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JUVENILE JUSTICE IN ARIZONA

INTRODUCTION

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Even before the United States Supreme Court's decision in *In re Gault*[1] sharply refocused the attention of the legal profession on the juvenile justice system,[2] that system of diverting most[3] minors from criminal prosecutions had received much attention in legal literature.[4] But with some exceptions,[5] most such writings have tended toward traditional theoretical analysis of juveniles' legal rights, present and proposed. This project, in contrast, is rooted in the editors' belief that

1. 387 U.S. 1 (1967).
2. See section III, "Jurisdiction and Waiver," *infra*, at 299.
3. *See, e.g.*, GAULT: WHAT NOW FOR THE JUVENILE COURT? (V. Nordin ed. 1968); FOX, *Juvenile Justice Reform: An Historical Perspective*, 22 STAN. L. REV. 1187 (1970); *Symposium on Juvenile Problems: In re Gault*, 43 IND. L.J. 523 (1968).
4. As early as 1909, in fact, an excellent summary of the legal foundations of a separate system of juvenile justice appeared in the *Harvard Law Review*. Mack, *The Juvenile Court*, 23 HARV. L. REV. 104 (1909).
5. The 1958 study of California juvenile courts conducted by the *Stanford Law Review*. *The California Juvenile Court*, 10 STAN. L. REV. 471 (1958).

any meaningful analysis of juvenile justice must begin from an empirical base. While the *Gault* decision was certainly an important step in the development of the body of constitutional law, we ought not to forget that its real importance lies in its effect on the thousands of juveniles who receive "juvenile justice" each year.

The juvenile court was born of the philosophy that children could be "rescued" from involvement in a life of crime by having the state exercise the custodial functions which the child's parents had apparently not.[6] This philosophy led to the vesting of sweeping discretionary powers in the juvenile court judge, and the establishment of few, if any, procedural protections, for the child, beyond the wisdom of the judge. Informal benevolence was thought to be clearly in the child's best interests.[7] But the result, for the child, was often no different than had he been criminally prosecuted as an adult, that is, a long period of incarceration. This tension between philosophy and reality was, in fact, an essential element of the *Gault* decision. Writing for the majority, Mr. Justice Fortas observed that while "the highest motives and most enlightened impulses" animated the juvenile court system,

> in practice . . . the results have not been entirely satisfactory. Juvenile Court history has again demonstrated that unbridled discretion, however benevolently motivated, is frequently a poor substitute for principle and procedure . . . . The absence of substantive standards has not necessarily meant that children receive careful, compassionate, individualized treatment. The absence of procedural rules based on constitutional principle has not always produced fair, efficient, and effective procedures. Departures from established principles of due process have frequently resulted not in enlightened procedure, but in arbitrariness.[8]

Our project, which culminates in this study, was undertaken with several objectives in mind:

(1) *To describe the administration of juvenile justice in Arizona.* This required a great deal more than mere review of formal adjudications. Much of what happens in court is affected, or even determined, by elements of the juvenile justice process which have already taken place; and what happens to the juvenile after adjudication is, at least for the juvenile, the "bottom line" of the whole system. Thus, this study begins with an examination of law enforcement activities as they affect juveniles, describes intake and detention procedures

6. *See* S. FOX, CASES AND MATERIALS ON MODERN JUVENILE JUSTICE 19 (1972); *Mack, supra* note 4, at 120.

7. *See, e.g.*, Molloy, *Juvenile Court—A Labyrinth of Confusion for the Lawyer*, 4 ARIZ. L. REV. 1 (1962); Schramm, *The Judge Meets the Boy and his Family*, in NAT'L PROB. ASSOC., 1945 YEARBOOK 182, as quoted in S. FOX, *supra* note 6, at 54.

8. *In re* Gault, 387 U.S. at 17-18.

of the juvenile court, discusses the concept of juvenile court jurisdiction, as well as adjudication, and concludes with discussions of appeals, probation, and corrections.

Regrettably, undertaking such a broad inquiry required certain compromises. A large part of the "business" of the juvenile courts involves adjudications of dependency[9] and neglect.[10] Because of limited resources and the different theoretical bases which underlie these cases, we have chosen to deal primarily with children who enter the system as a result of acts which would ordinarily be considered to be "criminal."[11]

In addition, the empirical research in most sections of the study was limited to three of Arizona's 14 counties: Maricopa,[12] Pima,[13] and Cochise.[14] Maricopa and Pima counties together account for approximately 80 percent of the state's population. Cochise County was chosen as representative of the less populous counties.

(2) *To examine the relationship between theory and reality in the administration of juvenile justice.* While all those who study juvenile or constitutional law know that *Gault* interpreted due process to require that juveniles who may be deprived of their freedom must be afforded the right to representation by counsel,[15] a bare statement in the *United States Reports* does not tell us whether, or in what manner, such a right is established. Therefore, we have attempted to examine the effectiveness of the implementation of the entire body of juvenile law from constitutional decisions through state law and local procedure.

(3) *To make recommendations, where appropriate, with respect to improving the quality of Arizona's juvenile justice system.* Beyond these descriptive functions, project members have analyzed both the doctrinal and the functional efficacy of the court systems they observed. Happily, many positive practices were found. Where the agencies have proven wanting, however, we have offered possible solutions drawn from the growing body of juvenile case law, experiences in

9. *See* ARIZ. REV. STAT. ANN. § 8-201(10) (1974).
10. *Id.*
11. For a brief discussion of the distinction among the possible juvenile "offenses," see section III, "Jurisdiction and Waiver," *infra*, at 297-303.
12. Maricopa County had a population of 968,487 according to the 1970 census. It is located in central Arizona and encompasses approximately 9,200 square miles. Phoenix, its principal city, is the state capital.
13. Pima County, located in Southern Arizona, had a 1970 population of 351,667. It covers approximately 9,240 square miles. Tucson is its principal city.
14. Cochise County is located in southeastern Arizona. Although it covers approximately 6,250 square miles, its 1970 population was only 61,918. Its largest city, Douglas, has a population of 12,462.
15. 387 U.S. at 41.

Arizona and other jurisdictions, the numerous model juvenile codes formulated in the past decade, and other sources.

This study was conducted primarily by writers of the *Arizona Law Review*. They were aided in research by members of the juvenile law seminar taught by Professor Jack Rappeport at the University of Arizona College of Law in the fall of 1973.[16] Judges, public officials, attorneys, probation officers, and others throughout the state were, in general, quite cooperative in providing both information and candid opinions. In some cases, citations to such interviews have been made in general, rather than specific terms, out of respect for those who have given information in confidence. In most cases where this has been done, it is the existence of the opinion expressed which is important, rather than its accuracy or specific source. All cited materials, such as department reports, hearing observation reports, interview forms, which are not generally available are on file in the offices of the *Arizona Law Review*.

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16. Those members of the juvenile law seminar who assisted in the research included: Brent Adams, Gaila Davis, Ralph Ellinwood, Frederick Nathan, Roger Sheer, Linda Thorpe, Robert Touchton, Edward Truman, and Milton Vickers.