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SPONSOR: LTC J. A. KOCHENOUR  
AUTHOR: MAJ R. P. WALTERS

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I. INTRODUCTION

This paper will examine the impact of dependent juvenile delinquency of military sponsors on CONUS Installations. Consideration will be given to the roles of the Installation Commander, Staff Judge Advocate, Provost Marshal, the Federal Court System, the individual and the parents.

II. THE PROBLEM

A. Background

Juvenile delinquency is not a recent problem. It has existed for centuries. In 1641, the Puritans in Colonial America adopted the "Body of Liberties" which provided that:

If any child ...above sixteen years old, and of sufficient understanding, shall curse or smite their natural father, or mother, he or she shall be put to death, unless it can be sufficiently testified that the parents have been very unchristianly negligent in the education of such children: so provoked them by extreme and cruel correction, that they have been forced thereunto, to preserve themselves from death or maiming.<sup>1</sup>

Historically, "juvenile delinquency" has been a catch-all



for youths who would not, or could not, strictly conform to society's dictates. The phrase frequently referred to youths exhibiting a diverse array of problems, from running away and truancy, to youthful exuberance, to criminal activities.

#### B. Juvenile Court Movement

The juvenile court movement, with its emphasis on rehabilitation instead of punishment has existed in America since 1899. Its realization, however has often been an unorganized and decentralized program in which the needs of most children coming into the system were inadequately and inappropriately met. Currently, the primary means of envisioning the principle of the juvenile court is to identify its unique procedural features which Mr. Fox, in his book Juvenile Courts in a Nutshell,<sup>2</sup> points out in detail. He discusses "intake," the means for screening cases out of court prior to the time they reach a hearing before the judge. He discusses the informality in juvenile courts and the subsequent state of flux caused by recent court decisions concerning treatment of juveniles. An example of this, taken from The Journal of Criminal Law, Criminology and Police Science, December 1971,<sup>3</sup> is an article entitled "Jury Trial-Juvenile Court". It discusses the extension of constitutional guarantees to juveniles, a trend initiated by the Warren Court, which was reversed with the Supreme Court's decision in Mckeiver vs Pennsylvania.<sup>4</sup> The court held that the right to a jury trial was not consti-



tutionally mandated in state juvenile delinquency proceedings. McKeiver was 16 years old when he was charged with robbery, larceny and receiving stolen goods, all felonies under Pennsylvania statutes. He was denied a jury trial and adjudicated delinquent. The case was appealed to the Pennsylvania Superior Court. The Court concluded that a juvenile was not constitutionally entitled to a jury trial and applied the fundamental fairness test previously enunciated by the Supreme Court in *Winship*, 397 U. S. 358, 359 (1970). It found that particular elements within the juvenile process assured the juvenile protection of his rights thereby rendering the jury trial non-essential within the juvenile setting. In a close decision, the Supreme Court affirmed the conclusion of the Pennsylvania Supreme Court. Mr. Justice Blackmun delivered the Courts opinion, concluding that a jury trial was not a necessary safeguard to insure accurate fact finding. The significance of the McKeiver decision emerges most clearly within the historical context of the juvenile system and the Supreme Court's involvement with it. The past few years we have witnessed a revolution in juvenile court proceedings, largely through the impetus of the Supreme Court's rulings on the Kent, Gault and Winship Cases.

Mr. Fox goes into the many different jurisdictions affecting juvenile courts. He defines the jurisdiction of the juvenile court as "a matter of persons, behavior and relation-

ships concerning which the authority of the court may be exercised." In the jurisdiction section of the book he breaks the material out into several subsections:

- 1. Lower age limits
- 2. Age 7 to 14
- 3. Maximum age
- 4. Double jeopardy
- 5. Criminal Conduct
- 6. Non-criminal conduct
- 7. Treatment
- 8. Concurrent or Exclusive Jurisdiction
- 9. Traffic offenses
- 10. Neglect and dependency
- 11. Adult proceedings
- 12. Family Courts
- 13. Problems of Notice

Each of these categories were quite lengthy and sometimes overlapping. Below are extracts of only the main theme of each section.

Lower Age Limits- The May 1975 edition of the U. S. Department of Justice, LEAA pamphlet entitled Children in Custody defines juvenile as a person charged with a criminal offense or juvenile offense, over whom the juvenile court has original jurisdiction. The juvenile court's jurisdiction is determined by the age of the person who must, in most states, be under 18 years of age.

A problem exists here in that most legislation defining delinquency contains no minimum age. At the turn of the century, common law held that a child under the age of seven could not be guilty of any crime, he had an absolute immunity. Some juvenile court acts now specify a lower age limit, however, the immunity is just to juvenile court proceedings. McKinney's

N. Y. Family Court Act defines juvenile delinquent as a person over eight years old.... The author feels that having the law incorporate such an immunity would clearly be preferable to a situation where children, barely aware of the difference between "mine and thine" could be accused of delinquency on the grounds of theft. Another point the author uses is that in cases of neglected children there is no reason for a lower age limit. In fact, there cannot be a lower age limit.

Seven to Fourteen- The common law also provided for the children between the ages of seven and fourteen by requiring that the prosecution prove beyond a reasonable doubt that the child knew right from wrong. There were many cases though where the courts ruled that this could not be used as a defense. However in 1970, the Supreme Court ruled that the common law defense, as coded in the California Penal Code, is applicable to delinquency proceedings.

Maximum Age- Mr. Fox points out that drawing a line at any age raises difficult questions when there are jurisdictionally significant events on both sides of that line. What happens when a kid commits an act below the age limit but doesn't get to court until after the age limit? Can the Juvenile Court still try him? Different cases have been resolved in different ways therefore leaving no clear cut guidelines to follow for future cases.

Double Jeopardy- In cases where jurisdiction is concurrent, both the juvenile court and the criminal court are auth-



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orized to try a juvenile. This of course raises the question of double jeopardy. Mr. Fox indicates here that White versus District Court of Milwaukee County in 1952 prohibits this use of concurrent jurisdiction. He also stresses that repeated juvenile court trials are constitutionally prohibited by Tolliver versus Judges of Family Court in 1969.

Criminal Conduct- Not all violations of the criminal law can lead to a finding of delinquency in a juvenile court. Some offenses, such as murder and rape can only be tried in criminal court, regardless of age. A big problem facing "juvenile justice" now is the lack of continuity in jurisdictional areas as is the case with adult criminal conduct. For example, assertion of jurisdiction by an Illinois juvenile court over a child who violated Illinois law while he was in Michigan where his conduct was innocent, would involve great unfairness of an "ex post facto" nature. When the juvenile court does lack jurisdiction over certain offenses, a problem arises when a child prosecuted for such an offense before a criminal court, but he pleads guilty to a lesser offense, one which is within exclusive jurisdiction of the juvenile court. The Texas statutes constitute an awareness of this problem in their definition of a delinquent child as one who violates penal laws that are felonies, or misdemeanors providing for jail terms. But a child who violates less serious law is delinquent only if he does so habitually. This brings us to:

Non-Criminal Conduct- An "unruly child" includes truants

and habitually disobedient children. Different jurisdictions have various counterparts for these kids. The Uniform Juvenile Court Act calls them "unruly"; New York calls them "persons in need of supervision"; and California, although no special name, provides that such children may be adjudged a ward of the court. In Maryland, youths who are adjudicated children in need of supervision (CINS) or delinquent remain the responsibility of Juvenile Services for rehabilitation. The State of Maryland feels removing a youth from the community has failed to significantly modify deviant behavior.<sup>5</sup> As a result, probation for adjudicated delinquents and protective supervision for adjudicated CINS has become a popular alternative to institutionalization. In 1973 Maryland legislation prompted community organizations (schools, recreation centers, social agencies) to begin dealing with CINS. The result was that kids committing CINS offenses were never exposed to the juvenile justice system.

Need for Treatment- Mr. Fox discusses the New York Family Court Act and deviant conduct in that a delinquent "requires supervision, treatment or confinement." He also points out that the Uniform Juvenile Court Act reaches the same result more directly by including in its definitions of delinquent child and unruly child the element that the child "is in need of treatment or rehabilitation." He stresses the lack of training on the judges, and probation staffs parts; but he did not at that time offer any solutions. A recent LEAA pub-

lication entitled The Philadelphia Neighborhood Youth Resources Center<sup>6</sup> shows where the NYRC did propose solutions and take actions to implement those solutions. They felt that a youngster's problems with the law rarely occur in isolation. More often they are apart of a multitude of problems; family conflict, school failure, unemployment, emotional difficulties, and, in urban ghettos, inadequate housing and health care. Too often, these young people with the widest range of problems are least aware and capable of using available community resources. Unresolved, the problem- and the problem behavior-continue. The NYRC developed a unique purchase of services arrangement with other community agencies. This system provides lawyers, Department of Recreation leaders, representatives from youth conservation services and a juvenile court probation officer. The center works with a target population of 4,000 young people between the ages of 10 and 17. Five kinds of services are offered: crises intervention, individual casework, group work involving counselling and educational assistance, referrals to cooperating agencies, and legal representation. It is a very good example of a workable solution.

Concurrent or Exclusive Jurisdiction- The section on concurrent or exclusive jurisdiction has only a couple of points which are important and valid enough to mention. First, prosecution of a parent for criminal neglect and a juvenile court neglect action aimed at protecting the child may both be undertaken without any conflict of a double jeopardy nature



since the latter is in no sense a criminal proceeding. There may also be concurrent jurisdiction to try adults accused of the crime of contributing to the delinquency of a minor. Secondly, the Uniform Juvenile Court Act provides for exclusive jurisdiction in all juvenile cases, but notes that state constitutions may prevent depriving another court of authority to deal with custody or guardianship cases, or proceedings concerning mentally ill children. However, even where a constitution vests jurisdiction of all criminal cases in another court, it is possible for the legislature to give the juvenile court exclusive jurisdiction on the theory that delinquency, even if based on criminal conduct, is not a criminal case. It is important to note though that the inherent power to punish for criminal contempt in such a case has been declared unaffected by exclusive jurisdiction provisions of juvenile court statutes.

Traffic Offenses- In the traffic offenses section, the biggest point Mr. Fox makes is that the Uniform Juvenile Court Act seeks to recognize the need for flexibility by retaining major traffic offenses within the juvenile court, while at the same time providing the traffic court with authority to transfer any lesser traffic case to the juvenile court where serious problems have become manifest.

Neglect and Dependency- A doctrine that is often found in formal statements of the law is that primary responsibility for the custody and control of children resides in the govern-

ment in its common law capacity as parens patriae. "The protective agency has a mandate to provide service when needed and an obligation to explore, study and evaluate the facts of neglect and their effect on children. The agency carries responsibility for maintaining service until the conditions are treated and neglect is reduced. It has the additional obligation to invoke the authority of the juvenile court when such action is deemed necessary to secure protection, care, and treatment of children whose parents are unable or unwilling to use the help offered by the agency."<sup>7</sup> In other words a further problem of the relationship between law and neglect appears in regard to the battered and abused child because parents have a common law privilege to administer corporal punishment. It appears that when there is validity to allegations of abuse of the corporal punishment there are four alternatives:

1. Social agency referrals are useful when there is only minimal evidence or evidence indicates minimal severity or danger to the child.
2. Juvenile probation referrals are helpful when evidence is minimal but the severity of the apparent neglect or abuse is maximal. These referrals draw on the resources of juvenile offenders who are officers of the court trained in family counselling.
3. Juvenile court referrals are made when there is sufficient evidence and the child's welfare is in jeopardy.

4. Criminal court referrals (usually made through the district attorney) are made when the child's welfare remains in doubt even after juvenile court proceedings.<sup>8</sup>

Mr. Fox points out that in the case of parents addicted to narcotics it is open to the parents to show that no abuse has resulted and the child's removal is not necessary. Considering all of the above, we note that there are many difficulties in dealing with "unfit" parents and with parents of delinquents. Mr. Coffey sums it all up by indicating neglected and abused children must be diverted from difficult home situations, if necessary, and from contact with delinquents in the juvenile justice system.

Adult Proceedings- In this section, I think the most important point made is that in some cases an adult may be convicted and punished in both juvenile court and criminal court without any violation of the constitutional rule against double jeopardy.

Family Courts- In this section Mr. Fox points out that in addition to the jurisdiction over children and adults already discussed, family courts may include authority to hear adoptions, divorces, proceedings concerning mentally or mentally ill children, cases involving disputes over custody of children, paternity and support matters, and certain criminal offenses when committed by one family member against another. The most important item here, I believe, is that the family court tries these "family offenses" in a civil proceeding in



which it has no authority to impose a criminal penalty.

Problems of Notice- This section deals with informing the subject of the charges against him and providing him the opportunity to defend himself against them. The Supreme Court recently said that: "The requirements are that the child and his parents or guardian be notified in writing, of the specific charge or factual allegations to be considered at the hearing and that such written notice be given at the earliest practicable time, and in any event sufficiently in advance of the hearing to permit preparation. Due process of law requires notice of the sort we have described- that is, notice which would be deemed constitutionally adequate in a civil or criminal proceeding. This decision was handed down because of the Gerald Gault case in Arizona. The only written notice Gault's parents received at any time was a note on plain paper from Officer Flagg delivered on the 11th or 12th of June, to the effect that the judge had set Monday, 15 June "for further hearings on Gerald's delinquency."<sup>9</sup>

In the Supreme Court decision, Mr. Justice Harlan stated: "...only three procedural requirements should, in my opinion, now be deemed required of state juvenile courts by the Due Process Clause of the Fourteenth Amendment: first, timely notice must be provided to parents and children of the nature and terms of any juvenile court proceeding in which a determination affecting their rights or interests may be made; second, unequivocal and timely notice must be given that

counsel may appear in any such proceeding in behalf of the child and its parents, and that in cases in which the child may be confined in an institution, counsel may, in circumstances of indigency, be appointed for them; and third, the court must maintain a written record, or its equivalent, adequate to permit effective review on appeal or in collateral proceedings....."

### C. Treatment Trends

Our juvenile courts constantly violate the simple truth that the love of a parent or other concerned adult is as vital as food to a child's growth. Yearly, these courts tear hundreds of thousands of non-criminal children from home, school and friends. After secret hearings, which would not be tolerated for adults, many are packed off to state training schools, which often are no more than maximum-security prisons for the young. In many states, any minor under 18 who is adjudicated "a habitual truant" or "beyond the control of his parents" or "incorrigible" may be locked up until he reaches 21. "The juvenile system does not correct. It does not even meet ordinary standards of human decency in some cases," the U. U. Law Enforcement Assistance Administration has said.<sup>10</sup>

In 1967, the president's commission on Law Enforcement and Administration of Justice reported:

Delinquency is not so much an act of individual deviancy as a pattern of behavior produced by a multitude of pervasive

societal influences well beyond the reach of the actions of any judge, probation officer, correctional counselor or psychiatrist."

The Commission found that delinquency should be combatted with social and economic weapons rather than attempting to change individual behavior. It recommended better schools, housing, employment, training programs and strengthening the family. The Commission found that juvenile courts should be used only as a last resort. It urged the establishment of youth service bureaus to be located in neighborhood centers that would receive and treat delinquent and non-delinquent children referred by parents, school and police officials, and other agencies.<sup>12</sup>

### III FEDERAL LEGISLATION

The Juvenile Justice and Delinquency Prevention Act of 1974,<sup>13</sup> (Referred to hereafter as the "ACT"), was enacted to provide for evaluation of juvenile delinquency, technical assistance and research. It also amends the standing federal law in the area. The ACT provides federal leadership and coordination of resources to prevent and treat juvenile delinquency.<sup>14</sup> Prior to 1974, there were more than 100 separate federal programs in the juvenile delinquency and related youth development areas.<sup>15</sup> Youth programs existed in the Department of Health, Education and Welfare; Agriculture; Interior; Justice; Labor; Transportation; and in the Civil Service



Comission.<sup>16</sup> In 1972, the federal government made 120,000 different grants in this area.<sup>17</sup>

Before 1974, the Department of Health, Education and Welfare (HEW) was charge with the responsibility of overseeing juvenile delinquency programs. Now, the Law Enforcement Assistance Administration (LEAA), has responsibility for juvenile correctional systems and HEW is only responsible for programs concerning preventing delinquency and providing rehabilitation. Title II of the ACT, authorized an appropriation of \$75 million for fiscal year 1975, \$125 million for fiscal year 1976 and \$150 million for fiscal year 1977. One of the major changes in the ACT provides that juveniles cannot be proceeded against in federal court unless a state court refuses jurisdiction or the state does not have adequate services available.<sup>19</sup>

#### IV. JUVENILE DELINQUENCY ON MILITARY INSTALLATIONS

##### A. The Problem

As previously stated, the ACT provides for trial of juveniles by district courts; the magistrate has no jurisdiction over juveniles and U.S. Attorneys feel they have no obligation to prosecute juveniles. These facts, coupled with the facts that military installations, which are exclusive federal jurisdiction, have no district courts but only magistrates and Federal attorneys to prosecute; leaves the juvenile delinquent, on such installations, with carte blanche freedom

to commit crimes without fear of retribution. In addition, the Army does not maintain statistics on acts of juvenile delinquency on military installations.<sup>20</sup> However, to establish meaningful research data a survey should be conducted by submitting questionnaires to Provost Marshals of selected major Army installations throughout the U.S. The only installation with which I am familiar is Ft. Meade, Maryland. In 1974, the installation had approximately 65 juvenile delinquency problems on post in which none were prosecuted by state or federal officials. While pursuing this, I contacted, through the AWOL Apprehension office in Baltimore, the Federal Prosecutor for the area. His reply was...."It appears to be the intent of Congress to get the Federal Government out of the business of prosecuting juveniles and to establish limited definable circumstances for the exercise of Federal jurisdiction....It is quite clear from the new law that congress does not want Federal time devoted to the prosecution of juveniles."<sup>21</sup>

#### B. Recommended Solution

There are a couple of recommended solutions which could prove beneficial if supported and followed intently. First is the "peer pressure" solution.

A program of juvenile probation service could be established at each Class I installation with minimum effort and resources, acting separately or in conjunction with any installation crime prevention and control group.

A juvenile council could be composed of at least seven

mature-minded individuals who are juniors or seniors in high school and who would volunteer their services to work under the supervision of the installation's Probation Officer.

The primary goals of this council would be as follows:

a. To identify habitual juvenile offenders and report name of individual(s) to the installation's juvenile probation officer. (It is envisioned that this officer would normally serve in the installation's Provost Marshal Office.)

b. To institute a meaningful method of correction and control of juvenile offenders.

c. Referral of offenders for appropriate professional follow-up, i.e., Chaplain, Mental Hygiene, etc.

d. To devise a system of follow-up checks on the juvenile(s) concerned by means of periodic contacts at home, school or the local military probation office or Army Community Services.

An adequate number of parents could also be designated by the Juvenile Council to be present at "Teen-Club Activities", i.e., parties, dances, etc., to assist all attendees and to insure that individuals conform to the accepted standards of behavior. Chaplains and medical officers could likewise be of considerable assistance to the Junior Council in resolving many of its juvenile problems.

The second and most probable solution is the one adopted at Ft. Meade, a juvenile arbitration program.



Responsibilities:

1. Provost Marshal

The Provost Marshal's Office would be the initial agency due to its law enforcement role. The responsibility to apprehend and initially identify the juvenile for the program is the PMO's responsibility. This identification procedure includes an initial screening and investigation not to exceed 10 working days. Standard police procedures will be utilized up to the completion of the investigation. Once investigation concludes that the juvenile is the subject of a criminal act a consultation/ referral statement will be initiated. The juvenile and the parents will be notified to appear before an arbitrator at a certain date/time where the case will be heard. PMO officers in conjunction with SJA will prepare the charges.

2. Staff Judge Advocate

The Staff Judge Advocate will appoint one officer to act as an arbitrator. The arbitrator will hear both charges and the accused's side. He will make a decision based upon the facts presented and on "expert" assistance provided and present his decision to the juvenile and his parents. Included in his decision will be a Community Services work assignment or recommendation for further referral.

3. Director of Personnel, Community Affairs

The DPCA will have a representative from ADDCO, ACS and DYA present to assist arbitrator as required, and provide input to family of services available.

#### 4. MEDDAC:

Have a psychologist or psychiatrist appointed as a representative to assist arbitrator and to expedite referrals as required.

#### 5. Post Chaplain

Appoint one Chaplain to be a member of the arbitrator's panel to assist the juvenile and his parents as required.

#### 6. Installation Commander

Since the Juvenile Arbitration Program is voluntary, persuasion can be placed on the parents by use of quarters termination for continued offenses.

#### Purpose

In many cases juveniles who have been given the proper guidance and assistance can be prevented from continuing on the path of delinquency.

The program provides "community involvement," early identification of problems to the juvenile and the parents who may not be aware a problem exists. It provides a quick process to render a multi-agency approach to solving the problem of juvenile crime.

The Council allows the juvenile and his or her family professional support should it be deemed appropriate rather than simply disciplining the family, by ordering them to move off post as has been done in the past. In other words, the aim of the council would be to identify a problem and seek appropriate resolution rather than simply denying it's

existence by removing it from view. It puts the offender into the proper channels for medical, financial or social help. The Juvenile Arbitration Program provides a multi-agency, swift, and firm yet fair response to juvenile crime, assist parents and the community to identify problems early and engender a true community approach to reducing crime with the ability to cope with and assist the juvenile delinquent prior to him becoming a Federal Bureau of Investigation statistic.



- 1 Hawes, Children in Urban Society, (1971)
- 2 Fox, Juvenile Courts in a Nutshell,
- 3 Journal of Criminal Law, 1971
- 4 McKeiver vs Pennsylvania, 403 U. S. 528 (1971)
- 5 The Juvenile Service Story (undated)
- 6 LEAA, The Philadelphia Neighborhood Youth Resources Center,
- 7 The American Humane Association, Child Protective Services, (1967)
- 8 Coffey, Juvenile Justice as a System,
- 9 Faust, Juvenile Justice Philosophy
- 10 Velie, Take Me Home, Readers Digest, Jun 72, at 195.
- 11 Paulsen and Whitebread, Juvenile Law and Procedure, (1974)
- 12 Id, at 6
- 13 P. L. 93-415, 88 Stat. 1109 (approved 7 Sep 74).
- 14 Senate Report (Judiciary Committee) N. 93-1011, 16 Jul 74,  
U. S. Code Congressional and Administrative News, 93<sup>D</sup> Congress,  
2<sup>D</sup> Session, at 4248 (referred to as Senate Report).
- 15 Id., at 4243.
- 16 Id.
- 17 Id.
- 18 Id at 4244-48
- 19 18 U.S.C. 5032 (1975 Supp)

## FOOTNOTES

- 20 A representative of the Law Enforcement Division, Department of the Army, advised in Sept. 1975, that such statistics are not kept and there are no plans to keep them.
- 21 Letter from George Beall, U. S. Attorney, District of Md., to the Baltimore Military Police Field Office, subject: Juvenile Justice and Delinquency Prevention Act of 1974, dated 3 Dec 74.