II. Detention

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In *In re Gault*,[1] the United States Supreme Court held that the constitutional requirements of due process apply to the adjudicatory stage of juvenile proceedings; it specifically left open the important issue of the extent of juvenile rights before the adjudication hearing.[2] The process by which authorities determine whether a child charged with a delinquent act should be released to his home or confined in a detention facility[3] is one of the most significant aspects of the preadjudication treatment of juveniles.[4] Since *Gault*, however, little effort has been directed toward study, change, or innovation in preadjudication detention.[5]

Arizona defines detention as "the temporary care of a child who requires secure custody in physically restricting facilities for the protection of the child or the community pending court disposition."[6] This section of the study will review juvenile detention practices in Arizona. Specifically, the discussion will focus on the statutory guidelines with

1. 387 U.S. 1 (1967).
2. "The problems of pre-adjudication treatment of juveniles, and of post-adjudication disposition, are unique to the juvenile process; hence what we hold in this opinion with regard to the procedural requirements at the adjudicatory stage has no necessary applicability to other steps of the juvenile process." *Id.* at 31 n.48.
3. Detention is typically defined as "the temporary care of children in physically restricted facilities pending court disposition or transfer to another jurisdiction or agency." NATIONAL COUNCIL ON CRIME AND DELINQUENCY, STANDARDS AND GUIDES FOR FOR THE DETENTION OF CHILDREN AND YOUTH 18 (2d ed. 1961) [hereinafter cited as DETENTION STANDARDS].
4. It has been estimated that approximately 500,000 juveniles are held annually in juvenile detention facilities in the United States, with an average daily population estimated at 13,000. Sari, *The Detention of Youth in Jails and Juvenile Detention Facilities*, 24 JUV. JUST. 2, 6 (Nov. 1973).
5. One study which attempted to evaluate the detention process in 51 counties throughout the country found that 22 jurisdictions did not keep any detention statistics at all. Of the 29 that did, most of the statistics were found to be so incomplete that it was almost impossible to assemble comparable statistical information on such items as rate of detention, length of detention, and disposition of juveniles after detention. *See* Ferster & Courtless, *Juvenile Detention in an Affluent County*, 6 FAMILY L.Q. 3, 4 (1972).
6. ARIZ. REV. STAT. ANN. § 8-201(11) (1974).

respect to detention of juveniles, the ways in which these guides are implementated, and the detention facilities themselves. Available statistics are incorporated to assist in this evaluation.[7] Where it seems desirable that the standards governing detention procedures be more fully developed, recommendations to that effect are made.

A. DETENTION PROCEDURES

There are three options available to the Arizona law enforcement officer[8] who believes a particular juvenile has committed a delinquent act[9] or is incorrigible:[10] (1) release the juvenile to parent or guardian with an official reprimand;[11] (2) release the juvenile, forwarding a written referral to the juvenile court; or, (3) escort the juvenile to the juvenile court detention facility.[12] The officer does not have the authority to require detention, but he may recommend detention if he believes the juvenile should be detained under one of the statutory grounds for detention established by the *Arizona Rules of Procedure for the Juvenile Court* [*Juvenile Rules*].[13]

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7. Unfortunately, data about the detention process is difficult to obtain and to interpret. All information used in this study was gathered from interviews with court personnel, statistics made available by the courts, and observations of intake interviews and preadjudication hearings.

Statistics for Maricopa County were obtained from the Office of the Director, Research and Planning Services Division, Maricopa County Juvenile Court Center. Pima County statistics were obtained from individual social files on record at the Pima County Juvenile Court Center and from the Center's *1972 Statistical Report.* Cochise County statistics were on file in the office of the Chief Juvenile Probation Officer of the Cochise County Juvenile Court.

8. Since most juveniles are brought to the juvenile court centers by law enforcement agencies, the initial exercise of discretion by a law enforcement officer in deciding whether to bring a juvenile to the center plays a large role in the number and types of juveniles received. In Pima County in 1972, 93 percent of the referrals were made by law enforcement officers. PIMA COUNTY JUVENILE COURT CENTER, 1972 STATISTICAL REPORT. In 1973, such referrals accounted for 88 percent of the referrals in Maricopa County. OFFICE OF THE DIRECTOR, RESEARCH AND PLANNING SERVICES DIVISION, MARICOPA COUNTY JUVENILE COURT CENTER, 1973 MARICOPA COUNTY JUVENILE COURT CENTER END-OF-YEAR REPORT [hereinafter cited as END-OF-YEAR REPORT]. No statistics are available for Cochise County.

Other referrals come primarily from state agencies, probation officers, parents and the court. See section I, "Intake," *supra,* at 240-46, for a discussion of the role of law enforcement officers in the juvenile justice system.

9. A delinquent act may be either an offense which would be a crime if committed by an adult or an offense which applies only to juveniles. ARIZ. REV. STAT. ANN. § 8-201(8) (1974).

10. A child may be adjudged incorrigible for refusing to obey reasonable and proper orders of his parents, for being habitually truant, or for habitually deporting himself so as "to injure or endanger the morals or health of himself or others." *Id.* § 8-201(12).

11. When the child is released without a referral to the juvenile court center, the officer may file a field interview card with the police department. *See* section I, "Intake," *supra,* at 242.

12. ARIZ. REV. STAT. ANN. § 8-226(A) (1974) requires that: "The board of supervisors shall maintain a detention center separate and apart from a jail or lock-up in which adults are confined where children alleged to be delinquent or incorrigible and within the provisions of this article shall, when necessary before or after hearing be detained."

13. ARIZ. R.P. JUV. CT. 3(b) provides:

A child shall be detained only if there are reasonable grounds to believe:

Many children referred by the police are later released by the intake staff. In Maricopa County, for example, 25 percent of those brought in by law enforcement officers in June 1973 were released.[14] Although no statistics were available for Pima County, intake officials speculated that at least half of those brought in were released immediately. This sometimes creates friction between police and court personnel. The police feel that they have done all the necessary preliminary work before they refer a case to the court, and that the court is uncooperative in not detaining the child.[15] A better understanding of the difficulties faced on both sides would go far towards promoting the smooth operation of the juvenile process. This tension might be reduced by requiring police and sheriff cadets to spend a period of time as observers at the intake division of the court, and having intake personnel spend a like amount of time on patrol.

At the detention facility, the juvenile is received by an intake worker[16] who, after screening the case, makes the official decision to release or detain. If the intake officer recommends that a juvenile remain in custody, the legal framework of the events that follow is set out by court rule.[17] No child may be held in detention for more than 24 hours, excluding Saturdays, Sundays, and holidays, unless the county attorney files a petition[18] in the juvenile court alleging delinquency.[19] A child may not be detained more than 24 hours after the filing of this petition unless a hearing is held and the court orders continued detention.[20]

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(1) that otherwise he will not be present at any hearing; or
(2) that he is likely to commit an offense injurious to himself or others; or
(3) that he must be held for another jurisdiction; or
(4) that the interests of the child or the public require custodial protection.

For an analysis of these criteria, see text accompanying notes 43-81 *infra*.

14. Office of the Director, Research and Planning Services Division, Maricopa County Juvenile Court Center, *Monthly Report* (June 1973) [hereinafter cited as *Monthly Report*].

15. Many policemen interviewed stated that if they brought a child "down to detention" they did so with good reason, and that if that child was released they would only have to bring him down again later on another charge.

16. The terms "intake worker" and "screening officer" are used interchangeably throughout this section.

17. *See* ARIZ. R.P. JUV. CT. 3.

18. ARIZ R.P. JUV. CT. 4(a) sets out the petition requirements:

> (a) Initiation of court action shall be by petition . . . . It shall set forth plainly:
>
> (1) The facts . . . as to the time, place and manner of the alleged acts of the child and the law . . . allegedly violated by such act, which brings the child within the jurisdiction of the court.
>
> . . . .
>
> (4) If the child is in custody, the place of his detention and the date and time he was taken into custody.

19. ARIZ. R.P. JUV. CT. 3(d).

20. *Id.* The procedure for the hearing is set out in ARIZ. R.P. JUV. CT. 6. See text accompanying notes 98-127 *infra*, for a discussion of the detention hearing.

1. *Maricopa County*

When a child is brought to the detention facility, he is stripped and thoroughly searched. Screening is done by an intake worker,[21] who interviews the referring police officer,[22] the juvenile, and, if possible, the juvenile's parents.[23] He then fills out a screening form that includes factual data,[24] a notation of whether the juvenile admits the allegations, and the screening officer's impressions of the parents and of the juvenile. The intake officer may then adjust the case,[25] or, if a delinquency petition is to be filed or further action taken, he may release the child or detain him if he believes detention is appropriate.[26] Sixty-five percent of all juveniles brought to the Maricopa County Detention Center for possible detention in 1973 were detained.[27] This high rate of detention is contrary to the articulated philosophy of the juvenile court that usually a juvenile is to be released to his parents to await court action.[28] It is also considerably in excess of the National Council on Crime and Delinquency [NCCD] recommendation that the detention rate "should not normally exceed ten percent of the total number of juvenile offenders apprehended."[29]

Maricopa County provides a separate facility for detaining juveniles during the 24 hour period prior to their "advisory hearing."[30] If

21. In Maricopa County the intake staff consists of two divisions. The Adolescent Offenses Unit is responsible for all juveniles brought to detention on juvenile status offenses such as incorrigibility, truancy, or running away. The Intake Probation Unit handles all juveniles charged with "criminal" acts.

22. Each county may specify its own rules concerning reports to the intake officer by a person bringing a juvenile to the detention facility. *See* ARIZ. R.P. JUV. CT. 3(a). In all three counties studied, the officer is asked if he has advised the child of his rights; if he has not, he is asked to do so. Jack Mead, Intake Officer, Maricopa County Juvenile Court Center, in Phoenix, Jan. 10, 1974; Donald T. Orr, Chief Probation Officer, Cochise County Juvenile Court, in Bisbee, Ariz., Jan. 29, 1974; interview with Sally Plager, Supervisor of Screening and Crisis Intervention, Pima County Juvenile Court Center, in Tucson, Oct. 22, 1973.

23. Normally the police officer has already contacted the parents, informed them of the charges, their rights, and of the fact that he is taking the juvenile to the detention center; he then asks them to come to the detention center. If the child is brought in by the parents on a charge of incorrigibility, the parents must fill out an Incorrigibility Fact Sheet before the child can be detained. Interview with Jack Mead, *supra* note 22.

24. See App. B, *infra*, at 432.

25. An adjustment means that the intake officer decides that no action should be taken on the petition, and the child released. Adjustments may be made for three reasons: (1) insufficient evidence to support a delinquency petition; (2) the complaint is not serious enough to warrant court action; or, (3) the juvenile admits his responsibility, but the investigation of the juvenile's total circumstances shows that court action is not necessary. *See* ARIZ. R.P. JUV. CT. 2(b), (c). See section I, "Intake," *supra*, at 248-62, for a complete treatment of intake and adjustment.

26. *See* ARIZ. R.P. JUV. CT. 3(b).

27. Of 5,837 physical referrals for detention, 3,896 juveniles were detained. END-OF-YEAR REPORT, *supra* note 8.

28. Interview with the Hon. Robert C. Broomfield, Presiding Judge, Maricopa County Juvenile Court, in Phoenix, Jan. 10, 1974.

29. DETENTION STANDARDS, *supra* note 3, at 18.

30. The advisory hearing is a procedure unique to Maricopa County, the purpose of which is to advise juveniles of their rights and the charges against them; no consider-

continued detention is recommended after the advisory hearing, the child is then moved to a permanent detention facility located at the court center.

2. *Pima County*

Intake procedures in Pima County are similar to those of Maricopa County. The primary difference is that the intake and court investigation units, separate departments in other court centers, were combined in 1973 into one department, referred to as the Screening and Crisis Intervention Unit [SCI]. This was done to provide more immediate attention to referrals and to make use of the professional expertise of those people conducting court investigations at the point of intake.[31] The SCI worker is responsible for each referral he receives[32] as long as that child remains in the predisposition care of the court. He or she makes all investigations and recommendations at each stage of the court proceedings. As a result of the careful consideration given to juveniles under this program, the detention rate in Pima County has decreased;[33] however, at 44.5 percent,[34] it is still far in excess of the 10 percent rate of detention recommended by the NCCD.[35]

3. *Cochise County*

Cochise County is divided into five geographic districts with one juvenile probation officer assigned to each district. The probation officer in each district is responsible for making the intake decisions for all children apprehended in his area. If a Cochise County law enforcement official believes a child should be detained, he notifies the probation officer of the district in which the child was apprehended. If the probation officer agrees that the child should be detained,[36] he instructs

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ation is given at this hearing to the recommendation for detention. See text accompanying notes 102-111 *infra*.

31. Report to the Hon. Jack D.H. Hays, Chief Justice, Supreme Court of Arizona, by the Hon. Ben C. Birdsall, Presiding Judge, Pima County Superior Court, on the Investigation of the Pima County Juvenile Court Center, Feb. 5, 1974, at 1 [hereinafter cited as Birdsall Report]. This report is set out in Appendix A, *infra*, at 414.

32. Some referrals may be directed to the probation officers or the Voluntary Intensive Probation Department [VIP]. VIP is a program designed to provide intensive supervision to juveniles on probation through the use of volunteer probation officers. *Id.*

33. Interview with Sally Plager, *supra* note 22.

34. The formula for determining the rate of detention suggested by the NCCD is the total number of children detained divided by the total number of physical referrals, not including dependent children, traffic cases, and material witnesses. National Council on Crime and Delinquency, *Correction in the United States, Juvenile Detention*, 13 CRIME & DELIN. 31 (1967) [hereinafter referred to as *Juvenile Detention*].

In 1973 there were 4,491 physical referrals to the Pima County Juvenile Detention Center and 1,999 detentions. Birdsall Report, App. A, *infra*, at 429.

35. DETENTION STANDARDS, *supra* note 3, at 18.

36. The probation officer's decision must be based on one of the grounds listed in ARIZ. R.P. JUV. CT. 3. See note 13 *supra*.

the staff of the detention center in Bisbee to accept the child.[37] If, however, it is late at night, he may advise the officer to hold the child in the local jail[38] and transfer him in the morning.[39]

Although Cochise County had the highest referral rate in Arizona during 1973,[40] the court center's detention rate was only 14.7 percent.[41] Court personnel in Cochise reported that even with their high release rate, it has been their experience that children rarely failed to appear in court or committed other offenses while awaiting hearings.[42]

B. STANDARDS FOR DETENTION

1. *Detention Criteria*

Arizona, like most other states, has established written guidelines governing the grounds for detention of a juvenile.[43] The Arizona rule, however, offers little guidance on what factors are to be considered in determining whether detention is in fact necessary.[44]

a. *Failure to Appear.* The first criterion, cited as the reason for detention in 20 percent of the 336 cases reviewed,[45] refers to children

37. The Cochise County detention home is staffed by house parents. There is one probation officer on duty at the home during the day.

38. The local jails in Cochise County each maintain a separate juvenile cell. ARIZ. REV. STAT. ANN. § 8-226(B) (1974) prohibits a child from being placed in jail with adults. A recent appellate court decision, in holding that a particular incarceration violated the statute, stated that by so holding, it did "not mean to imply that maintenance of a separate juvenile detention center within an existing jail facility . . . is impermissable." Anonymous v. Collins, 21 Ariz. App. 140, 517 P.2d 98 (1973).

39. Interview with Ronald Hunter, Cochise County Juvenile Probation Officer, in Bisbee, Ariz., Mar. 5, 1974.

40. The rate of referral is the total number of children referred divided by the juvenile population of the county. In 1972, Cochise County had a 14.4 percent rate of referral compared with 12 percent in Maricopa County and 10 percent in Pima County. BUREAU OF PREVENTIVE SERVICES, DEP'T OF CORRECTIONS, 1972 ARIZONA YOUTH ATLAS 11.

41. Cochise County handled 1,677 physical referrals in 1973 and detained 245. 1973 STATISTICAL REPORT FOR COCHISE COUNTY JUVENILE COURT. The fact that Cochise County had such a low detention rate despite a high rate of referral may be due in part to overenthusiastic police referrals, as well as to the center policy of providing counseling services outside of the center wherever possible instead of detaining.

42. Interview with Ronald Hunter, *supra* note 39; interview with Robert Holland, Cochise County Juvenile Court Referee, in Bisbee, Ariz., Jan. 29, 1974; interview with Donald T. Orr, *supra* note 22.

43. *See* ARIZ. R.P. JUV. CT. 3(b). For an anaylsis of other state statutes, see Ferster, Snethen & Courtless, *Juvenile Detention: Protection, Prevention or Punishment?*, 38 FORDHAM L. REV. 161, 164-74 (1969).

44. The Supreme Court of California has offered, as factors which are *not* relevant to the decision whether a child should be detained, the following: public outcry against the offense allegedly committed; the need to "crack down" generally on juveniles in the area; the nature of the offense *per se*; the belief that detention would have a salutary effect on the minor; convenience of the police, the probation officer, or the district attorney for investigation purposes; concern that the minor will fabricate a defense to his case; and, inability of minor to show good cause why he should be released. *In re* M., 3 Cal. 3d 16, 31 n.24, 473 P.2d 737, 747 n.24, 89 Cal. Rptr. 33, 43 n.24 (1970), citing *Cal. Juv. Ct. Practice* § 41, at 52 (1968).

45. The findings in this section refer only to Pima County, the only jurisdiction in which this data was available.

who are considered not likely to appear at any hearings.[46] Most authorities agree that a juvenile should be detained if such action is necessary to assure his presence in court.[47] They differ, however, on the degree of likelihood which should be used in making decisions on this basis. Arizona does not specify the basis upon which the decision is to be made.[48] The NCCD recommends that a child should be detained only if it is "almost certain" that he will not appear.[49] Under this standard, detention is only justified if the child is a runaway at the time of detention or has a history of absconding.[50] But even if Arizona were to follow the recommendation of the NCCD, the conclusion that juveniles require detention because they are likely to flee is undermined by empirical evidence. A study of the Louisville, Kentucky court system has indicated that, when the children normally considered unlikely to appear were nevertheless released prior to adjudication, only 2.7 percent failed to appear in court.[51] A demonstration project on home detention for similar children in St. Louis, Missouri, indicates no instances of a youth failing to appear.[52] It may well be, then, that the numbers detained on this ground are excessive. Decreasing the numbers detained under this criterion might be accomplished by drafting a statute or court rule, similar to that recommended by the NCCD,[53] narrowly drawn to reach only those presenting an almost certain risk. The studies mentioned above, however, suggest that the actual rate of failures to appear is not high enough to justify detention at all on this basis.

b. *Dangerous Offenses.* The second criterion, cited as the reason for detention in one-fourth of the cases reviewed, allows detention of children who are likely to commit offenses injurious to themselves or others.[54] This standard actually involves two distinct determinations, for offenses injurious to self are not always injurious to others.[55] The

46. *See* ARIZ. R.P. JUV. CT. 3(b)(1).
47. Ferster, Snethen & Courtless, *supra* note 43, at 164; *see* UNIFORM JUV. CT. ACT § 14; THE PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, TASK FORCE ON JUVENILE DELINQUENCY, TASK FORCE REPORT: JUVENILE DELINQUENCY AND YOUTH CRIME 37 (1967) [hereinafter cited as TASK FORCE: JUVENILE DELINQUENCY]; DETENTION STANDARDS, *supra* note 3, at 15.
48. Intake officers in every county were questioned to find out which children were detained under this standard. Responses ranged from those "in need of supervision" and "potential runaways" to "constant runaways."
49. DETENTION STANDARDS, *supra* note 3, at 15.
50. *Juvenile Detention, supra* note 34, at 29.
51. *See* Sari, *supra* note 4, at 13.
52. Keve & Zantck, *The Home Detention Program of St. Louis, Missouri,* DELIN. PREV. RPTS. 3 (Sept.-Oct. 1972).
53. DETENTION STANDARDS, *supra* note 3, at 15.
54. ARIZ. R.P. JUV. CT. 3(b)(2).
55. Sex activity by girls and drug and liquor offenses are those most often cited as "injurious to self."

problem with the standard is that it provides no guidelines for making these determinations.

The criterion most often applied by intake officers in determining the likelihood of the commission of offenses "injurious to others" is whether the child is likely to commit any new offenses.[56] There is no guidance, however, for deciding what evidence may be relevant to a determination that a child is likely to commit another offense or the degree of likelihood required. One factor sometimes considered is the nature of the charged offense, on the theory that those who commit certain types of offenses are likely to be in trouble again. Reliance on this factor as an absolute guide has been emphatically rejected by the Supreme Court of California.[57] Overturning a juvenile court's policy of detaining *all* children accused of selling marijuana, regardless of the child's past record or the circumstances of the offense, the court said:

> The whole concept of our procedure is that special diagnosis and treatment be accorded the psychological and emotional problems of each offender so that he achieves a satisfactory adjustment. . . . A mechanized, mass treatment of offenders not only violates our deep conviction that each individual should personally obtain the protection of due process of law but also thwarts the legislative objective of providing the troubled youth of today with particularized treatment directed toward rehabilitation.[58]

It has also been suggested that detention is proper when the child's attitude suggests that, if released, he would immediately repeat the offense.[59] This test places maximum weight on the child's appearance of repentance—a highly subjective factor. A third suggested approach has been that children with strained family relationships and serious problems are likely to get into further trouble and, consequently, should be detained.[60] This standard, too, is subject to interpretive vagaries, really implying a *sub rosa* assumption of dependency or incorrigibility done under the pretext of delinquency; essentially, it amounts to a nonjudicial finding of probable cause.

In some states, the juvenile who has been apprehended or adjudicated in the past is considered likely to commit a new offense.[61] Sta-

56. Interview with Jack Mead, *supra* note 22; interview with Sally Plager, *supra* note 22.

57. *In re* M., 3 Cal. 3d 16, 31, 473 P.2d 737, 747, 89 Cal. Rptr. 33, 43 (1970).

58. *Id.* at 31, 473 P.2d at 748, 89 Cal. Rptr. at 44.

59. D. OTTMAN, PROCEEDINGS OF THE ALA. WORK CONFERENCE FOR JUVENILE COURT JUDGES 21 (1965), *cited in* Ferster, Snethen & Courtless, *supra* note 43, at 166 n.43.

60. NATIONAL COUNCIL ON CRIME AND DELINQUENCY, GUIDES FOR JUVENILE CT. JUDGES 46 (1963), *cited in* Ferster, Snethen & Courtless, *supra* note 43, at 166.

61. Ferster, Snethen & Courtless, *supra* note 43, at 167.

tistics from the counties reviewed indicate that juveniles who have prior records are far more likely to be detained than those who do not.[62] Although prior delinquent behavior may seem to be a logical way to predict future offenses, its reliability has not yet been verified by empirical data. Indeed, its invalidity has been suggested by several studies.[63]

What evidence, then, *is* relevant to a determination that a child is likely to commit another offense while awaiting adjudication? The answer is not clear. In any case, the low recidivism rates of juveniles released pending adjudication in jurisdictions which do not even consider the "likelihood" of another offense indicate that such a determination is not necessary.[64]

Juvenile Rule 3(b)(2) also authorizes detention of children likely to commit offenses dangerous to themselves. Defining which acts fall within this category and are sufficiently "dangerous" to justify detention is even more difficult than defining those acts which may be dangerous to the community. The "degree of likelihood" problem also presents itself here. Girls who stay out late at night and are suspected of being promiscuous, and juveniles who are charged with alcohol and drug offenses, are often described as those who might commit acts dangerous to themselves prior to adjudication.[65] The question is whether the dan-

62. Each of the intake officers canvassed by questionnaire considered past offenses an "important" consideration in making a detention decision, but none indicated that it was "very important." See text & notes 82-97 *infra*, for a discussion of the attitudes of intake officers.

In Maricopa County, a study of 3 months of 1973 chosen at random revealed that only 14.2 percent of the juveniles detained had no previous referrals. OFFICE OF THE DIRECTOR, RESEARCH AND PLANNING SERVICES DIVISION, MARICOPA COUNTY JUVENILE COURT CENTER, 1973 MONTHLY STATISTICAL REPORTS. The Cochise County detention home contained 14.2 percent with no prior referrals for the month of January, 1974. Interview with Donald T. Orr, *supra* note 22. The Pima County detention facility contained 17.3 percent for the same month. Interview with John W. Zander, Supervisor of Detention, Pima County Juvenile Court Center, in Tucson, Feb. 20, 1974.

63. The one empirical study which attempted to validate the hypothesis was conducted with adult criminals. It concluded that neither the seriousness of the crime charged nor the offender's past record provides a reliable basis to predict adult pretrial behavior. REPORT OF THE PRESIDENT'S COMMISSION ON CRIME IN THE DISTRICT OF COLUMBIA, Minority Views of Patricia M. Wald, 930-36 (1966), *cited in* Ferster, Snethen & Courtless, *supra* note 43, at 167 n.47.

An empirical study has been conducted with juveniles in an attempt to predict future assaultive crimes. Using an actuarial table, psychiatrists succeeded in dividing a group of first parolees into two groups, one of which the scientists predicted would produce more assaultive crimes in the future and one of which would produce fewer. But only 29 out of 128 boys in the high risk group in fact committed such crimes while on parole. When the test was run again using different persons, only 29 out of 334 in the high risk group committed assaultive crimes. This experiment is discussed in Mora, *Juvenile Detention: A Constitutional Problem Affecting Local Government*, 1 URBAN LAW. 189, 201 (1969), *citing* Molof, *Prediction of Future Assaultive Behavior Among Youthful Offenders*, in CALIF. YOUTH AUTHORITY (1965). This study suggests that current scientific methodology is incapable of predicting who should and who should not be detained.

64. Statistics for most juvenile courts indicate that fewer than 10 percent of the juveniles released pending adjudication committed a new offense. TASK FORCE: JUVENILE DELINQUENCY, *supra* note 47, at 80.

65. Ferster, Snethen & Courtless, *supra* note 43, at 168.

ger that they will seriously injure themselves is sufficiently great to justify detention. The fact that most children are usually returned to the community even if they are ultimately adjudged delinquent should be considered in any decision concerning detention.[66]

It is therefore recommended that this criterion be scrapped and replaced by a very narrowly drawn provision. The provision should authorize preventive detention only when the juvenile is accused of a crime of violence to the person, or of a crime in which the threat to human life and limb is great (such as arson). In addition, there should be a determination that probable cause[67] exists to believe that the youth actually committed the crime, and evidence should be provided indicating that repetition is almost certain to occur upon release.

c. *Held for Another Jurisdiction.*[68] This criterion amounts for 11 percent of those detained, and is most often used for the incarceration of alien juveniles held pursuant to an agreement with federal immigration officials. Because of Arizona's proximity to Mexico, the state experiences a large influx of alien youths; this poses a unique problem for local juvenile court officials. Since Arizona does not allow the detention of juveniles in facilities where adults are confined,[69] the only facilities available are those of the juvenile court center. Yet none of the centers studied is equipped to meet the needs of alien children.[70] Compounding the problem, the juvenile courts have no control over the length of time these juveniles are detained; as a result, these children remain in the detention centers for many weeks at a time,[71] taxing the facilities and resources of the individual court centers. Because

66. None of the counties investigated keep separate statistics regarding dispositions of juveniles detained prior to the adjudication hearing. In Maricopa County, a total of 1,984 referrals were disposed of during June, 1973. Most of these cases were adjusted without any court proceeding. The following table shows court dispositions:

Disposition	*Number*
Placed on probation	142
Continued on probation	44
Committed to State Dep't of Corrections	20
Transferred to Adult Court Jurisdiction	6
Dismissals	23
Relieved of Responsibility	58

In that month only 26 out of 380 juveniles detained were removed from society. *Monthly Report, supra* note 14.

67. See text & notes 128-56 *infra*, for a discussion of probable cause hearings.

68. ARIZ. R.P. JUV. CT. 3(b)(3).

69. ARIZ. REV. STAT. ANN. § 8-266(B) (1974). See note 38 *supra*.

70. These children are not considered to be within the juvenile correctional system, but are held only as a courtesy for federal authorities. Therefore, no effort is made to provide counseling for them, or to place them in an environment most suited to their individual needs. In fact, Cochise County usually holds these children only long enough to arrange transportation for them back across the border. Interview with Donald T. Orr, *supra* note 22.

71. The average length of stay at the Pima County Juvenile Court Center for such Mexican nationals is 4 to 8 weeks. Interview with John W. Zander, Supervisor of Detention, Pima County Juvenile Court Center, in Tucson, Oct. 22, 1973.

of the length of their stay and the lack of treatment, these juveniles are a significant source of acts of violence against the detention staff and the facilities.[72] Aliens are a matter of federal responsibility and should be handled in separate facilities with treatment programs funded and operated by the federal government.

d. *Interests of the Child or Public Require Custodial Protection.*[73] This is the least definite and most used criterion, cited as the reason for detention in 44 percent of the cases reviewed. The child who does not need secure custody, but who must be removed from his home because of strained parent-child relationships or because the parents are unable or unwilling to supervise him, is most often detained under this category. These children are often charged with incorrigibility offenses and are detained like delinquents. In terms of practicality and in terms of the options open to juvenile authorities, however, the problems of these juveniles are often substantially similar to those of dependent and neglected children.[74] A child who is a habitual truant may be adjudged incorrigible; but if his behavior is accompanied by a lack of proper parental care at home, then he is also neglected.[75]

In Maricopa County, an effort is made to screen out children charged with incorrigibility at the intake stage by use of the Adolescent Offenses Unit.[76] This unit, which is responsible or all juveniles brought to detention on incorrigibility charges, is made up of members of the intake staff. If it is determined that a child does not need secure custody but cannot be left with his family, then, in lieu of detention, that child is referred to a "receiving foster home"[77] for a maximum of 5 working days, during which time the probation officer attempts to deal with the problems within the family or to find another placement. Pima County does not have such a program; as a result, many children are placed in detention who do not need to be, simply because they could not be returned home.[78]

72. Detention officers interviewed alleged that much of the violence occurring in the detention centers was instigated by Mexican nationals. Interview with Donald T. Orr, *supra* note 22; interview with Susan McConville, Intake Officer, Maricopa County Juvenile Court Center, in Phoenix, Jan. 10, 1974; interview with John W. Zander, *supra* note 71.

73. ARIZ R.P. JUV. CT. 3(b)(4).

74. Children referred for dependency and neglect are handled separately by the Child Welfare Agency, a division of the Dep't of Economic Security. *See* ARIZ. REV. STAT. ANN. § 8-502 (1974).

75. A neglected child is defined as one who "lacks proper parental care necessary for his health, morals and well-being." *Id.* § 8-531(9).

76. Interview with Susan McConville, Intake Officer, Maricopa County Juvenile Court Center, in Phoenix, Jan. 9, 1974.

77. A receiving foster home is "a licensed foster home suitable for immediate placement of children when taken into custody . . . ." ARIZ. REV. STAT. ANN. § 8-501(7) (1974).

78. It is interesting to note that there was substantial agreement among intake personnel interviewed that a bad home environment should play a role in the detention de-

It is generally maintained by authorities such as the NCCD that dependent and neglected children need "shelter care"[79] rather than secure custody. The use of shelter care, however, could also be extended to those juveniles charged with incorrigibility and delinquency offenses who do not need secure custody, but who cannot be returned to their homes.[80] The extent to which shelter care could be used to serve the needs of these children and the criteria to be used in making the determination between shelter and detention care will be taken up in a later section.[81]

2. *Staff Attitudes*

A questionnaire was developed to determine, (1) how much unanimity there is among intake personnel, as a group, concerning the goals of detention; (2) what intake personnel believe to be the primary purpose of detention; and, (3) the kinds of information they feel are relevant to the detention decision.[82]

In the part of the questionnaire pertaining to goals, there were listed a number of possible objectives to be considered in making a detention decision. The 23 intake officers interviewed were asked to indicate the relative importance they assigned to each goal. Each of the intake officers canvassed by questionnaire considered past offenses an important consideration in making a detention decision. All of the respondents agreed that protecting society from dangerous persons was important as an objective in decisionmaking. Protection of the child was considered an important objective in decisionmaking by 91.3 percent of the respondents, and 78.3 percent agreed on the importance of avoiding the detention of children considered to be no threat to themselves or others. There was also substantial agreement as to the importance of removing the child from a bad home environment[83] and the unimportance of detention as an opportunity for short-term rehabilitative efforts.[84]

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cision. Of those interviewed, 47.8 percent considered it a "very important" consideration, and 43.5 percent considered it "important." Only 8.7 percent considered it to have no place as an objective to be considered in making a decision.

79. Shelter care is defined as the "temporary care of children in physically unrestricting facilities, usually pending return to their own homes." DETENTION STANDARDS, *supra* note 3, at 2, 8.

80. The *Juvenile Justice and Delinquency Prevention Act* directs that juveniles charged with status offenses must not be placed in detention, but must be placed in shelter facilities. Pub. L. No. 93——, § 403 (Sept. 8, 1974).

81. *See* text accompanying notes 207-13 *infra.*

82. This part of the study was modeled after a similar study sponsored by the California Council of the NCCD reported in Sumner, *Locking Them Up*, 17 CRIME & DELIN. 168 (1971).

83. This was considered very important by 47.8 percent, important by 43.5 percent, and unimportant by 8.7 percent of those interviewed.

84. This was considered important by 17.4 percent and unimportant by 82.6 percent of those interviewed.

On the other hand, there was considerable disagreement about the relative importance of the following objectives when making a detention decision: impressing the child with the seriousness of his offense;[85] preventing the child from running away;[86] and, deterrence of further delinquency.[87]

The second part of the questionnaire concerned intake officers' attitudes toward the importance of certain kinds of information in making detention decisions. All of those interviewed agreed that the number of previous offenses was an important consideration in making detention decisions, and 78.6 percent agreed on the importance of considering the seriousness of the current offense. Items generally agreed to be relatively unimportant considerations in decisionmaking were occupation of parents,[88] family income and social status,[89] and source of referral.[90]

There was considerable disagreement as to the relative importance of certain factors in making detention decisions. These included the number of times the child had been previously detained;[91] whether the child was in school or not;[92] current population in detention facility;[93] attitude of child;[94] and, past record of assault offenses.[95]

The primary aim of the concluding part of the questionnaire was to gain information about intake officers' attitudes toward the general concept of detention and existing detention criteria. With remarkable consistency, a large majority[96] of all respondents felt that rule 3 of the *Juvenile Rules* does not provide clear guidelines as to who should be detained; that the current practice of detention is no longer viable; and, that distinct changes in the focus and emphasis of current detention practices are needed. When questioned, intake officers maintained that they follow the statutory guidelines in making detention decisions. The questionnaire, however, would seem to indicate that each

85. This was considered very important by 17.4 percent, important by 34.8 percent, and unimportant by 47.8 percent of those interviewed.
86. This was considered very important by 21.7 percent, important by 47.8 percent, and unimportant by 30.5 percent of those interviewed.
87. This was considered very important by 17.4 percent, important by 34.8 percent, and unimportant by 47.8 percent of those interviewed.
88. This was considered unimportant by 95.6 percent of those interviewed.
89. This was considered unimportant by 82.6 percent of those interviewed.
90. This was considered unimportant by 86.9 percent of those interviewed.
91. This was considered very important by 8.7 percent, important by 34.8 percent, and unimportant by 56.5 percent of those interviewed.
92. This was considered important by 43.4 percent and not important by 56.6 percent of those interviewed.
93. This was considered very important by 17.4 percent, important by 34.8 percent, and unimportant by 47.8 percent of those interviewed.
94. This was considered very important by 30.5 percent, important by 47.8 percent, and unimportant by 21.7 percent of those interviewed.
95. This was considered very important by 26.2 percent, important by 21.7 percent, and unimportant by 52.1 percent of those interviewed.
96. 82.6 percent of 23 intake officers polled agreed with the statements presented.

has his own ideas of what the guidelines mean or, at best, that the guidelines do not provide for adequate standards of interpretation.

The responses seem to indicate that nonlegal factors strongly influence detention rates in Arizona and, further, that intake officers are imposing personal value standards rather than following any uniform legal guidelines when making detention decisions. If this is the case, then the Arizona guidelines for detention in the *Juvenile Rules*[97] leave too much to the discretion of those making detention decisions. Ideally, the rules concerning juvenile procedures are designed broadly enough to provide flexibility, but this study indicates that in reality the result is inconsistency. The best method of preventing abuses of discretion, therefore, would be to maintain clearer standards for review of detention decisions at the detention hearing.

C. Judicial Review

Effective control over detention decisions can be exercised through the use of detention hearings, which are required in Arizona, and probable cause hearings, which are not.

1. *Detention Hearings*

Most commentators consider detention hearings to be a practical necessity to control detention decisions effectively;[98] others believe that they are a constitutional requirement.[99] In Arizona, the *Juvenile Rules* specify that a hearing be held if the intake officer recommends detention.[100] However, no guidelines are provided for the conduct of the hearing.[101] As a result, there is little uniformity among the counties in the application of the rule.

In Maricopa County, no hearing into the necessity of detention is held unless the child or his counsel requests one. The hearing held

97. Ariz. R.P. Juv. Ct. 3(b).

98. *See* Task Force: Juvenile Delinquency, *supra* note 47, at 37; Ferster, Snethen & Courtless, *supra* note 43, at 180.

99. Dorson & Rezneck, *In re Gault and the Future of Juvenile Law*, 1 Family L.Q. 1, 36 (Dec. 1967).

100. Ariz. R.P. Juv. Ct. 3 provides that:

> . . .
>
> (d) No child shall be held in detention for more than 24 hours, excluding Saturdays, Sundays and holidays, unless a petition alleging his delinquent conduct has been filed; and no child shall be held longer than 24 hours, excluding Saturdays, Sundays and holidays, after the filing of said petition unless so ordered by the court after hearing.
>
> (e) If the detention hearing is not held within the time specified, the child shall be released from detention to the custody of his parents or other suitable persons.

101. Ariz. R.P. Juv. Ct. 6 provides limited guidelines with regard to a child's right to notice and counsel at hearings in general, but does not specify the procedure of a detention hearing in particular.

within the time period specified by rule 3(d)[102] is not an inquiry into the necessity of continued detention as required by that rule. Rather, it is an "advisory hearing," the purpose of which is to advise juveniles of their rights and the charges against them.[103] Advisory hearings are presided over by a referee, who is an attorney,[104] and are attended by a probation officer.[105] The child is usually accompanied by his parents or guardian;[106] however, it is not mandatory that they be there.[107] After being advised of his constitutional rights,[108] the juvenile who is unrepresented at the hearing is asked if he wishes to have counsel. If he does, the court recesses the hearing, assumes the juvenile denies the allegations of the petition, and sets a date for adjudication, without asking the child to admit or deny the allegations of the petition. If the juvenile and his parents waive counsel,[109] he is read the petition and asked to admit or deny the allegations. If they are denied, the referee sets a date for an adjudication hearing, normally about 60 days from the date of the hearing.[110] If the allegations are admitted and the probation officer is ready with recommendations, the referee may adjudge a child delinquent without further hearing, and proceed with disposition.[111] If further hearings are to be conducted, the referee asks the probation officer whether continued detention is recommended. The referee then enters an order of detention[112] or release[113] and advises the child and parents of their right to a full inquiry into the matter of detention should they request a detention hearing. Such hearings are held at a later date, not to exceed 3 working days after the request.

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102. *See* text accompanying notes 18-20 *supra*.

103. Interview with Mary A. Bass, Referee, Maricopa County Juvenile Court, in Phoenix, Jan. 9, 1974.

104. Juvenile court referees are appointed by the presiding judge of the superior court. ARIZ. REV. STAT. ANN. § 8-231(A), (B) (1974). The referee's findings are submitted to the presiding judge of the juvenile court and signed by him.

105. Any of three staff members may attend the hearings with the juvenile and his parents: (1) the screening officer who originally admitted the child; (2) another screening officer if the admitting officer is unavailable; or, (3) the child's regularly assigned probation officer. Interview with Mary A. Bass, *supra* note 103.

106. Notice of the time and place of the hearing must be given to the parents, guardian, or custodian of the child. ARIZ. R.P. JUV. CT. 3(c)(2).

107. *Id.* rule 3(f) provides that: "The detention hearing may be held without the presence of the child's parents, guardian or custodian if they cannot be found or fail to appear."

108. *See id.* rule 6(b). Juvenile rights are considered to be those enunciated in *Gault*: (1) the right to timely notice of the specific issue to be considered; (2) the right to counsel; (3) the right against self-incrimination, and the right to confront and cross-examine witnesses against him (and the right to be told of these rights). *In re* Gault, 387 U.S. 1, 31-57 (1967).

109. Specific guidelines for waiver of counsel by child and parents are provided in ARIZ. R.P. JUV. CT. 6(c).

110. Interview with Mary A. Bass, *supra* note 103.

111. ARIZ. R.P. JUV. CT. 6(f).

112. The probation officer may, at his discretion, have the child released at any time. Interview with Mary A. Bass, *supra* note 103.

113. A random survey of the hearings indicated that one-third of the juveniles detained initially were released at the advisory hearing. One referee indicated that most

They are seldom requested.[114] Even if they were requested, such procedure would violate the requirement of rule 3(d) that detention hearings be held within 24 hours of the filing of the petition for adjudication.

In Pima and Cochise counties, all juveniles detained are provided a detention hearing within the time specified by the *Juvenile Rules*.[115] The hearing deals only with the need for continued detention; adjudication and disposition take place at a later hearing or hearings.[116] The detention hearing is conducted by a referee in both counties;[117] however, in Cochise and Pima the referees are not members of the bar and have no formal legal training.

In both counties, juveniles may be represented by counsel at the detention hearing.[118] In Pima County, the only county maintaining a record of appearance of counsel, a survey of 3 months chosen at random found that attorneys were present at only 12 percent of the hearings. The presence of an attorney did not appear to have a statistically significant effect on the outcome of the cases studied. In those cases at which counsel was present, 60 percent of the juveniles were detained; in those without, 68 percent were detained.[119] Nevertheless, an attorney serves an important function at the detention hearing. He can inquire into the court's jurisdiction and the evidence supporting the request for detention, thus placing a burden on the intake worker to do more than just repeat a vague statutory phrase. He may also suggest alternatives to detention if the child requires care outside the home.[120]

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of those released were incorrigibles whose family problems had been resolved through counseling with a probation officer or for whom alternative placement had been found during the prehearing detention period. Interview with Mary A. Bass, *supra* note 103.

114. Of 129 advisory hearings in June 1973 which resulted in orders for detention, but in which no further adjudication was made, none resulted in a request for a detention hearing. *Monthly Report, supra* note 14.

115. ARIZ. R.P. JUV. CT. 3(d); see text accompanying notes 18-20 *supra*.

116. In accordance with ARIZ. R.P. JUV. CT. 23, which allows each country to make rules governing its practice not inconsistent with the state rules, Pima County requires that an adjudicatory hearing be held no later than 30 days from the date of the filing of a petition (15 days if the juvenile is detained). PIMA COUNTY [ARIZ.] LOCAL R.P. JUV. CT. 5.

117. Pima County has three full-time referees, Cochise County has one, and Maricopa County has two full-time and three volunteer referees.

118. The right to counsel, held applicable by *Gault* to adjudication hearings, has been granted by statute in Arizona at all levels of juvenile proceedings. ARIZ. REV. STAT. ANN. § 8-225(A) (1974). For a complete discussion of the role of counsel at the detention hearing, see Rosenheim & Skoler, *The Lawyer's Role at Intake and Detention Stages of Juvenile Court Proceedings*, 11 CRIME & DELIN. 167 (1965).

119. Statistics obtained from the court calendar of detention hearings, Pima County Juvenile Court, 1973. It is conceivable that those juveniles accused of more serious crimes are the ones most likely to obtain counsel, but are also the ones more likely to be detained in any event. Therefore, it is possible that those represented by lawyers would have had a much higher detention rate had they not been represented.

120. Although this is theoretically the function of screening officers, they often do not perform a thorough search for outside placement. One deputy public defender indi-

The Pima and Cochise county detention hearings observed for this project averaged about 3 minutes in length[121] and were conducted in an informal manner without sworn witnesses or testimony. Typically, the referee informs the juvenile and parents of their rights at the outset.[122] He then asks for the intake worker's recommendation, and he asks the juvenile and his parents or counsel for their comments. The referee then enters an order of detention or release and advises the child and his parents of their right to appeal the decision to the juvenile judge within 3 days.[123] The order for detention specifies the statutory grounds for the detention order, but contains neither a discussion of the supporting factual considerations[124] nor a determination of probable cause that the child has committed the acts alleged in the petition. In Pima County, 41 percent of the juveniles in preadjudication custody were released at the detention hearing.[125] In Cochise County, no statistics were available, but the figure was estimated to be approximately 20 percent.[126]

This study revealed that the guidelines for detention of juveniles are of a broad and vague nature and their application by intake personnel subjective. If detention hearings are to provide adequate review of detention decisions, more thorough inquiry must be made.[127] The hearings should include a full inquiry into the necessity for detention and a determination of probable cause.

2. *Probable Cause Hearings*

Although the majority of juvenile court acts and court rules do not require a probable cause inquiry at the detention hearing,[128] several

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cated that much of the time spent on the case is involved in searching for placement. For if the screening officer does not have a recommendation to make, the judge may detain the child for lack of an alternative placement. Interview with Karen Zizmor, Deputy Public Defender, Pima County Juvenile Court Center, in Tucson, Nov. 19, 1973.

121. The longest hearing observed lasted 15 minutes, the shortest, 1 minute.

122. Observation of detention hearings revealed that rights were usually presented in a lifeless drone, often so hurriedly that not even the project observer could be certain what was said. As for parents and children, many appeared too frightened to make any reply whatsoever to the mumbled legalities.

123. If the parties make a timely request, the judge handling juvenile matters must order a rehearing of any matter originally heard by a referee. *See* ARIZ. REV. STAT. ANN. § 8-231(F) (1974). Of 78 detention hearings held in Pima County in October 1973, only one was appealed. Comparable information was not available for Cochise County.

124. A random sampling of 25 referee's reports containing detention orders were examined. None of these reports listed a factual basis for detention. Although this is normal procedure, it does not seem to prejudice a child's case if he appeals the referee's order, since the rehearing by the juvenile judge is conducted de novo. *Id.* § 8-231(F).

125. Statistics obtained from the court calendar of detention hearings, Pima County Juvenile Court Center, 1973.

126. Interview with Donald T. Orr, *supra* note 22.

127. For another commentary on the need for change in detention hearings in Arizona juvenile courts, *see* Comment, *Juvenile Detention in Arizona: Wisdom and Legality*, 1973 L. & SOC. ORDER 237.

128. *See* Ferster, Snethen & Courtless, *supra* note 43, at 183. The question of prob-

state statutes[129] and some cases[130] do so require. In fact, a reading of the decisions of the United States Supreme Court in *Kent* and *Gault* suggests that juveniles are constitutionally entitled to a judicial determination of probable cause.

In *Kent v. United States*,[131] the Supreme Court took the first major step toward extending due process protections to juveniles. In *Kent*, the Court was interpreting a statute which conditioned an order remanding a juvenile to adult court on a "full investigation."[132] The Court held that the statute required a hearing conducted in accordance with the basic requirements of due process and fairness.[133] The Court, commenting on the absence of provisions for a probable cause determination in juvenile proceedings, stated: "We indicate no view as to the legality of these practices."[134]

In *Gault*, the Court held that the purportedly "civil" character of juvenile proceedings did not remove the juvenile from the protection of pertinent provisions of the Constitution.[135] When the overall civil or quasi-civil character of juvenile proceedings is broken down into its components, a particular component may be found to require conformance with a particular provision. Thus, the Court held that the fourteenth amendment requires certain due process protections at the adjudication hearing.[136] Although *Gault* did not discuss the extent of due process protection before the adjudication stage,[137] its concern with the potential loss of a juvenile's freedom has implications for detention. If, as *Gault* held, children must be afforded due process rights at the adju-

able cause arises in two distinct situations in juvenile proceedings. First, when a child is in detention, there is a need to determine whether there is probable cause to hold him or her for the adjudicatory hearing. Second, when the child was never in custody or was released soon after being taken into custody, and there is no detention hearing, there may nevertheless be a need to determine probable cause to hold the child for trial. This second situation is examined separately in section I, "Intake," *supra*, at 257-62.

129. *See, e.g.*, ALASKA STAT. § 47.10.140(c) (1962); D.C. CODE ANN. § 16-2312(e) (Supp. 1973); ILL. ANN. STAT. ch. 37, § 703-6 (Smith-Hurd 1972).

130. Cooley v. Stone, 414 F.2d 1213 (D.C. Cir. 1969); Baldwin v. Lewis, 300 F. Supp. 1220 (E.D. Wis. 1969), *rev'd on other grounds*, 442 F.2d 29 (7th Cir. 1971); Doe v. State, 487 P.2d 47 (Alas. 1971). Cases denying detained juveniles the right to a preliminary hearing have done so on a variety of grounds. The Supreme Court of New Mexico, for example, concluded that such hearings were not constitutionally required in criminal cases, and it found no denial of equal protection in the fact that adult criminal defendants were provided a statutory right to a preliminary hearing while juveniles were not. The court noted sufficient differences in the consequences of criminal and juvenile proceedings in order to justify the legislative distinction. Williams v. Sanders, 80 N.M. 619, 621, 459 P.2d 145, 147 (1969).

131. 383 U.S. 541 (1966).

132. *Id.* at 547-48.

133. *Id.* at 562.

134. *Id.* at 545 n.3.

135. *In re* Gault, 387 U.S. 1, 12-14 (1967).

136. The Court held that the right to adequate notice of charges, the right to counsel, and the right against compelled self-incrimination apply to state juvenile proceedings through the due process clause of the fourteenth amendment. *Id.* at 31-57.

137. *See* text accompanying note 1 *supra*.

dication hearing *because* their freedom is at stake,[138] due process safeguards must also be necessary at other stages which may result in the deprivation of a child's liberty.[139] Several post-*Gault* cases have reached this conclusion.

In *Baldwin v. Lewis*,[140] a federal district court in Wisconsin stated that, since a detention hearing may result in the deprivation of liberty for an indeterminate period of time, *Gault* requires that all requirements of due process under the fourteenth amendment be satisfied.[141] Detention before trial without a finding of probable cause, the court concluded, denies the juvenile the fundamental fairness which the fourteenth amendment is designed to protect.[142] Under Wisconsin law, detention of an adult, without a determination of probable cause, for a period longer than is necessary to determine whether he should be released violates due process.[143] The *Baldwin* case holds that *Gault* requires that the same standard be applied to a detained juvenile.[144] In Arizona, an accused adult is also given the right to a preliminary hearing under the state constitution[145] unless he has been charged by a grand jury indictment, which is itself a determination of probable cause. Yet the same right has never been extended to juveniles.[146]

In another federal case, *Cooley v. Stone*,[147] a youth suspected of burglary was detained in a juvenile court center. At both the detention hearing and the initial hearing[148] his counsel requested judicial inquiry into probable cause. The requests were denied. Habeas corpus was sought and obtained. The United States Court of Appeals for the District of Columbia Circuit upheld the grant of habeas corpus, citing the lower court's belief that:

> 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*.[149]

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138. 387 U.S. at 33-34.
139. *See* Doe v. State, 487 P.2d 47, 51 (Alas. 1971).
140. 300 F. Supp. 1220 (E.D. Wis. 1969), *rev'd on other grounds*, 442 F.2d 29 (7th Cir. 1971).
141. 300 F. Supp. at 1232.
142. *Id.*
143. Phillips v. State, 29 Wis. 2d 521, 139 N.W.2d 41 (1966).
144. 300 F. Supp. at 1232.
145. ARIZ. CONST., art. 2, § 30.
146. Some jurisdictions require that a detained juvenile receive the same determination of probable cause accorded adults. *See* D.C. CODE ANN. § 16-2312(e) (Supp. 1973); ILL. ANN. STAT. ch. 37, § 703-6 (Smith-Hurd 1972).
147. 414 F.2d 1213 (D.C. Cir. 1969); *accord, In re* Edwin R., 60 Misc. 2d 355, 303 N.Y.S. 406 (Fam. Ct. N.Y.C. 1969).
148 The "initial hearing" was similar to the "advisory hearing" of Maricopa County. See text & notes 102-111 *supra*, for a discussion of the "advisory hearing."
149. 414 F.2d at 1213-214 (quoting the unreported trial court opinion).

As *Baldwin* and *Cooley* note, the *Kent* and *Gault* decisions make clear that a constitutional guarantee of a fundamental right cannot be denied by reference to a proceeding as civil, when the nature of the proceeding, however denominated, calls for the protection afforded by the right. This is especially true where, as in the application of a probable cause determination at the detention hearing, denial to juveniles of rights available to adults is not offset, mitigated, or explained by the action of the government as parens patriae evidencing a special solicitude for juveniles. In order to protect the juvenile's right to liberty, therefore, a determination of whether there is probable cause to hold a child for adjudication must be made at the detention hearing.

In establishing this protection, enactments by other jurisdictions may provide useful guidance. Under the recently enacted District of Columbia provisions, for example, the detention hearing is bifurcated.[150] At the first stage of the hearing, the court conducts a full inquiry into the necessity of continued custody. If the court finds that detention or shelter care is required under the statutory criteria, the court then hears evidence presented by the prosecutor to determine if there is probable cause to believe the allegations in the petition are true.[151] The child and parents may present evidence on the issue. If probable cause is found, the court may order detention or shelter care. If the judge finds no probable cause, he must order the child released.[152]

While it would be beneficial to amend the *Juvenile Rules* to provide protections similar to those outlined above, lack of action by the Arizona supreme court need not deter the lower courts from implementing such standards, since rule 23 allows supplemental rules to be implemented in each county.[153] It has been argued that detention hearings, if extended to include a determination of probable cause conducted under *Gault* rules, will put an extra burden on the court.[154] This will be true only if the present high detention rate continues. If the criteria for detention and the evidence required to support it are clarified, the number of children detained may be sharply reduced,

150. D.C. CODE ANN. § 16-2312(e) (Supp. 1973).

151. The inversion from the obvious order—probable cause hearing and then detention hearing—is probably done for reasons of conserving judicial energy. If, as seems likely, the court finds need for detention less often than it finds probable cause, there is a net savings of court time by disposing of detention first, since a finding of no need for detention eliminates the need for a probable cause hearing. Against this, however, must be balanced the danger of prejudice—a finding of need for detention could color the probable cause hearing.

152. D.C. CODE ANN. § 16-2312(f) (Supp. 1973).

153. ARIZ. R.P. JUV. CT. 23. Such rules are subject to approval by the supreme court.

154. Welch, *Delinquency Proceedings—Fundamental Fairness for the Accused in a Quasi-Criminal Forum*, 50 MINN. L. REV. 653, 692 (1966).

thereby reducing the total number of hearings held.[155] While it has been claimed that the benefits resulting from the special procedures applicable to juveniles more than offset the disadvantages of denial of the substance of normal due process,[156] it is difficult to imagine how the observance of due process standards, administered intelligently, will result in the abandonment or displacement of any of the substantive benefits of the juvenile process.

D. DETENTION

1. *Place of Detention*

Arizona requires that each county maintain a detention center for juveniles requiring secure detention, separate from jails in which adults are confined.[157] While the use of facilities built exclusively for juveniles has been generally characterized as beneficial,[158] and while such facilities may be more healthful or humane than their adult jail counterparts, they still function as jails. Efforts made to distinguish juvenile from adult detention on the ground that the former is "therapeutic" rather than punitive, have been described as "semantic acrobatics."[159] Not only is therapeutic treatment at the detention stage premature, the detention period is usually too short for any effective treatment.[160] In fact, at least one court has entirely rejected treatment as a proper aim or function of prehearing detention.[161] Even though "treatment" of juveniles must wait until after disposition, children in detention encounter numerous problems which require special care. The comings and goings of detained children fresh from encounters with the police produce a tension-ridden atmosphere,[162] which is exacerbated by overcrowding,[163] mixing of juveniles with a variety of problems, and inappropriately long periods of stay. More children are detained in Ari-

155. If a probable cause hearing were granted to detained individuals, due process or equal protection could require that nondetained juveniles also receive a hearing on probable cause before having to defend a full scale delinquency hearing. See section I, "Intake," *supra*, at 257-62.

156. Comment, *Trial of Juveniles as Adults*, 21 BAYLOR L. REV. 333, 343 (1969).

157. ARIZ. REV. STAT. ANN. § 8-226(A) (1974). Most recently, in Anonymous v. Collins, 21 Ariz. App. 140, 517 P.2d 98 (1973), the Arizona court of appeals interpreted these provisions as prohibiting the incarceration of a juvenile in an adult facility even though he was placed in a separate cell. The court indicated in dictum, however, that a separate facility within an adult jail might be acceptable. *Id.* at 143, 517 P.2d at 101.

158. Sari, *supra* note 4, at 5.

159. D. FREED & P. WALD, BAIL IN THE UNITED STATES: 1964 95 (1964).

160. *See* text & notes 166-67 *infra.*

161. *See In re* Macidon, 240 Cal. App. 2d 600, 609, 49 Cal. Rptr. 861, 867 (Ct. App. 1966).

162. Pima County requires that upon entering the detention facility *all* detainees be kept locked in isolation for 24 hours to allow them to "orient" themselves to the facilities. Pima County Juvenile Court Center, *Institutional Rules* 1 (Oct. 8, 1973).

163. *See* text accompanying notes 173-76 *infra.*

zona detention centers than the phrase "temporary detention"[164] suggests. Arizona, like most states, has no statutory provision limiting the length of detention.[165] Although complete statistics on length of detention are difficult to obtain, some information on the subject was obtained in a survey of the Arizona counties studied. The average length of detention ranged from 9.2 days for Maricopa County to 7 days in Cochise County.[166] However, actual periods of detention ran as high as 109 days, and more than one-third of the children stayed more than 2 weeks.[167]

Many children whose only need is for some form of adult supervision are left in detention because of the lack of other supervised facilities.[168] This problem frequently has its more severe effects on children who are charged with juvenile status offenses. These children are placed in confinement with children charged with more serious delinquency offenses, thus introducing them to the philosophies and modus operandi of more experienced and sophisticated offenders.[169] The Maricopa County Detention Center was the only facility studied which attempted to separate children into various groups[170] to minimize

164. *See* note 3 *supra.*

165. The NCCD recommends a 2-week limit to preadjudication detention. DETENTION STANDARDS, *supra* note 3, at 30. Some states limit the length of time a court may detain a child, but allow the court to review its order. Alaska limits the order to 30 days, with renewal upon written findings and approval of the superior court. ALAS. R. JUV. PROC. 7(a). The state of Washington allows 30 days detention under a court order, with no apparent limits on renewal. WASH. REV. CODE ANN. § 13.04.053 (Supp. 1972). Pima County requires that the detention of any juvenile longer than 15 days be cleared by order of the judge. PIMA COUNTY [ARIZ.] LOCAL R.P. JUV. CT. 8.

166. The average length of stay per child (in days) for 1972 in Maricopa County was 9.2 (boys), 7.8 (girls), 8.7 (total). END-OF-YEAR REPORT, *supra* note 8. The average stay in Pima County was 9.1 (boys), 7.2 (girls), 8.2 (total) for the month of January, 1974. Interview with John W. Zander, *supra* note 62. The average stay in Cochise County was 7.1 (boys), 6.3 (girls), 6.7 (total) for the month of January, 1974. Interview with Donald T. Orr, *supra* note 22.

167.

	Length of stay in detention for the month of January, 1974			
County	1 week or less	2 weeks	2 weeks to a month	over 1 month
Pima	119	20	18	26
Maricopa	169	41	32	74
Cochise	24	2	5	1

Theoretically, the detention stay is the length of the predisposition period. This study discovered, however, that many children remain in detention after disposition. These children had been committed by the court to state institutions but could not be sent there for lack of room. For this situation, the counties, through their failure to provide correctional treatment resources, are usually as responsible as is the state. Detention centers, inappropriately are made to bear the burden. Another reason for long detention stays is the time spent looking for appropriate foster homes or private institutional placement for some children. A partial solution to this problem would be a statutory limit on the length of stay. A better solution would be adequate probation and placement resources.

168. See note 167 *supra.*

169. D. FREED & P. WALD, *supra* note 159, at 95.

170. The child's age, behavior, and sophistication are considered when assigning him to a group. Interview with Bob Mack, Director of Maricopa County Detention Center, in Phoenix, Jan. 12, 1974.

the effects of "contagion";[171] but even this type of segregation cannot eliminate such harms entirely.[172]

Of the detention centers investigated, only Pima County's suffered from persistent overcrowding. The Maricopa County center had an average daily population in 1973 of 86 children in a facility capable of accommodating 100 (although there were times when the population was as large as 127).[173] The Cochise County center rarely had more than 10 juveniles in a facility with a capacity of 20.[174] Although statistics were not available for Pima County, detention officers estimated that they had an average daily population of 60 in a facility built to accommodate 55.[175] During the month in which the Pima County Detention Center was observed, ten foot square cells designed to house two boys were converted into cells for four by squeezing mattresses into the already minimal free space. This overcrowding produces expected conditions—a strained and nervous staff, a tension-ridden atmosphere, and acts of violence.[176]

There was a major disturbance in the Pima County Juvenile Court Center on September 24, 1973, which resulted in police officials being summoned to the center to restore order. In addition, other complaints were made at that time including the following: that juveniles were being detained for longer periods of time to the detriment of the juvenile and security in the center; that drugs and liquor had been used by juveniles in the detention center; and, that a lack of security had exposed some juveniles to physical harm from other juveniles. As a result, an investigation of the court center was ordered by Chief Justice Hays of the Arizona supreme court on December 7, 1973. The full report of that investigation is published in Appendix A of this study.

An additional problem is the provision of educational instruction for children in detention centers. The Maricopa County center, through a staff of trained teachers, provides daily instruction with a

171. "Contagion" is the expression which juvenile workers use to describe what happens when juveniles with a variety of problems are exposed to each other, and the lessor offenders begin to adopt the attitudes and habits of the more "hardened" youths through association.

172. It is questionable whether a juvenile whose violations of the law are minor should be subjected to the adverse effects of detention, particularly in light of the study results showing that fewer than 10 percent of the juveniles detained prior to adjudication are later removed from the community at disposition. For example, of 2,521 children in detention who had disposition hearings, only 237 were sent to the State Department of Corrections by the Maricopa Juvenile Court. Compiled from monthly statistics for the year 1973, Office of the Director, Research and Planning Services Division, Maricopa County Juvenile Court Center.

173. *Id.*

174. Interview with Donald T. Orr, *supra* note 22.

175. Interview with John W. Zander, *supra* note 71.

176. For a discussion of the effect of overcrowding in detention facilities, see *Juvenile Detention, supra* note 34, at 55. For a report on the particular problems experienced by Pima County during 1973, see Birdsall Report, App. A, *infra*, at 414.

varied curriculum.[177] Attendance is compulsory for all children in the center. An elaborate communications system connecting the center with area high schools also gives children an opportunity to follow classes they are missing. Pima and Cochise counties provide no program of classes for the children held in detention, arguably in violation of state law.[178] It is true that detention facilities, since they are intended to be used for short periods, should not be expected to have programs comparable to those in the correctional facilities. At least one detention center, in Washington, D.C., however, has been ordered to conduct classes for the same number of hours per day as do the public schools.[179]

Long stays, contagion, overcrowding and inadequate instruction are grave problems, but it is the criminogenic effect of detention which raises the most serious doubts about the appropriateness of preadjudication incarceration of juveniles.

> Locking up children charged with or suspected of offenses, before adjudication, probably does more to contribute to the army of habitual criminals than any other procedure in what is called the juvenile justice system. It is difficult for an adult who has not been through the experience to realize the terror that engulfs a youngster the first time he loses his liberty and has to spend the night or several days or weeks in a cold, impersonal cell or room away from home or family. . . . [T]he speed with which relatively innocent youngsters succomb to the infectious miasma of "Juvy" and its practices, attitudes, and language . . . is not surprising.[180]

The antirehabilitative atmosphere of detention facilities was evident throughout this study and has been documented by other research.[181] The process of stigmatization and societal reaction plays a large part in causing the detained juvenile to develop the self-image of a delinquent and to play the role—factors which surely impede any later attempts at rehabilitation.[182] The numerous problems inherent in detention lead naturally to a consideration of alternatives such as increased use of shelter care facilities or an extension of the right to bail to juveniles.

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177. Courses include typing, wood shop, crafts, math, and reading.

178. "Every person who has custody of a child between the age of eight and sixteen years shall send the child to a public school . . . ." ARIZ. REV. STAT. ANN. § 15-321 (A) (Supp. 1973).

179. Wilson v. Stone, No. 69-3250-J (D.C. Juv. Ct., filed Sept. 10, 1969), discussed in Ferster, Snethen & Courtless, *supra* note 43, at 188-89.

180. *In re* M., 3 Cal. 3d 16, 31 n.25, 473 P.2d 737, 747 n.25, 89 Cal. Rptr. 33, 43 n.25 (1970).

181. *See* D. FREED & P. WALD, *supra* note 159, at 95. One juvenile court judge has noted, for example, that juveniles placed in detention evidence a much greater recidivism rate than those who are not. Address by the Hon. John P. Collins, Presiding Judge, Pima County Juvenile Court, at the University of Arizona College of Law, in Tucson, Oct. 30, 1973.

182. *Juvenile Detention, supra* note 34, at 17.

2. *Alternatives to Detention*

Society's interest in pretrial freedom for persons accused of crimes is strong.[183] Without this conditional privilege, even those wrongly accused are punished by imprisonment while awaiting trial and are handicapped in consulting counsel, searching for evidence and witnesses, and preparing a defense.[184] In a recent case concerning this right, a federal district court, although referring to pretrial detention of adults, observed that:

> Having been convicted of no crime, the detainees should not have to suffer *any* "punishment" as such, whether "cruel and unusual" or not.
>
> . . . .
>
> [I]t is manifestly obvious that the conditions of incarceration for detainees must, cumulatively, add up to the least restrictive means of achieving the purpose requiring and justifying the deprivation of liberty.[185]

There are less restrictive means available to achieve the purposes of preadjudication detention of juveniles which have not been adequately utilized in Arizona.

a. *Bail for Juveniles.*[186] The important right to be free pending adjudication has usually been afforded adults by the use of bail;[187] the right to bail, however, traditionally has not been extended to juveniles.[188] Although bail for juveniles is disfavored by most commentators,[189] it is made available to juveniles by statute in several states.[190] A few courts[191] and some commentators[192] have suggested that juve-

183. *See* Stack v. Boyle, 342 U.S. 1, 4 (1951).
184. *See* Hudson v. Parker, 156 U.S. 277, 285 (1895).
185. Hamilton v. Love, 328 F. Supp. 1182, 1191-92 (E.D. Ark. 1971).
186. For another discussion of the right to bail for juveniles in Arizona, see Comment, *supra* note 127, at 248-50.
187. Arizona, like most states, has its own constitutional guarantees to the right of bail in most instances. ARIZ. CONST. art. 2, § 22. This right is implemented by ARIZ. R. CRIM. P. 7.2(a), discussed in Note, *Arizona New Rules of Criminal Procedure: A Proving Ground for the Speedy Administration of Justice*, 16 ARIZ. L. REV. 167, 172-79 (1974).
188. For an excellent discussion on the right of juveniles to bail, see Mora, *supra* note 63, at 202-15.
189. "Release as of right plainly may interfere with the protection and care required in some cases . . . ." TASK FORCE: JUVENILE DELINQUENCY, *supra* note 47, at 36. *See also* Note, *The Right to Bail and the Pre-"Trial" Detention of Juveniles Accused of "Crime,"* 18 VAND. L. REV. 2096, 2100 (1965).
190. For a summary of bail provisions relating to juveniles, see Note, *supra* note 189; Ferster, Snethen & Courtless, *supra* note 43, at 190.
191. Trimble v. Stone, 187 F. Supp. 483 (D.D.C. 1960). The court, applying the same philosophy later employed in *Gault*, concluded that District of Columbia juveniles have the right to bail guaranteed by the eighth amendment; however, the United States Supreme Court has not yet extended the eighth amendment right to bail to the states. *Id.* at 485. The Supreme Court of Louisiana held in 1943 that the Louisiana constitutional right to bail extends to juveniles. State v. Franklin, 202 La. 439, 12 So. 2d 211 (1943). Three lower state courts have found that juveniles have the right to bail. Smith v. McCravy, No. 108809 (Jefferson County Ct., Ky. 1967); Wisconsin *ex rel.* Mayberry

niles have an absolute right to bail under the United States Constitution, or under state constitutions guaranteeing that right to adults. It has been suggested, in fact, that the complex system of detention standards for juveniles might be effectively replaced entirely by a bail system analogous to that used for adults.[193] There are, however, problems peculiar to children which make an absolute grant of the right to preadjudication release unworkable and undesirable from the child's viewpoint.

In Arizona, for example, while a minor is capable of binding himself in a contract for bail,[194] most juveniles have neither property nor money of their own to use as collateral.[195] A monetary bail system for juveniles, therefore, makes the juvenile's freedom depend on his family's resources. Since many families of detained juveniles have low or marginal income,[196] the often criticized injustices of the adult bail system as applied to indigents would be visited with even more force upon the child.[197] Furthermore, in some cases, a parent whose child has become involved in delinquency proceedings may be unwilling to take the child back into the home pending an adjuciation hearing. In other cases, a child may not wish to return to his home, or facts adduced at a detention inquiry may show that he should not return home.[198] Thus, although a child who is charged under the juvenile statute should arguably have no less right to preadjudication freedom than adults charged with a crime,[199] use of bail in juvenile proceedings may for certain children be inappropriate or discriminatory. In view of these conflicts, the adult bail system does not seem to be a suitable means of providing preadjudication release of juveniles,[200] particularly when more effective solutions may be drawn from new developments in the

v. Administrator (Waukesha County Ct., Wis. 1967); Wisconsin *ex rel.* Wronski v. Fromader, No. 349-590 (Milwaukee Civ. Ct. 1967), cited in Comment, *Right to Bail for Juveniles*, 48 CHI-KENT L. REV. 99, 101 (1971).

192. *See, e.g.*, Mora, *supra* note 63, at 202-16; Comment, *supra* note 191, at 100-103; Comment, *A Juvenile's Right to Bail in Oregon*, 47 ORE. L. REV. 194 (1968).

193. *See* Mora, *supra* note 63, at 209-10.

194. ARIZ. REV. STAT. ANN. § 13-1576 (1956).

195. Ketchum, *Guidelines from Gault: Revolutionary Requirements and Reappraisal*, 53 VA. L. REV. 1700, 1715 (1967).

196. W. SHERIDAN, STANDARDS FOR JUVENILE AND FAMILY COURTS 63 (U.S. Children's Bureau Publication, No. 437, 1966).

197. For a commentary on the adult bail system, see Foote, *The Coming Constitutional Crisis in Bail: II*, 113 U. PA. L. REV. 1125, 1137-151 (1965); Paulsen, *Pre-trial Release in the United States*, 66 COLUM. L. REV. 109 (1966); Note, *supra* note 187, at 173.

198. It has been suggested that "where release would be detrimental to the juvenile because of his parents' deficiencies, a neglect petition may be the proper remedy." Ferster, Snethen & Courtless, *supra* note 43, at 192. But certainly before such drastic measures are taken, a chance for counseling with both parents and child should be afforded.

199. Denial of bail to juveniles can be analyzed as a violation of equal protection. Comment, *supra* note 191, at 102-03.

200. For a discussion of the inappropriateness of the bail system for juveniles, see Doe v. State, 487 P.2d 47, 51-52 (Alas. 1971).

area of bail program alternatives, such as release on recognizance or release to a third party.[201] In order to reasonably satisfy itself that the juvenile will appear at future court proceedings,[202] the juvenile courts could attach conditions to release similar to those in the new *Arizona Rules of Criminal Procedure*,[203] with strict penalties imposed on any juvenile breaching the conditions of release.[204] Other conditions such as daily calls to a probation officer might be required.[205]

The juvenile who does not require jail-like facilities but must live under intolerable conditions at home should be placed in a situation where his freedom will not be curtailed.[206] This could be achieved by the development of adequate and varied shelter care facilities. Such a program would permit removal of these children from inappropriate home environments without exposing them to the possibly injurious effects of detention.

b. *Shelter Care.*[207] In Arizona, shelter care is provided in group homes and is generally limited to dependent and neglected children.[208] The concept and use of shelter care may appropriately be expanded in order to create alternative placement facilities for other children in need of preadjudication custody. In addition to eliminating the detrimental effects of incarceration in a jail-like institution,[209] such a program would allow for specialized care. It is not enough, for example, to recognize that neglected children require a different type of custody from that received by delinquent youths. It is also apparent that youths charged with differing types of delinquent offenses need differing types of custody.[210]

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201. *See* NATIONAL ADVISORY COMMISSION ON CRIMINAL JUSTICE STANDARDS AND GOALS, TASK FORCE REPORT ON CORRECTIONS 259 (1973).

202. *See* Doe v. State, 487 P.2d 47, 52-53 (Alas. 1971).

203. ARIZ. R. CRIM. P. 7.3(a), (b). Those conditions particularly adaptable to juveniles are:

> (2) Placing him in the custody of a designated person or organization agreeing to supervise him;
>
> (3) Restriction on his travel, associations, or place of abode during the period of relase . . . .

Id. 7.3(b). *Cf.* Note, *supra* note 187, at 173-4.

204. *See* Mora, *supra* note 63, at 199.

205. *Id.*

206. *See* Doe v. State, 487 P.2d 47, 53 (Alas. 1971).

207. Shelter care is defined by the NCCD as temporary care in a physically unrestricting facility pending the child's return to his own home or placement for longer term care. *Juvenile Detention, supra* note 34, at 11. Shelter care facilities are designed primarily to reduce psychological hardships accompanying out-of-home custody. They are characterized by an absence of bars and locks, use of specially trained counselors, and a general nonpunitive, uncrowded, residential atmosphere with minimal restrictions.

208. By statute, shelter care in Arizona is a broad child-welfare service utilized not only by the juvenile courts but also by child and family agencies, both public and private. *See* ARIZ. REV. STAT. ANN. §§ 8-502 to -520 (1974).

209. *See* D. FREED & P. WALD, *supra* note 159, at 108-09.

210. See Ferster, Snethen & Courtless, *supra* note 43, at 173, for a discussion of specialized shelter care services.

Pima County is presently in the process of implementing just such a plan; it will involve 10 to 20 group homes.[211] There will be four types of homes, each providing care for eight to 10 children, to which juveniles will be assigned depending upon the severity of the problems of each person. Phase-one homes will be for children with violent and aggressive tendencies. Three phase-two homes will be built on the juvenile court center grounds; they will be for all delinquent juveniles other than those with aggressive tendencies or specialized problems. Progressive degrees of discipline will be imposed; children will progress from one home to the next on the basis of their behavioral improvement. Phase-three homes will be privately owned and operated and will offer intensive treatment to juveniles with specialized problems. The phase-four homes will be for dependent and neglected children.

The need for alternatives to preadjudication detention is pressing. The administration of the juvenile justice system has demonstrated that institutionalization, whether for delinquent, neglected, emotionally disturbed or so-called incorrigibles, or runaway youths, is extremely expensive[212] and, in a surprising number of cases, counterproductive.[213] Alternatives like the program in Pima County will enable detention to become a productive part of the juvenile justice system rather than merely a place where children are securely warehoused.

E. Conclusions and Recommendations

The process of detaining juveniles pending adjudication in Arizona is in need of substantial improvement. The fault lies not in the goals of juvenile proceedings but in the means by which they are implemented. Viable alternatives do exist. In the interest of protecting the important right of the juvenile to remain free pending adjudication, as

211. Interview with David L. Parslow, *Community Action Team*, Pima County Juvenile Court Center, in Tucson, Nov. 12, 1973.

212. The average daily cost of detaining a juvenile ranged from $18.43 in Pima County to $25.50 in Maricopa County. Temporary foster care can be provided in either a private or institutional setting for much less. The cost of care in a private home is $6.50 per day, per child for families hired directly by the Maricopa County Juvenile Court Center; the cost is $8.00 per day, per child for families obtained through an agency. The $8.00 also includes social services provided by the agency which are available to the child and family. Interview with Kathy Jordan, Extended Care Unit, Maricopa County Juvenile Court Center, in Phoenix, Jan. 11, 1973. The Pima County group homes will be funded by the Office of Economic Opportunity at an estimated cost of $15.00 per day, per child. Interview with David L. Parslow, *supra* note 211.

213. The Hon. John P. Collins, Presiding Judge, Pima County Juvenile Court, believes "in diverting the juvenile from the regular judicial system any time it is possible." He explained that in his experience "a child who has been detained often feels he has a reputation to live up to," and he claimed that "50 percent of the children who have been through the regular correctional process return to the juvenile courts, while only 5 percent of those who have been diverted from detention return." Address by the Hon. John P. Collins, *supra* note 181.

well as preserving the essentially rehabilitative goals of juvenile proceedings, the following recommendations are made:[214]

1.) Detention hearings should be expanded to include a determination of whether there is probable cause to believe that the juvenile in fact committed the act with which he or she is charged, and whether there is sufficient evidence to support the detention decision.

2.) Guidelines for determining whether detention is appropriate should be clarified and improved. Criteria for detention should be explicit and narrowly drawn to authorize detention only when there is probable cause to believe that the child will not appear for subsequent processing or when the juvenile's behavior indicates that he is almost certain to be a threat to the life and limb of others.

3.) Detention should be strictly limited in time, with court hearings to review its propriety at no greater than 2 week intervals. Thus, its use would be monitored by the court, permitting consideration of changing circumstances and the needs of each child.

4.) Rapid development of alternatives to preadjudication incarceration of juveniles, whether charged with status or criminal violations, must be given high priority. Foster and shelter homes can provide a variety of group care settings for the supervision of children with a variety of needs.

Indifference on the part of the public, the legislatures, and the juvenile court has created detention procedures and practices which fail to meet the goals of juvenile court and which do not protect the rights of the child. The status quo will continue until indifference is replaced by concerned supporters, creative solutions, and the funds to carry them out.

214. For more detailed explanation of alternatives to detention, see *Hearings on S. Res. 32 Before the Subcomm. to Investigate Juvenile Delinquency of the Senate Comm. on the Judiciary*, 92d Cong., 1st Sess. (1971).