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Survey of Recent Developments in Indiana Law

The Board of Editors of the *Indiana Law Review* is pleased to publish its sixth annual Survey of Recent Developments in Indiana Law. This survey covers the period from June 1, 1977, through May 31, 1978. It combines a scholarly and practical approach in emphasizing recent developments in Indiana case and statutory law. Selected federal case and statutory developments are also included. No attempt has been made to include all developments arising during the survey period or to analyze exhaustively those developments that are included.

I. Foreward: Indiana's New Juvenile Code

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On March 10, 1978, the statute enacting Indiana's new juvenile code¹ was signed by the governor although the code's effective date was deferred until October 1, 1979.² By coincidence, the last major revision and codification of the state's juvenile statutes was also signed on March 10, in 1945.³ In the intervening thirty-three years, the state's juvenile justice system underwent dramatic changes, many of which are reflected in the new code. Most of these changes occurred primarily because of the decisions of the United States Supreme Court in *Kent v. United States*⁴ and *In re Gault*.⁵

The preparation of Indiana's new code can be traced directly to these two decisions. In 1967, shortly after the *Gault* decision,⁶ the Indiana Judicial Conference was established as an organization of the

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¹Act of Mar. 10, 1978, Pub. L. No. 136, § 1, 1978 Ind. Acts 1196 (codified at IND. CODE §§ 31-6-1-1 to 10-4 (Supp. 1978)).

²Act of Mar. 10, 1978, Pub. L. No. 136, § 59(a), 1978 Ind. Acts 1196.

³Ch. 356, 1945 Ind. Acts 1724 (codified at IND. CODE §§ 31-5-2-1 to 10-2 (1976 & Supp. 1978)) (repealed effective Oct. 1, 1979).

⁴383 U.S. 541 (1966).

⁵387 U.S. 1 (1967).

⁶*In re Gault* was decided on May 15, 1967.

state's judges with authority to promote the improvement of the state's judicial system.⁷ One of this organization's first actions was the appointment of a Committee on Juvenile Procedure consisting of seventeen judges with juvenile jurisdiction. As reported by the Indiana Judicial Study Commission in 1968, this committee "drafted a revision of Indiana Juvenile Laws that will conform with the recent Constitutional requirements of juvenile procedure as interpreted by the United States Supreme Court and the Indiana Supreme Court."⁸ Although the draft was reviewed and revised by numerous organizations and groups in the intervening years, it served as the primary basis for the juvenile code which was finally enacted ten years later.⁹

Ten chapters are included in the new code which is part of the family law title (Title 31) of the Indiana statutes. These ten chapters are concerned with general provisions (Chapter 1), jurisdiction (Chapter 2), rights and effect of adjudication (Chapter 3), proceedings governing delinquent children and children in need of services (Chapter 4), termination of parent-child relationships (Chapter 5), paternity (Chapter 6), juvenile procedure (Chapter 7), records (Chapter 8), juvenile court provisions (Chapter 9), and the interstate compact on juveniles (Chapter 10).

A. *General Provisions (Chapter 1)*

1. *Purpose.*—A six-part statement of policies and purposes is set forth at the beginning of the new code. A similar statement appears at the beginning of the 1945 codification, but there are some striking differences. For example, the first purpose stated in the new code is "to provide a juvenile justice system that protects the public by enforcing the legal obligations children have to society."¹⁰ By contrast, the 1945 codification contains only a brief reference to enforcing the legal obligations "due" from children, and this appears at the very end of the statement of purpose.¹¹

⁷Act of Mar. 9, 1967, ch. 170, 1967 Ind. Acts 366 (effective July 26, 1967) (codified at IND. CODE §§ 33-13-14-1 to 5 (1976)).

⁸[1967-68] IND. JUD. STUDY COMM'N, BIENNIAL REP. 54.

⁹The code, as finally enacted, had passed through revisions by various organizations, including the Civil Code Study Commission in 1970-71, the Indiana Supreme Court Advisory Committee on Revision of Rules of Procedure and Practice in 1973-74, and the Juvenile Justice Division of the Indiana Judicial Study Commission in 1976-77. See JUVENILE JUSTICE DIVISION, INDIANA JUDICIAL STUDY COMMISSION, INDIANA JUVENILE CODE: PROPOSED FINAL DRAFT ix (1977) [hereinafter referred to as INDIANA JUVENILE CODE: PROPOSED FINAL DRAFT].

¹⁰IND. CODE § 31-6-1-1(1) (Supp. 1978) (effective Oct. 1, 1979). All citations herein to article 6 are from the new juvenile code which will be effective on October 1, 1979.

¹¹*Id.* § 31-5-7-1 (1976) (repealed effective Oct. 1, 1979). All citations herein to article 5 are from the existing Indiana statutes which will be repealed on October 1, 1979.

The second purpose in the new code reflects the due process emphasis generated by the United States Supreme Court in the *Kent* and *Gault* cases. According to this purpose, the code is to “provide a judicial procedure that insures fair hearings” and enforces the legal rights of children and their parents.¹² This emphasis on due process does not appear in the purposes stated in the earlier codification, although the 1945 statement does refer to the enforcement of rights “due” to children.¹³ The reference to the rights of parents, along with the later reference to the obligations of parents, is also a theme in the new code which is not included in the earlier codification.

Providing children with care, guidance, and control is the primary purpose stated in the 1945 statute,¹⁴ and this is repeated in the new code which refers to children in need of “care, treatment, rehabilitation, or protection.”¹⁵ Two new purposes appear in the new code, to develop diversionary programs¹⁶ and “to strengthen family life by assisting parents to fulfill their parental obligations.”¹⁷ The new code ends with the statement that children are to be removed from their parents only when in the best interest of the child or of public safety,¹⁸ a policy which also appears in the earlier codification.¹⁹

These purposes and policies are reflected throughout the new code and reflect the effort of the General Assembly to provide for the protection of society while retaining a special system of justice for the juvenile offender. In so doing, the General Assembly decided to retain the *parens patriae* concept but attempted to balance it with an emphasis on fundamental due process for juveniles.

2. *Definitions.*—Two major questions that existed under the state’s prior juvenile statutes appear to be resolved by the definitions section of the new code. The new code provides that a “child” is a person under eighteen years of age or a person “eighteen (18), nineteen (19), or twenty (20) years of age” who is charged with a delinquent act committed before his eighteenth birthday.²⁰ Under the prior Indiana law, a juvenile who committed an act of delinquency before the age of eighteen years remained subject to juvenile court jurisdiction even after reaching the age of eighteen, with no ap-

¹²*Id.* § 31-6-1-1(2) (Supp. 1978).

¹³*Id.* § 31-5-7-1 (1976).

¹⁴*Id.*

¹⁵*Id.* § 31-6-1-1(3) (Supp. 1978).

¹⁶*Id.* § 31-6-1-1(4).

¹⁷*Id.* § 31-6-1-1(5).

¹⁸*Id.* § 31-6-1-1(6).

¹⁹*Id.* § 31-5-7-1 (1976).

²⁰*Id.* § 31-6-1-2 (Supp. 1978).

parent age limitation.²¹ This apparently placed adults under the juvenile court's jurisdiction even after any reason for exercising such jurisdiction had ended, but the new code places a three-year limitation on the continuation of such jurisdiction.²²

The new code also defines a "crime" as an "offense for which an adult might be imprisoned under the law of the jurisdiction in which it is committed."²³ This would thus appear to authorize an Indiana juvenile court to exercise jurisdiction over a juvenile who is accused of committing an offense in another state or in violation of a federal law. The prior juvenile statutes did not contain a similar provision, and the definition of delinquency was ambiguous in this regard because it referred only to the commission of "an act which, if committed by an adult, would be a crime."²⁴

B. Jurisdiction (Chapter 2)

1. *General*.—The new juvenile code appears to make a number of substantial changes in the jurisdiction of juvenile courts. The first major change is concerned with the offense of murder. Under the prior statutes, a juvenile court had exclusive jurisdiction over delinquency proceedings involving acts that would be crimes if committed by an adult except for first degree murder and traffic violations.²⁵ The new code continues the exception for traffic violations²⁶ and adds exceptions for violations of laws concerning watercraft and snowmobiles²⁷ and laws protecting fish or wildlife.²⁸ At the same time, the code omits the former exception for first degree murder and thus gives the juvenile court exclusive jurisdiction over all charges involving murder. A subsequent section provides, however, that a child ten years of age or older must be waived when charged with an act that would be murder if committed by an adult

²¹*Id.* § 31-5-7-13 (1976).

²²*Id.* § 31-6-1-2 (Supp. 1978). See *In re Johnson*, 178 F. Supp. 155 (D.N.J. 1957). See also INSTITUTE OF JUDICIAL ADMINISTRATION & AMERICAN BAR ASSOCIATION JUVENILE JUSTICE STANDARDS PROJECTS, STANDARDS RELATING TO JUVENILE DELINQUENCY AND SANCTIONS 14 (Tent. Draft, 1977). [This project published numerous volumes of standards. Hereinafter the author will be cited as JUVENILE JUSTICE PROJECT; the title of each volume will be cited in full.]

²³IND. CODE § 31-6-1-2 (Supp. 1978).

²⁴*Id.* § 31-5-7-4.1 (1976). See also JUVENILE JUSTICE PROJECT, *supra* note 22, STANDARDS RELATING TO JUVENILE DELINQUENCY AND SANCTIONS 17 (Tent. Draft, 1977); NATIONAL ADVISORY COMMITTEE ON CRIMINAL JUSTICE STANDARDS AND GOALS (LAW ENFORCEMENT ASSISTANCE ADMINISTRATION), JUVENILE JUSTICE AND DELINQUENCY PREVENTION 295 [hereinafter cited as NATIONAL ADVISORY COMMITTEE].

²⁵IND. CODE § 31-5-7-4.1(a) (1976) (codified as amended at *id.* § 31-5-7-4.1(a) (Supp. 1978)).

²⁶*Id.* § 31-6-2-1(b) (Supp. 1978).

²⁷*Id.* § 31-6-2-1(b). See also *id.* §§ 14-1-1-63, 31-5-7-13.

²⁸*Id.* § 31-6-2-1(b).

unless the court finds that the child should remain within the juvenile justice system.²⁹

By eliminating this exception from the juvenile statutes, the General Assembly purported to resolve the discrepancy between the juvenile statutes and the new criminal code that had existed since October 1, 1977, the effective date of the new criminal code. Under the new criminal code, all distinctions between first and second degree murder were abolished.³⁰ Unfortunately, the juvenile statutes were not amended at the same time and thus continued to contain the distinctions between first and second degree murder, authorizing a juvenile court to process only second degree murder offenses.³¹

Having decided to resolve the discrepancy by giving the juvenile courts exclusive jurisdiction over all juveniles charged with offenses involving murder, the General Assembly omitted the first degree murder exception from the new juvenile code. It was still necessary, however, for the General Assembly to resolve the conflict on an interim basis until October 1, 1979, the effective date of the new juvenile code. The new provision of the juvenile code could have been made effective immediately on an emergency basis, but the General Assembly decided to enact a separate statute which excepted all murder charges from juvenile court jurisdiction.³² This statute was not effective until March 9, 1978, and thus Indiana's courts must still attempt to discern the legislative intent concerning the handling of offenses involving murder between October 1, 1977, and March 9, 1978. The inconsistent action of the General Assembly in enacting contradictory statutes in the same legislative session offers little guidance for resolving this issue.

As a second major change, the new code eliminates juvenile court jurisdiction over dependency and neglect proceedings and replaces this with jurisdiction over proceedings concerning children in need of services.³³ Although the drafters of the proposed code intended to combine the definitions of dependency and neglect into the one definition of children in need of services,³⁴ the new code has in fact eliminated the juvenile court's jurisdiction over children formerly considered to be dependent. This occurred, possibly through inadvertence, because of the manner in which the proposed definition of "child in need of services" was amended and ultimately

²⁹*Id.* § 31-6-2-4(c).

³⁰*Id.* § 35-42-1-1.

³¹*Id.* § 31-5-7-4.1, .14(b) (codified as amended at IND. CODE § 31-5-7-4.1(a) (Supp. 1978)).

³²Act of Mar. 9, 1978, Pub. L. No. 2, § 3109, 1978 Ind. Acts 2, (codified at IND. CODE § 31-5-7-4.1 (Supp. 1978)).

³³IND. CODE § 31-6-2-1(a) (Supp. 1978). See also *id.* § 33-12-2-3 (1976).

³⁴See INDIANA JUVENILE CODE: PROPOSED FINAL DRAFT, *supra* note 9, at xi.

enacted by the General Assembly in the new code,³⁵ to be discussed hereafter.

Otherwise, the juvenile courts will continue to have exclusive jurisdiction over delinquent children, children in need of services, and paternity proceedings.³⁶ Exclusive jurisdiction is extended to proceedings to terminate the parent-child relationship³⁷ whereas the juvenile court previously had authority to terminate the relationship only as a dispositional alternative in an appropriate dependency or neglect proceeding.³⁸ Likewise, the courts will continue to have concurrent jurisdiction over adults charged with neglect of a dependent³⁹ and contributing to the delinquency of a minor.⁴⁰ Concurrent jurisdiction is also extended to include proceedings involving adults charged with violating the compulsory school attendance law.⁴¹

2. *Criminal court jurisdiction.*—Two provisions of the new code were enacted to authorize the extradition of children who commit criminal acts and then go to another state. The rendition amendment to the Interstate Compact on Juveniles was adopted and authorizes extradition between states adopting the compact.⁴² In order to authorize the extradition of juvenile offenders from states that have not adopted the amendment, the code also gives criminal courts concurrent jurisdiction over juveniles who have left the state.⁴³ Any juvenile returned under this latter provision is then to be transferred from the criminal court to the juvenile court for further action.⁴⁴

If a defendant is brought to trial in a criminal court and it is determined that the alleged crime was committed before the defendant's eighteenth birthday, the code provides that the defendant is to be transferred immediately to the juvenile court.⁴⁵ This provision is essentially the same as the provision in the earlier statutes,⁴⁶ but it does not appear to be consistent with the new definition of "child" in the definitions section as discussed above. If the definition of "child" was intended to limit the time during which a person would

³⁵IND. CODE § 31-6-4-3 (Supp. 1978).

³⁶*Id.* § 31-6-2-1(a). *See also id.* § 33-12-2-3 (1976).

³⁷*Id.* § 31-6-2-1(a) (Supp. 1978).

³⁸*In re Perkins*, 352 N.E.2d 602 (Ind. Ct. App. 1976) (construing IND. CODE §§ 31-5-7-7, -15 (1976)).

³⁹IND. CODE §§ 31-6-2-1(c), 33-12-2-3(b) (Supp. 1978).

⁴⁰*Id.* §§ 31-6-2-1(c), 33-12-2-3(b) (Supp. 1978).

⁴¹*Id.* § 31-6-2-1(c) (Supp. 1978). *See also id.* § 20-8.1-3-32 (1976).

⁴²*Id.* § 31-6-10-1 (amend. 2) (Supp. 1978).

⁴³*Id.* § 31-6-2-1(e).

⁴⁴*Id.* § 31-6-2-2(b).

⁴⁵*Id.* § 31-6-2-2(a) (1976).

⁴⁶*Id.* § 31-5-7-13 (Supp. 1978).

continue subject to juvenile court jurisdiction, then this section should be amended to reflect that limitation.

3. *Waiver of jurisdiction.*—Although the waiver provision of the new code appears to be similar to the prior statute except for the waiver of murder offenses, as discussed above, there are a number of other substantial changes in the provision. The new code clearly provides that waiver of jurisdiction includes the offense charged and all lesser included offenses.⁴⁷ This provision resolves an issue that was not covered in the earlier statutes, although the Indiana Supreme Court unanimously endorsed this view in dicta in *Blythe v. State*,⁴⁸ a case that was decided twenty days after the new juvenile code was signed into law. In fact, the supreme court suggested in *Blythe* that either a conviction or a guilty plea to a lesser included offense would be proper after waiver to a criminal court. The new code, however, makes no reference to the propriety of plea bargaining concerning a lesser included offense.

The new code furthermore provides that a juvenile court must waive a child who is alleged to have committed a Class A or Class B felony when sixteen years of age or older unless the court finds that the child should remain in the juvenile system.⁴⁹ By contrast, the former statute provided for such waiver only with reference to eleven specifically enumerated offenses, including offenses such as second degree murder, kidnapping, rape, robbery, and first degree burglary.⁵⁰ Waiver of jurisdiction has been a highly controversial subject in the General Assembly in recent years as reflected by the fact that the waiver provisions have been amended four times since 1975. In fact, the General Assembly enacted two inconsistent provisions during the 1978 legislative session, just as it did with reference to the handling of murder offenses. Class A and Class B felonies were included in the new code's waiver provision concerning serious offenses, as noted above, but the General Assembly also enacted a separate statute which substituted "forcible felony" for the list of eleven offenses in the prior waiver statute.⁵¹ This provision was effective on March 9, 1978, and presumably will be superseded by the new code on October 1, 1979.

Finally, the code provides that a waiver motion cannot be filed after the juvenile has admitted the allegations in the juvenile court

⁴⁷*Id.* § 31-6-2-4(a).

⁴⁸373 N.E.2d 1098, 1100 (Ind. 1978).

⁴⁹IND. CODE § 31-6-2-4 (Supp. 1978).

⁵⁰*Id.* § 31-5-7-14(b) (1976) (currently codified as amended at *id.* § 31-5-7-14(b) (Supp. 1978)).

⁵¹Act of Mar. 9, 1978, Pub. L. No. 2, § 3112, 1978 Ind. Acts 2 (codified at IND. CODE § 31-5-7-14 (Supp. 1978)).

or jeopardy has attached by the swearing of a witness after a denial of the allegations.⁵² This provision reflects the decision of the United States Supreme Court in *Breed v. Jones*⁵³ which applied the constitutional provisions concerning double jeopardy to juvenile court proceedings.

C. Rights and Effect of Adjudication (Chapter 3)

1. *Rights of children.*—After restating several basic rights that children have in juvenile proceedings, the new code provides that a child who is charged with a delinquent act is entitled to be represented by counsel.⁵⁴ This provision makes no distinction between acts that would be crimes if committed by an adult and status offenses, a pattern that is generally reflected throughout the new code. The provision is more important, however, because of what is not stated and the ambiguities that thus remain. As a general rule, a person is entitled to the assistance of counsel in a criminal proceeding only at the critical stages of the criminal process.⁵⁵ The new code simply provides that a juvenile has the right to counsel with no attempt to set forth a list of the critical stages of the juvenile process. This may indicate a legislative intent to allow the courts to determine the critical stages on a case by case basis, or it may be interpreted to mean that a juvenile is entitled to counsel throughout the entire process. Furthermore, the provision refers only to charges of delinquency and thus juveniles are not entitled to counsel in dependency and neglect proceedings (now called proceedings to determine whether a child is in need of services). Another provision in the code, however, does give the court discretionary authority to appoint counsel for juveniles in "any other proceeding."⁵⁶

According to the code, a child is also entitled to "remain silent" in juvenile court proceedings.⁵⁷ An earlier draft of the code provided that a child had the right to "refrain from self-incrimination" in juvenile proceedings. As finally enacted, the code may be interpreted to mean that a child has the privilege against self-incrimination in juvenile proceedings, or it may mean that a child has even more protection than provided by the privilege against self-incrimination. For example, the provision could be interpreted

⁵²IND. CODE § 31-6-2-4(e) (Supp. 1978).

⁵³421 U.S. 519 (1975). See *Walker v. State*, 349 N.E.2d 161 (Ind.), cert. denied, 429 U.S. 943 (1976).

⁵⁴IND. CODE § 31-6-3-1(b) (Supp. 1978).

⁵⁵See *United States v. Wade*, 388 U.S. 218 (1967); *Winston v. State*, 263 Ind. 8, 323 N.E.2d 228 (1975).

⁵⁶IND. CODE § 31-6-7-2(a) (Supp. 1978).

⁵⁷*Id.* § 31-6-3-1(b).

to mean that a child may not be required to give voice exemplars or to speak for purposes of voice identification.⁵⁸

2. *Rights of adults.*—As noted in the discussion of the purposes of the code, an emphasis on the rights and obligations of parents appears throughout the new code. One of the major changes in the new code is the provision that a parent has the right to appear in his own behalf in a dependency or neglect proceeding (now called a proceeding to determine if the child is a child in need of services).⁵⁹ Thus both the child and the parent are parties to such proceedings with independent rights to participate fully in the confrontation of witnesses and the presentation of evidence. The code provides that the parent has the right to counsel only in proceedings to terminate the parent-child relationship, but the court is given discretionary authority to appoint counsel for the parent “in any other proceeding.”⁶⁰

D. Proceedings Concerning Delinquent Children and Children in Need of Services (Chapter 4)

Chapter four, “Delinquent Children and Children in Need of Services,” and chapter seven, “Procedure in Juvenile Court,” are the primary chapters in the new juvenile code. Chapter four is purportedly a substantive part of the code whereas chapter seven is expressly designated as procedural. Unfortunately, both chapters reflect the difficulty, if not impossibility, of defining and separating substance from procedure. For example, chapter four includes detailed procedures for detention hearings⁶¹ whereas chapter seven includes the provisions concerning venue.⁶² In fact, chapter four sets forth the basic framework and format for proceedings in the juvenile court, beginning with the definitions of delinquent children and children in need of services and also including the procedures for taking children into custody and adjudicating allegations concerning them.

1. *Definitions.*—Major changes have been made in most of the definitions concerning children subject to juvenile court jurisdiction as compared to the prior statutes. Delinquency still includes criminal acts and the traditional status offenses despite the growing effort to remove status offenses from juvenile court jurisdiction.⁶³

⁵⁸See generally *United States v. Dionisio*, 410 U.S. 1 (1973); *United States v. Wade*, 388 U.S. 218 (1967).

⁵⁹IND. CODE § 31-6-3-2 (Supp. 1978).

⁶⁰*Id.* § 31-6-7-2(b) (Supp. 1978). *Contra*, *Davis v. Page*, 442 F. Supp. 258, 263-64 (S.D. Fla. 1977).

⁶¹IND. CODE §§ 31-6-4-5 to 6 (Supp. 1978).

⁶²*Id.* § 31-6-7-7.

⁶³See JUVENILE JUSTICE PROJECT, *supra* note 22, STANDARDS RELATING TO

The changes in the criminal acts have been discussed above, but there are also significant changes in the definitions of the various status offenses. Running away from home has been transferred from the former dependency category⁶⁴ and is once again included as a status offense under delinquency.⁶⁵ The new definition, however, makes running away an offense only if the act is done without permission and the parent then requests the child's return.⁶⁶ Incurrigibility, ungovernability, and being beyond the control of a parent presumably are included within the offense of habitual disobedience to a parent,⁶⁷ and thus the new code includes only the latter offense. Even this offense has been modified, however, so that it covers only habitual disobedience to "reasonable and lawful commands" of a parent.⁶⁸ Although the new emphasis on reasonableness of the commands could lead to an increased involvement of juvenile courts in internal family matters and even an unwarranted judicial supervision and limitation on traditional parental authority, hopefully the courts will exercise judicial restraint and will limit this provision to situations in which parents abuse or seriously misuse their parental authority.⁶⁹ Habitual truancy continues to be a status offense although the code now simply refers to the violation of the compulsory school attendance law.⁷⁰ Since the school attendance law provides for court action when a juvenile is habitually absent or a confirmed truant,⁷¹ there is in fact no change in this status offense. Finally, the curfew provision has been substantially revised at least to make it more understandable if not more enforceable.⁷²

One of the most confusing changes in the code is the newly introduced distinction between a "delinquent act" and a "delinquent child." The code first states that a child "commits a delinquent act" if he commits one of the five acts discussed above. The code then provides that a child "is a delinquent child" if he (1) commits an act that would be a crime if committed by an adult or (2) commits any of the status offenses and also is in need of care, treatment, or rehabilitation.⁷³ This might appear to be a reasonable distinction be-

JUVENILE DELINQUENCY AND SANCTIONS 23 (Tent. Draft, 1977); NATIONAL ADVISORY COMMITTEE, *supra* note 24, at 295.

⁶⁴IND. CODE § 31-5-7-5 (1976).

⁶⁵*Id.* § 31-6-4-1(a)(2) (Supp. 1978).

⁶⁶*Id.*

⁶⁷*See id.* § 31-5-7-4.1(a)(2) (1976).

⁶⁸*Id.* § 31-6-4-1(a)(4) (Supp. 1978).

⁶⁹*See* NATIONAL ADVISORY COMMITTEE, *supra* note 24, at 327.

⁷⁰IND. CODE § 31-6-4-1(a)(3) (Supp. 1978).

⁷¹*Id.* § 20-8.1-3-31 (1976).

⁷²*Compare id.* § 31-6-4-2 (Supp. 1978) *with id.* § 31-5-7-4.1(a)(5).

⁷³*Id.* § 31-6-4-1(b).

tween delinquency based on criminal conduct and delinquency based on status offenses, but the code later provides that the juvenile court cannot authorize the filing of a petition or the taking of a child into custody for delinquency based upon a criminal act unless the court also finds that the child is in need of care, treatment, or rehabilitation.⁷⁴ Since the end result thus appears to be the same for delinquency based on a criminal act and delinquency based on a status offense, the distinction should be eliminated in order to avoid the possibility of confusion.

The most obvious change in the definitions section is the new definition concerning children in need of services⁷⁵ which replaces the former definition of neglected children⁷⁶ and eliminates the former definition of dependent children.⁷⁷ Despite recent warnings that the use of labels such as "children in need of supervision" could have a "potentially devastating effect on a child,"⁷⁸ the General Assembly followed the lead of a number of other states in adopting the new definition.⁷⁹ The drafters of the code intended to merge both dependency and neglect into the new definition concerning children in need of services,⁸⁰ but their proposal was amended by the General Assembly and the former definition of dependency was eliminated completely. The primary distinction between dependency and neglect under the former statutes was the nature of the parent's responsibility in bringing about the child's condition. If the parent was at fault, the child was a neglected child; if the parent was not at fault, the child was simply a dependent child. As proposed by the drafters of the code, the definition of a child in need of services included a child "without necessary food, clothing, shelter, medical care, or supervision" and a child "injured by the act or omission of his parent."⁸¹ Dependency would have been covered by the first provision, and neglect would have been covered by the second provision since the proposed draft also defined "omission" so as to involve the fault of the parent.⁸² The General Assembly's amendment, however, incorporated a requirement of parental fault not

⁷⁴See *id.* § 31-6-4-9(b), (c). See also *id.* § 31-6-4-12(a).

⁷⁵*Id.* § 31-6-4-3.

⁷⁶*Id.* § 31-5-7-6 (1976).

⁷⁷*Id.* § 31-5-7-5.

⁷⁸See NATIONAL ADVISORY COMMITTEE, *supra* note 24, at 312.

⁷⁹See COLO. REV. STAT. § 19-1-103(5) (1973); WIS. STAT. ANN. § 48-12 (West Supp. 1978-79). See also N.Y. JUD. LAW § 712 (McKinney Supp. 1977-78).

⁸⁰See INDIANA JUVENILE CODE: PROPOSED FINAL DRAFT, *supra* note 9, at xi.

⁸¹*Id.* at 22.

⁸²"An omission is an occurrence in which the parent, guardian, or custodian allowed his child to receive any injury which he had a reasonable opportunity to prevent or mitigate." *Id.* (enacted in the new code as IND. CODE § 31-6-4-3(b) (Supp. 1978)).

only in the second provision but also in the first provision as well. Thus the new code now provides that a child in need of services is a child who is in need of care, treatment, or rehabilitation when the child's physical or mental condition is substantially impaired by the "refusal or neglect of his parent" to provide him with necessities or when the child's physical health is seriously endangered "due to injury by the act or omission of his parent."⁸³

By enacting this provision, the General Assembly adopted a revised definition that is in accord with the recent recommendation of the National Advisory Committee on Criminal Justice Standards and Goals that a parent's inability to care for a child because of financial or social problems should be a basis for providing only voluntary services and should not authorize a court's coercive intervention.⁸⁴ At the same time, the General Assembly continued to emphasize parental fault despite the Committee's recommendation that parental fault should not be a consideration in determining when a child is otherwise in need of services.⁸⁵

The new definition also provides that a child in need of services is a child who "substantially endangers his own health or the health of another."⁸⁶ Since this is included as a third alternative in a definition that otherwise stresses parental fault, the provision might be interpreted to mean that a child is in need of services when he endangers his own health or the health of another because of a lack of parental care or supervision. If not, then the provision would appear to give the juvenile court broad general discretion to provide preventive care and treatment for a child, depending on the meaning given to the term "health." In addition, the provision would appear to authorize the juvenile court to treat at least some delinquent children as children in need of services.

2. *Detention.*—A three step detention review process is established by the new code and this process is to begin as soon as a juvenile is taken into custody. Initially, the law enforcement officer who takes a child into custody without a court order⁸⁷ for an act of delinquency based upon criminal acts must release the child to his parent on the parent's written promise to bring the child to court,

⁸³IND. CODE § 31-6-4-3 (Supp. 1978).

⁸⁴NATIONAL ADVISORY COMMITTEE, *supra* note 24, at 343.

⁸⁵*Id.*

⁸⁶IND. CODE § 31-6-4-3 (Supp. 1978).

⁸⁷The new code clarifies an issue that existed under the prior statutes by providing that a law enforcement officer may take a child into custody without a prior court order when acting with probable cause to believe that the child has committed a delinquent act. On the other hand, a child believed to be a child in need of services can be taken into custody only if the officer does not have time to obtain a court order. IND. CODE § 31-6-4-4 (Supp. 1978). *See also id.* § 31-5-7-12(c) (1976).

subject to four exceptions. The officer may detain the child if (1) the child is unlikely to appear, (2) there is probable cause to believe that the child has committed murder or a Class A or Class B felony, (3) detention is essential to protect the child or community, or (4) the parent cannot be located.⁸⁸ The officer is thus required to review the need for custody immediately after taking a juvenile into custody. A similar duty existed under the prior statute which required the officer to release the child on the parent's written promise unless it was "impracticable" to do so.⁸⁹ Since "impracticable" was ambiguous, the term was eliminated and the four specific exceptions were placed in the code.

If the officer decides to detain the child in custody, the child is delivered to an intake officer who is required to review the detention decision and to release the child, subject to the same four exceptions.⁹⁰ Finally, if the intake officer decides to detain the child, a detention hearing must be held within forty-eight hours and the juvenile court must review the decision to detain. The court, however, must release the child on the parent's written promise unless it finds that the child is unlikely to appear or that detention is essential to protect the child or community.⁹¹ The other two exceptions were omitted, apparently by inadvertence, and should be added by an amendment to the code.

The requirement of a detention hearing within forty-eight hours is a distinct change from the prior statute which required a hearing only if requested in writing by the child or some person on his behalf.⁹² This change probably was necessary in view of the United States Supreme Court decision in *Gerstein v. Pugh*.⁹³ Preventive detention was authorized under the former statute⁹⁴ and is continued under the new code despite the fact that it is not authorized with reference to adult criminal defendants.⁹⁵ The new code does not authorize releasing a juvenile on bail, and the questionable provisions in the prior statutes which purported to authorize bail⁹⁶ were repealed.⁹⁷

⁸⁸*Id.* § 31-6-4-5(a) (Supp. 1978).

⁸⁹*Id.* § 31-5-7-12(a) (1976).

⁹⁰*Id.* § 31-6-4-5(d) (Supp. 1978).

⁹¹*Id.* § 31-6-4-5(f).

⁹²*Id.* § 31-5-7-12(b) (1976).

⁹³420 U.S. 103 (1975). See *Moss v. Weaver*, 525 F.2d 1258 (5th Cir. 1976).

⁹⁴IND. CODE § 31-5-7-12(b) (1976).

⁹⁵*Hobbs v. Lindsay*, 240 Ind. 74, 78-79, 162 N.E.2d 85, 88 (1959).

⁹⁶IND. CODE §§ 31-5-2-1, -5 (1976). These statutory provisions authorized bail for juveniles, but they were questionable because they were remnants of the 1903 codification of juvenile statutes. As such, they purported to authorize not only bail but also trial by jury in juvenile cases, a provision that was clearly superseded and eliminated by the 1945 codification. See *Bible v. State*, 253 Ind. 373, 254 N.E.2d 319 (1970); IND. CODE § 31-5-7-15 (1976).

⁹⁷Act of Mar. 10, 1978, Pub. L. No. 136, § 57, 1978 Ind. Acts 1196.

A similar three-step process is established with reference to delinquency based on status offenses and children in need of services. A child who is taken into custody must be released unless (1) shelter care is necessary to protect the child, (2) the child is unlikely to appear, (3) the child does not want to be released to his parent, or (4) the parent cannot be located.⁹⁸ In such cases, the same four exceptions are to be considered by the law enforcement officer, the intake officer, and the juvenile court.

3. *Initiating formal action.*—A juvenile proceeding may be initiated under the new code when information concerning a delinquent child or a child in need of services is given in writing to the juvenile court's intake officer.⁹⁹ The officer is then to conduct a preliminary inquiry which "is an informal investigation into the facts and circumstances reported to the court."¹⁰⁰ By these provisions, the General Assembly resolved two major issues that existed under the prior statutes.

The first issue was concerned with the manner in which a juvenile proceeding could be initiated. Under one of the prior statutes, a juvenile court was authorized to conduct a preliminary inquiry whenever it received "information" concerning a delinquent, dependent, or neglected child.¹⁰¹ There was no provision in the statute concerning the procedure for the giving of this information, and there was no requirement that the information even be in writing. A second statute, however, provided that a juvenile could be brought before a juvenile court only by a "petition praying that the person be adjudged delinquent or dependent or neglected" or by transfer from a criminal court.¹⁰² These two statutes could have been interpreted to require the following four steps in bringing a juvenile before the juvenile court: (1) The giving of information to the court in any manner; (2) the conducting of a preliminary inquiry concerning the information; (3) the consideration of the preliminary inquiry and authorization of a formal petition; and (4) the filing of a formal petition. Instead of reaching this conclusion, however, the Indiana Court of Appeals interpreted the two statutes together as requiring a "petition" to initiate the preliminary inquiry as well as a subsequent, formal petition alleging delinquency, dependency, or neglect.¹⁰³ The first petition was apparently an "informational peti-

⁹⁸IND. CODE § 31-6-4-6 (Supp. 1978).

⁹⁹*Id.* §§ 31-6-4-7(a), -8(a).

¹⁰⁰*Id.* §§ 31-6-4-7(b), -8(b).

¹⁰¹*Id.* § 31-5-7-8 (1976).

¹⁰²*Id.* § 31-5-7-7.

¹⁰³*Seay v. State*, 337 N.E.2d 489 (Ind. Ct. App. 1975), *rehearing denied*, 340 N.E.2d 369 (1976).

tion" whereas the latter was the "formal petition" containing the specific allegations in question.

In view of the confusion caused by the requirement of having two "petitions" in each juvenile proceeding, the General Assembly decided to adopt the four steps suggested above, with one modification. As finally enacted, the new code authorizes the juvenile court to conduct a preliminary inquiry after receiving information concerning a juvenile, but the information must at least be in writing.¹⁰⁴ There is no requirement that the writing be in the form of a petition, however, and the statute relied on by the court of appeals was simply repealed and omitted from the new code.¹⁰⁵ Thus it appears that a written complaint, a letter, or even a police report would be sufficient to justify the initiation of a preliminary inquiry.

The second issue was concerned with the nature of the preliminary inquiry to be conducted by the court after receiving information concerning a juvenile. The prior statutes required a "preliminary inquiry" and provided that the inquiry should include a "preliminary investigation" into the facts and circumstances and the juvenile's background "whenever practicable."¹⁰⁶ As interpreted by the Indiana Court of Appeals, the preliminary inquiry and investigation were jurisdictional prerequisites for juvenile court action,¹⁰⁷ but there was no clear decision concerning the nature of the preliminary inquiry and investigation or the difference, if any, between the inquiry and the investigation. Thus it was possible to interpret the statute as requiring an informal investigation or information gathering process followed by a formal preliminary inquiry or court hearing to consider the propriety of authorizing a formal petition. The issue was finally resolved in the code by the provision that a "preliminary inquiry is an informal investigation,"¹⁰⁸ although it might have been better to eliminate the use of the term "inquiry" altogether in order to avoid any possible confusion. Thus the intake officer is to conduct an informal, information gathering investigation, and his report is to be considered by the court, *ex parte*, in deciding whether to authorize the filing of a petition.

4. *Role of the prosecuting attorney.*—After extensive debate, the General Assembly reached a compromise concerning the role of the prosecuting attorney in juvenile proceedings. Under the prior statutes, prosecutorial discretion in juvenile proceedings was exercised by the juvenile court judge assisted by his probation officer.

¹⁰⁴IND. CODE §§ 31-6-4-7(a), -8(a) (Supp. 1978).

¹⁰⁵Act of Mar. 10, 1978, Pub. L. No. 136, § 57, 1978 Ind. Acts 1196.

¹⁰⁶IND. CODE § 31-5-7-8 (1976).

¹⁰⁷Ingram v. State, 160 Ind. App. 188, 310 N.E.2d 903 (1974).

¹⁰⁸IND. CODE §§ 31-6-4-7(b), -8(b) (Supp. 1978).

The probation officer conducted the preliminary inquiry which was then submitted to the judge for consideration. If appropriate, the judge would then authorize the probation officer to file a petition concerning a delinquent, dependent, or neglected child.¹⁰⁹ No reference was made in the juvenile statutes concerning the role of the prosecuting attorney, and the practice therefore varied from court to court. Reflecting the recent trend,¹¹⁰ the General Assembly removed the prosecutorial function from the judge but compromised by dividing the function between the prosecuting attorney and the county welfare attorney. As a minimal requirement, the code requires the prosecutor to handle all delinquency cases involving acts that would be crimes if committed by an adult.¹¹¹ Either the prosecutor or the county welfare attorney may handle status offenses¹¹² and allegations concerning children in need of services.¹¹³ No guidance is given in the code concerning the division of authority in the latter two types of cases, but the code does provide that the decision of one office concerning children in need of services is final only as to that office.¹¹⁴ Otherwise, the code provides only that the person who requests authorization to file a petition must thereafter represent the interests of the state in all subsequent proceedings on the petition.¹¹⁵ The role of the person representing the state is further strengthened by a final provision that the court must dismiss any petition upon motion of the person representing the state.¹¹⁶ This may even be stronger than the authority given to a prosecutor in criminal cases since the prosecutor must at least state the reasons for his motion to dismiss a criminal indictment or information.¹¹⁷

5. *Informal adjustment.*—Various organizations have recently recommended that pre-adjudicatory programs for diversion and informal adjustment should be strengthened but that the authority for such programs should be given to agencies other than the courts.¹¹⁸ Despite such recommendations, the General Assembly enacted a legal basis for court-sanctioned informal adjustments which un-

¹⁰⁹*Id.* § 31-5-7-8 (1976).

¹¹⁰JUVENILE JUSTICE PROJECT, *supra* note 22, STANDARDS RELATING TO PROSECUTION 25 (Tent. Draft, 1977); NATIONAL ADVISORY COMMITTEE, *supra* note 24, at 503.

¹¹¹IND. CODE § 31-6-4-7(d) (Supp. 1978).

¹¹²*Id.* § 31-6-4-9(a).

¹¹³*Id.* § 31-6-4-10(a).

¹¹⁴*Id.* § 31-6-4-8(c).

¹¹⁵*Id.* §§ 31-6-4-9(a), -10(a).

¹¹⁶*Id.* § 31-6-4-11.

¹¹⁷*Id.* § 35-3.1-1-13(a) (1976).

¹¹⁸JUVENILE JUSTICE PROJECT, *supra* note 22, STANDARDS RELATING TO THE JUVENILE PROBATION FUNCTION 33 (Tent. Draft, 1977) NATIONAL ADVISORY COMMITTEE, *supra* note 24, at 216, 655.

doubtedly were being utilized by juvenile courts as a general practice. The original draft of the juvenile code would have placed informal adjustments under the control of the prosecutor or county welfare attorney,¹¹⁹ but this was changed before the proposed code was submitted to the General Assembly. As enacted, the code authorized the courts to approve a program of informal adjustment by the court's intake officer after completion of the preliminary inquiry. Three basic protections are included in the provision for the benefit of the juveniles involved. The primary requirement is that the intake officer have probable cause to believe that the juvenile is subject to juvenile court jurisdiction. In addition, the child and his parent must consent to the program and the program is limited to a period of six months.¹²⁰ There is no provision, however, to ensure that no action can be taken on the allegations involved once the juvenile has completed the program of informal adjustment.¹²¹

6. *Hearings.*—The code provides for an initial hearing on the petition, a fact-finding hearing, and a dispositional hearing to complete the processing of juvenile cases. The term "initial hearing" on the petition reflects the difficulty in choosing an appropriate name for this hearing.¹²² Other terms have been suggested, including "initial appearance"¹²³ and "arraignment,"¹²⁴ but there are difficulties with both of these terms since the juvenile may in fact have appeared in court at an earlier time in a detention hearing and the term "arraignment" has specific criminal court connotations. In any event, the code provides detailed procedures for conducting the initial hearing on the petition¹²⁵ which in fact is quite similar to an arraignment in a criminal proceeding.¹²⁶

A fact-finding hearing is the equivalent of a criminal trial and is to be held separately from the initial hearing, except that it may be held immediately after the initial hearing with the consent of the juvenile and his counsel or parent.¹²⁷ At the close of the evidence in the fact-finding hearing, the court is authorized to withhold judgment and continue the case for six months unless the child or his parent requests the court to enter the judgment.¹²⁸ This is a substan-

¹¹⁹INDIANA JUVENILE CODE: PROPOSED FINAL DRAFT, *supra* note 9, at 40.

¹²⁰IND. CODE § 31-6-4-12 (Supp. 1978).

¹²¹See generally JUVENILE JUSTICE PROJECT, *supra* note 22, STANDARDS RELATING TO THE JUVENILE PROBATION FUNCTION 33.

¹²²IND. CODE § 31-6-4-13(a) (Supp. 1978).

¹²³JUVENILE JUSTICE PROJECT, *supra* note 22, STANDARDS RELATING TO PRETRIAL COURT PROCEEDINGS 48 (Tent. Draft, 1977).

¹²⁴NATIONAL ADVISORY COMMITTEE, *supra* note 24, at 383.

¹²⁵IND. CODE § 31-6-4-13 (Supp. 1978).

¹²⁶See *id.* § 35-4.1-1-1 (1976).

¹²⁷*Id.* § 31-6-4-13(h) (Supp. 1978).

¹²⁸*Id.* § 31-6-4-14(e).

tial change from the prior statute which authorized the court to withhold judgment for two years or for ninety days even when the juvenile requested the entering of a judgment.¹²⁹ At the same time, the General Assembly did not agree with the view that a juvenile court should have no authority at all to withhold judgment.¹³⁰

The dispositional hearing completes the adjudicatory process and is not to be held until after a predisposition report has been prepared by the court's probation officer or caseworker.¹³¹ If the court concludes that the juvenile is mentally ill or developmentally disabled, it may continue the dispositional hearing and refer the juvenile to the appropriate court, such as the probate court, which handles such matters.¹³²

7. *Dispositional alternatives.*—Four major changes concerning dispositional alternatives are included in the new code. First, the new code prohibits the placement of juveniles in a secure facility unless they have been adjudicated delinquent for committing an act that would be a crime if committed by an adult.¹³³ Thus the General Assembly extended to status offenders the protection which had been given to dependent and neglected children two years earlier.¹³⁴ This change is consistent with the growing national trend in this direction.¹³⁵ The second major change points to the opposite direction and authorizes the confinement of juveniles who commit criminal acts to serve ten days in confinement in the juvenile part of the county jail, on either a continuous or an intermittent basis.¹³⁶ The original proposal which was submitted to the General Assembly would have authorized confinement for a period of thirty days,¹³⁷ but this was ultimately amended during the legislative session and was reduced to ten days.

¹²⁹*Id.* § 31-5-7-15 (1976).

¹³⁰See JUVENILE JUSTICE PROJECT, *supra* note 22, STANDARDS RELATING TO ADJUDICATION 64 (Tent. Draft, 1977).

¹³¹IND. CODE § 31-6-4-15(a) (Supp. 1978).

¹³²*Id.* § 31-6-4-16(c).

¹³³*Id.* § 31-6-4-16(e). By enacting this provision, the General Assembly took one of the steps which was necessary to make the state eligible for federal funds under the Juvenile Justice and Delinquency Prevention Act of 1974, 42 U.S.C. § 5601 (1976). In order to be eligible for funds under the Act, the state must provide that dependent or neglected children and juveniles charged with offenses that would not be crimes if committed by an adult may not be placed in juvenile detention or correctional facilities but must be placed in shelter care facilities. 42 U.S.C. § 5633(a)(12) (Supp. 1978).

¹³⁴See *id.* §§ 31-5-7-12.2, 20-8.1-3-31 (1976).

¹³⁵See JUVENILE JUSTICE PROJECT, *supra* note 22, STANDARDS RELATING TO NON-CRIMINAL MISBEHAVIOR 55 (Tent. Draft, 1977); NATIONAL ADVISORY COMMITTEE, *supra* note 24, at 480.

¹³⁶IND. CODE § 31-6-4-16(g)(5), (h) (Supp. 1978).

¹³⁷INDIANA JUVENILE CODE: PROPOSED FINAL DRAFT, *supra* note 9, at 49.

A provision for the emancipation of a juvenile upon his request is the third major change in the code. This provision authorizes the court to emancipate a child, partially or completely, if the child wishes to be free from parental control, no longer needs parental control or protection, and is able to support himself independently.¹³⁸ It is based on the recommendation of the National Advisory Committee on Criminal Justice Standards and Goals,¹³⁹ but it should be seriously reconsidered by the General Assembly. The National Advisory Committee's commentary suggests that the authority should not be exercised unless "all other available resources to achieve family harmony have been tried and have failed,"¹⁴⁰ but this limitation is not embodied in the provision in any form. Thus, the provision authorizes court action in favor of a juvenile who wishes to be free of parental control without any apparent duty to consider the interests or rights of the parents involved.

The final major change introduces the concept of family participation in the dispositional phase of the juvenile proceeding. Under this provision, the parent, guardian, or custodian of a child may be required to obtain assistance in fulfilling his parental obligations, provide special care or treatment for the child, or work with a person who is providing care or treatment for the child.¹⁴¹ This also follows the recommendation of the National Advisory Committee¹⁴² and should strengthen the ability of a juvenile court in its efforts to provide needed care and treatment for juveniles.

8. *Review of dispositional orders.*—Three separate provisions in the new code provide for the subsequent review and modification of a juvenile court's dispositional orders. In the jurisdictional section, it is provided that a juvenile continues subject to the court's jurisdiction until reaching twenty-one years of age unless the court orders otherwise or guardianship of the child is awarded to the department of correction.¹⁴³ This is essentially the same as the provision in the prior statute.¹⁴⁴ The new code adds, however, that the department of correction may request a modification of the judgment, presumably concerning a juvenile committed to its custody.¹⁴⁵ A second provision appears in the code's procedural chapter and provides that the court may modify its dispositional order at any time while it continues to retain jurisdiction, upon either its own

¹³⁸IND. CODE § 31-6-4-16(e)(5) (Supp. 1978).

¹³⁹NATIONAL ADVISORY COMMITTEE, *supra* note 24, at 482.

¹⁴⁰*Id.*

¹⁴¹IND. CODE § 31-6-4-16(i) (Supp. 1978).

¹⁴²NATIONAL ADVISORY COMMITTEE, *supra* note 24, at 480.

¹⁴³IND. CODE § 31-6-2-3 (Supp. 1978).

¹⁴⁴*Id.* § 31-5-7-7 (1976).

¹⁴⁵*Id.* § 31-6-2-3(b) (Supp. 1978).

motion or the motion of the child or other specific interested persons.¹⁴⁶ This provision is also essentially the same as in the prior statute, although the number of persons authorized to request modification appears to be increased somewhat.¹⁴⁷

The primary change, however, appears in the new provision of the code which mandates a continuing review of the court's dispositional orders. Under this provision, the court must hold a formal hearing at least once every eighteen months after entering a dispositional order to determine if the disposition is meeting the court's objectives and should be continued or modified.¹⁴⁸ If the objectives have in fact been accomplished, the juvenile must be discharged.¹⁴⁹ Furthermore, the court must hold the hearing every six months after any dispositional order is entered that removes a child from his parent, and the state must show that the child should not be returned to his parent.¹⁵⁰ Finally, the probation department must prepare a report on the progress of all juveniles every six months, regardless of the nature of the dispositional order.¹⁵¹ These provisions make no distinctions between delinquent children and children in need of services and thus appear to extend far beyond the recent recommendations which would require a six-month review only in those cases other than delinquency based on criminal misconduct.¹⁵² The General Assembly should seriously reconsider the effect of these provisions, especially with reference to delinquency based on criminal misconduct.

E. Termination of the Parent-Child Relationship (Chapter 5)

Whereas the prior juvenile statutes authorized the termination of parent-child relationships in neglect or dependency proceedings only if the parents were at fault or otherwise unable to provide care for their children,¹⁵³ the new code contains provisions which are essentially in accord with the recent recommendation of the Na-

¹⁴⁶*Id.* § 31-6-7-16.

¹⁴⁷*Id.* § 31-5-7-17 (1976).

¹⁴⁸*Id.* § 31-6-4-19 (Supp. 1978).

¹⁴⁹*Id.* § 31-6-4-19(a).

¹⁵⁰*Id.* § 31-6-4-19(d). Although this provision does not specifically state that there must be a formal hearing, it does provide that the state must show that the child should not be returned to the parent.

¹⁵¹*Id.* § 31-6-4-19(b).

¹⁵²JUVENILE JUSTICE PROJECT, *supra* note 22, STANDARDS RELATING TO NON-CRIMINAL MISBEHAVIOR 58 (Tent. Draft, 1977); NATIONAL ADVISORY COMMITTEE, *supra* note 24, at 496. Compare JUVENILE JUSTICE PROJECT, *supra* note 22, STANDARDS RELATING TO DISPOSITION 126 (Tent. Draft, 1977); NATIONAL ADVISORY COMMITTEE, *supra* note 24, at 475.

¹⁵³IND. CODE §§ 31-5-7-5 to 6 (1976). See generally *In re Perkins*, 352 N.E.2d 502 (Ind. Ct. App. 1976).

tional Advisory Committee to make the interests of the child the primary concern in termination decisions.¹⁵⁴ Thus the code provides for the termination of the relationship over the objections of the parent if the child has been removed from the parents for a period of six months and termination would be in the best interests of the child. At the same time, parental rights are still somewhat protected by two requirements. Termination is proper only if (1) there is a reasonable probability that the conditions resulting in removal of the child will not be remedied and (2) reasonable services have been offered to help the parent fulfill his parental obligations and have been refused or ineffective.¹⁵⁵

These provisions may be a reasonable compromise in balancing the competing interests between a child and his parents, but the General Assembly has introduced a new provision that is highly questionable at best. Under this provision, a county welfare department is required to file a petition for termination whenever requested to do so by the parents. Termination may then be ordered if it is in the child's best interest,¹⁵⁶ and the rights and duties of the parents will be permanently terminated, including the duty of support.¹⁵⁷ Such a provision could be of value in certain cases, but as a general rule parents should be encouraged by legislative action to fulfill their parental obligations, not to avoid them. Action should be taken to enforce parental obligations, even to the extent of imposing criminal sanctions when necessary, and parents should not be able to require the filing of a petition to transfer their support obligations to someone else simply upon their request.

F. Paternity (Chapter 6)

The former statutory provisions concerning paternity actions, or actions concerning children born out of wedlock,¹⁵⁸ are now included in the new juvenile code.¹⁵⁹ Although numerous changes have been made in the provisions, the changes are primarily in matters of form and style. In addition, some changes reflect an effort to distinguish between matters of substance and procedure. For example, the provisions concerning venue¹⁶⁰ have been transferred from the general chapter concerning paternity to the chapter on procedure in juvenile courts.¹⁶¹ Likewise, the provisions concerning the right to demand a

¹⁵⁴NATIONAL ADVISORY COMMITTEE, *supra* note 24, at 500.

¹⁵⁵IND. CODE § 31-6-5-4 (Supp. 1978).

¹⁵⁶*Id.* § 31-6-5-2.

¹⁵⁷*Id.* § 31-6-5-3(2).

¹⁵⁸*Id.* §§ 31-4-1-1 to 33 (1976).

¹⁵⁹*Id.* §§ 31-6-6-1 to 22 (Supp. 1978).

¹⁶⁰*Id.* §§ 31-4-1-8, -10 (1976).

¹⁶¹*Id.* § 31-6-7-7(b) (Supp. 1978).

jury trial,¹⁶² competency of the parties to testify,¹⁶³ and contempt proceedings¹⁶⁴ have been transferred to the procedural chapter. Nevertheless, a few basic changes are reflected in the new code. Thus the provisions concerning the persons who could attend paternity hearings¹⁶⁵ have been transferred to the procedural chapter but have been substantially revised. In the revised form, the court has the discretion to exclude the public from paternity hearings instead of being required to do so.¹⁶⁶ Furthermore, the new code omits the former provision that appeals were to be in accordance with the rules for the appeal of civil cases.¹⁶⁷ As provided in the new code, appeals in juvenile proceedings may be taken "under the Indiana Rules of Trial Procedure, the Indiana Rules of Criminal Procedure, or the Indiana Rules of Appellate Procedure."¹⁶⁸ Finally, the new code also eliminates any change of venue from the county in paternity actions, except that the court has discretion to transfer the case to the county of the child's residence at the mother's request.¹⁶⁹

G. Procedure in Juvenile Court (Chapter 7)

1. *Rules of procedure.*—Possibly indicating the extent of the controversy and the importance attached to the issue, the General Assembly finally enacted two separate provisions concerning the rules of procedure to be followed in juvenile courts. The first provision applies the rules of criminal procedure to all delinquency proceedings, including status offenses, and to criminal charges involving adults who are tried in juvenile court. All other juvenile court proceedings are to be governed by the rules of trial procedure (civil rules).¹⁷⁰ A subsequent provision is concerned specifically with the rules of discovery and applies the criminal and civil rules in the same manner to the various types of proceedings.¹⁷¹

Thus the General Assembly purported to resolve the uncertainty that existed under prior statutes despite recent recommendations that specialized rules should be developed for juvenile court proceedings instead of applying the criminal or civil rules as such. For example, the National Advisory Committee concluded: "Many jurisdictions use civil or criminal rules in an attempt to fill these

¹⁶²Compare *id.* § 31-4-1-16 (1976) with *id.* § 31-6-7-10(c) (Supp. 1978).

¹⁶³Compare *id.* § 31-4-1-16 (1976) with *id.* § 31-6-7-13(d) (Supp. 1978).

¹⁶⁴Compare *id.* §§ 31-4-1-20, -24 (1976) with *id.* § 31-6-7-15 (Supp. 1978).

¹⁶⁵*Id.* §§ 31-4-1-8, -16 (1976).

¹⁶⁶*Id.* § 31-6-7-10(b) (Supp. 1978).

¹⁶⁷*Id.* § 31-4-1-18 (1976).

¹⁶⁸*Id.* § 31-6-7-17 (Supp. 1978).

¹⁶⁹*Id.* §§ 31-6-7-7(c), -8(c).

¹⁷⁰*Id.* § 31-6-7-1.

¹⁷¹*Id.* § 31-6-7-11.

procedural gaps. But family court business differs significantly from civil and criminal business, and attempts to apply rules designed for the latter systems to family court processes may result in more confusion than clarity."¹⁷² Hopefully, the new code provisions will help to clarify the nature of juvenile proceedings in Indiana, but difficult questions can still be expected to arise. For example, should the civil rules be applied so as to permit the deposing of the defendant in a paternity action or a parent who is a party to a proceeding to declare his child a child in need of services? Likewise, should a child who is a party to juvenile court proceedings be entitled to see all of the reports and statements obtained from relatives and neighbors during the course of the proceedings? These and similar questions will undoubtedly still have to be resolved by the Indiana appellate courts on a case by case basis.

2. *Waiver of rights.*—During the past ten years, Indiana's appellate courts have developed stringent rules to protect juveniles from improper interrogations by law enforcement officials. Thus a juvenile must be advised of his rights before being interrogated, but his parents must also be advised of his rights and he must have an opportunity for meaningful consultation with his parents before deciding to waive his rights.¹⁷³ The new code now appears to take the final step in protecting a juvenile by providing that the juvenile's rights can be waived only by his parents or attorney.¹⁷⁴ The United States Supreme Court suggested in *In re Gault*¹⁷⁵ that special precautions should be taken to protect juveniles, but it is doubtful that the protections enacted in the new juvenile code were in any way contemplated by the Court. In fact, both of the recent major studies concerning juvenile proceedings recommend special protection for juveniles but conclude that a juvenile may waive his rights under appropriate circumstances.¹⁷⁶

3. *Speedy trial rules.*—Although the federal constitution does not mandate specific time limits in protecting a criminal defendant's right to a speedy trial,¹⁷⁷ provisions for specific time limits have been adopted for both federal¹⁷⁸ and Indiana¹⁷⁹ criminal proceedings.

¹⁷²NATIONAL ADVISORY COMMITTEE, *supra* note 24, at 288. See also JUVENILE JUSTICE PROJECT, *supra* note 22, STANDARDS RELATING TO PRETRIAL COURT PROCEEDINGS 55, 62 (Tent. Draft, 1977) (recommends "full and free" discovery in delinquency cases that is essentially similar to criminal discovery but in some respects provides even more discovery than in criminal cases).

¹⁷³*Garrett v. State*, 351 N.E.2d 30 (Ind. 1976).

¹⁷⁴IND. CODE § 31-6-7-3 (Supp. 1978).

¹⁷⁵387 U.S. 1, 45, 55 (1967).

¹⁷⁶JUVENILE JUSTICE PROJECT, *supra* note 22, STANDARDS RELATING TO INTERIM STATUS 67 (Tent. Draft, 1977); NATIONAL ADVISORY COMMITTEE, *supra* note 24, at 212.

¹⁷⁷*Barker v. Wingo*, 407 U.S. 514, 523 (1972).

¹⁷⁸18 U.S.C. § 3161 (1976).

¹⁷⁹IND. R. CR. P. 4.

The new juvenile code now adopts similar speedy trial rules for delinquency proceedings. No rules are specified for proceedings involving children in need of services, however, apparently because these proceedings are to be considered as essentially civil in nature.

If a child "is in custody," the new code provides that a petition alleging delinquency must be filed within seven days after the child was taken into custody.¹⁸⁰ No similar provision is included in the Indiana Rules of Criminal Procedure for the filing of an indictment or information, and the meaning of the juvenile provision itself is unclear. The provision may be interpreted to mean that a petition must be filed within seven days if a juvenile has been taken into custody and is still being detained in a detention center. If this interpretation is correct, then the code does not include any time limit for the filing of a delinquency petition after a child has been taken into custody and then promptly released to his parents. In such case, the only limitation would be the subsequent provision that a juvenile cannot be held to answer a delinquency charge for more than one year, apparently from the date that he was taken into custody and then released.¹⁸¹ This ambiguity arises because the word "custody" appears twice in the provision, possibly having different meanings for each usage, and should be clarified by an amendment to the provision.

The code also provides time limits for the holding of fact-finding and waiver hearings, and the time limits vary depending on whether the child is or is not in custody.¹⁸² Finally, the code provides that a child may not be held, presumably in custody, for more than six months in the "aggregate" pending an adjudication¹⁸³ and may not be held to answer a charge for more than one year in the "aggregate," presumably when not in custody.¹⁸⁴ These provisions appear to reflect the basic time limits included in the criminal rules, but their effect is uncertain because of the other provisions which prescribe specific time limits for the various hearings, as noted above. These provisions need to be revised to clarify the manner in which the time limits interrelate.

One other provision in the speedy trial rules makes a major change in the prior law and appears to be in conflict with the related provisions in Criminal Rule 4. Under the prior law, a

¹⁸⁰IND. CODE § 31-6-7-6(a) (Supp. 1978).

¹⁸¹*Id.* § 31-6-7-6(f). This section does not refer to a starting date for the one year period, but it follows immediately after a provision for a six month period which does refer to the time the juvenile was taken into custody.

¹⁸²*Id.* § 31-6-7-6(b), (c).

¹⁸³*Id.* § 31-6-7-6(e).

¹⁸⁴*Id.* § 31-6-7-6(f).

juvenile who was waived to the criminal court was then subject to the provisions of Criminal Rule 4. According to that rule, the juvenile would then have to be brought to trial within six months or a year from the date that an indictment or information was filed against him in the criminal court, depending on whether he was kept in custody pending the trial. Criminal Rule 4 does not prescribe any time limit for the filing of a formal charge, however, and thus a juvenile could apparently be detained in custody for an indefinite period of time pending the filing of the formal charge. In *State v. Roberts*,¹⁸⁵ the Indiana Court of Appeals concluded that Criminal Rule 4 should be construed to require the filing of a formal charge in the criminal court within a reasonable period of time after a waiver order and found a fifty day delay to be unreasonable. The new code purports to resolve the problem in a different manner by providing that "the computation of time under Criminal Rule 4 commences on the date of the waiver order."¹⁸⁶ Such a provision would be contrary to the provisions of Criminal Rule 4 which provides that the time limits run from the date that a charge is filed or from the date that the defendant is arrested, whichever is later. Thus the statutory provision would apparently be invalid unless the Indiana Supreme Court would decide to adopt it as a procedural rule.¹⁸⁷

4. *Change of venue and change of judge.*—As noted previously, the venue provisions are included in the procedural chapter despite the controversy over whether they are in fact substantive or procedural. The new provisions make a distinct change in the law concerning juvenile proceedings by providing that proceedings concerning delinquent children or children in need of services may be commenced in the county where the child resides or in the county where the act occurred.¹⁸⁸ Under the prior law, the proceedings could be commenced only in the county where the child resided or was found.¹⁸⁹ Furthermore, the new code changes the prior law concerning change of venue from the county¹⁹⁰ by providing that there is to be no change of venue from the county except that the court has discretion to transfer the case to the county of the child's residence.¹⁹¹ Finally, the code provides that a change of judge may be obtained only upon a showing of good cause.¹⁹² This provision ap-

¹⁸⁵358 N.E.2d 181 (Ind. Ct. App. 1976).

¹⁸⁶IND. CODE § 31-6-7-6(d) (Supp. 1978).

¹⁸⁷See *Neeley v. State*, 261 Ind. 434, 305 N.E.2d 434 (1974).

¹⁸⁸IND. CODE § 31-6-7-7(a) (Supp. 1978).

¹⁸⁹*Id.* § 31-5-7-8 (1976).

¹⁹⁰See *State ex rel. Dunn v. Lake Juvenile Court*, 248 Ind. 324, 228 N.E.2d 16 (1967).

¹⁹¹IND. CODE §§ 31-6-7-7(c), -8(a) (Supp. 1978).

¹⁹²*Id.* § 31-6-7-9.

parently applies to all proceedings in the juvenile court and is one of the most significant changes¹⁹³ in the entire code since the automatic change of judge rule has been a longstanding general practice in Indiana in both civil¹⁹⁴ and criminal¹⁹⁵ cases.

5. *Public hearings, juries, and burden of proof.*—The new code continues to give the juvenile court judge the discretion to determine whether the public should be admitted to juvenile proceedings¹⁹⁶ despite recent recommendations that delinquency proceedings should be open to the public.¹⁹⁷ Likewise, the code continues to provide that juvenile proceedings are generally to be tried by the court¹⁹⁸ even though some sentiment has developed that juveniles charged with delinquency should have the right to request a jury trial.¹⁹⁹ The new code does contain one questionable provision concerning juvenile court trials, however. It provides that adults who are tried in juvenile court on criminal charges are to be tried by the court unless they request a jury trial.²⁰⁰ This provision appears to be contrary to the conclusion of the Indiana Supreme Court in *State ex rel. Rose v. Hoffman*,²⁰¹ a case involving an adult tried in juvenile court for contributing to the delinquency of a minor. In that decision, the court concluded that the Indiana constitution requires a judge in a criminal case "to assume that a defendant will want a jury trial."²⁰² Finally, the code purports to change the prior law by providing that an adjudication of delinquency based on a status offense must be based on proof beyond a reasonable doubt.²⁰³ Since the provision is contrary to a decision of the Indiana Supreme Court,²⁰⁴ its effect will be in doubt until the court either adopts the provision or finds that it relates to a matter of substance rather than procedure.²⁰⁵

¹⁹³See *State ex rel. Duffy v. Lake Juvenile Court*, 238 Ind. 404, 151 N.E.2d 293 (1958).

¹⁹⁴IND. R. TR. P. 76.

¹⁹⁵IND. R. CR. P. 12.

¹⁹⁶Compare IND. CODE § 31-6-7-10(b) (Supp. 1978) with *id.* § 31-5-7-15 (1976).

¹⁹⁷See JUVENILE JUSTICE PROJECT, *supra* note 22, STANDARDS RELATING TO ADJUDICATION 70 (Tent. Draft, 1977); NATIONAL ADVISORY COMMITTEE, *supra* note 24, at 420.

¹⁹⁸Compare IND. CODE § 31-6-7-10(c) (Supp. 1978) with *id.* § 31-5-7-15 (1976). See *Bible v. State*, 253 Ind. 373, 254 N.E.2d 319 (1970).

¹⁹⁹See JUVENILE JUSTICE PROJECT, *supra* note 22, STANDARDS RELATING TO ADJUDICATION 52. *But see* NATIONAL ADVISORY COMMITTEE, *supra* note 24, at 420.

²⁰⁰IND. CODE § 31-6-7-10(c) (Supp. 1978).

²⁰¹227 Ind. 256, 85 N.E.2d 486 (1949).

²⁰²*Id.* at 262, 85 N.E.2d at 488. See also *Kindle v. State*, 161 Ind. App. 14, 20, 313 N.E.2d 721, 725 (1974).

²⁰³IND. CODE § 31-6-7-13(a) (Supp. 1978).

²⁰⁴*Warner v. State*, 254 Ind. 209, 258 N.E.2d 860 (1970).

²⁰⁵See *Neeley v. State*, 261 Ind. 434, 305 N.E.2d 434 (1974). The General Assembly

6. *Examinations of a juvenile.*—Under the prior juvenile statutes, a court could require a juvenile to be examined by a physician, psychiatrist, or psychologist for the purpose of providing needed medical, surgical, or psychiatric care or to determine if the juvenile should be committed because of a mental defect or disorder.²⁰⁶ The new code contains a revised version of this provision and authorizes medical, psychological, psychiatric, social, or educational examinations to determine if a petition should be filed or to provide information necessary for a fact-finding hearing.²⁰⁷ In this revised form it is doubtful if the provision is constitutionally valid, at least with reference to juveniles charged with an act of delinquency, especially since the provision would permit the juvenile to be placed in temporary confinement for fourteen days in order to complete the examinations.²⁰⁸

A juvenile is entitled to the privilege against self-incrimination, at least in delinquency proceedings in which the juvenile is charged with an act that would be a crime if committed by an adult.²⁰⁹ Therefore, it appears that a juvenile so charged could not be examined for the purpose of obtaining information to be used at the fact-finding hearing. It is even doubtful if such a juvenile could be subjected to “social or educational” examinations to determine if a petition should be filed. Possibly the provision could be valid to the extent that it would authorize examinations to determine mental competency to participate in the juvenile proceedings,²¹⁰ but the provision appears to need a substantial revision in order to eliminate the constitutional questions concerning it.

7. *Appeals.*—The procedural chapter concludes with the statement that appeals may be taken from any final order of the court under the civil rules, criminal rules, or appellate rules.²¹¹ No guidance is given concerning the definition of a final order or the types of proceedings to which the various rules apply. In particular, the code does not decide whether a waiver order is a final, appealable order or an order which cannot be appealed until after a conviction in the criminal court.²¹²

apparently considers the burden of proof to be a matter of procedure since it placed this provision in the procedural chapter of the code.

²⁰⁶IND. CODE § 31-5-7-21 (1976).

²⁰⁷*Id.* § 31-6-7-12(a) (Supp. 1978).

²⁰⁸*Id.* § 31-6-7-12(c).

²⁰⁹*In re Gault*, 387 U.S. 1 (1967).

²¹⁰*See* JUVENILE JUSTICE PROJECT, *supra* note 22, STANDARDS RELATING TO INTERIM STATUS 61; NATIONAL ADVISORY COMMITTEE, *supra* note 24, at 468.

²¹¹IND. CODE § 31-6-7-17 (Supp. 1978).

²¹²*See* JUVENILE JUSTICE PROJECT, *supra* note 22, STANDARDS RELATING TO TRANSFER BETWEEN COURTS 49 (Tent. Draft, 1977) (recommends that an appeal be authorized within seven court days after a waiver is ordered).

H. *Juvenile Records (Chapter 8)*

Juvenile records continue to be confidential records under the code which contains specific provisions concerning the persons authorized to inspect such records and the procedures by which confidentiality is to be maintained.²¹³ The code also includes a simplified expungement procedure by which any person may petition the juvenile court at any time to expunge records pertaining to his involvement in juvenile court proceedings. The court is given broad discretion to grant the order and may order the records to be destroyed or given to the person to whom they pertain.²¹⁴

I. *Juvenile Court Administrative Provisions (Chapter 9)*

The code contains a number of administrative provisions which authorize juvenile courts to appoint referees, reporters, and probation officers, to establish detention and shelter care facilities, and to assess certain court costs.²¹⁵

J. *Interstate Compact on Juveniles (Chapter 10)*

The juvenile code concludes with a reenactment of the interstate compact on juveniles²¹⁶ which was originally adopted by the General Assembly in 1957.²¹⁷ Three new amendments have also been added to the compact, including provisions for the return of runaways, the return of juveniles charged with delinquency based on criminal acts, and the confinement of a juvenile in another state.²¹⁸

K. *Conclusion*

The Indiana General Assembly has taken the initial step toward giving the state its first major revision of the juvenile code in over thirty years. Two additional steps need to be taken, however, by the General Assembly and the Indiana Supreme Court before the new code becomes effective on October 1, 1979. Assuming that the code is not repealed in the next legislative session, the General Assembly needs to clarify certain provisions, reconsider other provisions, and consider adding additional provisions to the code. At the same time, the supreme court will have to adopt the procedural provisions of

²¹³IND. CODE § 31-6-8-1 (Supp. 1978).

²¹⁴*Id.* § 31-6-8-2.

²¹⁵*Id.* §§ 31-6-9-1 to 6.

²¹⁶*Id.* §§ 31-6-10-1 to 4.

²¹⁷Interstate Compact on Juveniles, ch. 98, 1957 Ind. Acts 156 (codified at IND. CODE § 31-5-3-1 (1976)).

²¹⁸IND. CODE § 31-6-10-1 (Supp. 1978). By a separate statute, the 1978 General Assembly also enacted the Interstate Compact on the Placement of Children, Pub. L. No. 72, 1978 Ind. Acts 955 (codified at IND. CODE § 12-3-1-1 (Supp. 1978)).

the code as court rules or the effect of much of the code will be left in doubt for some time to come.²¹⁹

If the code does become effective, it will make a number of substantial changes in the state's juvenile justice system. Some of the more significant changes relate to the role of the prosecuting attorney, the codification of informal adjustment procedures, the clarification and revision of the investigation and petition procedures, the new rules concerning change of judge and change of venue, and the new emphasis on the participation of parents in the adjudicatory and dispositional phases of the proceedings. At the same time, the code contains certain other changes that the General Assembly should seriously reconsider. These include the provisions concerning emancipation of a juvenile, termination of the parent-child relationship, time limits on the adjudicatory process, and review of dispositional orders. In addition, the General Assembly should clarify the provisions concerning the definitions of delinquency and children in need of services, the rules of procedure to be followed in the various proceedings, and the inconsistent positions taken with regard to murder and waiver. Finally, action should be taken to add provisions that were omitted from the code, including provisions concerning dependency, the release of juveniles on bail, the insanity defense in juvenile proceedings, and appellate procedures with particular reference to the appeal of waiver orders and the rules to be followed on appeals.

Although this codification is referred to as the "juvenile code,"²²⁰ the term is not used in the statute. The term was used, however, in the statute which originally established the juvenile justice division of the judicial study commission and authorized it to "study and make recommendations for changes in the present substantive juvenile code."²²¹ Assuming that the term will continue to be used, it is necessary to recognize that the code does not include all of the state's statutory provisions concerning juveniles. Provisions concerning child support,²²² child welfare,²²³ truancy,²²⁴ and adoption²²⁵ are still included in other titles or sections of the Indiana general

²¹⁹See *Neeley v. State*, 261 Ind. 434, 305 N.E.2d 434 (1974).

²²⁰The Juvenile Justice Division, which proposed the changes in the law, entitled its proposal "Indiana Juvenile Code."

²²¹Act of Apr. 30, 1975, Pub. L. No. 2, § 3, 1975 Ind. Acts 2, 5 (codified at IND. CODE § 2-5-8-4(7) (1976) (amended 1978)). When the 1978 General Assembly decided to continue the work of the juvenile justice division, it amended this provision and substituted the term "juvenile law" for "juvenile code." Act of Mar. 9, 1978, Pub. L. No. 6, § 2, 1978 Ind. Acts 638, 639.

²²²IND. CODE §§ 12-1-6.1-1 to 20 (1976).

²²³*Id.* §§ 12-1-7-1 to 50.

²²⁴*Id.* §§ 20-8.1-3-1 to 37.

²²⁵*Id.* §§ 31-3-1-1 to 12.

statutes. The General Assembly will undoubtedly need to consider each of these areas carefully in order to decide what, if any, revisions are needed and whether any of the provisions should be included in the new code.

II. Administrative Law

Gary P. Price*

A. Administrative Fact-Finding

In last year's administrative law Survey discussion, the author outlined *V.I.P. Limousine Service, Inc. v. Herider-Sinders, Inc.*,¹ which elaborated on fact-finding requirements for administrative agencies.² As noted by the author, *V.I.P. Limousine* demanded that the agency fact-finder state not only the ultimate facts upon which conclusions are based, but also the basic facts necessary to support the ultimate facts and conclusions thereon. In addition, the court stated that situations may arise in which the agency must go beyond fact-finding, and give a statement of reasons for the factual determination.³

Once again, the Indiana Court of Appeals has seen fit to elaborate on what exactly will be required of agency fact-finders. In *Wolfe v. Review Board of the Indiana Employment Security Division*,⁴ the appellant challenged a denial of unemployment compensation by the Review Board, alleging *inter alia* that the Board "failed to make findings relative to each of the reasons he gave for leaving."⁵ The appellant had raised eight specific grounds which he claimed constituted good cause for voluntarily leaving his employment. Although the Board had made findings specifically disposing of a number of appellant's claims, it was silent with respect to other allegations raised. The posture of the court of appeals, in responding to appellant's challenge and remanding for further findings on the issues not addressed by the Board, illustrates the clearest statement

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¹355 N.E.2d 441 (Ind. Ct. App. 1976).

²See Utken, *Administrative Law, 1977 Survey of Recent Developments in Indiana Law*, 11 IND. L. REV. 20, 22 (1977).

³355 N.E.2d at 445.

⁴375 N.E.2d 652 (Ind. Ct. App. 1978).

⁵*Id.* at 653.