

Summer 1979

# A Judicial Response to the New Juvenile Code

J. Brandon Griffis

*Wayne County Superior Court*

Follow this and additional works at: <http://www.repository.law.indiana.edu/ilj>

 Part of the [Judges Commons](#), [Juvenile Law Commons](#), and the [Legislation Commons](#)

## Recommended Citation

Griffis, J. Brandon (1979) "A Judicial Response to the New Juvenile Code," *Indiana Law Journal*: Vol. 54 : Iss. 4 , Article 6.  
Available at: <http://www.repository.law.indiana.edu/ilj/vol54/iss4/6>

This Symposium is brought to you for free and open access by the Law School Journals at Digital Repository @ Maurer Law. It has been accepted for inclusion in *Indiana Law Journal* by an authorized editor of Digital Repository @ Maurer Law. For more information, please contact [wattn@indiana.edu](mailto:wattn@indiana.edu).

# A Judicial Response to the New Juvenile Code

J. BRANDON GRIFFIS\*

This article will comment upon Indiana's Juvenile Code in general and focus on particular areas of concern to a judge having juvenile jurisdiction.

The 1979 General Assembly recently adopted several amendments to the Juvenile Code proposed by the Juvenile Justice Division and by legislators from the floor of the House. In continuing the Juvenile Justice Division of the Judicial Study Commission in existence for an additional year, the General Assembly charged it to consider the entire area of delivery of services to children, amendments necessary to the Child Abuse Law<sup>1</sup> so as to make it consistent with the Code and to recommend necessary amendments to the new Code.<sup>2</sup> While the vast majority of the amendments are technical in nature, several are of substantive importance. Historically, members of the General Assembly have, on occasion, proposed hurriedly drafted amendments to carefully drafted legislation without due consideration of the ultimate effect. Some of these amendments have been adopted, particularly those in reaction to emotional issues of the time. By its nature, a comprehensive Juvenile Code is especially vulnerable to such amendments.

Another complication arises out of my having been a member of the Division that drafted the Code and having participated in two years of deliberation, including at times, intense debate. The active members of the Commission developed a begrudging mutual respect for each other. We fought among ourselves to bring forth a quality Code, and when that had been achieved tended to become defensive of its provisions and resentful of "outsiders" criticizing the Code even though as individual members we fought hard against some of its provisions.

Hopefully with the help of considerable input from the Indiana Council of Juvenile Court Judges, particularly from its Committee for the Improvement of Juvenile Justice, together with the passage of time, this article will reflect the reaction of a substantial number of Indiana's judges having juvenile jurisdiction.

One of the greatest strengths of the Code was in its careful drafting following the resolution of hard issues after full debate. This was coupled with the fact that the Division held meaningful public hearings. These meetings, held throughout the state, were advertised in advance. The

---

\*LL.B. 1949, Indiana University. Past President, Indiana Council of Juvenile Court Judges; former member, Judicial Study Commission; Judge, Wayne County Superior Court.

<sup>1</sup>IND. CODE § 31-5.5 (Cum. Supp. 1979)(repealed 1979, new version at § 31-6-11).

<sup>2</sup>*Id.* § 31-6 (Cum. Supp. 1979).

meetings were well attended by interested persons generally, Commission members and staff. More importantly, the Commission listened to the comments made at the meetings and responded to them in the final drafting of the Code. This has not always been the case with Indiana's Code Commissions. As a result, the Commission established a credibility with the General Assembly. By the time the Code reached the floor for vote, everything that could be said, had been voiced on several occasions.

The judicial impact upon the Code was far greater than intended. In creating the Commission, the Legislature empowered the Chief Justice of the Indiana Supreme Court to appoint three judges having juvenile jurisdiction. This comprised the entire judicial representation of the twenty-four member Commission. The appointments represented large, medium and small counties: Allen, Wayne and Posey.

The Commission used as its basic working document the Proposed Rules of Juvenile Procedure, a product of the Civil Code Study Commission, with those changes previously recommended by the Indiana Council of Juvenile Court Judges (ICJ CJ) and the Prosecuting Attorneys Council. This instrument was the descendant of a proposed code drafted in 1967 by Indiana juvenile court judges in response to the *In re Gault*<sup>3</sup> decision. Thus, the basic drafting document contained considerable judicial influence.

Further, the ICJ CJ Committee for the Improvement of Juvenile Justice met regularly as the Commission deliberated. This Committee studied and reacted to the preliminary and final drafts of the Code, communicating its reactions to the Division through the judicial members. The Commission paid attention to the Committee's recommendations, ultimately adopting many of them.

The Improvement Committee, composed of a cross-section of judges having juvenile jurisdiction, reached its height of effectiveness by meeting on four consecutive weekends in November and December of 1977. It reviewed the Code in its entirety and made final recommendations to the Commission. Again, the great majority of these were adopted by the Commission and incorporated into the final version of the Code submitted to the General Assembly which was later enacted into law with minimal change.

Thus, a combination of several factors resulted in the enactment of a Code into which there was substantial judicial input, contrary to the legislative intent. Despite this the Code is not all to the judges' liking as they both won and lost on major issues.

To fully appreciate the Code's ultimate effect it must be compared with the state of juvenile justice in Indiana prior to the Code's effective date. The present law is outdated, substantively and procedurally incomplete, inartfully drafted and confusing. It addresses itself to the society existing at the conclusion of World War II. Only recently have the Indiana

---

<sup>3</sup>387 U.S. 1 (1967).

courts of appeal become involved in the area of juvenile law. Such cases are infrequent and are not necessarily by judges having had substantial exposure to the juvenile system in practice.

An example is found in *Seay v. State*<sup>4</sup> where the Indiana Court of Appeals set forth precise procedures necessary before jurisdiction may be acquired by the juvenile court. These steps were not provided for in either the applicable substantive or procedural laws and differed from the actual practices of the trial judges.

As a result of all of these factors, the judges with juvenile jurisdiction in each of the ninety circuits developed independent procedures, having no uniform guidelines as to how the system should or should not be administered. Not only are the procedural steps inconsistent from circuit to circuit, but the pleadings bear different names and police and probation officers play varied roles with different responsibilities in each county. Judge Robert Kinsey, first President of the ICJ CJ, characterized sitting as a special judge in a juvenile matter in another county as traveling to a foreign land.

Indiana now has ninety different systems of juvenile justice, with no circuit being capable of establishing that its system is the right way and the others, wrong. It is not a state-wide system of justice. This is an intolerable situation. Had the criminal justice system reached such a state of deterioration, it would have been quickly recognized and a hue and cry raised. It would have received priority attention by the public, the Bar, the General Assembly, the executive branch of state government and our supreme court. Thus, there is more than just a need for a modern juvenile code in Indiana. It is essential if it is to survive as a separate justice system.

#### ROLE OF THE PROSECUTOR

The Code officially gives the prosecutor a role in the decision as to whether or not authorization should be sought to file a formal petition in juvenile court.<sup>5</sup> The Commission adopted this procedure after lengthy debate and at the strong urging of the prosecutor members.<sup>6</sup>

The decision to file a petition alleging delinquency rests with the prosecutor and the court *shall* authorize the filing if it finds probable cause that the child is delinquent, and that it is in the best interests of the child or the public interest that it be filed.<sup>7</sup> The prosecutor, therefore, assumes a similar posture to that which he holds in the criminal justice system. His discretionary decision to seek authorization or not is subject only to a judicial determination of probable cause.<sup>8</sup>

---

<sup>4</sup>*Seay v. State*, \_\_\_Ind. App. \_\_\_, 337 N.E.2d 489, 498 (1975).

<sup>5</sup>IND. CODE §§ 31-6-4-7, -9 (Cum. Supp. 1979).

<sup>6</sup>For a general discussion of the roles of the prosecutor, defense counsel and the judge, see D. BESHAROV, *JUVENILE JUSTICE ADVOCACY* 41-53 (1974).

<sup>7</sup>IND. CODE § 31-6-4-9(b) (Cum. Supp. 1979).

<sup>8</sup>*See id.* § 31-6-4-7(e)

The problem lies not with this concept, but with a dichotomy existing among Indiana's prosecutors. Some of the prosecutors now actively participate and want to continue to function in the juvenile justice system. Some are not now involved and do not want to be in the future. Indiana's prosecutors are evenly divided on this proposition according to representatives of the Prosecuting Attorney's Council. Members of the one half maintain that all criminal acts and threats to public safety are their ultimate responsibility; that victims of crime and the public do not distinguish between criminal acts committed by adults or juveniles, and they as prosecutors are held accountable to the electorate and thus must be free to operate as a part of the system. The remaining prosecutors maintain that the prosecution of adult crime occupies the full time of its members and exhausts their limited resources; further, that the juvenile justice system has been functioning well without prosecutorial intervention through the years and that the officers and agencies of both systems are comfortable in this arrangement and it is best left alone.

Those favoring inclusion of the prosecutor in the juvenile system were more emphatic than those preferring to remain outside the system, therefore, ninety prosecutors are now an integral part of the system, presumably including forty-five (more or less) reluctantly.

Judges readily accept the desirability of being relieved from the uncomfortable role of participating in the decision as to whether or not a petition should be filed as provided in current laws.<sup>9</sup> The inconsistency of making the decision to authorize the filing of a petition alleging delinquency and later sitting in judgment of that same decision is obvious. And yet this has been the practice in Indiana for seventy-eight years. Most judges welcome a reasonable alternative.

However, some apprehension arises by reason of the division among the prosecutors. If Indiana's reluctant prosecutors are willing to devote the time and make the effort to familiarize themselves with the peculiarities of the juvenile justice system, not only with the applicable law, but also to recognize the sensitivity necessary to carry out the objectives of *parens patriae* and thus reach a professional level enjoyed by their activist colleagues, all will be well. If not, one of the most important decisions in the system will rest with one who does not command a knowledge of the disciplines of the system. Of course, some prosecutors will accept this new responsibility, commit themselves and perform it well. Some will not. In those latter counties for the wrong reasons, some juveniles will enter the formal system who ought not to do so. Some who should enter it will not.

Another apprehension about the prosecutor's role in the decision to file a petition with the court arises with the "status offenses."<sup>10</sup> Most juvenile judges feel strongly that some of those young persons found to

---

<sup>9</sup>IND. CODE § 31-5-7-8 (1976)(repealed 1979).

<sup>10</sup>IND. CODE §§ 31-6-4-1(a), -2 to -5 (Cum. Supp. 1979).

be incorrigible, truant and run-aways ought to remain in the juvenile justice system, and that there is validity to the concept of curfew restrictions.<sup>11</sup> It is their belief, gained from experience, that many status offenders are in desperate need of intervention that cannot be otherwise obtained. The selfish judicial position would be the contrary, to seek removal of the status offender from the juvenile court. Removal, if accomplished, would not only ease the caseload of all juvenile judges, but would also remove the responsibility of handling what is often the most difficult of cases. How do you convince a truant to attend school? What if he persists in truancy after one or more court appearances? Why did a sixteen year-old girl leave her home? Why does she refuse to return? Why can't the parents of a twelve-year-old control his behavior? What can the court do about it? It well may be the juvenile judge's finest hour when he applies the proper remedy to a status offender after utilizing available diagnostic services, that accomplishes the rehabilitation of the child. The truant returns to school; the incorrigible child and his parents forge out a working relationship. This is *parens patriae* at work as it was originally conceived.

The prosecutor, trained and experienced in criminal law, will quickly be able to determine whether an act has occurred which would constitute a crime if committed by an adult. His attention is focused upon criminal activity and he is responsive to acts threatening to the public order.

Now he must shift his thinking and be able to recognize and take seriously the condition in which a child is found. Some "status offenders" can be quickly and effectively handled by social agencies; some require quick intervention by the court. Not only must the prosecutor be able to differentiate between the two, but he must be aware of the available private and public resources in the community and their particular areas of expertise and effectiveness. He must gear himself to the particular problems of the young if he is to respond effectively. He must have the same determination to represent the state adequately to establish the status in cases warranting intervention as he does where criminal-like activity has taken place and delinquency is alleged. If the status offender is to remain in the system in fact, as well as in name, the prosecutor must discipline himself to gain this new expertise. If not, we may have practically eliminated the status offenses from the system, a result not intended by the Division.

In fairness to those lawyers of prosecutorial bent, this concern arises in part from contact with private defense counsel who enter the juvenile court with minimal prior experience, having made no significant effort to familiarize themselves with the system. Traditionally, this lawyer incorrectly refers to his young client as the "defendant," enters pleas of "not

---

<sup>11</sup>IND. CODE §§ 31-5-7-4.1(a), -5 (1976 & Cum. Supp. 1979)(repealed 1979). Curfew violation laws are valid if they are reasonable and intelligible as opposed to Indiana's present curfew law.

guilty" and files pleadings captioned "State of Indiana" versus his client. He further misses the most important part of his representation in not knowing the dispositional alternatives available to the court and thus is in no position to "assist" the court in selecting a favorable disposition least restrictive to the juvenile. He is a fish out of water with an unfortunate client. Hopefully he is well insured.

At this time there are very few attorneys from either the defense or prosecutorial side who command knowledge of juvenile justice to the degree expected of a professional.

### TOO MANY HEARINGS

The most frequent concern expressed by judges relates to the number of hearings required by the Code. It is a legitimate concern, but one that should be allayed with experience.

Other than Allen (which has a juvenile division of its family court), Lake (Gary) and Marion (Indianapolis) counties, Indiana's juvenile judges exercise general jurisdiction and are not "juvenile judges" in the true sense. The great majority of Indiana judges exercise concurrent criminal jurisdiction and as a result, conduct a multitude of hearings to determine probable cause, arraign, establish bail, determine ability to stand trial, dismiss, suppress evidence, and to consider pre-trial motions such as motions in limine, discovery and the like. Following pre-trial conference, hearings take place out of the presence of the jury, and of course if the verdict is of guilt include sentencing, a hearing on the request for shock probation and if all else fails, a hearing on the post conviction relief petition takes place. Is it any wonder that trial judges, equipped with minimal staff, insufficient time and disgruntled civil litigants relegated to the rear of the trial calendar, react adversely to a new phalanx of hearings?

Although the Code requires certain hearings, it is important to keep in mind that several can be combined and handled in a single court appearance. A detention or shelter care hearing is required within forty-eight hours of the taking into custody of an alleged delinquent<sup>12</sup> and seventy-two hours of the taking into custody of a child in need of services,<sup>13</sup> excluding Saturdays, Sundays and legal holidays. This is a new formal hearing to comply with minimum standards imposed by case law.<sup>14</sup> Standards for detention are, for the first time, set forth.<sup>15</sup> While the

---

<sup>12</sup>*Id.* § 31-6-4-5(f) (Cum. Supp. 1979).

<sup>13</sup>*Id.* § 31-6-4-6(e).

<sup>14</sup>*Moss v. Weaver*, 383 F. Supp. 130 (S.D. Fla. 1974), *modified*, 525 F.2d 1258 (5th Cir. 1976). "No person can be lawfully held in penal custody by the state without a prompt judicial determination of probable cause. The Fourth Amendment so provides and this constitutional mandate applies to juveniles as well as adults. Such is the teaching of *Gault* and the teaching of *Kent*." *Cooley v. Stone*, 414 F.2d 1213 (D.C. Cir. 1969). *See also* NATIONAL JUVENILE LAW CENTER, LAW AND TACTICS IN JUVENILE CASES §§ 8.1 - 8.10 (2d ed. 1974).

<sup>15</sup>IND. CODE §§ 31-6-4-5, -6 (Cum. Supp. 1979).

hearing is new, detention decisions are now being made by various persons in the circuits, including in some, the judge. For these, it will not constitute a new proceeding, but its format will change. The Code does not contemplate that it be a lengthy, formal proceeding.

The initial hearing is comparable to a criminal arraignment. The Code provides that the juvenile and his parents shall be advised as to the allegations of the petition, their "rights" and the possible consequences of an adjudication of delinquency. The juvenile shall then admit or deny the allegations of the petition.<sup>16</sup> Again, it is important to note that this initial hearing may be combined with the dispositional hearing if the allegations are admitted<sup>17</sup> and will often constitute one judicial proceeding divided into two segments.

Similarly, upon the filing of a predispositional report, the court shall hold a dispositional hearing.<sup>18</sup> This should and frequently will be combined with the determination of the extent of parental participation.<sup>19</sup> This is an integral part of the disposition and there is no reason that these cannot be treated at the same court appearance, except in unusual circumstances.

The mandatory review of the dispositional decree<sup>20</sup> is, of course, new. It is a recognition by the Commission of the inherent wrong in the warehousing of people, whether adults within the mental health context or juveniles within their particular system, and of the case law responding to that problem.<sup>21</sup>

Many judges have been conducting periodic reviews in various forms and at varying intervals. Again, this provision standardizes review throughout the state and places on the state the burden of establishing the need for continued jurisdiction with articulated criteria.<sup>22</sup>

The Division originally proposed a "paper" review every six months and a formal hearing with the juvenile present every eighteen months. In an ill-considered action, the 1978 Legislature amended this to require the formal hearing every six months if the child is removed from his custodian. For no other reason than the high per diem cost of placement, only a small percentage of juveniles are removed and placed outside of their home. Those who are removed have exhibited serious problems requiring expensive custodial treatment. Few, if any, of these can be effectively treated within a six-month period of time. The inevitable grapevine will disclose to each placed juvenile that his case will be reviewed every six

---

<sup>16</sup>*Id.* §§ 31-6-4-13, -13.5.

<sup>17</sup>*Id.* § 31-6-4-13.5(i).

<sup>18</sup>*Id.* § 31-6-4-14(b).

<sup>19</sup>*Id.* § 31-6-4-17.

<sup>20</sup>*Id.* § 31-6-4-19.

<sup>21</sup>*Roose v. Cameron*, 373 F.2d 451 (D.C. Cir. 1966); *Wyatt v. Stickney*, 325 F. Supp. 781 (N.D. Ala. 1971). See also *BESHAROV*, *supra* note 6, at 431; *LAW AND TACTICS IN JUVENILE CASES*, *supra* note 14, at 314.

<sup>22</sup>IND. CODE § 31-6-4-19(b), -19(c) (Cum. Supp. 1979).



months and he will assume that he will then return home, thus, effectively crippling the treatment program. In an effort to compromise, the Commission suggested that the formal review occur every twelve months. The 1979 Legislature compromised, requiring a formal hearing within nine months. It is admittedly a new hearing. There are bona fide reasons for it, but as it now stands the intervals are too short, unrealistic and unwise.

#### SECURE V. NON-SECURE DETENTION

A reasonably careful study of the trend throughout the country leads to the conclusion that the non-secure detention of status offenders and children in need of services is a fact of life, if not now, in the very near future. Be that as it may, and without belaboring the wisdom of that proposition, there are nagging reservations as to its full impact upon those dealing directly with children and those also having the immediate responsibility of handling children at various times of the day and night.

The problem of secure detention arises in two areas: first, the general prohibition against the secure detention of any status offender; and second, the severe limitation upon the detention of the delinquent who has committed an act otherwise a crime if committed by an adult.

The runaway child presents unique problems to the police officer and the intake staff of the juvenile court. Indiana has experienced this for the last three years. In 1976, the General Assembly designated the runaway as a dependent child. Previously and appropriately, secure detention of the traditional dependent child was prohibited; thus, the Assembly brought the runaway child within this prohibition.<sup>23</sup>

The runaway child challenges the system. When he is in hand, the authorities are hard-pressed to determine his identity, his place of residence and the reason for his having left. Is he truly only a runaway? Or is he a fugitive from another jurisdiction? Is he fleeing from having committed a criminal act? If placed in non-secure detention, will he accept this? Will he enter the front door and exit the rear door? If so, is it reasonable to expect that the next jurisdiction will repeat this procedure and thus, effectively move the child across our state from one county to another?

There is strong judicial feeling of the need for a middle ground. Judges do not advocate punitive detention for the classical runaway fleeing from physical or sexual abuse or other threatening conduct on the part of a parent or custodian.

The Legislature has adopted a forty-eight hour period of secure detention for the runaway child. This may be a reasonable compromise that will allow the police and juvenile authorities an opportunity to identify the child, contact parents and make an assessment of the circumstances

---

<sup>23</sup>IND. CODE § 31-5-7-5 (1976)(repealed 1979).

surrounding the child, yet at the same time protect the true runaway who ought to be in non-secure, shelter care.

A more fundamental reservation arising from the inability to detain securely any status offender under any circumstances is the troublesome recognition that, even if all else fails, there is no coercive power. Parents, school administrators, social workers and others working directly with young people turn to the juvenile courts for help and support when faced with serious problems with the expectation that something can and will be done. Accepting without reservation that community resources should first be utilized in dealing with the incorrigible, truant and runaway child, how does the court respond if the child thwarts those efforts? Is not effective authority an essential ingredient of any court? If the court cannot coerce the unwilling child to participate in and avail himself of treatment, the juvenile court has been emasculated and relegated to the role of a referral agency, a task better handled by someone else. Again, we may have legislatively removed the status offender from the juvenile justice system despite our declarations to the contrary.

Of equal concern is the practical elimination of any realistic possibility of using secure detention for any adjudicated child, including the child found delinquent as part of a dispositional decree.<sup>24</sup>

After extensive debate the Commission submitted to the General Assembly a provision that juveniles who had been adjudicated as having committed a delinquent act, otherwise a crime if committed by an adult, could be committed to secure detention, although not commingled with adults, for a period not to exceed thirty days. This was reduced by the General Assembly to ten days.<sup>25</sup> At the same time a well intended amendment was also passed by the 1978 Legislature which credited toward that ten days the time spent in secure detention by the juvenile prior to disposition.

It is axiomatic that a large number of adjudicated delinquents for whom the court would consider detention as a part of its disposition will come from those detained awaiting trial. In those cases, detention will become impossible.

However well-intentioned, the "good time" provision would tend to become self-defeating and the 1979 Legislature removed it.

There may be a tendency to delay adjudication in a given case, thus substituting pre-adjudication detention as the only form of detention, although this is certainly not a result advocated by the Commission nor intended by the Legislature. Likewise in those cases deemed serious by the judge, a commitment to the Boys' or Girls' School becomes distinctly more possible. Those "advocates of youth" who vehemently oppose even limited detention of juveniles may advocate their wards out of short-term local detention into the Boys' or Girls' School for the better part of the year.

---

<sup>24</sup>IND. CODE § 31-6-4-16 (Cum. Supp. 1979). Delinquent child is defined in § 31-6-4-1.

<sup>25</sup>*Id.* § 31-6-4-16(g)(5).

It needs to be reiterated that most juvenile judges readily accept the rehabilitative basis of *parens patriae* and seldom punish for punishment's sake, using secure detention sparingly. It is, however, a valid concept that reasonable punitive measures can be an effective part of an overall rehabilitative program. Presently, defense counsel may offer short-term (*e.g.*, weekend) detention as an alternative to placement in the Boys' or Girls' School. Obviously, this will no longer be available. The General Assembly has thrown the baby out with its bath water.

The most compelling arguments against secure detention of delinquent children arise from the obvious inadequacies of Indiana's jails. Many of these are now being closed and replaced, and State attention and funding are long over-due. This problem should be faced head-on and not indirectly avoided at the expense of our Juvenile Code.

#### THE QUESTION OF COST

A substantial judicial concern is the question of cost. How much will it cost to implement the Code in the counties? Where will the money come from? These are honest apprehensions based on past experience. Administration of the Code will cost more money, especially in the area of shelter care. In a short time, many shelter care facilities must come into existence.

This concept, however commendable and essential, strikes discordant notes to the ears of beleaguered county councilmen who are saddled with fixed tax rates, too many demands for money and local taxpayer organizations. While many of them are concerned, compassionate people, they have had little, if any, contact with the juvenile justice system and picture juveniles referred to the court as "hoodlums" not deserving of special treatment, particularly if it is costly. Trial judges accustomed to dealing with local funding authorities have been living with "Proposition 13" for quite some time.

The track record of the State of Indiana is even less impressive. Being nineteenth in per capita income, Indiana is entrenched at or near fiftieth place in services to youth. In Indiana an adult committed to the Department of Corrections becomes its ward for all purposes. If a juvenile is so committed the counties must bear one-half of the cost of state incarceration. There is no state financial support for foster care or probation services. All costs of defense, adult or juvenile, must be borne locally. Lotteries and theft being illegal, the judge faces this stark financial picture.

In many counties existing personnel can fill the roles contemplated by the Code; in some, staff additions will be required. Soon, Indiana must join its sister states in providing reasonable funding of services to youths, including assistance for the development of shelter care facilities. In the interim, its juvenile judges will be caught between a Code mandating improved juvenile care and a state unwilling to match its mandate with its money. There is no present answer to the questions of cost and

source of funding. Indiana simply cannot continue to require more services without providing the financial ability to pay for them.

#### THE POSITIVE SIDE

There are specific provisions in the Code that will be very helpful to the judges and which will be met with judicial favor. For instance, the expansion of the narrow definitions of the neglected<sup>26</sup> and dependent child<sup>27</sup> by the creation of the "child in need of services,"<sup>28</sup> couched in broader terms, will make intervention simpler, particularly in those cases that do not fit within the narrow confines of the old definitions. This will be particularly true in those cases in which the child is in obvious need of intervention but there is either no evidence of parental fault or there is insufficient evidence to establish it.

The ability to appoint a guardian ad litem for the child<sup>29</sup> to act on behalf of the child should be welcomed in two areas. First, the parent seeking to dump the custody of the child upon the state is no stranger to the juvenile courts. This parent engages counsel ostensibly for the child, whose first loyalty is to the parents. As a result the child is in fact unrepresented. Not only may the court appoint a guardian for this child, but it has an affirmative duty to provide counsel representing the child's exclusive interests.<sup>30</sup> This is a result intended by *Gault*.<sup>31</sup>

Secondly, the appointment of a non-attorney guardian ad litem can be of great assistance to the attorney caught between his role as an advocate seeking dismissal of the petition against his client, who he knows is in serious need of care and treatment. Does he represent his client zealously within the bounds of the law, and if so, to what extent? Does he oppose the intervention that will result in his client receiving needed services? It is a particularly uncomfortable position for the attorney. The guardian ad litem, not necessarily a professional advocate, can join in this decisionmaking process and thereby ease the dilemma faced by counsel.

The judges attention is called to the section enabling the court to order the child to undergo medical examination and treatment both prior to and after adjudication, including the power to detain the child for such purposes.<sup>32</sup> Following adjudication, the court's dispositional powers are quite broad in providing for care and treatment found to be necessary.<sup>33</sup> The legal authority to issue broad protective orders is new to the juvenile justice system and is designed to give the judge the ability to react to

---

<sup>26</sup>IND. CODE § 31-5-7-6 (1976)(repealed 1979).

<sup>27</sup>*Id.* § 31-5-7-5 (1976)(repealed 1979).

<sup>28</sup>IND. CODE § 31-6-4-3 (Cum. Supp. 1979).

<sup>29</sup>*Id.* § 31-6-3-4.

<sup>30</sup>*Id.* § 31-6-3-1(B)(1); *id.* § 31-6-7-2.

<sup>31</sup>387 U.S. 1 (1967).

<sup>32</sup>IND. CODE § 31-6-7-12 (Cum. Supp. 1979).

<sup>33</sup>*Id.*

emergency situations to protect the child and the court's jurisdiction.<sup>34</sup> This is consistent with his power in similar family matters under the Dissolution of Marriage Act.<sup>35</sup>

The placing of venue in the county where the delinquent act occurred as well as in the county of residence,<sup>36</sup> will be of assistance to the court, police officers, victims and witnesses. Prior law fixed venue at the county of residence or where the child was found.<sup>37</sup> Thus a juvenile residing in Gary who committed an act in central Indiana and was apprehended at Evansville could only be tried in Lake or Vanderburg counties, at considerable expense and great inconvenience. The fact-finding hearing can now be held in the central Indiana county. The Code further enables the assignment of the case to the county of residence for disposition.<sup>38</sup> Two things can be accomplished by this procedure: the county of residence will bear the cost of placement or other services; and importantly, the disposition of the child will tend to be more consistent with the disposition of others with whom he comes into contact.

Emancipation in whole or part now becomes a dispositional alternative.<sup>39</sup> In those situations where the mature juvenile's best interest lies in severing ties with the prostitute mother, or abusive father, the court can now accomplish this. It is new, creative and will gain in usage.

Of the specific provisions in the Code, the ability to compel parental participation in the process of family rehabilitation<sup>40</sup> may constitute the Code's high water mark in the eyes of the judges. The present inability to treat the obvious source of the problem is extremely frustrating to judges and probation staff. Many have bluffed parents into counseling on limited occasions, running the risk of encountering defiance or non-compliance. It is an impossible position in which to place the court. The Code recognizes this and provides overdue, necessary legal tools.

Hopefully, the case for uniformity and a truly state-wide system of justice has been made. There exists in the Code an inherent element that protects the judges. It legitimizes what our judges have been doing in many instances. In trying to fit an inadequate and outdated accumulation of enactments to the problems of the times, judges have required examinations, testing, parental participation, restitution and other dispositional alternatives without clear-cut authority and at some personal and professional risk. The Code recognizes this and gives to juvenile courts the needed clear-cut authority. It is a vote of confidence in our juvenile courts and the system in general.

The juvenile justice system is alive and well and lives in Indiana.

---

<sup>34</sup>*Id.* § 31-6-7-14.

<sup>35</sup>*See id.* § 31-1-11.5-7.

<sup>36</sup>*Id.* § 31-6-7-7.

<sup>37</sup>IND. CODE § 31-5-7-8 (1976)(repealed 1979).

<sup>38</sup>IND. CODE § 31-6-7-8 (Cum. Supp. 1979).

<sup>39</sup>*Id.* § 31-6-4-16(e)(5).

<sup>40</sup>*Id.* § 31-6-4-17.