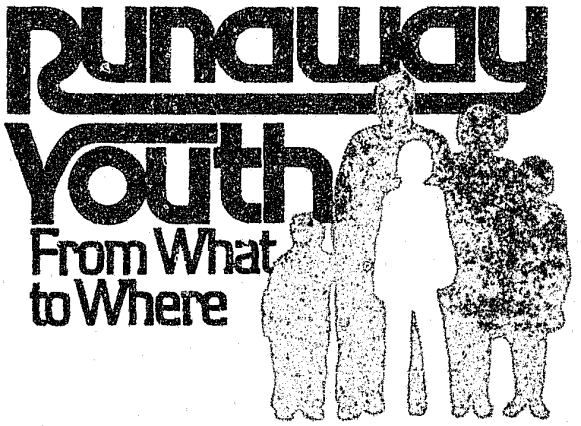

THE LEGAL STATUS OF RUNAWAY CHILDREN

S. DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
Office of Human Development
Office of Youth Development
Washington, D.C. 20201

THE LEGAL STATUS OF RUNAWAY CHILDREN

FINAL REPORT

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The Legal Status of Runaway Children

Final Report

by

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The project reported herein was performed pursuant to a grant from the Office of Youth Development, Office of Human Development, Department of Health, Education, and Welfare. The results and opinions expressed in this report, however, do not necessarily reflect the position or policy of the Department of Health, Education, and Welfare and no official endorsement should be inferred.

CHAPTER 1

PREFACE

This project -- to determine the current legal status of juvenile runaways in the United States -- was undertaken on July 1, 1974 at the behest of and funded by the Office of Youth Development, Office of Human Development of the Department of Health, Education, and Welfare. It is only one part of a very much broader in-depth effort covering a wide spectrum of subjects by many of the constituent units of that Department with respect to the many legal, health, social, education, welfare and other needs confronting the hundreds of thousands of runaway children in today's society.

Essentially the project was intended as a "bench study" of the major statutes, highest court decisions and opinions of attorneys general in 54 jurisdictions -- the 50 states and the District of Columbia, Guam, Puerto Rico and the Virgin Islands -- as they relate to the legal problems of major import likely to be encountered by children "on the run" -- whether running interstate or intrastate.

During the course of the study, two special field trips were taken, many special letters of inquiry were dispatched and many interviews were held with persons working with and knowledgeable of the problems of runaway children. Some of those letters, field trips and interviews were an attempt to ascertain, admittedly in a highly superficial manner, how the law on the books -- both statutory and

case law -- works in actual practice and what changes may be necessary in statutory law to meet more effectively and realistically the needs of runaway children.

These inquiries were made against the background of the Principal Investigator's knowledge and experience in this field over the years, including service as Chief Counsel of both the United States Children's Bureau and the U.S. Senate Subcommittee on Juvenile Delinquency as well as innumerable on-site surveys and studies of juvenile courts and probation offices, as well as the review of innumerable juvenile court and welfare records relating to neglected and delinquent children.

As a result of this "bench study," but in the light of the Principal Investigator's background, it would be well to issue the caveat that this study should be taken as going no further than being a report on the state of the law with respect to runaway children as gleaned from a study of pertinent statutes, judicial decisions and opinions of attorneys general in each of the jurisdictions studied To make this study most meaningful in any determination of the legal status of runaway children in the United States, it should be followed by extensive field studies that would test in depth the realities against the written statutes, decisions and opinions.

As part of this study, a system was devised for the easy "codification" of state legal materials relating to the legal status of

runaway children in the various jurisdictions. The system was so constructed that in future years the materials contained in this report, used in conjunction with the data contained on the basic-research instruments, can be updated with a minimum of legal-research effort. It is to be hoped that plans will be made at an early date to do so and to make the updated material available -- perhaps through a loose-leaf system -- to those who have a need therefor.

In the course of this study many public and private agencies and many individuals took the time and the trouble to consult with and advise the Principal Investigator by letter, by telephone or in person with respect to many of the troublesome problems in the course of this study of the legal status of runaway children. Such agencies and individuals are too numerous to mention individually by name. However, the Principal Investigator wishes to express to them deep appreciation for their suggestions and advice.

The statutes, decisions and opinions were researched through the latest additions to the jurisdictional laws, codes, etc. available through March 1975.

It should be noted that the recent case of Stanton v Stanton, decided by the Supreme Court of the United States on April 15, 1975, may cause significant alterations in the application of

many state statutes which make a distinction in their application as between males and females. In that case the court struck down a Utah statute as violating the Fourteenth Amendment to the Constitution on the ground that "there is nothing rational in the statutory distinction between males and females which, when related to the divorce decree, results in appellee's liability for support to the daughter only to age 18 but for the son to age 21, thus imposing 'criteria' wholly unrelated to the objective of that statute." It is still too early to determine definitively what effects this decision will have on state statutes which do make such distinctions "wholly unrelated" to the objectives of the statutes conferring benefits upon young men and women.

In evaluating the provisions of the statutes, decisions and opinions there is always an element of judgement involved. Initially that judgment as to how a particular statute, decision or opinion should be interpreted and its importance and relevance to the study and to the state of the law in a particular jurisdiction with respect to a particular subject matter was made by the Legal Research Assistants employed on the project. These were all reviewed by the Principal Investigator, who made the final judgment as to the meaning and effect of these statutes, decisions and opinions and their relevance and significance for this study. The responsibility for those decisions and for the contents of this report, however, must rest with the Principal Investigator.

Working on this project assisting the Principal Investigator were Ms. Karen Rinta, a student at the Georgetown University Law School in Washington, D.C., who served as Chief Legal Research Assistant. The other Legal Research Assistants were Ms. Joan Grupenhoff, Ms. Margaret Barbier and Mr. Melvin Wall, students at the Law School of Catholic University in Washington, D.C. These Legal Research Assistants performed their work in a highly competent, intelligent and lawyerlike manner and I am greatly indebted to them for their very valuable assistance to me in this project.

Herbert Wilton Beaser

CHAPTER 2

PARAMETERS OF THE STUDY OF THE LEGAL STATUS OF RUNAWAY CHILDREN

Legally, who is a runaway child? Legally, from a pragmatic standpoint, how do the legal rights and obligations of a runaway child differ from those of a child who is not a runaway?

In seeking to set forth parameters for this study of the legal status of a runaway child, it was necessary to envision the attributes of potential runaway children in this country and then to imagine how the law might affect them if they were of varying ages, were boys or girls, were in varying situations where the workings of the various laws would affect them positively or adversely, etc.

Certain legal situations affecting children could be ruled out as possibly affecting a runaway child only peripherally. For example, the legal ability or inability of a minor - runaway or not - to serve as a trustee or a member of the board of directors of a corporation could be ruled out of consideration for this study because it was highly unlikely that the type of runaway of concern in today's society is much troubled by an ability or inability to serve in a fiduciary capacity.

On the other hand, a runaway child's ability or inability to consent to the provision of medical care, or to take a busboy's

job in a short-order carry-out requiring late-night duty, may have a profound effect upon the ability of a runaway child to "make it on his own." Similarly, a runaway child, "cast out" of his own home wilfully by his own parents and seeking shelter with the child's grandparents may be profoundly affected by a state law limiting public schooling to residents of a particular state or county.

The parameters of this study, therefore, were set by the practical legal situations most likely to be encountered by the typical child who has run away from home. The study was bounded by the practical - by the legal situations most likely to be encountered by the typical runaway child, even in the absence of further study as to the typical runaway child.

Which returns us to the original question: legally, who is a runaway child?

When a state statute attempts to define a "runaway child," it is most likely to define such a child in terms so broad as to raise as many - or more - questions as it answers.

Thus, in Wisconsin, "...a child who is habitually truant from home...." [Underscoring supplied.] What does "habitually" mean? Twice? Weekly? Compared to what? What is the comparable norm?

Or, in South Dakota, "...any child...who has run away from home...." It should be noted that this statute, as worded, is about as vague as possible. It seems to imply, but does not so state, that the act of running away must be accompanied by some sort of intent to remain away. Also it does not set any durational limits on the absence from home, e.g., the child who goes downtown for a couple of hours; or indicate whether the absence from home was with or without the consent of the parent or guardian of such child, or whether the child was forced out of his or her home by conduct on the part of the child's parents which was inimical to the health and welfare of the child and contrary to the obligations owed to the child by the child's parents.

Similarly, in Texas, running away is spelled out by statute as the "...voluntary absence from home without the consent of the parent, guardian or other custodian without the intent to return...." The Texas statute is slightly - but only slightly - better than the other statutes cited above by way of illustration. It still seems to indulge in a statutory presumption that, regardless of the circumstances, a child's place is always at home and does not indicate that situations may exist in which a child may be justified in leaving home without parental consent or where it might be the better part of prudence for the child to do so for the child's own safety and well-being.

The wording of these statutes would seem to make them vulnerable to attack under the "void-for-vagueness" doctrine.[1]

Current thinking with respect to youth development in the United States seems to be to remove from the juvenile court its jurisdiction over status offenders - children who commit offenses, such as running away from home, which would not be a criminal offense if committed by an adult.[2]

The statutes dealing with the juvenile offense of running away seem to treat all runaways as falling within the same mold, without distinction as to age or sex. The distinction has been made between the runaways who are "nest leavers," "push outs" or those who keep right on running for the sake of running.[3]

The "nest leaver" is ready to leave home not because of any family conflict but because he is grown-up enough and needs to establish his independence. His readiness to leave is only complicated by the fact that he is not quite eighteen and does not yet have his parents' approval. In nest leaving, his disobedience is usually creative, because in having to say "no" to his parents, he is having to say "yes" to his own natural growth. At this stage of a person's development, he is growing by growing away.[4]

On the other hand, "the push out is not ready to leave his family, but he is told by word or by action that he is no longer welcome there."[5]

Of course, this simple three-type classification of the child who has run away from home may also be an oversimplification, but not nearly as much so as the statutory examples noted above.

The case law attempting to define the offense of "running away" is very sparse. In the 1922 Vermont case of In re Hook,[6] a 13-year-old girl was declared by the juvenile court to be a neglected child and ordered placed in a foster home. She stayed one or two weeks and then ran away from the foster home with her father and fiance for the purpose of getting married. The probation officer filed a petition alleging that she was insubordinate in that she had run away from the home in which she had been placed. The juvenile court found the girl to be delinquent and commited her to the industrial school. Whereupon the girl's husband petitioned for a writ of habeas corpus. The Vermont statute did not use the word "runaway" but rather the word "incorrigible." The court held that the word "incorrigible" meant "incapable of being corrected, or reformed in her present condition and under her present control." It means nothing more than "unmanageable," said the court. The petition alleged a single ground - running away. Getting married was the girl's right and added nothing to the petition. A child is not incorrigible who disobeys once, and hence the court exceeded its authority in finding the girl to be a delinquent.

In People v Pikunas,[7] the New York statute included in its definition of a delinquent child any child who, without cause, repeatedly deserts his home. In this case a fifteen-year-old girl ran away only once and the appellate court held that the charged act did not come within the statute since she had run away only once.

In the Louisiana case of State v Golden,[8] a fifteen-year-old girl left home and got married on April 1, 1946. Parents filed a petition alleging her to be a delinquent child in that she had run away from home and had been absent from home from April 1 to April 4, inclusive.

The court placed the girl in the Convent of the Good Shepherd, pending hearing. The girl's husband applied for a writ of habeas corpus. Under Louisiana law, ministers are not to marry anyone under the age of 16, but if it happens the marriage is not automatically annulled. The Appellate Court held that the girl, being a wife, was no longer under the control of her parents. The girl cannot be adjudged a delinquent for leaving her parents' house to go live with her husband, which it is her duty to do.

It is thus apparent that the case law - and the three cases noted above were the only three nearly relevant cases which could be found - does not add much to any in-depth discussion of the original question of: legally, who is a runaway child?

FOOTNOTES

[1] See: Juvenile Statutes and Noncriminal Delinquents; Applying the Void-for-Vagueness Doctrine, Rose, Robert G., 1972, Seton Hall Law School, reprinted by Office of Youth Development, Department of Health, Education and Welfare (SRS, 1973-26028).

[2] See: Model Acts for Family Courts and State-Local Children's Programs, Sheridan, William H. and Beaser, Herbert Wilton, Office of Youth Development, Office of Human Development, Department of Health, Education and Welfare, 1975, Publication No. OHY/OYD 75-26041; Jurisdiction Over Status Offenses Should be Removed From the Juvenile Court, Board of Directors, National Council on Crime and Delinquency, Crime and Delinquency, Volume 21, No.2, April 1975.

[3] Huckleberry's for Running, Chapter 11, Beggs, Rev. Larry, Ballantine Books, 1969.

[4] Id. at p. 182.

[5] Id. at p. 184.

[6] 115 A. 730, 95 Vt. 497.

[7] 182 N.E. 675, 260 N.Y. 72 (1932)

[8] 26 So. 2nd 837, 210 La.347 (1946)

CHAPTER 3

METHODOLOGY

This study of the legal status of runaway children was undertaken over a ten-month period beginning on 1 July 1974. The jurisdictions studied were the fifty states, the District of Columbia, Guam, Puerto Rico and the Virgin Islands.

The study itself was divided into four stages:

STAGE 1:

A. Review of Relevant Legal Research Efforts.

In order to secure an overview of the state of existing and ongoing legal research with respect to the state laws, court decisions and opinions of attorneys general with respect to the legal status of runaway children, and in order to avoid duplication of existing completed or ongoing legal research with respect to this subject, letters were sent to twenty-four private agencies and organizations, which are mostly national in the scope of their activities. These letters indicated the nature of the project and inquired whether or not such agencies and organizations were, had recently been or were about to become engaged in any significant, relevant legal research. If they indicated that they were not, they were then asked whether they were aware of any such research currently in progress by any other agency or organization.

Similar inquiries were made of nine Federal departments and agencies. In addition, telephone inquiries were made of two Assistant General Counsels and various units in the Department of Health, Education, and Welfare.

In general - except as specifically noted below - the responses were in the negative, indicating that no comprehensive legal research effort was under way with respect to the totality of the legal problems which are or may be encountered by interstate or intrastate runaways.

Many of those who responded, however, stated that there was great need for such legal research and requested that they be kept informed of the results of the Project and be sent a copy of the final report.

In some instances the responses indicated that, while the organization or agency queried was not itself engaged in such research, the respondent was of the opinion that some other organization, agency or individual was perhaps doing similar research. All such "leads" were pursued either by mail or telephone.

The usefulness, completeness, reliability and currentness of the materials secured were evaluated in relation to some of the specific topics discussed below (Subsection 1, E of this chapter).

B. Selection of Test Jurisdictions.

Four TEST JURISDICTIONS were chosen: Washington, Florida, Minnesota and Maryland.

Washington, Florida and Maryland have recently made extensive revisions of their juvenile court laws; Minnesota has a state law school deeply involved in upgrading the state's juvenile justice system.

C. Data Instruments.

After the selection of the four TEST JURISDICTIONS, specially designed research data instruments were developed and continuously tested and revised. These instruments relate to statutes, topical check lists, and juvenile rights check lists.

The research data instruments were developed, designed and tested for use by the Legal Research Assistants to achieve, at a minimum, the following objectives:

1. To obtain a detailed and comprehensive overview of the law in each state with respect to the legal status of interstate and intrastate runaway children: their legal rights and obligations and the legal rights and obligations of their parents, guardian or other legal custodian;

2. To obtain a comparative legal view of the state of the law in the United States with respect to the legal status of runaway children, i.e., In which states does a runaway have certain rights? In which states does a runaway not have certain rights? In which states is the statute law silent with respect to certain rights? The same comparative legal view would then be available with respect to the legal obligations of such runaways as well as with respect to the legal rights and obligations of the parents, guardian or other legal custodian of such runaways;

3. To permit, with the least possible effort, the data compiled in the Final Report of the Project to be updated in future years.

D. Master List of Runaway Topics

At the Project's outset a "Master List of Topics Involved in the Runaway Legal Project" was developed and divided into three groups.

Group 1 consisted of the following topics:

1. The Juvenile Court;
2. Public Education;
3. Public Welfare (excluding the AFDC program which would be covered through the compendium published by the Social Security Administration of the Department of Health, Education, and Welfare);

4. Custody and Control of Children;
5. Curfew Laws;
6. Hitchhiking Laws;
7. Authority to Provide Treatment Alternatives to the Juvenile Justice System;
8. Statutory Rape;
9. Drug Abuse Programs;
10. Contributing, Harboring and Interfering;
11. Ability to Contract - Age of Majority;
12. Marriage;
13. Tobacco Products.

Group 2 consisted of topics with respect to which compendia kept up-to-date by outside sources already existed or were in such form as to be readily brought up to date:

14. Medical, Surgical and Psychiatric Treatment;
15. Labor;
16. Operating Motor Vehicles;
17. AFDC Program;
18. Intoxicating Beverages.

Group 3 involved the problem of emancipation, which has broad legal implications for many of the other topics.

With respect to the topics in Group 1 [subtopics (1) through (13)], a 15-page "Topic Check List" (see Appendix

p.372) was prepared for use by the Legal Research Assistants to make certain that a search had been made in the statutes of each of the jurisdictions researched for the items on that list. In addition, another form was devised to ascertain which legal rights, if any, are accorded to juveniles by statute in each of the jurisdictions under their juvenile justice systems (see Appendix p. 389).

E. Analyses of Available Compendia.

1. The Juvenile Court

As a result of our inquiries, we received from the National Assessment of Juvenile Corrections of the University of Michigan at Ann Arbor, Michigan, a pamphlet entitled "Juvenile Delinquency: A Study of Juvenile Codes in the U.S.A.," which is a study of juvenile codes in the United States. It is an excellent "jumping off" place for a study of such codes.

Unfortunately, from the standpoint of this Project, this pamphlet had at least two deficiencies:

a. The research was performed with respect to statutes in effect on January 1, 1972 and there were apparently no plans or funds to keep the pamphlet current; there is required legal research with respect to relevant amendments to juvenile codes enacted subsequent to January 1, 1972.

b. The "schedule" used to make the study did not include an item with respect to the statutory definition of a "runaway."

The authors of this pamphlet seemed to assume that such terms as "wayward child," or "habitually disobedient child," or "beyond the control of parents, guardian or other legal custodian" were the legal equivalent of the term "runaway." Legally, that is not necessarily so.

This pamphlet was used as a base-line and the information in it was updated.

2. Medical, Surgical and Psychiatric Treatment

With respect to state laws relating to the ability of a minor - whether or not a runaway - to give a valid consent to receiving needed medical, surgical and psychiatric treatment, there seems to be considerable movement in recent years toward authorizing such consent.

The National Center for Family Planning Services (DHEW) published an excellent booklet, "Family Planning, Contraception, and Voluntary Sterilization: An Analysis of Laws and Policies in the United States, Each State and Jurisdiction," which covers such subjects as laws

establishing family planning programs, laws relating to contraceptive services to minors, etc. Unfortunately, this booklet is reflective of the laws in this field through 1972.

This information was updated with the laws on this subject, as they may affect runaway children.

3. Labor Laws

With respect to this Project, we needed the answers to such questions as the minimum age at which a minor may engage in "gainful employment," the definition of a minor in this context, prohibited night hours for minors, etc.

The Commerce Clearing House and the Council of State Governments have excellent publications on labor law which are maintained on a current basis. For this topic, the Commerce Clearing House Service and the Council of State Governments' pamphlets were used.

4. Operating Motor Vehicles

The information with respect to any impediments standing in the way of a runaway child's having the capacity and right to operate motor vehicles, such as delivery or farm vehicles, is contained in a pamphlet published

annually by the American Automobile Association. The AAA digest was used as a starting point and checked as needed.

5. Public Education

In 1966 the U. S. Office of Education issued an excellent publication entitled "State Law on Compulsory Education," which contained a state-by-state analysis of such topics as "compulsory school attendance span," "minimum attendance required," "permissive school age span," "age at which employment permits may be issued," "minimum age at which employment permits may be issued to a child of compulsory school age," etc.

Unfortunately, according to Mr. Grant of the National Center for Educational Statistics and Mr. Harry Chernock, OGC-DHEW, that publication has not been kept up to date and there are no present plans to update it. The National Education Association has no comparable publication and referred the Principal Investigator to the U. S. Office of Education and the Office of the General Counsel of DHEW.

The 1966 Office of Education study was dated May 1965. The educational scene in the United States has changed drastically since that time. The information given in the 1966 Office of Education pamphlet was updated in

relation to the effects of current compulsory school laws in reference to runaway children.

6. Public Welfare

Of concern to runaways is their eligibility for benefits under the programs for aid to families with dependent children and child welfare services.

The Assistance Payments Administration of the Social and Rehabilitation Service (DHEW) publishes annually an up-to-date book entitled "Characteristics of State Public Assistance Plans Under the Social Security Act - Old Age Assistance, Aid to the Blind, Aid to Families with Dependent Children, Aid to the Permanently and Totally Disabled, and Aid to the Aged, Blind, or Disabled." This compendium (Public Assistance Report No. 50-1973 Edition-SRS-74-21215) is excellent and includes such headings for each state as eligibility age, citizenship requirements, residence requirements, etc. No similar compendium is published with respect to the child welfare services program.

The pamphlet issued by the SRS was used as a base for legal research for the AFDC program, with only such additional legal research as was needed to clarify any possible inconsistencies which arose with respect to

any other provisions of the state's laws. State legal research was undertaken concerning CWS programs with respect to factors which might affect runaways.

7. Curfew Laws

Curfew laws are generally enacted by the state legislature in the form of general authority granted to the various subsidiary governmental units - counties, cities, etc. - to impose such restrictions on the movement of juveniles after a certain hour of the night and before a certain hour in the morning. Violations of such restrictions are generally specified by state statute as constituting a crime, albeit generally a misdemeanor. Thus, a runaway may find that the act of running away from the care and custody of his parents, guardian or other legal custodian, even though a "Person In Need of Supervision" (PINS) situation under state law, may ripen into the commission of a crime for violating the curfew laws, subjecting the juvenile to the many dispositional alternatives as a juvenile delinquent before the juvenile court.

The state laws relating to this subject were researched.

8. Hitchhiking

Hitchhiking is increasingly being regulated by state statute specifically, rather than by delegation of authority over the subject to the local governments.

In addition, there seems to be a trend for the state to preempt the field and to forbid local governments to assert jurisdiction in this field.

The state laws relating to this subject were researched.

9. Authority to Provide Alternatives to the Juvenile Justice System

The authority to provide alternatives to the juvenile justice system, such as youth service bureaus, is a new alternative, relatively speaking. It is only now beginning to appear on the statute books.

The state laws relating to this subject were researched.

10. Purchase by or Sale to Juveniles of Tobacco Products or Intoxicating Beverages

A compilation of state laws relating to the legal restrictions on the sale to or purchase by a juvenile of intoxicating beverages is issued by the Distilled Spirits Council of the United States (DSCUS). There is no similar compilation with respect to tobacco and tobacco products.

The compilation issued by DSCUS was used for the legal research with respect to the restrictions on juveniles

in the use of intoxicating beverages. The state laws with respect to the use of tobacco products by juveniles were researched.

11. Drug Abuse Programs

Some twenty years ago, the Senate Subcommittee to Investigate Juvenile Delinquency expressed its great concern about the growing problem of drug abuse by juveniles. In the intervening years, the problem has become more acute. Enticement into the use of drugs is one of the hazards likely to be encountered by runaways. State statutes and programs, under the impetus of Federal urging and funds, are relatively new, especially with respect to treatment as opposed to law enforcement.

The state laws with respect to drug-abuse programs were researched.

12. Statutory Rape

Since so large a percentage of runaways are girls - especially young girls - a major problem faced by them is statutory rape. As a matter of fact, some of the state statutes also take cognizance of the possibility of "statutory rape" of a male minor by a female above a certain age.

The state laws with respect to statutory rape were researched.

13. Contributing, Harboring and Interfering

Of special import to the Project were those statutes concerned with: (a) contributing to the delinquency of a minor; (b) harboring minors who have run away, without permission, from the care, custody and control of their parents, guardian or other lawful custodian; and, (c) interfering with the control of a minor by the minor's parents, guardian or other legal custodian. The problem can arise in a number of ways, e.g., counseling a minor to leave home or taking into a runaway house a child who has run away from home without permission and not informing the child's parents, etc.

The state laws with respect to contributing, harboring, and interfering were researched.

14. Ability to Contract - Age of Majority

The Council of State Governments has issued a pamphlet entitled "The Age of Majority," published in January 1972, and updated in February 1973, to take into account legislation enacted during 1972.

The state laws with respect to the ability to contract and the age of majority were researched.

15. Marriage

The age at which a runaway may marry, whether parental consent is needed, whether the runaway is subjected to waiting-period restrictions, judicial approval, residence requirements, etc. are matters which might be of concern to and affect the rights of the runaway and his parents, guardian or other legal custodian.

The state laws with respect to marriage were researched.

STAGE 2:

During Stage 2 of the Project, utilizing the Legal Research Instruments devised and tested during Stage 1, the pertinent statutes, decisions and opinions of each of the fifty-four jurisdictions were researched by the Legal Research Assistants employed on the Project under the supervision of the Principal Investigator.

In addition, during this phase of the Project, the compendia on medical treatment issued by the National Center for Family Planning Services, DHEW; on labor law issued by the Commerce Clearing House and the Council of State Governments; on motor vehicle laws issued by the American Automobile Association; on the AFDC program issued by the Social Security Administration, DHEW; and on the laws relating to intoxicating beverages issued by the Distilled Spirits Council of the United States were reviewed, analyzed and digested and work begun, where needed, on their updating.

The Interstate Compact on Juveniles was also analyzed during this Stage of the Project from the standpoint of how it might be strengthened and improved from the standpoint of the runaway child who is outside the juvenile justice system.

STAGE 3:

During this Stage of the Project, work continued reviewing the legal materials gathered by the Legal Research Assistants, re-checking some of the materials gathered and doing additional legal research on certain basic problems in preparation for the Final Report.

In addition, 77 letters were sent to Runaway Houses and 224 letters were sent to Youth Service Bureaus asking them generalized questions with respect to how the law in action affected runaway children and what changes in state laws would be most helpful to runaway children and to the operations of their agencies.

Some of the more important replies, comments and suggestions received as a result of such inquiry, as well as some of the more meaningful contributions to the Project received in response to our inquiry during STAGE 1, are set forth in Chapter 22.

STAGE 4:

At the early part of this Stage, the statutes of certain jurisdictions for which pocket parts to the state statutes had been received since the legal research had been completed during STAGE 2 and for some of the more important topics and cases were shepardized through the end of March 1975.

This Final Report was then written, incorporating the results of the study on the legal status of runaway children.

CHAPTER 4

PARENT AND CHILD RELATIONSHIPS IN THE LAW: AGE AND THE CONSEQUENCES OF ATTAINING MAJORITY

At an early stage in its evolution, the common law recognized that, as between parents and their children, there should exist certain reciprocal legal rights and duties.

However, as with the evolution of the common law generally, the exact parameters of those reciprocal legal rights and duties were delineated only gradually over the course of many years. Decision after decision was handed down by a variety of courts setting forth the principles at law and equity which should be applicable to the myriad of factual situations brought before them involving not only parent-child relationships but also situations where those relationships came in conflict with the rights and obligations of third parties.

The legal principles governing parent-child relationships which thus evolved held that, except in certain situations, parents had the legal right to:

1. maintain the physical care, custody and control of the person of their child;

2. provide and supervise the education, religious control and general upbringing of their child, including the discipline of their child; and

3. retain the services and earnings of their child - a matter of considerable financial importance, especially in an agrarian society.

At the same time, those common-law legal principles placed upon the parents certain specific legal obligations, i.e., the parents were legally obligated to provide their child with food, clothing, shelter, education, medical care and other necessaries of life.

At common law, these reciprocal rights and duties continued until the child attained the age of majority: 21 years less 24 hours.[1] Unless the reciprocal legal rights and duties as between the parents and their child are legally limited or terminated prior to that time,[2] they are completely terminated when a child reaches the age of 21.

At that time the child's parents are no longer legally obligated to supply the child with the necessaries of life; they are not legally authorized to direct and control the child's activities; and, they are not entitled to the child's earnings or services. The child, on the other hand, is no longer subject to the care, custody and control of his or her parents; is no longer entitled to be provided with the necessaries of life; and is entitled to keep whatever he or she earns and spend such earnings as he or she may determine.

The rights of parents to care for their children and to exercise their discretion in meeting the needs of their children are basic to our society.

> "The child is not the mere creature of the State. Those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for adult obligations." (Pierce vs. Society of Sisters, 268 U. S. 510 [1925])

Equally basic are the other rights of children to maintain their personal liberty free from other than parental or normal community restraint, to live with their parents, and to have someone legally responsible for protecting their interests.

The behavioral sciences, in emphasizing the importance to a child of his own parents, have further confirmed what tradition, religion and common sense have long accepted as true.

These rights of both the child and his parents are accompanied by corresponding responsibilities enforceable at law. The parents must send their child to school and the child must go. Both are limited in relation to the amount and kind of work the child may be allowed to do. Both must obey certain additional requirements - such as public health laws and regulations - promulgated to protect the general welfare of all children and of society as a whole.

But in most of their decisions with respect to their child, parents, as long as they meet minimal standards of care, are free to follow their own judgment. Their rights are protected by law. So are the rights of the child.[3]

However high-sounding it might be to speak of protecting the rights of the child before the child reached the common-law age of majority, the fact is that in actual practice the common law placed the child under severe legal disabilities with respect to his or her freedom of action in a great many respects. Under the common law the child overcame these disabilities only upon attaining the age of majority or upon being emancipated.[4]

Many of the common-law legal disabilities under which unemancipated minors labor would have little or no import with respect

to the legal status of unemancipated runaway children - i.e., ability to take, hold and convey real property, to make a will, to act as business agent or fiduciary, to hold public office, to vote, or to enter into business partnerships.

On the other hand, some common-law disabilities of unemancipated minors are potentially of great significance with respect to the legal status of such runaway minors and may well seriously affect such minors' ability to function and make necessary day-to-day choices of action while away from home and away from the care, custody and control of their parents or legal custodians. Seven such disabilities are discussed here.

1. UNEMANCIPATED MINORS AND CONSENT TO MEDICAL, SURGICAL OR PSYCHIATRIC CARE OR TREATMENT.

   At common law, an unemancipated minor could not give valid consent to the provision of medical, surgical or psychiatric care.

   However, in recent years there has been a distinct and striking legislative and judicial trend towards permitting an unemancipated minor to give consent to the provision of such care either generally or at a certain age or at certain ages for certain types of care.[5]

2. UNEMANCIPATED MINORS AND RESPONSIBILITY FOR CRIMINAL ACTIVITIES

   Under the common law, children under the age of seven were deemed incapable of committing a crime. That was an irrebuttable presumption.

> According to the common law a child under the age of seven has no criminal capacity; one who has reached the age of fourteen has the same criminal capacity as an adult; that is, he is fully accountable for his violations of law unless incapacity is established on some other basis such as insanity; while between the ages of seven and fourteen there is a rebuttable presumption of incapacity and conviction of a crime is permitted only upon clear proof of such precocity as to establish a real appreciation of the wrong done. This presumption is extremely strong at the age of seven and diminishes gradually until it disappears entirely at the age of fourteen, such references being to physical age and not to some 'so-called' mental age.[6]

Until the beginning of the twentieth century, minors coming before the Federal and state courts of this country charged with the commission of a crime were thus dealt with as provided for under common law, i.e., those 14 years of age or older were treated in every way as though they were adults. Those between the ages of seven and 14 who were charged with the commission of a crime took their places on the dock even as did the minors over 14 similarly charged with the commission of a crime. The only difference was the prosecution had the burden of proving the capacity of the minor under 14 to commit a crime.

But if that presumption were overcome and the child of seven years were convicted of a crime, the child's punishment could be less than, the same as, or greater than the punishment meted out to a co-defendant 14 years of age or older. The

incarceration of both could be in the same penal institution.

However, around the turn of the century a movement began which urged changes in the manner in which society dealt with persons below the age of majority who had committed crimes. Out of that movement grew the establishment of juvenile courts in each of the jurisdictions studied. Thus, today an unemancipated minor who commits a criminal offense would be handled in accordance with the provisions of the state juvenile or family court laws rather than under the old common-law concepts or under the criminal law.[7]

3. UNEMANCIPATED MINORS AND THEIR EARNINGS

At common law the earnings of a minor belonged to the child's parents because the parents were entitled to the minor's services.

Because of this, today's runaway child, if unemancipated, faces an uphill climb in attempting to obtain work so as to gain the wherewithal with which to live. For instance, the potential employer of such a runaway child runs the risk of the minor's parents demanding payment of any wages due the minor - perhaps even after the employer has paid the minor himself.[8] For that reason, a potential employer may refuse to hire unemancipated minors, thus critically limiting the number of employment opportunities that otherwise would have been available to the runaway child. In addition to that, such a runaway may run afoul of compulsory school laws[9] or of the Federal and/or state child labor laws.[10]

4. UNEMANCIPATED MINORS AND SELECTION OF THEIR OWN DOMICILE

At common law, a child, at birth, acquired the domicile of the child's father; or, if the father was dead or the child was illegitimate, then the child acquired the domicile of the child's mother.

The term "domicile" can generally be defined as that "place where a man has his fixed, true and permanent home and principal establishment and to which, when he is absent, he has the intention of returning."[11] Or, phrased differently and more commonly, "domicile" can be defined as a person's place of habitation from which the person has no present intention of moving.[12]

The term "domicile" in the law gives an aura of permanence to a person's physical presence in a certain geographical location that the word "residence" does not convey.

> So long as we have state and local governments...and so long as the impact of some legal rights and obligations depends upon a person's location within a given state, county or city, some rules for subjecting him to the jurisdiction of the local government have to be made, and so a domicile is assigned to him.[13]

It is, however, necessary to distinguish between the terms "domicile" and "residence."

> ...a person may have two places of residence, as in the city and country, but only one domicile. Domicile means living in that particular locality with intent to make it a fixed

> and permanent home. Residence simply requires bodily presence as an inhabitant in a given place, while domicile requires bodily presence in that place and also an intent to make it one's domicile.[14] (Emphasis added.)

Under the common law, an unemancipated minor could not change his or her domicile - it remained with the parent from whom it was derived. If that person was the father and the father died or abandoned the child, the child's domicile became that of the mother. If the mother then died, the domicile of the child remained "where it was" (i.e., with the mother) until he or she was taken in to live with someone, usually a relative. In that situation, the child's domicile followed that of the person with whom he lived.[15]

In the example given above, if the mother were dead at the time of the death of the father, the child's domicile would remain that of the father until the child acquired a new domicile. The situation becomes even more complicated with respect to the domicile of an unemancipated minor where the parents of such minor are divorced or separated. Generally, in cases of separation or divorce, the child's domicile follows that of the parent who has custody of the child, unless there has been a judicial decree awarding custody of the child to the other parent or to some other person.[16]

The foregoing sums up briefly and generally the incapacity of an unemancipated minor at common law to select his or her domicile at will. While the principles may seem needlessly complex and legalistic, they are the principles which would be applied at common law in determining the domicile of an unemancipated runaway child. And the manner in which they are applied may well determine, in certain instances, the eligibility of an unemancipated minor for certain public benefits.[17]

5. MINORS AND THEIR RIGHTS TO CONTRACT VALID MARRIAGES

Under the common law, at the age of seven a child became capable of consenting to marriage, but the marriage remained "inchoate and imperfect"[18] until the boy reached the age of 14 and the girl reached the age of 12.

Most states have by statute raised the age at which minors may consent to marriage without parental consent, but a few still retain the common-law age limits.[19]

6. UNEMANCIPATED MINORS AND THE RIGHT TO SUE OR BE SUED

At common law the rule was that an unemancipated minor could neither sue nor be sued. If the minor were sued, the minor could only defend through a guardian who would be named as one of the defendants to the suit. If the minor sued, the minor could do so only through a guardian or some friend who undertook to do so on behalf of the minor.[20]

Judicial procedures with respect to who can or cannot sue or be sued are generally covered by the state statutes, although it may be stated generally that unemancipated minors still must utilize the device of guardianship or defense by or suit through a "next friend." An interesting question arises when a minor seeks to engage the services of an attorney and claims that the attorney should be paid, since attorney's fees are one of the necessities of life for which the minor's parent should be held liable.[21]

7. UNEMANCIPATED MINORS AND THEIR LEGAL RIGHT TO DISAVOW MOST CONTRACTS

The ability of an unemancipated minor to disavow or disaffi: most contracts entered into by such minor was probably one of the most "disabling disabilities" affecting a minor. This ability of a minor to disavow an otherwise valid contract continued as the minor's right for a reasonable time after the minor reached the age of majority. In fact, if both parties to a contract were minors, either or both could disaffirm.

An exception to this rule was with respect to a contract to furnish a child with the child's "necessaries," a contract to furnish which the child could not disavow, unless the parents or guardian were already furnishing the child with them.

> "Necessaries" means food, drink, clothing, medical attention, and a suitable place of residence, and they are regarded as necessaries in the absolute sense of the word; however, liability for necessaries is not limited to articles required to sustain life; it extends to articles which would ordinarily be necessary and suitable in view of the rank, position, fortune, earning capacity, and mode of life of the husband or father.[22]

The power given to an unemancipated minor to disavow contracts was ostensibly given to safeguard the minor in business dealings with persons who had already reached the age of majority, and who therefore were deemed by the law to be capable of fending for themselves with respect to commercial transactions. The common-law rule was obviously unfair to the adult contractor who was legally bound by the terms of a contract which the other party need not fulfull merely because of nonage. The counter-argument was to the effect that the adult contractor could always guard against such a situation arising by asking for proof of age.[23]

But in the faster pace of modern business, exceptions were needed in the common law other than the one prohibiting the unemancipated minor from disavowing contracts with respect to necessaries. Those exceptions came about through the gradual lowering of the statutory age of majority or lowering the age at which a person who was otherwise a minor could enter into certain contractual arrangements for such things as bank loans, medical care, educational loans, giving

theatrical performances, etc. The changes found in the study of the statutes of the 54 jurisdictions showed no clear pattern or trend in the statutory exemptions. They seemed to have come about in an effort to reach certain jurisdictional local needs, or the necessity for jurisdictional statutory enactments to provide a statutory basis for certain Federal-state grant-in-aid programs.[24]

However, even this evolution was too slow to meet changing times and conditions. In addition to the common-law disabilities of unemancipated minors as discussed above, states gradually enacted a host of statutes imposing additional restrictions and limitations upon young persons who had not attained the age of their majority and were not emancipated.

These additional disabilities either required an unemancipated minor to take certain actions or refrain from taking certain actions because of the child's status as an unemancipated minor - actions or restraints which were not required or forbidden to be done by persons who had attained their majority. One such disability we have already noted: the inability of an unemancipated minor to marry without parental consent.[25]

Another statutorily imposed duty placed upon unemancipated minors is compulsory school attendance. At common law there

was no legal requirement that an unemancipated minor must attend either a public or a private school in order to fulfill the parental obligation to see to it that such a minor did in fact receive an appropriate education. How the parent fulfilled that parental duty was a matter which the common law left entirely up to the parent.

The requirement for compulsory education for unemancipated minors is one which is imposed on such minors by statutes enacted in all the jurisdictions studied, except for the State of Mississippi, which has no such statutory requirement. Those statutes generally impose minimum and maximum ages for compulsory school attendance. The specific ages vary from jurisdiction to jurisdiction. In addition, the statutes often contain many exemptions from the requirement for compulsory school attendance by minors.[26]

All jurisdictions studied restricted to varying degrees and at varying ages the ability of a minor to obtain a motor vehicle operator's permit,[27] to engage in certain types of gainful employment under certain conditions,[28] or to purchase intoxicating beverages.[29] Statutes in some of the jurisdictions authorize the imposition of curfews on minors,[30] and restrict the use by minors of tobacco products.[31]

In recent years, more and more states have been lowering the age of majority, usually to 18 years of age. The reasons for this relatively sudden movement among the state legislatures,

especially after adhering for so many years to the common-law age of majority of 21 years, are difficult to determine exactly.

To some extent, of course, the ratification on July 1, 1971 of the Twenty-Sixth Amendment to the Constitution of the United States, giving voting rights to 18-year-olds, may have inspired many state legislators to review other state statutes affecting minors. The youth "revolt" of the sixties may also have given impetus to revise downward the age of majority so as to give youth between the ages of 18 and 21 a greater feeling of participation in matters affecting them. It did seem incongruous to draft 18-year-olds into the Armed Services while at the same time retaining on the statute books laws which did not permit many of them to make contracts or to execute a valid will.

In trying to ascribe cause and effect to the change in the state legislatures in changing the age of majority, it should be remembered that no similar movement had swept the country after World War I and World War II or the Korean War when there had been a similar draft of young men to serve in the Armed Forces. Whatever the reason, the movement to lower the age of majority below 21 is definitely on among the states.

In Table 1, pp.50-52, are set forth the ages of majority in the 54 jurisdictions studied.

In nine of those 54 jurisdictions - Alabama, Arkansas, District of Columbia, Guam, Indiana, Maine, Puerto Rico, Texas and the Virgin Islands - the age of majority is 21. In three - Alaska, Nebraska and Wyoming - the age of majority is 19 years. In Utah, the age of majority is 21 for males and 18 for females.[32] And in the remaining 41 jurisdictions, the age of majority is 18, with five jurisdictions - California, Colorado, Florida, New York and Texas - placing some restrictions on granting the 21-year-olds full majority status for all purposes.[33]

But lowering the age of majority from 21 years of age to 18 or 19 years of age does not significantly assist in solving the legal problems of runaway children. Such scanty and incomplete statistics as may exist with respect to the characteristics of runaway children place the age of the majority of them as below the age of 18.

> Runaway children are much younger than might be expected...In 1963 and 1964, the most common ages noted for runaways were 16 and 17. In the past few years, that age has dropped to 15. Recently, there has been an alarming increase in the number of very young runaways. In New York City, for example, 43 percent of the runaways are between the ages of 11 and 14. Indications are that this group may become the single largest runaway age group. Fifty-five percent of girl runaways in New York City are already in the 11 to 14 age group.[34]

For this large group of runaway children, lowering the legal age of majority to 18 years or 19 years is not much

help in enabling them to cope with the many legal disabilities which they encounter as they "take to the road." These children are still subject to the many legal disabilities applicable to unemancipated minors under the common law. In addition, they are still subject to the many statutorily imposed legal disabilities and restrictions which treat them in the law as "statuts cases," subject to legal restrictions and restraints to which adults are not subject.

Throughout the country, the statutes, judicial decisions, opinions of attorneys general, municipal ordinances, state and local agency regulations, corporation counsel decisions, etc. become a legal maze through which the runaway child must try to seek a safe and legal path at the very time when such a child is seeking to make a personal adjustment in an emotionally fraught period.

Both statutory and common law as they exist today throughout the country are no of much assistance to the unemancipated runaway child. As a matter of fact it can safely be said that, on the whole, the law is more of a hindrance than a help to such a child. The legal status of an unemancipated runaway child in the United States today is both confused and confusing. For example, in many jurisdictions a police officer is by statute authorized, without a warrant, to take a suspected runaway child into custody and place such child in a detention or shelter-care home <u>even</u> where the act of running away from home is not specifically made a delinquent act or a status offense by the juvenile court statutes of that jurisdiction![35]

A presumption seems to prevail among certain authorities that there is something "wrong" with the unemancipated runaway child who leaves home without parental permission. This presumption seems to persist regardless of the factual situation which might exist with respect to that home and the known fact that in many cases it might have been more prudent from the standpoint of the child's best interests for the child to have "run" than to have stayed.

In the United States the common-law rule that the mutual rights and obligations existing between parent and child endured until the child became 21 proved to be too rigid for a young, vibrant and expanding country. A way was found to free the minor from the bondage of these mutual rights and obligations through the common-law concept of emancipation. How good that way out is, how it works, its limitations and its implications for the runaway child are discussed in Chapter 5 and in many of the subsequent chapters as appropriate.

FOOTNOTES

[1] Black's Law Dictionary, Rev. 4th Ed., West Pub., St. Paul, Mn., (1968) at pp. 1038-1039. See also: Clark, Homer H., Law of Domestic Relations, West Pub., St. Paul, Mn., (1968) at p. 230: From early times, the common law imposed disabilities upon persons under age. The age at which the disabilities came to an end originally varied for different classes of peoples, but gradually the age of twenty-one, the age of majority for the knightly class, came to be the standard. Apparently this was the age at which men were thought strong enough to bear the heavy medieval armour.

[2] See infra, this Chapter, and Chapter 5, infra.

[3] Standards for Juvenile and Family Courts, Children's Bureau, Social and Rehabilitative Service, U. S. Department of Health, Education, and Welfare, Washington, D.C. 1966 - Pub. No. 437-1966, pp. 5-6.

[4] For discussion of legal elements of emancipation, see Chapter 5, infra.

[5] For an analysis of this topic, see Chapter 9, infra.

[6] Criminal Law, Perkins, Rollin M., Foundation Press, Brooklyn, New York (1957), p. 729.

[7] For an analysis of this topic, see Chapter 6, infra.

[8] See infra, this Chapter, with respect to the inability of an unemancipated minor to make a legally binding contract. See also Chapter 5, infra.

[9] See infra., Chapter 7.

[10] See infra., Chapter 10.

[11] See Black, supra, Note 1, at p. 572.

[12] See Clark, supra, Note 1, at p. 144.

[13] Id., at p. 154.

[14] See Black, supra, Note 1, at p. 1473 citing In Re Riley's Will, 266 N. Y. S. 209, 148 Misc. 588.

[15] See Clark, supra, Note 1, at p. 152.

[16] Id., at p. 151-152. Also: 53 A.L.R. 1160 (1928); 13 A.L.R. 2nd 306 (1948).

[17] See infra, for example, Chapters 7, 8, 9, 10 and 19.

[18] Blackstone, Commentaries on the Law of England 436 (Cooley's Ed. 1884). Also see Clark, supra, Note 1, at pp. 77 et seq. and "The Law of Infant Marriages," 9 Vand. L. Rev. 593 (1956).

[19] For statutory and common-law age limits with respect to consent to marriage, see Chapter 16, infra.

[20] See Clark, supra, Note 1, at p. 233.

[21] See Chapter 5, infra.

[22] See Black, supra, Note 1, at p. 1181 citing Caruso vs. Caruso, 12 N. J. Eq. 393, 141 A. 16, 19.

[23] For authorities and discussion of estoppel (inability to use age as a defense to a suit) in cases involving misrepresentation of age by a minor and the necessity for making restitution as a condition to the disavowal of a contract by an unemancipated minor see Clark, supra, Note 1, Sec. 8.2, pp. 234-240. The authorities cited are widely divided, depending on the factual situation.

[24] For a further discussion, analysis and tables with respect to the age of majority and the age and/or ages at which an unemancipated minor who has not yet attained the age of majority may enter into various types of specialized contracts, see infra, beginning on page 50.

[25] For a fuller discussion of this topic, see Chapter 16, infra.

[26] For a discussion of this topic and an analysis of the various statutes enacted, see Chapter 7, infra.

[27] See Chapter 19, infra.

[28] See Chapter 10, infra.

[29] See Chapter 18, infra.

[30] See Chapter 11, infra.

[31] See Chapter 17, infra.

[32] See Stanton vs. Stanton, Chapter 1.

[33] See notes to Table 1.

[34] Runaway Youth, Hearings before the Subcommittee to Investigate Juvenile Delinquency of the Committee on the Judiciary, 92d Congress, First Session, January 13, 1972, at p. 6.

[35] See Chapter 6, infra, Table 2D.

TABLE 1

AGE OF MAJORITY - SPECIAL CONTRACTING PROVISIONS

STATE		
Alabama	21	
Alaska	19	Note 1
Arizona	18	
Arkansas	21	
California	18	Note 2
Colorado	18 (Ins. 16)	Uniform Commercial Code in effect. Note 3
Connecticut	18	
Delaware	18	Unless previously declared incompetent other than for age.
District of Columbia	21	
Florida	18	Note 4

Note 1: A person reaches the age of majority at marriage unless he or she is under the age when he or she can give consent to marriage (18), in which case he or she reaches the age of majority when they reach the age of consent. Otherwise age of majority remains at 19.

Note 2: Minor may disaffirm any time before maturity or a reasonable time thereafter except for: (a) necessaries; (b) artistic or creative services; (c) professional sports; (d) pregnancy care; (e) hospital, medical, surgical or dental care; and (f) treatment for venereal disease.

Note 3: At 18 minor becomes of full age for certain acts: (a) to make a contract and to be legally bound by it; (b) to manage the minor's estate except custodial property under the Colorado Gifts to Minors Act; (c) sue and be sued; (d) make decisions concerning minor's own body or body issue whether natural or adoptive; (e) Uniform Commercial Code applicable; and (f) contract for insurance cannot be disaffirmed.

Note 4: Disability of nonage removed: (a) if married, had been married or subsequently married, including where marriage is dissolved or widowed of widower; (b) for home farm and business loans act beneficiaries; (c) borrowing money for own higher education expenses; and (d) can donate blood and cannot disaffirm contract made for that purpose.

TABLE 1

AGE OF MAJORITY - SPECIAL CONTRACTING PROVISIONS (continued)

STATE		
Georgia	18	
Guam	21	Cannot disaffirm contract for necessaries.
Hawaii	18	
Idaho	18	Cannot disaffirm contract for necessaries.
Illinois	18	
Indiana	21	
Iowa	18	Male and Female attain majority upon marriage.
Kansas	18	Cannot disaffirm contract for necessaries.
Kentucky	18	Except intoxicating beverages (21) and care of handicapped child (21).
Louisiana	18	Cannot disaffirm contract for necessaries.
Maine	21	
Maryland	18	
Massachusetts	18	
Michigan	18	
Minnesota	18	
Mississippi	18	
Missouri	18	
Montana	18	Cannot disaffirm contract for necessaries.
Nebraska	19	
Nevada	18	If not under legal disability except for age.
New Hampshire	18	
New Jersey	18	
New Mexico	18	16 for loans for higher education loans; gifts act to 21.
New York	18	Note 5
North Carolina	18	

Note 5: (a) Minor cannot disaffirm contract for medical, surgical and hospital care; (b) if contract is for professional services by an infant and contract must be approved by Superior Court or Surrogate's court, parent or guardian of the infant not liable as a party to the contract or a guarantor of the contract.

TABLE 1

AGE OF MAJORITY - SPECIAL CONTRACTING PROVISIONS (continued)

STATE		
North Dakota	18	
Ohio	18	
Oklahoma	18	
Oregon	18	Minority ends upon marriage.
Pennsylvania	18	
Puerto Rico	21	
Rhode Island	18	
South Carolina	18	
South Dakota	18	
Tennessee	18	
Texas	21	Note 6
Utah	M: 21 F: 18	All minors obtain majority upon marriage.
Vermont	18	
Virgin Islands	21	
Virginia	18	
Washington	18	
West Virginia	18	
Wisconsin	18	
Wyoming	19	

Note 6: (a) Minor 18, or 16 living apart and maintaining self and managing own affairs, may petition court to have minority status removed for limited or general purposes; and (b) same provision for a nonresident who is 18 or older.

Sources for Table 1: (a) The Age of Majority, Council of State Governments, Lexington, Ky. 1972; (b) Age of Majority (Updated), Council of State Governments, Lexington, Ky. 1973; (c) Staff of Runaway Children Project.

CHAPTER 5

EMANCIPATION

"The law imposes a certain bondage upon minor children, but it also permits release therefrom."[1] However, the law also imposes many restrictions and limitations upon the circumstances under which a child may obtain release from such bondage. Many of these legal restrictions and limitations are of such a character as to make emancipation a very dubious tool for use by a runaway child to obtain freedom from the constraints of minority.

Under the common law, the release of a child from "bondage" to the child's parent could come about in one of two ways, other than upon the death of the child's parents.

The first way would be when the child reaches the age of majority, which under common law would be 21 years of age. Where the common-law rule has been changed by statute to a different age, the reciprocal rights and obligations between the parent and child theretofore existing would cease when the child attained the statutory age of majority.

The second way in which the bondage imposed upon a child under the common law could be removed before the child reached the age of majority was through the emancipation of the child by the child's parents. The term "emancipation" derives from Roman law rather than from the English common law. The term means "...the

enfranchisement of a son by his father and was anciently done by the formality of an imaginary sale. (This procedure was analogous and tantamount to the father's selling his son the father's right to his son's services until the son reached the age of 21 and the son's buying the right to keep whatever the son earned until the son reached that age.) This was abolished by [the Roman Emperor] Justinian, who substituted the similar proceeding of manumission before a magistrate."[2]

The doctrine of emancipation was not widely adopted in the English common law.[3] However, it did become an integral part of the common law in the United States, where it has been subject to extensive judicial use and interpretation.

> ...In some states the matter is expressly regulated by statute.[4] But in the absence of statute the rule now is the emancipation need not be evidenced by any formally executed instrument, or by any recorded act, but is a question of fact which may be proved by circumstances and direct proof is not required.[5]

An example would be the case in which a parent permits a child to work and foregoes the parental right to the child's wages but does not intend to terminate the other aspects of the parent-child relationship.

Statutorily, emancipation has been defined by the State of South Dakota as follows:

> Emancipation is express when it is by agreement of both parents, if living, and if not, the surviving parent and the child. Emancipation is implied when there has been complete abandonment of parental responsibility and control, and the child is actually obtaining support by other means or from other sources than his parent or parents.[6]

Unfortunately - especially from the standpoint of the runaway child - whether or not a child is in fact legally emancipated can only be determined by the court on a case-by-case basis in the light of the preponderance of the facts adduced in each individual case.

Even in those relatively few jurisdictions which authorize their courts to hear and decide petitions by or on behalf of children for emancipation, each such case must still be decided on its merits by the appropriate court on the basis of the evidence presented. Not until the court has heard the case, arrived at a decision that the child should be emancipated, and issued the appropriate decree may the child involved be considered emancipated.

Emancipation is a vague doctrine operating, except with respect to certain specific situations discussed below (marriage and service in the Armed Forces), on an individualistic, "after the fact" basis. It provides little protection or freedom of action for minors or third parties dealing with minors.

A leading case will serve to illustrate this point. Buxton v Bishop[7] was decided by the Virginia Supreme Court of Appeals in 1946 and sums up the salient judicial thinking with respect to the doctrine of emancipation. The facts involved in the case both as stipulated by the parties involved and as found by the jury were as follows:

> Charles Bishop, Jr., the son of the defendant, was admitted to the plaintiff hospital on August 5, 1942 suffering from acute appendicitis and died in the hospital fifteen days later.
>
> The age of majority in Virginia at that time was 21 years. At the time of his admission to the hospital, Charles Bishop, Jr. was 20 years of age.
>
> Charles Bishop, Sr. testified that his son had been working since he was 17 years of age; that his son had first worked for DuPont at Ampthill, Virginia, for two years, lived at home, received his own wages, paid no board but gave his mother some money from time to time; that, for a year before his death, his son had lived away from home, worked in Yorktown, Virginia, came home once a week, kept his own earnings and had been given no money by his father.

The Virginia Supreme Court of Appeals found that Charles Bishop, Jr. was emancipated and that the father was not liable to the hospital for his son's medical bills.

In its decision the court stated, in part:

> To hold...that the son of the defendant was not an emancipated youth at the time he entered the hospital would be very disconcerting to many employers and employees, for there are a large number of employees under twenty-one years of age working under contracts of employment made between themselves and their employers personally. They are paid their wages, which they spend as they please. They receive no support from their parents and ask none. They not only take care of themselves but frequently take care of their parents. If they are not emancipated then their parents are entitled to their wages. The result, in effect, would not only largely destroy the incentive for this class to work, but it would place a decided burden upon employers. They would, at their own risk, pay wages to the employees, never knowing when they might have to pay the same wages again to the parents of such employees.[8]

Buxton v Bishop, supra, illustrates some of the factors that would be considered by a court in determining whether a minor had been emancipated. In that case, the court was looking at all the pertinent facts introduced in evidence in an attempt to ascertain whether there had been cutting of the legal ties between father and son (total emancipation), or whether there had been only a loosening of those ties (partial emancipation), or whether the legal ties between the father and son still bound the two together so that the father was still legally obligated to pay for the necessaries (medical care) furnished his son.

The facts which the Buxton case felt to be controlling were:

(a) The son was working under an employment agreement which the son had worked out between himself and his employer.

(b) The son was working with the consent of his father.

(c) The son's wages were paid directly to the son and not to the father.

(d) The son kept the wages paid to him and spent them as he, the son, saw fit.

(e) The father had given the son no money, i.e., the son was completely self-supporting.

On the basis of these facts the court felt that the jury could correctly conclude that the son was emancipated.

The issue of whether the son had the legal ability to consent to the performance of the operation on him was not directly raised in Buxton.[9] The case was made to turn on the question of whether the son was so emancipated as to be required to pay for his own necessaries (in this case, hospital services) or whether the son was unemancipated so that the father was still required to supply him with necessaries.[10]

More, however, was involved in the Buxton case than the relationship between employer and employee. The supplier of goods and services (in that case, the hospital) was put in as great, if not

greater, quandary than was the employer. The hospital officials saw before them a 20-year-old youth requesting the provision of services which, under common law, the youth's father was required to provide and pay for. Before supplying the patient with the needed medical and surgical services, was the hospital required to ascertain from the patient at least the following information:

(a) Was the patient employed and, if so, had the patient worked out his employment agreement himself or had the patient's father obtained the employment for his son in the expectation that the father would obtain the son's wages for the father's benefit and use?

(b) Was the son working with the father's consent or was the son working without his father's knowledge and consent, intending to keep the wages earned for his sole benefit even though such wages belonged to the youth's father until the youth attained the age of majority?

(c) Had the son's wages been paid to the son or to the father?

(d) Did the son keep his own wages or did he turn them over to his father?

(e) Was the son receiving money from his father?

Even if the hospital officials asked and received answers to these questions, could they rely upon the answers given by the

son and proceed to provide the needed services in the expectation that they would receive payment for the services rendered, even though the services were provided without the express consent of the boy's father? At the time the hospital furnished the necessary medical services to the boy, those questions had not been judicially determined by the courts of Virginia (or of any other state) with respect to that particular individual and would not in fact be judicially decided for some three and one-half years - and then after a jury trial and appellate proceedings!

As a matter of fact, the hospital provided the needed medical services at its own risk insofar as certainty of ultimate payment for such services by the youth's father was concerned.

It is the fact that, except in the special situations discussed below (marriage and service in the Armed Forces), there must be some sort of a judicial determination that a particular youth is an emancipated minor which makes it difficult to see the doctrine of emancipation as being of great assistance in meeting the needs of runaway children.

Other than legal actions brought under statutes specifically authorizing actions to be brought by or on behalf of a minor for the sole purpose of having such minor judicially declared emancipated, the question of whether a particular minor has or has not been emancipated may arise under the common law as an incidental issue in many types of lawsuits.

One such type is exemplified by the facts in the Buxton case infra, where medical care was furnished to a minor and, upon non-payment, the vendor sued the minor's father. The father's defense was that the minor had been emancipated.

The issue may be raised where the creditors of the father of a minor seek to seize property which the minor claims is his by virtue of the fact that the minor purchased the property with funds which the minor obtained from his own work with his father's consent. In a Missouri case[11] where this issue was raised, the court discussed some of the attributes of emancipation, saying in part:

> ...It is not necessary that the father, in order to give his minor son the privilege of receiving the fruits of his own labor, should proclaim that fact from the house-tops, or accompany it by some token or ceremonial, as open and as odious as that which formerly attended the manumission of a slave; nor is it necessary, to accomplish that end, that the son should cease to be a member of his father's family; that the dearest domestic ties should be rudely sundered, and he be driven like some outcast from beneath the paternal roof.
>
> The fact that the father has relinquished his claim to the son's earnings may be established either by direct evidence or be implied from circumstances; and where such relinquishment has been bona fide effectuated, it does not lie in the power of some prowling creditor to wrest from the son the gains he has achieved by honest industry, under the spurious and covetous pretext that the property belonged to the father.

A question as to whether or not a minor has been emancipated may also arise where a minor is killed or injured and the father seeks to recover damages for the loss of his child's services and earnings. Thus, in a Massachusetts case,[12] a father sued to recover for the lost services of his son because of the injuries inflicted upon the son by the defendant. The facts were that the father had been put under bond on a complaint made against him by his wife, left his family and resided away from them and the son collected his own earnings and the father contributed nothing to his son's support. The court held that the facts were sufficient to warrant a finding by the jury that the father had in fact emancipated his son and that whether or not the father intended to do so was immaterial in the light of all the facts.

> If, for example, a father drives his minor son out of doors, and turns him upon the world to shift for himself, and then sues for his wages, he cannot be heard in court to say that in his own mind he nevertheless retained the right of claiming them. Emancipation is a practical thing, and may be proved by conduct and acts; and the father's secret intent, contrary to the effect of his acts, could not affect the son's rights.

The question of emancipation may also arise in a direct confrontation between child and parent with respect to wages for services rendered by the child and which both the child and the parent claim. Thus, in the Indiana case of Surface v Dorrell,[13] a minor

sought to recover from the estate of her deceased grandmother compensation for services rendered to the grandmother during the last years of the latter's life, alleging a promise by the grandmother to compensate the granddaughter for such services. The girl's father contended that he was entitled to such compensation.

> ...during the time in question the minor child, although frequently visiting her parents, not only lived and earned her livelihood away from her parental roof, but sometimes worked for others in the field and earned and spent her wages without parental direction, interference, restraint, or the assertion of any right to her earnings....the court concluded that under these circumstances the question of her emancipation was one for the jury to determine.[14]

Situations may also arise with respect to emancipation where the father has given permission for his son to seek his way in the world and then attempts to reverse his position and claim his son's wages. Thus, in Rounds Bros. v McDaniel,[15] the court was confronted with the following factual situation: a father, after his child had reached an age when he could earn his own living and was mentally and physically able to do so, voluntarily consented that he might leave his home, and continue in the employment of a certain employer for whom he had been working. For some time he continued in the employ of that employer with the

knowledge and consent of his father. He received his own compensation and spent it as he wished. This arrangement continued for a number of years with the father not requesting the son to return home or taking any interest in his son's welfare. The court held that, under these circumstances, there had been an implied emancipation and that, although the father could have exercised the right to revoke the emancipation if he had acted within a reasonable time and had so notified his son's employer, the father had not in fact so acted.

> ...the court...will consider what is best for the child. The father, when his child was... at least a burden to him, voluntarily allowed him to go out and care for himself, and after the child...had become more than self-sustaining, sought to withdraw the consent he had given. To permit him to do so would...be detrimental to the best interests of the child....We do not mean to extend this doctrine of implied emancipation to cases which do not justify its fullest application, and we do not mean to hold that every time a child who is old and strong enough to work becomes tired of or dissatisfied with his home he may leave, although without objection on the part of his parents, and live at some other place and work for other persons, and thereby sever the obligation he owes to his parents and destroy their right to his services and wages. Minor children cannot in this way cancel the duty they are under to the parent, who by acting promptly may reclaim the services of the child and the right to his earnings, but the parent must interpose his authority within a reasonable time. (Emphasis added)

The question of whether a minor had been emancipated may also typically arise where the minor is sued for damages for negligently causing injury to another. Such a suit was involved in Cafaro v Cafaro[16], in which a mother sued her infant son to recover damages for injuries sustained by the mother while riding in an automobile being driven by her son. The facts in that case showed that the son lived at home and worked in a neighboring dye works, turning over all his wages to his mother and receiving a couple of dollars a week as spending money. The court held that there was insufficient evidence to support a finding of emancipation. The court stated in part:

> Whether the minor child be employed at home or abroad, the mere allowance of "spending money" from his earnings, contributed to his parents, is not, without more, sufficient to sustain an inference of emancipation....Such course of conduct is entirely consistent with the continuous subjection of the minor child to parental care and control, and is therefore not a manifest of intention to effect emancipation within the intendment of the law; rather it definitely demonstrates a contrary purpose....The relation of parent and child embraces primary rights and duties which render insupportable the inference of general emancipation from the child's mere rendition of services to others with parental permission. It is significant that there the old family relationship was resumed after the termination of the infant's outside employment....In the ascertainment of parental intention, a factual distinction is required to be made "between a license for the child to go out and work temporarily and the more positive renunciation of parental rights"....Neither the former circumstance nor the allowance of "spending money," standing alone, justifies an inference of the destruction of the filial relation.

On the other hand, the overwhelming weight of authority in the United States holds that a minor is emancipated upon marriage.

> ...the marriage of a minor with the parent's consent (according to some cases) or even without the parent's consent (according to other cases) works as emancipation, for the reason that the marriage gives rise to a new relation inconsistent with the subjection to the control and care of the parent. In such case the emancipated minor is the head of a new family and as such is subject to obligations and duties to his wife and children which require him to be the master of himself, his time, his labor, earnings and conduct. And the same observation holds true of the marriage of a minor daughter.[17]

It is also generally held that enlistment in the Armed Forces constitutes an emancipation at least for the time during which the minor is serving, during which he is subject to the directions and control of the military. It has also been held that upon the minor's discharge from the service he becomes again subject to the direction and control of his parents and they are entitled to his earnings as though he had never entered the Armed Services.[18]

As has been mentioned above, several jurisdictions have statutes specifically establishing a procedure in their courts for the emancipation of minors. However, the statutes are most general in their provisions, either only vesting jurisdiction in the court to emancipate juveniles or stating that the court may emancipate a minor when the court finds that such action is in the best interests of the child.

As indicated above, it is highly unlikely that the common-law doctrine of emancipation would prove of very much assistance to a runaway child because such child's status as an emancipated child is established only after litigation.

On the other hand, some thought might be given to the development of model, uniform or reciprocal state laws which might prove useful in establishing the fact that the runaway child is an emancipated minor. Provision would have to be made in such laws to protect the rights not only of the minor but also of the parents of the minor. Such laws might be of assistance to runaway minors in enabling them to attend school or to be exempted from attending school, to enter into contracts, to consent to the provision of medical care, to work nights, and to exercise other privileges of emancipation.

FOOTNOTES

[1] 39 Am. Jur, 702, Parent and Child, Sec. 64.

[2] See Black, supra, Note 1, Ch. 4, at p. 613.

[3] See Clark, supra, Note 1, Ch. 4, at p. 240, ff#2.

[4] For a discussion of state statutes governing emancipation by judicial decree, see infra, this chapter.

[5] Brosius v Brosius, (1911) 154 Mo. App. 657, 136 SW 18.

[6] S. D. Comp. Laws Ann. Sec. 25-5-19 (1967)

[7] 185 Va. 1, 37 SE2d 755, 165 ALR 719

[8] Id.

[9] For a discussion of the ability of an emancipated child to consent to the provision of medical services, see Chapter 9, infra.

[10] According to the facts found in the Buxton case, the father testified that the first he had learned of his son's illness was after the operation and, if he had known about it beforehand, he would have had his son taken to the hospital in Richmond, Virginia. This seems to indicate that the father considered his son's emancipation as not to have been total, i.e., the father still believed he could determine the type of medical care the son could receive, by whom and where. The point was not pursued.

[11] Dierker v Hess, (1873) 54 Mo. 246.

[12] McCarthy v Boston & L.R. Corp. (1889) 148 Mass. 550, 20 N.E. 182, 2 LRA 608.

[13] (1944) 57 N.E. 2d 66

[14] 165 ALR 733

[15] (1909) 133 Ky 669, 118 SW 956, 134 Am St Rep 482, 19 Ann Cas 326.

[16] (1937) 118 NJL 123, 191 A 472.

[17] 165 ALR 719, 745 and cases therein cited. See also Chapter 16 and Table 10A, infra.

[18] Id.

CHAPTER 6

THE RUNAWAY CHILD AND THE JUVENILE COURT

As has been noted,[1] until the turn of this century the common law had created an irrebuttable presumption that a minor under the age of seven was incapable of possessing the mental capacity to commit a crime. From the age of seven until the age of 14, that presumption became progressively more rebuttable until the minor reached the age of 14. At that age the minor was thereafter treated, at least insofar as the criminal law was concerned, to all intents and purposes as an adult.

Early in this century, the concept of a specialized court to deal with legal cases involving juveniles was born in Illinois and then spread fairly rapidly throughout the rest of the country. The idea was that such a court would acquire the necessary staff and expertise to deal humanely, intelligently and effectively with children who had violated the law or who were otherwise acting in a manner which the society of the day believed to be inimical to their proper upbringing or whose conduct endangered themselves or others. This court was to be "noncriminal" in nature so as to avoid stigmatizing children brought before it as "criminals" - a taint which the supporters of the juvenile court movement thought should be avoided so as to enable the court, through its rehabilitative treatment, to guide such children to a law-abiding adult life.

The juvenile court would be informal, thus avoiding the "legalisms" of the regular criminal courts. It would use no juries or lawyers - only a judge and trained probation workers.

"Individualized treatment," tailored to meet the needs of each child, would be substituted for the fines and incarceration of the criminal courts.

The conceptual design underlying this movement in the United States was that complaints that a child had either violated the law or was so acting as to endanger the child or others would be lodged at the juvenile court with a specially trained probation officer. On the filing of such a complaint, the probation officer would investigate the facts to determine whether the charge had merit, whether it could be disposed of between the parties and the probation officer, or whether such action by the court was needed.

With respect to those complaints determined by the probation officer as having merit and requiring action by the court, the probation officer would also determine whether the child could safely remain in the child's own home until the court could act or whether the situation was such that the welfare of the child or the safety of the community required that the child be removed from his or her own home. If it was determined that it was necessary to remove the child, the child would be placed in a safe and suitable place where he or she would receive proper care and attention away from unwholesome influences.

The theory was that before the child's case were ever brought before the court for adjudication as to whether the allegations in the complaint were true and, if so, what treatment was needed by the child, the probation officer would have conducted a thorough investigation not only of the facts alleged in the petition but also with respect to the child, the child's family, the child's school behavior, the prior legal and social history of the child and the child's family, etc. In addition, as part of the probation officer's investigation of the case, the child would be given such medical, psychiatric and psychological examinations and testing as were indicated. On the basis of the data thus collected, the probation officer would prepare a written report for the court so that, if the allegations in the complaint were borne out by the facts brought out in the hearing, the court would have before it all available data concerning the child and the child's family, and the court would then be able to determine intelligently exactly the type of treatment needed by the child.

In theory, the actual hearing of the case by the judge would be as "informal" as possible, in contrast to the formality of a criminal trial. In general the actual hearing would not take place in a courtroom with its judge's bench and jurors' box but rather in the privacy of the judge's office on a face-to-face basis between the child and the judge, with only the probation

officer present. The public and the press, of course, would be excluded. Witnesses would be brought to the judge's office one by one and only as needed. There would be no formal rules of evidence; hearsay evidence -- evidence heard from a third person -- would be accepted. All matters brought before the court and all records as well would be declared confidential, and not even the name of the child involved was to be published or written about, thus drawing a veil of secrecy around all juvenile court proceedings.

There would be no need for lawyers at the proceedings, since the judge and the probation officer would be present to represent and protect the "child's best interests."

After the hearing, during which the probation officer would be permitted to testify as to the results of the probation officer's own investigation of the social, medical and legal background of the child and of the child's family, the court would decide whether the allegations of the petition had been proven and whether the facts brought out indicated that the child needed any further services from or through the juvenile court. In theory, at least, the juvenile court, as envisioned in the early days of its coming into being, had at its disposal a wide variety of treatment alternatives if the court found that the child needed treatment and services. The court could order the child to pay a fine or make restitution. It could permit the child to remain in his or

her own home under the supervision of the probation officer or some other appropriate person and to do so while fulfilling certain conditions as to behavior as the court might impose. It could provide foster-home care for the child, or group-home care or care in larger institutions especially designed to rehabilitate juvenile delinquents or children who needed supervision. It could arrange for medical, surgical, or psychiatric care to be given or remedial education to be provided for such child.

Such, in general outline, was the dream of those who began and supported the juvenile court movement many years ago.

All too often, in seeking to make of the dream a reality, actual practice did not quite catch up with the theoretical. The reasons were many and varied and have been elsewhere described, analyzed and critized.[2]

The motives of those who earlier in this century urged upon society a system of juvenile courts for the purpose of preventing, controlling and treating juvenile delinquency were noble. Unfortunately, in their enthusiasm and zeal in bringing about needed judicial reforms, insufficient attention was paid to the need to safeguard the substantive and procedural rights of the child and the child's parents.

Thus, in 1966 it could be written:

> The spirit of their concepts must be maintained. In recognizing the importance of maintaining a balance between protecting the individual's legal rights, and protecting the public's legal rights, any suggestion must be avoided of a return to a mechanized, routine application of "automatic" justice which would be no justice at all and which would deny one of the most vital functions of a specialized court - that of giving the authoritative support needed to assure to all children the help, care and treatment they need. The administration of justice need not become routinized.[3]

A runaway child who becomes enmeshed in the juvenile justice system may well agree with the conclusion in Dean Roscoe Pound's statement that "...the powers of the Star Chamber were a trifle in comparison with those of our juvenile courts...."[4]

Or with Doctor Bovet of the World Health Organization that: "One of the most definite conclusions of this investigation is that few fields exist in which more serious coercive measures are applied, on such flimsy objective evidence, than in that of juvenile delinquency."[5]

The juvenile court is all too often engaged in a delicate two- or three-way "balancing act" in which the rights of the child must be balanced with the rights of the child's parents which must in turn be balanced against the rights of the general public. Add to this triangle the fact that many of the statutes establishing

and delineating the jurisdiction of the juvenile court couched the authority given to the court in the broadest discretionary terms and it is easy to see how the seeds of possible arbitrary action were sown.

To this brew must be added the fact that the cloak of secrecy has been thrown over the juvenile court and its actions, and lawyers were discouraged from practicing in these courts -- a practice particularly and comparatively unremunerative.

For years lawyers, juvenile court judges and probation officers working with delinquent children were becoming increasingly more concerned because of the manner in which the juvenile courts were functioning with respect to safeguarding the basic constitutional rights of both parents and children coming within the jurisdiction of such courts.

In 1954, three leading national agencies involved in the problems of delinquent children[6] joined together in issuing a new set of national standards as a guide to the states in revising their laws with respect to juvenile courts. It was called: "Standards for Specialized Courts Dealing With Children."[7] In that pamphlet the following statement was made with respect to the rights of children and their parents in the juvenile court:

> Both the child and his parents are entitled to know the bases on which the State seeks to intervene and on which it predicates its plan for the care and treatment of the child. They are equally entitled to rebut these bases either directly by questioning witnesses, or indirectly by presenting facts to the contrary. This means that rules of evidence calculated to assure proceedings in accordance with due process of law should be applicable to children's cases. However, it is essential that these rules of evidence be especially designed. They should protect the informality of the hearing and avoid the needless legalisms of the rules of evidence customarily applicable to other judicial hearings. But at the same time they must assure that there will be an orderly presentation of credible facts in a manner calculated to protect the rights of all concerned....This principle also entails written findings, some form of record of the hearing, and the right to appeal. The court should give clear reasons for its decision as to the finding with respect to the allegations made and any order affecting the rights of the parents or the rights and status of the child. Any order for treatment, care or protection does, in fact, affect these rights.[8]

The "Standards for Specialized Courts Dealing With Children" were later updated to become the "Standards for Juvenile and Family Courts."[9] However these principles remained constant.

These principles were tested in the Supreme Court of the United States on May 15, 1967 in the landmark case of In re Gault[10] and were confirmed by the court.

Gault involved a 15-year-old Arizona boy, Gerald Gault, who was taken into custody by the county sheriff while still subject to a six-month juvenile-court probation order for having been in the

company of another boy who had stolen a wallet from a lady's purse. On this occasion, Gault was taken into custody upon the verbal complaint of a neighbor because of an obscene telephone call received by the neighbor.

At the time Gerald was taken into custody his mother and father were both at work. No notice that Gerald was being taken into custody was left in Gerald's home, nor were any other steps taken to notify Gerald's parents of his arrest. The boy was placed in the Children's Detention Home. His mother learned of his whereabouts indirectly from a neighbor after she returned home from work and immediately went to the detention home. There she was informed by the superintendent of the detention home that the hearing would be held at 3 P.M. on the following day.

A petition was filed on the day of the hearing but it was not served on Gerald or his father or mother. The petition contained no factual information concerning the offense but only alleged that he was "under the age of 18 years and in need of the protection of the court...said minor being a delinquent minor...."

On that same day, Gerald, his mother, an older brother and the deupty sheriff appeared before the juvenile-court judge in chambers. Gerald's father was at work. The complainant with respect to the obscene telephone call was not in court. No one was sworn as a witness at the hearing. No transcript or recording of the hearing was made. No memorandum or record of the substance of the hearing was prepared.

From testimony given at the habeas corpus hearing two months later, only the juvenile-court judge, Mr. and Mrs. Gault and the deputy sheriff testified at the original juvenile-court hearing.

From this it appears that at the original juvenile-court hearing "...Gerald was questioned by the judge about the telephone call. There was conflict as to what he said. His mother recalled that Gerald said he only dialed...(the neighbor)...and handed the telephone to his friend....(the deputy sheriff)...recalled that Gerald had admitted making the lewd remarks....(the judge)...testified that Gerald admitted making one of those (lewd) statements." At the conclusion of the hearing the judge said he would 'think about it.' Gerald was taken back to the Detention Home. He was not sent to his own home."

Gerald was released two or three days later. On the date of his release, Mrs. Gault received a note from the deputy sheriff saying that the judge had set a date and time for "...further hearings on Gerald's delinquency."

"Witnesses at the habeas corpus proceeding differed in their recollections of Gerald's testimony at the...(subsequent juvenile court hearing)....Mr. and Mrs. Gault recalled that Gerald again testified that he had only dialed the number and then the other boy had made the remarks....(the deputy sheriff)...agreed that at this hearing Gerald did not admit making the lewd remarks. But (the judge)...recalled that 'there was some admission again of some of the lewd statements. He - he didn't admit any of the more lewd statements."

The complainant was not present although her presence was requested by Gerald's mother. The court rules that the complaining witness did not have to be present at the hearing. At this second juvenile-court hearing, a "referral report" was filed by the deputy sheriff with the court - but not disclosed to Gerald or his parents - which listed the charge as "Lewd Phone Calls."

At the conclusion of the second hearing, the judge committed Gerald to the State Industrial School as a juvenile delinquent "for a period of his minority (that is, until 21), unless sooner discharged by due process of law." The finding by the court recited a finding by the court that "after a full hearing and after due deliberation, the court finds that the minor is a delinquent child, and that said minor is of the age of 15 years."

At the habeas corpus hearing the judge testified that Gerald came within the provisions of Section 8-201-6(a) of the Arizona Revised Statutes which specifies that a delinquent child is one "who has violated a law of the state or an ordinance or regulation of a political subdivision thereof."

The law which Gerald was found to have violated was Section Arizona Revised Statutes Sec. 13-377, which provides that a person who "...in the presence of or hearing of any woman or child...uses vulgar, abusive or obscene language, is guilty of a misdemeanor...." The penalty under the Arizona criminal code

for the violation of this section is, as it would apply to an adult, a $5 to $50 fine or imprisonment for not more than two months. In the Gault case, Gerald's commitment to the Arizona State Training School was for a period of about five years for the violation of the same statute.

In deciding the Gault case, the United States Supreme Court (Mr. Justice Fortas for the majority) set forth the following principles as applicable to actions in the juvenile courts:

> Notice:
>
> Notice, to comply with due process requirements, must be given sufficiently in advance of scheduled court proceedings so that reasonable opportunity to prepare will be afforded and must 'set forth the alleged misconduct with particularity'.... Due process of law requires...notice which would be deemed constitutionally adequate in a civil or criminal proceeding. It does not allow a hearing to be held in which a youth's freedom and his parents' right to his custody are at stake without giving them timely notice, in advance of the hearing, of the specific issues they must meet....
>
> Right to Counsel:
>
> ...A proceeding where the issue is whether the child will be found to be "delinquent" and subject to loss of his liberty for years is comparable in seriousness to a felony prosecution. The juvenile needs the assistance of counsel to cope with problems of law, to make skilled inquiry into the facts, to insist upon regularity of the proceedings, and to ascertain whether he

> has a defense and to prepare and submit it. The child "requires the guiding hand of counsel at every step in the proceedings against him...."...The Due Process Clause... requires that in respect of proceedings to determine delinquency which may result in commitment to an institution in which the juvenile's freedom is curtailed, the child and his parent must be notified of the child's right to be represented by counsel retained by them, or if they are unable to afford counsel, that counsel will be appointed to represent the child.
>
> Confrontation, Self-incrimination and Cross-examination:
>
> ...the question is whether...(in delinquency proceedings)...an admission by the juvenile may be used against him in the absence of clear and unequivocal evidence that the admission was made with knowledge that he was not obliged to speak and would not be penalized for remaining silent....if the privilege against self-incrimination is available...(can it be)...effectively...waived unless counsel is present or the right to counsel has been waived....The privilege against self-incrimination is...related to the question or the questions necessary to assure that confessions are reasonably trustworthy, that they are not the mere fruits of fear or coercion but are reliable expressions of the truth....the constitutional privilege against self-incrimination is applicable in the case of juveniles as it is with respect to adults....recommendations in the Children's Bureau's Standards for Juvenile and Family Courts are in general accord with our conclusions...."

The constitutional principles enunciated by the Supreme Court in Gault should be read in conjunction with another noteworthy decision by that Court.

In an earlier decision - Miranda v Arizona[11] - which in Gault the Court said was also applicable to juvenile court cases, the Court had held:

> ...the prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination. By custodial interrogation, we mean questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any way.

The Court then proceeded to spell out exactly what it meant to include in the term "procedural safeguards," although not ruling out others which might be found to be equally effective.

> Prior to any questioning, the person must be warned that he has the right to remain silent, that any statement he does make may be used in evidence against him, and that he has the right to the presence of an attorney, either retained or appointed. The defendant may waive effectuation of these rights, provided the waiver is made voluntarily, knowingly and intelligently. If, however, he indicates in any manner and at any stage of the process that he wishes to consult with an attorney before speaking there can be no questioning. Likewise, if the individual is alone and indicates in any manner that he does not wish to be interrogated, the police may not question him. The mere fact that he may have answered some questions or volunteered some statements on his own does not deprive him of the right to refrain from answering any further inquiries until he has consulted with an attorney and thereafter consents to be questioned.

These precepts of the Supreme Court have come to be known in police parlance as giving an accused his "Miranda warnings."

This chapter analyzes the legal status of a runaway child before the juvenile court from four broad aspects:

1. A runaway child as a delinquent child, a person in need of supervision (PINS), or a child in need of supervision (CINS).

2. Statutory rights of juveniles within the juvenile justice system.

3. Statutory jurisdiction of juvenile courts over delinquent children and over children in need of supervision;

4. Statutory dispositional alternatives available to juvenile courts upon the finding that a child is delinquent or in need of supervision.

1. *A Runaway Child as a Delinquent or as a PINS, CINS, etc. and the Right of a Peace Officer to Take Such Child into Custody.*

In 24 of the 54 jurisdictions studied, peace officers, police officers and/or probation officers are given authority by the statutes in those jurisdictions to take into custody and detail juveniles suspected of being runaways from home.

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In some jurisdictions this is so even though the statute delineating the jurisdiction of the juvenile court does not specifically state that the court has jurisdiction over juveniles who have run away from home.

The statutes involved did not make clear the exact nature of the complaint under which the runaway juvenile was being brought before the juvenile court.

In Table 2[12] are noted the jurisdictions which have or do not have statutes authorizing a peace officer to take a child into custody when the peace officer has reason to believe that the child has run away from home.

Inquiries were sent to certain Attorneys General in some of the jurisdictions having these apparent inconsistencies in their statutes. The replies seemed to indicate that the statutes relating to juveniles are so broadly construed that, contrary to the criminal law rule that the commission of a particular crime must be defined with precision and particularity, a status offense by a juvenile--the commission of an offense which would not be a criminal offense if committed by an adult--does not need to be defined with any degree of particularity and any appropriate words in the statute granting jurisdiction to the juvenile court may be used to justify the charge against the juvenile.

Thus the reply from the Department of Justice of the State of California stated in part as follows:

> Section 600 of the California Welfare and Institutions Code provides that the juvenile court may take jurisdiction over any person under the age of 18 "who is in need of proper and effective parental care or control and has no parent or guardian willing to exercise or capable of exercising such care or control." A minor under 18 years of age who has left his home, either in California or in another state, without the permission of his parent, guardian or other custodian, by definition has no parent or guardian actually exercising such care or control. Thus, a petition could be filed in the juvenile court in California where the sole allegation is that a minor has left his home without the permission of the child's parent, guardian or other custodian."

Or the thoughtful reply to our inquiry from the Office of the Attorney General of the State of Alabama which read, in part, as follows:

> ...Alabama Code of 1940...Section 351 grants jurisdiction to the juvenile court of dependent, neglected, or delinquent children as defined in Section 350. The child who has left his home in Alabama without permission of parent, guardian, or other custodian and is found in Alabama meets the definition in Section 350(2) of "neglected child" in that he is a "... child...who is in such condition or surroundings, or is under such improper or insufficient guardianship or control as to endanger the morals, health or general welfare of such child...or who for any other cause is in need of the care and protection of the state." This runaway child who is "neglected" because of "insufficient guardianship or control" is ordinarily also "dependent" under the definition in Section 350(1) because the petitioner is asking the court for a change in custody and thereby making the

> child's custody the "subject of controversy." The child also meets the definition in Section 350(3) of "delinquent child" in that he is "...beyond the control of his parent, guardian or other custodian...."
>
> In my opinion the statute operates for the runaway child's best interest in that the jurisdiction of the court can be invoked by a dependency-neglect petition and the child can be afforded the care and protection of the state without being alleged or found delinquent.

Or from the Department of Health and Welfare of the State of Idaho, which replied in part as follows:

> The term "runaway child" was removed from the Idaho statutes dealing with delinquent children. The philosophy behind this was to eliminate the stigma and classification of delinquent from a child who is merely a runaway. Since the removal of this portion of the Idaho law, counties and cities throughout the State have adopted runaway ordinances regarding the child who has left home without permission. Because of these local laws, petitions can be filed in the juvenile court where the only allegation is that the child has run away.

Or the reply from the Office of the Attorney General of Missouri, which read in part:

> ...You are correct in your assumption that the statutes of Missouri do not give the juvenile court jurisdiction over "runaway children" specifically by that denomination or by any equivalent description....
>
> ...Section 211.031 of Missouri's Revised Statutes reads in pertinent part as follows:
>
> 'Except as otherwise provided herein, the juvenile court shall have exclusive original jurisdiction in proceedings:

> '(1) Involving any child who may be within the county who is alleged to be in need of care and treatment because:
>
> **********
>
> '(c) The behavior, environment or associations of the child are injurious to his welfare or to the welfare of others....'
>
> Section 211.031(1)(c) is generally used in Missouri's juvenile courts to deal with the situation of the runaway child. A petition is filed pursuant this section alleging that the child is in need of care and treatment because his behavior is injurious to his welfare in that he has run away from home on a particular date and hence is beyond the control of his parents. Although some critics have maintained that this subsection is generally overbroad and hence, void for vagueness, no Missouri court...has ever considered this issue and the subsection is still used to handle runaway problems.

These replies are illustrative of the vagueness with which statutes governing the powers of juvenile courts are generally drafted. While not specifically so expressed, they sometimes seem to carry with them an implied presumption against the runaway child and seemingly place upon such child the burden of proving that his running away was justified, without specifically spelling out what would constitute legally justifiable grounds for a child's leaving home.

The drafters of such legislation seemed to have considered all runaways as cast in the same mold and not to have considered the fact that some running away by children may be

justified. They made no provision in the statutes for tempering the harshness and inflexibility with which these statutes are drafted. They make no provision for what may be termed "no fault" running away by children where they are "push-outs" - where the parents are behaving in such a manner that home life, so called, becomes intolerable for the child or where the parents literally push the child out of the house.

The replies also illustrate another fact about the drafting of juvenile court statutes: if the authorities cannot find a ground for the jurisdiction of the court in certain specific words of the juvenile court statute, i.e., running away from home without the permission of the parent, guardian, or other custodian of the child, other words can almost always be found in such statutes on which the court can "hang" its grounds for jurisdiction, i.e., beyond the control of the child's parents, guardian or other custodian or that the behavior, environment or associations of the child are injurious to his welfare or the welfare of others or the child is in such condition or surroundings, or is under such improper or insufficient guardianship or control as to endanger the morals, health or general welfare of such child.

Obviously such words are so general, all-encompassing and vague as to leave them open to attack as unconstitutionally void for vagueness, especially where under such statutes the juvenile may face the loss of liberty.

2. *Statutory Rights of Juveniles Within the Juvenile Justice System*

To what extent the landmark Supreme Court decisions in Miranda and Gault have caused changes in the previous juvenile court practices to assure that the rights enumerated in those cases are in actual practice accorded juveniles coming within the juvenile justice system is difficult to ascertain without considerable field study of such courts and their actual practices.

Essentially this study has been limited to a review of the statutes of the several jurisdictions in order to determine which jurisdictions have incorporated by statute requirements that certain rights be accorded juveniles within the juvenile justice system.

In some jurisdictions rules of court may require that certain rights be accorded juveniles. In certain other jurisdictions, the supreme courts of those jurisdictions have specifically enunciated some or all of the principles enunciated by the Supreme Court of the United States.

However, such rules of court or judicial decisions may well not be as effective in assuring juveniles that they will be accorded the constitutional safeguards to which they are entitled as specific statutory provisions.

The statutes setting forth the rights of juveniles coming within the juvenile justice system were analyzed with respect to the following 21 topics:

A. Right to Counsel at Police Interrogations.

B. Right to Miranda-Type Warning at Police Interrogations.

C. Right to Counsel at Every Stage of Juvenile Court Proceedings.

D. Right to Counsel, Court Appointed and Paid For, at Every Stage of the Juvenile Court Proceedings.

E. Right to Appeal Juvenile Court Decisions.

F. Right to Counsel on Appeal from Juvenile Court Decisions.

G. Right to Counsel, Court Appointed and Paid For, on Appeal from Juvenile Court Decisions.

H. Right to Written Notice of Charges.

I. Right to Detention Hearing.

J. Right to Adjudicatory Hearing.

K. Right to Dispositional Hearing.

L. Right to Hearing on Revocation of Probation or Aftercare Supervision.

M. Right to Subpoena.

N. Right to Confront and Cross-Examine Witnesses.

O. Right Against the Admissibility of Statements Made While not Advised by Counsel.

P. Right Against Self-Incrimination.

Q. Right Against Double Jeopardy.

R. Right to Stop Answering Questions at any Time.

S. Right Against Introduction of Illegally Seized Evidence.

T. Right to have Adjudicatory Hearing Transcribed.

U. Right to have Transcript of Adjudicatory Hearing.

The results of the statutory search made with respect to these topics are set forth in Table 2A.[13]

With respect to the following attempt to pinpoint the highlights of this statutory search as reflected in Table 2A, it should be borne in mind that, as is reflected in the notes to the Table, some of these rights may be accorded a juvenile by rule of court or by specific judicial decision rendered by the jurisdiction's highest court of appellate jurisdiction.

In at least 31 of the jurisdictions, a juvenile not only has a right to legal counsel but also the right to legal counsel appointed by and paid for by the court.

In all but 13 jurisdictions, there is a statutory right to be given written notice of the charges made against the juvenile. In Missouri, however, at least by statute, notice need not be given to the child although it must be given to the parents or guardian of the child. In the Virgin Islands the parents need to be notified, by statute, that the child has been taken into custody. South Carolina has a "catch all" provision that: "in all cases where required by law, the child shall be accorded all the rights enjoyed by adults, and where not required by law, the child shall be accorded such rights as shall be consistent with the interests of the child."

The right to a detention hearing is given by statute in 28 jurisdictions (by Attorney General opinion in Alaska). A statutory right to an adjudicatory hearing is given the juvenile by the statutes of 43 jurisdictions while the statutes of 23 jurisdictions provide for the right to a dispositional hearing. Ohio provides for a dispositional hearing by rule of court. The Wyoming statute provides for a dispositional hearing and states, however, that it need not be separate from the adjudicatory hearing.

There is a statutory right to a subpoena in 22 jurisdictions, with the court rules governing this point in Ohio. The statutory right of cross-examination and confrontation is given by the statutes of 19 jurisdictions, with Ohio again covering the subject in its rules of court, which, as has been pointed out, may well be the case in other jurisdictions. This right was accorded juveniles in Maryland in a Supreme Court ruling and by court rule in Ohio.

In nine jurisdictions the juvenile has a right against the admission of statements while not advised by counsel. In that regard, Colorado has a curious statutory provision which deals directly with the legal status of runaway children. Under Colorado law, a child's confessions are not admissible unless counsel, parent or guardian were present at the time

the statement was made. On the other hand, such statements are admissible if the child has no parents, waives counsel, or is a runaway from another state.[14]

3. *Statutory Jurisdiction of Juvenile Courts over Delinquent Children and Children in Need of Supervision*

The initial juvenile court movement in the United States had two major objectives.

The first was to divert children from the criminal justice system under which punishment through fines and incarceration was viewed as the major deterrent against the commission of further crimes.

The second was to provide, through a system of juvenile justice, specialized courts to deal with the problems encountered by children who were dependent, neglected or delinquent and which would, through individualized treatment tailored to fit the needs of each child, prevent the further dependency, neglect or delinquency of such child.

> The essential philosophy of the juvenile court and of other specialized courts handling children's cases, has been called "individualized justice." This in essence means that the court "recognizes the individuality of a child and adapts its orders accordingly," that it is a "legal tribunal where law and science, especially the science of medicine and those sciences which deal with human behavior, such as

> biology, sociology, and psychology, work side by side" and that its purpose is remedial and to a degree preventive, rather than punitive.[15]

This was not to say that those who advocated the establishment of juvenile courts separate from the criminal courts desired to establish a legal system under which children were legally immune from the consequences of their actions regardless of the consequences of those actions upon themselves or others in the community of which they were a part.

> Offenses committed by young people should not be excused or condoned. The general public should be protected, and young people need to be held responsible for the consequences of their misconduct. The consequences of such misconduct, however, should result in individualized treatment authorized through the ordinary process of law and utilizing the appropriate care and services as needed in a given situation. Such an approach is based upon knowledge of the individual and is designed to protect as well as rehabilitate--so-called "mollycoddling" or retributive punishment accomplishes neither objective.[16]

Many of the statutes establishing juvenile courts initially sought to classify the children coming before the new court and to "label" them as "delinquent," "dependent" or "neglected," on the basis of their more obvious characteristics.

Generally, the statutes came to define a "neglected child" as one who "...is neglected as to proper or necessary support or education as required by law, or as to medical,

psychiatric, psychological or other care necessary for his well-being, or who is abandoned by his parent or other custodian."[17]

The Legislative Guide for Drafting Family and Juvenile Court Acts[18] has a similar but slightly more elaborate definition. There a neglected child is defined as a child "(1) who has been abandoned by his parent or guardian; (2) who is without proper parental care and control, or subsistence, education, medical or other care or control necessary for his well-being because of the faults or habits of his parents, guardian, or other custodian, or their neglect or refusal, when able to do so, to provide them; or (3) whose parents, guardian or other custodian are unable to discharge their responsibilities to or for the child because of incarceration, or other physical or mental incapacity; or, (4) who has been placed for care or adoption in violation of law."

The newly issued Model Acts for Family Courts and State-Local Children's Programs[19] keeps the major portion of this definition of a "neglected child" but includes in such definition a child who "is physically abused by his parents, guardian or other custodian."[20]

Early state statutes with respect to the jurisdiction of the newly established juvenile court generally had a category called a "dependent" child which had the connotation that the court could take the custody of the child away from the child's parents because they could not support the child through no fault of their own. Gradually that concept disappeared from the later statutory enactments, or where it continued as a category separate and apart from that of a "neglected child" it required a showing that the "dependency" was due to parental fault.[21]

The inclusion of a category of children within the jurisdiction denominated "dependent children" has been omitted from the Standard Family Court Act[22] and from Model Acts for Family Courts and State-Local Children's Programs.[23]

> The term "dependent" is not used to describe a child. It is believed that the financial ability of parents to care for their children should not be a factor in removing them from their home. Public assistance should be available to meet this need, eligibility to be determined by an executive agency, not by a court.[24]

When the framers of the early statutes setting forth the jurisdiction of these new courts over children who had committed crimes and who would no longer be amenable to the jurisdiction of the criminal courts but only to this new

court, they faced a serious dilemma. Theretofore these children had fallen within traditional criminal courts, where through the years certain rules had grown up defining criminal law practice and procedures. What should be the outer limits of the juvenile court's jurisdiction, practice, procedures, rules of evidence, etc.?

It seemed obvious that, if there were to be no void in the orderly administration of justice and the protection of the public, the new juvenile courts must be given the same powers with respect to the enforcement of criminal laws as were now being removed from the criminal courts.

But the question still remained: should these new courts be given more authority with respect to the behavior of children than the "mere" enforcement of the criminal laws and their sanctions? The criminal law was, after all, limited in its enforcement and sanctions. It operated within strictly defined limits and constitutionally demarked boundaries. Should these new juvenile courts be similarly constricted?

To understand why the framers of these early statutes outlining the jurisdictional limits of the juvenile courts decided to enlarge their jurisdiction beyond the confines of the narrow bounds of the criminal laws and to expand them

into an attempt to control all manner of youthful behavior, one must seek to gain a view of their conceptualization by their founders.

In an early case at the beginnings of the juvenile court movement in 1905, the Pennsylvania Supreme Court uttered these ringing words:

> ...To save a child from becoming a criminal, or from continuing in a career of crime... the Legislature surely may provide for the salvation of such a child...by bringing it into one of the courts of the state without any process at all, for the purpose of subjecting it to the state's guardianship and protection....(T)he state, when compelled, as parens patriae, to take the place of the father...(is not) required to adopt any process as a means of placing its hand upon the child to lead it into one of its courts. When the child gets there, with the power to save it, determine on its salvation, and not its punishment, it is immaterial how it got there.[25]

The doctrine of parens patriae referred to in the case of Commonwealth v Fisher cited above is a vague doctrine underlying much of the efforts of the juvenile courts during the past 75 years in controlling the behavior of juveniles coming within their jurisdiction and control through loosely worded ambiguous statutes defining the jurisdiction of juvenile courts. It is a doctrine originally referring to the King of

England as the father of his country and in the United States referring to the state as a sovereign having the power of guardianship over persons under disability, such as minors, and insane and incompetent persons.[26]

It is a doctrine which has been widely criticized as having been used by the juvenile courts in the United States to justify actions with respect to juveniles which violated their basic constitutional rights. At the same time, it attempted to force upon them a type of behavior which was in total disregard of such rights and did so while ignoring the procedural protections accorded juveniles under the due-process clause of the Constitution of the United States or of the several states.[27]

Of this doctrine, the Supreme Court of the United States in the Gault decision[28] said:

> The early reformers were appalled by adult procedures and penalties, and by the fact that children be given long prison sentences and mixed in jails with hardened criminals. They were profoundly convinced that society's duty to the child could not be confined by the concept of justice alone. They believed that society's role was not to ascertain whether the child was "guilty" or "innocent" but "What is he, how has he become what he is, and what had best be done in his interest and in the interest of the state to save him from a downward career"....The idea of crime and punishment was to be abandoned. The child was to be "treated" and "rehabilitated" and the procedures...were to be

> "clinical" rather than punitive....These results were to be achieved...by insisting that the proceedings were not adversary, but that the state was proceeding as parens patriae. The Latin phrase proved to be of great help to those who sought to rationalize the exclusion of juveniles from the constitutional scheme; but its meaning is murky and its historical credentials are of dubious relevance....there is no trace of the doctrine in the history of criminal jurisprudence....

The Court then proceeded to detail the theory under which the state, by asserting the right of parens patriae, had denied to juveniles the procedural rights under the Constitution which were available to adults. It was asserted, the Court said, that a child has a right not to liberty but to custody.

> If his parents default in performing their customary functions - that is, if the child is "delinquent" - the state may intervene. In doing so, it does not deprive the child of any rights, because he has none. It merely provides the "custody" to which the child is entitled.

Whatever the justification - legal, historical or practical - the early statutes defining acts of delinquency by juveniles which would result in their coming within the jurisdiction of the juvenile courts listed acts, in addition to violations of criminal laws, which were not unlawful if performed by an adult. These have come to be known, in modern juvenile court parlance, as "status offenses" - offenses against the

law only because the perpetrator is a minor. To some extent it might be said that they have been put on the statute books in an attempt to modify juvenile behavior, molding it into the shape which fitted societal norms. The list is long and, in some cases, the offenses proscribed indicate a turn-of-the-century morality hardly in keeping with the '70s even though they may still be on the statute books.

Gradually, however, a movement began to separate and treat separately the "status offenders" from those juveniles guilty of violations of the criminal laws for which they would be legally accountable whether they were adults or juveniles. The statutes have variously denominated such children as "children in need of supervision" (CINS), "persons in need of supervision" (PINS), wayward children, etc.

As stated by the Vermont legislature in establishing a separate category of children amenable to the jurisdiction of the juvenile court as "children in need of care or supervision":

> It is the purpose of the...Act to include children who have formerly been defined as "neglected" or "unmanageable" in one category and to define the children in this one category as PINS. The General Assembly takes the position that children

> whose outward behavior is socially unacceptable share basic problems with children who have been deprived of certain essentials of care and supervision and that without implication of fault or blame, Vermont is better able to carry out its commitment to assist these children in achieving their highest potential.[29]

The Vermont statute listed the following types of children as falling into the category of children in need of supervision over whom the juvenile court was given jurisdiction:

> A child in need of care or supervision means a child who:
>
> (a) has been abandoned or abused by his parents, guardian or other custodian;
>
> (b) is without proper parental care or subsistence, education, medical or other care necessary for his well-being; or,
>
> (c) is without or beyond the control of his parents, guardian or other custodian.[30]

Under the provisions of the statutes enacted in the jurisdictions studied, the types of conduct on the part of a juvenile which would be legally sufficient to give the juvenile court jurisdiction over such juvenile either as a delinquent or as a "child in need of supervision" are many and varied. A number of such statutes seek to control a very wide variety

of juvenile activities, with the types of "offenses" often worded so broadly as seemingly to give the juvenile court almost limitless authority.

There seems to be no discernibly cohesive thread running through all these statutes except for the fact that jurisdiction, in one form or another, is conferred on the juvenile court with respect to a minor who has violated the law.

Some jurisdictions limit the jurisdiction of their juvenile courts with respect to traffic violations, i.e., reserving juvenile-court jurisdiction to the more serious traffic violations. Some jurisdictions limit the juvenile court's jurisdiction over serious felonies, i.e., murder, while most at least give the juvenile court initial jurisdiction over such cases, granting, in most jurisdictions, the right to the juvenile court to waive its jurisdiction and permit the jurisdiction of the case to be assumed by the adult criminal courts.

Table 2B sets forth the bases for the juvenile courts', under the statutes of those jurisdictions, assuming jurisdiction over juveniles for the commission of a delinquent act, the various statutory definitions of such "delinquent" acts and

indicating those jurisdictions where such acts are treated as acts committeed by a juvenile who is not a juvenile delinquent, but by a child in need of supervision.[31]

Table 2C sets forth the bases for the juvenile courts', under the statutes of those jurisdictions, assuming jurisdiction over juveniles on the basis that their actions indicated a need for their supervision by the juvenile court, and the various statutory definitions of such actions.[32]

Certain observations should be made with respect to these tables. The first point is statistical. Violation of a criminal law is recognized as a basis for juvenile-court jurisdiction in all jurisdictions.

In nine jurisdictions, the state statutes seem to provide that a runaway child may come within the jurisdiction of the juvenile court as a delinquent child (Arkansas, Connecticut, Indiana, Louisiana, Maine, Mississippi, Oregon, Virginia and West Virginia). In 15 jurisdictions, a runaway child may come within the jurisdiction of the juvenile court as a child in need of supervision (CINS). These states are: Alaska, Arizona, Colorado, Florida, Georgia, Kansas, Massachusetts, Nebraska, Nevada, North Carolina, Rhode Island, South Dakota, Tennessee, Texas and Wisconsin.

Haste must be made, however, in pointing out that these statistics, accurate as they may be from an objective reading of the actual words of the statutes themselves, do not accurately reflect the legal situation confronting juveniles in the 54 jurisdictions studied. From a review of the language of the statutes themselves, it is impossible to determine whether in those jurisdictions which do not by specific wording of their statutes include runaways within the jurisdiction of their juvenile courts, runaways are nevertheless brought within such jurisdictions by judicial interpretation of statutory provisions which do not specifically refer to runaways by that designation.[33]

In analyzing Tables 2B and 2C, it should be especially noted that conduct by juveniles in one state which would cause them to be brought before the juvenile court as delinquents may, in another state, cause them to be brought before the juvenile court as "children in need of supervision."

Thus, a juvenile may come within the jurisdiction of the juvenile court as a delinquent in certain jurisdictions because the juvenile "deports himself so as to be a danger to himself or others." This judgment would pertain in: Delaware, District of Columbia, Guam, Indiana, Iowa, Maine, Mississippi, Oregon, South Carolina, Virgin Islands, Virginia and West

Virginia. Apparently the same conduct by a juvenile in another jurisdiction, however, would cause such juvenile to come before the juvenile court as a "child in need of supervision." Such would be the case in: Alaska, Connecticut, Kansas, Maryland, Nebraska, New Jersey, North Dakota, Oklahoma, South Dakota and Wisconsin.

To state that such a conflict of statutory provisions from one state to another is contrary to the best interests of a runaway child would be to minimize the legal situation with respect to such juveniles as it exists in the United States today. In addition it should be noted that the "statutory characteristics" reported as brief headings in Tables 2B and 2C actually understate both the broadness and the vagueness of the actual provisions of the statutes themselves.

Thus a child may be charged with having committed a "juvenile offense" in Maine for "failing to attend school for five days or ten half sessions within any six-month period without excuse" or for "failing to attend school, without lawful occupation, and growing up in ignorance."[34]

Or, the juvenile court in Michigan has exclusive original jurisdiction over children found to be "habitually idle."[35]

In Washington the juvenile court is given jurisdiction over juveniles who "habitually visit saloons or the like" or who "wander about at nighttime without any lawful business."[36]

These are but a few examples, culled at random, of the manner in which the statutes are found to define juvenile delinquents, delinquency, persons in need of supervision or juveniles over whom the juvenile courts are given jurisdiction.

In many of the jurisdictions, the statutes defining a person in need of supervision follow the language suggested in Legislative Guide for Drafting Family and Juvenile Court Acts[37] and define such a person as follows:

> ...a child who:
>
> (1) being subject to compulsory school attendance, is habitually truant from school;
>
> (2) habitually disobeys the reasonable and lawful demands of his parents, guardian or other custodian, and is ungovernable and beyond their control;
>
> (3) has committed an offense not classified as criminal or one applicable only to children; and
>
> (4) in any of the foregoing, is in need of care or rehabilitation.[38]

However, in a more recent publication entitled Model Acts for Family Courts and State-Local Children's Programs,[39] it

is recommended that the juvenile court not be given such jurisdiction.

> It will be noted that the jurisdiction of the court over the category of cases often denominated "person in need of supervision" has been eliminated. These cases usually include children who are habitually truant from school, or who habitually disobey their parents, or are ungovernable and beyond their control, children who run away or who commit offenses applicable only to children.
>
> ...these types of cases have come to be known as juvenile status offenders - children who are brought within the jurisdiction of the court for having committed actions which are illegal only for minors.
>
> ...such actions...while they may be indicative of the imperative need of the child to receive some type of care or treatment, do not necessarily pose a threat to society....They... can safely be diverted from the juvenile-justice system, i.e., referred, prior to the filing of a petition, for service or care to a community agency which is not part of the juvenile-justice system.
>
> ...there will be cases in which an agreement cannot be achieved, thus necessitating referral to the court....the traditional definition of neglect has been broadened... (so as to allege a condition or status)... does not require a finding of fault on the part of any individual or social institution....[40]

A similar position has been taken by the Board of Directors of the National Council on Crime and Delinquency, which has said:

> The Board of Directors...advocates the removal of "status offenses" from the jurisdiction of the juvenile court...
>
> As difficult as it may be to define solutions to noncriminal juvenile behavior, the judicial system is certainly not designed, equipped or able to handle these problems. The result of giving jurisdiction over noncriminal behavior to the juvenile court is that a disproportionate share of available resources is applied to youth who pose no criminal danger to society.... Although a matter of community concern, noncriminal conduct should be referred to social agencies, not to courts of law.[41]

4. *Statutory Dispositional Alternatives Available to Juvenile Courts Upon the Finding that a Child is Delinquent or in Need of Supervision.*

Table 2D sets forth the dispositional alternatives available to a juvenile court upon its finding that a juvenile is a delinquent.[42]

Table 2E sets forth the dispositional alternatives available to a juvenile court upon its finding that a juvenile is a child in need of supervision.[43]

With respect to the dispositional alternatives which should be available to the juvenile court, the Legislative Guide for Drafting Family and Juvenile Court Acts[44] recommends:

> The statute should limit the court as to the type of disposition it may make, depending on the nature of the case, i.e., delinquency or neglect, rather than allow it unlimited discretion

> to make any disposition or to order any treatment that it may think advisable. It should have complete discretion within the range of the specific disposition authorized.

However, as may be seen from Tables 2D and 2E, the dispositional alternatives available to the juvenile courts in the United States both upon a finding of delinquency and upon a finding of a "person in need of supervision" are quite broad. Because of this and because of the statutes defining both a delinquent and a "person in need of supervision," it is not possible through a "bench review" of the statutes to ascertain actual practices of the juvenile courts with respect to utilizing the various dispositional alternatives with respect to runaway children. Such a review, which would require extensive field studies, should be undertaken if it is desired to arrive at a definitive picture of the legal treatment of runaway children under the juvenile-justice system.

Thus, for example, the Kansas statute classifies as a "wayward child" a child who has "deserted his home without good and sufficient reason." A "miscreant child" is a child who has been adjudged a "wayward child" three times. A "delinquent child" is a child who has been adjudged a "miscreant child" three times. A "delinquent child" may be placed in a state training school. Only a field study could determine whether the Kansas juvenile courts are committing

to the state training schools children who have repeatedly run away from home. In Kansas another dispositional alternative available to a juvenile court judge is to place a delinquent child in jail. A field study would also determine if and how often this alternative is used with respect to runaways.

Or in Colorado a runaway is by law a "child in need of supervision" and cannot be sent to a training school unless the court believes it is the best solution and the child is over 16.

Another problem which might be of importance in the further study of the legal status of runaway children and which also cannot be definitively examined through "bench study" of the statutes is the use of mental institutions for the care and treatment of runaway children.

Thus, in Colorado, a runaway child is a person in need of supervision. In disposition, the juvenile court, with respect to any child within the jurisdiction of the court, may order medical, psychiatric or psychological care. No limit seems to be placed on the court's jurisdiction, i.e., in-patient, out-patient, duration, etc., in this regard. Other jurisdictions have similar provisions, generally with the same lack of limitation on the court's authority.

FOOTNOTES

[1] See Chapter 4, supra.

[2] For example see: The Challenge of Crime in a Free Society, Report of the President's Commission on Law Enforcement and the Administration of Justice (1967) Government Printing Office, Washington, D. C.; Juvenile Delinquency and Youth Crime, Task Force Report, President's Commission on Law Enforcement and the Administration of Justice (1967) Government Printing Office, Washington, D. C.; Model Acts for Family Courts and State-Local Children's Programs, Sheridan, W. H and Beaser, Herbert Wilton, Office of Youth Development, Office of Human Development, Department of Health, Education and Welfare, Government Printing Office, Washington, D. C. 1975 (Publication No. OHY/OYD 75-25041); The Juvenile Court and the Public Welfare Agency in the Child Welfare Program, Nutt, Alice Scott, in Child Welfare at the Crossroads, Children's Bureau Publication No. 327, Washington, D. C., Government Printing Office, 1949; Juvenile Courts in the United States, Lou, Herbert H., University of North Carolina, Chapel Hill, N.C. (1927); Family Courts in the United States, Dyson, Elizabeth D., and Dyson, Richard B, Journal of Family Law, Vol. 8, No. 4 (1968) and Vol. 9, No. 1 (1969); Symposium on Juvenile Problems, Hopson, Dan, Jr., Vol. 43, No. 3, Indiana Law Journal (1968); The Juvenile Justice System - Some Tendencies and Trends, Vol. 19, No. 4, Crime and Delinquency (1973), pp. 457-550.

[3] Standards for Juvenile and Family Courts, Sheridan, William H., U. S. Children's Bureau, Welfare Administration, Department of Health, Education and Welfare, Washington, D. C. 1966 (C. B. Publication No. 436-1966), at p. 4.

[4] Id. at p. 5.

[5] Id. at p. 5.

[6] The three agencies were: The U. S. Children's Bureau, Department of Health, Education and Welfare; The National Council of Juvenile Court Judges; and, The National Probation and Parole Association (now the National Council on Crime and Delinquency).

[7] Children's Bureau Publication No. 346-1954. This was an "up-date" of a publication entitled "Juvenile Court Standards" (publication No. 121) originally issued in conjunction with the National Probation Association (now the National Council on Crime and Delinquency) in 1923 - only 24 years after the founding of the first juvenile court.

[8] Id. at p. 7.

[9] Supra, Note 3.

[10] 378 U.S. 1 (1967).

[11] 384 U.S. 436, 86 S. Ct. 1602 (1966).

[12] See Table 2, p. 115 .

[13] See Table 2A, p. 116.

[14] Colorado has another statute which provides that a search warrant is needed in order to search any place for the recovery of any person who is in need of the court's jurisdiction. (Ed: runaway?)

[15] Standards for Specialized Courts Dealing With Children, Note 7, supra this Chapter, at p. 1.

[16] Standards for Juvenile and Family Courts, Note 3, supra this Chapter, at pp. 1-2.

[17] A Standard Juvenile Court Act, 1949, National Probation and Parole Association (now National Council on Crime and Delinquency), New York, N. Y. The same definition is contained in the 1959 edition of those standards.

[18] Sheridan, William H., Children's Bureau Publication No. 472-1969, Washington, D. C., 1969, at p. 5.

[19] See Note 2, supra, this Chapter at p. 13.

[20] See also Chapter 15, infra.

[21] For example: Maryland: Dependent child is a child who has been "...deprived of adequate care and support by reason of the death, absence from home, or incapacity of his parent or guardian." North Carolina: "A dependent child is a child who is in need of placement, special care or treatment because such child has no parent, guardian or custodian to be responsible for his supervision or care, or whose parent, guardian or custodian is unable to provide for his supervision or care."

[22] Standard Family Court Act. 1959, National Council on Crime and Delinquency, New York, New York.

[23] Note 2, supra, this Chapter.

[24] Id. at p. 14.

[25] Commonwealth v Fisher, 215 Ps. St. 38, 50, 53, 62 Atl. 198, 199, 200 (1905), cited in Legal Renaissance in the Juvenile Court, Ketcham, Orman W., Vol. 60, No. 5, Northwestern University Law Review, 1965, pp. 585-598.

[26] See Black, Note 1, Chapter 4, at p. 1269.

[27] Wards of Court, Note, (1967) Law Quarterly Review, April

[28] See Note 10, supra, this Chapter.

[29] 9 Vt. Stat. Ann. Title 33, Sec. 632(a)(2) (1974).

[30] Id. Under 9 Vt. Stat. Ann. Title 33, Sec. 656, if a child is found to be a child in need of care or supervision under subsection (c) [...without or beyond control of his parents, guardian or other custodian], such child may, after a hearing, be transferred to the state training school for delinquents.

[31] See Table 2B at p. 123 , this Chapter.

[32] See Table 2C at p. 130 , this Chapter.

[33] See discussion, supra this Chapter, with respect to replies received from several Offices of Attorneys General with respect to the interpretation of statutes governing the manner in which their juvenile courts interpret statutes dealing with runaway children and the authority of peace officers to take such children into custody and the jurisdiction of their juvenile courts over such children.

[34] Art. 15 Maine Rev. Stat. Ann. Ch. 401, Sec. 2502.

[35] 37 Mich. Stat. Ann. Ch. 712A2.

[36] Title 13 Wash. Rev. Code Ch. 13.04 Sec. 010.

[37] See Note 3, supra, this Chapter.

[38] Id. at p. 5.

[39] See Note 2, supra, this Chapter.

[40] Id. at pp. 14-15.

[41] Statement by the Board of Directors of the National Council on Crime and Delinquency, October 22, 1974. Reprinted in Crime and Delinquency, Vol. 21, No. 2, April 1975.

[42] See Table 2D, p.134.

[43] See Table 2E, p.137.

[44] See Footnote 3, supra, this Chapter.

Table 2

Right to Take Child into Custody if Believed Runaway

STATE	YES	NO
Alabama		X
Alaska	X	
Arizona	X	
Arkansas		X
California		X
Colorado	X	
Connecticut		X
Delaware		X
Dist.Columbia	X	
Florida	X	
Georgia	X	
Guam		X
Hawaii	X	
Idaho		X
Illinois		X
Indiana	X	
Iowa	X	
Kansas		X
Kentucky		X
Louisiana		X
Maine		X
Maryland	X	
Massachusetts	X	
Michigan		X
Minnesota	X	
Mississippi		X
Missouri		X
Montana		X
Nebraska	X	
Nevada		X
New Hampshire		X
New Jersey		X
New Mexico	X	
New York	X	
North Carolina		X
North Dakota	X	
Ohio	X	
Oklahoma		X
Oregon		X
Pennsylvania	X	
Puerto Rico		X
Rhode Island		X
South Carolina		X
South Dakota	X	
Tennessee	X	
Texas	X	
Utah	X	
Vermont	X	
Virgin Islands		X
Virginia		X
Washington	X	
West Virginia		X
Wisconsin	X	
Wyoming	X	

NOTES ON TABLE 2A

Statutory Rights of Juveniles Within the Juvenile Justice System

The columnar headings (A, B, C, etc.) of the Table follow the headings of the research instrument on statutory rights used by the Legal Research Assistants and explained in the text of this chapter. (See p. 90 .) Column V indicates that, with respect to that particular jurisdiction, a special comment or a general observation has been made as to the rights accorded juveniles. The comments below follow that same schematic design.

TABLE 2A*

Statutory Rights of Juveniles Within the Juvenile Justice System

STATE	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T	U	V
Alabama			N	N	X	X	N	X		X			X									X
Alaska			N		X			X	X	X				N	N	N						X
Arizona			X	X	X			X		X	X	N										X
Arkansas			X	X	X			X														
California	X	X	X	X	X	X	N	X	X	X	X	X	X	X		X					X	X

Alabama:

C and D: There is a right to have a person represent the child, not necessarily an attorney. If no one represents a juvenile, the court may appoint a probation officer or a "discreet person" to act as guardian ad litem for the child.
G: Guardian ad litem may carry forward the appeal. No mention of payment for an attorney on appeal.
V: A "woman of good character" must be present in court when cases involving females are heard.

Alaska:

V: Supreme Court has held that the child has a right to legal counsel at every stage of the juvenile court proceedings, and also a statutory right to a detention hearing.

Arizona:

V: Supreme Court has held that a juvenile has a right to a hearing with respect to the revocation of the juvenile's probation.

Arkansas:

V: Juvenile has a statutory right to give bail at any time before hearing and adjudication.

California:
E: Right of appeal from decision by Juvenile Court may be implied from statute authorizing free transcript on appeal if appellant cannot pay for it.

* Note: The letters at the top of each column of this Chart refer to the topics researched as described on p. 20 of the text. Column "V" refers to special notes on the state - the notes referred to are contained in the notes appended to the table.

TABLE 2A

Statutory Rights of Juveniles Within the Juvenile Justice System

STATE	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T	U	V
Colorado	X	X	X	X	X			X	X	X	X	X	X	N	N					N		X
Connecticut		X	X	X	X		N	X		X			X	X								X
Delaware					X					X												
District of Columbia			X	X	X			X	X											X	X	
Florida					X					X	X	X	X									
Georgia	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X			X	X		X
Guam			X	X	X			X		X			X	X						X		
Hawaii			X		X			X	X	X	X	X	X			X				X		X
Idaho			X	X	X			X	X													
Illinois	N	N	X	X	X	X	X	X	X	X	X	X	X	X	X	X				X	X	

Colorado:
N: Child and parents must be advised of constitutional and legal rights, including a right to a trial by jury.
O: A child's confessions are not admissible unless counsel, parent or guardian were present at time statement was made. Statements are admissible if the child has no parents or waives counsel or is a runaway from another state.
V: A search warrant is required by statute in order to search any place for the recovery of any person who is in need of the court's jurisdiction.

Connecticut:
G: Counsel may be appointed on appeal only if the interests of justice require such appointment.

Georgia:
V: Valid out-of-court admission is insufficient to support an adjudication of delinquency unless corroborated in whole or in part by other evidence.

Hawaii:
V: Statute contains an injunction to children to obey the lawful and moral commands of their parents during minority.

Illinois:
A and B: Supreme Court has ruled that Miranda safeguards are applicable to Juvenile Court if the charge is the commission of a crime with the possibility of the loss of freedom.

TABLE 2A

Statutory Rights of Juveniles Within the Juvenile Justice System

STATE	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T	U	V
Indiana					X			X	X	X										X		
Iowa			X	X	X			X		X				X								
Kansas		X	X	X	X			X		X	X											
Kentucky			X	X	X	X		X		X	X			X		X				N		
Louisiana			X	X	X			X		X						X				X	X	
Maine					X			X				X	X									
Maryland			X	X	X	X		X	X	X	X	X	X	N	X	N						
Massachusetts			X	X	X			X	X	X		X			X				X			
Michigan			N		X			X	X	X										X		
Minnesota					X									X								X

Kentucky:
T: Transcript is optional in the Juvenile Courts in cities of the first and second classes.

Maryland:
N: Supreme Court has held that the juvenile has the right to confront, to cross-examine, to be represented by counsel, to receive a copy of the transcription of the adjudicatory hearing and to remain silent during the adjudicatory hearing.

Michigan:
C: Appointment of counsel by court discretionary.

Minnesota:
V: As noted in Table 2A, some juvenile rights are stated in the statutes. Others, such as the following, are established by the Rules of the Juvenile Court adopted by the Minnesota Juvenile Judges Association and may be changed by the Association: A, B, C, G, H, I, K, L, M, O, P, R, S, T, and U.

TABLE 2A

Statutory Rights of Juveniles Within the Juvenile Justice System

STATE	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T	U	V
Mississippi			X		X					X	X											
Missouri			N		X			N		X		X	X									
Montana		X	X	X	X			X		X	X	X		X					X	X		
Nebraska			X	X	X			X		X			X									
Nevada			X	X	X			X		X			X				X					
New Hampshire					X					X												
New Jersey			X	N	X				X													
New Mexico			X	X	X			X	X	X	X	X				X			X	X		
New York			X	X	X	X	X	X		X	X	X	N	X		X						X
North Carolina					X			X	X	X	X	X	X	X		X						

Missouri:
C: Right to counsel given only to a juvenile facing commitment to the State Training School.
H: Notice is to be given only to the parent, guardian or person having custody of the child but not specifically, by statute, to the child.

New Jersey:
D: Authority to appoint an attorney only in any case which might result in the institutional commitment of a juvenile.

New York:
M: Issuance of subpoena discretionary.
V: No statement made at preliminary conference is admissible at adjudicatory hearing or, if the juvenile is transferred to the criminal court, at any time prior to conviction.

TABLE 2A

Statutory Rights of Juveniles Within the Juvenile Justice System

STATE	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T	U	V
North Dakota			X	X	X			X		X	X	X	X	X	X	X			X		X	
Ohio		N	X	X	N			X	X	X	N	N	X	N		N			N	X	X	X
Oklahoma			X	X	X										X							
Oregon			X	X	X	X	X	X	X	X			X								N	
Pennsylvania			X	X				X	X	X	X	X	X	X		X			X	X		X
Puerto Rico				N	X			N	X	X		X								N		
Rhode Island					X																	
South Carolina				N				N		X				X						X		X
South Dakota			X	N	X				X	X	X	X								X		
Tennessee				X	X			X	X	X	X	X	X	X	X	X			X	X		

Ohio:
V: Some of the rights of juveniles - such as B, E, K, L, N, P and S - are contained in the Rules issued by the Ohio Courts.
Oklahoma:
V: Statutory right to trial by jury in juvenile cases.
Oregon:
T: Right to have adjudicatory hearing transcribed is discretionary with the court.
Pennsylvania:
V: An extra-judicial admission or confession made by a child is insufficient to support a finding with respect to the delinquency of a child unless corroborated by other evidence.
Puerto Rico:
D: Court rule gives juveniles right to counsel.
H: Court rule gives juveniles right to notice.
T: Court rule gives juveniles right to have the adjudicatory hearing transcribed.
South Carolina:
D and I: Right given where charge might result in child's commitment.
V: Statutes contain a "catch-all" provision: "In all cases where required by law, the child shall be accorded all the rights enjoyed by adults and where not required by law the child shall be accorded such adult rights as shall be consistent with the interests of the child."
South Dakota:
D: Counsel furnished if child requests it and the child is indigent.

TABLE 2A

Statutory Rights of Juveniles Within the Juvenile Justice System

STATE	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T	U	V
Texas			X	X	X	X	X	X	X	X	X	X		X		X			X	X		
Utah			X	X	X			X	X			X	X							X	X	
Vermont			N		X			X	X	X	X	X	X	N		X			X	X		X
Virgin Islands								N		X												
Virginia			X	X	X			X														
Washington					X				X	X											X	X
West Virginia			X	X	X				X		X											
Wisconsin			X	N	X				X	X	X		X	X	X							
Wyoming			X	X	X	X	X	X	X	X	N	X	X	X		X		X		X	X	X

Vermont:
C: Statute is worded in discretionary terms but the case law seems to indicate that it is mandatory to appoint counsel.
D: "The parties or their counsel shall be afforded the opportunity to examine those making the report..."
V: Out-of-court confessions are insufficient to support an adjudication of delinquency unless corroborated by other substantial evidence.

Virgin Islands:
H: Parents must be notified that child had been taken into custody.

Washington:
D: Right to counsel if proceedings would result in commitment to an institution.
R: Juvenile may remain silent during hearing.
V: The Supreme Court has held that Miranda warnings are required and that a juvenile has the right to counsel.

Wisconsin:
D: Right to counsel is discretionary with the court.

Wyoming:
K: Dispositionary hearing need not be separate from adjudicatory hearing.
W: Right to trial by jury at adjudicatory hearing.

Explanation of Symbols on Table 2B and Statistical Summary of Contents of Table.

Number of Jurisdictions	
43	Juvenile court age: 18
8	Juvenile court age: 17
3	Juvenile court age: 16
38	A. Violated any penal law of the United States.
54	B. Violated any penal law of the state.
36	C. Violated any penal law of another state.
51	D. Violated any regulation or ordinance of a municipality, city or county.
21	E. Beyond control, incorrigible or habitually disobedient.
9	F. Runaway.
8	G. Leading an idle, lewd, dissolute and immoral life.
2	H. Commits an offense which only can be committed by a child.
8	I. Failure to obey a lawful order of the juvenile court.
14	J. Deports self so as to be a danger to self or others
14	K. Truant - beyond control of school authorities.
18	L. Commission of certain traffic offenses.
25	PINS - Statutes provide separate category of "persons in need of supervision," "children in need of supervision," etc.
29	NO PINS - Statutes do <u>not</u> provide separate category of "persons in need of supervision," "children in need of supervision," etc.

TABLE 2B

Jurisdiction of Court Over Delinquents - Including or Excluding PINS, As Indicated

STATE	AGE M	AGE F	A	B	C	D	E	F	G	H	I	J	K	L	PINS	NO PINS
Alabama	16	16	X	X	X	X	X		X							X
Alaska	18	18		X		X									X	
Arizona	18	18	X	X	X	X				X	X					X
Arkansas	18	18	X	X	X	X	X	X					X			X
California	18	18	X	X	X	X					X				X	
Colorado	18	18	X	X	X	X								X	X	
Connecticut	16	16	X	X	X	X	X	X	X		X		X			X
Delaware	18	18	X	X	X	X	X		X			X	X			X
District of Columbia	18	18	X	X	X	X	X		X			X	X			X
Florida	18	18	X	X	X	X								X	X	

Alabama:
Add: Engages in occupation punishable by law.
Found in a place where adult could be punished for allowing a minor to enter.

Colorado:
Definition not applicable to:
Child 14 or older who commits class one felony;
Children who within past two years have been adjudicated a delinquent for commission of an act which would be a felony if committed by an adult and who are 16 or older and who commit class two, three or unclassified felonies punishable by death or a life sentence.
Children 14 or older who commit second felony subsequent to commission of felony which was waived by the juvenile court.
Children under 16 for violation of traffic law if case is transferred from county court.

TABLE 2B

Jurisdiction of Court Over Delinquents - Including or Excluding PINS, As Indicated

STATE	AGE M	AGE F	A	B	C	D	E	F	G	H	I	J	K	L	PINS	NO PINS
Georgia	17	17	X	X	X	X					X				X	
Guam	18	18	X	X	X	X	X					X				X
Hawaii	18	18	X	X	X	X								X		X
Idaho	18	18	X	X	X	X							X	X		X
Illinois	17	17	X	X	X	X									X	
Indiana	18	18	X	X	X	X	X	X	X	X		X	X			X
Iowa	18	18	X	X	X	X	X					X				X
Kansas	18	18		X										X	X	
Kentucky	18	18	X	X	X	X	X						X			X
Louisiana	17	17	X	X	X	X		X					X	X	X	

Georgia:
Add: Patronizing any bar unaccompanied by parent. Possessing alcoholic beverages.

Idaho:
Add: Who wanders the streets at night without any lawful business or occupation. [Not called delinquent - court just given jurisdiction over such children.]

Indiana:
Definition not applicable to child who commits an act punishable by death or life imprisonment. Add: Incorrigible, ungovernable or habitually disobedient and beyond control of parents, etc. Habitually truant; without just cause and without consent of parents, etc. repeatedly deserts his home or place of abode; Associates with immoral or vicious persons; Frequents a place which exists in violation of the law; Begging, receiving or gathering alms; Patronizing or visiting a place where intoxicating beverages are sold without parents; Wanders about between 11 P.M. and 5 A.M. without being on lawful business except returning home after attending religious or educational meeting or social function sponsored by a church or school.

Iowa:
Maximum age goes to 21 if between 18 and 21 and attending school.
Kansas: A delinquent child is a child adjudged a miscreant child three times. A runaway is a wayward child. A wayward child adjudged a wayward child three times will be adjudged a miscreant child.
Lousiana: Add: Who wilfully deceives or misrepresents facts to a retailer, servant, or employee in order to obtain alcoholic beverages or loiters around a place which handles such drinks as its principal commodity.

TABLE 2B

Jurisdiction of Court Over Delinquents - Including or Excluding PINS, As Indicated

STATE	AGE M	AGE F	A	B	C	D	E	F	G	H	I	J	K	L	PINS	NO PINS
Maine	18	18		X		X	X	X	X			X	X	X		X
Maryland	18	18	X	X	X	X								X	X	
Massachusetts	17	17	X	X	X	X									X	
Michigan	17	17	X	X	X	X			X				X			X
Minnesota	18	18	X	X	X	X	X						X			X
Mississippi	18	18		X		X	X	X				X	X			X
Missouri	17	17		X		X								X		X
Montana	18	18		X		X					X				X	
Nebraska	18	18		X		X	X					X		X	X	
Nevada	18	18		X		X					X			X	X	

Maine:
SS v State of Maine (1973) 299 A 2d 560 - not void for vagueness.

Michigan:
Add: Frequents places the principal business of which is the sale of intoxicating liquors. [Not called delinquents - court just given jurisdiction over persons who...]

Missouri:
Does not label certain children as delinquent. Merely gives juvenile court jurisdiction over children who do certain acts.

TABLE 2B

Jurisdiction of Court Over Delinquen Including or Excluding PINS, As Indicated

STATE	AGE M	AGE F	A	B	C	D	E	F	G	H	I	J	K	L	PINS	NO PINS
New Hampshire	18	18		X		X	X					X				X
New Jersey	18	18		X		X									X	
New Mexico	18	18		X		X								X	X	
New York	16	16	X	X	X	X									X	
North Carolina	18	18		X		X								X	X	
North Dakota	18	18	X	X	X	X								X	X	
Ohio	18	18	X	X	X	X					X			X		X
Oklahoma	18	18	X	X	X	X					X				X	
Oregon	18	18	X	X		X	X	X				X				X
Pennsylvania	18	18	X	X	X	X	X									X

North Carolina:
Excludes children who are married, emancipated or in the Armed Services.

North Dakota:
Excludes children who are married or in the Armed Services.

Oregon:
Does not label certain children as delinquent. Merely gives juvenile court jurisdiction over certain children who do certain acts.

TABLE 2B

Jurisdiction of Court Over Delinquents - Including or Excluding PINS, As Indicated

STATE	AGE M	AGE F	A	B	C	D	E	F	G	H	I	J	K	L	PINS	NO PINS
Puerto Rico	18	18		X		X	X									X
Rhode Island	18	18	X	X	X	X									X	
South Carolina	17	17	X	X	X	X	X					X				X
South Dakota	18	18	X	X	X	X								X	X	
Tennessee	18	18	X	X	X	X								X	X	
Texas	17	17		X		X									X	
Utah	18	18	X	X	X	X										X
Vermont	18	18	X	X	X									X	X	
Virgin Islands	18	18	X	X	X	X	X					X				X
Virginia	18	18		X			X	X				X	X			X

Puerto Rico:
Does not label certain children as delinquent. Merely gives juvenile court jurisdiction over certain children who do certain acts.
Rhode Island:
PINS called "wayward."
South Carolina:
A delinquent is less than 17; Neglected or dependent is less than 21.
South Dakota:
Not applicable to hunting, fishing or boating violations or traffic cases which fall within the jurisdiction of justices of the peace.
Tennessee:
A PINS is an "unruly child."
Texas:
Truancy not considered a delinquent act; constitutes action indicating a need for supervision.
Virgin Islands:
Does not label certain children as delinquent. Merely gives juvenile court jurisdiction over certain children who do certain acts.

TABLE 2B

Jurisdiction of Court Over Delinquents - Including or Excluding PINS, As Indicated

STATE	AGE M	AGE F	A	B	C	D	E	F	G	H	I	J	K	L	PINS	NO PINS
Washington	18	18	X	X	X	X										X
West Virginia	18	18		X		X	X	X	X			X	X			X
Wisconsin	18	18	X	X	X	X									X	
Wyoming	18	18	X	X		X										X

Washington:
Add: and whose case has been referred to the juvenile court.

West Virginia:
Add: frequents places which are in violation of law.

Explanation of Symbols on Table 2C and Statistical Summary of Contents of Table.

Number of Jurisdictions

22	A.	Persistently refuses to obey the reasonable and proper directions of parents, guardian or other custodian.
15	B.	Is a runaway.
1	C.	Has committed a misdemeanor.
3	D.	Is beyond the control of school authorities.
21	E.	Is an habitual truant from school.
1	F.	Is in danger of leading an idle life.
1	G.	Is in danger of leading a dissolute life.
1	H.	Is in danger of leading a lewd life.
3	I.	Is in danger of leading an immoral life.
2	J.	Is a wayward child.
10	K.	Endangers the health of himself and others.
10	L.	Endangers the morals of himself and others.
2	M.	Associates with vagrant, vicious or immoral persons.
9	N.	Has committed an offense applicable only to a minor.
1	O.	Has committed a delinquent act and needs supervision but does not need treatment or rehabilitation.
2	P.	Violation of curfew.
1	Q.	Is a drug addict.
2	R.	Violation of a juvenile court order.
1	S.	Is a vagrant.

TABLE 2C

Statutory Characteristics of PINS, CINS, Wayward Children, Etc.

STATE	NO PINS	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S
Alabama	X																			
Alaska		X	X								X	X	X	X						
Arizona	X		X																	
Arkansas	X																			
California		X			X	X	X	X	X	X										
Colorado			X			X						X	X							
Connecticut	X																			
Delaware	X																			
District of Columbia																				
Florida		X	X			X														
Georgia		X	X			X									X	X	X			
Guam																				
Hawaii	X																			
Idaho	X																			
Illinois		X				X												X	X	
Indiana	X																			
Iowa	X																			
Kansas		X	X									X	X							
Kentucky	X																			
Louisiana		X				X									X					
Maine	X																			
Maryland		X				X						X	X		X					
Massachusetts		X	X		X	X														
Michigan	X																			
Minnesota	X																			

Georgia: Called "unruly child."

Kansas: Called "wayward child."

TABLE 2C

Statutory Characteristics of PINS, CINS, Wayward Children, Etc.

STATE	NO PINS	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S
Mississippi	X																			
Missouri	X																			
Montana		X				X									X					
Nebraska		X	X			X					X	X	X							
Nevada		X	X			X														
New Hampshire	X																			
New Jersey		X				X				X		X	X		X		X			X
New Mexico		X				X									X					
New York																				
North Carolina		X	X			X									X					
North Dakota		X				X						X	X		X					
Ohio	X																			
Oklahoma		X				X						X	X							
Oregon	X																			
Pennsylvania	X																			
Puerto Rico	X																			
Rhode Island		X	X		X	X				X				X						
South Carolina	X																			
South Dakota		X	X			X						X	X							
Tennessee		X	X			X									X					

North Carolina: Called "undisciplined child."

North Dakota: Called "unruly child."

Rhode Island: Called "wayward child."

TABLE 2C

Statutory Characteristics of PINS, CINS, Wayward Children, Etc.

STATE	NO PINS	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S
Texas			X	X		X													X	
Utah	X																			
Vermont		X																		
Virgin Islands	X																			
Virginia	X																			
Washington	X																			
West Virginia	X																			
Wisconsin		X	X			X						X	X							
Wyoming	X																			

Explanation of Symbols on Table 2D and Statistical Summary of Contents of Table.

Number of Jurisdictions		
19	A.	Take no further action.
19	B.	Fine and/or restitution.
45	C.	Probation - indefinite term.
12	D.	Probation - definite term.
10	E.	Probation - periodically reviewed.
39	F.	Foster home care.
43	G.	Commitment to county public institution.
17	H.	Commitment to forestry or other camp.
29	I.	Commitment to state training school.
26	J.	Commitment to other state youth services.
6	K.	Commitment to penal institution.
17	L.	Commitment for medical, psychiatric or psychological treatment - in- or out-patient.
5	M.	Commitment to jail.
4	N.	Require the child to perform labor of public service.
7	O.	Commit to Department of Institutions.
28	P.	Place custody in a private person or relative.
9	Q.	Commit to state department of social services, youth welfare, etc.
27	R.	Commit to private institution or agency.

Table 2D

Dispositional Alternatives: Finding of Delinquency

STATE	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R
ALABAMA	X	X	X			X	X		X	X								
ALASKA			X		X				X								X	
ARIZONA			X												X	X		X
ARKANSAS					X	X	X			X						X		
CALIFORNIA		X	X			X	X	X		X								
COLORADO		X	X	X	X	X	X		X				X					
CONNECTICUT	X		X			X	X		X	X		X						
DELAWARE		X	X			X	X											
DIST. COLUMBIA			X									X			X			X
FLORIDA	X		X							X						X		
GEORGIA			X		X	X	X	X	X	X					X			
GUAM	X		X			X	X			X		X				X		X
HAWAII	X		X	X	X	X	X	X	X	X			X					
IDAHO				X		X	X											X
ILLINOIS	X		X			X	X		X	X						X	X	
INDIANA			X				X			X								
IOWA			X				X		X			X				X		X
KANSAS		X	X				X	X										X
KENTUCKY																		
LOUISIANA	X		X			X	X	X	X	X	X	X			X	X		X
MAINE	X	X	X		X	X	X		X							X		
MARYLAND		X	X			X	X	X	X	X		X				X		
MASSACHUSETTS	X	X	X			X	X	X	X	X								
MICHIGAN	X		X		X	X	X									X		X
MINNESOTA		X	X		X	X	X		X							X		X
MISSISSIPPI	X					X			X							X		X
MISSOURI			X			X	X			X		X				X	X	X
MONTANA			X	X		X	X	X		X	X							X
NEBRASKA		X	X			X	X			X		X		X		X		X
NEVADA			X			X	X		X		X	X	X					X
NEW HAMPSHIRE			X						X		X		X					
NEW JERSEY				X						X		X				X		
NEW MEXICO				X						X								X

Table 2D

Dispositional Alternatives: Finding of Delinquency

STATE	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R
NEW YORK	X		X			X	X		X	X						X		X
NORTH CAROLINA	X		X			X	X	X	X	X		X				X	X	
NORTH DAKOTA			X			X	X	X	X	X								
OHIO		X	X	X		X	X	X	X	X								X
OKLAHOMA	X		X			X	X									X		X
OREGON		X	X			X	X		X	X		X						
PENNSYLVANIA			X	X		X	X	X							X		X	X
PUERTO RICO			X													X	X	X
RHODE ISLAND			X			X	X									X		
SOUTH CAROLINA	X		X				X									X		X
SOUTH DAKOTA		X	X				X	X	X			X		X		X		
TENNESSEE		X	X	X		X	X	X	X						X	X		X
TEXAS	X			X		X	X			X						X	X	
UTAH		X		X	X	X	X	X	X	X		X						
VERMONT			X	X	X	X	X		X			X			X			
VIRGIN ISLANDS	X	X	X			X								X		X		X
VIRGINIA		X	X			X	X				X	X				X		X
WASHINGTON			X			X	X		X								X	X
WEST VIRGINIA	X		X			X	X		X							X		X
WISCONSIN	X	X	X			X	X	X	X							X	X	X
WYOMING		X					X	X	X	X	X	X	X	X				

Explanation of Symbols on Table 2E and Statistical Summary of Contents of Table.

Number of Jurisdictions		
6	A.	No further action.
7	B.	Fine and/or restitution.
21	C.	Probation - indefinite term.
5	D.	Probation - definite term.
5	E.	Probation - periodically reviewed.
22	F.	Foster home care.
14	G.	Commitment to county public institutions.
7	H.	Commitment to forestry and other camps.
12	I.	Commitment to state training school.
10	J.	Commitment to other state youth services.
2	K.	May not be committed to an institution housing juvenile delinquents.
11	L.	Commitment for medical, psychiatric or psychological services - in- or out-patient.
3	M.	Commitment to the custody of the probation officer.
5	N.	May require the child to perform labor or public service.
1	O.	Commitment to jail.
20	P.	Custody vested in a relative or a private individual.
9	Q.	Commitment to State Department of Public Welfare, Social Services, Children and Youth, etc.
13	R.	Commitment to private institution or agency.

TABLE 2E

Dispositional Alternatives: PINS, CINS, Wayward Children, Etc.

STATE	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R
Alabama	NO PINS																	
Alaska			X		X					X						X		
Arizona	NO PINS																	
Arkansas	NO PINS																	
California		X	X		X	X	X			X				X		X		X
Colorado		X	X		X	X	X	X	X			X		X		X		
Connecticut	NO PINS																	
Delaware	NO PINS																	
District of Columbia			X									X						X
Florida	X		X							X						X		
Georgia			X		X	X	X	X	X									
Guam																		
Hawaii	NO PINS																	
Idaho	NO PINS																	
Illinois			X			X		X	X			X	X			X	X	X

Florida:
For second offense, PINS is treated like a juvenile delinquent and may be sent to a training school.

Georgia:
Unruly child may not be committed to Division of Children and Youth unless not amenable to other means of rehabilitation. Delinquent or unruly child who is not amenable to rehabilitation may be committed to the Department of Corrections.

Illinois:
A child found to be dependent and neglected may also be sent to a training school.

TABLE 2E

Dispositional Alternatives: PINS, CINS, Wayward Children, Etc.

STATE	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R
Indiana	NO PINS																	
Iowa	NO PINS																	
Kansas				X		X			X	X			X		X		X	
Kentucky	NO PINS																	
Louisiana	X		X			X	X									X		X
Maine	NO PINS																	
Maryland		X	X			X	X		X		X	X				X		
Massachusetts				X		X			X		X	X	X			X	X	X
Michigan	NO PINS																	
Minnesota	NO PINS																	
Mississippi	NO PINS																	
Missouri	NO PINS																	
Montana			X			X			X									X
Nebraska		X	X			X				X		X		X		X		X
Nevada			X			X	X			X		X		X		X		

Kansas:
If "miscreant" child is found to be such three or more times, "graduates" to be a delinquent child. First the child has to be adjudged a "wayward" child three or more times - a wayward child includes runaways. After seven times the child can be committed to a training school.

Montana:
A PINS may be transferred to a Forestry Camp or to a Penal Institution only after evaluation by a panel.

Nebraska:
PINS may be committed to a training school if the court finds that the child has not made a "satisfactory" adjustment.

TABLE 2E

Dispositional Alternatives: PINS, CINS, Wayward Children, Etc.

STATE	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R
New Hampshire	NO PINS																	
New Jersey	X		X			X			X			X				X		
New Mexico			X			X	X									X		X
New York	X	X		X	X	X		X	X							X	X	X
North Carolina	X		X			X	X					X				X	X	X
North Dakota			X			X		X	X	X								
Ohio	NO PINS																	
Oklahoma	NO PINS																	
Oregon	NO PINS																	
Pennsylvania	NO PINS																	
Puerto Rico	NO PINS																	
Rhode Island			X			X	X					X				X	X	X
South Carolina	NO PINS																	
South Dakota		X	X			X	X	X		X		X		X		X	X	
Tennessee		X	X	X		X	X	X	X							X	X	

New Mexico:
A PINS cannot be committed to an agency caring for juvenile delinquents.

North Dakota:
If the court finds the child "unruly," the court may make disposition as though the court had found the child to be delinquent but the court cannot commit the child to a training school. However, if, after another hearing, the court finds that the child is "not amenable to treatment," the child may be committed to a training school.

TABLE 2E

Dispositional Alternatives: PINS, CINS, Wayward Children, Etc.

STATE	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R
Texas	X			X		X	X			X						X	X	
Utah	NO PINS																	
Vermont			X			X	X		X	X						X		X
Virgin Islands	NO PINS																	
Virginia	NO PINS																	
Washington	NO PINS																	
West Virginia	NO PINS																	
Wisconsin			X			X	X									X		X
Wyoming	NO PINS																	

Texas:
If adjudicated a PINS, cannot later be committed to the Texas Youth Authority.

Vermont:
A PINS may be sent to the State Training School if all alternatives fail, but only after a hearing.

Notes on Dispositional Alternatives Finding of Delinquency

A. Maine: If the juvenile is committed to Child Training Center and is incorrigible there, the juvenile may be returned to the court and committed to an adult correctional institution. (PINS may not be sent there.)

B. Maryland: may be committed to State Department of Health and Mental Hygiene.

C. Illinois: may also be committed to the custody of a probation officer.

D. Michigan: out-of-state placement authorized.

E. Missouri: out-of-state placement authorized.

F. New Mexico: PINS may not be mixed with delinquents. Delinquents may not be sent to a penal institution.

G. Nebraska: Court may also continue dispositional hearing from time to time.

H. Virginia: Commitment to State Board of Corrections if child would not benefit if left at home.

I. Wyoming: may be committed to a drug treatment facility.

CHAPTER 7

THE RUNAWAY CHILD AND PUBLIC EDUCATION

The subject of the runaway child and public education is discussed in terms of three important issues: compulsory school age spans; required state or local residence requirements; and abetting truancy. A brief account of exemptions from compulsory school attendance is also included.

1. *Compulsory School Age Spans*

Compulsory school age spans in the jurisdictions studied ranged from no compulsory school-attendance law in Mississippi and no minimum compulsory school age in New Mexico and Wyoming, to a minimum compulsory school age of five in Guam and the Virgin Islands and a maximum compulsory school age of 18 in Ohio, Oklahoma, Oregon, Utah and Washington.

Twenty-four jurisdictions had compulsory school-age spans of seven to 16, and eight jurisdictions had compulsory school age spans of six to 16.

In 35 of the 53 jurisdictions having compulsory school laws, the maximum age was 16 and ranged from a low of 14 (Puerto Rico) to a high of 18 (five jurisdictions).

For a runaway child these age spans - especially the maximum age at which the child must attend school - are important. They determine the age at which the child may no longer attend

school, the age at which he may obtain a work permit which would allow a potential employer to hire him and, if he so desires, whether he can continue in school in his new location.

2. *Required State or Local Residence*

The vast majority of jurisdictions require that those attending its public schools be residents of that jurisdiction. And even in some of those jurisdictions which have no jurisdictional residence requirements, the school district may impose a requirement for residence or payment. How the term "residence" will be interpreted is up to the courts or the attorney general in each jurisdiction.[1]

The notes to Table 3 give two examples of opposite types of interpretations of the phrase "residence" as used in compulsory school attendance statutes.

The earlier 1939 decision by the Supreme Court of Minnesota took the point of view that the objective of the Minnesota compulsory school-attendance law was to afford a free public education to all children who found themselves within the boundaries of the State of Minnesota, however they happened to be there. The Supreme Court of Minnesota, therefore, held that the term "residence," as used in that State's compulsory school attendance laws, should be interpreted

as meaning "inhabitant" of the State of Minnesota, rather than meaning "domiciled" within the State of Minnesota.

On the other hand, the Attorney General of the State of Arizona, in his 1939 opinion with respect to the Arizona compulsory school education law, took the opposite point of view. In order to establish residence in Arizona for purposes of attending the public schools there without paying tuition, the Attorney General ruled that three elements must be present simultaneously: (1) there must be an actual presence in the State of Arizona - merely wishing to become an Arizonian without ever going there was not enough; (2) there must be an actual intent to remain and make Arizona the individual's home; and (3) there mustbe an intent to abandon the individual's former home.

The possible effects of either of these points of view of state public school "compulsory school" residence requirements could have a profound effect upon a runaway child.

Suppose a 14-year-old female minor runs away from home without her parents' permission and travels to the home of her grandmother in another state and takes up her residence there, with her grandmother's permission. She intends to stay there for a while and then, perhaps, move on to stay with another relative in another state. She is within the compulsory school laws of grandmother's home state and has no objection to attending school in her grandmother's home town.

Suppose the school laws of that state stipulate that free public-school education will be provided by the school district in which the young girl's grandmother is located only to "residents" of that school district and will be provided to all others upon the payment of tuition. Under generally accepted principles of law, the residence of an unemancipated minor "follows" that of the minor's parents - generally that of the father. That would not be true ordinarily if the minor were emancipated, but in this case the young girl has not been emancipated. In fact, her parents would like her to return.[2]

If the opinion cited above by the Minnesota Supreme Court were the opinion prevailing in the grandmother's state, the young girl's grandmother would not be required to pay tuition to enable her granddaughter to attend public school. On the other hand, if the opinion of the Attorney General of Arizona were prevailing in the grandmother's home state, then the grandmother would be required to pay the tuition to enable her granddaughter to attend the public schools in the district in which she is living. Depending on the precise statutes governing compulsory school attendance, it is difficult to say whether the young girl might be prosecuted as a

truant under such circumstances for failure to attend school while it was in session. This is so because the compulsory education statutes generally impose an obligation upon a child between certain ages to attend school, or an obligation upon the child's parent or guardian to see to it that the child attends school without reference to whether or not the schools have a corresponding obligation to accept the child.

Thirty-nine of the jurisdictions studied imposed state residence requirements for school attendance; seven jurisdictions imposed local residence requirements where no state residence requirements were set out.

3. *Abetting Truancy*

In all but two of the jurisdictions studied (excluding Mississippi) it was made a crime for a person having control and custody of a child not to send such child to school. However, the crime was one generally punishable as a misdemeanor by a fine, or, at most, a short jail sentence - assuming the enforcement of the statute.

In the two jurisdictions in which this offense was not specifically punished - Michigan and Minnesota - there are statutes governing "contributing to the delinquency of a minor" sufficiently broad to govern the offense of not requiring a child to attend school.

4. *Exemptions from Compulsory School Attendance*

Of the 54 jurisdictions studied, as mentioned earlier, only Mississippi has no compulsory school law. In the remaining 53 jurisdictions, certain exemptions from compulsory school attendance are common to many of the jurisdictions.[3] The physical or mental condition of the child and the receipt of comparable education at independent or parochial schools are the most common of such exemptions.

Other types of exemptions appear in the statutes only infrequently. The major exemptions are as follows:

Alabama: over the maximum age of compulsory schooling, which seems to be a school census matter unrelated to compulsory schooling, although it appears in the Alabama statutes.

Alaska: child is regularly attending a school operated by the Federal government and child is in custody of law enforcement officers (see also Colorado, infra).

Arizona: services needed to support a widowed mother.

Arkansas: working with the consent of parents.

Colorado: see Alaska, supra.

District of Columbia: child has finished eighth grade and is regularly employed.

Florida: child married; child unmarried and pregnant; child has previously had a child out of wedlock; child has attained the maximum compulsory school age during the year.

Guam: child's conduct inimical to the welfare of other children.

Hawaii: child has graduated from vocational school.

Illinois: child under 14 and over 12 while attending confirmation classes.

Indiana: 120 minutes a week for religious instruction.

Iowa: while child is receiving religious training or instruction; while child is attending a private college or preparatory school; while child is being instructed by religious groups established at least 10 years before enactment of statute and whose tenets differ substantially from the tenets of compulsory education.

Michigan: child between 12 and 14 while attending confirmation class for 120 days.

Minnesota: religious instruction for three hours a week.

Montana: while receiving instruction in another district or state.

Nebraska: where the child is 14, has completed eighth grade

and services or earnings are needed for the support of those dependent on the child.

New Hampshire: child over 14, completed grammar school and there is no high school in the district.

New Mexico: child under eight years with excuse from superintendent and consent of parents; high school student who has passed General Education Development test, can prove not benefitting, or can show plan for pursuing educational interests not supplied by school.

North Dakota: child's services needed for the support of the child's family. An Attorney General's opinion also added lack of transportation as an excuse.

Ohio: Op. A.G. 1961, No. 2147: Board of Education may not adopt rule which would automatically prohibit the attendance of all married students who become pregnant but may adopt a rule which would, for physical safety of the student, require that at an advanced stage of pregnancy the student not attend classes.

Op. A.G. 1968 No. 68-061: Board of Education may not exclude unmarried pregnant student unless attendance would be detrimental to her health and well-being.

Oklahoma: if sixteen, by agreement.

Oregon: attending community college, or otherwise acquired a high school knowledge; over 16 by agreement.

Pennsylvania: child is in a trade or vocational school.

Puerto Rico: for good and sufficient reason proven to the satisfaction of the school board.

South Carolina: child is married; child previously had a child out of wedlock; child is pregnant; child is over ten and has been out of school eight years because of lack of special schools; child passed the eighth grade, is working, and child's work is needed to maintain the home.

Tennessee: child is 15 and would not benefit from further school work, or child's presence would be harmful to others.

Texas: child has completed ninth grade, is 17 years old, and services are needed to support parent; any temporary absence approved by superintendent of schools.

Utah: child is 16, has completed eighth grade, and services needed to support invalid mother; child 16 and unable to profit further from school.

Virgin Islands: child is 11 years old and cannot profit further from school.

Virginia: with consent of juvenile court and superintendent of schools if child cannot benefit further from school; if parents conscientiously object in writing to further attendance and juvenile court approved.

Wyoming: if school board feels further attendance would work an undue hardship.

In addition to the above, other exemptions are permitted for varying reasons as set forth on the attached Table 3A.

TABLE 3

COMPULSORY SCHOOLING, RESIDENCE REQUIREMENTS,
AND ABETTING TRUANCY

STATE	Compulsory School Age Span	Required Residence		Penalty for Inducing or Abetting Truancy	Notes
		State	Local		
Alabama	7 - 16	NO	YES	YES	
Alaska	7 - 16	NO	YES	YES	
Arizona	8 - 16	YES	NO	YES	Note 1
Arkansas	7 - 15	YES	NO	YES	
California	6 - 16	YES	NO	YES	
Colorado	7 - 15	YES	YES	YES	
Connecticut	6 - 16	YES	YES	YES	
Delaware	6 - 16	YES	YES	YES	
District of Columbia	7 - 16	NO	NO	YES	
Florida	7 - 16	NO	NO	YES	
Georgia	7 - 16	NO	NO	YES	
Guam	5 - 16	NO	NO	YES	
Hawaii	6 - 17	YES	YES	YES	
Idaho	7 - 16	YES	YES	YES	
Illinois	7 - 16	YES	YES	YES	
Indiana	7 - 16	YES	NO	YES	Min. less than 7
Iowa	7 - 16	YES	YES	YES	
Kansas	7 - 16	YES	YES	YES	
Kentucky	7 - 17	NO	YES	YES	
Louisiana	7 - 15	YES	NO	YES	Note 2

1. In order to establish a residence or domicile in Arizona sufficient to attend public school without paying tuition there must be an actual presence in Arizona coupled with intent to remain and make Arizona home. Also needs intent to abandon former home. Op. Atty. Gen. 59-146.

Students placed in foster homes are not residents for purposes of free tuition. Op. Atty. Gen. 71-2.

2. No authority for school board to exclude a pregnant or married girl. If she consents, she may be taught separately. Op. Atty. Gen. May 8, 1969.

CONTINUED

2 OF 5

TABLE 3

COMPULSORY SCHOOLING, RESIDENCE REQUIREMENTS,
AND ABETTING TRUANCY (continued)

STATE	Compulsory School Age Span	Required Residence		Penalty for Inducing or Abetting Truancy	Notes
		State	Local		
Maine	7 - 17	NO	YES	YES	
Maryland	6 - 16	NO	YES	YES	
Massachusetts	7 - 16	NO	YES	YES	
Michigan	6 - 16	NO	NO	YES	Note 3
Minnesota	7 - 16	NO	NO	YES	Note 4
Mississippi	No compulsory school attendance law				
Missouri	7 - 16	NO	YES	YES	
Montana	7 - 16	YES	YES	YES	
Nebraska	7 - 16	YES	YES	YES	
Nevada	7 - 17	YES	YES	YES	
New Hampshire	6 - 16	YES	YES	YES	
New Jersey	6 - 16	YES	YES	YES	Note 5
New Mexico	- 17	YES	YES	NO	Note 5
New York	6 - 16	YES	YES	NO	
North Carolina	7 - 16	YES	YES	YES	
North Dakota	7 - 16	YES	YES	YES	
Ohio	6 - 18	YES	YES	YES	
Oklahoma	7 - 18	YES	YES	YES	Note 6
Oregon	7 - 18	YES	YES	YES	

3. A pregnant person who is under compulsory school age may withdraw from regular public school attendance. (338.392 No. 42, Sec. 2, Dec., 1970.)

4. Word "residence" in school law is used in its broadest sense - means an inhabitant and not used as "domicile." Objective is to provide free public education for every child in state. Christian Services vs. School Board, 206 Minn. 63, 278 N.W. 2d 625 (1939).

5. A child not domiciled within the state may attend public school even without payment if the local school board agrees.

6. Nonresident may be admitted but must pay tuition.

TABLE 3

COMPULSORY SCHOOLING, RESIDENCE REQUIREMENTS,
AND ABETTING TRUANCY (continued)

STATE	Compulsory School Age Span	Required Residence		Penalty for Inducing or Abetting Truancy	Notes
		State	Local		
Pennsylvania	8 - 17	YES	YES	YES	Note 6
Puerto Rico	8 - 14	YES	YES	YES	
Rhode Island	7 - 16	YES	YES	YES	
South Carolina	7 - 16	YES	YES	YES	
South Dakota	7 - 16	YES	YES	YES	
Tennessee	7 - 16	YES	YES	YES	Note 5
Texas	7 - 17	YES	YES	YES	
Utah	6 - 18	YES	YES	YES	
Vermont	7 - 16	YES	YES	YES	
Virgin Islands	6 - 16	YES	YES	YES	
Virginia	6 - 17	NO	NO	YES	
Washington	8 - 18	YES	YES	YES	
West Virginia	7 - 16	NO	NO	YES	
Wisconsin	7 - 16	YES	YES	YES	Note 6
Wyoming	- 16	YES	YES	YES	

5. A child not domiciled within the state may attend public school even without payment if the local school board agrees.

6. Nonresident may be admitted but must pay tuition.

TABLE 3A

EXEMPTIONS FROM COMPULSORY SCHOOL ATTENDANCE

STATE	A*	B*	C*	D*	E*	F*	G*	H*	I*	J*	K*
Alabama	X	X		X		X	X				
Alaska	X	X		X	X	X		X		X	
Arizona	X	X									
Arkansas	X		X			X		X	X		
California	X				X		X				
Colorado	X	X			X	X	X		X	X	
Connecticut					X	X	X				
Delaware	X				X		X		X		
District of Columbia	X				X	X					
Florida	X			X	X		X	X			
Georgia	X	X					X	X			
Guam	X				X	X					
Hawaii	X	X				X	X				X
Idaho	X				X						
Illinois	X				X		X				
Indiana	X				X		X			X	
Iowa			X				X				
Kansas	X				X						
Kentucky	X	X			X						
Louisiana	X			X						X	
Maine	X	X			X			X			
Maryland	X				X	X					
Massachusetts	X				X	X	X				
Michigan				X	X						
Minnesota	X	X								X	
Mississippi	No compulsory school law										
Missouri	X				X						X

A* Physical or mental condition of child makes school attendance inadvisable.
B* Child has completed high school.
C* Child has completed grammar school.
D* Child has completed eighth grade.
E* Distance from nearest school more than certain number of miles - no transportation.
F* Child being provided comparable education at independent or parochial school.
G* Child being instructed at home or privately by competent teacher.
H* Has presented reasons for nonattendance satisfactory to school board.
I* Child is in a work-study program.
J* Child is sick or injured.
K* Child excused by court.

x = statute pertains in that jurisdiction

TABLE 3A

EXEMPTIONS FROM COMPULSORY SCHOOL ATTENDANCE (continued)

STATE	A*	B*	C*	D*	E*	F*	G*	H*	I*	J*	K*
Montana	X		X		X						X
Nebraska	X	X								X	
Nevada	X	X	X	X	X	X	X				X
New Hampshire	X			X				X			
New Jersey	X				X				X		
New Mexico	X	X			X		X				
New York	X	X		X	X			X			
North Carolina					X						
North Dakota	X	X			X						
Ohio	X	X			X	X	X				
Oklahoma	X	X			X	X					
Oregon	X	X	X	X	X	X	X	X			
Pennsylvania	X			X			X				
Puerto Rico							X				
Rhode Island	X	X			X						
South Carolina	X	X			X	X					
South Dakota	X				X	X		X			
Tennessee	X	X		X	X		X		X		
Texas	X				X				X	X	
Utah	X	X		X	X		X				
Vermont	X	X			X	X		X			
Virgin Islands	X	X				X	X				
Virginia	X			X	X						
Washington	X	X			X						
West Virginia	X	X		X	X			X			
Wisconsin		X			X	X		X			
Wyoming	X		X		X			X			

A* Physical or mental condition of child makes school attendance inadvisable.
B* Child has completed high school.
C* Child has completed grammar school.
D* Child has completed eighth grade.
E* Distance from nearest school more than certain number of miles - no transportation.
F* Child being provided comparable education at independent or parochial school.
G* Child being instructed at home or privately by competent teacher.
H* Has presented reasons for nonattendance satisfactory to school board.
I* Child is in a work-study program.
J* Child is sick or injured.
K* Child excused by court.

x = statute pertains in that jurisdiction

CHAPTER 8

THE RUNAWAY CHILD, SOCIAL SECURITY AND CHILD WELFARE SERVICES

The initial urgent needs of a child "on the run" would ordinarily be for food and lodging. Yet the runaway child may well find that the regularly organized "establishment" programs - both public and private - are not organized in such a way as to meet the child's needs in these respects because of the child's age, lack of an available parent or guardian or because of other restrictive eligibility requirements. To what agencies or programs may the runaway child legally turn when seeking food and lodging?

Aid to Families with Dependent Children (AFDC)

This is a Federal-state program of money payments with respect to families with dependent children. It is administered by the several states and funded in part by the Federal government. The amount of payment made to such families is determined by each state and varies among them according to policies established by each state.

Under Title IV of the Social Security Act, as amended, which established this program, a "dependent child" is defined as a: "...needy child...who has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent." In addition,

such child must be living "with his father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, or niece in a place of residence maintained by one or more of such relatives as his or their own home."

The child must be under 18 years of age or, if over 18 but under 21, must be a "student regularly attending a school, college, or university, or regularly attending a course of vocational or technical training designed to fit him for gainful employment." There is no durational residence requirement for the AFDC program. The Secretary of Health, Education and Welfare has defined residence as living in a state voluntarily with the intention of making one's home there and not for a temporary purpose.

In addition, a "dependent child" includes a needy child who has been deprived of parental support or care because of the unemployment of his mother. The child must still be living in a home maintained by one of the relatives enumerated above.

If a runaway child runs away from home to live in a home maintained by one of the enumerated relatives, the AFDC program may be of assistance to such a child and the relative with whom the child begins to live. One hurdle, however, might occur when the child has no intention of remaining and arrangements are under way for the child to return home or make other plans.

Table 4 indicates the characteristics of state plans[1] with respect to the age of eligibility. Ten jurisdictions require the child on whose behalf the payment is made to be under 18 years of age. Florida requires the child to be under 18 years of age and unmarried. Thirty-four jurisdictions follow the Federal act and permit payments until the child reaches the age of 21 provided the child is regularly attending school, etc.

The remaining jurisdictions have varying eligibility factors for children between the ages of 18 and 21.

In some jurisdictions, under the AFDC program, payments may be made with respect to an unborn child. This may be of some importance to the runaway child who is pregnant. The jurisdictions making such payments are shown on Table 4A.[2] Twenty-one jurisdictions make such payments. Some of those require the mother to satisfy residence requirements.

Child-Caring Agencies

A runaway child may also be eligible for care and services through a public or private child-caring agency which might purchase care in a facility operated by another agency or may provide the care directly in its own facility.

In all but four of the jurisdictions studied, the child-caring agency must be licensed by some agency of the state. Table 4B[3] sets forth the licensing requirements in the jurisdictions having

statutes covering such subjects. Most statutes, it will be noted, do not specify the minimum or maximum number of children who may be provided with care at such facilities or the minimum or maximum ages of the children to be cared for there. Such day-care facilities may be financed by the state or local governments or through private charitable contributions.

Funds for foster-home care or day care may also be purchased under the AFDC program if a court has determined that it is in the best interest of the child that he/she be removed from the home in which he/she was living.

Whether a "runaway house" would constitute a child-caring facility, and hence would require a license, depends on how the statute is worded as well as on the regulations promulgated to implement that statute. Existing licensure statutes covering child-caring facilities are very broadly worded and seem to give considerable powers to those administering the licensure laws.

Whether there needs to be inserted in licensure laws governing child-caring facilities special provisions to take account of any special problems encountered in operating runaway houses, both residential and nonresidential, is a matter deserving of further exploration.

Child Welfare Services - Runaway Program

Title IV of the Social Security Act, as amended, now contains a provision[Section 422(a)(2)] requiring a Child Welfare Service State Plan to provide: for paying the costs "of returning any runaway child who has attained the age of eighteen to his own community in another State, and of maintaining such child until such return (for a period not exceeding fifteen days), in cases in which such costs cannot be met by the parents of such child or by any person, agency, or institution legally responsible for the support of such child."

It should be noted that this particular provision applies only to interstate runaway children.

However, Title XX of the Social Security Act, which becomes effective 1 October 1975 and provides for grants to the states for services, has as one of its goals:

> Sec. 1001...(3) preventing or remedying neglect, abuse or exploitation of children... or preserving, rehabilitating or reuniting families...

That Title also requires that state plans for services:

> Sec. 2004(2)(H)...[shall include]...a description of how the provision of services under the program will be coordinated with the plan of the state...under...Part B of Title IV [Child Welfare Services]....

It is to be hoped that the state plans developed under both these titles of the Social Security Act will do much to provide needed child welfare services for runaway children.

FOOTNOTES

[1] See Table 4, p. 164.

[2] See Table 4A, p. 167.

[3] See Table 4B, p. 169.

TABLE 4

Relevant Characteristics of State Plans for Aid to Families With Dependent Children - AGE

STATE	Age	Comment
Alabama		See Note 1
Alaska	Under 18 years	
Arizona		See Note 1
Arkansas		See Note 1
California		See Note 2
Colorado		See Note 1
Connecticut	Under 18 years	
Delaware	Under 18 years	
District of Columbia		See Note 1
Florida	Under 18 years-unmarried	
Georgia	Under 18 years	
Guam		See Note 1
Hawaii		See Note 1
Idaho		See Note 1
Illinois		See Note 1
Indiana	Under 18 years	
Iowa		See Note 3
Kansas		See Note 1
Kentucky		See Note 1
Louisiana		See Note 4

Notes:

1. Under 21 years. If 18 and under, must be regularly attending high school, college or university, or a vocational school or technical training course.

2. Under 21 and unmarried. If 18 and under 21, must regularly be attending school or a training program, or if attending college, must be a full-time student with passing grades.

3. Under 20 years. If 16 and under 20, must be regularly attending grade school, high school, college, university or taking vocational or training course.

4. Under 21 years. If 16 or 17, must be regularly attending school, full-time or part-time, or unable to attend school due to incapacities (physical or mental); if 18 and under 21, must be regularly attending school, college, or university, or a course of vocational or technical training.

TABLE 4

Relevant Characteristics of State Plans for Aid to Families With Dependent Children - AGE (continued)

STATE	Age	Comment
Maine		See Note 1
Maryland		See Note 1
Massachusetts		See Note 1
Michigan		See Note 1
Minnesota		See Note 5
Mississippi	Under 18 years	
Missouri	Under 18 years	
Montana		See Note 1
Nebraska		See Note 1
Nevada		See Note 1
New Hampshire		See Note 1
New Jersey		See Note 1
New Mexico		See Note 4
New York		See Note 1
North Carolina		See Note 4
North Dakota		See Note 6
Ohio		See Note 1
Oklahoma		See Note 1
Oregon		See Note 1
Pennsylvania		See Note 1
Puerto Rico		See Note 1
Rhode Island		See Note 1
South Carolina		See Note 1
South Dakota		See Note 1
Tennessee	Under 18 years	

Notes:

1. Under 21 years. If 18 and under, must be regularly attending high school, college or university, or a vocational school or technical training course.

4. Under 21 years. If 16 or 17, must be regularly attending school, full-time or part-time, or unable to attend school due to incapacities (physical or mental); if 18 and under 21, must be regularly attending school, college, or university, or a course of vocational or technical training.

5. Under 19 years. If 18 but not yet 19, must be regularly attending as full-time student a high school, college or university, or a course of vocational or technical training.

6. Under 18 years, if living in a home of a relative by blood, marriage or adoption. Under 21 years if living in a licensed foster home or licensed child-caring or child-pacing institution, if physically or mentally incapacitated, or if regularly attending high school or a course of vocational or technical training and making satisfactory progress.

TABLE 4

Relevant Characteristics of State Plans for Aid to Families With Dependent Children - AFDC (continued)

STATE	Age	Comment
Texas		See Note 1
Utah		See Note 1
Vermont		See Note 1
Virgin Islands		See Note 1
Virginia		See Note 4
Washington	Under 18 years	
West Virginia		See Note 1
Wisconsin	Under 18 years	
Wyoming		See Note 1

Notes:

1. Under 21 years. If 18 and under, must be regularly attending high school, college or university, or a vocational school or technical training course.

4. Under 21 years. If 16 or 17, must be regularly attending school, full-time or part-time, or unable to attend school due to incapacities (physical or mental); if 18 and under 21, must be regularly attending school, college, or university, or a course of vocational or technical training.

Source: "Characteristics of State Public Assistance Plans Under the Social Security Act - 1973 Ed." Assistance Payments Administration, Social and Rehabilitation Service, Department of Health, Education and Welfare, Washington, D. C.

TABLE 4A

Relevant Characteristics of State Plans for Aid to Families With Dependent Children - Payments on Behalf of Unborn Child

STATE	YES	NO	Comments
Alabama	Yes		If mother satisfies state residence requirements
Alaska		No	
Arizona		No	
Arkansas		No	
California	Yes		
Colorado	Yes		
Connecticut		No	
Delaware		No	
District of Columbia	Yes		
Florida		No	
Georgia		No	
Guam	Yes		
Hawaii	Yes		
Idaho	Yes		
Illinois		No	
Indiana		No	
Iowa		No	
Kansas	Yes		
Kentucky		No	
Louisiana	Yes		If mother satisfies state residence requirements
Maine		No	
Maryland	Yes		
Massachusetts		No	
Michigan		No	
Minnesota		No	
Mississippi		No	
Missouri		No	
Montana	Yes		
Nebraska		No	
Nevada	Yes		If mother satisfies state residence requirements
New Hampshire		No	
New Jersey		No	
New Mexico	Yes		
New York	Yes		
North Carolina		No	

TABLE 4A

Relevant Characteristics of State Plans for Aid to Families With Dependent Children - Payments on Behalf of Unborn Child (continued)

STATE	YES	NO	Comments
North Dakota	Yes		
Ohio		No	
Oklahoma		No	
Oregon	Yes		If mother satisfies state residence requirements
Pennsylvania	Yes		If mother satisfies state residence requirements
Puerto Rico		No	
Rhode Island	Yes		Under certain conditions
South Carolina		No	
South Dakota		No	
Tennessee		No	
Texas		No	
Utah		No	
Vermont		No	
Virgin Islands		No	
Virginia		No	
Washington	Yes		If mother satisfies state residence requirements
West Virginia		No	
Wisconsin	Yes		Payments made on behalf of unborn child 6 months before birth
Wyoming		No	

Source: "Characteristics of State Public Assistance Plans Under the Social Security Act - 1973 Ed." Assistance Payments Administration, Social and Rehabilitation Service, Department of Health, Education and Welfare, Washington, D. C.

TABLE 4B

Child-Caring Agencies - Licensure Requirements and Limitations

STATE	License Required Yes	No	Number of Children Min.	Max.	Ages of Children Min.	Max.	Comments
Alabama	Yes		1	None	None	None	
Alaska		No	None	None	None	16	
Arizona	Yes		None	None	None	None	"Child of any age"
Arkansas	Yes		None	None	None	None	Department may limit number of children
California		No	None	None	None	None	Repealed 1973
Colorado	Yes		5	None	None	16	
Connecticut	Yes		None	None	None	18	Maximum age 21 if in school
Delaware	Yes		None	None	None	None	
District of Columbia		No	None	None	None	None	
Florida	Yes		None	None	None	None	
Georgia	Yes		None	None	None	16	
Guam	Yes		None	None	None	16	
Hawaii	Yes		None	None	None	None	
Idaho	Yes		None	None	None	None	
Illinois	Yes		7	None	None	18	Also; under 21 with court order
Indiana	Yes		None	None	None	None	
Iowa	Yes		1	None	None	16	
Kansas	Yes		None	None	3	16	
Kentucky	Yes		None	None	None	18	
Louisiana	Yes		None	None	None	None	

TABLE 4B

Child-Caring Agencies - Licensure Requirements and Limitations (continued)

STATE	License Required Yes	No	Number of Children Min.	Max.	Ages of Children Min.	Max.	Comments
Maine	Yes		None	None	None	16	
Maryland	Yes		None	None	None	None	
Massachusetts	Yes		1	None	None	16	
Michigan	Yes		None	None	None	18	
Minnesota	Yes		2	None	None	18	
Mississippi	Yes		None	None	None	None	
Missouri	Yes		1	None	None	17	
Montana	Yes		None	None	None	None	
Nebraska	Yes		7	None	None	None	
Nevada	Yes		5	None	None	18	
New Hampshire	Yes		1	None	None	18	
New Jersey	Yes		5	None	2	None	
New Mexico	Yes		None	None	None	None	
New York	Yes		None	None	None	16	
North Carolina	Yes		None	None	None	None	
North Dakota	Yes		1	None	None	18	
Ohio	Yes		None	None	None	None	
Oklahoma	Yes		None	None	None	18	
Oregon	Yes		None	None	None	16	
Pennsylvania	Yes		7	None	None	16	
Puerto Rico	Yes		6	None	None	18	
Rhode Island	Yes		None	None	None	None	
South Carolina	Yes		None	None	None	18	
South Dakota	Yes		None	None	None	Majority	
Tennessee	Yes		None	None	None	17	

TABLE 4B

Child-Caring Agencies - Licensure Requirements and Limitations (continued)

STATE	License Required		Number of Children		Ages of Children		Comments
	Yes	No	Min.	Max.	Min.	Max.	
Texas	Yes		6	None	None	None	
Utah		None	None	None	None	None	
Vermont	Yes		None	None	None	None	
Virgin Islands	Yes		None	None	None	18	
Virginia	Yes		None	None	None	None	
Washington	Yes		None	None	None	None	
West Virginia	Yes		None	None	None	None	
Wisconsin	Yes		4	None	None	None	
Wyoming	Yes		None	None	None	17	

Source: Research by staff of Runaway Children Project.

CHAPTER 9

LEGAL ABILITY OF RUNAWAY CHILD TO CONSENT TO MEDICAL OR SURGICAL CARE

At common law a minor could not legally consent to be provided with medical or surgical care (except sometimes in certain emergency situations).[1] Although there were exceptions, the consent of the parent or guardian before such treatment was required.

> Under the old common law rule...the consent of the parent or guardian was considered necessary before a physician could treat a minor, and physical contact by a physician with a minor without parental consent could constitute assault and battery and malpractice and make the physician liable for damages in a civil suit.[2]

By statute in many states it is provided that a minor who is emancipated and/or married may give an effective consent to medical or surgical care.[3] However, as we have seen in an earlier chapter,[4] unless a runaway child has been foresighted enough to obtain an emancipation decree before running away from home, such statute is not likely to be of much assistance to the minor in receiving the needed medical services. Such statute merely states that an emancipated minor may give a valid consent to medical care. But it leaves the proof of who is an emancipated minor up to the courts in each individual case. And the burden of proof would be on the person asserting the emancipation, in this case, the physician (if, for example, there were a suit for malpractice as a result of the medical care provided).

In more recent years many statutes have been enacted giving minors the right to consent to medical care without parental consent for certain situations, i.e., pregnancy, venereal disease, and contraceptive services.[5] The liberalization of some of these statutes relating to the legal ability of a minor to consent to certain medical treatment may prove beneficial, i.e., the ability of a runaway minor to consent to treatment for venereal disease or pregnancy. How beneficial, however, will depend on the availability of the services and the willingness of physicians and surgeons to treat minors who are not known to them and who admit that they are from another state or county.

The overall topic covered in this chapter will be treated under six sub-headings: (1) Legal capacity of a minor to consent generally to medical care; (2) Legal ability of a minor to consent to medical or surgical treatment in emergencies; (3) Legal ability of a minor to consent to medical treatment for pregnancy by special statutory provision; (4) Legal ability of a minor to consent to treatment for venereal disease without parental consent; (5) Eligibility of a minor to consent to the provision of contraceptive services from health and welfare departments; (6) Confidentiality of records relating to the provision of health services to minors.[6]

1. *Legal Capacity of a Minor to Consent Generally to Medical Care*

Surprisingly, in 17 of the 54 jurisdictions studied there could be found no cases or statutes covering the question of whether a minor could consent to the provision of general medical care without parental consent.[7] Presumably in those jurisdictions the common-law rule would prevail and parental consent would be required before medical care could be provided to a minor.[8] In Guam the common-law rule has been codified.

In 28 jurisdictions a minor who is married may give a valid consent to the provision of medical care. In 8 jurisdictions an emancipated minor may give consent to the provision of medical services without parental consent. Six jurisdictions have adopted what is known as the "mature minor doctrine."

That doctrine has been codified by the State of New Hampshire as follows:

> Nothing contained herein shall be construed to mean that any minor of sound mind (and 12 years of age or older) is legally incapable of consenting to medical treatment provided that such minor is of sufficient maturity to understand the nature of such treatment and the consequences thereof.[9]

The same doctrine has been incorporated into the statutes of Mississippi. Kansas, Michigan, Ohio and Washington established the same "mature minor doctrine" through judicial decisions.

Whether the "mature minor doctrine" comes about through statutory enactment, as in New Hampshire and Mississippi, or by judicial interpretation, as in Kansas, Michigan, Ohio and Washington, these enactments and decisions cannot be said to presage a complete breakthrough so as to result in all mature minors suddenly being released from the constraints of securing parental consent for medical care. The persons involved in the cases through which the judicial doctrine was evolved were in their late teens. More importantly, the decision as to whether the individual is a mature minor is a decision made by the supplier of services - and he makes it at his own risk.

It seems doubtful at this point whether the "mature minor doctrine" - much as it may be of assistance to nonrunaways - will prove of major import in securing the provision of needed medical care for runaway children.

The statutes governing the ability of a minor to consent generally to the provision of medical care without parental consent also contain many individual jurisdictional differences which make any broad generalizations difficult.

For example:

* In Alabama, not only may a married minor consent to medical care, but so also may a minor who has been married and is now divorced, a pregnant minor, a minor who has borne a child, and a high school graduate who is 14 years of age or older.

* In California, these minors may consent to medical care: minors in the armed services and minors 15 years old, living separate and apart from their parents, with or without parental consent and managing their own money without regard to the source of that money. Colorado has the same provision.

* In Georgia, a married minor may consent, but so may any person, adult or minor, for his minor child, any married person, whether adult or minor, for self and spouse; a guardian for a ward; a person in loco parentis for a minor; any female in connection with pregnancy or prevention thereof; if parents are absent, an adult for a brother or sister; and if parents are absent, a grandparent for a minor grandchild.

Other examples of special situations in which a minor may consent to medical services generally are set forth in Table 5, infra. Of course, where such rights to consent to medical care is worded in broadly general terms - as where the right is given to consent to medical care generally to a minor of a certain age - that would include the right to consent to emergency medical care and should be considered as included in the citations contained in Table 5A, infra.

2. *Legal Ability of a Minor to Consent to Medical or Surgical Treatment in Emergencies*

Twenty-five jurisdictions have no statutes of judicial decisions specifically relating to whether a minor could effectively give consent to medical or surgical treatment in an emergency. These jurisdictions also had no cases indicating whether those jurisdictions would follow the general case law pattern of other jurisdictions of permitting the provision of medical care for minors in emergencies or where the minor is emancipated or whether the courts of those jurisdictions would follow the "mature minor doctrine."[10]

The legal provisions with respect to the legal capacity of a minor to consent to the provision of medical and surgical services vary greatly from jurisdiction to jurisdiction. In Alabama and Kentucky such services may be provided if the physician believes that unless such services are provided the health of the minor will be endangered. By court decision in Arizona and by statute in Nevada and New Mexico consent to the provision of such services may be given by a person standing in loco parentis to the minor. In Florida, Indiana, Maine, South Carolina and Utah, the Attorney General has ruled that a physician has the legal authority to provide medical care to minors in emergencies without parental consent.

By statute in Georgia, Illinois, Massachusetts, Minnesota, Mississippi, New York, Pennsylvania, Rhode Island and Virginia, a physician may provide medical care to a minor in an emergency without parental consent. In Montana such emergency care is limited to psychiatric care. By Supreme Court decisions a physician may treat a minor in Michigan and, if the parent cannot be located, in West Virginia. Of course, in states which recognize the "mature minor doctrine" - Kansas, Michigan, Mississippi, New Hampshire, Ohio and Washington - a minor may legally consent to the provision of medical care in an emergency. Oklahoma has a "Good Samaritan" statute

> which protects from civil damages any licensed practitioner of a healing art who in good faith renders emergency care or treatment at the scene of the emergency...no person who is a licensed practitioner of a healing art in the State of Oklahoma shall be prosecuted under the criminal statutes of this State for treatment of a minor without the consent of a minor's parent or guardian when such treatment was performed under emergency conditions and in good faith.[11]

Some states have established by statute elaborate procedures for procuring for minors consent to the provision of medical care in emergency situations. Thus, North Carolina provides that

> a physician may treat a minor without parental permission where the parent or parents, the guardian or a person standing in loco parentis cannot be located within a reasonable time, where the identity of the child is unknown, or where the need for immediate medical treatment that any effort to secure approval would delay the treatment so long as to endanger the life of the minor...Any physician treating a minor under the emergency provisions of the law is not liable in damages for having proceeded without the permission of the parent or guardian...No surgery may be performed upon a minor under the emergency provision unless the surgeon obtains the opinion of another physician as to the necessity for such surgery except in a rural community where it is impossible for the physician to contact another physician.[12]

The Texas statutory provision, with respect to the consent needed before emergency medical care may be provided to a minor without parental consent, provides that if neither parent can be contacted in situations where parental consent is a prerequisite for the provision of medical care any of the following may give consent: any grandparent, an adult brother or sister, an aunt or uncle, the legal guardian, any other person who has custody of the child and has an affidavit signed by one or both parents authorizing the person to give consent. The consent must be in writing and include: name of the child, name of one or both parents, name of person giving consent and that person's relationship to the child, name of the doctor or medical facility rendering the service, nature of the medical care to be rendered, date.[13]

A runaway child in need of emergency medical care would find great difficulty in obtaining it in very many of the jurisdictions studied because of the inability of such child to give effective legal consent to the provision of such medical care. From the standpoint of the runaway child, what is needed is a model statute, adopted by all of the jurisdictions, which is carefully worded to safeguard parental rights, to authorize duly licensed physicians and surgeons to provide medical care to minors under emergency circumstances, and to hold the physician or surgeon harmless both civilly and criminally except for negligence.

3. *Legal Ability of a Minor to Consent to Medical Treatment for Pregnancy by Specific Statutory Provision*

In 32 of the jurisdictions studied no special statutory provisions were found which would permit a female minor to consent to medical treatment for pregnancy.[14]

In the following states a minor of any age may give a legally valid consent to treatment for pregnancy without parental consent: Alabama, Georgia, Kentucky, Maryland, Minnesota, Mississippi, Montana, New Jersey, New Mexico, Pennsylvania and Virginia.

The Utah Attorney General has ruled that medical care may be furnished an unwed pregnant minor on the ground that it is an emergency. Some of the statutes found permit consent to treatment for pregnancy at varying ages: Alaska: over 15, examinations only; Arkansas: 12 or older; Delaware: 12 or older; and Hawaii: 14 or over. In Arizona a minor 12 years of age or older who is unmarried and who was allegedly raped may consent to medical care. In California a minor of any age, if unmarried, may give a valid consent to medical care for pregnancy.

Colorado's statute on the subject is more elaborate. That statute provides that a licensed physician is authorized to

provide birth control information and any services to any minor who: (1) is married, (2) is a parent, (3) is pregnant, (4) has the consent of parent or guardian, (5) as to whom failure to provide such services would create a serious health hazard, or (6) is referred for such services by a physician, clergyman or planned-parenthood agency. The Illinois statute on this subject is the same as that of Colorado. The Missouri statute permits a minor of any age to consent to medical care for pregnancy, with the exception of consenting to an abortion.

The major unanswered legal question with respect to the ability of a minor to consent to medical care for pregnancy without parental consent is the extent of the medical treatment to which the minor is authorized to consent.

> At least 16 states now provide specifically that minors may consent to medical and surgical treatment related to pregnancy. While this has been held by a court in at least one state to include therapeutic abortion, it is not clear to what extent "treatment related to pregnancy" will be construed to include contraception, i.e., the prevention of pregnancy.[15]

Apparently, the state legislature of Missouri believed that the blanket permission contained in the generalized statutes of the other states which had enacted statutes permitting minors to consent to medical and surgical care relating to their pregnancies was too broad, and therefore specifically excluded the right to consent to abortions.

This is a problem potentially very important to runaway children. The least that could be done is to make certain that the statutes relating to this subject are clearly worded so as to reflect the purpose of the legislature. Vague wording of these statutes permits varying interpretations and, perhaps, may either force physicians to act at their peril or to deny needed services to a minor whom the legislature intended to be eligible for such services.

4. *Legal Ability of a Minor to Consent to Treatment for Venereal Disease Without Parental Consent*

In marked contrast to the statutes with respect to the ability of a minor to consent to medical treatment for pregnancies,[16] where statutes on that subject were enacted in only 22 of the jurisdictions studied, statutes were found in all but four of those same jurisdictions relating to the ability of a minor to request and receive treatment for venereal disease without parental consent.[17]

The statutes, in describing the individuals who were legally authorized to request and receive medical services for the treatment of venereal disease, used such words as "any minor," a "minor of any age," "any person," etc. However, the statutes in some jurisdictions limit the ability to consent to the provision of treatment services for venereal disease to minors "twelve years of age," "minors 14 years of age or over," or "any female."

In only three of the jurisdictions (Arkansas, Nevada and New Hampshire) was there a specific provision with respect to informing the parents of the minor of the fact that the minor had received treatment for a venereal disease, i.e., the doctor may, but is not obliged to, inform the spouse, parent or guardian of the minor as to the treatment given;

such information may be given or withheld even over the minor's objection. In Colorado the physician providing medical care for a minor's venereal disease is protected from civil or criminal liability except for negligence.

For a discussion of the confidentiality of the records of physicians with respect to their provision of medical care to minors, see Subtopic (6) of this Chapter.[18]

5. *Eligibility of a Minor to Consent to Contraceptive Services From Health and Welfare Departments*

a. Health Services

Table 5D[19] indicates the statutory provisions located which govern the ability or inability of a minor to consent to the provision of contraceptive services without parental consent.

In 17 of the jurisdictions, the policies with respect to the provision of contraceptive services to minors without parental consent are determined locally, so there is no way of determining whether a runaway child would be eligible for contraceptive services in any particular locality in those jurisdictions. One jurisdiction, Alaska, provides information only and provides no services. Mississippi has no policy with respect to whether such services will or will not be provided to minors without parental consent. Kentucky, Maryland, Oregon and Virginia have statutes permitting any physician to provide contraceptive services without parental consent, although the Maryland law prohibits the provision of such services if they would result in sterilization. In 11 jurisdictions, state health department policies permit the provision of contraceptive services without parental consent. In two jurisdictions, parental consent is an absolute requirement for all minors.

The other jurisdictions show wide variations in their policies governing the eligibility of minors for contraceptive services without parental consent. In 8 jurisdictions, a minor may consent to the provision of such services without obtaining the consent of any other person if the minor is married or, in 6 jurisdictions, if the minor is emancipated. In 6 jurisdictions only unmarried minors need parental consent to obtain such services.

Tennessee has an elaborate Family Planning Act under which contraceptive supplies and information may be furnished to any minor who: (1) is pregnant, (2) is a parent, (3) is married, (4) has the consent of his or her parent or guardian, (5) has been referred for such services by another physician, clergyman, family planning clinic, school or institution of higher learning, any instrumentality of the state or any subdivision, (6) is in need of birth control procedures, supplies or information. That act, however, is limited to residents of Tennessee.

Restrictions limiting the provision of contraceptive services to residents do appear in the policies of some states but, since many of the policies are determined locally, such residence restrictions may be more widespread than may at first glance appear to be the case.

b. Welfare Services

Table 5E[20] indicates the eligibility requirements for contraceptive services furnished to minors under welfare programs.

In only five jurisdictions are the policies established locally. In 22 jurisdictions, parental permission is a prerequisite for the provision of contraceptive services. In 12 jurisdictions such permission is not required if the minor is married or emancipated (9 jurisdictions). However, in 15 jurisdictions, a minor may receive contraceptive services without anyone's permission. In 10 jurisdictions, all recipients of Federally aided programs, even if they are minors, are eligible.

6. *Confidentiality of Records Relating to the Provision of Health Services to Minors*

One of the most basic tenets of the medical profession is that "a physician may not reveal the confidences entrusted to him in the course of medical attendance...unless he is required to do so by law or unless it becomes necessary in order to protect the welfare of the individual or of the community."[21]

When the doctor's patient is a minor, not only do serious legal questions arise as to the ability of the doctor to give a valid consent legally to the medical treatment needed by the minor;[22] questions arise also as to whether and to what extent the doctor is under a legal obligation to inform the parents or guardian of the minor of the fact that treatment was given to the minor and the nature of the treatment. May the doctor make such a disclosure over the express objection of the minor? If the physician nonethless informs the parents or guardian of the minor, would the physician be violating the Principles of Medical Ethics? On the other hand, until the minor reaches the age of majority or is sooner emancipated, the minor's parents or legal guardian have the right to the minor's care, custody and control and the corollary duty to supply the minor with necessaries, including necessary medical care. If the physician treats the minor without parental consent and then fails to inform the parent or guardian of that fact,

could it be said that the physician had interfered with care, custody and control of that minor which is legally vested in the parent or guardian?

> There is virtually no case law on the question of what a physician may disclose to the parents of his minor patients; the few cases on this subject are inconclusive. In deciding this question, a court might consider the age and maturity of the child, the nature of the service rendered and the degree of risk involved to the life and/or health of the patient.[23]

The paucity of cases on this important point should not be surprising. It is only recently that possible rights of children have been the subject of judicial scrutiny. And minors are more and more taking to the courts to assert such rights. From the standpoint of parents, minors and physicians, this is too important an area to be left uncovered by clear statutory provisions.

Statutes in many jurisdictions have covered some aspects of the confidentiality of the relationship between the physician and the minor patient. These statutes are those authorizing a minor to consent to the provision of medical treatment either generally or with respect to particular ailments, e.g., pregnancy, venereal disease, drug addiction, etc. The major relevant provisions of such statutes are described below.

ARKANSAS. Venereal disease: The physician treating a minor for venereal disease may, but is not obligated to, inform the spouse, parent or guardian of the minor as to the treatment given or needed. The information may be given even over the minor's objections.

CALIFORNIA. General: A physician, with or without the consent of a minor patient, may advise the parents or guardian of the treatment given or needed if the physician has reason to know, on the basis of the information given by the minor patient, the whereabouts of the minor's parents or guardian.

COLORADO. Venereal disease: Any physician may diagnose and treat any minor for venereal disease without the consent or notification of the parent or guardian of the minor. In any such case the physician is protected from civil or criminal liability except for negligence.

DELAWARE. Pregnancy or venereal disease: Physician in sole discretion may provide or withhold from the parents or legal guardian or spouse of minor pregnant or afflicted with venereal disease such information as to diagnosis or treatment as physician deems advisable with primary to the best interests of the minor. Notice of intention to perform any operation under the pregnancy-venereal disease statute must be given parents or guardian by telegram, but operation

may proceed if the physician believes that delay will endanger the life of the minor or there is a reasonable possibility of irreparable injury.

DISTRICT OF COLUMBIA. Venereal disease: Director of Public Health or his authorized agent is required to exercise reasonable diligence in locating a parent or person standing in loco parentis to the minor and notifying him that the minor is afflicted with a venereal disease.

FLORIDA. Venereal disease: Physician must make a sincere effort to persuade the minor to permit him to divulge the nature of the condition to the parent or parents of the minor. Physician may inform the spouse, parent, custodian or guardian of the minor as to the treatment given or needed. Such information may be given or withheld from the spouse, custodian or guardian without the consent of the minor patient.

GEORGIA. Venereal disease: The physician treating a minor for venereal disease may, but need not, inform the spouse, parent, custodian or guardian of the minor as to the treatment needed or given, and such information may be given or withheld even over the express refusal of the minor.

HAWAII. Pregnancy or venereal disease: Hospital, clinics or physician of any patient younger than 18 who is diagnosed as pregnant or afflicted with a venereal disease and such

information shall be given to the spouse, parent, guardian or custodian without the consent of the minor patient or even over the express refusal of the minor patient. If minor not diagnosed as pregnant or afflicted with venereal disease, withholding the information is within the discretion of the hospital staff, or clinic staff or physician.

ILLINOIS. Venereal disease: Any physician who provides diagnosis or treatment to a minor patient who has come in contact with any venereal disease may, but shall not be obligated to, inform the parent, parents or guardian of any such minor as to the treatment given or needed.

IOWA. Venereal disease: Physician must notify minor's parents that the minor has a venereal disease when it appears that the minor might communicate the disease to the minor's family.

KANSAS. Venereal disease: Physician may, but need not, inform spouse, parent, custodian, guardian or fiance of such minor as to the treatment given or needed.

KENTUCKY. Venereal disease, pregnancy, alcohol or other drug abuse, contraception or childbirth: No notice need be given to anyone.

LOUISIANA. Venereal disease: Physicians providing treatment for venereal disease may, but are not obligated to, inform the spouse, parent or guardian of any minor treated for venereal disease.

MAINE. Venereal disease and drug abuse: A licensed physician who, in the exercise of due care, treats a minor for venereal disease or drug abuse, is under no obligation to obtain the consent of or inform the parent or guardian of such minor.

MARYLAND. Pregnancy and venereal disease: Entirely within the physician's discretion as to whether to inform the spouse, parent, custodian or guardian when advice or treatment given minor.

MICHIGAN. Venereal disease: The treating physician may, but need not, inform the spouse, parent or guardian of such minor as to the venereal disease treatment given or needed and such information may be given to or withheld from such spouse, parent or guardian even over the express objection of the minor.

MINNESOTA. Venereal disease: The health professional may inform the parent or legal guardian of the minor patient of any treatment given or needed where, in his or her judgement, failure to inform the parent or guardian would seriously endanger the health of the minor.

MISSISSIPPI. Venereal disease: Any licensed physician who, in the exercise of due care, treats a minor for venereal disease is under no obligation to obtain the consent of or inform the parent or guardian of the minor.

MISSOURI. Pregnancy or venereal disease: The physician may, with or without the consent of the minor, notify the minor's parents if the minor has venereal disease or is pregnant.

MONTANA. Pregnancy or venereal disease: A treating physician may, but need not, inform the spouse, parent or guardian given or needed even over express refusal of minor patient. The law applies whether or not the professed suspicions of pregnancy or venereal disease are medically substantiated.

NEBRASKA. Venereal disease: If a minor is under 16, who may be suffering from or have been exposed to venereal disease, physician must write parent or guardian requesting them to come in to discuss child's health problems. If over 16, same letter unless minor has been emancipated. Minor is emancipated if: (1) married male and has established own residence, (2) lives and works away from parental jurisdiction, especially in another jurisdiction, and parents' whereabouts are unknown to child, (3) is a married man, (4) holds a franchise, (5) found under circumstances indicating abandonment of parental rights and no one else has acquired such rights through legal process.

NEW JERSEY. Venereal disease: Physician may, but need not, inform spouse, parent, custodian or guardian of the treatment given for venereal disease or needed and may do so even over the express refusal of the minor patient.

OREGON. Venereal disease: Physician may notify parent or legal guardian of diagnosis or treatment without the consent of the patient.

SOUTH DAKOTA. Venereal disease: Treatment of a minor for venereal disease by a county health department, state health department or doctors attached to such departments, shall be offered to a minor, if available, upon the minor's request and without the necessity of consent of parents or notification of parents.

VERMONT. Venereal disease or drug usage: If minor 12 years of age or older is suspected of having a venereal disease and the findings of such venereal disease are verified by a licensed physician, the physician must notify the parent, parents or guardian if the condition of the minor requires immediate hospitalization for treatment of venereal disease or as a result of drug usage.

Table 5F[24] sets forth the above information in tabular form. It will be noted that most of the statutes relating to this aspect of the confidentiality of medical records relate to treatment of venereal disease.

It should, however, be noted that according to the information in Table 5C (p. 210), many more states authorize a minor to consent to treatment for venereal disease, without making mention as to whether the physician treating the minor must or may notify the parent or guardian of the treatment. The same holds true with respect to treatment for pregnancies and for the provision of

contraceptive services. Without such statutory protections the child, the parents and the physician providing the services may well face future legal problems.

FOOTNOTES

[1] See infra, this chapter.

[2] See Family Planning: An Analysis of Laws and Policies in the United States, 1974, DHEW Publication (HSA) 74-16001, Washington, D. C. at page 70. See also: Minor's Rights to Medical Care, Pilpel, H. F., 36 Albany Law Review No.3, (Spring 1972) pps. 462-287.

[3] See infra, this chapter.

[4] See Chapter 5, supra.

[5] See infra, this chapter.

[6] Much of the material contained in this chapter is derived from Family Planning: An Analysis of Laws and Policies in the United States, supra Note 2, revised and updated in the light of the legal research on other topics during the course of this study.

[7] See Table 5, infra, p. 201.

[8] Except possibly in an emergency, see infra, this chapter, Section 2.

[9] N. H. Rev. Stat. Ann. Sec. 318-B; 12-a (Supp. 1971).

[10] See Table 5A, infra, p. 204.

[11] Family Planning, supra Note 2. However, under Rogers v Sells, 178 Okla. 103, 61 P. 2d 1018 (1936), the burden of proving that an emergency existed rests with the physician.

[12] Id.

[13] Id.

[14] See Table 5B, infra, p. 207.

[15] Family Planning, supra, Note 2, at p. 75.

[16] See Subtopic (3) this chapter, supra.

[17] See Table 5C, infra, p. 210. The four jurisdictions with respect to which no statutes were found authorizing a minor, without parental consent, to consent to medical care for the treatment of a venereal disease were: Guam, Puerto Rico, Washington and Wyoming.

[18] See p. 190.

[19] See p. 212.

[20] See p. 216.

[21] Family Planning, supra, Note 2, quoting from "Principles of Medical Ethics of the American Medical Association," Section 9 (1971).

[22] See supra, this chapter.

[23] Family Planning, supra, Note 2, at p. 77.

[24] See p. 219.

TABLE 5

Legal Capacity of a Minor to Consent Generally to Medical Care

STATE	No cases or stats	Married minor	Mature Minor Doctrine	Emancipated Minor	Notes and/or Comments
Alabama		Yes			Note 1
Alaska		Yes			
Arizona		Yes		Yes	
Arkansas	None				
California		Yes			Note 2
Colorado		Yes			Note 2
Connecticut	None				
Delaware		Yes			
District of Columbia	None				
Florida		Yes			
Georgia		Yes			Note 3
Guam					Consent of parent, guardian or court
Hawaii	None				
Idaho	None				
Illinois		Yes			If pregnant
Indiana				Yes	If married and living with spouse
Iowa				Yes	
Kansas			Yes		Note 4
Kentucky		Yes		Yes	Also: has borne a child
Louisiana		Yes			

Note 1. Also: if married and divorced, pregnant, has borne a child, high school graduate, if 14 years of age or older.
Note 2. Also: in armed services; is 15 years old, living separate and apart from parents, with or without their consent and managing own income regardless of sources.
Note 3. Also: any person, adult or minor, for his minor child; any married person, whether minor or adult, for self and spouse; guardian for ward or person in loco parentis for a minor; any female regardless of age in connection with pregnancy or prevention thereof; if parents absent, an adult for a brother or a sister; if parents absent, a grandparent for a minor grandchild.
Note 4. Also: minor 16 or older if parents not immediately available.

TABLE 5

Legal Capacity of a Minor to Consent Generally to Medical Care (continued)

STATE	No cases or stats	Married Minor	Mature Minor Doctrine	Emancipated Minor	Notes and/or Comments
Maine	None				
Maryland		Yes			Minor parent of a child
Massachusetts	None				
Michigan		Yes	Yes	Yes	
Minnesota		Yes			Also: has borne a child
Mississippi		Yes	Yes	Yes	Note 5
Missouri		Yes			Note 6
Montana		Yes			
Nebraska	None				
Nevada		Yes			Note 7
New Hampshire			Yes		
New Jersey		Yes			Also if pregnant
New Mexico		Yes			
New York		Yes			Also minor parent of a child
North Carolina		Yes		Yes	
North Dakota		Yes			
Ohio			Yes		
Oklahoma		Yes			
Oregon					Minor 15 yrs or older
Pennsylvania		Yes			Note 8

Note 5. Also: if parents absent, an adult for minor brother or sister.
Note 6. Also: any person, whether adult or minor, for his minor child; any married person, whether minor or adult, for self and spouse.
Note 7. Also: any person, whether adult or minor, for his minor child.
Note 8. Also: has graduated from high school, is 15 years or older.

TABLE 5

Legal Capacity of a Minor to Consent Generally to Medical Care (continued)

STATE	No cases or stats	Married Minor	Mature Minor Doctrine	Emancipated Minor	Notes and/or Comments
Puerto Rico	None				
Rhode Island					Note 9
South Carolina		Yes			
South Dakota		Yes		Yes	
Tennessee	None				
Texas		Yes			
Utah	None				
Vermont	None				
Virgin Islands	None				
Virginia	None				
Washington			Yes		
West Virginia	None				
Wisconsin	None				
Wyoming	None				

Note 9. Also: minor 16 years of age or older if parents not immediately available.

TABLE 5A

Legal Ability of a Minor to Consent to Medical or Surgical Treatment in Emergencies

STATE	
Alabama	Any minor if MD believes delay would endanger minor's life, health or mental health
Alaska	Note 1
Arizona	Consent may be given by person standing in loco parentis
Arkansas	Note 1
California	Note 1
Colorado	Note 1
Connecticut	Note 1
Delaware	Note 1
District of Columbia	Note 1
Florida	A.G. Op. MD may treat minor in emergency without parental consent
Georgia	MD may treat minor in emergency - statutory provision
Guam	By Juvenile Code consent of parent, guardian or court order needed - no exceptions
Hawaii	Note 1
Idaho	Note 1
Illinois	By statute MD may treat minor in emergency - statutory provision
Indiana	A.G.Op. MD may treat minor in emergency
Iowa	MD may treat minor in emergency - Supreme Court Opinion
Kansas	Mature minor doctrine
Kentucky	Any minor if MD believes delay would endanger minor's health, life or mental health
Louisiana	MD may treat in emergency if reasonable effort made to locate parents
Maine	A.G.Op. MD may treat minor in emergency without parental consent
Maryland	Note 1
Massachusetts	MD may treat if delay would endanger minor's life - statutory provision
Michigan	MD may treat minor in emergency if parents cannot be found - Supreme Court Opinion
Minnesota	MD may treat minor in emergency if delay would endanger minor's life - stat. prov.

Note 1. No cases indicating whether this jurisdiction follows general pattern of permitting th e provision of medical care for minors in time of emergency or where minor is emancipated or whether the courts of this jurisdiction would follow the "mature minor doctrine."

TABLE 5A

Legal Ability of a Minor to Consent to Medical or Surgical Treatment in Emergencies (continued)

STATE	
Mississippi	MD may treat minor in emergency without parental consent - statutory provision
Missouri	Note 1
Montana	Statutory provision permitting emergency care applicable only to psychiatric care
Nebraska	Note 1
Nevada	In emergencies, person in loco parentis may give consent - statutory provision
New Hampshire	Note 1
New Jersey	Note 1
New Mexico	In emergencies, person in loco parentis may give consent - statutory provision
New York	MD may treat if delay trying to find parents would endanger minor - statutory provision
North Carolina	Note 2

Note 1. No cases indicating whether this jurisdiction follows general pattern of permitting the provision of medical care for minors in time of emergency or where minor is emancipated or whether the courts of this jurisdiction would follow the "mature minor doctrine."

Note 2." A physician may treat a minor without parental permission where the parent or parents, the guardian or a person standing in loco parentis cannot be located within a reasonable time, where the identity of the child is unknown, or where the need for immediate medical treatment is so apparent that any effort to secure approval would delay the treatment so long as to endanger the life of the minor." [N.C. Gen. Stat. Sec. 90-21.1 (1969 Cum. Supp.)]

"Any physician treating a minor under the emergency provisions of the law is not liable in damages for having proceeded without the permission of the parent or guardian." [N.C. Gen. Stat. Sec. 90-3(1969 Cum. Supp.)]

No surgery may be performed under the emergency provision unless surgeon obtains opinion of another physician as to necessity for such surgery, except in a rural community where it is impossible for the physician to contact another physician." [N.C. Gen. Stat. Sec. 90-21.2; Sec. 90-21.3 (1969 Cum. Supp.)]

TABLE 5A

Legal Ability of Minor to Consent to Medical or Surgical Treatment in Emergencies (continued)

STATE	
North Dakota	Note 1
Ohio	Note 1
Oklahoma	Good Samaritan law with respect to minors
Oregon	Note 1
Pennsylvania	MD may treat if delay to secure consent would endanger minor - statutory provision
Puerto Rico	Note 1
Rhode Island	Person 16 or married may consent - statutory provision
South Carolina	A.G. Op. In certain circumstances parental consent not needed.
South Dakota	Note 1
Tennessee	Note 1
Texas	Note 3
Utah	A.G. Op. common law - emergencies excepted from need of consent
Vermont	Note 1
Virgin Islands	Note 1
Virginia	MD may provide if minor separated from parental custody or cannot be located. STAT
Washington	Note 1
West Virginia	MD can operate in emergency if parents not close by - Supreme Court Opinion
Wisconsin	Note 1
Wyoming	Note 1

Note 1. No cases indicating whether this jurisdiction follows general pattern of permitting the provision of medical care for minors in time of emergency or where the minor is emancipated or whether the courts of this jurisdiction would follow the "mature minor doctrine."

Note 3. If any person younger than 21 years needs medical care for which parental care is a prerequisite, but neither parent can be contacted to give consent, any of the following persons may give consent, absent actual notice by one or both parents: (a) any grandparent, (b) an adult brother or sister, (c) an aunt or uncle, (d) the legal guardian, (e) any other person who has custody of the child and has an affidavit signed by one or both parents authorizing the person to give consent. Consent must be in writing and include: name of the child, name of one or both parents, name of person giving consent and that person's relationship to the child, name of doctor or medical facility rendering the service, nature of medical care to be rendered, date.

TABLE 5B

Legal Ability of Minor to Consent to Medical Treatment For Pregnancy By Specific Statutory Provision

STATE	
Alabama	Minor of any age may consent to examination and treatment for pregnancy
Alaska	Examinations, without parental consent, of minors over 15 permitted.
Arizona	Minor 12 or older, alleged raped, unmarried, may consent to medical and surgical treatment.
Arkansas	Note 1
California	Minor, any age, unmarried, may consent to medical and surgical care for pregnancy
Colorado	Note 2
Connecticut	Note 1
Delaware	Minor 12 years may consent to medical and surgical care for pregnancy
District of Columbia	Note 1
Florida	Note 1
Georgia	Minor any age may consent to medical care regardless of marital status
Guam	Note 1
Hawaii	Minor 14 may consent to examination, treatment, including abortions
Idaho	Note 1
Illinois	Note 2
Indiana	Note 1
Iowa	Note 1
Kansas	Unmarried pregnant minor may consent to medical care
Kentucky	Any minor may consent to examination, treatment and childbirth
Louisiana	Note 1

Note 1. No special statutes or judicial decisions were found relating to the legal ability of a minor to consent to medical services because of the minor's pregnant condition in this jurisdiction.

Note 2. A licensed physician is authorized to provide birth control information and services to any minor who: (1) is married, (2) is a parent, (3) is pregnant, (4) has the consent of his parent or guardian, (5) as to whom failure to provide such services would create a serious health hazard, or (6) is referred for such services by a physician, clergyman or planned-parenthood agency.

TABLE 5B

Legal Ability of a Minor to Consent to Medical Treatment For Pregnancy By Specific Statutory Provision (continued)

STATE	
Maine	Note 1
Maryland	Any minor may consent to advice and treatment with respect to pregnancy
Massachusetts	Note 1
Michigan	Pregnant children may be provided with treatment if parents cannot provide
Minnesota	Any minor may consent to diagnosis and treatment of pregnancy and diseases associated
Mississippi	Any female may consent to medical and surgical treatment for pregnancy and childbirth
Missouri	Minors may consent to all medical care concerning pregnancy except abortion
Montana	Minor may consent to all medical care concerning pregnancy - no other consent needed
Nebraska	Note 1
Nevada	Note 1
New Hampshire	Note 1
New Jersey	Pregnant minors may consent to medical or surgical care relating to their pregnancies
New Mexico	Minor of any age may consent to diagnosis and examination with respect to pregnancy
New York	Note 1
North Carolina	Note 1
North Dakota	Note 1
Ohio	Note 1
Oklahoma	Note 1
Oregon	Note 1
Pennsylvania	Minor of any age may consent to diagnosis or treatment for pregnancies
Puerto Rico	Note 1
Rhode Island	Note 1
South Carolina	Note 1
South Dakota	Note 1
Tennessee	Note 1

Note 1. No special statutes or judicial decisions were found relating to the legal ability of a minor to consent to medical services because of the minor's pregnant condition in this jurisdiction.

TABLE 5B

Legal Ability of a Minor to Consent to Medical Treatment For Pregnancy By Specific Statutory Provision (continued)

STATE	
Texas	Note 1
Utah	A.G. Op. Medical care may be furnished unwed pregnant minor on grounds of emergency
Vermont	Note 1
Virgin Islands	Note 1
Virginia	Any person under 18 may consent to medical services because of pregnancy
Washington	Note 1
West Virginia	Note 1
Wisconsin	Note 1
Wyoming	Note 1

Note 1. No special statutes or judicial decisions were found relating to the legal ability of a minor to consent to medical services because of the minor's pregnant condition in this jurisdiction.

TABLE 5C

Legal Ability of a Minor to Consent to Treatment For Venereal Disease Without Parental Consent

STATE	
Alabama	Minor of any age
Alaska	Any minor
Arizona	Minor of any age
Arkansas	Any minor. Note 1
California	Any minor 12 years of age
Colorado	Any minor. Note 2
Connecticut	MD's in P.H. Departments, agencies, private hospitals, and clinics not liable without parent consent
Delaware	Minor 12 years of age
District of Columbia	Minor at any public health facility
Florida	Any minor
Georgia	Any minor
Guam	Note 3
Hawaii	Minor 14 years or over
Idaho	Minor 14 or older
Illinois	Minor 12 years or older
Indiana	Younger than 21
Iowa	Minor 16 or more may consent
Kansas	Any minor
Kentucky	Any minor. No consent or notification to parents or guardian
Louisiana	Any minor
Maine	Any minor. Note 4
Maryland	May consent if seeking advice or treatment for VD
Massachusetts	Minor - if unable to pay may receive treatment at publicly maintained facilities
Michigan	Minor can consent
Minnesota	Any minor - consent to diagnosis and treatment of pregnancy and conditions thereof

Note 1. Doctor may, but is not obliged to, inform spouse, parent, or guardian of minor as to treatment given. Information may be given or withheld even over minor's objection.

Note 2. Physician protected from civil or criminal liability except for negligence.

Note 3. Parents, guardian or others having control of children shall not conceal the fact that a child has a communicable disease.

Note 4. Physician under no obligation to obtain the consent of or inform the parent or guardian.

TABLE 5C

Legal Ability of a Minor to Consent to Treatment For Venereal Disease Without Parental Consent (continued)

STATE	
Mississippi	Any female - consent to medical or surgical care - married or unmarried
Missouri	Any minor
Montana	Any minor - no other consent necessary
Nebraska	Any minor - minor must consent in writing - parental consent not required
Nevada	Note 1
New Hampshire	Note 1
New Jersey	Any minor
New Mexico	A minor regardless of age
New York	Any person under 21 years of age without knowledge or consent of parent or guardian
North Carolina	Any minor
North Dakota	Any person 14 or older
Ohio	Any minor
Oklahoma	Minors regardless of age
Oregon	Minor 12 years of age
Pennsylvania	Any minor
Puerto Rico	No special statute relating to minors
Rhode Island	Minor of any age
South Carolina	Minor of any age may give consent
South Dakota	Minor of any age
Tennessee	Any minor
Texas	Any person of any age
Utah	Any minor
Vermont	Minor 12 years of age
Virgin Islands	Any person
Virginia	Any minor
Washington	Any minor 14 or older
West Virginia	Any minor
Wisconsin	No special statute relating to minors
Wyoming	No special statute relating to minors

Note 1. Doctor may, but is not obliged to, inform spouse, parent, or guardian of minor as to treatment given. Information may be given or withheld even over minor's objection.

TABLE 5D - EXPLANATION OF SYMBOLS

A. Policies locally determined.

B. All minors eligible without parental consent.

C. Parental consent needed for all minors.

D. Married minors are eligible.

E. Emancipated minors are eligible.

F. Unmarried minors need consent.

TABLE 5D

Eligibility of a Minor for Contraceptive Services - Health Programs

STATE	A	B	C	D	E	F	Notes
Alabama		x					
Alaska							Note 1
Arizona				x	x		
Arkansas			x				
California				x	x		Note 2
Colorado		x					Resident
Connecticut	x						
Delaware				x			
District of Columbia		x					
Florida				x	x		
Georgia		x					
Guam		x					
Hawaii						x	
Idaho				x	x		
Illinois	x						
Indiana	x						
Iowa	x						
Kansas	x						
Kentucky	Statute: any physician may provide service without parental consent						
Louisiana		x					
Maine				x	x		Note 3
Maryland	Statute: any minor eligible without consent if does not amount to sterilization						
Massachusetts	x						
Michigan		x					
Minnesota		x					

Note 1. Information only - no services.

Note 2. 15 years is the minimum age if unmarried.

Note 3. Also previously pregnant.

x = statute pertains in that jurisdiction

TABLE 5D

Eligibility of a Minor for Contraceptive Services - Health Programs (continued)

STATE	A	B	C	D	E	F	Notes
Mississippi	No policy						Resident
Missouri				x	x		Note 4
Montana							Note 5
Nebraska	x						
Nevada							Note 6
New Hampshire		x					
New Jersey	x						
New Mexico	x						Note 7
New York	x						
North Carolina	x						
North Dakota	x						
Ohio		x					
Oklahoma							Note 8
Oregon	Statute: any physician without regard to age of patient						
Pennsylvania	x						

Note 4. Have been married or pregnant.

Note 5. Minors who are or have ever been married or pregnant or emancipated minors or sexually active minors if they have venereal disease or are pregnant are all eligible without parental consent.

Note 6. Parental consent needed by those who have never married or given birth.

Note 7. State law prohibits treatment for anything without parental consent.

Note 8. Minor's eligible if: (1) never married, (2) provides acceptable proof of impending marriage, (3) accompanying parent requests services, (4) referred by recognized agency, doctor, nurse or clergyman. No residence requirement.

x = statute pertains in that jurisdiction

TABLE 5D

Eligibility of a Minor for Contraceptive Services - Health Programs (continued)

STATE	A	B	C	D	E	F	Notes
Puerto Rico							Note 9
Rhode Island				x			
South Carolina	x						
South Dakota						x	
Tennessee							Note 10
Texas						x	Note 11
Utah						x	Resident
Vermont	x						
Virgin Islands			x				
Virginia	Statute: any person may consent						
Washington		x					
West Virginia						x	Resident
Wisconsin	x						
Wyoming	x						

Note 9. Minors must have approval if unmarried, unemancipated and not previously pregnant.

Note 10. Family Planning Act of 1971: Contraceptive supplies and information may be furnished to any minor who: (1) is pregnant, (2) is a parent, (3) is married, (4) has the consent of his or her parent or guardian, (5) has been referred for such services by another physician, clergyman, family planning clinic, school or institution of higher learning, any instrumentality of the state or any subdivision, (6) is in need of birth control procedures, supplies or information. Limited to residents of the state.

Note 11. Mexicans may not be served.

x = statute pertains in that jurisdiction

TABLE 5E - EXPLANATION OF SYMBOLS

A. No information.

B. Policies established locally.

C. Parental consent needed for provision of services to minors.

D. Parental consent not needed if minor is married.

E. Parental consent not needed if minor is emancipated.

F. Parental consent not needed.

G. Only married minors are eligible for services.

H. All recipients of Federally aided programs are eligible.

I. Recipients of general assistance are eligible.

TABLE 5E

Eligibility of a Minor for Contraceptive Services - Welfare Programs

STATE	A	B	C	D	E	F	G	H	I	Notes
Alabama			x							
Alaska										Note 1
Arizona			x	x	x					
Arkansas			x							
California						x				
Colorado								x		
Connecticut							x	x	x	
Delaware			x	x	x					
District of Columbia						x				
Florida		x								
Georgia						x				
Guam	x									
Hawaii			x							
Idaho		x								
Illinois						x				
Indiana			x	x	x					
Iowa						x		x		
Kansas			x			x				
Kentucky	Statute: any physician may provide contraceptive services without parental consent									
Louisiana			x							
Maine			x	x	x					
Maryland	Statute: permits consent to contraception by any minor									
Massachusetts							x			
Michigan			x							Note 2
Minnesota						x		x		
Mississippi										Note 3
Missouri			x	x	x					
Montana			x	x	x			x		
Nebraska						x		x		
Nevada		x								

Note 1. No services provided. Statute only permits the furnishing of information.

Note 2. Parental consent needed unless minor is receiving assistance in own right.

Note 3. Parental consent required for referral of minors except those who are emancipated or married. Minimum age for referral service without parental consent is 18. Mature unemancipated minor may consent under the Mississippi law.

x = statute pertains in that jurisdiction

TABLE 5E

Eligibility of a Minor for Contraceptive Services - Welfare Programs (continued)

STATE	A	B	C	D	E	F	G	H	I	Notes
New Hampshire			x							
New Jersey						x				
New Mexico						x		x		
New York						x				
North Carolina		x						x		
North Dakota			x	x				x		
Ohio			x	x	x					
Oklahoma				x				x		
Oregon	Statute: any physician without regard to age of patient									
Pennsylvania						x				
Puerto Rico			x	x						
Rhode Island			x							
South Carolina			x							
South Dakota			x							Note 4
Tennessee			x	x	x					Note 5
Texas						x				
Utah			x							Note 6
Vermont	x									
Virgin Islands			x	x	x					
Virginia	Statute: any person may consent if under 18									
Washington						x				
West Virginia		x								
Wisconsin							x			
Wyoming						x				

Note 4. If individual is under 18 and unmarried, parental consent is required.

Note 5. The Tennessee law seems contrary to this provision.

Note 6. Unmarried minors must have parental consent.

x = statute pertains in that jurisdiction

TABLE 5F

Notification of Parent or Guardian of Medical Treatment of a Minor

STATE	Gen.	VD	Preg.	Drug	Comments
Alabama		x	x	x	
Alaska					
Arizona				x	12 years or older
Arkansas		x			May but not obligated to inform even over minor's objection
California	x				May but not obligated to inform even over minor's objection
Colorado		x			Without notification
Connecticut				x	
Delaware		x	x	x	Notification within sole discretion of physician
District of Columbia		x		x	Must notify (VD)
Florida		x		x	May but not obligated to inform even over minor's objection (VD)
Georgia		x			May but not obligated to inform even over minor's objection
Guam					
Hawaii		x	x		May but not obligated to inform even over minor's objection
Idaho				x	Only with minor's consent
Illinois		x		x	May but not obligated to inform
Indiana				x	
Iowa		x			Must notify if might communicate disease to family
Kansas		x		x	May but not obligated to inform (VD)
Kentucky		x	x	x	Also contraception and childbirth. No notice to anyone
Louisiana		x		x	May but not obligated to inform
Maine		x		x	No obligation to inform
Maryland		x	x	x	No obligation to inform
Massachusetts					
Michigan		x		x	May but not obligated to inform even over minor's objection
Minnesota		x	x	x	May but not obligated to inform

x = statute pertains in that jurisdiction

TABLE 5F

Notification of Parent or Guardian of Medical Treatment of a Minor (continued)

STATE	Gen.	VD	Preg.	Drug	Comments
Mississippi		x			No obligation to inform
Missouri		x	x	x	May but not obligated to inform even over minor's objection
Montana		x	x	x	May but not obligated to inform even over minor's objection
Nebraska		x			Must write letter unless emancipated. See above
Nevada				x	MD must try to notify parents within reasonable time after treatment
New Hampshire					
New Jersey		x			May but not obligated to inform even over minor's objection
New Mexico				x	
New York					
North Carolina					
North Dakota				x	
Ohio				x	
Oklahoma					
Oregon		x		x	May but not obligated to inform even over minor's objection
Pennsylvania				x	May but not obligated to inform even over minor's objection
Puerto Rico					
Rhode Island					
South Carolina		x		x	
South Dakota		x			No obligation to inform
Tennessee				x	No obligation to inform
Texas				x	
Utah					
Vermont		x		x	Must notify if immediate hospitalization needed
Virgin Islands					
Virginia					
Washington				x	
West Virginia				x	
Wisconsin					
Wyoming					

x = statute pertains in that jurisdiction

CHAPTER 10

THE RUNAWAY CHILD AND THE CHILD LABOR LAWS

One of the first legal difficulties encountered by a runaway child may well be the Federal and state child labor laws. These laws were designed to protect the health, safety and welfare of children by prohibiting their gainful employment below a certain age or under certain conditions. These laws are closely meshed with the compulsory school laws which require children between certain ages to attend school regularly, unless excused for certain stated reasons.[1]

The child labor laws served a dual purpose:

1. They buttressed the compulsory school attendance laws by absolutely prohibiting an employer from hiring minors below certain ages or during certain hours of the day or days of the week and permited employers to hire slightly older minors only if they could present to the prospective employer a work permit usually obtainable through the school authorities; and,
2. They protected the child from being exploited by unscrupulous employers who might give a child of tender years tasks which might endanger the child's health, safety or welfare.

As has been noted elsewhere[2], there was at common law no duty placed upon a parent to see to it that a child received an education. At the same time the common law did say that a parent was entitled to the child's earnings. Without a compulsory school attendance law, there was a tendency for a parent to send the child to work at an early age as a supplement to the father's earnings. Even after the enactment of compulsory school laws[3], their enforcement could not compete with the more compelling reasons (usually money) motivating parents - and children - to go to work, often under harsh, unsafe and unhealthy working conditions.

After considerable hue and cry from a disturbed citizenry, the Federal Government stepped in and passed the Fair Labor Standards Act[4] which sought to set, on a national basis, Federal standards for minimum wages, maximum hours, overtime pay, equal pay and child labor standards. Certain states had, before the enactment of the Federal Act, enacted laws attempting to cover the subject matter. However, the enactment of such a statute by one state put the employers of that state at a competitive disadvantage as compared with the employers of a state which had not adopted such legislation. Hence a Federal Act applicable to all states was enacted.

The child labor provisions of the Fair Labor Standards Act go further than merely banning from shipment in interstate commerce merchandise produced by child labor. In that way,

the Act not only prohibits the employment of "oppressive child labor" in interstate or foreign commerce, but in the production of goods for such commerce, or in any enterprise engaged in interstate commerce. In addition - and more importantly - the Act prohibits the shipment in interstate commerce of goods by any producer, manufacturer or dealer employing "oppressive child labor" for 30 days prior to such shipment. In other words, the employment of a minor contrary to the Act "taints" the production of the producer, manufacturer or dealer for a period of 30 days. The prohibition here is sweeping because

> ...it extends to all the products of establishments employing children, instead of merely to the products made by children. If a manufacturer employed but one child for but a fraction of a day, the ban would still fall upon the entire product of his plant for the thirty-day period subsequent to which such employment occurred. [5]

"Oppressive child labor," under the Act is defined as:

1. Employment of a child under 16, except employment of children between 14 and 16 years of age in such nonmining, nonhazardous and nonmanufacturing occupations and under such conditions as the Secretary of Labor determines not to interfere with their schooling or well-being.

2. Employment of minors between 16 and 18 years of age, in nonagricultural occupations found and by order declared by the Secretary of Labor to be particularly hazardous or detrimental to their health or well-being.

3. Employment of minors under 16 years of age in an agricultural occupation found and by order declared by the Secretary of Labor to be particularly hazardous.

4. The employment of a child under 14 in any occupation is "oppressive child labor" unless specifically exempt.[6]

The Secretary of Labor has issued a list of hazardous occupations in nonagricultural occupations. Each establishes a minimum age of 18. Those orders deal with the following:

1. Occupations in or about plants manufacturing or storing explosives or articles containing explosive components.
2. Occupations of motor-vehicle driver and helper.
3. Coal-mine occupations.
4. Logging occupations and occupations in the operation of any sawmill, lath mill, shingle mill, or cooperage-stock mill.
5. Occupations involved in the operation of power-driven wood working machines.
6. Occupations involving exposure to radioactive substances, and to ionizing radiations.
7. Occupations involved in the operation of elevators and other power-driven hoisting apparatus.
8. Occupations involved in the operation of power-driven metal forming, punching, and shearing machines.
9. Occupations in connection with mining other than coal.
10. Occupations in or about slaughtering and meatpacking establishments and rendering plants.
11. Occupations involved in the operation of certain power-driven bakery machines.
12. Occupations involved in the operation of certain power-driven paper-products machines.
13. Occupations involved in the manufacture of brick, tile and kindred products.
14. Occupations involved in the operation of circular saws, bandsaws, and guillotine shears.
15. Occupations involved in wrecking, demolition, and shipbreaking operations.
16. Occupations involved in roofing operations.
17. Occupations in excavation operations.

The Secretary of Labor has also issued a list of hazardous occupations in agricultural occupations. Each establishes a minimum age of 16 years. Those orders deal with the following:

1. Operating a tractor of over 20 PTO horsepower, or connecting or disconnecting an implement or any of its parts to or from such a tractor.
2. Operating or assisting to operate (including starting, stopping, adjusting, feeding, or any other activity involving physical contact associated with the operation) any of the following machines:
    (i) Corn picker, cotton picker, grain combine, hay mower, forage harvester, hay baler, potato digger, or mobile pea viner;
    (ii) Feed grinder, crop dryer, forage blower, auger conveyor, or the unloading mechanism of a nongravity-type self-unloading wagon or trailer; or
    (iii) Power post-hole digger, power post driver, or non-walking type rotary tiller.
3. Operating or assisting to operate (including starting, stopping, adjusting, feeding, or any other activity involving physical contact associated with the operation) any of the following machines:
    (i) Trencher or earthmoving equipment;
    (ii) Fork lift;
    (iii) Potato combine; or
    (iv) Power-driven circular, band or chain saw.
4. Working on a farm in a yard, pen or stall occupied by a:
    (i) Bull, boar, or stud horse maintained for breeding purposes; or
    (ii) Sow with suckling pigs, or cow with newborn calf (with umbilical cord present)
5. Felling, bucking, skidding, loading, or unloading timber with butt diameter of more than 6 inches.
6. Working from a ladder or scaffold (painting, repairing, or building structures, pruning trees, picking fruit, etc.) at a height of over 20 feet.
7. Driving a bus, truck, or automobile when transporting passengers, or riding on a tractor as a passenger or helper.
8. Working inside:
    (i) A fruit, forage, or grain storage designed to retain an oxygen-deficient or toxic atmosphere;
    (ii) An upright silo within 2 weeks after silage has been added or when a top unloading device is in operating position;
    (iii) A manure pit; or
    (iv) A horizontal silo while operating a tractor for packing purposes.

9. Handling or applying (including cleaning or decontaminating equipment, disposal or return of empty containers, or serving as a flagman for aircraft applying) agricultural chemicals classified under the Federal Insecticide, Fungicide, and Rodenticide Act...as Category I of toxicity, identified by the word "poison" and the "skull and crossbone" on the label; or Category II of toxicity, identified by the word "warning" on the label;
10. Handling or using a blasting agent, including but not limited to, dynamite, black powder, sensitized ammonium nitrate, blasting caps, and primer cort; or,
11. Transporting, transferring, applying anhydrous ammonia.[7]

The Secretary of Labor has also issued certain blanket exemptions with respect to child labor, exempting the following:

> Children under 16 years of age employed by their parents in occupations other than manufacturing or mining or occupations declared hazardous for minors under 18.
>
> Children under 16 years of age employed by other than their parents in agriculture, if the occupation has not been declared hazardous and the employment if performed outside the hours schools are in session in the district where the minor lives while working.
>
> Children employed as actors or performers in motion picture, theatrical, radio, or television productions.
>
> Children engaged in the delivery of newspapers to the consumer.
>
> Homeworkers engaged in the making of wreaths composed principally of natural holly, pine, cedar, or other evergreens (including the harvesting of the evergreens).[8]

The restrictions and exemptions listed above from the Federal Act apply to interstate commerce. Restrictions and exemptions with respect to child labor in occupations wholly intra-state in character would be governed by each jurisdiction's child labor laws, which basically follow the Federal Act with exceptions to take care of certain situations peculiar to con-

ditions in that jurisdiction.

In Table 6[9] is set forth for each jurisdiction the basic minimum age for child employment for each jurisdiction and the maximum age up to which an employment or age certificate is required. It will be noted that the range in basic minimum ages ranges from 14 to 16.

> The states listed as having a 16-year basic minimum age usually establish this age for factory employment at any time or for any employment during school hours, or both; certain employment is permitted under 16 outside school hours and during school vacations, usually in nonfactory employment. The States listed as having a 14- or 15-year minimum age often permit employment of children under those ages outside school hours or during school vacation or in certain occupations at any time.[10]

The age range during which an employment or age certificate is required goes from 15 all the way to 19 for minors working in the mines or quarries of Alabama.

The Council of State Governments notes: "In almost all States the law provides that age certificates may be issued upon request for minors above the age indicated[11] or, although not specified in the law such certificates are issued in practice."[12]

The ability to obtain an employment or age certificate may be extremely important to the child who seeks employment - especially a runaway far from home. The reason why such certificates take on such great importance is because of the manner in which child labor laws are enforced. No penalty attaches to a minor for working in a prohibited occupation. The penalty attaches to the em-

ployer - and it can be a stiff penalty. An employer operating a business where the employment of minors is possible under the law only on a limited basis, will ask a minor seeking employment to see the minor's employment or age certificate. Merely asking a minor how old he or she is is no protection for the employer. If the minor is lying because of an excess of zeal to secure employment, the employer accepts the minor's word at his peril. Even accepting at face value a birth certificate proffered by a minor has its perils.

Hence the method generally used for the issuance of employment or age certificates is to concentrate their issuance generally in a local official who would have an opportunity to investigate the circumstances. Generally such official is connected with the local school system or with the local office of the State Department of Labor, and usually is given the duty of enforcing state wage and hours laws.

This method of issuing employment or age certificates is a means of reassuring employers who, before they hire a minor, have before them a document issued by a government unit authorized to make such decisions. If, therefore, the employer relies upon this official document, he cannot be held liable for violation of the wage and hour law if a mistake has been made in the issuance of such document.

The wage and hour laws in the several jurisdictions have restrictions on the hours minors may work. Those restrictions are set forth

in Tables 6A and 6B.[13] Table 6A sets forth the maximum number of daily and weekly hours and the number of days per week which legally may be worked by minors of certain ages.

As will be seen from the table, no particular pattern is discernible in the number of hours in a day which may be worked, in the number of days in a week which may be worked or in the ages at which state regulation becomes applicable. In general, however, it should be noted that most of these statutes are geared either to making certain that the minor's employment does not interfere with the minor's schooling, or that the minor's type of work is not potentially dangerous to the minor's health, safety and welfare, or both.

In regulating the maximum time which a minor may work, most jurisdictions start with minors under 16, to whom certain restrictions are applied, and then have a separate category for minors between the ages of 16 and 18. Most of the states permit a minor, even under the age of 16, to work an eight-hour day - some as much as 10 hours per day - but then adjust that time downward generally in relation to school attendance, type of work, etc. The same is true with respect to the maximum number of hours or days which may be worked by a minor in a week.

Assuming that a runaway minor has been able to overcome the constraints imposed by the need for an employment/age certificate,[14] it is difficult to estimate how much such minor's problems may be increased by the statutes described in Table 6A[15] dealing

with the maximum hours he or she may work in a particular day or week. On the other hand, the restrictions imposed by the statutes described in Table 6B[16] may more seriously impede the ability of the runaway child to obtain employment.

These statutes deal with nightwork prohibited for minors during certain evening and night hours. Generally they are applicable to minors below the age of 16, although in some jurisdictions the applicable age may be as low as 14 or as high as 18. The statutes proscribe such night work generally and then set forth limited exceptions, again often geared to school attendance. Here too - as in the child labor laws previously discussed above - the sanction is placed upon the employer in that he is prohibited from hiring or permitting a minor to work during the proscribed hours. The effect is to prevent the minor from obtaining employment during those hours.

Many of these statutes regulating or prohibiting night work by minors have been enacted with the best of motives, i.e. to ensure that a minor is in a condition to participate fully in school work the next morning.[17] However, as applied to a runaway child who has already left home and school and who perhaps cannot go home again, these laws, so generally drafted as they are, may perhaps in some cases work to the disadvantage of such children and close to them a much-needed avenue of financial support. As a matter of fact, it may cause them to seek and obtain other and less desirable means of support than working at night.

Has the time come for a thorough review of current state child labor laws generally and as they affect runaway children?

> In that connection it has been recently recommended, with respect to cases of truancy: "If a child is found to be neglected, the court may...in the case of any child, 14 years of age or older, where the court finds that the school officials have made a diligent effort to meet the child's educational needs, and after study, the court further finds that the child is not able to benefit appreciably from further schooling, the court may: (i) excuse the child from further compliance with any legal requirement of compulsory school attendance; and (ii) authorize the child, notwithstanding the provisions of any other law, to be employed in any occupation which is not legally declared hazardous for children under the age of 18."[18]

FOOTNOTES

[1] See Chapter 7, supra.

[2] Id.

[3] The first compulsory school law was enacted by Massachusetts in 1852 and required parents to send their children to school unless they could prove that the child was receiving an equivalent education elsewhere. See State Law on Compulsory Education, Steinhilber, August W. and Sokolowski, Carl J.. 1966, U.S. Office of Education, Washington, D.C., OE-23044, Cir.No. 793.

[4] Act of June 25, 1938, as amended, 29 U.S.C. 201, et seq.

[5] Cases in Constitutional Law, Cushman, Robert E. and Cushman, Robert F., 3rd Ed., 1967, Appleton-Century Crofts, New York, New York, at p. 443, commenting on Hammer v Dagenhart, 247 U.S. 251, 38 S. Ct. 529 (1918) which held the predecessor Act unconstitutional only to be reversed 23 years later in United States v Darby, 312 U.S. 100, 61 S. Ct. 451 (1941).

[6] From Federal Labor Laws and Programs, 1971, Employment Standards Administration, Division of Employment Standards, U.S. Department of Labor, Washington, D.C., at pp . 87-88.

[7] Id, at pp. 88-90

[8] Id, at p. 90

[9] See page 234 infra. The basic information on the table is from The Book of States, 1974-1975, The Council of States Governments, Lexington, Ky., checked against the Commerce Clearing House Labor Law Service, as well as such additional legal research as may have seemed warranted.

[10] Id.

[11] Indicated on Table 6, infra, p. 234.

[12] The Book of the States, supra, Note 9.

[13] See Pages 236and 242, infra.

[14] See Table 6, page 234, infra.

[15] See Table 6A, page 236.

[16] See Table 6B, page 242.

[17] Wisconsin statutes prohibit work by minors between the hours of 12:30 A.M. and 6 A.M. except where the work is performed under the direct supervision of an adult and provided the minor receives eight consecutive hours of sleep between the end of work and the beginning of the school day.

[18] Model Acts for Family Courts and State-Local Children's Programs, 1975, Sheridan, W.H. and Beaser, H.W., Office of Human Development, Office of Youth Development, Department of Health, Education, and Welfare, Washington, D.C. (Publication No. OHY/OYD 75-26041).

TABLE 6

THE RUNAWAY CHILD AND CHILD LABOR LAWS

STATE	Basic Minimum Age	Employment/Age Certificate Required to Age Indicated	Notes and/or Comments
Alabama	16	17	19 in mines and quarries
Alaska	16	Not required under law	Note 1
Arizona	14	Not required under law	
Arkansas	14	16	
California	15	18	
Colorado	16	16	
Connecticut	16	18	
Delaware	14	18	
District of Columbia	14	18	
Florida	16	18	
Georgia	16	18	
Guam			
Hawaii	16	18	
Idaho	14	Not required under law	
Illinois	16	16	
Indiana	14	17	
Iowa	16	16	
Kansas	14		Not for minors in secondary schools
Kentucky	16	18	
Louisiana	16	18	
Maine	16	16	
Maryland	16	18	
Massachusetts	16	18	
Michigan	14	18	
Minnesota	14	16	
Mississippi	14	Not required under law	Issued by federal officials
Missouri	14	16	
Montana	16	18	
Nebraska	14	16	
Nevada	14	17	
New Hampshire	16	18	
New Jersey	16	18	
New Mexico	14	16	
New York	16	18	
North Carolina	16	18	

Note 1: Birth, baptismal and census records accepted as proof of birth.

TABLE 6

THE RUNAWAY CHILD AND CHILD LABOR LAWS (continued)

STATE	Basic Minimum Age	Employment/Age Certificate Required to Age Indicated	Notes and/or Comments
North Dakota	14	16	
Ohio	16	18	
Oklahoma	14	16	
Oregon	14	18	
Pennsylvania	16	18	
Puerto Rico	16	18	
Rhode Island	16	16	
South Carolina	16	Not required under law	Issued by federal officials
South Dakota	14	16	
Tennessee	14	18	
Texas	15	15	Issued by federal officials
Utah	16	Not required under law	
Vermont	14	16	
Virgin Islands	14	16	
Virginia	16	18	
Washington	14	18	
West Virginia	16	16	
Wisconsin	16	18	
Wyoming	16	16	

TABLE 6A

MAXIMUM DAILY AND WEEKLY HOURS AND DAYS PER WEEK AT SPECIFIED AGES

STATE	Age	Hours Per Day	Hours Per Week	Days Per Week	Age	Hours Per Day	Hours Per Week	Days Per Week	Comments
Alabama	Under 16	8	40	6					4 hrs. school day; 28 school week
Alaska	Under 18	8	40	6					16-18 during public school vacations; Note 1
Arizona	Under 16	8	40						3 school day; 18 school week; under 16 enrolled in school
Arkansas	Under 16	8	48	6	16-18	10	54	6	
California	Under 18	8	48						4 on schoolday; under 18 required to attend school
Colorado	Under 18	8	40		Under 16				6 on school day
Connecticut	Under 18	8	48		Under 18	8	48	6	In stores; 14-16 in agriculture
Delaware	Under 16	8	48	6					
District of Columbia	Under 16	8							
Florida	Under 16	8	40	6					Under 16, 3 hours on schoolday before schoolday
Georgia	Under 16	8	40		Over 16		60		In cotton and wool factories; under 16, 4 on schooldays
Guam	14		48						
Hawaii	Under 16	8	40	6	Under 16	Comment	Comment	Comment	10 hours combined work and school on schooldays

Note 1: Minors of 16 not attending school permitted to work 8-40-6. Minors attending school may work 9-48 during summer vacations and before school day if 16. If under 16: 3 on school day, 23 in school week.

TABLE 6A

MAXIMUM DAILY AND WEEKLY HOURS AND DAYS PER WEEK AT SPECIFIED AGES (continued)

STATE	Age	Hours Per Day	Hours Per Week	Days Per Week	Age	Hours Per Day	Hours Per Week	Days Per Week	Comments
Idaho	Under 16	9	54						
Illinois	Under 16	8	48	6	Under 16	Comment	Comment	Comment	3 on school day; 8 combined work and school on school day
Indiana	Under 17	8	40	6					Note 1
Iowa	Under 16	8	40		Under 16	Comment	Comment	Comment	4 on school day; 28 in school week
Kansas	Under 16	8	40						
Kentucky	Under 16	8	40		Under 16	3	18		Note 2
Louisiana	Under 17	8	44	6					Under 16, 3 on school days
Maine	Under 16	8	48	6	Under 16	Comment	Comment	Comment	4 on school day, 28 school week if enrolled in school
Maryland	Under 16	8	40	6					Note 3

Note 1: Minors of 16 not attending school permitted to work 8-40-6. Minors attending school may work 9-48 during summer vacations and before school day if 16. If under 16: 3 on school day, 23 in school week.

Note 2: If under 16: 8-40 on nonschool days and weeks. 3-18 on school days and weeks. 16-18: 4 on school day; 8 on Friday or nonschool day; 32 in school week.

Note 3: 16-18 not in school: 9-48-6. Under 16 attending school: 3 on school days when school in session 5 or more days and 23 in week; 16-17: attending school: 5 on school days and 30 a week when school in session 5 or more days; 8 on non-school day and 40 a week when school in session less than 5 days.

TABLE 6A

MAXIMUM DAILY AND WEEKLY HOURS AND DAYS PER WEEK AT SPECIFIED AGES (continued)

STATE	Age	Hours Per Day	Hours Per Week	Days Per Week	Age	Hours Per Day	Hours Per Week	Days Per Week	Comments
Massachusetts	Under 16	8	48	6	16-18	9	48	6	Under 14, farm work, 4 hours per day, 24 hours week
Michigan	Under 18	8	40	6					
Minnesota	Under 16	8	48						
Mississippi	Under 16	8	44						10 hour day for employees over 16 in mills, etc.
Missouri	Under 16	8	40	6					
Montana	Under I6								Students at recreational jobs, not more than 48 hours per week.
Nebraska	Under 16	8	48						
Nevada	Under 16	8	48						
New Hampshire									Note 4
New Jersey	Under 18	8	40	6					Note 5

Note 4: 16 enrolled in school: 3 on school day, 8 any other day; 23 in school week, 48 during vacation. Under 16 and not enrolled in school and 16-18: 10-48 hours at manual or mechanical labor in manufacturing; 10 1/4-54 at such labor in other employment.

Note 5: Under 16: 10 hour day, 6 day week in agriculture; 8 combined hours work and school on school days.

CONTINUED

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TABLE 6A

MAXIMUM DAILY AND WEEKLY HOURS AND DAYS PER WEEK AT SPECIFIED AGES (continued)

STATE	Age	Hours Per Day	Hours Per Week	Days Per Week	Age	Hours Per Day	Hours Per Week	Days Per Week	Comments
New Mexico	Under 14	8	44						48 hours per week in special cases
New York									Note 6
North Carolina	Under 16	8	40	6	16-18	9	48	6	Under 16, 8 hours combined work and school on school day
North Dakota	Under 18	8	48	6	16-18				Under 16-18: 3 school day, 24 hours school week; under 16 attend school
Ohio	Under 18	8	48	6	Under 16				14-16: 9 hours work plus school; under 14: 4 hours per day
Oklahoma	Under 16	8	48						
Oregon	Under 16	10	44	6	16-18		44		Emergency overtime allowed on special permit
Pennsylvania	Under 18	8	44		Under 16	4	18		Under 16 in school; 16-18: 28 in week if enrolled in school

Note 6: Under 16: 8-40-6; 16-18: 8-48-6; Under 16: 3 on schooldays, 23 in schoolweek; 16 attending day school: 4 on schooldays, 28 in schoolweek.

TABLE 6A

MAXIMUM DAILY AND WEEKLY HOURS AND DAYS PER WEEK AT SPECIFIED AGES (continued)

STATE	Age	Hours Per Day	Hours Per Week	Days Per Week	Age	Hours Per Day	Hours Per Week	Days Per Week	Comments
Puerto Rico	Under 18	8	40	6	Minor				Minor in school; school day, 8 hour work plus school
Rhode Island	Under 16	8	40		16-18	9	48		
South Carolina	Over 16	10	55						In cotton and woolen manufacturing plants
South Dakota	Under 16	8	40						
Tennessee	Under 18	8	40	6	Under 17	4	28		5 on Friday; not exempt from school
Texas	Under 15	8	48						
Utah	Under 16	8	40						Under 16, 4 hours on school day
Vermont	Under 18	8	48	6	16-18	9	50		
Virgin Islands									
Virginia	Under 18	8	40	6					
Washington	Under 16	8	40	5	16-18	8	40	5	Under 16: 8-40-5 when school not in session. Note 7

Note 7: In computing hours, 1/2 total school attendance hours included.

TABLE 6A

MAXIMUM DAILY AND WEEKLY HOURS AND DAYS PER WEEK AT SPECIFIED AGES (continued)

STATE	Age	Hours Per Day	Hours Per Week	Days Per Week	Age	Hours Per Day	Hours Per Week	Days Per Week	Comments
West Virginia	Under 16	8	40	6					
Wisconsin	Under 16	8	24	6	16-18	8	40	6	Note 8
Wyoming	Under 16	8							

Note 8: Under 16: 8-40-6 during school vacations; 16-18: 8-48-6 during school vacations.

TABLE 6B

NIGHTWORK PROHIBITED FOR MINORS OF AGE INDICATED AND FOR HOURS SPECIFIED[1]

STATE	Age	Prohibited Hours	Age	Prohibited Hours	Comments
Alabama	Under 16	8 p.m. - 7 a.m.			
Alaska	Under 16	7 p.m. - 6 a.m.			
Arizona	Under 16	9:30 p.m. - 6 a.m.			
Arkansas	Under 16	7 p.m. - 6 a.m.	16-18	10 p.m. - 6 a.m.	Under 16, 9 p.m. before non school day; 16-18: 10 p.m. before school day
California	Under 18	10 p.m. - 5 a.m.			12:30 a.m. before nonschool day
Colorado	Under 16	9:30 p.m. - 5 a.m.			Before school day only
Connecticut	Under 18	10 p.m. - 6 a.m.			
Delaware	Under 16	7 p.m. - 6 a.m.			9 p.m. in stores Friday, Saturday and vacations
District of Columbia	Under 16	7 p.m. - 7 a.m.	16-18	10 p.m. - 6 a.m.	
Florida	Under 16	8 p.m. - 6:30 a.m.	16-18	10 p.m. - 5 a.m.	Under 16: 10 p.m. before non-school day
Georgia	Under 16	9 p.m. - 6 a.m.			
Guam					None found
Hawaii	Under 16	7 p.m. - 7 a.m.			8 p.m. June 1 to day before Labor Day
Idaho	Under 16	9 p.m. - 6 a.m.			
Illinois	Under 16	7 p.m. - 7 a.m.			

Note 1: Statutes restricting hours of women have not been noted in the tables. Some are noted below. Most of such statutes which have not been specifically repealed would probably be declared invalid as discriminatory under Title VII of the Civil Rights Act of 1964.

TABLE 6B

NIGHTWORK PROHIBITED FOR MINORS OF AGE INDICATED AND FOR HOURS SPECIFIED[1] (continued)

STATE	Age	Prohibited Hours	Age	Prohibited Hours	Comments
Indiana	Under 16	7 p.m. - 6 a.m.	16	10 p.m. - 6 a.m.	Under 16: 9 p.m. before school day; 16: midnight before nonschool and vacations
Iowa	Under 16	7 p.m. - 7 a.m.			9 p.m. June 1 through Labor Day
Kansas	Under 16	10 p.m. - 7 a.m.			Before school day only
Kentucky					Note 2
Louisiana					Note 3
Maine	Under 16	9 p.m. - 7 a.m.			
Maryland	Under 16	7 p.m. - 7 a.m.	16-18	11 p.m. - 6 a.m.	Under 16: 9 p.m. - 6/1-9/1; 16-18: while attending school
Massachusetts	Under 16	6 p.m. - 6:30 a.m.	16-18	10 p.m. - 6 a.m.	16-18: midnight restaurants, Friday, Saturday and vacations
Michigan	Under 16	9 p.m. - 7 a.m.	16-18	10:30 p.m. - 6 a.m.	16-18: 11:30 p.m.-6 a.m. not attending school Note 4
Minnesota	Under 16	7 p.m. - 6 a.m.			
Mississippi	Under 16	7 p.m. - 7 a.m.			10 p.m. before nonschool days and for minors not enrolled in school
Missouri	Under 16	7 p.m. - 7 a.m.			Under 16: 10 p.m. before school days for minors not enrolled in school
Montana					
Nebraska	Under 14	8 p.m. - 6 a.m.	14-16	10 p.m. - 6 a.m.	Beyond midnight for 14-16 on special permit
Nevada					

Note 2: Under 16: 7 p.m. - 7 a.m. (9 p.m. June 1 through Labor Day) 16-18: 10 p.m. - 6 a.m. if attending school (midnight on Friday, Saturday and during vacation); 16-18: midnight to 6 a.m. if not attending school.
Note 3: 7 p.m. - 6 a.m. girls under 17, boys under 16; 10 p.m. - 6 a.m. boys 16, girls 17 if attending school. See Note 1 supra
Note 4: 6 p.m. - 6 a.m. girls in factories, see Note 1 supra.

TABLE 6B

NIGHTWORK PROHIBITED FOR MINORS OF AGE INDICATED AND FOR HOURS SPECIFIED[1] (continued)

STATE	Age	Prohibited Hours	Age	Prohibited Hours	Comments
New Hampshire	Under 16	9 p.m. - 7 a.m.			If enrolled in school
New Jersey	Under 16	6 p.m. - 7 a.m.	16-18	10 p.m. - 6 a.m.	16-18: midnight in restaurant before nonschool day and vacations. Note 5
New Mexico	Under 14	9 p.m. - 7 a.m.			
New York	Under 16	7 p.m. - 7 a.m.	16-18	Midnight-6 a.m.	
North Carolina	Under 16	7 p.m. - 7 a.m.	16-18	Midnight - 6 a.m.	Under 16: 9 p.m. when school not in session
North Dakota	Under 16	7 p.m. - 7 a.m.			9 p.m. June 1 through Labor Day
Ohio	Under 16	6 p.m. - 7 a.m.	16-18	10 p.m. - 6 a.m.	Under 16: 10-6 before nonschool day; 16-18: midnight before nonschool day
Oklahoma	Under 16	6 p.m. - 7 a.m.			Note 6
Oregon	Under 16	6 p.m. - 7 a.m.			10 p.m. with special permit
Pennsylvania	Under 16	7 p.m. - 7 a.m.			10 p.m. during vacation - June to Labor Day
Puerto Rico	Under 16	6 p.m. - 8 a.m.	16-18	10 p.m. - 6 a.m.	
Rhode Island	Under 16	6 p.m. - 8 a.m.	16-18	11 p.m. - 6 a.m.	
South Carolina	Under 16	8 p.m. - 5 a.m.			11 p.m. before nonschool day; domestic service, farmwork
South Dakota	Under 14	After 7 p.m.			Mercantile establishments only
Tennessee	Under 16	10 p.m. - 7 a.m.	16-18	10 p.m. - 6 a.m.	

Note 5: Except boys 16-18 in nonfactory establishments during vacations. See Note 1 supra.
Note 6: Boys under 16; girls under 18. See Note 1 supra.

TABLE 6B

NIGHTWORK PROHIBITED FOR MINORS OF AGE INDICATED AND FOR HOURS SPECIFIED[1] (continued)

STATE	Age	Prohibited Hours	Age	Prohibited Hours	Comments
Texas	Under 15	10 p.m. - 5 a.m.			
Utah	Under 16	9:30 p.m. - 5 a.m.			Only before a school day
Vermont	Under 16	7 p.m. - 6 a.m.			
Virgin Islands					
Virginia					Note 7
Washington	Under 16	7 p.m. - 7 a.m.	16-18	After 7 p.m.	16-18: may be employed after 7 p.m. in "authorized employment"
West Virginia	Under 16	8 p.m. - 5 a.m.			
Wisconsin					See Note 8
Wyoming	Under 16	10 p.m. - 5 a.m.			Note 9, Under 16: midnight before nonschool day and minors not enrolled

Note 7: Minors of 15 may begin work at 5 a.m. Under 16: 6 p.m. - 7 a.m. (10 p.m. before nonschool days and June 1 - September 1); 16-18: midnight to 5 a.m.

Note 8: Girls 16-18: 11 p.m. - 6 a.m. (12:30 a.m. before nonschool day and vacation; boys 16-18: 12:30 a.m. - 6 a.m. (except where under direct adult supervision and provided minor receives 8 consecutive hours of sleep between end of work and beginning of school day); see Note 1 supra.

Note 9: Girls: 16-18: midnight - 5 a.m., see Note 1 supra.

CHAPTER 11

CURFEW LAWS AS THEY MAY AFFECT RUNAWAY CHILDREN

The imposition of curfew derives from an old English custom under which at eight o'clock at night bells were rung throughout the city as a signal that all the inhabitants were to disburse from whatever gatherings they were attending, go indoors, rake up their fires and extinguish their lights. The word itself comes from the French, meaning "cover the fire" (couvre feu).

> The curfew originated in the fear of fire when most cities were built of timber. Its use was obvious, as the household fire was usually made in a hole in the middle of the floor, under an opening in the middle of the roof through which the smoke escaped.[1]

In the United States, curfews are imposed in furtherance of the police power generally held to be vested in the several states. Under that power, the executive branch of the government is empowered to take all measures "necessary for the preservation of public order and tranquility; the promotion of the public health, safety and morals, and the prevention, detection and punishment of crime."[2]

In passing statutes and ordinances restricting access to the streets and public places during certain times by certain people or all people, the states are acting pursuant to their police power.

With respect to juveniles, curfew laws and ordinances are generally used to restrict their activities during certain evening or night hours.

Eleven jurisdictions have enacted state statutes imposing curfew restrictions on juveniles: Alaska, Hawaii, Illinois, Maryland, Michigan, New Hampshire, Ohio, Oregon, Vermont, Virgin Islands and Virginia. It should be noted that Kansas, Minnesota and New York impose specific time-and-place restrictions on certain juveniles with respect to the operation of motor vehicles. See Chapter 19, infra. Alaska's statute is a general enabling act authorizing any city or village to impose curfews with respect to minors. The statutes in Maryland, New Hampshire, Ohio, Rhode Island, Vermont and Virginia follow the Alaska type of approach to this subject.

Hawaii's statute is more elaborate. It prohibits a child under 16 -- except for necessity or with the written permission of a judge -- to go on any public road or highway between the hours of 8:00 P.M. and 4:00 A.M. unless "accompanied by an adult duly authorized by a parent to accompany the child." Parents of a child under 15 are prohibited from permitting the child to go out unaccompanied by an adult between the hours of 9:00 P.M. and 4:00 A.M. However, the Hawaii statute permits each county to pass its own curfew ordinance which would supersede the state law.

The Illinois law is applicable to minors under 18 and is applicable between the hours of 12:01 A.M. and 6:00 A.M. on Saturday

and Sunday and between the hours of 11:00 P.M. and 6:00 A.M. on other days. In Michigan, the age is 12 and the statutory hours are between 10:00 P.M. and 6:00 A.M. Oregon's curfew for minors is from midnight to 4:00 A.M. unless accompanied by a person over 18.

Rhode Island has delegated authority to policechiefs to designate certain streets as curfew streets on which minors under 16 may not loiter after 9:00 P.M. unless accompanied by an adult. The Virgin Islands' curfew is applicable to a child under 16 found on the streets or highways after 10:00 P.M. unless accompanied by an adult.

Under the statutes giving the juvenile court jurisdiction in Georgia and New Jersey, a child in need of supervision is specifically one who has violated a curfew law. "...State curfew laws are of questionable efficacy since the enforcement pattern may reflect the fact that they do not take into account local factors such as public reaction and the need for the measure."[3]

A runaway juvenile's problems with curfew laws are not so much likely to arise under a statute such as that enacted by Michigan, for example, as under a statute such as that enacted by Alaska, to cite another type of curfew regulation. An intrastate runaway in Michigan knows of the existing statewide statute and would comport himself accordingly. The interstate runaway would very quickly learn of its existence. Under an Alaska-type

statute, the runaway child, whether interstate or intrastate, may find himself in a dilemma as he wanders from town to town. The town the runaway approaches may or may not have imposed a curfew upon its juvenile inhabitants; the curfew may or may not apply to juveniles of the runaway's age; the curfew may or may not be the same or different from the curfew, if any, imposed by the town from which the runaway has come; it may be applicable on weekdays only or on weekends only, etc.

Of course, the minor's dilemma might be just as great if the runaway found himself in a state whose statutes were silent with respect to curfews. In such states, local units of government could, under their police powers, adopt reasonable curfew ordinances and,again, the out-of-state runaway would have difficulty obtaining information as to their existence before entering a locality.

The value, effectiveness and desirability of juvenile curfew laws have been debated since the latter part of the 19th century. Those in favor of curfew laws give mixed reasons for their advocacy of them:

> ...curbing juvenile delinquency...last resort where all other measures have apparently failed ...nocturnal juvenile crime must necessarily be eliminated when children are constrained by the threat of legal sanctions to remain at home... juveniles ought to be at home at night...promote family life...necessary police device designed to control nighttime accumulation of juveniles in public places with its attendant risk of mischief.[4]

On the other hand, opponents of curfew laws argue:

> ...peak of juvenile criminal activity is in the early hours of the evening, before the time at which curfews usually go into effect...only a small portion of the juvenile population engages in crime...curfew is a shotgun approach, encroaching on the many who are innocent to control the dissident few...effective enforcement of a general curfew is well beyond the physical capabilities of existing police forces...tendency of a curfew to shift the focus of attention from other more immediate problems of delinquency....[5]

What effect do curfew statutes and ordinances have on the problems confronting runaway children and their parents? Is their enforcement effective? Feasible? Do they do more harm than good in preventing runaways from obtaining needed services? Are existing statutes and ordinances too broadly worded? Is there a need to bring the entire concept of curfew and the statutes and ordinances implementing that concept up from the days of William the Conqueror into the 20th Century? These questions deserve close examination and realistic responses.

FOOTNOTES

[1] Encyclopaedia Britanica, 1959 Ed., Encyclopaedia Britanica, Inc., Chicago, Ill., Vol. 6 at p. 873.

[2] Black, supra, Note 1, Chapter 4, at p. 1316.

[3] Curfew Ordinances and the Control of Nocturnal Juvenile Crime, Note, 107 University of Pennsylvania Law Review 1, Nov. 1958, pp. 66-101.

[4] Id. at pp. 67-68.

[5] Id. at p. 68.

CHAPTER 12

HITCHHIKING AND THE RUNAWAY CHILD

To "hitchhike" has been defined as a slang expression meaning "to make one's way, especially when hiking, by getting rides in automobiles."[1]

Statutes prohibiting hitchhiking have been found in 34 of the 54 jurisdictions studied. The offense of hitchhiking is not one applicable only to minors. The statutes are generally phrased "...no person shall..." or "...any person who...," making them applicable to adults and minors alike.

Hitchhiking is punished as no more than a misdemeanor, rather than as a felony. However, the laws of all the jurisdictions define an act of delinquency as the violation of any state law (or the violation of a municipal ordinance).[2] Therefore, insofar as a runaway minor is concerned, this distinction between a misdemeanor and a felony is a distinction without a difference.

Many of the statutes relating to hitchhiking in the jurisdictions studied have what we have called "standard wording"[3] and is along the following lines: "No person shall stand in a roadway for the purpose of soliciting a ride from a driver of any vehicle.[4]

Some jurisdictions have adopted variations on this wording, the commonest being to limit the prohibited solicitations to solicitations of private vehicles. Other variations add to the "standard wording" soliciting for employment, soliciting for business or soliciting for contributions. Table 7[5] sets forth on a juris-

diction-by-jurisdiction basis the various types of statutes which have been found. It is important to realize that we are at this point discussing the statutes which have been enacted by the various jurisdictions prohibiting or regulating the practice of hitchhiking. Under their police powers,[6] counties, cities and towns would be able to regulate hitchhiking within their jurisdictional limits.

The runaway child who "takes to the road" runs a great danger, if taken into custody, of being charged with the violation of a state law or local ordinance and charged with an act of juvenile delinquency. But in this area, there seem to be grounds for exploring the need for the protection of the rights of motorists, as contrasted to the needs to protect the rights (and safety) of runaways.

FOOTNOTES

[1] Webster's New Collegiate Dictionary, 2nd Ed., (1957) G. & C. Merriam Co., Springfield, Mass., at p. 392.

[2] See Chapter 6, supra.

[3] This is the meaning to be ascribed to these words as used in Table 7, infra p. 255.

[4] Arizona Stats. Ann. Vol. 9, Title 28, Ch. 6, Sec. 28-769.

[5] See Table 7, p. 255.

[6] See Chapter 11, supra.

TABLE 7

STATES HAVING STATEWIDE HITCHHIKING LAWS

STATE	
Alabama	
Alaska	
Arizona	Standard wording
Arkansas	
California	Standard wording
Colorado	Standard wording applies only to soliciting ride from private vehicle
Connecticut	Standard wording excepts taxi, bus or emergencies
Delaware	Standard wording BUT also includes soliciting for employment or business from occupants.
District of Columbia	
Florida	Standard wording BUT also includes soliciting for employment or business from occupants.
Georgia	Standard wording
Guam	
Hawaii	
Idaho	
Illinois	Note 1
Indiana	Standard wording
Iowa	Note 2
Kansas	
Kentucky	Standard wording applies only to soliciting ride from private vehicle
Louisiana	Standard wording BUT also includes soliciting for employment or business from occupants.

Note 1: No soliciting of rides from roadway; outside a business or residence district, no soliciting for employment or contributions from occupants of any vehicle; no soliciting on roadway for purpose of guarding any vehicle parked on the street.

Note 2: No person shall stand in a roadway for the purpose of soliciting a ride from the driver of any private automobile. Nothing in this section to be construed so as to prevent a pedestrian from standing on that portion of the highway or roadway not ordinarily used for vehicular traffic for the purpose of soliciting a ride from the driver of any vehicle.

TABLE 7

STATES HAVING STATEWIDE HITCHHIKING LAWS (continued)

STATE	
Maine	Note 3
Maryland	Note 4
Massachusetts	Note 5
Michigan	
Minnesota	Standard wording applies only to soliciting ride from private vehicle
Mississippi	Standard wording applies only to soliciting ride from private vehicle
Missouri	
Montana	Standard wording BUT also includes soliciting for employment or business from occupants.
Nebraska	Standard wording BUT also includes soliciting for employment or business from occupants.
Nevada	Standard wording BUT also includes soliciting for business from occupants.

Note 3: Prohibits any person from standing on public highway or right-of-way of any public highway from begging, inviting or securing transportation in any vehicle not for hire unless such person knows the driver or passenger of such vehicle. Does not prohibit solicitation because of an emergency or sickness.

Note 4: Except for occupant of a disabled vehicle who is seeking aid, it is unlawful for any person to stand on roadway seeking a ride, employment or business from the occupant of any motor vehicle. No person to stand on or near a highway for purpose of soliciting the guarding of a parked car or a car about to be parked. Hitchhiking prohibited at any vehicular crossing. It is unlawful for motorists to pick up or discharge passenger at any vehicular crossing.

Note 5: Applies only to Massachusetts Turnpike - prohibits display of sign, signalling a moving vehicle, causes stopping of vehicle, or stands on property of Massachusetts Turnpike Authority in view of roadway or ramp of turnpike.

TABLE 7

STATES HAVING STATEWIDE HITCHHIKING LAWS (continued)

STATE	
New Hampshire	Standard wording BUT also includes soliciting for employment or business from occupants.
New Jersey	Standard wording but excepts minibus or street car
New Mexico	Standard wording BUT also includes soliciting for employment or business from occupants.
New York	Note 6
North Carolina	May not stand on state highway to solicit - may stand on shoulders
North Dakota	Standard wording BUT also includes soliciting for employment or business from occupants.
Ohio	Prohibits hitchhiking while on roadway outside safety zone
Oklahoma	
Oregon	Standard wording applies only to soliciting ride from private vehicle
Pennsylvania	Standard wording
Puerto Rico	
Rhode Island	Note 7
South Carolina	Standard wording
South Dakota	
Tennessee	
Texas	Note 8
Utah	
Vermont	Prohibits soliciting rides or loitering near access to Interstate highway
Virgin Islands	
Virginia	

Note 6: The New York State Thruway Authority, the park commission, the parkway authority, the Niagara Falls Bridge Commission, the Saratoga Springs Commission, or bridge or tunnel authority may restrict pedestrian or vehicular traffic.

Note 7: Any person who endeavors by words, gestures or otherwise to beg, invite or secure transportation in any motor vehicle on any freeway within the state, except in the case of a bona fide emergency or sickness; prohibits same action if done on any other highway in state.

Note 8: Prohibits soliciting rides, contributions, employment or business.

TABLE 7

STATES HAVING STATEWIDE HITCHHIKING LAWS (continued)

STATE	
Washington	Note 9
West Virginia	
Wisconsin	
Wyoming	Standard wording

Note 9: No person shall stand in or on a public highway or alongside it at any place where a motor vehicle cannot safely stop off the main travelled portion for the purpose of soliciting a ride. It is unlawful to solicit a ride from within the right-of-way of any limited access facility in such areas where permission to do so is given and posted by the highway authority of the state, county, city or town having jurisdiction over the highway. Exceptions to the above: emergency signal for transportation from a passenger carrier for purposes of becoming a paying passenger.

CHAPTER 13

STATUTORY RAPE AND THE RUNAWAY CHILD

At common law the unlawful carnal knowledge of a woman is a felony if done without her consent or by force.[1] The crime of rape has three elements:

(1) It must be against the law. Even where the sexual intercourse is against the woman's will and is by force, a husband cannot be found guilty of raping his wife, because intercourse between a husband and his wife is lawful, i.e., sanctioned by the law.

(2) There must be some penetration of the woman by the man, but it is generally held by the courts that even the slightest penetration of the woman by the man will sustain a charge of rape.

(3) The intercourse must have taken place without the consent of the woman involved. If there were consent, that consent must have been given without duress, with knowledge of what she was consenting to and the consent was to the complete act.

> There was no rape according to the common law of England except where the unlawful intercourse was without the consent of the woman. An ancient English statute declared that unlawful carnal knowledge of a woman child under the age of ten years was felony, without the limitation that it be against her will....The statute is old enough to be a part of the common law of this country....[2]

It can be said, therefore, that in this country a female under the age of 10 years was presumed by the law to be incapable of giving effective legal consent to the act of sexual intercourse.[3]

It should be noted that the common-law rule that a girl under the age of 10 could not consent to sexual intercourse is an absolute presumption and cannot be rebutted by such defenses as by maintaining that the girl looked older or that the girl claimed she was over 10 years of age. The prosecutor need only prove that the girl was not yet 10 years of age and that the act of sexual intercourse did in fact take place between the defendant and the girl.

Under the common law, a boy under 14 years of age is presumed - conclusively - to be incapable of committing rape. This is the common-law rule in most states unless it has specifically been changed by statute. This is in contrast with the common-law rule with respect to other criminal acts by minors who, while below the age of seven, are conclusively presumed to be incapable of forming the necessary intent to commit a crime, while between

the ages of seven and 14 years of age that presumption of inability to commit a crime is rebuttable.[4] By statute in a few jurisdictions[5] the common-law rule that a male minor below the age of 14 is presumed to be incapable of commiting rape has been changed to make the presumption rebuttable.

The statutes changing the age at which a girl is old enough to consent to sexual intercourse range widely in their own provisions and in the elaborateness with which these statutes seek to cover every possible situation which might arise. For example, consider the statutes in Alabama. First, the state punishes (by death or no less than 10 years) anyone who has carnal knowledge of any girl under 12 years of age, or sexually abuses such girl in an attempt.[6] The next section of the Alabama statutes deals with carnal knowledge of a girl over 12 and under 16, or sexual abuse of such a girl in attempted rape. The punishment for such an offense is from 2 to 10 years in prison. But the section specifically states that it is not applicable to boys under 16.

The Colorado statute seeks to cover not only the rape of a female by a male, but also the rape of a male by a female. In that state first-degree rape is defined as by a male person on a female who is under 18 and the male is over 18, whether or not there is consent. Rape in the third-degree is defined as rape, with or without consent, by a male where both parties are under 18. The

Colorado statute goes on to define as third-degree rape, sexual intercourse by a female person of whatever age where the male is under 18 and where intercourse is had at the solicitation, inducement, or connivance of such female or where, at the time of the act, the female was a free, common, public or clandestine prostitute and the male was, up to the time of the act, of good moral character.

The statutes cited above are not presented as illustrative of the statutes in this field. "Actually, the breadth of difference in statutory provisions is too wide to permit any simple generalization which will be applicable to every state."[7]

The basic characteristics of the law in the various jurisdictions relating to statutory rape are set forth in Table 8.[8]

It should be obvious from the foregoing analysis of the statutory restrictions upon the permissible sexual activities of minors that the statutes of the jurisdictions studied fall into no discernible or rational pattern.

From the standpoint of a runaway child, whether male or female, this fact may be particularly disconcerting, if not really harmful. Sexual activities, freely and legally indulged in by the runaway in the state from which he or she comes, are suddenly, in the place in which the runaway finds himself or herself,

seen as crimes subject to severe penalties. The question might well be raised as to whether these laws - dating back to different times and mores - need revision in the light of changed and changing times - especially as they affect juveniles "on the run."

FOOTNOTES

[1] See Criminal Law, supra. Note 7, Chapter 4.

[2] Id. at p. 111.

[3] There are other circumstances where the law may find that a woman did not have sufficient mental capacity to give a legally valid consent to have intercourse, e.g., where the woman is feeble minded, very drunk or drugged, unconscious, etc.

[4] See Chapters 4 and 6, supra.

[5] See Table 8, p. 265.

[6] Carnal knowledge is defined by Black, supra, Note 1, Chapter 4 as "Coitus; copulation; the act of a man in having sexual bodily connection with a woman." Carnal abuse is there defined as: "An act of debauchery of the female sexual organs by those of the male which does not amount to penetration." at page 268.

[7] See Criminal Law, supra at p. 111.

[8] See Table 8, p. 265.

TABLE 8

Statutory Rape

STATE	RAPE OF FEMALE BY MALE						INTERCOURSE OF FEMALE WITH MALE				Notes
	Female Under	Male Over	Female Under	Male Over	Female Under	Male Over	Male Under	Female Over	Male Under	Female Over	
Alabama	12		12-16	16							1
Alaska	16	15									
Arizona	18	13									2
Arkansas	16		14	18							1
California	18										
Colorado	18	18	18	17			18				1 3
Connecticut	16										
Delaware	12										
District of Columbia	16						16				
Florida	18										
Georgia	14										
Guam	16										4
Hawaii	12										
Idaho	18										
Illinois	16	17									5

Notes:

1. Punishments differ depending on age of the girl.
2. If boy under 14, must prove penetration.
3. By female of any age where male is under 18, intercourse at solicitation, inducement, connivance of such female, or where female was a free, common, public or clandestine prostitute and the male was, up to that time, of good moral character.
4. If boy under 14, must prove physical ability.
5. Boy must be 14 or over.

TABLE 8

Statutory Rape (continued)

STATE	RAPE OF FEMALE BY MALE						INTERCOURSE OF FEMALE WITH MALE				Notes
	Female Under	Male Over	Female Under	Male Over	Female Under	Male Over	Male Under	Female Over	Male Under	Female Over	
Indiana	12		16								1
Iowa	16		17	25							
Kansas	16						16				
Kentucky	12		12-16		16-18		12		12-16		
Louisiana	12-17	17									
Maine	14		14-15	18							
Maryland	14		14-16								
Massachusetts	16						16				
Michigan	16										
Minnesota	18										
Mississippi	12-18										6
Missouri	16										
Montana	16										7
Nebraska	18	18									8
Nevada	16	18									

Notes:

1. Punishments differ depending on age of the girl.
6. Girl younger than himself, over 12 and under 18.
7. Defendant is three years older than the girl.
8. Unless female over 15 and previously unchaste.

TABLE 8

Statutory Rape (continued)

STATE	RAPE OF FEMALE BY MALE						INTERCOURSE OF FEMALE WITH MALE				Notes
	Female Under	Male Over	Female Under	Male Over	Female Under	Male Over	Male Under	Female Over	Male Under	Female Over	
New Hampshire	16										
New Jersey	12	16	12-16	16							1
New Mexico	16										
New York	11		18		18	21					
North Carolina	16										
North Dakota	18										
Ohio	16	18									
Oklahoma	16										
Oregon	18		16		14						
Pennsylvania	16										
Puerto Rico	14										
Rhode Island	16										
South Carolina	16										
South Dakota	16										2
Tennessee	12		12-18								
Texas	17										
Utah	13-18										2
Vermont	16	16									
Virgin Islands	14										
Virginia	16										

Notes:

1. Punishments differ depending on age of the girl.
2. If boy under 14, must prove penetration.

TABLE 8

Statutory Rape (continued)

STATE	RAPE OF FEMALE BY MALE						INTERCOURSE OF FEMALE WITH MALE				Notes
	Female Under	Male Over	Female Under	Male Over	Female Under	Male Over	Male Under	Female Over	Male Under	Female Over	
Washington	18						18				
West Virginia	10	16	16	16			16	16			
Wisconsin	12	18	16	18	18						
Wyoming	15		15-18								

CHAPTER 14

DRUG ABUSE PROGRAMS AND THE RUNAWAY CHILD

The statutes in the jurisdictions studied varied very widely in the provisions they contained governing drug abuse treatment programs.

This chapter is concerned primarily with those statutory provisions - or lack of them - authorizing or mandating programs under which minors would be entitled to receive treatment if they are or become addicted to drugs. It is not concerned with what happens to a runaway child who is taken into custody by the police and charged with violating the laws relating to the use, possession or sale of proscribed drugs. The question as to the child's constitutional rights under such circumstances and the dispositional alternatives available to the court if such child is found, after a hearing, to be a juvenile delinquent, are dealt with in Chapter 6, supra.

It should also be pointed out that the ability of a runaway child to consent to medical or psychiatric treatment for drug addiction, without parental consent, has been treated more fully in Chapter 9, supra, although some duplication is inevitable because of the manner in which the particular statutes have been drafted.

In two jurisdictions (Alabama and Guam), no statute with respect to drug abuse treatment programs was found. However, it should be noted that there may still be locally sponsored and operated drug treatment programs in those areas, whether under state or private auspices. In addition, a minor in those jurisdictions may, depending on the law relating to the ability of a minor to consent to medical treatment, consent to receive treatment for such minor's drug addiction.

A number of jurisdictions, while having no over-all statewide public drug treatment program, do have statutes specifically authorizing a minor to consent to medical treatment for drug addiction and also, generally, protecting the person giving such treatment against legal action resulting from such treatment except where such person acted negligently in providing the treatment. These states include: Arizona, Kansas, Kentucky, North Dakota, Ohio, Vermont and West Virginia

Some jurisdictions (Alaska and Rhode Island) have merely established state advisory committees with respect to the drug abuse problem, apparently in the expectation that such advisory committees will recommend to the state legislatures desirable drug treatment programs to meet the needs of those states. As a result of such action, it is reasonable to expect, depending on the extent of the drug abuse problems in those states, that remedial legislation will be enacted in the future.

In many jurisdictions the state enabling legislation takes the form of authorizing a particular state agency to establish a program for drug abuse treatment either directly or through local agencies. Direct state-agency authorization is utilized in: Arkansas, California, Colorado, District of Columbia, Georgia, Idaho, Illinois, North Carolina, Oklahoma, Oregon, Pennsylvania, South Dakota, Texas, Virgin Islands, Virginia, Washington, Wisconsin and Wyoming. Local agencies are employed in: Michigan, New Mexico and South Carolina.

A number of jurisdictions have enacted legislation establishing drug addiction treatment programs specifying in considerable detail the procedures to be followed, including, in some instances, the eligibility requirements with respect to minors. These jurisdictions include: Connecticut, Delaware, Florida, Hawaii, Indiana, Iowa, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New York, Puerto Rico, Tennessee and Utah.

Thus, Maryland has established a Drug Abuse Authority which is given authority to treat any person who voluntarily applies for such treatment. However, if such person is under the age of 18[1] and is unmarried and dependent or is in the custody of the minor's parents or guardian, application may be made on behalf of such

child by the child's parent or guardian. If the Drug Abuse Authority believes it in the best interests of the addict, he may be retained for a period not to exceed 30 days. After 10 days, the superintendent of the facility may discharge the addict if he/she believes the addict has recovered or is not suitable for treatment. The Maryland statutes[2] also provide that a minor has the same capacity as an adult to consent to treatment for drug abuse.

In addition, the Maryland Circuit Court has the authority to commit a person to the Drug Abuse Authority if the person is found to be a drug addict even though such person has not committed a crime. If the addict is under 18 years of age, unmarried and dependent, the court shall notify the addict's parents and may require them to be present at any judicial proceedings.

Further, the Maryland statutes provide that any person committed to the Drug Abuse Authority by court order may be conditionally released when the person's progress warrants such release. While on conditional release, the person released is deemed to be in the legal custody of the Drug Abuse Authority. Conditional release is to last a minimum of three years. If the individual violates the terms of the conditional release, the person may be returned to the committing court or may be institutionalized for a period not to exceed one year.

The Connecticut statutes provide for a drug treatment program similar in broad outline to that of Maryland (supra). Under Connecticut law, a minor may participate in a drug treatment program and may consent to such treatment in his own capacity. The physician may not disclose the minor's application for treatment or the treatment given without the minor's consent. A drug-dependent person may apply to a drug treatment facility for voluntary admission but such person, after admission, shall not be discharged for at least 90 days.

Also, in Connecticut, the statutes provide that the circuit court may commit a person to an institution for treatment for drug dependency. A person so committed shall be committed for not less than 90 days nor more than two years, although if he has sufficiently responded to treatment such person may be released within the minimum 90-day period.

The Indiana statutes refer specifically to voluntary treatment for drug addiction. Any person who believes himself to be a drug abuser may request the Department of Health to provide him with treatment. Upon receipt of such request, within a reasonable time the Department may order an examination of the drug abuser to determine whether he should be admitted to a treatment facility. Decisions are not appealable. An individual admitted to voluntary treatment may withdraw upon ten days' written notice to the superintendent of that facility. A minor who voluntarily seeks

treatment for drug abuse may receive such treatment without notification to or consent by the parents of such minor. Any notification or consent shall be at the discretion of the Department. No action shall be permitted - either civil or criminal - against the Department or its agents for the reasonable exercise of this discretion.

Most of the state statutes establishing drug treatment programs contain a provision, similar to that contained in the Kentucky law, to the effect that the name of the person or the fact that drug treatment was requested or given shall not be disclosed to any law enforcement agency or officer. Information shall not be disclosed in any criminal proceeding unless authorized by the person treated.

FOOTNOTES

[1] For ability of minor to consent to drug treatment without parental consent, see Chapter 9, supra.

[2] Id.

CHAPTER 15

CONTRIBUTING, HARBORING AND/OR INTERFERING

It has been previously noted[1] that under the common law a child's parents had the right to the care, custody and control of their child. That right included the right to the physical care, custody and control of that child until the child's majority, unless that right was sooner terminated or limited by judicial process or unless they died or unless the child was emancipated.

If someone deprived the parents of that right to the care, custody and control of their child, the parents could go into court and ask for a writ of habeas corpus[2] to be issued by the court so that the court could then determine who had the legal right to the care, custody and control of the child.

Originally, the writ was used by the criminal courts of England but then it was taken over by the civil courts and used as a means of determining who had the right to the custody of infants. It became well established in American common law.

> ...it is recognized as the remedy by which a person claiming custody of a child in the possession of another may have the court pass on his claim...the writ in custody is generally considered equitable rather than legal... the court is by no means limited to an inquiry into the legal right by which the child is held, but must determine the broad question of what disposition will best serve the child's interests...the usual rules of res ad judicata apply in habeas corpus cases involving custody, at least to the extent that the judgement is final [but not in criminal cases]...[3]

The law has been interested in protecting the right of the child's parents to the "care, custody and control" from the standpoint of assuring more than that the parents continue the uninterrupted physical possession of the person of the child. The law - this time the statutory criminal law - has also been interested in assuring the proper upbringing of the child. The law thus provides criminal sanctions against those who contribute to the delinquency of a minor, or who would harbor a minor contrary to the right of the child's parents to the "care, custody and control" of the minor or those who would interfere in the proper "care, custody and control" of a minor.

Statutes in all jurisdictions studied had provisions governing contributing to the delinquency of a minor, "harboring"[4] a minor, or interfering with the right of a parent to the "care, custody and control" of such parent's minor child. Essential details of such statutes are set forth in Table 9.[5] The provisions of the statutes found varied greatly and followed no special pattern.

We are here dealing with criminal statutes defining certain actions as criminal and prescribing criminal penalties for those participating in their commission. However, these crimes are generally categorized as misdemeanors calling for fines and short sentences.

For this reason, the appeals from lower court decisions are kept at a minimum and the opportunity for the development of a body of appellate court decisions spelling out the breadth and scope of these statutes, as well as their constitutionality, is also kept at a minimum.

The statutes themselves, in defining the perpetrators of these crimes, generally speak in terms of "any person who," "a parent or other person," "any person over 18," "no person shall," "whoever shall," "any person, including minors" or "parent or person having custody." These are broad-reach statutes intended to have the widest possible scope -- without defining with any degree of specificity the crime alleged. Thus, with nothing more, speaking of "any person, including minors" with no other qualification, would make amenable to its provisions a minor who induces another minor to leave home or to stay away from home contrary to the wishes of the parent or guardian involved.

The potential beneficiaries of such statutes are variously described as "child under 16," "child under 18," "child," "juvenile," "boy under 16, girl under 18," "child under 17," "child under 14," or "minor."

The statutes themselves generally in their provisions - by the very vagueness in terms of the criminal activities they purportedly describe - illustrate the constitutional problems they potentially pose. Some typical statutes are quoted or abstracted below:

ARIZONA: A person who by act causes, encourages or contributes to the dependence or delinquency of a child is guilty of a misdemeanor.

DELAWARE: A person is guilty of endangering the welfare of a child when he knowingly contributes to the delinquency of any child less than 18 by doing or failing to do any act with the result, alone or in conjunction with other acts or circumstances, that the child becomes a delinquent child.

GEORGIA: Any parent or person having custody, control or supervision of a delinquent or neglected child or any person who knowingly and willfully encouraged, aided, caused, or connived at such state of delinquency or neglect, or has willfully done any acts which he knew would tend to produce or contribute to such conditions of delinquency or neglect...misdemeanor.

INDIANA: Unlawful for any person to encourage any boy under 16 or any [illegible] under 18...to commit an act of delinquency...to cause to be sent or permit to remain [any such child in a]...house of prostitution...saloon...place where intoxicating liquor is sold... pool room...bucket shop...to knowingly encourage, contribute to or cause any child to violate any law or ordinance...knowingly permit, contribute to, encourage or cause such child to be guilty of any vicious or immoral conduct.

KENTUCKY: No person shall...knowingly contribute...cause or in any manner contribute to the conditions which cause...a child who has not reached his 18th birthday to become delinquent, neglected, needy or charged with a crime...willfully to fail to do any act that would directly tend to prevent a child under 18 from becoming delinquent, dependent, neglected...

Many of these statutes raise serious constitutional questions and face the very real danger of being struck down in the future under the "void for vagueness" doctrine. It is the general rule of criminal law, and a matter of basic fairness, that a criminal statute - one which imposes criminal sanctions for the doing or the not doing of a specified act - set forth the alleged crime with great precision. Otherwise two results would follow, both of which the law should and does seek to avoid.

The criminal law establishes the "rules of the road" insofar as conduct acceptable in modern society is concerned. That society can properly and effectively function only if the vast majority of the people who constitute it obey those "rules." The laws must, therefore, be precisely and clearly worded so that those who wish to obey will be in a position to understand the exact types of conduct permitted or prohibited.

In the second place, a person charged with the commission of a crime - with having violated one of the "rules of the road," so to speak - should be in a position to understand precisely which rule he is accused of violating so that he will be in a position to present a defense to the accusation by presenting the facts in refutation of the accusation.

If the crime charged under the statute is vague and subject to many interpretations, then the individual charged with the commission of a crime is not in a position to bring forward the facts necessary to refute the allegations made against him! "A statute violates the Due Process Clause [of the Constitution] if it fails to give adequate guidance to those who would be law-abiding and to advise defendants of the offense with which they are charged." [6]

Whether the statutes cited above - and they are fairly typical of the statues dealing with "contributing" - would violate the "void-for-vagueness" doctrine has not yet been definitively resolved by the courts. The Arizona Supreme Court, in reviewing the statute noted above, came to the conclusion that on the basis of the facts presented the statute was <u>not</u> constitutionally void for vagueness.[7] The same result was reached by the Florida Supreme Court, which had before it a statute which provided:

> ...any person who shall by any act encourage, cause or contribute to the dependency or delinquency of...[such]...child and any parent or legal guardian of such child who shall by neglect of duty as such parent or legal guardian encourage, cause or contribute to the dependency or delinquency of such child...is guilty of a misdemeanor....[8]

The looseness with which so many of these "contributing" statutes are drafted can well create serious problems for workers employed in runaway houses. May a runaway house legally provide shelter care for a runaway child without first notifying the parent or guardian of the child and obtaining permission? May there legally be a time lag before notifying the parent or guardian that the runaway house is providing shelter care to the runaway? Is there any legal basis for measuring that time lag or would any delay in notifying the parent or guardian that such care is being provided constitute a legal basis for criminal charges of contributing, harboring and/or interfering? May a runaway house provide shelter care to a runaway through another agency without first notifying the parent or guardian of the runaway? May a runaway house legally refuse, when directly asked, to disclose that it is providing shelter care to the child of the parents making the inquiry?

Unfortunately, there are no clear legal answers to these questions or to other questions along similar lines. In this connection, the Illinois statute should be noted: under Illinois law it is illegal to "harbor" a truant for over three days.

The Minnesota Attorney General has ruled[9] that the term "person" in its "contributing" statute, i.e., "any person who," includes a minor, so that in Minnesota one minor may contribute to the delinquency of another minor. The Minnesota Attorney General has also ruled that before there can be a prosecution under the Minnesota statute of "contributing," there must be a finding that the juvenile is delinquent.[10] On the other hand, the Washington Supreme Court has ruled directly to the contrary.[11]

The Utah statute on contributing to the delinquency of a minor makes it a misdemeanor for any person, 18 or older, to induce, aid or encourage a child to break a law. The same applies to any person who tends to cause a child to become or remain a delinquent, or aids or is responsible for the neglect or delinquency of a child, or forcibly takes a child from or encourages a child to leave the legal custody of a person or agency in which the child has been placed or who knowingly detains or shelters a child. A church in Utah ran a church program for alienated youth and gave shelter care to a runaway. The court held that such action did not constitute a violation of this statute since the church did not induce the child to run away, and the child was not exposed to immoral or illegal activities by others. The church was under no duty to investigate the child or to report to the parents.[12]

The Youth Services Bureau in Louisiana is authorized by statute to provide emergency temporary maintenance for runaways. A December 1973 Michigan statute authorizes the Michigan Department of Social Services to develop a plan for the establishment, maintenance and operation of temporary housing and counseling services for transient juveniles who have run away from home.[13]

FOOTNOTES

[1] See Chapter 4, supra.

[2] Literally, the words are from the Latin and mean "you have the body." The writ is directed at the person who is detaining another person and commands such person to produce the detainee in court and there "to do, submit to, and receive whatsoever the judge awarding the writ shall consider in that behalf." Black, supra, Chapter 4, Note 1.

[3] Law of Domestic Relations, supra, Note 1, Chapter 4. The "rules of res ad judicata, " referred to in the quotation cited, mean the rules that "final judgement or decree on the merits by court of competent jurisdiction is conclusive of rights of parties or their privies in all later suits on points or matters determined in former suit."

[4] "harboring" meaning: "To receive clandestinely and without lawful authority a person for the purpose of so concealing him that another having the lawful right to the custody of such person shall be deprived of the same." Black, supra, Note 2, Chapter 4, at p. 487.

[5] See Table 9, p. 286.

[6] Criminal Law, Perkins, supra, at p. 541. See also: Contributing to Delinquency, Geis, Gilbert, St. Louis University Law Journal, Vol. 8, No. 1, Fall, 1962; Juvenile Statutes and Noncriminal Delinquents: Applying the Void-for-Vagueness Doctrine, Rose, Robert G., reprinted from an article in the Seton Hall University School of Law Review by the Office of Youth Development, U. S. Department of Health, Education and Welfare (1973) (SRS 73-26028), and the articles and cases cited therein.

[7] State v Swafford (1974) 21 Ariz. App. 474, 520 P2d 1159.

[8] State v Lindsay 284 So 2d 377 (1973).

[9] Op. AG. 218 -J-12-Aug. 18, 1950.

[10] Op. AG. (1940) No. 36, p. 63.

[11] State v Bryant (1970) 3 Wash. App 15, 472 P2d 408.

[12] State v Macri (1972) 27 U 2d 68, 498 P2d 335.

[13] See Chapter 20, infra.

TABLE 9

CONTRIBUTING TO THE DELINQUENCY OF A MINOR

STATE	DESCRIPTION OF DEFENDANT	DESCRIPTION OF JUVENILE
Alabama	Parent or other person	Child under 16
Alaska	Any person	Child under 18
Arizona	Any person	Child
Arkansas	Any person	Child
California	Any person	Child under 18
Colorado	Any adult	Child
Connecticut	Any person	Child
Delaware	Any person	Child
District of Columbia	Any person over 18	Child under 18
Florida	Any person	Child
Georgia	Parent or other person	Child
Guam	Parent or other person over 18	Juvenile
Hawaii	Parent or person with legal authority	Child*
Idaho	Any person	Child
Illinois	Any person harboring a truant over 3 days	Child
Indiana	Any person	Boy under 16, girl under 18
Iowa	Parent or other person	Child under 18
Kansas	Any person	Juvenile
Kentucky	No	Child under 18
Louisiana	Whoever	Juvenile
Maine	Whoever	Child under 17
Maryland	Adult	Child
Massachusetts	Any person	Child
Michigan	Any person	Child under 17
Minnesota	Any person, including minors	Child
Mississippi	Any person	Child
Missouri	Any person	Child under 17
Montana		
Nebraska	Any person	Child under 18
Nevada		

* Repealed L 1972, c 9, pt. of Sec. 1.

TABLE 9

CONTRIBUTING TO THE DELINQUENCY OF A MINOR (continued)

STATE	DESCRIPTION OF DEFENDANT	DESCRIPTION OF JUVENILE
New Hampshire	Any person	Child
New Jersey	Parent or person having custody	Child
New Mexico	Any person	Child under 18
New York		
North Carolina	Any person	Child under 16
North Dakota	Any person	Child
Ohio	Any person	Minor
Oklahoma	Every person	Minor
Oregon		
Pennsylvania	Every person over 18	Minor under 18
Puerto Rico	Every person	Child
Rhode Island	Any person	Child under 16
South Carolina	Any person over 18	Minor
South Dakota	Any person	Child
Tennessee	Any person	Child
Texas	Parent or other person	Child
Utah	Any person over 18	Child
Vermont	Any person	Child under 16
Virgin Islands	Any person	Child under 18
Virginia	Any person over 18	Child under 18
Washington	Any person	Child
West Virginia	Any person	Child
Wisconsin	Any person over 18	Minor
Wyoming	Any person	Child under 14

CHAPTER 16

LEGAL ABILITY OF A RUNAWAY TO MARRY

Basically, marriage is a civil contract between two persons having the legal capacity to enter into a contract. At common law, the minimum age at which a minor - who could not otherwise enter into a valid, legally binding contract - could enter into a marriage contract was at age 14 for males and at age 12 for females.

Statutes in the many jurisdictions studied have changed the common-law minimum ages below which a minor could not enter into a legally binding contract to marry even with parental consent. This age is generally lower for females, the lowest such age being 13 for females in New Hampshire.[1]

Exceptions are also made in the statutes for minors with special problems, such as when a female is pregnant. In these cases a doctor's certificate is usually required. Consent of a court is sometimes needed for marriage below the statutory minimum age.

The statutes covering the minimum age for marriage by minors therefore cover three general situations:

(1) the ability to marry above a certain age;

(2) the ability to marry before reaching that age, but only with parental consent between that age and a lower statutory age; and,

(3) a lower age than that requiring parental consent alone and where an intervening circumstance, e.g., pregnancy, the draft, etc., permits marriage at a lower age but only in certain situations and with certain circumstances, e.g., court permission, physician's certificate, etc.

The last several years have witnessed a dramatic lowering of the age at which juveniles may legally marry. In a study made by the Council of State Governments[2] of marriage laws in the United States (states only), it was found that in 1971, 21 of the states no longer required parental consent when the male was 21 and the female was 18; nine of the states no longer required such consent when the male was 18 and the female was the same age and ten states when both were 21. In contrast, this study has found that the number of states permitting juveniles to marry without parental consent when both were 18 has risen from nine to 24.

In some jurisdictions a court, under certain circumstances, e.g., when the female is pregnant, is empowered either to grant consent to marriage at a lower age than the statutorily

established minimum age for juveniles to marry or to appoint a guardian for the child to do so.[3]

Fourteen states (Alabama, Colorado, Florida, Georgia, Idaho, Iowa, Kansas, Montana, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina and Texas) and the District of Columbia[4] still recognize common-law marriages. The requirements for a valid common-law marriage, most authorities agree, are:

(1) "...the consent of two parties expressed in words of present mutual acceptance constituted an actual and legal marriage technically known by the name of sponsalia per verba de praesenti."[5]

(2) In addition, the cases in the United States require for an effective common-law marriage a mutual assumption of the marriage obligation.

(3) And finally, the couple must hold themselves out for the world to see that they are living together as husband and wife. The agreement to live together as husband and wife may be inferred from the manner in which the couple lived together.

Although only 14 states and the District of Columbia recognize common-law marriages, a valid common-law marriage contracted in one of those jurisdictions would be recognized in all the other jurisdictions in the United States. The doctrine may therefore have a much more significant role in American life than would appear to be so because of the relatively small number of states which recognize the principle. Thus, for example, a runaway youth who runs away from his home in Maryland to, for example, the District of Columbia and lives with a girl there under circumstances fulfilling the requirements of a common-law marriage may find that he has entered into a valid marriage recognized in his home state of Maryland.

The following two tables, Numbers 10 and 10A, set forth, respectively, the age of consent to marriage and the jurisdictions where marriage has been held to constitute the emancipation of the minors involved.

FOOTNOTES

[1] See Table 10, p.293.

[2] The Age of Majority, The Council of State Governments, Lexington, Kentucky, January 1972 and Age of Majority (Updated), Council of State Governments, Lexington, Kentucky, February 1973.

[3] Id. See also Table 10, p.293. See also: Stanton v Stanton, Ch. 1, for possible effect of Supreme Court decision on age differentials by sex.

[4] See Law of Domestic Relations, at p. 46, note 1, Ch. 4.

[5] Id. at p. 47.

TABLE 10

Age of Consent to Marriage

STATE	Minimum Marriage Age With Parents' Consent		Age Below Which Parental Consent Required		Notes
	Male	Female	Male	Female	
Alabama	17	14	21	18	(a)
Alaska	18	16	19	18	(b)
Arizona	16	16	21	18	(b)
Arkansas	17	16	21	18	(b)
California	18	16	18	18	(a) (c)
Colorado	16	16	18	18	(c)
Connecticut	16	16	18	18	(c)
Delaware	18	16	21	21	(a) (b)
District of Columbia	18	18	21	18	(a)
Florida	18	16	21	21	(a) (b)
Georgia	18	16	18	18	(b) (d)
Guam	18	16	21	18	(l) (k)
Hawaii	16	16	18	18	(c)
Idaho	15	15	18	18	(c)
Illinois	18	16	21	18	(b) (i)
Indiana	17	17	18	18	(b)
Iowa	18	16	18	16	(b)
Kansas	18	18	18	18	(c)
Kentucky	18	16	18	18	(a) (b)
Louisiana	18	16	21	21	(c)

Notes

(a) Parental consent not needed if minor was previously married.
(b) Younger parties may obtain consent from court, physician or license clerk, in case of pregnancy or birth of child.
(c) Younger parties may obtain license in special circumstances.
(d) If parties are under 19, proof of age and consent of parents in person is required, if parents are residents of the state. If one of the parents is sick, require affidavit of sick parent and of the sick parent's physician.
(i) Attorney General Opinion September 11, 1973: parental consent will validate a marriage if the male is under 18 and female under 16.
(k) If male is 18 and emancipated, no parental consent necessary.
(l) Consent of parents and court needed if male under 18 but over 16 and female is under 16 but over 14.

TABLE 10

Age of Consent to Marriage (continued)

STATE	Minimum Marriage Age With Parents' Consent		Age Below Which Parental Consent Required		Notes
	Male	Female	Male	Female	
Maine	16	16	18	18	(c)
Maryland	18	16	18	18	(b)
Massachusetts	18	16	18	18	(c)
Michigan		16	18	18	(e)
Minnesota	18	16	18	18	(a) (f)
Mississippi	17	15	21	21	(c)
Missouri	15	15	21	18	(c)
Montana	18	18	18	18	(c)
Nebraska	18	16	18	16	(b)
Nevada	18	16	18	16	(a) (c)
New Hampshire	14	13	18	18	(b)
New Jersey	18	16	21	18	(c)
New Mexico	16	16	18	18	(b)
New York	16	14	21	18	(f)
North Carolina	16	16	18	18	(b)
North Dakota	18	15	18	18	
Ohio	18	16	21	21	(b)
Oklahoma	18	15	21	18	(b)
Oregon	18	18	18	15	(g)
Pennsylvania	16	16	18	18	(c)

Notes

(a) Parental consent not needed if minor was previously married.
(b) Younger parties may obtain consent from court, physician or license clerk, in case of pregnancy or birth of child.
(c) Younger parties may obtain license in special circumstances.
(e) No legal provision for parental consent for males.
(f) Parental consent and permission of judge required.
(g) Permission of judge required for male under 19 and female under 17.

TABLE 10

Age of Consent to Marriage (continued)

STATE	Minimum Marriage Age With Parents' Consent		Age Below Which Parental Consent Required		Notes
	Male	Female	Male	Female	
Puerto Rico	18	16	21	21	(c)
Rhode Island	18	16	21	21	(b)
South Carolina	16	14	18	18	(b)
South Dakota	18	15	21	21	(b)
Tennessee	16	16	18	18	(c)
Texas	16	14	18	18	
Utah	16	14	21	18	(a)
Vermont	18	16	18	18	(c)
Virgin Islands	18	18	21	18	
Virginia	18	16	21	21	(a) (b)
Washington	17	17	17	17	(c)
West Virginia	18	16	18	16	(a)
Wisconsin	18	16	18	16	
Wyoming	18	16	18	16	

Notes

(a) Parental consent not needed if minor was previously married.
(b) Younger parties may obtain consent from court, physician or license clerk, in case of pregnancy or birth of child.
(c) Younger parties may obtain license in special circumstances.

TABLE 10A

Marriage of a Minor as the Emancipation of the Minor

STATE	
Alabama	Hutchinson v Till (1924) 212 Ala. 64, 101 So. 676
Alaska	
Arizona	Dept. of Law Op. No. 69-27, Oct. 1969
Arkansas	
California	
Colorado	Perkins v Westcoat (1893) 2 Colo. App. 338, 33 P 139
Connecticut	
Delaware	
District of Columbia	Davis v Davis (1938) 68 App. DC 240, 96 F2d 512 (revd other grds: (1938) 305 US 32]
Florida	
Georgia	Irby v State (1938) 57 Ga. App 717, 196 SE 101
Guam	
Hawaii	
Idaho	
Illinois	People ex rel Mitts v Ham, (1917) 206 Ill App 543
Indiana	
Iowa	
Kansas	
Kentucky	
Louisiana	La. Civil Code Art. 365 (1952) - marriage irrevocable emancipation
Maine	Bucksport v Rockland (1868) 56 Me 22
Maryland	
Massachusetts	Charlestown v Boston (1816) 13 Mass. 469
Michigan	Mich. Comp Laws Ann Sec. 722.4 (Cum. Supp. 1972)
Minnesota	State ex rel Scott v Lowell (1899) 78 Minn 166, 80 NW 877, 46 ALR 440
Mississippi	Holland v Beard (1881) 59 Miss 161
Missouri	
Montana	
Nebraska	
Nevada	
New Hampshire	Aldrich v Bennett (1885) 63 NH 415
New Jersey	Rinaldi v Rinaldi (1922) 94 NJ Eq 14, 118 A 685
New Mexico	
New York	Inakay v Sun Laundry Corp, (1943) 180 Misc 550, 42 NY S2d 344
North Carolina	Church v Hancock (1964) 264 N.C. 764, 136 S.E. 2d 81

TABLE 10A

Marriage of a Minor as the Emancipation of the Minor (continued)

STATE	
North Dakota	N.D. Code Cent Sec. 14-09-20 (1971)
Ohio	Schulman v Villensky (1957) 103 Ohio App 300, 143 NE 2d 754
Oklahoma	Ex parte Mosier (1926) 114 Okla 234m 245 P 992
Oregon	Ore. Rev. Stat. Sec. 109.520 (1969) All persons attain majority upon marriage.
Pennsylvania	
Puerto Rico	
Rhode Island	
South Carolina	1963-1974 OP.AG #155 (Op. #1583, October 22, 1963) Child emancipated on marriage.
South Dakota	S. D. Comp. Laws Ann Sec. 25-5-17 (1967) Emancipation of child on marriage
Tennessee	McWhorter v Gibson (1935) 19 Tenn App 152, 84 SW 2d 108
Texas	Jackson v Banister (1907) 47 Tex Civ App 317, 105 SW 66
Utah	
Vermont	Craftsbury v Greensboro, (1894) 66 Vt 585, 29 A 1024
Virgin Islands	
Virginia	Kirby v Gilliam (1943) 182 Va 111, 28 SE 2d 40, 150 ALR 601
Washington	Smith v Seilby (1967) 72 Wash. 2d 16, 431 P 2d 719 If married can give medical consent
West Virginia	
Wisconsin	La Crosse County v Vernon (1940) 233 Wis. 664, 290 NW 279
Wyoming	

CHAPTER 17

THE RUNAWAY CHILD AND THE USE OF TOBACCO PRODUCTS

With respect to the use of tobacco products, a runaway child may find that the use of such products, which may have been perfectly legal in the jurisdiction in which the child resided, may subject the child to legal sanctions in the jurisdiction to which he or she has run. For example, a minor running away from New Mexico en route to California would find that the mere possession of a package of cigarettes while crossing Arizona would constitute the commission of a misdemeanor under the laws of Arizona, even though there is no Arizona law against the possession of a package of cigarettes by an adult.

The statutes, where they exist, attempting to curb the use, acquisition or possession of tobacco products by minors are very broadly worded. Thus, for example, the Florida statute provides: "No person shall sell, barter, furnish or give away, directly or indirectly, to any minor, any cigarette, cigarette wrapper or any substitute for either...misdemeanor."[1] Florida has no statute prohibiting minors from smoking. However, as the Florida statute is worded, a minor offering another minor a cigarette as a gift - not a sale - may be found guilty of having committed a misdemeanor while, at the same time, the minor who accepts the cigarette is not guilty of any offense whatsoever under Florida law.

A "child in need of supervision, " under Florida law, is, among other things, a child who has "run away from his parents or legal custodian." Upon a finding by the court that a child is in "need of supervision" by virtue of the child's having "run away from his parents or legal custodian," if it is the child's first "offense," the court is precluded from committing the child to the division of youth services.

On the other hand, under the Florida statutes a delinquent child is defined as one "who commits a violation of law." The term "violation of law" is defined by the Florida statutes as meaning "a violation of any law of the United States or of the state, or of a local ordinance, which would be a misdemeanor or a felony if committed by an adult."[2] Thus a runaway child under the Florida statutes who could otherwise be proceeded against only as a "child in need of supervision" under those statutes may be proceeded against as a juvenile delinquent for giving another minor a cigarette.

The Florida statutes in this regard are not being cited as "horrible examples." Similar examples may be cited with respect to the statutes of other states. Whether or not such statutes are enforced, it should be a matter of concern that a runaway child may be put at the risk of being committed to a training school solely because such child gave another child a cigarette.

It does not seem that the respect of children for the law would be promoted in this way -- especially as they see the double standard which is applied to youths only a year or so older than themselves who are permitted to smoke without fear of legal retribution.

To the extent that unreasonable laws are permitted to be placed upon the statute books, to that level is disrespect for the law and for law enforcement encouraged among youth.

Table 11, page 302, deals with the statutes in the jurisdictions which cover the sale, gift, barter or exchange of tobacco products to minors who are variously designated as recipients who are "minors," 15 years of age, 16 years of age, 17 years of age, 18 years of age and 19 years of age. All but 18 of the 54 jurisdictions have statutes, in one form or another, relating to or regulating the sale, barter, gift or exchange of tobacco products with or to minors.

Table 11A, page 304, deals with statutes covering the purchase, possession, use, etc. of tobacco products by minors. Thirteen out of the 54 jurisdictions studied were found to have such statutes. While the number of such statutes may be few, they may, nevertheless prove devastating to a runaway child coming from a state which provides for no punishment for the mere possession of tobacco products, i.e., purchase, possessing or using in a public place (Utah); smoking in a public place (Rhode Island); smoking or using tobacco products in a public place (Michigan); or buying, receiving, accepting, owning or keeping tobacco products (Indiana).

FOOTNOTES

[1] Florida Rev. Stat. Vol. 22A, Ch. 859, Sec. 06

[2] Florida Rev. Stat. Ch. 39, Sec. 39.01 (31)

TABLE 11

TOBACCO PRODUCTS - SALE, GIFT, BARTER, EXCHANGE TO MINORS

STATE	Age of Minor	Action with respect to "minor"
Alabama	Minor	Sale, barter, exchange or gift
Alaska	18	Give, sell or exchange
Arizona	Minor	Furnish
Arkansas	18	Give, barter or sell
California	18	Sell, give or furnish
Colorado	16	Sell, give or furnish
Connecticut	16	Sell, give or deliver
Delaware	17	Sell, give or purchase for
District of Columbia		
Florida	Minor	Sell, barter, furnish or give
Georgia		
Guam		
Hawaii	15	Sell or furnish
Idaho		
Illinois	18	Sell, buy or furnish
Indiana	18	
Iowa	18	Sell, barter or give
Kansas		
Kentucky		
Louisiana		
Maine	16	Sell, give or obtain
Maryland	15	Sell or buy for
Massachusetts	18	Sell cigarettes
Michigan	18	
Minnesota	18	Furnish tobacco products to one not entitled
Mississippi		
Missouri		
Montana		
Nebraska	18	Sells, gives or furnishes
Nevada	18	Sells or gives away
New Hampshire	Minor	Sell
New Jersey	16	Sell
New Mexico		
New York		
North Carolina		
North Dakota	Minor	Sell, furnish or procure
Ohio	18	Sell, give or furnish
Oklahoma		
Oregon	18	Sell
Pennsylvania	16	Purchase or furnish

TABLE 11

TOBACCO PRODUCTS - SALE, GIFT, BARTER, EXCHANGE TO MINORS (continued)

STATE	Age of Minor	Action with respect to "minor"
Puerto Rico	16	Sale or delivery
Rhode Island	16	
South Carolina	Minor	Supply
South Dakota	16	Sell, give or furnish
Tennessee	18	Sell or furnish
Texas		
Utah	19	Furnishing
Vermont	17	Sell or give
Virgin Islands		
Virginia	16	Sell, barter or give
Washington	19	Sell or give
West Virginia	18	Buy for, give or furnish
Wisconsin		
Wyoming		

TABLE 11 A

TOBACCO PRODUCTS - PURCHASE, POSSESSION, USE, ETC. BY MINORS

STATE	Age of Minor	Action by minor - exceptions
Alabama		
Alaska		
Arizona	Minor	Possess; accept or receive tobacco products
Arkansas		
California		
Colorado	16	May purchase with written note from father or guardian
Connecticut		
Delaware	17	Not applicable to parent or guardian
District of Columbia		
Florida		
Georgia		
Guam		
Hawaii		
Idaho		
Illinois	18	Purchase except with written order from parent or guardian
Indiana	18	Buy, receive, accept, own, keep - misrepresent age to purchase
Iowa		
Kansas		
Kentucky		
Louisiana		
Maine		
Maryland	15	Parent/guardian written consent - buying for employer
Massachusetts		
Michigan	18	Smoke/use in public place
Minnesota	18	Use tobacco products in any form
Mississippi		
Missouri		
Montana		
Nebraska	18	Misrepresenting age to purchase
Nevada	18	Written parental consent except 16 year olds in training school
New Hampshire		
New Jersey		
New Mexico		
New York		
North Carolina		

TABLE 11A

TOBACCO PRODUCTS - PURCHASE, POSSESSION, USE, ETC. BY MINORS (continued)

STATE	Age of Minor	Action by Minor - Exceptions
North Dakota	Minor	Smoke or use tobacco products
Ohio		
Oklahoma		
Oregon		
Pennsylvania		
Puerto Rico		
Rhode Island	16	Smoking in a public place
South Carolina		
South Dakota		
Tennessee		
Texas		
Utah	19	Purchase or possession or using in a public place
Vermont		
Virgin Islands		
Virginia		
Washington		
West Virginia		
Wisconsin		
Wyoming		

CHAPTER 18

THE RUNAWAY CHILD AND INTOXICATING BEVERAGES

The legal disabilities of minors with respect to the purchase, consumption and/or possession of intoxicating beverages - beer, wine and/or distilled spirits - in each of the fifty-four jurisdictions studied are set forth in Table 12, p. 308.

In twenty-four jurisdictions it is legal for a juvenile 18 years of age or older to purchase or to be sold intoxicating beverages, including beer, wine and distilled spirits. These jurisdictions include: Connecticut, District of Columbia, Georgia, Hawaii, Iowa, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, New Hampshire, New Jersey, New York, Puerto Rico, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Virgin Islands, West Virginia and Wisconsin.

In seven jurisdictions (Alaska, Arizona, Guam, Illinois, Idaho, Nebraska and Wyoming) a juvenile must be at least 19 years of age before he or she may legally purchase such beverages.

In fourteen jurisdictions the juvenile must be 21 years of age before his or her purchases of such beverages are legal. These states are: Alabama, Arkansas, California, Florida, Indiana, Kentucky, Missouri, Nevada, New Mexico, North Dakota, Oregon, Pennsylvania, Utah and Washington.

In the remaining jurisdictions, the statutes vary greatly. It is legal for minors to purchase beer at 18 in Colorado, Kansas, Mississippi, Ohio, South Dakota and Virginia. However, it is not legal in Mississippi if the beer is over 3.2%-4%. Minors may not purchase wine or distilled spirits in those states until they reach the age of 21 years. In the District of Columbia and North Carolina, minors may purchase beer at age 18 but may not purchase wine with an alcoholic content exceeding 14% until they are 21 years of age.

Why are these facts of importance in dealing with the problems confronting runaway children? A juvenile "on the run" may well find himself or herself in violation of the laws of another jurisdiction for conduct which would be perfectly legal in the jurisdiction from which he or she has come. In the case of an intrastate runaway, this would probably not be of any great significance since presumably the juvenile would know the law applicable to the juvenile's own jurisdiction. An interstate runaway, however, may encounter problems.

TABLE 12

LEGAL AGE FOR SALE OF BEER, WINE AND DISTILLED SPIRITS TO MINORS

STATE	Beer	Wines	Distilled Spirits	Comments
Alabama	21	21	21	
Alaska	19	19	19	
Arizona	19	19	19	
Arkansas	21	21	21	
California	21	21	21	
Colorado	18 - not over 3.2%	21	21	
Connecticut	18	18	18	
Delaware	20	20	20	
District of Columbia	18	18 - not over 14%	21	
Florida	21	21	21	
Georgia	18	18	18	
Guam	19	19	19	
Hawaii	18	18	18	
Idaho	19	19	19	
Illinois	19	19	21	
Indiana	21	21	21	
Iowa	18	18	18	
Kansas	18 - not over 3.2%	21	21	
Kentucky	21	21	21	
Louisiana	18	18	18	
Maine	18	18	18	
Maryland	18	18	18	
Massachusetts	18	18	18	
Michigan	18	18	18	
Minnesota	18	18	18	
Mississippi	18 - not over 4%	21	21	
Missouri	21	21	21	
Montana	18	18	18	
Nebraska	19	19	19	
Nevada	21	21	21	
New Hampshire	18	18	18	
New Jersey	18	18	18	
New Mexico	21	21	21	
New York	18	18	18	
North Carolina	18	18 - not over 14%	21	

TABLE 12

LEGAL AGE FOR SALE OF BEER, WINE AND DISTILLED SPIRITS TO MINORS (continued)

STATE	Beer	Wine	Distilled Spirits	Comments
North Dakota	21	21	21	
Ohio	18 - not over 3.2%	21	21	
Oklahoma	See Comments	21	21	3.2% beer: males, 21; females, 18
Oregon	21	21	21	
Pennsylvania	21	21	21	
Puerto Rico	18	18	18	
Rhode Island	18	18	18	
South Carolina	18	18	21	
South Dakota	18 - not over 3.2%	21	21	Note (a)
Tennessee	18	18	18	
Texas	18	18	18	
Utah	21	21	21	
Vermont	18	18	18	
Virgin Islands	18	18	18	
Virginia	18 - not over 3.2%	21	21	
Washington	21	21	21	
West Virginia	18	18	18	
Wisconsin	18	18	18	Note (b)
Wyoming	19	19	19	

Note (a): Except in presence of parents, guardian or spouse.

Note (b): Beer at any age if accompanied by parent.

Source: "Summary of State Laws and Regulations to Distilled Spirits," 21st Ed, June 1974, Distilled Spirits Council of the United States. Washington, D. C. and project staff.

CHAPTER 19

THE RUNAWAY CHILD AND THE MOTOR VEHICLE LAWS

The laws applicable to juveniles operating or seeking to operate motor vehicles upon the public highways have been analyzed from the standpoint of how the statutory requirements and restrictions imposed might affect runaway juveniles. Such analysis seems to indicate that under certain circumstances some of these laws may pose problems for some runaways.

1. *Licensure and examination requirements.*

Table 13[1] indicates for all the jurisdictions the statutory licensure and examination requirements. All the jurisdictions require that a person must have applied for and been issued a license authorizing such person to operate a motor vehicle on the public highways of that jurisdiction. All the jurisdictions except Georgia and Pennsylvania require that an applicant for such license take and pass a written examination. Twelve jurisdictions require an oral examination, and in two of these jurisdictions the oral examination is in addition to the written. In Wisconsin the oral examination will be administered where the applicant cannot read.

In all jurisdictions except Georgia, North Dakota, Puerto Rico and South Carolina, an applicant is required to pass a vision test. All jurisdictions except Georgia require an applicant to take and pass a driving test. Only Kentucky requires an applicant to take and pass a hearing test.

Kentucky, Pennsylvania, Puerto Rico, the Virgin Islands and Washington require the applicant to pass a physical examination. An applicant is also required to take and pass a road sign test in California, Florida, Mississippi, Missouri, New York and Pennsylvania.

2. *Age of licensure and license restrictions*

The age at which a person may apply for and receive a license to drive a motor vehicle and the restrictions which may attach or be attached to such license vary widely among the jurisdictions, making any broad generalizations with respect to them almost impossible except with respect to a few general characteristics. The specifics with respect to each jurisdiction are set forth in Table 13A[2]. The minimum age at which an individual may obtain a license to operate a motor vehicle -- although "learner's permits" may be obtained at an earlier age -- ranges from 14 in Arkansas to 21 in Colorado. Of the 53 jurisdictions studied (Georgia's statute specifies no minimum age), the minimum age was 16 in 25 jurisdictions and 18 in 19 jurisdictions. The minimum age was 14 in one jurisdiction (Arkansas, as noted above), 15 in three jurisdictions, 16 1/2 in one jurisdiction, 17 in three jurisdictions and 21 in one jurisdiction (Colorado, as mentioned above).

The minimum ages set forth in the statutes for the issuance of a license to drive a motor vehicle do not, however, mean that those are absolutes. Under the specific provisions of the statutes enacted in these jurisdictions, permits to operate a motor vehicle at earlier ages may be issued. For example: In Colorado an individual who is 21 years of age may be issued a regular adult and chauffeur license. But in that state, a person who is only 15-1/2 years of age may obtain a special minor's permit if the minor is enrolled in a high school driver-education program; may obtain a special minor's license at age 16 and a provisional adult and chauffeur license at age 18. In Arkansas a person may obtain a driver's license at age 14. However, if such person is between the ages of 16 and 18, the license application must be signed by the minor's parent or guardian. Moreover, in Arkansas, a licensed driver who is between the ages of 14 and 16 must be accompanied by a licensed adult driver.

Restrictions, limitations, conditions, age requirements, hours when minors may be in an automobile in certain designated geographical areas, etc. make the state motor vehicle licensing laws a veritable maze for one who has not attained the age of majority. Their major provisions are set forth in Table 13A.[3]

Many of those provisions are aimed at assuring that new drivers have either received some type of driver education/training or that they will be accompanied during their first years of driving an automobile by a licensed adult driver. Some of the other restrictions and limitations, however, seem more in the nature of curfews imposed upon minors because they are minors, without regard to their driving records.

Thus the New York statute provides a junior license may be issued to a minor at age 16. Under such a junior license, which will be issued only with parental consent, the minor may operate cars and trucks (up to nine tons), but not for compensation; may operate alone during daylight and at night if accompanied by an adult; may operate between 8 P.M. and 5 A.M. between home and school in direct route to credit-bearing classes; may not drive in New York City or in Nassau County, with one Nassau County exception for work-study programs.

Kansas issues restricted licenses to minors between the ages of 14 and 16 with the following restrictions, dividing the state into ordinance cities and non-ordinance cities. In an ordinance city, a minor holding a restricted license is permitted to drive between the hours of 7 A.M. and 7 P.M. only on direct route between home

and school where driver is enrolled; and anytime with licensed parent or guardian sitting beside the licensee. In a non-ordinance city, a minor holding a restricted license is permitted to drive between the hours of 7 A.M. and 7 P.M. only on direct route between home and school where driver is enrolled and on farm errands for parents; anytime with licensed 21-year-old sitting beside the driver.

Louisiana states flatly that persons under 17 who obtained licenses after August 1, 1968 may not drive anywhere on the public highways of Louisiana between the hours of 11 P.M. and 5 A.M. In Massachusetts, a junior permit is issued to minors under the age of 18. Under such a permit, the minor is prohibited from driving, unless accompanied by a parent or guardian, between 1 A.M. and 5 A.M. Pennsylvania has the same system as Massachusetts, but starts the driving curfew one hour earlier at midnight.

The foregoing examples of restrictions upon a minor's right to operate a motor vehicle in the various jurisdictions under study are set forth to indicate the difficulties which may be encountered by a runaway driving an automobile from jurisdiction to jurisdiction.

3. *Reciprocity with respect to out-of-state driver's permits.*

One question which might arise regarding a runaway child is whether, for how long and under what restrictions that runaway child, holding a valid driver's permit issued by the jurisdiction from which the runaway came, may legally continue to operate motor vehicles in the jurisdiction to which he has come.

> It is general practice among the states to permit nonresident drivers the highways of the state for a certain period without requiring them to register their vehicles in the state. This privilege is reciprocal among the states....Generally a nonresident must obtain a driver's license and register his car after a certain period of time within the state, or if at anytime he obtains employment within the state, or places his children in a public school within the state. State laws invariably require a person to register his motor vehicle and obtain a local driver's license when he becomes a resident of the state.[4]

Table 13B[5] sets forth the relevant statutes of the 54 jurisdictions studied with respect to the statutory provisions governing the reciprocity extended between jurisdictions to holders of valid driver's licenses in other jurisdictions.

Here too, as with the statutory provisions relating to other aspects of the motor laws, no broad generalizations as to their contents are possible. Alabama, Georgia and Guam have no statutory provisions governing reciprocity.

Such a statement, however, does not necessarily indicate that the subject matter has not been covered in administratively adopted regulations. The statutes with respect to reciprocity make no special mention of minors.

CONTINUED

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FOOTNOTES

[1] See page 318.

[2] See pp.320 through 330.

[3] Id.

[4] Digest of the Motor Laws, 1974, 51st Ed., American Automobile Association, Falls Church, Virginia.

[5] See pp.331 through 337.

TABLE 13

LICENSURE AND EXAMINATION REQUIREMENTS

STATE	LICENSE REQUIRED	Initial Examination for License						Comments
		Written	Oral	Vision	Driving	Hearing	Physical	
Alabama	YES	YES	YES	YES	YES	NO	NO	
Alaska	YES	YES	NO	YES	YES	NO	NO	
Arizona	YES	YES	YES	YES	YES	NO	NO	
Arkansas	YES	YES	YES	YES	YES	NO	NO	
California	YES	YES	NO	YES	YES	NO	NO	Road sign test
Colorado	YES	YES	NO	YES	YES	NO	NO	
Connecticut	YES	YES	YES	YES	YES	NO	NO	
Delaware	YES	YES	NO	YES	YES	NO	NO	
District of Columbia	YES	YES	YES	YES	YES	NO	NO	
Florida	YES	YES	YES	YES	YES	NO	NO	Road sign test
Georgia	YES	NO	NO	NO	NO	NO	NO	
Guam	YES	YES	NO	YES	YES	NO	NO	
Hawaii	YES	YES	NO	YES	YES	NO	NO	
Idaho	YES	YES	NO	YES	YES	NO	NO	
Illinois	YES	YES	NO	YES	YES	NO	NO	
Indiana	YES	YES	NO	YES	YES	NO	NO	
Iowa	YES	YES	NO	YES	YES	NO	NO	
Kansas	YES	YES	NO	YES	YES	NO	NO	
Kentucky	YES	YES	NO	YES	YES	YES	YES	
Louisiana	YES	YES	NO	YES	YES	NO	NO	
Maine	YES	YES	YES	YES	YES	NO	NO	
Maryland	YES	YES	NO	YES	YES	NO	NO	
Massachusetts	YES	YES	NO	YES	YES	NO	NO	
Michigan	YES	YES	YES	YES	YES	NO	NO	
Minnesota	YES	YES	NO	YES	YES	NO	NO	
Mississippi	YES	YES	NO	YES	YES	NO	NO	Road sign test
Missouri	YES	YES	NO	YES	YES	NO	NO	Road sign test
Montana	YES	YES	NO	YES	YES	NO	NO	
Nebraska	YES	YES	NO	YES	YES	NO	NO	
Nevada	YES	YES	NO	YES	YES	NO	NO	

TABLE 13

LICENSURE AND EXAMINATION REQUIREMENTS (continued)

STATE	LICENSE REQUIRED	Initial Examination for License						Comments
		Written	Oral	Vision	Driving	Hearing	Physical	
New Hampshire	YES	YES	YES	YES	YES	NO	NO	
New Jersey	YES	YES	NO	YES	YES	NO	NO	
New Mexico	YES	YES	NO	YES	YES	NO	NO	
New York	YES	YES	NO	YES	YES	NO	NO	Road sign test
North Carolina	YES	YES	NO	YES	YES	NO	NO	Road sign test
North Dakota	YES	YES	NO	NO	YES	NO	NO	Vision on renewal
Ohio	YES	YES	NO	YES	YES	NO	NO	
Oklahoma	YES	YES	NO	YES	YES	NO	NO	
Oregon	YES	YES	NO	YES	YES	NO	NO	
Pennsylvania	YES	NO	YES	YES	YES	NO	YES	
Puerto Rico	YES	YES	NO	NO	YES	NO	YES	
Rhode Island	YES	YES	NO	YES	YES	NO	NO	
South Carolina	YES	YES	YES	NO	YES	NO	NO	
South Dakota	YES	YES	NO	YES	YES	NO	NO	
Tennessee	YES	YES	NO	YES	YES	NO	NO	
Texas	YES	YES	NO	YES	YES	NO	NO	
Utah	YES	YES	NO	YES	YES	NO	NO	
Vermont	YES	YES	NO	YES	YES	NO	NO	
Virgin Islands	YES	YES	NO	YES	YES	NO	YES	
Virginia	YES	YES	YES	YES	YES	NO	NO	
Washington	YES	YES	NO	YES	YES	NO	YES	
West Virginia	YES	YES	NO	YES	YES	NO	NO	
Wisconsin	YES	YES	(1)	YES	YES	NO	NO	
Wyoming	YES	YES	NO	YES	YES	NO	NO	

(1) Oral exam if applicant cannot read.

Source: "Digest of Motor Laws, 1974," American Automobile Association, Falls Church, Virginia 1974.

TABLE 13A

MOTOR VEHICLE OPERATORS LICENSURE LAWS APPLICABLE TO JUVENILES

	Min. License Age	Learner's Permit Age	Comments
Alabama	16	15	At 14, cycle license, 5 hp., 200 lbs.
Alaska	16	None	Under 18, written consent, parent/guardian.
Arizona	18	15-5 mos.	At 16 with notorized parent/guardian consent. Parent's consent needed for learner's permit.
Arkansas	14	30 days before test	14-16: driver must be accompanied by licensed adult driver; 14-18: license application must be signed by parent or guardian.
California	18	15-17 1/2	Min. age 16 if driver's education and training courses completed. Learner's permits if have taken or are taking driver's education and training courses. Special license for good cause for those over 17 1/2. Driver with learner's permit must be accompanied by licensed driver over 18.
Colorado	21	3 mos. prior to 16th birthday	21 for regular adult and chauffeur license. 18 for provisional adult and chauffeur license. 16 for minor's license. 15 1/2 for special minor's permit for students enrolled in high school driver education.
Connecticut	16	None	Under 18 must complete driver training course to apply for license or provide evidence of having been taught by parent, guardian or spouse having an operator's license for at least two years preceding the certificate.

TABLE 13A

MOTOR VEHICLE OPERATORS LICENSURE LAWS APPLICABLE TO JUVENILES (continued)

	Min. License Age	Learner's Permit Age	Comments
Delaware	16	Yes	Applicants between 16-18 must complete approved driver education course for a license. Learner must be accompanied by licensed driver to operate vehicle.
District of Columbia	16	Yes	Applicants under 18 must have written permission of parent/guardian.
Florida	16	Yes	Restricted license at 15. Application between 15-18, verified by both parents or guardian and submit proof of age. Under 18, must have completed approved driver education course.
Georgia			No minimum age given. Compendium indicates a learner's permit is required but gives no further details.
Guam	16	None	Under 18 must have written consent of parent/guardian.
Hawaii	15	No age	If under 18, must have consent parent/guardian. Learner's permit required - issued for 90 days.
Idaho	16	No age	If 14 or 15 restricted licenses may be issued if driver's education completed.
Illinois	18	No age	Minimum age 16 if driver's education course completed. Unmarried applicant below 18 need consent of parent/guardian.

TABLE 13A

MOTOR VEHICLE OPERATORS LICENSURE LAWS APPLICABLE TO JUVENILES (continued)

	Min. License Age	Learner's Permit Age	Comments
Indiana	16 & 6 mos.	16	If driver's education course completed, min. age 16 years, 1 month. Learner's permit good for 1 year; must be held at least 2 mos.; must be accompanied by licensed driver over 21 years of age.
Iowa	18	14	Learner's permit called "school license and instruction permit." First license is a temporary permit for one year. Minimum age can be 16 if approved driver's education course completed.
Ka	16	No age	Restricted licenses issued to persons between 14-16. Restrictions: Ordinance City: 7:00 a.m.- 7:00 p.m. - direct route home/school where enrolled - anytime with licensed parent or guardian sitting beside driver; Non-Ordinance City: 7:00 a.m. - 7:00 p.m. - direct route home/school where enrolled - farm errands for parents - anytime with licensed 21-year-old beside driver; Instruction permit - if enrolled in driver education course for length of course - otherwise, instruction permit good for 6 months - requires written and vision tests.

TABLE 13A

MOTOR VEHICLE OPERATORS LICENSURE LAWS APPLICABLE TO JUVENILES (continued)

	Min. License Age	Learner's Permit Age	Comments
Kentucky	18	No age	Min. age 16 with consent of parent/guardian. Learners permit required.
Louisiana	15	None	Persons under 17 who obtained licenses after August 1, 1968 may not drive between 11:00 p.m. and 5:00 a.m.
Maine	17	No age	Min. age 15 with approved driver education course. Instruction permit required.
Maryland	18	No age	Min. age 16 if approved driver education course passed. Learner's permit required - must be accompanied by driver licensed to operate vehicle being driven. Under 18, must have parents' consent. Proof of age and identity required.
Massachusetts	17	16	Min. 16 1/2 if passed driver education course. Learner's permit required - eye test and written test required for issuance of learner's permit. Under 18, parental consent required and junior permit issued prohibiting driving between 1:00 a.m. and 5:00 a.m. unless accompanied by parent or legal guardian.

TABLE 13A

MOTOR VEHICLE OPERATORS LICENSURE LAWS APPLICABLE TO JUVENILES (continued)

	Min. License Age	Learner's Permit Age	Comments
Michigan	18	No age	Min. age 16 if approved drivers' education course completed. Learner's permit required for 30 days before application for license permitted. If under 18, consent of parent/guardian required. License may be cancelled upon written request of parent/guardian.
Minnesota	18	No age	Min. age 16 if approved driver's education course completed. Provisional license 16-18 years old expires on 18th birthday - then gets regular driver's license. Learner's permit - valid for 6 mos. but renewable - is required unless applicant passes road test. General curfew statute prohibits any juvenile under 17 from driving a motor vehicle on a public highway between the hours of 12:00 midnight and 5:00 a.m. unless accompanied by an adult or in case of an emergency.
Mississippi	15	No age	
Missouri	16	None	Applicant enrolled in school driving training program may operate under school supervision at 15 1/2.

TABLE 13A

MOTOR VEHICLE OPERATORS LICENSURE LAWS APPLICABLE TO JUVENILES (continued)

	Min. License Age	Learner's Permit Age	Comments
Montana	16	No age	Min. age if applicant has passed approved driver education course. Parents' consent necessary for those under 18. Provisional licenses issued to those under 18. Learner's permits required.
Nebraska	16	15	Min. age for school permit: 14. Person with learner's permit must be accompanied by licensed driver at least 19 and must have permit in possession. Learner's permit required.
Nevada	16	15 1/2	Under 18, consent of parent/guardian required. Under 21, birth certificate or other proof of age required. Learner's permits authorized.
New Hampshire	18	No	Min. age 16 if approved driver education course completed. Unlicensed person being taught to drive must be accompanied by licensed driver 21 years of age or older.
New Jersey	17	Yes	Min. age 16 for agricultural pursuits. Holder of learner's permit must be accompanied by licensed driver.
New Mexico	16	15,8 mos.	Min. age for drivers education graduates: 15. Instruction permit: 14 for students enrolled in driver education courses.

TABLE 13A

MOTOR VEHICLE OPERATORS LICENSURE LAWS APPLICABLE TO JUVENILES (continued)

	Min. License Age	Learner's Permit Age	Comments
New York	18	Yes	17-year-old may apply for license if he has passed high school driver education course. Junior license: 16 years old - requires consent of parent/ guardian - may operate cars and trucks (up to 18,000 lbs.) but not for compensation - may operate alone during daylight and at night if accompanied by adult - may drive alone between 8:00 p.m. and 5:00 a.m. between home and school in direct route to credit-bearing classes - not permitted to drive in New York City or Nassau County with one Nassau County exception for work-study programs. Learner's permits: may practice for road test under supervision of licensed 18-year-old. Learner under 18 may practice at night only if accompanied by driver education teacher, commercial driving school instructor, or licensed parent or guardian. In New York City or Nassau County may practice drive only in dual control cars.
North Carolina	18	No	Min. age 16 if driver education course completed. If under 18, driver's permit must be signed by parent, guardian, employer or other responsible person.

TABLE 13A

MOTOR VEHICLE OPERATORS LICENSURE LAWS APPLICABLE TO JUVENILES (continued)

	Min. License Age	Learner's Permit Age	Comments
North Dakota	16	Yes	Restricted junior license 14-15 when need for license shown by parent or guardian with certificate showing 6 hours behind-wheel driving. Learner's permit required.
Ohio	16	No age	Temporary instruction permit: entitles holder to drive when accompanied by licensed driver occupying seat beside him. Restricted license: may be issued to person 14-15 years old upon proof of hardship. Probationary license: issued to any person between 16 and 21 years of age.
Oklahoma	16	No age	Min. age for driver education students: 15 1/2. Learner's permit issued.
Oregon	16	15	Learner's permit required unless applicant can already drive - permit good for 1 year. Student permit issued under special circumstances at age 14.
Pennsylvania	18	No age	Learner's permit required. Junior permit issued at age 16 with permission of parent/guardian - prohibits driving between 12:00 a.m. to 5:00 a.m. unless accompanied by parent.

TABLE 13A

MOTOR VEHICLE OPERATORS LICENSURE LAWS APPLICABLE TO JUVENILES (continued)

	Min. License Age	Learner's Permit Age	Comments
Puerto Rico	16	No age	Learner's permit required - must take written exam and present medical certificate. Applicants under 18 must have applications signed by parent/guardian.
Rhode Island	16	No age	Learner's permit required - written exam for learner's permit.
South Carolina	16	15	Special restricted license expiring on 16th birthday or beginner's permit good for 6 mos. may be obtained at age 15 - must be accompanied by licensed driver over 18 years.
South Dakota	16	No age	Limited license at 15. Learner's permit required.
Tennessee	16	No age	Junior, 14-16, restricted to day driving from home to school, church and grocery. Learner's permit required.
Texas	18	15	Min. age 16 if driver's education course completed. Person over 15 may get license if hardship case. Instruction permit to driver's education student if accompanied by licensed driver over 18 or driver education instructor.
Utah	16,	No age	Must complete driver education course. Probationary period of 2 weeks during which must be accompanied by licensed driver.

TABLE 13A

MOTOR VEHICLE OPERATORS LICENSURE LAWS APPLICABLE TO JUVENILES (continued)

	Min. License Age	Learner's Permit Age	Comments
Vermont	18	15	Junior license, 16, must be accompanied by licensed operator at least 18. Learner's permit, 15, must be accompanied by licensed operator over 25 or driver training instructor.
Virgin Islands	18		Temporary 90-day permit available.
Virginia	18	15,8 mos.	Min. age 16 if driver education course completed and parents/ guardian consent. Learner's permit required - must be accompanied in front seat by licensed driver.
Washington	18	15 1/2	Min. age 16 with driver training. Learner's permit required - good 6 mos. - issued at age 15 1/2 or at 15 for student enrolled in high school driver education course.
West Virginia	18	No age	Min. age 16 for junior permit with written consent of parents or guardian. Instruction permit, if under 21 must submit copy of birth certificate at time of taking written exam.
Wisconsin	18	No age	Min. age 16 if driver education course completed. Special permits for students enrolled in school driver education courses. Learner's permit required. First license probationary for 2 years unless over 21 and held license in another state for more than 3 years.

TABLE 13A

MOTOR VEHICLE OPERATORS LICENSURE LAWS APPLICABLE TO JUVENILES (continued)

	Min. License Age	Learner's Permit Age	Comments
Wyoming	16	15	Under 21, need consent of 1 parent or guardian. Instruction permit not needed but available age 15 with parental consent and must be accompanied by licensed driver 18 or older.

Source: "Digest of Motor Laws, 1974," American Automobile Association, Falls Church, Virginia, 1974.

TABLE 13B

TIME AND CIRCUMSTANCES GOVERNING HONORING OF OUT-OF-STATE DRIVER'S LICENSES

Alabama	No statutory provision.
Alaska	90 days after entry into state.
Arizona	After employment secured.
Arkansas	When application is made for Arkansas license plates.
California	Nonresident over 18 with valid home-state license may operate in California. Nonresident over 16 but under 18, with valid home-state license, may operate motor vehicle in California for no more than 10 days after entry unless he also obtains Non-Resident Minor Certificate. No person under 18 may be employed for purpose of driving on the highways. California license must be obtained within 10 days of establishing residence.
Colorado	With valid home-state license nonresident may operate motor vehicle in Colorado until 30 days after residence established or employment obtained.
Connecticut	Nonresident's home state licensed on reciprocal basis. Visitor's permit not required. Operator's license must be purchased within 60 days if residence established.
Delaware	Within 90 days after establishing residence in state.
District of Columbia	Nonresident's license honored on reciprocal basis.
Florida	Nonresident's license honored on reciprocal basis. Visitor's permit not required. Must obtain Florida license within 30 days after becoming a resident, obtains employment or places children in school.

TABLE 13B

TIME AND CIRCUMSTANCES GOVERNING HONORING OF OUT-OF-STATE DRIVERS' LICENSES

Georgia	No statutory provision.
Guam	No statutory provision.
Hawaii	Nonresidents from Compact States, 18 or older may drive in Hawaii as long as home-state license remains valid. Nonresidents from non-compact states can use current home-state license for 90 days.
Idaho	Nonresident's license honored on reciprocal basis. Visitor's permit not required. Idaho license must be purchased immediately if residence established or gainful employment accepted. Persons living in state 90 days considered residents.
Illinois	Nonresidents license honored on reciprocal basis up to 90 days if driver 16 or over - motocycles 18. Illinois license must be applied for 90 days after residence established.
Indiana	Nonresident's license honored. If permanent residence is established or after residing in state 60 days, operator's license must be purchased immediately.
Iowa	Nonresident's license honored. Iowa license must be purchased immediately if residence is established
Kansas	Nonresident's license honored. Nonresident who is 16 and has valid operator's license from home state may operate in Kansas if like privileges granted Kansas residents. Nonresident holding valid operator's or chauffeur's license may operate rented or privately owned vehicles bearing Kansas registration plates for 90 days without procuring Kansas license.

TABLE 13B

TIME AND CIRCUMSTANCES GOVERNING HONORING OF OUT-OF-STATE DRIVERS' LICENSES

Kentucky	Nonresident's license honored on reciprocal basis. Visitor's permit not required. License must be purchased within 30 days if residence established.
Louisiana	Nonresident's license honored. Visitor with valid home-state license permitted to use it for 90 days.
Maine	Nonresident's license honored on reciprocal basis. Visitor's permit not required.
Maryland	Nonresident's license honored for 120 days on reciprocal basis. If residence established or employment secured, Maryland license must be secured within 30 days. All previous licenses must be surrendered.
Massachusetts	Nonresident's license honored on reciprocal basis. Massachusetts license must be obtained immediately upon establishing residence.
Michigan	Nonresident licensed in home state may operate motor vehicle in Michigan. If residence established, operator's license must be purchased immediately.
Minnesota	Nonresident can use valid operator's license from home state. Can drive any vehicle regardless of State vehicle registration. License must be secured within 60 days if residence established.
Mississippi	Nonresident must obtain Mississippi license after 60 days unless tourist, out-of-state student, seasonal laborer or in armed service.

TABLE 13B

TIME AND CIRCUMSTANCES GOVERNING HONORING OF OUT-OF-STATE DRIVERS' LICENSES

Missouri	Nonresident license honored on reciprocal basis. Visitor's permit not required. Missouri license must be obtained when Missouri residence established.
Montana	Nonresident license honored. Montana license must be secured within 90 days. All other licenses from other jurisdictions must be surrendered upon receiving Montana license.
Nebraska	Nonresident's license honored for 30 days of continuous residence.
Nevada	Nonresident's license honored until residency established.
New Hampshire	Nonresident licensed on reciprocal basis. Visitor's permit not required. Also reciprocal with regard to visitors who obtain employment or enter children in school.
New Jersey	Nonresident's license honored on reciprocal basis. Visitor's permit not required.
New Mexico	Nonresident permitted to use home-state operator's license in New Mexico.
New York	Nonresident license honored on reciprocal basis. Nonresident 18 or older who have valid licenses from home state may drive in New York subject to restrictions on their licenses and laws and regulations governing motorists in New York state. Nonresident licensees 16 or 17 years of age may drive in New York state but are subject to New York state junior operator regulations. Nonresident licensees under 16 not permitted to drive in New York state no matter what type of license they hold. New York license must be obtained 60 days after New York residence established.

TABLE 13B

TIME AND CIRCUMSTANCES GOVERNING HONORING OF OUT-OF-STATE DRIVERS' LICENSES

North Carolina	Nonresident license honored on reciprocal basis. Visitor's permit not required. North Carolina license must be secured when residence established in state.
North Dakota	Nonresident license honored until 60 days after residence established. Visitor's permit not required.
Ohio	Nonresident license honored on reciprocal basis. Visitor's permit not required. Also reciprocal of nonresident who obtains employment in state and enters children in schools.
Oklahoma	Home-state license honored for nonresidents. Oklahoma license must be purchased immediately after establishing Oklahoma residence.
Oregon	Nonresident's license honored. License must be obtained immediately after establishing Oregon residence.
Pennsylvania	Nonresident license honored on reciprocal basis. License must be purchased within 30 days of establishing residence.
Puerto Rico	Nonresident's driver's license honored for 120 days.
Rhode Island	Nonresident license honored on reciprocal basis. Visitor's permit not required. Operator's license must be purchased within 30 days if residence established.
South Carolina	Nonresident may use home-state operator's license as long as he maintains permanent residence address in state and county of which he holds a valid and current operator's license.

TABLE 13B

TIME AND CIRCUMSTANCES GOVERNING HONORING OF OUT-OF-STATE DRIVERS' LICENSES

South Dakota	Nonresident licensed on reciprocal basis. Visitor's permit not required. If residence established, operator's license must be purchased within 90 days.
Tennessee	Nonresident must obtain driver's license immediately upon establishing residence. Visitor's permit not required.
Texas	Nonresident's operator's license honored for 30 days after residence established.
Utah	License must be purchased immediately if Utah residence established. Must be licensed in Utah if driver accepts employment and comes from state which has not adopted Driver License Compact. Otherwise, permitted to use home-state license for 60 days.
Vermont	Nonresident license honored on reciprocal basis but not more than 6 months. Visitor's permit not required.
Virgin Islands	Temporary 90-day permit available.
Virginia	Persons temporarily employed and temporarily residing in Virginia may lawfully operate motor vehicles in Virginia for 60 days.
Washington	Nonresident permitted to use State operator's license in Washington. Visitor's permit not required. Must secure Washington permit upon establishing Washington residence.
West Virginia	Nonresident permitted to use home-state operator's permit for 30 days on reciprocal basis. Visitor's permit not required. Also reciprocal if nonresident obtains employment and enters children in local schools. Does not apply if temporary residence exceeds 30 days.

TABLE 13B

TIME AND CIRCUMSTANCES GOVERNING HONORING OF OUT-OF-STATE DRIVERS' LICENSES

Wisconsin	Nonresident's license honored on reciprocal basis. Visitor's permit not required. License must be obtained immediately if residence is acquired. Reciprocal with respect to transient workers.
Wyoming	Nonresident permitted to use home-state license to drive in Wyoming 90 days. Visitor's permit not required. License must be secured within 90 days if residence established or employment accepted.

Source: "Digest of State Motor Laws, 1974," American Automobile Association, Falls Church, Virginia. 1974.

CHAPTER 20

STATUTORY AUTHORITY TO PROVIDE TREATMENT ALTERNATIVES FOR RUNAWAY CHILDREN

In the jurisdictions studied, there exists very little by way of specific statutory authority which would authorize or direct an agency of that jurisdiction to establish and operate, or assist in the establishment and operation, of treatment alternatives for runaway children.

In Michigan, the State Department of Social Services is directed to develop a plan for the establishment, maintenance and operation of temporary housing and counseling services for "transient juveniles who have run away from home." The legislation in Michigan gives as its "primary goal" the reuniting of runaway youth with their families. The plan developed by the Department of Social Services must:

(a) encourage the establishment of temporary housing and counseling services by private agencies and by local governments;

(b) delineate the need for the Department to furnish facilities where private agencies or local governmental units do not have adequate housing and counseling services for runaway youth or are unwilling or unable to accept Federal funds or state grants to provide such services;

(c) delineate the need for those operating shelters for transient juveniles to establish proper relations with law enforcement agencies and probate judges; and,

(d) provide that shelters are to be operated independently of the juvenile justice system and of law enforcement agencies.

By statute, the Louisiana Youth Service Bureau is authorized to provide emergency temporary maintenance for runaways. No further definition is given of the terms used.

It may be that under some of the statutes authorizing the establishment of Youth Service Bureaus, needed services might be provided to runaways. Thus, Indiana defines a Youth Service Bureau as any nonprofit corporation established for the purpose of coordinating and supplementing the activities of public and private agencies devoted exclusively to the welfare of youth.

Additionally, needed services might be provided to runaway children under state plans developed for the provision of child welfare services under Title IV of the Social Security Act.[1] It may well be that the statutory language in many of the jurisdictions establishing Departments of Public Welfare or Social Services or Human Resources would be interpreted broadly enough to permit the provision of needed services to runaway children. Thus in Florida:

The Division of Youth Services shall be responsible for the planning, development and coordination of a statewide comprehensive youth services program for the prevention, control and treatment of juvenile delinquency. Or in Maine: The Department of Health is authorized to cooperate with the Federal Government in providing child welfare services to remedy problems resulting in neglect, abuse, delinquency or exploitation of children, the care of neglected or dependent children in their own homes or, if necessary, their placement in foster homes, day-care or other child-caring facilities.

However, it would seem legally and practially sounder for the states to enact statutes establishing programs specifically designed to meet the needs of runaway children. Under such statutes, the exigencies of the multitude and variety of situations likely to be encountered in meeting the needs of runaway children could be anticipated. Likewise, specific and precise provisions could be included in the statute so as to obviate any possible later litigation to determine the precise legislative meaning and intent.

As a case in point, without in any way derogating from the pioneering effort of the State of Michigan in leading the way in the enactment of legislation dealing with the provision of services to runaway children, it should be noted that even a cursory

review of that act will reveal a number of areas which should be covered if the statute is to be effective within the least degree of uncertainty. For example, may a shelter-care facility providing housing for a runaway child do so without notifying the parent or guardian of such child that such housing is being provided? Must the policy with respect to such notification be uniform throughout the state? Must a shelter-care facility meet the same facility standards that must be met by any other child-caring institution? May lower standards be adopted because of the transient nature of the services being provided? Are the records maintained by the shelter-care facility confidential or may they be inspected by police authorities? Must they be produced in court proceedings? These and other similar questions should be answered by any statute on this subject, so that all who must operate under its provisions may proceed with the greatest amount of certainty.

FOOTNOTES

[1] See Chapter 8, supra.

CHAPTER 21

THE INTERSTATE COMPACT ON JUVENILES

All but two of the states have adopted the Interstate Compact on Juveniles developed and sponsored by the Council of State Governments.

The Compact, entered into in order to "provide for the welfare and protection of juveniles and the public," provides for:

1. cooperative supervision of delinquent juveniles on probation or parole;

2. the return, from one state to another, of delinquent juveniles who have escaped or absconded;[1]

3. the return, from one state to another, of nondelinquent juveniles who have run away from home; and

4. additional measures for the protection of juveniles and of the public, which any two or more of the party states may find desirable to undertake cooperatively.

The Compact states that "the party states shall be guided by the noncriminal, reformative and protective policies which guide their laws concerning delinquent, neglected or dependent juveniles generally." By specific provision, the Compact states that the

remedies and procedures of the Compact are to be considered to be in addition to and not in derogation of "other rights, remedies and procedures...and...of parental rights and obligations."

Procedures When Petition Initiated in Runaway's Home State

The procedures provided for the return of runaway juveniles are as follows:

1. The parent, guardian, person or agency entitled to the legal custody of a juvenile who has not been adjudged a delinquent but has merely run away without consent may petition the "appropriate court" in the demanding state to issue a "requisition" for the return of the runaway.

2. The petition must state:
   (a) name of the juvenile;
   (b) age of the juvenile;
   (c) name of the petitioner;
   (d) basis of entitlement to the custody of the juvenile;
   (e) the circumstances of the juvenile's running away;
   (f) the juvenile's location at time application is made, if the location of the juvenile is known;
   (g) other facts showing that the juvenile is endangering his own welfare or the welfare of others;
   (h) facts showing that the juvenile is not an emancipated minor.

3. Petition must be accompanied by copies of documents on which entitlement to custody is based, such as birth certificate, letters of guardianship or custody decrees.

4. Judge of the court petitioned may hold a hearing on it to determine:

   (a) whether petitioner is entitled to the legal custody of the juvenile;
   (b) whether or not it appears that the juvenile has in fact run away without consent;
   (c) whether or not the juvenile is an emancipated minor;
   (d) whether or not it is in the best interest of the juvenile to compel his return to the state.

5. If the court decides - with or without a hearing - that the juvenile should be returned, the court presents a written requisition to the appropriate court or to the executive authority of the state where the juvenile is alleged to be located.

6. If a proceeding for the adjudication of the juvenile as a delinquent, neglected or dependent juvenile is pending in the court, the court may issue a requisition on its own motion, regardless of the consent of the parent, guardian, etc., reciting the nature and circumstances of the pending proceeding.

7. This requisition contains the following:

   (a) name of juvenile;

   (b) age of juvenile;

   (c) the determination of the court that the juvenile has run away without the consent of a parent, guardian, etc.;

   (d) that it is in the best interest and for the protection of the juvenile that he/she be returned.

8. Upon receipt of a requisition demanding the return of a juvenile who has run away, the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing him to take into custody and detain the juvenile.

9. Detention order must substantially recite the facts necessary to support the validity of its issuance under the Compact.

10. Juvenile taken into custody on detention order to be taken forthwith before a judge of a court in the state who:

   (a) shall inform him of the demand made for his return;

   (b) may appoint counsel or guardian ad litem for him.

11. No juvenile may be delivered over to an officer appointed by the demanding court to receive the juvenile without being first taken to a court in the state for a hearing.

12. If the court finds the requisition in order, the court shall deliver the juvenile over to the officer appointed by the demanding court.

13. Court may fix a reasonable time to be allowed "for the purpose of testing the legality of the proceeding."

Taking Alleged Juvenile Runaway into Custody Without Requisition From Another State:

1. "Upon reasonable information" that a person is a juvenile who has run away from another state party to the Compact without the consent of such juvenile's parents, guardian, etc., such juvenile may be taken into custody and brought forthwith before a judge of an appropriate court.

2. Court may appoint counsel or guardian ad litem for such juvenile.

3. Court shall determine, after hearing, whether "sufficient cause exists to hold the person, subject to the order of the court, for his own protection and welfare."

4. Upon such a finding, the juvenile may be held "for such time not exceeding 90 days as will enable his return to another state party to this Compact pursuant to a requisition for his return from a court of that state."

5. If, when a state seeks the return of a runaway juvenile, there is pending in the state where the juvenile is found any criminal charge or a proceeding to have the juvenile adjudicated a juvenile delinquent for an act committed while within that state, or if he is suspected to have committed a criminal offense or an act of juvenile delinquency, the juvenile shall not be returned without the consent of such state until discharged from "prosecution or other form of proceeding, imprisonment, detention or supervision for such offense or juvenile delinquency."

Returning Juvenile Runaway

Officers of any state, duly accredited, upon the establishment of their authority, shall be permitted to transport such juvenile through any and all states party to this Compact, without interference.

Action With Respect to Juvenile Runaway Upon Return

After return, the juvenile shall be subject to "such further proceedings as may be appropriate under the laws of the state to which the juvenile is returned."

Who Pays the Costs

The state to which the juvenile is returned shall be responsible for payment of the transportation costs of such return.

Definition of Juvenile

A "juvenile" means any person who is a minor under the law of the state of residence of the parent, guardian, person or agency entitled to the legal custody of such minor.

Detention Practices

"That, to every extent possible, it shall be the policy of states party to this Compact that no juvenile or delinquent juvenile shall be placed or detained in any prison, jail or lockup, nor be detained or transported in association with criminal, vicious or dissolute persons."

Compact Administrators

The Compact provides that each state shall designate an officer who shall promulgate rules and regulations to carry out "more effectively the terms and provisions of the Compact."

Execution of Compact

The Compact becomes operative immediately upon its execution by any state as between it and any other state or states so executing. When executed it shall have the full force and effect of law within such state. The form of execution must be in accordance with the laws of each state; usually the state legislature enacts a law authorizing the governor of the state to enter into such Compact.

Proposed Compact Amendments

Three amendments to the Interstate Compact on Juveniles have been proposed by the Council of State Governments, only one of which is pertinent to this study.[2]

The pertinent amendment provides that a court can require that a nonresident child be returned to the child's home state at the expense of the home state, unless a court in the home state determines within five days that the child is not a resident of the home state. This amendment has been adopted by the following states: Arizona, Colorado, Florida, Idaho, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Mississippi, Oklahoma, Pennsylvania, Texas, Vermont, West Virginia and the District of Columbia.

The Interstate Compact and the Runaway Child

As a mechanism for dealing with the many problems - legal, social and practical - encountered by the runaway child and his or her parents or guardian, the Interstate Compact on Juveniles leaves very much to be desired, to say the least. The protections accorded by the Compact to the legal rights of the runaway juvenile and his or her parent are at best minimal.

Where the petition is initiated in the juvenile's home state, it should be noted that it is an ex parte proceeding, with no provision made for representation of the interests of the juvenile. A hearing on the petition is not mandatory. No provision

is made for a social investigation to determine whether the facts alleged are supported by evidence and whether the facts would justify a finding by the court that the return of the juvenile is in the best interests of the juvenile.

The procedures under the Compact for presenting the requisition to the court of the state where the juvenile has been found do not seem to indicate that speed may be of the essence if, in fact, the juvenile is, as was alleged in the petition, "endangering his own welfare or the welfare of others."

Note that, upon the receipt of the requisition, the court shall issue a detention order. The child is then taken into custody and brought before the court. The rights of the child at the hearing are not spelled out and the court is not required to appoint an attorney or guardian ad litem for the child. No provision is made for a social investigation or for the court's, on the basis of the facts brought out at the hearing, coming to the conclusion that it would not be in the best interests of the juvenile to return him or her to the previous environment.

The same criticisms may be levied at the pact's provisions where the alleged runaway is taken into custody without a requisition; the pact contains insufficient safeguards for the legal rights of the runaway child and the child's parents or guardian. Here,

however, the juvenile may be held in detention for a period of 90 days while it is determined whether the state of residence will transmit the necessary requisition for the child's return. At a time when the trend is to do away with detention care for status offenders, three months seems an inordinately long period of time to confine a child in detention while the creaky wheels of justice slowly seek to determine if the child should be returned to the child's parents or guardian.

It seems obvious, therefore, that if the Interstate Compact on Juveniles is to be used as an enlightened judicial instrument to solve the legal, social and practical problems of runaway children and their parents, the Compact needs extensive revisions.

FOOTNOTES

[1] Escape: The departure or deliverance out of custody of a person who was lawfully imprisoned before he was entitled to his liberty by the process of law. Abscond: To go in a clandestine manner out of the jurisdiction of the courts, or to lie concealed in order to avoid their process. Black, Note 1, Ch. 4, supra, at pp . 639-640, 21.

[2] The other two proposed amendments involve: (a) covering the situation where a juvenile who is a resident of State "A" commits an offense in State "B" and then flees to State "C"; (b) making officials of the state where the juvenile is found or is being supervised agents of the home state.

CHAPTER 22

THE LAW IN ACTION

As has been previously indicated,[1] as part of this Project letters of inquiry were sent to a number of agencies throughout the country which might be expected to have frequent contact with runaway children. This inquiry was an attempt to ascertain roughly which segments of the laws researched, if any, impeded their ability to be of assistance to runaway children and, if so, in what way.

These inquiries were not in the form of a formal questionnaire. That was not their purpose. It was rather an attempt to secure from the experienced individuals in these agencies their own points of view, in light of their work with runaway children, on which particular laws or types of laws hindered their activities on behalf of such children.

1. *Vagueness of the Laws Relating to Runaway Children*

Not surprisingly, many of these replies complained of the vagueness of the state laws affecting runaway children - an opinion separately arrived at in this Report on the basis of our "bench review."[2]

> ...I become quite frustrated by the confusion in the present laws concerning juveniles in general and runaways in particular. Since many runaways cross state lines, a unified Federal law clearly stating their status

> and the procedures for dealing with them would be very helpful. I don't know which method would work best (standard state acts, model acts, or uniform acts), but I do know I'd like some uniformity among the states and a clear Federal stance about runaways, who they are and how they should be handled. I think that stance should recognize runaway episodes as symptomatic of family and individual difficulties that may require counseling or family mediation besides other social services.

Or, on the same subject, by another respondent:

> One area that would benefit greatly from attention is that of the legal definition of a runaway child. Here...efforts are being made to attempt to answer various questions...as to whether or not a runaway child is entitled to attend public school... the fact that the runaway child is still so loosely defined is a major roadblock. A clear definition of this term would allow local agencies to begin to lobby for changes in state statutes and local ordinances that would deal more closely with runaway children.

2. *Interstate Compact on Juveniles*

Many replies addressed the question of the effect and usefulness of the Interstate Compact on Juveniles sponsored by the Council of State Governments and adopted by 48 States and the District of Columbia.[3]

The comments were mixed. One respondent stated:

> Our Interstate Compact has been a help to us in that we can get reimbursement for return-home expenses for those youth we assist in returning home. This is utilized in situations where parents cannot afford or refuse to provide transportation to their child.

While another respondent commented:

> The Interstate Compact is not very effective. Usually the runaway child is not wanted in his home state, unless he is in the custody of the court--then they make transportation arrangements.

Or another reply:

> ...we have had very few opportunities to use the Compact or to see it work simply because it has not been needed. It has mainly been used in this state in reference to legal offenders and not in terms of runaway youth....it is felt that the framework it provides for dealing with other states in the runaway area is very necessary and can and will be beneficial when it is pressed into service.

Another commentator was highly critical of the Compact:

> As for the Interstate Compact....we have seen very little of it. It does not take into consideration whether or not a runaway wants to return home. If a runaway is returned against his/her will, he/she can simply run away again. Locally, it is not enforced because police have no funds to return a runaway to his/her home. This could probably be paid for through the local welfare department but police are unwilling to hold runaways until that can be arranged.

And another respondent wrote in connection with the Interstate Compact on Juveniles:

> ...this Compact has not been any assistance to us since it deals specifically with adjudicated matters, that is, youth who are on probation from another state or who have been found wayward or delinquent.[4] Since it is the tendency in this state, and by law enforcement officers, to keep the runaway

child and other lesser offenses unofficial, and since the Youth Service Bureau handles these matters with the goal of diversion from the Juvenile Justice System, the Compact is of no use to us. I would suggest that some type of interstate compact be formulated for the status offender geared toward diversion.

3. *Treatment of Runaways as PINS or Juvenile Delinquents*

Considerable resentment was exhibited in the replies received from the inquiries to treating runaways as "PINS," delinquents or "criminals."

One reply read in part:

> Another difficulty we have with the runaway laws is that runaway kids are treated as and usually see themselves as wanted criminals....a runaway is similar to an alcoholic - he isn't a criminal but is directly indicating that he and his family are somehow emotionally disturbed and need counseling and therapy, not punishment of some kind. As things are now, runaways avoid help because they know they'll be forced back to their parents or into the courts. They seemingly can't win...the court may be their best bet, but they still have to be charged to get there.
>
> ...many parents don't even report their child as missing, to protect their child's record. They thus lose out on any help from the police or social service agencies, besides making themselves liable to "contributing to the delinquency of a minor." The parents who in effect throw their child out and don't report him because they don't want him back should be liable, but more for "neglect." Decriminalizing runaways would lift the burden of illegality off both the teenager and his parents.

And from New York State:

> The first thing that hampers the provision of services to runaways is the classification of running away as a status offense....Since most of the youth who run away are reacting constructively to obtain a resolution of family problems, it is unfortunate that they are brought into Court as culprits and often punished for their "crime." In some cases, the judge may strongly recommend counseling for the entire family. In others, the child may be placed in an institution for his "crime" of trying to find a solution for family problems.

And another reply from New York State discussing the same problem:

> ...the biggest legal controversy surrounds the PINS age....Currently the law states that a teenager 16 years or older cannot be petitioned to the Family Court by parents or other authorities...parents can only maintain legal control over their children until the age of 16. This has its positive and negative effects. On the negative side, parents are often able to kick their children out of the house at 16 or over and there is little, if anything, legal authorities can do about it. Those who have become "throwaways" are for all practical purposes acting as free agents in the street. If they can't somehow get their case before family court, they cannot receive court placements in foster homes or group homes.
>
> ...there is a positive side to the low PINS age. Many children are living in homes where they simply shouldn't be. They are often mentally abused and treated as private property rather than as humans. When they leave home,

> they often leave for good reasons. At 16 and over they are able to escape harmful family situations and their parents cannot force them to remain in these situations. Another positive aspect is that with the 16-years-old cutoff, family courts are able to spend more time working in behalf of younger children. If the PINS age were to be raised, the increase in court caseloads would be overwhelming.

4. *Economic Problems of Runaway Children*

One response related to the special legal problems of runaway children already mentioned.[5]

> Present employment restrictions on youth inhibit the development of creative work and training programs for juveniles. A summer camp...was unable to employ 12- and 13-year-old youths who were both physically able to work and interested in employment at the camp, and for whom the camp offered the only realistic alternative to an unsupervised and unhealthy home environment during summer months. The work available would have been comparable to the work which earns an allowance for a child in a healthy home.

A broader picture of the economic difficulties faced by a runaway child was pointed out in another response:

> A youth (in New York State) 16 and over can leave home without parental consent and is not considered a runaway. Parents can complain to law-enforcement agencies, if they so desire, but nothing is gained as there is no legal authority to pick the youth up, unless a crime is committed. At this age, running away is no longer a crime. There are...many obstacles for a 16-year-old youth to overcome living on his/her own.

> Employment is almost impossible to find. If the youth wishes to complete high school, he/she must have income of some sort to provide the basic necessities of life. If the youth applies for public assistance as an emancipated minor, the Department of Social Services regulations require that the youth's parent(s) or guardian(s) fill out a financial information form. If the parent(s) or guardian(s) say they will provide for the youth, public assistance will be denied whether or not the youth returns home. Unfortunately...(this county)...has no viable alternatives for those youth who do not want to or cannot return home....If a child under the age of 16 runs away from home and is living with friends or relatives who do not have legal guardianship, some schools refuse to let that child attend classes until legal guardianship is established. If said child then cannot attend school, he/she is considered truant.

5. *The Rights of Parents vs. the Rights of Children*

Another recurring theme was the status of the "rights of parents" as "opposed" to the "rights of children."

As one respondent wrote:

> The questions of parent rights and responsibilities versus the rights of children who demonstrate something is wrong with their family life by running from it are complex and should be settled in court....the laws function as well as can be expected, especially when there is clear communication and cooperation among the police, courts, and social service agencies....Besides which, parents have the right and responsibility to get help in finding their children. What is needed is some system through which teenagers could have a say in what's done with them, they wouldn't have to fear turning themselves in or finding help, the parents would get help getting their kid home, and the whole

> family could get any social service it might need. One possible solution would be to give the runaway the choice of being taken back to his parents or to a social service agency... that could help him and his family. This would give the runaway a choice, and insure contact with social services if necessary.

That respondent quickly added, however, that "...present agencies are not financially equipped to handle such a job, and would have to be expanded, at someone's expense....there would have to be expansions in housing, such as runaway houses. Personally, I think it's money well spent."

Running through many of the replies was an oft-repeated thought that there should be some sort of a "Bill of Rights" for children.

As one person wrote:

> ...youth...cannot seek service, they have no legal redress of injuries in the court, and they are routinely not given an attorney if they go to court....If we had laws which would guarantee to a youth the right to seek any service, we feel there would be an increase in services and opportunities for all youth to seek help when they need it. This, hopefully, would decrease the incidence of running away as well as provide outlets for prevention of crisis situations.
>
> To change the legal status of youth...direction must come from the Federal level and be applicable to all youth. This could be in the form of a Bill of Rights for Children, specifying their rights. Piecemeal efforts produce too much of a hit or miss (mostly miss) pattern. Of course, model legislation

> for states would be a good interim plan...we feel that many current problems faced by youth and youth workers would be greatly reduced if we had increased legal rights for youth.

6. *Notification of Parents*

A recurring problem reported in many, but not all, of the replies received was with respect to the need to notifying the child's parents that services were being provided to the child before the elapse of ample time in which to counsel with the runaway child so that the child could become reconciled to the need for such notification.

One reply urged:

> ...Running away and all other so-called "status" offenses should be removed from the juvenile code. The existing "harboring" section of the juvenile code also needs to be changed to allow licensed runaway centers sufficient time to work with a youngster before obtaining parental or court permission... ...Services for runaways or other "status" types of youth should be provided by family-oriented, nonjudicial, nonauthoritarian agencies.

Another reply stated that in "Minneapolis...there is a 24-hour limit prior to reporting a child's presence at the center (The Bridge). Some police officers support the concept of a shelter...and refer children. Others arrest and permit the court to make some determination."

While still another reply reported: "We take seriously 'contributing to the delinquency' and any liability we might incur; therefore, after talking with the runaway, we always get in touch with either the police or the runaway's family."

From another part of the country, a runaway house in Louisiana reported:

> Although we will counsel a youth without parental permission, we contact his/her parent or guardian before he/she can spend the night. Included in this permission is a consent for medical care as we have a physician on the staff. Initial permission is verbal and a follow-up letter is sent which seeks to obtain this verbal permission in writing....we find these laws inhibiting our flexibility....We would like to give housing to a youth upon request, but we cannot if he/she refuses to contact his/her parents. We are not hassled by the police in this matter, but we are bound to immediately contact parents because of our Department of Public Welfare license. We are currently doing research about how we can get an exception to this policy.

With respect to this problem, this reply was received from Illinois:

> We must, by law, notify them (the police) if a runaway contacts us...this has worked out to our and the teenager's advantage more often than not, partly because of the police and us working together to try to get at the root of the family problem. The law, which simply reflects the runaway's real physical and psychological dependence on his parents, is helpful as a lever to make the teenager face his problems in some realistic and responsible way, rather than run from them. Even if he should be separated from his family, working through the law is the only sound way to get that.

And yet another reply suggested: "Specifically for our program, if we had a 72-hour grace period during which time no one need be contacted we are confident we could reach more youth."

Another suggested a shorter time lapse before being required to notify the parents of a runaway child:

> ...As things now stand, we must notify the police within a few hours of contact with a runaway. They then notify the parents. We tell the teenager this, and he or she may well run again before we can really get a chance to go over options with him or her, and work out whether he or she will work with us with the family. A 24- or 48-hour buffer period would give us a better chance to get through to the person, and provide what service we can. That could be accomplished either by giving the social service agency the authorization to delay notifying the police, or to give the police the option of delaying notifying the parents. This breathing space would be especially useful for agencies with crash-pad or group-home arrangements....If we had the authority to give runaways lodging for a night or two before their parents were notified, we might have used it in some cases.

The Model Acts for Family Courts and State-Local Children's Programs[6] recommend a modified version of this suggestion with the immediate notification of the parents by the licensed runaway house that the child is safe, but without the disclosure of the child's whereabouts. Notification of the parents of the child's exact location would be required within a specified number of hours later, unless the parents have been notified earlier with the runaway's permission. An attempt was made through this device to give the agency time to counsel with the runaway before notifying the parents, with the parents at least being informed that their child is safe while this counseling process takes place.

7. *Comments on Replies to Inquiries*

The inquiries sent out in connection with this Project were never intended as a definitive analysis of the actual practices in the various jurisdictions with respect to the treatment of the runaway child under the laws of each jurisdiction. They were only intended to give some slight, over-all indication of some of the areas in which the laws "on the books" seemed to differ from the law in actual practice in those jurisdictions and to point up the need for further study.

The replies to the inquiries do indicate that much more is "going on" affecting the legal status of runaway children and the treatment they are receiving under the juvenile justice system than would appear from a simple reading of the statutes themselves or the judicial decisions and the opinions of the various attorneys general.

A much more thorough, in-depth field study is needed if the true picture of the legal status of runaway children in actual practice is to be obtained. Such a study is both needed and warranted.

If such additional studies are undertaken, they could be conducted in depth in about ten selected locations throughout the country which are focal points for runaway children. The studies should be conducted by an interdisciplinary team so that all aspects of the problems involved could be explored.

FOOTNOTES

[1] See Chapter 2, supra.

[2] See Chapter 6, supra.

[3] See Chapter 21, supra.

[4] Compare analysis of the Interstate Compact on Juveniles contained in Chapter 21 supra.

[5] See Chapter 10, supra.

[6] See Note 2, Chapter 6, Part II, Title A, Sec. 15.

CHAPTER 23

RECOMMENDATIONS

1. *Emancipation*

Some thought might be given to the development of model, uniform or reciprocal recommended state laws which might prove useful in establishing the fact that the runaway child is an emancipated minor. Provision would have to be made in such laws to protect the rights not only of the minor but also of the parents of the minor. Such laws might be of assistance to runaway minors in enabling them to attend school or to be exempted from attending school; to enter into contracts; to consent to the provision of medical care, to work nights and to exercise other privileges of emancipation. (See Chapter 5, supra.)

2. *Runaway Houses Licensure Laws*

A matter deserving further exploration is whether suggested state legislative language would be of assistance to take into account any special problems encountered in establishing or operating both residential and nonresidential runaway houses. (See Chapter 8, supra.)

3. *Medical Care*

In many jurisdictions, a runaway child would find it very difficult to obtain medical care because of the child's inability to give effective legal consent to the provision of such care.

From the Principal Investigator's own, on-site observations of the operations of runaway houses in various areas and from discussions with those operating runaway houses in other areas, it seems obvious that medical services are being provided to runaways from such houses or "off the street" by so-called "free clinics" or through hospital out-patient clinics, often without regard for the legal requirements of parental consent.

However worthy the provision of such medical services may be, the fact remains that the physician providing such services to a minor, without parental consent and without statutory sanction, acts at his peril in doing so. In the light of the prevailing situation with respect to the rising tide of malpractice suits against physicians and the increasingly higher malpractice insurance fees, it seems highly imprudent for such physicians --- usually in "free clinics" and interns and residents working in out-patient clinics of hospitals --- to take such risks of financially ruining their professional futures, when the enactment of properly worded state statutes could obviate such financial and professional risks.[1]

From the standpoint of the runaway child in need of medical care, what is needed is a model statute, adopted by all of the jurisdictions, which is carefully worded to safeguard parental rights and the rights of the juvenile, and which

authorizes duly licensed physicians to provide needed medical care to minors under certain circumstances which are clearly defined in such model statutes and which hold the physician harmless both civilly and criminally except for negligence. (See Chapter 9, supra.)

4. *Child Labor Laws*

The time seems to be ripe for a multi-disciplinary study of child labor laws to ascertain whether they are in fact attaining their original objectives or whether changes are needed in the light of modern conditions. (See Chapter 10, supra.)

5. *Curfew Laws*

Further study is needed of the operation of curfew statutes and ordinances and the effects which they have upon runaway children and their parents. (See Chapter 11, supra.)

6. *Interstate Compact on Juveniles*

The Interstate Compact on Juveniles needs extensive revisions to make it a more effective legal instrument to solve the many legal, social and practical problems of runaway children and their parents and to protect their rights. (See Chapter 21, supra.)

7. *Further Field Study of the "Law in Action."*

A much more thorough, in-depth field study is needed on an inter-disciplinary basis in order to obtain a true picture of how runaway children are in actual practice treated in the juvenile justice system and under treatment alternatives.

FOOTNOTES

[1] Legal Status of Midwifery and Nurse-Midwifery in Relation to Family Planning Services, Beaser, Herbert Wilton, National Center for Family Planning Services, Health Services and Mental Health Administration, Public Health Service, Department of Health, Education, and Welfare, 1973; 60 A.L.R. 147; Rath v Craddock, 65 Ohio App. 135, 25 N.E. 2d 426 (1940); An Introduction to Physician's Liability, Pfizer Laboratories, "Spectrum," 1966; The Negligent Doctor, Kramer, Charles, Crown, N.Y. 1968; The Rise of Medical Liability Suits, Morris, R. Crawford, JAMA, 2/1/1971, Vol. 215, No. 5, pps. 843-844; JAMA Editorial, September 26, 1966, Vol. 197, No. 13, p. 10.

APPENDIX

Topic Check List

LIST OF TOPICS

A. THE JUVENILE COURT.

B. PUBLIC EDUCATION.

C. PUBLIC WELFARE [Except Social Security Programs]

D. CUSTODY AND CONTROL OF CHILDREN.

E. CURFEW LAWS.

F. HITCHHIKING LAWS.

G. AUTHORITY TO PROVIDE TREATMENT ALTERNATIVES TO JUVENILE JUSTICE SYSTEM.

H. STATUTORY RAPE.

I. DRUG ABUSE PROGRAMS.

J. CONTRIBUTING, HARBORING AND INTERFERING.

K. ABILITY TO CONTRACT - AGE OF MAJORITY.

L. MARRIAGE.

M. TOBACCO PRODUCTS.

TOPIC A. THE JUVENILE COURT.

1. DEFINITIONS.

a. Definition of minor. [ ]YES? [ ]NO? [ ]COMMENT?

b. Definition of child. [ ]YES? [ ]NO? [ ]COMMENT?

c. Definition of adult. [ ]YES? [ ]NO? [ ]COMMENT?

d. Definition of delinquent act. [ ]YES? [ ]NO? [ ]COMMENT?

e. Definition of delinquent child. [ ]YES? [ ]NO? [ ]COMMENT?

f. Definition of PINS. [ ]YES? [ ]NO? [ ]COMMENT?

g. Runaways included in PINS. [ ]YES? [ ]NO? [ ]COMMENT?

h. Beyond control included in PINS. [ ]YES? [ ]NO? [ ]COMMENT?

i. Truant included in beyond control. [ ]YES? [ ]NO? [ ]COMMENT?

j. Definition of neglected child. [ ]YES? [ ]NO? [ ]COMMENT?

k. Definition of dependent child. [ ]YES? [ ]NO? [ ]COMMENT?

l. Definition of abused child. [ ]YES? [ ]NO? [ ]COMMENT?

m. Definition of mentally handicapped/retarded child. [ ]YES? [ ]NO? [ ]COMMENT?

n. Definition of juvenile traffic offender. [ ]YES? [ ]NO? [ ]COMMENT?

o. Definition of detention care. [ ]YES? [ ]NO? [ ]COMMENT?

p. Definition of shelter care. [ ]YES? [ ]NO? [ ]COMMENT?

q. Definition of licensed child caring institution. [ ]YES? [ ]NO? [ ]COMMENT?

r. Definition of licensed child placing agency. [ ]YES? [ ]NO? [ ]COMMENT?

s. Definition of detention hearing. [ ]YES? [ ]NO? [ ]COMMENT?

t. Definition of adjudicatory hearing. [ ]YES? [ ]NO? [ ]COMMENT?

u. Definition of disposition hearing [ ]YES? [ ]NO? [ ]COMMENT?

v. Definition of custodian. [ ]YES? [ ]NO? [ ]COMMENT?

w. Definition of residual parental rights. [ ]YES? [ ]NO? [ ]COMMENT?

x. Definition of legal custody. [ ]YES? [ ]NO? [ ]COMMENT?

y. Definition of guardian of person of a minor. [ ]YES? [ ]NO? [ ]COMMENT?

z. Definition of aftercare supervision. [ ]YES? [ ]NO? [ ]COMMENT.

aa. Definition of protective supervision. [ ]YES? [ ]NO? [ ]COMMENT?

TOPIC A. THE JUVENILE COURT, Continued.

1. Definitions, continued.

bb. Definition of probation. [ ]YES? [ ]NO? [ ]COMMENT?

cc. [Other] _____ [Describe]

dd. [Other] _____ [Describe]

ee. [Other] _____ [Describe]

COMMENTS: _____

2. GENERAL JURISDICTION OF JUVENILE COURT.

a. Minimum age for delinquency. [ ]YES? [ ]NO? [ ]COMMENT?

b. Maximum age. [ ]YES? [ ]NO? [ ]COMMENT?

c. Special age limits. [ ]YES? [ ]NO? [ ]COMMENT?

d. Juris. over delinquent child. [ ]YES? [ ]NO? [ ]COMMENT?

e. Juris. over PINS. [ ]YES? [ ]NO? [ ]COMMENT?

f. Juris. over neglected child. [ ]YES? [ ]NO? [ ]COMMENT?

g. Juris. over dependent child. [ ]YES? [ ]NO? [ ]COMMENT?

h. Juris. over abused/battered child. [ ]YES? [ ]NO? [ ]COMMENT?

i. Juris. over mentally handicapped/retarded child. [ ]YES? [ ]NO? [ ]COMMENT?

j. Juris. over miscreant child. [ ]YES? [ ]NO? [ ]COMMENT?

k. Juris. over wayward child. [ ]YES? [ ]NO? [ ]COMMENT?

l. Juris. over juvenile traffic offender. [ ]YES? [ ]NO? [ ]COMMENT?

m. Juris. over felonies. [ ]YES? [ ]NO? [ ]COMMENT?

n. Juris. over misdemeanors. [ ]YES? [ ]NO? [ ]COMMENT?

o. Juris. over local ordinances. [ ]YES? [ ]NO? [ ]COMMENT?

p. Juris. over traffic cases. [ ]YES? [ ]NO? [ ]COMMENT?

q. [Other] _____ [Describe]

TOPIC A.. THE JUVENILE COURT, Continued.

2. GENERAL JURISDICTION OF JUVENILE COURT, Continued.

r.[Other]_____. [Describe]

COMMENTS: _____

3. CONTRIBUTING, HARBORING OR INTERFERING.

a.General statute. [ ]YES? [ ]NO? [ ]COMMENT?

b. Age of plaintiff. [ ]YES? [ ]NO? [ ]COMMENT?

c. Age of defendant. [ ]YES? [ ]NO? [ ]COMMENT?

d. [Other] _____[Describe]

e. [Other] _____[Describe]

COMMENTS: _____

4. PATERNITY.

a. General statute. [ ]YES? [ ]NO? [ ]COMMENT.

b. Juris. in JCt. [ ]YES? [ ]NO? [ ]COMMENT?

c. Juris. in other court. [ ]YES? [ ]NO? [ ]COMMENT?

d. Age of plaintiff. [ ]YES? [ ]NO? [ ]COMMENT?

e. Age of Defendant. [ ]YES? [ ]NO? [ ]COMMENT?

f. [Other] _____. [Describe]

g. [Other] _____. [Describe]

COMMENTS: _____

TOPIC A. THE JUVENILE COURT, Continued.

5. INTERSTATE COMPACT.

a. Adoption by state. [ ]YES? [ ]NO? [ ]COMMENT?

b. Age. [ ]YES? [ ]NO? [ ]COMMENT?

c. Flight before petition filed. [ ]YES? [ ] NO? [ ]COMMENT?

d. Other variations from standard act. [ ]YES? [ ]NO? [ ]COMMENT?

e. [Other] _____ [Describe]

COMMENTS: _____

6. RETENTION OF JURISDICTION.[ ]YES? [ ]NO? [ ] COMMENT?

7. TERMINATION OF JURISDICTION.[ ]YES? [ ]NO? [ ]COMMENT?

8. EXCLUSIONS FROM COURT'S JURISTICTION.[ ]YES? [ ]NO? [ ]COMMENT?

9. RIGHT TO PRELIMINARY INQUIRY BEFORE FILING PETITION.[ ]YES? [ ]NO? [ ]COMMENT?

10. FINGERPRINTING JUVENILES. [ ]YES? [ ]NO? [ ]COMMENT?

11. PHOTOGRAPHING JUVENILES. [ ]YES? [ ]NO? [ ]COMMENT?

12. RIGHT TO PRELIMINARY ADJUSTMENT. [ ]YES? [ ]NO? [ ]COMMENT?

13. TAKING CHILD INTO CUSTODY:WHO MAY DO SO.[ ]YES? [ ]NO? [ ]COMMENT?

14. TAKING CHILD INTO CUSTODY: CIRCUMSTANCES. [ ]YES? [ ]NO? [ ]COMMENT?

15. DUTIES OF PERSON TAKING CHILD INTO CUSTODY. [ ]YES? [ ]NO? [ ]COMMENT?

16. LIMITATIONS ON CHILDREN PLACED IN SHELTER CARE.[ ]YES? [ ]NO? [ ]COMMENT?

17. LIMITATIONS ON CHILDREN PLACED IN DETENTION CARE. [ ]YES? [ ]NO? [ ]COMMENT?

18. LIMITATIONS ON PLACING CHILD IN JAIL. [ ]YES? [ ]NO? [ ]COMMENT?

19. AUTHORITY TO ORDER MED.,PSYCH.,& SURG. CARE. [ ]YES? [ ]NO? [ ]COMMENT?

20. LIMITATIONS ON AUTHORITY IN 19. [ ]YES? [ ]NO? [ ]COMMENT?

COMMENTS: [Items 6 thru 20,incl. - cite numbers]: _____

TOPIC A. THE JUVENILE COURT.

21. DISPOSITIONAL ALTERNATIVES: FINDING OF DELINQUENCY.

a. No further action. [_]YES? [_]NO? [_]COMMENT?

b. Fine and/or restitution. [_]YES? [_]NO? [_]COMMENT.

c. Probation - indefinite. [_]YES? [_]NO? [_]COMMENT?

d. Probation - definite term. [_]YES? [_]NO? [_] COMMENT?

e. Probation - periodically reviewed. [_]YES? [_]NO? [_]COMMENT?

f. Foster home care. [_]YES? [_]NO? [_]COMMENT?

g. Commitment to county public institutions. [_]YES? [_]NO? [_]COMMENT?

h. Commitment to forestry & other camps. [_]YES? [_]NO? [_]COMMENT?

i. Commitment to state training school. [_]YES? [_]NO? [_]COMMENT?

j. Commitment to other state youth services, [_]YES? [_]NO? [_]COMMENT?

k. Commitment to penal institution. [_]YES? [_]NO? [_]COMMENT?

l. [Other]_____[describe]

m. [Other]_____[describe]

n. [Other]_____[describe]

COMMENTS:_____

22. DISPOSITIONAL ALTERNATIVES: FINDING OF PINS.

a. No further action. [_]YES? [_]NO? [_]COMMENT?

b. Fine and/or restitution. [_]YES? [_]NO? [_]COMMENT?

c. Probation - indefinate. [_]YES? [_]NO? [_]COMMENT?

d. Probation - definite term. [_]YES? [_]NO? [_]COMMENT?

e. Probation - periodically reviewed. [_]YES? [_]NO? [_]COMMENT?

f. Commitment to county public institutions. [_]YES? [_]NO? [_]NO?

TOPIC A. THE JUVENILE COURT, Continued.

22. Dispositional alternatives: Finding of PINS, Continued.

g. Commitment to forestry & other camps. [_]YES? [_]NO? [_]COMMENT?

h. Commitment to state training school. [_]YES? [_]NO? [_]COMMENT?

i. Commitment to other state youth agencies. [_]YES? [_]NO? [_]COMMENT?

k. Commitment to penal institutions. [_]YES? [_]NO? [_]COMMENT?

l. [Other]_____. [Describe]

m. [Other]_____. [Describe]

n. [Other]_____. [Describe]

COMMENTS: _____

23. Dispositional alternatives: finding of neglect.

a. Permit child to remain with parents with conditions. [_]YES? [_]NO? [_]COMMENT?

b. Place child under protective supervision. [_]YES? [_]NO? [_]COMMENT?

c. Transfer legal custody to state agency. [_]YES? [_]NO? [_]COMMENT?

d. Transfer legal custody to local public agency. [_]YES? [_]NO? [_]COMMENT?

e. Transfer legal custody to local private agency. [_]YES? [_]NO? [_]COMMENT?

f. Transfer legal custody to relative. [_]YES? [_]NO? [_]COMMENT?

g. Transfer legal custody to private individual. [_]YES? [_]NO? [_]COMMENT?

h. [Other]_____. [Describe]

i. [Other]_____. [Describe]

j. [Other]_____. [Describe]

COMMENTS: _____

TOPIC A. THE JUVENILE COURT, Cont'd.

24. Dispositional alternatives: finding of dependent.

a. Permit child to remain with parents with conditions. [_]YES? [_]NO? [_]COMMENT?

b. Place child under protective supervision. [_]YES? [_]NO? [_]COMMENT?

c. Place parents on probation. [_]YES? [_]NO? [_]COMMENT?

d. Transfer legal custody to state agency. [_]YES? [_]NO? [_]COMMENT?

e. Transfer legal custody to local public agency? [_]YES? [_]NO? [_]COMMENT?

f. Transfer legal custody to local private agency. [_]YES? [_]NO? [_]COMMENT?

g. Transfer legal custody to relative. [_]YES? [_]NO? [_]COMMENT?

h. Transfer legal custody to private individual. [_]YES? [_]NO? [_]COMMENT?

i. [Other]_____. [Describe]

j. [Other]_____. [Describe]

k. [Other]_____. [Describe]

COMMENTS: _____

25. Revocation of Probation.

a. Hearing required. [_]YES? [_]NO? [_]COMMENT?

b. Notice of hearing required. [_] YES? [_]NO? [_]COMMENT?

c. Right to counsel at hearing. [_]YES? [_]NO? [_]COMMENT?

d. If revoked, commitment to training school permitted. [_]YES? [_]NO? [_]COMMENT?

COMMENTS: _____

TOPIC A. THE JUVENILE COURT.

26. Revocation of Aftercare Supervision.

a. Hearing required. [ ]YES? [ ]NO? [ ]COMMENT?

b. Notice of hearing required. [ ]YES? [ ]NO? [ ]COMMENT?

c. Right to counsel at hearing. [ ]YES? [ ]NO? [ ]COMMENT?

d. If revoked, commitment to training school permitted. [ ]YES? [ ]NO? [ ]COMMENT?

COMMENTS: _____

TOPIC B. PUBLIC EDUCATION.

1. Compulsory school age.

a. Minimum. [ ]YES? [ ]NO? [ ]COMMENT?

b. Maximum. [ ]YES? [ ]NO? [ ]COMMENT?

COMMENT: _____

2. Exemptions from Compulsory school attendance.

a. Physical condition. [ ]YES? [ ]NO? [ ]COMMENT?

b. Mental condition. [ ]YES? [ ]NO? [ ]COMMENT?

c. Elsewhere receiving regular, adequate education. [ ]YES? [ ]NO? [ ]COMMENT?

d. Completion of high school. [ ]YES? [ ]NO? [ ]COMMENT?

e. Lack of transportation. [ ]YES? [ ]NO? [ ]COMMENT?

f. Legally, regularly employed with work permit. [ ]YES? [ ]NO? [ ]COMMENT?

g. Excused by school board. [ ]YES? [ ]NO? [ ]COMMENT?

h. Physicians certification. [ ]YES? [ ]NO? [ ]COMMENT?

i. Over certain age and working with parent's permission. [ ]YES? [ ]NO? [ ]COMMENT?

j. Completed grammar school. [ ]YES? [ ]NO? [ ]COMMENT?

k. Services needed to support widowed mother. [ ]YES? [ ]NO? [ ]COMMENT?

l. Rec. by JCT Judge; app. by Sup. School. [ ]YES? [ ]NO? [ ]COMMENT?

m. [Other]_____. [Describe]

n. [Other]_____. [Describe]

o. [Other]_____. [Describe]

p. [Other]_____. [Describe]

COMMENTS: _____

TOPIC B. PUBLIC EDUCATION, Continued.

3. Compulsory education for migrants. [ ]YES? [ ]NO? [ ]COMMENT?
4. Compulsory education for indians. [ ]YES? [ ]NO? [ ]COMMENT?
5. Compulsory education for married girls. [ ]YES? [ ]NO? [ ]COMMENT?
6. Compulsory education for married boys. [ ]YES? [ ]NO? [ ]COMMENT?
7. Compulsory education for pregnant girls. [ ]YES? [ ]NO? [ ]COMMENT?
8. Age of work permit if of compulsory school age. [ ]YES? [ ]NO? [ ]COMMENT?
9. Parental schools. [ ]YES? [ ]NO? [ ]COMMENT?
10. Residence requirements if of compulsory school age. [ ]YES? [ ]NO? [ ]COMMENT?
11. Tuition if non-resident of school district. [ ]YES? [ ]NO? [ ]COMMENT?
12. Tuition if non-resident of state. [ ]YES? [ ]NO? [ ]COMMENT?
13. Penalty for inducing unlawful absence from school. [ ]YES? [ ]NO? [ ]COMMENT?
14. Penalty for not sending child of compulsory age to school. [ ]YES? [ ]NO? [ ]COMMENT?
15. [Other]_____[Describe]
16. [Other]_____[Describe]
17. [Other]_____[Describe]

COMMENTS on 3 to 17, incl.: _____

TOPIC C. PUBLIC WELFARE.

1. Child Welfare Services.

a. Eligibility age. [ ]YES? [ ]NO? [ ]COMMENT?

b. Effect of marriage on eligibility for services. [ ]YES? [ ]NO? [ ]COMMENT?

c. Effect of residence on eligibility for services. [ ]YES? [ ]NO? [ ]COMMENT?

d. [Other]_____[Describe]

COMMENTS: _____

TOPIC C. PUBLIC WELFARE, Continued.

2. Child Caring Agencies.

a. Definition. [ ]YES? [ ]NO? [ ]COMMENT?

b. Licensure requirements. [ ]YES? [ ]NO? [ ]COMMENT?

c. Exceptions to licensure requirements. [ ]YES? [ ]NO? [ ]COMMENT?

d. Minimum age of children cared for. [ ]YES? [ ]NO? [ ]COMMENT?

e. Maximum age of children cared for. [ ]YES? [ ]NO? [ ]COMMENT?

f. [Other]_____ [Describe]

COMMENTS: _____

TOPIC D. CUSTODY AND CONTROL OF CHILDREN.

1. Definitions: age of child. [ ]YES? [ ]NO? [ ]COMMENT?

2. Rights, powers and duties of person exercising control. [ ]YES? [ ]NO? [ ]COMMENT?

3. Exceptions. [ ]YES? [ ]NO? [ ]COMMENT?

4. [Other]_____ [Describe]

5. [Other]_____ [Describe]

COMMENTS: _____

E. CURRENT LAWS.

1. General provisions. [ ]YES? [ ]NO? [ ]COMMENT?

2. Maximum age. [ ]YES? [ ]NO? [ ]COMMENT?

3. Special limitations. [ ]YES? [ ]NO? [ ]COMMENT?

E. CURFEW LAWS, Continued.

4. [Other] _____ [Describe]

COMMENTS: _____

F. HITCHHIKING LAWS.

1. General provisions. [ ]YES? [ ]NO? [ ]COMMENT?
2. Age. [ ]YES? [ ]NO? [ ]COMMENT?
3. Exceptions. [ ]YES? [ ]NO? [ ]COMMENT?
4. [Other] _____ [Describe]
5. [Other] _____ [Describe]

COMMENTS: _____

G. AUTHORITY TO PROVIDE TREATMENT ALTERNATIVES TO JUVENILE JUSTICE SYSTEM.

1. Authority to provide Youth Service Bureaus. [ ]YES? [ ]NO? [ ]COMMENT?
2. Authority to establish half-way houses. [ ]YES? [ ]NO? [ ]COMMENT?
3. Authority to establish youth hotels. [ ]YES? [ ]NO? [ ]COMMENT?
4. Authority to establish runaway houses. [ ]YES? [ ]NO? [ ]COMMENT?
5. [Other] _____ [Describe]
6. [Other] _____ [Describe]

COMMENTS: _____

TOPIC H. STATUTORY RAPE.

1. Age of consent - female. [ ]YES? [ ]NO? [ ]COMMENT?
2. Age of consent - male. [ ]YES? [ ]NO? [ ]COMMENT?
3. Limitations. [ ]YES? [ ]NO? [ ]COMMENT?
4. Conditions. [ ]YES? [ ]NO? [ ]COMMENT?
5. [Other] _____ [Describe]
6. [Other] _____ [Describe]

COMMENTS: _____

TOPIC I. DRUG ABUSE PROGRAMS.

1. Program established. [ ]YES? [ ]NO? [ ]COMMENT?
2. Eligibility of minors. [ ]YES? [ ]NO? [ ]COMMENT?
3. Necessity for parental consent. [ ]YES? [ ]NO? [ ]COMMENT?
4. Exceptions to necessity for parental consent. [ ]YES? [ ]NO? [ ]COMMENT?
5. Necessity for spouse's consent. [ ]YES? [ ]NO? [ ]COMMENT?
6. Exceptions to necessity for spouse's consent. [ ]YES? [ ]NO? [ ]COMMENT?
7. Notification to parents, guardian etc. [ ]YES? [ ]NO? [ ]COMMENT?
8. Notification to spouse. [ ]YES? [ ]NO? [ ]COMMENT?
9. Notification to parents, guardian etc. discretionary. [ ]YES? [ ]NO? [ ]COMMENT?
10. Notification to spouse discretionary. [ ]YES? [ ]NO? [ ]COMMENT?
11. Liability of provider of services. [ ]YES? [ ]NO? [ ]COMMENT?
12. Institutionalization required. [ ]YES? [ ]NO? [ ]COMMENT?
13. Duration of voluntary institutionalization. [ ]YES? [ ]NO? [ ]COMMENT?
14. Duration of involuntary insitutionalization. [ ]YES? [ ]NO? [ ]COMMENT?
15. Confidentiality of records. [ ]YES? [ ]NO? [ ]COMMENT?
16. [Other] _____ [Describe]
17. [Other] _____ [Describe]

TOPIC I. DRUG ABUSE PROGRAMS, Continued.

18. [Other] _____ [Describe]

COMMENTS: _____

TOPIC J. CONTRIBUTING, HARBORING AND INTERFERING.

1. Applicable to adults. [ ]YES? [ ]NO? [ ]COMMENT?
2. Applicable to miners. [ ]YES? [ ]NO? [ ]COMMENT?
3. [Other] _____ [Describe]
4. [Other] _____ [Describe]

COMMENTS: _____

TOPIC K. ABILITY TO CONTRACT - AGE OF MAJORITY.

1. Age of Majority Act. [ ]YES? [ ]NO? [ ]COMMENT?
2. Ability to contract. [ ]YES? [ ]NO? [ ]COMMENT?
3. Ability to disavow. [ ]YES? [ ]NO? [ ]COMMENT?
4. Age of majority. [ ]YES? [ ]NO? [ ]COMMENT?
5. Responsibilities for necessities. [ ]YES? [ ]NO? [ ]COMMENT?
6. Responsibility of parents, guardian, etc. [ ]YES? [ ]NO? [ ]COMMENT?
7. [Other] _____ [Describe]
8. [Other] _____ [Describe]
9. [Other] _____ [Describe]

COMMENTS: _____

TOPIC L. MARRIAGE.

1. Age for males. [ ]YES? [ ]NO? [ ]COMMENT?
2. Age for females. [ ]YES? [ ]NO? [ ]COMMENT?
3. Need for parental consent. [ ]YES? [ ]NO? [ ]COMMENT?
4. Effects of pregnancy on ability to marry [ ]YES? [ ]NO? [ ]COMMENT?
5. Waiting period. [ ]YES? [ ]NO? [ ]COMMENT?
6. VD test needed. [ ]YES? [ ]NO? [ ]COMMENT?
7. Special disabilities preventing marriage. [ ]YES? [ ]NO? [ ]COMMENT?
8. [Other] _____ [Describe]
9. [Other] _____ [Describe]

COMMENTS: _____

TOPIC M. TOBACCO PRODUCTS.

1. Age for purchasing tobacco products. [ ]YES? [ ]NO? [ ]COMMENT?
2. Penalty for misrepresenting age. [ ]YES? [ ]NO? [ ]COMMENT?
3. [Other] _____ [Describe]
4. [Other] _____ [Describe]

COMMENTS: _____

Legal Rights

Data-Compilation Form

. RIGHT TO COUNSEL AT POLICE INTERROGATIONS.

[_]NO? [_]YES? Vol.#____;Art.#____;Ch.#____;Sec.#____;Other:_____;Enacted:_____19__

OCKET PART:[_]NO? [_]YES? If YES,checked thru 19___.COMMENTS?[_]NO? [_]YES? If YES,comments

] on reverse side or [] here:_____

. RIGHT TO MIRANDA TYPE WARNING AT POLICE INTERROGATIONS.

_]NO? [_]YES? Vol.#____;Art.#____;Ch.#____;Sec.#____;Other:____;Enacted:_____19

OCKET PART:[_]NO? [_]YES? If YES,checked thru 19__. COMMENTS:[_]NO? [_]YES? If YES, comment

] on reverse side or [] here:_____

RIGHT TO COUNSEL AT EVERY STAGE OF JUVENILE COURT PROCEEDINGS.

_]NO? [_]YES? Vol.#____;Art.#____;Ch.#____;Sec.#____;Other:____;Enacted:_____19__

CKET PART:[_]NO? [_]YES? If YES,checked thru 19__. COMMENTS:[_]NO? [_]YES? If YES, comment

]on reverse side or [] here:_____

. RIGHT TO COUNSEL,CT.APPTD.& PAID FOR,AT EVERY STAGE OF JCT PROCEEDINGS.

]NO? [_]YES? Vol.#____;Art.#____;Ch.#____;Sec.#____;Other:____;Enacted:_____19__

CKET PART:[_]NO? [_]YES? If YES,checked thru 19__. COMMENTS:[_]NO? [_]YES? If YES, comment

]on reverse side or [_] here:_____

. RIGHT TO APPEAL JUVENILE COURT DECISIONS.

]NO? [_]YES? Vol.#____;Art.#____;Ch.#____;Sec.#____;Other:____;Enacted:_____1

CKET PART:[_]NO? [_]YES? If YES, checked thru 19___.COMMENTS:[_]NO? [_]YES? If YES, commen

]on reverse side or [_] here:_____

RIGHT TO COUNSEL ON APPEAL FROM JUVENILE COURT DECISION.

_]NO? [_]YES? Vol.#____;Art.#____;Ch.#____;Sec.#____;Other:____;Enacted:_____19__

CKET PART:[_]NO? [_]YES? If YES, checked thru 19__.COMMENTS:[_]NO? [_]YES?If YES,comments

] on reverse side or [] here:_____

G. RIGHT TO COUNSEL,CT APPTD & PAID FOR, ON APPEAL FROM JCT DECISION.

[_]NO? [_]YES? Vol.#____;Art.#____;Ch.#____;Sec.#____;Other:____;Enacted:_____19__

POCKET PART:[_]NO? [_]YES? If YES,checked thru 19__.COMMENTS:[_]NO? [_]YES? If YES, comments

[_]on reverse side or [_]here:_____

H. RIGHT TO WRITTEN NOTICE OF CHARGES.

[_]NO? [_]YES? Vol.#____;Art.#____;Ch.#____;Sec.#____;Other:____;Enacted:_____19__

OCKET PART:[_]NO? [_]YES? If YES,checked thru 19__.COMMENTS:[_]NO? [_]YES? If YES, comments

[_]on reverse side or [_]here:_____

. RIGHT TO HEARING - DETENTION.

[_]NO? [_]YES? Vol.#____;Art.#____;Ch.#____;Sec.#____;Other:____;Enacted:_____19__

OCKET PART:[_]NO? [_]YES? If YES,checked thru 19__.COMMENTS:[_]NO? [_]YES? If YES, comments

[_]on reverse side or [_]here:_____

RIGHT TO HEARING - ADJUDICATORY.

[_]NO? [_]YES? Vol.#____;Art.#____;Ch.#____;Sec.#____;Other:____;Enacted:_____19__

OCKET PART:[_]NO? [_]YES? If YES,checked thru 19__.COMMENTS:[_]NO? [_]YES? If YES, comments

[_]on reverse side or [_]here:_____

. RIGHT TO HEARING - DISPOSITIONAL.

[_]NO? [_]YES? Vol.#____;Art.#____;Ch.#____;Sec.#____;Other:____;Enacted:_____19__

OCKET PART:[_]NO? [_]YES? If YES,checked thru 19__.COMMENTS:[_]NO? [_]YES? If YES, comments

[_]on reverse side or [_]here:_____

. RIGHT TO HEARING - REVOCATION OF PROBATION OR AFTERCARE SUPERVISION.

[_]NO? [_]YES? Vol.#____;Art.#____;Ch.#____;Sec.#____;Other:____;Enacted:_____19__

OCKET PART:[_]NO? [_]YES? If YES,checked thru 19__.COMMENTS:[_]NO? [_]YES? If YES, comments

[_]on reverse side or [_]here:_____

. RIGHT TO SUBPOENA.

[ ]NO? [ ]YES? Vol.#____;Art.#____;Ch.#____;Sec.#____;Other:____;Enacted:_____19__

OCKET PART:[ ]NO? [ ]YES? If YES,checked thru 19__.COMMENTS:[ ]NO? [ ]YES? If YES, comments

]on reverse side or [ ]here:_____

_____

RIGHT TO CONFRONT AND CROSS-EXAMINE WITNESSES.

[ ]NO? [ ]YES? Vol.#____;Art.#____;Ch.#____;Sec.#____;Other:____;Enacted:_____1

OCKET PART:[ ]NO? [ ]YES? If YES,checked thru 19__.COMMENTS:[ ]NO? [ ]YES? If YES, comments

]on reverse side or [ ]here:_____

_____

RIGHT AGAINST ADMISSABILITY OF STATEMENTS MADE WHILE NOT ADVISED BY COUNSEL.

[ ]NO? [ ]YES? Vol.#____;Art.#____;Ch.#____;Sec.#____;Other:____:Enacted:_____1

CKET PARK:[ ]NO? [ ]YES? If YES,checked thru 19__.COMMENTS:[ ]NO? [ ]YES? If YES, comments

]on reverse side or [ ]here:_____

_____

RIGHT AGAINST SELF INCRIMINATION.

[ ]NO? [ ]YES? Vol.#____;Art.#____;Ch.#____;Sec.#____;Other:____;Enacted:_____1

CKET PART:[ ]NO? [ ]YES? If YES,checked thru 19__.COMMENTS:[ ]NO? [ ]YES? If YES, comments

]on reverse side or [ ]here:_____

_____

RIGHT AGAINST DOUBLE JEOPARDY.

[ ]NO? [ ]YES? Vol.#____;Art.#____;Ch.#____;Sec.#____;Other:____;Enacted:_____1

CKET PART:[ ]NO? [ ]YES? If YES,checked thru 19__.COMMENTS:[ ]NO? [ ]YES? If YES, comments

]on reverse side or [ ]here:_____

_____

RIGHT TO STOP ANSWERING QUESTIONS AT ANY TIME.

[ ]NO? [ ]YES? Vol.#____;Art.#____;Ch.#____;Sec.#____;Other:____;Enacted:_____1

CKET PART:[ ]NO? [ ]YES? If YES,checked thru 19__.COMMENTS:[ ]NO? [ ]YES? If YES, comments

]on reverse side or [ ]here:_____

5. RIGHT AGAINST INTRODUCTION OF ILLEGALLY SEIZED EVIDENCE.

[_]NO? [_]YES? Vol.#___;Art.#___;Ch.#___;Sec.#___;Other:___;Enacted:_____19__

POCKET PART:[_]NO? [_]YES? If YES,checked thru 19__.COMMENTS:[_]NO? [_]YES? If YES, comments

[_]on reverse side or [_]here:_____

_____

• RIGHT TO HAVE Adjudicatory Hearing transcribed.

_]NO? [_]YES? Vol.#___;Art.#___;Ch.#___;Sec.#___;Other:___;Enacted:_____19__

OCKET PART:[_]NO? [_]YES? If YES,checked thru 19__.COMMENTS:[_]NO? [_]YES? If YES, comments

]on reverse side or []here:_____

_____

. RIGHT TO HAVE COPY OF TRANSCRIPT OF ADJUDICATORY HEARING.

_]NO? [_]YES? Vol.#___;Art.#___;Ch.#___;Sec.#___;Other:___;Enacted:_____19__

OCKET PART:[_]NO? [_]YES? If YES,checked thru 19__.COMMENTS:[_]NO? [_]YES? If YES, comments

]on reverse side or []here:_____

_____

•_____

_]NO? [_]YES? Vol.#___;Art.#___;Ch.#___;Sec.#___;Other:___;Enacted:_____19__

OCKET PART:[_]NO? [_]YES? If YES,checked thru 19__;COMMENTS:[_]NO? [_]YES? If YES, comments

]on reverse side or []here:_____

_____

_____

_]NO? [_]YES? Vol.#___;Art.#___;Ch.#___;Sec.#___;Other:___;Enacted:_____19__

OCKET PART:[_]NO? [_]YES? If YES,checked thru 19__.COMMENTS:[_]NO? [_]YES? If YES, comments

]on reverse side or []here:_____

_____

•_____

_]NO? [_]YES? Vol.#___;Art.#___;Ch.#___;Sec.#___;Other:___:Enacted:_____19__

OCKET PART:[_]NO? [_]YES? If YES,checked thru 19__.COMMENTS:[_]NO? [_]YES? If YES, comments,

]on reverse side or []here:_____

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