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Lynne M. Hufnagel

John P. Davidson

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CHILDREN IN NEED: OBSERVATIONS OF PRACTICES OF THE DENVER JUVENILE COURT*

BY LYNNE M. HUFNAGEL,** JOHN P. DAVIDSON* **

I. INTRODUCTION

There are a growing number of empirical studies of the juvenile court, focusing most particularly on the implementation and impact of rights accorded juveniles in *In re Gault*[1] and subsequent decisions. One certain impact of the *Gault* decision is that lawyers may now discuss the juvenile court and its problems, apparently secure in the knowledge that the juvenile court is, afterall, a forum that trades in rights and remedies in much the same manner as the civil and criminal courts in which lawyers have traditionally performed their services. Law review articles paying homage to *Gault* have billowed forth in recent years, not unlike a Gargantuan sigh, as though reflecting communal relief at the entry of juvenile law into the familiar adversary arena.

Another apparent impact of the *Gault* decision has been increased public interest in and access to what is happening in the juvenile courts, about which much has been written and little is known. One who spends time in the juvenile court may easily develop a vague feeling that the law ultimately has very little to do with a vast portion of the day-to-day processing of juveniles through the juvenile justice system. While the historical *parens patriae* orientation of the juvenile court would certainly have accounted for that impression at one time, the feeling comes as something of a surprise in the context of *Gault* and its progeny. Five years after *Gault*, the likely explanation for this feeling is that the rights accorded juveniles by *Gault* have probably not been implemented—so the question of whether implementation has occurred arises rather naturally.

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** Research Consultant, Colorado Department of Institutions, Office of Youth Services; J.D., 1971, University of Denver College of Law.

*** Partner, Kastler, Erwin, and Davidson, Raton, New Mexico; B.A., 1969, University of Denver; J.D., 1972, University of Denver.

[1] *In re* Gault, 387 U.S. 1 (1967).

It was such a question that originally motivated the study from which this article resulted. The result, however, is not principally an implementation study. The typical focus of an implementation study is to determine whether there has been local compliance with a legal mandate, whether compliance accomplished the policy goals which the mandate was designed to achieve, or whether compliance is possible at all. The focus of an implementation study, consequently, is on the *law* and its relationship, in practical terms, to the situation in which it is intended to operate. An implementation study in the juvenile area might be motivated by one of two assumptions: first, that because *Gault* is the law (and therefore assumed to be beneficial), it should and can be enforced; or second, that because *Gault* represents a recent judicial re-evaluation of recognized problems in the juvenile court, its enforcement will solve the problems of the juvenile court.

The alternative assumptions on which this article is based are that the problems facing the juvenile court are not so simple that mere implementation of the recognized rights of juveniles will serve to alleviate them; that the juvenile laws are merely one element among a group of forces that influence the behavior of the juvenile court bureaucracy and its success, however defined, in dealing with the problems assigned to it, and that these laws may in fact have only a negligible influence; that the juvenile law may be, at any given time, as much a part of the problem as a part of the solution; that a bare examination of court practices to determine whether a court has complied with the express requirements of *Gault* and other decisions, though legitimate for that limited purpose, fails to account for the impact of such subtle factors as the child's capacity to comprehend his rights, systematic pressures on the child which influence him to waive his rights, or the effectiveness of counsel when that right is not waived; that the concept of "implementation" in the juvenile area has not developed beyond "compliance" and fails to take the above factors into account; and that, consequently, the problems of the juvenile court are deserving of a broader, less restricted approach, in which both legal and social issues are given cognizance.

No attempt is made here to quantify practices or trends in the court. The object of this article is to identify problem areas and to suggest topics for further study. The objective of the study

was exploratory and the data presented are predominantly impressionistic in form. It is submitted that approaches of more narrow scope at the present time fail to comprehend the complex interrelation of law, bureaucracy, and social problems that meet in the present-day juvenile court.

II. METHODOLOGY

Various legal and administrative requirements connected with the processing of a child through the juvenile court system have resulted in the development of a series of *critical junctures*—established decisionmaking points, each of which has the result of either progressing the child in the system, or turning him out of it. These critical junctures may involve the input of several individuals with differing functions or, in some instances, may be controlled by a single individual. The child may or may not be an active participant in the particular decisionmaking process. The critical junctures identified in this study and used as units for the organization and presentation of the observational results of the study include: (1) referral to the juvenile court by police, parents, and school officials; (2) probation department decision to detain pending detention hearing; (3) detention hearing; (4) decision to file a petition, handle informally, or handle unofficially;[2] (5) plea hearing; (6) omnibus hearing; (7) adjudicatory hearing; (8) dispositional hearing; and (9) subsequent hearings to review placement.

The critical junctures listed do not include the taking of a child into custody (arrest) or the eventual decision to release the child from institutional commitment, but do cover all other decisions resulting in referral to or severance from the court system.[3]

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[2] *See* note 85 *infra* concerning recent statutory changes affecting this critical juncture.

[3] One additional decisionmaking point which is *not* covered in this study is the transfer hearing provided for in ch. 110, § 19, [1973] Colo. Sess. Laws 391, *amending* COLO. REV. STAT. ANN. § 22-3-8(1) (Supp. 1969):

> (1)(a) At the transfer hearing, the court shall consider:
> (b) Whether there is probable cause to believe that the child has committed an act for which waiver of juvenile court jurisdiction over the child and transfer to the district court may be sought . . . ; and
> (c) Whether the interests of the child or of the community would be better served by the juvenile court waiving its jurisdiction over the child and transferring jurisdiction over him to the district court.

While this decision certainly involves a juvenile court decision of a critical nature, it was

Observations relating to each juncture will include specific examples from particular case studies, as well as aggregate impressions.

Following a description of the facilities and personnel of the Denver Juvenile Court and of the characteristics common to all critical junctures, each decisionmaking point will be viewed from several perspectives. Second, the legal bases and administrative guidelines which are intended to govern each critical juncture will be discussed.[4] Third, the decisionmakers at each critical juncture will be described, both as they are contemplated in law and as they function in fact. Both the consequences of their actions upon the child and his family, and the legal alternatives open to the court and to the attorneys at each critical juncture will be analyzed.

The primary research method utilized was in the form of informal and structured interviews with participants in Denver's juvenile justice system, observation of court practices and procedures, and the assumption of the role of student counsel in the Denver Juvenile Court by the principal investigators. Under Rule 226 of the Colorado Rules of Civil Procedure, law students are "authorized to appear in . . . courts of the state as if licensed to

not included in the series of critical junctures discussed fully for two reasons. First, in the Denver Juvenile Court, the transfer hearing is a fairly rare occurrence. A past presiding judge estimated that only about twelve transfer hearings per year are requested by the district attorney's office, and less than half of those result in a transfer of jurisdiction over the child from the Denver Juvenile Court to the criminal division of the district court. Secondly, the transfer hearing does not result in progressing the child through the system or turning him out of it in the same manner as do the critical junctures discussed in the text. If the juvenile court retains jurisdiction over the child, the child proceeds to the plea hearing as if the transfer hearing had never occurred and from that critical juncture on is subject to the same procedures as any other child. If the transfer hearing results in a transfer of jurisdiction to the criminal division of the district court, the child *has* been turned out of the juvenile justice system, but must still wend his way through the adult system. Because of the narrow scope of the transfer hearing, no findings or decision other than these two can be made by the juvenile court. *See Kent v. United States*, 383 U.S. 541 (1966), for discussion of due process requirements in transfer hearings.

[4] This study does not purport to be a comparative analysis of legal precedents and administrative procedures in juvenile courts throughout the country. While such an analysis of extant juvenile law and procedure would be extremely valuable, it is the purpose of this study to give an in-depth analysis of a single urban juvenile court—Denver Juvenile Court—and the law and procedures which govern it. It is recognized that important case law is being formulated in other states; however, it is suggested that differing administrative procedures in the urban juvenile courts of other states and the relative breadth and liberality of the Colorado Children's Code would in most instances significantly reduce the import and impact of those decisions in Colorado.

practice" when they are representing poor persons under the auspices of a legal aid dispensary. Early in 1971, this rule was construed to cover the representation by law students of Children in Need of Supervision (CHINS) in the juvenile court under the auspices of the Legal Aid Society of Metropolitan Denver and the University of Denver College of Law Student Internship Program. Since January of 1971, student attorneys, under the direct supervision of staff attorneys of the Legal Aid Society have been involved in the bulk of representation of CHINS in the Denver Juvenile Court.

Both principal investigators participated in the Juvenile Court Internship Program as student attorneys at various times during the period of the study and therefore had relatively easy access to the personnel and procedures in the court on a rather informal basis. Other observations and interviews were conducted under the direct auspices of the *Denver Law Journal* study. Impressions of the researchers cover generally the period from January 1971 through June 1972.[5] Both as student attorneys and as researchers not directly involved in the proceeding being observed, we observed all critical junctures at random times. As student attorneys we had the additional exposure of interviewing children detained by the intake division of the probation department, representing them in detention hearings, discussing the filing of the petition with the probation officers (plea-bargaining, if you will), interviewing parents involved, and actually representing the child during subsequent critical junctures. As student attorneys—actual participants in the juvenile justice system—we were also subjected to many of the same pressures which influence the behavior of the more traditional participants in the court—judges, probation officers, and police. While the possibility for organizational cooptation of student counsel in the Denver Juvenile Court was perhaps not as real as for those attorneys who practice regularly and over an extended period of time in the court, student counsel certainly felt the press of the court's tremendous workload, the impact of the lack of treatment facilities, and the role conflict implicit in balancing the best interests of the child with the necessity of working within the realm of the possi-

[5] One of the principal researchers has been continually working as an attorney in the Denver Juvenile Court and has been able, where necessary, to update information obtained from the interviews which is no longer accurate.

ble. Maintaining a fairly cordial working relationship with court staff, in most instances, was essential to moving a case through the system, but often ran contrary to the adversary role of counsel necessary to presenting the case properly to the court. As researchers, we attempted to be aware of these pressures, both to avoid a personal impact on the functioning of the system, and to be able to assess more objectively the impact of counsel on the court itself.

Interviews conducted during the major portion of the study were informal and unstructured and occurred during or following observations of critical junctures. Among those interviewed were juveniles and their parents, officers and detectives in the Delinquency Control Division of the Denver Police Department, probation officers, Denver Juvenile Court judges and referees, juvenile court administrators, public defenders and legal aid attorneys working in the juvenile court, legislators involved with proposals affecting the Colorado Children's Code, administrators of various state and private placement facilities, school administrators, and a newspaper reporter whose principal function was to cover the juvenile court. Toward the final stages of research, structured interviews were conducted with representative groups from the Denver Juvenile Court itself, including probation officers, juvenile court administrators, and juvenile court judges and referees. In addition to obtaining additional information, the object of the final round of structured interviews was to present the tentative results of previous observations and interviews for the purpose of obtaining reactions to and evaluations of our conclusions.

III. PERSONNEL AND FACILITIES OF THE DENVER JUVENILE COURT

> *[O]ur judges and referees continue to maintain voluminous caseloads without relief in sight. . . . There can be but few courts in Colorado or the entire country that are sustaining caseloads such as these.*

By 9 o'clock in the morning on any weekday, the wooden benches in the south end of the Denver City and County Building are sagging with the weight of parents and children waiting for their day in court. Passing among them in the dark hallway are public defenders negotiating last-minute plea bargains, probation counselors trying to ascertain whether necessary parties are present, private attorneys, and an occasional sheriff's deputy leading a handcuffed child to a courtroom to face the judge. A couple of miles to the northeast, parents wait on more comforta-

ble chairs in Denver's well-lit, air conditioned juvenile detention facility, juvenile hall, where they strain for glimpses of their children being escorted from detention units to appear before the juvenile court referee. After what frequently must seem to be an interminable delay, parent and child appear before the court to receive "juvenile justice" and be sent on their sometimes separate ways.

In the 1970-71 fiscal year, judges and referees in the Denver Juvenile Court were assigned an average of 1,496 cases.[6] The projected caseload for 1971-72 was 1,344 and for the following fiscal year, 1,695. The total number of petitions filed in 1970-71 was 5,983, and 5,374 were projected for the following year. Yet by June 1, 1972, the intake division of the probation department had already handled 2,952 cases of delinquency, children in need of supervision, and out-of-town runaways. This staggering caseload must be explained briefly to be clearly understood.

Chapter 22 of the Colorado Revised Statutes, 1963, as amended, hereinafter referred to as the Code,[7] confers broad jurisdiction upon the juvenile courts. Exclusive original jurisdiction is given not only in proceedings concerning delinquent children, children in need of supervision, and dependent and neglected children, but also in all adoption proceedings, proceedings to determine the paternity, legal custody, support, or guardianship of a child or involving the termination or relinquishment of parental rights, and proceedings in which an adult is charged with contributing to the delinquency of a child. This list suggests the broad range of proceedings which may be conducted daily in the Denver Juvenile Court.[8]

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[6] Court Statistics, District 2, Denver Juvenile Court, at 2 (1972). These statistics are compiled annually by the court and used for analysis as well as budget requests. Any statistics cited further in this section are drawn from this compilation by the court which is neither published nor distributed to the public at large. Further mention of statistics in the text will not be footnoted.

[7] The Colorado Children's Code was enacted in 1967 and preceded the Supreme Court decision *In re* Gault, 387 U.S. 1 (1967), the first case according significant due process rights to juveniles. The Code has been amended yearly to conform with later decisions, changes in state facilities, and developing views as to what is "in the best interest of the child and the community."

[8] The full extent of the jurisdiction of juvenile courts in Colorado may be found in COLO. REV. STAT. ANN. § 22-1-4 (Supp. 1967), *as amended*, ch. 110, §§ 2-4, [1973] Colo. Sess. Laws 384-85. There is support among the personnel of the Denver Juvenile Court for changing the jurisdiction to exclude paternity and support proceedings and concentrate more fully on the problems of adolescent offenders; however, it is unlikely that the

Since early in 1971, the judicial personnel of the Denver Juvenile Court have included two full-time judges and two full-time referees. In July 1973, a third judgeship was allocated for Denver Juvenile Court by the Colorado General Assembly. A juvenile judge is appointed by the governor from a list of three names submitted by the Judicial Commission of the Second Judicial District. Judges face retention elections every 6 years. Referees in the Denver Juvenile Court are appointed by the juvenile judge under whom they serve at that judge's pleasure.[9] By statute, referees must be licensed to practice law in Colorado,[10] and the administrative guidelines of the Denver Juvenile Court require that they have practiced law at least 3 years. With the exceptions of jury trials and transfer hearings,[11] referees are empowered to hear any case or matter under the court's jurisdiction. Although parties have a right to an initial hearing before a judge, if they waive their right a referee will hear the case and make findings and recommendations to a judge.[12] If no rehearing before the judge is requested,and if the judge, on his own motion, does not order a rehearing,[13] the judge will approve or disapprove the recommendations of the referee. The recommendations become a final order of the court only upon such approval.[14]

In the Denver Juvenile Court, the referees hear all detention hearings, the great majority of plea hearings, a majority of the dispositional hearings, and most of the review or further dispositional hearings. The judges hear all jury trials, transfer hearings, and omnibus hearings and the majority of trials to court.[15] Judges

legislature would support such a move in the near future, especially since it is only the urbanized Denver Juvenile Court which is pushing for the change. As support for their position, court personnel have documented that in fiscal year 1970-71 paternity and support proceedings accounted for 1,615 of the 5,983 new petitions filed, more than any other single type of proceeding. There is a feeling, particularly among the judicial officers of the court, that the Denver Juvenile Court's primary function in these proceedings is to act as a collection agency for the Department of Welfare.

[9] COLO. REV. STAT. ANN. § 22-1-10(1) (Supp. 1967).

[10] *Id.* § 22-1-10(2).

[11] *Id.* § 22-1-10(1).

[12] *Id.* §§ 22-1-10(3),(4).

[13] Ch. 110, § 8, [1973] Colo. Sess. Laws 387, *amending* COLO. REV. STAT. ANN. § 22-1-10(5) (Supp. 1967).

[14] *Id. See* People v. J.A.M., 174 Colo. 245, 483 P.2d 362 (1971), wherein the court held that the procedure was a two-stage factfinding process and that no jeopardy attached during the first stage.

[15] With the exception of support proceedings, which are handled primarily by the referees, the other proceedings within the jurisdiction of the juvenile court are handled primarily by the judges.

and referees both prefer to preside at the dispositional hearings of those children whose trials they have heard, rather than to transfer the case to another judicial officer for disposition.

Responsibility for investigating child in need of supervision cases has been delegated to the probation department of the court.[16] During the first 5 months of 1972, almost 3,000 such investigations were made by the 22 line-staff probation counselors of the intake units.[17] The field division of the probation department, composed of 18 probation counselors,[18] is responsible for investigating referrals of children already on probation and for filing probation revocation petitions. A total of 408 revocation petitions were filed during fiscal year 1971-72. This division is also responsible for the supervision of children previously placed on probationary status by the court. In April 1972, each field counselor was supervising an average of 54 probationers.

The director of court services and his assistant manage the operations of the probation department. Children in Denver's juvenile justice system, however, rarely see administrators. Their contact is largely with counselors at the hall if they are detained, with the probation counselors in any case, and with the judicial officers if their case is handled by the filing of a petition.

The Denver City and County Building houses the juvenile court. About 15 minutes away from the city and county building is juvenile hall, where the intake division of the probation department is located. Unit III of the intake division, the screening unit, is responsible for interviewing all children brought to the hall by

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[16] Ch. 110, § 16, [1973] Colo. Sess. Laws 390, *amending* COLO. REV. STAT. ANN. § 22-3-1(2)(a) (Supp. 1967), which reads:

> Whenever it appears to a law enforcement officer or other person that a child is, or appears to be, within the court's jurisdiction, as provided in section 22-1-4(1)(c) [CHINS] or (1)(d) [dependency and neglect], the law enforcement officer or other person may refer the matter to the court, which shall have a preliminary investigation made to determine whether the interests of the child or of the community require that further action be taken, which investigation shall be made by the probation department, county department of public welfare, or any other agency designated by the court.

The Denver Department of Welfare investigates possible dependency and neglect cases and files petitions in this jurisdictional area with the court's authorization.

[17] Line-staff counselors are responsible for the day-to-day handling of cases, whereas their supervisors generally handle administrative matters and oversee the management of caseloads. The intake division also includes a director, three supervisory counselors, and three counselors who deal in the specialized areas of guardianship and delinquency prevention through volunteer services.

[18] The field division also includes a director and four supervisory counselors.

the police or their parents. Division III of the Denver Juvenile Court is also located in the administrative wing of this building. Since 1972, this courtroom has been used on a regular basis for delinquency and children in need of supervision hearings, in addition to daily detention hearings. The referees rotate assignment between divisions III and IV approximately once a month.

IV. CRITICAL JUNCTURES

A. *Characteristics Common to All Critical Junctures*

While there are apparent differences among the critical junctures, there are also some common characteristics. All junctures occur in the Denver Juvenile Court and are presided over by staff persons of the court. Thus the philosophies, pressures, and vagaries of the court, as well as the strengths and weaknesses of court personnel, are influencing factors in each juncture. Each of the junctures takes place in the facilities of the court, and whether those facilities are cramped or luxurious obviously influences the behavior of the participants in the decisionmaking process. A child, moreover, may be placed in or released from detention[19] as a result of a decision made at any of the junctures. In most instances, detention decisions are made by judicial officers.

Finally, statutory definitions of delinquent children and children in need of supervision are employed at each critical juncture, although the interpretation imposed in practice varies. The Code defines delinquent children as follows:

> (17)(a)(i) "Delinquent child" means any child ten years of age or older who, regardless of where the violation 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.[20]

Important exceptions to the above definition are children who, having been previously adjudicated delinquent, commit an act

[19] Detention is defined as secure custody in physically restricting facilities. COLO. REV. STAT. ANN. § 22-1-3(12) (Supp. 1967).

[20] People v. D.R., 29 Colo. App. 525, 487 P.2d 824 (1971), held in essence that a "lawful order of the court made under this chapter" did not include conditions of probation imposed as a result of an adjudication that a child was a child in need of supervision, if violation of the conditions of probation would not in themselves be sufficient to sustain a delinquency petition.

which would be a felony if committed by an adult, or who are 14 years or older and commit crimes of violence.[21]

Children in need of supervision, referred to by judges and children alike as "CHINS", are defined in the Code as follows:

> (18)(a) "Child in need of supervision" means any child:
>
> (b) Who is repeatedly absent from school in violation of the requirements of Article 20 of Chapter 123, C.R.S. 1963.[22]
>
> (c) Who has run away from home or is otherwise beyond the control of his parent, guardian, or other legal custodian; or
>
> (d) Whose behavior or condition is such as to endanger his own or others' welfare.[23]

B. *Referral to the Denver Juvenile Court by Police, Parents, or School Officials*

1. Police Referral

Approximately 1,350 juveniles per month pass through the Delinquency Control Division (DCD) of the Denver Police Department, some to be sent to juvenile hall and others to be released to their parents. Typically, DCD will receive a report of suspicious activity by juveniles. Officers will be sent to the scene and, after an investigation, will decide whether to take the children into custody. If the officers do take the children into custody, they will be taken to DCD where the arresting officers will attempt to notify the parents and will determine whether there are any juvenile case histories on the children. The children may then be interrogated about the alleged offense. On this basis, a DCD detective will decide the course of action to be taken. In the more "serious" cases, the children will be transported to juvenile hall for detention.

The children in this typical situation might also be dealt with in a number of other ways. The arresting officers will often lecture the children on the street and then release them, or merely take them home to their parents, especially if the officers feel that either the DCD detective or the complaint deputy at the district

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[21] COLO. REV. STAT. ANN. § 22-1-3(17) (Supp. 1969), *as amended*, ch. 110, § 1, [1973] Colo. Sess. Laws 384.

[22] Basically the requirement, with exceptions listed in the statute, is that "[e]very child who has attained the age of seven years and is under the age of sixteen . . . shall attend public school for at least one hundred seventy-two days during each school year." COLO. REV. STAT. ANN. § 123-20-5(1) (1963).

[23] COLO. REV. STAT. ANN. § 22-1-3(18) (Supp. 1967).

attorney's office will conclude that the offense does not require the filing of a petition.

Similarly, the officers might choose to take the children home immediately after they are taken into custody and to leave with each child and his parents a request to appear at DCD at some later time for investigation by a detective.[24] The police officers might also have contacted the children's parents before transporting the children to DCD. Officers at DCD have observed that if the parents are present at DCD during the questioning and willing to take their children home at that time, the detectives are much more inclined to release them, especially if the parents seem able to assert control over their children.

If the parents appear at DCD, they may be asked to participate in the interrogation. In this case, the children and their parents will usually be advised of their legal rights.[25] A statement of these rights is generally read in a perfunctory manner by the officer, and the parents and children are then left alone to discuss the matter. Often the officer suggests that if the children waive their rights, matters will be facilitated, or states as an inducement that the case is not going to be referred to the court anyway (a decision which the detective and not the officer makes). If any child decides voluntarily to speak with the officers, he and his parent are asked to sign a juvenile advisement form.[26]

The Code is fairly explicit in its directives to "law enforcement officers." While it does not require that a specific division be established to deal with juvenile offenders, the Denver Police Department has nevertheless created one. Any person taken into custody by a police officer who informs that officer that he is

[24] These requests carry no legal significance as far as most attorneys who practice in the Denver Juvenile Court are concerned, and any appearance by child or parent is wholly voluntary on their part. Furthermore, there is no provision in the Colorado Children's Code for these requests, which have become known as "order-ins."

[25] Miranda v. Arizona, 384 U.S. 436 (1966).

[26] Except for discussions of police conduct with regard to the involuntariness of juvenile confessions in Haley v. Ohio, 332 U.S. 596 (1948), and Gallegos v. Colorado, 370 U.S. 49 (1962), the Supreme Court has not dealt with the rights of juveniles in the custody of the police. Therefore, the legalities of the police relationship with juveniles are determined by the Colorado Children's Code and the cases decided by the appellate courts of Colorado. Information concerning the guidelines and procedures used by the Delinquency Control Division of the Denver Police Department was obtained as a result of a lengthy interview conducted with the chief of the division in August of 1971, and several observation and interview sessions within the division were conducted during the summer of 1971. Procedures have not changed appreciably since the dates of those interviews and observations.

under 18 years of age, or whom the officer believes to be under 18, is processed through DCD regardless of the nature of the offense alleged. If an offense is processed through the burglary division, for instance, and it is later discovered that the person charged is a juvenile, the case will be transferred to DCD.

Once a child has been taken into custody by a law enforcement officer,[27] the Code defines the duties of that officer:

> (1) When a child is taken into temporary custody, the officer shall notify a parent, guardian, or legal custodian without unnecessary delay and inform him that, if the child is placed in detention, all parties have a right to a prompt hearing to determine whether the child is to be detained further. Such notification may be made to a person with whom the child is residing if a parent, guardian, or legal custodian cannot be located. . . .
>
> (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) Except as provided in paragraph (b) of this subsection (3), 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 legal custodian.
>
> (b) If he is not thereupon released, as provided in subsection (2) of this section, he must be taken directly 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 and any agency or persons so designated by the court at the earliest opportunity that the child has been taken into custody and where he has been taken. He shall also file a brief written report promptly with the court and any agency or person so designated by the court, stating the facts which led to the child being taken into custody and the reason why the child was not released.[28]

Generally, the DCD adheres rigorously to these guidelines. Upon occasion children have been transported through the city and interrogated in patrol cars before being taken to DCD, and

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[27] The guidelines for taking into custody are found at COLO. REV. STAT. ANN. § 22-2-1 (Supp. 1967). Discussion of the procedure is not included as part of this study. The phrase used is "taken into temporary custody" rather than "arrested." *Id.* § 22-2-1(3) (Supp. 1967).

[28] *Id.* §§ 22-2-2(1) to -(4), *as amended*, ch. 110, § 12, [1973] Colo. Sess. Laws 388.

there have been isolated cases of police brutality to juveniles occurring between the time a youngster left DCD with the officers and his arrival at a hospital or at juvenile hall. These cases have been extremely rare, however, and have frequently resulted in massive publicity and investigations of the officers involved.

Yet the good intentions of the officers are unfortunately often frustrated. Sometimes parents do not receive notification of their child's detention until long after he reaches juvenile hall. The most common reason for this delay is that many parents simply cannot be reached. The Code seems to contemplate that parents will respond positively when notified that they may meet their children at DCD. However, one DCD detective has estimated that between 10 and 25 percent of the children taken to juvenile hall every month are placed there not because the police feel they should be detained, but because parents cannot or, more often, will not take the child home. Needless to say, this parental decision moves the child forward through the juvenile justice system.

DCD routinely complies with subsection (3) of the above-quoted Code section. Perhaps the reasons underlying this compliance are that there is no holding facility in the division[29] and that the rate of escape would be even higher than the present rate if processed children were held in the division. The facilities of DCD are cramped, and an enormous amount of traffic funnels through the offices hourly.

Subsection (4) is satisfied by the use of the juvenile case summary sheet, which is forwarded to juvenile hall if the child is detained and given to the parent if the child is released.

The interpretation given by the police officers and detectives to the vague statutory language in subsection (2) requires some discussion. The statute demands release of the child "unless his immediate welfare or the protection of the community requires that he be detained." Although this standard was not mentioned by the receiving officers interviewed, they did delineate standards which they utilize for deciding whether to send children to juvenile hall. Children on probation or parole are always taken to juvenile hall[30] regardless of the offense alleged or the pattern of

[29] COLO. REV. STAT. ANN. § 22-2-3(6) (Supp. 1971) prohibits holding children in the city jail located on the fourth floor of the same building.

[30] Police officers and Denver Juvenile Court intake personnel who were interviewed both admitted that alleged parole violators of any age are generally refused entry at juvenile hall and are confined in the Denver city or county jail. Some court personnel insist

previous offenses. Juveniles subject to an order of detention[31] or a request for apprehension of a runaway child are detained unless the parent who signed the order or request is prepared to accept the release of the child from DCD. Finally, the officers and detectives look to the seriousness of the offense as a criterion for detention. Apparently, each detective's subjective view of what is "serious" guides the decision. Another obvious, though unstated, factor is the authority and discipline exercised by the child's parent. Those who are stern with their children or who promise retribution gain the release of their children more often than those parents, especially unmarried mothers, who are tearful, confused, or seemingly lacking in control over their children.

Because the responsibility for filing a "CHINS" petition is vested in the Denver Juvenile Court (delegated to its probation department) and because delinquency petitions are filed by the district attorney's office, the DCD can refer a case or an offense for filing to the court or to the district attorney.[32] The procedure is administrative, and is not provided for in the Code. In the case of every juvenile brought to DCD, a juvenile case summary sheet is completed by the arresting officer and checked for completeness by the DCD detective or receiving officer. On the basis of this summary, any interrogation of the child, and the investigation, the receiving officer must make his decision whether to send a formal complaint to the court or to the district attorney. In the case of a "first offender," the officer is given broad discretion by the division, regardless of the presence of probable cause, in deciding whether to refer the complaint. Two of the detectives interviewed stated that in addition to the referral criteria enumerated above, they give great consideration to the attitude of the child in a first arrest situation. One also indicated that if the *parent*

the decision is discretionary with the Director of Juvenile Hall, while the police maintain that no alleged parole violator over the age of 16 years is ever accepted for detention at juvenile hall. It would seem that both the police and the court personnel are operating in direct contravention of a directive from the Denver Juvenile Court judges dated April 6, 1971, which states that "no juvenile shall be transferred from Juvenile Hall to either City Jail or County Jail without a written specific order signed by the Court." In addition, the practice violates COLO. REV. STAT. ANN. § 22-2-2(3)(b) (Supp. 1967), quoted in the text, and section 22-2-3(6)(a) (Supp. 1971). While the practice could conceivably be justified in specific cases, the across-the-board policy administered under the discretion of the Director of Juvenile Hall is certainly questionable.

[31] *See* COLO. REV. STAT. ANN. § 22-2-4 (Supp. 1969) for requirements.

[32] Ch. 110, § 15, [1973] Colo. Sess. Laws 389, *amending* COLO. REV. STAT. ANN. § 22-3-1 (Supp. 1967).

were "uncooperative" or "cocky," he would file on the child, regardless of the child's attitude. The other detective intimated that if he felt discipline from the parent was forthcoming, he would not file, preferring to see the matter handled at home. Exactly what parental actions the detectives were looking for is unclear.

On a second-time alleged offense, discretion is removed from the detectives and, upon a finding of probable cause, the child's case must automatically be referred to the district attorney regardless of whether the child was convicted of the first alleged offense. This procedure was justified by the chief of the division in the following manner: "If we waited for a conviction in the Denver Juvenile Court, we would never refer anyone for further action." Cases of children on probation or parole are referred automatically for further action.

The referral goes initially to a district attorney who works with the division in making a further determination as to the existence of probable cause. If the district attorney advises the officers to pursue the case, the investigation is completed and the complaint usually reaches the probation department of the court within 15 to 30 days after the alleged offense.

Whether or not a case will eventually be filed was seen by all the officers interviewed as having a bearing on whether an advisement of rights should be given to the child and his parents. This was so even though the decision to refer to the district attorney in most cases is made following interrogation and is automatic. One detective said: "Advisement is never made unless there is an intention to file . . . . You always know if you're going to file." The detective may know, but the arresting officers, who are generally responsible for advisement, may not. It was observed that advisement was also not given if violations of municipal ordinances were alleged, if the interrogation was for the purpose of "case clearance" or recovery of property, or if the officers felt that the case would not result in a court hearing even if it were referred to the district attorney. This final reason probably explained most adequately why police officers are lax in following the Code guidelines with regard to advisement. The chief of the division, for example, estimated that perhaps 1 percent of the cases referred to Denver Juvenile Court by DCD lead to a formal hearing.[33]

[33] Ch. 110, § 12, [1973] Colo. Sess. Laws 388, *amending* COLO. REV. STAT. ANN. §

This selectivity in advisement is practiced in spite of the Code provision that all statements or admissions of a child concerning acts which would be a crime if committed by an adult that are obtained in violation of his right to formal advisement shall be inadmissible in evidence.[34]

2. Parental Referral

> I've been passed from one court to another. I have no money for private help. I just want to get her off the streets.
>
> Parent[35]

Generally parents refer their children to Denver Juvenile Court by calling or visiting the intake units of the probation department. Occasionally, however, a parent will bring his child directly to juvenile hall.[36] Parental reasons for referral are varied and difficult to define.

Some parents use the court or a threat of court action to curb anticipated misbehavior or minor infractions of parental rules by their children. This "threat" usage of the court has diminished over the period of this study, primarily because so many serious problems are presented that probation counselors give little attention to anticipated or minor misbehavior.[37]

22-2-2(3)(c) (Supp. 1971). This section of the Colorado Children's Code goes far beyond the requirements stated by the United States Supreme Court in *In re* Gault, 387 U.S. 1 (1967), which specifically limited the juvenile's right to counsel and right against self-incrimination to the adjudicatory phase of a delinquency proceeding. *Id.* at 13 & 31 n.48. Under the cited section of the Code, Colorado courts have recognized "that the juvenile is entitled to comparable protection in connection with the waiver of his Fourth Amendment rights." This is so even though the section cited in the text refers specifically to statements and admissions of the child. People v. Reyes, 174 Colo. 377, 483 P.2d 1342 (1971). *See also In re* B.M.C., 506 P.2d 409 (Colo. Ct. App. 1973).

[34] The Denver Juvenile Court personnel would probably dispute the chief's estimate. The typical filing rate, according to court statistics, is 53.8 percent of *all* referrals, though how many of those filings do actually make it to a formal hearing could not be ascertained from the court's statistics.

[35] Keene, *God Bless the Child*, CERVI'S J., July 5, 1971, at 7.

[36] If this is the case, the hall will either accept the child for detention, or the parent and child will be asked to speak immediately with the intake screening counselor on duty to ascertain what further action is required.

[37] A former judge in the Denver Juvenile Court describes this change in the court's function as follows:

> [T]he court was visible. If your child was giving you static, you could go to court and the court had developed, in my mind, this loathsome image (a) of being everything to all people, and (b) as the whipping boy for parents and school teachers and administrators and police and everyone, to psychologically whip youngsters around to say "you better shape up or you're going to court. . . ."
>
> . . . .

Some parents refer their children to the Denver Juvenile Court as a last resort, looking to the court as the ultimate social agency to deal with family problems. Many of the problems are real and serious, posing a genuine threat to the health or welfare of the child or his family. Others reflect the developing life styles of young people, which although perhaps inimical to parents, do not result in actual danger or damage to the child, his parents, or the community. Some parental referrals can also be seen as conscious or unconscious efforts of the parent to expose his physical, psychological, or marital problems through the child surrogate.

Parental referrals are generally handled as CHINS referrals, being encompassed within the vague statutory rubric that the child has "run away from home," "is otherwise beyond the control of his parent," or his "behavior or condition is such as to endanger his own or others' welfare."[38] Regardless of the reasons for parental referrals or their validity, referrals must be considered by the court. That consideration usually occurs in the context of the next three critical junctures to be discussed.

3. School Referral

The statutory definition of a CHINS includes a child who is "repeatedly absent from school,"[39] presumably without a valid excuse. The Code thus necessarily involves the court in school problems. Referrals are generally received by the intake units of the probation department from a school social worker or assistant principal. Because the law does not define "repeated" absence, school officials must use their own discretion in referring children to the court. If an official allows a problem student to remain absent continuously, he may never refer a child for court filing. Other school personnel automatically recommend filing after seven unexcused absences. Still other cases are referred to the court only after every effort has been made by school social work-

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[I]t's this changing public perception of the court that needs more time to filter through. Because when you take the old conception which I have described, then you take the conception that I had of the court as a screener, as a court of last resort, and as a court of law and a court of lawyers, and with rather substantial diversion—then you can see public impatience with the court because they saw the court as the club and as the efficient quick club where kids really were immediately processed and threatened or banished.

[38] COLO. REV. STAT. ANN. §§ 22-1-3(18)(a), (c), (d) (Supp. 1967).

[39] *Id.* § 22-1-3(18)(b) (Supp. 1967).

ers, community agencies, and teachers to work with the children and their families in altering class schedules and in making counseling services or psychological evaluation available.

Generally, children alleged to have committed truancy violations are not detained in juvenile hall unless they are subject to other CHINS or delinquency allegations. Their initial contact with court personnel is usually an interview with an intake probation counselor in the presence of the referring school official and their parents.

It is impossible to determine from present court statistics how many cases are referred by police, parents, and school personnel. The police, through the district attorney, undoubtedly refer the majority, followed by parental referrals and school referrals. The referral is the means by which the child enters into Denver's juvenile justice system. It assures him, at the least, of speaking with a probation counselor, at the most, of passage through the remaining eight critical junctures to receive "help" from the court.

C. *Probation Department Decision to Detain Pending Detention Hearing:*

> I try to look at the child and look at the parents, and I see if there is a possibility that the parents can supervise that child at home . . . . I have to feel that the child can be relatively safe staying at home . . . because I think that is where he should be if at all possible.
>
> Intake Probation Counselor[40]

Almost hourly, a patrol car will turn into the alley behind juvenile hall with a child or two for the admissions office. The door is locked, and a buzzer must be pushed to notify the counselor that another child is awaiting admission. The child will pass through the door into a poorly lit office area. Behind a large counter, a juvenile hall employee waits to get basic information from the child and to relieve him or her of all valuables. If an intake screening counselor is not readily available,[41] the child will

[40] During fiscal year 1971-72, 4,739 children were admitted to Denver Juvenile Hall. The projected figures for the following year suggest that 5,876 will be admitted. On an average day in 1971-72, 83 youngsters were detained at the hall—some serving time on the school program, some waiting for court hearings, some waiting for placement in group homes, and some waiting for their parents to want them home again.

[41] Beginning in early 1972, unit III of the intake division of the probation department, located at juvenile hall, initiated a work schedule which required one counselor from the unit to be responsible for the screening of children brought to the hall. There is a "screen-

be placed in a small locked room across from the admissions office until an interview can be arranged which will aid in determining whether or not the child will be detained pending a detention hearing before the court.

Frequently, no explanation of the procedures which are being followed or what can be expected is given to the child; generally he has a fairly clear idea why he is where he is, but little insight into what is coming next. Therefore, when the screening probation counselor arrives, he may appear to the child as a friend. The child has just been impersonally treated by police officers or overwrought parents and a juvenile hall employee, and anyone who will talk to him is an improvement. The screening probation counselor already has obtained some information on the child from the police summary sheet accompanying him. If the child is currently on probation or awaiting other court action, the screening counselor will defer to the counselor already involved. If the child is new to the court, the screening counselor will make the detention decision himself.

If the screening counselor determines that the child can be released, the child will usually wait in the admissions area for his parent or probation counselor to take him home. He and his parents may be asked to promise to return for further interviews at a later date. Some children who are not potential runaways are released to shelter care because of parental refusal to respond or because of the child's fear of returning home.[42] If it is determined that the child must be held pending a detention hearing, he will be taken to one of the units upstairs, relieved of his own clothing, given juvenile hall clothing, and introduced to his "home" and "roommates" for at least the next 48-hour period.

Although it is not part of the administrative guidelines for hold or release from juvenile hall, an informal procedure was noted by a screening counselor:

> Now, if they are 16 or over [and on parole], they'll just be taken to city jail and you won't have to make that decision. You do have to make the decision to have them go to city jail . . . but that's kind

ing counselor" on duty from 7:00 a.m. to 11:00 p.m. daily, including weekends. A child brought to the hall after 11:00 p.m. would be transferred to a unit upstairs to spend the night, and would be interviewed the following morning.

[42] According to one intake probation counselor who serves as a screening counselor at least 1 day a week, well over half of the children who are brought to juvenile hall are released prior to their detention hearings—that is, within 48 hours.

of a policy, if they are 16 or over and on parole, then they go to city jail.[43]

The screening unit is a relatively new administrative innovation in the court.[44] Before its inception, children brought to the hall were interviewed by a juvenile hall employee and transferred immediately to units upstairs. The probation counselors had the authority to release a child prior to his detention hearing, but because there was no efficient mechanism for contacting the counselor and because a full unit of intake counselors was not housed in the hall, release was much less frequent. This resulted in detention hearing dockets of 10 to 20 children daily and massive overuse of detention facilities.

The Code does not provide for the establishment of special screening units, nor does it delineate, except in the most general language, the criteria to be considered in deciding to detain a child.[45] It defines detention and shelter care as follows:

> (12) "Detention" means the temporary care of a child who requires secure custody in physically restricting facilities pending

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[43] *See* discussion in note 30 *supra*.

[44] The efficient operation of the juvenile hall screening unit has probably been the most notable reform effected in Denver Juvenile Court during the period of time covered by this study. Its purpose and structure were described by the acting assistant director of court services as follows:

> [T]he unit at the hall was set up so there would be a professional approach—dialogue—between the child first coming into detention and professional decisions being made at that point.
>
> The way it's structured is that when a child is picked up anywhere in the city, the child will go through the Delinquency Control Division and they have a receiving officer on duty 24 hours a day, 7 days a week. This receiving officer makes the initial decision whether the child should be released or detained.
>
> . . . .
>
> Once that decision is made, if the decision is made for detention, the child comes to juvenile hall. Immediately upon the child's arrival, he is interviewed—screened—by an intake probation officer. This officer has the final say as to whether the child is to be detained or not, and there are certainly cases where we don't go along with the police department's recommendation. They might have recommended detention but we might release the child. So it has to be clear—it is clear—to the police department and the probation department that the final decision is made by that particular officer. . . . If the police are saying "hold" and the probation officer is saying "release", the supervisor is contacted and has to agree with the probation officer before the child is released.

But see ch. 110, § 12, [1973] Colo. Sess. Laws 388, *amending* COLO. REV. STAT. ANN. § 22-2-3-(3)(b) (Supp. 1967).

[45] There are neither United States Supreme Court nor Colorado appellate court decisions with regard to the preadjudicatory phase of detention.

> court disposition or an execution of a court order for placement or commitment.
>
> (13) "Shelter" means the temporary care of a child in physically unrestricting facilities pending court disposition or execution of a court order for placement.[46]

The authority of the intake division of the probation department to act on detention prior to a detention hearing is apparently derived, as a delegated responsibility, from the following Code section:

> (4) The court may at any time order the release of any child, except children being held pursuant to paragraphs (b) and (c) of subsection (3) of this section, from detention or shelter care without holding a hearing, either without restriction or upon written promise of the parent, guardian, or legal custodian to bring the child to the court at a time set or to be set by the court.[47]

The Code requires the use of shelter care rather than detention where appropriate, but it does not require that a hearing be held to determine its necessity.[48] Presumably, the authority to release a child to shelter care has also been delegated to probation counselors by the court, although shelter is not mentioned in the court's administrative guidelines reprinted below.[49]

The only other official guidelines on detention standards are found in the Colorado Rules of Juvenile Procedure. Rule 58(a) uses as a standard the child's "immediate welfare or the protection of the community," while the comparable language of Rule 59(a) is "the child's best interest or that of the community."[50]

The court has interpreted these broad statutory guidelines and has formulated a court policy on hold or release from juvenile hall. Its policy statement was written by the director of field services and the acting director of intake with the help of their staff supervisors, and reads as follows:

> I. *Discretion To Release:*
>
> A. When any child is brought to Juvenile Hall to be detained,

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[46] COLO. REV. STAT. ANN. §§ 22-1-3(12), (13) (Supp. 1967).

[47] Ch. 110, § 14, [1973] Colo. Sess. Laws 389, *amending* COLO. REV. STAT. ANN. § 22-2-3(4) (Supp. 1967).

[48] COLO. REV. STAT. ANN. § 22-2-3(1) (Supp. 1967).

[49] One reason for this omission may be the crucial lack of shelter facilities available to the Denver Juvenile Court and the presumption, probably legitimate, that the agency charged with the responsibility of establishing and making available to the court adequate shelter care would respond more quickly to an order for shelter placement by the court than a request for it by a screening counselor.

[50] COLO. R. JUV. P. 58(a), 59(a).

the proper probation officer, Intake or Field, will make the final determination on the Hold or Release of the juvenile.

II. *Reasons For Holding a Child:*

A. Unless otherwise committed to a probation program, or ordered by the Court, no child should be detained in Juvenile Hall, unless the child is a danger to himself or to the community.

B. A child is not to be held in Juvenile Hall merely as a disciplinary measure.

C. A child is not to be held in Juvenile Hall merely for investigation. If investigation of unsolved complaints becomes a factor in danger to self or community, the probation officer should take this into careful consideration.

. . . .

E. A child should be held if there is strong evidence he is a danger to himself or the community even though that danger is not at the moment completely established.

1. Danger to self or community must be established by taking into consideration all involved factors - probable cause, seriousness of alleged offense, pending court action, past behavior pattern, social and psychological history, and knowledge of home and community environments.

The discretion allowed a probation officer in deciding to release a child varies depending on the DCD's request to hold or release. If the DCD wishes the child to be held, the proper supervisor or director must approve the child's release, unless the police hold was requested because the child is alleged to have committed a delinquent act which would constitute a felony if committed by an adult, in which case the child must be held for a detention hearing.[51] Before a release is permitted, a conference between the probation counselor and the child must take place. If a decision cannot be reached, the child is held pending a final decision by the director. If the DCD indicates that the child may be released, the probation counselor has full discretion over the detention decision.

After the above guidelines had been promulgated, structured interviews were conducted with probation counselors to determine their own practices. The counselors were asked what criteria were used in the decision to hold or release and were asked whether the decision was theirs alone to make. Most of those interviewed were familiar with the guidelines but had embellished and interpreted them substantially to reflect their own

[51] Ch. 110, § 13, [1973] Colo. Sess. Laws 389, *amending* COLO. REV. STAT. ANN. § 22-2-3(3)(b) (Supp. 1967).

philosophies and experiences. Many of these embellishments are consistent with the statutory requirement of detention where the child's "immediate welfare or the protection of the community" can be served.[52] Certainly repeated runaways, users of hard drugs, and juveniles whose conduct suggests the probability that they will commit further similar offenses might reasonably be detained under this standard. However, detaining a child for the purpose of forcing parental involvement in a treatment plan or of gathering investigative information, as one intake screening counselor suggested, would seem to be only indirectly related to the best interests of the child. Surely, a recommendation of detention because shelter care or other alternative holding facilities are unavailable is not acceptable.

All of the line-staff probation counselors questioned indicated that, in most cases, they would not ask that a child be detained unless a formal petition on the alleged offense was going to be filed. The acting assistant director of court services, however, did not feel this was an absolute requirement. In spite of the guidelines promulgated by the court administrators, the counselors felt the detention decision was theirs alone to make in the first instance. One suggested conferring with the supervisor only for the sake of communication, another, with DCD for informational purposes.

The decision to release a child is obviously not reviewed by the court since the child will not appear for a detention hearing. Nor can it be assumed that the decision is reviewed by a supervising probation counselor. On the other hand, if the decision is made to detain the youngster, that decision will be reviewed by the court within 48 hours.[53]

D. *Detention Hearing*

> Effective Monday, December 13, 1971, members of the Court Intake Staff will advise all children detained at Juvenile Hall of their right to an attorney and a list will be compiled daily of the children on the Detention Docket who desire attorneys. This list will be available to the Public Defenders and Legal Aid Attorneys at the Admitting Office. The children will be brought from the units to be interviewed by the attorneys in the interviewing rooms across from the Admitting Office.[54]

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[52] COLO. REV. STAT. ANN. § 22-2-2(2) (Supp. 1967).

[53] *Id.* § 22-2-3(2) (Supp. 1971).

[54] Memorandum to Public Defenders and Legal Aid Attorneys from the Presiding

The referee who sits at juvenile hall in Division III of the Denver Juvenile Court averages eight to nine detention hearings an afternoon, Monday through Friday. Until the establishment of the intake screening unit at the hall, hearings were often held for as many as 20 youngsters in a single day. Most children are now represented by counsel, and a representative of the district attorney's office attends all hearings, arguing vigorously for detention in many of the more serious delinquency allegation cases and taking no role whatsoever in most CHINS cases.

The child who is detained as a result of his interview with a probation counselor often waits in an upstairs living unit at juvenile hall for at least one full day following the interview. On the day of his scheduled detention hearing, he will be brought to the lobby area of the visiting or interviewing rooms across from the admitting office. The child may or may not have been advised as to the purpose of this removal. Generally, promptly at 1 p.m., a representative of the public defender's office and a student attorney from the University of Denver's Clinical Legal Education Program will arrive, detention docket in hand.

The child may be impressed by the youth and the rather "hip" appearance of his attorney. Most are in their twenties, many are women, and all have a casual attitude with regard to their own and the court's status as authority figures. The attorneys, on the whole, show concern for helping the child to understand what is going to happen in the detention hearing, and most of the children readily choose to be represented. Those who are unsure or unconcerned about being represented are generally represented anyway.

When the attorney tells the child that the purpose of the detention hearing is to determine whether he is going to remain at juvenile hall, return home, or go to a welfare shelter placement, the child, when asked, will almost always respond that he wants to go home. In the rare case where the child may fear abuse at home, he will select the protective closed environment of juvenile hall. Even though the majority of the children interviewed had been represented by counsel before, most seemed genuinely surprised that anyone cared about their feelings.

Judge of Denver Juvenile Court, Dec. 9, 1971. The memorandum is court policy only and is not drawn from the Children's Code which requires only that children and parents be advised of the child's right to counsel "at his first appearance before the court." COLO. REV. STAT. ANN. § 22-1-6(1)(a) (Supp. 1967).

The typical attorney-child interview lasts for 5 to 15 minutes, although often the attorney is able to speak with the child immediately before the hearing to tell him whether his parents are present and whether the child's assessment of their willingness to take him home is correct. After all of the children have been interviewed, they are escorted upstairs through many corridors and locked doors. The children are then moved downstairs in the other wing of the building where they sit in a cramped stairwell to await being called by the sheriff, who attends all detention hearings.[55]

When each child's name is called, the locked door to the stairwell opens, and the child is led by the sheriff across a hall to the courtroom. The child's attorney either is sitting at defense counsel table or meets him in the hall. The parents of the child, who have been waiting near the courtroom in a lobby area, are now called and join the child and his attorney at counsel table. This is often the first time that the child and his parents have seen each other in 2 days.

After questioning counsel about his or her willingness to proceed before a referee[56] and to waive formal advisement of the child's rights,[57] the referee will ask the probation counselor to proceed. In almost all cases, the probation counselor is the same person who made the initial decision to detain the child. He will relate why the child is before the court, often stating as fact the alleged offense. The counselor's information is derived from the police summary sheet, past court records of the child, and interviews with the child and his parent. On the basis of this information, the probation counselor makes a recommendation as to detention or release. After this presentation, the child's attorney is permitted to question the counselor about the statements made or about omissions in the presentation. In addition, the referee and opposing counsel may question the probation counselor about his recommendation. Experienced probation counselors are careful to recite the alternative litanies that the child is "a danger

[55] The sheriff has become a permanent fixture at detention hearings because of the large number of children who have escaped by running down the carpeted hall about 20 feet to an open door used by the general public as the entrance to the courtroom area. In fiscal year 1971-72, 76 children were "AWOL" from juvenile hall, a decrease of 22 from the previous year.

[56] Ch. 110, § 6, [1973] Colo. Sess. Laws 386, *amending* COLO. REV. STAT. ANN. § 22-1-10(3) (Supp. 1967).

[57] COLO. REV. STAT. ANN. § 22-1-6(1)(a) (Supp. 1967).

to himself or the community" or that his detention or release is "in his best interest or in the best interest of the community." With newer counselors, however, the referee may have to consciously lead the presentation so that the counselor ends by articulating these statutory standards for detention.

The evidentiary rules applicable to detention hearings are informal. Witnesses are rarely sworn, opinion testimony and hearsay are widespread, and probation counselors often urge as the basis for detention the commission of offenses by a child which have not been admitted or proved. Repeated objections by attorneys are frowned upon by the court.

After the counselor's presentation is completed, the attorney for the child will present the child's case. Usually this consists of either relating or having the child relate what he wants to do, arguing that the child's situation does not fall within the parameters of the standards for detention, and possibly enlisting the support of the parent for the child's viewpoint. If the parent's view is contrary to the child's wishes, the attorney will at least make the parent's view clear to the court and then attack it. The attorney for the child will also suggest the alternative shelter replacement if it is appropriate and desired by the child. The referee may question the child or the attorney following this presentation. In addition, the court will usually ask the parents how they feel about the situation.

If serious allegations of delinquency are at issue, the representative of the district attorney's office may then present the case for the "prosecution." If the counselor is recommending release, some elements of a contested hearing may ensue, and the representative may choose to cross-examine any of the persons who testified. It must be remembered that the district attorney's representative generally has available for review only that information which has been developed in the hearing and additional reports from the files of the police department or district attorney. Rarely has this representative interviewed either the child or the child's parents.

After listening to these arguments, the referee will make findings and will recommend further detention, shelter placement, or release to the parents. The recommendation may be followed by emotional appeals from the parents or child or by an oral request on the record from counsel for the child for a rehearing before a judge.

If the child is released to his parents, they may leave the hall within approximately one-half hour, possibly with orders to return to speak further with a probation counselor about contemplated court action. If a shelter placement is ordered for the child, the probation counselor is charged with the duty of contacting the Denver Department of Welfare to request that a child welfare worker transport the child from juvenile hall to the shelter facility.[58] This will occur 2 hours to 2 days following the court's recommendation, during which time, of course, the child remains in detention. Probation counselors are not authorized by the welfare department to place the child in a shelter facility.

If further detention is recommended for the child, he will be returned to his detention unit. This recommendation may be reviewed by a judge and can be re-evaluated at any of the later critical junctures. During detention, psychological and medical evaluations of the child may be performed, and the probation counselor will probably visit with him again. However, the child will receive no counseling or treatment, except for the limited amount provided by the unit counselors. A detained child may understandably become depressed following the detention hearing since the average length of stay in Denver's Juvenile Hall in 1971 was 28.7 days.

The provisions of the Code and the Colorado Rules of Juvenile Procedure which deal specifically with the detention hearing are sparse. As a result, an administrative overlay has been developed. But because the detention hearing is the child's first appearance before the court, it may be instructive to examine the provisions of the Code dealing with court hearings generally.

The Code provides that upon a first appearance before the court, the child and his legal custodian are to be fully advised of their constitutional and legal rights, including the right to a jury trial and the right to be represented by counsel.[59] It would seem

[58] Presently there is one shelter facility for girls available to the court and one for boys, so this argument for shelter placement may in many cases be futile. The standard for detention is so vague that almost any behavior can be said to fulfill it, and often does, when there are no placements available in shelter care. In recent months the court has shown decreasing reticence in ordering the placement despite the absence of shelter placements. Only upon occasion will it force the Denver Department of Welfare, to whom the court has delegated the responsibility for the establishment of shelter facilities, to bear the burden of finding *some* nonrestrictive placement or risk being held in contempt of court.

[59] COLO. REV. STAT. ANN. § 22-1-6(1)(a) (Supp. 1967). Subsection (b) provides for

that the rights accorded juveniles as a result of United States Supreme Court decisions should therefore be explained to the child at his first appearance before the court. Those rights include timely written notice to parents and child of the specific charge and factual allegations to be considered at any adjudicatory hearing,[60] retained or appointed counsel for the child in that hearing,[61] the privilege against self-incrimination,[62] confrontation and cross-examination of witnesses against the child,[63] and the right to have the allegations in the adjudicatory hearing proved beyond a reasonable doubt.[64]

These constitutional rights, as well as the right under the Code to a jury trial, apply only to an adjudicatory hearing. Consequently, referees rarely advise the child and his parents of them at the detention hearing. In practice, this is of little significance since in most cases a petition, even if contemplated, has not as yet been filed, and under *Gault*, the court has the responsibility of again advising the child prior to both the plea and the adjudicatory hearings.

Inasmuch as detention hearings are generally held before a referee, the child and his parents should also be advised of the child's right to a hearing before a judge in the first instance,[65] of the effect of the recommendation of the referee,[66] and, following the findings and recommendations of the referee, of the right of the parties to a rehearing before a judge if requested within 5 days.[67]

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court-appointed counsel if the family "requests an attorney and is found to be without sufficient financial means." *Id.* §§ 22-1-6(4)(i), (ii) provide for a "trial by a jury of not more than six."

[60] *In re* Gault, 387 U.S. 1, 33 (1967). *See also* COLO. REV. STAT. ANN. §§ 22-3-2(2)(a) to -3(1) (Supp. 1967); COLO. R. JUV. P. 12-14.

[61] 387 U.S. at 41. *See* COLO. REV. STAT. ANN. § 22-1-6 (Supp. 1969).

[62] Ch. 110, § 12, [1973] Colo. Sess. Laws 388, *amending* COLO. REV. STAT. ANN. § 22-2-2(3)(c) (Supp. 1971) applies to interrogation by police officers if the information garnered is to be used in trial against the child; however, no provision was found which provided that the court must advise the child of this right at any hearing.

[63] 387 U.S. at 57. While the Colorado Children's Code provides in sections 22-1-8(2), (3) for the cross-examination of persons who have submitted reports upon which the disposition of the child's case may be based, it does not expressly provide for the confrontation and cross-examination of witnesses at the adjudicatory hearing, apparently relying on the mandate of *Gault*.

[64] *In re* Winship, 397 U.S. 358 (1969); COLO. REV. STAT. ANN. § 22-3-6(1) (Supp. 1969).

[65] Ch. 110, § 6, [1973] Colo. Sess. Laws 386, *amending* COLO. REV. STAT. ANN. § 22-1-10(3) (Supp. 1967).

[66] Ch. 110, §§ 7-8, [1973] Colo. Sess. Laws 387, *amending* COLO. REV. STAT. ANN. § 22-1-10(4) (Supp. 1967).

[67] *Id.*

If a formal advisement is given by the court at the detention hearing, it generally includes discussion only of the child's right to a hearing before a judge in the first instance, of the right to counsel at every stage of the proceedings, and of the privilege against self-incrimination in the detention hearing. Rarely is the child or parent advised of the child's right to a rehearing before a judge if they dispute the recommendations of the referee.

Other provisions of the Code also apply specifically to detention hearings. "[T]emporary care in a shelter facility designated by the court or the county department of public welfare" is required for those children who must be taken from home but do not require physical restriction.[68] Such children should not be placed in detention.[69] However, all children taken into custody by the police and not released to their parents are in fact placed in Denver's Juvenile Hall at least temporarily, since the police officers are not permitted by the Denver Department of Welfare to take such children directly to a shelter facility.

Some provisions of the Code are applicable to all hearings in Juvenile Court. The Colorado Rules of Juvenile Procedure govern,[70] hearings "may be conducted in an informal manner,"[71] the general public is not excluded unless the court determines such exclusion is in the best interest of the child,[72] a verbatim record is required in all hearings unless waived,[73] and publicity including names or pictures of the parties is forbidden unless specifically ordered by the court.[74]

Generally these provisions, as well as those referring specifically to detention hearings, are well followed by the court. Yet in some instances, the administrative overlay of court structure and procedure has the effect of abridging or nullifying many of the rights included in the formal law. For example, all detention hearing proceedings are recorded by tape recorder, as mandated,

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[68] COLO. REV. STAT. ANN. § 22-2-3(1); *Id.* §§ 22-1-3(12) - (13) (Supp. 1967).

[69] Ch. 110, § 13, [1973] Colo. Sess. Laws 389, *amending* COLO. REV. STAT. ANN. § 22-2-3(3) (Supp. 1967). COLO. R. JUV. P. 59 is more explicit in its guidelines for detention, stating that "[i]f the court finds release will not be contrary to the child's best interest or that of the community it shall release the child to the custody of its parents or other responsible adult."

[70] COLO. REV. STAT. ANN. § 22-1-7(1)(a) (Supp. 1967).

[71] *Id.* § 22-1-7(1)(b) (Supp. 1969).

[72] *Id.*

[73] *Id.* § 22-1-7(2) (Supp. 1967).

[74] *Id.* § 22-1-7(5)(a) (Supp. 1967).

and the tapes retained in the court clerk's office. However, even if counsel immediately files a request for a rehearing of the referee's detention decision, it is often at least 5 days before the judge receives the request, locates and listens to the tape, and is prepared for the rehearing. If the child has been detained, the judge's subsequent decision to release the child benefits him only after 5 to 10 days of detention, and the child's right to a redetermination of the referee's detention decision thus becomes less meaningful.

Similarily, although hearings "may be conducted in an informal manner,"[75] the detention hearing is the only type of hearing conducted in the court in which informality is peculiarly pronounced. Although the injustice which may result to the child is only further detention, and neither commitment nor branding as a delinquent, the following section of the *Gault* decision is apropos:

> [T]here is increasing evidence that the informal procedures, contrary to the original expectation may themselves constitute a further obstacle to effective treatment of the delinquent to the extent that they engender in the child a sense of injustice provoked by seemingly all-powerful and challengeless exercise of authority by judges and probation officers.[76]

The brief description of a typical detention hearing contained in the first part of this section gives some indication of the confused and confusing nature of the hearings in division III of the court. Because the child is usually represented by an attorney, the allegations and authority of the probation counselor and the court may not go totally unchallenged. However, because the informality of the hearing is so extreme, and because those involved generally have only limited information to work with, it may often seem to the child that the recommendations of the probation counselor are always followed by the referee, and the objections of counsel regarding gross hearsay and opinion evidence always ignored. As presently conducted, a detention hearing is an ill-defined hybrid governed only minimally by the formal law. It is too formal in some respects, devastatingly informal in others; sometimes evidentiary, other times oblivious of the rules of evidence; adversary as to participants involved, nonadversary

[75] *Id.* § 22-1-7(1)(b) (Supp. 1969).

[76] *In re* Gault, 387 U.S. 1, 26n.37, citing from PRESIDENT'S COMM'N ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, THE CHALLENGE OF CRIME IN A FREE SOCIETY (1967).

as to the conduct of the hearings; governed by a statutory standard and theoretically limited in scope, but far reaching in practice on account of the hopelessly broad and vague terms of that statutory standard. Influencing every detention hearing is the lack of placement alternatives other than detention and the lack of treatment alternatives within the detention placement.

A further problem regarding the fairness of the detention hearing arises from the role that the probation counselor is forced to play. Because the representative of the district attorney's office is rarely prepared to argue for or against detention, the counselor often appears to the child to be the prosecutor, especially since a determination to release the child would usually have been made prior to the detention hearing.

Most probation counselors are uncomfortable with their role as untrained legal adversaries of the child's attorney, but they believe that making recommendations about a child's detention or release is their responsibility. Whatever negative impressions are left with the child as a result of his perception of the probation counselor as prosecutor can be mitigated, they argue, by establishing the limits of the counselor-child relationship at an early stage. Rejected by each counselor interviewed as both deceptive and inefficient was the suggestion that a hearing officer, who could relate to the court the probation counselor's recommendations regarding detention, might serve to insulate the counselor from the negative reactions of his probationers.

The Code provides that "[n]othing in this section shall be construed as denying a child the right to bail."[77] This broad statement is the only reference in the formal law[78] to the right to bail and must be read together with the vague standards for detention or release of the child. A conflict arises because a child who must be detained for his own welfare still has the right of bail, and if bond is posted, the child's welfare or best interest may be jeopardized. The court's solution has been to detain on the statutory authority and, if the setting of bail is requested, to set such an excessive amount that as a practical matter the child cannot be released. This practice is especially common in CHINS cases. Its

[77] COLO. REV. STAT. ANN. § 22-2-3(7) (Supp. 1967).

[78] COLO. R. JUV. P. 59(c) states that "[i]f the court believes that release will be contrary to the welfare of the child or the community, the court may order further detention and shall support such order with appropriate findings of fact, subject, however, to the right of the child to bail."

effect is to abrogate the child's right to bail, which the Supreme Court has defined as intended only to assure the presence of the accused at further court hearings.[79] Also, because the formal law and the Colorado Rules of Juvenile Procedure provide no standards for ascertaining the amount of bail calculated to meet this purpose, the court rarely inquires as to the financial status of the child or parent, previous appearances or lack of appearance at court hearings following release, and other factors relevant to fixing the amount of bail. In fact, one referee in the court, in response to counsel's argument for reduction of bail, stated that standards set by the United States Supreme Court did not apply.[80]

A final problem in the area of detention is the absence of a time limit for the filing of a petition against the child. The Code provides that "[n]o child shall be held in a detention or shelter facility longer than forty-eight hours . . . unless a petition has been filed, or the court determines that it would be contrary to the welfare of the child or of the community to release the child from detention."[81] The court has utilized the latter basis for detaining children longer than 48 hours and has been generally diligent in bringing children before the court for detention hearings within the time limit. However, once it is determined that a child must be detained, there is no further time period imposed by law within which a petition must be filed.[82] In practice, the filing often takes as long as 10 days, and it is even longer until the plea hearing is held. The child's detention is not automatically reviewed by the court until 10 days after the detention hearing,[83] and even then there is no remedy for the child unless counsel can convince the court to order filing or release within a specified period of time.

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[79] Stack v. Boyle, 342 U.S. 1, 5 (1951).

[80] The presiding judge in the same case had initially set bail at $3,000, and then, upon advice from his clerk that perhaps it would be met, raised it to $5,000 and finally to $10,000, all without questioning the child or her parents. The girl was alleged to have run away from home.

[81] Ch. 110, § 13, [1973] Colo. Sess. Laws 389, *amending* COLO. REV. STAT. ANN. § 22-2-3(3) (Supp. 1967).

[82] *Id.*

[83] This 10-day review of detention is merely an administrative practice of the Denver Juvenile Hall, established following complaints of defense attorneys that children were getting "lost" up in the living units and many times continued to be detained even after the probation counselor had decided to file a formal petition.

The child detained following the detention hearing by then probably feels inexorably bound into the juvenile justice system. The child who is released to his parents or to a shelter facility may be just as involved, but the indices of freedom still exist for him. The decision of the probation department to file a formal petition, handle informally, or handle unofficially probably has the greatest impact on whether the released child is to be exposed to the entire system.[84]

Meanwhile, the child detained in the living units of Denver Juvenile Hall waits—for a visit from his family or lawyer, for his next court appearance, for a chance to escape.

E. *Probation Department Decision to File a Petition, Handle Informally, or Handle Unofficially*[85]

[84] *See* note 85 *infra* regarding the filing decision.

[85] Intense interagency squabbling concerning the discretionary power vested by the Denver Juvenile Court in its probation department to file formal petitions or handle cases informally or unofficially resulted in some of the most sweeping amendments made to the Colorado Children's Code in 1973. The process described in this critical juncture describes the procedures prior to the enactment of the amendments. Those supporting the amendments argued that if there is probable cause to believe a child was involved in a delinquent offense, the case should be brought under the jurisdiction of the court, and special consideration for the child because of family background, emotional problems, or educational or cultural deficiencies should be accorded, if at all, at the dispositional stage of the proceedings, and should not be used as a tactic to keep the child out of the system altogether.

In delinquency cases only, the new provisions designate the district attorney's office as the only agency charged initially with determining "whether the interests of the child or of the community require that further action be taken." Ch. 110, § 15, [1973] Colo. Sess. Laws 389, *amending* COLO. REV. STAT. ANN. § 22-3-1(1) (Supp. 1967). The requirement for a preliminary investigation in cases of suspected delinquency offenses is removed, and the district attorney's office, presumably relying only upon the seriousness of the offense, whether probable cause exists to believe the child committed the offense, and on the extent of the child's police record, is given the power to file delinquency petitions "which shall be accepted by the court." Ch. 110, § 15, [1973] Colo. Sess. Laws 390, *amending* COLO. REV. STAT. ANN. § 22-3-1(1) (Supp. 1967). The court no longer has the discretion to refuse to authorize petitions. If the district attorney's office is unable to determine whether further action should be taken, the case may be referred to the probation department for a determination regarding filing following a preliminary investigation. Ch. 110, § 15, [1973] Colo. Sess. Laws 390, *amending* COLO. REV. STAT. ANN. § 22-3-1(1) (Supp. 1967).

Finally, subsection (d) gives the juvenile court permission to "conduct a preliminary hearing to determine if there is probable cause to believe that the facts alleged in the petition bring the child within the court's jurisdiction." Ch. 110, § 15, [1973] Colo. Sess. Laws 390, *amending* COLO. REV. STAT. ANN. § 22-3-1(1) (Supp. 1967). The final subsection was added in anticipation of the argument that alleged delinquents might well suffer a denial of equal protection in that adults charged with criminal offenses are brought before the court by direct information, filed by leave of court, by grand jury indictment, or have the right to a preliminary hearing to protect them from the possible tyranny of an overzeal-

> Do the findings of the above investigation indicate that it is necessary for the court to take a strong course of action through the filing of a petition which would enforce a program leading to the rehabilitation of the child? If not, what resources in the life of the child are available (both in his family and in the community) to help him again attain a path of productivity in his life?[86]

The probation department's decision to file a petition, handle a case by means of "informal adjustment," or dispense with the case "unofficially" is based on a "discretionary filing" procedure. Nowhere within the juvenile court system does a probation counselor's absolute discretion have such far-reaching effects. Through his filing decision, the counselor either prevents a child from having further court contact or thrusts him into an intimate and complete involvement with formal court procedures and decisions.

The counselor's choice of whether or not to file is based on a preliminary investigation.[87] This investigation is initiated following receipt of either a police complaint certified for probable cause by the district attorney's office or, in the case of CHINS, a verbal complaint lodged by a parent or school official. Receipt of a police complaint can take from two days to two weeks or more from the time the child was taken into custody, depending on the speed of any DCD investigation conducted.

The counselor's interview with the parents and child is usually the first step in the preliminary investigation of which the child becomes aware. No such interviews were observed by the researchers, but according to the children interviewed, the child may or may not be advised of his rights, especially the rights

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ous district attorney. It is possible that this argument could still be made since the preliminary hearing provided is discretionary with the juvenile court.

The practical effect of these amendments has been minimal thus far. While an initial determination to file or to handle informally or unofficially is made by the district attorney's complaint deputy, the cases still are sent to the probation department for a preliminary investigation and a recommendation. If the probation counselor's decision based upon the preliminary investigation is different from that of the district attorney, a supervisory counselor "negotiates" with the district attorney to present the department's view. The final decision of the district attorney, however, prevails under the new amendments.

[86] Taken from a preliminary draft of INTAKE DIV., PROBATION DEP'T, DENVER JUVENILE COURT, CRITERIA FOR FILING PETITIONS (1972), which is destined to become part of an INTAKE PROCEDURES MANUAL for the court.

[87] For purposes of this section of the study, the practical effect on a child and his family of a *police* referral will be discussed. Referrals from parents or schools are processed in essentially the same fashion although of course there is no police investigation or certification of probable cause by the district attorney's office, and thus the case can be processed more expeditiously.

against self-incrimination, to have an attorney present, and to have the charges proved against him beyond a reasonable doubt.[88]

The child and his parents may expect a broad discussion of the alleged offense, the child's involvement, the damage to property or harm to persons, and the degree of restitution possible if the child was indeed involved. While the interview does include these considerations, its major thrust is an effort to determine the educational, emotional, legal, and familial strengths and weaknesses of the child and his family. Children may be surprised to learn that the probation counselor, in most cases, presumes their participation in the alleged offense, and instead focuses discussion on school performance, relationships with parents and peers, runaway patterns, drug use, and what the children think about themselves and their lives.

In some cases, a child may learn of the counselor's decision at the end of this interview. If no further preliminary investigation is necessary, the counselor may choose to handle the case "unofficially" and merely to lecture and release the child. The child and his parents may be reprimanded or reassured, but they will not be requested to sign documents or to do anything further.

Most children involved in Denver's Juvenile Court system are familiar with this process. Although the counselor may suggest rehabilitative steps, such as family counseling, recreational programs, change in school program, or informal supervision by the probation counselor, and may even make a referral, the counselor's suggestions are neither mandatory nor enforceable.[89] Once

[88] Neither the Colorado Children's Code nor United States Supreme Court cases require advisement by probation counselors making the filing decision, although most counselors interviewed stated they *did* advise children of their rights during the interview. The danger of a lack of advisement and general lack of formality in the interview with the probation counselor would appear to be primarily psychological. If the child admits participation in the alleged offense to the counselor in the presence of his parents, it is much easier for that child to agree to admit to the allegations in a formal courtroom setting or in later interrogation sessions with police officers—even if a full advisement is given at the later session. The problem is, of course, that absent competent legal counseling, the child and his parents do not know whether the level of participation in the offense is sufficient to sustain the charges. As stated previously, most children in the Denver Juvenile Court *are* represented by counsel and it must be hoped that the input of counsel for the child prior to the plea hearing is sufficient to overcome any psychological propensity for admission resulting from prior uninformed admissions to the probation counselor.

[89] The Denver Juvenile Court separates statistically those children "merely" lectured and released, those referred to other community agencies, and those offered limited supervision by the counselor. However, both practically and legally, the child has been handled

a case is handled unofficially, the child's involvement with the court is ended.

In some instances a counselor will determine that an "informal adjustment" is the most appropriate manner of handling a case.[90] The purpose of informal adjustment is to provide informal supervision for the child and counseling for the family. These rehabilitative steps cannot exceed 6 months and are usually overseen by a field probation counselor or "Partner."[91]

The informal adjustment is a slightly more formalized procedure than unofficial handling, and parents and child must be advised of their legal rights.[92] Both must sign an "Informal Adjustment Petition," consenting to the processing of the case in this manner, and the child must admit enough facts to establish prima facie jurisdiction. Counseling and visits are not mandatory, though it is doubtful that most parents and children understand this. Most children on informal adjustment status who were interviewed felt they were on probation. Some did not know what their status was. To the parents and children involved, informal adjustment in most instances must seem identical to a lecture-and-release procedure, except that they have to "sign something." This is especially true if, as in many cases, the infor-

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unofficially pursuant to COLO. REV. STAT. ANN. § 22-3-1(2)(b) (Supp. 1967). Whether parents and child realize that there is no legal obligation upon them to participate in the suggested counseling is open to question.

[90] Informal adjustment is appropriate only for those children who have not already been placed on formal probation by the court.

[91] The "Partners" organization is for the most part privately funded and has as its purpose one-to-one counseling of children who are involved to any degree with the Denver Juvenile Court, or children who, because of demonstrated problems at home, in school, or in the community, are likely to become so involved. The "senior" partners are lay volunteers from the community who receive training and guidance from the organization in counseling and working with troubled children, the "junior" partners.

In 1972, as a result of a grant from the Law Enforcement Assistance Administration, the organization began to accept as junior partners children placed on informal adjustment by the court. Referral of such children is made by a liaison officer in the intake division of the probation department, and reports from the senior partner as to the effectiveness of the "partnership" may be transmitted to the court. Junior and senior partners agree to spend at least 3 hours a week together. The organization provides opportunities, particularly in the area of recreation, for the partners to engage in at minimal or no cost. It is enormously successful in Denver, and children referred to Partners for informal adjustment are much more likely to receive a substantial counseling input than those referred to field probation counselors who are already overburdened with caseloads of 40 to 50 or more children who have been placed on formal probation. The commitment of a senior partner is for at least a 9-month period.

[92] See discussion of legal and constitutional rights of the child *supra* at notes 59-67 and accompanying text.

mal supervision does not begin until well into the 6-month period. If a Partner has been assigned, the contact may not begin any sooner, but at least it is more constant and continuous. Again the family's involvement with the court is essentially over, except for limited contacts which may be made over a 3-month period, unless another parental, school, or police referral is received by the probation department.

The final option open to a probation counselor is the filing of a formal petition. When this option is pursued, the preliminary investigation is usually more complete, if only because the court and the defense counsel will scrutinize the petition's validity. The decision to file a formal petition also requires more extensive paperwork, arrangements for court filing and service, and court appearances for the probation counselor. Unofficial treatment of cases requires less work and such decisions are never reviewed. The counselor will explain his decision to file a petition to the parents and the child in an interview with the family. Generally during this interview, which is probably at least the second, the counselor will present a copy of the petition to the child and parents. The allegations are usually written in legalistic terminology and probation counselors feel they are under some obligation to clarify them as well as to advise the family of their legal rights, especially the right to be represented by counsel. Some probation counselors automatically refer the family to the public defender's office for legal representation. In spite of the probation officer's attempt to explain the petition, few parents of children seemed to comprehend it.

If the petition has been filed and the plea hearing set, many counselors will "serve" a copy of the petition and summons during the interview, or if the hearing has not been set, request a waiver of service to be signed by the parents.[93] The parents can then be notified by phone of the date, time, and place of the hearing and will receive a copy of the summons and petition at the plea hearing.[94]

[93] If the petition involved is a Child in Need of Supervision petition, the parents may also be required to sign the petition as petitioner. If the CHINS petition alleges truancy, a school social worker may be present at the interview, and in any case will be required to sign as petitioner.

[94] The illegality of such a procedure is obvious. First, under the Colorado Rules of Civil Procedure, service is to be completed by a person who is not interested in the action; a probation counselor who is often the petitioner can hardly be said to fall into the category

Once the probation counselor has opted for the decision of filing a formal petition, the child is projected into a very formal court system, at least in the Denver Juvenile Court. His next contact will be the plea hearing which is set one to two weeks after the petition is filed with the court. For the child in detention, this means more time waiting in Juvenile Hall; for the child at home, it means at least a week or two more of freedom. For both, the process is just beginning.[95]

The vagueness of the probation department's decisions to file a petition, handle informally, or handle unofficially can be justified to some extent by the broadness of the statutory standards guiding discretionary intake.[96]

The Colorado statutes specify that the choice of manner of handling the case must be based on a preliminary investigation. However, the statutes give no guidelines as to what information should be included in this investigation or what criteria should be used to determine whether the case should be filed or handled unofficially. The only guidance offered is the flexible standard of taking whatever action is required by the "interest of the child or of the community."[97]

These vague standards surrounding the decision to handle unofficially, informally, or to file a petition are not clarified by

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of disinterested persons. Secondly, neither the notice requirements of the Code, COLO. REV. STAT. ANN. §§ 22-3-2, to -3 (Supp. 1967), nor that of *In re* Gault, 387 U.S. 1, 33 (1967), are fulfilled by such a procedure, as administratively easy and commonly practiced as it may be.

[95] A fairly substantial class of offenders has thus far not been discussed. They are the out-of-town runaways or escapees from juvenile facilities in other states. One hundred and sixty-five such runaways were processed from January to June of 1972 by the intake division of the probation department located at juvenile hall. These children go through the detention procedure outlined above and are detained, almost without exception, pending transportation back to their home states under the Interstate Compact on Juveniles, COLO. REV. STAT. ANN. §§ 74-8-1 to -8 (Supp. 1967). Most children are returned under the voluntary return procedure of article vi of the Compact, although a small percentage are requisitioned by the home state pursuant to articles iv and v. Almost as a matter of course, if the child agrees to return voluntarily or is requisitioned by the home State, any charges pending in Colorado are dropped or dismissed. These children rarely appear before the court except in detention hearings and on occasion in requisition hearings, but they do constitute a considerable portion of the Intake Division workload because their numbers are both great and increasing, and because arrangements for their return are often complex.

[96] Ch. 110, §§ 16-17, [1973] Colo. Sess. Laws 390, *amending* COLO. REV. STAT. ANN. §§ 22-3-1(2)(a) to -1(3) (Supp. 1967).

[97] *Id.*

officially promulgated administrative guidelines in the Denver Juvenile Court. The only directive concerning filing which has been issued is one by the presiding judge that felony offenses alleged to have been committed by children already on probation must be filed.

Because of the dearth of court-promulgated guidelines regarding this most important decision, it is necessary to rely for information on probation counselors' practices as related by them in structured interviews.

Eight different probation counselors were interviewed—field and intake workers, both line staff and supervisory staff, and the presiding judge of the Denver Juvenile Court. There were definite trends among their comments. Most preferred to handle a case unofficially as often as possible and viewed filing a petition as a means to force cooperation or acceptance of a treatment plan by the child or parents. One very candid subject noted that even court-ordered treatment may not produce a positive response from an intransigent family. Another mentioned the possible harmful effects on the child which could easily result from court intervention which was not needed.

Those interviewed saw the preliminary investigation as an effort to obtain a "total picture" of the child, with the alleged offense constituting only a part of that picture. Except for "very serious" offenses, which counselors feel pressured to file, the major concern seems to be first, whether the child needs help, and second, whether formal court processing will facilitate receipt of help by the child and his family. The comments continually emphasized the discretionary judgment exercised and the lack, and perhaps impossibility, of strict guidelines.

The decision to file a petition is twofold; once a counselor has made the personal decision to file a formal petition, he must decide whether to file a delinquency or a CHINS petition. At one point in the court's history, this decision was relatively uncomplicated. If a violation of a state law or a municipal ordinance were alleged, a delinquency petition was filed; if truancy or runaway were the problem, a CHINS petition was filed. However, recently many counselors have begun to use CHINS definitions to encompass delinquency allegations. A child who is an inveterate shoplifter could certainly be said to be "beyond the control of his parent, guardian, or other legal custodian,"[98] and a child alleged to be

[98] COLO. REV. STAT. ANN. § 22-1-3(18)(c) (Supp. 1967).

using drugs regularly can be seen as a child "[w]hose behavior or condition is such as to endanger his own or others' welfare."[99] Generally, CHINS petitions alleging delinquent acts are filed by probation counselors if a child's age suggests he is really beyond the control of his parents and only tangentially a threat to the community, if he is under the age of 10 years and a delinquency petition cannot be filed, if the basic problem is perceived by the counselor as a family problem and not a violation of the law or if the child must come before the court but has no prior record and the counselor feels a CHINS label will be less detrimental to the child than a delinquency label.[100] The question in all cases obviously is, is it a legal problem?

Unless a case is disposed of by informal adjustment or unofficially, the case, the child, and the parents will proceed to the next critical juncture, the first hearing on the petition itself.

F. *Plea Hearing*

> I would guess about 90% of the delinquency cases in juvenile court are bargained out.[101] But the pleas are better from the DA's point of view because the kids plead out to offenses as alleged on the petition—the original charge—instead of to a lesser included charge, as occurs in the adult system.
>
> Deputy District Attorney
> in the Denver Juvenile Court

Although hundreds of children in the Denver Juvenile Court participate each year in the tactic of plea bargaining, very few understand the process. Plea bargaining in the juvenile system results in substantially less benefit to the accused than it does in the adult system, where a guilty plea nearly always reduces the potential extent of the punishment. Under the Code, however, almost exactly the same dispositional alternatives are open to the

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[99] *Id.* § 22-1-3(18)(d) (Supp. 1967).

[100] One point which should be mentioned regarding the developing practice of filing delinquency allegations under CHINS petitions is that the reverse does not occur, at least in such an obvious manner. Children who run away from home could in most cases also be cited for curfew violations, prostitution, panhandling, drinking under age, or some other delinquency offense which occurs as a result of their new-found "freedom." Probation counselors, in such cases, usually file the primary offense—the runaway—under a CHINS petition, and the DCD usually does not push filing of the relatively minor municipal ordinance violations which result from the runaway.

[101] In fiscal year 1971-72, 1,817 petitions were filed in the Denver Juvenile Court as CHINS, revocation of CHINS probation, delinquency and revocation of delinquency probation. Of these, only 176, just under 10 percent, resulted in trials, 50 to a jury (all delinquency) and 126 to the court (123 delinquency).

court, regardless of the number or types of offenses admitted.[102]

The negotiating positions of the participants in the plea bargaining process are comparable in both the adult and juvenile systems. The district attorney usually is unwilling to dismiss several charges if one allegation will be admitted for three reasons: 1) his perceived responsibility to the police department, to victims of juvenile offenses, and to society as to prosecute all wrongdoers on all charges filed; 2) his opportunity to use a lengthy record of admissions by a juvenile to argue at the dispositional stage for commitment to the Department of Institutions or more harsh sanctions, or if the juvenile reappears before the court, for a transfer of jurisdiction to the adult system;[103] and 3) his belief that mass dismissals contribute to a diminishing respect among juveniles for the legal system.

Defense counsel participate in the practice of plea bargaining to limit the severity of the disposition of each case and to thwart possible attempts by the district attorney to have juvenile court jurisdiction transferred later. Some defense counsel also believe that parole can be obtained more quickly if there are fewer admitted offenses, although this has not been substantiated. Finally, many counsel, especially private counsel, conclude that if they get half or more of the charges in each case dismissed, the child-client will perceive that he has been well represented.

Most children are represented at plea hearings[104] by the public defender or by an attorney or student from the Legal Aid Society. The attorney may not have represented the child at the detention hearing, and, in any event, counsel usually does not receive a copy of the petition sufficiently in advance of the hearing to conduct an investigation or to speak with the child prior to the morning on which a plea must be entered.

Counsel generally asks the child if he has seen a copy of the

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[102] COLO. REV. STAT. ANN. § 22-3-9 (Supp. 1967); Ch. 110, § 22, [1973] Colo. Sess. Laws 392, *amending* COLO. REV. STAT. ANN. § 22-3-13(1)(b) (Supp. 1969); COLO. REV. STAT. ANN. § 22-3-12(1)(h), (i) (Supp. 1967).

[103] Ch. 110, § 20, [1973] Colo. Sess. Laws 392, *amending* COLO. REV. STAT. ANN. § 22-3-8(4)(a) (Supp. 1969). An adjudication for a delinquent act which would be a felony if committed by an adult also brings into play the possibility of a direct filing in the adult criminal system as discussed in Ch. 110, § 1, [1973] Colo. Sess. Laws 384, *amending* COLO. REV. STAT. ANN. § 22-1-3(17)(b) (Supp. 1969).

[104] Almost all plea hearings are scheduled before a Denver Juvenile Court referee, and since July 1, 1973 the child no longer has a right to request a judge to hear his entry of plea. Ch. 110, § 7, [1973] Colo. Sess. Laws 387, *amending* COLO. REV. STAT. ANN. § 22-1-10(4) (Supp. 1967).

petition. Most answer "no," indicating that they have not seen it, do not remember it, or do not know what a petition is. After the petition is shown to the child and the charges explained, counsel advises the child of his rights[105] and explains the purpose of the plea hearing,[106] making clear that whether or not the charges are true, the child may insist that the district attorney prove them. If the child wishes to admit one or more of the allegations in the petition, counsel advises the child that probation, removal from his family, or commitment may be the consequence of entering an admission.[107] If the child persists in his desire to enter a plea of admission, counsel then probes the voluntariness of the plea.[108]

The voluntariness of pleas of admission in the Denver Juvenile Court is often questionable, primarily because of the involvement of probation counselors in planning the disposition. The child's attorney must carefully explain that while the probation counselor may already have made some plans, they are only recommendations and the judge or referee is free to reject them.[109] If

[105] See discussion of legal and constitutional rights of the child *supra* notes 59-67 and accompanying text.

[106] A typical and understandable explanation might be worded:

> "In the hearing today, the referee just wants to know whether you admit the charges (or the burglary, runaway, etc.) or whether you deny the charges and want the district attorney to prove it beyond a reasonable doubt. He would have to call witnesses to prove that the charges are true, and we could ask those witnesses questions and have our own witnesses to show that the charges are not true. We could have a jury trial or we could just let the judge decide. Even if you think that the charges are true, you don't have to admit them—you don't have to help the district attorney out; you have a right to have them proved against you. Can you decide what you want to do?"

[107] Counsel might utilize the following format:

> "You know that if you admit this charge, that will give the court power over you for 2 years or maybe even longer. The referee (or judge) could put you on probation which means that you would have to visit with a probation counselor probably once a week or so, and he or she would be keeping an eye on you. The court could also take you away from your family and put you someplace else to live—like in a group home or on a ranch. The court could even lock you up for 2 years at Mountview or Lookout. The court can't do any of these things unless you admit the charges or unless they're proved against you in a trial. Do you still think you want to admit the charges?"

[108] "You know you don't have to admit the charges? Do you think anyone made you decide to admit them? Has your probation officer or anyone else promised you anything if you admit? Is this what you want to do even though you know what could happen?"

[109] Whenever delinquency allegations are involved, COLO. REV. STAT. ANN. § 22-1-8(1)(b) (Supp. 1967) forbids probation department investigation and study of possible dispositional recommendations prior to adjudication or entry of a plea of admission. However, it is broadly known and frankly admitted by probation counselors that planning for disposition begins probably at the filing stage, but certainly before adjudication.

the child is entering an admission based on a perceived disposition, the plea is involuntary.

A concept which is a source of difficulty for children is the right of having charges proved against them, particularly if the children know the allegations are true or know that they were involved in the alleged offense. Most children feel that if they "did it," denying the allegations is lying. Often a child can be educated if his attorney will explain that a denial of allegations really means that the child wants to have the charges proved in trial. Counsel might briefly describe trial procedure. Nevertheless, even after such an explanation, some children never understand their right to trial.

If the child wishes to deny the charges, counsel questions him more thoroughly about the alleged offense and begins to evaluate possible defenses. On account of their shortened preparation time, some attorneys deny all allegations in each petition so that an investigator can establish the facts prior to the omnibus hearing. Others proceed with whatever a child tells them and willingly enter admissions at the plea hearing.

Because most children desire to admit guilt, because many already have incriminated themselves in conversations with their probation counselors, because the majority of attorneys or law students are inexperienced in practicing in Denver Juvenile Court, and because some attorneys view probation as an inconsequential punishment, it is possible that some children admit allegations despite the availability of a valid legal defense. It is also common for prosecutors and defenders to cooperate in gaining a conviction because "the kid needs some help." The legal ethics of these positions are certainly questionable.

When counsel and the child have agreed to the plea that will be entered, they proceed to a hearing before a referee. The plea hearing is generally very short and routinized. The referee or probation counselor introduces the case by identifying the parties present and stating that the hearing is for the purpose of entering a plea. Generally counsel for the child waives both a formal advisement of the child's rights by the court and a reading of the petition. The judicial officer than asks whether the child is prepared to enter a plea. Unless counsel requests either a continuance based on lack of notice or a need for further investigation, or a dismissal based on insufficiency of service, he enters the child's plea. If a denial is entered, the case is set for an omnibus

hearing before a judge. Unless the issues of detention or bond are raised and argued, that terminates the plea hearing.

If an admission of one or more of the charges is entered, the referee should inquire into the voluntariness of the plea. The format which should be used is similar to that suggested for use by counsel[110] for the child. However, some judicial officers either do not inquire into voluntariness or perfunctorily ask if the admission is being made under any threat, promise, or coercion. Most children will say "no," even if they do not understand the question. Once the judicial officer is satisfied as to the voluntariness of the plea and some disposition has been made of any remaining counts,[111] he accepts the plea and sets the case for dispositional hearing.

Ninety percent of the children named in petitions filed in the Denver Juvenile Court enter admissions of guilt. It is impossible to determine how many of these have an informed understanding of their rights and the consequences of their admissions. Most are represented by legal counsel, advised of their rights, and formally questioned as to the voluntariness of their admissions. Although the statutory requirements are met, it is debatable, in view of the uncomprehending acquiescence of some children, whether the constitutional requirements of due process are also satisfied.

The Code, Rules of Juvenile Procedure, Colorado case law, and administrative guidelines promulgated by the Denver Juvenile Court are silent as to the plea hearing.[112] The drafters of the Code and Rules apparently contemplated one or, at the most, two hearings for an alleged CHINS or juvenile delinquent. The adjudicatory hearing[113] was established to determine "whether the

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[110] *See* note 112 *infra*.

[111] If only one or two of several allegations is admitted to, defense counsel will move for the dismissal of the other counts. If those other counts are CHINS allegations, the court will usually dismiss them forthwith. If they are delinquency allegations, the concurrence of the district attorney's representative is usually required. If that concurrence is not forthcoming, the remaining charges will be set for omnibus hearing, usually in a couple of weeks.

[112] The only mention of the hearing is found at Ch. 110, § 7, [1973] Colo. Sess. Laws 386, *amending* COLO. REV. STAT. ANN. § 22-1-10(3) (Supp. 1967), and even there it is not denominated a "plea hearing." The "advisement hearing" discussed in COLO. R. JUV. P. 8 could well be the plea hearing if that hearing is the child's first appearance before the court; however, no mention of entry of plea is made in that rule.

[113] Ch. 110, § 18, [1973] Colo. Sess. Laws 391, *amending* COLO. REV. STAT. ANN. §§ 22-3-6(4)(a), (c) (Supp. 1969); COLO. R. JUV. P. 17.

allegations of the petition are admitted or, if contested, are supported by evidence beyond a reasonable doubt."[114] Once the allegations had been established beyond a reasonable doubt, whether through admissions of the child or proof at trial, the court was directed by the Code to "sustain the petition, and . . . make an order of adjudication . . . ."[115] The court could then proceed with the dispositional hearing or continue the hearing on the motion of any interested party.[116] Early in 1971, however, the Denver Juvenile Court began to split the adjudicatory and dispositional hearings.

The plea hearing is an appropriate time for counsel to make procedural objections concerning the petition itself or the legitimacy of court jurisdiction over the child. However, because there is no right in a plea hearing to proceed before a judge in the first instance, and because such issues are still timely if raised at the omnibus hearing, most defense attorneys prefer to raise them before a judge at that time.

G. *Omnibus Hearing*

> The problem was moderately difficult—the solution relatively simple.
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> . . . .
>
> In January of 1972, we started the experiment of an "Omnibus" hearing, which is, in effect, a pretrial conference—but more.
>
> Former Presiding Judge of the
> Denver Juvenile Court

With the omnibus and adjudicatory hearings, the child's perceptions become more and more confused because the hearings become more and more legalistic. Especially at the omnibus hearing, the child rarely says anything unless he decides to enter a plea of admission. Even then he is advised and questioned by the court. He will probably not see his probation counselor. For the first time he will probably appear before a judge of the Denver Juvenile Court rather than a referee, and he will appear in a main courtroom rather than in the juvenile hall courtroom or a referee's hearing room.

If further negotiation between the district attorney and defense counsel results in a settlement, the omnibus hearing will

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[114] COLO. R. JUV. P. 17(a).

[115] COLO REV. STAT. ANN. § 22-3-6(6)(a) (Supp. 1969).

[116] *Id.* §§ 22-1-3(21), -3-6(6)(b) (Supp. 1967).

proceed as a second plea hearing, following which a date for the dispositional hearing will be set. When the omnibus process was first established, the presiding judge estimated that 37 percent of the cases were settled. Since then this percentage has increased to at least 50 percent.

If no settlement has been arranged, the judge will make several inquiries of counsel, which in effect comprise the entirety of the omnibus hearing. The judge will ascertain whether a trial by jury is requested and, if so, whether it is to be a jury of three or six persons; whether the jurisdictional matters of age and residence of the child are admitted, and whether there are any discovery problems;[117] and finally, whether either side anticipates the filing of motions. A date by which motions are to be filed will be set, and if an extended hearing will be required, a preliminary hearing on motions will be set prior to the date set for trial. To further illustrate that omnibus hearings are at least perfunctory, if not unnecessary, the Denver Juvenile Court sets all omnibus hearings on Friday afternoons, at least two, and sometimes as many as four, to the half hour.

There are no statutory provisions or rules of juvenile procedure governing the omnibus hearing since it is essentially an administrative procedure utilized only in the Denver Juvenile Court.

By the end of 1971, delinquency cases in the Denver Juvenile Court were taking an average of 265 days from the filing of the petition to trial. Omnibus hearings were introduced to deal with this problem. The short history of this experiment has been erratic. Initially, omnibus hearings could be set a week or two following the plea hearing. However, because there remained the problem of lack of notice of the allegations prior to the plea hearing, all those cases which had been set for jury trial were being set for omnibus hearing, so that by the summer of 1972, counsel could secure an earlier date for a trial by jury than for an omnibus hearing. This situation has been alleviated, but at the expense of

[117] The district attorneys who practice in the Denver Juvenile Court are generally very informal about discovery by defense counsel, and are willing, in most cases, to give their files to the defense for purposes of copying the police summary sheet, copies of any statements made by the child, and the results of any scientific tests or experiments made in connection with the particular case. Extensive discovery motions are rarely filed either by the prosecution or the defense because of the level of cooperation between the two.

circumventing some of the original purposes of the omnibus hearing.

Omnibus hearings are now generally set upon the entry of a denial of the allegations regardless of whether a trial by jury is requested. As noted above, many attorneys set omnibus hearings for the purpose of having a hearing on motions before a judge rather than a referee, whether or not a trial is anticipated. Finally, written motions no longer need be filed prior to the date of the omnibus hearing, nor are pretrial motions argued at the omnibus hearing. Juries and witnesses may well be kept waiting for extended periods of time while pretrial motions are argued unless a separate hearing on motions has been docketed. Since adequate and cooperative discovery has never really been a problem in the Denver Juvenile Court,[118] the failure of the omnibus procedure to dispose of pretrial motions really portends a failure of that procedure altogether. If adequate notice and discovery were available at the initial plea hearing, and counsel for both sides were empowered to enter into binding plea negotiations, most of the settlements now reached at the omnibus hearing likely could be reached at the original plea hearing, with a saving of court time, and detention time for the child.[119]

Challenges to the petition, procedures, or relevant statutes may be raised at the omnibus hearing.[120] The completion or ade-

[118] Because juvenile proceedings are civil proceedings, counsel for either the prosecution or defense could claim very expansive discovery rights under the rules of civil procedure. COLO. R. CIV. P. 26-37. Only one rule, Rule 16, of the Colorado Rules of Juvenile Procedure deals with discovery and it is very limited in scope and semantically inappropriate in cases where the child's right to discovery is at issue. Requests for a preliminary hearing could also be utilized as a discovery tactic, though the Denver Juvenile Court has yet to establish rules or procedures for this new provision of the Code. Ch. 110, § 15, [1973] Colo. Sess. Laws 390, *amending* COLO. REV. STAT. ANN. § 22-3-1(1)(d) (Supp. 1967).

[119] The omnibus hearing procedure may be impaired further by the 1973 amendment to the Colorado Children's Code which allows the court to "conduct a preliminary hearing to determine if there is probable cause to believe that the facts alleged in the petition bring the child within the court's jurisdiction." Ch. 110, § 15, [1973] Colo. Sess. Laws 390, *amending* COLO. REV. STAT. ANN. § 22-3-1(1)(d) (Supp. 1967). Thus far the court has not dealt with the issues of whether the availability of a preliminary hearing makes the omnibus hearing superfluous, or if not, when the omnibus hearing should be conducted—before or after the preliminary hearing—or finally, whether the two are mutually exclusive or if both may be requested by counsel.

[120] It should be remembered that the Denver Juvenile Court is governed in its procedures first, by the Colorado Children's Code, and also secondly, by the Colorado Rules of Juvenile Procedure. Where the latter are silent or otherwise inadequate, proceedings are

quacy of the "preliminary investigation" required by the Code[121] is a basis for a challenge to the filing by the probation department of a delinquency petition,[122] and for a challenge to a CHINS or dependency and neglect petition. Even if the preliminary investigation has been completed and is adequate, the decision to file a formal petition may be challenged on the grounds that it is unnecessary in "the interests of the child or of the community,"[123] and a motion can be made to remand the case to the intake probation division for informal adjustment or dismissal.[124] The filing of CHINS allegations in a delinquency petition should result, upon motion of the child, in a dismissal or, at the least, a refiling.[125] Similarly, the filing of delinquency allegations under the CHINS rubric may be challenged, especially if the statement of allegations does not conform to the statutory requirements.[126]

The Denver Juvenile Court has been responsive to arguments and proof that a child's problems are the result of an abusive home situation and that the filing of a petition in dependency and neglect therefore would be more appropriate[127] than one in delinquency or CHINS. The court's willingness to order the filing of a petition in dependency and neglect, and the dismissal of other

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conducted according to the Colorado Rules of Civil Procedure (COLO. R. JUV. P. 1). Neither the rules nor the Code discusses whether the Colorado Rules of Criminal Procedure may be used. As will appear from the critical juncture dealing with the adjudicatory hearing or trial, juvenile trials and adult trials are almost indistinguishable. Although Denver Juvenile Court does not seem to have established any clear policy as to whether the rules of criminal procedure may be used if the civil rules are inappropriate, the criminal rules and terminology therefrom are in fact used repeatedly. Generally, counsel is well advised to draft pleadings and motions under the juvenile or civil rules when at all possible, and to assume that the court will either interpret those rules to cover what is in fact becoming at least a quasi-criminal proceeding, or will give permission to counsel to utilize the criminal rules.

[121] Ch. 110, §§ 15-16, [1973] Colo. Sess. Laws 390, *amending* COLO. REV. STAT. ANN. §§ 22-3-1(1)(c), -3-1(2)(a) (Supp. 1967).

[122] Ch. 110, § 15, [1973] Colo. Sess. Laws 390, *amending* COLO. REV. STAT. ANN. § 22-3-1(1) (Supp. 1967). If the delinquency petition has been filed by the district attorney, the court must accept the filing. *Id.*

[123] Ch. 110 § 16, [1973] Colo. Sess. Laws 390, *amending* COLO. REV. STAT. ANN. §§ 22-3-1(2)(a), (b), (c), (d) (Supp. 1967).

[124] *Id.* §§ 22-3-1(2)(b), (d) (Supp. 1967).

[125] See discussion of *In re* D.R., 29 Colo. App. 525, 487 P.2d 824 (1971) *supra* at note 20.

[126] COLO. REV. STAT. ANN. § 22-3-2(2)(a) (Supp. 1967); COLO. R. JUV. P. 12.

[127] COLO. REV. STAT. ANN. §§ 22-1-3(19), -3-1(2) (Supp. 1967); COLO. R. JUV. P. 26.

actions, occurs most frequently when CHINS petitions have been filed or when delinquency petitions concerning children under the age of thirteen are at issue. Otherwise, unless a serious and continuing pattern of neglect and abuse can be shown, the court will rarely take this step.

Other appropriate motions at the pretrial stage include motions for joinder of a respondent parent or legal custodian whose appearance is deemed necessary to the action,[128] and for appointment of a guardian *ad litem*.[129] The latter is customary when the child has no parents or they refuse or are unable to appear, when there is a conflict between parent and child, or when the court determines such appointment is in the child's best interest or necessary for his welfare.

Motions to suppress evidence or statements are filed and generally heard prior to trial. There is, however, no interlocutory appeal from the juvenile court of the denial or granting of a motion to suppress.[130] A prerequisite to the admissibility of a child's statements or admissions in response to police interrogation is a showing by the people of the presence of the parent at the interrogation,[131] the advisement of both parent and child of their rights, the comprehension by both of the significance of their rights, the knowing and intelligent waiver by both of those rights, and the voluntariness of the statements or admissions made by the child.[132] An exception to this exclusionary rule exists if the child is emancipated by marriage or military service, or "if the child is a runaway from a state other than Colorado and is of sufficient age and understanding."[133]

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[128] COLO. REV. STAT. ANN. § 22-3-3(4) (Supp. 1967); COLO. R. JUV. P. 13(c).

[129] COLO. REV. STAT. ANN. § 22-3-5(3) (Supp. 1971).

[130] People v. P.L.V., 176 Colo. 342, 490 P.2d 685 (1971). COLO. APP. R. 4.1 is denominated "Inter-locutory Appeals in Criminal Cases."

[131] A recent Colorado case states that "mere physical presence does not satisfy the requirements of the statute concerning confessions of a child." The parent "must be in a position to give advice freely [and a] parent who is himself incarcerated is in no such position." *In re* L.B., 513 P.2d 1069, 1070 (Colo. App. 1973). Here the father had been incarcerated for drunkenness and was brought from his cell to advise his son who had been taken into custody for an alleged burglary.

[132] COLO. REV. STAT. ANN. § 22-2-2(3)(c) (Supp. 1971). The Colorado Supreme Court has held in *People v. Reyes*, that the protections afforded a minor under this statute with regard to waiver of his fifth amendment rights are equally applicable to waiver of the minor's fourth amendment rights. 174 Colo. 377, 483 P.2d 1342 (1971). With regard to a minor's fourth amendment rights in Colorado, *see also In re* B.M.C., 506 P.2d 409 (Colo. App. 1973).

[133] The evidentiary problems are obvious. Proof of emancipation is a factual determi-

Counsel for the child may request psychological or psychiatric evaluation prior to the adjudicatory hearing. Generally the court will deal with the issue of mental illness or deficiency in the pretrial stage,[134] although the Code provides that such evidence shall be introduced at the adjudicatory hearing.[135] If it is established that the child is mentally ill, his case must be transferred to the Probate Court of the City and County of Denver,[136] which has exclusive jurisdiction in the adjudication of the mentally ill of whatever age.[137] The test for whether the Denver Juvenile Court retains jurisdiction over the child is not the legal sanity test used in the adult criminal court, but is whether "the child is mentally ill or mentally deficient to the extent that short-term or long-term hospitalization or institutional confinement and treatment is required."[138] If so, the juvenile court must transfer the case. The difficulty with the test is that it is even more vague and more dependent upon the philosophy of the examiner than is the test for legal sanity.

H. *Adjudicatory Hearing*

> The court which must direct its procedure even apparently to do something *to* a child because of what he *has done*, is parted from the court which is avowedly concerned only with doing something *for* a child because of what he *is* and *needs*, by a gulf too wide to be bridged by any humanity which the judge may introduce into his hearings, or by the habitual use of corrective rather than punitive methods after conviction.[139]

The adjudicatory hearing or trial of a juvenile in Denver so closely resembles an adult criminal trial that, except for the age and size of the "defendant," the legal terminology used, and the

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nation to be made by the court, and in Colorado, there are no degrees of emancipation; a child is either emancipated or not, for all purposes or none. Poudre Valley Hospital v. Heckart, 491 P.2d 984 (Colo. App. 1971). Marriage or military service alone does not confer an emancipated status on a child under the age of 21 years as the new section would seem to intimate.

[134] The court can do so by utilizing its powers under COLO. REV. STAT. ANN. § 22-1-4(3) (Supp. 1967). The problems caused in the dispositional phase by the Code sections dealing with mentally ill and deficient children are discussed *infra* at notes 158, 168, and 169.

[135] *Id.* § 22-3-7(1)(a) (Supp. 1967).

[136] COLO. CONST. art. VI, § 1.

[137] *Id.* § 9(3); COLO. REV. STAT. ANN. §§ 22-1-4(1)(k), -3-7(5) (Supp. 1967).

[138] *Id.* §§ 22-3-7(2), (5) (Supp. 1967).

[139] Waite, *How Far Can Court Procedure Be Socialized Without Impairing Individual Rights?*, 12 J. CRIM. L.C. & P.S. 339, 340 (1922).

number of jurors, most laypeople and a substantial number of attorneys would find the two types of proceedings impossible to differentiate.

A child and his parents face the trial setting with an increased apprehension. Part of this is attributable to the formality of the adjudicatory hearing, especially if a jury is involved.[140] Both child and parents have probably been told by defense counsel to dress appropriately, not to chew gum, to speak only when spoken to, and not to show emotion during the course of the proceedings. The apprehension of the parties is compounded by the aunts, uncles, brothers, sisters, and friends of the child who often accompany him.

The trial constitutes the child's "day of reckoning." If a juvenile admits the allegations of a petition in a plea hearing, he knows what to expect. He knows he will "plead guilty," that the admission will be accepted by the court in most cases, and that disposition will be delayed for at least two weeks. A trial is different. The juvenile does not know what the outcome will be. Typically the child will not testify. He will understand little of the fast-moving colloquy between the prosecution, the defense, and the court, and his lawyer will not have time to explain much of it to him. Even after the court has announced its findings, in many cases the child will not know what decision has been reached until defense counsel explains the result to him.

The formality of the adjudicatory hearing is in contrast to the limited number of statutes, rules, and cases which define its parameters. The conduct of the hearing is only partially defined by the Code[141] and the Colorado Rules of Juvenile Procedure,[142] and has been mostly determined by Supreme Court cases of *In re Gault*[143] and *In re Winship*.[144] The rights of children in an adjudicatory hearing as enunciated in these two cases[145] are embellished in Colorado by the right to a jury trial,[146] the right to raise various

[140] The informality permitted by the Code in hearings before the juvenile court (COLO. REV. STAT. ANN. § 22-1-7(1)(b) (Supp. 1967)) is not practiced in adjudicatory hearings.

[141] COLO. REV. STAT. ANN. § 22-1-3(2) (Supp. 1967); *id.* § 22-3-6 (Supp. 1967).

[142] COLO. R. JUV. P. 17.

[143] 387 U.S. 1, 31-57 (1967).

[144] 397 U.S. 358, 365-68 (1970).

[145] *See* discussion of *In re* Gault and *In re* Winship *supra* at notes 60-64 and accompanying text.

[146] COLO. REV. STAT. ANN. §§ 22-1-6(4)(a)(i), (ii) (Supp. 1967). This right to a jury

legal challenges prior to or during trial,[147] and the right of appeal.[148]

The administrative overlay on the formal law at this stage of the proceedings is sparse. The court personnel most responsible for that overlay, the probation counselors, play almost no role whatsoever in the adjudicatory hearing,[149] which is almost solely the province of the attorneys and the judge. As such it represents the best or the worst of the juvenile court, depending upon whether one perceives it as strictly a court of law, or as a social agency with powers of legal sanction.

However, if the allegations in the petition are sustained, the prominence and power of the probation counselor come to bear fully in the dispositional hearing, the next critical juncture.

I. *Dispositional Hearing*

> (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

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trial for juveniles in Colorado had been maintained in spite of the conclusion reached by the United States Supreme Court that "trial by jury in the juvenile court's adjudicative stage is not a constitutional requirement." McKeiver v. Pennsylvania, 403 U.S. 528, 545 (1971).

[147] *Supra* at notes 70, 120 and accompanying text.

[148] Ch. 110, § 110, [1973] Colo. Sess. Laws 387-88, *amending* COLO. REV. STAT. ANN. § 22-1-12 (Supp. 1971). The 1973 amendment to this section gave the people the right to appeal questions of law in delinquency cases. Motions for a new trial or a rehearing are governed by COLO. REV. STAT. ANN. § 22-3-17 (Supp. 1967) and COLO. R. JUV. P. 55, 57, and by COLO. R. CIV. P. 59. Rule 56 of the juvenile rules of procedure governs motions for arrest or modification of judgment, and the appellate process itself governed by the Colorado Appellate Rules.

[149] COLO. R. JUV. P. 17 as adopted in 1970, originally provided that no statements made by the child "to any court employee" were admissible in evidence in the adjudicatory hearing unless the right to exclusion was waived by the child and his parents. This section was deleted by a rewriting of the rule in 1971; however no probation counselor has ever to the knowledge of the writers been called by the people to testify in the adjudicatory hearing as to statements made by the child, and many probation counselors consider such statements privileged even though they are not in fact privileged under the law.

> parents the necessary care, guidance, and discipline to assist him in becoming a responsible and productive member of society.[150]

The purposes of the Code find their fulfillment, if at all, in the dispositional hearing, for it is here that the juvenile court can make real its promise to "[do] something *for* a child because of what he *is* and *needs*. . . ."[151] The hearing, from the point of view of the child and his family, is most critical, because it bares their problems to the court and may destroy their physical unity. The parents may be surprised to find that the dispositional hearing does not necessarily focus completely on the child, but may result in court orders to them as well to participate in a treatment program designed for the family's benefit.

The Code provides that in all children's cases "the probation department or other agency designated by the court shall make a social study and report in writing," unless the requirement is waived by the court and presumably by the child and his family as well.[152] The social study is not to be commenced when delinquency allegations are involved until after the adjudication is completed,[153] but this requirement is unrealistic and therefore circumvented by the probation counselors.[154] It would appear that, at most, the information gathered for the court report is merely an expansion of the information already obtained in the preliminary investigation to determine whether a petition should

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[150] COLO. REV. STAT. ANN. § 22-1-2 (Supp. 1967).

[151] Waite, *supra* at note 139.

[152] COLO. REV. STAT. ANN. § 22-1-8(1)(a) (Supp. 1967); COLO. R. JUV. P. 19, 20.

[153] COLO. REV. STAT. ANN. § 22-1-8(1)(b) (Supp. 1967); COLO. R. JUV. P. 20(b), (d).

[154] Intake Probation Supervisor:

> A. I think an awful lot of information gained at the preliminary investigation can be later used in the social history. . . . An awful lot of the social investigation is begun at the time of the first interview, and even though the Children's Code asks for a separate social investigation after the court takes jurisdiction, I don't see how you can readily separate those totally in reality.
>
> Q. Do you think that it is unrealistic to talk about two distinct investigations?
>
> A. I think that two investigations are necessary, but they overlap so much that sometimes they become indistinguishable. A preliminary investigation is often done in a time of crisis; parents and child are going to be more willing to divulge things at that time, because they want to resolve the problem. That kind of preliminary investigation is usually only supplemented in your final investigation by specific things like psychological interviews or definite school reports with exact grades and this kind of thing, or a more specific social history in terms of childhood illnesses.

be filed. The purpose of the report, as described by the Code, is to help in "determining proper disposition of a child."[155]

To aid in accomplishing the purpose of the dispositional hearing,[156] which is to determine "the proper disposition best serving the interests of the child and the public,"[157] "[t]he court may have the child examined by a physician, psychiatrist, or psychologist, and . . . may place the child in a hospital or other suitable facility for this purpose."[158] Many probation counselors avail themselves of the opportunity for outside evaluation, even though the procedure is often frightening for the child because it

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[155] COLO. REV. STAT. ANN. § 22-1-8(2) (Supp. 1967). An intake probation Supervisor interviewed expanded on this definition in a very thoughtful statement:

> Especially when we are dealing with people who do have 40, 50, 60 years of their lives left possibly, to begin with the idea in mind that there are no mitigating circumstances or there are no circumstances that might put a different light upon the situation, to assume what is happening around him—I don't feel that this is a realistic approach to life.
>
> Basically, I think that this is the importance of the preliminary investigation and the social history—that the probation counselor has to be . . . aware of human nature, family life, community resources, community pressures, [and] individual psyches. In other words, he's got to be that semigod sitting between the Almighty and the earth, trying to decide exactly what *is* in the best interests of this child. I don't know if I answered your question or not. To me, it's a matter of how you approach life. I don't quantify life—it's a quality thing—and I can't give this much retribution for so much infraction. And I think that the whole basis of the Children's Code is this—that we *don't* give retribution for infractions. We give remedies for situations.

[156] COLO. REV. STAT. ANN. § 22-1-3(21) (Supp. 1967) defines the dispositional hearing.

[157] *Id.* § 22-3-9(1) (Supp. 1967).

[158] Since in most cases there has been no adjudication of the child's case prior to examination, as required by COLO. REV. STAT. ANN. § 22-3-9(1) (Supp. 1967), there can arise the problem of the evaluation information being used in violation of section 22-1-8(1)(b) (Supp. 1967). However, this legal argument is rarely raised when the court orders psychological or psychiatric evaluation prior to adjudication. First, the participants—child, family, probation counselors, lawyers and court—assume adjudication once a plea of admission has been entered or the allegations have been proved at trial. This is generally a valid assumption to be made, unless the child is one who might be placed on a continued petition under section 22-3-6(3) (Supp. 1967), and such children are rarely seen to be in need of medical evaluation. Secondly, any objection which might be raised to the procedure of evaluation prior to adjudication could be answered by the court's interpreting broadly its powers under section 22-1-4(3) (Supp. 1967) to issue temporary orders providing for "medical treatment" prior to adjudication or disposition, if deemed in the best interest of the child. This problem of evaluation prior to adjudication will not be discussed again but is a problem in almost every critical juncture, since in the Denver Juvenile Court, the order adjudicating a child delinquent or in need of supervision immediately precedes the orders of disposition in the dispositional hearing.

means to him that he is "crazy." In the interviews conducted, the counselors and supervisors were asked in what percentage and what kinds of cases they requested psychological evaluation. The extent of variation in their response is illustrated by the following remarks:

Field Probation Counselor:

> Q: When do you refer children to psychological services?
> A: I don't refer a kid to [Denver Juvenile Court's] psychological services[159] to be quite honest with you. I don't feel like waiting for two or three months; I want it now. I usually refer to children's diagnostic center.[160] When a kid is not motivated [and] I feel maybe that he has average abilities, but [is] maybe using drugs and maybe having a lot of conflicts with the parents, really doesn't know where he or she is at or where they're going, then I refer to CDC and get a medical workup—psychological, psychiatric, the whole gamut.
> Q: What percentage of your cases do you refer for some sort of psychological evaluation?
> A: Probably 50 to 75 percent.

Intake Probation Counselor:

> Q: On what percentage of the children you work with do you request psychological evaluation?
> A: I would say maybe 5 to 10 percent of my cases, something like that. . . . I think most children are all right psychologically; I don't think they necessarily need the professional services of a psychologist. . . . Some people seem to refer a lot of children to psychological services when it is really not necessary. They are having some typical problems that you have at that age. . . . Kids are going to

[159] The psychological services of the Denver Juvenile Court are housed in a building immediately adjacent to juvenile hall. The major function performed by the unit is predispositional evaluation of children detained in the hall. The evaluation generally consists of an interview with the child which may last from half an hour to an hour and a half, and the administering of up to two or three psychological tests to determine I.Q., aptitudes, etc. The time necessary to receive a written report is often as long as 6 weeks or longer. There are no Ph.D psychologists on the staff and there is one consulting psychiatrist who devotes three hours a week to the unit. In addition to the two regular staff members, there are generally a couple of student interns who participate in testing and evaluation.

[160] Children's Diagnostic Center (CDC) is a unit of the University of Colorado's Medical Center. The evaluations performed by CDC are comprehensive and occur over about a week. Both parents and child are evaluated psychologically. The child usually sees a psychiatrist as well, and has a complete physical examination. If indicated, a neurological workup is also completed on the child. Written reports from CDC are delayed extensively, although a "staffing" involving the psychologist, social worker, and probation counselor can usually be arranged within a week or two following the evaluation. CDC evaluations almost always recommend detailed treatment plans.

> have all kinds of experiences and some people are going to think they need very professional help when they don't. It's putting a load on our services there for children who really do need this service. So, I think it's a lack of understanding. We all grew up in different environments and different experiences. When I refer a child to psychological services, it's because I definitely feel that he needs special help or he needs special evaluation in determining what to do. In most situations, I do not refer.

The final dispositional recommendations made by the probation counselor are strongly influenced by the results of the psychological, psychiatric, or medical testing. The child rarely, if ever, sees the written report of the examination. Any explanation of the diagnosis camouflages the real meaning of the tests. If the results of court ordered evaluations are to be used in the dispositional hearing, counsel must receive a copy, and the author of the report may be required to be present at the hearing to be cross-examined.[161]

Following the psychological or psychiatric examination of the child, or perhaps simultaneously with it, the probation counselor must begin to formulate his own recommendations for the disposition of the child. Although the Code suggests a number of dispositional alternatives, it contains no standards for choosing among them other than that the determination be in the "best interests of the child and the public."[162] Most alternatives may be utilized for either delinquents or CHINS.[163] These include placing the child on probation or under protective supervision[164] in the legal custody of his parents[165] or a relative or other suitable person.[166]

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[161] COLO. REV. STAT. ANN. §§ 22-1-8(2), (3) (Supp. 1971); COLO. R. JUV. P. 19(b).

[162] COLO. REV. STAT. ANN. §§ 22-3-9(1), -12(1)(g) (Supp. 1967); *id.* § 22-3-13(1)(a)(ii) (Supp. 1969).

[163] Adjudicated delinquents over 16 years of age can also be committed to the department of institutions with a recommendation from the court that placement be made in the state training school at Buena Vista, Colorado. If the child is adjudicated delinquent for an act which occurred before his 18th birthday, but he is 18 or older at the time of the dispositional hearing, the court may sentence such a person to the county jail for a period of time not to exceed an aggregate total of 180 days. Finally, the court may impose a fine of not more than $300 on adjudicated delinquents. COLO. REV. STAT. ANN. § 22-3-13(1)(b)(22) (Supp. 1969); Ch. 110, § 22, [1973] Colo. Sess. Laws 392, *amending* COLO. REV. STAT. ANN. § 22-3-13(1)(b) (Supp. 1969); *id.* § 22-3-13(1)(c) (Supp. 1971).

[164] The probation or supervision status may include assignment to a constructive supervised work program provided the child's education is not curtailed and the work program is designed to promote the rehabilitation of the child. COLO. REV. STAT. ANN. § 22-3-12(1)(d) (Supp. 1967).

[165] *Id.* § 22-3-12(1)(b)(Supp. 1967).

[166] *Id.* § 22-3-12(1)(c) (Supp. 1967).

If placement in the child's own home would be detrimental to his rehabilitation, the court may combine probation or protective supervision with giving custody of the child to the county department of public welfare or a child placement agency, or the court may simply place the child directly in a child care center.[167] If the child requires medical, psychological, or psychiatric examination or treatment, the court may place the child in a hospital or other suitable facility for that purpose.[168] The court may commit, or transfer legal custody of, the child to the State Department of Institutions for placement in a group care facility or other facility as determined by the evaluation unit of that department.[169]

Finally, the court may require, in combination with any of the other alternatives, that the child pay for damage done to persons or property, if such payment can be expected "without serious hardship or injustice to the child."[170]

Because of the overwhelming importance of the dispositional hearing, the weight given by the court to the probation counselor's recommendation in that hearing, and the vagueness of the standards and guidelines of the formal law, each probation counselor interviewed was asked what factors he considered in making recommendations and whether or not the court set any standards.

Considerations weighed by the various probation counselors were the availability of placement facilities, whether the child is a prospective repeater, whether he would be better helped in the community or in his home situation, and the child's attitude. Most probation counselors put little emphasis on the specific offense committed and were more child-oriented than public-oriented. Even recommendations for a locked setting were viewed in terms of protecting the child from himself rather than protecting the community from the child.

Prior to the completion of the court report the district attorney rarely communicates his views on disposition to the probation

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[167] *Id.* § 22-3-12(1)(e) (Supp. 1967).

[168] *Id.* § 22-3-12(1)(f). This is assuming that somehow the court has determined that even though the child needs inpatient treatment, he or she is not a mentally ill or mentally deficient child requiring transfer to the probate court. *See supra* note 158 and accompanying text.

[169] Ch. 111, § 1, [1973] Colo. Sess. Laws 393, *amending* COLO. REV. STAT. ANN. § 22-3-12(1)(h) (Supp. 1967).

[170] COLO. REV. STAT. ANN. § 22-3-12(1)(g) (Supp. 1967).

counselor. The activities of defense counsel, meanwhile, are governed to a great extent by his perception of his role at the critical juncture of disposition. Attorneys who believe that the probation counselor is the only person with the time and expertise to determine what is the child's best interest take a passive role. A more active role is taken by those attorneys who feel that the child's wishes must be made known to the counselor and that the counselor should be willing to adjust his recommendations to accommodate the wishes of the child insofar as possible. Any accommodation depends on the development of a positive relationship between defense counsel and the probation counselor, and is, in essence, dispositional bargaining. It may take the form of an agreement, for example, to out-of-home placement through the department of public welfare in exchange for an abandonment by the probation counselor of his recommendation to commit to the Department of Institutions. In this situation, the attorney's objective is to help the child and probation counselor reach an agreement which will facilitate the child's adjustment to whatever disposition is finally reached.

Alternately, counsel and the child may propose and justify their own set of dispositional recommendations without consulting with the probation counselor. This most frequently occurs when negotiation fails, or when the attorney or child feels that the assigned probation counselor is either incompetent or not acting in the best interest of the child. Because the probation counselor is intended to perform the functions of referral for evaluation or placement, gathering of school information, and arranging for preplacement visits, this role is a difficult one for counsel to play. Indeed he may find that he can obtain information which would be given willingly to probation counselors only through court-ordered discovery. Counsel may also find that while the probation counselor would have no difficulty removing a child from detention for a preplacement visit, such a visit when arranged by the child's attorney requires transportation and accompaniment by a member of the sheriff's department.

Because of these system-imposed restraints, because most attorneys who practice in juvenile court are somewhat unfamiliar with the various possible dispositions, and because of heavy case loads, few attorneys adopt an active role in pursuing dispositional alternatives. Nevertheless, some, especially student interns with few cases to handle, choose to negotiate. The approach adopted

by the attorney dictates, to a great extent, the degree of adversariness in the dispositional hearing itself.[171]

Four of the more common dispositional alternatives are (1) continued petition, (2) probation, (3) out-of-home placement without commitment, and (4) commitment to the department of institutions.

1. Continued Adjudication of the Petition

Continued adjudication of the petition,[172] commonly called a "continued petition" is usually granted in cases where a child's infraction is minor, intensive supervision by the court is unnecessary, and treatment is either unnecessary or has been arranged through a community resource without the need for a court order. Continued petitions are also common when, prior to the dispositional hearing, a child has been placed in an out-of-home setting and responds to it.

In these cases, the juvenile court probably should not have exercised its jurisdiction at all. The continued petition allows the court, without dismissing the petition, to continue jurisdiction and supervision with a minimum of time and resources. Often a continued petition is granted when a child is very young and the court wishes to attempt treatment without the necessity of labeling the child as a CHINS or a delinquent, or when the child is almost beyond the jurisdictional age of the court and has had an

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[171] A brief discussion of the role of the attorney in juvenile court at the dispositional stage is contained in the Counsel Table Feature, *The Role of the Attorney in Juvenile Court*, 42 CLEVELAND B.J. 127 (1971).

[172] Though the alternative of a "continued petition" is not mentioned as a possibility in the sections of the Children's Code dealing with the disposition because it cannot occur after adjudication, it is outlined in the section on the adjudicatory hearing as follows:

> (3)(a) After making a finding as provided by subsection (6)(a) of this section but before making an adjudication, the court may continue the hearing from time to time, allowing the child to remain in his own home or in the temporary custody of another person or agency subject to such conditions of conduct and of visitation or supervision by a probation counselor as the court may prescribe, if:
>
> (b) Consent is given by the child and his parent, guardian, or other legal custodian after being fully informed by the court of their rights in the proceeding, including their rights to have an adjudication made either dismissing or sustaining the petition.
>
> (c) Such continuation shall extend no longer than six months without review by the court. Upon review the court may continue the case for an additional period not to exceed six months, after which the petition shall either be dismissed or sustained.

COLO. REV. STAT. ANN. § 22-3-6(3) (Supp. 1971); COLO. R. JUV. P. 17(c).

offense-free record prior to the incident at issue. The advantage to the child of this dispositional alternative is that if there is no further trouble the petition will be dismissed at the end of 6 months and there will be no adjudication noted on the child's record.

The Code requirement that a review hearing be held within 6 months and that the adjudication be continued for no longer than 1 year[173] is regularly followed by the court. However, Code provisions making mandatory court advisement of the parent and child of their specific right to have an adjudication made either dismissing or sustaining the petition are rarely complied with. Because most children given continued petitions have previously entered pleas of admission to the allegations, the failure of advisement is of negligible effect, as most parties offered the right to adjudication would certainly waive it.

Few continued petitions have been granted in the Denver Juvenile Court since the Code was amended in 1973 to allow for expungement of a child's record prior to the expiration of a 2-year period if all parties consent.[174]

2. Probation

The most common dispositional alternative recommended by probation counselors and ordered by the court is probation, or probation in combination with other alternatives.[175] At least

[173] COLO. REV. STAT. ANN. § 22-3-6(3)(c) (Supp. 1971).

[174] Ch. 110, § 9, [1973] Colo. Sess. Laws 387, *amending* COLO. REV. STAT. ANN. § 22-1-11(2)(a) (Supp. 1969).

[175] Probationary status is inconsistent with only two of the dispositional alternatives discussed—continuation of the adjudication and commitment. In the former situation, protective supervision, which is almost indistinguishable from probation except in name, is given to the child. The most frequent combinations for adjudicated delinquents are probation and restitution as provided in COLO. REV. STAT. ANN. § 22-3-12(1)(g) (Supp. 1967), probation and a fine, *id.* § 22-3-13(1)(c) (Supp. 1971), probation and psychological counseling, *id.* § 22-3-12(1)(f) (Supp. 1967), and probation and the intervention of a Partner, *supra* at note 91. While probation in combination with psychological counseling or Partners is also common for adjudicated CHINS, the nature of CHINS problems makes probation in combination with out-of-home placement with relatives or in a group care facility more common for this type of child. Out-of-home placement without commitment is discussed in the following subsection. CHINS dispositions often include as well orders of protection under *id.* § 22-3-10 (Supp. 1967) and COLO. R. JUV. P. 48, which orders may set forth reasonable conditions of behavior to be observed by the *parent or guardian* of the child. Protective orders may prescribe conditions of visitation between parent and child, conditions of cooperation with an involved agency, support orders, or orders requiring improved "parenting." Violation of protective orders subjects the parents to civil contempt of court proceedings.

three-fourths of the children appearing before the Denver Juvenile Court for disposition are placed or continued on probation. Those who are denied probationary status are children whose offenses are very serious and who are perceived to be a real menace to the community, or those who are in desperate need of intensive treatment and whose runaway patterns indicate they will not remain in an open setting. Both types of children are generally committed to the Department of Institutions for placement in a locked facility.

If a child is placed on probation,[176] the terms and conditions of that probation are to be specified by orders of the court, given to the child in written form, and explained fully to the child and his parents by the court or the probation counselor.[177]

The Code provides for a maximum period of probation of 2 years[178] and a mandatory review of the terms and conditions of probation at least once every 6 months.[179] On the basis of such review hearings, the court may either modify the terms and conditions of probation or release the child from probationary status.[180]

There are virtually no guidelines in the formal or administrative law specifying the responsibilities of the probation counselor to his probationer. Probation counselors are admonished to keep themselves informed of the conduct and condition of children placed under their supervision, to keep complete records of all work done, and to "use all suitable methods including counseling to aid each child under [their] supervision."[181] Because failure of the child on probationary status may indicate failure of the counselor to meet even the minimum standards of contact and supervision, because probation is such a common form of disposition, and because revocation of probation often results in commitment, the formulation of standards of probationary supervision would seem desirable.

In practice, probationers who continue to have problems re-

[176] COLO. REV. STAT. ANN. §§ 22-3-12(1)(b), (c) (Supp. 1967); COLO. R. JUV. P. 22(a).

[177] COLO. REV. STAT. ANN. §§ 22-3-18(1), -5-5(2) (Supp. 1967); COLO. R. JUV. P. 22(a).

[178] COLO. REV. STAT. ANN. § 22-3-18(2)(b) (Supp. 1967); COLO. R. JUV. P. 22(c). *See* text accompanying notes 230-36 *infra* for discussion of revocation of problem.

[179] COLO. REV. STAT. AN.. § 22-3-18(2)(a) (Supp. 1967); COLO. R. JUV. P. 22(b). *See* discussion of subsequent hearings to review placement or probationary status, *supra* notes 221-36 and accompanying text.

[180] COLO. REV. STAT. ANN. § 22-3-18(2)(b) (Supp. 1967); COLO. R. JUV. P. 22(b).

[181] COLO. REV. STAT. ANN. § 22-5-5(3) (Supp. 1967).

ceive attention, and those who do not may never feel the responsibilities of probationary status. The probation counselors who were interviewed recognized the limited extent of the supervision given by field probation counselors. The majority felt that the field probation officer is burdened by a shortage of facilities, a heavy caseload, and an excessive amount of paper work, all of which combined to prevent him from providing adequate supervision, carrying through with established treatment plans, and meeting with the child in the community.

Probation can form the basis for a successful completion of a child's involvement with the juvenile court, or, if he violates the terms and conditions of his probation, for increased court involvement through a revocation of probation petition. If the court grants probation in lieu of incarceration, it is an act of grace within its discretion.[182] Whether or not the child falls from grace depends on the child and the effectiveness of his probation counselor.

3. Out-of-Home Placement without Commitment

When a child's home situation is a substantial cause of his delinquent or CHINS behavior, out-of-home placement without commitment is often the first dispositional alternative attempted. It is often the second alternative when probation while living in the home has failed because of family pressures.

Because the Code states that children removed from their parents should be given "the necessary care, guidance, and discipline to assist [them] in becoming responsible and productive member[s] of society,"[183] a determination of the type of out-of-home placement best suited to fulfill that purpose is essential. The court may place the child with a relative or other suitable person,[184] such as a friend or neighbor. The court may also place the child in a foster or family care home,[185] a child care facility or center,[186] a group care facility or home,[187] a half-way house,[188]

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[182] *In re* D.S., 31 Colo. App. 300, 502 P.2d 95 (1972).

[183] COLO. REV. STAT. ANN. § 22-1-2(1)(e) (Supp. 1967).

[184] *Id.* § 22-3-12(1)(c) (Supp. 1967).

[185] *Id.* "Family home care" is defined in ch. 340, § 15, [1973] Colo. Sess. Laws 1224.

[186] COLO. REV. STAT. ANN. § 22-3-12(1)(e) (Supp. 1967). "Child care center" is defined in ch. 340, § 15, [1973] Colo. Sess. Laws 1224.

[187] COLO. REV. STAT. ANN. § 22-3-12(1)(e) (Supp. 1967).

[188] *Id.*

or temporarily in a hospital or mental health center.[189]

Placement without the intervention of a placement agency is most often accomplished when the family agrees with the recommendation of out-of-home placement, does not interfere with it, and there are no funding problems. Otherwise, a recommendation may be made to the court that it transfer legal custody[190] from the parents to the county department of public welfare,[191] or to another child placement agency.[192] Transfer of legal custody, like commitment, is for an indeterminate period not to exceed 2 years and must be reviewed by the court within 6 months.[193] It is usually accompanied by appropriate protective orders to the parents concerning, *inter alia*, visitation, support, and mandates to cooperate with the agency.[194]

Once the type of placement best suited to a child's needs and the desirability of a transfer of custody have been decided, the difficult problem of funding the placement must be faced. If placement is with a relative, funding often can be arranged voluntarily. However, because out-of-home group placements for adolescents cost from $150 to $2,000 per month,[195] the great majority of parents of children exposed to the Denver Juvenile Court cannot make a significant contribution toward the cost.

If either parent is an active or retired member of the military, C.H.A.M.P.A.S. will pay for treatment at specified facilities. Some placements, such as Job Corps or L.E.A.A. funded facilities, are entirely financed by the federal government if the child meets the criteria for admission. There are also some facilities sponsored by private foundations which require no financial contribution by the child if admission criteria are met. With most out-of-home group placements, however, the sources of funding in Denver are the Denver Department of Public Welfare or the Colorado Department of Institutions. In the past, the department

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[189] *Id.* § 22-3-12(1)(f) (Supp. 1967).

[190] *Id.* §§ 22-1-3(6)(a), (9) (Supp. 1967).

[191] *Id.* § 22-3-12(1)(e) (Supp. 1967).

[192] *Id.* "Child placement agency" is defined in ch. 340, § 15, [1973] Colo. Sess. Laws 1224.

[193] COLO. REV. STAT. ANN. § 22-3-15(4)(a) (Supp. 1967).

[194] *Id.* § 22-3-10 (Supp. 1967); COLO. R. JUV. P. 48. Parental rights and responsibilities which remain after legal custody of the child has been transferred are defined in COLO. REV. STAT. ANN. § 22-1-3(8) (Supp. 1967).

[195] Forest Heights Lodge, a sophisticated residential psychiatric treatment facility, is on the upper end of the cost spectrum.

of institutions had been able to fund placements for noncommitted children through a special federal grant for that purpose, but since July 1, 1973, when the grant expired, only children committed to the legal custody of the department may be placed and financially maintained by it.[196] Excluding parental, federal government, or private support, the largest single source of funding for out-of-home placements of noncommitted children in Denver is the department of welfare.

When a probation counselor senses the need for out-of-home placement financed by the department of welfare, he may refer the cases to child welfare for placement. Although, statutorily, " 'child welfare services' means the provision of necessary shelter, sustenance, and guidance to or for children who are or who, if such services are not provided, are likely to become 'delinquent', 'neglected or dependent', or 'in need of supervision' "[197] and although all children referred to child welfare for placement by their probation counselors fit that definition, there are many children whose cases are "not accepted" by child welfare or who are accepted for family counseling but not for placement. If this occurs, the probation counselor must investigate the placement and request at the dispositional hearing that the department of welfare be ordered to become involved, either by paying for placement of a particular child in a particular facility or by being given legal custody of the child.[198]

If child welfare accepts the referral of a case from a probation

[196] Ch. 112, § 2, [1973] Colo. Sess. Laws 395.

[197] Ch. 340, § 3, [1973] Colo. Sess. Laws 1195.

[198] Conflicts regarding the legal interpretation of the juvenile court's power to issue such orders, and regarding the differing views of the professionals in the court and in the department of welfare concerning the needs of a particular child resulted in a Colorado Supreme Court opinion issued in 1973. The court found in City & County of Denver v. Juvenile Court, 511 P.2d 898, 901 (Colo. 1973) that:

> [T]here can be no doubt that the juvenile court has the power and the duty to make such determinations as it deems appropriate regarding the custody and care of a child adjudicated to be within its exclusive jurisdiction. . . . When the general assembly said that "this chapter shall be liberally construed," it meant that it should be construed favorably to the best interests of the child and society. It is the juvenile court's responsibility to determine what that may be on a case by case basis.

Conflicts between the court and the Denver Department of Public Welfare are not far from the stage of open warfare, regardless of the statutorily mandated cooperation and the presumed desire of each to serve the best interest of the child and the community. Cooperation is achieved between individual probation counselors and individual child welfare workers in particular cases, but administratively the two public bodies are tragically at odds.

counselor, if the child welfare worker and the counselor agree on a specific placement and award of legal custody, if the department of welfare agrees to fund the placement, and if the facility has an opening and the child meets the admission criteria, the social worker and counselor can make a joint placement recommendation to the court. Absent persuasive opposition by counsel, or the child and his family, this recommendation will almost always be accepted and ordered by the court. Given the possible conflict with the department of welfare, the difficulty in finding an appropriate and available placement facility, and the necessity of justifying the selection, many probation counselors recommend either probation, even if out-of-home placement might be more appropriate to the child's needs, or commitment, which transfers responsibility for finding out-of-home placement to the evaluation personnel of the department of institutions.

If the court orders out-of-home placement at a particular facility, the child will be placed or continued on probation and, in many cases, moved immediately to his new home. Unless the child has participated in a preplacement visit to the facility, the move is a traumatic one usually involving change of neighborhoods, if not communities, and of schools.

4. Commitment to the Department of Institutions

The final, and most severe, dispositional alternative is commitment to the Colorado Department of Institutions. Commitment requires a transfer of legal custody from the parents, guardian, or agency custodian to the department.

Children adjudicated as either CHINS or delinquents may be committed to the department of institutions and placed by the department as provided by law.[199] The court may not dictate the specific placement to be made, although it may recommend either a specific type of placement, *e.g.* a youth camp, or a specific placement, *e.g.* Lookout Mountain School for Boys. A former legislator and juvenile court judge explains the rationale behind this centralized commitment procedure:

> In 1962, as a legislator, I was trying to get ready for having more institutions in our state [than Lookout Mountain School for Boys and Mount View Girls' School], and so I looked at the California Youth Authority concept and wrote in a provision which was passed,

[199] Ch. 111, § 1, [1973] Colo. Sess. Laws 393, *amending* COLO. REV. STAT. ANN. § 22-3-12(1)(h), (i) (Supp. 1967).

> saying when the judge commits, he commits to the department of institutions and not to any particular institution. I was trying to develop the concept that the *judge* did not have the power to designate the institution. . . . So it was recognized, based on California, that not every kid who certain judges would [commit] would have to be institutionalized, and gave authority to the state department of institutions to spin kids around right away. We know that there are very discrepant commitment bases—a judge in a rural area with no services at all will [commit] a very moderate offender instead of only the most sophisticated offenders.

There have been problems in the Denver Juvenile Court with the centralized commitment procedure. Sometimes the court has been incensed when its recommendations have been ignored, and defense counsel have argued that the *court* has the nondelegable[200] responsibility to "secure for each child . . . such care and guidance . . . as will best serve his welfare . . . ."[201]

Nevertheless, commitment to the department of institutions now offers the broadest range of placement alternatives on account of the facilities administered by the department itself and the department's service contracts with many varied private treatment facilities.

Most children who appear before the Denver Juvenile Court think of commitment as placement at Mount View Girls' School or Lookout Mountain School for Boys,[202] which are closed facilities offering academic training and group living based on a variety of behavior modification models. These training schools,[203] were once properly called reform schools and fit that definition—custodial penal institutions for young offenders. In the last few years, however, both schools, but especially Mount View, have excelled in providing innovative treatment under the most difficult of circumstances.

The child's misconceptions notwithstanding, commitment may mean placement at the schools, the youth camps for boys,[204] the closed adolescent treatment center, various preparole release homes and ranches administered by the Division of Youth Serv-

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[200] COLO. REV. STAT. ANN. § 22-1-2(1)(b) (Supp. 1967).

[201] It would seem that this argument has been mooted by the Colorado Supreme Court's holding that "the [juvenile] court may delegate responsibility for placement." Denver v. Juvenile Court, 511 P.2d 898, 901 (Colo. 1973).

[202] COLO. REV. STAT. ANN. §§ 22-8-7(2),-8-6(2) (Supp. 1971).

[203] *Id.* § 22-1-3(25) (Supp. 1967).

[204] *Id.* § 22-8-8 (Supp. 1967).

ices of the Colorado Department of Institutions, or one of the numerous private facilities, both in and out of state, with which the department contracts for the placement of children committed to its legal custody.[205]

For delinquent boys over 16 years of age, commitment may also entail placement at the state reformatory,[206] the most secure setting available for juveniles. For any committed child it may mean release on parole following evaluation.[207]

The drawbacks to the dispositional alternative of commitment are that it necessarily transfers legal custody, usually removes the child from his community, and offers the possibility of a locked institutional setting for a period of up to 2 years.[208] Nevertheless, some probation counselors, unwilling to wait for the provision of community based services and having little time to counsel their probationers, recommend and receive court orders for commitment. Most probation counselors, however, still seem to favor community based treatment when it is feasible, and view commitment as a last resort.[209]

Court approval is a prerequisite to the placement of CHINS at Lookout Mountain School for Boys or Mount View Girls' School.[210] If the department's evaluation indicates that the "child requires placement in a state facility for the mentally ill or mentally deficient . . . [the department] shall place the child in the appropriate facility"[211] and, when the committing court is Denver

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[205] *Id.* § 22-8-10 (Supp. 1967).

[206] *Id.* § 22-3-13(1)(b)(ii) (Supp. 1969); *id.* § 22-8-16 (Supp. 1969).

[207] *Id.* § 22-8-3(2)(a) (Supp. 1967).

[208] Commitment of CHINS is "for an indeterminate period not to exceed two years." *Id.* § 22-3-14(3)(a) (Supp. 1967), while commitment of delinquents is "for an indeterminate period, but institutional placement shall not exceed a total of two years." *Id.* § 22-3-14(3)(b)(i) (Supp. 1969). Upon petition by the department to the committing court, commitment of CHINS or delinquents can be extended for an additional period not to exceed two years if the petition sets forth sufficient reasons why such extension would be in the best interest of the child or of the public. *Id.* § 22-3-14(3) (Supp. 1967).

[209] One field probation supervisor interviewed stated:

> [W]hen you separate them from the community, no matter what they learn, sometimes they will come back into the community and have the same type of problem and get involved in the same type of thing. . . . [M]y feeling is to try to work it out and keep it in the community as long as possible. Then if it doesn't work, I find that confinement with care is the next best thing.

[210] Ch. 111, § 6, [1973] Colo. Sess. Laws 394, *amending* COLO. REV. STAT. ANN. § 22-8-17(2) (Supp. 1971). No such approval is necessary for committed delinquents.

[211] COLO. REV. STAT. ANN. § 22-8-3(3)(a) (Supp. 1967).

Juvenile Court, shall petition that court to transfer the case to the probate court for a civil commitment.[212]

A dispositional order of commitment effectively terminates the child's relationship with the Denver Juvenile Court, even though the court retains jurisdiction over him[213] and even though the court may require the department at any time to provide information concerning the child.[214] Probation counselors are rarely ordered to continue a relationship with a child, although some do. Nor do attorneys in most cases attempt to keep in touch with the child.[215]

If the probation counselor, counsel, and child engage in a thorough discussion of dispositional alternatives prior to the dispositional hearing, the counselor's recommendations will usually be uncontested. On the other hand, if the attorney does not receive the court report until the morning of the hearing, and if neither he nor the probation counselor explains the recommendation to the child, the hearing may be difficult for all parties.

Dispositional hearings are conducted informally as provided in the Code.[216] The probation counselor introduces the case and the parties, after which counsel consents to the jurisdiction of the court if the hearing is being held before a referee, and usually

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[212] *Id.* § 22-8-3(3)(b) (Supp. 1967). The department has authority to transfer children committed to its custody to state facilities for the mentally ill or mentally retarded only for a period not to exceed 60 days and only for evaluation or emergency treatment, unless the transfer is followed by a probate commitment. *Id.* § 22-8-4(4)(a) to -(c) (Supp. 1967). The one exception to this rule is the closed adolescent treatment center which is a closed psychiatric facility operated by the department under an L.E.A.A. grant. Children in need of psychiatric treatment may be placed in that facility without commitment through the probate court.

[213] COLO. REV. STAT. ANN. § 22-3-19 (Supp. 1967).

[214] *Id.* § 22-3-14(1)(b) (Supp. 1967).

[215] This abandonment of the child by those who have worked with him or her is described in the following lament by a former presiding judge of the Denver Juvenile Court:

> The important thing is that our court knows this child—our officers have studied that child from beginning to end, heard the case, and I think we should . . . track that child, if you will. I want the probation officers to follow that child. Now the policy *has* been that once there is a commitment to the department of institutions, the probation counselor phases out. That is not right. That counselor should stay right in there and keep the court advised—keep themselves advised—as to the progress of the child. They should participate in the staffings that are held by the department of institutions.

[216] COLO. REV. STAT. ANN. § 22-1-7(1)(b) (Supp. 1967).

waives a formal advisement by the court of the child's rights.[217] The probation counselor then reads, summarizes, or explains the information contained in the court report, his recommendations, and his justification for them. Probation counselors rarely call on other persons to testify or concur. Hearsay testimony is almost always readily accepted by the court.

The district attorney and counsel for the child may cross-examine the probation counselor. The more extensive examination is generally made by counsel for the child and usually seeks to determine whether the recommendations of the counselor do best serve the interests of the child, whether other alternatives were considered and why they were rejected, and whether additional alternatives could or should be included in the recommendations.[218] If the counselor testifies as to the psychological problems and needs of the child, counsel may question his qualifications. However, unless it is obvious that the probation counselor is incompetent or has prepared an inadequate social study or court report, the court may protect him from rigorous cross-examination.

Each side also has the opportunity to cross-examine the authors of any other reports submitted to the court and to present its own evidence.[219] The court usually wishes to hear the testi-

[217] It should be remembered that because the dispositional hearing in the Denver Juvenile Court *is almost always the adjudicatory hearing as well*, a full advisement should be given to the child by counsel or the court. The advisement at this stage should also include advisement of the child's right to request a new hearing under COLO. REV. STAT. ANN. § 22-3-17 (Supp. 1967), and COLO. R. CIV. P. 50. Finally, the court or counsel for the child should inform the child that adjudication in the juvenile court does not impose any civil disabilities upon him or disqualify him from civil or military service application or appointment, or from holding public office, nor can the adjudication, disposition or evidence given in juvenile court hearings be used in any other hearings except further hearings in juvenile court. COLO. REV. STAT. ANN. § 22-1-9 (Supp. 1967).

[218] For example, the additional recommendation of a referral to Partners is often suggested by counsel and adopted by the probation counselor.

[219] Counsel may legitimately request a continuance of the dispositional hearing if a copy of the social study or court report is not received at least 48 hours prior to the hearing, COLO. REV. STAT. ANN. § 22-3-9(3)(a) (Supp. 1967); COLO. R. JUV. P. 20(c); if counsel feels more tests or reports are necessary, COLO. REV. STAT. ANN. § 22-3-9(3)(a) (Supp. 1967); or if the authors of reports to be considered by the court in making its dispositional orders are not available for cross-examination, *id.* §§ 22-1-8(2),(3) (Supp. 1967). If the hearing is continued, the court must make appropriate orders for the release or continued detention of the child pending the rescheduling of the hearing. *Id.* § 22-3-9(3)(b) (Supp. 1967). Even though the dispositional hearings of detained children are given priority on the docket, *id.* § 22-3-9(3)(c) (Supp. 1967), counsel for the child may often waive the child's right to a continuance if it would mean continued detention in suspense, and a delay of treatment for the child.

mony of the child and his parents. Counsel may make closing statements, following which the court announces its findings and recommendations or orders.

The advisability of predispositional hearing consultation with the probation counselor is demonstrated in that eight out of ten of the court's dispositional orders adopt exactly, or with only minor modifications, the probation counselor's recommendations.

If the child is committed to the department of institutions, a copy of the commitment order, or mittimus, is signed by the court and given to the sheriff, who takes or returns the child for evaluation to Denver Juvenile Hall, the receiving center for the department of institutions. There is never a review hearing in commitment cases.

This description of the dispositional hearing does not suggest the tension and impersonality which are often present. The director of field probation services for the court has commented on these aspects as follows:

> One of the inadequacies of the system is that you work in a vacuum a lot—the whole court room scene is working in a vacuum. You are making decisions based on data, impressions, and attitudes that you are getting that do not belong to the actual happenings.
>
> . . . .
>
> [I]t's like psychiatry. You are sitting in a room simulating life to try to determine what to do about it. You are sitting in a courtroom simulating [an] individual's life, simulating what his problems are, diagnosing them, and recommending treatment. You are really working in a think tank; you are working in a made-up situation . . . where generally what the kid's whole life is about is told . . . by people other than himself. . . . [Y]ou rarely hear much from either [the] family or the kid, and then you are really making decisions in a vacuum as to the treatment of the kid, based on what other people say the treatment is all about. . . . [W]e are shooting in the dark like everybody else is.

Following the dispositional hearing, the regular sessions of most children with the Denver Juvenile Court are over. They need anticipate only review hearings.[220]

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[220] The rehearing and appellate processes available to the child in the Denver Juvenile Court will not be discussed, as they are almost identical to those in the adult system. Suffice it to say that appellate review of discretionary decisions made by a juvenile judge "in the best interest of the child and the public" is almost never successful for the child. *See In re* M.T. & G. McL., 508 P.2d 417 (Colo. Ct. App. 1973).

J. *Subsequent Hearings to Review Placement or Probationary Status*

Review hearings before the Denver Juvenile Court examine placement or other terms and conditions of probation, or are held on formal petition to consider the modification or revocation of a child's probation. By the first review hearing, the court and probation counselor can almost always determine whether the disposition is in the best interest of the child, or whether the court must again try to refashion his life. If the review is a plea on a probation revocation petition, the court process will begin again.

The Code mandates certain types of review hearings. If a child is placed on probation as a result of the dispositional hearing, the court must "review the terms and conditions of probation and the progress of each child placed on probation at least once every six months."[221] Similarly, a court hearing seems required to modify the terms and conditions of probation,[222] release the child from probationary status,[223] or terminate the jurisdiction of the court prior to the child's 21st birthday.[224]

If a transfer of legal custody was part of the dispositional decree, it is valid for a period not to exceed 2 years, and the decree must "be reviewed by the court no later than 6 months after it is entered."[225] Modification or termination of the decree transferring legal custody,[226] including extension of the 2-year limitation, must be by court order.[227]

The requirements for mandatory review are not always met. Often children are placed for longer than 2 years, petitions for revocation of probation have been filed long after the expiration of the 2-year probationary period, and the department of institutions has funded placements of children whose commitments are no longer valid. Both the court and the department of institutions seem to lack a good followup system for informing the counselor in charge when a hearing should be set.

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[221] COLO. REV. STAT. ANN. § 22-3-18(2)(a) (Supp. 1967); COLO. R. JUV. P. 22(b).

[222] COLO. REV. STAT. ANN. § 22-3-18(2)(b) (Supp. 1967); COLO. R. JUV. P. 23(a). *But see id.* 24(d).

[223] COLO. REV. STAT. ANN. § 22-3-18(2)(b) (Supp. 1967); COLO. R. JUV. P. 22(c).

[224] COLO. REV. STAT. ANN. § 22-3-19 (Supp. 1967).

[225] *Id.* § 22-3-15(4)(a) (Supp. 1967). Transfer of legal custody to the department of institutions is exempted from this subsection.

[226] COLO. R. JUV. P. 23.

[227] COLO. REV. STAT. ANN. § 22-3-15(4)(b) (Supp. 1967). Extension of the 2-year commitment period must also be by court order. *Id.* § 22-3-14(3) (Supp. 1967).

Reviews of probation and jurisdiction hearings are conducted in "nonappearance hearings" in which a probation counselor, ex parte and with notice to no one, appears before the court, informs the court of a child's progress, and recommends continuation or termination of his probationary status. The child's right to appear at hearings held in his interest is diminished and, if probation and jurisdiction are to be terminated, his right to apply for expungement of his record prior to the expiration of a 2-year period on the consent of all parties is negated.[228] He loses the opportunity to appear before the court as a "success story" and to be advised again, or perhaps for the first time, of the general expungement procedures and that no civil disabilities have been imposed on him.[229] Most seriously, continuing a child on probation on the recommendation of his probation counselor, with the child and his attorney unable to offer evidence in support of the termination of probation and jurisdiction, is arguably a denial of due process. It is therefore suggested that the nonappearance review be used only if counsel and all parties have been notified of the hearing and its purpose, and have waived in writing the rights associated with it.

Review hearings with all parties present are generally very informal and are used primarily to keep the court informed of the child's progress. If a modification of the terms and conditions of probation or a change in placement is recommended, it is usually the joint recommendation of all concerned. If there is disagreement, the probation counselor will seek to substantiate his recommendation by filing a formal petition alleging violations of the terms and conditions of probation or of specific statutes.[230] The case will then be docketed for a revocation of probation plea hearing, rather than a review hearing.

The rights of the child at a hearing to modify or revoke probation are similar to his rights at his first hearing before the court[231] with a few notable exceptions. There is no right to a jury trial in a revocation or modification of probation proceeding as

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[228] Ch. 110, § 9, [1973] Colo. Sess. Laws 387, *amending* COLO. REV. STAT. ANN. § 22-1-11(2)(a) (Supp. 1967).

[229] COLO. REV. STAT. ANN. § 22-1-9 (Supp. 1967).

[230] *Id.* § 22-3-18(3) (Supp. 1967); COLO. R. JUV. P. 24. The discretion practiced in original filings is also present in decisions to file modification or revocation of probation petitions.

[231] *See* notes 59-67 *supra* and accompanying text.

the child has already been adjudicated.[232] A recent case, moreover, has held that revocation of probation hearings may be conducted in an informal manner as provided in the Code, and that in such hearings the juvenile court is not bound by the traditional rules of evidence.[233] In a later case, the same court concluded that since hearings to revoke probation are not adjudicatory in nature, the judge need only apprise himself of facts which convince him that the conditions of probation have been violated. Proof of any violation of law is sufficient to revoke probation, even if the proof does not correspond exactly to the specifics in the petition.[234] Proof by a preponderance seems to be the Colorado standard in probation revocation hearings.

If the court finds no violation of probation, the child continues under the original terms and conditions of probation.[235] If the court finds that the child has violated terms and conditions of probation, the court in essence returns to the dispositional stage, may request an updated court report, and may take any action permitted by the dispositional sections of the Code.[236]

The child has come the full circle. Whether he is released from probation or is facing a probation revocation, the juvenile justice maze through which he has come has been arduous and painful. Those searching for "what is in the child's best interest" might agree that the child himself, rather than the juvenile court system, is the greater source of guidance.

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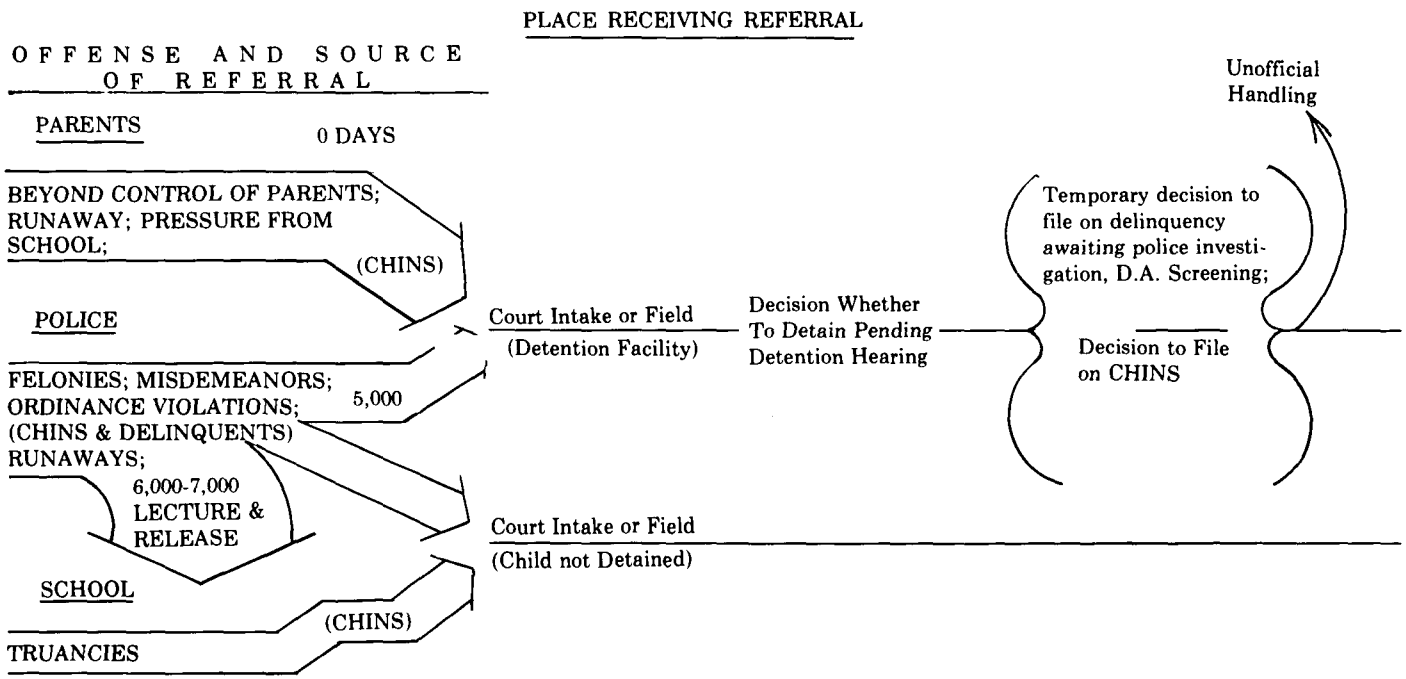
[232] COLO. R. JUV. P. 24(b).

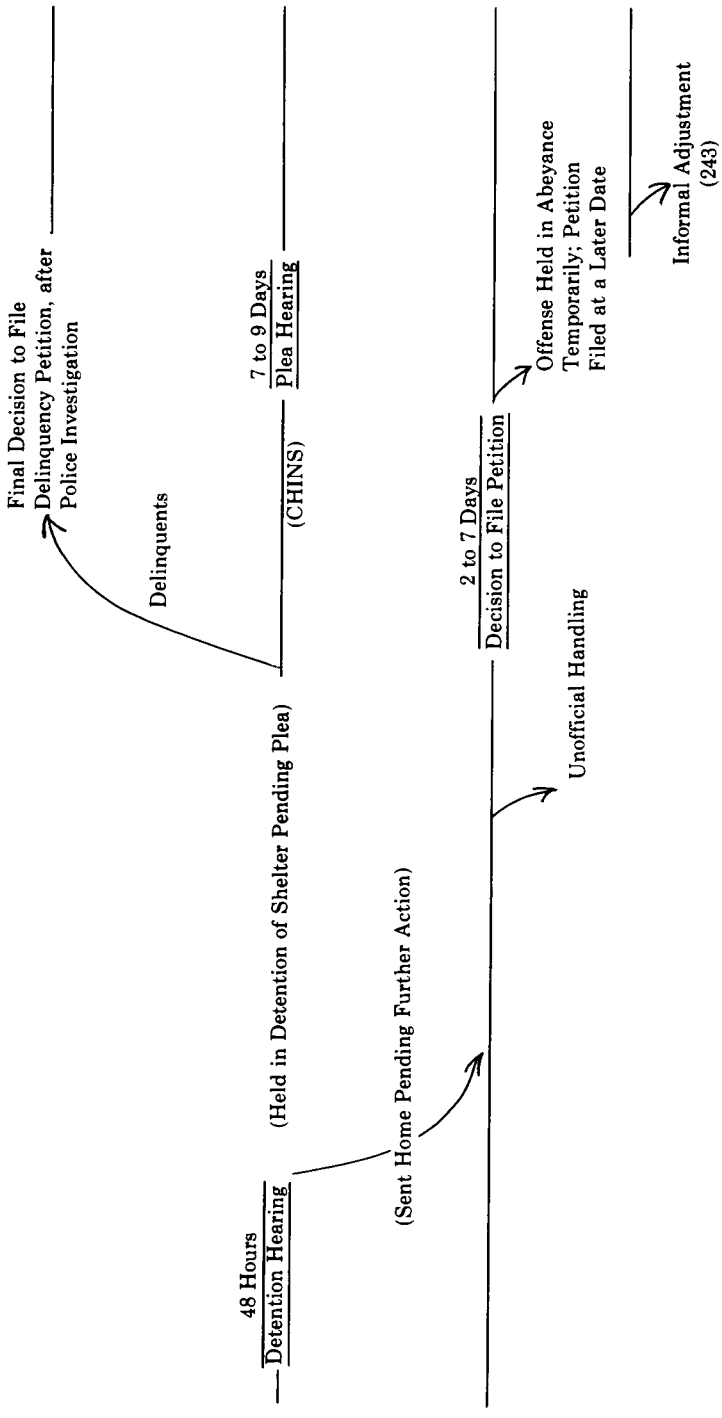
[233] *In re* B.L.M., 31 Colo. App. 106, 500 P.2d 146 (1972).

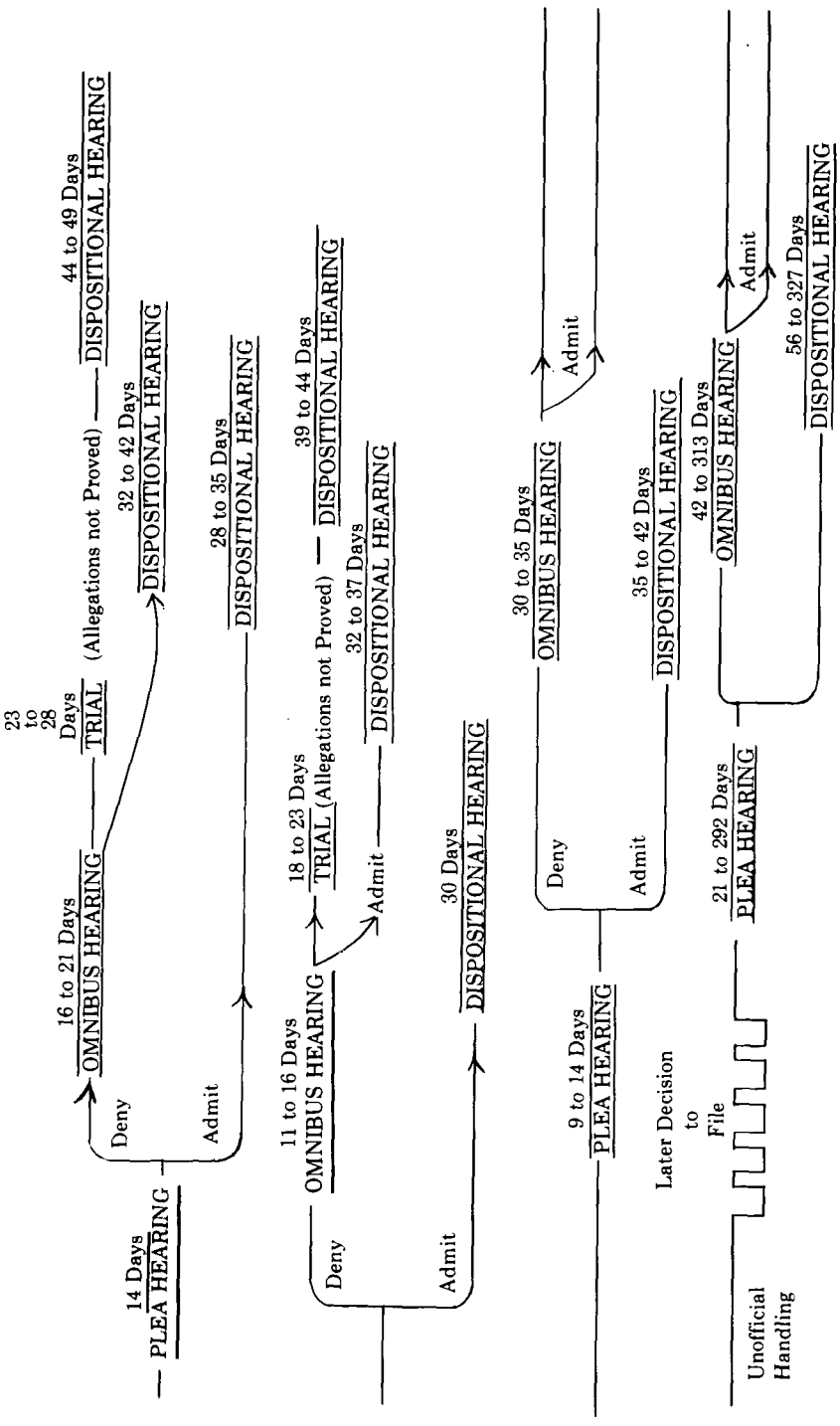
[234] *In re* D.S., 31 Colo. App. 300, 502 P.2d 95 (1972).

[235] COLO. REV. STAT. ANN. § 22-3-18(3)(d)(iii) (Supp. 1967).

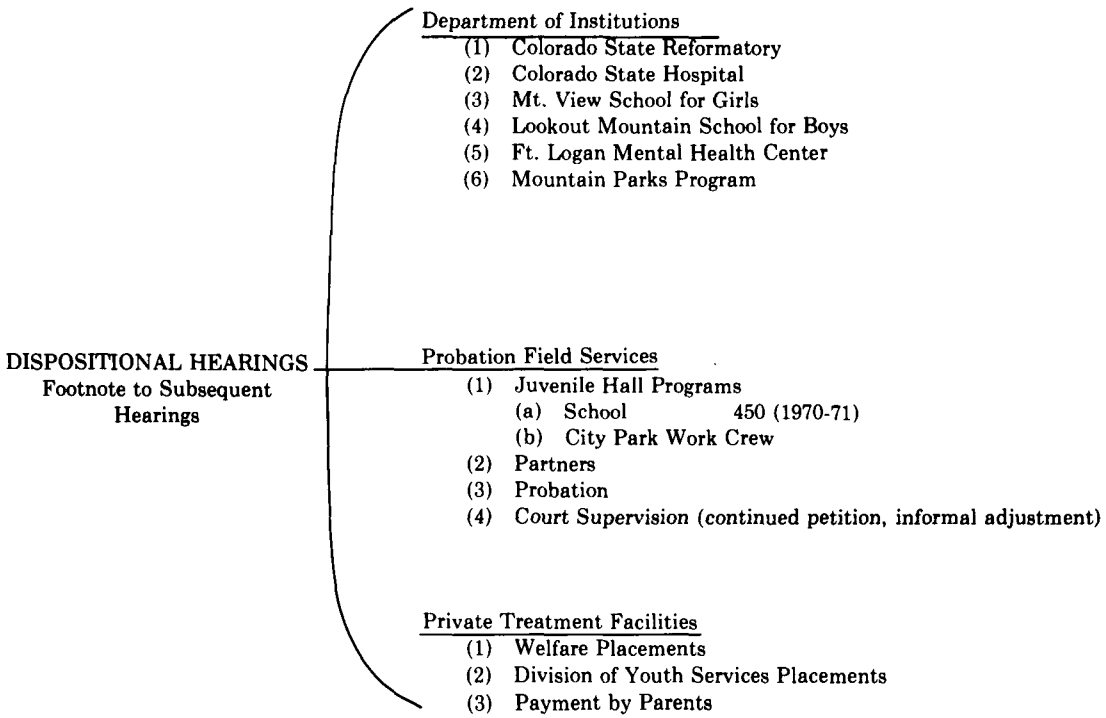
[236] *See generally, id.* §§ 22-3-9, -3-12, -3-13 (Supp. 1967). If the petition for revocation of probation is sustained, the court may revoke the probation of either a CHINS or a delinquent who is over the age of 18 years and may sentence him to the county jail for a period not to exceed three months. *Id.* § 22-3-18(3)(e) (Supp. 1969); Ch. 110, § 22, [1973] Colo. Sess. Laws 392, *amending* COLO. REV. STAT. ANN. § 22-3-13(1)(b) (Supp. 1969).


PLACE RECEIVING REFERRAL
OFFENSE AND SOURCE OF REFERRAL
PARENTS
0 DAYS
BEYOND CONTROL OF PARENTS; RUNAWAY; PRESSURE FROM SCHOOL;
(CHINS)
POLICE
FELONIES; MISDEMEANORS; ORDINANCE VIOLATIONS; (CHINS & DELINQUENTS) RUNAWAYS;
5,000
6,000-7,000 LECTURE & RELEASE
SCHOOL
TRUANCIES
(CHINS)
Court Intake or Field
(Detention Facility)
Court Intake or Field
(Child not Detained)
Decision Whether To Detain Pending Detention Hearing
Temporary decision to file on delinquency awaiting police investigation, D.A. Screening;
Decision to File on CHINS
Unofficial Handling


48 Hours
Detention Hearing
(Held in Detention of Shelter Pending Plea)
(Sent Home Pending Further Action)
Final Decision to File
Delinquency Petition, after
Police Investigation
Delinquents
7 to 9 Days
Plea Hearing
(CHINS)
2 to 7 Days
Decision to File Petition
Unofficial Handling
Offense Held in Abeyance
Temporarily; Petition
Filed at a Later Date
Informal Adjustment
(243)


14 Days
PLEA HEARING
Deny
16 to 21 Days
OMNIBUS HEARING
23 to 28 Days
TRIAL
(Allegations not Proved)
44 to 49 Days
DISPOSITIONAL HEARING
Admit
32 to 42 Days
DISPOSITIONAL HEARING
Deny
11 to 16 Days
OMNIBUS HEARING
18 to 23 Days
TRIAL
(Allegations not Proved)
39 to 44 Days
DISPOSITIONAL HEARING
Admit
32 to 37 Days
DISPOSITIONAL HEARING
Admit
30 Days
DISPOSITIONAL HEARING
28 to 35 Days
DISPOSITIONAL HEARING
9 to 14 Days
PLEA HEARING
Deny
30 to 35 Days
OMNIBUS HEARING
Admit
Admit
35 to 42 Days
DISPOSITIONAL HEARING
Later Decision to File
Unofficial Handling
21 to 292 Days
PLEA HEARING
42 to 313 Days
OMNIBUS HEARING
Admit
56 to 327 Days
DISPOSITIONAL HEARING

51 to 56 Days
TRIAL (Allegations not Proved)
77 to 84 Days
DISPOSITIONAL HEARING
51 to 63 Days
DISPOSITIONAL HEARING
63 to 334 Days
TRIAL (Allegations not Proved)
84 to 335 Days
DISPOSITIONAL HEARING
70 to 341 Days
DISPOSITIONAL HEARING


DISPOSITIONAL HEARINGS
Footnote to Subsequent Hearings
Department of Institutions
(1) Colorado State Reformatory
(2) Colorado State Hospital
(3) Mt. View School for Girls
(4) Lookout Mountain School for Boys
(5) Ft. Logan Mental Health Center
(6) Mountain Parks Program
Probation Field Services
(1) Juvenile Hall Programs
(a) School 450 (1970-71)
(b) City Park Work Crew
(2) Partners
(3) Probation
(4) Court Supervision (continued petition, informal adjustment)
Private Treatment Facilities
(1) Welfare Placements
(2) Division of Youth Services Placements
(3) Payment by Parents