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The National Debate and State Level Response: The New Indiana Juvenile Code (Symposium Introduction)

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An Introduction
The National Debate and State Level Response:
The New Indiana Juvenile Code

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The spring 1968 issue of the Indiana Law Journal was devoted to a symposium on the then recent United States Supreme Court decision, In re Gault. Several scholars and juvenile justice functionaries analyzed the probable impact of Gault on the historic role of the juvenile court, the official actors in the juvenile justice system and the parents and children whom the courts serve. A law student examined the existing Indiana Juvenile Code and concluded that a "comprehensive program" of legislative reform was necessary if "the legislature would ... meet the Supreme Court's challenge in Gault to give the juvenile fair treatment in actuality, consistent with the State's espousal of concern for children."

Subsequently, the United States Supreme Court and the various states' supreme courts embarked on a program of constitutional

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2387 U.S. 1 (1967).


6Id. at 676.


8As compared to pre-Gault days, the number of appeals in juvenile cases is staggering. Compare West Key numbers Infants 68, Infants 12, Court 100 and Constitutional Law 255(4) in 1965 with the number of cases cited under the same key numbers in 1972 and 1978. The Juvenile Law Digest, published monthly by the National Council of Juvenile
development of procedural due process and statutory interpretation of existing parens patriae informal state juvenile codes. Law journals responded with an ever increasing volume of symposia, articles, and student notes. But Gault's major impact was on nationally organized task forces and standard setting groups and on state legislatures themselves.

Initially, the effort by these groups was primarily aimed at procedural reforms, but with the rise of both the children's liberation movement and the fear of children generated by the increase in violent juvenile behavior, reform groups and, to an increasing extent, state legislatures reexamined the basic premises of the juvenile justice system—that troubled children, whether labeled neglected, status-delinquent (PINS), or crime-delinquent, were entitled to have delivered to them and Family Courts Judges, reflects the increasing numbers and wide variety of appellate court cases in this area.

Five symposia which cite most of the earlier articles and notes have been recently published: 57 B.U.L.J. 617 (1977); 24 GONZ. L. REV. 289 (1979); 52 N.Y.U.L. REV. 1015 (1977); 39 OHIO ST. L.J. 239 (1979); 5 PEPPERDINE L. REV. 633 (1978). Compare the entries in the INDEX TO LEGAL PERIODICALS under the headnotes Juvenile Courts and Juvenile Delinquency in the September, 1967 — August, 1970 volume with the entries in the more recent September, 1973 — August, 1976 volume.


See UNIFORM ACT and MODEL RULES, supra note 10.


rehabilitative, care and protective services on an individualized basis. From those who feared children came the call for the categorization of children based on the nature of the crime, legislative or prosecutorial discretion to start certain children in the adult system and, in the highly publicized effort by the IJA-ABA Juvenile Justice Standards Project, allowing, within the juvenile system itself, determinate sentences based upon the nature of the child’s behavior. Initially, and even before Gault, the first effort was to relabel status offense children by creating new labels: PINS (persons in need of supervision); CHINS (children in need of supervision); and similar labels. Subsequently, diversion, deinstitutionalization and the non-mixing of crime and status-delinquent children were passionately advocated. More recently, the call has been to remove “non-crime” children from the system entirely.


16D.C. CODE ENCYCL. § 16-2301 (West Supp. 1978); N.Y. CRIM. PROC. LAW § 720.10 (McKinney Supp. 1978). The Connecticut legislature has recently passed a bill requiring trials in adult criminal courts for any juvenile, 14 or older, who is charged with murder or who is a repeat felony offender. 5 FAM. L. REP. (BNA) 2661 (June 19, 1979). See also D. KATKIN. D. HYMAN & J. KRAMER, JUVENILE DELINQUENCY IN THE JUVENILE JUSTICE SYSTEM, 95-100 (1976); Marina, Juvenile Crime—New York’s Juvenile Criminals, A Call for Trial by Adult Court, TRIAL, Feb. 1977, at 25.

17See IJA-ABA STANDARDS. SANCTIONS supra note 10. This volume has been withdrawn and was not presented to the ABA House of Delegates. See Kaufman, Kaufman Claims Win for Juvenile Justice, 85 A.B.A.J. 331 (1979).


19Task Force on Youth Crime, supra note 10; N.Y. FAM. CT. ACT § 712(A) (delinquent), 712(B) (person in need of supervision) (McKinney 1975). California did not create a label, but formed three classes. CAL. WELF. & INST. CODE §§ 600 (dependency), 601 (beyond control), 602 (delinquency) (West 1972).


21See MODEL ACT: IJA-ABA STANDARDS. NON-CRIMINAL BEHAVIOR, supra note 10 (this
The history of the legislative reform effort in Indiana nicely mirrors the national debate and, once again, illustrates both the direct and indirect effect of policy advocacy on the practical world of legislative compromise. A comparable history of the new Washington Juvenile Code has been written by Washington State Representative Mary Kay Becker. Since the final result in Washington sharply contrasts with Indiana’s final product, her excellent account of the pressures brought to bear on the Washington Legislature should be compared with this account of those same pressures in Indiana.

In the fall of 1967, in response to the June Gault decision, the Indiana Judicial Conference appointed a seventeen-person committee composed exclusively of circuit and superior court judges who exercised juvenile court jurisdiction. This committee, relying largely on the Third Tentative Draft of the Uniform Juvenile Court Act and the organizational structure of the 1945 Indiana Juvenile Code reported a proposed code to the Conference in the fall of 1968. The Conference endorsed it with little debate.

This code was largely concerned with providing a statutory base for Gault’s notice, confrontation, silence and counsel requirements and in cleaning up and formalizing the procedures to be used in the juvenile court. For example, the code was particularly concerned with establishing a detention hearing, although no distinction was made between crime-delinquent and status-delinquent children as to the basis for the detention. Statements given by children to probation officers and at the waiver hearing were made privileged. The fact-finding and dispositional hearings were separated and dispositional alternatives were restricted. The juvenile court judge retained, however, his or her power

volume, as was the SANCTIONS volume, was withdrawn); BEYOND CONTROL (1977); NATIONAL COUNCIL ON CRIME AND DELINQUENCY, STATUS OFFENDERS AND THE JUVENILE JUSTICE SYSTEM (1978); Sussman, Judicial Control over Noncriminal Behavior, 52 N.Y.U.L. REV. 1051 (1977).


Most of this history is not documented. The author served as reporter, consultant or advisor to the committees or agencies involved.

The UNIFORM ACT, as drafted, appeared in 1968.


Id. §§ 14, 22(c).

Id. §§ 24, 25.

See id. § 25(d).
to authorize the filing of the petition. The prosecuting attorney was not involved unless directed by the court to participate.

On the substantive side, the proposed code did reduce the number of status offenses from seventeen under the 1945 Act to four but still labelled the behavior delinquency. Jurisdiction over capital offense crime was given to the juvenile court for the first time.

The only innovative policy recommendation, picked up from the Uniform Act and the 1962 New York Juvenile Code was the proposal to formally require a finding that the child needed treatment or rehabilitation before the child could be adjudged a delinquent child. In the Proposed Code, at the fact-finding hearing, the court could only determine whether the child committed the delinquent act. Adjudication as a delinquent child was to occur at the beginning of the dispositional hearing after the finding of the need for treatment or rehabilitation. Although not innovative, waiver to the adult court was limited to those cases where "because the child is not amenable to treatment or rehabilitation, the welfare of the community requires criminal proceedings."

Thus, the overall recommendation of the juvenile court committee reflected a strong belief in procedural fairness for juveniles and a strengthening of the parens patriae concept.

The Judicial Conference Proposed Code was subsequently introduced

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See id. § 23(f).

The Proposed Code provided:

[Who is under the age of eighteen (18) years, and (A) who is disobedient and ungovernable, refusing to accept the reasonable control of his parents, guardian, custodian or school authorities; or (B) who, being subject to compulsory school attendance, is repeatedly absent from school without justification; or (C) who is found on or about the streets of any city, or on or about any highway or any public place between the hours of eleven (11) o'clock p.m. and five (5) o'clock a.m. except returning home or to his place of abode after attending a religious or educational meeting or social function sponsored by a church or school; or (D) who attempts or does wilfully injure the morals of another or the person or morals of himself.]


Under the 1945 Code, children charged with crime punishable by death were prosecuted directly in the adult court. IND. CODE § 31-5-7-4 (1976)(repealed 1979).

Clearly such provisions as putting capital offense back into the juvenile court, making waiver available for only the child beyond rehabilitation and requiring a finding of need for treatment and rehabilitation before the state intervenes in the life of the child, evidences the juvenile court judges' commitment to the philosophical assumptions of the juvenile court movement.
in the 1969 session of the Indiana General Assembly.\textsuperscript{42} It received generally favorable responses in a joint Senate and House Judiciary Committee hearing with almost no amendments being offered. But the bill failed to pass. There was some rumbling that something had to be done "to" the older, tougher child. A second-reading amendment in the Senate was adopted which reduced the age of the juvenile court jurisdiction from under eighteen to under sixteen.\textsuperscript{43}

Faced with the removal of sixteen and seventeen year old children from their jurisdiction, leaders of the juvenile court judges committee persuaded the House Judiciary Committee to kill the bill.\textsuperscript{44} Both sides preferred the 1945 Act to the other's version of juvenile justice.

In 1970 the Civil Code Study Commission\textsuperscript{45} agreed to sponsor a slightly revised version of the Judicial Conference's 1969 Proposed Code. The Commission submitted it to the 1971 session of the General Assembly.\textsuperscript{46} The result was identical—the Senate lowered the age to sixteen and the bill died in the House.\textsuperscript{47}

Having lost twice in the legislature, the proponents of the Proposed Code discussed tactics with the Civil Code Study Commission. In the fall of 1971 they decided to lift from their proposed code those sections dealing with procedure and submit them to the Indiana Supreme Court for adoption by rule. After considerable debate and discussion as to which sections were "substantive" and which "procedural," a set of rules was offered to the court in 1972.\textsuperscript{48}

The Indiana Supreme Court, then, in January of 1973 issued Rules of Juvenile Procedure which were to take effect June 1, 1973.\textsuperscript{49} Approximately one week after their issuance, the supreme court recalled them stating that the court felt that additional hearings should be held on the

\textsuperscript{42}In addition to the substantive and procedural code which was introduced as Senate Bill 15, provisions concerning court structure and probation officers were introduced as Ind. S.B. 16, 96th Gen. Assem., Reg. Sess. (1969) and Ind. S.B. 17, 96th Gen. Assem., Reg. Sess. (1969). Senate Bill 16 was enacted. An Act to Amend an Act Providing for Juvenile Courts and Defining Their Powers and Jurisdiction, ch. 223, 1969 Ind. Acts 848.

\textsuperscript{43}"INDIANA SENATE JOURNAL 606 (1969).

\textsuperscript{44}There was no action taken on this bill by the House according to the INDIANA HOUSE JOURNAL (1969).

\textsuperscript{45}The Commission is a state agency charged with general revision of law relating to courts and court personnel. It has a large board composed of influential lawyers and judges. It is currently named the Judicial Study Commission.


\textsuperscript{47}The amendment is noted at INDIANA SENATE JOURNAL 426-30 (Reg. Sess. 1971). The bill was read for the first time in the House and referred to the Committee on the Judiciary on March 3, 1971. INDIANA HOUSE JOURNAL 730-31 (Reg. Sess. 1971). It was never reported out of that committee. \textit{Id.} at 2487.


\textsuperscript{49}Order dated Jan. 9, 1973 is on file with the Clerk of the Indiana Supreme Court.
content of the rules. The court directed its Rules Advisory Committee to hold such hearings, which it did in May of 1973.

Subsequently, the Rules Advisory Committee submitted to the supreme court, in the fall of 1973, a transcript of its hearings. The supreme court, in the spring of 1974, then asked the Indiana Lawyer's Commission to collate the testimony concerning the rules. They did so and submitted the report in June of 1974. During the spring of 1974, the Indiana Prosecuting Attorney's Council prepared and submitted to the court an alternative set of proposed Rules of Juvenile Procedure. In the fall of 1974, at the request of the supreme court, the Indiana Judicial Center held statewide hearings on the proposed rules and submitted a report of the hearings to the court in 1975.

The supreme court, apparently bothered by the ambiguity in what sections should be labeled procedure, and thus within its rulemaking power, and also faced with several different sets of proposed rules, procrastinated.

The Legislature, however, in its 1975 session moved forward on two fronts. A particularly horrendous robbery and rape in Indianapolis committed by a six foot fourteen year-old occasioned considerable publicity concerning the complaint by the local juvenile court judge that he could not waive the child to the adult court. The Legislature responded by enacting a curious mixture of conflicting policies reflecting, in large measure, the conflicting policies emerging in the national debate over juvenile justice.

For those who wanted a get-tough policy, using the fourteen year-old rapist as an example, the Legislature lowered the waiver age to fourteen, and, for serious crimes for those sixteen and over, made it almost mandatory for the juvenile court to waive. Juvenile courts were also almost mandated to hold public hearings, for those children the court did not waive, when the charge was a felony. The Legislature also

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50 The primary objection came from the Hoosier Press Association concerning certain sections of the rules which provided for increased secrecy in the juvenile court.
51 Under the 1945 Code, the minimum age for waiver was 15. IND. CODE § 31-5-7-14 (1976)(repealed 1979).
56 The section provided: "The court shall consider that the best interest of the public
appropriated funds and ordered the Superintendent of the Indiana Boys' School to build a security unit.\(^5\)

But the civil libertarians had their day also. The 1945 laundry list of status offenses was reduced to three—incorrigibility, habitually truant and a reworded curfew provision which because of poor drafting was incomprehensible and unenforceable.\(^7\) Significantly, running away\(^5\) and under-age-eighteen consumption of alcohol\(^6\) were omitted.

The 1975 Legislature also agreed with the reformers that the 1975 amendments were only the first of many legislative battles that it would face over the next few years if it continued the practice of piecemeal changes in the 1945 Act. Consequently, in Public Law 2, it created the Juvenile Justice Division of the Judicial Study Commission.\(^6\) The Division was to be broadly representative of juvenile justice professionals and the juvenile justice system.\(^6\)

Responding to the criticism of the policies explicit in the 1975 amendments and to the sloppy draftsmanship of many of these amendments,\(^6\) the 1976 session of the General Assembly declined to wait for the report of the Juvenile Justice Division\(^6\) before acting. The Legislature once again felt the pressure from the current debate, but this time, responded by moving toward the older mainline view of the value of the juvenile justice system. In Public Law 129, the Legislature, while retaining fourteen as the age for waiver, tightened the substantive requirements and provided for a hearing for those being waived because of violent behavior.\(^6\) Also, any violation of the Alcoholic Beverage Control Act (possession of alcohol by minors)\(^6\) was specifically made an act of status-delinquency\(^6\) and runaways were put back into the Juvenile Code, although this time as an act of dependency.\(^8\) Moreover, responding to
the deinstitutionalization movement, no dependent nor neglected child could be placed in what we now would call a secure facility.\textsuperscript{69} The push, pull and cross-current continued.

In the fall of 1977 the Juvenile Justice Division reported its efforts to the Legislature. Its bill\textsuperscript{70} easily passed the 1978 session, but its effective date was delayed until October 1, 1979\textsuperscript{71} to allow for additional input from the community\textsuperscript{72} and to allow the Juvenile Justice Division to come up with recommended improvements in the service delivery system.\textsuperscript{73}

In response, the Division held hearings and submitted numerous, but mainly technical changes to the 1979 Legislature which, with one or two exceptions, were also easily adopted.\textsuperscript{74}

Since the articles in this symposium detail the substantive and procedural provisions as finally adopted by the Legislature, even an outline summary is unnecessary at this point. However, a few comments on the national debate as reflected in the Division's work, which was substantially adopted by the Legislature, may be worthwhile.

The Division and the Indiana Legislature rejected the more strident claims of both the fearmongers and the civil libertarians.\textsuperscript{75} In fact, the original parens patriae-individualized justice-service delivery philosophy of the juvenile court movement was probably strengthened. But the influence of both the right and left were reflected in the new Code.

A subtle shift in philosophy appears in the purpose section.\textsuperscript{76} The first purpose listed is: "to provide a juvenile justice system that protects the public by enforcing the legal obligations children have to society" but the third purpose still retains the basic juvenile justice system ideal. It reads: "to insure that children within the juvenile justice system are treated as persons in need of care, treatment, rehabilitation, or protec-

\textsuperscript{69}Id. § 6 (codified as IND. CODE § 31-5-7-12.2 (1976)) (repealed 1979); Juvenile Justice and Delinquency Prevention Act of 1974, Pub. L. No. 93-415, § 223(a)(13), 88 Stat. 1109 (1974).


\textsuperscript{72}This technique was used by the Legislature when it adopted a new criminal code in 1976. An Act to Amend the Indiana Code to Revise the Criminal Law of the State, Pub. L. No. 148 1976 Ind. Acts 718 (effective date delayed until July 1, 1977). Comments from legislators indicated that most were pleased with the technique and it allowed them to pass a major reform effort without lengthy debate and detailed analyses. It also provided a way to uncover technical mistakes or major changes that impinged too greatly on powerful interest groups. From the viewpoint of the "reformer" this system is also ideal. While it delays the reform one year, it makes it much easier to get an original, lengthy act passed with a minimum of gutting or inconsistent and irrational amendments. Most significantly, once passed, the burden of persuading the legislature to amend then falls on those favoring the status quo. See Horack, The Common Law of Legislation, 23 IOWA L. REV. 41 (1937).

\textsuperscript{73}See note 128 infra.


\textsuperscript{75}Becker, supra note 23, at 305, reports that the ACLU and the police joined forces in support of the Washington Code since the ACLU obtained removal of status offenses and the police obtained determinate punishment.

\textsuperscript{76}IND. CODE § 31-6-1-1 (Cum. Supp. 1979).
tion." Yet even the addition of the responsibility language does not, in fact, move that far from the 1945 Act. It said: "The principle is hereby recognized that children under the jurisdiction of the court are subject to the discipline and entitled to the protection of the State, which may intervene to safeguard them from neglect or injury and to enforce the legal obligations due to them and from them."77 Surely the new Indiana purpose section is a far cry from the much heralded language of the new Washington Code that:

It is the further intent of the Legislature that youth, in turn, be held accountable for their offenses and both communities and the juvenile courts carry out their functions consistent with that intent. To effectuate these policies it shall be the purpose of this Chapter to:

....

(c) make the juvenile offender accountable for his or her criminal behavior; (d) provide for punishment commensurate with the age, crime, and criminal history of the juvenile offender...."78

Other efforts to criminalize the Indiana juvenile justice system were partially successful. Easy waiver for serious felonies committed by children, coming out of the 1975 amendment79 to the 1945 Code, was retained.80 And as David Bahlmann and Stephen Johnson discuss in their contribution to this symposium, At Long Last Credibility: The Role of the Attorney for the State Under Indiana's New Juvenile Code, the prosecutor was given a significant decisionmaking role in the process. No longer would the probation officer directly seek permission from the court for authorization to file the petition as required in the 1945 Act81 and the 1969 Judicial Conference Proposed Code.82 Under the 1979 Code the intake officer refers the preliminary inquiry to the prosecutor.83 He or she then makes the decision whether to move forward on filing the petition. But even here the Division, reflecting a middle ground in the national argument, compromised. The prosecutor must seek authorization from the court before filing the petition. While the judge's power to

77IND. CODE § 31-5-7-1 (1976) (repealed 1979).
80But interestingly enough, murder, if a capital offense, which was excluded from juvenile court jurisdiction under the 1945 Act, was made subject to the exclusive original jurisdiction of the juvenile court as had been recommended in the 1969 Judicial Conference Proposed Code, Senate Bill 15. This change occurred even though the 1978 Legislature, in passing amendments to the criminal code, had expressly taken all murder prosecution away from the juvenile court. An Act to Amend IC 1-1-1-8 Concerning the Severability of Statutes, Pub. L. No. 2, § 3109, 1978 Ind. Acts 2d Reg. Sess. 1.
83IND. CODE § 31-6-4-9 (Cum. Supp. 1979). For status offenses, the reference may be to the attorney representing the county department of public welfare. Id. § 31-6-4-10.
refuse to authorize the petition is not as unlimited as in the 1969 Judicial Conference Proposed Code\(^4\) or as in the Division bill passed in 1978,\(^5\) ultimate practical power still resides with the court.\(^6\)

Other shifts to a more prosecutive stance include a provision for a ten-day jail sentence\(^7\) and a retreat from the 1969 Judicial Conference Proposed Code that provided for confidentiality of statements made to probation officers,\(^8\) which is discussed in detail by Professor Batey, in *Transfer Between Courts Under the Indiana Juvenile Code*, his exploration of the waiver of juvenile court jurisdiction.

Finally, one other change from the 1969 Judicial Conference Proposed Code to the 1979 Act, as formally adopted, reflects the influence of the criminalization of the juvenile court occasioned by the national debate. As mentioned earlier,\(^9\) the Judicial Conference bill, following the lead of the Uniform Act, required a finding, before adjudication as a delinquent child, of a need for treatment and rehabilitation. The finding was required for both crime- and status-delinquent children. The new Code, after much

\(^6\)IND. CODE § 31-6-4-9 (Cum. Supp. 1979) provides:

The juvenile court shall consider the preliminary inquiry and the evidence of probable cause. The court shall authorize the filing of the petition if it finds probable cause to believe that the child is a delinquent child and that it is in the best interests of the child or the public that the petition be filed.

Note that the required finding is probable cause "that the child is a delinquent child." For status offenses, to make that finding, the court must find that "the child needs care, treatment, or rehabilitation that he is not receiving, that he is unlikely to accept voluntarily and that it is unlikely to be provided or accepted without the coercive intervention of the court." See *id.* § 31-6-4-1.

Pub. L. No. 136, 1978 Ind. Acts, at § 21 required for a crime-delinquent child that the court find probable cause "that the child needs care, treatment, or rehabilitation." Reflecting the increased popularity of criminalization within the Division after the original bill passed, this language was dropped by the Division in its recommended amendments.

After eliminating the care and treatment language, the Division had required that the court find before authorizing the filing of the petition that it "is in the best interest of the child and the public that the petition be filed." The "or" was substituted prior to submission to the Legislature. Even under the final wording, however, a court would be free to find that it was not in the best interest of the child or the public that a child who could be handled informally through the probation office or diverted should be adjudicated a delinquent child.

\(^7\)IND. CODE § 31-6-4-16(b) (Cum. Supp. 1979). This subsection restricts commitment "to an area of the jail where he has no regular communication or contact with persons charged with or convicted of crimes." The fight over this provision is instructive. Various drafts by the Division and legislative amendment throughout the two legislative sessions included jailing of 60 days, 30 days and deducting time spent in pre-trial detention. The final compromise was 10 days with no credit for pre-trial detention. *Id.* § 31-6-4-16(g)(5). But, throughout the debate, no one suggested moving to Washington's proportionate determinate sentencing model. See IJA-ABA STANDARDS. *supra* note 10, SANCTIONS. All the participants conceived of "jail time" as rehabilitative shock therapy and as an alternative to a commitment to the Indiana Boys' or Girls' Schools. Those opposed to jail time saw it as ineffective and probably even counterproductive.

\(^8\)Ind. S.B. 15, § 14, 96th Gen. Assem., Reg. Sess. (1969) (confidentiality of statements to probation officers); *id.* § 22(c) (confidentiality of statements made during waiver hearings).
\(^9\)See note 39 & accompanying text *supra*. 
debate within the Division, continues the requirement for status offense children but does not require any such finding for the crime-delinquent child. One can argue that, since children in the system are “[to be] treated as persons in need of care, treatment, rehabilitation or protection,” the Legislature has, as a matter of legislative policy, decreed that a child, who commits an act which would be a crime if committed by an adult, is conclusively presumed to be a person in need of treatment or rehabilitation. Nevertheless, the conceptual shift is evident.

Thus, the Division and the Indiana Legislature, while being influenced by those on the national level who desired the criminalization of the juvenile court for the crime-delinquent child, basically, unlike the Washington Legislature, rejected that position. The concept of responsibility by the child for his or her behavior is now accepted by the Indiana Legislature; but the concept is not that of criminal responsibility. It still invokes only the coercive power of the state, under parens patriae, to deliver treatment and rehabilitative services.

The civil libertarians of the children’s liberation movement faired about equally well with the Division and the Legislature. Their voice was heard and the final product extensively reflects their views. However, some of their key positions were rejected.

The complete abolition of status offense jurisdiction was considered by the Division but the arguments in favor were found unpersuasive. The Division was not convinced that voluntary service delivery would suffice for the incorrigible, the runaway, and the truant and, in any event, the Division felt that complete rejection of status offense jurisdiction would never pass the Legislature. Moreover, the Division was not willing to hide coercive power over status offense children within a definition of dependent or neglected children.

There was also an inarticulated premise, perhaps best illustrated by the Division’s retention of the label “delinquent” for status offense children rather than creating PINS or CHINS, that to remove status offenses from the jurisdiction of the court would have an adverse effect on the underlying premise that crime-delinquent children are not criminals subject to punishment. If only crime-delinquent children were left within

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90 In fact it strengthens it. See note 109 & accompanying text infra.
91 “To insure that children within the juvenile justice system are treated as persons in need of care, treatment, rehabilitation, or protection . . . .” IND. CODE § 31-6-1-1(3) (Cum. Supp. 1979).
93 CHINS (in Indiana called Children in Need of Services, not Supervision) did become the new label for dependent and neglected children. See IND. CODE § 31-6-4-3 (Cum. Supp. 1979).
94 In the United States at the present time, keeping PINS out of training schools may be desirable as the most feasible short-term way of benefiting at least one group of juveniles. As a long-term policy, emphasizing the distinction between delinquents and other juveniles appears to be short-sighted. Delinquency itself is often a symptom of family problems. A far more
the court, parens patriae for them becomes difficult to maintain. The morality of this decision may be questioned, as Professor Teitelbaum points out in this symposium, but only validly so if one believes that the legislative labeling of certain behavior as criminal must be applied to children.

Nevertheless, the impact of the national debate and the children's liberation movement was substantial, particularly when contrasted to what was considered a very pro-child 1969 Judicial Conference Proposed Code. First, in the new Indiana Juvenile Code, as J. Richard Kiefer examines in this symposium, status offenses were limited to the carefully and reasonably clearly defined behavior of running away, incorrigibility and violation of the school truancy laws. The 1969 Judicial Conference

reasonable, but also considerably more difficult approach, would be to attempt to create facilities decent enough to treat or care for all or almost all juveniles who cannot stay in their home for whatever reason, and to attempt to minimize the stigma attached to any court adjudication.

LePoole, Law and Practice Concerning the Counterparts of "Persons In Need of Supervision" in Some European Countries with Particular Emphasis on the Netherlands, in BEYOND CONTROL 115, 149 (1977).


The Code now reads:

A child commits a delinquent act if, before his eighteenth birthday, he:

1) leaves home without reasonable cause and without permission of his parent, guardian, or custodian who requests his return;
2) violates the compulsory school attendance law (IC 20-8.1-3);
3) habitually disobeys the reasonable and lawful commands of his parent, guardian, or custodian; or
4) commits a curfew violation.

IND. CODE § 31-6-4-1(a) (Cum. Supp. 1979).

A curfew violation is defined as:

1) a curfew violation for a child thirteen (13), fourteen (14), fifteen (15), sixteen (16), or seventeen (17) years of age to be in a public place:
   1) between 1 a.m. and 5 a.m. on Saturday or Sunday;
   2) after 11 p.m. on Sunday, Monday, Tuesday, Wednesday, or Thursday;
   3) before 5 a.m. on Monday, Tuesday, Wednesday, Thursday, or Friday.
2) a curfew violation for a child under thirteen (13) years of age to be in a public place after 10 p.m. or before 5 a.m. on any day.
3) This section does not apply to a child who is:
   1) accompanied by his parent, guardian, or custodian;
   2) accompanied by an adult specified by his parents, guardian, or custodian;
   3) participating in or returning from lawful employment or a lawful athletic, educational, entertainment, religious or social event.

IND. CODE § 31-6-4-2 (Cum. Supp. 1979). The 1976 version of curfew was retained on political grounds. Its wording renders it largely symbolic since it probably is unenforceable. Note particularly subsection (c)(3).
Proposed Code’s status definition, which included “who attempts or does willfully injure the morals of another or the person or morals of himself,” was eliminated. Also eliminated was the 1976 legislative restoration of underage possession of alcohol as a status offense.

Secondly, and more importantly, the Division and the Legislature rejected the 1969 Judicial Conference Proposed Code that allowed equal placement for status- and crime-delinquent children by providing in the new Code that there could be no secured detention or post-adjudication secure placement for incorrigibles, or truants. Only forty-eight hours (which includes Saturdays, Sundays and holidays) secure detention for runaways is permitted.

While the Bayh bill which threatened loss of federal juvenile delinquency money if the state holds status offense children in secure detention, played a role in the ultimate decision to deinstitutionalize status offense children, it surely was not determinative. The basic argument that secure placement of status offense children is counterproductive to rehabilitation and is not needed for the protection of the community (felt by the Division to be the only legitimate role of the juvenile justice system) was agreed to by the Division. If secure detention serves no function, it should be abolished. While the Division recommended no secure detention, even for runaways, the Legislature’s forty-eight hour secure detention policy is not inconsistent with the basic policy of the Legislature to respond favorably to the civil libertarian argument that in-

98IND. CODE § 31-5-7-4.1(a)(6) (Supp. 1978)(repealed 1979), had defined a delinquent child as one who "commits an act which, if committed by a person at least eighteen (18) years of age but less than twenty-one (21) years of age would be an offense under IC 7.1-5-7." Id.
99Presumably a child who was an alcoholic could be found to be a CHINS under IND. CODE § 31-6-4-3(a)(6) (Cum. Supp. 1979), if he substantially endangers his own health or the health of another.
100Id. § 31-6-5-6.5.
101Id. § 31-6-4-16.
102Id. § 31-6-4-6.5. A child who is alleged to be a delinquent child because of an act under § 31-6-4-1(a)(2) (runaways) may be held in secure detention for 48 hours. Subsection (c) was a legislative goof. The Division recommended no secure detention for any status offense children. The House amended the Division recommendation to allow for 48 hours (plus Saturdays, Sundays and legal holidays) secure detention for runaway children. The Senate voted in favor of a 24 hour (plus Saturdays, Sundays and legal holidays) secure detention. The Conference Committee agreed to a 24 hour limitation and counted in Saturdays, Sundays and holidays as part of the 24 hours. The House staff attorney in executing the Conference Committee report redrafted the language so as to exclude the exception for Saturdays, Sundays and holidays. As printed the bill was formally printed. Although both the House and Senate, when voting on the Conference Report, thought they were reducing secure detention to 24 hours, they discovered, after the bill was formally printed, that they had actually voted in favor of 48 hours.
104The regulations issued by LEAA, Office of Juvenile Delinquency, 43 Fed. Reg. 36402 (1978), allows 24 hours secure detention. As mentioned above, the legislative intent was to allow only 24 hours secure detention thus complying with the regulation. Hopefully the 1980 session of the Indiana Legislature will be able to bring Indiana into compliance.
institutionalization is counterproductive for children. An argument can be made that short term secure detention is needed to find parents or guardians.\(^\text{103}\)

Third, the Division and the Legislature moved one step beyond the 1969 Judicial Conference Proposed Code’s mandated finding of a need for treatment or rehabilitation. The new Code requires that the court find that the child, if a status offense child: “needs care, treatment or rehabilitation that he is not receiving, and that he is unlikely to accept voluntarily, and that is unlikely to be provided or accepted without the coercive intervention of the court.”\(^\text{106}\) While this requirement does not create the truly “voluntary” seeking of services by the child and his family (there is the ultimate threat of coercive intervention by the court), recommended by the IJA-ABA Standards Project and others,\(^\text{107}\) it was clearly a legislative declaration of policy that voluntary services were preferred. In practice, the courts will have to inquire whether the child has rejected voluntary efforts before adjudicating him or her a delinquent child. In rejecting the more radical removal of jurisdiction, the Division wanted to avoid the specter of private secure placement by parents in “educational” institutions,\(^\text{108}\) and to reassure the community that “help” was available from the court. Actually the new Indiana Juvenile Code gives but little more, if any, ultimate power to the juvenile court than does the Washington status offense statute.\(^\text{109}\)

Fourth, by allowing the court to easily acquire jurisdiction over the parents or guardians of the child (including crime-delinquent children as well as status-delinquent children and CHINS),\(^\text{110}\) the Legislature took a major step in recognizing that not only status offense children, but also crime-delinquent children are in a no-fault situation vis-a-vis their parents, a position strongly advocated (as to status offense children) by the National Task Force on Juvenile Justice of the Office of Juvenile Justice and Delinquency Prevention.\(^\text{111}\)

Other provisions also go far in protecting the child against oppressive or negligent official action. For example, many have advocated closer supervision of foster care placement of dependent and neglected

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\(^{106}\) *Ind. Code* § 31-6-4-1(b)(2) (Cum. Supp. 1979) (emphasis added).

\(^{107}\) *See* note 10 & accompanying text *supra.*


Indiana's new nine and eighteen month review for all CHINS, status offense and crime-delinquent children goes beyond the usual recommendation to protect the neglected child. Status offense and crime-delinquent children should not be lost either.

Thus, the Indiana Legislature's new Juvenile Code was in the best American tradition — responding to passionately held beliefs that promised a solution for a major social problem, but rejecting the all or nothing solution advocated by the true believer. Other states were not as fortunate.

The articles presented in this symposium will give the reader the opportunity to assess, in detail, how well the Division and the Legislature carried out its policy of staying with parens patriae and procedural due process. The article by Lee Teitelbaum, Jurisdiction Over Misbehaving Children and Their Parents Under the New Indiana Juvenile Law, well illustrates the weakness of the Indiana compromise position, and it will force the reader to critically evaluate whether the historic goal of the juvenile court is, indeed, possible, or even desirable, in 1979.

Likewise, the article by Robert Batey, Transfer Between Courts Under the Indiana Juvenile Code, examines the weakness of the Indiana waiver provision as measured against the IJA-ABA Standards and shows, in detail, how the use of pre-transfer confessions in the subsequent criminal prosecution compromises the goal of care and rehabilitation in the juvenile justice system.

The two articles by Indiana lawyers, Division members, David Bahlmann and Stephen Johnson, At Long Last Credibility: The Role of the Attorney for the State Under Indiana's New Juvenile Code, and J. Richard Kiefer, This Code is Rated "R" — Second Class Citizenship Under Indiana's New Juvenile Code, provide a constructive counterbalance to the articles by the academic outsiders.

115 IJA-ABA STANDARDS, supra note 10, TRANSFER BETWEEN COURTS.
116 Although the Standards Project protects statements made at the transfer hearing itself, id. § 2.31 commentary, the standards themselves make no mention of the use of confessions at a later criminal trial. The 1969 Judicial Conference Proposed Code did contain provisions protecting confessions made to a probation officer or during the waiver hearing from later use in a criminal court. See Ind. S.B. 15, §§ 14, 22, 96th Gen. Assem., Reg. Sess. (1969).
INTRODUCTION

Judge Griffis explains some of the processes within the Division itself and points out the major impact of the Indiana Council of Juvenile and Family Court Judges on the final product. The article itself shows the frustration of an experienced and competent juvenile court judge with the extremes of the right and the left. Buying the parens patriae concept, he analyzes the strengths and weaknesses of the new act in terms of the responsibility of a juvenile court judge to use the power of the state to provide care, treatment and rehabilitation to Indiana's troubled children. Finally, he notes the lack of legislative responsibility in funding the services mandated by the Code.

The Bahlmann and Johnson and the Kiefer articles, in contrast, analyze the new Code in terms of its weaknesses (and strengths) from the prosecutorial (Bahlmann) and defense counsel (Kiefer) perspectives. Both concentrate on the procedural provisions contained in the Code and the role of the prosecutor or defense counsel. For attorneys wanting a survey of the new Code in its entirety and help in effectively representing the state or the child, both articles will be invaluable.

One final point should be made. Like Judge Griffis, I too believe that the state has abdicated its responsibility to Indiana children by its failure to address the issue of service delivery. Whatever new model is adopted by a state—junior criminal court, removal of jurisdiction over status offenses, or due process parens patriae—the state must ensure that it has not built in failure of the new system by underfunding. The State of Washington is a good example. With its heralded new model of juvenile justice, it was saved by a $3,635,000 grant from LEAA.118

Indiana's failure, and perhaps the failure of other states, goes deeper than a mere inadequate funding of services. Service delivery has, since the advent of the juvenile justice system, been a hodgepodge of service delivery systems. Funds come from county, state and national government sources, supplemented by United Way and other charitable giving. Responsibility for service has been split between the court and, in most states, several executive branch agencies.119

The results, not surprisingly, have been poor. There is too much truth in the claim by the left and the right that the system does not deliver care and treatment. As long as the system remains fragmented with each agency (including the courts) being able to shift responsibility for lack of service, the situation will not greatly improve.

The Indiana Juvenile Justice Division must bear responsibility for not being able to come to grips with the problem. In its report to the 1979 Legislature,120 which contained amendments to the 1978 Act, the Divi-

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118Becker, supra note 23, at 310.
119For an excellent review of the service delivery system in the juvenile justice area, see Harmon, Unravelling Administrative Organizations of State Juvenile Services, 13 CRIME & DELINQUENCY 432 (1967).
sion also recommended appropriation of four million dollars for juvenile
court probation officer salary subsidy (with upgrading of probation of-
ficer qualification), appropriation of sixteen million dollars for one-half
the county cost for per diem care for children placed by the courts and the
creation of a state wide juvenile coordination board and office. None of
these recommendations passed the Legislature.

In disenting from these proposals I wrote:
When the Juvenile Justice Division was unable to recommend
any improvements in the way Indiana delivered services to
troubled children, the General Assembly, in addition to
passing a new Juvenile Code, continued the life of the Division
and ordered it to take a good look at our delivery system. The
Division did so.

However, the recommendations, contained in this document
(pages 88-92), of the Juvenile Justice Division concerning the
delivery of services are inadequate. While I favor, as a general
proposition, partial state funding of per diem charges for
children placed by the Juvenile Court and partial state funding
of Juvenile Court Probation Services, the proposal to create
the Indiana Board and Office for the Coordination of Children
and Youth Services is woefully inadequate. At best, this new
office is merely the reincarnation of the Indiana Youth Coun-
cil, a state agency established in the mid-1960’s and effectively
abolished in 1977 when the Legislature declined to fund it for
more than two dollars. Our children deserve better than the
proposals contained herein.

Why did the Legislature abolish the Youth Council? What
could be substituted for it that would have at least a chance of
effectively and efficiently delivering the services,
psychological, social work, habilitation, and correctional, that
the troubled children of this state need if they are to become
productive adults rather than inmates of our prisons or
habitues of our welfare rolls?

The Youth Council was abolished because it, in fact, was
merely window dressing. It was to coordinate and promote ser-
vice delivery but had neither the power nor independent funds,
nor even any mandate, to organize the existing fragmented
delivery system. Failure was built into its structure.

What is needed? The subcommittee [of the Division which had
drafted a comprehensive delivery system] recognized that
there were many dedicated service delivery people working
hard and frequently effectively within the existing delivery
system. But they were hampered by the bureaucratic structure
now in existence. Consequently, the subcommittee proposed,
after a year of work, in August, 1977, a draft of a bill that
would have established, on the state level, a Department of
Children and Youth Services, and, on the county level, a County Department of Children and Youth Services. This proposal, although receiving a majority of votes, was not, under the rules of the Division, presented to the Legislature. In 1978, these proposals were rejected by a majority of the Division. Space limitations prevent a detailed analysis of these proposals. The basic thrust of the bill was to transfer from the Department of Correction, the juvenile delinquency programs and facilities (the Boys' and Girls' Schools); from the State Department of Public Welfare, the Division of Child Welfare Services (but not the AFDC program); and from the Department of Mental Health, the Division of Child Mental Health. These major child serving programs would be moved into the Department of Children and Youth Services. These transfers would solve four current problems:

1. The fragmented gaps and overlaps of service delivery caused by bureaucratic structures which were based on the type of service — corrections, mental health, etc., rather than the needs of the client — the child;
2. The low priority children's services received in each department since the department was also responsible for adult services;
3. The lack of one agency that could be held responsible for the inadequate level of services; and
4. The lack of one agency given the responsibility of presenting to the Legislature the needs of Indiana children and a plan to meet those needs.

The subcommittee's proposals would not have created a new level of bureaucracy nor a super agency. It merely provided for a reorganization and consolidation of services in a manner that solved the existing problems. This structure would have been, in fact, more cost-effective in that duplication and gaps in services could have been eliminated. In truth, the only additional cost would have been the salary of the chief administrator and a secretary or two. Administrative consolidation would more than have offset that cost.

Likewise, the same types of problems exist on the county level. Services are fragmented. County councils are bombarded with requests for funds for services either directly or as a match for LEAA of Title XX funding. Planning and coordination are generally lacking. Evaluation of existing programs is difficult. Waste is probably high. A County Department, as both a coordinator and deliverer of services, could solve many of these problems. Again, the cost of the consolidation into the county department would be low. Existing personnel now split among several county agencies would be consolidated (i.e., the child...
welfare workers in the County Department of Public Welfare would be moved to the County Department of Children and Youth Services).

The subcommittee’s bill was in fact a modest beginning in providing a mechanism for assessing the needs of children and for providing these programs that would help meet those needs. It did not change the power relationship between state and local government, nor did it call for massive new programs. In essence, it said that the people of Indiana are entitled to a governmental structure at both the state and local level that has a real chance of giving children the high priority among competing governmental activities — the priority that our children and society deserve.

Even if the Indiana General Assembly declined to create either the State or County Departments (while desirable, both need not be created at the same time), they should have had an opportunity to consider a comprehensive solution to our problems. The proposed State and County Departments are one such solution.

It would have been possible to have solved some of these problems by the creation of a strong Board and Office for the Coordination of Children and Youth Services. The Division, in the proposal presented in this document, did not do so. Almost every effort to strengthen the Office was defeated on a split vote. All efforts to create, on the county level, some form of coordination were also defeated. All that is left and all that is presented is a shell — the same shell that proved worthless when called the Indiana Youth Council.111

Washington and Indiana have both adopted a comprehensive restructuring of their juvenile justice systems. Washington bought, in large measure, the radical IJA-ABA model; Indiana rejected it, electing to stay with due process parens patriae. Neither state adequately addressed the problem of service delivery within the system.

In the future there will be, one hopes, major studies of how well each system has worked. At that time, decisionmakers will be able to arrive at a much better judgment as to which system most helps the growth and development of our children.

111 This dissent was included in the PROPOSED AMENDMENT. Id.