place of the name of the child. Appeals from orders or decrees concerning legal custody, termination of parental rights, and adoptions shall be advanced upon the calendar of the supreme court and shall be decided at the earliest practicable time.	shall be taken to the Colorado Supreme Court as provided in the Colorado rules of civil procedure, except contributing to delinquency cases, which are criminal actions. This section specifies further that appeals concerning parental rights, custody, and adoptions shall be advanced on the docket to reduce the amount of time during which such matters are in limbo. Children are further protected from publicity by the requirement that initials appear on the record instead of the child's name.
22-1-13. Previous orders and decrees - force and effect. All orders and decrees in proceedings concerning dependency and neglect, delinquency, relinquishment, adoption, paternity, or contributing to dependency or delinquency entered by the court prior to adoption of this chapter shall remain in full force and effect until modified or terminated by the court, as provided in this chapter.	22-1-13 provides for the continued force and effect of all decrees and orders entered in juvenile and related proceedings prior to the adoption of this chapter.

ARTICLE 2

Temporary Custody, Detention, and Shelter

22-2-1. Taking children into custody.
22-2-2. Duty of officer - notification - release or detention - records.
22-2-3. Detention and shelter - hearing - time limits - restrictions.

General Comments

Article 2 of the proposed revision covers some important matters barely touched on in the present provisions of Chapter 22. These include: 1) the circumstances under which a child may be taken into temporary custody by a law enforcement officer or a juvenile probation counselor; 2) the duties of an officer and procedures to be followed when a child is taken into temporary custody; 3) the handling and disclosure of police records; and 4) detention and shelter care, retention or release.

In the absence of such provisions in law, procedures have been worked out on an ad hoc basis between the courts and police and sheriffs' departments. Some of these procedures may be very satisfactory in protecting the rights of the child as well as public safety, but there is considerable leeway for possible abuse, such as a police department placing youngsters on informal probation without ever referring them to the court or holding hearings with the child and his parents to determine if a petition should be filed with the court. Such procedures and proceedings are extralegal and place law enforcement officials in the position of being both prosecutor and judge without any legal safeguards afforded the child or his parents. They have been the subject of much study and criticism by authorities in the juvenile field. Criticism has also been directed at the indiscriminate release of police records and the confinement of children with or in proximity to adult prisoners.

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22-2-1. Taking children into custody. (1) (a) A child may be taken into temporary custody by a law enforcement officer without order of the court:

(b) When in the presence of the officer, he has violated a federal or state law or a municipal ordinance, except that game and fish and traffic violations shall be handled as otherwise provided by law;

(c) When there are reasonable grounds to believe that he has committed an act which would be a felony if committed by an adult;

(d) When he is abandoned or seriously endangered in his surroundings or seriously endangers others, and immediate removal appears to be necessary for his protection or the protection of others; or

(e) When there are reasonable grounds to believe that he has run away or escaped from his parents, guardian, or custodian.

(2) (a) A juvenile probation counselor may take a child into temporary custody:

COMMENTS

22-2-1 sets forth the circumstances under which a child may be taken into temporary custody by a law enforcement officer or a probation officer. It states specifically that taking a child into temporary custody is not an arrest, nor does it constitute a police record.

The provisions of 22-2-1 are based primarily on a similar section of the new Illinois Juvenile Court Act, but the same kind of provisions are also contained in the new Utah code.

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(b) Under any of the circumstances stated in subsection (1) of this section; or

(c) If he has violated the conditions of probation, provided the child is under the continuing jurisdiction of the juvenile court.

(3) The taking of a child into temporary custody under this section is not an arrest, nor does it constitute a police record.

22-2-2. Duty of officer - notification - release or detention - records. (1) When a child is taken into temporary custody, the officer shall notify the parents, guardian, or custodian without unnecessary delay and inform them that if the child is placed in detention, he has the right to a prompt hearing to determine whether he is to be detained further. Such notification may be made by a juvenile police or law enforcement officer, if the child is so referred by the officer taking him into temporary custody.

22-2-2 (1) through (4) state the procedures to be followed when a child is taken into temporary custody. These procedures set forth the ground rules for notification of parents and retention or release of the child depending on the circumstances, the child's welfare, and public protection, and are designed to safeguard the rights of the child and provide public protection through detention when the circumstances require in the opinion of the officer. If the child is to be detained, he must be taken to a place of detention or shelter specified

(2) The child shall then be released to the care of his parents or other responsible adult, unless his immediate welfare or the protection of the community requires that he be detained. The parent or other person to whom the child is released may be required to sign a written promise, on forms supplied by the court, to bring the child to the court at a time set or to be set by the court.

(3) (a) A child shall not be detained by law enforcement officials any longer than is reasonably necessary to obtain his name, age, residence, and other necessary information and to contact his parents, guardian, or custodian.

(b) If he is not thereupon released, as provided in subsection (2) of this section, he must be taken to the court or to the place of detention or shelter designated by the court without unnecessary delay.

(4) The officer or other person who takes a child to a detention or shelter facility must notify the court at the earliest opportunity that the child has been taken into custody and where he has been taken. He shall also

by the court, which under the provisions of 22-2-3 (6) (a) cannot be a place for the confinement of adult offenders.

The new Illinois and Utah codes were also used as references for this portion of this revision.

file a brief written report promptly with the court, stating the facts which led to the child being taken into custody and the reason why the child was not released.

(5) (a) The records of law enforcement officers concerning all children taken into temporary custody or issued a summons under the provisions of this article shall be maintained separately from the records of arrest and may not be inspected by or disclosed to the public including the names of children taken into temporary custody or issued a summons, except:

(b) by order of the court;

(c) when the court orders the child to be held for criminal proceedings, as provided in 22-1-4 (2); or

(d) when there has been a criminal conviction, and a pre-sentence investigation is being made on an application for probation.

(6) No fingerprint, photograph, name, address, or other information concerning identity of a child taken into temporary custody or issued a summons under the provisions

Subsections (5) and (6) are based primarily on the new Illinois Juvenile Code. They set the ground rules for police records and their disclosure concerning children taken into custody or issued a summons in delinquency or in need of supervision actions. The court is given control over the release of records or information to the public, the F.B.I., or any other agency. Without such controls by the court, the provisions in Article 1 concerning publicity in juvenile proceedings and the inspection of court records are much less effective in assuring the anonymity of children who are not charged with a crime. If a child between 16 and 18 is transferred to the criminal division of district court for prosecution, then the ground rules change, and the records are treated like those of any other alleged adult offender.

of this article may be transmitted to the federal bureau of investigation or any other person or agency, except when the court orders the child to be held for criminal proceedings, as provided in 22-1-4 (2).

22-2-3. Detention and shelter - hearing - time limits - restriction. (1) A child who must be taken from his home, but who does not require physical restriction, shall be given temporary care in a shelter facility designated by the court or the county department of public welfare and shall not be placed in detention.

(2) When a child is placed in a detention facility or in a shelter facility designated by the court, the person in charge of the facility shall promptly so notify the court. He shall also notify the parents, guardian, or custodian immediately and inform them of the right to a prompt hearing to determine whether the child is to be detained further.

(3) No child shall be held in a detention or shelter

22-2-3 provides the procedures and ground rules for detention or release of a child taken into custody. It is adapted to a large extent from the standard acts and the new Utah, Illinois, and Hawaii codes. The major difference is that it permits release on bail should it be requested; there is no such provision in the other acts and codes cited.

The applicable provisions of the present delinquency statute are as follows:

"22-8-6 (3) No child within the provisions of this article under fourteen years of age shall under any circumstance be incarcerated in any common jail or lock-up, and any officer or person violating this provision shall be guilty of a misdemeanor, and on conviction fined in a sum not to exceed

facility longer than forty-eight hours, excluding Sundays and court holidays, unless a petition has been filed, or the court so orders following a hearing to determine further detention or release.

(4) The court may at any time order the release of a child from detention or shelter care without holding a hearing, either without restriction or upon written promise of the parent, guardian, or custodian to bring the child to the court at a time set or to be set by the court.

(5) (a) After making a reasonable effort to obtain the consent of the parent, guardian, or other custodian, the court may authorize or consent to medical, surgical, or dental treatment or care for a child placed in detention or shelter care.

(b) When the court finds that emergency medical, surgical, or dental treatment is required for a child placed in detention or shelter care, it may authorize such treatment or care, if the parents or guardian are not immediately available.

one hundred dollars. In counties of the first class it shall be the duty of the proper authorities to provide and maintain at public expense a detention room or house of detention, separated or removed from such jail or lock-up, to be in charge of a matron or other person of good moral character, wherein all children within the provisions of this article shall be incarcerated when necessary. Any such child shall also have the right now given by law to any person to give bond or other security for its appearance at the trial of such case, and the court may appoint counsel to appear and defend on behalf of any such child in any such case."

(6) (a) No child under the age of fourteen and, upon order of the court, no child between the ages of fourteen and sixteen shall be detained in a jail, lockup, or other place used for the confinement of adult offenders or persons charged with crime.

(b) Children fourteen years of age or older must be detained separately from adult offenders or persons charged with crime, including any child ordered by the court to be held for criminal proceedings pursuant to 22-1-4 (2).

(c) The official in charge of a jail or other facility for the detention of adult offenders or persons charged with crime shall inform the court immediately when a child who is or appears to be less than eighteen years of age is received at the facility, except for a child ordered by the court to be held for criminal proceedings pursuant to 22-1-4 (2).

(7) Nothing in this section shall be construed as denying a child the right to bail.

ARTICLE 3

Petition, Adjudication, Disposition

General Comments

Article 3 is concerned almost entirely with the judicial process and procedures in delinquency, in need of supervision, and dependency and neglect cases. It is much more detailed in its provisions concerning these procedures than are the present dependency and delinquency statutes, especially as to the way in which hearings are conducted. The emphasis throughout Article 3 is on providing a proper legal framework which adequately protects the rights of children and other parties to the proceedings, while at the same time generally allowing the juvenile court to operate in its traditional fashion.

Petition. Article 3 provides first for petition initiation and the issuance of summons. The petition initiation procedure has been changed from that in the present statutes to provide for investigation by the court before a petition is filed, such investigation to determine whether it should be filed, dismissed, or other action taken. This kind of pre-screening or intake procedure is part of the standard acts and the new codes. It formally makes the court the screening agency, instead of law enforcement officers serving informally in this capacity.

Hearings. The adjudicatory hearing (at which the court determines whether a petition is to be amended, dismissed, or sustained or if a transfer hearing should be held or a medical commission appointed) is covered in some detail, as are the transfer hearing and procedures concerning mentally ill or mentally deficient children. The purpose of these detailed provisions is two-fold: first, to provide adequate due process safeguards, especially in the transfer of youngsters for criminal proceedings; and second, to provide a way by which mentally ill or mentally deficient children before the court for other reasons can be committed as such, rather than to the Department of Institutions as being delinquent or in need of supervision.

Disposition. While Article 3 provides for separate adjudicatory and dispositional hearings, they may be held consecutively as part of the same proceeding. This is the usual procedure in routine cases in the Denver Juvenile Court and in the juvenile courts in the other states (e.g., California, New York, Hawaii, Utah, Illinois) which have similar provisions.

In addition to the other dispositional alternatives available to the court, section 10 provides that the court may enter orders of protection to require parents or other persons to do or refrain from doing certain things relating to the welfare of a child before the court. It is this section which makes civil actions in contributing unnecessary.

Separate sections (11, 12, 13) respectively specify the dispositional alternatives for neglected and dependent children, children in need of supervision, and delinquent children. Under these provisions, all of the present remedies available in dependency cases would apply to dependent or neglected children, except custody could not be given to the Department of Institutions. Thus, a dependent or neglected child could not be placed in the Colorado Youth Center.

If a child is found to be "in need of supervision," the court may avail itself of most of the disposition alternatives which apply to neglected children. In addition, it may place the child on probation or use most of the alternatives which usually apply to delinquents, including commitment to the Department of Institutions; except that if a "child in need of supervision" is committed to the Department of Institutions, he can not be placed in Golden or Morrison. This means that the Department of Institutions could place the child in a camp such as Golden Gate, release him on parole, place him in a private facility subject to its legal custody, or place him in the Colorado Youth Center. Restitution may be required if there has been damage or loss resulting from his behavior.

If a child is found to be delinquent, the court may use most of the disposition alternatives applying to neglected children and any of those applying to children in need of supervision, except

that if a youngster is committed to the Department of Institutions, the department may place him in Golden or Morrison. It may also fine the child nominally or require restitution for damage or loss resulting from his act, as is presently permitted.

It would no longer be possible to commit a delinquent to the Colorado State Reformatory. Many authorities have questioned the present provision, because it permits commitment to a penal institution as a result of a proceeding which is primarily civil and in which no crime is charged. The only way in which a youngster alleged to be delinquent may be committed to the reformatory is if he is between 16 and 18 and is transferred to district court, for a criminal trial, because the alleged delinquent act would be a felony if committed by an adult.

Other provisions. Article 3 also covers new hearings, modification of orders and decrees, probation (terms, release, revocation), and contributing to delinquency.

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22-3-1. Petition initiation - preliminary investigation - informal adjustment. (1) Whenever the court is informed by a law enforcement officer or any other person that a child is, or appears to be, within the court's jurisdiction, as provided in 22-1-4 (1) (b), (c), or (d), the court shall make a preliminary investigation to determine whether the interests of the public or of the child require that further action be taken.

(2) (a) On the basis of the preliminary investigation, the court may:

(b) decide that no further action is required, either in the interests of the public or of the child;

(c) authorize a petition to be filed; or

(d) (i) make whatever informal adjustment is practicable without a petition, provided that:

(ii) the child, his parents, guardian, or other custodian were informed of their constitutional and legal rights including being represented by counsel at every stage of the proceedings, should a petition be filed,

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Present dependency (22-1-3) and delinquency (22-8-3) statutes permit filing of petitions without any prescreening by the court. 22-3-1 of the revision follows the standard acts and the new juvenile codes by requiring that the court make a preliminary investigation to determine whether further action should be taken. Experience in other jurisdictions has shown that an effective screening procedure reduces significantly the number of cases before the court by petition. Eliminated are cases which have no basis in fact and require no further action, and those which can be adjusted informally.

Informal adjustment really means unofficial probation, but under the court rather than a law enforcement agency. Subsection (2) (d) sets the ground rules for informal adjustment and requires that the child and his parents be informed of their rights should a petition be filed, that the act be admitted, and that the child and his parents agree to handling the matter in this way. As further

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(iii) the facts are admitted and establish prima facie jurisdiction, and

(iv) consent is obtained from the parents, guardian, or other custodian, and also from the child, if of sufficient age and understanding.

(3) (a) Efforts to effect informal adjustment may extend no longer than three months.

(b) In any informal adjustment, the court shall not compel any person to appear at any conference, produce any papers, or to visit any place.

22-3-2. Petition form and content. (1) The petition and all subsequent court documents in any proceedings brought under 22-1-4 (1) (b), (c), or (d) shall be suitably entitled to state that the proceeding is in the interest of rather than against the child concerned. The petition shall be verified, and the statements in the petition may be made upon information and belief.

(2) (a) The petition shall set forth plainly the

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checks on possible abuses of informal adjustment, subsection (3) requires that it extend no longer than three months and limits the conditions the court may impose.

22-3-2 provides for petition form and content in proceedings in delinquency, in need of supervision, and dependency and neglect, instead of having separate statutes, as is presently the case for dependency and delinquency. It is based primarily on the new Utah code, although similar provisions are found in the new Illinois and Hawaii laws. One requirement not found elsewhere is that if the petition alleges the child to be

facts which bring the child within the court's jurisdiction. If the petition alleges that the child is delinquent, it shall cite the law or municipal ordinance which the child is alleged to have violated.

(b) The petition shall also state the name, age, and residence of the child and the names and residences of his parents, guardian, or other custodian, or of his nearest known relative if no parent, guardian, or other custodian is known.

delinquent (under the new definition of delinquency), it must cite the law or municipal ordinance which the child is alleged to have violated.

22-3-3. Summons - issuance - contents - service. (1) After a petition has been filed, the court shall promptly issue a summons reciting briefly the substance of the petition. The summons shall also contain a statement, when appropriate, that the termination of parental rights is a possible remedy under the proceedings and shall set forth the constitutional and legal rights of the child, his parents or guardian, or any other respondent, including the right to have an attorney present at the hearing on the petition.

Present summons provisions are found in 22-1-4 (dependency) and 22-8-3 (delinquency). 22-3-3 amalgamates most of the provisions of these two statutes, which is the reason why subsection (7) requires service five days prior to the hearing on dependency and neglect petitions and two days service prior to the hearing on delinquency and in need supervision petitions.

22-3-3 also contains some significant additions to the present summons and notice provisions. These are found

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(2) No summons shall issue to any respondent who appears voluntarily, or who waives service, or who has promised in writing to appear at the hearing as provided in 22-2-2 or 22-2-3, but any such person shall be provided with a copy of the petition and summons upon appearance.

(3) The summons shall require the person or persons having the physical custody of the child to appear and to bring the child before the court at a time and place stated. If the person or persons so summoned are not the parents or guardian of the child, then summons shall also be issued to the parents or guardian, or both, notifying them of the pendency of the case and of the time and place set for hearing.

(4) Summons may be issued requiring the appearance of any other person whose presence the court deems necessary. A parent or guardian shall be entitled to the issuance of compulsory process for the attendance of witnesses on his own behalf or on behalf of the child. Upon application to the court, compulsory process shall be issued for the

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in subsections (1) and (2). Subsection (1) requires that the petition set forth the rights of the parties to the proceedings as well as a statement in dependency and neglect petitions that the termination of parental rights is a possible remedy.

Because these statements are to be set forth on the summons, subsection (2) requires that a copy of the summons (as well as the petition) be given upon appearance to respondents who waive service.

attendance of witnesses on behalf of the child.

(5) If it appears that the welfare of the child or of the public requires that the child be taken into custody, the court may, by endorsement upon the summons, direct that the person serving the summons take the child into custody at once.

(6) The court may authorize the payment of necessary travel expenses incurred by persons summoned or otherwise required to appear, which payments shall not exceed the amount allowed to witnesses for travel by the district court.

(7) Summons shall be served personally, pursuant to rule 4 of the Colorado rules of civil procedure. If personal service is used, it shall be sufficient to confer jurisdiction if service is effected no less than two days before the time fixed in the summons for the appearance of the person served, except that personal service shall be effected no less than five days prior to the time set for a hearing under 22-1-4 (d).

(8) (a) If the parents, guardian, or other custodian of the child required to be summoned under subsection (3) of this section cannot be found within the state, the fact of the child's presence in the state shall confer jurisdiction on the court as to any absent parent or guardian, provided that due notice has been given in the following manner:

(b) When the residence of the person to be served outside the state is known, a copy of the summons and petition shall be sent by certified mail with postage prepaid to such person at his place of residence, with a return receipt requested. Service of summons shall be deemed complete within five days after return of the requested receipt.

(c) When the person to be served has no residence within Colorado and his place of residence is not known or when he cannot be found within the state after due diligence, summons may be served by publication as provided in rule 4 of the Colorado rules of civil procedure.

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22-3-4. Contempt - warrant. (1) Any person summoned as provided in 22-3-3 who fails to appear without reasonable cause may be proceeded against for contempt of court.

(2) If after reasonable effort the summons cannot be served, or if the welfare of the child requires that he be brought immediately into the custody of the court, a warrant may be issued for the parents, guardian, or other custodian, or the child.

(3) When a parent or other person who signed a written promise to appear and bring the child to court under 22-2-2 or 22-2-3, or who has waived service fails to appear with the child on the date set by the court, a warrant may be issued for the parent or other person, the child, or both.

22-3-5. Appointment of guardian ad litem. (1) (a) The court may appoint a guardian ad litem to protect the interest of a child in proceedings pursuant to 22-1-4 (1) (b), (c), or (d) when:

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22-3-4 gives the court authority to proceed against anyone summoned who fails to appear without reasonable cause for contempt of court. It also authorizes the court to issue a warrant if a summons cannot be served with reasonable effort or if the child's welfare requires he be brought immediately into the court's custody. In addition the court may issue a warrant if anyone who has waived service or has signed a promise to appear fails to appear at the hearing.

22-3-5 (1) sets forth the circumstances under which the court may appoint a guardian ad litem to protect the interest of a child before the court.

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(b) No parent, guardian, custodian, or relative of the child appears at the first or any subsequent hearing in the case; or

(c) The court finds that there may be a conflict of interest between the child and his parent, guardian, or other custodian;

(d) The court finds that it is in the child's interest and necessary for his welfare, whether or not a parent or guardian is present.

(2) The court shall appoint a guardian ad litem for any parent in proceedings under 22-1-4 (1) (d) or (g) who has been adjudicated as mentally ill or mentally deficient, except that if a conservator has been appointed, the conservator may serve as the guardian ad litem. If the conservator does not serve as guardian ad litem, he shall be informed that a guardian ad litem has been appointed.

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Subsection (2) provides that a guardian ad litem shall be appointed in dependency or neglect, or relinquishment proceedings for any parent adjudicated as mentally ill or mentally incompetent. This provision is necessary to protect the rights and assure due process for such parents, and to avoid questions concerning the validity of such proceedings, particularly when parental rights are terminated and the child is placed for adoption.

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22-3-6. Adjudicatory hearing - findings - adjudication. (1) At the adjudicatory hearing, which shall be conducted as provided in 22-1-7, the court shall first consider only whether the allegations of the petition are supported by a preponderance of the evidence.

(2) (a) When it appears that the evidence presented at the hearing points to material facts not alleged in the petition, the court may proceed immediately to consider the additional or different matters raised by the evidence, if the parties consent.

(b) In such event, the court, on the motion of any interested party or on its own motion, shall order the petition to be amended to conform to the evidence.

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22-3-6 sets forth in detail how the adjudicatory hearing is to be conducted, the various options the court may exercise, and the circumstances related to these options. Subsection (1) provides that the adjudicatory hearings shall be conducted as provided in 22-1-7, which sets the general ground rules for all court hearings on children's cases and other proceedings under the court's jurisdiction. It requires the court to determine whether the allegations of the petition are supported by a preponderance of the evidence.

Subsection (2) sets forth the options open to the court when the evidence presented at the hearing points to facts not alleged in the petition which have a substantial bearing on the case. These options are so designed to assure adequate protection and a fair hearing to all parties. If the additional facts not alleged in the petition indicate that the child may be mentally ill or deficient, subsection (2) (d) requires the court to suspend

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(c) If the amendment results in a substantial departure from the original allegations in the petition, the court shall continue the hearing on the motion of any interested party, or the court may grant a continuance on its own motion, if it finds it to be in the best interests of the child or any other party to the proceeding.	the adjudicatory hearing and proceed under 22-3-7 (which is discussed below).
(d) If it appears from the evidence that the child may be mentally ill or mentally deficient, as these terms are defined in 71-1-1, subsections (2) (a), (b), and (c) of this section shall not apply, and the court shall proceed under 22-3-7.	
(3) (a) Before making an adjudication, the court may continue the hearing from time to time, allowing the child to remain in his own home subject to such conditions of conduct and of visitation and supervision by a probation counselor as the court may prescribe, if:	Subsection (3) makes it possible for the court to correct the problems that caused the petition to be filed by providing supervision and counseling without making a formal adjudication. This is a common practice in many courts in Colorado, but the circumstances and procedures differ among these courts, and there is presently no legal sanction for handling cases in this way. Subsection (3) not only provides legal sanction, but it
(b) Consent is given by the child and his parents, guardian, or other custodian after being fully informed by the court of their rights in the proceeding, including	

their right to have an adjudication made either dismissing or sustaining the petition.

(c) Such continuation shall extend no longer than three months without review by the court. Upon review the court may continue the case for an additional period not to exceed three months, after which the petition shall either be dismissed or sustained.

(4) (a) When the petition alleges that a child sixteen years of age or older committed an act which would constitute a felony if committed by an adult, the court may:

(b) Proceed as otherwise provided in this section; or

(c) (i) Continue the case for further investigation and a transfer hearing under 22-3-8 to determine whether the child should be held for criminal proceedings in district court, if

(ii) the court finds that further investigation would be in the best interests of the child, his parents,

also: 1) provides uniformity in handling cases this way; and 2) provides adequate safeguards in subsections (2) (b) and (c).

Subsection (4) sets forth the options available to the court when the petition alleges that a child sixteen years of age or older committed an act which would constitute a felony if committed by an adult. The court may proceed with the adjudicatory hearing, in which event, a transfer hearing will not be held to determine whether the child should be referred for criminal proceedings. The court also has the alternative option of holding a transfer hearing. If it so decides, it can proceed with the transfer hearing immediately only under the conditions set forth in subsection (4) (d). Otherwise it shall continue the case, as provided

guardian, or custodian, and other parties to the proceedings, or

(iii) the child and his parents, guardian, or other custodian request that they be represented by counsel at the transfer hearing, and counsel has not previously been engaged by them or appointed by the court; or

(d) (i) Hold the transfer hearing immediately to determine whether the child should be held for criminal proceedings in district court, if

(ii) the court finds that no additional information is necessary to make this determination, and

(iii) the child and his parents, guardian, or other custodian either are already represented by counsel or have waived their right to counsel after having it fully explained.

(5) When the court finds that the allegations of the petition are not supported by a preponderance of the evidence, the court shall order the petition dismissed and the child discharged from any detention or restriction

in subsection (4) (c).

The provisions of subsections (4) (c) and (d) are designed to provide adequate protection in transfer hearings and are considered necessary in light of the Kent case cited in the introductory remarks under due process.

Subsections (5) and (6) specify the circumstances under which a petition shall be sustained or dismissed.

previously ordered. His parents, guardian, or other custodian shall also be discharged from any restriction or other previous temporary order.

(6) (a) When the court finds that the allegations of the petition are supported by a preponderance of the evidence, the court shall sustain the petition, and shall make an order of adjudication, setting forth whether the child is delinquent, in need of supervision, or neglected or dependent.

(b) The court shall then hold the dispositional hearing, provided that such hearing may be continued on the motion of any interested party or on the motion of the court.

Subsection (6) (b) makes it possible for the court to hold the dispositional hearing immediately after the adjudicatory hearing if it so desires.

22-3-7. Mentally ill or mentally deficient child - procedure. (1) (a) Whenever it appears from the evidence presented at an adjudicatory hearing that the child may be mentally ill or mentally deficient, as these terms are defined in 71-1-1, the court shall suspend the hearing on

22-3-7 specifies the procedures to be followed when the court has reason to believe from the evidence presented at the adjudicatory hearing that a child is mentally ill or mentally deficient. The court may proceed to appoint a medical commis-

the petition and shall either:

(b) Order that the child be examined by a physician, psychiatrist, or psychologist and may place the child in a hospital or other suitable facility for the purpose of examination; or

(c) Proceed as provided in 71-1-5.

(2) If the report of the examination made pursuant to subsection (1) (b) of this section states that the child is mentally ill or mentally deficient to the extent that long-term hospitalization or institutional confinement and treatment is required, the court shall proceed as provided in 71-1-5.

(3) The court shall dismiss the original petition when a child is committed to a state hospital or state home and training school under article 1 of chapter 71.

(4) (a) The court shall set a time for resuming the hearing on the original petition when:

(b) the report of the examination made pursuant to subsection (1) (b) of this section states that the child

sion and hold a hearing on commitment, as provided in 71-1-5, or it may have the child examined to determine whether it should proceed under 71-1-5.

If the court finds that the child is not mentally ill or deficient either from the examination or as a result of the hearing under 71-1-5, it shall proceed with the adjudicatory hearing on the original petition. If the child is found to be mentally ill or mentally deficient in the proceedings under 71-1-5, he shall be so committed and the original petition dismissed.

The purpose of this procedure is to limit the possibility of a mentally ill or deficient child being found delinquent or in need of supervision, with a resultant inappropriate disposition of the case. It also is aimed at assuring that the same judge who conducted the adjudicatory hearing and is familiar with the case will also conduct the proceedings under 22-3-7. This is not possible in the Denver Juvenile Court, because the Denver Probate Court has

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is not mentally ill or deficient to the extent that long-term hospitalization or institutional confinement and treatment is required; or (c) the child is not found to be mentally ill or deficient under article 1 of chapter 71.	constitutional jurisdiction in mental health matters. Consequently, subsection (5) requires the Denver Juvenile Court to transfer any child coming under the provisions of this section to the Denver Probate Court for proceedings under Chapter 71.
(5) The juvenile court of the city and county of Denver shall transfer any child coming under this section to the probate court of the city and county of Denver for proceedings under article 1 of chapter 71.	
22-3-8. Transfer hearing. (1) At the transfer hearing, the court shall consider only whether it would be contrary to the best interest of the child or of the public to retain jurisdiction over a child sixteen years of age or older who is alleged to have committed an act which would constitute a felony, if committed by an adult. (2) The hearing shall be conducted as provided in 22-1-7, and the court shall make certain that the child and his parents, guardian, or other custodian have been	As previously indicated, the district attorney presently has the option of filing a petition in delinquency or an information for criminal proceedings, when a youngster between 16 and 18 is alleged to have committed an act which would constitute a felony if committed by an adult, except in Denver. Consequently, transfer proceedings are not presently provided by statute, except for the Denver Juvenile Court in 37-19-3 (2). 37-19-3 (2), however, does not

fully informed of their right to be represented by counsel, as provided in 22-1-6.

(3) Written reports and other materials relating to the child's mental, physical, and social history may be considered by the court, provided that the person or persons who prepared the report and other material shall appear and be subject to both direct and cross-examination.

(4) If the court finds that a child should be held for criminal proceedings in the district court, the court shall enter an order certifying to that effect. When an order of certification has been made, the jurisdiction of the juvenile court as to the child concerned is terminated, except that the district court may petition the juvenile court to hold the child in detention pending proceedings in the district court.

(5) If the court finds that it is in the best interests of the child and of the public for the court to retain jurisdiction, it shall proceed with the adjudicatory hearing as provided in 22-3-6.

specify the procedures to be followed.

22-3-8 of the proposed revision specifies the hearing procedure in order to meet any possible question of the deprivation of due process. For this reason, some of the provisions were considered necessary, even though they are repetitive of provisions found elsewhere in the revision.

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22-3-9. Dispositional hearing. (1) After making an order of adjudication, the court shall hear evidence on the question of the proper disposition best serving the interests of the child and the public.

Such evidence shall include, but not necessarily be limited to, the social study and other reports, as provided in 22-1-8.

(2) The court may have the child examined by a physician, psychiatrist, or psychologist, and the court may place the child in a hospital or other suitable facility for this purpose.

(3) (a) The court may continue the dispositional hearing, either on its own motion or on the motion of any interested party, for a reasonable period to receive reports or other evidence, provided that the court shall continue the hearing for good cause on the motion of any interested party in any case where the termination of parental rights is a possible remedy.

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22-3-9 sets forth the procedures to be followed in the dispositional hearing and specifies the circumstances under which the hearing may be continued.

(b) If the hearing is continued, the court shall make an appropriate order for detention of the child or for his release in the custody of his parents, guardian, or other responsible person or agency under such conditions of supervision as the court may impose during the continuance.

(c) In scheduling investigations and hearings, the court shall give priority to proceedings concerning a child who is in detention or who has otherwise been removed from his home before an order of disposition has been made.

22-3-10. Order of protection. (1) The court may make an order of protection in assistance of, or as a condition of, any decree of disposition authorized by this article. The order of protection may set forth reasonable conditions of behavior to be observed for a specified period by the parent, guardian, or any other person who is party to a proceeding brought under 22-1-4 (1) (b), (c), or (d).

22-3-10 provides for court orders of protection, in addition to any other decree of disposition authorized by this article. Similar provisions are found in 22-1-6 and 22-7-3 of the present statute. The advantage to 22-3-10 is that it covers in one place all orders of protection in neglect or dependency, in need of supervision, and delinquency, instead of having separate provisions. By authorizing the court to use contempt proceedings, if necessary, to enforce such orders, it

(2) (a) The order of protection may require any such person:

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(b) To stay away from a child or his home;

(c) To permit a parent to visit a child at stated periods;

(d) To abstain from offensive conduct against a child, his parent or parents, guardian, or any other person to whom legal custody of a child has been given;

(e) To give proper attention to the care of the home;

(f) (i) To cooperate in good faith with an agency;

(ii) which has been given legal custody of a child,

(iii) which is providing protective supervision of a child by court order, or

(iv) to which the child has been referred by the court;

(g) To refrain from acts of commission or omission that tend to make a home an improper place for a child; or

(h) To perform any legal obligation of support.

(3) After notice and opportunity for a hearing is given to a person subject to an order of protection, the order may be terminated, or it may be modified or extended for a specified period of time, if the court finds that

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eliminates the need for civil contributing to dependency or delinquency proceedings which have the same objective, but use probation or posting a bond to assure compliance, as provided in present 22-7-3. The new Illinois Juvenile Code also provides for orders of protection in this way.

the best interests of the child and the public will be served thereby.

(4) A person failing to comply with an order of protection without good cause may be found in contempt of court and dealt with accordingly.

22-3-11. Neglected or dependent child -- disposition. (1) (a) When a child has been adjudicated to be neglected or dependent, the court shall enter a decree of disposition. When the decree does not terminate parental rights, it shall include one or more of the following provisions which the court finds appropriate:

(b) The court may place the child in the legal custody of one or both parents or guardian, with or without protective supervision, under such conditions as the court may impose, as provided in 22-3-10.

(c) The court may place the child in the legal custody of a relative or other suitable person, with or without protective supervision, under such conditions as the court

22-3-11 provides the various disposition alternatives, including termination of parental rights, when a child has been adjudicated as neglected or dependent. It includes all the remedies presently provided in 22-1-6, with the exception of placement of custody with the Department of Institutions for placement in the Colorado Youth Center (Children's Home).

It is of necessity more lengthy than present 22-1-6 because it attempts to avoid some of the uncertainty and ambiguity of the present provisions. It does this by relating the different disposition alternatives to three separate circumstances 1) the types of disposition when

may impose, as provided in 22-3-10.

(d) The court may place legal custody in the department of public welfare or a child placement agency for placement in a foster home or other child care facility; or

(e) The court may order that the child be examined or treated by a physician, surgeon, psychiatrist, or psychologist, or that he receive other special care, and may place the child in a hospital or other suitable facility for such purposes.

(2) (a) The court may enter a decree terminating all parental rights of one or both parents in the child when it finds that the best interests and welfare of the child so require.

(b) (i) Upon the entry of a decree terminating the legal rights of both parents, or of the sole surviving parent, the court may:

(ii) vest the department of public welfare or a child placement agency with the legal custody and guardianship of the person of a child for the purposes of placing the

parental rights are not terminated (subsection (1)); 2) the types of disposition when the rights of both parents are terminated (subsection (2) (b)); or 3) the types of disposition when the rights of only one parent are terminated (subsection (2) (c)).

child for adoption; or

(iii) make any other disposition provided in subsections (1) (c), (d), or (e) of this section that the court finds appropriate.

(c) (i) Upon the entry of a decree terminating the parental rights of one parent, the court may:

(ii) leave the child in the legal custody of the other parent and discharge the proceedings; or

(iii) make any other disposition provided in subsection (1) of this section that the court finds appropriate;

(3) When a child has been adjudicated neglected because he has been willfully abandoned by his parent or parents, the court may enter a decree terminating parental rights in the child, if it finds that the parent or parents having legal custody have surrendered physical custody for a period of at least six months and during this period have not manifested to the child or the person having physical custody a firm intention to resume physical custody or to make arrangements for the care of the child.

22-3-11 (3) attempts to eliminate the possibility of a child's legal status being in limbo when he has been willfully abandoned, by providing that if he has been so abandoned for six months, the court may enter a decree terminating parental rights. A similar provision is contained in the new Utah code.

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(4) In placing the legal custody or guardianship of the person of a child with an individual or a private agency, the court shall give primary consideration to the welfare of the child, but shall take into consideration the religious preferences of the child or of his parents, whenever practicable.

(5) (a) The court may grant a new hearing as provided in 22-3-16 or modify the decree of disposition, as provided in 22-3-17, except as to the termination of parental rights.

(b) Unless there is an appeal from a decree terminating the rights of one or both parents, the decree terminates permanently the legal parent-child relationship and all the rights and duties, including residual parental rights and duties, of the parent or parents involved.

22-3-12. Child in need of supervision - disposition. (1) (a) When a child has been adjudicated as being in need

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22-3-11 (4) is also based on the Utah code. It recognizes that religious preferences should be considered, but are not as important as the welfare of the child. 22-1-6 (2) presently provides: "In placing a child in the custody of any person or agency, after termination of parental rights, the court shall take into account, the racial, cultural, and religious background of the child's parents."

Subsection (5) provides for a new hearing or modification of the decree, except that the termination of parental rights shall be permanent unless appealed to the supreme court. This exception concerning the termination of parental rights was included to avoid legal limbo situations which might interfere with prompt placement and adoption, which would be in the child's best interest.

22-3-12 provides the various disposition alternatives when a child has been adjudi-

of supervision, the court shall enter a decree of disposition, containing one or more of the following provisions which the court finds appropriate:

(b) The court may place the child on probation or under protective supervision in the legal custody of one or both parents or guardian under such conditions as the court may impose;

(c) The court may place the child in the legal custody of a relative or other suitable person under such conditions as the court may impose, which may include placing the child on probation or under protective supervision.

(d) (i) The court may require as a condition of probation that the child report for assignment to a supervised work program or place such child in a child care or detention facility which shall provide a supervised work program, if

(ii) the child is not deprived of the schooling which is appropriate to his age, needs, and specific rehabilitative goals;

cated as being in need of supervision. It includes many of the disposition remedies applicable to dependent and neglected children, and several presently provided in 22-8-11 for delinquents, including participation in a supervised work program.

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(iii) the supervised work program is of a constructive nature designed to promote rehabilitation, is appropriate to the age level and physical ability of the child, and is combined with counseling from a probation counselor or other guidance personnel;

(iv) the supervised work program assignment is made for a period of time consistent with the child's best interest, but not exceeding ninety days.

(e) The court may place legal custody in the department of public welfare or a child placement agency for placement in a foster home or child care facility, or it may place the child in a child care center.

(f) The court may order that the child be examined or treated by a physician, surgeon, psychiatrist, or psychologist, or that he receive other special care, and may place the child in a hospital or other suitable facility for such purposes.

(g) The court may require the child to pay for any damage done to persons or property, upon such conditions

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Subsection (g) provides for restitution, and is also applicable in the case of a

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as the court may deem best, when such payment can be enforced without serious hardship or injustice to the child.

(h) (i) The court may commit the child to the department of institutions for placement in the Colorado Youth Center, any other group care facility, or other disposition as may be determined by the department, as provided by law.

(ii) No child committed to the department of institutions under the provisions of this section shall be placed initially in the Lookout Mountain School for Boys, the Mount View Girl's School, or any other training school as defined in 22-1-3 (25), but may be transferred to one of these facilities by the department only as provided in 22-8-4 (2).

(2) The court may grant a new hearing, as provided in 22-3-16 or modify the decree of disposition, as provided in 22-3-17.

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delinquent child, with the addition of a fine (see 22-3-13 (1) (c)). This is presently provided in 22-8-11 (2) (h).

Subsection (h) (ii) provides that no child in need of supervision who is committed to the Department of Institutions may be placed initially in Golden or Morrison.

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22-3-13. Delinquent child - disposition. (1) (a) Whenever a child has been adjudicated as being delinquent, the court shall enter a decree of disposition, containing one or more of the following provisions which the court finds appropriate:

(b) The court may make any disposition, or combination of dispositions when appropriate, provided under 22-3-12 (1), except that any delinquent child committed to the department of institutions may be placed in the Lookout Mountain School for Boys, the Mount View Girl's School, or any other training school, in addition to any other facility or disposition which the department may determine as provided by law.

(c) The court may impose a fine not to exceed fifty dollars.

(2) The court may grant a new hearing, as provided in 22-3-16, or modify the decree of disposition, as provided in 22-3-17.

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22-3-13 sets forth the disposition alternatives when a child has been adjudicated as a delinquent. It includes all the dispositional remedies available for a child who has been adjudicated as being in need of supervision (which also covers some of the dispositional options for neglected or dependent children), except that commitment to the Department of Institutions may include placement in Morrison or Golden. In addition, the court may impose a fine not to exceed fifty dollars.

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22-3-14. Commitment to department of institutions. (1) (a) When a child is committed to the department of institutions, the court shall transmit, with the commitment order, copies of the social study, any clinical reports, and other information pertinent to the care and treatment of the child.

(b) The department of institutions shall provide the court with any information concerning a child committed to its care which the court at any time may require.

(2) (a) Unless and until otherwise changed by the department of institutions, the Colorado Youth Center is designated as the receiving center for children in need of supervision committed to the department, and the Lookout Mountain School for Boys and the Mount View Girl's School are designated as receiving centers for delinquent children committed to the department.

(b) If a change is made in the designation of a receiving center by the department, it shall so notify the

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22-3-14 (1) provides for the transmittal by the court of social studies, etc., with the order of commitment, when a child is committed to the Department of Institutions. It also provides that the department shall provide any information the court may require concerning a child committed to the department's care.

Subsection (2) specifies the facilities to be used as receiving centers by the Department of Institutions, until changed by the department. A similar provision is contained in 22-8-2, for ease of reference.

juvenile courts at least thirty days prior to the date that the change takes effect.

(3) (a) A commitment of a child to the department of institutions under 22-3-12 shall be for an indeterminate period not to exceed two years, except that the commiting court may renew the commitment for an additional period not to exceed two years upon petition of the department of institutions. Such petition shall set forth the reasons why it would be in the best interest of the child or of the public that the commitment be renewed.

Subsections (3) (a) and (b) place a limit on the length of time a child may be placed in an institution by the department, or be kept on parole after institutional placement. Similar provisions on limitations are found in 22-8-5 (institutionalization) and 22-9-2 (3) (parole) for ease of reference and to avoid any possible conflicts. The purpose of these limitations is to make sure that no child is kept in custody or under parole any longer than necessary to achieve maximum benefit from the institutional program and parole supervision. This limitation has been approved by the Director of Youth Services.

(b) A commitment of a child to the department of institutions under 22-3-13 shall be for an indeterminate period, but institutional placement shall not exceed a total of two years, as determined by the department, and parole supervision shall not exceed an additional two years, as determined by the juvenile parole board.

(c) When it is brought to the attention of the court that a child committed to the department by the court has been placed in an institution or other facility for a

Under the provisions of subsection (3) (c) the court is authorized to inquire into the status of a child committed by it to the department

period exceeding one year without being considered for parole, the court may request the juvenile parole board to review the case.

who has not been considered for parole after a year of institutional placement.

22-3-15. Legal custody - guardianship. (1) (a) Any individual, agency, or institution vested by the court with legal custody of a child shall have the rights and duties defined in 22-1-3 (6).

22-3-15 clarifies the duties and rights of persons vested by the court with legal custody or guardianship of the person of a child.

(b) Any individual, agency, or institution vested by the court with the guardianship of the person of a child shall have the rights and duties defined in 22-1-3 (7), except that no guardian of the person may consent to the adoption of a child unless that authority is expressly given him by the court.

(2) (a) Whenever legal custody or guardianship of the person is vested in an agency or institution, the court shall transmit, with the court order, copies of the social study, any clinical reports, and other information concerning the care and treatment of the child.

Subsection (2) provides for the exchange of reports and other information between the court and individuals, agencies, and institutions in whom legal custody or guardianship of the person is placed.

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(b) An individual, agency, or institution having legal custody or guardianship of the person of a child shall give the court any information concerning the child which the court at any time may require.	
(3) (a) Any agency vested by the court with legal custody of a child shall have the right to determine where and with whom the child shall live, except that the child shall not be removed from the state for more than thirty days without court approval.	Subsection (3) places a thirty day limitation on the removal of a child from the state by a legal custodian or guardian of the person without court approval.
(b) No individual vested by the court with legal custody of a child shall remove the child from the state for more than thirty days without court approval.	
(4) (a) A decree vesting legal custody of a child in an individual, institution, or agency other than the department of institutions shall be for an indeterminate period, not to exceed two years from the date it was entered. Such decree shall be reviewed by the court no later than six months after it is entered.	Subsection (4) is taken from a similar provision in the new Utah code, and specifies that placement of legal custody shall be reviewed after six months and may extend for no more than two years initially. The decree may be renewed by the court for such period as it may determine following a hearing on the matter.

(b) The individual, institution, or agency vested with the legal custody of a child may petition the court for renewal of the decree. The court, after notice and hearing, may renew the decree for such additional period as the court may determine, if it finds such renewal to be in the best interest of the child. The findings of the court and the reasons therefor shall be entered with the order renewing or denying renewal of the decree.

(5) No legal custodian or guardian of the person may be removed without his consent until given notice and an opportunity to be heard by the court if he so requests.

Subsection (5) provides protection for legal custodians and guardians of the person by requiring that they may not be removed by the court without being given an opportunity to be heard by it.

22-3-16. Modification of order or decree. (1) The court may modify or set aside any order or decree made by it, except a decree terminating parental rights.

22-3-16 sets forth the conditions and procedures for the modification of any court order or decree, except a decree terminating parental rights.

(2) (a) No modification of an order or decree shall be made without a hearing when

(b) A violation of the terms of probation by a child

Subsection (2) specifies those circumstances in which a decree may not be modified without a court hearing. Subsection (2) (b) is included

is alleged; or

(c) The effect of modifying or setting aside an order or decree may be to deprive a parent of legal custody of a child or to make any other change in legal custody.

(3) (a) When legal custody of a child has been vested by the court in an individual, institution, or agency other than the department of institutions, a parent whose parental rights have not been terminated, a guardian, or next friend of the child may petition the court for restoration of custody or other modification or termination of the decree on the ground that a change of circumstances has occurred which requires such modification or termination in the best interest of the child or the public.

(b) The court shall make a preliminary investigation and may dismiss the petition if it finds that the alleged change of circumstances, if proved, would not affect the decree.

(c) If the court finds that a further examination of

to avoid any possible conflict with 22-3-18.

Subsections (3) and (4) specify who may petition for a modification of a court order or decree, and set forth the procedure to be followed by the court when a petition for modification is filed.

the facts should be made, or if the court on its own motion determines the decree should be reviewed, it shall conduct a hearing upon due notice to all persons concerned. Thereupon, the court may enter an order continuing, modifying, or terminating the decree.

(4) (a) Any individual, agency, or institution vested with legal custody of a child may petition the court for a modification of the order or decree on the ground that such change is necessary for the welfare of the child or in the public interest.

(b) The court shall thereupon proceed as provided in subsections (3) (b) and (c) of this section.

22-3-17. New hearing authorized. (1) A parent, guardian, custodian, or next friend of any child adjudicated under this article, or any person affected by a decree in a proceeding under this article, may petition the court for a new hearing on the ground that new evidence has been discovered which was not known and could not with due diligence

22-3-17 sets forth the grounds for petitioning for a new hearing and specifies who may petition. It is in the court's discretion as to whether a new hearing shall be held.

have been made available at the original hearing and which might affect the decree.

(2) If it appears to the court that there is such new evidence which might affect the original decree, it shall order a new hearing and shall make such disposition of the case as warranted by all the facts and circumstances and the best interest of the child.

22-3-18. Probation - terms - release - revocation. (1) The terms and conditions of probation shall be specified by rules or orders of the court. Each child placed on probation shall be given a written statement of the terms and conditions of his probation and shall have such terms and conditions fully explained to him.

22-3-18 (1) requires that probation terms and conditions be specified by court orders of rules and each child placed on probation be given a copy of the terms and conditions, in addition to having them explained. The present statute (22-8-10 (2) (c).

(2) (a) The court shall review the terms and conditions of probation and the progress of each child placed on probation at least once every six months.

Subsection (2) (a) is similar to the present provision of 22-8-11 (2) (c).

(b) The court may release a child from probation or modify the terms and conditions of his probation at any time, but any child who has complied satisfactorily with

Subsection (2) (a) limits the length of time a child may be kept on probation to two years, if he has complied satisfactorily with the terms

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the terms and conditions of his probation for a period of two years shall be released from probation, and the jurisdiction of the court shall be terminated.

(3) (a) When it is alleged that a child has violated the terms and conditions of his probation, the court shall set a hearing on the alleged violation and shall give notice to the child, his parents, guardian, or other legal custodian, and any other parties to the proceeding as provided in 22-3-2.

(b) The child, his parents, guardian, or other legal custodian shall be given a written statement concerning the alleged violation and shall have the right to be represented by counsel at the hearing and be entitled to the issuance of compulsory process for the attendance of witnesses, as provided in 22-3-3 (4).

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and conditions of probation. Present 22-8-11 (2) (c) permits a child to be kept on probation until he is 21. The two-year limitation is imposed because some authorities feel there is no need to keep a youngster on probation any longer, if his probation period is satisfactory. Children who have completed two years satisfactorily are usually only given token supervision after that period anyway.

Subsection (3) provides that no child may have his probation revoked without a hearing, with the procedures to be followed somewhat similar to those applying to hearings on a new petition. This provision is considered consistent with due process protection, instilling in the child a feeling that the court is treating him fairly. Opponents may argue that a person on probation has no rights, because probation is a privilege which may be revoked at any time for whatever reason the court chooses. They also point to the possible expense to and burden on the court of requiring additional hearings. Those who served in an advisory capacity

(c) When the child has been taken into custody because of the alleged violation, the provisions of 22-2-2 and 22-2-3 shall apply.

(d) (i) The hearing on the alleged violation shall be conducted as provided in 22-1-7.

(ii) If the court finds by a preponderance of the evidence that the child violated the terms and conditions of probation, it may modify the terms and conditions of probation, revoke probation, or take such other action permitted by this article which is in the best interest of the child and the public.

(iii) If the court finds that the child did not violate the terms and conditions of his probation as alleged, it shall dismiss the proceedings and continue the child on probation under the terms and conditions previously prescribed.

in the preparation of the revision are in agreement with the provisions of subsection (3) as are a number of authorities who have written on the subject.

22-3-19. Continuing jurisdiction. Except as otherwise provided in this article, the jurisdiction of the

22-3-19 provides for the continuing jurisdiction of the court until a child is 21,

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court over any child adjudicated as neglected or dependent, in need of supervision, or delinquent shall continue until he becomes twenty-one years of age, unless terminated by court order.	except as otherwise provided in this article. (These exceptions have already been commented upon.)
22-3-20. Adult cases - proceedings - penalty - suspension. (1) Proceedings concerning any adult who is alleged to have induced, aided, or encouraged a child to violate any federal or state law, or municipal ordinance the penalty for which may be a jail sentence, or a court order shall be conducted according to the Colorado rules of criminal procedure, except that proceedings may be commenced by complaint.	22-3-20 provides for a criminal action in contributing to delinquency. By tying contributing to delinquency to the revised definition of delinquency much of the vagueness usually criticized in contributing to delinquency statutes is avoided. This section limits contributing to delinquency to acts which induce, aid, or encourage a child to violate any law or a municipal ordinance for which the penalty may be a jail sentence, or a court order. This limitation on municipal ordinance violations was inserted, so that parents could not be tried for contributing to the delinquency of their child if he is found on the street five or ten minutes after curfew.
(2) When a complaint is filed with the court charging an adult with inducing, aiding, or encouraging a child	Subsections (2) through (6) are similar to the present provisions of 22-7-14 (2) through (6).

to violate any federal or state law, municipal ordinance, or court order the court may make a preliminary investigation and may make such nonjudicial adjustment without prosecution as may be practicable, if the person charged consents, after having been fully informed of his right to be represented by counsel and to have a trial by jury, should a trial be held on the complaint.

(3) Any adult having been tried and found to have induced, aided, or encouraged a child to violate any federal or state law, municipal ordinance, or court order shall be guilty of a misdemeanor and shall be fined in a sum not to exceed one thousand dollars or imprisoned in the county jail for a period not to exceed one year, or both such fine and imprisonment.

(4) (a) Any order, judgment, or sentence entered or imposed in any case under this section may be suspended or execution therein stayed by the court and such person placed on probation under such terms and conditions as the court

may impose in the interest of justice and for the protection of the child.

(b) If the terms and conditions of probation are complied with to the satisfaction of the court, the execution of such order, judgment, or sentence may continue to be suspended, and probation shall remain in full force and effect for a period not to exceed two years, unless sooner terminated by order of court.

(5) (a) If, at any time, it appears to the court that the terms and conditions of probation have been violated, the court shall hold a hearing thereon, after giving due notice to all interested parties.

(b) If the court finds at the hearing that such terms and conditions have been violated, the court shall have the authority to revoke probation and to enter an order enforcing the original judgment or sentence, the terms of which shall commence from the date of such order.

(6) If the court finds that the terms and conditions

of probation have been complied with satisfactorily, the court shall terminate any suspended sentence or orders of executions thereof and release the adult from probation after the expiration of the two year period, or at such time prior thereto that the court deems proper.

ARTICLE 4

Relinquishment and Adoption

General Comments

The primary purpose of adoption is to create new parent-child relationships which will establish a stable atmosphere in which children can grow and develop. Whenever possible society encourages the strengthening of natural family ties. When, in the interest of the child, it is necessary to sever natural parent-child relationships and establish new ones the law must specify clearly the rights and responsibilities of the adoptive parents, the natural parents, and the child, and safeguard the interests of each.

Legal Basis for Adoption

There is a strong presumption that the natural parents are the proper custodians of their children. Hence, the burden of proof is upon those who allege that conditions of neglect or abuse exist, and that parental rights and responsibilities should be terminated. There must be great care that the constitutional rights of all parties are protected.

A parent cannot, voluntarily, by contract, relieve himself of responsibility for the care and support of his children. Only with judicial termination is there a complete divestment of all legal rights, privileges, duties, and obligations of the parent and

child with respect to each other. So only with judicial termination is the child's status as legally free for adoption certain.11

Once a judicial termination, voluntary or involuntary, is decreed, or, in the case of children whose parents are deceased, a guardian of the person with power to consent to adoption is appointed by the court, a child may be placed for adoption with reasonable assurance of an uninterrupted new permanent family relationship. Any questions as to the legality of the involuntary termination of parental rights or judicially ordered relinquishment, or the approval of the guardian should be resolved before placement for adoption to reduce the danger of interruption.

Adoption by Relatives

The question of adoptions by relatives is a difficult one. Some argue that the court should be involved as little as possible, merely formalizing a decision already made. This could mean, for instance, that a young girl could relinquish her illegitimate child to the child's grandmother who would adopt it, and the child's own mother would assume the role of sister to the child. In the instance of the child whose parents are deceased, a grandparent, aunt or uncle, or older sibling may wish to adopt, or may even have been designated as preferred by the child's parents. Where such is the situation one would expect that the court or any public agency involved would give extra consideration to family wishes in an adoptive placement.

Others argue that no adoptive placement should ever be made except by a child placement agency or a welfare department. These people say that no individual will act objectively in the child's interest, even in carrying out the wishes of the natural parent.

Suggested Statute

The suggested statute represents a compromise between these positions. It requires that all involuntary terminations follow court determination of neglect or dependency. All voluntary terminations must be upon court order, after the court is assured that the relinquishing parent understands the finality of her act. All adoptive placements must have the approval of the agency, department, or individual who has been appointed guardian of the person of the child by the court following termination of parental rights or death, except in stepparent adoptions.

11. Legislative Guides, Childrens Bureau Publication Number 394-1961, page 10.

Under the present relinquishment statute no counseling or explanations are necessary if the relinquishment is to relatives of the child. Since the relinquished child is often illegitimate, one would question the wisdom of placing the baby with the grandmother to raise, as she raised her own daughter, at least without some investigation of the circumstances. The suggested statute does not prohibit the appointment of relatives or friends as guardians of the person, nor the placement of a child for adoption by relatives or friends, but it does require judicial approval, both of the relinquishment and the adoption, with a short trial period before the final adoption decree is issued. Stepparent adoptions where a natural parent of the child and the stepparent have been married for six months are possible upon consent of a natural parent having residual rights.

The aim of the entire statute is to make as certain as possible that once the adoption decree is issued no incident of prior misunderstanding or illegality can interrupt the new relationship and that the new relationship will be in the child's best interests.

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22-4-1. Termination of parental rights in a child. (1) (a) The juvenile court may, upon petition, terminate all rights of a parent or parents in a child in:

(b) proceedings under 22-1-4 (1) (d), by which the court has determined the child to be neglected by one or both parents or to be dependent; or

(c) proceedings under 22-1-4 (1) (g), by which a mother and father jointly or either of them severally, or the mother only in the case of illegitimate children, voluntarily relinquish all the parental rights which they or each of them may have in a child, natural or adopted.

(2) No parent shall relinquish his child other than in accordance with the provisions of this article.

22-4-2. Relinquishment procedure - petition - hearings. (1) Any parent desiring to relinquish his child shall petition the juvenile court upon forms supplied by

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22-4-1 (1) describes the two forms of termination of parental rights which the court may order. Involuntary termination may be ordered after a hearing on neglect or dependency as provided in 22-3-11. Voluntary termination may be ordered when a parent or parents voluntarily relinquish their rights in a child as provided in 22-4-2 and 22-4-3. In the present statute (22-5-3 (2)) judicial approval of relinquishment, with the requirement of counsel and guidance as to the meaning of the act, is not necessary in relinquishment to a relative of the child. This simplifies the process for some relinquishing parents, but may also deny professional assistance in planning for the child's future. Other than relinquishment to relatives, section 1 is similar to portions of 22-5-3 of the present statute. (See also comments on 22-4-3.)

22-4-2 (1) lists the information to be required on the petition for relinquishment. The wording is similar to present 22-5-4 (1), except

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the court, giving the following information: name of both natural parents, if known; name of the child, if named; ages of all parties concerned; and why relinquishment is desired.

(2) Upon receipt of the petition, the court shall set the same for hearing.

(3) If the petitioner is married at the time of relinquishment the parental rights of the spouse of the petitioner shall not be terminated by the relinquishment proceedings unless he joins in the petition.

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that increasing court concern with constitutional issues on statements about color and religion has led to their omission in this revision.

Subsection (2) requires the court to schedule a hearing on the petition, and is the same as the first sentence of present 22-5-4 (2).

Under present 22-5-4 and 4-1-6 (2) (f) there is a contradiction in that it appears that a married woman who wishes to relinquish a child born during the marriage but alleged not to be the child of her absent husband might be able to do so without the knowledge of the husband. The proposed revision, based on the legal presumption of the legitimacy of a child born to a married woman, clearly would leave unaltered, the parental rights of a spouse not joining in a relinquishment petition. In circumstances cited above, a paternity hearing, a separate relinquishment, a hearing on neglect or dependency, or perhaps the assumption of

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	parental duties would be the alternatives.
(4) The court shall not issue an order of relinquishment until it is satisfied that the relinquishing parent has been counseled and fully advised of the consequences of his act.	This is essentially the same requirement, although worded differently, as in present 22-5-2. Much of the legal finality of a relinquishment order rests on the understanding the relinquishing parent has of the action taken. Although under the present statute a relinquishment cannot be upset unless obtained through fraud or duress the exception regarding counsel and advice made for relinquishments to relatives (22-5-3 (2)), can lead to unhappiness and misunderstanding.
(5) If the court believes after the hearing that it is in the best interests of the parties concerned that no relinquishment be granted, the court shall enter an order dismissing the action.	The court may dismiss a relinquishment action. This is similar to the last sentence of present 22-5-4 (2).
(6) If the court is satisfied after the hearing that the relinquishing parent or parents have been counseled as provided in subsection (4) of this section and that the relinquishment would best serve the interests	If the court is satisfied that the relinquishment action has been fully explained to the parent and that it is in the best interests of all parties the court may issue an order of relinquishment.

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of all parties concerned, it shall enter an order of relinquishment.	This is similar to present 22-5-4 (3), although the wording is somewhat more simple.
(7) If the court is not satisfied that the relinquishing parents have been offered proper and sufficient counsel and advice, it shall continue the matter for such time as the court deems necessary.	The matter may be continued for as long as necessary to allow for further counselling. The present statute allows a 30 day continuance. The inability of the petitioner to be present in court within the time allowed, perhaps due to illness, or being confined in jail, might necessitate a further continuance. The present statute contains, in 22-5-5, provisions for an interlocutory order. It is suggested that a continuance will serve any purpose there may be for the interlocutory order and that the interim status of the child is more certain; therefore the interlocutory provision has been omitted.
22-4-3. Final order of relinquishment. (1) (a) If the court terminates parental rights of both parents, or of the mother if the child is illegitimate, or of the only living parent, the court shall order guardianship of the	Subsection (1) lists those persons or agencies who may receive guardianship of the person and custody of the relinquished child. Subsection (e) of this subsection allows guardianship to be

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person and legal custody transferred to:

(b) The department of public welfare; or

(c) A licensed child placing agency; or

(d) A relative of the child; or

(e) An individual of good moral character, if such individual shall have had the child living in his home for a year or more.

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placed in an individual and (d), in a relative of the child. Some suggest that only a welfare department or child placement agency be appointed. This controversy stems back to a long debate that has ranged for the past ten to twelve years as to how much authority the court should have in placing a child who has had his parental rights terminated, either voluntarily or involuntarily. Care should be taken that guardianship of a child whose parental rights have been terminated involuntarily and the guardianship of a relinquished child are consistent with the requirements for availability for adoption in this article, i.e., if guardianship is placed in an individual that person must be able to consent to adoption. The present statute in 22-5-6 (1), states that "Every order of relinquishment shall award the custody of the child to whomsoever the court shall see fit, after taking into account the racial cultural and religious background of the child's mother... ." Contradictory to this provision, the present definition

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(2) The court shall consider, but shall not be bound by, a request that guardianship be placed in a grandparent, aunt, uncle, brother, or sister of the child.

(3) The order of relinquishment shall set forth all pertinent facts brought at the hearing, and in addition it shall state that the court is satisfied that the counsel and guidance provided for in 22-4-2 (4) has been offered the relinquishing parent or parents.

(4) A final order of relinquishment shall divest the relinquishing parent or parents of all legal rights and

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of relinquishment includes, in 22-5-1, "...voluntarily release to the department of institutions or the executive head of any public welfare department or of any licensed child placement institution or agency all the parental rights... ." This is the kind of contradiction which must be avoided.

Subsection (2) provides for a request that guardianship be vested in a relative, but does not bind the court to the request if it finds it not in the interest of the child to do so. There is no comparable provision in the present statute since it handles relinquishment to relatives differently.

Subsection (3) requires that the relinquishment order include the facts of the case and a statement that counsel and advise has been offered the relinquishing parents. This is similar to portions of present 22-5-6 (1).

Subsection (4) describes the severance of all legal ties between relinquishing parents

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obligations they may have with respect to the child relinquished. The order shall release the relinquished child from all legal obligations with respect to the relinquishing parent or parents.	and child. 22-5-6 (2) of the present statute is similar to subsections (4) and (5) of the suggested revision.
(5) The fact that the relinquishing parent or parents are minors shall in no way affect the validity of the final order of relinquishment.	Subsection (5) specifically states that a minor parent may relinqish a child.
22-4-4. Records - separate dockets. (1) Records and papers in relinquishment and in adoption proceedings from and after the filing of a petition shall be confidential and open to inspection only upon order of the court for good cause shown. Separate dockets shall be maintained for relinquishment proceedings and for adoption proceedings.	22-4-4 requires that the court act generally to assure all possible anonymity in all actions regarding relinquishment and adoption. Subsection (1) requires that all records and papers be kept confidential, to be opened only on court order, and that separate dockets be maintained. The new adoptive parent-child relationship will be more stable, if there is less possibility for contact with the prior family. Provisions similar to 22-4-4 (1) with respect to relinquishments are presently in 22-5-7. Subsection (2) repeats the general requirement that anonymity be preserved throughout and is not found in the present statutes on relinquishment and adoption.
(2) In all matters relating to the relinquishment and adoption of children the court shall act to preserve the anonymity of the natural parents, child, and adoptive parents.	

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22-4-5. Who may be adopted. Any person present in the state at the time the petition is filed may be adopted except that a child must be legally available for adoption as provided in 22-4-7. Upon approval of the court, a person eighteen years of age or over, and under twenty-one years may be adopted as a child, and all provisions of this article referring to the adoption of a child shall apply to such a person.

22-4-6. Who may adopt. (1) (a) Any person twenty-one years of age or over may petition the court to decree an adoption.

(b) A minor, upon approval of the court, may petition the court to decree an adoption.

(c) A person having a living spouse, from whom he is not legally separated, shall petition jointly with such spouse, unless such spouse is the natural parent of the child to be adopted, or has previously adopted the child.

COMMENTS

This section states that any person may be adopted, if present in the state at the time the petition is filed and, in the case of a child, if legally available for adoption. Ways in which a child is legally available for adoption are explained in 22-4-7. Present 4-1-4 merely states that any person, whether a minor or adult, may be adopted.

Any adult person, whether single or married, may petition the court to grant an adoption. Married persons, not legally separated, must petition together, except where the spouse of the petitioner is already the parent of the child. In special cases, the court may permit adoption by a person between 18 and 21.

There is no provision in the present statute for a minor to adopt. Other provisions are similar to present 4-1-3.

PROPOSED DRAFT

22-4-7. Availability for adoption. (1) (a) A child may be available for adoption only upon:

(b) order of the court terminating all parental rights in the child in a proceeding brought under 22-1-4 (1) (d);

(c) order of the court decreeing the voluntary relinquishment of all parental rights in the child under 22-4-3;

(d) written and verified consent of the guardian of the person, appointed by the court, of a child whose parents are deceased;

(e) written and verified consent of the guardian of the person, appointed by the court, of a child whose parental rights have been terminated under (b) or (c);

(f) written and verified consent of the natural parent in a stepparent adoption where the other parent is deceased or his rights have been terminated under (b) or (c); or

(g) written and verified consent of the parent having only residual parental rights when custody has been awarded to the other parent in a divorce proceeding and

COMMENTS

The purpose of 22-4-7 subsection (1) is to make certain that the child to be adopted has had prior parental ties legally severed and that there is someone to whom the court has given the power to consent to adoption. This section is new, although present 4-1-6 contains a list of those who may consent to adoption. The list is somewhat ambiguous and contradictory to other portions of the article and of the present relinquishment statute.

where the spouse of the parent having custody wishes to adopt the child.

(2) Written consent to any proposed adoption shall be obtained from the person to be adopted if such person is twelve years of age or older.

Subsection (2) recognizes that the wishes of the child should be considered in adoption, particularly with an older child. It is similar to present 4-1-6 (2) (b).

(3) If placement for adoption occurred or custody of the child was acquired outside of Colorado, any child concerning whom an adoption petition is filed in the courts of Colorado must be available for adoption in substantial accordance with this section.

Subsection (3) requires that the court ascertain that the child to be adopted, if from outside of Colorado, has had prior relationship with parents terminated judicially so that the subsequent adoption can be expected to be uninterrupted. There is no similar provision in the present statute, although a number of other states either make similar requirements or exclude the adoption of children acquired out of state.

22-4-8. Placement for purposes of adoption. No placement of any child legally available for adoption under 22-4-7 (1) (b), (c), (d), or (e) shall be made for the purposes of adoption except by the department of public welfare, licensed child placement agency or insti-

Under 22-4-8, placement for adoption may be made only by the agency or individual who is the court appointed guardian of the person of the child. Suggestion has been made that no individual should be allowed to place a child for adoption. Others

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tution, or individual in whom guardianship of the person of the child has been placed by the court.

COMMENTS

argue that this should apply only to placements with strangers and that unless freedom for adoption by relatives without need for court approval is allowed, there must be some credence placed in the good judgment and good will of the relative or family friend who has been appointed guardian of the child, either upon termination of parental rights or the death of the parents. Section 22-4-8 limits decision on placement to those previously approved by the court as guardian of the person of the child.

There is no requirement as to who may place a child in the present statutes except the prohibition of receiving compensation in 4-1-14, repeated in substance in 22-4-16 of the revision. It is assumed that most placements are made by agencies or welfare departments at present, but there are no statistics outside of the Denver area so the number of independent placement is unknown.

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22-4-9. Written consent and report. (1) Written consent of the department, agency, or individual to the proposed adoption, as required by 22-4-7, shall be filed with the petition to adopt.

(2) (a) Such written consent by the department of public welfare or a child placement agency shall include a written report showing the following:

(b) The physical and mental health, emotional stability, and moral integrity of the petitioner or petitioners and the ability of the petitioner or petitioners to promote the welfare of the child; provided, that no physical examination shall be required of any person who in good faith relies upon spiritual means or prayer in the free exercise of religion to prevent or cure disease, unless there is reason to believe such person's physical condition is such that he would be unable to take care of such child;

(c) The physical and mental condition of the child;

COMMENTS

If the required written consent is from the welfare department or a child placement agency it is to be accompanied by a report of a social study providing the court with information necessary for deciding whether to issue the adoption decree. Subsection (2) lists the kinds of information requested.

Under the present statute no investigation of any sort is required in relative or stepparent adoptions, and the decree may be granted forthwith (4-1-7 (1)).

Contents of the report accompanying consent in revised 22-4-9 are similar to those in present 4-1-7.

(d) The child's family background including the names of parents and other identifying data regarding the parents, if obtainable;

(e) Reasons for the termination of parental rights in the child;

(f) The suitability of the adoption of this child by this petitioner or petitioners, and the child's own disposition toward the adoption in any case in which the child's age makes this feasible; and

(g) The length of time the child has been in the care and custody of the petitioner or petitioners.

(3) Any party to the adoption proceeding may be entitled to see the report required by subsection (2) of this section, except that the names of natural parents and adoptive parents and any means of identifying either shall not be made available, except upon order of the court.

Subsection (3) specifies that any party to the proceeding may have access to this social report, however, it requires that names and other identifying data be unavailable in the interests of anonymity, except on order of the court. This provision is not found in the present statute.

22-4-10. Petition for adoption. (1) The petition

22-4-10 (1) requires prompt

PROPOSED DRAFT

shall be filed not later than thirty days after the date on which the child is first placed in the home of the adoptive applicants for the purpose of adoption, unless the court finds that there was reasonable cause or excusable neglect for not filing the petition. The court shall then fix a date for the hearing.

(2) (a) Every petition for adoption of a child shall be verified by the petitioner or petitioners, and shall be entitled substantially as follows: "In the matter of the petition of _____ for the adoption of a child." It shall contain:

(b) The name, date and place of birth, race, and place of residence of each petitioner, including the maiden name of the adopting mother, and the date of marriage, if any, of the petitioners.

(c) The name, date and place of birth, and place of residence, if known by the petitioner, of the child to be adopted.

COMMENTS

filing of a petition after the child is placed for adoption, except in unusual circumstances. The hearing on the petition is to be scheduled thereafter. This is somewhat similar to provisions of present 4-1-7 (2).

Subsection (2) lists information to be included in the petition. This is information which will be of use to the court in deciding whether to grant the adoption decree and it also includes some data which will be necessary in order to issue the new birth certificate, if the decree is ordered.

The requirements are similar to 4-1-5, except for a few additions of information needed for birth certificates and subsection (m) which is not in the present statute. "Religion" has been omitted, as was discussed under 22-4-2. "Race" is required information on Colorado birth certificates.

(d) The relationship, if any, of the child to the petitioner;

(e) The full name by which the child shall be known after adoption;

(f) The full description of the property, if any, of the child;

(g) The names of the parents of the child, and the address of each living parent, if known to the petitioner;

(h) The names and addresses of the guardian of the person and the guardian of the estate of the child, if any have been appointed;

(i) The name of the agency or person to which the custody of the child has been given by proper order of court;

(j) The length of time the child has been in the care and custody of the petitioner or petitioners;

(k) Names of older children, both natural and adopted, and both living and dead, of the adopting parents; and

(l) The residence and occupation of each petitioner at or about the time of the birth of the child.

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(m) If the petitioners are a step parent and a natural parent, the petition shall allege that the petitioners have been married for six months prior to the filing thereof.

(3) If the adoption placement is made by the department of public welfare or a child placement agency, the information required in subsections (2) (c) and (g) of this section shall not be included in the petition, but shall be transmitted to the court as part of the report required in 22-4-9.

(4) A statement of any fee charged relative to the adoption shall be submitted to the court with the petition. It shall state that no additional fees shall be charged.

22-4-11. Petition - written reports. -- (1) If a petition for the adoption of a child is not accompanied by the written consent and report of the department of public welfare or a licensed child placement agency, as required.

COMMENTS

Subsection (m) gives some assurance that the marriage of parent and stepparent is stable and provides time to determine whether both the stepparent and the child really wish the adoption to take place.

Subsection (3) excludes identifying data from the petition, which would be signed by petitioners. It requires that unless these facts are already known by the adoptive parents, they will be supplied to the court only. This is a new provision.

Section 22-4-11 requires a social study be made if one has not already been made by an agency which placed the child.

Again, this is similar to

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by 22-4-9, a copy of the petition shall be transmitted immediately to the department of public welfare, to a licensed child placement agency, or to the probation department of the court.	present 4-1-7, except that at present relative adoptions are excluded.
(2) Upon receipt of the copy of the petition, the agency or the person to whom it has been transmitted shall make a thorough investigation and file a written report substantially in the form outlined in 22-4-9 (2), including a recommendation as to whether the adoption should be decreed.	
22-4-12. Hearing on petition. (1) A hearing on the petition to adopt shall be held on the date set or the date to which the matter has been regularly continued, in no event earlier than thirty days after filing.	22-4-12 specifies a hearing to be held no sooner than thirty days after filing of the petition. This will allow time for a social study to be made if it has not been done prior to filing. This provision is similar to present 4-1-7 (2).
(2) (a) After six months from the date of the hearing, the court may enter a decree setting forth its findings and grant to the petitioner or petitioners a final decree	Subsection (2) requires that a final decree be entered no sooner than six months after the hearing, and that the court be satisfied that the

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of adoption if, after such hearing, it is satisfied as to:

(b) The availability of the child for adoption;

(c) The good moral character, ability to support and educate the child, and the suitableness of the home of the person or persons adopting such child;

(d) The mental and physical condition of the child as a proper subject for adoption in said home; and

(e) The fact that the best interests of the child will be served by the adoption.

(3) If, after the hearing, the court is not satisfied as to the matters listed in subsection (2) of this section, the petition for adoption may either be continued or dismissed in the discretion of the court.

(4) All hearings with reference to adoption shall be closed to the public, and in the discretion of the court, to any child who is the subject of adoption and who is under

COMMENTS

legal requirements be met and that the adoption is in the best interests of the child. The present statute requires no waiting period after the hearing and prior to the final decree. Most other states require some waiting period, some as long as two years.

In general the other provisions of 22-4-12 are more simply stated, but similar to those of present 4-1-9, except that 4-1-9 contains provision for a possible interlocutory decree which is not included in this revision. All adoptions, under the revision, would be subject to the six months waiting period.

Provision is made in subsection (3) for a continuance, if the court finds that a decision should be postponed or for a dismissal, if the court does not believe that adoption should be granted. These provisions are not in the present statute.

Subsection (4) also protects the privacy of proceedings concerning children. The provision that the court may interview the child is similar

twelve years of age, provided that the court may interview the child whenever it deems it fit and proper.

22-4-13. Legal effects of final decree. (1) From and after the entry of a final decree of adoption, the person adopted shall be, to all intents and purposes, the child of the petitioner or petitioners. He shall be entitled to all the rights and privileges and be subject to all the obligations of a child born in lawful wedlock to the petitioner or petitioners.

(2) The natural parents shall be divested of all legal rights and obligations with respect to the child, and the adopted child shall be free from all legal obligations of obedience and maintenance with respect to the natural parents.

(3) Nothing herein shall be construed to divest any natural parent or child of any legal right or obligation where the adopting parent is a stepparent and is married to said natural parent.

to present 4-1-9 (3).

The provisions of 22-3-13 as to the legal effects of adoption are the same as in the present statute (4-1-11). They simply sever all relationship with the natural parents, which has already been done with legal termination, and establish the new relationship of the child to the adoptive parents, as if he had been born to them.

Some states go into much more detail as to inheritance rights. A body of law already exists around these questions in Colorado, and it was felt both unnecessary and outside the responsibility of this revision to consider further this aspect of adoptive rights.

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22-4-14. Copies of order of adoption, to whom given. (1) Whenever the court enters an order of adoption, certified copies shall be given to the adopting parents, the person or agency consenting to the adoption, and the state registrar.

(2) The court shall also send to the state registrar an application for a birth certificate, signed by the adoptive parents. The state registrar shall thereupon issue a new birth certificate to the child, as provided in 66-8-14.

(3) If the child was born outside of Colorado such copy of the order of adoption and application for birth certificate shall be sent to the state registrar of the state of birth.

22-4-15. Compensation for placing child prohibited. (1) No person or persons shall offer, give or receive any money or other consideration or thing of value in connection with the consent to adoption, or with the petition for adoption, except attorney's fees relative to the adop-

COMMENTS

22-4-14 (1) lists those persons to whom a copy of the adoption decree is sent. Subsection (2) provides that the state registrar shall receive information necessary for the issuance of a new birth certificate. Subsection (3) provides similarly for a child born outside of Colorado. Presently some courts assist parents in obtaining the new birth certificate and some do not. The present statute, 4-1-12, requires only that adopting parents and persons giving consent would receive a copy of the order of adoption.

This is essentially the provision of the present statute (4-1-14), designed to prevent black-marketing of babies. The addition of penalty provisions supports this prohibition. This regulation has been effective in reducing abuses.

adoption proceedings and such charges and fees as may be approved by the court.

(2) Any person found guilty of the violation of the provisions of this section shall be deemed guilty of a misdemeanor and shall upon conviction be fined not less than one hundred dollars nor more than five hundred dollars or imprisoned for ninety days in the county jail or both.

A statement of all fees charged in connection with the adoption must be submitted to the court as provided under revised 22-4-10 (4).

22-4-16. Adoption of adults. (1) Any person desiring to adopt an adult as heir at law shall file his petition therefor in the juvenile court of the county of his residence or the county of the residence of the person sought to be adopted, and thereupon summons shall issue the same as in ordinary cases under the Colorado rules of civil procedure, and be served on the person sought to be adopted. Such person shall file in the court a written answer to the petition within the time required by the summons, and shall either consent to such adoption, or deny or disclaim all desire to be adopted by such person.

22-4-16 providing for the adoption of an adult as heir at law is the same as the present statute, 4-1-13.

(2) Upon the filing by the person sought to be adopted of a disclaimer of all desire to become the heir at law of the petitioner, then the petition shall be dismissed by the court, but upon the filing of a consent to such adoption, whether by the person sought to be adopted, or by a legally qualified conservator or other representative if such person is non compos mentis at the time, then the prayer of the petition shall be granted and a decree of adoption shall be rendered and entered by the court declaring such person the heir at law of the petitioner and entitled to inherit from the petitioner any and all property in all respects as if such adopted person had been the petitioner's child born in lawful wedlock, and such decree may or may not change the name of such adopted person, as the court rendering the decree may deem advisable; and such decree or a certified copy thereof may be used as primary evidence in any court establishing the status of the person so adopted.

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22-4-17. Limitation on annulment of adoption. No final decree of adoption shall be attacked by reason of any jurisdictional or procedural defect after the expiration of two years following the entry of the final decree.

COMMENTS

A limit of two years is placed on any attempt to invalidate an adoption decree for procedural or jurisdictional errors. The provision is the same as present 4-1-16 except that wording is simplified.

ARTICLE 5

Juvenile Probation Services and Detention Facilities

General Comments

This article covers juvenile probation services, including state aid, and the establishment and operation of detention facilities outside of the City and County of Denver.

Probation Services

The organization, control, and financing of both juvenile and adult probation services is one aspect of a larger study on state fiscal responsibility for the entire judicial system which is being made by the judicial administrator's office at the request of the Joint Budget Committee, pursuant to a joint resolution adopted in 1966.

Since this study had not been completed in time to be considered by the Children's Laws Committee in its deliberations on juvenile probation, the portion of this article on juvenile probation may require additional revision depending on the recommendation of the judicial administration study and the Joint Budget Committee. It is designed, however, to stand by itself in the event that no legislative action is taken on the findings of the judicial administration study.

The provisions concerning juvenile probation services deviate considerably from the present provisions of 22-8-8 and 9 with respect to the permissive ways in which juvenile probation services may be organized. These are explained in the comments opposite 22-5-1, 2, and 3.

The revision provides that both the scope and the amount of the state aid for juvenile probation be increased as follows: 1) the monthly amount of state aid for full-time qualified juvenile

probation officers should be increased from $200 or one-half of monthly salary, whichever is less, to $300 or one-half of monthly salary, whichever is less; 2) provide $200 or one-half of monthly salary, whichever is less, for full time juvenile probation officers who meet the educational qualifications, but lack the one year of experience; and 3) provide a maximum of $150 per month for each part-time juvenile probation officer (under certain circumstances as specified in 22-5-4) who meets both the educational and experience qualifications.

The Division of Youth Services estimates that in order to implement this program of increased state aid for 1967-68 an addition of $109,800 over the present budget of $175,200 would be needed, making a total state aid of $285,000. This would, in addition to increasing the amount of assistance per probation counselor, provide for an increase in the number of full-time counselors assisted from 73 to 85 and provide assistance for 16 part-time probation counselors.

Detention Facilities

The provisions in this article concerning the establishment and operation of detention facilities follow closely the present permissive provisions of Article 14 of Chapter 22, which was adopted as part of the legislation implementing the new judicial article. There is a change in the requirement that detention facilities shall be established in counties with 100,000 population or more. There was a similar requirement in the statutes prior to the adoption of the new judicial article. These are the counties, except for Denver, which have the greatest need for detention facilities. So far, of the counties over 100,000 population, only El Paso County has constructed a detention facility. Pueblo has set aside some cells in the new jail for juveniles, and Adams County is seriously considering establishing a detention facility. It is not known what is being done, if anything, in Arapahoe and Jefferson Counties, the other two in this population group. Boulder County will also be in this category after the 1970 census.

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22-5-1. Juvenile probation departments or divisions. (1) (a) The judge or judges of the juvenile court are hereby authorized to establish juvenile probation departments or divisions and to appoint juvenile probation counselors qualified by training and experience to supervise children placed on probation by the court.

(b) The judge or judges of the juvenile court are hereby authorized to appoint such other professional and clerical personnel as may be required by the juvenile probation department or division.

(c) Unless otherwise provided by law, juvenile probation counselors and other personnel of the juvenile probation department or division shall serve at the pleasure of the court and their compensation shall be set by the court.

(2) (a) A juvenile probation department or division may serve one or more counties within a judicial district as determined by the court.

COMMENTS

22-5-1 authorizes the creation of juvenile probation departments on a single or multi county basis within a judicial district. Such authorization is also permitted under 22-8-8 and 22-8-9 of the present statutes, but state aid is not forthcoming unless certain population minima are met, in addition to probation officer qualifications.

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(b) When a juvenile probation department or division serves more than one county in a judicial district, the compensation of the employees thereof, except as provided in 22-5-4, and the other expenses of the department or division shall be paid on a pro rata basis by each of the participating counties according to its proportion of the total population of the participating counties. For this purpose, the latest annual population estimates of the state planning division shall be used.

22-5-2. Interdistrict juvenile probation departments or divisions. (1) (a) Upon the agreement of the juvenile court judges and the approval of the presiding judge in each district, two or more contiguous judicial districts may:

(b) Combine to form an interdistrict juvenile probation department; or

(c) Establish a juvenile probation division in an interdistrict probation department providing probation

COMMENTS

Subsection (2) (b) provides for the allocation of costs among participating counties on a population basis as is provided under present statutes.

22-5-2 authorizes the creation of interdistrict juvenile probation departments, either as separate entities or as a juvenile division of an existing multidistrict adult probation department. (The only such probation department currently in operation is the Tri-District Probation Department which supervises adult probationers in the three metropolitan judicial districts surrounding Denver (1st, 17th, and 18th).

supervision and services for adults in such districts under 39-16-12.

(2) (a) (i) An interdistrict juvenile probation department shall have an administrative head who shall be appointed by the juvenile court judges, or a majority of the juvenile court judges, with the approval of the presiding judges of the judicial districts which comprise the department. Such administrative head shall be the chief probation counselor of the department

(ii) A juvenile probation division in an interdistrict probation department providing probation supervision and services for adults shall have a chief juvenile probation counselor who shall be appointed by the juvenile court judges, or a majority of the juvenile court judges, with the approval of the presiding judges of the judicial districts which comprise the department. Such chief juvenile probation counselor shall serve under the chief probation counselor of the department.

Subsection (2) concerning the organization and operation of either an interdistrict juvenile probation department or an interdistrict juvenile probation division follows closely the organization and operation of interdistrict adult probation departments presently provided in 39-16-12.

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COMMENTS

(b) The juvenile department or division shall consist of such other probation counselors as may be appointed jointly by the juvenile court judge or judges of each participating district, together with such other professional, administrative, and clerical employees as may be required, who shall be appointed by the chief probation counselor.

(c) Unless otherwise provided by law, the chief juvenile probation counselor and other employees shall serve at the pleasure of the juvenile court judges of the participating districts, and their compensation shall be set by such judges with approval of the presiding judges.

(3) The compensation of employees and other expenses of an interdistrict juvenile probation department or a juvenile probation division shall be paid by the participating counties as provided in 22-5-1 (2) (b).

Subsection (3) provides for the allocation of expenditures among the participating counties on a population basis in the same way as costs are allocated among counties participating in a juvenile probation department within one district.

(4) (a) Any judicial district which participates in an interdistrict juvenile probation department or an interdistrict juvenile probation division may withdraw from such

The provisions of subsection (4) regarding withdrawal by a district from an interdistrict department or division are taken from similar sub-

department or division upon the election of the judge or judges of the juvenile court and the approval of the presiding judge.

(b) Written notice of such withdrawal shall be given to the presiding judges of the other participating judicial districts, and withdrawal shall not be effective until January 1 of the year following the written notification.

22-5-3. Agreements to provide probation services. (1) The judge or judges of the juvenile court are hereby authorized to enter into agreements with the department of public welfare, the juvenile parole division, or with other juvenile courts for the juvenile probation departments or divisions of other counties or judicial districts to provide supervision or other services for children placed on probation by the court.

(2) The conditions and terms of any such agreement shall be set forth in writing, including any payments to be made by the court for the probation supervision or other

sections of 39-16-12.

22-5-3 gives legal recognition to what has been an informal practice in some counties or judicial districts. At the present time, the Juvenile Parole Division has arranged with the district court in some counties to provide probation supervision, and county departments of welfare have occasionally provided such services for some courts in the past.

services to be provided.

(3) Any agreement made under this section may be terminated upon ninety days written notice by either party thereto.

22-5-4. Juvenile probation counselors - state aid. (1) (a) After July 1, 1967, the state shall pay one-half of the monthly salary, or three hundred dollars per month, whichever is less, for each full-time juvenile probation counselor who meets the following minimum qualifications:

(b) (i) A bachelor of arts or a bachelor of science degree in the social sciences, psychology, education, or a related field, which degree has been earned at a college or university requiring the completion of at least one hundred twenty semester hours or the equivalent thereof; and

(ii) At least one year of experience in probation work, social work, teaching, psychology, recreation, vocational guidance, counseling, or a related field, except

22-5-4 provides for state aid for juvenile probation services in the manner and amount discussed in the general comments preceding this article. No population requirements are included, unlike the present law (22-8-8 and 22-8-9), but the same qualifications for probation officers are established in subsection (1) (b) as are presently contained in 22-8-9 (2). Note, that the monthly maximum would be increased from $200 to $300 per month.

that a year of graduate work in any such fields may be substituted for the year of experience; or

(c) Employed as a full-time juvenile probation counselor prior to July 1, 1967, and who has been determined by the director of institutions to meet the minimum qualifications for state salary reimbursement as then provided by law.

Subsection (1) (c) covers those full-time juvenile probation officers (if any are still employed) who were "grandfathered" in under 22-8-9, because of being employed prior to July 1, 1959. At the same time, it excludes any full-time juvenile probation officers employed after July 1, 1959, but before July 1, 1967, who were not qualified to receive state aid, thus avoiding any further "grandfathering."

(2) (a) After July 1, 1967, the state shall pay one-half of the monthly salary, or two hundred dollars per month, whichever is less, for each full-time juvenile probation counselor trainee who meets the following minimum qualifications.

Subsection (2) provides that a monthly state subsidy ($200 maximum) will be paid for each full-time juvenile probation officer who meets the educational qualifications, but lacks a full year of experience as required in subsection (1) (b) (ii).

(b) The educational requirements set forth in subsection (1) (b) (i) of this section, but with no experience required in subsection (1) (b) (ii) of this section.

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(c) When a full-time juvenile probation counselor trainee has completed one year of experience as required in subsection (1) (b) (ii) of this section, he shall then be eligible for the state salary reimbursement provided in subsection (1) (a) of this section.

(3) (a) (i) After July 1, 1967, the state shall pay a portion of the monthly salary of each part-time juvenile probation counselor who meets the qualifications set forth in subsection (1) (b) (i) and (ii) of this section and who is either:

(ii) employed by the court at least one-half time as a juvenile probation counselor, or

(iii) employed full-time by the court, but who spends at least one-third time as a juvenile probation counselor.

(b) The state shall pay one-half of the monthly salary of each such qualified part-time juvenile probation counselor or one hundred and fifty dollars, whichever is less.

COMMENTS

Subsection (2) (c) provides that any full-time juvenile probation officer in this category becomes eligible for state aid under subsection (1) after attaining a year of experience.

Subsection (3) applies to part-time juvenile probation officers and provides state aid with a $150 monthly maximum for such officers who meet both the educational and the experience qualifications set forth in subsection (1). Generally, this subsection would apply to those full-time qualified probation officers who supervise both adults and juveniles in judicial districts that do not have sufficient caseloads to require a full-time officer for each.

It may also apply to a juvenile probation officer who is employed elsewhere, but also supervises juveniles on a part-time basis. In these instances, such an officer must be employed at least

PROPOSED DRAFT

(4) (a) Applications for state salary payments to juvenile probation counselors shall be made in writing to the director of institutions. When the juvenile probation department or division comprises one judicial district or a portion thereof, such application shall be made by the court. When the juvenile probation department or juvenile probation division comprises more than one judicial district, such application shall be made by the chief probation counselor of the interdistrict probation department.

(b) (i) The director of institutions shall determine whether the probation counselor or counselors for whom application for such payments is made meet the appropriate qualifications set forth in subsections (1), (2), or (3) of this section. The director of institutions shall be authorized to request such information from applicants as he may deem necessary in making his determination as to qualifications.

COMMENTS

one-half time to supervise juveniles in order to qualify for state aid.

Subsection (4) sets forth the procedures to be followed by the courts in applying for state aid and by the Department of Institutions in determining whether probation officers are qualified for state aid. In general, these procedures follow those presently provided in 22-8-9, but impose more duties on the department because of the additional state aid options and the possibility that state aid payments may have to be apportioned among several counties in some instances. These duties are specified in subsections (b) (ii), (b) (iii), and (b) (iv).

(ii) When the director of institutions makes an affirmative finding concerning the qualifications of the probation counsel or counselors for whom application has been made for state salary payments, he shall so notify the state treasurer in writing.

(iii) Such notification shall specify whether each qualified juvenile probation counselor qualifies under subsection (1), (2), or (3) of this section and the maximum monthly amount of the state salary payment to be made for each such qualified juvenile probation counselor.

(iv) If a qualified juvenile probation counselor serves more than one county, the written notification to the state treasurer shall also specify the proportion of the state salary payment for such counselor which shall be made to each county in which the counselor serves. To determine this proportion, the director of institutions shall use the formula set forth in 22-5-1 (2) (b).

(c) The state treasurer, upon receipt of a written

notification from the director of institutions, is hereby authorized and directed to reimburse monthly each county set forth in such notification the amount specified therein.

(d) Juvenile probation departments and juvenile probation divisions receiving state salary payments shall provide such information concerning children under the court's jurisdiction as may be requested by the director of institutions upon forms to be prescribed and supplied by the director.

22-5-5. Juvenile probation counselors - powers and duties. (1) Juvenile probation counselors appointed under the provisions of this article shall make such investigations and keep written records thereof as the court may direct.

22-5-5, with some additions, is similar to present 22-8-10.

(2) When any child is placed on probation, the juvenile probation counselor shall give the child a written statement of the terms and conditions of his probation and shall explain fully such terms and conditions to him,

unless such statement has been given him and explanation made by the court pursuant to 22-3-18.

(3) (a) Each juvenile probation counselor shall keep himself informed as to the condition and conduct of each child placed under his supervision and shall report thereon to the court as it may direct.

(b) He shall use all suitable methods including counseling to aid each child under his supervision and shall perform such other duties in connection with the care and custody of children as the court may direct.

(c) He shall keep complete records of all work done, as well as complete accounts of all money collected from those under supervision.

(4) Juvenile probation counselors, for the purpose of performing their duties, shall have all the powers of peace officers.

(5) (a) When a juvenile probation counselor learns that a child under his supervision has changed his residence to another county, he shall immediately notify the court.

PROPOSED DRAFT

(b) The court may then transfer the probation records of such child to the juvenile court of the county to which the child has moved, together with a request that such court direct the probation supervision of the child. The juvenile court of the county to which the child has moved shall then place the child under probation supervision.

22-5-6. Establishment of juvenile detention facility. (1) The establishment of a juvenile detention facility in any county other than the city and county of Denver by action of the board of county commissioners is hereby authorized, except that such facilities shall be established in counties having a population of one hundred thousand or more according to the last preceding decennial census. The juvenile detention facilities in counties of one hundred thousand population or more may be established jointly as provided in 22-5-7.

(2) A juvenile detention facility shall be entirely separate and removed from any common jail, although it may be in the same building.

COMMENTS

22-5-6, although rewritten slightly, is similar to present 22-14-1, except for the requirement that counties of 100,000 or more shall establish detention facilities.

PROPOSED DRAFT

COMMENTS

(3) Juvenile detention facilities in the city and county of Denver shall be established and operated as provided in 37-19-28.

22-5-7. Joint establishment or utilization. (1) Two or more counties may enter into an agreement jointly to establish and operate a juvenile detention facility and each may contribute capital as well as operating funds for the purpose.

22-5-7 is essentially the same as 22-14-2.

(2) In lieu of joint establishment and operation, a county establishing or operating a juvenile detention facility may agree to accept children from other counties and to provide for their care, subject to instruction from the juvenile court which directs their detention. The county providing for the care of such children shall be reimbursed for the service by the county from which the child is ordered held. Reimbursement may be by payment at an appropriate daily rate, by payment of a fixed annual amount, or by a combination of these two or any other factors. The basis of reimbursement shall be determined by

agreement between the county providing care and the county from which the child is ordered held.

22-5-8. Operation - supervision - education. (1) A juvenile detention facility shall be operated as a division of the juvenile court for the county in which it is established. If the facility has been jointly established, the juvenile judges for all counties involved shall be vested with the governing authority and may sit en banc for the purpose.

22-5-8 incorporates the present provisions of 22-14-5, 22-14-6, and 22-14-7.

(2) The juvenile judge or judges, with the approval of the presiding judge or judges, shall appoint a superintendent and other employees of a juvenile detention facility, all of whom shall be officers of the court and serve at the pleasure of the judges. The salaries of the superintendent and other employees shall be fixed by the juvenile judge or judges, with the approval of the presiding judge or judges.

(3) The conduct, education, control, and care of

children in a juvenile detention facility shall be the responsibility of the superintendent thereof, subject to the control of the juvenile judge or judges.

(4) The school boards of the school districts which a juvenile detention facility serves, when requested by the juvenile judge or judges, shall furnish the teachers and any books or equipment needed for the proper education of such children as may be present in the juvenile detention facility. The expenses of such activities shall be shared and paid by each school district served in the proportion which the school enrollment of each school district bears to the total school enrollment of all the districts served.

ARTICLE 6

Paternity Proceedings

General Comments

History

The present article known as Paternity Proceedings C.R.S. 1963, 22-6-1, et seq., was approved on February 18, 1879, as "An Act in Relation to Bastardy." A minor change was made in 1885. In 1964 the reference to a justice of the peace was eliminated and county court substituted because of judicial reorganization. Otherwise the statute has remained unchanged; only the title has been modernized.

The language and the remedies are venerable and Victorian, and have, in recent years largely been bypassed. The Contributing to Dependency and Delinquency statute (22-7-1, et seq.) although not intended for this purpose has been pressed into service, since it allows a civil hearing by the court having jurisdiction over other juvenile proceedings and is extremely broad in scope.

General

The purpose of a paternity proceeding is to establish accurately the identity of the father of a child so that the responsibility for support of the child can be determined and support ordered. It is not and is not intended to be a general support statute. It is not a proceeding intended to charge a man with a criminal act. If retribution is sought, charges may be filed under 40-2-25.

A child, born to a woman married at the time of its conception, is by law presumed to be legitimate. To overcome this presumption there must be proof that the husband had no access to the mother of the child during the time that he could have fathered the child. Exclusion on tests of blood type, in states recognizing the conclusive nature of blood test results, overcomes the presumption

of legitimacy. Once paternity is established by court action or acknowledged in writing or by furnishing support, an order of support may be issued.

A woman who has borne or will be delivered of an illegitimate child, under the present statute, files a complaint in a county court. A warrant is served, and the accused is brought before the court. In his presence, the woman and/or her counsel attempt to show the judge that the case is well founded. If so, the accused posts bond of not less than $500 and the case is tried by jury in the district court. If the jury finds for the complainant, it may assess damages, a fair proportion of which shall be used for the care and education of the child. No mention is made in this statute of blood tests to determine or exclude paternity, although C.R.S. 1963, 52-1-27 establishes that such tests may be admitted as evidence.

Problems in the current statutes and proposed remedies.

The required filing and hearing of the complaint in the county court and subsequent jury trial in the district court is an unnecessary duplication of time, effort, and costs. The suggested procedure in the juvenile court is simple and nonrepetitious.

The jury decision as to the award of damages may jeopardize claims to adequate support of legitimate children by the alleged father in favor of the illegitimate child. All legal obligations of the father and his earning capacity should be considered in determining a fair amount of support to be ordered. "Damages" should not exceed actual costs of pregnancy and confinement of the mother. Changes of circumstances may necessitate changes in support orders. 22-6-5 of the revision states the limits and requirements of support orders that may be issued and provides for changes.

Blood Types

Blood type grouping is now a scientifically valid method of excluding certain people from possible paternity of a particular child. The present paternity statute does not mention the use of blood tests. Present 52-1-27 permits their use as evidence, but does not require, as does the Uniform Act on Blood Tests to Determine Paternity that where exclusion is established the court shall decide accordingly.

Further refinements in blood grouping may establish even more sharply the degree of possibility that a man not excluded by the tests may be the actual father, because of the relative infrequency of some blood types. Such information should be available to the court when appropriate. Since blood tests to establish paternity are sometimes applicable in divorce actions and in certain criminal cases, a suggested amendment to 52-1-27 is referred to in this report, rather than including the provisions in

the revision of Chapter 22.

The present statute makes no reference to agreements or compromises which might be entered into and which subsequently could bar other attempts to require payments to the mother and support of a child by the alleged father. Such agreements should have court approval to be binding. Where the mother or the child is a public charge, the adequacy of the agreement may be subject to review by a representative of the county welfare department, prior to court approval. Revised 22-6-7 provides for court approval of agreements or compromises.

To a considerable extent the revision of the Colorado paternity article is based on provisions of the paternity sections of the New York Family Court Act and the Uniform Act on Paternity.

PROPOSED DRAFT

22-6-1. Persons who may initiate proceedings - limitations. (1) Proceedings to establish the paternity of a child and to compel support under this article may be commenced by the mother, whether a minor or not, by the child's guardian of the person, or, if the mother or the child is a public charge, by the county department of public welfare.

(2) No proceeding under this article shall be initiated after the child is three years old, unless paternity has been acknowledged by the father in writing or by furnishing support.

COMMENTS

22-6-1 (1) allows proceedings to be started by the mother or the guardian of the child or the county department of welfare, those who would otherwise be responsible for the support of the child. In the present statute only a single woman, mother of the child, may start proceedings.

Subsection (2) limits action to establish identity of the father to within three years after the birth of the child. If identity has been voluntarily established previously, an order of support may be issued under this article after the three year limitation. Present limit is one year, with no provision for subsequent orders of support. Argument is offered that paternity proceedings should be possible until the child is eighteen as a means of protecting the child's right to support. Arguments against a long statute of limitations on paternity rest on the increasing difficulty of proving paternity or non-paternity with the passage of time.

PROPOSED DRAFT	COMMENTS
22-6-2. Petition. Proceedings under this article shall be started by the filing of a verified petition alleging that the person named as respondent is the father of the child and requesting the court to enter a declaration of paternity, an order of support, and such other and further relief as may be appropriate under the circumstance.	22-6-2 provides that the action is started by filing of a petition rather than a complaint asking that identity of the father be established and support and payment of other costs be ordered.
22-6-3. Summons. (1) Upon filing of the petition, the court shall issue a summons stating the substance of the petition and requiring the alleged father to appear at the time and place set for hearing on the petition. (2) Service of such summons shall be by personal service, as provided in rule 4 of the Colorado rules of civil procedure.	22-6-3 requires that the alleged father respond to a summons, rather than be served a warrant as in the present 22-6-1. 22-6-6 provides that failure to respond to summons may be cause for contempt of court proceedings.
22-6-4. Hearing testimony. -- (1) At the hearing the mother or the alleged father shall be competent to testify. If the mother is married, both she and her husband may testify to nonaccess.	22-6-4 (1) states that the mother, the husband of the mother, and the alleged father may testify. The presumption of legitimacy of the child of a married woman must be overcome to establish the paternity of a man not her husband.

PROPOSED DRAFT

(2) The court may exclude the general public from the room where the proceedings are heard and may admit only persons directly interested in the case, including officers of the court and witnesses.

(3) Upon motion of the alleged father, blood grouping tests may be ordered and the results received in evidence, as provided in 52-1-27, C.R.S. 1963, as amended.

COMMENTS

Subsection (2) provides the privacy necessary to protect the child.

Subsection(3) refers to 52-1-27. An amendment to this section is suggested which contains substantially the provisions of the Uniform Act on Blood Tests to Determine Paternity. It recognized that blood tests can indicate conclusively that a certain man cannot be the father of a certain child, although they cannot prove that a certain man necessarily is the father. The relative rarity of some blood types may tend to corroborate other testimony as to the likelihood of a person not excluded by the tests being the father, and such information may be useful to the court.

The present statute does not mention blood tests. 52-1-27, at present, is permissive only and does not require the case be dropped against a man excluded by blood tests.

PROPOSED DRAFT	COMMENTS
22-6-5. Orders. (1) If the court finds the respondent is not the father of the child, it shall dismiss the petition.	Subsections (1) and (2) determine basic court orders upon decision that the man is or is not the father of the child. Under 22-1-6 (4) (a) (iii) a trial by a jury of no more than six may be demanded to determine paternity. However, unlike the present statute the terms of the support order are to be determined by the court.
(2) If the court finds the respondent is the father of the child, it shall make an order declaring paternity.	
(3) (a) In a proceeding in which the court has made an order declaring paternity, the court shall direct a father possessed of sufficient means or able to earn such means, to pay weekly or at other fixed periods a fair and reasonable sum for the support and education of the child until the child is eighteen years of age, unless the support order is terminated sooner because the child becomes self supporting or is legally emancipated, taking into consideration those other persons legally entitled to support by the father.	Subsection (3) provides orders for payment of those expenses of a child and mother for which the father can be held responsible. Subsection (a) takes into consideration the father's means and other responsibilities in deciding upon the amount of reasonal support.
(b) The order declaring paternity may also direct the father to pay for support of the child prior to such order.	Subsections (3) (b) and (c) list other types of costs which may be required to be the father's responsibility.

PROPOSED DRAFT	COMMENTS
(c) The order may direct the father to pay necessary expenses incurred by or for the mother in connection with her confinement, and such expenses in connection with her pregnancy as the court may find proper.	The court may decide which of the mother's expenses of pregnancy are proper costs to the father.
(d) The court may order payments made to the mother or to some other person or agency who shall administer them under the supervision of the court.	Subsection (3) (d) allows for payment to be made on behalf of the child to persons in addition to the mother, for instance, to the person or agency actually caring for the child.
(4) The court may require the father to enter a bond as surety that the order of support shall be carried out.	Subsection (4) provides for a bond as assurance that the support order will be carried out.
(5) The court may modify an order of support upon proof of change in relevant circumstances.	Subsection (5) specifically allows changes to be made in court orders of support, if changes in the circumstances of any of the parties indicate need. These cannot be retroactive changes nor without basis in changed circumstance, so that full faith and credit will apply relative to persons who leave the state.

PROPOSED DRAFT

22-6-6. Failure to comply. (1) A person failing to respond to summons or to comply with an order of the court in connection with paternity proceedings brought under this article shall be found in contempt of court and dealt with accordingly.

(2) The court shall have authority to issue writs of execution for the collection of accrued and unpaid installments of support orders.

22-6-7. Agreement or compromise. (1) An agreement or compromise made by the mother or by some authorized person on behalf of either the mother or child concerning the support of either shall be binding upon the mother and child only when the court approves such agreement or compromise after determining that adequate provision for support has been made and is fully secured.

(2) If the mother or child is a public charge, no agreement or compromise under this section shall be approved by the court until notice and opportunity to be

COMMENTS

22-6-6. Contempt of court proceedings would be instituted upon noncompliance with the orders of support. The court is also given authority to issue writs of execution to collect unpaid support.

22-6-7 (1) provides that the mother shall not be able to compromise away the rights of the child to the support of his father without court determination that adequate provision for the child has been made.

Since the child would be supported by welfare if not by the parents that department has a voice in judging whether provision for the child is adequate.

heard are given to the county department of public welfare of the county where the mother resides or the child is found. Such notice may be given to the county department of public welfare in other cases at the discretion of the court.

(3) The complete performance of the agreement or compromise, when so approved, bars other remedies of the mother or child for the support and education of the child.

Subsection (3) limits the parties to the terms of that agreement and provides some possibility of relief to the man should the element of blackmail be involved.

22-6-7 is based on New York law and brings under court scrutiny extra-legal arrangements that might be otherwise used. It is possible that voluntary agreement on reasonable support might be reached by the mother and father prior to full hearing and disposition and, upon court approval, provide a satisfactory solution to their difficulties.

ARTICLE 7

Support Proceedings

General Comments

Article 7 provides for a simple civil proceeding requiring parents to support their children, as their means permit. Although orders of support are provided for in Chapter 22, in proceedings in neglect or dependency and also upon the determination of the paternity of a child, there are instances when the only issue is the amount of support which would be reasonable in the circumstances. A person who fails to comply with such a support order may be found in contempt of court and writs of execution may be issued for the collection of unpaid support. Most cases of this kind are presently filed under the Contributing to Dependency statute.

PROPOSED DRAFT

22-7-1. Initiation of proceedings. (1) Proceedings to compel parents to support a child or children may be commenced by any person filing a verified petition in the court of the district where the child resides or is physically present.

(2) A petition under this article may be filed at any time prior to the eighteenth birthday of the child.

(3) Once the court has acquired jurisdiction, such jurisdiction shall be retained, regardless of the child's place of residence or physical presence.

(4) The minority of the petitioner or of the respondent shall in no way effect the validity of the proceedings.

(5) Actions brought under this article shall be entitled, "The People of the State of Colorado in the Interest of _____, children, upon the Petition of _____, petitioner, and concerning _____, respondent."

22-7-2. Summons. (1) Upon filing of the petition,

COMMENTS

Both the father and the mother are held responsible for the support of their children until each child is eighteen years of age.

Summons is issued in the same

PROPOSED DRAFT	COMMENTS
the court shall issue a summons stating the substance of the petition and requiring the respondent or respondents to appear at the time and place set for hearing on the petition.	manner as other civil actions under this chapter.
(2) Service of the summons shall be by personal service as provided in rule 4 of the Colorado rules of civil procedure.	
22-7-3. Hearing - orders. (1) If, at the hearing, the court finds that the respondent has an obligation to support the child or children mentioned in the petition, the court may enter an order directing the respondent or respondents to pay such sums for support as may be reasonable under the circumstances.	Section 3 provides that the court may enter orders of support, the terms depending on the circumstances.
(2) If, at or before the hearing, the respondent or respondents waive their right to a hearing and stipulate to the entry of a support order, such stipulation may be presented to the court. If the court finds that the amount stipulated is reasonable under the circumstances, it may enter an order of support in accordance with the stipulation.	If a hearing is waived, the court must approve any support arrangements the parties have agreed upon.

PROPOSED DRAFT	COMMENTS
(3) The court may enter a temporary support order, to remain effective pending a final disposition of the proceeding.	Temporary support orders may be issued.
(4) The court may modify an order of support upon proof of change in relevant circumstances.	
(5) Any order made pursuant to this article shall not be exclusive.	
22-7-4. Failure to comply. (1) A person failing to respond to summons or to comply with an order of the court entered under this article shall be found in contempt of court and dealt with accordingly.	22-7-4 provides the same enforcement of orders of support as does 22-6-6 of the revised paternity statute.
(2) The court shall have authority to issue writs of execution for the collection of accrued and unpaid installments of support orders.	

ARTICLE 8

Institutional Facilities and Transfers

General Comments

Institutional Facilities

Article 8 covers all of the institutions and other facilities for juveniles under the Youth Services Division of the Department of Institutions. Included in this category are: 1) the Lookout Mountain School for Boys and the Mount View Girls' School (presently Articles 1 and 2 of Chapter 105); 2) the Colorado Youth Center (presently the State Children's Home - Article 4 of Chapter 22); and 3) the camps located at Golden Gate and Lathrop state parks (presently not provided for by statute, but considered adjuncts of the boys' school). In addition, the first section of Article 8 provides broad authority for the establishment and operation of juvenile facilities by the Department of Institutions, as funds permit and conditions require. These facilities include, but are not limited to, those defined in 22-1-3 (23) through (28).

In transferring the statutory provisions for the boys' and girls' schools from Chapter 105, a large number of extraneous, expired, or ambiguous sections were eliminated. These are discussed in the appropriate places in the section by section comments accompanying the proposed draft of Article 8.

Placement and Transfer

Probably the most important provisions of the proposed draft of Article 8 are those concerning the initial placement and inter-institutional transfer of children committed to the Department of Institutions as delinquents or as children in need of supervision. The present placement and transfer provisions are contained in 3-11-3 (1) (h), (i), and (j). They have been placed in Article 8 of the proposed draft, because this is a more appropriate location. (An amendment to 3-11-3 has been prepared to avoid possible conflicts and to provide ease of reference.)

The placement and transfer provisions (22-8-3 and 22-8-4) were drafted with two major objectives in mind: 1) the elimination of present legal and administrative problems connected with the placement and transfer of children committed to the department; and 2) the facilitation of the proper initial placement of children committed to the department and their transfer to other facilities when required. Both of these objectives were considered within the context of changes in the definitions of children committed to the department and of the future role and functions of the Colorado Youth Center.

22-8-3 follows the present practice of having children committed to the department sent to receiving centers for examination and evaluation prior to institutional placement, recognizing that this process will not achieve maximum effectiveness until the department has a separate, properly staffed, diagnostic facility. There are two major changes from the present procedures, however. The first concerns children who may be mentally ill or mentally deficient, and the second concerns children in need of supervision and placement in the Colorado Youth Center.

Mentally Ill or Deficient. As previously discussed, 22-3-7 established procedures by which the court can make appropriate disposition of cases concerning mentally ill or deficient children who are before it because of alleged acts or behavior constituting delinquency or being in need of supervision. 22-8-3 (3) recognizes that it still may be possible for children who may be mentally ill or deficient to be committed to the department as delinquents or being in need of supervision. It does this by providing that when the department determines from the examination and evaluation made of a child in a reception center that he is mentally ill or deficient, the child shall be placed in the appropriate facility (which may be Pueblo, Fort Logan, Ridge, or Grand Junction) and petition the court for a short-term commitment under 71-1-4. This short-term commitment, depending on the institutional diagnosis, could then lead to the appointment of a medical commission under 71-1-5.

Children in Need of Supervision. 22-8-3 carries out the intent (also expressed in 22-3-12) that children in need of supervision committed to the department can not be placed initially in Golden, Morrison, or a similar facility. Consequently, children in need of supervision committed to the department could be placed only

in the Colorado Youth Center or in one of the conservation camps, given the present institutional facilities.

In all likelihood, the Colorado Youth Center would be the most appropriate initial placement for these children. With a planned capacity of 120, it will probably not be long before the Colorado Youth Center is filled. 22-8-3 (4) is designed to provide for such a situation, so that the Department of Institutions will not have a number of children on its hands for which no appropriate placement can be made. 22-8-3 (4) does this by providing the following:

1) When the Colorado Youth Center has no more room, and the department has children in the receiving center who should be place in the Youth Center, it shall so inform the committing court and return the child to the court for such other disposition under 22-3-12 as the court may find in the best interests of the child pending placement in the Colorado Youth Center.

2) The department is required to establish a waiting list for the Youth Center according to original date of commitment, but is permitted in its discretion to give priority in emergency situations to a child on the waiting list for whom the court is unable to make other satisfactory arrangements.

3) Until the waiting list of children in need of supervision is exhausted, the department is prohibited from placing any delinquent or any juvenile parollee in the Colorado Youth Center.

Transfer Procedures

Institutional transfers are provided for in 22-8-4 and are designed to solve current legal and administrative problems. This is accomplished as follows:

1) The Department of Institutions is prohibited from placing any child in a penal institution who is committed to it as a delinquent or in need of supervision (22-8-4 (5)). This should eliminate the possibility of a delinquent child who is placed temporarily in the state hospital being transferred to the penitentiary because he is too difficult to handle (as has happened in the past).

2) The department is given express authority to transfer a delinquent or a child in need of supervision to a state hospital or to Ridge or Grand Junction for a maximum of sixty days for diagnosis, evaluation, or emergency treatment. If the child should be transferred for a longer period, the department petitions the committing court for a short-term commitment under 71-1-4. These provisions make it possible to transfer children when necessary without undue red tape, while at the same time providing adequate legal protection and proper commitment procedure.

3) The department is required to have each child examined and evaluated prior to making a transfer, which is similar to the

present law. But unlike the present law, 22-8-4 (2) recognizes that occasional emergencies may exist which require immediate transfer by providing that when the director of institutions finds that the welfare and protection of child or of others requires immediate transfer, such transfer may be made prior to having the child examined and evaluated.

22-8-4 (3) provides that no child in need of supervision committed to the department may be transferred to Golden or Morrison (or a similar facility) for more than thirty days without approval of the committing court. When a child in need of supervision is so transferred, the department is required to notify the committing court immediately, stating the reasons therefor. The committing court then has ten days after it receives notification to object in writing to the transfer. If it does not so object, the department may keep the transfer in effect for as long a period as it deems proper, consistent with the other provisions of this article. If the court objects to the transfer, the transfer may not exceed thirty days, after which the department must make such other placement as is permissible for children in need of supervision.

Facilities and programs to handle children in need of supervision without recourse to transfers to delinquency institutions would further protect due process and maintain the differences between the categories of delinquent and in need of supervision. However, with the present limited facilities, the department should be able to transfer a child whose behavior is such as to disrupt the program badly at the Colorado Youth Center or is a danger to himself or other children. Unless this is possible, a maximum security unit may be necessary at the Youth Center, which is not in keeping with the atmosphere and program to be developed at this facility. Further, there may be some children who, although not delinquent, may need a more closed setting than that provided at the Colorado Youth Center in order to respond to efforts at rehabilitation and treatment. In most instances, such transfers would probably not be of long duration.

22-8-4 (3) takes care of such emergency situations, while at the same time giving the committing court a check on any possible abuse of this type of transfer.

PROPOSED DRAFT

22-8-1. Authority. (1) (a) The department of institutions shall establish and operate facilities necessary for the care, education, training, treatment, and rehabilitation of those children legally committed to its custody under 22-3-12 or 22-3-13. As necessary and when funds are available for such purposes, such facilities may include, but shall not be limited to:

(b) Group care facilities and homes, including halfway houses:

(c) Training schools;

(d) Conservation camps; and

(e) Diagnostic and evaluation, and receiving centers.

(2) The department shall cooperate with other governmental units and agencies, including appropriate local units of government, other state departments, and agencies of the federal government in order to facilitate the training and rehabilitation of youth.

COMMENTS

22-8-1 (1) establishes the general authority under which the Department of Institutions may operate various kinds of facilities for the care and rehabilitation of children committed to its custody. It is an open authority, listing the kinds of facilities now in operation or contemplated, but not limited to those, as funds or needs may indicate in the future.

Subsection (2) allows the department to cooperate with other governmental units when appropriate. Neither subsection (1) nor (2) is contained in the present statutes (Articles 1 and 2 of Chapter 105, and Article 4 of Chapter 22) because of the way in which they are organized. This section is based in part on similar provisions in the Wisconsin code.

PROPOSED DRAFT

COMMENTS

22-8-2. Receiving centers - designation. (1) Unless and until otherwise changed by the department of institutions, the Colorado Youth Center is designated as the receiving center for children in need of supervision committed to the department under 22-3-12, and the Lookout Mountain School for Boys and the Mount View Girls' School are designated as receiving centers for delinquent children committed to the department under 22-3-13.

(2) If a change is made in the designation of a receiving center by the department of institutions, it shall so notify the juvenile courts at least thirty days prior to the date that the change takes effect.

22-8-2 is the same as 22-3-14 (2), repeated here for clarity and ease of reference.

22-8-3. Children committed to the department - evaluation and placement. (1) (a) Each child committed to the custody of the department of institutions shall be examined and evaluated by the department prior to institutional placement or other disposition.

(b) A child may either be kept at the receiving center

22-8-3 provides for the examination and evaluation of children committed to the department and then for their institutional placement or other disposition. This section was discussed in detail in the general comments at the beginning of this article.

during the period that the examination and evaluation is to be made or transferred temporarily to another institution or facility for this purpose for a period not to exceed thirty days.

(2) (a) Each child shall then be placed by the department in the appropriate state institution or facility, released on parole, or placed as provided in 22-8-10, as indicated by the examination and evaluation and the limitations on physical capacity or programs at the respective state institutions and facilities, except that;

(b) No child committed under 22-3-12 may be placed initially in the Lookout Mountain School for Boys or the Mount View Girls' School.

Subsection (2) (b) prohibits the initial placement of a child in need of supervision in the boys' or girls' school.

(3) (a) When the department determines that a child requires placement in a state facility for the mentally ill or mentally deficient, as defined in 71-1-1, it shall place the child in the appropriate facility and petition the juvenile court having original jurisdiction for a commitment under 71-1-4 to the facility in which the child

Subsection (3) provides for the placement of children determined by the department to be mentally ill or deficient and requires the department to petition the committing court for a new commitment under 71-1-4.

has been placed.

(b) If the juvenile court of the city and county of Denver is the court having original jurisdiction, it shall transfer the case to the probate court of the city and county of Denver for a commitment under 71-1-4.

(4) (a) When the department determines that the appropriate placement for a child committed under 22-3-12 is the Colorado Youth Center, and that facility cannot accept any more placements because of limitations on physical capacity or program, the department shall so inform the juvenile court having original jurisdiction and shall return the child to the court for such other disposition under 22-3-12 as the court may find in the best interests of the child, pending placement in the Colorado Youth Center.

Subsection (4) specifies what happens when the Colorado Youth Center can accept no more children, including the establishment of a waiting list by the department.

(b) (i) The department of institutions shall establish a waiting list according to the original date of commitment for children committed under 22-3-12 who cannot be placed in the Colorado Youth Center because of limitations on

physical capacity or program and who, therefore, are returned to the court of original jurisdiction, except that;

(ii) Upon request of the court of original jurisdiction, the department in its discretion may give priority in emergency situations to a child on the waiting list for whom the court has been unable to make other satisfactory arrangements.

(c) Until the waiting list for the Colorado Youth Center of children committed under 22-3-12 is exhausted, the department shall not place any child committed under 22-3-13 in the Colorado Youth Center, nor shall the department accept for placement in the center any children paroled under 22-9-2.

(d) The provisions of subsections (4) (a), (b), and (c) of this section shall not apply to children 10 years of age or over and under twelve years of age. Such children shall be accepted by the department regardless of any limitations on facilities or programs.

PROPOSED DRAFT

22-8-4. Children committed to the department - transfers. (1) (a) The director of institutions may transfer any child committed under 22-3-12 or 22-3-13 among the facilities established under 22-8-1 and 22-8-6 through 22-8-9, except that;

(b) Before any child shall be transferred he shall be examined and evaluated, and such evaluation shall be reviewed by the director of institutions before approving the transfer; and

(c) No child committed under 22-3-12 may be transferred for more than thirty days to the Lookout Mountain School for Boys, the Mount View Girls' School, or any other training school as defined in 22-1-3 (25) without approval of the juvenile court having original jurisdiction, as provided in subsection (3) of this section.

(2) When the director of institutions finds that the welfare and protection of a child or of others requires the child's immediate transfer to another facility, he shall make the transfer prior to having the child examined and evaluated.

COMMENTS

22-8-4 provides for the institutional transfers of children committed to the department. This section was discussed in detail in the general comments at the beginning of this article.

Subsection (1) (c) and subsection (3) set forth the procedures and limitations for the transfer of children in need of supervision to Golden and Morrison.

Subsection (2) gives the department authority to transfer a child in emergency situations without examination and evaluation.

PROPOSED DRAFT

(3) (a) When the director of institutions approves the transfer of a child committed under 22-3-12 to the Lookout Mountain School for Boys, the Mount View Girls' School, or any other training school as defined in 22-1-3 (25), the court of original jurisdiction shall be notified immediately in writing of the proposed transfer and the reasons therefor.

(b) If the court of original jurisdiction does not object in writing to such transfer within ten days after receipt of notification from the director of institutions, the transfer shall be considered approved, and the transfer shall remain in effect for such period as the department deems proper, consistent with the provisions of 22-8-5.

(c) If the court of original jurisdiction objects in writing to the transfer within ten days after receipt of notification from the director of institutions, the period of such transfer shall not exceed thirty days, after which the child shall either be returned to the facility to which he was originally committed, transferred to another

COMMENTS

See general comments at beginning of this article for a discussion of subsection (3).

facility other than a training school, or placed as provided in 22-8-10.

(d) No child committed under 22-3-12 may be transferred to a training school by the director of institutions more than once without approval of the court of original jurisdiction.

(4) (a) Any child committed under 22-3-12 or 22-3-13 may be transferred temporarily to the Colorado State Hospital, Fort Logan Mental Health Center, state home and training school at Ridge, state home and training school at Grand Junction, or any other state facility for the mentally ill or mentally deficient for the purposes of diagnosis, evaluation, and emergency treatment. The period of such temporary transfer shall not exceed sixty days.

Subsection (4) provides for the temporary transfer (not to exceed 60 days) of children for the purpose of diagnosis, evaluation, or emergency treatment in a state hospital or state home and training school. It also requires the department to petition the committing court for a commitment under 71-1-4, if the transfer is to exceed 60 days.

(b) When the director of institutions determines that a child committed under 22-3-12 or 22-3-13 requires transfer of more than sixty days to a state facility for the mentally ill or mentally deficient, he shall transfer the child to the appropriate facility and petition forthwith the juvenile

PROPOSED DRAFT

COMMENTS

court having original jurisdiction for a commitment under 71-1-4 to the facility in which the child has been placed.

(c) If the juvenile court of the city and county of Denver is the court having original jurisdiction, it shall transfer the case to the probate court of the city and county of Denver for a commitment under 71-1-4.

(5) The department of institutions shall not have the authority to place in a penal institution any child committed under 22-3-12 or 22-3-13.

Subsection (5) prohibits the placement in any penal institution of any delinquents or children in need of supervision committed to the department.

22-8-5. Length of placement. (1) In no case shall institutional placement under this article exceed two years, for children committed under 22-3-13,nor shall the custody of the department of institutions extend beyond the age of eighteen for any child, except that whenever a child is committed to the department within less than twelve months before his eighteenth birthday, the director of the facility in which he is placed, with approval of the department, may hold the child for a period not to

The provisions of 22-8-5 are the same as those of 22-3-14 (3) (a) and (b) of this revision, but are repeated for ease of reference. The purpose (as commented on relative to 22-3-14 (3) (a) and (b)) is to assure that no child be kept in an institution longer than necessary to receive maximum benefit. Together with the two year limit on parole supervision (22-9-2 (3) (a)) a delinquent child may be under the control of the department a maximum of four years. Present

exceed one year.

(2) Institutional placement for a child committed under 22-3-12 shall not exceed two years, except that the committing court may renew the placement for an additional two year period upon recommendation of the department of institutions.

(3) (a) When the department of institutions determines that a child committed under 22-3-12 should be released, it shall so notify the committing court in writing, setting forth the reasons why the child should be released.

(b) (i) Upon receipt of such notification, the committing court may:

(ii) enter an order releasing the child from commitment to the department of institutions, either unconditionally or under such conditions as the court may impose;

(iii) enter an order releasing the child from the jurisdiction of the court;

(iv) enter an order continuing the commitment of the

experience with the Children's Home indicates a considerably longer stay for some children. The renewal provision of subsection (2) extends institutional care to four years for some children in need of supervision. The exception in 22-8-5 (1) for children committed beyond their seventeenth birthday is to provide some period of institutional program for older delinquents.

Subsection (3) provides the method whereby a child who had been committed to the department of institutions as in need of supervision may be released.

child to the department of institutions;

(v) hold a hearing on the request for release after due notice has been given to all parties involved; or

(vi) any combination of subsections (3) (b) (i) through (iv) which the court finds appropriate and which are not mutually exclusive.

(c) When the committing court enters an order releasing the child from commitment to the department of institutions, the department shall return such child forthwith to the committing court.

22-8-6. Lookout Mountain School for Boys. (1) There is hereby established at Golden, Jefferson county, a training school known as the Lookout Mountain School for Boys, under the supervision and control of the department of institutions.

(2) The school shall provide care, education, training, and rehabilitation for boys twelve years of age or over and under the age of eighteen years who have been

Sections 22-8-6 through 22-8-9 authorize and describe briefly the institutions now operating under the Division of Youth Services of the Department of Institutions. In each case the particular facility is named, its location is given, the general program is described and reference is made to the statute under which children may be placed in it. When additional facilities are constructed similar sections may be added to the statute

committed to the custody of the department under 22-3-13, and as provided in 22-8-4 (2).

22-8-7. Mount View Girls' School. (1) There is hereby established near Morrison, Jefferson county, a training school known as the Mount View Girls' School, under the supervision and control of the department of institutions.

(2) The school shall provide care, education, training, and rehabilitation for girls twelve years of age or older and under the age of eighteen years who have been committed to the custody of the department under 22-3-13, and as provided in 22-8-4 (2).

22-8-8. Youth camps. (1) (a) There is hereby established in Gilpin county a conservation camp known as Golden Gate Youth Camp.

(b) There is hereby established near Walsenburg, Huerfano county, a conservation camp known as Lathrop Park Youth Camp.

(2) These camps shall be under the supervision and

without the necessity of reorganizing the entire article.

In the present statutes Articles 1 and 2 of Chapter 105 concern the boys' and the girls' schools. They are each long, and each contain provisions in conflict with each other and with portions of the statute on delinquency.

In 22-8-6 the age limits for boys to be committed to the Lookout Mountain School for Boys have been changed from ten to eighteen to twelve to eighteen. This conforms to present program and practice and to the thinking of most authorities that younger children should be handled in their own or foster homes or small group care facilities. Similarly in 22-8-7 the ages for girls have been changed from ten to twenty-one to twelve to eighteen. The new addition to the reformatory should be able to care for girls over eighteen.

The camps described in 22-8-8 have the same age limits as the boys' school. They are

control of the department of institutions and shall provide care, education, training, and rehabilitation for boys twelve years of age or older and under the age of eighteen years who have been committed to the custody of the department under 22-3-12 or 22-3-13.

22-8-9. Colorado Youth Center. (1) There is hereby established in the city and county of Denver, a group care facility known as the Colorado Youth Center, under the supervision and control of the department of institutions.

(2) This group care facility shall provide care, supervision, counseling, and treatment for, and shall be responsible for the education of, children ten years of age or older and under the age of eighteen years who have been committed to the custody of the department under 22-3-12 or 22-3-13, or who have been released on parole as provided in 22-8-2.

authorized to care for boys adjudicated either as delinquents or in need of supervision. The camps are not mentioned in the present statute, receiving silent authorization as adjuncts of the boys' school. Additional camps, as constructed, can be added to this section as (1) (c), (d) etc.

22-8-9 establishes in its new role, the Colorado Youth Center, presently the Colorado State Children's Home. The age limits are set at ten or older and under eighteen, although it is expected that the center will rarely care for the children under twelve. The Center will receive children who are in need of supervision, some delinquent children and some children who have been released on parole. (See 22-8-3 (4) (a), (b), (c), and (d) for priorities as to placement in the Colorado Youth Center.)

The statute authorizing the Children's Home at present, 22-4-1, describes it merely as a home for dependent children between seven and sixteen

PROPOSED DRAFT

22-8-10. Contracts and agreements with public and private agencies. (1) The director of the department of institutions may enter into agreements or contracts with any governmental unit or agency, or private facility, co-operating or willing to cooperate in a program to carry out the purposes of this article. Such contracts or agreements may provide, among other things, for the type of work to be performed at a camp or other facility, for the rate of payment for such work, and other matters relating to the care and treatment of children.

(2) Placement of children by the department of institutions in any public or private facility not under the jurisdiction of the department shall not terminate the legal custody of the department.

COMMENTS

years of age.

The program description in 22-8-9 is necessarily broad, and directed toward the needs of the children it is designed to serve, children in need of supervision.

22-8-10 is a new section, based somewhat on similar provisions in the Wisconsin and other newer statutes. Subsection (1) specifically authorizes the Department of Institutions to enter into agreements or contracts which will facilitate carrying out programs for children which are its responsibility.

For some time specialized care has been purchased outside state institutions when there has been a recognized need which cannot be met otherwise. 22-8-10 (1) provides statutory authority.

Subsection (2) retains the department's legal custody of a child even though the child is placed away from the jurisdiction of the department.

PROPOSED DRAFT

(3) The department shall have the right to inspect all facilities used by it and to examine and consult with persons in its legal custody who have been placed in any such facility.

22-8-11. Directors - duties. (1) A director of each facility established by 22-8-1 and 22-8-6 through 22-8-9 shall be appointed by the director of institutions pursuant to article XII, section 13, of the Colorado constitution.

(2) It shall be the duty of the director of each facility established by 22-8-1 and 22-8-6 through 22-8-9:

(3) To report to the director of the department of institutions at such times and on such matters as the director may require.

(4) To receive, subject to limitations on physical capacity and programs all children committed to the custody of the department of institutions and placed in

COMMENTS

Subsection (3) reserves the right of inspection and consultation within such facilities used by, but not controlled by the department.

In 22-8-11 various duties and responsibilities common to the directors of each of the facilities for children are listed. In the present statutes the three facilities authorized have separate and inconsistent provisions concerning the duties and responsibilities of their administrators. Rarely do the statutory details conform to actual practice. Administrative details belong in departmental rules and not in statutes, except in a broad way.

Subsection (3) states their general responsibility to the director of the Department of Institutions.

Subsection (4) states broadly their responsibility to the children under their care. It also limits their responsibility to receive additional

PROPOSED DRAFT	COMMENTS
his care under the provisions of this article and to keep them for rehabilitation, education, and training until discharged by law or under the rules of the department of institutions or released on parole as provided in 22-9-2.	children to the physical capacity and program of the facility.
(5) To make a careful and thorough evaluation of every child placed under his care at intervals no greater than six months, such evaluation to ascertain whether the child's program should be modified, whether his transfer to another facility should be recommended to the director of institutions, or whether his release should be recommended to the juvenile parole board.	Each director of a children's facility must see that there is an evaluation of each child in his care at least every six months. Present 105-1-7 (2) provides for an evaluation after a boy has been at the boys' school for one year. There is no such provision in the statutes concerning either the girls' school or the children's home. Without such procedures it is possible for a child to be "lost" in an institution and plans and programs adequate at one time to become useless in rehabilitative effect.
22-8-12. Publications. Publications of any of the facilities established by 22-8-1 and 22-8-6 through 22-8-9 intended for circulation in quantity outside such facility shall be subject to the information coordination	22-8-12 is a routine requirement to conform to the information coordination act of 1964.

act of 1964.

22-8-13. Rules - academic and vocational courses. (1) It shall be the duty of the department of institutions to develop such rules and regulations as may be necessary for imparting instruction, preserving health, and enforcing discipline of children committed to the department.

Subsection (1) of 22-8-13 imparts general rule making authority to the department. Rules and regulations, spelled out in the present statutes, have accumulated with the years, and have become unrealistic.

(2) The academic courses of study and vocational training and instruction given in the facilities established by 22-8-1 and 22-8-6 through 22-8-9 shall include those approved by the state department of education for the instruction of pupils in the primary and secondary schools of the state. Full credit shall be given by school districts in this state for completion of any semester, term, or year of study instruction by any child who has earned credit therefor.

Subsection (2) authorizes the establishment and operation of educational facilities according to the general requirements of the Department of Education.

(3) The department may appoint, pursuant to article XII, section 13 of the state constitution, a director and such other officers, teachers, instructors, counselors, and other personnel as it may consider necessary to

Subsection (3) authorizes the employment of personnel to operate such educational programs. It requires adherance to the rules for teacher qualifications of the Department of Education.

transact the business of the schools, and may designate their duties, but no person shall be appointed as a teacher or instructor in the schools who is not qualified to serve as a teacher or instructor in the schools under the laws of the state and the standards established by the state department of education.

22-8-14. Fees for transporting children. It shall be the duty of the sheriff, under-sheriff, or deputy, or in their absence, of any suitable person appointed by the court for such purpose, to convey any child committed under the provisions of 22-3-12 or 22-3-13 to these facilities. All officers performing services under this article shall be paid the same fees as are allowed for similar services in criminal cases, such fees to be paid by the county from which such child was committed.

22-8-14 is comparable to present 105-1-10. Such provision is necessary in order to have authority to transport children to the facilities and for such services to be properly compensated.

22-8-15. Runaways - penalties. Every person who aids or abets any child, committed to the custody of the department of institutions under 22-3-12 or 22-3-13, in

22-8-15 is comparable to 105-1-11, and 105-2-14. The present provision for deducting time while away from the facility from the sentence is meaningless with indetermi-

running away from the facility in whose care he has been placed, or who knowingly harbors such child, or who aids in abducting him from persons to whose care and service he has been properly committed, is guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not to exceed one hundred dollars, or by imprisonment in the county jail for a term of not to exceed sixty days.

nate commitment and has been eliminated.

ARTICLE 9

Juvenile Parole Division

General Comments

When a child who has been committed to the Department of Institutions is ready to go back into the community, the Department of Institutions, through its Youth Services Division, has the responsibility of arranging the most advantageous time and circumstances to inhance the possibility of good social adjustment by the child. Generally, the decisions on the time and conditions of parole are made by the Juvenile Parole Board, and supervision of and assistance to the child on parole is provided by the Juvenile Parole Division.

Juvenile Parole Board. The Juvenile Parole Board presently comprises members of the administrative staffs of some of the state departments which may be involved in parole planning. Placements, it is felt, may be facilitated by the special knowledge these individuals can bring to planning sessions. This special usefulness is in danger of being inundated by the parole board's tremendous workload.

This board makes a decision each time a child is considered for the granting, suspension, or revocation of parole. It approves plans for the placement of the child and specifies the conditions of his parole. These are considerations which require careful evaluation of the history of the child's problems, his adjustment to institutional care, and to any previous experience with parole supervision.

Both as a part of the planning process and a step in rehabilitation, the board should interview each child, but is unable to do so because of the workload and the board's part-time service. At the present, approximately 125 children come before the parole board for one or more of these considerations each month. The board meets twice a month, once at the boys' school, and once at the girls' school, usually on Saturdays. The services of the board members are in heavy demand in their own departments and for the most part their responsibilities with the parole board have been met on their

own time. A number of plans have been suggested to utilize the knowledge of these board members and, at the same time, provide time for a more detailed consideration of each child's situation, including an interview.

Hearing Panel. To meet these problems, this revision provides for the appointment of one or more hearing officers for the parole board. A hearing officer would coordinate and schedule hearings, in which he and one member of the board would function as a hearing panel. Each board member would thus hear fewer cases in more detail and each child would be present when his case is considered. Upon request or upon the board's motion, certain cases could be reviewed by the entire board, meeting once a month. This procedure should make it possible for each board member's duties to be coordinated more effectively with his responsibilities in his own department, easing the pressure on his time and increasing the time available for each case consideration.

Parole Violations. The revocation of parole upon violation of the terms of parole or through the commission of another act of delinquency has been handled without a hearing at which the child could be present. The reports of police and parole officers have been the basis for the decision. The rationale for this procedure has been that parole is a privilege, not a right, and as such, no issue of due process is involved. In fact, parole could be revoked without the child actually doing anything, but simply because he was not adjusting. This revision, contemplating the increased attention to due process in all juvenile proceedings, requires more procedural safeguards, and allows the child to be present at the hearing. In this respect it is similar to the provisions for probation revocation contained in 22-3-18. (See comments opposite 22-9-6 of the revision.)

PROPOSED DRAFT

22-9-1. Juvenile parole board - membership. (1) There is hereby created a juvenile parole board to consist of seven members appointed by the governor.

(2) (a) Five shall be voting members appointed from the administrative staffs of the following departments:

(b) one member from the department of public welfare;

(c) one member from the department of education;

(d) one member from the department of institutions;

(e) one member from the department of employment; and

(f) one member from the department of rehabilitation.

(3) Two members shall be nonvoting members, one member to be appointed from the staff of the Lookout Mountain School for Boys, and one member to be appointed from the staff of the Mount View Girls' School.

(4) All members shall serve at the pleasure of the governor, and the governor shall designate one member of the board to act as chairman.

22-9-2. Juvenile parole board - powers and duties.

COMMENTS

Although reworded, the makeup of the Juvenile Parole Board is the same as in the present statute, 39-20-1, as amended.

22-9-2 sets forth the powers

PROPOSED DRAFT

(1) The juvenile parole board shall meet not less than once a month, and the presence of three voting members shall constitute a quorum to transact official business.

(2) The board shall have the authority to grant, defer, suspend, or revoke all paroles of a child committed to the department of institutions under 22-3-13 as are in the best interests of the child and the public, except that each child shall be considered by the board for parole within one year after commitment.

(3) (a) The board shall grant parole to a child for no longer than one year without review, and no child shall remain on parole longer than two years after the original grant of parole.

COMMENTS

and duties of the Juvenile Parole Board. Although the wording and the way in which these duties are carried out is new, the duties are essentially the same as provided presently in 39-20-2 (1).

In subsection (1) there must be at least one meeting of the entire board per month at which three of the five voting members would be a quorum. Cases to be reviewed by the entire board would be heard at this meeting (see 22-9-2 (4) (b) and (c)).

Broad authority over all decisions relating to the parole of a child is conferred by subsection (2).

Subsection (3) (a) requires that the situation of each child on parole shall be reviewed by the board at least annually and that parole shall last no longer than two years for any commitment to

PROPOSED DRAFT

(b) The board shall have the authority to release a child from parole before the expiration of two years, when it appears to the board that there is reasonable probability that the child will remain at liberty without violating the law.

(c) The board may revoke or modify any of its previous orders respecting a committed child, except an order of unconditional release.

(4) (a) Hearing panels consisting of one voting member of the board and a hearing officer shall interview, and review the record of, each child who comes before the board for the granting, suspension, or revocation of parole.

COMMENTS

the Department of Institutions. Conceivably, a child who had been released from parole might be brought before the court on a new charge of delinquency and eventually paroled again, to start another two-year period.

Subsection (3) (b) allows the parole board to release a child from parole before two years at its discretion.

Subsection (3) (c) specifically permits revocation or modification of parole. (See 22-9-6 for procedure for revocation upon violation of terms of parole.) Orders of release may not be revoked.

Subsection (4) (a) describes the use of hearing panels. It is assumed, but not required, that each voting member of the board will, at least once each month, participate in a hearing panel with a hearing officer. The child would be interviewed and his case reviewed in more detail than

PROPOSED DRAFT

COMMENTS

(b) (i) Subject to review by the entire board, a hearing panel shall have authority to grant, defer, suspend, revoke, or specify conditions of the parole of each child, or to release him from parole supervision, except that

(ii) if the members of a hearing panel disagree, a review of that case shall be made by the entire board;

(iii) if a hearing panel refers a case for review, a review of that case shall be made by the entire board; or

(iv) if written request is made by the child, his parents, guardian, or attorney, or the director of the facility from which the child was or is to be paroled, the board may review the case of any child who has been interviewed by a hearing panel.

(5) The child, and his parents, or guardian shall be informed that they may be represented by counsel in any hearing for the grant, modification, or revocation of a

is possible at present. The California Youth Authority has statutory provision for case hearing representatives which are used in somewhat this manner.

Under subsection (4) (b) provision is made that any case heard by a hearing panel may be reviewed by the entire board. Review must take place if the two members of the panel disagree, or if they request review. If the child or a person representing him requests review the board may, but is not required to, review the case.

Counsel may be retained by the child or his parents or guardian, but no provision is made for appointment of counsel by the board. There

PROPOSED DRAFT	COMMENTS
parole before the board or a hearing panel.	is no mention of counsel in the present statute.
(6) The board or a hearing panel shall consult the director of the facility in which the child had been placed before granting a parole.	A similar provision is found in 39-20-2 (1) of the present statute.
(7) All members of the board shall be reimbursed for expenses necessarily incurred in the performance of their duties.	This is the same as 39-20-2 (2) of the present statute. No provision is made for payment to the board members for board work outside of regular working hours, either in the present statute or in the revision.
(8) Clerical and other assistance for the board shall be furnished by the department of institutions, except as provided in 22-9-3.	This is similar to 39-20-2 (3) of the present statute.
22-9-3. Hearing officers. (1) One or more hearing officers shall be appointed by the board, pursuant to article XII, section 13, of the Colorado constitution, who shall be responsible to the board and shall have the following duties:	22-9-3 is new, allowing for the appointment of one or more full-time staff persons for the Juvenile Parole Board, responsible to the board. Such a person is essential if the board is to continue to be made up of people with other primary responsibilities. The caseload does not appear to be large enough to merit a full time paid board, as in California.

PROPOSED DRAFT

(2) A hearing officer shall sit as a member of a hearing panel for consideration and review of each child who comes before the board.

(3) A hearing officer shall make reports to the board and carry out such administrative and other duties of the board as the board shall from time to time direct.

22-9-4. Division of juvenile parole - organization. (1) (a) There is hereby established in the state department of institutions a division of juvenile parole, under the direction of the director of juvenile parole, who shall be appointed by the director of institutions pursuant to article XII, section 13, of the Colorado constitution.

(b) The division of juvenile parole shall include the director of juvenile parole and all juvenile parole counselors appointed under this section. Such juvenile parole counselors and other personnel shall be appointed by the director of juvenile parole pursuant to article XII, section 13, of the Colorado constitution and with the consent of the department of institutions.

COMMENTS

Subsections (2) and (3) list the duties of the hearing officer.

22-9-4 provides general authority for the establishment of a Division of Juvenile Parole. It is similar to present 39-20-3.

PROPOSED DRAFT

(2) The director of juvenile parole shall establish districts in the state for the administration of juvenile parole. The number of districts and their size shall be determined with reference to the number of counties using parole services, their location, and the case load in each county. An office for the juvenile parole counselor shall be provided in each district.

(3) The director of juvenile parole shall report to the director of youth services of the department of institutions at such times and on such matters as the director of the department may require.

(4) Publications of the division circulated in quantity outside the division shall be subject to the information coordination act of 1964.

22-9-5. Division of juvenile parole - powers - duties. (1) Under the direction of the director of juvenile parole, the juvenile parole counselor or counselors in each district established under this article shall super-

COMMENTS

In general, this is similar to present 39-20-4 (1). New provisions include a requirement that terms of parole be written, and that the counselor shall have periodic conferences with the child.

vise all children living in the district who, having been committed to the department of institutions, are on parole from one of its facilities.

(2) The juvenile parole counselor shall give to each child granted parole a written statement of the conditions of his parole, shall explain such conditions to him fully, and shall aid him to observe them. He shall have periodic conferences with and reports from the child. He may conduct such investigations or other activities as may be necessary to determine whether the conditions of parole are being met and to accomplish the rehabilitation of the child.

(3) All juvenile parole counselors shall have the powers of peace officers in performing the duties of their position.

This is similar to present 39-20-4 (6).

22-9-6. Parole violations - hearing on allegations - disposition. (1) (a) Whenever the director of juvenile parole , or a juvenile parole counselor has reason to believe that the conditions of parole have been violated by any parolee, he shall have the right to take the alleged

22-9-6 specifies the procedures to be followed if it is alleged that the conditions of parole have been violated.

Subsection (1) (a) provides that the director of juvenile parole or the parole officer can take an alleged violator

violator into temporary custody, with or without a warrant.

(b) When an alleged violator is taken into temporary custody, the director of juvenile parole or the juvenile parole counselor shall notify the parents, guardian, or custodian of the child without unnecessary delay.

(c) The alleged violator shall then be released to the care of his parents, or other responsible adult, unless his immediate welfare or the protection of the community requires that he be detained. The parent or other person to whom the alleged violator is released may be required to sign a written promise, on forms supplied by the juvenile parole division, to bring the alleged violator to the place and at a time set or to be set by a hearing officer. The hearing shall be held within ten days after the alleged violator is taken into temporary custody and the alleged violator shall be required to be present.

(d) At least five days prior to the hearing, the child and his parents or guardian shall be provided with a written statement setting forth the alleged parole

into temporary custody without a warrant. The remaining subsections, (1) (b) and (c), are similar to the provisions in 22-2-2 of this revision for taking a child into temporary custody who has not yet been adjudicated.

Subsection (1) (c) requires that the hearing be held no later than ten days after the child is taken into temporary custody. (See subsection (5) of this section as to conditions of detention.)

Subsection (1) (d) requires that the child and his parents or guardian be informed in writing the reasons the child's parole may be subject to revocation.

Under the present statute 39-20-4 (2) (a) the child may be held in jail for ten days while the alleged violation is investigated, and neither the child nor his parent, guardian, or counsel is present at the hearing, nor required to be informed of the nature of the charges. This procedure is based on the assumption that parole is a privilege, rather than a right

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violation and citing the law or municipal ordinance, if any, which the child is alleged to have violated.

(2) The division of juvenile parole shall investigate the alleged violation and shall file a written report and recommendation with the hearing officer prior to the date set for the hearing.

(3) A hearing panel of the juvenile parole board shall conduct the hearing on the validity of the allegations and, at the conclusion of the hearing, shall transmit promptly to the board all papers relating to the case, together with its findings and recommendations in writing.

(4) At the conclusion of the hearing, the hearing panel shall advise the parties before it of its findings and recommendations and of their right to request a rehearing before the board. Such rehearing may be held if a written request is filed within ten days after the conclusion of the hearing before the hearing panel. If a rehearing before the board is not requested or the right to review is waived, the findings and recommendations of the

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and consequently no constitutional rights are at stake.

Subsection (2) requires a written report concerning the alleged violation be filed with the hearing officer by the division of juvenile parole after it has investigated the matter.

Subsection (3) provides that the hearing take place before the hearing panel, and that papers, findings, and recommendations of the panel are sent to the board.

Subsection (4) requires that parties to the hearing must be informed of the right to request a rehearing before the board. The board may decline to rehear the case if it wishes.

hearing panel, if unanimous, shall become the decision of the juvenile parole board, unless the board on its own motion orders a rehearing.

(5) Detention of a child held under subsection (1) (c) of this section shall be as provided in 22-2-3 (6), or he may be returned to the facility from which he was paroled pending further action by the board.

The same safeguards which apply to juveniles before adjudication as to being held with or in proximity to adult prisoners apply to the child alleged to have violated parole. The only restriction in the present statute is that he may be held no more than ten days in jail at any one time.

(6) The case of a child alleged or found to have violated the conditions of his parole outside the state of Colorado shall be handled according to the provisions of the Interstate Compact on Juveniles, article 8 of chapter 74.

Present 39-20-4 does not mention the use of the Interstate Compact, but states that facts concerned with an alleged violation outside the state be reported to the board and that they may suspend or revoke parole forthwith.

The Compact provides for the supervision of parolees by another state and for the return of runaways, escapees, etc. It requires a judicial decision as to whether there is sufficient reason to hold a parolee in detention and provides for his return to his home state. The revision provides that the Compact

terms should be applied and upon the return of the parolee the case be handled as any other.

The Compact administrator in Colorado is the Department of Public Welfare.

ARTICLE 10

Reporting of Nonaccidental Injuries Inflicted

General Comments

Present Article 13 of Chapter 22 is included as Article 10 of the revision. It is unchanged, except as to numbers, and except that section 5 has been brought into conformity with the provisions of the revision of Chapter 22.

22-10-1. Declaration of purpose. In order to protect children whose health and welfare may be adversely affected through the infliction, by other than accidental means, of physical injury requiring the attention of a physician, the general assembly hereby provides for the mandatory reporting of such cases by doctors and institutions to the appropriate public authorities. It is the intent of the general assembly that, as a result of such reports, protective social services shall be made available in an effort to prevent further abuses, safeguard and enhance the welfare of such children, and preserve family life wherever possible.

22-10-2. Definitions. (1) (a) For the purpose of and as used in this article:

(b) "Physician" means any doctor of medicine or doctor of osteopathy licensed to practice medicine in this state as provided in article 1 of chapter 91, Colorado Revised Statutes 1963, and any intern or residents as de-

fined in said article 1 of chapter 91.

(c) "Institution" means a private or public hospital or other facility providing medical diagnosis, treatment, or care.

(d) "Department" means the county department of welfare.

(e) "Law enforcement agency" means the police department in incorporated municipalities and the office of the sheriff in unincorporated areas.

22-10-3. Report by physicians and institutions. (1) When any physician has cause to believe that a child under the age of twelve years brought to him or coming before him for examination, care, or treatment has had physical injury or injuries inflicted upon him other than by accidental means by a parent, stepparent, legal guardian, or any other person having custody of such child, he shall report such incident or cause a report to be made to the proper law enforcement agency as provided in subsection (3) of this section.

(2) When a physician is attending a child under the age of twelve years as part of his regular duties as a staff member of an institution and has cause to believe that such child has had physical injury or injuries inflicted upon him other than by accidental means by a parent, stepparent, legal guardian, or any other person having custody of such child, he shall so notify the person in charge of the institution or his designated representative, who shall report the incident or cause such report to be made as provided in subsection (3) of this section.

(3) (a) An immediate oral report shall be made by telephone or otherwise to the proper law enforcement agency and shall be followed by a report in writing. Such reports shall contain the following information if known:

(b) The address and age of the child;

(c) The address of the child's parents, stepparents, guardians, or other persons having custody of the child;

(d) The nature and extent of the child's injury or injuries;

(e) Any evidence of previous injuries, including their nature and extent; and

(f) Any other information which in the opinion of the physician may be helpful in establishing the cause of the child's injury or injuries and the identity of the perpetrator or perpetrators.

22-10-4. Duties of law enforcement agency - limitations. (1) Upon the receipt of a report concerning the possible nonaccidental infliction of a physical injury upon a child, it shall be the duty of the law enforcement agency to refer such report to the department.

(2) No child upon whom a report is made shall be removed from his parents, stepparents, guardian, or other persons having custody by a law enforcement agency without consultation with the department unless in the judgment of the reporting physician and the law enforcement agency, immediate removal is considered essential to protect the child from further injury or abuse.

22-10-5. Duties of department. (1) The department shall investigate each report referred to it by a law enforcement agency to determine the circumstances surrounding the injury or injuries, the cause thereof, and the person or persons responsible. The department shall advise the law enforcement agency referring the report of its investigation and shall provide such social services as are necessary to protect the child and preserve the family.

(2) In the event that the department determines that further legal action is necessary to protect the child it may refer the case to the district attorney for criminal prosecution, or it may file a petition in neglect or dependency in juvenile court as provided in article 3 of chapter 22, Colorado Revised Statutes 1963, as amended.

22-10-6. Immunity from liability. Any person participating in the making of a report pursuant to this article or participating in a judicial proceeding resulting therefrom shall in so doing be immune from any liability, civil

or criminal, that might otherwise be incurred or imposed.

22-10-7. Evidence not privileged. The privileged communication between patient and physician shall not be a ground for excluding evidence regarding a child's injuries or the cause thereof, in any judicial proceeding resulting from a report pursuant to this article.

AMENDMENTS

As noted in more detail in the accompanying research report, the following articles and chapters of the present Colorado Revised Statutes would need to be repealed: Articles 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and 13 of Chapter 22; Article 1 which is all of Chapter 4; Articles 1 and 2 of Chapter 105; Article 20 of Chapter 39; and 66-8-17 (1) and (2). In addition, Articles 11 and 12 of Chapter 22, would need to be repealed and reenacted as Articles 9 and 8, respectively, of Chapter 119. Other changes in the present statutes that would be needed in order to make their provisions consistent with the revision follow:

33-11-3 (1) should be amended to read as follows:

> (h) To examine and evaluate each child committed to the department and to place each child so committed as provided in 22-8-3, C.R.S. 1963, as amended.
>
> (j) To transfer between appropriate state institutions children committed to the department as provided in 22-8-4, C.R.S. 1963, as amended.
>
> (i) (repeal)

3-11-4 should be amended to change the name of the Children's Home and add the Youth Camps as follows:

> (i) ~~State children's home~~ COLORADO YOUTH CENTER at Denver.
>
> (k) GOLDEN GATE YOUTH CAMP IN GILPIN COUNTY.
>
> (l) LATHROP PARK YOUTH CAMP IN HUERFANO COUNTY.

A new section should be added to Article 1 of Chapter 39, to read as follows:

> 39-1-6. Protection of children. In any case in any court against any person for the violation of any statute against rape or any other law of this state for the correction or protection of children, the provisions of 22-1-7 (5), C.R.S. 1963, as amended, shall apply.

37-19-3, C.R.S. 1963, as amended, should be repealed and the following enacted in its place:

> 37-19-3. Jurisdiction. -- (1) (a) The juvenile court of the city and county of Denver shall

have exclusive original jurisdiction in said county:

(b) (i) Concerning any delinquent child;

(ii) As defined in 22-1-3 (17) and in 22-1-3 (4), or

(iii) As defined in 22-1-3 (17) (c), except that the court may refuse to accept jurisdiction in any such case.

(c) Concerning any child in need of supervision, as defined in 22-1-3 (18).

(d) Concerning any child who is neglected or dependent, as defined in 22-1-3 (19).

(e) (i) Concerning any adult:

(ii) who induces, aides, or encourages a child to violate any federal or state law or municipal ordinance, or

(iii) who willfully abuses, ill-treats, neglects, or abandons a child who comes within the court's jurisdiction under other provisions of this section, so as to cause the child unnecessary suffering or serious injury.

(f) To determine the custody of any child or appoint a guardian of the person or other guardian of any child who comes within the juvenile court's jurisdiction under provisions of this section.

(g) To terminate the legal parent-child relationship, including termination of residual parental rights and duties, as defined in 22-1-3 (8).

(h) For the issuance of orders of support under article 7 of chapter 22.

(i) To determine the paternity of a child and to make an order of support in connection therewith.

(j) For the adoption of a person or any age.

(k) For judicial consent to the marriage, employment, or enlistment of a child, when such consent is required by law.

(l) Under the Interstate Compact on Juveniles, article 8, of chapter 74, C.R.S. 1963, as amended.

(2) The court may issue temporary orders providing for protection, support, or medical or surgical treatment as it deems in the best interest of any child under its jurisdiction prior to adjudication or disposition of his case.

(3) (a) When a petition filed in juvenile court alleges that a child sixteen years of age or older committed an act which would constitute a felony if committed by an adult, if, after full investigation and a hearing, the juvenile court finds it would be contrary to the best interests of the child or of the public to retain jurisdiction, it may enter an order certifying the child to be held for criminal proceedings in the district court. The hearing required in this subsection shall be held pursuant to the provisions of 22-1-7 and 22-3-8.

(b) A child shall be charged with the commission of a felony only as provided in subsection (3) (a) of this section, except for crimes of violence punishable by death or life imprisonment where the accused is sixteen years of age or older.

37-19-11 C.R.S. 1963, as amended, should be amended to read:

37-19-11. Referees. -- The judges of the juvenile court of the city and county of Denver may appoint referees as provided in 22-1-10, C.R.S. 1963, as amended.

37-19-16 C.R.S. 1963, as amended, should be amended to read:

37-19-16. Practice and procedure. -- Practice and procedure in the juvenile court shall be conducted in accordance with the provisions of this article, and in accordance with the provisions of chapter 22 C.R.S. 1963, as amended.

37-19-21 C.R.S. 1963, as amended, should be amended to read:

37-19-21. Venue. -- Venue in the juvenile court shall be as provided in 22-1-5 C.R.S. 1963, as amended.

37-19-23 C.R.S. 1963, as amended, should be amended to read:

37-19-23. Appearance by district attorney and county attorney. -- Upon the request of the court, the district attorney shall represent the state in the interest of the child in any proceedings brought under

22-1-4 (b), and the county attorney shall represent the state in the interest of the child in any other proceedings.

37-19-26 C.R.S. 1963, as amended, should be amended to read:

37-19-26. Appellate review. -- An appeal from any order, decree, or judgment may be taken to the supreme court by writ of error as provided in rule 112 of the Colorado rules of civil procedure, except that appeals taken pursuant to 22-3-20 shall be as provided by the Colorado rules of criminal procedure. Initials shall appear on the record on appeal in place of the name of the child. Appeals from orders or decrees concerning legal custody, termination of parental rights, and adoptions shall be advanced upon the calendar of the supreme court and shall be decided at the earliest practicable time.

123-20-9 (6) (b) C.R.S. 1963 as amended, should be amended to read:

(b) If the child refuses or neglects to obey the order, the court may determine that the child is a delinquent as defined by section 22-1-3 (17) (a) (iv), C.R.S. 1963, as amended, and upon so finding the court shall provide for the disposition of the child as provided in section 22-3-13, CR.S. 1963, as amended.

52-1-27 C.R.S. 1963, as amended, should be amended to read:

52-1-27. Blood tests to determine paternity. -- (1) (a) In any action, suit, or proceeding in which the paternity of any child is an issue, upon motion of the alleged father, the court shall order the mother, her child or children, and the alleged father to submit to one or more blood grouping test. If any party refuses to submit to these tests the court may resolve the question of paternity against such party or enforce its order if the rights of others and the interests of justice so require.

(b) The tests shall be conducted by a duly qualified physician or physicians, or other duly qualified person, who shall be expert witnesses. Costs of such expert witness shall be fixed at a reasonable amount and shall be paid as the court shall order.

(c) (i) The results of such tests shall have the following effect:

(ii) If the court finds that the conclusions of all the experts, as disclosed by the evidence based upon the tests, are that the alleged father is not the father of the child, the question of paternity shall be resolved accordingly.

(iii) If the experts disagree in their findings or conclusions, the question shall be submitted upon all the evidence.

(iv) If the experts conclude that the blood tests show the possibility of the alleged father's paternity, admission of this evidence is within the discretion of the court, depending upon the infrequency of the blood type.

(v) The presumption of legitimacy of a child born during wedlock is overcome if the court finds that the conclusions of all the experts, as disclosed by the evidence based upon the tests, show that the husband is not the father of the child.

A section should be added to 37-13-6, C.R.S. 1963, as amended, which would read:

(2) The provisions of subsection (1) (c) shall not apply to any child under the age of eighteen alleged to have committed a felony, except a crime of violence punishable by death or life imprisonment where the accused is sixteen years of age or older.