VII. Corrections

Gary E. Lawyer

Prior to 1968, complete responsibility for the administration of Arizona's juvenile correctional facilities was vested in a five-member board.[1] With the creation of the State Department of Corrections [SDOC] in 1968,[2] both adult and juvenile correctional services were merged under that single state agency.[3] The director of the SDOC is appointed by the governor[4] and is responsible for the administration and supervision of all correctional facilities, halfway houses, and parole services.[5] A three-member Youth Hearing Board [YHB], which must approve all releases and interdepartmental transfers of juveniles, also is under the auspices of the SDOC.[6]

A juvenile committed to the State Department of Corrections is in a unique position in that he is the only type of state "prisoner" for

1. Ch. 10, § 2, [1938] Ariz. Sess. Laws 4th Spec. Sess. 511. *See* Ridgway v. Superior Court, 74 Ariz. 117, 245 P.2d 268 (1952).

2. ARIZ. REV. STAT. ANN. §§ 41-1601 *et seq.* (Supp. 1973).

3. The propriety of unifying adult and juvenile institutional services within one agency has been criticized. The United States Children's Bureau, for example, has noted that: "There is some evidence . . . that where adult corrections and services for delinquent children are merged with a single-function adult corrections department regimentation and emphasis on custody has hampered the development of services for delinquent children." NATIONAL COUNCIL ON CRIME AND DELINQUENCY, STANDARD ACT FOR STATE CORRECTIONAL SERVICES 17 (1966). *See generally* INSTITUTE OF JUDICIAL ADMINISTRATION, JUVENILE JUSTICE STANDARDS PROJECT, ADMINISTERING JUVENILE CORRECTIONS § 2.1(d) (Partial Tent. Draft, Oct. 1973) [hereinafter cited as JUVENILE JUSTICE STANDARDS PROJECT].

But such unification holds certain advantages, especially for less populous states. It has recently been observed, for example, that: "Unification of all correctional programs will allow the coordination of essentially interdependent programs, more effective utilization of scarce human resources, and development of more effective, professionally operated programs across the spectrum of corrections." NATIONAL ADVISORY COMMISSION ON CRIMINAL JUSTICE STANDARDS AND GOALS, CORRECTIONS 561 (1973).

4. ARIZ. REV. STAT. ANN. § 41-1603(A) (Supp. 1973).

5. *Id.* § 41-1604(A)(2), (4).

6. *See id.*; interview with George Herman, Member, Youth Hearing Board, in Phoenix, Feb. 7, 1974. The adult counterpart of the YHB, the Board of Pardons and Paroles operates independently of the SDOC. Interview with George Herman, *supra*; *see also* ARIZ. REV. STAT. ANN. §§ 31-401, -402 (Supp. 1973).

whom the goal of his period of incarceration is solely rehabilitation.[7] This section will examine juvenile incarceration steps: first, an examination of the commitment process itself; second, a broad overview of the correctional program with special emphasis on the correctional institutions themselves; and finally, a discussion of some of the "problem areas" of Arizona juvenile corrections.[8]

A. THE COMMITMENT PROCESS

A juvenile can come under the control of the SDOC by various routes. If at the juvenile court adjudication it is determined that the juvenile is a delinquent or incorrigible youth,[9] the court may turn him

7. A juvenile judge who feels that such rehabilitation is not probable is likely to waive the jurisdiction of the juvenile court and transfer the youth for trial as an adult. See section III, "Jurisdiction and Waiver," *supra*, at 312-16.

8. This examination of the juvenile correctional facilities is not intended to be an exhaustive catalog of the rehabilitative programs offered in these institutions. Such a study is beyond the scope of this project and beyond the expertise of the law students conducting it. A general overview of the system is the goal of this section, with the purpose of isolating specific problems which can be characterized as relating to legal notions of "juvenile justice."

9. The committing judge, however, has no discretion in determining to which of the available state institutions the juvenile will be assigned. This situation has been the subject of some debate. Prior to its amendment in 1970, section 8-231 of the juvenile code authorized the juvenile court to commit a child "to a suitable institution." Ch. 80, § 10, [1941] Ariz. Sess. Laws 157. The Arizona supreme court subsequently upheld the order of a Maricopa County judge assigning a juvenile to Arizona Youth Center. Gault v. Board of Directors of State Institutions for Juveniles, 103 Ariz. 397, 442 P.2d 844 (1968). The court noted that, in light of the judge's order, the board of directors had no authority to subsequently transfer the juvenile to the Industrial School at Fort Grant. *Id.* at 401, 442 P.2d at 848. *See also In re* Santa Cruz, 8 Ariz. App. 349, 446 P.2d 253 (1968).

The Industrial School at Fort Grant, formerly used as a juvenile institution, is no longer used to confine juveniles committed to the Department of Corrections. The facility has been converted to a minimum security adult prison to ease the overcrowded conditions at the Arizona State Prison. Interview with John McFarland, Deputy Director, Community Services, State Department of Corrections, in Phoenix, Nov. 1, 1973.

As a result of the 1970 amendments, a juvenile court no longer has authority to assign a child to a specified state institution. ARIZ. REV. STAT. ANN. § 8-241(A)(2)(e) (1974), provides that the court may award a delinquent or incorrigible child "[t]o the department of corrections without further directions as to placement by that department." The court apparently has retained indirect control, however, since section 8-246 (A) provides that "[f]rom the time of commitment to the department of corrections, a child shall be subject to the control of the department of corrections until such child's absolute discharge." The effect of this provision would seem to be that the juvenile court may reconsider the commitment order if the court is dissatisfied with the child's placement. The child then may be returned to the court for further disposition. *Id.* § 41-1604(B)(2)(f) (Supp. 1973).

A dependent child may not be committed to the SDOC, nor may a child under the age of 8, regardless of his adjudication. *Id.* § 8-244(A) (1974). If the court finds, after an appropriate examination and report, that a minor is mentally retarded or ill, the court must award the child to an appropriate institution. *Id.* § 8-242. The court must find that the child is "committable under the laws of this state" before it can award the juvenile to the State Department of Mental Retardation [SDMR] or the Arizona State Hospital. *Id.* § 8-242(B). Apparently, the requirements of title 36 pertaining to civil commitment must be satisfied. Thus, the court must find the juvenile to be "mentally ill to such a degree that he is in danger of injuring himself or the person or property of others if permitted to remain at liberty . . . ." *Id.* § 36-514(C) (Supp. 1973). The child also is entitled to a hearing on the mental health issue and representation by counsel. *Id.* § 36-514(A).

House Bill 172, introduced in the first session of the 30th Arizona Legislature,

over to the Department of Corrections. A juvenile also may end up under the direction of the SDOC if his probation is revoked, either because he commits a new offense, or because it is decided that probation has not proved to be a suitable disposition. In either case, it appears that as a practical matter juveniles usually are not committed to the SDOC unless they have several juvenile court referrals on their record; rarely would a child be committed on his first court appearance.[10]

Once a juvenile is committed to the SDOC, he or she is assigned to a diagnostic program at Arizona Youth Center [AYC] in Tucson or Adobe Mountain School [AMS] near Phoenix. During the diagnostic evaluation period, which generally lasts from 4 to 6 weeks, the child receives intensive social counseling as well as academic and psychological testing. At the conclusion of the diagnostic stage, each child's performance is evaluated at a staff meeting, and recommendation as to future placement is made to the Youth Hearing Board.[11]

Placements by the Youth Hearing Board may include assignment to a group or foster home, a halfway house, or one of the three state juvenile facilities. Each SDOC institution forwards a progress report on its wards to the Youth Hearing Board every 3 months.[12] At the end of 6 months each juvenile is entitled to a hearing, before the board, to review his placement and to determine his likelihood of success on parole.[13] A recommendation for parole may be submitted at any time, regardless of the review dates.[14] Additionally, a significant number of juveniles are conditionally released by the department at the end of the diagnostic period.[15]

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would have amended section 8-242 to authorize the juvenile court to make unconditional commitments of youths to the SDMR regardless of whether they would be classified as dangerous to themselves or others. The bill was vetoed, however, by Governor Jack Williams on May 21, 1971, with the following comment by the Governor:

> This bill has the potential of placing an immediate increased burden upon our appropriate institutions which could be beyond their present capabilities. This would not only be a disservice to new admittees, but could well disrupt programs now serving mentally retarded children. If this type of procedure is to be followed prior provisions should be made so that the resulting responsibilities of the institutions may be effectively performed.

ARIZ. H. JOUR. 1076, 30th Ariz. Legis., 1st Sess. (1971).

10. In 1972, only about 7 percent of the juveniles committed to the SDOC had no or only one prior court referral. In the same year, the average for all committed juveniles was seven prior court appearances. ARIZONA STATE DEPARTMENT OF CORRECTIONS, CHARACTERISTICS OF OFFENDERS 42 (June 1973) (hereinafter cited as CHARACTERISTICS OF OFFENDERS).

11. Interview with John Kohl, Superintendent, Arizona Youth Center, in Tucson, Nov. 6, 1973; interview with John McFarland, *supra* note 9.

The recommendation of the juvenile court as to placement is taken into consideration by the Youth Hearing Board, but is not binding. *Id.*; *see* note 9 *supra.*

12. STATE DEP'T OF CORRECTIONS, YOUTH HEARING BOARD PROCEDURES 1 (Tent. Draft Nov. 8, 1973) [hereinafter cited as YHB PROCEDURES].

13. Interview with John McFarland, *supra* note 9.

14. YHB PROCEDURES, *supra* note 12, at 1.

15. In 1972, for example, approximately 15 percent of the juveniles awarded to the AYC diagnostic center were conditionally released at the termination of the diagnostic

The Department of Corrections may retain jurisdiction over committed juveniles until age 21.[16] Few wards, however, actually are detained by the department until that time. The average period of institutionalization is approximately 6 months,[17] after which most of the detained juveniles are released on parole. Although few juveniles are confined until they are 21, the threat of further detention always exists. Indeed, most correctional personnel interviewed expressed the belief that the use of "indeterminate" commitments helps motivate a juvenile to work towards rehabilitation.[18] If a minor is committted for only 6 months, some correctional officials maintain, he will not be responsive to rehabilitation, since he knows he can "sit out" his fixed term and be released.[19]

One of the difficulties with the indeterminate commitment, however, is that a minor may be confined for a longer period than may be reasonable considering the nature of his offense. A potential 6-year sentence facing the 15-year-old delinquent charged with petty theft would be very harsh. Although the purpose for which the juvenile is confined may be rehabilitative, the end result is, in a sense, punitive, in that the minor is deprived of his freedom. A sentencing process which recognized the advantages of the indeterminant commitment,

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stage. Interviews with John Kohl, Superintendent, Arizona Youth Center, in Tucson, Nov. 6, 1973 & May 14, 1974. During the first quarter of 1974, a study conducted by AYC personnel revealed that more than 29 percent of the juveniles admitted during that period had been placed in a group home, foster home, or halfway house following the diagnostic stage. *Id.*

16. ARIZ. REV. STAT. ANN. § 8-246(B) (1974). Prior to its amendment in 1973, section 8-246(B) provided that "commitments to the department of corrections shall be for the term of the child's minority. . . ." When the age of majority was lowered to 18 by constitutional amendment in 1972, section 8-246(B) was left unchanged. Subsequent legislation, effective August 8, 1973, amended that section to provide for commitment to the SDOC until age 21. Ch. 162, § 1, [1973] Ariz. Sess. Laws 1598, 1599.

In July 1973, Richard Louis Hoover, a juvenile committed to the SDOC in February of that year, brought a petition for writ of habeas corpus in the Supreme Court of Arizona demanding his release from the Industrial School at Fort Grant. Hoover, who had just turned 18, argued that, as a result of the constitutional amendment, the SDOC had no authority to confine him beyond his 18th birthday. The Arizona court agreed and ordered Hoover's release. Hoover v. Department of Corrections, 109 Ariz. 485, 512 P.2d 594 (1973).

Approximately 460 juveniles, committed to the SDOC during the one year legislative hiatus (Aug. 13, 1972 to Aug. 7, 1973), may be affected by the *Hoover* decision. Since these wards were committed under the prior statute which authorized confinement only until age 18, these juveniles must be released when they reach their 18th birthday. The SDOC is attempting to place all such youths in a halfway house setting before they reach the age of 18 in order to ease their transition back to the community. Interview with Dr. A. LaMont Smith, Deputy Director, Research-Program Planning and Development, State Dep't of Corrections, in Phoenix, Feb. 7, 1974; *see* YHB PROCEDURES, *supra* note 12, at 4.

17. Interview with Richard Galbraith, Research Consultant, State Dep't of Corrections, in Phoenix, Feb. 7, 1974.

18. *See, e.g.*, interviews with G. Herman, D. Lawrence, Members of the Youth Hearing Board, in Phoenix, Feb. 7, 1974.

19. *See generally* R. CLARK, CRIME IN AMERICA 222-24 (1970). The indeterminate sentencing process has been the subject of considerable criticism. *See* Prettyman, *The Indeterminate Sentence and the Right to Treatment*, 11 AM. CRIM. L. REV. 7 (1972).

while maintaining a reasonable correlation between the offense charged and the length of incarceration, would be more acceptable. The *Uniform Juvenile Court Act*, for example, would place a 2-year limit on court orders committing delinquent or unruly children, with extensions of up to 2 additional years if necessary for the "treatment or rehabilitation of the child."[20]

Another difficulty which arises in considering the propriety of indeterminant commitments is the possibility that a juvenile may be incarcerated for a longer period than an adult charged with the same offense. In contrast to the potential 6-year sentence facing a 15-year-old delinquent accused of petty theft, an adult charged with an identical crime can be sentenced to a maximum of 6 months in jail, in addition to a $300 fine.[21] Most courts confronted with the equal protection issue, however, have upheld indeterminate sentences for juveniles.[22] In a Texas case, for example, a 16-year-old boy was committed to the Texas Youth Council for carrying a switchblade knife.[23] Under the applicable Texas criminal statute, an adult convicted of the same offense was subject to no more than 1 year in prison and a $500 fine.[24] Finding a reasonable relationship between the legislative purpose for indeterminate sentencing and the use of age as the classifying trait, the Texas court suggested that:

> The Legislature could reasonably have concluded that children, as a class, should be subject to indefinite periods of confinement, not to extend beyond their twenty-first birthday, in order to insure sufficient time to accord the child sufficient treatment of the type required for his effective rehabilitation. This conclusion might be based on physiological and psychological differences between children and adults, the types of crimes committed by children, their relation to the criminal world, their unique susceptibility to rehabilitation, and their reaction, as a class, to confinement and discipline, as well as reformative treatment.[25]

Nevertheless, even under the guise of treatment, it seems fundamentally unfair to impose a harsher penalty on a juvenile than may be imposed on an adult for the same offense. A requirement that a ju-

20. UNIFORM JUVENILE COURT ACT § 36(b).
21. ARIZ. REV. STAT. ANN. § 13-671(b) (Supp. 1973); *Id.* § 13-1645 (1956).
22. *See, e.g.*, United States *ex rel.* Wilson v. Coughlin, 472 F.2d 100 (7th Cir. 1973); *In re* Herrera, 23 Cal. 2d 206, 143 P.2d 345 (1943); *In re* Tyler, 262 So. 2d 815 (La. Ct. App. 1972); Smith v. State, 444 S.W.2d 941 (Tex. Civ. App. 1969).
23. Smith v. State, 444 S.W.2d 941 (Tex. Civ. App. 1969).
24. Ch. 9 [1887] Tex. Acts 6, now TEX. PENAL CODE art. 46.02 (1973).
25. 444 S.W.2d at 945. In *In re* Wilson, 438 Pa. 425, 264 A.2d 614 (1970), the Pennsylvania supreme court held that a longer sentence for a juvenile was a violation of due process where juveniles and adults were confined in the same institution. The court set three conditions which must be met if longer periods of institutionalization are imposed for juveniles:
1. the juvenile must have full notice of all factors upon which the state will base

venile's confinement may not exceed the length of incarceration which an adult could receive for the same offense would substantially reduce the likelihood of disparate sentencing.[26]

B. THE JUVENILE CORRECTIONAL PROGRAMS

Arizona's juvenile correctional facilities include Arizona Youth Center, Adobe Mountain School, and Alpine Conservation Center.[27] In addition, juveniles are placed in privately-operated child care facilities licensed by the Department of Economic Security and under contract to the SDOC.[28] Juveniles who are thought to have severe psy-

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the adjudication of delinquency;

2. the ultimate conclusions which form the basis for the adjudication must be set forth;

3. the juvenile must receive appropriate rehabilitative care while institutionalized. *Id.* at 618, 264 A.2d at 428. The Youth Corrections Act, 18 U.S.C. §§ 5005 *et seq.* (1970), which authorizes indeterminate sentences of up to 6 years, has been consistently upheld against both due process and equal protection attacks. *See* Guidry v. United States, 433 F.2d 968 (5th Cir. 1970); Kotz v. United States, 353 F.2d 312 (8th Cir. 1965); Rogers v. United States, 326 F.2d 56 (10th Cir. 1963).

26. The argument for uniform sentencing for adults and juveniles, of course, cuts both ways. While the 15-year-old juvenile who is adjudged delinquent by the juvenile court may be confined for no more than 6 years regardless of his offense, his adult counterpart may be incarcerated for a substantially longer period. An adult first offender convicted of grand theft, for example, may be sentenced to 10 years in the state prison. ARIZ. REV. STAT. ANN. § 13-671(A) (Supp. 1973). An adult found guilty of robbery or aggravated assault while armed with a gun may be imprisoned from 5 years to life. Id. §§ 13-245(c), -643(A).

Comparison of actual sentences imposed provides an even more interesting analysis. It has been estimated, for example, that in Pima County the typical penalty imposed on an adult first offender for petty theft is a fine of $110. Interview with Andrew Silverman, Director, Student Defense Program, College of Law, University of Arizona, in Tucson, Apr. 8, 1974. In contrast, a juvenile appearing before the juvenile court for the first time on a similar charge will almost inevitably receive only a reprimand or be placed on probation. He usually will not be committed to the SDOC. *See* note 10 *supra.*

27. Time limitations for this study necessitated focusing on Arizona Youth Center and Adobe Mountain School.

28. As of January 1, 1974, there were 68 SDOC wards in group homes and 75 in foster homes. Interview with Richard Galbraith, *supra* note 17.

It is interesting to note that many SDOC wards are placed in group and foster homes following the diagnostic period. See note 15 *supra.* Since those juveniles could have been assigned to a group or foster home by the committing court, *see* ARIZ. REV. STAT. ANN. § 8-241(A)(2)(d) (1974), arguably the juvenile should not have been committed to the SDOC at all. If the ward can be returned successfully to a community setting after 4 weeks of close counseling and observation, it is conceivable that he did not need the structured environment of a state institution. Correctional workers maintain, nevertheless, that commitment itself may be rehabilitative as a "scare" technique. Interview with probation officers, Pima County Juvenile Court Center, in Tucson, Nov. 1, 1973. Moreover, juveniles who are committed undergo the intensive diagnostic stage before they are placed in the group or foster home.

If a juvenile is placed in a licensed facility by a juvenile court, the Department of Economic Security reimburses the county for the cost of his confinement. In contrast, the SDOC must pay the cost if it assigns a ward to such a facility. If the child is an SDOC ward, his parents ultimately may be liable for all expenses of his confinement. *See* ARIZ. REV. STAT. ANN. § 8-243 (1974). In 1972, parents of 21 per cent of all committed juveniles were assessed an average of $47.50 a month for support. CHARACTERISTICS OF OFFENDERS, *supra* note 10, at 40. The constitutional validity of section 8-243 may be subject to serious question, however. *Cf.* Department of Mental Hygiene v. Kirchner, 60 Cal. 2d 716, 388 P.2d 720, 36 Cal. Rptr. 488 (1964), *vacated* 380 U.S. 194, *reaffirmed*, 62 Cal. 2d 586, 400 P.2d 321, 43 Cal. Rptr. 329 (1965) (holding un-

chological problems may be assigned to the California Youth Authority for placement in an appropriate facility in that state.[29]

While the SDOC has expanded its use of group and foster homes for placement of their wards, many juveniles cannot be placed in such facilities. Some homes, for example, refuse to take delinquent children or children who have a history of running away.[30] Moreover, available accomodations at most group homes are very limited and in constant demand. The SDOC must compete with county probation departments and protective service divisions, who also place minors in child care facilities. The result is that many juveniles are assigned to one of the three state institutions simply because of a lack of other suitable facilities. If alternative accomodations were available to meet the particular needs of many of these juveniles, placement in a state institution might be unnecessary.[31]

1. *Arizona Youth Center*

Arizona Youth Center, located some 20 miles north of Tucson, is a minimum security facility designed to hold approximately 120 male juveniles.[32] There are no high fences or walls surrounding AYC, and outwardly it resembles a small junior college campus. The "campus" contains five small, self-contained cottages. When a juvenile first arrives at AYC, he is assigned either to cottage 1, the diagnostic center, or cottage 2, the intensive program unit. Both of these cottages are surrounded by a high fence, and all outside doors are continually locked.[33]

Although a juvenile's scholastic education is interrupted during the diagnostic period, the ward is immediately placed in the AYC school if he subsequently is assigned to one of the treatment cottages.[34] The

constitutional a California statute requiring relatives of a committed mental patient to pay the costs of institutionalization).

29. As of January 1, 1974, 14 juveniles were assigned to the California Youth Authority. One male juvenile has been placed in the Ingleside Mental Health Center in Rosemead, California, which handles only psychotic or violent children. Interview with John Sloss, Bureau of Resources, Dep't of Corrections, in Phoenix, Feb. 7, 1974.

30. *See* ARIZONA DEPARTMENT OF ECONOMIC SECURITY, DIRECTORY OF CHILD WELFARE AGENCIES LICENSED AS CHILD-PLACING AGENCIES AND/OR CHILD CARING INSTITUTIONS IN ARIZONA (Sept. 1973).

31. See text & notes 121-23 *infra*.

32. Interview with John Kohl, *supra* note 11. In May 1974, there were approximately 125 boys in the diagnostic and treatment programs at AYC. With the closing of the Industrial School at Fort Grant as a juvenile facility, most of the SDOC wards originally assigned to that facility have been transferred to AYC. Thus, some overcrowding has resulted. Cottage 1, for example, designed for 25 boys, housed 42 boys on May 14, 1974.

33. Rooms in Cottage 1 and in Cottage 2, which houses transferees from Fort Grant, can only be described as "cells." They are very small and drab. Each room contains one or two beds, a toilet, and occasionally a book shelf. There are bars on all the windows; even the glass windows above the doors have been replaced with bars.

34. Interview with John Kohl, *supra* note 11.

educational program at the school is extensive; classes are offered in language arts, reading, social studies, science, music, art, and mathematics. Class size generally is limited to seven or eight.[35] The school has a wide range of texts and other materials, as well as a small library. Wards in the treatment cottages are allowed to check out as many books as they wish from the library.[36] Classes are scheduled from 8:30 a.m. to 3:10 p.m., and each child has a lunch and recess periods, in addition to a free hour during the day when he is not required to attend any classes.[37]

Disciplinary measures at AYC generally are limited to privilege restrictions and room confinement. A ward may be placed in "lockup" (locked in his room for a specified period) for eloping, initiating a fight, or using or possessing a weapon.[38] The boy will usually be required to remain in his room for 2 or 3 days, although there is no established maximum. During lockup, the ward is allowed to leave his room for showering, exercise, and group therapy. No other wards are permitted to visit a juvenile who is confined to his room. The boy also misses classes while in lockup.

In accordance with SDOC policy, the use of corporal punishment is officially prohibited.[39] Physical restraint may be used only when necessary to prevent escape or injury to others. Additionally, cottage counselors and other staff members are not allowed to administer any form of drugs to the wards. Chemotropic drugs such as thorazine, stel-

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35. Interview with Grant Wolfe, Instructor, Arizona Youth Center, in Tucson, May 14, 1974.

Approximately 64 percent of the juveniles committed to the SDOC have tested reading levels more than two grades below their chronological grade level. SDOC, SUMMARY OF READING LEVELS (Oct. 22, 1973). It is claimed that due to the individualized instruction at AYC many wards have experienced significant increases in their reading levels during their stay at the center. Interview with John Kohl, Superintendent, Arizona Youth Center, in Tucson, May 14, 1974.

36. Interview with Pamela Miller, Staff Librarian, Arizona Youth Center, in Tucson, May 14, 1974.

37. Although educational programs for the older wards are very limited, some juveniles attend a prevocational training program at the University of Arizona.

38. Interviews with cottage counselors, Arizona Youth Center, in Tucson, May 14, 1974.

39. STATE DEP'T OF CORRECTIONS, POLICY STATEMENT No. 70-34 (Oct. 19, 1970) provides:

> It is the policy of the Department of Corrections to provide care and treatment programs designed to achieve optimum rehabilitation of the individual inmate or ward while simultaneously striving to maintain the individual's sense of personal dignity. Certain forms of discipline operate to defeat the concept of dignity and conflict with basic departmental goals. *Physical restraint* will be used as a protective measure only when necessary to maintain custody, prevent injury to other inmates, wards, or staff members. *Physical abuse* of inmates and wards is prohibited. *Corporal punishment* is expressly forbidden under any circumstances. (emphasis original).

Several wards interviewed at AYC reported isolated instances of physical abuse (slapping, kicking, use of fists) by staff personnel in Cottages 1 and 2. Most wards said they were aware of no instances of physical abuse in the treatment cottages. Interviews with wards, Arizona Youth Center, in Tucson, May 14, 1974.

lazine, and milleral are given to a juvenile only when prescribed by a physician. Any medication which requires injections must be administered by the staff nurse.[40]

2. *Adobe Mountain School*

Adobe Mountain School, which is located north of Phoenix, provides diagnostic and treatment programs for female juvenile offenders and treatment programs for males.[41] Classes similar to those at AYC are conducted at AMS.[42] In contrast with the Arizona Youth Center, Adobe Mountain School is surrounded by a high chain link fence topped with barbed wire.[43] The reason for the increased security is the runaway problem at AMS. Runaways averaged 45 per month during 1974, an extremely high figure considering that the normal population of the school is about 140. SDOC Director John J. Morgan attributes the problem to a three-fold increase in the school population over the last year due to the conversion of the school from an institution exclusively for girls to a coeducational facility and to a change in the type of youths who make up the population. "We've got older more complex and more repetitive offenders. Most of these kids have committed felonies and were sent to us only after they've been through the whole route in county juvenile court, several of them more than once."[44] John Schuster, Deputy Director of the SDOC, has commented that "until the department's proposed medium-security prison for young adults is built, Adobe Mountain offers the only alternative to Arizona State Prison for the serious juvenile offender. Adobe Mountain is not really equipped to handle this type of offender. These juveniles come here, they assault us and commit new felonies while

40. Interview with Mary Buss, nurse, Arizona Youth Center, in Tucson, May 14, 1974.

There is no nurse or physician available at AYC on weekends or evenings. In Morales v. Turman, 364 F. Supp. 166 (E.D. Tex. 1973), confinement of juveniles in a state institution where a nurse was not available on the premises 24 hours-a-day was held to violate the juveniles' right to treatment under state and federal law. *Id.* at 175.

41. Formerly called Arizona Girls' School, AMS became coeducational in 1973. At present, AMS has no diagnostic facilities for juvenile males; all boys initially committed to the SDOC are assigned to AYC. At the end of the diagnostic period, however, a boy may be transferred to AMS. Interview with John Kohl, *supra* note 35.

42. See text & notes 34-37 *supra.*

43. Access to AMS is severely restricted. Visitors must announce their name and purpose at the outer main gate; the main gate then is unlatched electronically by the switchboard operator in the administrative building. The visitor then must pass through a second gate which also is unlatched by the operator. The prison-like atmosphere created by the double-locking gates and the high fence is attenuated somewhat by the absence of armed security guards.

44. Arizona Republic, Sept. 13, 1974, § A, at 24, col. 1. In 1972, 79.7 percent of the girls committed to the SDOC were determined to be incorrigibles or runaways. Approximately one-half of the 148 girls committed that year had no record of any delinquent acts. CHARACTERISTICS OF OFFENDERS, *supra* note 10, at 41-42.

here and the judges just send them back to us. They have no alternative other than the state prison."[45]

Adobe Mountain School employs a "behavior modification" program by which wards may earn privileges when they accumulate a specified number of points.[46] All wards are evaluated weekly and are awarded points for their performance in such areas as attitude, responsibility, impulse controls, and social skills. Specified point totals allow a ward such privileges as use of the hobby shop, late patio use, telephone calls, and visits to other cottages. Basic privileges such as general use of the patio and television room, recreation checkout, and visitation are available to all wards regardless of point totals.[47]

When a girl first arrives at AMS, she is assigned to Cottage B; thereafter, she may earn the right to transfer to Cottage A or D, which offer more privileges and fewer restrictions.[48] As long as a girl remains in Cottage B, she is not eligible for release on parole.[49] All wards at AMS receive a detailed list of acceptable and unacceptable behavior and of disciplinary measures when they arrive. Infractions are divided into those of major and those of minor consequence.[50] Major and minor consequence infractions differ, with respect to punishment, mainly in terms of bedtimes imposed and temporary loss of privileges.

C. RIGHTS OF THE INSTITUTIONALIZED JUVENILE

In recent years there has been some recognition that incarcerated individuals enjoy certain basic rights which are not forfeited once the

45. Arizona Republic, Sept. 13, 1974, § A, at 24, col. 1.

46. For an excellent discussion of the legal implications of the "token economy" as a behavior modification technique in the context of psychiatric care, see Wexler, *Token and Taboo: Behavior Modification, Token Economies and the Law*, 61 CALIF. L. REV. 81 (1973).

47. A ward who violates any of the cottage rules, however, may be deprived of all privileges for a limited time. Thus, a ward who is "insubordinate" loses all privileges for 24 hours and is restricted to her room.

48. Cottage D, for example, is located outside the main fence. Girls who live in Cottage D are permitted to leave the school on day pass and to date on weekends if they accumulate sufficient points. At the present time, only Cottage C is available for boys; thus, the privilege of transferring to a less restrictive facility is not available.

49. A girl may be assigned to a placement cottage if she receives a total of 200 points in 15 specific categories of conduct over a 4-week period and if she acquires satisfactory ratings 3 out of 4 weeks for impulse control and critical achievement goals. Adobe Mountain School, Policy Guidelines.

50. Disciplinary rules vary within each cottage. In Cottage B, for example, "minor consequence infractions include:

1. failing to have room cleaned by designated time;
2. improper dress;
3. horseplay;
4. leaving recreation or group therapy without permission;
5. failing to completely shut or completely open a room door;
6. unauthorized petty contraband.

"Major consequence" infractions include:

1. entering the office without permission;
2. communicating with another ward after 10:00 p.m.;
3. communicating with a ward who is on restriction;
4. any other behavior judged unacceptable by the staff.

prison gates slam shut.[51] Thus, the first amendment freedoms of speech, association, and religion have been held applicable to prisoners.[52] The requirement of procedural due process continues to make inroads in the sanctum of prison disciplinary proceedings,[53] and a handful of courts have even found conditions in the prisons violative of the eighth amendment prohibition against cruel and unusual punishment.[54] There is little evidence, however, that the rationale of prisoners' rights decisions is being applied to juvenile corrections.[55]

Once a juvenile is committed to the SDOC, he is subject to the control and supervision of the department and of the individual institution to which he is assigned.[56] Although the juvenile is still technically a ward of the court,[57] he must look to the correctional officials to see that his constitutional and legal rights are protected. Correctional administrators concerned with ensuring maximum security and discipline within the institutions, however, often fail to protect the ward's rights.

1. *Mail Restrictions*

At both Arizona Youth Center and Adobe Mountain School, incoming as well as outgoing mail is opened and inspected by the staff.[58] At AMS, mail from attorneys, courts, and SDOC officials must be opened by the ward in the presence of a staff member, but the mail is not examined by the staff members.[59] Wards at AMS may correspond only with persons on an approved mailing list. Residents of Cottage C may write to one friend and four family members if approved

51. *See generally* Edwards, *Foreward-Penitentiaries Produce No Penitents, Symposium—Prisoners' Rights*, 63 J. CRIM. L.C. & P.S. 154 (1972); Goldfarb & Singer, *Redressing Prisoner's Grievances*, 39 GEO. WASH. L. REV. 175 (1970).

52. *E.g.*, Northern v. Nelson, 315 F. Supp. 687 (N.D. Cal. 1970); Carothers v. Follette, 314 F. Supp. 1014 (S.D.N.Y. 1970); Glenn v. Wilkinson, 309 F. Supp. 411 (W.D. Mo. 1970).

53. *See, e.g.*, Howard v. Smyth, 365 F.2d 428 (4th Cir. 1966); Allen v. Nelson, 354 F. Supp. 505, 513 (N.D. Cal.), *aff'd mem.*, 484 F.2d 960 (9th Cir. 1973); Clutchette v. Procunier, 328 F. Supp. 767 (N.D. Cal. 1971).

54. *See, e.g.*, Anderson v. Nosser, 438 F.2d 183 (5th Cir. 1971); Wright v. McMann, 387 F.2d 519 (2d Cir. 1967); Holt v. Sarver, 300 F. Supp. 825 (E.D. Ark. 1969).

55. See, however, ARIZ. REV. STAT. ANN. § 8-207(A) (1974), where an adjudication of delinquency "shall not be deemed a conviction of crime or impose any civil disabilities ordinarily resulting from a conviction . . . ." Thus, if there is any justification for denying certain civil liberties to an adult prisoner, there would appear to be less justification in the case of a juvenile.

56. ARIZ. REV. STAT. ANN. § 8-246(A) (1974). See note 9 *supra*.

57. The juvenile court retains jurisdiction over the child until he attains the age of 21 or is discharged by the SDOC. ARIZ. REV. STAT. ANN. § 8-246 (1974).

58. Interview with John Kohl, *supra* note 11; Adobe Mountain School, Policy Guidelines. Mr. Kohl indicated that the mail policy at AYC was under reevaluation and may be discontinued. In recent years several adult prison systems have discontinued all mail censorship. *See* Singer, *Privacy, Autonomy, and Dignity in the Prison: A Preliminary Inquiry Concerning Constitutional Aspects of the Degradation Process in Our Prisons*, 21 BUFFALO L. REV. 669, 670 n.3 (1972).

59. Adobe Mountain School, Memorandum on Mail Procedures (Feb. 8, 1974) [hereinafter cited as AMS Mail Procedures].

on the list; girls in Cottage D may write to four friends and four family members if approved.[60] Correspondence with juveniles or adults in other correctional institutions is forbidden. AMS wards may write to a juvenile or adult on probation or parole if approved by a correctional service officer, the probation or parole officer, and the parent.[61] In contrast, juveniles at AYC are not restricted to corresponding with individuals on an approved mailing list.[62] Neither institution imposes any limitations on the total number of letters which a juvenile may send.[63]

Generally, institutional officials justify censorship and restrictions on mail for reasons of security, rehabilitation, and administrative convenience: uninspected mail may contain unlawful contraband or escape plans; unrestricted correspondence might allow a ward to communicate with a hardened criminal or former associate whose influence is viewed as nonrehabilitative; finally, reading a ward's mail may reveal insights into his behavior which may aid the staff in therapeutic efforts.[64]

Although the first amendment proscribes prior restraints on oral and written expression,[65] most courts have been reluctant to review censorship policies of penal institutions.[66] Recently, however, some courts have begun to closely examine prison mail restrictions and have required the state to justify such restrictions, by showing a substantial or paramount state interest or by demonstrating the existence of a clear and present public danger.[67] The United States Court of Appeals for the First Circuit, for example, has found that the need for prison security, though compelling, was not sufficient to justify the prison's refusal to send to the press an inmate's correspondence critical of the prison administration.[68] Recently, the United States Supreme Court, in a unanimous decision, struck down California's prison mail censorship

60. Adobe Mountain School, Policy Guidelines.

61. AMS Mail Procedures, *supra* note 59.

62. Interview with Steven Bell, Correctional Service Officer, Arizona Youth Center, in Tucson, May 14, 1974.

63. At AMS, the state pays the cost of mailing two letters per week; the cost of additional letters and stamps must be paid by the ward. AMS Mail Procedures, *supra* note 63. This policy appears to be a regulation unique to AMS, as AYC pays the cost of all letters mailed by a ward. Interview with Steven Bell, *supra* note 62.

64. *See generally* J. PALMER, CONSTITUTIONAL RIGHTS OF PRISONERS 26 (1973).

65. *See* New York Times Co. v. United States, 403 U.S. 713 (1971); Near v. Minnesota, 283 U.S. 697 (1931).

66. *See, e.g.*, Brown v. Wainwright, 419 F.2d 1308 (5th Cir. 1969); Bethea v. Crouse, 417 F.2d 504 (10th Cir. 1969); Numer v. Miller, 165 F.2d 986 (9th Cir. 1948). *See also* Fox, *The First Amendment Rights of Prisoners*, 63 J. CRIM. L.C. & P.S. 162 (1972).

67. *See, e.g.*, Brown v. Peyton, 437 F.2d 1228 (4th Cir. 1971); Jackson v. Goodwin, 400 F.2d 529 (5th Cir. 1968); Marsh v. Moore, 325 F. Supp. 392 (D. Mass. 1971).

68. Nolan v. Fitzpatrick, 451 F.2d 545 (1st Cir. 1971). While recognizing the prison's legitimate interest in ensuring security, the court held that the prison's total ban on inmate correspondence to the news media concerning prison affairs imposed a greater restriction on first amendment rights than was essential to the furtherance of that interest. *Id.* at 549-50.

regulations as an "impermissible restraint of First Amendment liberties."[69] The Court declined to reach the issue of whether prisoners enjoy first amendment rights; rather, the court held that the prison regulations violated the first amendment rights of the nonprisoner recipient.[70]

It would seem particularly difficult to justify wholesale inspection and censorship of mail at Arizona's juvenile institutions. None of the wards at AYC or AMS have been convicted of a crime, and many have never been adjudged delinquent.[71] While the safety of the personnel and other wards may justify reasonable inspections of incoming mail to discover weapons or other contraband,[72] officials should use methods of inspection which involve the least possible amount of intrusion.[73] In most cases, physical handling of a letter would reveal an object which might be used as a weapon. In doubtful cases, the ward could be required to open a letter or package in the presence of a staff member.[74]

Moreover, there would seem to be no clear justification for placing a limit on the number of persons with whom a juvenile may correspond. Since the juvenile is completely cutoff from his familiar world while incarcerated, the state's interest in rehabilitation should warrant an expansion of the ward's opportunities to communicate.[75] The fears of

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69. Procunier v. Martinez, 94 S. Ct. 1800, 1811 (1974).

70. Whatever the status of prisoner's claim to uncensored correspondence with an outsider, it is plain that the latter's interest is grounded in the First Amendment guarantee of freedom of speech. And this does not depend on whether the nonprisoner correspondent is the author or intended recipient of a particular letter, for the addressee as well as the sender of direct personal correspondence derives from the First and Fourteenth Amendment protection against unjustified governmental interference with the intended communication.

Id.

71. In 1972, 25 percent of the boys and 80 percent of the girls committed to the SDOC were committed as incorrigibles. Approximately one-half of the girls committed that year had no record of delinquent acts. CHARACTERISTICS OF OFFENDERS, *supra* note 10, at 41-42.

72. Weapons and contraband do not fall within the gambit of protected speech; thus, inspection of a ward's mail for such items may raise fourth amendment, but not first amendment, problems. Marsh v. Moore, 325 F. Supp. 392 (D. Mass. 1971).

The *Model Rules and Regulations on Prisoners' Rights and Responsibilities* promulgated by the Boston University School of Law Center for Criminal Justice in 1973 provide for opening and inspecting all incoming mail to discover weapons or contraband. *Id.* rule IC-2, alternative 2 [hereinafter cited as MODEL RULES ON PRISONERS' RIGHTS]. Outgoing mail would be opened or inspected only upon a showing of probable cause and a proper warrant. *Id.* rule IC-1b; *accord*, Palmigiano v. Travisono, 317 F. Supp. 776, 791 (D.R.I. 1970).

73. The doctrine of the least restrictive means would seem to be mandated in cases involving first amendment freedoms. *See* United States v. O'Brien, 391 U.S. 367 (1968); United States v. Robel, 389 U.S. 258 (1967). *See generally* Note, *Prison Mail Correspondence and the First Amendment*, 81 YALE L.J. 87, 94-104 (1971); Note, *Less Drastic Means and the First Amendment*, 78 YALE L.J. 464 (1969).

74. Where a ward is suspected of using drugs, a thorough examination of incoming mail would appear to be justified. Even a visual inspection of the correspondence, however, may not reveal the presence of drugs. *See* Palmigiano v. Travisono, 317 F. Supp. 776, 783-84 (D.R.I. 1970) (testimony in the trial court indicated that a solution containing LSD can be placed on a piece of paper, often without leaving a visible stain).

75. *See* Fox, *supra* note 66, at 173.

correctional officials that they would not have sufficient personnel to inspect the mail if there were no volume limitations seem insubstantial when placed in opposition to the ward's first amendment rights.[76]

2. *Privacy and the Fourth Amendment*

When a juvenile arrives at one of the Arizona juvenile institutions, he is searched thoroughly by a staff member.[77] Throughout his stay at the institution, his person, belongings, and room are subject to search at any time at the discretion of the staff.[78] If a ward is suspected of using drugs, a urinalysis may be conducted without the juvenile's consent and without prior judicial authorization.[79] After a ward returns to AYC from a weekend pass, a frisk of his outer clothing is conducted.[80]

Although the fourth amendment guarantees the security of the person from unreasonable searches and seizures, no court has applied the full sweep of the amendment to incarcerated prisoners. One would be hard pressed to argue that the prisoner's cell is equivalent to one's own home, and that the prisoner may refuse entry to his cell if a proper warrant is not shown. Clearly, the institution's interest in security would appear to justify limited intrusions. Nevertheless, the necessity for more serious intrusions of a ward's person or effects would seem far less compelling in the case of a state juvenile institution than an adult prison.[81]

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76. Fears of increased administrative problems created by unlimited mailing privileges may be misplaced. *See* UNITED STATES BUREAU OF PRISONS, THE JAIL: IT'S OPERATION AND MANAGEMENT 131 (1971); Comment, *Prisoner Correspondence: An Appraisal of the Judicial Refusal to Abolish Banishment As a Form of Punishment*, 62 J. CRIM. L.C. & P.S. 40, 42 n.25 (1971).

77. Interview with John Kohl, *supra* note 35.

At AMS, the search is conducted individually and in private. At AYC, however, several wards reported that they were required to strip and be searched in front of the other wards. There is no valid justification for such humiliating treatment; all strip searches should be handled with as much privacy as possible. *See* Schwartz, *Deprivation of Privacy as a "Functional Prerequisite": The Case of the Prison*, 63 J. CRIM. L.C. & P.S. 229 (1972).

78. Adobe Mountain School, Policy Guidelines; interviews with correctional staff, Arizona Youth Center, in Tucson, May 14, 1974.

The MODEL RULES ON PRISONERS' RIGHTS, *supra* note 73, rule ID-1, would permit routine room inspections without prior authorization. The inspection is limited to a visual examination of the inmate's cell. Rule ID-3 would allow a weapon frisk based only on the suspicion of the officer that the inmate is carrying a weapon. As the comment to the rule states: "The gravity of the threat inherent in a concealed weapon and the minimal invasion of privacy involved in a frisk are both factors that permit the easy test of "suspicion" which must be met before a frisk."

79. Adobe Mountain School, Policy Guidelines.

80. Some wards, nevertheless, are able to smuggle contraband items into the Center by leaving the items near the entrance when they return to AYC. Since AYC has an "open campus" policy, the wards can later return to the spot and retrieve the contraband.

81. In 1973, less than 10 percent of all juveniles committed to the SDOC were charged with crimes against persons. Information compiled from statistics supplied by Richard Galbraith, Research Consultant, State Dep't of Corrections. For the 1972 statistics, which are quite similar, see CHARACTERISTICS OF OFFENDERS, *supra* note 10, at 41.

3. *Disciplinary Proceedings*

State and federal courts generally have been reluctant to review intraprison disciplinary proceedings, holding such review to be a function of the executive branch.[82] This traditional "hands off" doctrine, however, has been seriously eroded in recent years. A number of courts have construed the procedural due process requirements of the fifth and fourteenth amendments applicable to prison disciplinary actions.[83] Hence, prisoners confronted with disciplinary sanctions have been held to be entitled to notice of the accusation and the evidence to be used against him.[84] Additionally, prisoners have been held to be entitled to a hearing before an impartial tribunal, to have an opportunity to confront witnesses, and to be assisted by counsel or a lay advisor.[85] Although courts may increasingly see the value and necessity of such safeguards in juvenile disciplinary proceedings,[86] intra-institution safeguards at Arizona's juvenile institutions are woefully inadequate.

a. *Fair Notice.* Each ward at AMS is given a lengthy list of regulations applicable to the cottage to which the ward is assigned. In addition to conduct specifically proscribed, however, Cottage B regulations also prohibit "any other behavior judged unacceptable by the staff."[87] It would seem that at least some of the advantages gained by the detailed list of prohibited activity would be lost by the use of such a broad regulation. Such a broad prohibition is so vague that it offers no useful guidance for a ward.[88]

At Arizona Youth Center, no written list of proscribed conduct or penalties is distributed or made available to the boys.[89] When they arrive, most wards verbally are informed that they are not allowed to

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82. *See* J. PALMER, CONSTITUTIONAL RIGHTS OF PRISONERS 95 (1973).

83. *See, e.g.*, Landman v. Royster, 333 F. Supp. 621 (E.D. Va. 1971); Clutchette v. Procunier, 328 F. Supp. 767 (N.D. Cal. 1971); Meola v. Fitzpatrick, 322 F. Supp. 878 (D. Mass. 1971).

84. *See* Clutchette v. Procunier, 328 F. Supp. 767 (N.D. Cal. 1971) (prisoner entitled to 7 days notice of disciplinary hearing).

85. *See* Landman v. Royster, 333 F. Supp. 621, 651-54 (E.D. Va. 1971).

86. *See, e.g.*, Morales v. Turman, 364 F. Supp. 166, 174 (E.D. Tex. 1973); *In re* Owens, 9 CRIM. L. REP. 2415 (Cir. Ct. Cook County, Ill., July 9, 1971), *noted in* 52 B.U.L. REV. 480 (1972).

87. For some examples of proscribed behavior, see note 49 *supra*. Conduct at AMS may be punishable although it would not be deemed unacceptable behavior outside the institution. Horseplay, use of profanity, and leaving recreation early are all minor infractions which may bring specified penalties. Thus, actual notice of the proscribed activity would seem essential. *Cf.* MODEL RULES ON PRISONERS' RIGHTS, *supra* note 72, at 114-15.

88. *See* Landman v. Royster, 333 F. Supp. 621 (E.D. Va. 1971). While the court in *Landman* held such offenses as "misbehavior" or "misconduct" impermissably vague, it nevertheless upheld such offenses as "insolence," "harassment," and "insubordination." *Id.* at 656.

89. Interview with John Kohl, *supra* note 35.

leave the center, smoke cigarettes, initiate fights, or possess a weapon.[90] Generally, AYC staff members opposed the use of detailed written rules and regulations. Most felt that such lists would inhibit individual treatment and were contrary to the philosophy of the center that life in the correctional setting should, where possible, emulate home life.[91]

The nature and degree of punishment imposed also is subject to great discretion. Usually, a ward who is returned after "eloping" is placed in lockup for 2 or 3 days.[92] Some wards, however, are merely returned to their rooms with a reprimand or under restriction.[93] Thus, the absence of standards for assessing behavior may encourage arbitrary imposition of punishment by the correctional staff. If the cottage counselor felt that a boy ran away from the institution because he was homesick, a rule imposing lockup for any "elopement" not only would be ineffective as a deterrent but also could be counter-rehabilitative. Nevertheless, it would appear that, as a minimum, the ward should have full notice of any conduct which could result in serious penalties.

b. *Disciplinary Hearings.* There are no provisions for hearings in disciplinary actions at AMS or at AYC. A child may lose privileges or be confined to his room by the decision of any staff member, with no review procedure available. Certainly, there are several instances where immediate disciplinary action may be necessary, and a requirement of a prior hearing might impede rehabilitative efforts. Thus, where a child is unruly or verbally agressive, he may be told to go to his room to "cool off."[94] If the child is to be confined for more than a short time, however, a hearing should be held within a reasonable time. While, considering the nature of the offense and the punishment, the formality of a full due process hearing would not seem appropriate, the ward should at least have an opportunity to question witnesses and present his own version of the incident.

More extensive procedures seem required where the commission of an offense could result in the extension of the juvenile's overall insti-

90. Interview with correctional staff, Arizona Youth Center, in Tucson, May 14, 1974.
91. *Id.*
92. See text & note 38 *supra.*
93. Interview with correctional staff, *supra* note 90.
94. Adobe Mountain School Policy Guidelines require that a wards given a "cooling off" period must immediately go to their room and remain there with the door closed until a staff officer contacts them. A ward also may be restricted to an isolation room for up to 3 days. In such a case, the ward is placed in a small bare room containing only a mattress and is allowed to leave the room only for showers. Although the staff psychologist at AMS felt that in certain cases such isolation was necessary, he felt that extended periods of 2 and 3 days are unwarranted. Interview with Dr. Larry Irey, Staff Psychologist, Adobe Mountain School, in Phoenix, Feb. 7, 1974. *See generally* Nelson v. Heyne, 355 F. Supp. 451 (N.D. Ind. 1972) (confinement in isolation room for 5 to 30 days, depending on the infraction, held unconstitutional); Lollis v. New York State Dep't of Social Serv., 322 F. Supp. 473 (S.D.N.Y. 1970) (confining 14-year-old girl in "strip cell" for 2 weeks held unconstitutional).

tutional confinement. Considering the severity of such punishment, full due process rights, including written notice of the alleged violation, notice of the evidence which will be presented, and an opportunity to cross-examine witnesses and present testimony or facts which might act to mitigate the offense, should be afforded the juvenile.[95]

D. The Incarcerated Juvenile's Right to Treatment

The "right to treatment" concept has received considerable legislative and judicial approval in recent years.[96] Essentially, the doctrine requires that if the parens patriae theory is used to deprive certain individuals of their liberty, those individuals have a right to treatment and rehabilitation. "To deprive any citizen of his or her liberty upon the altruistic theory that the confinement is for humane therapeutic reasons and then fail to provide adequate treatment violates the very fundamentals of due process."[97] Although conceived for the protection of mental patients, the doctrine of parens patriae has been applied to both adult and juvenile corrections.[98]

While the right to treatment generally denotes psychiatric assistance when applied to the mentally ill, it is not precisely clear what may be the proper means in the context of the institutionalized juvenile. Certainly, for the juvenile who has mental problems, psychiatric care would fall within the scope of required treatment. For the runaway, the incorrigible, and the petty thief, the answer is not so apparent. Arizona's juvenile correctional facilities implement, to a certain degree at least, the rehabilitative goal of juvenile corrections.[99] Juveniles at Adobe Mountain School and Arizona Youth Center are not kept

95. Hearings for serious offenses should be held before the Youth Hearing Board to ensure an impartial tribunal. The present policy of the board toward institutional discipline is to the contrary:

> The matter of proper disposition of disciplinary violations is a responsibility of each individual institution. It is not a proper consideration for the Youth Hearing Board, except insofar as institutional behavior and adjustment can establish appropriateness for denial or approval of parole status.

YHB Procedures, *supra* note 12, at 1.

96. *See, e.g.*, Rouse v. Cameron, 373 F.2d 451 (D.C. Cir. 1966); Wyatt v. Stickney, 325 F. Supp. 781 (M.D. Ala. 1971); ch. 227, § 1, [1973] Colo. Sess. Laws 827.

97. Wyatt v. Stickney, 325 F. Supp. 781, 785 (M.D. Ala. 1971) (Johnson, C.J.). *See also* Birnbaum, *The Right to Treatment*, 46 A.B.A.J. 499 (1960). The argument that a right to treatment exists frequently is grounded on the fact that procedural safeguards accompanying state commitment processes often are not rigorous. *See* Morales v. Turman, 364 F. Supp. 166, 175 (E.D. Tex. 1973); Note, *Right to Treatment for Juveniles?*, 1973 Wash. U.L.Q. 157, 162.

98. *See, e.g.*, Creek v. Stone, 379 F.2d 106 (D.C. Cir. 1967); Morales v. Turman, 364 F. Supp. 166, 174-75 (E.D. Tex. 1973); Holt v. Sarver, 309 F. Supp. 362 (E.D. Ark. 1970).

99. It should be noted that this does not appear to be the case uniformly across the country. The court in Morales v. Turman, 364 F. Supp. 166 (E.D. Tex. 1973), found that Texas Youth Council wards were abused physically, placed in solitary confinement, and often denied casework and psychological services. *Id.* at 173-75. *See also* Lollis v. New York State Dep't of Social Serv., 322 F. Supp. 473 (S.D.N.Y. 1970).

merely in protective custody until their discharge. All juveniles in the treatment phase attend classes and participate in cottage activities. Group therapy and psychological counseling is provided regularly for all wards. As soon as a ward demonstrates an ability to perform effectively in a less structured environment, he or she will be placed in a community setting. At both institutions, reasonable effort appears to be made to return the wards successfully to the community as soon as possible.

Nevertheless, serious deficiencies do exist in the operational structures of Arizona's juvenile facilities. Juveniles assigned to the diagnostic cottage and the intensive treatment unit at AYC live in prison-like conditions.[100] These wards, unlike other cottage residents, usually are restricted to the cottage or the immediate grounds within the fence. There is no opportunity for them to attend classes. Those in the intensive treatment program are usually too old for the educational program at the AYC school.[101] There is no reason, other than administrative convenience, why all new arrivals at AYC, regardless of the offense for which they were committed, must be assigned to the diagnostic center. From the ward's court records and previous evaluations by probation officers, an initial determination could be made of the youth's propensity for violence or escape. Based on these findings, those juveniles who clearly do not represent a danger to anyone could be assigned to the less restrictive treatment cottages.[102] The child still can undergo diagnostic evaluation in the treatment cottage, but he will be spared the experience of having lived in cottage 1.

E. ALTERNATIVES TO INSTITUTIONALIZATION

It has been observed that "[t]he good of the State requires a child to be removed from a community only when his delinquency is such that he has become a danger to society either because of his own conduct or his influence upon others."[103] Arizona juvenile courts increasingly appear to adopt that view. The total number of commitments to the Department of Corrections has declined dramatically since 1969. In that year, 1000 juveniles were committed to the department by Arizona juvenile courts; in contrast, 430 juveniles were committed to the SDOC in 1973.[104] Although commitments from all Arizona counties

100. *See* notes 31-33 *supra.*
101. Interview with John Kohl, *supra* note 35.
102. *See* Morales v. Turman, 364 F. Supp. 166, 174 (E.D. Tex. 1973) (initial placement of all wards in a maximum security unit regardless of juvenile's dangerousness constitutes a violation of the fourteenth amendment).
103. *In re* Walter, 172 N.W.2d 603, 606 (N.D. 1969).
104. CHARACTERISTICS OF OFFENDERS, *supra* note 10, at 38; interview with Richard Galbraith, *supra* note 17.

has declined, reduced commitments from the state's two most populous counties represent the major portion of the 4-year decrease.[105]

The reduction in the number of committed juveniles would seem to be attributable primarily to the development of community-based resources for handling juveniles.[106] Juvenile courts in Arizona increasingly are beginning to examine other alternatives to institutional confinement for minor offenders. Emphasis on probation services and expanded use of group and foster homes have contributed significantly to the lower commitment figures. Nevertheless, many juveniles who properly could be handled in a community-based treatment program if such a program were available still are committed to the SDOC. Arizona's juvenile courts committed 154 young persons to the SDOC in 1973 whose only "offense" was being a runaway or incorrigible.[107] Some 50 percent of the girls committed to the department in 1972 had no record of delinquent acts;[108] yet, their record now reflects the stigma of commitment to a state girls' school. Although several judges and correctional officials interviewed favored removing those children classified merely as incorrigible and runaway from the jurisdiction of the juvenile court, little has been accomplished in this direction in Arizona. Both Texas and Illinois, however, recently have amended their juvenile codes to prohibit commitment of children who are merely in need of supervision.[109] A similar prohibition in Arizona would compel juvenile courts and county probation departments to seek alternative treatment programs for runaways, truants, and incorrigibles.

Small residential treatment centers, such as Achievement Place in Kansas and the Pinehills Project in Utah, offer a viable alternative to the larger state institution.[110] Usually locally based, these facilites al-

105. The most significant drop in commitments occurred in Pima County where total commitments declined from 280 in 1969 to 24 in 1973. ANNUAL REPORT OF THE SUPERIOR COURT OF PIMA COUNTY ARIZONA 64 (1972). Maricopa County commitments also declined substantially from 553 in 1969 to 237 in 1973. Interview with Richard Galbraith, *supra* note 15.

106. *See* CHARACTERISTICS OF OFFENDERS, *supra* note 10, at 38.

107. Approximately 75 juveniles were committed as runaways and 79 as incorrigibles. Four juveniles were committed for truancy and one for curfew violation. Interview with Richard Galbraith, *supra* note 17.

108. CHARACTERISTICS OF OFFENDERS, *supra* note 10, at 42.

109. TEX. FAM. CODE ANN. § 54.04(g) (Supp. 1973); ILL. REV. STAT. ch. 37, § 705-2(1)(a) (Supp. 1973). *See generally In re* E.M.D., 490 P.2d 658 (Alas. 1971).

110. *See* THE PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND THE ADMINISTRATION OF JUSTICE, TASK FORCE REPORT: CORRECTIONS 38 & 39 (1967) [hereinafter cited as TASK FORCE REPORT]; Phillips, Phillips, Fixsen & Wolf, *Achievement Place: Modification of the Behaviors of Pre-Delinquent Boys Within a Token Economy*, 4 J. APPLIED BEHAVIOR ANALYSIS 45 (1971). *See also* Flackett & Flackett, *Criswell House: An Alternative to Institutional Commitment for the Juvenile Offender*, 34 FED. PROB. 30 (Dec. 1970); Gerard, *Institutional Innovations in Juvenile Corrections*, 34 FED. PROB. 37 (Dec. 1970); Skoler, *Future Trends in Juvenile and Adult Community-Based Corrections*, 21 JUV. CT. JUDGES J. 98 (1971).

William Ryan, Deputy Commissioner of the Kentucky Department of Child Welfare has commented on the juvenile treatment program in his state:

low wards to attend public schools, secure gainful employment, and participate in the therapy program at the center. At the Pinehills Project, for example, all boys were employed by the city of Provo, Utah, at a nominal wage, to work on city streets, golf courses, and other community projects. In the afternoon, boys attended group meetings at the center; in the evening, the boys were allowed to return to their homes.[111] Arizona's four juvenile halfway homes[112] represent an important step toward the development of community treatment centers. Although the facilities currently are used for juveniles released on parole from the SDOC, similar facilities could serve as alternative placements for the incorrigible child.

Other communities have achieved notable success working with local runaway homes. Arizona's first runaway home will begin operation soon in Tucson.[113] The home will be limited to 10 juveniles and will provide food, shelter, and counselling for runaway youths.[114] Although most runaway homes are designed to work with juveniles before they enter the juvenile court system, assignment to a runaway home for counselling and therapy should be an available option for the juvenile court judge.

F. CONCLUSIONS AND RECOMMENDATIONS

Arizona's juvenile correctional institutions are a far cry from the reformatories and training schools provided for young offenders in many other states. The closing of the Industrial School at Fort Grant, a prison-like, high security institution, as a juvenile facility may typify the attitude which currently prevails in the Department of Corrections, that locally-based, rehabilitative-oriented facilities serve a more useful purpose. In the near future, the SDOC plans to double the number of halfway homes for juvenile parolees; with sufficient financial resources, community treatment centers will be constructed for juveniles.[115] But operations of the institutions currently operating must be subject to

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> We are operating a series of ten, small, decentralized intensive residential treatment centers. Each of these smaller centers has a maximum capacity of 40 youths, with a maximum stay of 6 months.
>
> . . . We recognize that the residential treatment centers are much more effective in working with delinquent youth than the large custodial type of facilities.

Hearings on the Juvenile Justice and Delinquency Prevention Act Before the Subcomm. to Investigate Juvenile Delinquency of the Senate Comm. on the Judiciary, 93d Cong., 1st Sess. 280 (1973).

111. TASK FORCE REPORT, *supra* note 110, at 39.

112. Columbus House and Wilson House in Tucson, and Diamond House and Portland House in Phoenix.

113. The home, called Open Inn, has received $32,500 in federal funds to begin operation. Arizona Daily Star, June 23, 1974, § A, at 5, col. 1.

114. *Id.*

115. Interview with John Kohl, *supra* note 35; interview with John McFarland, *supra* note 11.

greater professional, public and judicial scrutiny; juvenile institutions cannot escape the tides of change in philosophical and judicial thinking. In particular, the practice of sentencing juveniles to indefinite terms should be re-examined, and extension of a youth's stay in an institution only should be permitted upon a full hearing before the Youth Hearing Board. The arbitrariness of the current practices are counterproductive of a central goal of the juvenile justice system—fostering respect for the law in the youths being treated. Rehabilitation, always the theoretical cornerstone of the juvenile justice system, must not fail to maintain its rightful place in the beliefs of those who develop and administer "correctional" programs and institutions, or justifications for the system itself may vanish.