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PROCEDURE IN THE ILLINOIS JUVENILE COURT SYSTEM

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INTRODUCTION

As a result of several divergent factors, attorneys in private practice have increasingly been called upon to represent minors charged with delinquent conduct. One such factor is the increasing rate of juvenile delinquency, especially in suburban areas. Juvenile delinquency presently accounts for approximately one-half of all criminal offenses, and it is increasing more rapidly than the adult crime rate.[1] Another, and perhaps more important factor, is the abandonment of the historical informality found in the juvenile courts, and the corresponding recognition that juveniles have certain fundamental rights;[2] for example, a juvenile charged with delinquent conduct has the right to counsel.[3]

Since the United States Supreme Court's decisions in *Kent v. United States*[4] and *In re Gault*,[5] which essentially rejected the informality then prevalent in the juvenile courts and established that juveniles have certain fundamental rights, the trend has been to extend to juveniles those procedural rights similarly accorded to adults in criminal proceedings.[6] However, despite this trend, the objectives of the juvenile system remain protective rather than penal, and its procedures are intended to reform and rehabilitate rather than punish.[7] These ob-

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[1] *See e.g.*, Railsback, *Less Than the Sum of Its Parts*, 7 TRIALS 15, (Sept.-Oct., 1971). The author also points out that juvenile delinquency has increased by 90% in the 1960s.

Elliott, *Trends in Theories Regarding Juvenile Delinquency and Their Implications for Treatment Purposes*, FED. PROB. 31.3 Sept., 1967.

[2] *In re* Gault, 387 U.S. 1 (1967); Kent v. United States, 383 U.S. 541 (1966).

[3] This is expressly recognized in the Illinois Juvenile Court Act, ILL. REV. STAT. ch. 37, §701-20(1) (1971).

[4] 383 U.S. 541 (1966).

[5] 387 U.S. 1 (1967).

[6] For a discussion of the history, etc., *see, e.g.*, Comment, *A Balancing Approach to the Grant of Procedural Rights in Juvenile Court*, 64 NW. U.L. REV. 87 (1969-70). Many of the views expressed herein are based upon the author's experience in the Juvenile Court of Cook County as an assistant public defender and upon a discussion with judges and other officials of the Juvenile Court.

[7] *See, e.g., In re* Urbasek, 38 Ill. 2d 535, 232 N.E.2d 716 (1967). In People v. Crable, 80 Ill. App. 2d 243, 225 N.E.2d 76 (1967), the court held

jectives pervade the Illinois Juvenile Court Act, which provides, for example, that minors in custody must be separated from adults; that juvenile proceedings are not open to the general public; and that juvenile court records are not subject to public inspection.[8]

In addition to the similarities between the juvenile and criminal systems and the various due process objectives of the juvenile court system, procedural differences remain, and the terminology of the juvenile system is unique. An attorney must become familiar with, and take advantage of, both the similarities and differences between juvenile and criminal procedure in order to properly represent a juvenile charged with delinquent conduct.

This article will attempt to explain the present procedure in the Illinois juvenile court system. Dependency and minor in need of supervision proceedings will be discussed only to the extent that they may be viable alternatives to delinquency proceedings. Since this article is intended primarily as a guide to the practicing attorney, discussions of the objectives, reasons, and theories of juvenile practice will be minimized.

AN OVERVIEW OF JUVENILE PROCEDURE

When law enforcement authorities determine that a person charged with criminal conduct is a juvenile, he and his parents are referred to a juvenile officer. The juvenile officer may either adjust the matter at the station, or refer it to the juvenile court by filing a petition. If a petition is to be filed, the juvenile officer must determine whether the minor is to remain in custody or be released to his parents pending a court hearing.

If the minor remains in custody, he must be brought before the court within thirty-six hours for a custody hearing. The court may decide that the minor should remain in custody; however, it must be an adjudicatory hearing, which is equivalent to a trial, within ten judiciary days. If the minor is released, his adjudicatory hearing must be set within thirty days.

At the *initial* court hearing, the minor enters a plea of either denial or admission. Prior to the adjudicatory hearing, counsel

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that consideration, in a criminal sentencing proceeding, of the defendant's prior commitment as a juvenile was error, and consequently the sentence was reduced.

[8] *See generally* Juvenile Court Act, ILL. REV. STAT. ch. 37, §701 et seq. (1971). Defense counsel should also be aware of the prosecutor's unique function in juvenile court; *see* Kent v. United States, 383 U.S. 541, 554-55 (1966). *See also* Feldman, *The Prosecutor's Special Tasks in Juvenile Delinquency Proceedings*, 59 ILL. B.J. 146 (1970-71).

for the minor may file various motions, including discovery and suppression of evidence. The allegations in a delinquent petition must be proved beyond a reasonable doubt, and criminal rules of evidence apply.

If the minor is found delinquent, either after an admission or adjudicatory hearing, the matter is set for disposition. The court will usually order the probation department to investigate the minor's home situation, school record, and other matters which may be relevant. Rules of evidence do not apply to the dispositional hearing. The court may either dismiss the case, place the minor on supervision or probation, or commit him to the Department of Corrections, which then decides when to release the minor.

THE FUNCTION OF DEFENSE COUNSEL

The role of defense counsel at delinquency proceedings has been somewhat unique. It has been stated that the defense counsel must recognize only what is in the best interests of the minor.[9] However, it may be argued that counsel must ethically consider only the wishes of the minor, regardless of whether he personally feels that they best serve the minor and society.[10] Nevertheless, because of the special nature of juvenile proceedings, defense counsel may face unique ethical problems and may be called upon to do a certain amount of social work.

The parents or guardians of a minor are named parties to the juvenile proceeding.[11] Usually their interests will be identical to those of the minor, since they undoubtedly will want him to remain at home, with only a minimum of court interference. However, the attorney must be careful to recognize situations where the interests of the parents and the minor are conflicting. Since the parents usually provide the attorney's fees, counsel must determine whether he can ethically represent the parents and minor without compromising the interests of either.

For example, let us assume that a client comes to your office and explains that his son is charged with stealing a car and asks if you will represent him. He further explains that his son is fifteen years old; that he has been keeping bad company, does not go to school regularly, and generally does not obey his parents. In these circumstances, the minor's guilt

[9] *See, e.g.*, 1971 ILLINOIS JUVENILE PRACTICE §1.6.

[10] Wizner, *The Defense Counsel: Neither Father, Judge, Probation Officer, or Social Worker*, 7 TRIAL 30 (Sept.-Oct., 1971).

[11] Juvenile Court Act, ILL. REV. STAT. ch. 37, §701-20 (1971); *see also In re* Burr, 119 Ill. App. 2d 134, 255 N.E.2d 57 (1970).

is not the only problem you must face. Assuming he is found delinquent, the social investigation,[12] upon which the court will determine disposition (sentencing), will not be favorable, and the chances of commitment or imposition of other harsh measures will be enhanced.[13]

Thus, the lawyer must first recognize any conflicting interests between the parents and child. If there is a conflict, he must decide whether he will, in reality, be representing the parents or the minor. Moreover, the lawyer may be called upon to provide social services for his clients. In the above example, he should, of course, explain the possible legal consequences of the situation to the parents and the minor; perhaps referring them to some appropriate social agency or offering advice concerning psychiatric aid. In general, the presentation of a viable plan at the dispositional hearing, assuming the minor is found delinquent, will in many cases convince the court to refrain from unduly interfering.[14]

STATION ADJUSTMENTS

A minor who is taken into custody will be referred to a juvenile police officer. These officers possess a certain amount of discretion in determining whether the minor will be referred to the court, and in the appropriate circumstances will adjust the matter at the station.[15] The station adjustment remains a permanent part of the minor's record, and is available for future reference at subsequent juvenile proceedings. Among the factors considered by the juvenile officer are: the nature of the crime, prior station adjustments or court contacts, and the attitude of the minor and his parents. In short, he must determine whether the minor is in need of court services.[16]

The advantages of a station adjustment to the parents and the minor, in terms of time and effort, are self-evident; however, these hearings are informal and lack fundamental procedural safeguards. For example, one of the factors the youth officer may consider is whether or not the minor admits his guilt.[17] In practice, attorneys are seldom involved at this stage.

THE DELINQUENT PETITION

A petition alleging that the minor is delinquent may be

[12] Juvenile Court Act, ILL. REV. STAT. ch. 37, §705-1 (1971).
[13] *Id.* at 705-10.
[14] It is vital to note that the juvenile court's primary concerns are the best interests of the minor and society.
[15] Note, *Juvenile Delinquents: The Police, State Courts, and Individual Justice*, 79 HARV. L. REV. 775 (1965-66).
[16] *Id.*
[17] *See Id.* at 781.

filed by any adult person, and unlike a criminal charge, it may be verified upon the information and belief of the petitioner.[18]

Notice

In *In re Gault*,[19] the United States Supreme Court held that due process requires that a juvenile be given adequate notice of the charges against him, and that the petition must allege the misconduct with sufficient particularity. The Court, however, did not indicate whether civil or criminal rules should apply.

The question of whether civil or criminal standards of pleading apply to juvenile petitions has not been expressly decided in Illinois. However, the several cases that have dealt with the sufficiency of juvenile petitions alleging delinquent conduct have applied criminal rather than civil standards.

In *People v. Hill*,[20] decided by the First District of the Illinois Appellate Court, the respondent was charged with carrying a concealed weapon and the unlawful possession of weapons. The petition failed to allege that the respondent was under eighteen years of age and that the weapon was of a size capable of being concealed, as the pertinent statute required. The court applied criminal standards and stated that the allegations were essential. Moreover, the court held that a juvenile petition which fails to allege the essential elements of a crime must be dismissed. The court also held that where the petition alleges the commission of two crimes in the same count, and one of the crimes is not a lesser included offense, the petition is duplicative and must be dismissed.

In *People v. Horton*,[21] one of the respondents was charged with receiving stolen property. The evidence produced at the adjudicatory hearing established that the respondent committed the offense of theft and burglary, but not receiving stolen property. He was found delinquent by the juvenile court and committed to the Illinois Youth Commission. The appellate court reversed, applying the criminal law principle that the judgment must conform to the proof. It reasoned that the offense of receiving stolen property was not a lesser included offense of theft of property or burglary. Clearly, if the appellate court had applied civil rules of procedure, the judgment of the juvenile court would have been affirmed since the state

[18] The court may also direct the state's attorney to file a petition, Juvenile Court Act, ILL. REV. STAT. ch. 37, §704-1 (1971); *see, e.g., In re* Jones, 46 Ill. 2d 506, 263 N.E.2d 863 (1970).

[19] 387 U.S. 1 (1967).

[20] 272 N.E.2d 840 (Ill. App. 1971).

[21] 126 Ill. App. 2d 401, 261 N.E.2d 693 (1970).

could have amended the petition at any time.

In *People v. Hicks*,[22] the Illinois Appellate Court for the Fourth District held that a juvenile delinquency petition which is not so lacking in specificity that it fails to allege a crime may be amended by the State's Attorney at any time, including after the adjudicatory hearing, since it was not fatally defective. The court, in effect, held that the petition fulfilled criminal requirements; however, it also stated: "Whether the requirements of the criminal law in this respect should be applied to a [juvenile delinquency] petition . . . need not now be determined."[23]

From the above decisions, it would seem that the trend in Illinois is to apply criminal standards of procedure to delinquency petitions. This conclusion is supported to some extent by a statement of the Illinois Supreme Court that, since a juvenile can be committed until he is twenty-one years of age, delinquency proceedings are analogous to felonies rather than misdemeanors.[24] Also, the petitions are usually written in the language of the relevant criminal statute rather than alleging facts, as required by civil rules. In practice, most juvenile court judges apply criminal standards to delinquency petitions.

The attorney, practicing in juvenile court, will frequently find that the petitions are legally deficient, since in many cases they are prepared by the juvenile officer without the aid of counsel. Even under criminal rules, the state's attorney may amend or refile a defective petition prior to trial. If the charge is serious, it may be advantageous for the defense counsel not to raise the defect until after adjudication, thus presenting problems of double jeopardy for the state. However, the state's attorney will rarely refile a petition which charges minor offenses such as disorderly conduct or simple battery. To save time and effort, defense counsel may consider seeking the dismissal of such a petition, prior to adjudication, at the initial court hearing.

Delinquent Conduct Defined

The Juvenile Court Act defines a delinquent minor as a boy under seventeen or a girl under eighteen years of age, who has violated or attempted to violate any federal or state law or municipal ordinance, or a minor who has violated a lawful juvenile court order, regardless of where the act occurred.[25]

[22] 131 Ill. App. 2d 939, 267 N.E.2d 763 (1971).
[23] *Id.* at 941, 267 N.E.2d at 765.
[24] *In re* Boykin, 39 Ill. 2d 617, 237 N.E.2d 460 (1968).
[25] Juvenile Court Act, ILL. REV. STAT. ch. 37, §702-2 (1971); the distinction between boys under seventeen and girls under eighteen is not a violation

However, the Act further provides that if a minor is alleged to have committed a traffic, boating, fishing or game law violation, or one punishable by fine only, he may be prosecuted without reference to the Juvenile Court Act.[26] Thus, the juvenile court has concurrent jurisdiction in cases involving traffic or other similar offenses, and original jurisdiction in all other cases.

As noted, the Juvenile Court Act provides for two types of delinquent minors. The first type, although not yet judicially determined, is defined as one who violates a federal or state law or municipal ordinance. Clearly, a minor whose conduct would be a criminal violation if he were an adult is subject to juvenile proceedings. In practice, most juveniles are referred to court for the alleged commission of an act which would be criminal if they were adults. However, the Act seems broader in that it apparently provides that the violation of any state or federal law or municipal ordinance, regardless of whether that violation would be criminal if the minor were an adult, may result in a finding of delinquency. Moreover, the Act seemingly confers jurisdiction upon the juvenile court in respect to a minor who has allegedly violated a law regardless of where the violation took place. Thus, for example, the Act appears to allow a finding of delinquency against a minor who violates a Wisconsin statute.

A minor may also be found delinquent if he violates a lawful juvenile court order. This type of violation is found most frequently where a minor has been previously found to be in need of supervision.[27] A minor in need of supervision is one under eighteen years of age who is beyond the control of his parents, a truant, or a drug addict.[28] Such a minor may be placed on supervision or probation, but cannot be committed to the Illinois Department of Corrections by the juvenile court.[29] The supervision or probation order may include a provision commanding the minor to obey a certain curfew or may place other limitations upon the minor's conduct that the court deems appropriate.[30] If the minor violates his curfew or the other terms of his supervision or probation order, a delinquency petition may be filed against him. If he is found to be delinquent, the court may, in addition to placing him on supervision or proba-

of equal protection of the laws, People v. Pardo, 47 Ill. 2d 420, 265 N.E.2d 656 (1970).

[26] Juvenile Court Act, ILL. REV. STAT. ch. 37, §702-7(1)(2) (1971).

[27] *Id.* §702-3.

[28] *Id.*

[29] *Id.* §705-10.

[30] *Id.* §§704-7, 705-3.

tion, commit him to the Department of Corrections.[31]

The Illinois Supreme Court has expressly approved such a procedure. In the case of *In re Sekeres*,[32] the respondent was found to be a minor in need of supervision and placed on probation. The juvenile's probation officer subsequently filed a supplemental delinquency petition alleging that she had violated her probation by truanting from school; she was found delinquent and committed to the Department of Corrections. The Illinois Supreme Court, allowing a direct appeal because of the constitutional questions involved, held that her confinement at the Department of Corrections was not a cruel and unusual punishment since she was committed for the violation of a court order, not for her truancy.[33]

The court further stated that the commitment did not violate the minor's constitutional right to equal protection of the laws, since she was reasonably classified with others who had committed criminal acts.

Supplemental Petitions

The Juvenile Court Act provides that at any time before dismissal of a petition or before wardship is terminated,[34] a supplemental petition may be filed against the minor.[35] Supplemental petitions can be divided into two types. If the minor violates the terms of his supervision or probation, the probation officer may file a supplemental petition alleging that violation. On the other hand, if the minor, while on supervision or probation, is alleged to have violated a criminal law, the complaint department or state's attorney may file a supplemental petition alleging the criminal violation.

The Juvenile Court Act does not specify the requirements of a supplemental petition, and there are no court decisions expressly dealing with this issue. However, the Act prescribes that all petitions must, for example, specify the name, age, and residence of the minor and the names and residences of his parents.[36] It may be argued from the language that supplemental petitions should be treated similarly to all other petitions. Such an argument would be especially persuasive in the case of a minor who was alleged to have violated the terms of his supervision or probation which resulted from a minor in need of supervision petition. In such a situation, the minor is subject for the first time to a finding of delinquency that could result

[31] *Id.* §705-10.
[32] 48 Ill. 2d 431, 270 N.E. 2d 7 (1971).
[33] *See also In re* Presley, 47 Ill. 2d 50, 264 N.E.2d 177 (1970).
[34] ILL. REV. STAT. ch. 37, §705-11 (1971).
[35] *Id.* §704-1(6).
[36] *Id.* §704-1(2).

in a possible commitment to the Illinois Department of Corrections.

The Illinois Supreme Court, in *In re Presley*,[37] held that a minor may be found delinquent and committed for the violation of a juvenile court order. In support of this holding, the court noted that the minor was proved, beyond a reasonable doubt, to have violated her probation; thus implying that procedural safeguards should apply to those supplemental as well as original petitions that allege delinquent misconduct.

ARREST

Once it is determined that a petition alleging delinquency will be filed against the minor, the juvenile officer must then determine whether the minor will remain in the custody of his parents pending a court hearing.[38] The taking of a minor into custody is not an arrest and does not constitute a police record.[39] A law enforcement officer may take a minor into custody if he has probable cause to believe that the minor is delinquent, that the minor has violated a commitment order, or if he is in need of medical care.[40] The law regarding the taking into custody of a minor, who is alleged to have committed a crime, is essentially the same as that governing the arrest of an adult.[41] The officer must have probable cause to believe that a minor has committed or is committing a crime. In addition, once the arresting officer determines that the person arrested is a minor, he must make a reasonable attempt to notify the minor's parents or guardians and, without unnecessary delay, take him to a juvenile officer.[42]

If the minor is not in custody when the petition is filed, or if he is released to the custody of his parents by the juvenile officer, the clerk of the juvenile court is required to issue a summons and a copy of the petition to the minor and his parents or guardians, commanding them to appear in court on the specified date.[43] If the minor does not appear, or if the court finds that his conduct may be injurious to his health, welfare, or that of others, it may issue a juvenile warrant.[44]

In some Illinois counties, the juvenile courts give notice by letter rather than summons.[45] This defect is waived by

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[37] 47 Ill. 2d 50, 264 N.E.2d 177 (1970).
[38] ILL. REV. STAT. ch. 37, §703-2(1) (1971).
[39] *Id.* §703-1(3).
[40] *Id.* §703-1(1).
[41] 1971 ILLINOIS JUVENILE PRACTICE §3.3.
[42] ILL. REV. STAT. ch. 37, §703-2(1) (1971).
[43] *Id.* §704-3.
[44] *Id.* §703-5(1).
[45] This practice is especially prevalent in the Juvenile Court of Cook County.

filing a general appearance, such as entering a plea. However, if delay is a desirable tactic, a defense counsel may either ignore the defective notice or file a special appearance questioning the jurisdiction of the court over the parties.

CUSTODY

Under certain circumstances, a minor charged with delinquent conduct may be taken into custody. The juvenile officer may initially determine custody pursuant to a warrant issued by the juvenile court. In such cases, the minor is entitled to a detention hearing before a judicial officer within 36 hours, exclusive of legal holidays and Sundays; otherwise he must be released.[46] In Cook County, those minors taken into custody are usually detained in the Audy Home, regardless of the charges against them.[47] The Act also provides that a probation officer or such other public officer designated by the court shall immediately investigate the minor's circumstances and determine whether the juvenile should remain in custody.[48]

The Act provides:

> If the court finds that there is not probable cause to believe that the minor is a person described in Section 2-1, it shall release the minor and dismiss the petition.[49]

This section requires that the court find probable cause that the minor is the person who committed a violation. However, the question of what constitutes probable cause in juvenile court is unclear. It has been argued that the requirements are equivalent to those for an adult preliminary hearing.[50] The practice in Cook County is that probable cause is generally not determined at the initial detention hearing unless specifically requested by the minor or his attorney. If requested, the case is then continued, usually for an additional thirty-six hours, to determine probable cause. At the probable cause hearing, the evidence presented by the state's attorney is usually the testimony of a police officer, since the complaining or occurrence witnesses are rarely called. In light of the short time within which the state's attorney must investigate and locate witnesses, the court requires only a minimal amount of evidence to show probable cause. Moreover, if the minor is kept in cus-

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[46] ILL. REV. STAT. ch. 37, §703-5(1).

[47] ILL. REV. STAT. ch. 37, §701-9 (1971) provides that a minor may require detention if "physically restricting facilities" for his or the community's protection are necessary; however, a minor may require only "shelter care," defined as temporary care in a physically unrestricted facility (*Id.* §701-17).

[48] *Id.* §703-4. In Cook County, custody hearings are scheduled every afternoon and on Saturdays.

[49] *Id.* §703-6(1).

[50] 1971 ILLINOIS JUVENILE PRACTICE §3-2.

tody, he must be provided with an additional hearing within ten judicial days.[51] For these reasons, a probable cause hearing would seem desirable primarily as a discovery tool, or if defense counsel is convinced that there is no evidence of probable cause.

In addition to determining probable cause, the Act provides that a minor will remain in custody if the court finds that either "it is a matter of immediate and urgent necessity for the protection of the minor or of the person or property of another . . . ,"[52] or that he is likely to flee the jurisdiction. To determine custody,[53] the court may examine all witnesses, including the minor's parents, admit hearsay testimony, and some judges will consider the juvenile officer's report. The courts almost always allow the minor's counsel to be present and, within reasonable limits, allow cross-examination of the witnesses and the presentation of relevant evidence.

The court considers the following factors in determining custody. First, the nature and seriousness of the crime; if it was a crime against the person, the condition of the victim. Defense counsel should, if possible, investigate the crime and present to the court any mitigating circumstances. For example, the respondent may have been only an accessory, and thus would be guilty on the theory of accountability; or, if the respondent is charged with aggravated battery, he may have committed a simple battery upon a school teacher or police officer. Secondly, the judge will consider the minor's prior contacts with the police and the courts. In Cook County, the judge is informed of all the minor's prior station adjustments and referrals to court, regardless of whether he was found delinquent on the referrals or if they were dismissed. If the prior referrals were not of a serious nature, or if they were dismissed without a finding of delinquency, defense counsel should bring this fact to the court's attention.

The defense counsel may present mitigating evidence, such as testimony by a minister or teacher of the minor's exemplary behavior, the ability of the parents to control the minor, or the necessity for the minor's release so that he may adequately help prepare his defense.[54] In some cases, the court will consider releasing the minor if he is temporarily removed from his environment. Thus, the defense counsel should prepare a plan whereby the minor will be temporarily placed with relatives

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[51] ILL. REV. STAT. ch. 37, §704-2 (1971).

[52] *Id.* §703-6(2).

[53] *Id.*

[54] Kinney v. Lenon, 425 F.2d 209 (9th Cir. 1970), held that a factor to be considered is that the detention of the minor would impede his preparation for trial.

outside the minor's immediate neighborhood. The state's attorney or probation officer may also request that the minor remain in custody because of the possible harassment of witnesses. The court, however, may enter appropriate orders, including an order that the minor avoid contact with witnesses.[55] Counsel should also present to the court any other special circumstances; for example, the minor may be retarded or in need of special care or treatment.

Although the question of bail has yet to be expressly determined in Illinois, most juvenile court judges take the position that minors are not entitled to bail because of the provisions governing custody. This interpretation of the Act is reasonable, since the statute provides for the custody of a minor only under certain conditions and regardless of the minor's financial position.[56] However, the fact that if the minor were an adult charged with the crime he would be entitled to bail should be brought to the court's attention.

The Act provides that if a minor is held in custody, the adjudicatory hearing must be set within ten judicial days, exclusive of Sundays and holidays or at the earliest possible date if the parents or guardians must be notified.[57] This requirement has been interpreted in several different ways, and depends upon the judge hearing the case. The Act does not provide any sanctions for a failure to schedule the hearing within ten judicial days. In fact, most judges would probably take the position that such a failure is not jurisdictional, and would therefore not dismiss the petition. This point, however, should always be raised so that it may be preserved in case of an appeal.

In most cases, a hearing is set within the time required. However, the state's attorney may not be ready to proceed at the initial adjudicatory hearing.[58] In these instances, the court will almost always grant the state's motion for a continuance. Some judges interpret this section to require the minor's release after he has been held in custody for ten judicial days and will set another adjudicatory hearing within thirty days.[59] However, other judges will schedule another hearing within ten

[55] *Id.*

[56] 1971 ILLINOIS JUVENILE PRACTICE 3.19-3.20.

[57] ILL. REV. STAT. ch. 37, §704-2 (1971). If the parents are in court and the minor is detained, his hearing must be scheduled within ten judicial days. If only the minor is in court, the case will be continued for a few days so that the parents may be notified.

[58] As a matter of fact, the state's attorney is usually not ready to proceed within ten judicial days because of the short time he has to prepare his case and issue subpoenas.

[59] ILL. REV. STAT. ch. 37, §704-2 (1971) provides that an adjudicatory hearing be set within thirty days if the minor is not in custody.

days, retaining the minor in custody for the additional period.

If the minor is in custody pending an adjudicatory hearing, his attorney may have problems in adequately preparing for trial and taking advantage of the various discovery procedures. If the state is ready to proceed at the initial hearing, defense counsel may in good conscience be forced to ask for a continuance on behalf of the respondent. No matter how a judge may interpret the ten-day rule when the state seeks a continuance, the universal feeling is that if the minor is not ready to proceed, he may be held in custody for an additional period of time.

Although not specifically provided by the Act, the question of custody is treated by most judges as a continuing one. For example, the minor may be released to the custody of his parents by the juvenile officer pending his appearance at the arraignment calendar. At that time, the state's attorney may feel that certain special circumstances warrant the minor's retention in custody pending adjudication. Or, the respondent may be released from custody at the initial detention hearing over the strenuous objection of the state's attorney. If the respondent is not ready to proceed at the adjudicatory hearing and is seeking a continuance, the state may in fact renew its request to hold the minor in custody. Thus, the defense counsel should be prepared to argue the question of custody at all times, especially where the charge is serious or the minor's past record is extensive.

As in almost all other aspects of juvenile proceedings, defense counsel must be prepared to argue the social as well as legal aspects of the case. Moreover, since the question of custody is largely discretionary, it is dealt with differently by the various juvenile court judges. Representation of a client who is not in custody has certain clear and definite advantages in terms of prepartion for trial. The fact that a minor has been in custody for a period of time may, however, be argued to his advantage at the dispositional hearing, and may in some cases mean the difference between commitment and probation.

DISCOVERY

Although the Juvenile Court Act does not include discovery procedure, the Illinois Supreme Court has specifically dealt with this issue in *People ex rel. Hanrahan v. Felt.*[60] In that case, the juvenile court judge granted the respondent's motion for extensive discovery on the basis that juvenile proceedings are

[60] 48 Ill. 2d 171, 269 N.E.2d 1 (1971).

civil in nature, and therefore civil rules of discovery should apply. The court allowed a direct appeal from the interlocutory order and reversed, holding that civil rules of discovery do not apply to juvenile proceedings, stating: "This is not to say that the juvenile court may never allow a broader discovery than is allowed in criminal cases."[61] The court further held that the extent to which discovery should be allowed in juvenile court is within the sole discretion of the trial judge, who should not allow discovery where the danger to the state outweighs any possible benefit to the minor.

Thus, the juvenile respondent is entitled to the full extent of discovery allowed in a criminal proceeding under the recent Supreme Court Rules.[62] In most cases, the state's attorney is willing to supply police reports, statements of witnesses, a list of witnesses, and other evidence he may have in his possession. However, if defense counsel is seeking broader discovery than allowed in criminal cases, such as a deposition of a state's witness, he may be forced to seek a court order allowing such discovery. In light of *Felt*, if the state objects, it must apparently show that the danger of allowing such discovery outweighs any possible benefit.

COURT SUPERVISION

The Juvenile Court Act expressly provides for a continuance of the matter, under the court's supervision,[63] without a finding of delinquency. There are several variations of court supervision. The matter may be continued for a period of time under court supervision without a plea of either denial or admission. The original matter may be set for an adjudicatory hearing if a violation of the supervision is subsequently alleged. On the other hand, the minor may enter an admission. If the proper circumstances exist, the court will place him on a period of supervision rather than find him delinquent. If an admission is entered, the court may, where there has been a subsequent violation, find the minor delinquent and order him a ward of the court based on the original admission.

The period of supervision may be with or without the benefit of a probation officer. If no probation officer is assigned, the case is usually continued for a specified period of time and the minor respondent generally need not return to court unless he is alleged to have violated his supervision. However, if a probation officer is assigned, he may present interim reports to the

[61] *Id.* at 175, 269 N.E.2d at 4.

[62] The new criminal rules for discovery are expressly exempted from juvenile proceedings.

[63] ILL. REV. STAT. ch. 37, §704-7 (1971).

court, or may require that the minor appear in court at the termination date. In any case, the supervision may be extended or the order modified if the best interests of the minor so require.

Court supervision may be a desirable alternative to adjudication in many cases. In practice, if a matter is adjudicated, the court will either dismiss the petition or find the minor a delinquent, resulting in a record. Thus, supervision should be sought if the chances of winning at trial are slim and the charges are minor. This procedure will insure that the juvenile, if he complies with the terms of his supervision, will not have a court record.

PLEA BARGAINING

Although the desirability of plea bargaining in juvenile courts has been questioned, it is now common in Illinois, especially Cook County, because of the large number of cases.[64] In urban areas it is argued that the system would break down if all matters were adjudicated.[65] In effect, the minor is "rewarded" for entering an admission.

In any event, the minor's attorney should ask for a pre-trial conference with the state's attorney for several reasons: 1) they may reach a mutually agreeable solution; 2) the attorney will ascertain the state's position while at the same time clarify his; and 3) the discussion may indicate any weaknesses in the minor's position or otherwise result in a means of informal discovery. In some cases, if the judge does not approve the agreement reached between the parties, defense counsel should, pursuant to Illinois Supreme Court Rule 402, withdraw the minor's plea and move for a substitution of judges.[66]

Among the factors to be considered in plea bargaining are: 1) the nature of the crime, 2) the minor's involvement, 3) his prior record, and 4) his social background. For example, a minor, who might be guilty of robbery on the theory of accountability, may be placed on supervision, whereas the state's attorney may be seeking probation or perhaps commitment for the principal.

Based upon the above factors, the state's attorney may agree to dismiss the charge even if the minor would probably be found delinquent after adjudication. For example, coun-

[64] 1971 ILLINOIS JUVENILE PRACTICE §1.8.

[65] *Id.* at §1-8.

[66] Most juvenile court judges will agree that this rule applies to juvenile proceedings, although the issue has not been as yet decided on appeal. If the judge refuses to abide by this rule, counsel may seek a substitution of judges or a change of venue.

sel should seek dismissal where the minor was charged with theft of services or disorderly conduct where he has never been arrested before, goes to school and generally possesses all the middle-class virtues. If the state's attorney will not agree to a dismissal, counsel could consider either transferring the matter to the criminal court or seeking a pre-trial conference with the judge, who may agree to the dismissal.[67]

Under other circumstances, the state's attorney may offer to recommend that the minor be placed on a period of supervision. Or, he may recommend that the court enter an order of no finding of delinquency and a social investigation by the probation department,[68] dependent, of course, upon the minor's entering a plea of admission. If the social investigation is favorable, the minor may be placed on supervision; however, the disadvantage of such a procedure is that the court may enter any dispositional order it deems appropriate, including commitment.

The parties may also agree that the minor enter an admission, be found delinquent, and placed on probation. Counsel should then consider entering a motion to vacate the finding of delinquency.[69] If the minor successfully finishes his probation, the judge may sustain the motion to vacate the finding, with the result that the minor does not have a record.

The state's attorney may be seeking commitment if the charges are of a serious nature and the minor's background is extensive. He may, however, agree to allow the minor to retain his freedom under an informal procedure adopted by the Illinois juvenile courts. The state's attorney will recommend that the court commit the minor, with a stay of the mittimus, to the Department of Corrections. The minor remains in the custody of his parents under the strict supervision of the court, which may require frequent progress reports by the minor's probation officer. This procedure is, in effect, a strict form of probation; however, it has certain disadvantages. If a minor violates his probation he has certain procedural rights; for example, a supplemental petition must be filed and a hearing held.[70] On the other hand, most judges feel that since staying

[67] It may be argued that unlike in criminal courts the state does not have the right to try the matter, and the judge may dismiss it under the appropriate circumstances. *See* ILL. REV. STAT. ch. 37, §704-7 (1971).

[68] The probation officer will investigate such things as school attendance and grades, parental control and the minor's activities in general.

[69] Juvenile court judges will in many cases vacate a finding of delinquency upon social rather than legal considerations. For example, the minor may have excellent grades and indicate that he wants to become a lawyer.

[70] ILL. REV. STAT. ch. 37, §705-2(3) (1971); *Id.* §704-1(6).

the mittimus pending progress reports is a court-made procedure, they have absolute discretion and may commit the minor at any time.[71] Thus, because of the lack of procedural safeguards under this procedure, it should be accepted only as a last resort.

In general, the attorney should seek to settle the matter with a minimum of court interference into the minor's life. There are, of course, a number of exceptions. For example, the court may provide counselling where serious differences between the minor and his parents exist.[72] However, the problem is that some judges may view the minor's social adjustment problems as violations of court orders, with the resulting threat of commitment. Much also depends on the probation officer who is assigned to the case, since his report and recommendations are often quite influential in the court's decision. For example, if a minor is placed on supervision with a probation officer, the officer may report that although there are no contacts with the police or the court during the term of the supervision, the minor is adjusting poorly in school, recommending that supervision be extended or that the court find the minor delinquent and place him on probation. The case may conceivably result in the commitment of the minor if he continues to adjust poorly in school. On the other hand, however, if the minor is placed on supervision without a probation officer, the fact that there were no further police or court contacts will certainly assure dismissal.

TRANSFER TO THE CRIMINAL COURT

The Act provides:

> If a petition alleges commission by a minor 13 years of age or over of an act which constitutes a crime under the laws of this State, the State's Attorney shall determine the court in which that minor is to be prosecuted; however, if the Juvenile Court judge objects to the removal of a case from the jurisdiction of the Juvenile Court, the matter shall be referred to the chief judge of the circuit for decision and disposition. If criminal proceedings are instituted, the petition shall be dismissed insofar as the act or acts involved in the criminal proceedings are concerned. Taking of evidence in an adjudicatory hearing in any such case is a bar to criminal proceedings based upon the conduct alleged in the petition.[73]

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[71] For example, the mere allegation of new criminal charges may be sufficient to convince the court to commit the minor.

[72] In some cases, psychiatric aid may be provided. Or a probation officer may help the minor obtain employment, provide motivation for going to school, etc.

[73] ILL. REV. STAT. ch. 37, §702-7(3) (1971). A detention hearing does not preclude a transfer to criminal court on the basis of double jeopardy. *People v. DePoy*, 40 Ill. 2d 433, N.E.2d (1968).

Transfer by the State

The leading case on juvenile transfers is *Kent v. United States.*[74] In that case, the attorney for the juvenile at the transfer hearing offered to show that the juvenile was a fit subject for rehabilitation under the Juvenile Act of the District of Columbia. Counsel requested both hospitalization of the minor for psychiatric observation and access to the minor's social service file; both requests were denied and the minor was transferred to the criminal court, where he was tried and convicted. The judgment was affirmed by the court of appeals, and reversed by the United States Supreme Court, which held that, although a transfer is discretionary, it must be based upon

> procedural regularity sufficient in the particular circumstances to satisfy the basic requirements of due process and fairness, as well as compliance with the statutory requirement of a "full investigation."[75]

The majority opinion apparently determined that constitutional requirements of due process and fairness are applicable to transfer proceedings. However, the four dissenting Justices reasoned that the Federal Constitution was not involved, and felt that the question was one solely of interpreting the relevant statute.

The Illinois Supreme Court, in several recent decisions, has determined that the Illinois transfer provision is consistent with *Kent.* In *People v. Jiles,*[76] the defendants, originally charged under the Juvenile Court Act, were transferred to the criminal court upon a motion of the state's attorney, without objection by the juvenile court. Prior to trial, the defendants appealed directly to the Illinois Supreme Court, contending that the transfer provision was unconstitutional since it failed to provide adequate and reasonable guidelines concerning the issues and burden of proof; that it failed to provide adequate standards; and was so vague and ambiguous as to be violative of the due process and equal protection clauses of the Federal Constitution. Initially, the court granted leave to appeal, then reversed itself, holding that the transfer order was not final and appealable.

In support of this decision, the court reasoned that prior to 1964 and the adoption of a new Judicial Article creating one circuit court with general jurisdiction, the juvenile court was created by statute, whereas the criminal court was created by the Constitution. Since 1964, the juvenile and criminal courts are simply divisions of the circuit court. Orders transferring a

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[74] 383 U.S. 541 (1966).
[75] *Id.* at 553.
[76] 43 Ill. 2d 145, 251 N.E.2d 529 (1969).

case from one court to another were not appealable prior to 1964, when courts of separate jurisdiction existed. Apparently realizing the tortuous logic of this argument, the court added: "We do not, however, rest our decision as to the appealability [of a transfer to criminal court] upon the fact that no appeal from such an order has heretofore been authorized."[77] The court reasoned that to permit an appeal at this stage would hinder the administration of justice by subordinating the primary issues of guilt or innocence.

The constitutional validity of the transfer provision was upheld in *People v. Bombacino*[78] and *People v. Handley*.[79] In *Bombacino*, the defendant objected to a transfer from the juvenile court. Although arguments were heard, no supporting evidence was presented and no objection to the transfer had been entered. The supreme court held that since no objection was entered, the defendant lacked standing to challenge the provision which allowed the chief judge of the circuit court to review the case if the juvenile judge entered an objection. The court further held that the Illinois provision did not require a due process hearing, reasoning that *Kent* was merely interpreting the statute in question. The Illinois provision vests the discretion to transfer with the state's attorney, whereas the statute involved in *Kent* vested the discretion with the court after a full investigation. The Illinois Supreme Court reaffirmed these holdings in *Handley*, upon essentially identical facts, stating as follows:

> Historically, the office of the State's Attorney has involved the exercise of a large measure of discretion in the many areas in which State's Attorneys must act in the performance of their duties in the administration of justice. We do not find it constitutionally objectionable that the legislature has seen fit to grant discretion to the State's Attorney in removal matters under the Juvenile Court Act, . . . [80]

In conclusion the following is clear: a transfer order is not appealable; a transfer is within the sole discretion of the state's attorney; the respondent is not entitled to a hearing, and no evidence need be presented in support of the motion to transfer. This procedure seems inconsistent with the language of *Kent*, which expressly stated that a transfer hearing is sub-

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[77] *Id.* at 147. Since *Kent* was decided in 1966, prior decisions have no bearing on the issues raised in this case.

[78] 51 Ill. 2d 17, 280 N.E.2d 697 (1972).

[79] 51 Ill. 2d 229, 282 N.E.2d 131 (1972).

[80] People v. Handley, 51 Ill. 2d at 233, 282 N.E.2d at 134 (1972). The validity of these cases in light of *Kent* will probably be tested in the federal courts. In People v. Perruquet, 4 Ill. App. 3d 4, 280 N.E.2d 42 (1972), the court held the mother's presence was not necessary at the transfer hearing, despite the fact that she was named as a respondent in the petition.

ject to due process requirements, regardless of the statute in question. Under the present procedure, the respondent is powerless to question the basis of the state's attorney *ex parte* decision to transfer.

Generally, in light of the serious implications of a transfer to criminal court, the attorney should vigorously oppose the transfer. The factors considered by the state's attorney and the court are the seriousness of the charge, the strength of the state's case, whether the minor was the perpetrator or simply legally accountable, and the minor's background and chances for rehabilitation.[81] A defense counsel should be prepared to present evidence on all of these points. For example, he may request that the court order a social investigation and a clinical examination by the court psychiatrist so that some light may be shed on the minor's possibility of rehabilitation. Informal discussions and negotiations with the state's attorney may convince him to withdraw his motion for transfer, perhaps in return for a plea of admission. However, if an agreement cannot be reached, counsel must then attempt to convince the juvenile court judge to object to the transfer. Because the state need not present any evidence in support of its motion, the minor in effect has the burden of presenting evidence which may convince the judge to object. In general, it is unwise to present evidence tending to show innocence, since it could subsequently be used for impeachment purposes by the state.

Almost without exception, the minor, where the state is considering a transfer, will be held in custody. At the custody hearing, the state's attorney will either give oral notice of his intention to file a transfer motion or ask that the matter be continued for further investigation. To insure the applicability of the criminal fourth-term provisions, the defense counsel may consider entering a denial and trial demand. In the alternative, he may ask that the matter be set for a probable cause hearing for discovery purposes.

Transfer by the Respondent

A juvenile, thirteen years or older, charged with criminal conduct, has an absolute right to transfer the matter from the juvenile court.[82] It is usually inadvisable to transfer the matter to the criminal court, especially if he will be charged with a felony, since the minor would be subject, if convicted, to the possiblity of a criminal record and a long sentence. However, a transfer may be desirable under certain circumstances. For

[81] Dore, *Illinois Juvenile Practice — Adjudication*, 17 ILLINOIS CONTINUING LEGAL EDUCATION 5-6 (1971).

[82] ILL. REV. STAT. ch. 37, §702-7(5) (1971).

example, if the minor has an extensive juvenile record, he may face commitment if found delinquent on the present charge, no matter how trivial. If the charge is indeed trivial, a transfer would considerably diminish the possibility that the minor would be incarcerated.

OTHER PRE-ADJUDICATION CONSIDERATIONS

As previously indicated, juvenile procedure is similar to criminal procedure in many respects. However, in some instances juvenile procedure is unique, and in others civil rather than criminal rules may apply. If the matter is set for an adjudicatory hearing, the attorney for the minor should approach the hearing as if it were a criminal trial. Along with other pre-trial procedural tools, defense counsel should consider the following motions where appropriate.

Substitution of Judges

The issue whether the criminal right of substitution of judges exists in the juvenile court is presently undecided in Illinois.[83] It may be argued that the respondent does not have this right and must seek a change of venue which, because it is discretionary with the judge, is more restrictive.[84] If the civil rules of change of venue apply, it could be argued that the state's attorney may also seek a change of venue, since the statute allows either party to make the motion. Notably, the state has, on occasion, sought a change of venue.

Suppression of Physical Evidence

It is now settled that the criminal law relating to search and seizure applies to juveniles,[85] and the Illinois Supreme Court has expressly held that a juvenile is entitled to rely on the exclusionary rules of the fourth amendment of the Federal Constitution.[86] It follows, then, that a juvenile is entitled to a separate hearing on his motion prior to adjudication.

Perhaps one of the most common factual situations faced in the juvenile court is the minor arrested for truancy. Here,

[83] This possibility should be brought to the attention of the state's attorney, who may agree not to seek commitment on the new charge.

[84] In Cook County, the Chief Judge has indicated that the minor must seek a change of venue. His decision was based upon *In re* Fucini, 44 Ill. 2d 305, 255 N.E.2d 380 (1970), which implied that juvenile proceedings are civil in nature, at least in some respects. However, other decisions of the Illinois Supreme Court have held that juvenile proceedings are in some respects criminal in nature. *See, e.g., In re* Marsh, 40 Ill. 2d 53, 237 N.E.2d 529 (1968); People v. Felt, 48 Ill. 2d 171, 269 N.E.2d 1 (1971). Therefore, the argument that a juvenile has the absolute right to a substitution of judges is equally valid.

[85] *See, e.g., In re* Boykin, 39 Ill. 2d 617, 237 N.E.2d 450 (1968), which held that the reasonableness of a search need not always depend upon the existence of probable cause for an arrest; People v. Hughes, 123 Ill. App. 2d 115, 260 N.E.2d 34 (1970).

[86] *In re* Marsh, 40 Ill. 2d 53, 237 N.E.2d 529 (1968).

the officer will testify that he arrested the minor during school hours because of his youthful appearance, that the resulting search revealed such incriminating evidence as a knife or marijuana. Since no crime was being committed when the juvenile was arrested, the subsequent search lacked the probable cause needed to satisfy the fourth amendment. Thus, it should be argued that the police officer did not have probable cause to search the minor, since he was not committing any crime at the time of his arrest.

Motions To Suppress Confessions and Admissions

Statements made by the respondent to the police may be suppressed if the *Miranda* requirements have not been fulfilled.[87] The Act provides that an arrested minor must be transferred to the custody of a juvenile officer, and his parents must be notified as soon as possible.[88] However, if the minor makes a spontaneous statement to the arresting officers, on the way to the police station and before he is warned of his rights, the statement is admissible.[89] Moreover, even if the arresting officers fail to comply with the above section requiring notification of the minor's parents and a transfer to the juvenile officer, a statement is admissible if it is made consistent with *Miranda.*[90] An important factor to remember is that juveniles, because of their tender years, may not have knowingly waived their constitutional rights. Thus, the presence of the minor's parents may be significant in determining whether there was a voluntary and knowing waiver.

Even if the court suppresses any statements made by the juvenile and the juvenile testifies, the statements may then be introduced for impeachment purposes, following the Supreme Court's decision of *Harris v. New York.*[91] Therefore, it may be advisable to argue not only that the statements were elicited contrary to *Miranda,* but also that they were involuntary, especially where the respondent is of very tender years.

Motions To Suppress Identification

As in criminal cases, the question whether the respondent is the person who committed the crime is frequently raised.

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[87] *See, e.g., In re* Orr, 38 Ill. 2d 417, 231 N.E.2d 424 (1967).

[88] ILL. REV. STAT. ch. 37, §703-2(1) (1971).

[89] See note 87 *supra.*

[90] People v. Zapeda, 47 Ill. 2d 23, 265 N.E.2d 647 (1970), *aff'g* 116 Ill. App. 2d 246, 253 N.E.2d 598 (1969), which held that such a failure was harmless error under the circumstances. The supreme court held that, because these provisions have no sanctions and because an unlawful arrest will not, of itself, invalidate a confession or statement, the failure was not an error. Justice Schaefer concurred, stating that the appellate court's decision was proper. *Cf.* People v. McFarland, 17 Cal. App. 3d 807, 95 Cal. Rptr. 369 (1971); People v. Hester, 39 Ill. 2d 489, 237 N.E.2d 466 (1968).

[91] 401 U.S. 222 (1971).

In many cases, the respondent will deny that he was present at the scene and may present alibi witnesses. In light of the above decisions regarding the suppression of physical evidence and statements, the criminal law regarding identification procedure is surely applicable.[92] This issue becomes even more important in juvenile court because many law enforcement officers, since they are restricted in using fingerprints or photographs of juveniles,[93] may feel that juveniles should be placed in lineups as would adults charged with a crime. Thus, the possibility of a suggestive lineup should always be kept in mind.[94]

Right to a Speedy Trial

It would seem that a minor charged with delinquent conduct has a constitutional right to a speedy trial in light of *Gault* and other cases extending constitutional rights to juveniles.[95] As discussed, the Juvenile Court Act provides that an adjudicatory hearing must be set within ten judicial days if the minor is in custody and within thirty days if he is not.[96] However, the Act does not provide sanctions for a failure to comply with this section. It is doubtful whether the courts will interpret this section to be a codification of the right to a speedy trial, since it would be unrealistic to require a trial in such a brief period of time, especially where the victim is seriously injured or the issues are complex.

The Illinois Criminal Code provides that every person, unless he causes a delay, must be tried within 120 days if "in custody,"[97] and within 160 days if not.[98] It would seem that these provisions apply to juveniles unless and until the legislature or the courts determine the extent of the juvenile's right to a speedy trial.

Competency

The attorney may conclude that the minor, because of his youth or mental state, does not understand the nature of the charges against him, or cannot cooperate in his defense; in short, he would be incompetent to stand trial if he were an adult. Neither the courts nor the Juvenile Court Act have dealt with this issue. The attorney, however, should present

[92] As yet, there is no decision dealing expressly with this point.
[93] ILL. REV. STAT. ch. 37, §702-8(2) (1971).
[94] The leading cases on identification in Illinois are People v. Palmer, 41 Ill. 2d 571, 244 N.E.2d 173 (1969), and People v. Blumenshine, 42 Ill. 2d 508, 250 N.E.2d 152 (1969).
[95] *In re* Gault, 387 U.S. 1 (1967); Kent v. United States, 383 U.S. 541 (1965); *In re* Winship, 397 U.S. 358 (1970).
[96] ILL. REV. STAT. ch. 37, §704-2 (1971).
[97] ILL. REV. STAT. ch. 38, §103-5(a) (1971).
[98] *Id.* §103-5(b).

the motion where appropriate, since most juvenile judges will not try a minor who is incompetent.

Other Motions

Most juvenile court judges will allow other appropriate motions, such as a motion to sever the cause where the defenses of several respondents will be conflicting and prejudicial.

ADJUDICATION

This stage of a juvenile proceeding is, in effect, a trial. The Juvenile Court Act provides that the allegations of a petition charging delinquent conduct must be proved beyond a reasonable doubt and that criminal rules of evidence apply.[99] A juvenile does not have the right to a jury trial in Illinois unless he transfers his case to the criminal court.[100]

Although the standard of proof and procedure is clear in the case of an original petition alleging delinquent conduct, there is some question as to these issues when a supplemental petition has been filed. A reading of the Act would seem to indicate that the burden of proof and procedure would be the same regardless of whether the petition was original or supplemental. The Act defines a "petition" as that provided for in section 704-1, "including any supplemental petitions thereunder."[101] It requires that all "petitions" must be set for an adjudicatory hearing within the stated time limits.[102] It further requires that the standard of proof and rules of evidence as applied in criminal proceedings also be applied at the juvenile hearings, if delinquent conduct is alleged.[103] Since the Act does not distinguish between original and supplemental petitions, it is reasonable to conclude that all petitions must be treated the same way. This conclusion is supported to some extent by a 1970 Illinois Supreme Court decision[104] which, in support of its holding that a minor may be found delinquent for violating a juvenile court order, noted with apparent approval that the Juvenile Court Act required proof of such allegations in the

[99] ILL. REV. STAT. ch. 37, §704-6 (1971). *See In re* Urbasek, 38 Ill. 2d 535, 232 N.E.2d 716 (1967), which held that the prior statute requiring only a preponderance of the evidence was unconstitutional; *In re* Winship, 397 U.S. 358 (1970), decided by the Burger Court, which held that due process requires that a juvenile must be proved guilty beyond a reasonable doubt.

[100] *In re* Fucini, 44 Ill. 2d 305, 255 N.E.2d 380 (1970); *In re* Jones, 46 Ill. 2d 500, 263 N.E.2d 863 (1970). Courts in some other states have held that juveniles do have a right to a jury; *see, e.g.*, RLR v. State, 487 P.2d 27 (Alaska 1971).

[101] ILL. REV. STAT. ch. 37, §701-15 (1971).

[102] *Id.* §704-2. Within thirty days if the minor is not in custody; within ten judicial days if he is in custody.

[103] *Id.* §704-6.

[104] *In re* Presley, 47 Ill. 2d 50, 264 N.E.2d 177 (1970).

supplemental petition beyond a reasonable doubt. This issue, however, was not expressly before the court.

On the other hand, it may be argued that since the court may modify its order of disposition,[105] evidence tending to show a violation of probation is dispositional rather than adjudicatory. In practice, most judges feel that the burden is merely the preponderance of evidence, reasoning that the requirements are similar to criminal proceedings for the violation of probation.

Although the adjudicatory hearing is probably most analogous to criminal proceedings, a defense counsel may, in appropriate cases, present evidence of a social nature. After the adjudicatory hearing, the court may find that the minor is delinquent and that it is in the best interests of the minor and society that he be made a ward of the court.[106] If the attorney presents evidence tending to show that the minor should not be made a ward, the judge may dismiss the petition, even if he finds that the minor committed the act charged.

In many cases, the complaining witnesses in juvenile proceedings are minors themselves. In such cases, defense counsel should consider a motion to have the court determine the competency of the minor witness to testify,[107] since motions to exclude witnesses are routinely allowed in juvenile court. Before cross-examination, a copy of any prior statements of witnesses should be obtained. Depending on the circumstances, after the state rests on the ground that it has failed to meet its burden, a motion to dismiss the petition may be made. In short, the adjudicatory hearing may be conducted substantially as a criminal trial, including objections to hearsay or leading questions and closing arguments.

DISPOSITION

At the adjudicatory hearing, the court may dismiss the petition either because the state has failed to prove the allegations beyond a reasonable doubt, or because the best interests of society or the minor do not require that the minor be adjudged a ward of the court. If the minor is adjudged a ward, the judge will usually order a social investigation and continue the case for disposition. The minor can be detained for a "reasonable period" pending disposition.[108] What is reasonable

[105] ILL. REV. STAT. ch. 37, §705-2(3) (1971).
[106] *Id.* §704-8.
[107] People v. Sims, 113 Ill. App. 2d 58, 251 N.E.2d 795 (1969), the defendant need not always raise the issue; People v. Bryant, 123 Ill. App. 2d 35, 259 N.E.2d 638 (1970).
[108] ILL. REV. STAT. ch. 37, §705-1(3) (1971).

is not yet clear, although minors have been held for four to five weeks pending disposition. The court considers identical factors to those at the initial custody hearing.

A probation officer will be assigned to conduct the social investigation. He will check into the minor's background, including his adjustment at home and school, prior station adjustments, court referrals, and his attitude. The court may hear any helpful evidence, including hearsay, even though it would have been inadmissible at the adjudicatory hearing.[109] At the dispositional hearing, the probation officer will present his investigation. Some judges will ask for recommendations and others will not. The case may again be continued for a clinical services evaluation where the court feels it necessary. Such an evaluation may be considered in cases where there is some evidence of either mental disorder or where the minor has a history of sex-related offenses.

Because of the importance of the probation officer's report, the minor and his parents must be cautioned to cooperate with him. The defense counsel may contact him to discuss the investigation or to propose any positive plans. He may be cross-examined in court to determine the basis of any conclusions he has reached. For example, if he testifies that the youth is a gang member, the source of this information should be elicited so that the court may properly weigh the credibility of such an allegation.

The clinical evaluation may also reach conclusions unfavorable to the minor. Thus, counsel may request the court to call the evaluating psychiatrist into court for cross-examination, and in many cases, the court will grant such a request.

A defense counsel may present evidence on behalf of the respondent, such as an evaluation by private psychiatrists or psychologists, the testimony of school teachers, and the like.

After hearing all evidence presented, the court may consider several alternative dispositions. If it finds that it is in the best interests of the minor and society, it may dismiss the petition. This may be done if the crime was not serious, the respondent's involvement was minimal, he had no prior delinquency problem and the incident was isolated; in general, where the minor's adjustment in society has been good. If the time between adjudication and disposition is extensive and the minor's interim adjustment was excellent, this should be brought

[109] *Id.* The juvenile court's refusal to introduce the results of a polygraph test at a dispositional hearing was not an abuse of its discretion; People v. Perry, 270 N.E.2d 272 (Ill. App. 1971).

to the court's attention. The court may at times be convinced to vacate the finding of delinquency and either continue the case under the court's supervision, or place the minor on a period of probation, with interim progress reports by the probation officer.[110] The court may also commit the minor and stay the mittimus.[111] In effect, this informal procedure is a strict form of probation. The court may also specify the terms and conditions of probation, including the custody of the minor.[112] For example, the court may find that both his and society's best interests require that he be removed from his immediate environment and, thus, order him to live with relatives or friends who reside in a different area. However, the court may order a special curfew; for example, requiring that the minor stay home immediately after school. The court may also order that the juvenile be placed by the state in a trade or boarding school[113] if his parents are unable or unwilling to care for, protect and discipline him.

The court may also commit the minor to the Illinois Department of Corrections.[114] In order to do so, however, the court must find both that the minor's parents are unable or unwilling to care for, protect, and discipline the minor, and that the best interests of the minor and society will not be served by placing the minor in a trade or boarding school, in accordance with section 705-7.[115] It has been held that a commitment is improper where the evidence does not show the above requirements.[116] In practice, however, the juvenile court judges frequently fail to consider the above factors, and the commitment may be reversed on appeal.

If the commitment is indeterminate, however, the minor must be released when he becomes twenty-one years old.[117] The term of commitment depends on the charges for which the minor was committed and his adjustment at the Department of Corrections. In many cases, minors are paroled after six months to a year in custody. The time a minor spends in cus-

[110] ILL. REV. STAT. ch. 37, §705-3 (1971).
[111] *Id.* §705-2(a).
[112] *Id.* §705-3.
[113] *Id.* §705-7.
[114] *Id.* §705-10.
[115] *Id.* §705-10(1).
[116] People v. Hackman, 1 Ill. App. 3d 1030, 275 N.E.2d 488 (1971). In People v. Shannon, 2 Ill. App. 3d 451, 276 N.E.2d 419 (1971), in an abstract decision, the court reversed holding that a commitment based upon the sale of marijuana where that portion of the drug act was found invalid was without foundation. In *In re* Johnson, 30 Ill. App. 2d 439, 174 N.E.2d 907 (1961), the court reversed a commitment for criminal damage to property, holding that the act was not intended to punish petty offenders but to prevent boys from becoming criminals.
[117] ILL. REV. STAT. ch. 37, §105-11 (1971).

tody pending adjudication and disposition has no relevance to the time he spends in the Department of Corrections.

APPEAL

A minor has the right to appeal the court's decision after he has been found delinquent and adjudged a ward of the court.[118] It is unclear whether civil or criminal rules apply to an appeal from juvenile court, and therefore to preserve an adequate record, motions in arrest of judgment and for a new trial should be made, specifying all the points that may possibly be relied upon. A notice of appeal should be filed within thirty days of the finding or within thirty days of the hearing or post trial motions, if any were made. The Illinois Supreme Court has held that Supreme Court Rule 607(b), which provides that where "the defendant is convicted of an offense punishable by imprisonment for more than six months" and he is indigent, a transcript of the proceedings must be furnished to him without charge, applies to juveniles found delinquent.[119] The court reasoned that since minors may be committed until they are twenty-one years old, all delinquency charges are analogous to felonies.

The Juvenile Court Act does not deal with the question of custody pending an appeal. If the minor is committed, the appeal may very well be disposed of only after he has been released on parole or his wardship terminated. The juvenile court judge will most probably deny a motion for a bond pending appeal. However, defense counsel may have some alternatives. Supreme court rules provide that the defendant in a criminal case may request, by motion, that the appellate court reduce or set bond in his case.[120] In light of *Boykin* and *Marsh*,[121] this rule may also be applicable to appeals from juvenile court commitments. Counsel may also seek an emergency appeal. Finally, a habeas corpus petition may be filed with the chief judge of the juvenile court, the Illinois Supreme Court, or the federal courts.

CONCLUSION

With the realization that the commitment of a minor to the Department of Corrections is in fact a loss of freedom and that institutions such as St. Charles and Sheridan are in many respects similar to adult penal institutions, the procedure in

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[118] *Id.* §704-8(3).

[119] *In re* Boykin, 39 Ill. 2d 617, 237 N.E.2d 460 (1968); *In re* Marsh, 40 Ill. 2d 53, 237 N.E.2d 529 (1968).

[120] ILL. REV. STAT. ch. 110A, §609(c).

[121] Note 119 *supra.*

juvenile courts is becoming similar to that in criminal courts.

On the other hand, the "spirit" of the original juvenile court is still present. The prosecutor may be convinced to drop the charges against a minor, not because the juvenile is innocent, but because his background is such that the incident was probably isolated and no disruption of his life by the court is justified or necessary. With few exceptions, state's attorneys are not trying to make a record of convictions for themselves or punish the respondents; rather, they are, in many cases, genuinely concerned with the rehabilitation of the minors, as are most juvenile judges. Many probation officers in the juvenile court make a genuine effort to rehabilitate the minor. Moreover, their case loads are not as heavy or unrealistic as those of adult probation officers. In many cases a probation officer may find the minor a job, may help him transfer to another school or enroll in a special school, or help the juvenile enter a branch of the armed services. In general, most probation officers try to help juveniles with their problems and often, in fact, take the minor off the road to commitment and on to the path of rehabilitation.

For these reasons, the attorney who represents a minor in juvenile court must be prepared to argue the social aspects of a case at all points of the juvenile proceedings, from the initial custody hearing to the dispositional hearing. In every case, he should talk to the state's attorney and in some cases seek a pre-trial conference with the juvenile court judge.