A Recommendation for Juvenile Jury Trials in Minnesota

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A RECOMMENDATION FOR JUVENILE JURY TRIALS IN MINNESOTA

Nearly one century ago, advocates for the legal reform of the juvenile justice system declared the existing system "inhumane." Since then, progress has been slow but steady. Nonetheless, juvenile law continues to be an active area of the law, especially in Minnesota. The author of this Note recommends an additional step toward reform of the state's juvenile law, the availability of the jury trial to juveniles in delinquency proceedings.

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I. INTRODUCTION

Since 1980, Minnesota has shifted the focus of its juvenile justice philosophy from rehabilitation to deterrence and punishment.1 The determinative factor in treatment of the juvenile offender is no longer the best interests of the child.2 Today, Minnesota’s juvenile system treats the juvenile offender essentially as a criminal, yet denies the child a trial by
By depriving the child of the protections accorded adults as well as the solicitous treatment generally accorded children, the present system realizes the fear expressed by the United States Supreme Court: the child in the midst of a delinquency proceeding is subjected to the “worst of both worlds.” With this shift to criminal treatment, due process should include jury trials for juveniles in Minnesota.

This Note first examines the progression and regression of children’s constitutional rights as interpreted by the United States Supreme Court. The arguments for and against the implementation of a juvenile jury system in Minnesota are examined and discussed. In conclusion, the author recommends that children who are prosecuted for delinquency in Minnesota’s juvenile courts be accorded jury trials.

II. THE CONSTITUTIONAL RIGHTS OF JUVENILE OFFENDERS

A. Expansion of Children’s Constitutional Rights

In 1899, the first juvenile court was established in Illinois after widespread public outcry against inhumane treatment of juveniles involved in the court process. The purpose of the Illinois Act was to afford

3. For a discussion of the “criminal” treatment of the juvenile, see infra notes 90-141 and accompanying text.


7. “[D]isrupted families, overcrowded housing, poverty, slums, alcoholism and resultant increasing crime and delinquency spurred reformers into establishing a separate set of courts for youth.” Kittle, Juvenile Justice Philosophy in Minnesota, 34 JUV. & FAM. CT. J., Feb. 1983, at 93. For an extensive discussion on the history of the child saving movement in America in the 1800’s, see A. PLATT, supra note 6. For a discussion of the child savers as they exist today, see P. PRESCOTT, THE CHILD SAVERS (1981).
juveniles more humane and protective treatment by the state than previously provided. This was effectuated by an informal court which attempted to individualize the hearing and disposition of the juvenile offender. Under the Act, the parens patriae doctrine was implicitly recognized. The doctrine was based upon the theory that the state, looking out for the child’s welfare and best interests, acted through the court as a parent of the child.

Although establishment of the juvenile court marked an improvement in juvenile proceedings, no specific constitutional safeguards were extended to children. The United States Supreme Court first explicitly extended constitutional protection to juvenile offenders in 1948. In Haley v. Ohio, the United States Supreme Court held that the fourteenth amendment prohibited the admission of a fifteen-year-old’s coerced confession into evidence during his criminal trial for homicide. The Court’s holding acknowledged the need to extend due process to juveniles in delinquency proceedings.

Since Haley, the United States Supreme Court has maneuvered its way through a series of cases involving the constitutional rights of children, stating that children are persons within the meaning of the Constitu-

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8. See supra note 6. Initially, juveniles were treated as adults when faced with a criminal charge and any due process received by adults was applied with equal force to juveniles. See Ex parte Becknell, 119 Cal. 496, 51 P. 692 (1897); People ex rel. O’Connell v. Turner, 55 Ill. 280, 8 Am. Rep. 645 (1870).

9. The doctrine of parens patriae originated in England, where the King or Queen was viewed as “parent” of neglected or abandoned children. Stuart, Judicial Powers Of Non-Judges: The Legitimacy Of Referee Functions In Minnesota Courts, 6 WM. MITCHELL L. REV. 65, 80 (1980). Minnesota also adopted the parens patriae stance, as evidenced by the following language:

The language of the constitution does not apply where the state acts as the common guardian of the community, exercising its power whenever the welfare of an infant demands it, or where the state acts in the legitimate exercise of its police power. Therefore the lawmakers were not prohibited from conferring jurisdiction in such cases upon any of the judicial officers of the state.

State ex rel. Olson v. Brown, 50 Minn. 353, 359, 52 N.W. 935, 936 (1892); see also Loyd v. Youth Conservation Comm’n, 287 Minn. 12, 17, 177 N.W.2d 555, 558 (1978); infra note 20.

10. See, e.g., A. PLATT, supra note 6, at 67. Professor Platt states:

Since the child savers professed to be seeking the best interest of their ‘wards’, there was no need to formulate legal regulation of the right and duty to treat in the same way that the right and duty to punish had formerly been regulated. In effect, the new penology reified the dependent status of children by disenfranchising them of legal rights.

Id.

11. 332 U.S. 596 (1948).

12. Id. The Court stated, “[N]either man nor child can be allowed to stand condemned by methods which flout constitutional requirements of due process of law.” Id. at 601. This statement is somewhat surprising in view of the Court’s holding in McKeiver v. Pennsylvania, 403 U.S. 528 (1971) (due process stops short of allowing a juvenile the constitutional right to a jury trial in the adjudicative phase of a state juvenile court delinquency proceeding).
tion. Notwithstanding the increased recognition of children's rights, the Court has declared that the right to a jury trial is not essential for fundamental fairness in juvenile proceedings.\(^{14}\)

In 1966, the United States Supreme Court first discussed the "delinquent" child's constitutional rights.\(^{15}\) The Court in *Kent v. United States*\(^{16}\) held that due process rights must be extended to juveniles in delinquency proceedings.\(^{17}\) Significantly, it did not mandate that the constitutional safeguards be equivalent to those granted adults.\(^{18}\) In reaching this conclusion, the Court discussed the inherent special nature of the juvenile court system:\(^{19}\)

Its proceedings are designated as civil rather than criminal. The Juvenile Court is theoretically engaged in determining the needs of the child and of society rather than adjudicating criminal conduct. The objectives are to provide measures of guidance and rehabilitation for the child and protection for society, not to fix criminal responsibility, guilt and punishment. The State is *pars pro toto* rather than prosecut-


\(^{16}\) *Id.*

\(^{17}\) *Id.* at 557. *Kent* did not extend to juveniles the right to bail, indictment by a grand jury, speedy and public trial, or trial by jury. *Id.* at 555. *Kent* did extend to juveniles the rights to discovery, hearings, and counsel prior to waiver of jurisdiction by the juvenile court. *Id.* at 561.

*Kent* involved a 16-year-old juvenile charged with housebreaking, robbery, and rape. After an initial hearing, the juvenile court declined jurisdiction over the matter, instead recommending trial at the district court level. *Id.* at 546. Petitioner was later convicted by the district court on charges of housebreaking and robbery. *Id.* at 550.

On appeal, counsel for petitioner argued that the waiver was defective because there was no hearing prior to the waiver, the juvenile court made no findings, and counsel had no access to the reasons relied upon by the court in its decision to waive jurisdiction. *Id.* at 552. The Supreme Court stated:

We do not consider whether, on the merits, Kent should have been transferred; but there is no place in our system of law for reaching a result of such tremendous consequences without ceremony — without hearing, without effective assistance of counsel, without a statement of reasons. It is inconceivable that a court of justice dealing with adults, with respect to a similar issue, would proceed in this manner. It would be conceivable if society's special concern for children . . . permitted this procedure. We hold that it does not. *Id.* at 554.

\(^{18}\) *Id.* at 556.

\(^{19}\) *Id.* at 554-57. See generally Handler, *The Juvenile Court and the Adversary System: Problems of Function and Form*, 1965 Wis. L. Rev. 7, 9-10.
To guard against improper use of the parens patriae power, the Kent Court held that a juvenile is constitutionally entitled to discovery, a hearing, and counsel prior to waiver of the juvenile court’s jurisdiction.

One year later, the constitutional protection granted juveniles in Kent was further expanded in the leading case of In re Gault. The juvenile in Gault was adjudicated delinquent on a charge of making lewd telephone calls. He was subsequently ordered confined to an industrial school until he reached the age of twenty-one. This sanction was imposed without adequate notice to the parties, representation by counsel,

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20. 383 U.S. at 554-55. In taking the role of parens patriae, the state assumes a fictional role as parent of the child. In this role, the state attempts to discern the best interests of the child. See Handler, supra note 19, at 9-10. The Kent Court recognized the inherent potential for abuse in the parens patriae concept, stating that the right to act as parent was neither unlimited nor an “invitation to procedural arbitrariness.” 383 U.S. at 555.

21. 383 U.S. at 562. The Court was dealing specifically with the accessibility of certain “social” records concerning the defendant. Because such records are used in adjudications, it is essential that defense counsel have access to them.

22. Id. The Court stated:

We do not mean by this to indicate that the hearing to be held must conform with all of the requirements of a criminal trial or even of the usual administrative hearing; but we do hold that the hearing must measure up to the essentials of due process and fair treatment.

Id. (citing Pee v. United States, 274 F.2d 556, 559 (D.C. Cir. 1959)).

23. Id. at 561. “The right to representation by counsel is not a formality. It is not a grudging gesture to a ritualistic requirement. It is of the essence of justice. Appointment of counsel without affording an opportunity for a hearing of a ‘critically important’ issue is tantamount to denial of counsel.” Id.

24. 387 U.S. 1 (1967). In Gault, the Court stated that counsel for juveniles is required because “[a] proceeding where the issue is whether the child will be found to be ‘delinquent’ and subjected to the loss of his liberty for years is comparable in seriousness to a felony prosecution.” Id. at 36.

Gault was an appeal to the United States Supreme Court after denial by the Arizona Supreme Court of a habeas corpus petition alleging the unconstitutionality of Arizona’s juvenile laws. Id. at 9-10. The Court took the opportunity to discuss and expand the constitutional safeguards extended to children, using the oft-repeated phrases that “neither the Fourteenth Amendment nor the Bill of Rights is for adults alone,” and “the condition of being a boy does not justify a kangaroo court.” Id. at 13, 28.

After being adjudicated delinquent at a juvenile hearing under a charge of making lewd telephone calls, the 15-year-old petitioner in Gault was ordered confined at an industrial school for six years, until he reached the age of 21. Id. at 7. The Supreme Court found a number of violations in the petitioner’s confinement, including: inadequate notice of charges, inadequate factual basis for confinement, no confrontation afforded, no record of the proceeding, no self-incrimination protection, and no appeals permitted. Id. at 4-11. Although the Gault Court recognized the seriousness of a delinquency adjudication, it did not discuss the jury issue. See id. at 24-25.

25. Id. at 7-8.

26. Id.

27. Id. at 5-7.

28. Id. at 5, 7.
cross-examination of the complaining witness,29 or observance of the juvenile’s right against self-incrimination.30 The hearing did not establish a factual basis for the charge.31 The proceedings took place without a record,32 and appeal was not allowed.33

Despite the Gault Court’s condemnation of the juvenile’s due process denials, it did not require states to afford juveniles the full panoply of adult constitutional safeguards.34 Thus, a delinquency adjudication resulting in the deprivation of a child’s liberty for a period of years remained subject to a less strict standard of review than adults in essentially the same position. The Court reasoned that since delinquency proceedings were civil, not criminal in nature, the procedural protections for adults and children need not be identical.35

Gault reaffirmed the Kent holding that a juvenile is entitled to counsel prior to waiver of any rights and extended the holding to include the right at all stages of delinquency proceedings.36 The Gault Court also

29. Id. at 7.
30. Id. at 6.
31. Id. at 5.
32. Id.
33. Id. at 8.
34. See id. at 30.
35. Cf. id. at 23-24. The Court noted that referring to a juvenile as a “delinquent” has “only slightly less stigma than the term ‘criminal’ applied to adults.” Id.

The civil label attached to delinquency proceedings derives from the parens patriae concept. Id. at 17; see supra note 9. The Gault Court criticized the concept, however, stating that “its meaning is murky and its historical credentials are of dubious relevance.” 387 U.S. at 16. Still, the doctrine remains in use today. The Gault Court held the concept was needed despite its problems; if the natural parents of the child do not assert their custodial duties properly, the state must intervene and take over the position of parent in determining the best interests of the child. See id. at 17-18; see also Petition of Ferrier, 103 Ill. 367, 371-73 (1882); Ex parte Crouse, 4 Whart. 9, 11 (Sup. Ct. Pa. 1839); Shears, Legal Problems Peculiar to Children’s Courts, 48 A.B.A.J. 719, 719-20 (1962).

Once the parens patriae privilege is exercised, constitutional protections must be extended to the child to check the power granted the state. “[U]nbridled discretion, however benevolently motivated, is frequently a poor substitute for principle and procedure.” 387 U.S. at 18; see Pee v. United States, 274 F.2d 556 (D.C. Cir. 1959) (Judge Prettyman lists authority supporting this in 51 jurisdictions).

36. 387 U.S. at 36; see supra note 23; see also In re Welfare of T.D.F., 258 N.W.2d 774 (Minn. 1977) (juvenile has right to effective counsel); MINN. R. JUV. P. 4 (1984) (right to counsel).

Counsel is required by due process to “cope with problems of law, to make skilled inquiry into the facts, to insist upon regularity of the proceedings and to ascertain whether [the juvenile] has a defense and to prepare and submit it.” 387 U.S. at 36. For a general discussion of a juvenile’s right to counsel, see id. at 34-42. The Gault Court stated:

We conclude that the Due Process Clause of the Fourteenth Amendment requires that in respect of proceedings to determine delinquency which may result in commitment to an institution in which the juvenile’s freedom is curtailed, the child and his parents must be notified of the child’s right to be represented by counsel retained by them, or if they are unable to afford counsel, that counsel will be appointed to represent the child.

Id. at 41.
held that juveniles must be given notice of all pending charges and granted the privilege against self-incrimination. Lack of a valid confession entitled the juvenile to the dual rights of confrontation and cross-examination. In reaching these conclusions, the Gault Court recognized the similarities between delinquency and adult proceedings.

In 1970, the Supreme Court continued its expansion of juvenile constitutional protections in In re Winship. The Court in Winship held that charges must be proved beyond a reasonable doubt in delinquency actions. "The accused during a criminal prosecution has at stake interests of immense importance, both because of the possibility that he may lose his liberty upon conviction and because of the certainty that he would be stigmatized by the conviction." Although the Court retained the civil label attached to juvenile proceedings, it minimized the distinctiveness of the juvenile system.

37. See 387 U.S. at 31-34 (general discussion of the juvenile's right to notice); see also In re Welfare of Raino v. State, 255 N.W.2d 398 (Minn. 1977) (juvenile has right to notice of all charges against him).

38. For the Court's general discussion of the juvenile's protection against self-incrimination, see 387 U.S. at 42-57. The juvenile in Minnesota also has the right to remain silent. MINN. R. JUV. P. 6 (1984). In granting the child the right against self-incrimination, the Supreme Court ignored the civil label attached to the delinquency proceedings. The Gault Court stated, "To hold otherwise would be to disregard substance because of the feeble enticement of the 'civil' label-of-convenience which has been attached to juvenile proceedings." 387 U.S. at 49-50.

39. For the Court's general discussion of these rights, see 387 U.S. at 56-57. See also Note, supra note 5, at 336.

40. See 387 U.S. at 36; see also supra note 20. "A proceeding where the issue is whether the child will be found to be 'delinquent' and subjected to the loss of his liberty for years is comparable in seriousness to a felony prosecution." 387 U.S. at 36.

41. 397 U.S. 358 (1970). Winship involved a 12-year-old boy who was committed to a reformatory for a period not to exceed six years, after being found guilty by a preponderance of the evidence of stealing $122 from a woman's purse. Id.

42. Id. at 362; see also MINN. R. JUV. P. 27.05 (1984) (allegations in delinquency or petty petition must be proved beyond reasonable doubt); Speiser v. Randall, 357 U.S. 513, 525-26 (1958); Leland v. Oregon, 343 U.S. 790, 795 (1952); Brinegar v. United States, 338 U.S. 160, 174 (1949); Wilson v. United States, 232 U.S. 563, 569-70 (1914); Holt v. United States, 218 U.S. 245, 253 (1910); Miles v. United States, 103 U.S. 304, 312 (1881).

43. 397 U.S. at 363. As in Gault, the Winship court disregarded the civil label to effectuate this purpose. Id. at 366.
tion by acknowledging that no one, adult or child, should be deemed guilty unless there is proof beyond a reasonable doubt.44

B. McKeiver v. Pennsylvania: The Juvenile Has No Constitutional Right to a Jury

In view of the Supreme Court's established cases, and its progressive expansion of juvenile constitutional safeguards, the 1971 decision in McKeiver v. Pennsylvania45 emerged as an archaic anomaly. McKeiver was the consolidation of two juvenile cases46 in which appellants were denied jury trials and subsequently adjudicated delinquent.47 The sole issue presented to the Court was "whether the Due Process Clause of the Fourteenth Amendment assures the right to a trial by jury in the adjudicative phase of a state juvenile court delinquency proceeding."48 In a plurality opinion, the Supreme Court held that the juveniles did not have the constitutional right to trial by jury,49 as the jury trial was not needed to ensure fundamental fairness.50

The plurality opinion, written by Justice Blackmun and joined by Chief Justice Burger and Justices Stewart and White, recognized that "the fond and idealistic hopes of the juvenile court proponents and early reformers . . . [have] not been realized."51 The Court stated:

44. Id. at 364.
45. 403 U.S. 528 (1971).
46. Joseph McKeiver and Edward Terry were the juveniles in the first of the consolidated cases. McKeiver, 16, was adjudged a delinquent after being charged with robbery, larceny, and receipt of stolen goods. Id. at 534-35. McKeiver was placed on probation. He requested a jury trial, which was denied. The Superior Court of Pennsylvania affirmed. Id. at 535. Terry, 15, was adjudged a delinquent on charges of assault and battery and conspiracy. Like McKeiver, Terry requested and was denied a trial by jury. Terry was committed to a "Youth Development Center." The Superior Court of Pennsylvania affirmed. Id. The Supreme Court of Pennsylvania consolidated these two cases, and then determined that there was no constitutional right to a trial by jury in juvenile court. An appeal was taken to the Supreme Court of the United States. Id. at 535-36.

The second case involved Barbara Burrus and approximately 45 other black children, ages 11-15. These children, except one, were charged with "wilfully impeding traffic," a misdemeanor offense. Id. at 536-37. Each child, represented by the same lawyer, requested and was denied a jury trial. Id. at 537. Each child was then declared a delinquent and committed to the County Department of Public Welfare for an undetermined period of time. Id. at 537-38. These commitments were suspended by the court, and each child was placed on probation. Id. at 538.

The two cases were consolidated, and the United States Supreme Court granted certiorari. Id.
47. Id.
48. Id. at 530.
49. See id. at 545.
50. See id. at 545-51.
51. Id. at 543-44; see also President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Juvenile Delinquency and Youth Crime 7-10 (1967) [hereinafter cited as Task Force Report]. The task force
Too often the juvenile court judge falls far short of that stalwart, protective, and communicating figure the system envisaged. The community’s unwillingness to provide people and facilities and to be concerned, the insufficiency of time devoted, the scarcity of professional help, the inadequacy of dispositional alternatives, and our general lack of knowledge all contribute to our dissatisfaction with the experiment.52

Despite these recognized shortcomings in the system, the Court concluded that jury trials for juveniles were not constitutionally mandated to ensure fundamental fairness in the juvenile process.53 Justice Blackmun opined that the jury is not a “necessary component of accurate factfinding”54 and a juvenile may be treated as fairly by a judge as by a jury. Nonetheless, the Court expressed doubts about the qualifications and possible partiality of juvenile court judges.55

The McKeiver Court was concerned that the institution of juvenile jury trials would mandate removal of the civil label from delinquency proceedings.56 By maintaining the civil label, opined the Court, the juvenile system would be better able to preserve the desired aspects of fairness, concern, and parental attention traditionally deemed inherent in the juvenile court.57 The Justices were also concerned that use of the jury trial could turn juvenile proceedings into a “fully adversary process and . . . put an effective end to what has been the idealistic prospect of an intimate, informal protective proceeding.”58 Thus, although the Court recognized that the ideal juvenile system had not been realized, it was unwilling to extend to juveniles the constitutional protection of a trial by jury. The McKeiver Court warned that imposition of a jury would bring with it “the traditional delay, the formality, and the clamor of the adversary system, and possibly, the public trial.”59 “Meager as has been the
hoped-for advance in the juvenile field, the alternative [jury trial] would be regressive, would lose what has been gained, and would tend once again to place the juvenile squarely in the routine of the criminal process. The paucity of states using jury trials in delinquency proceedings bolstered the Court's decision. The Court stated:

The fact that a practice is followed by a large number of states is not conclusive in a decision as to whether that practice accords with due process, but it is plainly worth considering in determining whether the practice 'offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental.'

The Court in McKeiver did not bar jury trials for juveniles. Rather, the Justices encouraged states to experiment with various juvenile systems in their search for an ideal process. They stated, "There is, of course, nothing to prevent a juvenile court judge, in a particular case where he feels the need, or when the need is demonstrated, from using an advisory jury."

Justice White concurred with the McKeiver holding and filed a separate opinion. He emphasized that delinquency actions were not "criminal," distinguishing the proceedings on the basis that "criminal law proceeds on the theory that defendants have a will and are responsible for their actions." On the other hand, "Reprehensible acts by juveniles are not deemed the consequence of mature and malevolent choice but of environmental pressures (or lack of them) or of other forces beyond their control." Justice White saw a vast difference between the consequences

60. 403 U.S. at 547.
61. Id. at 548.
62. Id.
63. Id. at 547.
64. Id. at 548. Duluth, Minnesota has implemented such a system. See infra notes 155-62 and accompanying text; cf. Arthur, Should Children Be As Equal As People?, 45 N.D.L. REV. 204, 214-15 (1969) (children cannot be jurors for other children and the judge is the peer for the child).
65. 403 U.S. at 551.
66. Id.
67. Id. at 551-52. Another commentator states:

The causes of juvenile delinquency were believed to be the result of juvenile ignorance, naivety or inadvertence, inadequate family parenting or a crime and vice-ridden environment. As a result, instead of placing blame and punishing the guilty, like criminal court judges, juvenile court judges were to be non-judgmental and determine suitable treatment methods.

Kittle, supra note 7, at 93. Even if this is true, some commentators believe there is little that society can do to remedy the problem:

If a child is delinquent because his family made him so or his friends encouraged him to be so, it is hard to conceive what society might do about this. No one knows how a government might restore affection, stability, and fair discipline to a family that rejects these characteristics; still less can one imagine how even a family once restored could affect a child who by now has left the formative years and in any event has developed an aversion to one or both of his parents.

of misconduct by juveniles and by adults. He stated that there was "a substantial gulf between criminal guilt and delinquency . . . " He feared that jury trials would leave states free to "embrace condemnation, punishment, and deterrence as permissible and desirable attributes of the juvenile justice system."

Justice Brennan also concurred with the result in *McKeiver*, stating that the due process clause of the sixth and fourteenth amendments compels "not a particular procedure . . . [but only] fundamental fairness." He perceived that public scrutiny of the juvenile legal process then effective in Pennsylvania's juvenile courts provided fundamental fairness, and, therefore, a jury trial was not required.

Justices Douglas, Black, and Marshall dissented. Justice Douglas believed that states were required to extend jury trials to juveniles under the Bill of Rights and the fourteenth amendment. He stated:

[W]here a State uses its juvenile court proceedings to prosecute a juvenile for a criminal act and to order 'confinement' until the child reaches 21 years of age or where the child at the threshold of the proceedings faces that prospect, then he is entitled to the same procedural protection as an adult.

The dissenters also emphasized that the fourteenth amendment refers to denial of rights to "any person," not "any adult person." Finding the

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68. 403 U.S. at 553 (emphasis added).
69. *Id.* (emphasis added); c.f. *infra* note 87 and accompanying text (Minnesota now uses condemnation, punishment, and deterrence in treatment of juvenile offenders).

Justice White believed that since the juvenile proceedings were not labeled criminal, they did not require a jury. 403 U.S. at 551. Now, however, Minnesota's statute is criminal in effect. *See infra* note 87 and accompanying text. Therefore, according to Justice White's concurring opinion, Minnesota courts should now be employing jury trials for juveniles in delinquency proceedings. *See* 403 U.S. at 551.

70. 403 U.S. at 553.
71. *Id.* at 554.
72. *Id.* at 555-56.
73. *Id.* at 554-55. *McKeiver* was commenced in Pennsylvania, where juvenile trials were open to the public. Justice Brennan indicated that the public scrutiny of the juvenile process was sufficient to meet the burden of "fundamental fairness." *See id.*
74. *Id.* at 557.
75. *Id.* at 558.
76. *Id.* at 559.
77. *Id.* at 560. In comparison, the Minnesota Constitution, article I, section 4 states:

The right of trial by jury shall remain inviolate, and shall extend to all cases at law without regard to the amount in controversy. A jury trial may be waived by the parties in all cases in the manner prescribed by law; and the legislature may provide that the agreements of five-sixths of a jury in a civil action or proceeding, after not less than six (6) hours' deliberation, shall be a sufficient verdict therein.

Minn. Const. art. I, § 4. Article I, section 6 provides that the defendants in criminal cases receive "a speedy and public trial, by an impartial jury . . . ." *Id.* § 6. Section 4 does not use the word "person," rather it mandates the jury trial in "all cases at law." This would appear to include juveniles. Those who insist on labeling juvenile proceedings
difference between the treatment of juvenile and adult criminal offenders to be minimal, the dissenters applied a literal interpretation of the due process clause of the fourteenth amendment.

Finding support from a lower court opinion in which a juvenile was granted a jury trial, the dissenting Justices agreed that the right to a jury trial would engender rehabilitation and respect for the juvenile court system. Under their view, the advent of the jury trial would be a positive step toward the ultimate goal of juvenile rehabilitation.

C. State Experimentation After McKeiver

The McKeiver decision prompted many state courts and legislatures to experiment with their juvenile systems. Today, twelve years after McKeiver, sixteen states provide juveniles involved in delinquency proceedings the right to a trial by jury. Eleven states provide an absolute right to a jury trial, while the remaining five qualify that right. Although the
civil, irrespective of the criminal effect, may claim that juvenile proceedings are outside the purview of section 6 because it applies only to criminal prosecutions.

78. The Court noted that "[c]onviction of each of the crimes [perpetrated by the juveniles] would subject a person, whether juvenile or adult, to imprisonment in a state institution." 403 U.S. at 558 (Douglas, J., dissenting). The Justices also cited with approval Justice Black's statement in Gault that: "[I]t would be a plain denial of equal protection of the laws—an invidious discrimination—to hold that others subject to heavier punishments could, because they are children, be denied these same constitutional safeguards." Id. at 559 (Douglas, J., dissenting) (citing Gault, 387 U.S. at 61).

79. Id. at 562 (citing In re McCloud, an unpublished opinion by Judge DeCiantis of the Family Court of Providence, Rhode Island). Judge DeCiantis wrote:

The child who feels that he has been dealt with fairly and not merely expeditiously or as speedily as possible will be a better prospect for rehabilitation. Traumatic experiences of denial of basic rights only accentuate the past deprivation and contribute to the problem. Thus, a general societal attitude of acceptance of a juvenile as a person entitled to the same protection as an adult may be the true beginning of the rehabilitative process.

Id. at 562 (Douglas, J., dissenting); see also Rosenberg, supra note 5, at 708 (juvenile jury trials would lend proceedings air of dignity and assure juvenile that case had been thought through thoroughly).

80. See 403 U.S. at 560; see also infra notes 177-80 and accompanying text.

81. See ALASKA STAT. § 47.10.070 (1983); COLO. REV. STAT. § 19-1-106(4) (1978); MASS. GEN. LAWS ANN. ch. 119, § 55A (West 1982); MICH. COMP. LAWS ANN. § 712A.17(2) (West 1968); MONT. CODE ANN. § 41-5-521(1) (1981); N. M. STAT. ANN. § 32-1-31(A) (1983); OKLA. STAT. ANN. tit. 10, § 1110 (West 1983); TEX. FAM. CODE ANN. § 54.03(c) (Vernon 1982); W. VA. CODE ANN. § 49-5-6 (1980); WIS. STAT. ANN. § 48.31(2) (West 1979); WYO. STAT. § 14-6-223(c) (1977).

82. In Tennessee, a child who commits an act which would be a felony if committed by an adult is entitled to a jury trial. Arwood v. State, 62 Tenn. App. 453, 458, 463 S.W.2d 943, 946 (1970). Indiana provides for a juvenile jury trial if the child is subject to placement in a public hospital or incarceration with adults. IND. CODE ANN. § 31-6-7-10(c) (West 1979).

The juvenile court judge is granted discretion to permit juvenile jury trials in Alabama, Kansas, and South Dakota. Ex parte State ex rel. Simpson, 288 Ala. 535, 537, 263
right to a trial by jury has long been labeled fundamental for adults, there clearly has been reluctance to recognize the same right for children.

To some extent, Minnesota has experimented with its juvenile justice system as encouraged by the Justices in *McKeiver*. In 1980, the Minnesota Legislature amended the purpose clause of the Juvenile Court Act. The amendment constituted a significant shift in policy. The original purpose of the Act was:

- to secure for each minor under the jurisdiction of the court the care and guidance, preferably in his own 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.

The benevolent language of the original clause presents a stark contrast to the severity of the amended version, which provides in relevant part:

The purpose of the laws relating to children alleged or adjudicated to be delinquent is to promote the public safety and reduce juvenile delinquency by maintaining the integrity of the substantive law prohibiting certain behavior and by developing individual responsibility for lawful behavior. This purpose should be pursued through means that are fair and just, that recognize the unique characteristics of children, and that give children access to opportunities for personal and social growth.

Comparison of the two clauses demonstrates that Minnesota has shifted the primary emphasis of its entire juvenile system from rehabilitation to punishment, aligning it with the adult criminal system. Along with the shift in purpose of the law has come harsher, systematic criminal treatment of juvenile offenders. Having eliminated the civil-criminal justification for withholding the right, Minnesota should now provide

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83. See *Duncan v. Louisiana*, 391 U.S. 145, *reh'g denied*, 392 U.S. 947 (1968). "[T]rial by jury is fundamental to the American scheme of justice . . . ." 391 U.S. at 149. The right to a trial by jury is a fundamental right and must be recognized by states as part of their obligation to extend the process of law to all persons within their jurisdiction. The right to a jury trial is extended in order to prevent oppression by the government. *Id.* The jury trial demonstrates "a reluctance to entrust plenary powers over the life and liberty of the citizen to one judge or to a group of judges." *Id.* at 156.

84. See *supra* notes 63-64 and accompanying text.
86. MINN. STAT. § 260.011, subd. 1 (1978) (repealed 1980).
87. *Id.* § 260.011, subd. 2 (1982).
88. See *supra* note 1.
juveniles the right to trial by jury. The juvenile should no longer be regarded essentially as a non-person with meager constitutional rights.

III. THE RATIONALE FOR JUVENILE JURY TRIALS IN MINNESOTA

A. Criminal Treatment of Juveniles in Minnesota

Juvenile proceedings are labeled "civil," a fact which has been soundly criticized. The label does not eradicate the criminal effect of the proceedings. As one court stated, "While the juvenile court law provides that adjudication of a minor to be a ward of the court shall not be deemed to be conviction of a crime, . . . for all practical purposes, this is a legal fiction, presenting a challenge to credulity and doing violence to reason." The majority of jurisdictions have been hesitant to dismiss the civil label demonstrating a reluctant ideal.
tance to scrutinize their juvenile proceedings, or perhaps merely fearing

Ex parte Newkosky, 94 N.J.L. 314, 315, 116 A. 716, 716 (1920) (juvenile proceedings “save young persons from the ordinary punishment for crime”); People v. Lewis, 260 N.Y. 171, 172, 183 N.E. 353, 354 (1932) (juvenile proceedings not criminal in nature); In re Agler, 19 Ohio St. 2d 70, 80, 249 N.E.2d 808, 811 (1969) (civil label used to protect juveniles from answerability of adult criminals); Cope v. Campbell, 175 Ohio St. 475, 477, 196 N.E.2d 457, 458 (1964) (juvenile courts are civil not criminal); In re Holmes, 379 Pa. 599, 603, 109 A.2d 523, 525 (1954) (purpose of law protective not penal); Yzaguirre v. State, 427 S.W.2d 687 (Tex. Civ. App. 1968); State v. Lawley, 91 Wash. 2d 654, 591 P.2d 772 (1979).

93. See, e.g., United States v. Duboise, 604 F.2d 648, 650 (10th Cir. 1979) (purpose of juvenile justice system is removing juveniles from criminal process which allows them to be treated rather than punished); United States v. Doe, 385 F. Supp. 902, 905 (D. Ariz. 1974) (delinquents not punished, but led away from life of crime); Prince v. State, 19 Ala. App. 495, 98 So. 320 (1923); In re Dargo, 81 Cal. App. 2d 205, 207, 183 P.2d 282, 283 (1947) (proceedings similar to guardianship, with opportunity for supervision, corrective care, and training); People v. Superior Court, 104 Cal. App. 276, 282, 285 P. 871, 874 (1930) (juvenile court reformatory rather than punitive); Cinque v. Boyd, 99 Conn. 70, 121 A. 678 (1923); Brooks v. Taylor, 51 Del. 583, 589, 150 A.2d 188, 192, aff'd, 52 Del. 138, 154 A.2d 386 (1959) (purpose to assist juveniles overcome antisocial tendencies); In re Elmore, 222 A.2d 255, 258 (D.C. App. 1966) (directed to status and needs of child, far removed from criminal trial); People ex rel. Carey v. White, 65 Ill. 2d 193, 199, 357 N.E.2d 512, 515 (1976) (protection of minors enhanced by not allowing a jury trial); Welfare of J.E.C. v. State, 302 Minn. 387, 401, 225 N.W.2d 245, 253-54 (1975) (entire purpose of juvenile act is rehabilitation of child before he becomes menace to society); Petersen v. McAuliffe, 151 Minn. 467, 469-70, 187 N.W. 226, 226-27 (1922) (purpose of juvenile court act not punishment but welfare of delinquent child); State ex rel. Olson v. Brown, 50 Minn. 353, 357-58, 52 N.W. 935, 936 (1892) (child committed to reform school is not “punished” in ordinary sense of word); Bryant v. Brown, 151 Miss. 398, 118 So. 184 (1928) (purpose of commitment to reform school is not punitive but reformatory); State ex rel. Maticia v. Buckner, 300 Mo. 359, 254 S.W. 179 (1923) (purpose of act pertaining to delinquent children is not trial and punishment but reformation); Laurie v. State, 108 Neb. 239, 188 N.W. 110 (1922) (commitment of child to reform school is not for purposes of punishment but for guardianship, maintenance, and care and is not an interference with personal liberty requiring trial by jury); In re Perham, 104 N.H. 276, 184 A.2d 449 (1962) (purpose of juvenile act protective, not punitive); In re Poulin, 100 N.H. 458, 129 A.2d 672 (1957) (juvenile court proceedings are protective, not penal, and are designed to rehabilitate minors rather than punish them); Ex parte Newkosky, 94 N.J.L. 314, 116 A. 716 (1920) (juvenile court proceedings are not for punishment but are for reformation, education and parental care, a substitute of public control for parental control); State v. Burnett, 179 N.C. 735, 102 S.E. 711 (1920); In re Watson, 157 N.C. 340, 351-55, 72 S.E. 1049, 1053-54 (1911) (state’s power to detain minor children justly limited only upon idea that child is without parental care and state, as parens patriae, performs duty which devolves primarily on parent); In re Darnell, 173 Ohio St. 335, 337, 182 N.E.2d 321, 322 (1962) (child is committed to guardian of state for proper care, reformation, and discipline); State v. Turner, 253 Or. 235, 241-42, 453 P.2d 910, 913 (1969) (ultimate question not guilt or innocence, but best interests of child); In re Gomez, 113 Vt. 224, 225, 32 A.2d 138, 140 (1943) (statutory scheme relating to delinquent children not penal but protective); State v. Lawley, 91 Wash. 2d 654, 591 P.2d 772 (1979) (primary purpose rehabilitation of juvenile offender); Wisconsin Indus. School for Girls v. Clark County, 103 Wis. 651, 664-65, 79 N.W. 422, 426-27 (1899) (proceeding to commit child to “industrial school” is not a trial for an offense requiring a jury but a statutory proceeding for the protection of the helpless). But see, e.g., A. PLATT, supra note 6, at 192. Professor Platt states:

[It is impossible to conceive of the juvenile court system as an agency of ‘rehabil-
change. Today, however, "it has become clear that in fact the same purposes that characterize the use of criminal law for adult offenders—retribution, condemnation, deterrence, incapacitation—are involved in the disposition of juvenile offenders too."

Although Minnesota has adopted the civil label for its juvenile proceedings, its delinquency proceedings are now criminal in nature, as evidenced by the current purpose clause of the Juvenile Court Act. A referee for the Hennepin County Juvenile Court stated that the purpose clause reflects a new "no-nonsense, get tough, . . . kick in the pants approach to recidivist, hard-core, and personal injury offenders." Minnesota no longer places primary emphasis on the best interests of the child, but instead emphasizes public safety and protection. This reemphasis made the statute criminal in effect. Traditionally, the juvenile system attempted to paternally guide the delinquent in making wiser choices through rehabilitation rather than mere incarceration. Today, however, the statutory purpose emphasizes public safety and individual responsibility, rather than the former ideal of paternalistic care and guidance. Thus, the "substantial gulf" between delinquency and crime perceived by Justice White in McKeiver no longer exists in Minnesota. As Justice White feared, Minnesota now appears to "embrace

... and social equality in a society where most working-class and minority youths are tracked into dead-end or low wage jobs, where institutional racism and sexism systematically segment people into antagonistic social relations, and where the criminal justice system is blatantly used to undermine and repress progressive political movements.


94. TASK FORCE REPORT, supra note 51, at 8.
96. See supra note 87 and accompanying text.
98. See supra note 87 and accompanying text.
99. Id.; see also Feld, supra note 5, at 203. "The new language of the purpose clause is functionally indistinguishable from the language in the criminal code's purpose clause . . . ." Id.
100. 403 U.S. at 552; cf. A. PLATT, supra note 6, at 160. "The benevolent philosophy of the juvenile court often disguises the fact that the offender is regarded as a 'non-person' who is immature, unworldly, and incapable of making effective decisions with regard to his own welfare and future." Id.
101. See MINN. STAT. § 260.011, subd. 1 (1982); supra notes 86-87 and accompanying text.
102. 403 U.S. at 553.
condemnation, punishment and deterrence” in the treatment of juvenile offenders.104

A juvenile adjudicated delinquent in Minnesota is subject to nearly all of the same procedures applied to an adult offender.105 The proceedings yield essentially the same results. For example, the Gault Court recognized that the stigmas attached to the labels of delinquent and criminal are similar.106 Well-intentioned arguments have been advanced in an attempt to create a “gulf” separating criminal and delinquency proceedings: “taking a child into custody, rather than arresting him; placing him in detention, rather than jail; . . . adjudication rather than findings of guilt; disposition rather than sentencing; commitment, not incarceration; rehabilitation, not punishment.”107 Nonetheless, euphemisms cannot change reality.108 A child taken into custody in Minnesota109 is subjected to a loss of liberty.110 A juvenile adjudicated delinquent may be detained against her will for a period of years111 in an institution simi-

Law Review office) [hereinafter cited as Response Memorandum]. See also Stuart & Bush, It’s Time for Jury Trials in Juvenile Court, 50 HENN. LAW., Mar.-Apr. 1981, at 8-10. See generally Feld, supra note 5. Professor Feld states that “[m]aintaining the integrity of the substantive criminal law and developing individual responsibility for lawful behavior marks a fundamental philosophical departure from the previous rehabilitative purpose of the juvenile justice system to much more explicitly punitive and social control purposes.” Id. at 192.

For the text of the earlier purpose of the Juvenile Court Act, see supra note 86 and accompanying text. A comparison of the repealed and current statutes illustrates that Minnesota has aligned its juvenile philosophy with that of its criminal statutes.

104. See 403 U.S. at 547.
105. See infra note 169 and accompanying text.
106. See supra note 24 and accompanying text.
108. Id. “[E]uphemistic and rhetorical language [has] not had the hoped-for effect of changing the reality. The outcome for the juvenile on trial is real, and is not altered by or dependent upon the label given the proceedings.” Id.
110. Rule 18 governs procedures to be followed in detention of a child. MINN. R. JUV. P. 18 (1984). See generally In re Welfare of I.Q.S., 309 Minn. 78, 87-88, 244 N.W.2d 30, 38-39 (1976). The I.Q.S. court was concerned with the juvenile defendant’s unsuitability for treatment. Through psychological testimony, it was determined that the juvenile needed a high-security, yet rehabilitative facility. Id. at 87-88, 244 N.W.2d at 38-39. Minnesota presently does not have such a facility.
111. See MINN. STAT. § 242.44 (1982). The Juvenile Justice Agency Act states in part:

The commissioner of corrections, so far as the accommodations of the correctional facilities and other means at the commissioner’s disposal will permit, shall receive and keep until they reach 19 years of age, or until placed in homes, or discharged, all persons committed to his care and custody by a juvenile court.
lar to an adult prison.\textsuperscript{112}

The array of dispositional alternatives\textsuperscript{113} available to the Minnesota juvenile for rehabilitative purposes has been cited as demonstrating that the system is not punitive in nature.\textsuperscript{114} These alternatives currently include counseling,\textsuperscript{115} probation,\textsuperscript{116} restitution,\textsuperscript{117} fines,\textsuperscript{118} specialized treatment,\textsuperscript{119} residential or nonresidential programs,\textsuperscript{120} commitment to the Commissioner of Corrections,\textsuperscript{121} and reference for adult prosecution.\textsuperscript{122} Except reference for adult prosecution, each of these alternatives is also available to the adult offender in some form.\textsuperscript{123}

\textit{Id.} Consequently, the number of years a child is incarcerated may depend more on the child's age at the time of the commitment than the severity of the offense.

112. See, e.g., \textit{Gault}, 387 U.S. at 27. The Supreme Court stated:

It is of no constitutional consequence—and of limited practical meaning—that the institution to which he is committed is called an Industrial School. The fact of the matter is that, however euphemistic the title, a 'receiving home' or an 'industrial school' for juveniles is an institution of confinement in which the child is incarcerated for a greater or lesser time.


114. Memorandum In Opposition To Respondent's Motion for Trial By Jury at 7, In the Matter of the Welfare of D.A.S., No. 90369-96 (Hennepin County Juv. Div. Minn. Oct. 17, 1980) (on file at William Mitchell Law Review office) [hereinafter cited as Memorandum In Opposition]. "A key determinant as to whether the juvenile system has become criminal in nature is to examine the dispositional alternatives . . . ." \textit{Id.}


117. \textit{Id.} § 260.185, subd. 1(b).

118. \textit{Id.} §§ 260.185, 260.194, subd. 1(b).

119. \textit{Id.} § 260.185, subd. 1(e).

120. \textit{Id.} § 260.185, subd. 1(f) (juvenile may be ordered to pay a fine up to $500.00).

121. \textit{Id.} § 260.185, subd. 1(g) (court may order special treatment for child).

122. \textit{Id.} § 260.185, subd. 1(e). Subdivision 1(c) provides that the court may transfer legal custody of the child to (1) a child placing agency, (2) the county welfare board, (3) a reputable individual, or (4) a county home school. \textit{Id.}

123. Response Memorandum, \textit{supra} note 103, at 5-6. Counseling for adults is provided by Minnesota Statutes section 244.09, subdivision 5(2); transfer to a reputable person is authorized under Minnesota Statutes section 609.135, subdivision 1. See \textit{Minn. Stat.} §§ 244.09, subd. 5(2), 609.135, subd. 1 (1982). The Response Memorandum notes the "wide variety of community based residential programs such as Nexus, Freedom House, Eden House, Portland House, Prodigal House, and Alpha House, as well as numerous short-term chemical dependency programs" and refers to them as "the adult equivalent of a child placing agency, the County Welfare Board, or the County Home School." Response Memorandum, \textit{supra} note 103, at 6.

Adults may also be committed to the Commissioner of Corrections for rehabilitation and custody. \textit{Minn. Stat.} § 241.01, subd. 3a(a) (1982). Adults may receive an order of
The availability and method of reference of a juvenile for adult prosecution is a much debated area. If a child waives trial as a juvenile in favor of trial as an adult, she is afforded the full panoply of adult constitutional safeguards. Because of this possibility of waiver, the Minnesota Supreme Court has stated that "any child not wishing to avail himself of such [juvenile court] treatment could certainly demand his constitutional right to be, for example, tried by a jury." Thus, to obtain a trial by jury in this manner, the juvenile must forfeit any shred of special protection that the juvenile court may still have to offer.

Another example of the alignment of Minnesota's juvenile system with the adult criminal process is the Minnesota Citizen's Council on Crime and Justice's draft of dispositional guidelines for anticipated implementation in Minnesota. The dispositional grid is strikingly similar to the adult sentencing guidelines. Along with the semi-automatic refer-

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Id. § 609.135, subd. 1. Adults may also be subjected to a fine without incarceration. Id. § 609.10(4). Adults may receive specialized treatment: In the adult system, treatment can either be provided as a diversion alternative such as Project de Novo, as a condition of probation, or as a part of a continuance for dismissal. An adult defendant who, for example, needs treatment for incest may be sent to the Family Renewal Program or the Center for Behavioral Therapy as a disposition of his or her criminal case. Response Memorandum, supra note 103, at 6.

124. See, e.g., In re Welfare of Kelly Patrick Hartung, 304 N.W.2d 621 (Minn. 1981); In re Welfare of S.R.J., 293 N.W.2d 32 (Minn. 1980); In re Welfare of T.D.S., 289 N.W.2d 137 (Minn. 1980); In re Welfare of Dahl, 278 N.W.2d 316 (Minn. 1979); In re Welfare of J.B.M., 263 N.W.2d 74 (Minn. 1978); State v. Duncan, 312 Minn. 17, 250 N.W.2d 189 (1977); In re Welfare of I.Q.S., 309 Minn. 78, 244 N.W.2d 30 (Minn. 1976); In re Welfare of J.E.C., 302 Minn. 387, 225 N.W.2d 245 (1975); State v. Hogan, 297 Minn. 430, 212 N.W.2d 664 (1973). See generally Feld, supra note 5.


126. See In re Welfare of I.Q.S., 309 Minn. 78, 87, 244 N.W.2d 30, 37 (1976).

127. Id.

128. Id. For a discussion of Minnesota's "get tough" references for prosecution and arguments that such references evidence the criminal nature of the juvenile system, see Memorandum in Support of Respondent's Motion For Trial By Jury at 1, In the Matter of the Welfare of D.A.S., No. 90369-96 (Hennepin County Juv. Div. Minn. Oct. 6, 1980) (on file at William Mitchell Law Review office) (refers to Minnesota reference procedures as "semiautomatic" and "punitive"); Response Memorandum, supra note 103, at 7 (points to "semiautomatic" certification as evidencing legislature's "intent to bring punishment into the juvenile system"); Stuart & Bush, supra note 103, at 8. But see Order and Memorandum, supra note 113, at 3 (Judge Oleisky presents both sides of the argument); Memorandum in Opposition, supra note 114, at 10 (argues that reference is not "semiautomatic"); Baez, Jury Trials In Juvenile Courts: A Prosecutor's Perspective, HENNEPIN LAW., Jan.-Feb. 1981, at 16. See generally, Feld, supra note 5 (includes in-depth discussion of adult certification procedures in Minnesota).

129. Formerly the Correctional Service of Minnesota.


131. Compare MINN. STAT. §§ 244.01-11 (1982) with DISPOSITIONAL GUIDELINES,
ral for adult prosecution, the inherent rigidity of the juvenile disposi-
tional guidelines indicates a trend toward increased criminal treatment
of juvenile offenders in Minnesota.

The Minnesota Supreme Court has also recently adopted a set of uni-
form juvenile court rules. Associate Justice Scott of the Minnesota
Supreme Court has recognized that:

The adoption of the Uniform Rules of Juvenile Procedure in Minne-
sota presents the stark realization that we have swung from the philo-
supra note 130. The Dispositional Guidelines attempt to create less severe sanctions for
juveniles than adults. See DISPOSITIONAL GUIDELINES, supra note 130, at 1 (statement of
philosophy). Following is the list of principles which "guided the development" of the
guidelines:

1. Separation of sanction and treatment decisions.
2. Sanctions which are neutral with respect to race, color, national origin,
religion, sex, handicap, socioeconomic or family status.
3. Sanctions proportional in severity to the severity of the current offense
and offense history.
4. Sanctions which place greater emphasis on current offense than on off-
fense history.
5. Less severe sanctions than those for adults.
6. Accountability for behavior without unnecessary use of institutionaliza-
tion or unnecessarily severe fines, work orders, or time on probation.
7. Discretion in unique situations.
8. Structured individualization including choice of sanctions.
9. Ease of use.
10. Maximal involvement of practitioners in development and testing.

Id

The October 1982 grid of "Advisory Sanction Levels" is appended to this Note. Dur-
ing testing of the draft, the results will be reviewed by the Council to ensure that juvenile
sanctions are not harsher than adult sanctions would be. Id at iii. The Advisory San-
ctions "are not treatment or program specific," and the needs of the juvenile are to be
considered. Id at iv. The abbreviation of "DOC" on the grid stands for the Department
of Corrections, used to indicate where commitment is recommended. Id at v.

Like the adult sentencing guidelines, departures are expected, but at a higher rate.
Therefore, the Council has appended a non-exhaustive list of mitigating and aggravating
factors to the grid. These include:

1. age at the time of offense
2. lapse of time between the current offense and previous delinquent be-
behavior
3. mitigating and aggravating factors surrounding previous offenses
4. performance while under previous court orders (this should be mea-
ured against the adequacy of service provided during such court orders)
5. previous traffic violations (if related to current offense)
6. whether, in the case of both current and previous misdemeanors, the
act was a gross misdemeanor as provided by law
7. number and nature of previous court diversions and continuances (if
they resulted from clearly documented delinquent behavior)
8. number of days in detention prior to the disposition
9. attempts or conspiracies
10. any factors applicable to a juvenile which appear in the adult sentenc-
ing guidelines departure policy

Id at v.

132. See supra notes 122-26 and accompanying text.
133. MINN. R. JUV. P. (effective May 1, 1983).
phy that originally created our juvenile court system, based upon a benevolent and less formal means of dealing with the special and often sensitive problems of youthful offenders, to what Chief Justice Burger described as . . . ‘the trappings of legal procedure and judicial formalism.’

With this realization must come the extension of adult due process rights, as the juvenile in Minnesota is essentially subject to the same legal process as an adult, with the exception of the jury trial and open trial.

Although the juvenile offender in Minnesota receives additional protections while undergoing a delinquency adjudication, those shades of protection pale in comparison to the similarities between juvenile and adult procedures. Neither the civil label of the proceedings nor the availability of rehabilitative dispositional alternatives, also available to adults, is a sufficient distinguishing factor on which to base a denial of the fundamental right to trial by jury. When special protections afforded juveniles “have been so eroded away that what is actually a punishment is characterized as a treatment, an abuse of constitutional dimension has occurred, and, a jury trial is required before punishment . . . may be inflicted.” Nevertheless, 64.7% of Minnesota’s juvenile court judges responding to a 1981 survey agreed with the statement: “Punishment is a morally desirable goal for the juvenile justice system.”


135. See generally supra note 123 and accompanying text.

136. See, e.g., MINN. R. JUV. P. 8, 34 (1984) (confidentiality of hearings and court records); id. at 18 (court review of continued detention; restriction of photographs). Additionally, juvenile proceedings for children in custody are generally conducted more quickly than their adult counterparts.

137. See supra notes 65-69 and accompanying text.

138. See supra notes 113-22 and accompanying text.

139. See supra notes 43, 52.


141. Kittle, supra note 7, at 97. In 1981, a written survey was sent to the 110 county court judges in Minnesota. Seventy-eight of those judges (68%) responded to the survey. Four judges sent the survey back unanswered because they handled no juvenile court matters. The total number of judges answering the survey was 71 (64%). Id.

In response to the statement, “Punishment is a morally desirable goal for the juvenile court system,” the answers were as follows:

- Strongly Agree: 10 (14.0%)
- Agree: 36 (50.7%)
- No opinion: 7 (10.0%)
- Disagree: 14 (20.3%)
- Strongly Disagree: 1 (2.0%)
- No response: 3 (4.2%)

Id. Interestingly, Minnesota judges were chosen specifically for this study because of the state’s “reputation for compassion, governmental innovation and progressive corrections system.” Id. After receiving the results of the survey, however, Professor Kittle stated that
The civil label cannot eradicate the criminal effect of Minnesota's punitive treatment of juvenile offenders. Since the juvenile offender in Minnesota is now processed through a system which effectively treats her as a criminal, the jury trial should be available as a necessary component of due process.

B. Judge Versus Jury

Courts have often stated that a juvenile jury trial is not necessary because the judge is an adequate, fair, and competent fact-finder.\textsuperscript{142} In many cases, this is assuredly true. It is not always possible, however, for even the most conscientious judge to maintain impartiality.\textsuperscript{143} Without a jury, the judge is vested with almost unlimited discretionary powers, and is susceptible of taking an individualistic approach to the daily caseload.\textsuperscript{144} Total impartiality is impossible when the judge is faced with a recidivist juvenile.\textsuperscript{145} The juvenile court judge rules on the admissibility of evidence,\textsuperscript{146} and it is unrealistic to assume that the judge can ignore a piece of evidence after ruling it inadmissible.\textsuperscript{147} "Such concentration of power substantially refutes the fundamental decision of our forebearers that the life and liberty of a citizen should not be entrusted to one judge."\textsuperscript{148} A sole judge is insufficient in the juvenile system. The

\textsuperscript{142} See, e.g., McKeiver v. Pennsylvania, 403 U.S. at 547 (jury trial would not strengthen fact-finding function); United States v. Duboise, 604 F.2d 648 (10th Cir. 1979) (jury not a necessary component of accurate fact finding); Dryden v. Commonwealth, 435 S.W.2d 457, 461 (Ky. 1968) ("cannot regard a jury as a better, fairer, more accurate fact-finder than a competent and conscientious circuit judge"); Commonwealth v. Johnson, 211 Pa. Super. 62, 234 A.2d 9 (1967) (jury would not contribute to fact-finding function of court). See generally George, supra note 5, at 326-27 (suggests jury may be harsher and more arbitrary than a judge); Note, supra note 54, at 994.

\textsuperscript{143} See Stuart & Bush, supra note 103, at 9. Stuart and Bush state that:

[A] juvenile court judge often follows the development of a juvenile respondent and his or her family for several years. This familiarity is a tremendous asset when a case reaches the disposition stage; however, it is not the sort of knowledge appropriate for the trier of fact to have in reaching a verdict on a specific charge.

\textsuperscript{144} See McLaughlin & Whisenand, supra note 93, at 3. The individual "value systems of juvenile court judges are most crucial because such value systems are important factors when judges carry out their judicial function." Kittle, supra note 7, at 96.

\textsuperscript{145} Kittle, supra note 7, at 96; see also supra note 126.

\textsuperscript{146} See MINN. STAT. § 260.155, subd. 1 (1982).

\textsuperscript{147} See Stuart & Bush, supra note 103, at 9. Because the jury does not hear evidence excluded by the judge, it is never put in the position of being impartial after hearing an inadmissible piece of evidence. Id.

\textsuperscript{148} McLaughlin & Whisenand, supra note 93, at 3. These authors state:

The right to trial by jury was granted to juveniles early in this nation's history. Even after the reform movement directed toward the means of juvenile delinquents began in the late 1800's, major juvenile offenders were prosecuted in adult criminal systems, and accordingly, their guilt customarily was determined by a jury.
goal of an adequate, fair, and competent fact-finder may be less attainable when a referee, who is not a trained attorney or judge, hears the case. 149

The jury plays an important role in the legal process, and is needed for several well-known, oft-repeated reasons: to prevent oppression by government; 150 to protect against the “corrupt or overzealous prosecutor and against the compliant, biased, or eccentric judge”; 151 to buffer the wide discretionary power granted the judge; 152 to check dishonesty or partiality within the system; and basically, to make findings of fact which are fair, disregarding outdated legal concepts. 153 Juries are deeply rooted in our nation’s legal heritage. 154 Juries were created to make fair findings of fact, and our legal system embraces them for that purpose.

Duluth has instituted a system providing juvenile offenders a hearing before a jury of peers—volunteer high school students. 155 Juvenile defendants who have admitted the charge 156 participate voluntarily. 157 The defendant may at any time choose to stop the jury proceeding and be heard before a judge. 158 The jurors hear a variety of misdemeanor cases 159 and make disposition recommendations. 160 If the defendant objects to the disposition reached, she may withdraw and receive a judicial

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Id. (footnotes omitted). See generally Duncan v. Louisiana, 391 U.S. 145 (1968) (history of trial by jury); H. Kalven & H. Zeisel, The American Jury 8 (1966); Comment, supra note 5, at 835-38; Case Comment, supra note 5, at 256-63.

149. Minn. Stat. § 260.031, subd. 1 (1982). See generally Stuart, supra note 9, at 80-89 (function of referees in Minnesota’s juvenile courts). Referees may hear juvenile cases in Minnesota. Minn. Stat. § 260.031 (1982). “The judge may direct that any case or class of cases shall be heard in the first instance by the referee in the manner provided for the hearing of cases by the court.” Id. § 260.031, subd. 2. In Hennepin County, for example, they hear the majority of cases. See infra note 167 and accompanying text.

150. See Duncan v. Louisiana, 391 U.S. at 156.

151. Comment, supra note 5, at 836 (quoting Duncan v. Louisiana, 391 U.S. at 156).

152. Duncan v. Louisiana, 391 U.S. at 156; cf. Kittle, supra note 7, at 94 (judges may espouse rehabilitative values while actually practicing crime control values). The judge may, however, be less punitive than a panel of adult jurors. See George, supra note 5, at 327; cf. Arthur, supra note 64, at 214 (suggests juvenile jury trial not trial by one’s peers as required by Constitution because children are not jurors).

153. Comment, supra note 5, at 837. “The threat of judicial abuse in the juvenile court is real, and juries can be expected to buffer that problem.” Id.

154. See supra notes 77, 83.

155. Duluth Youth Council, Youth Jury: A Report (June 1981) (on file at William Mitchell Law Review office). The jury runs for the nine month school year. Each board of jurors is randomly selected from the applicants and comprises a board of 14 jurors (the median number of attending is 10). The jurors hear cases one day per week for four hours and serve for three weeks. Id. at 2.

156. Id. The juvenile defendants are each first-time offenders. Id.

157. Id. at 3.

158. Id. at 4.

159. The jurors hear misdemeanor criminal damage to property, vandalism, theft, assault, possession of marijuana and alcohol, and game violation offenses. Id. at 38. The actual frequency of cases heard is as follows:
Shoplifting 27%
Consumption of Alcohol 15.4%
Possession of Marijuana 33.6%
Possession of Alcohol 3.6%
Attempted Theft 1.4%
Theft 11.9%
Attempted Burglary 2.8%
Burglary
Attempted Robbery
Robbery
Assault
Other 4.1%

Id. at 52.

160. Id. at 38. The jurors actively participate in the process, contrary to adult court. Jurors also question the defendant and use the responses in their deliberations. The following is a list of suggested questions and possible sentences given to prospective jurors:

1. How have your grades been in school up to this point.
2. What did your parents say and do when the Police brought you home on the night of the arrest.
3. Do you have many friends at school.
4. Do your parents approve of your friends.
5. How do you and your parents get along.
6. Do you consider drinking by a person under age to be wrong.
7. Do you consider the smoking of marijuana to be wrong.
8. Do you feel that you should be punished for breaking the law.
9. How long have you been drinking, smoking marijuana, shoplifting, burglarizing houses, staying out late at night and other assorted acts.
10. Do you feel your acts are excusable because you are drunk or otherwise intoxicated.
11. What was your reaction when you were arrested by the Police.
12. Did you do what you did to be accepted by a group of people or to be liked more by your friends.
13. What do you feel would be a satisfactory punishment for the crime you have been charged and admitted guilt to.

Remember that the questions you ask as a jury are the only means of determining what sentence should be given to this person for the act that they have confessed guilt to.

LIST OF POSSIBLE SENTENCES

1. 0-90 days of probation (supervised or unsupervised): supervision means that the student case worker can request that the individual meet with them on a regular basis and unsupervision means that for all intents and purposes the individual does not have to report to anyone during his/her probation period.
2. 0-96 hours of community service work; community service work is free work that the individual will give to a private, non-profit agency in the city of Duluth.
3. Parents and youth drug awareness education, PAYDAE, this is a drug education program run by the Center on Alcohol and Drug Problems and you can sentence the individual and parents to attend these sessions which occur twice in a two week period.
4. You can assign a volunteer in corrections to the individual, this is similar to a Big Brother or Big Sister Program, use your [judgment] in assigning volunteers.
5. You can require that the individual apologize either in writing or in person to the manager of a store where they were caught shoplifting or to an individual that they may have hurt in the course of what they were doing or an individual they may have insulted or otherwise abused in the course of their crime.
According to the Duluth City Council, the system is a success. The system is certainly more informal than adult court; no findings of fact are made and the defendant receives a sentence truly determined by her peers.

The age of jurors in comparison to the age of defendants should not be

---

6. You can assess monetary restitution for a crime, such as: if they break windows, destroy front lawns, break up something, steal something that is irreparable, or [lose] something that they have stolen.

*Id* at 49-50. The Juvenile Court Judge has also created a list of guidelines for hours of community service work:

- 8-16 - Consumption and [drugs] (First Offense).
- 24-32 - Theft, depending if First Offense.
- 32-40 - Burglary, depending on record.
- 60-120+ - Assault
- ? - Criminal Damage to Property

*Id* at 51. The following is a chart of sentences given by the youth jury:

<table>
<thead>
<tr>
<th>Days of Probation</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>0</td>
<td>2.5%</td>
</tr>
<tr>
<td>30</td>
<td>31.0%</td>
</tr>
<tr>
<td>60</td>
<td>42.1%</td>
</tr>
<tr>
<td>90</td>
<td>24.4%</td>
</tr>
<tr>
<td>120</td>
<td>0</td>
</tr>
<tr>
<td>150</td>
<td>0</td>
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</tbody>
</table>

Average Days of Probation 56.6

<table>
<thead>
<tr>
<th>Community Service Hours</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>0</td>
<td>16.2%</td>
</tr>
<tr>
<td>4</td>
<td>1.3%</td>
</tr>
<tr>
<td>8</td>
<td>40.1%</td>
</tr>
<tr>
<td>10</td>
<td>1.4%</td>
</tr>
<tr>
<td>12</td>
<td>8.0%</td>
</tr>
<tr>
<td>16</td>
<td>15.9%</td>
</tr>
<tr>
<td>20</td>
<td>1.6%</td>
</tr>
<tr>
<td>24</td>
<td>11.5%</td>
</tr>
<tr>
<td>32</td>
<td>4.1%</td>
</tr>
<tr>
<td>36</td>
<td>0</td>
</tr>
<tr>
<td>40</td>
<td>0</td>
</tr>
</tbody>
</table>

Average Community Service Hours 11.3

<table>
<thead>
<tr>
<th>Apology to Victim</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>42.1%</td>
</tr>
<tr>
<td>No</td>
<td>57.9%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>PAYDAE (CD Program)</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>24.4%</td>
</tr>
<tr>
<td>No</td>
<td>75.6%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>CD Evaluation</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>12.9%</td>
</tr>
<tr>
<td>No</td>
<td>87.1%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Other Sentence</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>25.2%</td>
</tr>
<tr>
<td>No</td>
<td>74.8%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Type of Probation</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Supervised</td>
<td>58.4%</td>
</tr>
<tr>
<td>Unsupervised</td>
<td>41.6%</td>
</tr>
</tbody>
</table>

*Id* at 52-53.

161. *Id* at 4.

162. *Id* at 1.
a decisive factor for denial of juvenile jury trials. If the Minnesota Legislature were to implement jury trials, the peers would most likely be adults.163 In Minnesota, any person over the age of eighteen may, under appropriate circumstances, serve as a juror.164 The word peer has never been so stringently defined as to include only persons of precisely the same age as the accused.165 Certainly peers would include persons older than the defendant, just as in adult criminal court.166

The hoped-for educated, impartial judge envisioned by the juvenile court system cannot always be present.167 Therefore, the decision to have a jury in any given juvenile case should be left to the lawyer, client, and other interested parties. With the exception of the Duluth system, the judge, not the jury, imposes the sentence. In some cases, the judge's role should be limited to determining which dispositional alternative balances the child's best interests with those of public safety. The jury and the judge would each occupy a necessary position, and the child would have the advantage of a carefully analyzed and reasoned decision.168

163. See Minn. Stat. § 593.41, subd. 2(2) (1982) (juror must be at least 18 years old); cf. Arthur, supra note 64.
165. For example, an adult defendant may have a jury with a wide range of ages with no one near his or her own age.
166. The only age restriction is a minimum age of 18. Minn. Stat. § 593.41, subd. 2(2) (1982).
167. See Duncan v. Louisiana, 391 U.S. 145, reh'g denied, 392 U.S. 947 (1968). The Duncan Court stated, "Providing an accused with the right to be tried by a jury of his peers gave him an inestimable safeguard against the corrupt or overzealous prosecutor and against the compliant, biased, or eccentric judge." 391 U.S. at 156. It should be noted that the juvenile in Minnesota does not necessarily receive a trial before a judge. Minn. R. Juv. P. 2.01 (1984). "[A] referee may hear, as authorized by statute [Minn. Stat. § 260.031 (1982)], any matter under the jurisdiction of the court in the manner provided for the hearing of matters by the court." Id. The juvenile is permitted to object to the hearing before the referee and be heard before a judge. Minn. R. Juv. P. 2.02 (1984). A court may review all or part of the referee's findings. Minn. R. Juv. P. 2.04 (1984). The juvenile court referee is not required to be a lawyer. See Stuart, supra note 9, at 80-89 (discussion of role of referees in Minnesota's juvenile courts).

In his article, Mr. Stuart presented a chart which demonstrated that the majority of juvenile court cases were held before a referee in Hennepin County:

<table>
<thead>
<tr>
<th>Type of Hearing</th>
<th>Count</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Detention hearings</td>
<td>2100</td>
<td>97%</td>
</tr>
<tr>
<td>Arraignments</td>
<td>2600</td>
<td>95%</td>
</tr>
<tr>
<td>Adult references</td>
<td>1</td>
<td>1%</td>
</tr>
<tr>
<td>Pre-arraignments/Omnibus</td>
<td>410</td>
<td>95%</td>
</tr>
<tr>
<td>Default trials</td>
<td>180</td>
<td>98%</td>
</tr>
<tr>
<td>Contested trials</td>
<td>340</td>
<td>85%</td>
</tr>
<tr>
<td>Dispositions</td>
<td>3800</td>
<td>90%</td>
</tr>
<tr>
<td>Adoptions</td>
<td>740</td>
<td>98%</td>
</tr>
<tr>
<td>Traffic</td>
<td>4500</td>
<td>100%</td>
</tr>
</tbody>
</table>

Id. at 84. "In short, of the nine kinds of hearings in the repertoire of the court, the Hennepin County Juvenile Court referees handled the vast majority of cases in eight categories, leaving only references for adult prosecution as the near-exclusive preserve of the judge." Id.

168. See, e.g., Rosenberg, supra note 5, at 657, 708.
C. The Jury Trial’s Effect on the Informal Atmosphere of Juvenile Proceedings

Minnesota provides that juvenile hearings may be conducted in an informal manner. The integration of juries would add an additional element of formality to the proceedings. The importance of the informal ideal, however, has been questioned by several commentators. Many courts continue to rely on informality, stating that the purpose of informality is to allow the judge to act in a paternalistic role, thereby gaining the trust and confidence of the juvenile. The initial consensus was that a “child was not to feel he was being dealt with as a criminal, but that the parent-state was taking him under its protective wing and guiding his future.” Today, this concept is outdated. To the child being

169. MINN. STAT. § 260.155, subd. 1 (1982). Section 260.155 provides in relevant part: “Except for hearings arising under section 260.261 [jurisdiction over offense of contributing to delinquency or neglect], hearings on any matter shall be without a jury and may be conducted in an informal manner.” Id. The tenor of the recently adopted Minnesota Juvenile Court Rules is quite different:

(A) Trial Rights. The child’s counsel and the county attorney shall have the right to:
   (i) present evidence, and
   (ii) present witnesses, and
   (iii) cross-examine witnesses, and
   (iv) present arguments in support of or against the allegations of the petition.

(B) Trial Order. The order of the hearing shall be as follows:
   (i) the county attorney may make an opening statement, confining the statement to the facts that the state expects to prove, and
   (ii) the child’s counsel may make an opening statement, or make it immediately before offering evidence. The statement shall be confined to a statement of the defense and the facts expected to be proved, and
   (iii) the county attorney shall offer evidence in support of the petition, and
   (iv) the child’s counsel may offer evidence in defense of the child, and
   (v) the county attorney may offer evidence in rebuttal of the defense evidence, and the child’s counsel may then offer evidence in rebuttal of the county attorney’s rebuttal evidence. In the interests of justice the court may permit either the county attorney or the child’s counsel to offer evidence upon the original case, and
   (vi) at the conclusion of the evidence, the county attorney may make a closing argument, and
   (vii) the child’s counsel may make a closing argument.

MINN. R. JUV. P. 27.03, subd. 2 (1984). This is essentially identical to the procedure followed in the adult criminal court. See MINN. R. CRIM. P. 26.03, subd. 11 (1984).


172. Comment, supra note 5, at 828; see also Mack, The Juvenile Court, 23 HARV. L. REV. 104, 120 (1909). Professor Mack states:

The child who must be brought into court should, of course, be made to know
processed through the juvenile system, the proceedings already appear formal.\textsuperscript{173}

In Minnesota, the juvenile proceeding is "no longer an informal event."\textsuperscript{174} "The juvenile trial is held in a courtroom in front of a robed judge sitting behind a bench. The formal rules of courtroom decorum and dress apply. A court reporter transcribes the entire proceeding. There is a formal written complaint presented by the Assistant County Attorney."\textsuperscript{175} The procedure essentially parallels adult proceedings.\textsuperscript{176} The child necessarily perceives a real and formal proceeding.

One commentator suggests that formality in a juvenile system is actually "more therapeutic and rehabilitative than the traumatizing effects of an informal adjudicatory hearing at which the child is deprived of basic rights."\textsuperscript{177} In Minnesota, where juvenile proceedings are already formal, the jury trial's minimal increase in formality would not have a deleterious effect. The jury trial may serve to impress upon the juvenile the gravity and severity of the offense, hopefully creating a deterrent effect.\textsuperscript{178} "Unless appropriate due process is followed, even the juvenile who has violated the law may not feel that he is being fairly treated and may therefore resist the efforts of court personnel."\textsuperscript{179} "[F]air treatment is frequently viewed as helpful to rehabilitation since juveniles who are

that he is face to face with the power of the state, but he should know at the same time, and more emphatically, be made to feel that he is the object of its care and solicitude. The ordinary trappings of the courtroom are out of place in such hearings. The judge on a bench, looking down upon the boy standing at the bar, can never evoke a proper sympathetic spirit. Seated at a desk, with the child at his side, where he can on occasion put his arm around his shoulder and draw the lad to him, the judge, while losing none of his judicial dignity, will gain immensely in the effectiveness of his work.

\textit{Id.} This may have been the ideal in 1909, but the concept is not in practice today. \textit{See supra} notes 169-71 and accompanying text.


175. \textit{Id.; see also Minn. R. Juv. P. 27} (1984) (dealing with timing, procedure, evidentiary matters, and findings of juvenile proceedings).

176. \textit{See supra} note 169 and accompanying text.

177. \textit{Comment, supra} note 5, at 832.


There is increasing evidence that the informal procedures, contrary to the original expectation, may themselves constitute a further obstacle to effective treatment of the delinquent to the extent that they engender in the child a sense of injustice provoked by seemingly all-powerful and challengeless exercise of authority by judges and probation officers.

accorded due process rights may be unable to rationalize away their delinquent acts on the grounds that they were not given their legal rights and therefore, treated unfairly. 180 A paternalistic, informal proceeding is less likely to deter the hard-core offender.

D. The Juvenile Adversary System

Courts have expressed concern that jury trials would create a full-blown adversary process, vest the proceeding with the appearance of a criminal trial, and make the child feel like a criminal. 181 This argument is unpersuasive because an adversary system already exists in Minnesota's juvenile courts. The recently adopted Minnesota Rules of Juvenile Procedure require an elaborate juvenile court process closely resembling adult criminal proceedings. 182 Therefore, concerns about implementing an adversary system in Minnesota are moot.

E. The Efficiency of Juvenile Jury Trials

Critics of the juvenile jury trial also claim that it would create an undue administrative burden on the courts. 183 While "many juvenile courts are overcrowded and understaffed," 184 the integration of juvenile jury trials would not create a significant increase in the burden. 185 The Supreme Court dissenters in McKeiver 186 refuted the argument by noting the experiences of states allowing juries. 187 Those states experienced no major burden on their courts and no flood of requests for jury trials by juveniles. 188

In 1970, the National Juvenile Justice Center examined eleven jurisdictions providing juries for juveniles and found that: "[W]here a jury trial is available by statute it is seldom used and creates no burden on the juvenile court system . . . . None of the data collected indicated that the extension of this right to the remaining states would significantly affect the efficiency of the juvenile courts." 189 Another study, conducted in

180 Kittle, supra note 7, at 96.
181 See, e.g., 403 U.S. at 550; In re Johnson, 257 N.W.2d 47 (Iowa 1977); Dryden v. Commonwealth, 435 S.W.2d 457, 461 (Ky. 1958).
182 MINN. R. JUV. P. 27.03, subd. 2 (1984); supra note 169 (text of rule 27.03, subd. 2).
184 This unexpressed fear may have swayed the McKeiver Court. See Ketcham, supra note 5, at 567.
185 Comment, supra note 5, at 834; see Note, The Supreme Court 1970 Term, 85 HARV. L. REV. 38, 118 (1971).
186 See infra notes 189-93 and accompanying text.
187 403 U.S. at 557-72 (Douglas, Black, Marshall, JJ., dissenting).
188 The two states allowing juveniles juries were Colorado and Michigan. For the current listing of states giving juveniles the right to a jury trial, see supra notes 81-82.
189 403 U.S. at 564-65.
1978, revealed that the frequency of jury trials ranged from a low of .36% to a high of 3.2% of the entire juvenile caseload. Jury trials are rarely requested by juveniles. The implementation of jury trials could actually serve to reduce the caseload because county attorneys would be forced to process only meritorious cases.

Fundamental rights outweigh concerns about de minimus administrative burdens. The right to trial by jury is fundamental when a person is faced with a serious loss of liberty, and fundamental fairness is the constitutional standard in delinquency cases. Thus, denying juveniles the right to a jury trial because of a potential for slightly diminished administrative efficiency may be fundamentally unfair.

F. Jury Trials and Confidentiality

Courts attempt to keep juvenile proceedings confidential. Presumably, confidentiality aids rehabilitation by eliminating the criminal stigma.

192. \textit{Id}.
193. For example, in 1980, two commentators examined the number of jury trials in Hennepin County criminal court. Stuart & Bush, supra note 103. These figures were then used to advance a hypothesis on the number of juvenile jury trials that could be expected in Hennepin County:

\begin{quote}
In Hennepin County courts (District and Municipal) in 1979, there were 18,373 defendants charged with felonies, gross misdemeanors or misdemeanors. Only 219 of those cases (1.19%) resulted in a trial by jury. In Hennepin County Juvenile Court, 4,552 delinquency petitions were filed in 1979. If the adult percentage is any guide, there would be 54 jury trials in a year in juvenile court.
\end{quote}
\textit{Id}. This figure is probably higher than would actually occur because jury trials are rarely requested by juveniles. \textit{See}, e.g., McKeiver v. Pennsylvania, 403 U.S. 528, 565-66 (Douglas, J., dissenting).

194. In Minnesota, the “discretionary decision as to whether a delinquency or petty matter should be initiated lies with the county attorney.” Minn. R. Juv. P. 17 (1984).
196. See \textit{id}. at 147-50; see also McKeiver v. Pennsylvania, 403 U.S. at 533, 545.
197. Minnesota conducts a private hearing for juveniles pursuant to Minnesota Statutes section 260.155, subdivision 1, which provides in part: “The court shall exclude the general public from these hearings and shall admit only those persons who, in the discretion of the court, have a direct interest in the case or in the work of the court.” Minn. Stat. § 260.155, subd. 1 (1982).

Rule 8.01 of the Minnesota Rules of Procedure for Juvenile Court provides:

\begin{quote}
Only the following may attend hearings:
\begin{enumerate}
\item the child, guardian ad litem and counsel for the child, and
\item the parent(s) and guardian of the child and their counsel and guardian ad litem and the legal custodian of the child and
\item the spouse of the child, and
\item the county attorney, and
\item persons requested by the child, the county attorney, or the parent(s) and guardian of the child and approved by the court, and
\item persons authorized by the court under such conditions as the court may approve, and
\item persons authorized by statute under such conditions as the court may approve.
\end{enumerate}
\end{quote}
attached to a public trial. Some commentators believe that a jury in juvenile court would destroy the confidentiality traditionally surrounding the proceedings. This concern may be unwarranted because, realistically, juvenile proceedings are not particularly confidential.

The Supreme Court in Gault criticized the claim of secrecy calling it "more rhetoric than reality." Individuals and organizations, including the FBI, government agencies, the military, social service agencies, and sometimes even private employers, may have access to information about juvenile offenses. Moreover, the juvenile's friends, family, relatives, and neighbors are likely to be aware of the proceedings.

A court has two options: the jurors may be sworn to secrecy, or the proceedings may be opened to the public. Although opening juvenile proceedings to the public is usually discussed in the context of the first amendment, opening juvenile proceedings could foster the public scrutiny Justice Brennan found so laudable in McKeiver. Swearing jurors to secrecy may be a more realistic option because many juvenile courts cling to the ideal of absolute confidentiality. The name of the juvenile could remain undisclosed, or a pseudonym could be used. The court's contempt power could be invoked to ensure the confidentiality of the proceedings. Swearing jurors to secrecy would not burden the court.

IV. CONCLUSION

Minnesota's Juvenile Act is continually being amended, expanded, and modernized. With the advent of more punitive laws relating to delinquent children, the substantial gulf initially perceived between the adult criminal and juvenile delinquency proceedings has diminished. The criminal and juvenile courts are now substantially equivalent, with the exception of the increased confidentiality of the juvenile system.


The records pertaining to juvenile matters are closed to the public. MINN. STAT. § 260.161, subsds. 2-3 (1982).

198. Amicus Curiae Memorandum, supra note 107, at 11.
199. 387 U.S. at 24.
200. See id. at 24-25; see also Cashman, Confidentiality of Juvenile Court Proceedings: A Review, JUV. JUST., Aug. 1973, at 30, 35; Note, supra note 5, at 286-89; Note, Juvenile Delinquents: The Police, State Courts, and Individualized Justice, 79 HARV. L. REV. 775, 784-87, 800 (1965); cf. MINN. R. JUV. P. 34 (1984) (controlling access to the juvenile's records—records not released to employers or military personnel); Ketcham, The Unfulfilled Promise of the Juvenile Court, 7 CRIME & DELINQ. 97, 102-03 (1961); Comment, supra note 5, at 818-19.
201. Comment, supra note 5, at 827.
202. See supra note 59.
203. See supra note 73 and accompanying text.
204. See Response Memorandum, supra note 103, at 16-17; Amicus Curiae Memorandum, supra note 107, at 11; Comment, supra note 5, at 828.
205. Comment, supra note 5, at 828.
206. Id.
Thus, juveniles should be afforded the right to a jury trial in juvenile court.

Hypothesized concerns of administrative burden, creation of an adversary system, and formalization are easily remedied. A formalized adversary system already exists in Minnesota. Even if an increased administrative burden resulted, it is likely that fewer weak cases would be prosecuted. In the final analysis, juveniles should not be denied the fundamental right to a jury trial because of administrative problems.

Due process is a more important concern. A juvenile offender will have greater respect for Minnesota’s courts if afforded the full adult panoply of constitutional safeguards. The recidivist juvenile will more likely be deterred from future criminal misconduct when faced with the full impact and gravity of the offense.

Juries will protect against the possibility of juvenile courts’ findings being influenced by inadmissible evidence disclosed in pretrial proceedings. The court will rule on evidentiary issues, but will not have to pretend to be unaware of a prejudicial piece of inadmissible evidence. The jury will hear the facts, and the judge will impose the sentence.

_McKeiver_ did not forbid juvenile jury trials. Rather, the Court encouraged states to experiment with their systems in the hope of reaching the rehabilitative ideal. With the exception of the Duluth system, Minnesota has not experimented with juvenile jury trials. It has deviated from rehabilitation by enacting punitive laws for children while continuing to deny the right to a jury trial. The civil label cannot change the punitive effect of the laws. The time has come to accept _McKeiver_'s challenge and expand the accused child's rights to include the fundamental right of trial by jury.
APPENDIX

Minnesota Citizens Council on Crime and Justice
formerly
Correctional Service of Minnesota

ADVISORY SANCTION LEVELS

<table>
<thead>
<tr>
<th>OFFENSE SEVERITY SCALE— RANKING OF MOST SERIOUS CURRENT OFFENSE</th>
<th>0 Previous Offense in Ranking A</th>
<th>OFFENSE HISTORY</th>
<th>1 or More Previous Offenses in Ranking A</th>
</tr>
</thead>
<tbody>
<tr>
<td>A HABITUAL TRUANCY — 260.015, subd. 19</td>
<td>10</td>
<td>no adjudication, continuance up to 90 days</td>
<td>no adjudication, continuance up to 90 days, possible extension up to 90 days</td>
</tr>
<tr>
<td>RUNNING AWAY — 260.015, subd. 20</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>JUVENILE PETTY OFFENSES —</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>260.015, subd. 21</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

| OFFENSE SEVERITY SCALE— RANKING OF MOST SERIOUS CURRENT OFFENSE | OFFENSE HISTORY POINT TOTAL |
|---|---|---|---|---|
| 0 | .25 | .50 | .75 or more |
| B JUVENILE ALCOHOL OFFENSES — 260.015, subd. 22 | 20 | 21 | 22 | 23 |
| JUVENILE CONTROLLED SUBSTANCE OFFENSES — 260.015, subd. 23 | $40 fine or 10 hrs. work or 60 days probation or combination | $60 fine or 15 hrs. work or 90 days probation or combination | $80 fine or 20 hrs. work or 120 days probation or combination | $100 fine or 25 hrs. work or 150 days probation or combination |
## OFFENSE SEVERITY SCALE—RANKING OF MOST SERIOUS CURRENT OFFENSE

<table>
<thead>
<tr>
<th></th>
<th>0- .25</th>
<th>.50- .75</th>
<th>1-2.75</th>
<th>3-5.75</th>
<th>6-8.75</th>
<th>9 or more</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>C MISDEMEANORS</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Examples:</td>
<td>Assault 4 — 609.224</td>
<td>Theft under $150 — 609.52, subd. 3(5)</td>
<td>Disorderly Conduct — 609.72</td>
<td>$80 fine or 20 hrs. work or 120 days prob. or comb.</td>
<td>$100 fine or 25 hrs. work or 150 days prob. or comb.</td>
<td>$120 fine or 30 hrs. work or 180 days prob. or comb.</td>
</tr>
<tr>
<td><strong>1 FELONIES</strong></td>
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<tr>
<td>Examples:</td>
<td>Dangerous Weapon — 609.86</td>
<td>Unauthorized Use of Motor Vehicle — 609.55</td>
<td>Forgery — 609.63</td>
<td>$120 fine or 30 hrs. work or 180 days prob. or comb.</td>
<td>$160 fine or 40 hrs. work or 240 days prob. or comb.</td>
<td>$200 fine or 50 hrs. work or 300 days prob. or comb.</td>
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<tr>
<td><strong>2 FELONIES</strong></td>
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<tr>
<td>Examples:</td>
<td>Aggravated Forgery $150-$2500 — 609.625</td>
<td>Damage to Property — 609.595, subd. 1(2) &amp; (3)</td>
<td>Terroristic Threats — 609.713, subd. 2</td>
<td>$160 fine or 40 hrs. work or 240 days prob. or comb.</td>
<td>$200 fine or 50 hrs. work or 300 days prob. or comb.</td>
<td>$240 fine or 60 hrs. work or 360 days prob. or comb.</td>
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<td><strong>3 FELONIES</strong></td>
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<tr>
<td>Examples:</td>
<td>Sale of Marijuana — 152.15, subd. 1(2)</td>
<td>Theft Crimes $150-$2500</td>
<td>Arson 3 Over $300 - 609.583</td>
<td>$200 fine or 50 hrs. work or 360 days prob. or comb.</td>
<td>$240 fine or 60 hrs. work or 420 days prob. or comb.</td>
<td>$280 fine or 70 hrs. work or 480 days prob. or comb.</td>
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## OFFENSE HISTORY POINT TOTAL

<table>
<thead>
<tr>
<th></th>
<th>0- .25</th>
<th>.50- .75</th>
<th>1-2.75</th>
<th>3-5.75</th>
<th>6-8.75</th>
<th>9 or more</th>
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<tr>
<td>Examples:</td>
<td>Assault 4 — 609.224</td>
<td>Theft under $150 — 609.52, subd. 3(5)</td>
<td>Disorderly Conduct — 609.72</td>
<td>$80 fine or 20 hrs. work or 120 days prob. or comb.</td>
<td>$100 fine or 25 hrs. work or 150 days prob. or comb.</td>
<td>$120 fine or 30 hrs. work or 180 days prob. or comb.</td>
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*Note: Maximum of 120 days inst. or DOC*
### JUVENILE JURY TRIALS

#### 4 FELONIES

<table>
<thead>
<tr>
<th>Examples:</th>
<th>29</th>
<th>30</th>
<th>41</th>
<th>42</th>
<th>52</th>
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<tbody>
<tr>
<td>Burglary — 609.58, subd. 2(3)</td>
<td>$240 fine or 60 hrs. work or 360 days prob. or combination</td>
<td>$280 fine or 70 hrs. work or 420 days prob. or combination</td>
<td>$320 fine or 80 hrs. work or 480 days prob. or combination or maximum of 120 days instit.</td>
<td>$360 fine or 90 hrs. work or 540 days prob. or combination or maximum of 150 days instit.</td>
<td>Maximum of 180 days instit. or DOC</td>
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<tr>
<td>Receiving Stolen Goods, $301-$999 — 609.525, 609.53</td>
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<td>Nongilg Fire — 609.576(a)</td>
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#### 5 FELONIES

<table>
<thead>
<tr>
<th>Examples:</th>
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<th>41</th>
<th>51</th>
<th>52</th>
<th>60</th>
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<tbody>
<tr>
<td>Assault 3 — 609.223</td>
<td>$280 fine or 70 hrs. work or 420 days prob. or combination</td>
<td>$320 fine or 80 hrs. work or 480 days prob. or combination or maximum of 120 days instit.</td>
<td>Maximum of 150 days instit. or DOC</td>
<td>Maximum of 180 days instit. or DOC</td>
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<tr>
<td>Criminal Sexual Conduct 3 — 609.344(a)&amp;(b)</td>
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<tr>
<td>Burglary — 609.58, subd. 2(1)(a)&amp;(c)</td>
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#### 6 FELONIES

<table>
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<tr>
<th>Examples:</th>
<th>41</th>
<th>42</th>
<th>52</th>
<th>60</th>
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<tbody>
<tr>
<td>Arson 2 — 609.562</td>
<td>$320 fine or 80 hrs. work or 480 days prob. or combination or maximum of 120 days instit.</td>
<td>$360 fine or 90 hrs. work or 540 days prob. or combination or maximum of 150 days instit.</td>
<td>Maximum of 180 days instit. or DOC</td>
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<tr>
<td>Burglary of Occupied Dwelling — 609.58, subd. 2(2)</td>
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<tr>
<td>Criminal Sexual Conduct 2-609.343(a)&amp;(b)</td>
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#### 7 FELONIES

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<th>Examples:</th>
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<th>60</th>
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<tbody>
<tr>
<td>Aggravated Robbery — 609.245</td>
<td>Maximum of 150 days instit. or DOC</td>
<td>Maximum of 180 days instit. or DOC</td>
<td>DOC</td>
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<td>Criminal Sexual Conduct 2 — 609.343(c), (d), (e)&amp;(f)</td>
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<tr>
<td>Burglary with Weapon — 609.58, subd. 2(b)</td>
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#### 8 FELONIES

<table>
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<tr>
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<tbody>
<tr>
<td>Assault 1 — 609.221</td>
<td>DOC</td>
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<tr>
<td>Criminal Sexual Conduct 1 — 609.342</td>
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<td>Manslaughter 1 — 609.20(1)&amp;(2)</td>
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#### 9 MURDER

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<tbody>
<tr>
<td>MURDER 3 — 609.195</td>
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<tr>
<td>MURDER 2 — 609.19</td>
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<tr>
<td>MURDER 1 — 609.185</td>
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