VENUE IN JUVENILE COURTS

The juvenile courts, first established in 1899,[1] are based upon the concept that the state is "parens patriae"[2] to the children within its boundaries. Their proceedings were initially denominated as "civil," since the task of the juvenile court was to integrate the needs of the child with the policy of providing protection to society against anti-social conduct, rather than merely effectuating that social policy through criminal responsibility and punishment.[3] The constitutional safeguards surrounding a criminal proceeding were deemed inapposite to the juvenile procedures because of the civil nature and the rehabilitative focus of the juvenile court system.[4] Partly because the ideals underlying the juvenile system were unfulfilled, the Supreme Court has held that certain procedural safeguards are constitutionally required at the juvenile

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1. The first juvenile court was opened on July 1, 1899, in Chicago, Illinois, with Judge R. S. Tuthill presiding. For history of the juvenile court system, *see* Glueck, *Some "Unfinished Business" in the Management of Juvenile Delinquency,* 15 SYRACUSE L. REV. 628 n.2 (1964); Mack, *The Juvenile Court,* 23 HARV. L. REV. 104, 107 (1909).

2. The parens patriae concept was developed in England, where the chancery court exercised protective jurisdiction over all children of the realm on behalf of the pater patriae, the King. In the United States, the individual state was substituted for the King and was said to possess an interest in the welfare of every child within its boundaries and possessed the power to exercise this interest through the juvenile courts. *See* THE PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, TASK FORCE REPORT: JUVENILE DELINQUENCY AND YOUTH CRIME 2 (1967); Note, *Due Process and the Juvenile Offender: The Scope of In re Gault,* 14 HOW. L.J. 150 (1968).

3. *See* Mack, *The Juvenile Court,* 23 HARV. L. REV. 104 (1909). Early cases enunciated this view of the juvenile court. In Commonwealth v. Fisher, 213 Pa. St. 48, 53, 62 A. 198, 200 (1905), the court stated:

> To save a child from becoming a criminal, or from continuing in a career of crime, to end in maturer years in public punishment and disgrace, the legislature surely may provide for the salvation of such a child, if its parents or guardian be unable or unwilling to do so, by bringing it into one of the courts of the state without any process at all, for the purpose of subjecting it to the state's guardianship and protection.

The Supreme Court of Idaho in the case of *In re* Sharpe, 15 Idaho 120, 127, 96 P. 563, 564 (1908), stated the object of the juvenile court in this manner:

> Its object is to confer a benefit both upon the child and the community in the way of surrounding the child with better and more elevating influences and of education and training him in the direction of good citizenship, and thereby saving him to society and adding a good and useful citizen to the community.

See Trumbull, *Proposed New Juvenile Court Act for Illinois,* 53 ILL. B.J. 608 (1967).

4. *See In re* Gault, 387 U.S. 1, 14-21 (1967).

court adjudication stage.[5] One issue that the Supreme Court has not directly confronted, however, is that of venue[6] in juvenile court proceedings.

This note will examine venue in the juvenile justice system, analyze the relevant state statutes and case law, report on the findings of an empirical study conducted by the *Law Quarterly*,[7] and discuss possible constitutional bases for venue as a constitutional right.

I. THE LAW OF JUVENILE VENUE

In the juvenile justice system, the issue of venue arises only when a juvenile resides, commits an act, or is apprehended in different jurisdictions. Since there are few reported cases,[8] the statutes of the individual states must be examined[9] to ascertain the state of the law.

State statutes vary in approach to the designation of juvenile court venue. The juvenile court acts of nineteen states contain express venue

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5. *In re* Winship, 397 U.S. 358 (1970) (the standard of proof at the adjudication phase of the juvenile court proceedings must be proof beyond a reasonable doubt); *In re* Gault, 387 U.S. 1 (1967) (in the adjudication phase of a delinquency proceeding which could result in a deprivation of liberty the child is entitled to certain procedural rights—notice of the charges, right to retained or appointed counsel, right to confrontation and cross-examination of witnesses, and the privilege against self-incrimination). *See* Kent v. United States, 383 U.S. 541 (1966) (waiver hearing must measure up to the essentials of due process and fair treatment). *But cf.* McKeiver v. Pennsylvania, 403 U.S. 528 (1971) (a juvenile within the juvenile justice system is not entitled to a trial by jury, since this would contravene the avowed objectives of that system).

6. Venue is a term used to describe the appropriate court within a jurisdiction in which an action may be brought. *See* Morgan, *Criminal Venue and Related Problems*, 2 GA. ST. B.J. 331 (Feb. 1966); Williams, *Venue and the Ambit of Criminal Law*, 81 L.Q. REV. 276 (1965); *cf.* Miller, *Constitutional Limitations on the Power of the Missouri Legislature to Provide for Venue In Criminal Cases*, 1958 WASH. U.L.Q. 35.

7. The empirical findings represent the results of a questionnaire sent to 500 juvenile court judges throughout the country selected in proportion to population. The returned questionnaires are now on file in the James Carr Collection of the Washington University School of Law Library. The *Law Quarterly* extends its appreciation to Professor Frank W. Miller for his assistance and Miss Kathy Dumont for her guidance in the empirical study.

8. A possible reason for the sparsity of cases raising venue issues is that, until *In re* Gault, 387 U.S. 1 (1967), attorneys were not required at juvenile adjudication hearings. Therefore, it was unlikely that procedural issues such as venue would be raised.

9. In addition to an examination of the various state statutes, the *Law Quarterly* surveyed judges of various juvenile courts. The responses to the questionnaire sent to the judges are primarily discussed *infra* at notes 56-83.

provisions.[10] Sixteen states in effect create venue provisions by limiting juvenile court jurisdiction to a particular county or counties,[11] while eight states create venue by limiting the court in which a petition may be filed.[12] Seven states provide that the juvenile court has original and exclusive statewide jurisdiction.[13]

There are five conceivable alternatives for juvenile court venue: (1) where the petition is filed; (2) where the child is found; (3) where the act was committed; (4) where the child resides; and (5) where the parent, but not necessarily the child, resides. Five states make the broadest selection among these alternatives and allow venue wherever the petition is filed.[14] The statutes of eleven states permit three alterna-

10. ARIZ. REV. STAT. ANN. § 8-206 (Supp. 1972); CAL. WELF. & INST'NS CODE § 651 (Deering 1969); COLO. REV. STAT. ANN. § 22-8-3 (1964); GA. CODE ANN. § 24A-1101 (1971); ILL. ANN. STAT. ch. 37, § 702-6 (Smith-Hurd Supp. 1972); IOWA CODE ANN. § 232.68 (1969); KAN. STAT. ANN. § 38-811 (1964); ME. REV. STAT. ANN. tit. 4, § 155 (1964); MD. ANN. CODE art. 26, § 70-4 (Supp. 1971); MINN. STAT. ANN. § 260.121 (1971); N.H. REV. STAT. ANN. § 169:3 (1955); N.Y. FAMILY CT. ACT § 717 (McKinney Supp. 1972); ORE. REV. STAT. § 419.480 (1971); TENN. CODE ANN. § 37-211 (Supp. 1972); TEX. REV. CIV. STAT. art. 2338-1, § 7-A (1971); UTAH CODE ANN. § 55-10-85 (Supp. 1971); VT. STAT. ANN. tit. 33, § 637 (Supp. 1972); VA. CODE ANN. § 16.1-160 (1960); WIS. STAT. ANN. § 48.16 (1957); WYO. STAT. ANN. § 14-115.5 (Supp. 1971).

11. DEL. CODE ANN. tit. 10, § 951 (Supp. 1970); FLA. STAT. ANN. § 39.02 (Supp. 1972); HAWAII REV. STAT. § 571-11 (1968); IDAHO CODE § 16-1803 (Supp. 1972); KY. REV. STAT. § 208.020 (1972); LA. REV. STAT. ANN. § 13:1570 (1968); MICH. STAT. ANN. § 27.3178 (598.2) (Supp. 1972); MISS. CODE ANN. § 7185-03 (Supp. 1972); MO. REV. STAT. § 211.031 (1969); NEV. REV. STAT. § 62.040 (1971); N.M. STAT. ANN. § 13-8-26 (1968); N.C. GEN. STAT. § 7A-279 (1969); N.D. CENT. CODE § 27-16-08 (1960); OKLA. STAT. tit. 10, § 1102 (Supp. 1972); S.C. CODE ANN. § 15-1171 (Supp. 1971).

12. ALA. CODE tit. 13, § 352 (1959); ARK. STAT. ANN. § 45-210 (1964); CONN. GEN. STAT. REV. § 17-70 (Supp. 1969); IND. ANN. STAT. § 9-3208 (1956); NEB. REV. STAT. § 43-205 (1968); OHIO REV. CODE § 2151.27 (Supp. 1972); S.D. COMP. LAWS ANN. § 26-8-10 (Supp. 1972); WASH. REV. CODE ANN. § 13.04.060 (1962).

13. ALASKA STAT. § 47.10.290 (Supp. 1971); MASS. GEN. LAWS ANN. ch. 119, § 24 (Supp. 1972); MONT. REV. CODE ANN. § 10-603 (1968); N.J. REV. STAT. § 2A:4-14 (1952); PA. STAT. ANN. tit. 11, § 244 (1965); R.I. GEN. LAWS ANN. §§ 14-1-3(B), 14-1-5 (1970); W. VA. CODE ANN. § 49-5-1 (1966). Hereinafter, there will be no formal distinction made between express venue provisions, *see* note 10 *supra*, jurisdictional grants, *see* note 11 *supra*, filing of the petition, *see* note 12 *supra*, and statewide jurisdiction, *see* note 13. All of these classifications will be treated as one type of venue provision.

14. ARK. STAT. ANN. § 45-210 (1964); MONT. REV. CODE ANN. § 10-603 (1968); NEB. REV. STAT. § 43-205 (1968); S.D. COMP. LAWS ANN. § 26-8-10 (Supp. 1972); W. VA. CODE ANN. § 49-5-1 (1966). The petition in these states must allege juvenile court jurisdiction expressly as well as the improper conduct. The *Law Quarterly* received four responses to its questionnaire from three of these states—Montana, Ne-

tives—where the child is found, where the act occurred, or where the child resides.[15] Twenty-five states provide two alternatives for venue: seventeen of these states set venue either where the child is found or where the child resides,[16] while eight states lay venue where the act occurred or where the child resides.[17] No state provides as an alternative venue where the child is found or where the act occurred. Four states limit

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braska, and South Dakota. All the judges concurred that venue could be laid in their court if the juvenile resided, committed an act or was apprehended in their jurisdiction.

15. CAL. WELF. & INST'NS CODE § 651 (Deering 1969); COLO. REV. STAT. ANN. § 22-8-3 (1964); HAWAII REV. STAT. § 571-11 (1968); ILL. ANN. STAT. ch. 37, § 702-6 (Smith-Hurd Supp. 1972); IOWA CODE ANN. § 232.68 (1969); KAN. STAT. ANN. § 38-811 (1964); KY. REV. STAT. § 208.020 (1972); MINN. STAT. ANN. § 260.121 (1971); UTAH CODE ANN. § 55-10-85 (Supp. 1971); WIS. STAT. ANN. § 48.16 (1957); WYO. STAT. ANN. § 14-115.5 (Supp. 1971). The *Law Quarterly* received responses from judges in seven of these states. The judges from California, Hawaii, Illinois, and Iowa interpreted their statute to allow for all three alternatives. The judges in Colorado, Minnesota, and Wisconsin seem to interpret their statute in a more limited fashion, restricting venue to where the juvenile resides or where he commits an anti-social act.

16. ALA. CODE tit. 13, § 352 (1959); ALASKA STAT. § 47.10.010 (Supp. 1971); DEL. CODE ANN. tit. 10, § 951 (Supp. 1970); FLA. STAT. ANN. § 39.02 (Supp. 1972); IDAHO CODE § 16-1803 (Supp. 1972); IND. ANN. STAT. § 9-3208 (1956); KAN. STAT. ANN. § 38-811 (1964); LA. REV. STAT. ANN. § 13:1570 (1968); MISS. CODE ANN. § 7185-03 (Supp. 1972); NEV. REV. STAT. § 62.040 (1971); N.H. REV. STAT. ANN. § 169:3 (1955); N.M. STAT. ANN. § 13-8-26 (1968); N.C. GEN. STAT. § 7A-279 (1969); N.D. CENT. CODE § 27-16-08 (1960); ORE. REV. STAT. § 419.480 (1971); R.I. GEN. LAWS ANN. § 14-1-5 (1970); WASH. REV. CODE ANN. § 13.04.060 (1962). Judges from nine of these states responded to the *Law Quarterly* questionnaire. All the judges except those from New Hampshire stated that residence venue was allowed. All the judges indicated jurisdiction could be assumed if the juvenile committed an anti-social act in the judge's jurisdiction. It appears, therefore, that jurisdiction in several of these states is extended beyond the statutory provision.

The phrase "within the county" was interpreted by *In re* Gibson, 4 Wash. App. 372, 483 P.2d 131 (1971), to contemplate physical presence of the child in the county where the petition is filed. The court stated that the child may be considered within the county of a particular court even though the child who has been living in that county spends brief periods of time in another county.

17. ARIZ. REV. STAT. ANN. § 8-206 (Supp. 1972); CONN. GEN. STAT. REV. § 17-70 (Supp. 1969); GA. CODE ANN. § 24A-1101 (Supp. 1972); MD. ANN. CODE art. 26, § 70-4 (Supp. 1971); OHIO REV. CODE § 2151.27 (Supp. 1972); TENN. CODE ANN. § 37-211 (Supp. 1972); TEX. REV. CIV. STAT. art. 2338-1, § 7-A (1971); VT. STAT. ANN. tit. 33, § 637 (Supp. 1972).

Judges from Connecticut, Ohio, Tennessee, and Texas responded. The Tennessee judges indicated that venue was proper where the petition was filed or when the juvenile was apprehended in their jurisdiction. Conversely, Texas judges limited the scope of their statute by assuming jurisdiction only when the juvenile committed an anti-social act in their jurisdiction.

venue to only one location:[18] Missouri and Michigan[19] provide for venue only where the child is found;[20] Maine and New York allow venue only where the act was committed.[21]

Approaching statutory venue from another perspective, twenty-three states do not expressly provide for venue where the act occurred;[22]

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18. ME. REV. STAT. ANN. tit. 4, § 155 (1964); MICH. STAT. ANN. § 27.3178 (598.2) (Supp. 1972); MO. REV. STAT. § 211.031 (1969); N.Y. FAMILY CT. ACT. § 717 (McKinney Supp. 1972).

19. MICH. STAT. ANN. § 27.3178 (598.2) (Supp. 1972); MO. REV. STAT. § 211.031 (1969).

20. The provisions providing for venue "where the child is found" have been interpreted to mean "physically present." *See In re* Mathers, 371 Mich. 516, 124 N.W.2d 878, *motion for reh. denied*, 371 Mich. 516, 126 N.W.2d 722 (1963); *In re* Shaw, 449 S.W.2d 380 (Mo. 1969). The Michigan Court held that "found" meant "physically present in the county" and that according to the statute, juvenile court jurisdiction is not based upon the residence of the juvenile. The court in Smith v. Davis, 147 So. 2d 177, 179 (Fla. App. 1962), held that the juvenile court has no jurisdiction to adjudicate the custody of a minor unless the child is physically present within the territorial jurisdiction of the court at the time the suit is filed.

In dependency and neglect proceedings different rules seem to apply. A Missouri court in State v. Farrell, 237 S.W.2d 492, 495 (Mo. App. 1951), held that the juvenile court had authority to adjudge a seven year old child neglected when the child was within the jurisdiction when the action was instituted. An Illinois court in the case of *In re* Bartha, 87 Ill. App. 2d 263, 266, 230 N.E.2d 886, 887-88 (1967), held that the circuit court had jurisdiction to entertain dependency proceedings although the child had been within its jurisdiction for only one day.

The *Law Quarterly* received responses from judges of both states, from which it was evident that the concept of physical presence allows considerable latitude. Missouri judges permit venue to be placed in their court if the juvenile was apprehended, resided, or committed an anti-social act within their jurisdiction. *See* text accompanying notes 45-47 *infra*. Michigan judges indicated that venue was proper if the juvenile was apprehended or resided within their jurisdiction, or the petition was filed there.

21. ME. REV. STAT. ANN. tit. 4, § 155 (1964); N.Y. FAMILY CT. ACT § 717 (McKinney Supp. 1972). Seven judges from New York responded to the *Law Quarterly* questionnaire. Four interpreted the statute to allow venue when the juvenile resided in their jurisdiction. All seven would assume jurisdiction if the juvenile committed an anti-social act in their jurisdiction. The one response received from Maine indicated that the judge would assume jurisdiction when the child was apprehended in his jurisdiction.

22. ALA. CODE tit. 13, § 352 (1959); ALASKA STAT. § 47.10.010 (1962); ARK. STAT. ANN. § 45-210 (1964); DEL. CODE ANN. tit. 10, § 951 (Supp. 1970); FLA. STAT. ANN. § 39.02 (Supp. 1972); IDAHO CODE § 16-1803 (Supp. 1972); IND. ANN. STAT. § 9-3208 (Supp. 1972); LA. REV. STAT. ANN. § 13:1570 (1968); MICH. STAT. ANN. § 267.3178 (598.2) (Supp. 1972); MISS. CODE ANN. § 7185-03 (Supp. 1972); MO. REV. STAT. § 211.031 (1969); NEB. REV. STAT. § 43-205 (1968); NEV. REV. STAT. § 62.040 (1968); N.H. REV. STAT. ANN. § 169:3 (1955); N.M. STAT. ANN. § 13-8-26 (1968); N.C. GEN. STAT. § 7A-279 (1969); N.D. CENT. CODE § 27-16-08 (1960); OKLA. STAT. tit. 20, § 1102 (Supp. 1972); ORE. REV. STAT. § 419.480 (1971); R.I. GEN. LAWS ANN. § 14-

eleven states do not permit venue where the child is found;[23] and four states do not provide for venue where the child resides.[24] No state restricts venue exclusively to the child's residence.[25]

The statutes of only twenty-four states contain change of venue provisions.[26] Thirteen states limit the change of venue to the juvenile's

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1-5 (1970); S.D. COMP. LAWS ANN. § 26-8-10 (Supp. 1972); WASH. REV. CODE ANN. § 13.04.060 (1962); W. VA. CODE ANN. § 49-5-7 (1966).

23. ARIZ. REV. STAT. ANN. § 8-206 (Supp. 1972); CONN. GEN. STAT. REV. § 17-70 (Supp. 1969); GA. CODE ANN. § 24A-1101 (1971); ME. REV. STAT. ANN. tit. 4, § 155 (1964); MD. ANN. CODE art. 26, § 70-4 (Supp. 1971); N.Y. FAMILY CT. ACT § 717 (McKinney Supp. 1972); OHIO REV. CODE § 2151.27 (Supp. 1972); TENN. CODE ANN. § 37-211 (Supp. 1972); TEX. REV. CIV. STAT. art. 2338-1, § 7-A (1971); VT. STAT. ANN. tit. 33, § 637 (Supp. 1972).

24. ME. REV. STAT. ANN. tit. 4, § 155 (1964); MICH. STAT. ANN. § 27.3178 (598.2) (Supp. 1972); MO. REV. STAT. § 211.031 (1969); N.Y. FAMILY CT. ACT § 717 (McKinney Supp. 1972).

25. But a comparison of model juvenile court acts demonstrates a trend away from the general "where the child is found" and "where the petition is filed" provisions. The Uniform Juvenile Court Act provides for venue "where the act occurred" and "where the child resides." UNIFORM JUVENILE COURT ACT § 11 (1968). The earlier Standard Juvenile Court Act had allowed the additional alternative "where the child is found." STANDARD JUVENILE COURT ACT § 8 (1959). This trend is supported by the states that have revised or adopted new juvenile court acts since 1967: only one state, Oklahoma, out of at least fourteen states has included the "where the child is found" provision. *See* OKLA. STAT. tit. 10, § 1102 (Supp. 1972).

26. ALA. CODE tit. 13, § 365 (1959); CAL. WELF. & INST'NS CODE § 750 (Deering 1969); COLO. REV. STAT. ANN. § 22-1-5 (1964); CONN. GEN. STAT. REV. § 17-70 (Supp. 1972); FLA. STAT. ANN. § 39.02 (Supp. 1972); GA. CODE ANN. § 24A-1201 (1971); ILL. ANN. STAT. ch. 37, § 702-6 (Smith-Hurd Supp. 1972); IOWA CODE ANN. § 232.69 (1969); KAN. STAT. ANN. § 38-812 (1964); KY. REV. STAT. § 208.020 (1971); LA. REV. STAT. ANN. § 13:1570 (1968); ME. REV. STAT. ANN. tit. 4, § 155 (1964); MD. CODE ANN. art. 26, § 70-5 (Supp. 1971); MINN. STAT. ANN. § 260.121 (1971); N.H. REV. STAT. ANN. § 169:3 (1955); N.Y. FAMILY CT. ACT § 717 (McKinney Supp. 1972); OHIO REV. CODE § 2151.27 (Supp. 1972); ORE. REV. STAT. §§ 419.545 & 419.547 (1971); S.D. COMP. LAWS ANN. § 26-7-1.1 (Supp. 1972); TENN. CODE ANN. § 37-212 (Supp. 1972); UTAH CODE ANN. § 55-10-85 (Supp. 1971); VT. STAT. ANN. tit. 33, § 636 (Supp. 1972); VA. CODE ANN. § 16.1-160 (1960); WYO. STAT. ANN. § 14-115.5 (Supp. 1971).

The remaining twenty-six states do not expressly provide for a change of venue. Two possible reasons exist for this phenomenon. If a state's initial venue provisions are broad enough, or if changes are made by informal agreement, formal change of venue statutory provisions may be unnecessary. This is supported by the responses *Law Quarterly* received from judges in Delaware, Kansas, Michigan, Missouri, Montana, Nebraska, New Jersey, Pennsylvania, South Carolina, Texas, and Wisconsin, who indicated a change of venue would occur to the court of the juvenile's residence and (except in Montana) to the place where a serious act was committed. The authorization for such change of venue may be in juvenile court rules of which the *Law Quarterly* is unaware, or these changes of venue may occur without explicit statutory authority.

residence.[27] Kentucky and Minnesota provide for a change of venue to either where the juvenile resides or where the act was committed.[28] Iowa permits a change of venue to any other place where the action could have been brought.[29] Finally, Alabama, New York, and New Hampshire permit a change of venue to any other county in the state.[30]

In the states that explicitly provide for a change of venue,[31] the statutes of ten states make no reference to the time when a change of venue is to be made.[32] The statutes of eight states provide only that a change of venue may occur at any time during the proceedings.[33] Three

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27. CAL. WELF. & INST'NS CODE § 750 (Deering 1969); COLO. REV. STAT. ANN. § 22-1-5 (1964); FLA. STAT. ANN. § 39.02 (Supp. 1972); GA. CODE ANN. § 24A-1201 (1971); ILL. ANN. STAT. ch. 37, § 702-6 (Smith-Hurd Supp. 1972); MD. ANN. CODE art. 26, § 70-5 (Supp. 1971); OHIO REV. CODE § 2151.271 (Supp. 1972); ORE. REV. STAT. §§ 419.545 & 419.547 (1972); S.D. COMP. LAWS ANN. § 26-7-1.1 (Supp. 1972); TENN. CODE ANN. § 37-212 (Supp. 1971); UTAH CODE ANN. § 55-10-85 (Supp. 1971); VT. STAT. ANN. tit. 33, § 636 (Supp. 1972); VA. CODE ANN. § 16.1-160 (1960).

The *Law Quarterly* received responses from nine of these states. The judges from all nine states would change venue to the jurisdiction where the juvenile resided. However, the judges of six states added that they would allow a change of venue to the jurisdiction where a serious or a non-serious anti-social act was committed.

28. KY. REV. STAT. § 208.020 (1971); MINN. STAT. ANN. § 260.121 (1971).

The judge from Kentucky who responded did not answer this part of the questionnaire. The Minnesota judges indicated that a change of venue will usually be to the court of the juvenile's residence.

29. IOWA CODE ANN. § 232.69 (1969). Thus the proceedings can be transferred to the county where the child is found, where the act occurred, or where the child resides. The Iowa judges who responded to the questionnaire indicated that, despite the broad language, transfers were actually made only to the residence of the child.

30. ALA. CODE tit. 13, § 365 (1959); N.H. REV. STAT. ANN. § 169:3 (1955); N.Y. FAMILY CT. ACT § 717 (McKinney Supp. 1972).

The judges of Alabama, Louisiana, and New York who responded all indicated that a change of venue would occur primarily to the court of the juvenile's residence.

31. *See* note 26 *supra*.

32. CONN. GEN. STAT. REV. § 17-70 (Supp. 1969); IOWA CODE ANN. § 232.69 (1969); LA. REV. STAT. ANN. § 13:1570 (1968); ME. REV. STAT. ANN. tit. 4, § 155 (1964); MINN. STAT. ANN. § 260.121 (1971); N.H. REV. STAT. ANN. § 169:3 (1955); N.Y. FAMILY CT. ACT § 717 (McKinney Supp. 1972); ORE. REV. STAT. §§ 419.545 & 419.547 (1971); UTAH CODE ANN. § 55-10-85 (Supp. 1971); WYO. STAT. ANN. § 14-115.5 (Supp. 1971).

The *Law Quarterly* received responses from judges of eight states. As a general rule, they indicated that in the majority (ranging from fifty to ninety-nine percent) of the cases, venue was (in the order of frequency) changed at the (1) intake stage, (2) after disposition, and (3) after adjudication but prior to disposition. Thus, despite the absence of statutory guidance, the judges indicated a fairly uniform time period at which a change of venue would occur.

33. COLO. REV. STAT. ANN. § 22-1-5 (1964); FLA. STAT. ANN. § 39.02 (Supp. 1972); ILL. ANN. STAT. ch. 37, § 702-6 (Smith-Hurd Supp. 1972); KAN. STAT. ANN.

states permit a change of venue only after the transferring court has determined that the juvenile court has jurisdiction.[34]

The decision to allow a change of venue is usually within the discretion of the forum judge. Nine states provide for change of venue only upon the court's motion.[35] Four states allow the change to be made on motion by any interested party or the court.[36] Four states provide for change of venue upon request from the juvenile court in the child's residence.[37] Of those four states, two make the change mandatory,[38]

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§ 38-212 (1964); KY. REV. STAT. § 208.020 (1971); MD. ANN. CODE art. 26, § 70-5 (Supp. 1971); S.D. COMP. LAWS ANN. § 26-7-1.1 (Supp. 1972); VT. STAT. ANN. tit. 33, § 636 (Supp. 1972).

The *Law Quarterly* received responses from seven of these states. The judges of five states indicated the percentage of changes of venue made at the intake stage: Kansas, 80 percent; Illinois, 99 percent; Florida, 90 percent; Kentucky, 50 percent; and South Dakota, 90 percent. The remaining cases were changed either after disposition or after adjudication but prior to disposition.

34. ALA. CODE tit. 13, § 365 (1959); CAL. WELF. & INST'NS CODE § 750 (Deering 1969); TENN. CODE ANN. § 37-212 (Supp. 1972).

The *Law Quarterly* received responses from all three states. As with the other two types of statutes, *see* notes 32 and 33 *supra*, the broadness of the statute is narrowed in actual practice.

35. ALA. CODE tit. 13, § 365 (1959); FLA. STAT. ANN. § 39.02 (Supp. 1972); IOWA CODE ANN. § 232.69 (1969); KY. REV. STAT. § 208.020 (1971); ME. REV. STAT. ANN. tit. 4, § 155 (1964); MINN. STAT. ANN. § 260.121 (1971); UTAH CODE ANN. § 55-10-85 (Supp. 1971).

The *Law Quarterly* received responses from eight states. All the judges indicated that in addition to the judge's own power to move for a change of venue, the juvenile, his parents, or his attorney could also move for the change of venue. Judges from two states also permitted change of venue on motion by the intake worker of the court. In addition, all the judges except those from Maine reported that the most important factor in making a change of venue decision was the residence of the child. Some judges also considered the availability of greater intra-community rehabilitative resources in the transferee jurisdiction.

36. COLO. REV. STAT. ANN. § 22-1-5 (1964); MD. ANN. CODE art. 26, § 70-5 (Supp. 1971); OHIO REV. CODE § 2151.27 (Supp. 1972); VT. STAT. ANN. tit. 33, § 636 (Supp. 1972).

The *Law Quarterly* received responses from four states. Generally, it appears that the court itself most often makes the motion to change venue; the juvenile, his parents, or his attorney move for change of venue less frequently. All judges reported that the primary factor in the decision was the residence of the child. Some judges also considered the availability of greater intracommunity rehabilitative resources in the transferee jurisdiction.

37. CONN. GEN. STAT. REV. § 17-70 (Supp. 1969); FLA. STAT. ANN. § 39.02 (Supp. 1972); ORE. REV. STAT. §§ 419.545 & 419.547 (1971); S.D. COMP. LAWS ANN. § 26-7-1.1 (Supp. 1972).

38. ORE. REV. STAT. §§ 419.545 & 419.547 (1969); S.D. COMP. LAWS ANN. § 26-7-1.1 (Supp. 1972).

while the other two[39] place the decision at the discretion of the judge.[40] Statutory standards for the exercise of this discretion include a showing of "good cause,"[41] the "best interests of the child,"[42] the "convenience of the parties"[43] and "the interests of justice."[44]

II. INFORMAL INTER-COUNTY TRANSFER AGREEMENTS

A. *Treatment of non-resident juvenile offenders in the St. Louis Metropolitan Area*

An accurate picture of the functioning of statutory venue provisions within the juvenile justice system cannot be obtained from an examination of the venue statutes themselves. In the first place, those statutes are often too broadly drawn to give an accurate indication of the venue of any particular juvenile court proceeding. When alternative venues or changes of venue are permitted, it is impossible to predict with assurance where a child's case will be handled. Secondly, the statutes give no indication of the nature and extent of the discretion exercised by those administering the statute. The power to transfer cases to other courts tends to make the setting of venue as much a matter of administrative action as of legislative mandate. Therefore, the necessity of an examination of the everyday application of venue provisions becomes apparent.

An examination of the implementation of Missouri's venue provision has been made by the *Law Quarterly*, based upon an interview with the regional coordinator of juvenile court services for the St. Louis metropolitan area.[45] The Missouri venue provision, as contained in the juris-

39. CONN. GEN. STAT. REV. § 17-70 (Supp. 1969); FLA. STAT. ANN. § 39.02 (Supp. 1972). *See* ORE. REV. STAT. § 419.545 & 419.547 (1969).

40. A change of venue provision was included in UNIFORM JUVENILE COURT ACT § 12 (1968). This provision allowed a discretionary change to the child's residence upon motion of the child or the court. The comment to this provision justified permitting a change only to the child's residence on the basis that: (1) the county of residence has the primary duty of caring for and supervising the child; and (2) the residence has better access to the social history of the child.

41. *See, e.g.*, N.Y. FAMILY CT. ACT § 717 (McKinney Supp. 1972).

42. *See, e.g.*, ALA. CODE tit. 13, § 365 (1959); COLO. REV. STAT. ANN. § 22-1-5 (1964); IOWA CODE ANN. § 232.69 (1969); S.D. COMP. LAWS ANN. § 26-7-1.1 (Supp. 1972).

43. *See, e.g.*, ME. REV. STAT. ANN. tit. 4, § 155 (1964); N.H. REV. STAT. ANN. § 169:3 (1955).

44. *See, e.g.*, ME. REV. STAT. ANN. tit. 4, § 155 (1964).

45. The St. Louis Metropolitan Region is a five county area with a total population of 1.9 million. The counties involved are: St. Louis County, 951,000; St. Louis City,

dictional grant, states that

> the juvenile court shall have exclusive original jurisdiction in proceedings: (1) involving any child *who may be within the county* who is alleged to be in need of care and treatment. . . .[46]

While the language "who may be within the county" has been construed by Missouri courts to require the physical presence of the child within the county,[47] it is still clear that a juvenile court could exercise its jurisdiction over a child even if he neither committed any act within the county nor resided there. Furthermore, the absence of any change of venue provision would seem to indicate that any assumption of jurisdiction by a court would be final.

Juvenile court administrators in the St. Louis area do not operate under that construction of the statute, however. Instead, they operate under an agreement which, in effect, transforms the statute into a "venue only in the residence" provision. The juvenile courts of four out of the five counties comprising the St. Louis metropolitan area have joined in a gentlemen's agreement governing the treatment of non-resident offenders. Each participating juvenile court has agreed to transfer immediately jurisdiction over non-resident youths to the juvenile court of the child's residence when (1) the child resides in a county participating in the agreement, and (2) the offense involved is not "serious" in nature.

The agreement operates in the following manner.[48] Upon identification of a juvenile in custody as a non-resident, but yet a resident of one of the participating counties, the intake department decides whether jurisdiction over the child should be retained. The key factor involved in this decision is the seriousness of the offense. If the particular offense involves bodily harm to others or significant property loss, jurisdiction will be retained. If the offense is not deemed "serious," the police report and any other relevant information are forwarded to the regional coordinator's office. The coordinator performs both a screening and a routing function. As an aid he often checks with the

662,000; St. Charles County, 105,000; Jefferson County, 93,000; and Franklin County, 55,000.

46. Mo. Rev. Stat. § 211.031 (1969) (emphasis added).

47. *In re* Shaw, 449 S.W.2d 380 (Mo. App. 1969).

48. This information was obtained in an interview with Mr. Kenneth Foresman, Coordinator of Juvenile Court Services, Region 5, Missouri Law Enforcement Assistance Council, in St. Louis, Missouri, July 20, 1972. A transcript of the interview is on file in the Washington University Law Library.

arresting officer for additional information and with the juvenile court of the child's residence for his prior record. When he has all the necessary information before him, he determines whether there is both sufficient evidence and reason to proceed with the case. Occasionally, he will dismiss the charges himself, but in most cases dismissal will occur only upon authorization of the referring court. If the coordinator decides that no formal petition should be filed, he has three possible courses of action available. He may send a letter concerning the incident to the juvenile's residence court marked "for informational purposes only" to be placed in the child's file. If the offense is a first offense and minor, but requires some action, the coordinator may decide to have a conference with the parents or may send them a warning letter stating that any further incidents would be referred to the juvenile court. If the case is not screened out, the entire record is forwarded to the juvenile court of the child's residence along with a transferal memorandum which serves as formal authorization for the transfer. The receiving court may then take any action that it deems appropriate.

During 1971, 1,110 "interjurisdictional referrals" passed through the regional coordinator's office.[49] While that figure indicates that the agreement is being followed by the participating juvenile courts, its viability was not always a foregone conclusion. When it was first initiated, there were two basic concerns about the feasibility of the agreement. The first concern was about the sheer volume of referrals. It was clear from the beginning that the major flow of referrals would be from the suburban counties into the City of St. Louis. In fact, ninety percent of the interjurisdictional referrals in 1971 were referrals to the St. Louis City Juvenile Court.[50] The city's participation in the agreement was therefore crucial to its success. Judge Theodore McMillian, St. Louis City Juvenile Court Judge, decided to accept the agreement and assured the other counties that the city's intake staff would be able to bear the burden of the anticipated referrals. His assessment has proven correct. The second principal concern was that referrals would not be acted upon by the receiving court. This, it was felt, would merely encourage juveniles to confine their anti-social activity to the counties surrounding their residence, since they would become aware

49. MISSOURI LAW ENFORCEMENT ASSISTANCE COUNCIL, REGION FIVE, 1971 REPORT ON THE COORDINATION OF JUVENILE COURT SERVICES—INTERJURISDICTIONAL REFERRALS 6 [hereinafter cited as 1971 REPORT].

50. 1971 REPORT 6.

that any referral to the residence would be of no consequence. Mr. Kenneth Foresman, the present regional coordinator, conducted two follow up surveys which indicated that this concern was unwarranted. The first survey was of referrals made within a two month period, and showed that every interjurisdictional referral had been acted upon in some manner by the receiving court.[51] The subsequent survey was of referrals of juveniles who had committed two or more offenses within the calendar year. The results indicated that less than ten percent of the referrals had not been acted upon.[52]

The policy determination that venue in the residence is preferable has won overwhelming acceptance within the four participating counties. An indication of this acceptance is the fact that jurisdiction over nonresidents has been retained in only five cases out of approximately 1,660 in a recent eighteen month period.[53] While the agreement gives each participating court discretion to retain jurisdiction in any given case, it is clear that they do not often exercise that discretion. Behind this overwhelming acceptance of the agreement is the belief that the residence court is the best court to handle juvenile offenders. This is because the residence court, in most cases, is probably more knowledgeable about the child's circumstances and background,[54] and is in a better position to both arrive at and supervise the disposition of a case. By uniformly channeling all handling of offenders to one court, that court will develop a complete file on the child and therefore will be better able to determine the most appropriate disposition. In many cases this channeling feature serves as an early warning system, alerting officials that the child is a "potential delinquent" and that immediate action is required. A rather important aspect of this "one court" approach is its effect on the attitude of the court and the child. A court

51. *Id.* at 3-4.

52. *Id.* at 4-5.

53. Interview with Mr. Kenneth Foresman, *supra* note 48.

54. This enables the intake department to prepare a more thorough and accurate social history, which most judges take into account in arriving at a disposition. The following state statutes require the filing of such reports prior to disposition. ARK. STAT. ANN. § 45-219 (1964); CONN. GEN. STAT. ANN. § 17-66 (1958); IOWA CODE ANN. § 232.14 (1969); MASS. GEN. LAWS ANN. ch. 119, § 57 (Supp. 1972); NEB. REV. STAT. § 43-205.03 (1968); NEV. REV. STAT. § 62.130 (1968); N.Y. FAMILY CT. ACT § 727-734 (McKinney Supp. 1972); N.D. CENT. CODE § 27-16-11 (1960); S.C. CODE ANN. § 15-1137 (1962); TENN. CODE ANN. § 37-228 (Supp. 1972); WASH. REV. CODE ANN. § 13.04.040 (1962); W. VA. CODE ANN. § 49-5-18 (1966); WIS. STAT. ANN. § 48.19 (1957); WYO. STAT. ANN. § 14.115.28 (Supp. 1971).

which realizes that it will handle all future incidents in which the child is involved will be encouraged to develop a more rational treatment program—one which provides for adjustments for future behavioral variations. Mr. Foresman believes that this continuity of handling has also had a real deterrent effect on juvenile crime in the St. Louis area.

While the gentlemen's agreement clearly favors referral to the residence, there are situations which cannot easily be handled within its framework. One special problem involves the question of the certification of a child as an adult for trial in the criminal courts. Apparently, the practice in the St. Louis area is that certification to be tried as an adult can only be done by the juvenile court in the county where the act which gives rise to the certification was committed. Thus, the receiving residence court will send the case back to the referring court when certification as an adult is contemplated. This avoids a potential constitutional difficulty; namely, whether a juvenile court other than the juvenile court in the county where the act was committed can certify a juvenile as an adult.

A second problem concerns the procedures for the physical transfer of detained children. The problem is rare, since it is the practice of the juvenile courts to release children directly to the custody of their parents. However, when a parent cannot be reached or when the alleged act is serious, the child may be detained. Once detained, a juvenile will be transfered to the residence court under the authority of a formal memorandum of transfer. The detained juvenile will then be escorted back to the residence court by an intake worker of the residence court. Whether such a transfer constitutes an artificial and thus impermissible creation of jurisdiction in the residence is a question which the Missouri courts have not considered.[55] When the jurisdiction of the court depends on the physical presence of the child within the county, it is questionable whether an act of the authorities may be the basis for finding that physical presence.

A third problem concerns those incidents which involve a group of juveniles, only some of whom reside in counties which participate in the agreement. Mr. Foresman indicated that where the offense is not serious the case is split and referred to each child's residence. If, how-

55. It is the recognized rule in civil cases that jurisdiction based on service of process on a defendant who was brought within the jurisdiction fraudulently or otherwise wrongfully is improper. Wyman v. Newhouse, 93 F.2d 313 (2d Cir. 1937); Bowman v. Neblett, 24 S.W.2d 697 (Mo. App. 1930).

ever, one of the non-participating counties will not accept the case, the referring court will reassume its jurisdiction over that particular child. If the testimony of witnesses is essential, the court where the incident occurred may retain jurisdiction over the whole case.

One side effect of the gentlemen's agreement has been the extension of the operation of the agreement to residents of non-participating counties. The general practice is that any juvenile who commits an act within the participating counties will be referred to his residence court regardless of whether his residence county is one of the participating counties. The same factors are taken into consideration and the same procedures are followed as those employed for residents of the participating counties. The only additional consideration is whether the residence county will accept the referral. Franklin County, a county adjacent to three of the participating counties, has taken the position that the advantages of accepting such referrals do not outweigh the inconvenience of requiring witnesses and arresting officers to travel great distances to testify at hearings and adjudications. As a result it will not accept or make any referrals. This decision may, in part, be due to the fact that Franklin County is farther from the population center of the metropolitan area than any of the other participating counties and consequently has fewer problems with non-residents.

B. *Treatment of non-resident juvenile offender in other states*

The *Law Quarterly* mailed to juvenile judges throughout the country a questionnaire which, in part, inquired about the existence and the mechanics of any informal inter-county agreement to which they were a party. The results of the questionnaire indicated that the St. Louis area is not unique in its utilization of inter-county agreements for the handling of non-resident juvenile offenders. Of the 112 judges in forty states responding to the questionnaire, judges from nineteen states[56] acknowledged the existence of similar agreements in their area. Twenty-one agreements[57] restrict referral[58] to the child's residence,

56. Arizona, California, Delaware, Illinois, Iowa, Louisiana, Michigan, Minnesota, Nevada, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, and Wisconsin.

57. These twenty-one agreements were reported in cities in California, Delaware, Illinois, Iowa, Louisiana, Michigan, Minnesota, New Jersey, New York, North Carolina, Pennsylvania, South Carolina, South Dakota, Tennessee, and Wisconsin.

58. The terminology used in the questionnaire was actually "transfer," but since both transfer and referral have the same meaning in the juvenile court context, the terminology of the St. Louis juvenile courts is retained in this section.

while five include the option of referral to the parents' residence if different from that of the child.[59] Agreements from four states[60] allow referral either to the child's residence or to the county where the act is alleged to have occurred, and three agreements in two states[61] permit referral to either the child's residence, the parents' residence, or the county where the acts are alleged to have occurred. Only two agreements limit referrals to the county where the acts are alleged to have occurred.[62]

On the whole, then, these agreements, like the St. Louis area agreement, are designed to provide for the referral of cases involving non-residents to the juvenile court of the juvenile's residence. The replies to the questionnaire also established that under the terms of the agreements each juvenile court has the power to retain jurisdiction over a case in certain situations.[63] The agreements are clearly informal and not binding on the courts. As in St. Louis, the most important factor in a decision not to make a referral is whether the offense alleged is "serious."[64] The replies from seven states[65] which listed this as a factor did not elaborate which offenses would be classified as "serious," although one specified felonies,[66] and another capital offenses.[67] Two judges stated that a referral would be made if certification as an adult was contemplated.[68] Other factors which were listed included whether two or more youths were involved,[69] whether an adult was involved,[70] and whether the

59. Such agreements were reported to exist in California, Michigan, Ohio, Oregon, and Pennsylvania.

60. Arizona, Iowa, Michigan, and Pennsylvania.

61. Two of the three agreements are in California and the other is in Nevada.

62. These two agreements are in New York and Ohio.

63. Only a juvenile judge from South Carolina stated that he had no discretion to retain jurisdiction.

64. While there is no clear distinction between serious and non-serious crimes, serious crimes are generally considered by the judges to be those which involve violence or the threat of violence.

65. Arizona, Delaware, Iowa, Michigan, New Jersey, Pennsylvania, and Wisconsin.

66. Response from a judge in Wisconsin.

67. Response from a judge in Pennsylvania.

68. Judges in Iowa and Michigan. One Iowa judge stated:

> Iowa's juvenile statutes clearly indicate a preference for handling the child in his own home insofar as possible. Normally, a nonresident juvenile offender will be released to juvenile authorities of the county or state where he resides. The only exception is in that situation where consideration is given to trying the offender as an adult, such as in crimes of violence.

69. Response from a judge in New Jersey. Another judge from New Jersey stated that: "If the jurisdiction of residence requests that we retain jurisdiction in a complex

child objected to the transfer.[71] Most of the referrals are made at intake. Twenty-one of the responses indicated that over ninety percent of their referrals are made at intake.[72] Nine courts,[73] however, prefer to wait until a finding of facts has been made before transferring. Even in states where most transfers are made at intake, an exception is often made for contested cases.[74] In California, for example, one response indicated that if there is a factual dispute, transfer to the residence is not made until a finding of fact is made by the court as to where the act occurred.

The judges gave varied explanations for why they participate in such agreements. Some[75] stated that the agreements are simply effective and efficient methods of dealing with non-resident juvenile offenders. Others[76] claim that transfers to the residence lead to better dispositions and better supervision of offenders. For others, participation was the result of a strong Juvenile Judge Association[77] or a history of cooperation between intake or probation departments.[78] The most frequently stated reason for preferring residence venue was that it allowed the residence court to develop a more complete understanding of the child putting it in a better position to select and supervise a disposition.[79]

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matter involving many local witnesses and other local juveniles, [the court would retain jurisdiction] to avoid duplicitious [*sic*] hearings and a burden on witnesses."

70. Response from a judge in Pennsylvania.

71. Response from a judge in California.

72. Judges indicating this situation were from: California (2); Illinois; Iowa (3); Louisiana; Michigan (3); Minnesota; Nevada; New Jersey (2); Ohio (2); Oregon; Pennsylvania; South Carolina (2); and South Dakota.

73. Courts in California (2), Delaware (2), New York (2), North Carolina, Tennessee, and Wisconsin. A response from New York City indicates that referrals to the residence are frequently made for the dispositional phase of New York's two-phase proceeding if the juvenile resides in one of New York City's five counties.

74. Contested cases are cases in which the juvenile disputes the facts alleged in the petition charging delinquency.

75. Judges in Michigan, Nevada, and Tennessee.

76. Judges in California, Iowa, and Pennsylvania.

77. Response from a judge in Minnesota. A judge in New Jersey observed that "participation was the result of improved public relations."

78. Response from a judge in California.

79. Responses from judges in Iowa, Michigan, New Jersey, Oregon, and Pennsylvania. The comments of a New Jersey judge were:

> We believe that except in serious charges or those involving multiple offenders particularly where a formal trial is necessary, the county of residence has the greatest interest in the handling of the matter and for practical reasons, including closer contact with school administrators. Also, if the child has been known to the court, the county of residence would have appropriate informa-

It was also pointed out that a residence court had easier access to sociological and background information on the child.[80] Other judges emphasized the fact that a residence court usually has a greater interest in the child,[81] is more aware of community resources,[82] and can conduct family counseling more effectively.[83]

III. COMMISSION VENUE OR RESIDENCE VENUE AS A CONSTITUTIONAL RIGHT

Although no case has been found declaring a particular form of venue for juvenile proceedings to be constitutionally required, arguments can be formulated to support the proposition that either commission venue[84] or residence venue[85] is a constitutional requisite.

The argument supporting a constitutional right to commission venue is based on the "substantial fairness" test of the due process clause.[86]

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tion for disposition. We, in New Jersey, utilize a postponement of adjudication often, particularly in minor offenses, and thus avoid imposing a juvenile record [on the youth]. This can be best determined by the county of residence.

80. Response from a judge in South Carolina, who stated: "Even if the court where the juvenile resides does not have a record on him, they would have easier access to his family, school and others who could provide more social background on the child."

81. Responses from judges in Illinois and New Jersey.

82. Responses from judges in Michigan (2), New Jersey (2), and Oregon. The Oregon judge included the juvenile's relatives as being a valuable source of community assets for rehabilitation.

83. Response from a judge in Minnesota, who explained that his preference for residence venue was based on a belief that "family counselling and treatment services for the juvenile in his own environment" are better.

84. Commission venue refers to holding the stages of the juvenile justice system in the juvenile justice system in the county or district in which the alleged violation occurred.

85. Residence venue refers to holding these stages in the county or district in which the juvenile resides.

86. The right to commission venue in all criminal prosecutions is protected by the sixth amendment, which provides:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district *wherein the crime shall have been committed,* which district shall have been previously ascertained by law. . . .

U.S. CONST. amend. VI (emphasis added). Any argument based on the sixth amendment and its incorporation under the fourteenth amendment would necessarily first have to answer whether the adjudication stage of a juvenile proceeding is a "criminal prosecution" within the meaning of the sixth amendment. This is a question which the Supreme Court has studiously avoided answering because the Court fears that any such holding would introduce unnecessary rigidity into the various state approaches to the

In re Gault[87] held that certain procedural protections were constitutionally required by the due process clause during the adjudication stage of juvenile proceedings in order to insure the substantial fairness of the proceedings. These protections include the right to be represented by counsel, the right to confrontation and cross-examination and the privilege against self-incrimination. In *McKeiver v. Pennsylvania*,[88] however, the Court, characterizing the protections held applicable to juvenile proceedings in *Gault* as those designed to insure accurate fact-finding, stated that the jury was not essential to reliable and accurate fact-finding and therefore held that the constitutional right to a jury trial did not extend to juvenile proceedings. Thus, for any additional rights to be held applicable to the adjudication stage of a juvenile proceeding it would now seem that the rights must be an aid to accurate fact-finding. Commission venue, it can be argued, is such an aid because it would promote convenience for the witnesses and further the ease of investigation by providing a ready access to the physical evidence of the case.[89]

The possible argument for the proposition that residence venue is constitutionally required is based upon the due process clause of the fourteenth amendment. The proposition is that, since juveniles receive fewer procedural safeguards than adults in criminal proceedings, they should receive other benefits in exchange; namely, residence venue.[90] The benefits accruing to the juvenile, as explained by the judges re-

juvenile justice system. *See* McKeiver v. Pennsylvania, 403 U.S. 528 (1971).

In the case of *In re* Gault, 387 U.S. 1 (1967), the Supreme Court was presented with the issue that, since the juvenile proceeding is civil in nature rather than criminal, the fifth amendment privilege against self-incrimination could not be held applicable because the fifth amendment specifically states that it applies in a "criminal case." The Court, in response, stated that to so hold "would be to disregard substance because of the feeble enticement of the 'civil' label-of-convenience which has been attached to juvenile proceedings." 387 U.S. at 49. The Court preferred, instead, to judge whether the proceeding was criminal with respect to the right asserted rather than to engage in a labeling game. The Court thus evinced a willingness to declare the juvenile proceeding as "criminal" only for the purposes of providing particular safeguards. At least two members of the present Supreme Court, however, are willing to have the sixth amendment apply to all juvenile proceedings when the act alleged is a violation of a criminal statute and the child faces a period of confinement if adjudged a delinquent. *See* Mr. Justice Douglas' dissenting opinion in *McKeiver*, 403 U.S. at 557.

87. 387 U.S. 1 (1967).

88. 403 U.S. 528 (1971).

89. Judges emphasizing this point were from numerous states, including California, Delaware, Florida, Iowa, New York, and South Carolina.

90. *Cf. In re* Rich, 125 Vt. 373, 216 A.2d 266 (1966).

sponding to the questionnaire, would be a more appropriate disposition because of a more complete knowledge of the juvenile's background and his particular problems and needs. This enables the judge to make a more informal and better use of the available rehabilitative resources, and thus advance the treatment objective of the juvenile justice system.[91]

Before a new constitutional right is established, however, its probable impact upon the system ought to be assessed. In this area, even assuming the constitutional arguments are tenable, neither proposition should be accepted. If commission venue was established as a constitutional right, it would advance the juvenile system through improvement of the adjudication stage by assuring accurate and adequate fact-finding. Commission venue as a constitutional right would not promote the objective underlying the disposition stage, however, since the available evidence indicates that the court sitting where the act occurred does not have available to it the full information needed to make an informal use of dispositional facilities unless it is also the court of the juvenile's residence.[92] Conversely, residence venue as a constitutional right would function well at the disposition stage to advance the ideal of rehabilitation,[93] but the consensus of the judges responding to the questionnaire was that the court of the juvenile's residence cannot perform the adjudication function of fact-finding as well as the court where the alleged anti-social act was committed.

It is apparent that to adjudicate either commission venue or residence venue as a constitutional right will introduce an aspect of inflexibility into the juvenile court process which will defeat the purposes of the juvenile process in at least some instances: commission venue as a constitutional right will weaken the dispositional process, while residence venue as a constitutional right will undermine possible constitutional rights to accurate fact-finding. Further, the adjudication of such a constitutional right to a certain venue would render the flexible and informal gentlemen's agreements among juvenile courts in a metropolitan area unconstitutional.

CONCLUSION

One basis for juvenile venue might be the following proposed statute:

91. *See* text accompanying notes 79-80 *supra.*
92. *See* text accompanying note 82 *supra.*
93. *See* Mack, *The Juvenile Court*, 23 HARV. L. REV. 104 (1909).

> Venue in all delinquency proceedings shall lie in the jurisdiction where the juvenile resides; provided, that venue shall lie in the jurisdiction where the alleged delinquency occurred if requested by the juvenile, his attorney, or his parent or guardian; provided further, that if the adjudication takes place in the jurisdiction where the alleged delinquency occurred and the juvenile is adjudicated delinquent, the case shall be transferred for disposition to the jurisdiction where the juvenile resides.

The proposed statute initially and primarily provides for residence venue. This is based on the value judgment that the juvenile process will be best served by facilitating the dispositional process of the juvenile courts. The judges responding to the questionnaire seemed to agree that residence venue best allows a juvenile court to intelligently provide for the disposition of the offending juvenile. The statute does, however, allow alternative venue in the jurisdiction where the alleged act occurred if requested. This provision is a frank recognition that the possibility exists that courts might find that a constitutional right to accurate fact-finding cannot be satisfied without commission venue.

It is probably indefensible to limit the opportunity for commission venue only to serious crimes, for the juvenile charged with a less grave anti-social act has the same interest in accurate fact-finding on the issue of his guilt or innocence as the juvenile charged with an act comparable to a felony. Note that the statute provides for disposition in the jurisdiction where the juvenile resides, regardless of where the adjudication process takes place. Thus the preference for disposition in the juvenile's residence is maintained.