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Juvenile Law—Referral for Prosecution—In re Welfare of I.Q.S., ____ Minn. ____, 244 N.W.2d 30 (1976)

as a whole. This decision was mandated by the special status of the reservation and by the court's recognition that where a people have been given the right of self-government they must be allowed to exercise that right to the fullest extent possible, provided they do not infringe upon compelling state interests. The *Red Lake* decision indicates that the Minnesota court will continue to limit severely the state's interference with the self-government of the Red Lake Band of Chippewa Indians.

Juvenile Law—REFERRAL FOR PROSECUTION—*In re Welfare of I.Q.S.*, ___ Minn. ___, 244 N.W.2d 30 (1976).

Minnesota, like most other states,[1] has a procedure for determining whether a juvenile accused of a crime should be tried as an adult instead of given special treatment because of age. These reference procedures have been the subject of an "ever-increasing number of challenges."[2] With *In re Welfare of I.Q.S.*,[3] the Minnesota Supreme Court consolidated and reviewed nine appeals from orders of state juvenile courts either referring or refusing to refer nine juveniles for prosecution as adults.

Reference for prosecution is the waiver of jurisdiction by a juvenile court over an alleged criminal offense.[4] Reference means that the juvenile may be tried as an adult in a municipal or district court on the referred offense. In making the reference decision the court balances the welfare and interests of the juvenile against the state interest in protecting members of society.[5] Reference for prosecution normally occurs when

1. *See, e.g.*, MICH. COMP. LAWS ANN. § 712A.4 (Cum. Supp. 1978); MO. ANN. STAT. § 211.071 (Vernon 1962); OR. REV. STAT. § 419.533 (1977); WIS. STAT. ANN. § 48.18 (West Cum. Supp. 1977).

2. *In re* Welfare of I.Q.S., ___ Minn. ___, ___, 244 N.W.2d 30, 34 (1976).

3. ___ Minn. ___, 244 N.W.2d 30 (1976).

4. Under many state statutes the process of removing a juvenile or an alleged violation by a juvenile from the jurisdiction of the juvenile court to a municipal or district court so that the juvenile may be prosecuted as an adult is termed "waiver of jurisdiction," *see, e.g.*, D.C. CODE ENCYCL. § 11-1553 (West 1966); TEX. FAM. CODE ANN. tit. 3, § 54.02 (Vernon 1975 & Cum. Supp. 1978), or "transfer," *see, e.g.*, GA. CODE ANN. § 24A-2501 (1976); N.D. CENT. CODE ANN. § 27-20-34 (1974 & Cum. Supp. 1977). In Minnesota it is termed "reference for prosecution." *See* MINN. STAT. § 260.125 (1976). As of 1974 all states except New York and Vermont had some procedural mechanism for waiver or transfer. *See* Note, *Sending the Accused Juvenile to Adult Criminal Court: A Due Process Analysis*, 42 BROOKLYN L. REV. 309, 309 n.3 (1975).

The procedure established by the Minnesota reference statute differs from that of most other states. In Minnesota the case is referred to the prosecuting authority which then decides whether to prosecute. If the prosecuting authority decides not to prosecute, the juvenile court retains jurisdiction over the case and must proceed with it. *See* MINN. STAT. § 260.125(1) (1976), *quoted in* note 11 *infra*.

5. The balancing of interests required is described in the statement of the purpose of the Minnesota Juvenile Act:

> The purpose of the laws relating to juvenile courts is to secure for each minor under the jurisdiction of the court the care and guidance, preferably in his own

a juvenile is alleged to have committed a serious offense and is not amenable to treatment in the juvenile court system.[6] A decision to refer deprives a juvenile offender of all rights and benefits conferred by the Juvenile Court Act[7] and subjects the juvenile to the potential imposition of the same criminal penalties as would be imposed on an adult.[8] Thus, as noted by the United States Supreme Court, "waiver of jurisdiction is a 'critically important' action determining vitally important statutory rights of the juvenile."[9]

The court in *I.Q.S.* used the consolidation of the nine appeals as a vehicle to decide three main issues: whether denial of a motion for

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> home, as will serve the spiritual, emotional, mental, and physical welfare of the minor and the best interests of the state; to preserve and strengthen the minor's family ties whenever possible, removing him from the custody of his parents only when his welfare or safety and protection of the public cannot be adequately safeguarded without removal; and, when the minor is removed from his own family, to secure for him custody, care and discipline as nearly as possible equivalent to that which should have been given by his parents. The laws relating to juvenile courts shall be liberally construed to carry out these purposes.

MINN. STAT. § 260.011(2) (1976).

6. Thus, only "hardcore" juvenile offenders are usually referred for prosecution as adults. For a discussion of what constitutes a hardcore juvenile, see Note, *Juvenile Law: Decision to Refer Juvenile Offenders For Criminal Prosecutions as Adults to Be Made on Basis of "State of the Art" of Juvenile Corrections,* 60 MINN. L. REV. 1097, 1098 n.5 (1976). For a discussion of some of the special problems associated with hardcore juveniles, see Boxmeyer, *The Hard-Core Kid: If He Hollers Make Him Stay?*, St. Paul Pioneer Press-Dispatch, May 6, 1978, § B, at 1B, col. 1.

7. MINN. STAT. ch. 260 (1976 & Supp. 1977), *as amended by* Act of Mar. 28, 1978, ch. 602, §§ 3-12, 1978 Minn. Sess. Law Serv. 334 (West), *as amended by* Act of Mar. 28, 1978, ch. 637, 1978 Minn. Sess. Law Serv. 374 (West), *as amended by* Act of Mar. 28, 1978, ch. 657, 1978 Minn. Sess. Law Serv. 397 (West), *as amended by* Act of Apr. 5, 1978, ch. 750, §§ 7, 9, 1978 Minn. Sess. Law Serv. 822 (West), *as amended by* Act of Apr. 5, 1978, ch. 778, § 2, 1978 Minn. Sess. Law Serv. 970 (West). The benefits of the Juvenile Court Act are clearly outlined in the statement of the Act's purpose. *See* MINN. STAT. § 260.011(2) (1976), *quoted in* note 5 *supra.* The Act's purpose reflects the *parens patriae* principle of the juvenile court system. The term *"parens patriae"* refers to the state's sovereign power of guardianship over persons under disability and allows the state to act in place of a juvenile's parent to secure the welfare of the juvenile. For a discussion of the development of the *parens patriae* philosophy that juveniles should be cared for rather than punished, see Mack, *The Juvenile Court,* 23 HARV. L. REV. 104 (1909). *See also* Fox, *Juvenile Justice Reform: An Historical Perspective,* 22 STAN. L. REV. 1187 (1970).

8. An adjudication by a juvenile court is not considered a criminal conviction and the subject juvenile is not considered a criminal. MINN. STAT. § 260.211(1) (1976). However, if jurisdiction is waived the juvenile is treated as if he was never under the jurisdiction of the juvenile court. *See id.* § 260.125(3). Thus, the confidential nature of the juvenile court, *see id.* § 260.155(1), is replaced by the publicity and notoriety associated with criminal trials and, if convicted, the juvenile will acquire a criminal record.

9. Kent v. United States, 383 U.S. 541, 556 (1966). *Kent* was the first major case involving juveniles to be considered by the United States Supreme Court in this century. Comment, *Juveniles in the Criminal Courts: A Substantive View of the Fitness Decision,* 23 U.C.L.A. L. REV. 988, 989 n.8 (1976).

referral is appealable by the state,[10] whether the reference statute[11] is unconstitutional,[12] and what findings-of-fact must be made by the juvenile court when making the reference decision.[13] A fourth issue, the availability of treatment facilities for hardcore juveniles, was mentioned in the court's opinion[14] and discussed in detail in Justice MacLaughlin's special concurring opinion.[15]

On the appealability question, the court held that a refusal to refer was appealable by the state. In so holding, the court reconsidered and overruled its 1974 decision in the case of *In re Welfare of A.L.J.*[16] that the denial of the state's motion for referral was not a final order and was thus not appealable. The court overruled its prior decision in light of the recent United States Supreme Court decision in *Breed v. Jones*[17] which, based on a double-jeopardy argument, refused to allow the referral decision to be made after an adjudicatory hearing had been held by the

10. *See* ___ Minn. at ___, 244 N.W.2d at 35.

11. The Minnesota reference statute, MINN. STAT. § 260.125 (1976), provides as follows:

Subdivision 1. When a child is alleged to have violated a state or local law or ordinance after becoming 14 years of age the juvenile court may enter an order referring the alleged violation to the appropriate prosecuting authority for action under laws in force governing the commission of and punishment for violations of statutes or local laws or ordinances. The prosecuting authority to whom such matter is referred shall within the time specified in such order of reference, which time shall not exceed 90 days, file with the court making such order of reference notice of intent to prosecute or not to prosecute. If such prosecuting authority files notice of intent not to prosecute or fails to act within the time specified, the court shall proceed as if no order of reference had been made. If such prosecuting authority files with the court notice of intent to prosecute the jurisdiction of the juvenile court in the matter is terminated.

Subd. 2. The juvenile court may order a reference only if

(a) A petition has been filed in accordance with the provisions of section 260.131

(b) Notice has been given in accordance with the provisions of sections 260.135 and 260.141

(c) A hearing has been held in accordance with the provisions of section 260.155, and

(d) The court finds that the child is not suitable to treatment or that the public safety is not served under the provisions of laws relating to juvenile courts.

Subd. 3. When the juvenile court enters an order referring an alleged violation to a prosecuting authority, the prosecuting authority shall proceed with the case as if the jurisdiction of the juvenile court had never attached.

12. *See* ___ Minn. at ___, 244 N.W.2d at 35-37.

13. *See id.* at ___, 244 N.W.2d at 37-41.

14. *See id.* at ___, 244 N.W.2d at 38-39.

15. *See id.* at ___, 244 N.W.2d at 41-43.

16. 300 Minn. 542, 220 N.W.2d 303 (1974) (per curiam). In *A.L.J.* the court held that an order refusing to refer a juvenile for prosecution as an adult did "not have the substantive effect of precluding [future] proceedings" and did "not unconditionally deny referral for adult prosecution." *See id.* at 543, 220 N.W.2d at 304. Thus, the court reasoned, such an order was not appealable by the state because it was not a final order. *See id.*

17. 421 U.S. 519 (1975).

juvenile court.[18] Hence, if the state were not allowed to appeal immediately a denial of reference, the state's right of appeal would be denied.

After resolving the appealability issue, the court discussed the contention that the Minnesota reference statute is unconstitutional because it allegedly denies equal protection and due process. In response to this contention the Minnesota Supreme Court held, based on "vast authority," that the Minnesota reference statute and procedure are constitutional and do not deny equal protection or due process.[19] The court based its decision partially on the fact that the Minnesota reference statute compares favorably with section thirty-four of the Uniform Juvenile Court Act.[20] The court apparently felt that the Act itself is constitutional since it was drafted at least partially in response to the United States Supreme Court decisions of *Kent v. United States*[21] and *In re Gault*,[22] discussed below.[23]

The equal protection argument made was that the reference statute may impose greater punishment upon certain juveniles than that which other juveniles receive for the same offense. In response to this argument, the court noted that holding the reference statute unconstitutional for denying equal protection would mean that numerous pretrial diversionary programs would have to be held unconstitutional.[24] Pretrial diversionary programs and reference of juveniles for prosecution as

18. *See id.* at 541. In the initial jurisdictional hearing the juvenile court found that the juvenile had violated a criminal statute. At the subsequent waiver hearing the juvenile court waived jurisdiction and referred the juvenile for prosecution as an adult. The United States Supreme Court held that to try the juvenile again as an adult would violate the double jeopardy clause of the fifth amendment. *See id.*

Based on *Breed*, the Minnesota Supreme Court concluded in *I.Q.S.* that a decision not to refer is a final order because a subsequent adjudication by the juvenile court will have the effect of precluding future criminal proceedings by the state. *See* ___ Minn. at ___, 244 N.W.2d at 35.

19. ___ Minn. at ___, 244 N.W.2d at 36. For another recent Minnesota case discussing equal protection, see Unborn Child v. Evans, ___ Minn. ___, 245 N.W.2d 600 (1976), *noted in* 4 WM. MITCHELL L. REV. 233 (1978). In *I.Q.S.* the Minnesota court also noted that the Minnesota reference statute is not unconstitutional for imposing cruel and unusual punishment or for denying the right to a speedy trial. *See* ___ Minn. at ___, 244 N.W.2d at 40.

20. The Uniform Juvenile Court Act was promulgated by the National Conference of Commissioners on Uniform State Laws in 1968. The Uniform Juvenile Court Act has been adopted substantially as written by North Dakota, *see* N.D. CENT. CODE ANN. ch. 27-20 (1974 & Cum. Supp. 1977), Pennsylvania, *see* PA. STAT. ANN. tit. 11, §§ 50-101 to -337 (Purdon Cum. Supp. 1978), and Tennessee, *see* TENN. CODE ANN. §§ 37-201 to -282 (1977 & Supp. 1977). It also forms the basis for the Georgia Juvenile Act. *See* GA. CODE ANN. tit. 24A (1976 & Cum. Supp. 1977).

21. 383 U.S. 541 (1966).

22. 387 U.S. 1 (1967).

23. The Commissioners' Prefatory Note to the Uniform Juvenile Court Act states that the "Act has been drawn with a view to fully meeting the mandates of [the *Kent* and *Gault*] decisions." UNIFORM JUVENILE COURT ACT, Prefatory Note.

24. *See* ___ Minn. at ___, 244 N.W.2d at 37.

adults are simply two examples of selectively enforcing criminal statutes. The exercise of reasonable selectivity in enforcing criminal statutes was held constitutional by the United States Supreme Court in *Oyler v. Boles.*[25]

The assertion that the reference statute and procedure denied due process involved two arguments: (1) that the reference statute itself is too vague and (2) that the statute is arbitrarily and capriciously applied. The Minnesota Supreme Court answered the first argument by finding that the statute incorporates suitable and ascertainable standards.[26] The court correctly distinguished the Minnesota statute from the Michigan reference statute which was held unconstitutional for lack of standards by the Michigan Supreme Court.[27]

The Minnesota reference statute requires that one of two standards be met before a juvenile court can order reference. The reference statute is written in the alternative; the court must find that a juvenile is "not suitable to treatment" or "the public safety is not served" by denying reference.[28] These two bases for reference, standing alone, are vague and allow room for more judicial discretion than is necessary. The reference statute itself and the remainder of the Minnesota Juvenile Court Act do not define either of the standards or indicate what criteria should be considered in determining when they are satisfied. The Minnesota Supreme Court did, however, in *State v. Hogan,*[29] set out six criteria to be considered in determining if the public safety is threatened:[30]

> (1) The seriousness of the offense in terms of community protection; (2) the circumstances surrounding the offense; (3) whether the offense was committed in an aggressive, violent, premeditated, or willful manner; (4) whether the offense was directed against persons or property; (5) the reasonably foreseeable consequences of the act; and (6) the absence of adequate protective and security facilities available to the juvenile treatment system.

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25. 368 U.S. 448, 454-56 (1962). Selective enforcement is constitutional only when it is not based on an unjustifiable standard, such as race or religion. *Id.* at 456. The burden is on the defendant to prove that there is impermissible discrimination, and the burden is a heavy one. United States v. Smith, 354 A.2d 510, 512-13 (D.C. 1976).

26. ___ Minn. at ___, 244 N.W.2d at 36.

27. People v. Fields, 388 Mich. 66, 77, 199 N.W.2d 217, 222 (1972), *aff'd on rehearing,* 391 Mich. 206, 216 N.W.2d 51 (1974). The Michigan statute had provided that "the judge . . . may, after investigation and examination . . . waive jurisdiction . . . ." MICH. COMP. LAWS ANN. § 712A.4 (1968). The standard was, in the words of the Michigan Supreme Court, "subject to so many possible interpretations as to be no standard at all." 388 Mich. at 76, 199 N.W.2d at 222. In contrast, the Minnesota reference statute requires that the court consider the juvenile's suitability to treatment or the public safety in making a reference decision. MINN. STAT. § 260.125(2)(d) (1976), *quoted in* note 11 *supra.*

28. MINN. STAT. § 260.125(2)(d) (1976), *quoted in* note 11 *supra.*

29. 297 Minn. 430, 212 N.W.2d 664 (1973).

30. *Id.* at 438, 212 N.W.2d at 669-70 (citing Mikulovsky v. State, 54 Wis. 2d 699, 196 N.W.2d 748 (1972) and Note, *Reference for Prosecution in Juvenile Court Proceedings,* 54 MINN. L. REV. 389, 404 (1969)).

Unfortunately the court has not set out similiar criteria to be considered in determining when a juvenile is not suitable for treatment.

The Minnesota Juvenile Court Rules,[31] which are applicable in all Minnesota counties except Hennepin and Ramsey,[32] set out four criteria to be considered when applying either statutory standard:[33]

> (a) the type of offense, including whether it demonstrated viciousness, or involved force or violence; and (b) whether the offense is part of a repetitive pattern of offenses which indicates that the child may be beyond rehabilitation under the regular statutory juvenile procedures; and (c) the record of the child; and (d) the relative suitability of programs and facilities available to the juvenile and criminal courts.

Hennepin County and Ramsey County have their own juvenile court rules which do not set out any criteria to be considered when applying the statutory reference standard in the respective counties. Thus, the way the law currently stands, all Minnesota juvenile courts should consider the six criteria set out in *Hogan* when applying the "public safety" standard and juvenile courts outside Hennepin County and Ramsey County should consider the four criteria set out in the Minnesota Juvenile Court Rules when applying both statutory standards. Or, put another way, the juvenile courts in Hennepin County and Ramsey County, where over fifty percent[34] of the juvenile hearings in Minnesota occur, have no specific criteria to consider when they determine if a juvenile is suitable for treatment.

The Minnesota Legislature should remedy this situation by establishing criteria which must be considered by all Minnesota juvenile courts when considering the questions of "public safety" and "suitable to treatment." The criteria set out in *Hogan,*[35] the Minesota Juvenile Court Rules,[36] and the reference statutes of other states[37] could be a good

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31. The Minnesota Juvenile Court Rules were promulgated by the Minnesota Juvenile Judges Association and became effective in all Minnesota probate-juvenile courts on March 1, 1969. The rules are in effect in all counties where the probate court is the juvenile court. *See* MINN. JUV. CT. R. 1-2(d) (1978). This includes all the Minnesota counties except Hennepin and Ramsey. In Hennepin County and Ramsey County the district court is the juvenile court. Act of Apr. 15, 1978, ch. 570, § 7, 1978 Minn. Sess. Law Serv. 822 (West) (to be codified at MINN. STAT. § 260.019(1)). Hennepin County and Ramsey County have their own juvenile court procedural rules.

32. *See* note 31 *supra.*

33. MINN. JUV. CT. R. 8-7(2)(a) to (d) (1978). *See also* Note, *Reference for Prosecution in Juvenile Court Proceedings*, 54 MINN. L. REV. 389, 402-07 (1969).

34. Note, *Basic Rights for Juveniles in Juvenile Proceedings Under the Minnesota Juvenile Court Rules: A Response to Gault*, 54 MINN. L. REV. 335, 338 n.27 (1969).

35. See text accompanying note 30 *supra.*

36. See text accompanying note 33 *supra.*

37. For example the Colorado reference statute, COLO. REV. STAT. § 19-3-108(2)(b) (1973), provides:

> In considering whether or not to waive juvenile court jurisdiction over the child, the juvenile court shall consider the following factors:

starting point. Some discretion should be preserved so that a juvenile court judge can act as the representative of the state in a *parens patriae* capacity and give each juvenile individual attention. An overriding purpose of the juvenile court is to determine the needs of the child and society,[38] not to adjudicate criminal conduct. Sufficient discretion should be maintained to allow fulfillment of this purpose. Thus, the standards should be sufficiently defined to eliminate unnecessary discretion which could be abused, while allowing sufficient discretion for the juvenile court to function in its *parens patriae* role. Well-defined standards would also make it easier for a reviewing court to determine if there has been an abuse of discretion by the trial court.

Without much analysis, the court answered the second due process argument—that the reference statute is arbitrarily and capriciously applied—by listing four constitutionally required procedural safeguards for waiver hearings and implying that the Minnesota procedure meets the four requirements.[39] While the court was correct in holding that the Minnesota reference procedure does meet due process requirements, additional discussion beyond that given by the court probably would have been beneficial.

The four procedural safeguards set out by the Minnesota Supreme Court as being required at all waiver proceedings were:[40]

> (1) If the juvenile court is considering a waiver of jurisdiction, the juvenile is entitled to a hearing;
>
> (2) The juvenile is entitled to representation by counsel at such hearing;
>
> (3) The juvenile's attorney must be given access to the juvenile's social record on request; and
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> (4) If jurisdiction is waived, the juvenile is entitled to a statement of reasons in support of the waiver order.

The reference procedure used in Minnesota meets all four of these re-

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(I) The seriousness of the offense and whether the protection of the community requires isolation of the child beyond that afforded by juvenile facilities;

(II) Whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner;

(III) Whether the alleged offense was against persons or property, greater weight being given to offenses against persons;

(IV) The maturity of the child as determined by considerations of his home, environment, emotional attitude, and pattern of living;

(V) The record and previous history of the child; and

(VI) The likelihood of rehabilitation of the child by use of facilities available to the juvenile court.

38. *See* notes 5, 7 *supra*.

39. *See* ___ Minn. at ___, 244 N.W.2d at 36. The Minnesota Supreme Court did not specifically state that the four procedural safeguards were met by the Minnesota reference procedure. The court implied that there was evidence that the safeguards were satisfied. *See id.*

40. *Id.*

quirements. The first three—a hearing, right to counsel, and access to social records—are required by the Minnesota Juvenile Court Act,[41] the Minnesota Juvenile Court Rules,[42] the Hennepin County Juvenile Court Rules,[43] and the Ramsey County Juvenile Court Rules.[44] The fourth requirement—a statement of reasons if jurisdiction is waived—is not specifically required by the Minnesota Juvenile Court Act or the Hennepin County Juvenile Court Rules but is required by the Minnesota Juvenile Court Rules[45] and the Ramsey County Juvenile Court Rules.[46]

The necessity of a statement of reasons and findings-of-fact was discussed at length by the supreme court in *I.Q.S.*[47] The court held that juvenile court orders denying or granting reference must be accompanied by an adequate statement of the facts considered and the reasons for the decision.[48] These findings-of-fact need not be formal but must

41. MINN. STAT. ch. 260 (1976 & Supp. 1977), *as amended by* Act of Mar. 28, 1978, ch. 602, §§ 3-12, 1978 Minn. Sess. Law Serv. 334 (West), *as amended by* Act of Mar. 28, 1978, ch. 637, 1978 Minn. Sess. Law Serv. 374 (West), *as amended by* Act of Mar. 28, 1978, ch. 657, 1978 Minn. Sess. Law Serv. 397 (West), *as amended by* Act of Apr. 5, 1978, ch. 750, §§ 7, 9, 1978 Minn. Sess. Law Serv. 822 (West), *as amended by* Act of Apr. 5, 1978, ch. 778, § 2, 1978 Minn. Sess. Law Serv. 970 (West). A hearing must be held before a reference decision can be made. *See* MINN. STAT. § 260.125(2)(c) (1976). The juvenile has a right to counsel at the reference hearing. *See id.* § 260.155(2). The juvenile has a right to inspect the records concerning him, *see id.* § 260.161(1), and this right should give the juvenile's attorney a right to inspect any social reports on the juvenile.

42. Under the Minnesota Juvenile Court Rules a reference hearing is required, *see* MINN. JUV. CT. R. 8-1(3) (1978), the juvenile has a right to legal counsel at the hearing, *see id.* 2-1, and the juvenile's counsel has a right to inspect any report on file with the court, *see id.* 8-3, 10-5, which would include social reports on the juvenile.

43. The Hennepin County Juvenile Court Rules have been adopted by the Hennepin County District Court, Juvenile Division. Under these rules a juvenile has a right to counsel at the reference hearing. *See* HENN. COUNTY, MINN., JUV. CT. R. 6.2 (Aug. 1977). While not specifically granting the rights, the rules imply that a juvenile has a right to a reference hearing, *see id.* 4, and a right to have his counsel inspect social reports on the juvenile, *see id.* 5.1.

44. The Ramsey County Juvenile Court Rules have been adopted by the Ramsey County District Court, Juvenile Division. These rules give a juvenile the right to a reference hearing, *see* RAMSEY COUNTY, MINN., JUV. CT. R. 5.01 (June 1, 1971), the right to counsel at the hearing, *see id.* 2.03, 5.01, and the right to have his counsel inspect social reports on the juvenile, *see id.* 5.10.

45. If a court covered by the Minnesota Juvenile Court Rules decides to refer a juvenile for prosecution as an adult, the court must make separate findings-of-fact which include the court's reasons for referring and the facts supporting its reasons. *See* MINN. JUV. CT. R. 8-7(1)(b) (1978).

46. *See* RAMSEY COUNTY, MINN., JUV. CT. R. 5.01 (June 1, 1971) which requires that the court "announce the facts . . . which it considers to have been clearly and convincingly proven." This should be interpreted to include a statement of the reasons for a decision to refer. While the Hennepin County Juvenile Court Rules currently in effect, HENN. COUNTY, MINN., JUV. CT. R. (Aug. 1977), do not specifically require findings-of-fact, the prior version did. *See* HENN. COUNTY, MINN., JUV. CT. R. 5.23 (Nov. 1974). Thus, prior to the decision in *I.Q.S.*, which now requires findings-of-fact in all reference decisions, Hennepin County specifically required findings-of-fact.

47. *See* ___ Minn. at ___, 244 N.W.2d at 37-39.

48. *Id.* at ___, 244 N.W.2d at 38. These "findings-of-fact" are necessitated by the

show that the court has fully investigated the matter, demonstrate that the court's decision was based on careful consideration of the facts, and indicate which of the two statutory standards the court applied.[49] The court indicated that such findings will help assure procedural regularity, which is especially important because of the substantial discretion that juvenile court judges have in making the reference decision.

The Minnesota Supreme Court apparently arrived at the four procedural safeguards set out in *I.Q.S.* by reading together the United States Supreme Court decisions of *Kent v. United States*[50] and *In re Gault*[51] as constitutionally requiring them. *Kent* was not a decision of constitutional dimensions; rather, it involved the interpretation of the District of Columbia Juvenile Court Act. The Court interpreted the Act to require that a juvenile be given four procedural safeguards during the waiver proceedings: a hearing,[52] assistance of counsel,[53] access to social records on the juvenile,[54] and a statement of reasons for the court's decision.[55] These four safeguards are the same as those set out in *I.Q.S.*[56]

While the procedural safeguards set out for the waiver process by *Kent* were based on statutory construction and not constitutional requirements, some courts,[57] including the Minnesota Supreme Court in *I.Q.S.*,[58] have interpreted the safeguards as having been raised to constitutional dimensions by the decision in *Gault*.[59] Although it can be

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complexity of reviewing juvenile court orders. *See id.* In a case subsequent to *I.Q.S.*, the supreme court interpreted their pronouncement in *I.Q.S.* to mean that detailed findings should be employed so that the reviewing court could determine the precise basis for the reference decision. Full compliance was urged. *See In re* Welfare of K.T.N., ___ Minn. ___, ___, 251 N.W.2d 636, 638 (1977).

49. ___ Minn. at ___, 244 N.W.2d at 38. This assumes that the motion for reference was granted. However, the statutory standards may still need to be discussed even if reference is denied. For example, the court remanded the three appeals in *I.Q.S.* where the juvenile court found the juveniles to be amenable to treatment but failed to discuss its conclusion that each of the juveniles represented a danger to the public safety. *See* text accompanying note 64 *infra*.

50. 383 U.S. 541 (1966).

51. 387 U.S. 1 (1967).

52. 383 U.S. at 561-62.

53. *Id.*

54. *Id.* at 562-63.

55. *Id.* at 561.

56. *See* text accompanying note 40 *supra*.

57. *See, e.g., In re* Harris, 67 Cal. 2d 876, 879, 434 P.2d 615, 617, 64 Cal. Rptr. 319, 321 (1967) (in bank). For a criticism of the *Harris* decision, see Note, *supra* note 4, at 320.

58. *See* ___ Minn. at ___, 244 N.W.2d at 36.

59. *Gault* involved an adjudicatory hearing, not a waiver or reference hearing as was involved in *Kent*. The United States Supreme Court held in *Gault* that certain procedural safeguards are constitutionally required in a juvenile adjudicatory hearing which may result in placing a juvenile in an institution. The safeguards required were: notice of the charges, 387 U.S. at 31-34; right to counsel, *id.* at 34-42; right to confront and cross-examine witnesses, *id.* at 56-57; and the privilege against self-incrimination, *id.* at 44-55. Some of the language in *Gault* has been interpreted as indicating that the procedural

argued that this interpretation is not strictly correct,[60] it does not affect the court's reasoning in *I.Q.S.* since there can be little doubt that the United States Supreme Court would constitutionally require the same four safeguards for all waiver or transfer proceedings if specifically faced with the question. In fact, it is likely that the United States Supreme Court would constitutionally require that waiver proceedings include the three additional procedural safeguards constitutionally required by *Gault* for the juvenile adjudicatory hearing:[61] notice of the hearing, the right to confront and cross-examine witnesses, and the privilege against self-incrimination.[62] The Minnesota procedure does require these three safeguards.[63]

After discussing the standards and findings-of-fact requirements, the Minnesota Supreme Court applied them to the nine appeals. Three cases—*I.Q.S.*, *E.T.B.*, and *T.L.P.*—where reference was denied and the

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safeguards set out in *Kent*, see notes 52-55 *supra* and accompanying text, are constitutionally required for waiver hearings, *see* notes 57-58 *supra* and accompanying text.

60. The United States Supreme Court specifically stated in *Gault* that it was not considering the applicability of procedural safeguards to other parts of the juvenile process, which would include reference proceedings. At one point the Court stated:

> We do not even consider the entire process relating to juvenile "deliquents." For example, we are not here concerned with the procedures or constitutional rights applicable to the pre-judicial stages of the juvenile process, nor do we direct our attention to the post-adjudicative or dispositional process. . . . We consider only the problems presented to us by this case.

387 U.S. at 13. At another point the Court stated that "[t]he problems of pre-adjudication treatment of juveniles, and of post-adjudication disposition, are unique to the juvenile process; hence what we hold in this opinion with regard to the procedural requirements at the adjudicatory stage has no necessary applicability to other steps of the juvenile process." *Id.* at 31 n.48. Thus, a strict interpretation of *Gault* would not raise the procedural requirements of *Kent*, which applied only to the reference process, to constitutional dimensions.

61. A decision at the reference hearing to prosecute criminally a juvenile as an adult would have potentially far more adverse consequences for a juvenile than an adjudication of juvenile deliquency. Thus, it seems logical that a juvenile should be accorded all the procedural safeguards which are constitutionally required of a hearing on the question of juvenile deliquency at a hearing on the reference question. Of course, once a juvenile is referred for prosecution as an adult he will have all of the procedural safeguards of any accused criminal. However, these safeguards do not help him during the stage when the most important decision may have been made—the reference hearing.

62. *See* note 59 *supra.*

63. A juvenile is entitled to notice of the reference hearing. *See* MINN. STAT. § 260.125(2)(b) (1976); MINN. JUV. CT. R. 8-2 (1978). A juvenile also has the right of cross-examination. *See* MINN. STAT. § 260.155(6) (1976); MINN. JUV. CT. R. 2-3(1)(b) to (c) (1978). While the Minnesota Juvenile Court Act does not specifically state that a juvenile has the right against self-incrimination during a reference proceeding, there are no Minnesota cases which deny the right and the Minnesota cases which have considered the right of a juvenile to remain silent in other contexts appear to assume that the right exists. *See, e.g.*, State v. O'Neill, 299 Minn. 60, 70-71, 216 N.W.2d 822, 829 (1974); State v. Hogan, 297 Minn. 430, 440-41, 212 N.W.2d 664, 670-71 (1973). The Minnesota Juvenile Court Rules, as distinguished from the Act, specifically give a juvenile the right to remain silent. *See* MINN. JUV. CT. R. 2-2 (1978).

state appealed, were remanded for further consideration by the juvenile court. The Juvenile Division of the Hennepin County District Court had found the juveniles to be amenable to treatment and had based its decisions not to refer on these findings. However, the juvenile court had also found that each of the juveniles was dangerous, a finding which would support reference. The supreme court remanded the cases for the juvenile court to consider the risk the juveniles presented to the public safety.[64] The supreme court apparently felt that the findings-of-fact were insufficient to explain the apparent anomoly in the juvenile court's decisions.

Referral orders were affirmed in the *J.E.C.*, *Hunter*, *Romanowski*, *Amos*, *Wright*, and *Parker* cases. In *Hunter* and *Romanowski* the Minnesota Supreme Court found the juvenile court's findings insufficient to support a referral decision but went on to find adequate evidence in the juvenile court's records to affirm the referrals.[65] In the other four cases the court found sufficient findings to support the decisions to refer.

Finally, Minnesota's failure to provide separate facilities for hardcore juveniles, which was originally discussed by the supreme court in the case of *In re Welfare of J.E.C.*,[66] was again noted by the court in *I.Q.S.* This failure is probably the primary reason for most reference orders. As the supreme court stated in *I.Q.S.*, facility considerations "continue to be paramount in this court's resolution of the propriety of orders of the

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64. ___ Minn. at ___, 244 N.W.2d at 39.

65. *See id.* at ___, 244 N.W.2d at 40-41. In *Hunter* the juvenile court apparently found that the juvenile was not amenable to treatment because of a lack of adequate treatment facilities. *See id.* at ___, 244 N.W.2d at 40. The supreme court indicated that, based on its prior decision of *In re* Welfare of J.E.C., 302 Minn. 387, 225 N.W.2d 245 (1975), such a lack of facilities is not itself sufficient to support a decision that a juvenile is not amenable to treatment. However, the supreme court found from the record that the juvenile in this case had rejected prior attempts to treat him within the juvenile system and thus should be prosecuted as an adult for reasons of public safety. *See* ___ Minn. at ___, 244 N.W.2d at 40.

In *Romanowski* the juvenile court had found that:

> 1. Respondent is chronically anti-social, hedonistically concerned with immediate gratification of his wants, by lawful means if possible, otherwise by unlawful means. He is without conscience. He has no need for other persons and resents any intrusion into his life style.
>
> 2. He is unamenable to any known means of socializing therapy.
>
> 3. The prognosis is unacceptably poor for modifying his behavior by a program of security with gradually acquired accountability, or by any other existing or feasible program within the Juvenile Justice System before his twenty-first birthday.

Id. The supreme court indicated that these findings might not be sufficient to support a decision to refer. The supreme court went on to find, however, that the trial court's record indicated that the juvenile had previously been before the juvenile court on several occasions and that he had failed to respond to treatment. These findings were sufficient to support the juvenile court's reference decision. *See id.* at ___, 244 N.W.2d at 40-41.

66. 302 Minn. 387, 225 N.W.2d 245 (1975). For a general discussion of the lack of separate facilities for hardcore juvenile offenders in Minnesota, see Note, *supra* note 6.

juvenile court either granting or denying motions for reference."[67] The opinion of the supreme court and the special concurring opinion of Justice MacLaughlin[68] discuss this problem and correctly urge the Minnesota Legislature to consider seriously the problem of the lack of separate facilities for hardcore juvenile offenders.

In conclusion, the Minnesota Supreme Court in *I.Q.S.* held that the denial of a reference motion is appealable by the state, the Minnesota reference statute and procedure are constitutional, and findings-of-fact will be required of Minnesota juvenile courts in the future to facilitate judicial review. While the Minnesota reference statute is constitutional, the Minnesota Legislature should add specific criteria to be considered by juvenile courts when applying the two standards set out in the reference statute. Additional criteria would supplement the findings-of-fact requirements of *I.Q.S.* and could be designed to help eliminate unnecessary judicial discretion, while leaving sufficient discretion to allow the juvenile courts to function in their *parens patriae* role. In addition, the legislature should consider the need for a separate secure facility for hardcore juvenile offenders.

Liquor Licensing—SUPREME COURT REVERSAL OF A MUNICIPALITY'S DENIAL OF A LICENSE—*Wajda v. City of Minneapolis*, ___ Minn. ___, 246 N.W.2d 455 (1976).

In *Wajda v. City of Minneapolis*,[1] the Minnesota Supreme Court made an unprecedented decision to reverse a municipality's denial of a liquor license. The appellant had operated or leased a 3.2 beer tavern from 1954 until 1970 without violations of the law or neighborhood problems. Subsequently, the appellant leased the premises, first to her son and later to an unrelated tenant. Each of these tenants obtained a license to operate the tavern, as required by city ordinance.[2] During

67. ___ Minn. at ___, 244 N.W.2d at 39.

68. Justice MacLaughlin, concurring specially in *I.Q.S.*, elaborated on the difficult questions of fact and policy involved in providing a separate facility for hardcore juvenile offenders. On one side is the belief that some hardcore juvenile offenders can be rehabilitated, consistent with the purposes and directions of the Juvenile Court Act, if a separate facility is provided. Such a facility would avoid placing juveniles in an adult detention facility which, it is generally agreed, decreases the chance of rehabilitation. On the other side is the Department of Corrections' conclusion that it is not feasible to develop a separate secure facility for hardcore juvenile offenders. *See id.* at ___, 244 N.W.2d at 41-43. *See generally* Boxmeyer, *supra* note 6.

1. ___ Minn. ___, 246 N.W.2d 455 (1976).

2. MINNEAPOLIS, MINN., CODE OF ORDINANCES § 366.10 (1976) requires that every seller of beer be licensed. A license may be transferred, but the application procedures for transfers, renewals, and new licenses are essentially the same. *See id.* § 366.110. Applications are investigated by the police license inspector. *See id.* § 366.150. Hearings on applications are then held by a committee of the city council. *See id.* §§ 366.180, .200.