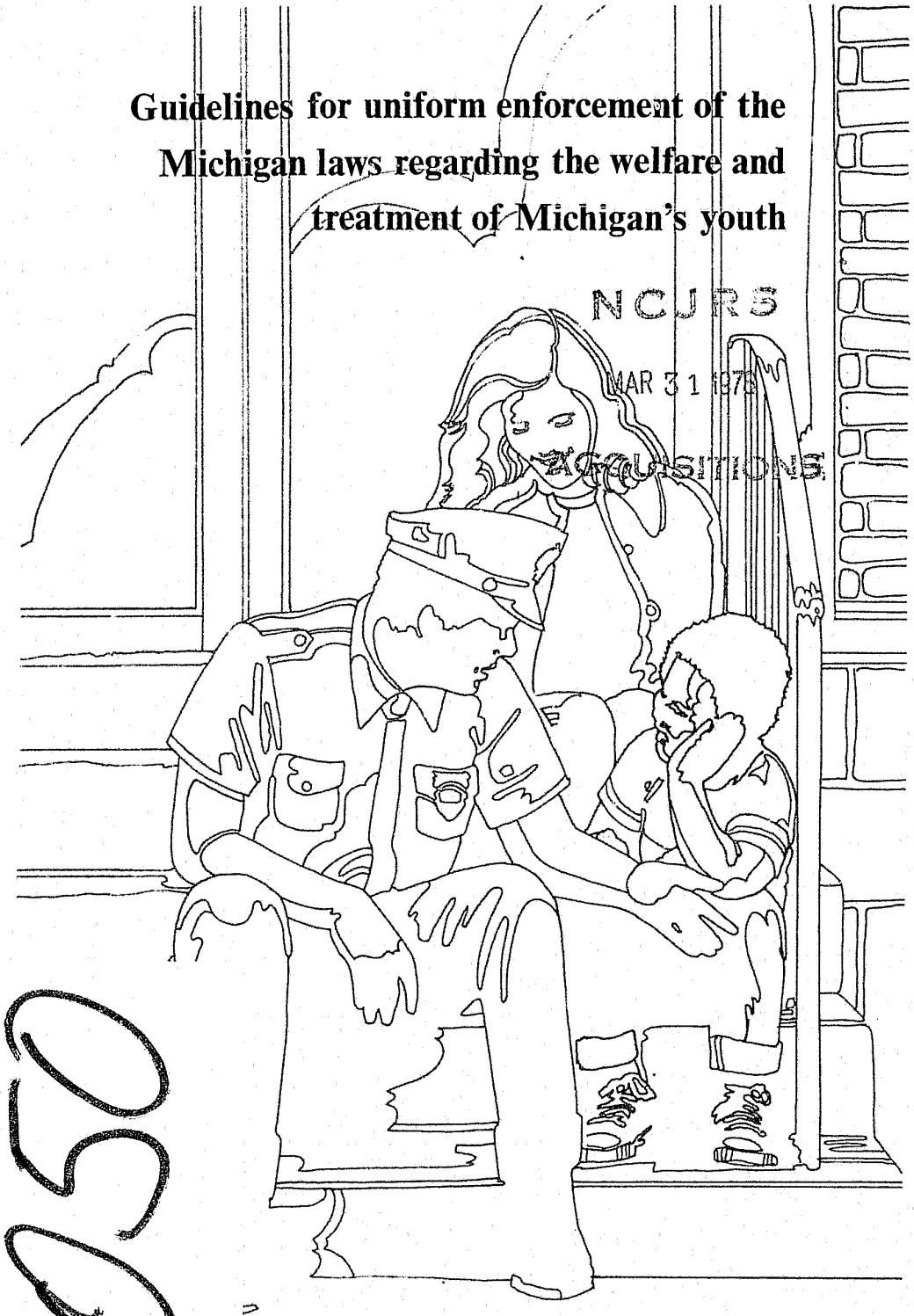
LAW ENFORCEMENT & YOUTH

Guidelines for uniform enforcement of the Michigan laws regarding the welfare and treatment of Michigan's youth



MICHIGAN DEPARTMENT OF STATE POLICE
COMMUNITY SERVICES SECTION
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THE COVER

The police officer on the cover is representative of the men and women in law enforcement in Michigan. These police officers are meeting the challenge in regards to the handling of the welfare of Michigan's youth. The officer on the cover is involved in the role of developing communications within the community. Communications being a necessary element in the understanding of police/youth relationships.

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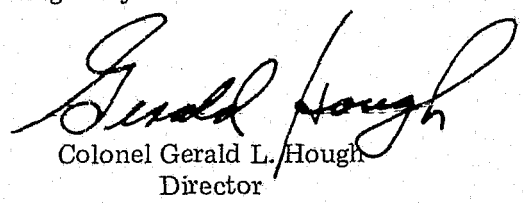
FOREWORD

"Law Enforcement and Youth" is based upon thorough research of this important subject and has been reviewed by and prepared in conjunction with competent authorities in each of the affected fields.

Its objective is to provide the groundwork for uniform enforcement of the Michigan laws regarding the welfare and treatment of the juvenile who needs such attention. Proper handling of the juvenile because of his very youth has always presented a perplexing problem much of which has been due to divergent views and interpretations. The purpose of this study is to resolve such divergencies into a formula upon which there is common agreement and a meeting of the minds.

The prevention and reduction of delinquent behavior is a major domestic challenge facing all Americans today. We in law enforcement have a leading role in providing our technical resources, our leadership in the implementation of the criminal standards and goals, and as a team member who's aim is to effectively reduce delinquent behavior and to provide alternative treatment programs to serve the individual needs of Michigan's youth. This is the desire of all—parents, police officers and courts—to help Michigan's youth.



Colonel Gerald L. Hough
Director

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SECTION ONE

INTRODUCTION

LAW ENFORCEMENT AND JUVENILE PROBLEMS

The changing social structure of the State of Michigan has brought the juvenile problem into a part of the total function of most police agencies.

An indication of the impact of those changes can be seen in the increase of juvenile offenders being taken into custody. Juvenile apprehensions have been increasing constantly. The rise in the incidents of juvenile misconduct has caused increased concern in all areas of law enforcement, and a means of controlling this problem effectively are constantly under evaluation with new resources being sought.

THE OBJECTIVES OF THE POLICE OFFICER IN THE JUVENILE FIELD

Laws and their interpretation can be described as the reflection of the wishes of society, and the degree of the intensity of their enforcement can be traced to the people through the election of judges. The police officer is one part of the total law enforcement team and cannot hope to do the job alone, but must have the complete cooperation and respect of the courts.

The ultimate objective of society is to provide an opportunity for every individual to develop into a socially acceptable adult. The juvenile code expresses the desires of the people in this connection. The intent of the law indicates that each child under the age of seventeen years is not an adult and should not be treated as such. The primary objective of the juvenile code is to provide every opportunity for a child to develop into adulthood without the stigma of a criminal record, and to provide him with essentials of care, custody, and discipline that are needed to insure his natural maturation.

Maturity is the realization that adult status has been reached with the acceptance of a full measure of social responsibility. Each year of additional experience brings maturity one year closer and lessens the possibility of deliquent behavior. The impact left by the experience of meeting a good police officer and his ability to control young people's conduct so that court action is unnecessary lessens the probability of serious behavioral problems.

The general policies of any police department must conform to the wishes of society as they are expressed within the law. Since the intent of the law is to provide every opportunity for a young person to develop into a law abiding adult, this must also be the objective of law enforcement. This procedure is directed toward the goal of keeping young people in society who belong in society, to divert youth who need the additional experience to adjust to community based supportive agencies outside of the juvenile criminal justice system, and to remove from society those individuals who have progressed so far in their delinquent habits that extensive correctional treatment is essential for their rehabilitation.

COOPERATION WITHIN THE DEPARTMENT

The American public is unquestionably interested in, and concerned about, the welfare of its youthful population. We are indeed a child-centered culture, and our desire for improvement and development of services for juveniles is voiced throughout the nation. Not so clear, however, is the degree to which we are willing to go—both individually or as a department—to provide rehabilitative programs.

Work in the juvenile field is not a job for just one particular group of individuals within a department. The objectives of any procedure in this area of law enforcement cannot hope to be reached unless every member within that department accepts his responsibility and applies those procedures in his every day work. The total effectiveness of each operation division is dependent upon each person. The interest he displays, the understanding of his role, and the initative that he uses in carrying out those tasks determine to a great degree the success that will be achieved.

Juvenile work is no exception and it requires the complete understanding and cooperation of each member to the extent that he embodies the philosophy of the objectives of juvenile work within

the scope of his normal functions. The apprehension of juvenile offenders is a part of the total law enforcement picture and cannot be considered as a separate and isolated segment, even though there are special laws and special processes involved. The same officers investigate the complaints, and it is not until the apprehension of the perpetrator of the offense has been effected that it can be reliably determined that a juvenile was involved. The destruction of property, the larceny of goods and chattels, and the death of a citizen are no less a crime when committed by a juvenile, even though the law does not term the act as such.

The investigative officer must operate under a professional enforcement practice on all matters he performs so that when a juvenile offender is confronted with criminal charges the court guidelines are formalized in accordance with the law. When one follows his case with quality and via departmental procedures the chances of error in court are controlled. Too often in the course of an investigation with a juvenile suspect the court standards of procedures are skipped because of the officer's personal feelings of the formalized procedures for the discipline and control of delinquent youth. The practical limitations of court action are not a part of a thorough investigation, therefore, professional investigation at all levels of individual officers attitudes are a must to reach a total effectiveness in dealing with youth.

THE RELATIONSHIP AMONG LAW ENFORCEMENT, COURTS, AND TREATMENT AGENCIES

The police officer has as one of his basic responsibilities the preservation of the peace and tranquility of the community that he serves. His basic function is to protect the community through the prevention of the violations of regulations imposed upon society, and to apprehend those individuals found violating those regualtions. The police officer is faced with the responsibility of making an early decision for the immediate solution to whatever problem faces him. The disruption of society, the damage to property, the injury to an individual, cannot and should not be tolerated, therefore, the burden upon the police officer requires that he make an immediate decision to restrain and control the conduct bringing about those conditions.

The total problem facing society is to identify and apprehend the individual causing those disturbances, and to change his behavior to that which is socially acceptable. If the youth cannot relate to a program developed for him to assist in a positive role in the community then removal from society to a correctional process may bring to bear those facilities that will redirect his conduct into acceptable proportion.

It is the function of the juvenile court to determine whether a legal basis for official action exists and what the most constructive solution appears to be. It is the function of the correctional agencies involved to protect society and the juvenile, and to aid in the development of new attitudes and behavior acceptable to society. The court may, through its probation staff, involve one or more social agencies in the process of treatment once a disposition has been made. Their long range solution is aimed at changing the individual's behavior.

There may be an area of apparent conflict of ideals and purposes between these two segments of the administration of justice. Law enforcement seeks an immediate or short term solution. Courts are concerned with legal questions as to jurisdiction, procedure, and substantive rights and responsibilities. Once these have been properly determined by the court, the latter will make an appropriate disposition based upon the protection of society, the needs of the individual, and the resources available. The treatment agencies (including probation, institutional treatment, and aftercare) are concerned with long range goals of attitude and behavior modification. The eventual successful solution to many of the problems affecting juveniles rests to a great degree in the mutual understanding of the problems of each agency, and a sense of respect for the functions of each, so that the intercorrelation of their work will result in a harmonious operation that tends to achieve total effectiveness.

Each police officer should make every reasonable effort to solicit the most cooperative relationship between himself and the corrections agencies so that the elements of the Criminal Justice System are working as a unit, and not as separate entities. No matter how skilled a police officer may be, he can never accomplish the desired results without the support of the court and the community.

POLICE OFFICER AND JUVENILE RELATIONSHIPS

What should be the attitude and approach of the police officer in all matters concerning the juvenile population as a whole? The answer rests in the objectives that the police expect to work towards. We must remember too that the youngster between the ages of 10 to/including 16 years represents a general figure of approximately 10 percent of the entire population of our state. He also has consistently been responsible for almost one half of the seven major felonies for which apprehensions were made.

It is readily discernible that the vast majority of the total population of young people stays within the community and develops into adulthood with little difficulty. If given a realistic choice, we believe that many children would rather pass in school than fail, attend rather than drop out, get along with parents rather than fight, stay at home rather than runaway, work rather than walk the streets. Recent research supports this by revealing that many delinquent children share conventional values and goals with conforming society. They also have similar physical and social needs. They differ greatly from conforming society however, in their ability to have these needs and goals satisfied through socially acceptable means. School failure, parental rejection and related problems are common threads that run through the lives of many delinquent children. We must remember that every child that violates a law is not necessarily a delinquent and there is a strong chance that he will not become one.

The problem confronting the police officer is two-sided: First, the segregation of those individuals who must be removed from the community for specialized treatment, be it in a correctional setting, via of a professional caseworker, or foster placement; and secondly, the control of the remaining juveniles' behavior to such an extent that they will conform to the rules of society and develop through the adolescent stage into adulthood without the need for institutional treatment. One alternative is by diversion from the juvenile justice system to a community based supportive agency.

The police officer is usually the first person representing the authority of the community with whom the juvenile comes into contact. The police officer's role at this point is not only of authority but it represents action by which a youth is introduced to the juvenile justice system. Every law enforcement officer must remain cognizant of his demeanor, attitude, professional bearing, and the decision made must be implemented with the community, the victim, and the future of the youth all carefully measured. The very attitude and conduct the police officer displays is of great importance since this first meeting will determine the respect the youth will show law enforcement officers at future meetings. Juveniles are noted for their imitation of adults and often copy their behavior after some adult. Law enforcement has a major impact in that role of providing a model or example to follow.

The skilled police officer with all the professional training developed into his repertoire but little concern for the youth as an individual, is seldom effective. The unskilled person who frequently makes "technical errors" but cares a great deal and is percevied that way by the youth, is often very effective in changing behavior. If we in law enforcement are realistic, the role of the police officer is really one of friendship and counseling in the true sense of the word. Behavior can not be changed by coercion and threats. It can often change, however, if a youth derives more satisfaction from behaving in a socially acceptable manner than a negative one.

Therefore, each and every officer should be friendly, constructive, and understanding in all official contacts with juveniles.

There is one specific type of a juvenile who causes the police officer a greant deal of concern. The individiual referred to is that juvenile who has been referred to the juvenile court and has been released, whether with a warning, or having been placed on probation. An individual in this category frequently has problems. They may have been of his own making, but by and large they have been brought about through his home conditions, through environmental conditions, through a lack of discipline, or through his not being wanted. Usually he has failed to keep up with his class in school because of slow reading, or lack of help at home, and has been in difficulty with the school authorities.

This individual is in need of help and whether the police officer can provide such help is questionable. The police officer may be able to assist the youth by referring him to an agency outside the scope of the juvenile justice system (Probate Court). Court flow chart in appendix.

The Goals as outlined in the Law Enforcement's Criminal Justice Goals and Standards for the State of Michigan are to divert those juveniles who do not need the official intervention of the juvenile justice system into programs which provide the juvenile and the community with the optimum level of intervention and service.

The Standards and Goals point out that our current methods of dealing with delinquency have been relatively ineffectual, limited in content and impact, and in some ways, positively harmful. Many experts inform us that the process of being adjudicated, of bearing the stigma of the delinquent label, of being dealt with by the courts and correctional systems, are often themselves a factor leading the way to a criminal career. The recidivism rate among youth who have been institutionalized runs as high as 50 percent. (U.S. Code Congressional and Administrative News, 1968:2831)

Frequently, children are unnecessarily referred to juvenile courts. The problems caused by such referral are many, an alternative is to turn from the trend of court involvement and to promulgate new standards and alternatives. The diverson programs are positive alternatives for youthful offenders, the Michigan State Police have appropriate guidelines and structural policies so that interested law enforcement agencies may pattern their procedures after them. To develop such programs law enforcement agencies may draw from the guidelines of the Goals and Standards or contact the Community Services Section of the Michigan State Police.

Diversion of youth from the juvenile justice system is not an indication that the police are becoming probation officers per se, but officers who are capable of exerting positive influences on the juvenile are encouraged to do so. Evidence indicates that the formal sanctions of the juvenile court should be imposed only as a last resort, after all diversionary alternatives have been thoroughly utilized by law enforcement, this way the youth is diverted without the juvenile justice system becoming flooded with the volume of referrals which would take place if diversion was not an alternative to referral to the juvenile court.

Both the police and courts should utilize community youth services agencies in the diversion process. If a youth service bureau is available to the police and courts, all cases for diversion should be referred to the bureau to facilitate obtaining the most effective treatment for the case. No diversion referral should be made to an agency without an agreement to provide services and offer feedback to the referring agency. It must be recognized that under the present Juvenile Court Rules the court and/or parents must agree to any diversion the police may wish to use.

The police officer, with the authority of the community behind him, can do wonders with many of these youths. It may have to be done on an unofficial basis, however, we are citizens and there is every indication that crime prevention is a duty for all concerned citizens.

THE POLICE OFFICER'S ROLE

Throughout our nation there is change, Michigan is no exception, in fact we have made major changes in the area of youth, their rights and responsibilities in school, in the community, and as of January 1 of 1972, the 18—20 year olds were provided by law benefits and the burdens of adulthood by the Age of Majority Act of 1971 (CL 722.51—55; MSA 25.244(51)—(55)) (PA 79 '71).

Many young adults only viewed the new law as "benefits" with an attitude of "you owe me", many others have viewed the "benefits" with an attitude of awareness of responsibilities on their part to earn and function within the framework of society with the new "benefits" provided. Because of the lack of total awareness of the Age of Majority Rights provided by the law, many youths have not become totally aware of its impact on their life within the community. We in law enforcement are knowledgeable of the reasons for the change in the law, the motivation and concern for our youth which was a part of the need for such a law. We must not forget that our primary obligation is to be totally aware that all people have rights, at all times, be it under the Age of Majority Act or not, the same rights we have, that we want, are shared by all citizens. We must attempt therefore to provide a standard in our contacts with youths to assist them in understanding their responsibilities. Young people, young adults, must remember that when they start to infringe on the rights of others, their own rights cease to exist.

With rights come responsibilities. Certainly with the Age of Majority Act came social change to our community structure, and with that change came new problems with new standards to be developed. These changes are felt in our schools, on our highways, and in our everyday life.

We must recognize that change in social structure likewise involves changes in the means and facilities for controlling the problems that develop. Juvenile delinquency, as one of the by-products, is spreading more and more each year and will continue to spread until such time as the efforts of law enforcement, the courts, and the community are unified to effectively control it. The job of such control is the responsibility of all and cannot be isolated into any given segment of the governing body or the community.

When police officers become involved with youth many problems arise, the most common problem is that the investigator expects too much from the children with whom he is working. They don't realize that progress is frequently slow and that a juvenile can seldom progress from delinquency to complete model behavior in a period of months. Unrealistic expectations and goals for both the officer and the youth is a serious problem that must be resolved in training. If it is not, then the officer may feel he is a failure, even though he isn't.

Law enforcement officers must also be confronted with the possibility that he may indeed fail. This is often the price of trying to help a troubled youth.

A police officer must be aware, however, that despite that ever present risk of failure, no matter how the relationship turns out, he will have tried and is a better person for having done so.

COMPARISON BETWEEN CRIMINAL AND JUVENILE PROCEEDINGS

This section on criminal law is intended to not only familiarize the reader with the purpose, definition and procedure of the criminal law but to also distinguish and compare that law with the purpose, definition and procedure of the juvenile law and court rules as applied to criminal offenses committed by juveniles.

CRIMINAL	JUVENILE
PURPOSE: To protect and defend the people of the State against infringements by others who would do harm to their morals, physical person, or their property; and to **punish** those who infringe. (See, e.g., Peo. v. Pate, 1965, 2 MA 66; Peo. V. Piaseki, 1952, 333 Mi 122)	PURPOSE: Proceedings in Juvenile Court are **not criminal** and are construed to the end that child coming within the jurisdiction of the court shall receive such care as will be conducive to his welfare and best interest of the state. **(Rehabilitation)** MCL 1948, Sec. 712A.1.
DEFINITION: Crimes are those **ACTS** or **OMISSIONS** which were recognized as crimes at common law or which have been designated as crimes by statute. (Mich. Penal Code is generally set forth in MCL Secs. 750.1 to 750.906, and see MCL 1948 Sec. 750.505 for preservation of Common Law crimes) Common Law definition of particular crime prevails unless changed by statute, Peo. v. Schmidt, 1936 275 Mi 575. However, **unless penalty** is prescribed for an act which was criminal at common law, it is **not** a crime in Michigan. (in re Lambrecht, 1904, 137 Mi 450). May also be a local ordinance. If statute provides a crime and no penalty provided, it is a misdemeanor. MCL 1948, 705.9	DEFINITION OF DELINQUENCY: Person under the age of 17 years who has violated any municipal ordinance or law of the State of Michigan or of the United States. Must, therefore, first determine if the act or omission is a common law crime for which there is a prescribed penalty or one which is defined as a crime by federal or state statute or defined as a crime by local or municipal ordinance. However, child may be delinquent for status offenses such as truancy, runaway or disobedience to parents, etc., but these are **NOT** criminal offenses. MCL 1948, Section 712A.2, sub-sections 2 (a) (1) to (6).

PROCEDURE

For the purpose of comparison and relating facts to the criminal law and juvenile law procedure, the Wymore case will be used. The larceny of gas will be treated both for an adult and for a juvenile, as will the breaking and entering. Larceny of 5 gals. of gasoline assumed to have value of less than $100.00, and therefore a misdemeanor. MCL 1948 750.356.

CRIMINAL	JUVENILE
Larceny of personal property of value less than $100 is a misdemeanor, as defined by statute, MCL 1948 750.356.	Larceny of personal property is a criminal act defined by statute and is therefore a delinquent act.
ARREST: Prohibited act must be committed in presence of arresting officer if arrest is made without a warrant. Otherwise arrest can only be made with a warrant issued pursuant to a sworn complaint before the Court or Magistrate, following authorization by the Prosecutor.	TAKING INTO CUSTODY: Prohibited act must be committed in presence of officer if child is taken into custody. If not in presence of officer, then petition must be filed and have order of the Court authorizing officer to take child into custody. (See JCR 2 which also requires notice to parent.)
ADVISING OF RIGHTS: Prior to the asking of any questions, officer must advise defendant of "MIRANDA" rights. This must be done as soon as defendant is "in custody"; defined by Supreme Court as being at that point at which defendant's freedom of action is limited. See Miranda V. Arizona, 1966 386 U.S. 436.	ADVISING OF RIGHTS: Prior to the asking of any questions, must not only give Miranda warnings, but must have also advised parents they have the child in custody and wish to question child and advise parents they have right to be present during interrogation. See Gallegos v. Colorado, 1962, 370 U.S. 49; and Bridges v. Indiana, 1973, 299 NE2d 616.
APPEARANCE IN COURT: Call Arraignment. If defendant in jail, he must be taken before the District Court for the purpose of being formally advised of the charge contained in complaint and warrant and for entering his plea; and to have bond set if plea of Not Guilty is entered. Arraignment must be as soon as possible after arrest and in no case should more than 48—60 hours elapse. Must also advise defendant of right to remain silent, of right to be represented by attorney, at public expense if indigent, and right to trial by jury. See General Court Rules.	APPEARANCE IN COURT: If child in custody, must be taken promptly before Juvenile Court for preliminary hearing on the petition to determine if the petition should be accepted. Parents must be notified of hearing and hearing shall be within 48 hours, if judge not immediately available. If child not released to parents, they must be advised of right to bond. Must also be advised of right to be represented by attorney, at public expense, if indigent, advised of right to remain silent, and of right to trial by jury. See JCR 4.
TRIAL: If defendant has pleaded not guilty to the charge, will be set for trial and will be a jury unless jury expressly waived by defendant. The burden of proof is on the people to prove the offense charged was committed beyond a reasonable doubt. Must also prove that it happened in that county. Jurisdiction is based on offense w/in county, not residence of defendant.	ADJUDICATORY HEARING: Child is before the Court either with parents or a guardian ad litem, and in some instances may be both. The burden of proof is on the people to prove the offense alleged was committed by the child beyond a reasonable doubt. (See In re Gault, 387 U.S. 1, 1966.) Must also establish that child is a resident of the county, and makes no difference in what county offense perpetrated. (Child may admit the allegations of the petition at this hearing, whereas an adult pleads guilty at initial arraignment.)
SENTENCE: In most misdemeanor cases, the defendant is sentenced immediately upon his plea of guilty or conviction, without presentence investigation. (Some District Courts now have staff for pre-sentence investigation, however.) All misdemeanors, unless otherwise stated in the statute for the offense, carry a maximum penalty of $100 and/or 90 days in county jail. Cannot be sent to prison and confinement is limited to county jail.	DISPOSITIONAL HEARING: This hearing follows investigation by juvenile staff of social factors affecting child and child has right to question such reports and recommendations as staff may make and may present testimony in own behalf, or from other persons or agencies. As to child's right to see social reports, see Kent v. U.S., 384 U.S. 541. All alternatives are open to Court; probation in own home, foster care and even BTS. CANNOT be waived to Circuit Court to stand trial as adult if is a misdemeanor.

FELONY

Breaking and Entering With Intent To Commit a Larceny is the statutory offense for common law burglary and is designated as a felony. (MCL 1948, 750.110). The maximum penalty is 10 years in prison, since in Wymore case was a store. (Had the breaking and entering been in an occupied dwelling house, the maximum penalty is 15 years in prison.

CRIMINAL	JUVENILE
ARREST: Act need not be committed in presence of arresting officer; may be arrested if officer knows that crime was committed and has reasonable grounds based upon information and belief to believe defendant committed it. Officer must then immediately seek authorization for warrant from Prosecutor and may sign complaint for warrant upon information and belief if Prosecutor is satisfied that a warrant should be issued.	TAKING INTO CUSTODY: Since JCR 2 provides that officer may take into custody any child when he finds conditions exist which would make the arrest lawful if committed by an adult, the officer may take the child into custody since the arrest is lawful for an adult. Must notify parents in accordance with JCR 2.3; then must take child before the Court or have a preliminary hearing within 48 hours if child is detained and file Officer's Custody Statement.
ADVISE OF RIGHTS: Same as that stated for a misdemeanor.	ADVISE OF RIGHTS: Same as that stated for a misdemeanor.
APPEARANCE IN COURT: Arraignment in District Court: Defendant must be taken before District Judge for the purpose of being formally advised of the charge against him and also to advise him that the charge is a felony and advise him of the maximum penalty provided by law. He is further advised that the offense is one which is not cognizable by the District Court but that the defendant is entitled to a preliminary examination in District Court to determine if Defendant shall be bound over to Circuit Court to answer to the charge there; the defendant must be advised that the purpose of the Preliminary Examination is that the People must show that the crime charged was committed and that there is probable cause for charging the defendant therewith. (N.B.): (does not require proof beyond a reasonable doubt at preliminary exam) Must also be advised of right to attorney, and if indigent, one may be appointed; that has right to remain silent. Exam must be set within 12 days from date of arraignment. Defendant may waive exam and be bound over to Circuit Court forthwith. Bond must be set.	APPEARANCE IN COURT: Child must be brought before the Court, after diligent attempt to notify parents, and if they are not available, the Court shall appoint a guardian ad litem for the preliminary hearing; child is advised of the nature of the allegations contained in the petition, advised of right to remain silent and of right to be represented by attorney, and if indigent, that one may be appointed to represent him. Must also advise him of right to trial by jury and advise child and parents of right to bond if it is decided that child is to be detained. If child is 15 or more years of age, and if Prosecutor indicates at the hearing that he may file a petition to waive child to adult criminal court to stand trial as adult, then child must be advised of that possibility, together with his parents or guardian ad litem.
PRELIMINARY EXAMINATION: The Prosecutor brings such witnesses and evidence before the Court to show conclusively that a crime was committed; and further brings such evidence as to show there is probable cause for charging defendant therewith. Defendants rarely present any evidence at preliminary exam unless there is a good alibi witness or other evidence to establish that it would have been impossible for him to have committed the crime. (Must give Prosecutor (continued)	WAIVER HEARING: Since Peo. v. Fields, 388 Mi 66 (1972) held Michigan's waiver statute unconstitutional, Section 712A.4 has been amended by P.A. 265 of 1972 and provides that in addition to the people showing that a crime was committed and that there is probable cause for charging this child therewith, the Court must also hear evidence concerning: (a) prior record of offenses, maturity and pattern of living; (b) seriousness of offense; (c) if it is repetitive type of offense leading to determination that juvenile rehabilitative programs are inadequate; and (continued)

CRIMINAL	JUVENILE
advance notice if call alibi witnesses) If the District Judge is satisfied crime was committed and finds probable cause for charging the defendant, he is bound over to Circuit Court and his bond is continued for his appearance there. If District Judge does not find probable cause, defendant is released and the complaint and warrant dismissed.	(d) relative suitability of juvenile programs as compared to adult programs.
ARRAIGNMENT AND TRIAL IN CIRCUIT COURT: Prosecutor files an **Information** which contains the charge against defendant and also has endorsed thereon all of the witnesses that may be used against him. To the Information, the defendant pleads Guilty or Not Guilty or stands mute in which case a plea of Not Guilty is entered in his behalf. If goes to trial, will be jury trial unless is waived expressly by the defendant. At trial the burden of proof is on the people to show crime committed by defendant beyond a reasonable doubt. Defendant will be advised of his right not to take the stand. If defendant takes the witness stand, then prosecutor may use a prior criminal record (not juvenile) to impeach his credibility and **NOT** to show criminal tendencies.	ADJUDICATORY HEARING: If child is waived to adult court, then no further hearing will be held in juvenile court. If no waiver, then prosecutor has burden of proof of proving the child has committed the crime beyond a reasonable doubt. Child may admit the allegations of the petition at the time of this hearing and obviate the necessity of proofs if the Court is satisfied that the admission is freely and understandingly made and with the consent of the parents or guardian ad litem. The child must also be advised that he does not have to take the witness stand but that if he does, he will be subject to cross examination.
SENTENCE: If defendant is convicted in Circuit Court, a pre-sentence investigation IS required. After the appropriate investigation is made, the Court may sentence the defendant to anything from probation to a term of years in the state prison system. While the Court may provide for minimum terms, the Court may not provide for the minimum to be more than 2/3 of the maximum term. He may place the defendant on probation with some time to be spent in the county jail but such confinement in the county jail may not exceed one year.	DISPOSITIONAL HEARING: The same alternatives and factors apply as discussed in the dispositional hearings for misdemeanors.
APPEAL: A defendant convicted in Circuit Court has an appeal to the Michigan Court of Appeals as a matter of right and the Circuit Court must so advise the defendant at the time of sentencing, including defendant's right to have an attorney appointed to perfect his appeal.	APPEAL: A juvenile has a right to appeal to the Circuit Court if adjudged delinquent and found to come within the jurisdiction of the Juvenile Court, and has the right to be represented by counsel to perfect his appeal.

Some General Observations Concerning The Criminal Law

In criminal cases, a defendant may, within the discretion of the Court, enter a plea of Nolo Contendre, (No Contest), which is treated the same as a plea of guilty, but such plea is not an admission of the facts contained in the charge in the information or complaint and warrant. (There is no provision for such plea in juvenile court.)

It should also be noted that in both criminal and juvenile cases, all of the elements of the offense charged must be proved beyond a reasonable doubt. Thus, in the breaking and entering charge against

Wymore, it would be necessary for the prosecutor to show a breaking, however slight, the entry and the intent to commit larceny at the time the breaking and entering occurred. Circumstantial evidence is permitted at a criminal or juvenile trial and e.g., intent may be inferred from the acts of defendant since it is impossible to look into the mind of a person at the time he perpetrates a crime. HOWEVER, a mere intent without present means to carry it out is NOT a crime.

There are TWO categories of crimes: (a) Those, which by their very nature can be regarded as inherently wrong or doing something wrong in and of itself, as e.g., assault on another, rape, murder, or robbery and these are known as crimes MALEM IN SE. (literally, "wrongs in themselves") and are commonly known as crimes in most societies. (b) The other category being crimes MALEM PROHIBITUM which are those prohibited by present law and may change from time to time. Among these, e.g., is gambling, which is legal in Nevada, but largely illegal in Michigan because the legislature has defined such act illegal and provides a penalty.

In the study of Wymore, another felony occurred which would be treated the same way as the felony for breaking and entering. This was the enticing a 15-year-old girl to leave her parents and to marry him. This is defined as a felony by MCL 1948 750.13 and provides a maximum penalty of 10 years.

* * * * *

SECTION TWO

ENFORCEMENT ACTION: POLICY AND PROCEDURE

AUTHORITY OF POLICE OFFICER TO TAKE CUSTODY OF JUVENILES

The authority by which a police officer takes a juvenile into custody is found in Section 712A.14 of the Compiled Laws.

This section of law provides the police officer with a comparatively wide latitude in taking a juvenile offender into custody. There is no differentiation made between a felony and a misdemeanor since any violation of the law committed by a juvenile is termed a delinquent rather than a criminal act.

There are some other conditions concerning the conduct of young people that bring them within the jurisdiction of the juvenile court, which are not found in the penal code. Such actions as idling away his time, deserting his home, associating with immoral persons, or repeatedly patronizing taverns, etc. It is quite obvious that there must be a court finding in such matters before there can be a determination as to whether the child shall be taken into custody. There are certain other offenses of a minor nature in which there is a question of the police officer's authority to take the juvenile into custody. The terms used in the juvenile code are "any child found violating any law or ordinance" may be taken into custody. Certainly law enforcement officers must draw on the common law rules of arrest with respect to taking a juvenile into custody. Other areas of reference are outlined in the U.S. Supreme Court decision **In re Gault** (1967), 387 U.S.1. The major court decisions affecting juveniles are described in the appendix. There is no indication that the offense need be a felony, nor does the law state that the offense must be committed within the presence of the officer.

CUSTODY OF JUVENILE OFFENDERS

The laws covering the conduct of young people are very explicit in outlining the authority of the police officer, however there are some discretionary actions that the police officer may use in certain situations. The juvenile code stated that any police officer **MAY**, and the word "may" is emphasized because it is the key to the police officer's action, take into custody any child found violating certain laws and ordinances, or whose home conditions are such as to prove detrimental to his health and welfare. The word "may" implies that the police officer may take a child into custody, or he may not, depending upon the gravity of the offense, and the seriousness of the surrounding conditions. Certainly you would take a youth into custody for felonious assault, and you would seek court intervention, however, a youth who is trespassing or in violation of curfew, could be referred to the custody of his parents. Parents have a responsibility in raising their children to conform to the rules of society, and it is not the prerogative of the police officer to supersede the parents. It is expected that the police officer will exercise good judgement in the taking of a child into custody, paying particular attention to the juvenile, to his home conditions, and to his intent in the violation of the law.

The same problems are presented in the taking into custody and disposing of female juvenile offenders as is presented by an adult woman. A police officer should not take a female juvenile offender into custody unless he is accompanied by another officer or another competent adult, except in cases of extreme emergency.

There is no section of law that states that a police officer must, or that he shall initiate court action in all matters. The very nature of his duties implies that part of his responsibility is to prosecute the perpetrator of an offense. The intensity with which he carries out that responsibility rests within the policy of the department.

TAKING CUSTODY OF JUVENILES WITHOUT A WARRANT

There is on occasion a problem created when a police officer takes a juvenile into custody under questionable circumstances that might indicate a false arrest. The courts are concerned

because if a child is illegally arrested his detention would also be considered illegal and there may be some personal responsibility on the part of the superintendent and attendants at the juvenile home. The law of arrest without a warrant makes no provisions because of the age of the offender.

The interpretation of the law would therefore indicate that in matters of arrest, a juvenile has the same rights as an adult and the age of the individual has no bearing on the legality of the arrest. The arrest of a juvenile must therefore be made in accordance with the law governing arrest without a warrant as it pertains to any other individual. Police officers should comply with the law of arrest without a warrant when taking a child into custody without a court order.

The statute providing the police officer with the authority to take a person into custody without a warrant is as follows:

Section 764.15 of the Compiled Laws reads as follows:

"Section 15. Any peace officer may, without a warrant, arrest a person:

(a) For the commission of any felony or misdemeanor committed in his presence;
(b) When such person has committed a felony although not in the presence of the officer;
(c) When a felony in fact has been committed and he has reasonable cause to believe that such person has committed it;
(d) When he has reasonable cause to believe that a felony has been committed and reasonable cause to believe that such person committed it;
(e) When he has received positive information by written, telegraphic, teletypic, telephonic, radio, or other authoritative source that another officer holds a warrant for such arrest;
(f) When he has received such positive information broadcast from any recognized police or other governmental radio station, or teletype, as may afford him reasonable cause to believe that a felony has been committed and reasonable cause to believe that such person committed it;
(g) When he has reasonable cause to believe that such person is an escaped convict, or has violated a condition of parole from any prison, or has violated a condition of probation imposed by any court, or has violated any condition of a pardon granted by the executive."

In the event that a juvenile has committed a misdemeanor, not in the presence of the officer, and is found in conditions detrimental to his health and welfare, or it is found that the parents refuse to provide the necessary cooperation in such a matter, the investigating officer should provide the court with sufficient information to substantiate a preliminary hearing. It should then be the decision of the court to order the child and the parents to court.

Rule 2 of the Michigan Juvenile Court Rules of 1969 (Revised May 1973) deals with taking a juvenile into custody. Section .2 of the rule defines the reasons for an officer to take a juvenile into custody without the order of the court when:

(a) Found violating any law or ordinance, or
(b) Conditions exist which would make the arrest lawful if the child were an adult, or
(c) The officer reasonably believes the child is evading the person or proper authority having legal custody, or
(d) Conditions or surroundings under which the child is found are such as to endanger his health, morals, or welfare, or
(e) The officer continues a lawful arrest made by a private citizen.

NOTIFICATION OF PARENTS

As soon as a police officer takes a child into custody he is responsible for notifying the child's parents. The juvenile code states that "Whenever any such officer takes a child into custody he shall forthwith notify the parents, guardian or custodian".

The Juvenile Court Rules of 1969 (Revised May 1973) require not only the notification of parents or guardian of the apprehension of a juvenile but they also specify that a written record will be prepared and filed with the court which indicates the names of persons notified and the times of such notification or what attempts were made to such notification.

The last part of Rule 2 of the Juvenile Court Rules of 1969 deals with the requirement for notification.

(3) Notification of parents; record of notice. Upon taking a child into custody the officer **shall forthwith notify the parent or parents, guardian, or custodian if they can be found.** A written record of the names of persons notified and the manner and time of notification or reasons for failure to notify shall be preserved and furnished the court as provided in Rule 3.

As a police officer you may feel that your obligation has been completed when the parents have been so notified, since the law is silent regarding the interview of a juvenile. However, this is not true as the juvenile has the same constitutional rights as an adult in that he has a right to contact an attorney and/or may have anyone of his choosing present during an interview.

It should always be the policy of the police officer that when parents, guardians or custodians of a child in custody are notified, such parents, guardians or custodians, as well as the child, should be advised of the constitutional rights they are afforded.

INTERVIEWING THE YOUTHFUL OFFENDER

Interviewing a youthful offender is the most important phase of an investigation of an offense involving a youth. It is desirous to leave the youth with a sense of hope rather than frustration. It should be the policy of any police department to be fair, firm, friendly, and constructive during the interview of a youthful offender.

A youth is accorded the same procedural rights as an adult during any interview and investigation. **Be he in custody or not.**

(a) Some probate courts have indicated that the youth may be entitled to even further protection in regard to being interviewed and require that no youth may be interviewed without first advising the child and his parents of their constitutional rights. They may further require that the parents, an attorney, or "friendly adult" of the child's choice be present during any questioning subsequent to receiving their "rights warning". It therefore should be the policy of all police officers that whenever possible juvenile offenders and suspects shall only be interviewed in the presence of such persons. *NOTE: A school authority cannot be a "friendly adult" when that individual is a part of the investigation as the reporting agent of the school or as the victim or witness of the reported incident.*

The school is ordinarily an unsatisfactory place in which to interview and should be used only in extreme cases. A policy of mutual understanding between school authorities and police officers is of paramount importance and it should be the policy of all departments to effect such understanding whenever possible.

The interview of a juvenile offender does not necessarily mean that he has been taken into custody. Some actions committed by a youthful offender are best disposed of at his home, or at the scene of its occurrence. It goes without saying that the "rights warning" and the all rights guaranteed him with respect to arrest, search and seizure, and pretrial interrogation **may not** be set aside.

As outlined in opinion of the Supreme Court of the United States **In re Gault** (1967), 387 U.S. 1 . . . ."it seems probable that where children are induced to confess by 'paternal' urgings on the part of officials and the confession is then followed by disciplinary action, the child's reaction is likely to be hostile and adverse—the child may well feel that he has been led or tricked into confession and that despite his confession, he is being punished". "There is no place in our system of law for reaching a result of such tremendous consequence without ceremony . . . ." The Due Process Clause of the Fourteenth Amendment of the Constitution of the United States of America is for all, be they a child or an adult. It should be the desire of all police officers to build upon whatever good can be found in the individual and not to destroy it.

Once a youthful offender has been taken into custody he should be questioned to determine the factors of the offense. It is essential that the police officer know the part played by the juvenile in the offense, the part he may have played in other offenses, the juvenile's attitude toward police officer and law enforcement in general, as much as possible about his mental and physical condition, and any other factor that will influence the final disposition. Interviewing the juvenile is probably the most important aspect of the total investigation and will have an effect upon the juvenile's future actions. It is the police officer's opportunity to indicate the responsibility of law enforcement, and how the department expects the juvenile to conduct himself within the community.

There are many ways that an interview may be conducted and they vary from individual officer to individual officer. Each officer has a style peculiar to himself and he uses it because it has proven beneficial to him.

The interviewing of an offender of the opposite sex presents the officer with possible problems, be the offender a juvenile or an adult. A golden rule to follow is "except in case of extreme emergency, a police officer should not interview a member of the opposite sex unless he/she is accompanied by another officer or another competent adult, preferably of the same sex as the offender".

It should be the desire of all police officers to be constructive and to aid in the building of good character whenever possible, and the conduct of the interviewing officer should be such as to further that objective. There is no room for the use of physical abuse, vulgarity, obscenity, profanity, or the use of derogatory, descriptive language such as liar, thief, or similar terms. The reputation of the police officer and the department is at stake in such an interview and the conduct used by the police officer will be transmitted to other young people in the area in a very short time. The police officer can become an extremely constructive individual under such circumstances. Consequently, every officer should take into consideration the following suggestions and to place them in use whenever possible.

In matters of sexual misconduct in which the police officer must interview the victim or the offender, particular attention should be directed toward his choice of language and his demeanor. The officer shall use that language which is appropriate and understandable. In such an interview, it is preferable that either parent or a person of the same sex as the offender (such as an officer or courtworker) be present.

Generally speaking the interview should not be held in the detention quarters. The room used should be quiet, clear of distracting influences and as comfortable as possible.

(a) In all interviews of a juvenile who is being accused of committing a crime, a "friendly adult" should be present. This friendly adult should be a parent or guardian of the youth, or a guardian ad litem appointed by the Juvenile Court. An explanation of the rights of an individual, as outlined below, must be intelligently waived by both the youth and the adult before questioning can commence.

(b) Normally an interview is conducted with just the officer and subject alone in the selected room, however, when dealing with a juvenile this is not the normal procedure. Therefore, the interrogator should sit fairly close to the subject, and between the two there should be no table, desk, nor the friendly adult. Distance or the presence of an obstruction of any sort constitutes a serious psychological barrier and also affords the subject a certain degree of relief and confidence not otherwise attainable. Much of this will depend, of course, upon the circumstances of each particular case.

(c) Juveniles must be accorded the same rights as an adult during an interview or investigation. Whenever a person who is about to be interrogated by a law enforcement officer "has been taken into custody or otherwise deprived of his freedom of action in any significant way", he must be given the following warnings, as prescribed by the Supreme Court of the United States in the **Miranda** case:
    (1) That he has a right to remain silent, and that he need not answer any questions;
    (2) That if he does answer questions his answers can be used as evidence against him;
    (3) That he has a right to consult with a lawyer before or during the questioning of him by the police; and
    (4) That if he cannot afford to hire a lawyer one will be provided for him without costs at county expense prior to any further questions being asked; and that now or at any time thereafter, they may refuse to answer any questions.

(d) Avoid creating the impression that you are an investigator seeking a confession or conviction. It is far better to appear in the role of one who is merely seeking the truth.

(e) A subject should be treated with decency and respect, regardless of the nature of his or her offense; this is especially true with regard to homosexuals and female subjects generally.

(f) Friendship is therapy and it costs very little to be friendly and courteous. Build rapport with the youth by your demeanor.

(g) The police officer must gain the respect and confidence of the juvenile and this can only be obtained by the police officer being honest and sincere, and taking a personal interest in him. Interest and understanding remove a great many obstacles that often lie between the youth and officer.

(h) Questioning a juvenile requires a great deal of patience. A certain amount of resistance is to be expected since there are two opposing forces at work. Interviews cannot as a rule be closed in a few minutes and the time consumed in getting to the bottom of the offense will pay great dividends.

EVIDENCE IN THE JUVENILE COURT

EVIDENCE — That which makes clear or ascertains the truth of the very fact or point in issue, either on the one side or the other; those rules of law whereby we determine what testimony is to be admitted and what rejected in each case, and what is the weight to be given to the testimony admitted.

REAL EVIDENCE — Evidence consisting of exhibits physically brought into court. Such evidence is more satisfactory than a description of it by witnesses that have inspected it outside of court.

RELEVANCY — The logical relation between proposed evidence and a fact to be established. All facts are admissible in evidence which afford reasonable inferences or throw any light upon the matter contested, but circumstances having no direct connection with the case, which are remote, collateral and irrelevant, should not be admitted in evidence.

DEGREE OF PROOF — The grade or measure of the proof which the law requires for the establishment of the truth of an alleged fact. In civil actions, such proof must be by a preponderance of the evidence. In criminal cases the guilt of the accused is established by proof beyond a reasonable doubt.

(a) Preponderance of Evidence — The weight, credit, and value of the aggregate evidence, on either side. To create a preponderance of evidence, the evidence must be sufficient to overcome the opposing presumptions as well as the opposing evidence. The expression does not mean the mere numerical array of witnesses, but it means weight, credit, and value.

(b) Proof Beyond Reasonable Doubt — A phrase synonymous with and equivalent to "proof to a moral certainty", each signifying such proof as satisfies the judgement and conscience of the jury, as reasonable men, and applying their reason to the evidence before them, it so satisfies them as to leave no other reasonable conclusion possible. *NOTE: It should be noted and understood that the courts, including the U.S. Supreme Court (in re Winship) have held that the due process clause requires that the conviction of a criminally accused be based upon proof of guilt beyond a reasonable doubt. The same standard applies to the adjudicatory stage of a Juvenile Court delinquency proceedings in which a youth is charged with an act that would be a crime if committed by an adult.*

After the apprehension, the search, the seizure of evidence and other preliminaries, the time of the hearing or trial is at hand. It is at this point that we learn exactly how important the rules of evidence are, for if you have sufficient admissible evidence of the suspect's guilt you will bring a lawbreaker to justice and your case will be successfully completed. If you do not have sufficient evidence, or your evidence is incompetent (legally inadmissible), then you will have wasted a great deal of valuable time. Not only will your suspect go free but your creditability will be questioned by complainant, prosecutor, and you may have lost all chances of getting the case to court.

The Michigan Juvenile Court Rules of 1969 (revised May 1973) in Rule 8.3 entitled **EVIDENCE** states the following:

(a) Adjudicative Phase — In absence of a valid plea in confession only competent, relevant, and material evidence is admissible at the adjudicative phase, subject to the general rules of evidence in civil proceedings.

(b) Dispositional Phase — In the dispositional phase only such matters as are relevant and material may be considered.

Within the footnotes of that Rule it is pointed out that in the decisions of **In re Gault** and **In re Mathers** (1964) 371 Mich. 516. To include that testimony should be under oath and that only

competent material and relevant evidence under rules applicable to civil cases should be admitted in evidence.

It should also be pointed out that many problems stem from search and seizure in schools, etc., and can be answered by following the Unites States Supreme Court in **Mapp v. Ohio** (367 U.S. 643,81S.Ct. 1684,6L.Ed2d, 1089) in that it points out that any evidence seized by state officers in violation of the Fourth Amendment of the United States Constitution **may not be used** as evidence at the state trial of the individual from whom it was taken (or from whose possession it was taken). In short, if what the police officer does when he seizes the property is illegal (no warrant, no probable cause for a warrant, not "incidental" to an arrest, and invalid arrest, a defective warrant to search or arrest, etc.) that evidence cannot be used in court. Once that happens, the case usually has to be dismissed because without the "goods" there is no case.

Rules regarding the requirements of search and seizure law and confession law have many more guidelines than provided herein. Remember that evidence obtained in violation of these Constitutional and Court Standards will not be admitted. Although the ultimate burden is felt by the prosecutor when evidence is admitted the initial responsibility rests with the individual police officer. We must remember that the due process of law is the primary and indispensable foundation of individual freedom for both juveniles and adults.

FINGERPRINTING AND PHOTOGRAPHING OF THE YOUTHFUL OFFENDER

For some time the question of the authority of the police to fingerprint and photograph the juvenile offender has been at issue. Different juvenile court judges and various police agencies have had opposing conceptions as to what procedures could or would be followed. This question has now been resolved and again the authority for the determination is to be found in the Juvenile Court Rules, Rule 10 states:

(1) Rule 10.1 — Fingerprinting or photographing of children may be permitted **by the court** when the child is in custody or under investigation. Fingerprints and photographs shall be filed in a separate confidential file, subject to being located and destroyed upon order of the judge.
COMMENT: Nothing herein is intended to prohibit fingerprinting or photographing a child upon consent properly obtained, or for inclusion in non-criminal identification records.

(2) Rule 10.2 — **SHOW-UPS.** The child and his parent, parents, guardian, custodian, or duly appointed guardian ad litem, shall be first advised of the right to counsel and shall have opportunity to consult with counsel before the child shall be required to appear in a show-up. All show-ups shall be conducted in the presence of counsel either retained, or appointed by the court to observe the show-up. Except in cases where an immediate show-up is necessary.

This rule also covers the procedure to be followed in placing the juvenile offender in a line-up. The rule is an outgrowth of the United States v. Wade, 388 U.S. 218.18 L. Ed. 2nd 1149.87 S. Ct. 1926 (1967) which requires the presence of counsel at a line-up for adult prisoners. The same constitutional safeguards apply to the juvenile as to the adult.

The Michigan Juvenile Court Rules makes provisions for the police to obtain the authorization of the court to fingerprint and photograph when the youth is in custody or under investigation. It likewise points out that there is no prohibition against fingerprinting and photographing upon consent of the parents, child and/or attorney.

The primary consideration in any question regarding the taking of fingerprints and photographs should be reasonableness. The following are offered as guidelines:

(a) When authorized, only one copy of fingerprints and one set of photographs shall be taken. The fingerprints shall be taken on an applicant card.

(b) These are to be kept at the police jurisdiction taking same and under the supervision of the agency's commander or turned over to the probate court. They shall be destroyed upon the request of the probate court.

THE USE OF THE JUVENILE OFFENDER RECORDS

The juvenile code provides that any proceedings in the juvenile court shall not be deemed to be criminal proceedings, and therefore no juvenile may be found guilty of a crime except upon waiver to circuit court. The law states that a juvenile comes within the jurisdiction of the court by committing certain acts. Since no juvenile can be found guilty of a crime in juvenile court, it justifiably follows that his records are not criminal in nature and should not be kept with criminal records. As a result of this interpretation of the law the juvenile apprehension report forms came into being.

It should not be the desire of the police to compile extensive records that serve no useful purpose, but rather to keep in contact with those individuals who have exhibited reasonable cause to believe that they will repeat the offense. The use of apprehension report forms is very similar to the use of adult arrest reports and serves the same purpose. The principle use of such reports is to identify the persons involved in criminal acts and to record sufficient information so that the individual may be located at a later date.

The determination of whether a juvenile apprehension report should be submitted is determined by the juvenile actually being taken into custody. Warning a child about his behavior, interviews at the child's home, or similar actions should not result in the submitting of an apprehension report form. **The juvenile must be taken into custody,** the same as is done with an adult, before an apprehension report is submitted.

Juvenile apprehension reports on children under the age of ten years generally serve no useful purpose, and there should be no apprehension reports submitted on juveniles under that age. The information concerning the name, address, offense, and other pertinent information should be carried within the body of the report.

Juveniles who have been taken into custody for felonious acts, and have been waived into the adult court, have become adults in the eyes of the law. Therefore as soon as the waiver has been completed, an adult arrest report should be submitted.

Occasionally it will be necessary to take into custody some children as material witnesses, or as a result of neglect and dependent situations. In such circumstances there has been no law violated as far as the child is concerned and there should be no apprehension reports submitted on such individuals.

The Michigan Supreme Court has ruled that the law limiting access to juvenile court records does not apply to police department records. The court ruled that juvenile police records can be disclosed by police departments. Disclosure of these records, the court ruled, is up to the police department and not up to the Probate Court. This court decision came on a suit filed by the Aetna Casualty and Surety Company against the juvenile division of the Oakland County Probate Court. 393 Mich 597.

THE DISPOSITION OF THE JUVENILE OFFENDER

Assuming that the child has been taken into custody in accordance with the terms of the previous paragraphs, the police officer must make a decision. Should the child be returned to his parents without a court referral, or is court action necessary. The determination of the disposition of the juvenile offender must be based upon a complete investigation of the facts surrounding the offense. In making such a decision the officer should refer to the amended Goals and Standards for Michigan for guidance. The recommendations of Chapter 1, "Diversion of Juveniles From the Juvenile Justice System," are reproduced here in relevant part.

Diversion Definition: **Diversion occurs when, in lieu of further juvenile justice processing, one of the following alternatives occurs:**

1. **The youth is released into the custody of his/her parents or guardians.**
2. **The youth agrees to participate in a program designed to meet his/her needs.**

Explanation: Diversion is the removal of the offender from the criminal justice system. A necessary condition for removal is that the offender be in the system. For this reason a youth should only be considered for diversion if he has been apprehended and a formal record of the apprehension has been made. This consideration is important because it is unnecessary and unwise to consider the traditional curbside "warn and release" a diversion. Also potentially harmful is to "widen the net" and start bringing in those children who ordinarily would have been released without any formal

record of a police contact.

When using diversion the officer has two distinct alternatives, as stated in the definition: (1) Release of the youth into the custody of his/her parents or guardian with no referral, activity or commitment expected on the part of the youth; or (2) Release of the youth to his/her parents or guardian with referral of the youth to a program designed to meet his/her needs. These two options are distinct and a decision on which to use should be solely based on the needs of the offender.

Diversion Criteria: The Goals and Standards provide excellent guidance, in the form of criteria, for the officer to assist him in deciding whether a particular youth is a good candidate for diversion. They are:

A. NATURE OF THE OFFENSE Commentary: Criteria should address aspects surrounding the offense: (1) The seriousness of the offense; (2) The degree of bodily harm inflicted by the offender on self or others; (3) The degree of criminal sophistication utilized in the commission of the crime, such as the use of burglary tools, premeditation, and the use of a weapon or strongarm tactics; (4) Time of day (If the delinquent act occurred at a time of day when the youth would normally be at home, this may indicate poor supervision and a lack of parental responsibility); (5) The desire of the victim/complainant to prosecute.

B. AGE OF THE OFFENDER Commentary: Intellectual and emotional maturity do not progress hand-in-hand with chronological age and, therefore, some youth of 16 might be very immature while others at 14 or 15 would show much greater maturity. Among the very young, the offense may be an impulsive act without great significance, or it may be a danger signal and a "cry for help." Although the age of the offender plays an important part in any decision to divert, age alone should not be the sole criterion for such a decision.

C. NATURE OF THE PROBLEM WHICH LED TO THE OFFENSE Commentary: In many cases, the commission of the offense is motivated by emotional, psychological, physical, or educational problems. Such knowledge of the juvenile's need for professional assistance with social/personal problems should be a deciding factor in the decision to divert.

D. A HISTORY OF CONTACTS OR THE USE OF PHYSICAL VIOLENCE Commentary: A review should be made to determine the contacts a youth may have had with official agencies of the juvenile justice system. The review should determine if the youth is a recidivist, if previous efforts to rehabilitate the child nonjudically have failed, or if the child has a history of the use of physical violence in the offenses committed.

E. CHARACTER OF THE OFFENDER AND HISTORY OF BEHAVIOR IN SCHOOL, FAMILY AND PEER GROUP SETTINGS Commentary: A study of the character of the youthful offender should be conducted and should include such factors as: the youth's school performance; family characteristics such as parental harmony and sibling relationships; physical characteristics such as mental or physical illness or disabilities; maturity of the youth; the youth's relationships with peers, including gang membership; responsibilities of the youth such as employment or job training; and evidence of drug or alcohol use or abuse.

The character study must be objective and nonjudgmental. Subculture life-styles, truculence, sullenness, posture, gestures, race, and sex should not be allowed to influence the character study and the ultimate decision to divert.

Referral To The Juvenile Court: If, after using the above criteria, a decision is made to refer the offender to the juvenile court, the court should be provided with sufficient information so that a judicial determination can be made. It should be the policy of the police to provide the juvenile court, in a personal meeting, with all of the factors that the investigation disclosed, including:

(a) The name, address, birthday, race, religion, school, and grade of the offender.
(b) The name and address of both parents or guardian.
(c) Copies of the juvenile apprehension report, the investigation report, and all forms required by the probate court.
(d) The dates and nature of previous contacts with the juvenile, to include diversion action if taken without court action being sought.
(e) The attitude of the juvenile, his parents, and the complainant.
(f) The need of the community for protection from the juvenile.

The juvenile court has a definite function in the correction of the behavior of youthful offenders who are brought to their attention and is an essential integral part of the total element of law

enforcement, even though there are special laws for the juvenile offender. The respect and esteem in which the court is held has a great bearing upon its effectiveness in this area. It should not be the desire of any police officer to weaken in any way the court's ability to carry out that responsibility. The use of the court as a means of passing the problem on to someone else is not the determination of whether a referral to the court is in order. The referral of juveniles to the court, in matters where the court is unable to take action, is reflected in the attitude of the juveniles. Court action must serve a purpose and must be reserved for those individuals needing court treatment. At any time that the police officer is in doubt as to whether the juvenile or the offense indicate that court action is necessary, he should contact the court prior to ordering the juvenile into court. It is then the court's decision as to whether the court appearance is necessary.

The juvenile court is controlled by the law in determining the action that it must take, as well as by the facilities provided for it to use. The juvenile court is the final authority to whom we may apply for assistance and the control of the juvenile population within that jurisdiction is determined, to a great degree, by the strength of the court. Criticism and ridicule have no place in the relationship between the police officer and the court. It is much more reasonable to discuss the problem with the court and determine where the problem lies. A difference of opinion need not give rise to gossip and ridicule when a cooperative and understanding relationship can bring a much closer working arrangement.

THE RIGHT TO BOND

The Michigan Juvenile Court Rule 4.2 (B) (7—9) points out that at the conclusion of the preliminary hearing the judge or referee shall make a determination as to:

(a) Authorizing the filing of the petition.
(b) Release of the child or detention, etc., and
(c) In the event detention is ordered, except in cases of child abuse or neglect, where it appears to the court immediate protection of the child requires continuation of court custody, advise the parent, guardian, or custodian of the right to a bond.

THE WAIVER OF JUVENILES INTO THE ADULT COURT

There are some individuals in most communities who have been constant problems for the police officers or have committed serious offenses that endanger the community. Generally they border on the adult age, and are very apt to be the leaders of the element within that community causing the majority of the law enforcement problem. It will often be found that they have made repeated trips to the juvenile court, or that the court has assumed jurisdiction over them. The court has explored or utilized every available resource, including the state's training schools, in an attempt to correct his behavior. The juvenile has become aggressive and defiant and it is evident that stronger correctional care is needed. There is little doubt that a juvenile of this nature is well enroute to becoming a confirmed criminal and must be removed from the community so that he will have little opportunity to influence others. It should be the responsibility of the investigating officer to provide the prosecuting attorney and the Probate Court Judge with sufficient information to make a decision as to the need for the offender to be prosecuted in the adult court.

The law indicating the procedure that should be followed in such matters can be found in section 712A.4 of the Compiled Laws, last amended by Act No. 256 of the Public Acts of 1972.

There are two important considerations in regard to obtaining such a waiver. The juvenile involved must have passed his fifteenth birthday and the offense he is accused of must be of the nature of a felony.

The Juvenile Court Judge has the final discretion in either granting or denying the waiver.

An aggressive and defiant juvenile, such as is described above, has indicated that he is an adult and wishes to be treated as an adult. There is no reason for a police officer to subject himself to the possibility of bodily harm, regardless of the age of the person being taken into custody. Every police officer taking a juvenile into custody is entitled to exercise the customary precautions for his self protection. This is especially true in taking such juveniles as described above into custody.

There are some individuals who commit offenses that constitute a menace to society and to the community. Such an individual may be an arsonist, he may be a sexual psycopath, he may have

committed a homicide, robbery, rape, or a serious assault. The police officer's responsibility is to protect the community, and he is duty bound to take such an individual into custody immediately and to place him in detention.

THE JUVENILE AT SCHOOL

Interviewing Juveniles At School

There have apparently been some rather serious differences of opinions regarding whether school officials have authority or should permit or deny interviewing children at school. On the other hand, it is logical to assume an officer is acting in the best interest of all concerned to pursue the questioning or interviewing of a child at school when this is reasonable and necessary in the best interest of the child, the community, or the school.

School authorities are extremely interested in the welfare and proper treatment of children under their supervision. In this respect, school authorities stand in a position of responsibility toward the child in school, and have a legitimate reason to determine the need for such interviewing.

Some schools may request that the officer prepare a written statement in which he identifies himself and his department, furnishes the date and time, and identifies the child which he interviewed. This is a reasonable request and should be complied with.

A trained interviewer will acknowledge that the school is ordinarily an unsatisfactory place in which to interview and should be used only in extreme cases. A policy of mutual understanding between school authorities and police officers is of paramount importance and it should be the policy of the department to effect such understanding whenever possible.

Removal Of Juvenile Offender From The School

One of the more difficult problems confronting the police officer in the apprehension and interviewing of youthful offenders rests in the removal of a child from school, or interviewing the child at school.

There are circumstances where an apprehension is not contemplated or the youth not taken into custody, however, the youth's cooperation in accompanying the officer for legitimate or reasonable purposes would serve to expedite the investigation. As hereinafter explained, such would be in order if there is mutual understanding and agreement with school authorities and parents.

In regard to removal of the youth from school under apprehension or to take into legal custody, the authority of a police officer is well defined under the laws of arrest with or without warrant. Again reasonableness should prevail and the following should serve as a practical rule;

(a) When the investigating officer has the legal authority to make a lawful arrest without a warrant.

(b) When the investigating officer has been so authorized by the probate court to take such child into custody.

NOTE: Although the law authorizes the apprehension of a juvenile offender while attending school, it should be the policy of the police to exercise extreme care in determining whether the ends of justice are best served by such an apprehension or removal from the school.

To draw on another source of guidelines officers should become familiar with Michigan Department of Education booklet entitled, "A Recommended Guide to STUDENTS' RIGHTS AND RESPONSIBILITIES IN MICHIGAN". The purpose of the guidelines in the booklet, which is directed to Michigan's schools, is to merely provide a basis for each individual school district to draw their guidelines from so that all Michigan school districts have a uniform base. They are not meant to be mandatory impositions placed upon local school districts and their officials by the State. They are a frame of reference and within the booklet are current school laws and guidelines in applying itself to the area of students' rights and responsibilities.

Guideline 8 of this manual is printed herein in its entirety as a recommended directive for police officers in their control with juveniles and school officials.

GUIDELINE 8 – SEARCH AND SEIZURE AND POLICE IN THE SCHOOLS

Search and Seizure

CURRENT LAW AND PRACTICE

Students possess the right of privacy of person as well as freedom from unreasonable search and seizure of property guaranteed by the Fourth Amendment of the U.S. Constitution. That individual right, however, is balanced by the school's responsibility to protect the health, safety and welfare of all its students. The most relevant of recent court decisions uphold school official's actions in this regard, specifically recognizing the right of school officials to search student lockers when " 'suspicion arises that something of an illegal nature may be secreted there' ".

SUGGESTED PROCEDURES

It is suggested the following determinations be made by school officials relative to the seizure of items in the student's possession and the search of the school property (locker, desk) assigned to the student.

1. There is reasonable cause to believe that possession constitutes a crime or rule violation, or that the student possesses evidence of a crime or violation of law.
2. There is reason to believe that the student is using his/her locker or property in such a way as to endanger his/her own health or safety or the health, safety and rights of others.
3. There is reason or belief that there are weapons or dangerous materials on the school premises. As such school officials must retain the right to act—to search students' desks and/or lockers, and to seize in cases of emergencies—such as in the event of fire or bomb threat.

When locker checks are made in the exercise of fundamental school authority, students should be informed within the context of general school rules at the beginning of each term. In cases of clearly defined emergencies and the lack of availability of the students assigned to a locker, the principal or his designee(s) possess the authority to enter. The student, however, should be informed as soon as possible.

CURRENT LAW AND PRACTICE

This is a country of laws, designed to ensure fair treatment of all. Police have the responsibility to protect all citizens by enforcing the laws of the community. The school community should encourage and promote understanding and cooperation with the police. It is the duty of school authorities, students, teachers, parents and police to work cooperatively with each other to insure that the rights of each individual are respected.

Police in the schools are not necessarily an indication of trouble, disruption, or discontent. Police can enter the school upon invitation of school authorities. However, they may also enter if they possess evidence of a crime having been committed or if they have a warrant for arrest or search. Interrogation of students by police is to take place privately within the school and in the presence of the principal or his representative. Parents, and/or guardians are to be informed and should be present whenever possible. The Michigan Attorney General has stated:

1. "Law enforcement officers may be given access to school children on school property during school hours for the purpose of interrogation pursuant to a rule or regulation adopted by the board of education of a school district, subject to such conditions as the board of education in its discretion may reasonably impose."
2. "Law enforcement officers are empowered to arrest a person without a warrant, including children, in the case of a felony where the officer has reasonable cause to believe that the person has committed a felony or a misdemeanor committed in the officer's presence. A rule of the board of education of a school district which would permit (a) law enforcement officer to remove a student from the public schools only upon presentation of a warrant is not in accordance with law."

SUGGESTED PROCEDURES

Generally, in this situation, students have the same rights as any other citizen, the right to be informed of their legal rights, to be protected (by counsel or school officials) from coercion and

illegal constraint, and to remain silent. If the doctrine of "in loco parentis" is to maintain its vitality, school officials must continue to have a legal responsibility to protect minor students while they are physically on school grounds or at school functions.

THE DEPENDENT AND NEGLECTED/ABUSED CHILD

On October 1, 1975, Public Act 238, known as the "Child Protection Law", took effect. That act expanded the responsibility of the Michigan Department of Social Services for the delivery of protective services for children. The major concern for law enforcement officers is the awareness of the "Child Protection Law" and the awareness of the leadership role of the Department of Social Services in this law. An investigator cannot assume that "the old ways" of handling the abuse/neglect cases will "get him by" with the new law. In short, unless you become knowledgeable of the new law you cannot act as a professional nor provide the child with the services available.
To assist in an overview, the following major changes are provided for your review:

(a) Who must be reported, children under 18 years of age, formerly 17 years of age.
(b) Included in the act was the additional required reporting of "child neglect" and "sexual abuse", formerly only "child abuse" was required to be reported. You must report to the Department of Social Services suspected or actual cases of abuse/neglect.
(c) Formerly, only physicians, registered nurses, social workers, school principals, school counselors, and law enforcement officers were required to report. Added to the list are coroner, dentist, medical examiner, any nurse, audiologist, certified social worker and social work technician, school administrator, teacher, or duly regulated child care provider. It also provides that anyone may report abuse/neglect to either D.S.S., or law enforcement agencies.
(d) It outlines when abuse/neglect must be reported. No longer can law enforcement "take it's time" on notifying the D.S.S., the law states that "immediately, an oral report shall be made by telephone or otherwise, within 72 hours, a written report shall be made".

Child Abuse And Neglect Procedures

The following procedures should be followed by law enforcement officers regarding suspected child abuse or neglect cases.

There are two ways in which a law enforcement agency may become aware of a case of suspected child abuse.

1. A specific complaint is made concerning suspected child abuse and that becomes the basis for an investigation.
   (a) A phone call should be made directly to the Protective Services Unit at the local county Department of Social Services, so that both the officer and the social worker may arrange to make a home call. The Department of Social Services has protective services workers on call 24 hours a day for each county or cluster of counties.
   (b) If the child is obviously abused or seriously neglected, take the child to a medical facility for a physical examination. The parents at this point should be encouraged to accompany the officer and social worker.
   (c) If a hospital physician determines that a child's health would be in danger if released, the child may be detained until the next regular business day of the court.
   (d) The law enforcement officer then fills out the official report form "Confidential Report of Actual or Suspected Child Abuse" (Form DSS-3200). A supply of these forms may be obtained by contacting the county office of the Michigan Department of Social Services.
2. In the course of investigating a "family problem" or "domestic" complaint, the office discovers or suspects that a child has been abused or is neglected. It is important to bear in mind that the Michigan Child Protection Law (MCL 722.621—722.636) requires law enforcement officers, among other professionals, to report cases of suspected child abuse or neglect.
   (a) The officer should telephone the Protective Services Unit so a social worker can begin his investigation, immediately in an emergency; otherwise within 24 hours.

(b) Complete the report form (DSS-3200), and submit one copy to the county office of the Michigan Department of Social Services, and retain one copy for your files. If you have a supply of the four part forms, the additional copies are no longer required.

A few things should be noted:

1. In all cases the parents should be presumed to be responsible for the care of the child and as such, should be expected to pay for the physical examination. However, if they are unable or refuse, other arrangements are possible through the Department of Social Services. DSS will pay for diagnostic work only, under the following conditions; (1) As a part of their own investigation, and (2) when no other payment source exists. Insurance or medical assistance would be prior choices.
2. **The focus of the DSS is on protection of the child and preservation of family life.** The role of the **protective service worker** is to gather information toward this end. His role is **not to gather evidence to be used against the parent in criminal court.** His information, however, would possibly be used in probate court, but the **Miranda warning,** advising a person of his rights, etc., is not required by the protective services worker. On the other hand, a law enforcement officer **may need to give such a warning** since the investigation would relate to circuit or criminal court.

The new "Child Protection Law" expanded the services and protections for abused and/or neglected children and named the Michigan Department of Social Services as the responsible "department". Due to it's very impact on law enforcement's traditional role and the degree of services DSS will provide, a copy of Public Act 238 may be found in the appendix.

* * * * *

SECTION THREE

STATUTES COMMONLY ENCOUNTERED WHEN DEALING WITH JUVENILES

The consistent and uniform enforcement of the laws pertaining to the misconduct of juveniles will not solve the entire problem, although it is a strong step in the proper direction. There are elements within the community whose operation is such that they appeal to young people, and yet are the types of activities that the law does not permit them to be a part of because of the adverse effect they have on children's morals.

The control of such activities is an essential part of the prevention of crime, and once the contributing factors have been removed, there is less opportunity for the juvenile to become involved. It should be the policy of the police to apprehend and charge the persons responsible for maintaining and operating such negative influences at every opportunity. It should also be the policy of the police to apprehend and charge every person found receiving stolen property, furnishing alcoholic liquor to young people, and conducting parties for the purpose of drinking involving young people.

ALCOHOLIC BEVERAGES AND MINORS

The control of clubs, lounges, recreation halls, and such places is specifically detailed in Section 750.141 of the Compiled Laws as last amended by Act No. 32 of the Public Acts of 1972. The principal means of control of such establishments rests in continuous and consistent inspections, and when a violation is observed, prosecution should be initiated.

The control of such places as homes and lounges that provide alcoholic beverages to young people is specifically detailed in Section 750.141a of the Compiled Laws as amended. This statute is very clear in stating that any person who gives or furnishes alcoholic beverages to minors shall be guilty of a misdemeanor. The liquor law describes a minor as any person under the age of 18 years, and that definition shall be applied to this section of law. There is no indication in the law that it was intended to be limited to certain times and places, therefore, it must be assumed that the person or persons who furnish alcoholic liquor to young people may be prosecuted. The lone exception appears to be in the young person's home, and when the alcoholic liquor is furnished by the parents. This law is very useful in combatting the house party, or the drinking party in which disturbances and fights are drawn to the attention of the police officer. Occasionally it will be found that young people become involved in other infractions of the law following the attendance at such as party.

Whenever such conditions are drawn to the attention of the police officer, he should assume the responsibility of initiating criminal proceedings against the person who furnished the alcoholic beverage. It often requires a lengthy investigation to determine the complete information, however, it does not require many such prosecutions to eliminate future occurrences.

ENCOURAGING OR CONTRIBUTING TOWARD DELINQUENCY

There is a section of the law that may be applied in many instances where another specific law cannot be found that will apply. The law is generally referred to as the law covering contributing to delinquency. This is Section 750.145 of the Compiled Laws and is very broad. Its use may vary with the interpretation of the local court and prosecuting attorney.

RECEIVING STOLEN PROPERTY FROM JUVENILES

The receiving of stolen property probably contributes more to delinquent acts than any other form of conduct. Many young people would not become involved in acts of burglary and larceny if there were no means available for the disposition of the stolen property. There are two sections of law that are directed precisely at such activity. Section 750.535 of the Compiled Laws of 1948 as last amended by Act No. 242 of the Public Acts of 1972 and Section 750.137 of the Compiled Laws as last amended by Act No. 32 of the Public Acts of 1972.

The principal problem of enforcement of Section 750.535 rests in the phrase, "knowing the same to be stolen" and this factor is often difficult to prove. It is good policy to prosecute in every

instance where the individual has received the property and there is any indication whatever of the defendant knowing or believing that the property was stolen. The final determination should be made by the prosecuting attorney.

Section 750.137 is directed toward the traveling purchaser, pawnbroker, and persons who deal either directly or indirectly in secondhand goods. The burden of proof rests with the purchaser since it is necessary that he had the written consent of the parent for purchasing such articles.

CORRUPTION OF THE MORALS OF JUVENILES

There are several sections of law dealing with the corruption of morals of young people. The most enforceable one has to do with the enticing and soliciting of children for immoral acts. This is Section 750.145a of the Compiled Laws. This section is very explicity and easily enforceable, however, special attention is directed to the age of 16 years. The victim must be 15 years or younger since the law reads under 16 years.

Section 750.142 of the Compiled Laws as amended by Act No. 14 of 1972 and Section 750.143 of the Compiled Laws deals with the furnishing and exhibiting of obscene literature to children. There are some pictures and photographs of such an extremely immoral character that there is little difficulty in determining the obscene aspects of the pictures and writing. There are others, however, that border on the acceptable lines and prosecution is extremely difficult. The difficulty rests in the definition of what is obscene and what is immoral. There has been no clear cut determination made and many books and pamphlets seen in stores, drug stores, and counters appear to be obscene, but are allowed to be sold. A great deal of care must be exercised when making the arrest of an individual disposing of material that is questionable.

THE JUVENILE CURFEW LAW

The juvenile curfew law may be found in Section 722.751 of the Compiled Laws as amended by Act No. 20 of Public Acts of 1972. This statute appears in the Appendix of this handbook.

The curfew law is directed toward the control of children who are permitted to adjust their own hours, and toward the prosecution of parents who permit their children to travel the streets at all times. The intent of the law is to provide a means whereby children are kept at home during the time they ought to be studying and getting school work done, as well as to place the responsibility of keeping them home with the parents. The curfew law must be interpreted in the same light as the juvenile code and other juvenile laws. The keynote to the enforcement of such laws rests in the matter of common sense and good judgement. Common sense may dictate that in some instances a child may be taken home to his parents and they informed of his whereabouts. On another occasion it may dictate that the child be taken into custody and the parents called to the department for the child. On still another occasion it may require the arrest of the parents as a result of obtaining a warrant when they persist in permitting him to keep hours contrary to this statute. The only time that a petition should be filed in juvenile court, or the matter referred to the juvenile court, should be when there is sufficient indication to show that the parents are not concerned about the child and there is no indication that they or the child will comply. When such a condition exists, there is a definite need for further correction or assistance for the family.

CRIMINAL SEXUAL CONDUCT

The Criminal Sexual Conduct Law was enacted on November 1, 1974 by Act No. 266, Public Acts of 1974. The immediate results were the additions of sections 520a, 520b, 520c, 520d, 520e, 520f, 520g, 520h, 520i, 520j, 520k, and 520l of Section 750.1 to 750.568 of the Compiled Laws of 1970 and included in the changes was the repeal of sections 85, 333, 336, 339, 340, 341, 342, 520, and 767.82 of Act No. 328 of the Public Acts of 1931, being sections 750.85, 750.333, 750.336, 750.339, 750.341, 750.342, and 750.520 of the Compiled Laws of 1970, and Section 82 of chapter 7 of Act No. 175 of the Public Acts of 1927, being section 767.82 of the Compiled Laws of 1970.

In order to correctly understand this statute, it is imperative that a thorough study be made and a complete understanding of the definitions contained in Section 520a, as used in Sections 520a to 520l, be arrived at, before even reading the remainder of the law.

The understanding of the degrees and elements of Criminal Sexual Conduct and related elements will require a great deal of soul searching and a wrenching change in attitudes by a vast number of officers. As in all laws, this statute has evidence of flaws and weaknesses which will undoubtedly be uncovered and exploited as it is exposed to the judicial process. Only time and trial will determine if it is a viable piece of legislation.

Provided in the appendix of this handbook are the following:

(a) Act No. 266, Public Act of 1974

(b) Guideline for determining the degrees of criminal sexual conduct—a check list.

CONTROLLED SUBSTANCE ACT OF 1971

The "Controlled Substance Act of 1971" which took effect April 1, 1972, replaced all the previous laws pertaining to drugs and narcotics. The act places narcotics, hallucinogens, depressants, stimulants, and medicinal mixtures into five major schedules according to medical value; potential for abuse, scientific knowledge, history of abuse, risk to public health, and addicting properties. The act not only prescribes crimes and punishments, but details procedures to be administered by the Department of Licensing and Regulation. It deals with three types of offenses: (1) Delivery of controlled substances; (2) Possession of controlled substances; and (3) Use of controlled substances. The act requires that a thorough study be made and a complete understanding of the definitions in order to make it a part of an officer's working knowledge.

The amount of experimentation by our young people today is a well known element of drug related abuses and violations by all of law enforcement. Utilization of the law is a major tool in the efforts to stop this flirtation with tragedy.

Section 752.271 of the Compiled Laws deals with substance abuse of volatile hydrocarbons or any chemical agent capable of releasing toxic vapors. Generally all other forms of drug or substance abuse is now covered by the Controlled Substance Act of 1971. This Act is found in Section 335.303 to 335.363 of the Compiled Laws as amended by Act No. 106 of the Public Acts of 1972.

* * * * *

SECTION FOUR

SUMMARY

In summarizing what has been said it is necessary to note that the reputation of the police department is reflected to a large extent by that department's attitude toward the young people within the community. Crime prevention is the responsibility of the entire community, however, it must include the police officer as a primary tool. The police officer holds a unique position within his community and he must have the respect and confidence of its citizens, if his work is to be effective.

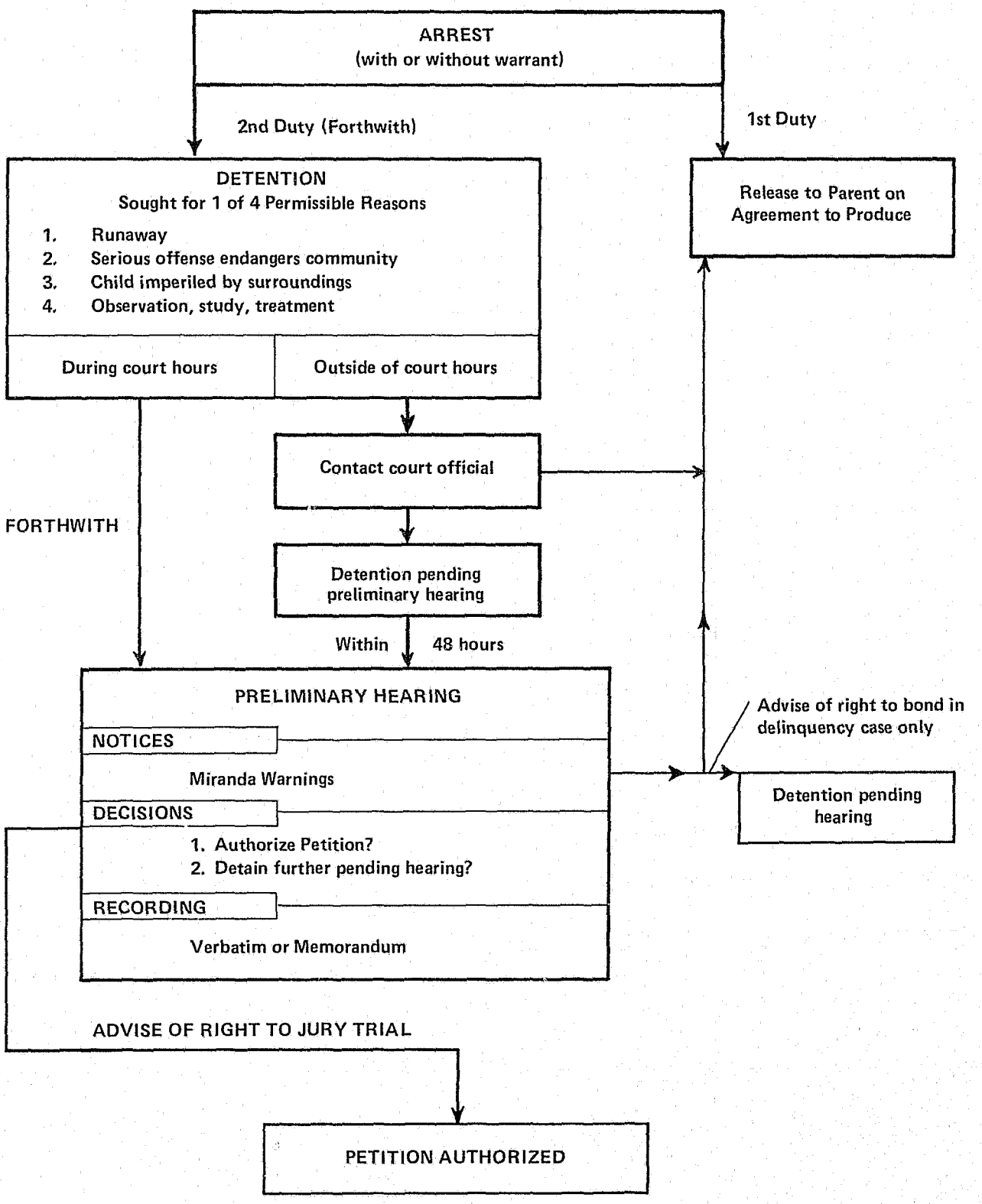
The police officer, through his everyday contacts, can engender confidence, respect, and admiration for his profession if he does his job with courtesy, understanding and intelligence. Each individual citizen, regardless of his status or means, is entitled to such treatment by his law enforcement officials.

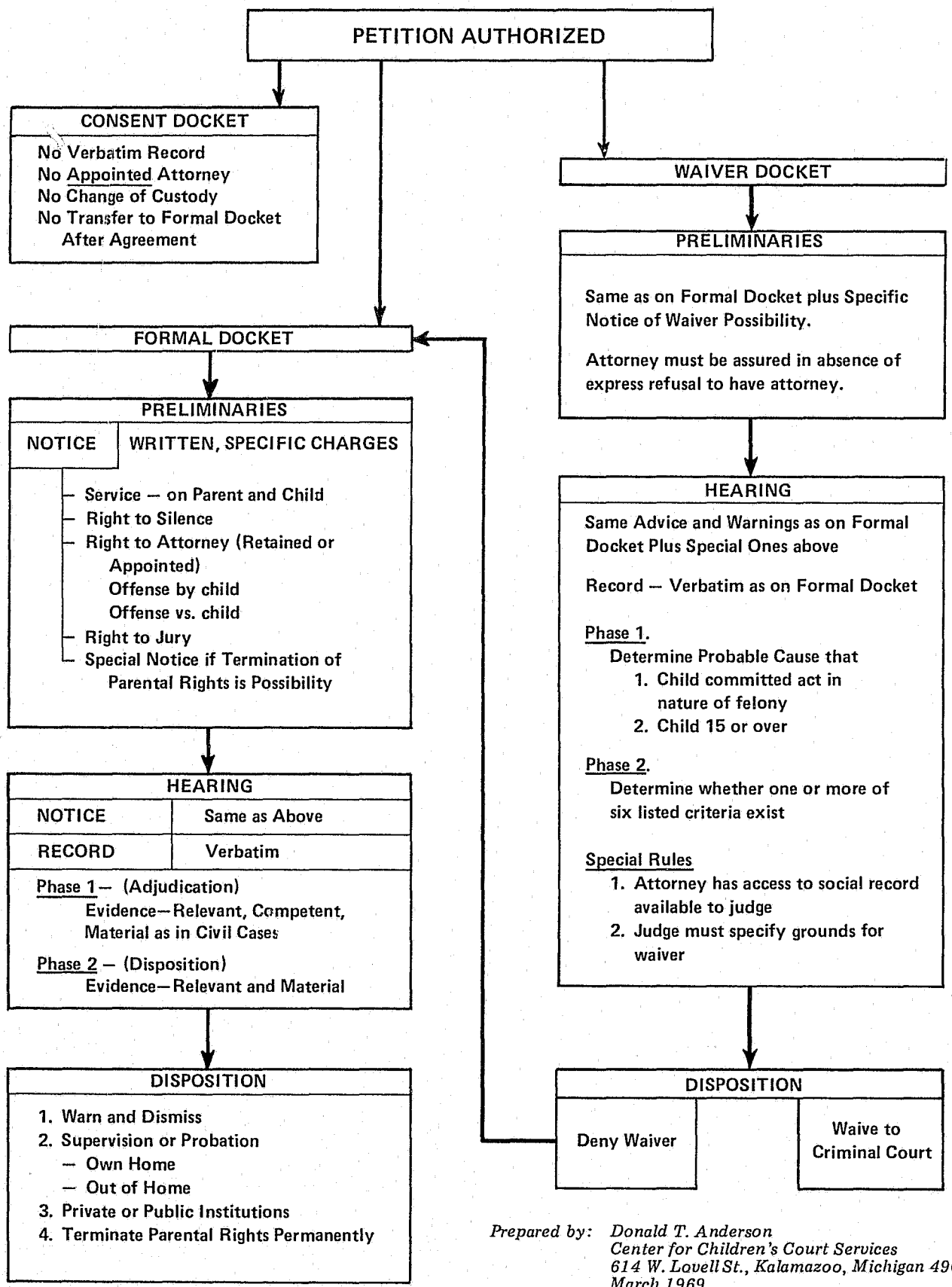
The police officer's role is to reduce the incidence of crime to its lowest possible extent. His most effective method of doing that is by setting the best possible example for those with whom he has contact. There is no one individual within any given community who can exert more influence toward good conduct than such a police officer.

* * * * *

APPENDIX – ARTICLE I

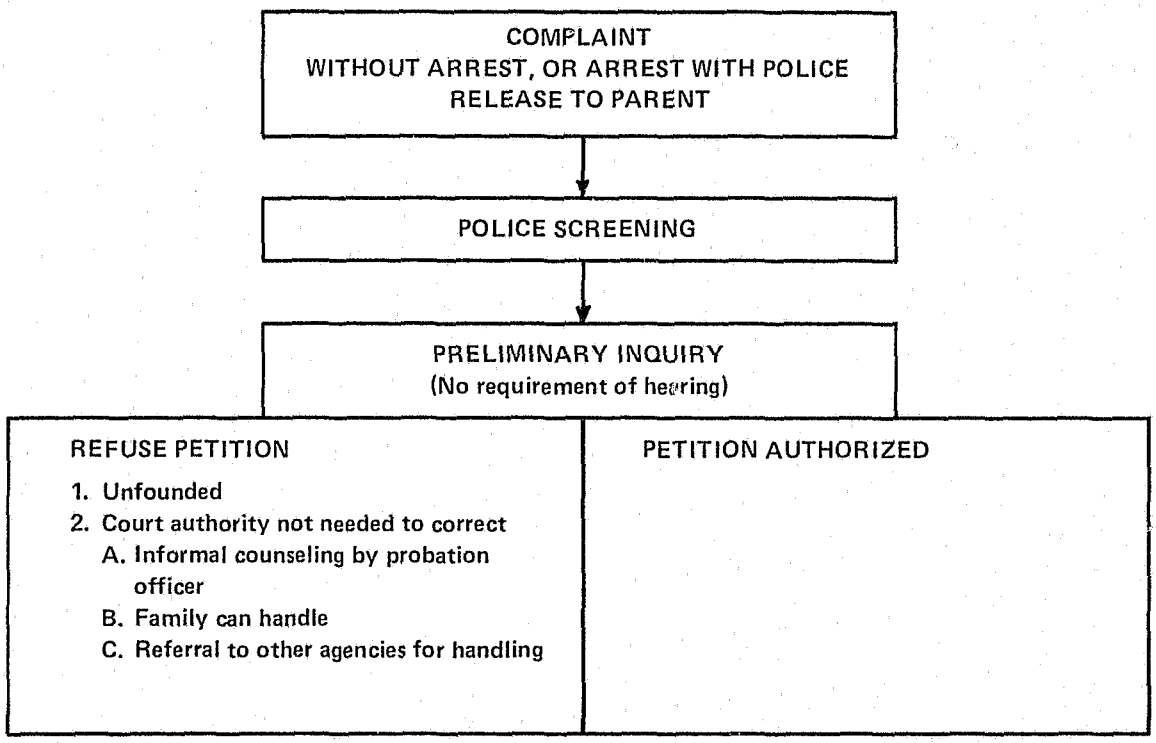
FLOW CHART – JUVENILE COURT
Under Michigan Juvenile Court Rules, 1969





Prepared by: *Donald T. Anderson*
Center for Children's Court Services
614 W. Lovell St., Kalamazoo, Michigan 49007
March 1969

* * * * *



SPECIAL COMMENTS:

1. For the first time the juvenile court can issue a warrant for apprehension and search.

2. If the county appoints an attorney it may assess the cost against a parent to extent of his ability to pay.

3. An attorney's written appearance must specifically disclose any representation of other parties to avoid conflict of interest.

4. Waiver of right to counsel by a juvenile must be joined in by a parent or guardian.

5. Information or testimony furnished to a court at its request is privileged and the informant is immune from civil or criminal liability.

6. Revocation of parole will be decided in a court hearing (formal docket) without a jury unless the state agency establishes an administrative hearing procedure.

7. Fingerprinting, photographing and show-ups may be authorized by the court under controlled circumstances.

APPENDIX – ARTICLE II

COURT DECISIONS

1. PEOPLE v. ROBERTS 364 MICH. 60 (1961)

15-year-old boy charged with stabbing a woman to death. Questioned by police and confessed.

Court held that the confession was voluntarily given and hence valid; that the mother knew she could have counsel but made no effort to obtain counsel.

Ordered held for trail.

DISSENTING OPINION: Insufficient reason for the judge to hold him for trial, since only basis of proof was the boy's statement; that the boy should have been transferred to the juvenile court at once.

COMMENT: Michigan's probate code holds that the juvenile court has exclusive jurisdiction over any juvenile, for any offense, but that a juvenile committing an adult offense, if over 14 years of age, may be waived to the adult or criminal court.

It is our view that the criminal process was not in accord with long-standing Michigan law as to the exclusive jurisdiction of the juvenile court.

2. GALLEGOS v. COLORADO, 370 US 49 (1964)

Boy of 14 was picked up by the police after an assault on an elderly man whom he robbed. He admitted, in juvenile court, to both robbery and assault. He was committed to the State Training School.

About 4 weeks later, the man died. He was tried in the adult court for first degree murder and found guilty by a jury. Again, the basis of proof was the boy's confession.

Question was raised as to the admissibility of the confession. Court ruled that the confession (after being held five days without visit by family, friend, or counsel) was obtained illegally. Conviction reversed.

Dissenting opinion by three U.S. Supreme Court justices held that the boy waived right to counsel, nobody prevented him from being visited, made his confession voluntarily before the trial judge.

COMMENT: Colorado juvenile code holds the juvenile court must try a juvenile under 17 and may hold him until age 21. However, in capital offenses, the criminal court has jurisdiction over child 16 or 17, in a capital offense.

Apparently he was not tried in the juvenile court for the second offense.

3. KENT v. US 86 SUP. CT., 1045 (1966)

Kent, on juvenile probation, was charged with B & E robberies and rapes. He admitted his offenses to the police. Parents obtained counsel who advised an arm of the court that he would oppose waiver to the criminal court. During the time he was held in the juvenile home, he was given a psychiatric examination and found to be a "victim of severe psychopathy". Counsel asked the juvenile court for access to the record.

The juvenile judge waived him to the criminal court and he was given extended sentences for some of the offenses; he was also found "insane" and committed to the government mental hospital until cured, for the other offenses.

Juvenile judge refused counsel access to the record and waived him, without given reasons, to the criminal court.

U.S. Supreme Court held to be invalid because there was no hearing on the waiver proposal. Kent was entitled to a hearing, counsel, the right of counsel to see the court reports (on which the judge based his decision to waive him), and to a statement by the judge in writing, as to his reasons for waiver.

4. IN RE GAULT, 387 US 1 (1967)

Gault, on juvenile probation, was charged with making obscene telephone calls to a neighbor. He was held in detention; later, a scrap of paper was left at his home, advising the parents that a court hearing was to be held. A postponement of the case was had and again there was no formal notice to the parents of the charge of the hearing. At neither hearing was the complainant present. The judge committed him to the training school.

The U.S. Supreme Court held that the proceedings were illegal: Notice of formal charges, no formal notice of charges, no confrontation by complainant, no record made of the hearing, and, by Arizona law, no appeal was possible from the juvenile court.

Court ordered a re-hearing, since his constitutional rights were violated.

5. IN RE WINSHIP, 3-31-70

The popular assumption that the constitution compels the "proof beyond a reasonable doubt" standard in criminal trials is a misconception no longer. The U.S. Supreme Court now explicitly holds that the due process clause requires that the conviction of a criminally accused be based upon proof of guilt beyond a reasonable doubt. The same standard applies to the adjudicatory stage of a juvenile court delinquency proceeding in which a youth is charged with an act that would be a crime if committed by an adult.

6. IN RE MARSH, 237 N.E. 2d 529 (29 May 68)

Juveniles entitled to protection against unlawful search and seizure and to transcript on appeal.

The Illinois Supreme Court enunciated additional rights available to a defendant in a juvenile court proceeding. On May 3, 1967, a delinquency petition was filed charging respondent Marsh, age 16, with violating the terms of his juvenile probation by knowingly concealing on his person a zip gun and live shells, a misdemeanor in Illinois punishable by a fine and/or imprisonment not to exceed one year. Respondent through his counsel filed a motion to suppress the gun and shells. After an evidentiary hearing, this motion was denied, after which a hearing was held on the delinquency petition resulting in a finding that respondent had violated his probation and his commitment to the custody of the Illinois Youth Commission. Marsh then made a post-hearing motion, accompanied by his mother's affidavit of indigency, requesting that he be furnished without cost a transcript of the proceedings. This motion was also denied, but the transcript was provided by a legal aid group and Marsh instituted his appeal. Although the Illinois Supreme Court affirmed the delinquency findings and commitment, in doing so it also resolved several questions concerning what it characterized as the "constitutional" rights of a juvenile in such proceedings in the light of in re Gault, 387 US 1 (1967). In considering whether the juvenile had the right to invoke the Fourth Amendment's bar against the admission of illegally siezed evidence, the court stated:

> "Since an evidentiary hearing consistent with constitutional standards was held on the admissibility of the seized items here, the issue of the applicability of the Fourth Amendment to juvenile court proceedings is not, in a strict sense, before us . . . However, for purposes of eliminating uncertainty in future cases, we have considered this issue and hold that the exclusionary rules required by the Fourth Amendment's prohibition against illegal search and seizures are applicable to proceedings under the juvenile court act." 237 NE 2d 529, 531.

7. UNITED STATES v. WADE (338 US 218)

LINEUP IDENTIFICATION — There appears to be some disagreement among officers of this department as to how the decision in the United States v. Wade (338 US 218) should be applied to lineups conducted by the state police. The decision in the Wade case, or the

precedent itself, requires officers conducting a lineup to provide for the attendance of an attorney at a lineup, when the defendant or suspect wants one. It would also seem that it is incumbent upon the officers to advise the suspect of this right to the presence of counsel and the fact that an attempt will be made to procure an attorney where the suspect cannot afford one. The court also said that even if a suspect does not ask for an attorney, they felt one should be present during any lineup. The court expressed an inherent distrust of the police lineup, in that the opportunities for making it suggestive or leading were unlimited. What the court was really after was a witness, regardless of whether or not he was a lawyer, who was not an interested party and who could vouch for the fairness or unfairness of the lineup. It is certainly not very flattering to us that the court should feel this way, but it must be remembered that the well-handled, better cases are not the ones that the supreme court sees. At any rate, the whole idea behind the Wade decision was to guarantee a fair lineup identification. The court never said, nor has it since said, that a suspect has a right not to be viewed in a lineup, or that his attorney could prohibit such a procedure, only that there should be an impartial witness.

8. MIRANDA v. ARIZONA (1966), 384 US 436

This involved admissibility of a confession stemming from custodial interrogation. While it was a criminal case, it would appear from the Kent and Gault cases that the procedures are applicable. For confessions resulting from police custodial interrogations to be admissible it must be demonstrated there was proper advice of (1) the right to remain silent, (2) that any statement can be used in court, and (3) that there is a right to retained or appointed counsel. A waiver of the above rights must be shown to have been made "voluntarily, knowingly, and intelligently".

* * * * *

APPENDIX – ARTICLE III

JUVENILES–WAIVER INTO ADULT COURT–PROCEDURE/REQUIREMENTS

Act No. 265, P.A. 1972

Amends section 4 of Chapter 12A, Act No. 288, P.A. 1939, as amended. C.L. 712A.4.M.S.A. 27.3178(598.4).

Approved October 3, 1972, immediate effect.

CHAPTER 12A

Sec. 4. (1) Where a child who has attained the age of 15 years is accused of any act the nature of which constitutes a felony, the judge of probate of the county wherein the offense is alleged to have been committed may, waive jurisdiction pursuant to this section upon motion of the prosecuting attorney, whereupon it shall be lawful to try such child in the court having general criminal jurisdiction of such offense.

(2) Before conducting a hearing on the motion to waive jurisdiction, the court shall give notice of the hearing in the manner provided by supreme court rule to the child and the prosecuting attorney and, if addresses are known, to the child's parents or guardians. The notice shall state clearly that a waiver of jurisdiction to a criminal court has been requested and that, if granted, the child can be prosecuted for the alleged offense as though he were an adult.

(3) Before the court waives jurisdiction, it shall determine if there is probable cause to believe that the child committed an offense which if committed by an adult would be a felony.

(4) Upon a showing of probable cause, the court shall conduct a hearing to determine whether or not the interests of the child and the public would be served best by granting a waiver of jurisdiction to the criminal court. In making the determination, the court shall consider the following criteria:

(a) The prior record and character of the child, his physical and mental maturity and his pattern of living.

(b) The seriousness of the offense.

(c) Whether the offense, even if less serious, is part of a repetitive pattern of offenses which would lead to a determination that the child may be beyond rehabilitation under existing juvenile programs and statutory procedures.

(d) The relative suitability of programs and facilities available to the juvenile and criminal courts for the child.

(e) Whether it is in the best interest of the public welfare and the protection of the public security that the child stand trail as an adult offender.

(5) If counsel has not been retained or appointed to represent the child, the court shall advise the child and his parents, guardian, custodian or guardian ad litem of the child's right to representation and appoint counsel. Where the court appoints counsel, the judge may assess the cost of providing such counsel as costs against the child or those responsible for his support, or both, if the persons to be assessed are financially able to comply.

(6) Counsel shall have access to records or reports provided and received by the judge as a basis for decision in proceedings for waiver of jurisdiction. A continuance shall be granted at counsel's request if any report, information or recommendation, not theretofore available, is introduced or developed at the hearing and the interests of justice require a continuance.

(7) If the court waives jurisdiction, the order shall include a written statement of the court setting forth findings forming the basis for entry of the order.

* * * * *

Act No. 238
Public Acts of 1975
Approved by Governor
September 2, 1975

STATE OF MICHIGAN
78TH LEGISLATURE
REGULAR SESSION OF 1975

Introduced by Reps. Kehres, Mastin, Joseph F. Young, Larsen, Owen, Padden, Bonior, Vaughn, Ryan, Thaddeus C. Stopczynski, Clodfelter, Bullard, Scott, Stevens, Cawthorne and Wolpe
Reps. Cushingberry and Elliott named co-sponsors

ENROLLED HOUSE BILL No. 4214

AN ACT to require the reporting of child abuse and neglect by certain persons; to permit the reporting of child abuse and neglect by all persons; to provide for the protection of children who are abused or neglected; to authorize limited detainment in protective custody; to authorize medical examinations; to prescribe powers and duties of the state department of social services to prevent child abuse and neglect; to safeguard and enhance the welfare of children and preserve family life; to provide for the appointment of legal counsel; to provide for the abrogation of privileged communications; to provide civil and criminal immunity for certain persons; to provide rules of evidence in certain cases; to provide for confidentiality of records; to provide for the expungement of certain records; to prescribe penalties; and to repeal certain acts and parts of acts.

The People of the State of Michigan enact:

Sec. 1. This act shall be known and may be cited as the "child protection law".

Sec. 2. As used in this act:

(a) "Child" means a person under 18 years of age.

(b) "Child abuse" means harm or threatened harm to a child's health or welfare by a person responsible for the child's health or welfare which occurs through nonaccidental physical or mental injury, sexual abuse, or maltreatment.

(c) "Child neglect" means harm to a child's health or welfare by a person responsible for the child's health or welfare which occurs through negligent treatment, including the failure to provide adequate food, clothing, shelter, or medical care.

(d) "Department" means the state department of social services.

Sec. 3. (1) A physician, coroner, dentist, medical examiner, nurse, audiologist, certified social worker, social worker, social work technician, school administrator, school counselor or teacher, law enforcement officer, or duly regulated child care provider who has reasonable cause to suspect child abuse or neglect immediately, by telephone or otherwise, shall make an oral report, or cause an oral report to be made, of the suspected child abuse or neglect to the department. Within 72 hours the reporting person shall file a written report as required in this act. If the reporting person is a member of a hospital, agency, or school staff, he shall notify the person in charge thereof of his finding, that the report has been made, and make a copy of the written report available to the person in charge. One report from a hospital, agency, or school shall be deemed adequate to meet the reporting requirement.

(2) The written report shall contain the name of the child and a description of the abuse or neglect. If possible, the report shall contain the names and addresses of the child's parents, the child's guardian, or the persons with whom the child resides, and the child's age. The report shall contain other information available to the reporting person which might establish the cause of abuse or neglect and the manner in which it occurred.

(3) The department shall inform the reporting person of the required contents of the written report at the time the oral report is made.

(4) The written report required in this section shall be mailed to the county department of social services of the county in which the child suspected of being abused or neglected is found.

(5) Upon receipt of a written report of suspected child abuse or neglect, the department may provide copies to the prosecuting attorney and the probate court of the counties where the child suspected of being abused or neglected resides and is found.

Sec. 4. In addition to those persons required to report child abuse or neglect under section 3, any person, including a child, who has reasonable cause to suspect child abuse or neglect may report the matter to the department or law enforcement agency as indicated in section 2.

Sec. 5. The identity of a reporting person shall be confidential subject to disclosure only with the consent of that person or by judicial process. A person acting in good faith who makes a report or assists in any other requirement of this act shall be immune from civil or criminal liability which might otherwise be incurred thereby. A person making a report or assisting in any other requirement of this act shall be presumed to have acted in good faith. This immunity from civil or criminal liability extends only to acts done pursuant to this act and does not extend to a negligent act which causes personal injury or death or to the malpractice of a physician which results in personal injury or death.

Sec. 6. (1) If a child suspected of being abused or neglected is admitted to a hospital or brought to a hospital for outpatient services and the attending physician determines that the release of the child would endanger the child's health or welfare, the attending physician shall notify the person in charge and the department. The person in charge may detain the child in temporary protective custody until the next regular business day of the probate court, at which time the probate court shall order the child detained in the hospital or in some other suitable place pending a preliminary hearing as required by section 14 of chapter 12a of Act No. 288 of the Public Acts of 1939, as amended, being section 712a.14 of the Michigan Compiled Laws, or order the child released to the child's parent, guardian, or custodian.

(2) When a child suspected of being an abused or neglected child is seen by a physician, the physician shall make the necessary examinations, which may include physical examinations, x-rays, photographs, laboratory studies, and other pertinent studies. The physician's written report to the department shall contain summaries of the evaluation.

(3) If a report is made by a person other than a physician, or if the physician's report is not complete, the department may request a court order for a medical evaluation of the child. The department shall have a medical evaluation made without a court order if the child's health is seriously endangered and a court order cannot be obtained.

Sec. 7. (1) The department shall maintain a central registry system to carry out the intent of this act. Written reports, documents, or photographs filed with the department pursuant to this act shall be confidential records available only to:

(a) A legally mandated public or private child protective agency investigating a report of known or suspected child abuse or neglect.

(b) A police or other law enforcement agency investigating a report of known or suspected child abuse or neglect.

(c) A physician who has before him a child whom the physician reasonably suspects may be abused or neglected.

(d) A person legally authorized to place a child in protective custody when the person has before him a child whom the person reasonably suspects may be abused or neglected and the information is necessary to determine whether to place the child in protective custody.

(e) An agency having the legal responsibility or authorization to care for, treat, or supervise a child who is the subject of a report or record, or a parent, guardian, or other person who is responsible for the child's welfare.

(f) A person named in the report or record, if the identity of the reporting person is protected pursuant to section 5.

(g) A court which determines the information is necessary to decide an issue before the court.

(h) A grand jury which determines the information is necessary in the conduct of its official business.

(i) A person engaged in a bona fide research purpose. Information identifying a person named in the report shall not be made available to the research applicant unless the department has obtained that person's written consent. A research applicant shall not conduct a personal interview with a family without their prior consent and shall not disclose information which would identify the child or the child's family or other identifying information.

(2) A person who is the subject of a report made pursuant to this act may request the director of the department to amend or expunge an inaccurate or unsubstantiated report or record from the central registry. If the director refuses the request or fails to act within 30 days after receiving the request, the person shall be granted a hearing to determine whether the report or record should be amended or expunged on the grounds that it is inaccurate or is being maintained in a manner inconsistent with this act. The hearing shall be before a hearing officer appointed by the director and shall be conducted pursuant to Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.315 of the Michigan Compiled Laws. A finding by a court of competent jurisdiction of child abuse or neglect shall be presumptive evidence that the report or record was substantiated. If the investigation of a report conducted pursuant to this act fails to disclose credible evidence of abuse or neglect, the information identifying the subject of the report shall be expunged from the central registry. If credible evidence of abuse or neglect exists, the information identifying the subject of the report shall be expunged when the child alleged to be abused or neglected reaches the age of 18, or 10 years after the report is received, whichever occurs later.

Sec. 8. (1) Within 24 hours after receiving a report made pursuant to this act, the department shall commence an investigation of the child suspected of being abused or neglected.

(2) In the course of its investigation, the department shall determine if the child is abused or neglected. The department shall cooperate with law enforcement officials, courts of competent jurisdiction, and appropriate state agencies providing human services in relation to preventing, identifying, and treating child abuse and neglect; shall provide, enlist, and coordinate the necessary services, directly or through the purchase of services from other agencies and professions; and shall take necessary action to prevent further abuses, to safeguard and enhance the welfare of the child, and to preserve family life where possible.

(3) In conducting its investigation, the department may seek the assistance of law enforcement officials and the probate court.

(4) If there is reasonable cause to suspect that a child in the care of or under the control of a public or private agency, institution, or facility is an abused or neglected child, the agency, institution, or facility, shall be investigated by an agency administratively independent of the agency, institution, or facility being investigated.

Sec. 9. (1) The department, in discharging its responsibilities under this act, shall provide, directly or through the purchase of services from other agencies and professions, multidisciplinary services such as those of a pediatrician, psychologist, psychiatrist, public health nurse, social worker, or attorney through the establishment of regionally based or strategically located teams.

(2) The department shall assure a continuing education program for department, probate court, and private agency personnel. The program shall include responsibilities, obligations, and powers under this act and the diagnosis and treatment of child abuse and neglect.

(3) The department shall provide for the dissemination of information to the general public with respect to the problem of child abuse and neglect in this state and the facilities, prevention, and treatment methods available to combat child abuse and neglect.

Sec. 10. The court, in every case filed under this act in which judicial proceedings are necessary, shall appoint legal counsel to represent the child. The legal counsel, in general, shall be charged with the representation of the child's best interests. To that end, the attorney shall make further investigation as he deems necessary to ascertain the facts, interview witnesses, examine witnesses in both the adjudicatory and dispositional hearings, make recommendations to the court, and participate in the proceedings to competently represent the child.

Sec. 11. Any legally recognized privileged communication except that between attorney and client is abrogated and shall neither constitute grounds for excusing a report otherwise required to be made nor for excluding evidence in a civil child protective proceeding resulting from a report made pursuant to this act.

Sec. 12. This act shall not prohibit a person who has reasonable cause to suspect child abuse or neglect from making a report to the appropriate law enforcement officials or probate court.

Sec. 13. (1) A person required to report an instance of suspected child abuse or neglect who fails to do so is civilly liable for the damages proximately caused by the failure.

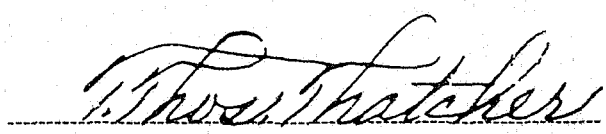
(2) A person who permits or encourages the unauthorized dissemination of information contained in the central registry and in reports and records made pursuant to this act is guilty of a misdemeanor.

Sec. 14. A parent or guardian legitimately practicing his religious beliefs who thereby does not provide specified medical treatment for a child, for that reason alone shall not be considered a negligent parent or guardian. This section shall not preclude a court from ordering the provision of medical services or non-medical remedial services recognized by state law to a child where the child's health requires it nor does it abrogate the responsibility of a person required to report child abuse or neglect.

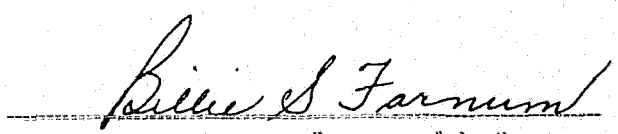
Sec. 15. Act No. 98 of the Public Acts of 1964, being sections 722.571 to 722.575 of the Compiled Laws of 1970, is repealed.

Sec. 16. This act shall take effect October 1, 1975.

This act is ordered to take immediate effect.



Clerk of the House of Representatives.



Secretary of the Senate.

Approved _____

_____

Governor.

(Front)

(Form has been reduced from original size)

REPORT OF ACTUAL OR SUSPECTED CHILD ABUSE OR NEGLECT

State of Michigan — Department of Social Services

INSTRUCTIONS:

REFERRING PERSON: Complete items 1 - 20. Send PART 1 to local County Department of Social Services where the child is found. Retain PART 2 for your records. See additional instructions on back.

1. DATE

2. LIST OF CHILD(REN) SUSPECTED OF BEING ABUSED OR NEGLECTED (List additional children on back of Part 1)

NAME	BIRTH DATE	RACE	SEX

3. FATHER'S NAME	4. MOTHER'S NAME		
5. CHILD(REN)'S ADDRESS	6. CITY	7. COUNTY	8. PHONE NO.
9. NAME OF ALLEGED PERPETRATOR OF ABUSE OR NEGLECT	10. RELATIONSHIP TO CHILD(REN)		
11. PERSON(S) THE CHILD(REN) LIVING WITH WHEN ABUSE/NEGLECT OCCURRED	12. ADDRESS WHERE ABUSE/NEGLECT OCCURRED		

13. DESCRIBE INJURY OR CONDITIONS AND REASON FOR SUSPICION OF ABUSE OR NEGLECT

14. SOURCE OF REFERRAL (Check appropriate box)

- ☐ PHYSICIAN
- ☐ MEDICAL EXAMINER (Coroner)
- ☐ DENTIST
- ☐ NURSE
- ☐ AUDIOLOGIST
- ☐ *SOCIAL WORKER
- ☐ SCHOOL ADMINISTRATOR
- ☐ SCHOOL COUNSELOR
- ☐ TEACHER
- ☐ LAW ENFORCEMENT OFFICER
- ☐ CHILD CARE PROVIDER
- ☐ HOSPITAL
- ☐ DSS FACILITY
- ☐ DMH FACILITY
- ☐ OTHER (Specify below)

15. REFERRING PERSON'S NAME	16. NAME OF REFERRING ORGANIZATION (school, hospital, etc.)		
17. ADDRESS	18. CITY	19. STATE	20. PHONE NO.

TO BE COMPLETED BY MEDICAL PERSONNEL WHEN PHYSICAL EXAMINATION HAS BEEN DONE

21. SUMMARY REPORT AND CONCLUSIONS OF PHYSICAL EXAMINATION

22. LABORATORY REPORT	23. X-RAY
24. OTHER (Specify)	25. HISTORY OR PHYSICAL SIGNS OF PREVIOUS ABUSE/NEGLECT ☐ Yes ☐ No

26. PRIOR HOSPITALIZATION OR MEDICAL EXAMINATION FOR THIS CHILD

DATES	PLACES

27. PHYSICIAN'S SIGNATURE	28. DATE	29. HOSPITAL (If applicable)

DSS-3200 (Rev. 1-76)
Previous edition obsolete.

*INCLUDES CERTIFIED SOCIAL WORKER, SOCIAL WORKER, SOCIAL WORK TECHNICIAN (Act No. 352, P.A. of 1972)

(Back)

(Form has been reduced from original size)

ACT NO. 238, PUBLIC ACTS OF 1975

Sec. 3. (1) A physician, coroner, dentist, medical examiner, nurse, audiologist, certified social worker, social worker, social work technician, school administrator, school counselor or teacher, law enforcement officer, or duly regulated child care provider, who has reasonable cause to suspect child abuse or neglect, immediately, by telephone or otherwise, shall make an oral report, or cause an oral report to be made, of the suspected child abuse or neglect to the department. Within 72 hours the reporting person shall file a written report as required in this act. If the reporting person is a member of a hospital, agency, or school staff, he shall notify the person in charge thereof of his finding, that the report has been made, and make a copy of the written report available to the person in charge. One report from a hospital, agency, or school shall be deemed adequate to meet the reporting requirement.

INSTRUCTIONS

GENERAL INFORMATION: This form is to be completed as the written follow-up to the oral report required in the above Sec. 3. (1) Act No. 238, P.A. of 1975 and mailed to the local county department of social services. Referring person is to fill out as completely as possible items 1-20. Only medical personnel may complete items 21-29.

1. Date - Enter the date the form is being completed
2. List child(ren) suspected of being abused or neglected - Enter available information for the child(ren) believed to be abused or neglected
3. Father's name - Enter father's name or father substitute
4. Mother's name - Enter mother's name or mother substitute
5. Child(ren's) address - Enter the address of the child(ren)
6. City - Self explanatory
7. County - Self explanatory
8. Phone - Enter phone number of the household where child(ren) resides
9. Name of alleged perpetrator of abuse or neglect - Indicate person(s) presumed to be responsible for the alleged abuse or neglect
10. Relationship to child(ren) - Indicate the relationship to the child(ren) of alleged perpetrator of neglect or abuses, i.e. parent, grandparent, babysitter
11. Person(s) child(ren) living with when abuse/neglect occurred at home and child is living at home, enter "parents"; if other, indicate
12. Address where abuse/neglect occurred - Self explanatory
13. Describe injury or conditions and reason for suspicion of abuse or neglect - Indicate the basis for making a report and the information available about the abuse or neglect
14. Source of referral - Check appropriate box noting professional group or appropriate category
    Note: If abuse or neglect is suspected in a hospital, check hospital.

    DSS Facility - Refers to any group home, shelter home, halfway house or institution operated by the Department of Social Services.

    DMH facility - Refers to any institution or facility operated by the Department of Mental Health.
15. Referring person's name - Enter your name if you are referring or reporting this matter
16. Name of referring organization - Enter the name the agency or organization, if appropriate
17. Address - Self explanatory
18. City - Self explanatory
19. State - Self explanatory
20. Phone No. - Self explanatory

DSS-3200 (Rev. 1-75) (Back)

* * * * *

APPENDIX – ARTICLE V

CURFEW

Caption editorially supplied

P.A. 1960, No. 41, Eff. Aug. 17

AN ACT to regulate the hours that children under the age of 16 years may be in or on the public streets, highways, alleys and parks; and to prescribe penalties for violations of the provisions of this act.

The People of the State of Michigan enact:

722.751. Curfew for 12 year old children.

Sec. 1. No minor under the age of 12 years shall loiter, idle or congregate in or on any public street, highway, alley or park between the hours of 10 o'clock p.m. and 6 o'clock a.m., unless the minor is accompanied by a parent or guardian, or some adult delegated by the parent or guardian to accompany the child. P.A. 1960, No. 41, Section 1, Effective August 17.

HISTORICAL NOTE

The enrolled act was presented to the Governor on April 6, 1960, and became a law without his approval upon the expiration of 10 days, Sundays excepted, after presentation.

LIBRARY REFERENCES

Infants Key 13.
C.J.S. Infants, Section 11 et seq.

Michigan Juvenile Court: Law and Practice, Downs (ICLE 1963) Sec. 5.14, Appendix D.

722.752. Curfew for 16 year old children.

Sec. 2. A minor under the age of 16 years shall not loiter, idle or congregate in or on any public street, highway, alley or park between the hours of 12 * * * midnight and 6 * * * a.m., immediately following, except where the minor is accompanied by a parent or guardian, or an adult * * * delegated by the parent or guardian to accompany the minor * * * , or where the minor is upon an errand or other legitimate business directed by his parent or guardian. Amended by P.A. 1972, No. 20, Section 1, Immediate Effect. February 19.

722.753. Aiding underage children to violate law, midemeanor.

Sec. 3. Any person of the age of 16 years or over assisting, aiding, abetting, allowing, permitting or encouraging any minor under the age of 16 years to violate the provisions of sections 1 and 2 hereof[1] is guilty of a misdemeanor. P.A. 1960, No. 41, Section 3, Effective August 17.

[1] Section 722.751, 722.752.

CROSS REFERENCES

Misdemeanor,
Generally, see sections 750.8, 750.9.
Punishment, see section 750.504.

LIBRARY REFERENCES

Michigan Juvenile Court: Law and Practice, Downs (ICLE 1963) section 5.14.

* * * * *

APPENDIX – ARTICLE VI

STATE OF MICHIGAN
77TH LEGISLATURE
REGULAR SESSION OF 1974

Introduced by Senators Byker, Faust, Zaagman, Hart, Lodge, Bowman, Toepp, Novak, Pursell, Plawecki, Mack, McCauley, Zollar, O'Brien, Cartwright, Rozycki, Davis, Bouwsma, Brown, DeGrow, Rockwell, Richardson, Ballenger, Faxon, Cooper, McCollough, DeMaso, Pittenger, Bishop and Fleming

ENROLLED SENATE BILL No. 1207

AN ACT to amend Act No. 328 of the Public Acts of 1931, entitled "An act to revise, consolidate, codify and add to the statutes relating to crimes; to define crimes and prescribe the penalties therefor; to provide for the competency of evidence at the trial of persons accused of crime; to provide immunity from prosecution for certain witnesses appearing at such trials; and to repeal certain acts and parts of acts inconsistent with or contravening any of the provisions of this act," as amended, being sections 750.1 to 750.568 of the Compiled Laws of 1970, by adding sections 520a, 520b, 520c, 520d, 520e, 520f, 520g, 520h, 520i 520j, 520k and 520l; and to repeal certain acts and parts of acts.

The People of the State of Michigan enact:

Section 1. Act No. 328 of the Public Acts of 1931, as amended, being sections 750.1 to 750.568 of the Compiled Laws of 1970, is amended by adding sections 520a, 520b, 520c, 520d, 520e, 520f, 520g, 520h, 520i, 520j, 520k and 520l to read as follows:

Sec. 520a. As used in sections 520a to 520l:

(a) "Actor" means a person accused of criminal sexual conduct.

(b) "Intimate parts" includes the primary genital area, groin, inner thigh, buttock, or breast of a human being.

(c) "Mentally defective" means that a person suffers from a mental disease or defect which renders that person temporarily or permanently incapable of appraising the nature of his or her conduct.

(d) "Mentally incapacitated" means that a person is rendered temporarily incapable of appraising or controlling his or her conduct due to the influence of a narcotic, anesthetic, or other substance administered to that person without his or her consent, or due to any other act committed upon that person without his or her consent.

(e) "Physically helpless" means that a person is unconscious, asleep, or for any other reason is physically unable to communicate unwillingness to an act.

(f) "Personal injury" means bodily injury, disfigurement, mental anguish, chronic pain, pregnancy, disease, or loss or impairment of a sexual or reproductive organ.

(g) "Sexual contact" includes the intentional touching of the victim's or actor's intimate parts or the intentional touching of the clothing covering the immediate area of the victim's or actor's intimate parts, if that intentional touching can reasonably be construed as being for the purpose of sexual arousal or gratification.

(h) "Sexual penetration" means sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body, but emission of semen is not required.

(i) "Victim" means the person alleging to have been subjected to criminal sexual conduct.

Sec. 520b. (1) A person is guilty of criminal sexual conduct in the first degree if he or she engages in sexual penetration with another person and if any of the following circumstances exists:

(a) That other person is under 13 years of age.

(b) The other person is at least 13 but less than 16 years of age and the actor is a member of the same household as the victim, the actor is related to the victim by blood or affinity to the fourth degree to the victim, or the actor is in a position of authority over the victim and used this authority to coerce the victim to submit.

(c) Sexual penetration occurs under circumstances involving the commission of any other felony.

(d) The actor is aided or abetted by 1 or more other persons and either of the following circumstances exists:

(i) The actor knows or has reason to know that the victim is mentally defective, mentally incapacitated or physically helpless.

(ii) The actor uses force or coercion to accomplish the sexual penetration. Force or coercion includes but is not limited to any of the circumstances listed in subdivision (f) (i) to (v).

(e) The actor is armed with a weapon or any article used or fashioned in a manner to lead the victim to reasonably believe it to be a weapon.

(f) The actor causes personal injury to the victim and force or coercion is used to accomplish sexual penetration. Force or coercion includes but is not limited to any of the following circumstances:

(i) When the actor overcomes the victim through the actual application of physical force or physical violence.

(ii) When the actor coerces the victim to submit by threatening to use force or violence on the victim, and the victim believes that the actor has the present ability to execute these threats.

(iii) When the actor coerces the victim to submit by threatening to retaliate in the future against the victim, or any other person, and the victim believes that the actor has the ability to execute this threat. As used in this subdivision, "to retaliate" includes threats of physical punishment, kidnapping, or extortion.

(iv) When the actor engages in the medical treatment or examination of the victim in a manner or for purposes which are medically recognized as unethical or unacceptable.

(v) When the actor, through concealment or by the element of surprise, is able to overcome the victim.

(g) The actor causes personal injury to the victim, and the actor knows or has reason to know that the victim is mentally defective, mentally incapacitated, or physically helpless.

(2) Criminal sexual conduct in the first degree is a felony punishable by imprisonment in the state prison for life or for any term of years.

Sec. 520c. (1) A person is guilty of criminal sexual conduct in the second degree if the person engages in sexual contact with another person and if any of the following circumstances exists:

(a) That other person is under 13 years of age.

(b) That other person is at least 13 but less than 16 years of age and the actor is a member of the same household as the victim, or is related by blood or affinity to the fourth degree to the victim, or is in a position of authority over the victim and the actor used this authority to coerce the victim to submit.

(c) Sexual contact occurs under circumstances involving the commission of any other felony.

(d) The actor is aided or abetted by 1 or more other persons and either of the following circumstances exists:

(i) The actor knows or has reason to know that the victim is mentally defective, mentally incapacitated or physically helpless.

(ii) The actor uses force or coercion to accomplish the sexual contact. Force or coercion includes but is not limited to any of the circumstances listed in sections 520b (1) (f) (i) to (v).

(e) The actor is armed with a weapon, or any article used or fashioned in a manner to lead a person to reasonably believe it to be a weapon.

(f) The actor causes personal injury to the victim and force or coercion is used to accomplish the sexual contact. Force or coercion includes but is not limited to any of the circumstances listed in section 520b (1) (f) (i) to (v).

(g) The actor causes personal injury to the victim and the actor knows or has reason to know that the victim is mentally defective, mentally incapacitated, or physically helpless.

(2) Criminal sexual conduct in the second degree is a felony punishable by imprisonment for not more than 15 years.

Sec. 520d. (1) A person is guilty of criminal sexual conduct in the third degree if the person engages in sexual penetration with another person and if any of the following circumstances exists:

(a) That other person is at least 13 years of age and under 16 years of age.

(b) Force or coercion is used to accomplish the sexual penetration. Force or coercion includes but is not limited to any of the circumstances listed in section 520b (1) (f) (i) to (v).

(c) The actor knows or has reason to know that the victim is mentally defective, mentally incapacitated, or physically helpless.

(2) Criminal sexual conduct in the third degree is a felony punishable by imprisonment for not more than 15 years.

Sec. 520e. (1) a person is guilty of criminal sexual conduct in the fourth degree if he or she engages in sexual contact with another person and if either of the following circumstances exists:

(a) Force or coercion is used to accomplish the sexual contact. Force or coercion includes but is not limited to any of the circumstances listed in section 520b (1) (f) (i) to (iv).

(b) The actor knows or has reason to know that the victim is mentally defective, mentally incapacitated, or physically helpless.

(2) Criminal sexual conduct in the fourth degree is a misdemeanor punishable by imprisonment for not more than 2 years, or by a fine of not more than $500.00, or both.

Sec. 520f. (1) If a person is convicted of a second or subsequent offense under section 520b, 520c, or 520d, the sentence imposed under those sections for the second or subsequent offense shall provide for a mandatory minimum sentence of at least 5 years.

(2) For purposes of this section, an offense is considered a second or subsequent offense if, prior to conviction of the second or subsequent offense, the actor has at any time been convicted under section 520b, 520c, or 520d or under any similar statute of the United States or any state for a criminal sexual offense including rape, carnal knowledge, indecent liberties, gross indecency, or an attempt to commit such an offense.

Sec. 520g. (1) Assault with intent to commit criminal sexual conduct involving sexual penetration shall be a felony punishable by imprisonment for not more than 10 years.

(2) Assault with intent to commit criminal sexual conduct in the second degree is a felony punishable by imprisonment for not more than 5 years.

Sec. 520h. The testimony of a victim need not be corroborated in prosecutions under sections 520b to 520g.

Sec. 520i. A victim need not resist the actor in prosecution under sections 520b to 520g.

Sec. 520j. (1) Evidence of specific instances of the victim's sexual conduct, opinion evidence of the victim's sexual conduct, and reputation evidence of the victim's sexual conduct shall not be admitted under sections 520b to 520g unless and only to the extent that the judge finds that the following proposed evidence is material to a fact at issue in the case and that its inflammatory or prejudicial nature does not outweigh its probative value:

(a) Evidence of the victim's past sexual conduct with the actor.

(b) Evidence of specific instances of sexual activity showing the source or origin of semen, pregnancy, or disease.

(2) If the defendant proposes to offer evidence described in subsection (1) (a) or (b), the defendant within 10 days after the arraignment on the information shall file a written motion and offer of proof. The court may order an in camera hearing to determine whether the proposed evidence is admissible under subsection (1). If new information is discovered during the course of the trial that may make the evidence described in subsection (1) (a) or (b) admissible, the judge may order an in camera hearing to determine whether the proposed evidence is admissible under subsection (1).

Sec. 520k. Upon the request of the counsel or the victim or actor in a prosecution under sections 520b to 520g the magistrate before whom any person is brought on a charge of having committed an offense under sections 520b to 520g shall order that the names of the victim and actor and details of the alleged offense be suppressed until such time as the actor is arraigned on the information, the charge is dismissed, or the case is otherwise concluded, whichever occurs first.

Sec. 520l. A person does not commit sexual assault under this act if the victim is his or her legal spouse, unless the couple are living apart and one of them has filed for separate maintenance or divorce.

Section 2. All proceedings pending and all rights and liabilities existing, acquired, or incurred at the time this amendatory act takes effect are saved and may be consummated according to the law in force when they are commenced. This amendatory act shall not be construed to affect any prosecution pending or begun before the effective date of this amendatory act.

Section 3. Sections 85, 333, 336, 339, 340, 341, 342 and 520 of Act No. 328 of the Public Acts of 1931, being sections 750.85, 750.333, 750.336, 750.339, 750.340, 750.341, 750.342 and 750.520 of the Compiled Laws of 1970, and section 82 of chapter 7 of Act No. 175 of the Public Acts of 1927, being section 767.82 of the Compiled Laws of 1970, are repealed.

Section 4. This amendatory act shall take effect November 1, 1974.

Beryl J. Kenyon

Secretary of the Senate.

Thos Thatcher

Clerk of the House of Representatives.

Approved _____

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Governor.

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DEGREES OF CRIMINAL SEXUAL CONDUCT – CHECK LIST

	Victim Under 13 Years	Victim 13–16 Actor Related or Position of Authority	Commission of Another Felony	Weapon Used	Aided by Another Actor	Personal Injury Results	Victim 13–16 no Relation or Position of Authority	All Other Victims
Penetration by Consent	1	1	1	1	no crime	no crime	3	no crime
Penetration by Threats of Violence or Retal	1	1	1	1	1	1	3	3
Penetration by Improper Medical Examination	1	1	1	1	1	1	3	3
Penetration by Concealment or Surprise	1	1	1	1	1	1	3	3
Penetration When Victim Physically Helpless	1	1	1	1	1	1	3	3
Penetration When Victim Mentally Defect or Incapable	1	1	1	1	1	1	3	3
Contact by Consent	2	2	2	2	no crime	no crime	no crime	no crime
Contact by Threats of Violence or Retal	2	2	2	2	2	2	4	4
Contact by Improper Medical Examination	2	2	2	2	2	2	4	4
Contact by Concealment or Surprise	2	2	2	2	2	2	no crime	no crime
Contact When Victim Physically Helpless	2	2	2	2	2	2	4	4
Contact When Victim Mentally Defect or Incapable	2	2	2	2	2	2	4	4

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