REPORT

of the

MINNESOTA LEGISLATIVE INTERIM COMMISSION

on

PUBLIC WELFARE LAWS

Proposed Juvenile Court Act

Submitted to the Legislature of the State of Minnesota

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STATE OF MINNESOTA

PUBLIC WELFARE LAWS COMMISSION

324 STATE CAPITOL ST. PAUL 1, MINNESOTA

HOWARD OTTINGER, CHAIRMAN SALLY LUTHER, VICE CHAIRMAN
JOSEPH VADHEIM, SECRETARY

PHILIP OLFELT
EXECUTIVE SECRETARY

January, 1959

TO THE GOVERNOR OF THE STATE OF MINNESOTA

AND THE MEMBERS OF THE LEGISLATURE

Gentlemen:

Pursuant to Minnesota Laws 1957, Chapter 817, the Public Welfare Laws Commission hereby transmits its report. This report concerns laws relating to children and juvenile courts. A report on sex psychopath laws has been submitted by the commission.

Respectfully transmitted,

Howard Ottinger

Howard Ottinger
Chairman

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I. ESTABLISHMENT AND ACTIVITIES OF THE PUBLIC WELFARE LAWS COMMISSION

The 1957 Session of the Minnesota Legislature created an interim commission on Public Welfare Laws with authority to study the laws relating to programs administered by the Department of Public Welfare, except correction programs, with a view toward revising and codifying existing laws and recommending improvements requiring legislation (Laws 1957, Chapter 817; appendix 1). Five senators and five representatives were selected to serve on this commission (Membership list; appendix 2).

At a joint meeting held for the purpose of eliminating overlap, the chairmen of the Public Welfare Laws Commission, Lower Courts Commission, and the Commission on Juvenile Delinquency, Adult Crime and Corrections decided that the Public Welfare Laws Commission should undertake revision of the juvenile court act and related children's laws and the laws relating to sex offenders. Pursuant to statutory authority, the Public Welfare Laws Commission then created citizens' advisory committees to assist it with these problems. Some of the members of these advisory committees were invited to membership directly by the commission, others were chosen by groups invited by the commission to have representation on the advisory committees. This report relates to the work of the Advisory Committee on Laws Relating to Children and Juvenile Courts (Membership list; appendix 3). A report on the work of the Advisory Committee on Sex Psychopath Laws has been published by the commission.

The Advisory Committee on Laws Relating to Children and Juvenile Courts held eight meetings, including one two-day meeting. A drafting subcommittee, created by the advisory committee for the purpose of preparing drafts for the advisory committee, held fourteen meetings, four of which were two-day meetings (Membership list, drafting subcommittee; appendix 4).

The subcommittee prepared its drafts on the basis of study of the following materials: Minnesota statutory law and judicial interpretations of this law; the statutory law and judicial interpretations of other jurisdictions, particularly Wisconsin, which recently enacted a new Children's Code; the "Standards for Specialized Courts Dealing with Children", a publication prepared by the Children's Bureau of the federal government in cooperation with the National Probation and Parole Association and the National Council of Juvenile Court Judges; the "Standard Juvenile Court Act", prepared by the National Probation and Parole Association; preliminary drafts of the new "Standard Juvenile Court Act", prepared by Children's Bureau; the proposed "Juvenile Court Code for Minnesota", prepared by judges of juvenile courts in Minnesota; and other pertinent articles and reports.

The full advisory committee carefully considered the subcommittee's drafts. Often these drafts were returned to the subcommittee for redrafting, sometimes as many as five or six times. Although the advisory committee disagreed on certain details, their recommendations represent a consensus of opinion which attempts to provide, in a clear and organized fashion, a workable juvenile court act for Minnesota, one which promotes the welfare of children while protecting both society's interests and the rights of

affected individuals.

This report by the Public Welfare Laws Commission is based upon the report of the advisory committee. The commission has made no changes to the text of the proposed Juvenile Court Act submitted to them by the advisory committee. The commission is indebted to the members of the advisory committee and its consultants for the expert knowledge and hours of labor contributed so freely to this task. This report could not have been made without their efforts.

II. OUTLINE OF THE PROPOSED JUVENILE COURT ACT

A. Philosophy and Historical Development of Juvenile Courts in Minnesota

To better understand this report on laws relating to children and juvenile courts it is well to consider the underlying philosophy of the juvenile court and its historical development in Minnesota. The Minnesota Supreme Court, interpreting Minnesota's juvenile court act in a 1957 decision, summarized the purpose of juvenile courts as follows:

> "It has been stated that the juvenile court laws of this country are the most outstanding improvement in the administration of criminal justice since the Magna Charta was signed. While it may be noted that the courts vary in form and structure throughout the states, there is general agreement on certain principles on which the juvenile court operates, such as the principle that children are not to be dealt with as criminals but as individuals in whose future welfare the community is concerned. The purpose of the court proceedings is to help the child, not to punish him. (Citation) The whole tenor of the Juvenile Court Act indicates that the sole purpose is the welfare of the delinquent as well as the dependent or neglected child. The principle is now firmly established that for its protection and for the good of the child the state may, through its courts, place the child in charge of some person or institution for proper training and support. (Citation) The act itself, in section 260.33, states that there is due from the state to the child concerned the protection and correction which he needs under the circumstances disclosed in the case." (Knutson v Jackson, 1957, 249 Minn. 246,249; 82 NW 2d 234)

Historically the basic juvenile court act we have today in Minnesota dates back to 1917. However, in 1905, juvenile courts were successfully established in Hennepin, Ramsey, and St. Louis counties, patterned after the first juvenile court, which was established in Illinois in 1899. Unsuccessful attempts were made in 1909 and 1913 to extend the juvenile court plan throughout the remainder of the state by giving probate courts the same jurisdiction as was given to the district courts of the three metropolitan counties by the act of 1905. Before 1905 Minnesota courts protected the interests of children under the doctrine of "parens patriae", a doctrine under which the state could interfere as ultimate guardian of those people unable to adequately take care of themselves, a doctrine which was inherited from English jurisprudence and the chancery courts. The act of 1917 gave the probate courts in the 84 non-metropolitan counties juvenile court jurisdiction and the district court continued to serve as juvenile court in the three metropolitan counties. This system has continued in effect up to the present time. (Reference: The Origin and Development of the Minnesota Juvenile Court, an address before the Minnesota Association of Probate Judges, January 15, 1920, by District Judge Edward Waite.)

The basic act adopted in 1917 has been amended in nearly every succeeding session of the legislature. These amendments have preserved the pro-

gressive nature of the law but have also resulted in a patchwork of current and obsolete provisions. Judge Waite, who was chairman of the advisory committee which prepared the drafts of the 1917 act, made a similar observation in a report of that committee's work in 1 Minnesota Law Review, 48, at page 49.

B. Summary of the Provisions of the Proposed Juvenile Court Act.

The proposed juvenile court act is organized into eleven general headings (see Part III, Proposed Act): General Provisions; Organization of the Court; Jurisdiction of the Court over Children and Minors; Procedures; Detention; Dispositions; Termination of Parental Rights; Costs and Expenses; Jurisdiction over Persons Contributing to Delinquency or Neglect of Children; Rehearing and Appeal; and Contempt.

The provisions of these proposals will replace the following sections of existing Minnesota Statutes, which will be repealed: Sections 260.01 through 260.34 and 260.37, except for 260.05 (Bailiff, Ramsey County), 260.09 (Probation Officers), and 260.27 (Contributing to Delinquency or Neglect).. The revision of section 260.09 is the subject of study by the Commission on Juvenile Delinquency, Adult Crime and Corrections. That commission is also preparing legislative proposals relating to juvenile traffic offenders, a subject not specifically treated in the proposed juvenile court act.

The most important provisions of the proposed juvenile court act are as follows. First, jurisdiction of the determination of permanent custody and support of children of divorced or separated parents or parents whose marriage is annulled is given to the juvenile court (see Proposed Act, section 13, subdivision 2, clause e,and commentary.). These children are often the subject of bargaining in divorce settlements and their welfare is often a very secondary consideration in the whole divorce problem. District court judges have expressed the opinion that they are not trained or equipped to handle this problem. Also, these children sometimes appear subsequently in juvenile court as delinquent, neglected, or dependent children, a consequence which possibly could have been avoided by careful earlier planning. (For a discussion of this problem see Children of Divorce in Minnesota: Between the Millstones; 32 Minnesota Law Review 766, June 1948, Edward F. Waite.)

The second important provision is that the juvenile court is given jurisdiction over adoptions (see Proposed Act, section 13, subdivision 2, clause d, and commentary).

The third important provision is a new procedure for terminating parental rights [see Proposed Act, section 13, subdivision 2, clauses (a) and (b) and commentary, and sections 35 through 40 and commentary].

The fourth important provision relates to strengthening the juvenile court's jurisdiction over children who violate the law (see Proposed Act, section 13, subdivision 1 and commentary, and section 34 and commentary).

Other changes of importance are as follows. Under "Organization of the Court", authority is provided for the appointment of referees, the establishment of county home schools and detention homes by all counties, and the designation of probate juvenile judges as such on election ballots. Under "Jurisdiction of the Court over Children and Minors," in addition to previously mentioned proposals, the procedure for transfer, both to and from juvenile court, of a child who violates a law is carefully outlined and the minimum age limit for transfer for criminal prosecution is raised from 12 to 14. A new section treats the subject of venue, or place of hearing, and does not permit a change of venue when legal settlement is in another county. Under "Procedures", the contents of the petition, the persons to be served with summons and notice, and the manner of service are set forth in detail. Social study of the child or examination of him cannot be undertaken until a petition is filed and, in the case of an allegation of delinquency, no investigation or examination can be made if the child denies that he is delinquent before the judge or referee. A section devoted to the hearing sets forth the rights of the parties at the hearing. A section related to records specifies among other things that peace officers' records of children are not open to public inspection and provides a penalty for violation of the provision. "Detention" sections spell out the situations in which a child may be taken into custody, what is to be done with him, and the places where he may be detained. "Disposition" sections delineate the corrective steps a juvenile court may take under particular circumstances, providing for some degree of "informal" handling of the delinquent child, with safeguards for the child, and spell out the effect of a juvenile court adjudication. The section entitled "Costs" describes the financial responsibility of parents and society, and sets forth costs and expenses chargeable to the county. Sections under "Jurisdiction of the Court over Persons Contributing to the Delinquency or Neglect of Children" permit the court to make certain orders in regard to persons contributing to the delinquency or neglect of a child. District juvenile court jurisdiction over the offense of contributing is preserved. In sections under "Rehearing and Appeal", a rehearing is allowed if there is new evidence, and appeals are taken directly to the supreme court.

The remaining sections of the proposed act deal with amendments to existing laws related to the proposed act, sections repealed, a savings clause, amd the effective date of the act, which is July 1, 1959.

III. PROPOSED JUVENILE COURT ACT

A BILL

FOR AN ACT RELATING TO JURISDICTION OF JUVENILE COURTS OVER DELINQUENT, NEGLECTED, DEPENDENT AND ADOPTIVE CHILDREN, AND CHILDREN REQUIRING SPECIAL JUDICIAL SUPERVISION; THEIR CARE; PERSONS CONTRIBUTING TO THE DELINQUENCY OR NEGLECT OF CHILDREN; PRESCRIBING PENALTIES; PROVIDING FOR THE NUMBERING OF THE SECTIONS THEREOF; AMENDING MINNESOTA STATUTES 1957, SECTIONS 259.23, SUBDIVISION 1; 259.24, SUBDIVISION 1; 259.26, SUBDIVISION 3; 259.27; 259.28; 259.32; 260.36; 518.17; 518.18; AND 636.07; AND REPEALING MINNESOTA STATUTES 1957, SECTIONS 260.01 TO 260.04, 260.06 TO 260.08, 260.10 TO 260.26, 260.28 TO 260.34, AND 260.37.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:*

[GENERAL PROVISIONS]

Section 1. [260.011] [TITLE, INTENT, AND CONSTRUCTION] Subdivision 1. Sections 1 to 46 may be cited as the Juvenile Court Act.

Subd. 2. The purpose of the laws relating to juvenile courts is to secure for each minor under the jurisdiction of the court the care and guidance, preferably in his own home, as will serve the spiritual, emotional, mental, and physical welfare of the minor and the best interests of the state; to preserve and strengthen the minor's family ties whenever possible, removing him from the custody of his parents only when his welfare or safety and protection of the public cannot be adequately safeguarded without removal; and, when the minor is removed from his own family, to secure for him custody, care and discipline as nearly as possible equivalent to that which should have been given by his parents. The laws relating to juvenile courts shall be liberally construed to carry out these purposes.

* New matter is underlined, deleted matter is crossed out.

Comment: There is no existing provision comparable to subdivision 1. The existing provision comparable to subdivision 2 is section 260.33.

Subdivision 1. The provisions of subdivision 1 are recommended by the Revisor of Statutes as a useful indexing device.

Subdivision 2. The provisions of subdivision 2 are substantially the same as section 35 of the new Standard Juvenile Court Act, except for the last sentence, which is derived from the first sentence of 260.33. The above proposal differs from 260.33 as follows. First, the above proposal emphasizes the desire to preserve the family whenever possible. Second, the above proposal does not mention adoption as one method of providing a family home for a child removed from his parents.

Section 2. [260.015] [DEFINITIONS] Subdivision 1. As used in sections 1 to 46 the terms defined in this section have the meanings given to them.

Subd. 2. "Child" means an individual under 18 years of age and includes any minor alleged to have been delinquent prior to having become 18 years of age.

Subd. 3. "Child placing agency" means anyone licensed under Minnesota Statutes, section 257.091.

Subd. 4. "Court" means juvenile court unless otherwise specified in the section.

Subd. 5. "Delinquent child" means a child:

(a) Who has violated any state or local law or ordinance; or

(b) Who has violated a federal law or a law of another state and whose case has been referred to the juvenile court; or

(c) Who is habitually truant from school; or

(d) Who is uncontrolled by his parent, guardian, or other custodian by reason of being wayward or habitually disobedient; or

(e) Who habitually deports himself in a manner that is injurious

or dangerous to himself or others.

Subd. 6. "Dependent child" means a child:

(a) Who is without a parent, guardian, or other custodian; or

(b) Who is in need of special care and treatment required by his physical or mental condition and whose parent, guardian, or other custodian is unable to provide it; or

(c) Whose parent, guardian, or other custodian for good cause desires to be relieved of his care and custody.

Subd. 7. "Facility for foster care" means any facility for foster care defined in Minnesota Statutes, section 257.081, subdivision 4.

Subd. 8. "Legal custody" means the right to the care, custody, and control of a child who has been taken from a parent by the court in accordance with the provisions of sections 28, 29, or 39. The expenses of legal custody are paid in accordance with the provisions of section 41.

Subd. 9. "Minor" means an individual under 21 years of age.

Subd. 10. "Neglected child" means a child:

(a) Who is abandoned by his parent, guardian, or other custodian; or

(b) Who is without proper parental care because of the faults or habits of his parent, guardian, or other custodian; or

(c) Who is without proper parental care because of the emotional, mental, or physical disability, or state of immaturity of his parent, guardian, or other custodian; or

(d) Who is without necessary subsistence, eduction or other care necessary for his physical or mental health or morals because his parent, guardian or other custodian

neglects or refuses to provide it; or

(e) Who is without the special care made necessary by his physical or mental condition because his parent, guardian, or other custodian neglects or refuses to provide it; or

(f) Whose occupation, behavior, condition, environment or associations are such as to be injurious or dangerous to himself or others; or

(g) Who is living in a facility for foster care which is not licensed as required by law, unless the child is living in the facility under court order; or

(h) Whose parent, guardian, or custodian has made arrangements for his placement in a manner detrimental to the welfare of the child or in violation of law; or

(i) Who comes within the provisions of section 2, subdivision 5, but whose conduct results in whole or in part from parental neglect.

Subd. 11. "Parent" means the natural or adoptive parent of a minor.

Subd. 12. "Person" includes any individual, association, corporation, partnership, and the state or any of its political subdivisions, departments, or agencies.

Subd. 13. "Relative" means a parent, step parent, grandparent, brother, sister, uncle, or aunt of the minor. This relationship may be by blood or marriage.

Comment: This section sets forth the meanings to be given to certain words throughout the juvenile court act. References to existing comparable provisions in the juvenile court act, if any, are made in the discussion of each clause, and are as follows: Subdivision 2, 260.02, paragraph 2; subdivision 3, 260.01, last sentence; subdivision

5 and 6, 260.01, sentences 3 and 1 respectively; subdivision 8, 260.11, sentences 1 and 3, and 260.13, sentence 1; subdivision 10, 260.01, sentence 2.

Subdivision 2. The definition of "child" as an individual under 18 years of age is essentially the same as in the existing law, section 260.02, paragraph 2, except as follows. The definition is qualified to include minors who are alleged to have been delinquent before becoming 18 to harmonize with the change recommended in the proposed jurisdictional section, section 13, subdivision 1.

Subdivision 3. The existing comparable definition is found in the last sentence of section 260.01. The reference is to the laws relating to the licensing of child placing agencies.

Subdivision 4. is self explanatory. There is no comparable existing provision in the juvenile court act.

Subdivision 5. The existing comparable provision is found in section 260.01, sentence 3. The proposal eliminates obsolete language and draws upon the Wisconsin Code, section 48.12, for new language. The definitions follow the recommendations of the "Standards for Juvenile Courts", page 26. The reference to federal law is intended to eliminate any question about the authority of a Minnesota juvenile court to receive an alleged juvenile offender referred from another state or on waiver from a federal district court as provided in 18 U.S.C.A. section 5001. (This provision does not conflict with Y.C.C. authority under section 242.45 to receive custody of any minor convicted of a crime in a federal court who is turned over to the Y.C.C. under the provisions of 18 U.S.C.A. section 5003.) The classic labels "delinquency", "neglect", and "dependency" are preserved because they are used throughout the statutes in laws referring or relating to the juvenile court act.

Subdivision 6. The existing comparable provision is found in section 260.01, sentence 1. Changes from existing law are the addition of clause (b) relating to special care and treatment which the child's parents are unable to provide, and the deletion of illegitimacy as a basis for a finding of dependency. The first change is recommended to encourage certain parents to seek aid in a situation presently labeled as neglect, a label which has discouraged the cooperation of some parents. The second change is based upon a Minnesota Supreme Court decision which held, in effect, that an illegitimate child is a dependent child only if in fact neglected. The supreme court said: "Manifestly, the intent of the statute (M.S. 260.01; definition of a dependent child) is to exclude from its operation a child having a parent able to provide for its proper support and who does not consent to separation from it, whether illegitimate or legitimate." State ex rel Mattes v. Juvenile Court of Ramsey County, 1920, 147 Minn. 222, 179 N.W. 1006, at page 224, Minn. None of the standard acts nor any of the states recently adopting new juvenile court acts define "illegi-

timates" as dependent or neglected children. The "Standards for Specialized Courts" do not make such a recommendation.

Subdivision 7. There is no comparable existing provision in the juvenile court act. The reference is to the laws relating to the licensing of facilities for foster care.

Subdivision 8. Existing comparable provisions are found in sentence 1 of section 260.11, where the court may commit a neglected or dependent child to the "care of" the commissioner, an association, or individual, and in sentence 3 of the same section, where the court may commit neglected or dependent children to the "temporary care or custody" of the county welfare board. Similar language is also used in relation to the delinquent child, section 260.13, sentence 1. Wisconsin's Code, section 48.02 (10), which follows the "Standards", uses similar language but elaborates upon it. (See the "Standards for Specialized Courts", pages 15 and 75, for a discussion of the meaning of "legal custody".) In the proposed Minnesota act, as in the "Standards", the transfer of "legal custody" from a parent to someone else will follow an adjudication of delinquency, neglect, or dependency. The procedure corresponds most closely to the present concept of "temporary custody". However, transfer of "legal custody" will not become permanent until parental rights are terminated in a separate proceeding in which a guardian is appointed. Expenses of legal custody are treated in section 41.

Subdivision 9. There is no comparable existing provision in the juvenile court act. This definition of "minor" is the same as that found in the chapter on statutory construction, section 645.45 (14).

Subdivision 10. The existing comparable provision is found in section 260.01, sentence 2. The proposal is intended to encompass the present definition of neglect in more clear and up to date language and is derived in large part from Wisconsin's Code, section 48.13 (1). Clause (g) is new and is intended to plug a loophole in the licensing law, which presently provides only a fine for an unlicensed facility and says nothing about the child. Clause (h) is new and is intended to provide the child who is the subject of an independent placement some protection before the child becomes a member of a home which is an unlicensed facility for foster care and thus within the provisions of clause (g). Clause (i) is also new and is intended to provide the court a means toward greater flexibility in disposition.

Subdivision 11. There is no comparable existing definition in the juvenile court act. This definition of "parent" is the same as that of the adoption laws, section 259.21, subd. 3.

Subdivision 12. There is no comparable existing definition in the juvenile court act. This definition of "person" is similar to that found in the licensing laws, section 257.081, subdivision 3, except

that "individual" and "state" are added. (See also 645.44, subdivision 7.)

Subdivision 13. There is no comparable existing definition in the juvenile court act. This definition of "relative" is derived from Wisconsin's Code, section 48.02 (12), except that in the first sentence "step parent" is added and the words "blood or marriage" are substituted for "consanguinity or direct affinity". The words "blood or marriage" are used in the licensing laws, section 257.081, subdivision (2) c.

[ORGANIZATION OF THE COURT]

Section 3. [260.021] [DISTRICT AND PROBATE JUVENILE COURTS] Subdivision 1. [DISTRICT COURT - JUVENILE COURT] In counties now or hereafter having a population of more than 100,000, the district court is the juvenile court.

Subd. 2. [JUVENILE COURT; RAMSEY AND ST. LOUIS COUNTIES] In Ramsey and St. Louis Counties the judges of the district court shall, at such times as they shall determine, designate one of their number to hear all cases arising under sections 1 to 46. This designation is for a period of one year unless otherwise ordered. If the designated judge is absent or disabled, another judge shall be temporarily assigned for these purposes. The judge designated as the judge of juvenile court shall devote his first service and all necessary time to the business of the juvenile court, and this work has precedence over all his other court work. When considered advisable, the district court judges may designate two or more judges for the purposes and subject to the provisions specified in this section. A special court room, designated as the juvenile court room, shall be provided for the hearing of these cases. The court, for convenience, may be called the juvenile court of the county.

Subd. 3. [JUVENILE COURT, HENNEPIN COUNTY] In Hennepin County, the juvenile court judge has the title "District Court Judge, Juvenile Court

Division", and if appointed, shall be so designated. At the primary or general election, the office shall be designated on the ballot as "District Court Judge, Juvenile Court Division". The judge of the juvenile court division has charge of the juvenile court in Hennepin county, and shall hear and determine all matters brought before the juvenile court, and shall perform all other duties of the judge of juvenile court under the laws of the state. The performance of these duties takes precedence over all other work. In case of the absence, sickness, or other disability, or workload of the judge which prevents him from performing his duties, the chief judge of the district court of Hennepin county may designate or assign one or more of the other judges of the district court to perform the duties of the judge of the juvenile court division. Vacancies in this office shall be filled in the manner provided by law for the filling of vacancies in the office of other judges of the district court. The judge of the juvenile court division may be designated in writing by the governor to the regular or ordinary duties of a judge of the district court without this designation affecting the term of office to which he was elected.

Subd. 4. [PROBATE COURT - JUVENILE COURT] In counties now or hereafter having a population of not more than 100,000, the probate court is the juvenile court. At the primary or general election, the office of probate judge shall also be designated on the ballot as "Judge of the Juvenile Court".

Comment: The existing provisions comparable to the above proposals are as follows: The existing provisions comparable to subdivision 1 are found in 260.02, sentence 1; existing provisions comparable to subdivision 2 are found in 260.03, subdivision 1; existing provisions comparable to subdivision 3 are found in 260.03, subdivision 2; and existing provisions comparable to subdivision 4 are found in 260.02, sentence 3.

Subdivision 1. The provisions of proposed subdivision 1 differ from 260.02, sentence 1, in the omission of a reference to jurisdiction, which is covered by section 13 of these proposals.

Subdivision 2. The provisions of proposed subdivision 2 differ from 260.03, subdivision 1, in the following ways. First, the counties affected are named specifically, a procedure recommended by the revisor of statutes, rather than described by reference to judicial districts, which are periodically changed. Second, no reference is made to the keeping of records, which is covered by proposed section 23. Third, no reference is made to the title of proceedings, which is covered by proposed section 17.

Subdivision 3. The provisions of proposed subdivision 3 differ from 260.03, subdivision 2, in the following ways. First, as in proposed subdivision 2 above, the affected county is specifically named. Second, the office, and not the candidate, is designated on the ballot as "District Court Judge, Juvenile Court Division". This change is recommended by the revisors of the election laws. Third, the chief judge is given the authority to designate additional judges to sit as juvenile judges under certain circumstances, and adds "workload" to the circumstances specified. This change codifies existing practice.

Subdivision 4. The provisions of proposed subdivision 4 differ from 260.02, sentence 3, in the following ways. No mention is made of jurisdiction, which is covered by proposed section 13. Designation of the probate judge as the juvenile court judge on the ballot is new and is recommended by the Judges' Code, page 1.

Section 4. [260.025] [PLACE OF HEARING] The judge of the juvenile court may hold hearings in the county seat of the county, or in any other city, village or borough in the county. The county shall provide suitable quarters at the county seat for the hearing of cases and the use of judges and other employees of the court.

Comment: The first sentence of this provision is substantially the same as sentence 3 of section 260.08. The second sentence is taken from the old Standard Juvenile Court Act, section 35. The Judges' Code, page 1, contains a similar provision.

Section 5. [260.031] [REFEREE] Subdivision 1. The judge of the juvenile court may appoint one or more suitable persons to act as referees. These referees shall be qualified for their duties by their previous training and experience and shall hold office at the pleasure of the judge. The compensation of a referee shall be fixed by the judge and approved by the

county board and shall be payable from the general revenue funds of the county not otherwise appropriated.

Subd. 2. The judge may direct that any case or class of cases shall be heard in the first instance by the referee in the manner provided for the hearing of cases by the court.

Subd. 3. Upon the conclusion of the hearing in each case, the referee shall transmit to the judge all papers relating to the case, together with his findings and recommendations in writing. Notice of the findings of the referee together with a statement relative to the right of rehearing shall be given to the minor, parents, guardian, or custodian of the minor whose case has been heard by the referee, and to any other person that the court may direct. This notice may be given at the hearing, or by certified mail or other service directed by the court.

Subd. 4. The minor and his parents, guardians, or custodians are entitled to a hearing by the judge of the juvenile court if, within three days after receiving notice of the findings of the referee, they file a request with the court for a hearing. The court may allow such a hearing at any time.

Subd. 5. In case no hearing before the judge is requested, or when the right to a hearing is waived, the findings and recommendations of the referee become the decree of the court when confirmed by an order of the judge. The final order of the court shall, in any event, be proof of such confirmation, and also of the fact that the matter was duly referred to the referee.

Comment: This section is new and is derived from the new Standard Juvenile Court Act, section 4. The purpose of this section is to provide the court with the authority to delegate certain duties when the court is overburdened or in need of help in a particular

class of cases. The proposal differs from the new Standard Act in the following ways.

Subdivision 1. The referee need not be an attorney. The qualifications specified in subdivision 1 are derived from the act enabling the Hennepin County Juvenile Court to appoint a referee (Laws 1957, chapter 742, section 1.). The sentence relating to the referee's compensation is the method used in existing section 260.09 in relation to the compensation of probation officers.

Subdivision 3. The method specified for notifying the parties is taken from the Hennepin County Act, section 3.

Subdivision 4. The hearing before the judge is not in the nature of an appeal, as it is in the Standard Act. The language used is taken from the Hennepin County Act. section 4, subdivision 2.

Subdivision 5. The last sentence of this subdivision is taken from the Hennepin County Act, section 4.

Section 6. [260.041] [CLERK] Subdivision 1. The clerk of the juvenile court shall keep necessary books and records, issue summons and process, attend to the correspondence of the court, and in general perform such duties in the administration of the business of the court as the judge may direct.

Subd. 2. In counties having a population of not more than 100,000, the clerk of the probate court shall serve as clerk of the juvenile court.

Comment: The existing comparable section is 260.04, which relates to clerks in district court juvenile courts.

The provisions of section 6 are derived substantially from the Judges' Code, page 2. The provisions of the proposal differ mainly from 260.04 in that the duties of the district court clerk of the juvenile court are applied to all counties and no salary is specified. The method of appointing a district court clerk of the juvenile court is not specified, as in 260.04, because there are other general or special laws covering this procedure. (See Laws 1951, Chapter 653 for clerk of juvenile court of Ramsey County.) The provision that the clerk of the probate court serves as the clerk of juvenile court in all other counties is new. The Judges' Code adds that the clerk's tenure is at the pleasure of the court.

Section 7. [260.092] [EXPERT ASSISTANCE] In any county the court may provide for the physical and mental diagnosis of cases of minors who are believed to be physically or mentally diseased or defective, and for such purpose may appoint professionally qualified persons, whose compensation shall be fixed by the judge with the approval of the county board.

Comment: The existing comparable provision is found in section 260.10. In addition to eliminating obsolete language, the proposal differs from 260.10 in the following ways. The population limit of 150,000 is removed, so that the section applies to all counties. It also differs from 260.10 in that the last line of 260.10, which relates to physical and mental examinations on an individual basis in counties under 150,000 is deleted. This is done because the probate juvenile court will have this authority under section 21, relating to investigation, and sections 28 and 29 relating to disposition.

Section 8. [260.094] [COUNTY HOME SCHOOLS] In any county or group of counties the county boards may purchase, lease, erect, equip, and maintain a county home school for boys and girls, or a separate home school for boys and a separate home school for girls. The juvenile court may transfer legal custody of a delinquent child to the home school in the manner provided in section 28. The county home school may, with the approval of the district court judges in counties now or hereafter having a population of more than 100,000, or of the juvenile court judges in all other counties, be a separate institution, or it may be established and operated in connection with any other organized charitable or educational institution. However, the plans, location, equipment, and operation of the county home school shall in all cases have the approval of the said judges. There shall be a superintendent or matron, or both, for such school, who shall be appointed and removed by the said judges. The salaries of the superintendent, matron, and other employees shall be fixed by

the said judges, subject to the approval of the county board. The county board of each county to which this section applies is hereby authorized, empowered, and required to provide the necessary funds to make all needful appropriations to carry out the provisions of this section. The board of education, commissioner of education, or other persons having charge of the public schools in any city of the first or second class in a county where a county home school is maintained pursuant to the provisions of this section may furnish all necessary instructors, school books, and school supplies for the boys and girls placed in any such home school.

Comment: The existing comparable provision is 260.14. The proposal differs from existing law in the following ways. First, the population limitation is removed, so that the section applies to all counties or any group of counties. (The existing 33,000 population limit has not been changed since 1917). Second, the use of county home schools is restricted to delinquents, to conform with the proposed disposition sections, 28 and 29. Third, references to other dispositions and time limits for dispositions in sentences 4 and 5 of 260.14 are eliminated because these matters are covered in proposed sections 27, 28 and 29..

Section 9. [260.096] [EXISTING HOME SCHOOLS CONTINUED] All juvenile detention homes, farms, and industrial schools heretofore established under the provisions of Laws 1905, Chapter 285, section 5, as amended by Laws 1907, Chapter 172, and Laws 1911, Chapter 353, or Laws 1913, Chapter 83, Laws 1915, Chapter 228, or Laws 1917, Chapter 317, as amended, are hereby declared to be county home schools within the meaning of sections 1 to 46 and all the provisions of those sections relating to county home schools shall apply thereto.

Comment: The existing comparable provision is 260.15. The only change is the addition of a reference to Laws 1917, Chapter 317, as amended, to include any home schools built under the authority of that act.

Section 10. [260.101] [DETENTION HOMES] In any county or group of counties the county boards may purchase, lease, erect, equip, and maintain a detention home for boys and girls, or a separate detention home for boys, or a separate detention home for girls. Any child alleged to be delinquent may be detained in the detention home in the manner provided in section 25, subdivision 2. The detention home may, with the approval of the district court judges in counties now or hereafter having a population of more than 100,000 or of the juvenile court judges in all other counties, be a separate institution, or it may be established and operated in connection with a county home school or any organized charitable or educational institution. However, the plans, location, equipment, and operation of the detention home shall in all cases have the approval of the judges. Necessary staff shall be appointed and removed by the judges. The salaries of the staff shall be fixed by the judges, subject to the approval of the county boards. The county board of each county to which this section applies shall provide the necessary funds to carry out the provisions of this section.

Comment: This section is new and is intended to authorize any county or group of counties to establish a detention home. A "detention home" provides care for the child in "secure custody" pending disposition of the case by the court. (Detention homes are licensed in Minnesota by the Commissioner of Public Welfare; Minnesota Statutes, section 257.101.) A "county home school" is a facility for rehabilitation and training and is a place where the court may send a child when making disposition of the child's case.

Section 11. [260.103] [JUVENILE COURT JUDGES; ANNUAL CONFERENCE]

Subdivision 1. [PURPOSE OF CONFERENCE] For the purpose of promoting economy and efficiency in the enforcement of laws relating to children and particularly of the laws relating to defective, delinquent, dependent and neglected children, the president of the association of juvenile court judges may at such time and place as he deems advisable call an annual con-

ference of all judges acting as judge of juvenile court.

Subd. 2. [EXPENSES PAID BY COUNTIES] The necessary expenses of the judges attending such conference shall be paid by their respective counties.

Subd. 3. [COUNTY BOARD TO AUDIT CLAIMS FOR EXPENSES IN ATTENDING CONFERENCE] The county board of each county shall audit and, if found correct, allow duly itemized and verified claims of the juvenile judge for travel and other necessary expenses incurred and paid by him in attending the annual conference called by the president of the association of juvenile court judges.

Comment: This is section 260.065 of the present law. The only change is found in subdivision 2, where the $25 limitation on expenses other than travel is removed.

Section 12. [260.105] [SALARIES] All salaries and expenses to be paid by the county under the provisions of sections 3 to 11 shall be paid upon certification of the judge of juvenile court or upon such other authorization provided by law.

Comment: This proposal restates existing section 260.32, eliminating obsolete language and the reference to fees, which are covered in section 41, subdivision 2.

[JURISDICTION OF THE COURT OVER CHILDREN AND MINORS]

Section 13. [260.111] [JURISDICTION OVER DELINQUENT, NEGLECTED, AND DEPENDENT CHILDREN] Subdivision 1. Except as provided in section 16, the juvenile court has original and exclusive jurisdiction in proceedings concerning any child who is alleged to be delinquent, neglected, or dependent, and in proceedings concerning any minor alleged to have been delinquent prior to having become eighteen years of age. The juvenile court shall deal with

such a minor as it deals with any other child who is alleged to be delinquent.

Subd. 2. [JURISDICTION OVER OTHER MATTERS RELATING TO CHILDREN] The juvenile court has original and exclusive jurisdiction in proceedings concerning:

(a) The termination of parental rights to a child in accordance with the provisions of sections 35 to 40.

(b) The appointment and removal of a juvenile court guardian of the person for a child, where parental rights have been terminated under the provisions of sections 35 to 40.

(c) Judicial consent to the marriage of a child when required by law.

(d) Adoptions. The juvenile court shall proceed under the laws relating to adoptions in all adoption matters.

(e) The care, custody, and support of minors whose parents' marriage has been annulled, or whose parents have been separated by a final decree of divorce or separation. A certified copy of the decree of annulment, divorce, or separation has the effect of a petition and confers jurisdiction on the juvenile court when filed in the juvenile court by the clerk of the district court. The person awarded temporary custody by the district court shall be considered the petitioner in juvenile court.

Comment: The existing provisions comparable to subdivision 1 are found in 260.02, sentences one and three. The existing provisions comparable to subdivision 2 are found in 260.02, sentences one and three, 260.08, 260.11, 260.12, and 260.16. Comparisons are made in detail in the commentary below.

Subdivision 1. The existing comparable provisions are found in 260.02,

sentence one, which gives the district courts in counties over 100,000 population "original and exclusive jurisdiction" over all juvenile court matters, and 260.02, sentence three, which gives the probate courts in all counties under 100,000 population jurisdiction "over the appointment of guardians of dependent, neglected, or delinquent children for the purposes (of the juvenile court act)". The proposal differs from existing law in that it gives the probate juvenile courts the same "original and exclusive" jurisdiction as the district juvenile courts. The word "original" is applied to probate juvenile court jurisdiction partly to codify the holding in the case of Knutson v. Jackson, 1957, 249 Minn. 246, 82 N.W. 2d 234, where the supreme court said that the district court was without jurisdiction to try a boy on a murder charge because of defective proceedings in the probate juvenile court, a holding which in essence says that there must be a valid juvenile court hearing before a child can be prosecuted under the criminal law in another court. However, the primary purpose of describing the juvenile court jurisdiction as "original and exclusive" is to state as strongly as possible the authority of a probate juvenile court to handle and make dispositions in cases of violations of law by children. The "Standards for Specialized Courts Dealing with Children", page 27, emphasizes the importance of making no exceptions to the juvenile court's original exclusive jurisdiction on account of the serious nature of an offense committed by the child, except that the child's case may be referred by the juvenile court to another court for criminal prosecution. The basic philosophy of the court is denied by taking from it cases in which children have committed offenses punishable by death or life imprisonment. The alternatives to giving the juvenile court this original exclusive jurisdiction are to have either the prosecuting attorney or the grand jury decide which court should hear the case. The provisions of this proposed section, together with the provisions of proposed section 34 are intended to overcome the state constitutional provision giving the district court "original jurisdiction in all civil and criminal cases", (Minn. Const. Art. 6, Sec. 5), by defining violations of law by those under 18 as delinquency, unless the juvenile court refers the violation to a prosecuting authority for criminal proceedings. See the commentary to proposed section 34 for further discussion of this point, particularly in regard to the decision in the Pett case. (The legislature's power to determine by rules and definitions, the class or classes of children requiring state supervision, and to impose such supervision, is generally conceded. 31 Am. Jur. 790, Juvenile Courts and Offenders; State exrel Olson v. Brown, 1892, 50 Minn. 353, 52 N.W. 935).

Another change from existing law is the provision establishing the time of the delinquent act as the controlling time for determining the court's jurisdiction. This provision resolves the uncertainty existing under the present law in the situation where a person violates a law while under 18 but is not apprehended until after 18. The attorney general has stated that the time of arraignment is the con-

trolling time under our present law (Op. Atty. Gen. 1954, No. 21, p. 58). Y.C.C. jurisdiction extends to those under 21 at the time of apprehension. Both the old and the new Standard Juvenile Court Act, the Judges' Code, and cases interpreting the federal law, which has the same uncertainty as our present law, favor the time of the act as the controlling time.

Subdivision 2. The existing provisions, comparable to the introductory provisions of subdivision 2, are found in 260.02, sentences one and three. Existing provisions comparable to clauses (a) and (b) are found in 260.08, 260.11, 260.12, and 260.16. Clauses (c), (d), and (e) are new.

As stated above, the introductory sentence describing the jurisdiction of the juvenile court as "original and exclusive" is the same as existing law for the district juvenile court, under the provisions of 260.02, sentence one. It is new for the probate juvenile court, (see 260.02, sentence three), but should raise no constitutional questions in regard to probate juvenile court jurisdiction over matters specified in subdivision 2. As mentioned, the district juvenile courts have "original and exclusive" jurisdiction over the appointment of guardians for children in the juvenile court under existing law. The appointment of a guardian for a neglected and dependent child by a district juvenile court was upheld by the supreme court of Minnesota in Petition of Sherman, March 1954, 241 Minn. 447, 63 N.W. 2d 573. At the time of that decision the constitution gave the probate court "jurisdiction over the estates of deceased persons and persons under guardianship", (Minn. Const. Art. 6, Sec. 7). The supreme court held that the district court guardianship was valid despite this constitutional provision because this sort of guardianship, which is incidental to the adoptive process, was unknown at the time the constitution was adopted and therefore not included in the grant of exclusive guardianship jurisdiction to the probate court. Since this decision the constitutional authority of the probate court has been changed twice, so that it now has "unlimited original jurisdiction in law and equity for the administration of the estates of deceased persons and all guardianship and incompetency proceedings, and such further jurisdiction as the legislature may establish". What this does to the authority of a district juvenile court to appoint a guardian for a neglected or dependent child is uncertain. However, it is unlikely that the latest version of the probate court's constitutional authority was intended to deprive the district juvenile court of its authority to appoint a guardian in this specialized situation. (The supreme court upheld the appointment of a guardian for a delinquent child by a municipal court in State exrel Olson v. Brown, 1892, 50 Minn. 353, 52 N.W. 935, 16 L.R.A. 691.)

Clause (a). Sections 260.08, 260.11, and 260.12 presently contain provisions which, in practice, provide for termination of parental rights in dependency and neglect situations by requiring that parents be notified that a "final order of committment" of their child by the court will make the child subject to adoption,

which statutorily gives the child the legal status of a natural child of his adoptive parents. This present provision handicaps the court in seeking a solution short of terminating parental rights because it puts the parents on the defensive and tends to make them uncooperative, a situation which can be corrected by providing a separate proceeding for terminating parental rights. Our present law is criticized by Sol Rubin, counsel to the National Parole and Probation Association, in his notes on Minnesota's Juvenile Code, specifically in regard to section 260.08. Mr. A. F. Angster, former director of Minnesota's Child Welfare Division, in his report to the Juvenile Judges' Association in 1955, comments on the importance of notice in neglect and dependency proceedings because of the consequences which flow from a final commitment, a problem which will be resolved by separate proceedings to terminate parental rights.

The sections relating to termination of parental rights referred to in clause (a) will outline, formally, the procedure to be followed in the termination of parental rights. Both the old and the new Standard Juvenile Court Acts, the "Standards", and Wisconsin's Code provide for a separate procedure for terminating parental rights.

Clause (b). Sections 260.11 and 260.12 presently give the juvenile court authority to appoint guardians for neglected and dependent children. Section 260.16 gives the probate juvenile court the authority to appoint the commissioner of public welfare the guardian of a child found to be delinquent. Proposed clause (b) outlines the jurisdiction of the court to appoint guardians, specifying that the appointment comes only after termination of parental rights. The probate code presently spells out probate court authority to appoint guardians for minors in section 525.54, providing that "No guardian of the person of any minor shall be appointed while proceedings for his care and custody are pending in any juvenile court of this state". (See also 525.60)

Clause (c). This clause is new to the juvenile court act. However the authority already is given to the juvenile courts by Minnesota Statutes 517.02, which requires consent by the juvenile court prior to marriage of children of certain ages. At the present time, marriage between persons under 15 years of age is illegal in Minnesota, and no judge can consent to such a marriage.

Clause (d). This clause is new. All adoptions are presently under the jurisdiction of the district courts. Logically adoptions of minors should be included within the jurisdiction of a court devoted to children's affairs, and this recommendation has been made by prior interim commissions (see reports of Commission on Domestic Relation Problems, 1951, and Commission on Juvenile Delinquency, 1957), and by interested persons such as A. F. Angster,

former director of the Child Welfare Division of Minnesota's Department of Public Welfare (Report to the Juvenile Judges' Association, 1955, Problems of Dependency and Neglect). The argument against giving the juvenile court adoption jurisdiction is that 37 of the 84 probate juvenile judges are not lawyers, and that because adoption creates new legal rights and responsibilities, especially in regard to property, only judges with legal training should have this responsibility. In rebuttal to this argument it can be said that probate judges presently are terminating parental rights by making orders of "final commitment", the first step in the adoptive process.

Clause (e). This clause is new. In order that minor children of divorced or separated parents or minor children whose parents' marriage is annulled may be given more adequate protection and their future welfare be more carefully considered, the determination of the permanent custody of these children is made the jurisdiction of the juvenile court. This court, which is presently handling difficult problems relating to delinquent, neglected, or dependent children, is on the whole better equipped to handle and more familiar with children's problems than is the district court, which presently determines the permanent custody of minor children in case of divorce, separation, or annulment. Under this proposal the district court will continue to handle all divorce matters, including temporary custody of minor children, except for permanent custody and support. The certified order of the decree of the district court under proposed section 13, subdivision 2 (e), becomes a petition in juvenile court when filed by the clerk of district court, following which the juvenile court will make whatever temporary orders are necessary, under the provisions of proposed sections 30, 31, and 32 of "Dispositions".

Section 14. [260.115] [TRANSFERS FROM OTHER COURTS] Subdivision 1. Except where a juvenile court has referred an alleged violation to a prosecuting authority in accordance with the provisions of section 16, a court other than a juvenile court shall immediately transfer to the juvenile court of the county the case of a minor who appears before the court on a charge of violating any state or local law or ordinance and who is under 18 years of age or who was under 18 years of age at the time of the commission of the alleged offense.

Subd. 2. The court transfers the case by filing with the judge or

clerk of juvenile court a certificate showing the name, age, and residence of the minor, the names and addresses of his parent or guardian, if known, and the reasons for his appearance in court, together with all the papers, documents, and testimony connected therewith. The certificate has the effect of a petition filed in the juvenile court, unless the judge of the juvenile court in his discretion directs the filing of a new petition, which shall supersede the certificate of transfer.

Subd. 3. The transferring court shall order the minor to be taken immediately to the juvenile court and in no event shall detain the minor for longer than 48 hours after the appearance of the minor in the transferring court. The transferring court may release the minor to the custody of his parent, guardian, custodian, or other person designated by the court on the condition that the minor will appear in juvenile court as directed. The transferring court may require the person given custody of the minor to post such bail or bond as may be approved by the court which shall be forfeited to the juvenile court if the minor does not appear as directed. The transferring court may also release the minor on his own promise to appear in juvenile court.

Comment: The existing comparable section is 260.22, subdivision 1. The following changes have been made.

Subdivision 1. Proposed section 14 refers to "a court other than a juvenile court", which is broader than "municipal court or justice of the peace", the present language. The new language would include the district court and would conform to the decision in the Knutson case (249 Minn. 246, 82 N.W. 2d 234) which holds, in effect, that a district court does not have proper criminal jurisdiction over an offender under the age of 18 unless the alleged offender has had a hearing in juvenile court. "A charge of violating any state or local law or ordinance" is substituted for "a criminal charge" to conform with that part of the proposed definition of a delinquent. A minor who committed the alleged offense prior to having become 18 is included for the same reason.

These changes are made, in substance, in the Juvenile Judges' Code, page 4, and are recommended by both the old and new Standard Juvenile Court Acts and by the "Standards for Juvenile Courts", page 32. "Immediate" transfer is required, instead of "forthwith", the present language. This gives a sense of urgency to the transfer, even though the transferring court may detain the child for not longer than 48 hours.

Subdivision 2. "Reasons for his appearance in court", is substituted for "the specific charge for which he has been arragined", the present language, and "name and residence of the complainant" has been dropped to avoid giving a criminal character to the juvenile proceedings. Neither the Judges' Code, page 4, nor the old Standard Juvenile Court Act requires the transferring court to supply any of the information required by proposed subdivision 2; however, they do recommend that the transfer include all papers, documents and testimony, a recommendation which is included in proposed subdivision 2 but which is not in our present law.

Subdivision 3. The important changes in this subdivision are two: First, limiting the time of detention by the transferring court to 48 hours instead of one week; and second, providing for supervision or custody under bond, if necessary, during the transfer. (Detention procedures are spelled out in a later section.) The Judges' Code, page 5, permits detention for a maximum of 48 hours, Sundays excluded, while the "Standards", pages 45 and 46, would limit it to 24 hours. The "Standards", page 47, recommend bond from parents where necessary. The new Standard Juvenile Court Act, section 15, recommends bail for minors only if they live outside the territorial jurisdiction of the court.

Section 15. [260.121] [VENUE] Subdivision 1. Except where otherwise provided, venue for any proceedings under section 13 shall be in the county where the child is found, or the county of his residence. If delinquency is alleged, proceedings may also be brought in the county where the alleged delinquency occurred.

Subd. 2. The judge of the juvenile court may transfer any proceedings brought under section 13, except adoptions, to the juvenile court of a county having venue as provided in subdivision 1, at any stage of the proceedings and in the following manner. When it appears that the best interests of the child, society, or the convenience of proceedings will be served by a

transfer, the court may transfer the case to the juvenile court of the county of the child's residence. With the consent of the receiving court, the court may also transfer the case to the juvenile court of the county where the child is found or, if delinquency is alleged, to the county where the alleged delinquency occurred. The court transfers the case by ordering a continuance and by forwarding to the clerk of the appropriate juvenile court a certified copy of all papers filed, together with an order of transfer. The judge of the receiving court may accept the findings of the transferring court or he may direct the filing of a new petition and hear the case anew.

Subd. 3. If it appears at any stage of the proceeding that a child before the court is a resident of another state, the court may invoke the provisions of the interstate compact on juveniles or, if it is in the best interests of the child or the public to do so, the court may place the child in the custody of his parent, guardian, or custodian, if the parent, guardian, or custodian agree to accept custody of the child and return him to their state.

Comment: The existing comparable provisions are found in 260.02, first paragraph, last sentence; 260.07, first sentence; 260.08, first sentence; and 260.22, subdivision 2.

The proposals of this section collect into one section the scattered provisions of existing law relating to the geographic location of the hearing. Important changes from existing law are as follows. First, legal settlement in another county is not a basis for changing venue, as it is under existing section 260.30, because it was felt that this is an administrative problem which should be handled accordingly, (see proposed section 41). Second, the county of the alleged violation is added as a place of venue. (Wisconsin's Code has a similar provision, section 48.16). Third, the juvenile court is authorized to transfer a case, with the consent of the receiving court, to the juvenile court of the county where the violation took place or where the child is found. Fourth, the juvenile court is authorized to return an out-state child to his home state by placing the child in the custody of his

parent, guardian, or custodian.

Section 16. [260.125] [REFERENCE FOR PROSECUTION] Subdivision 1. When a child is alleged to have violated a state or local law or ordinance after becoming 14 years of age the juvenile court may enter an order referring the alleged violation to the appropriate prosecuting authority for action under laws in force governing the commission of and punishment for violations of statutes or local laws or ordinances. The order of reference terminates the jurisdiction of the juvenile court in the matter.

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

(a) A petition has been filed in accordance with the provisions of section 17

(b) Notice has been given in accordance with the provisions of sections 18 and 19

(c) A hearing has been held in accordance with the provisions of section 22, and

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

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

Comment: The existing comparable provisions are found in 260.21. The important changes from existing law are as follows. First, the minimum age limit for reference for criminal prosecution is raised from 12 to 14 and the time of the violation is established as the controlling time, to eliminate uncertainty. (Wisconsin's Code, the new Standard Juvenile Court Act, and the "Standards" set a minimum age of 16 for reference for criminal prosecution.) Second, the procedural prerequisites to entering an order of reference are carefully itemized in subdivision 2, following the opinion in the Knutson case, 249 Minn. 246, 82 N.W. 2d 234. Third,

the jurisdiction of the juvenile court terminates when the court orders a reference for prosecution. This is done to prevent repeated references between court and prosecutor, and to assure the child all the rights of a person facing criminal prosecution, during the period preceding his trial on the offense charged. Other changes from existing law are in wording; the "alleged violation" and not "the child" is "referred to the appropriate prosecuting authority" instead of to the "county attorney".

[PROCEDURES]

Section 17. [260.131] [PETITION] Subdivision 1. Any reputable person, including but not limited to any agent of the commissioner of public welfare, having knowledge of a child in this state who appears to be delinquent, neglected, or dependent, may petition the juvenile court in the manner provided in this section.

Subdivision 2. The petition shall be verified by the person having knowledge of the facts and may be on information and belief. If requested by the petitioner, the county attorney shall draft the petition if the petitioner alleges facts which bring the child within the jurisdiction of the court.

Subdivision 3. The petition and all subsequent court documents shall be entitled substantially as follows:

"Juvenile Court, County of - - - - - - - - - - - -

In the matter of the welfare of - - - - - - - - - -"

The petition shall set forth plainly:

(a) The facts which bring the child within the jurisdiction of the court;

(b) The name, date of birth, residence, and post office address of the child;

(c) The names, residences, and post office addresses of his parents;

(d) The name, residence, and post office address of his guardian if there be one, of the person having custody or control of the child, and of the nearest known relative if no parent or guardian can be found;

(e) The spouse of the child, if there be one.

If any of the facts required by the petition are not known or cannot be ascertained by the petitioner, the petition shall so state.

Comment: The existing comparable provisions are found in 260.03, subdivision 1, last sentence; 260.07; and 260.08, second paragraph, first sentence.

The proposal differs from existing law as follows: In subdivision 1 no mention is made of the State Industrial Commission as a petitioner, as in 260.07, the first sentence. It was the committee's opinion that special mention of the Industrial Commission is not necessary any longer. In subdivision 2, the county attorneys of all counties, not just those of under 150,000 population, are required to draft the petition, upon request of the petitioner, only when jurisdictional facts are alleged. This latter qualification is not a part of existing law, 260.08 - paragraph 2, sentence 1, where the county attorney is directed to appear for the petitioner, without any qualifications. In subdivision three the title provisions specified for certain district juvenile courts in 260.03, subdivision 1, last sentence, are simplified and made applicable to all juvenile courts in the state. Other changes from existing law in subdivision three are the requirement that the child's date of birth be given, rather than age, for purposes of exactness; the requirement of post office addresses as well as residence address, to take care of those situations where the post office address may be in a county other than the county of residence; and the addition of the name of the spouse of the child, if there is one.

Section 18. [260.135] [SUMMONS; NOTICE] Subdivision 1. After a petition has been filed and unless the parties hereinafter named voluntarily appear, the court shall set a time for a hearing and shall issue a summons requiring the person who has custody or control of the minor to appear with the minor before the court at a time and place stated. The summons shall recite briefly the substance of the petition or shall be attached to a copy of the petition.

Subd. 2. The court shall have notice of the pendency of the case and of the time and place of the hearing served upon the parents, guardians, or spouse of a legitimate minor or the mother, guardian, or spouse of an illegitimate minor, if they are not summoned as provided in subdivision 1.

Subd. 3. If a petition alleging delinquency, neglect, or dependency, or a petition to terminate parental rights is initiated by a person other than a representative of the department of public welfare or county welfare board, the clerk of the court shall notify the county welfare board of the pendency of the case and of the time and place appointed.

Subd. 4. The court may issue a subpoena requiring the appearance of any other person whose presence, in the opinion of the court, is necessary.

Subd. 5. If it appears from the petition or by separate affidavit of a person having knowledge of the fact that the minor is in such condition or surroundings that his welfare requires that his custody be immediately assumed by the court, the court may order, by endorsement upon the summons, that the officer serving the summons shall take the minor into custody at once.

Comment: The existing comparable provisions are found in 260.08.

Subdivision 1. The requirement that the summons shall contain either a brief statement of the substance of the petition or be attached to a copy of the petition is new. Its purpose is to inform the person receiving the summons of the nature of the proceeding. The Judges' Code, page 6, requires that the summons be attached to a copy of the petition. However it may not be desirable to distribute the contents of the petition in all cases. Therefore, the alternative of a brief statement of the contents of the petition is added. This is the method favored by the old Standard Juvenile Court Act and the "Standards", page 49.

Subdivision 2. This proposal differs from existing law in limiting the number of relatives to be notified if they are not summoned under subdivision 1. The provision eliminates notice to the father of an illegitimate, as is done in the adoption law, section 259.26,

subdivision 1. No requirement of notice to the grandfather, sister, brother, uncle or aunt of legal age, as is required in 260.08, is necessary because of the separate procedure proposed for terminating parental rights. This latter procedure also makes unnecessary the statement in a neglect or dependency notice that in case of final commitment the child is subject to adoption.

Subdivision 3. The proposal restates existing law as found in the middle of the first paragraph of 260.08, but adds that the county welfare board be notified of petitions to terminate parental rights.

Subdivision 4. This provision is new. It is recommended by the "Standards", page 49, the old Standard Juvenile Court Act, the Judges' Code, page 6, and Wisconsin's Code. The purpose of this change is to authorize the court to bring into the hearing anyone necessary to promote the rehabilitation or treatment of the child.

Subdivision 5. The provisions of this subdivision are new, providing a mechanism by which the court may assume immediate custody of a minor in addition to the issuance of a warrant as provided by proposed section 20. The old Standard Juvenile Court Act contains a provision similar to this subdivision.

Section 19. [260.141] [SERVICE OF SUMMONS, NOTICE] Subdivision 1.

(a) Service of summons or notice required by section 18 shall be made in the same manner in which personal service of summons in civil actions is made. Personal service shall be effected at least 24 hours before the time of the hearing; however, it shall be sufficient to confer jurisdiction if service is made at any time before the day fixed in the summons for the hearing, except that the court, if so requested, shall not proceed with the hearing earlier than the second day after the service.

(b) If the court is satisfied that personal service of the summons or notice cannot well be made, it shall make an order providing for the service of summons or notice by certified mail addressed to the last known addresses of such persons, and by one weeks published notice as provided in Minnesota Statutes, section 645.11. A copy of the notice shall be sent by certified mail at least five days before the time of the

hearing or fourteen days if mailed to addresses outside the state.

(c) Notification to the county welfare board required by section 18, subdivision 3, shall be in such manner as the court may direct.

Subd. 2. Service of summons, notice, or subpoena required by sections 18 or 37 shall be made by any suitable person under the direction of the court, and upon request of the court shall be made by a probation officer or any peace officer.

Subd. 3. Proof of the service required by this section shall be made by the person having knowledge thereof.

Comment: The existing comparable provisions are found in sections 260.08, first paragraph, and 260.12, last sentence.

Subdivision 1. Clause (a). The proposal differs from existing law, section 260.08, first paragraph, sentence 11, in that notice is served in the same manner as the summons in all cases, not just in those cases where the person to be notified resides in the county.

Clause (b). The proposal differs from existing law in that it provides notice by certified mail in addition to publication. This provision is recommended by the "Standards", page 49, the Judges' Code, page 6, both the old and new Standard Juvenile Court Acts, and Wisconsin. The time limit for published notice is reduced to one week because of the proposed separate procedure for terminating parental rights, where the notice is longer. The reference to section 645.11 is new and is intended to make clear the publication procedure required.

Clause (c). This is existing law, 260.08, first paragraph, sentence 10, except that it applies to all counties, instead of those not having a city of the first class.

Subdivision 2. This provision elaborates on existing law, section 260.08, first paragraph, sentence 5, by providing that the summons may be served by a peace officer or other suitable person, as well as the probation officer. These changes are found in the old Standard Juvenile Court Act and the Judges' Code.

Subdivision 3. This provision puts the burden of proving service on the person having knowledge, a more certain procedure than that mentioned in 260.08, first paragraph, sentence 14, and 260.12, the last sentence.

Section 20. [260.145] [FAILURE TO OBEY SUMMONS OR SUBPOENA; CONTEMPT, ARREST] If any person personally served with summons or subpoena fails, without reasonable cause, to appear or bring the minor, he may be proceeded against for contempt of court or the court may issue a warrant for his arrest, or both. In any case when it appears to the court that the service will be ineffectual, or that the welfare of the minor requires that he be brought forthwith into the custody of the court, the court may issue a warrant for the minor.

Comment: The existing comparable provision is 260.08, first paragraph, 13th sentence. The proposal eliminates the court's authority to issue a warrant for the person when it merely appears to the court that the summons will be ineffectual, and adds contempt to the action the court may take.

Section 21. [260.151] [INVESTIGATION; PHYSICAL AND MENTAL EXAMINATION] Subdivision 1. Upon request of the court the county welfare board or probation officer shall investigate the personal and family history and environment of any minor coming within the jurisdiction of the court under section 13 and shall report its findings to the court. The court may order any minor coming within its jurisdiction to be examined by a duly qualified physician, psychiatrist, or psychologist appointed by the court, in order that the condition of the minor be given due consideration in the disposition of the case. Adoption investigations shall be conducted in accordance with the laws relating to adoptions.

Subd. 2. The court may proceed as described in subdivision 1 only after a petition has been filed and, in delinquency cases, after the child has appeared before the court or a court appointed referee and has been informed of the allegations contained in the petition. However, when the child denies before the court or court appointed referee that he is delinquent, the invest-

igation or examination shall not be conducted before a hearing has been held as provided in section 22.

Comment: The existing provisions comparable to the investigation are found in 260.08, the last paragraph, and the existing provisions comparable to the examinations are found in 260.10, second sentence.

The proposal differs from existing law, section 260.08, last paragraph, by providing that the probation officer may make the investigation, in addition to the county welfare board, and by eliminating the county attorney as a person who may request the investigation. A change from existing law, section 260.10, second sentence, is that there are no population limitations on these provisions relating to examination. (The court is authorized to employ medical staff under the provisions of section 7.)

Subdivision 2 is new and is intended to protect a child from unnecessary labeling in those few situations where the child before the court may not, in fact, be delinquent. This procedure is now the practice in Hennepin County, (see Report of the Juvenile Court and Probation Subcommittee, Committee on Juvenile Delinquency, January 1956, pages 13 and 14), and is recommended by the "Standards", page 50.

Section 22 [260.155] [HEARING] Subdivision 1. [GENERAL] Except for hearings arising under section 43, hearings on any matter shall be without a jury and may be conducted in an informal manner. Hearings may be continued or adjourned from time to time and, in the interim, the court may make such orders as it deems in the best interests of the minor in accordance with the provisions of sections 1 to 46. The court shall exclude the general public from these hearings and shall admit only those persons who, in the discretion of the court, have a direct interest in the case or in the work of the court. Adoption hearings shall be conducted in accordance with the provisions of laws relating to adoptions.

Subd. 2. [APPOINTMENT OF COUNSEL] The minor, parent, guardian or custodian have the right to counsel. If they desire counsel but are unable to employ it, the court shall appoint counsel to represent them. The court

may appoint counsel to represent the minor or his parents or guardian in any other case in which it feels that such an appointment is desirable.

Subd. 3. [COUNTY ATTORNEY] Except in adoption proceedings, the county attorney shall present the evidence upon request of the court.

Subd. 4. [GUARDIAN AD LITEM]. The court shall appoint a guardian ad litem to protect the interests of the minor when it appears, at any stage of the proceedings, that the minor is without a parent or guardian, or that his parent is a minor or incompetent, or that his parent or guardian is indifferent or hostile to the minor's interests. In any other case the court may appoint a guardian ad litem to protect the interests of the minor when the court feels that such an appointment is desirable. The court shall appoint the guardian ad litem on its own motion or in the manner provided for the appointment of a guardian ad litem in the district court.

Subd. 5. [WAIVING THE PRESENCE OF CHILD, PARENT] Except in delinquency proceedings, the court may waive the presence of the minor in court at any stage of the proceedings when it is in the best interests of the minor to do so. In a delinquency proceeding, after the child is found to be delinquent, the court may excuse the presence of the child from the hearing when it is in the best interests of the child to do so. In any proceeding the court may temporarily excuse the presence of the parent or guardian of a minor from the hearing when it is in the best interests of the minor to do so. The attorney or guardian ad litem, if any, has the right to continue to participate in proceedings during the absence of the minor, parent, or guardian.

Subd. 6. [RIGHTS OF THE PARTIES AT THE HEARING] The minor and his parent, guardian, or custodian are entitled to be heard, to present evidence material to the case, and to cross examine witnesses appearing at the hearing.

Comment: Existing comparable provisions are found in sections 260.02, 260.08, 260.11, 260.13, and 260.24, and are discussed in detail under each subdivision below.

Subdivision 1. The first sentence of proposed section 22, subdivision 1, prohibits a jury trial, except for prosecutions in district juvenile courts for the crime of contributing to the delinquency or neglect of a minor. Under the present law there is no provision for a jury trial in a probate-juvenile court. Except in the 4th judicial district, either the parties or the judge may demand a jury trial in proceedings in a district juvenile court under the provisions of 260.02, sentence 2. The Judges' Code, page 7, recommends no jury, as does the old Standard Juvenile Court act, and also the "Standards", page 56. Wisconsin, section 48.25 subd. 2, provides for a jury trial on demand. Professor Paulson's opinion, in his discussion of the question in 41 Minn. Law Review 547, at 559, is that a jury trial is not desirable. The view has generally been taken that statutes providing for the custody or commitment of delinquent or incorrigible children are not unconstitutional by reason of failure to provide for a jury trial, where the investigation is into the status and needs of the child, and the institution to which the child is committed is not of a penal character, (see 31 Am. Jur. Juvenile Courts, sec. 67; and Annotation in 43ALR2d 1129).

The first sentence of proposed section 22, subdivision 1, also provides that the hearing may be conducted "in an informal manner". Presently, section 260.08, paragraph 1, the last sentence, provides that the court "shall proceed to hear the case, and may proceed in a summary manner". The new language is intended to describe the informal atmosphere of juvenile proceedings. The new Standard Juvenile Court Act, section 17, and the "Standards", page 54, favor an "informal" hearing. Wisconsin, section 48.25, subd. 1, specifies as "formal or informal" a procedure as the judge desires. The Judges' Code, page 7, specifies an "informal hearing" conducted "with due regard for the rights of the child and his parents".

Sentence two of proposed section 22, subdivision 1, authorizes the court to continue the hearing from time to time, and to make such orders as it deems in the best interests of the minor in accordance with the provisions of the juvenile court act. The provisions of 260.11, third sentence, and 260.13, first sentence, presently provide the court with the same authority after making a determination of delinquency, neglect, or dependency. The Judges' Code, page 7, provides for the continuance of hearings, during which time the court may make such orders as it deems in the best interests of the child. The new Standard Juvenile Court Act and Wisconsin, section 48.25, subd. 1, provide merely that the hearing may be adjourned from time to time.

The third sentence of proposed subdivision 1, providing for confidential hearings, is a restatement of the first sentence of section 260.24. Wisconsin, section 48.25, subd. 1, the Judges' Code, page 7, the new

Standard Juvenile Court Act, section 17, and the "Standards", page 59, agree with the provision. (Confidentiality of records is treated in proposed section 23.)

The last sentence of subdivision 1 is intended to direct the juvenile court to follow the procedure of the adoption laws when conducting an adoption hearing.

Subdivision 2. The existing comparable provision is found in section 260.08, next to the last paragraph, second sentence. The proposal differs from existing law in that it gives the parent, guardian, or custodian, as well as the minor, the right to counsel, and requires the court to appoint counsel if they desire counsel but are unable to employ it. This provision is derived from the new Standard Juvenile Court Act, section 16(2). The court is also empowered to appoint an attorney for the minor or his parents or guardian in any other situation in which it feels this is desirable. This provision gives the court authority to act where the parents or guardian fail to see the necessity of counsel in a situation where counsel is necessary to protect the minor's interests,(See Op. Atty. Gen., 268-H, April 1, 1958). Professor Paulson favors counsel for all juvenile offenders after the petition is filed, (see 41 Minn. Law Review 547, pages 568-573). The Judges' Code, page 7, preserves the existing language. Wisconsin, section 48.25, subd. 6, is similar to the Judges' Code.

Subdivision 3. The existing comparable provision if found in 260.08, next to the last paragraph, sentence 1. The proposal differs from existing law in that it requires the county attorney to "present the evidence" instead of "appear for the petitioner" in all counties, not just those over 150,000 population, when the court so requests. This is the procedure presently followed in Hennepin County, (see Report on Hennepin County Juvenile Court and Probation Services to Delinquent Children, 1956, page 17). Sol Rubin, counsel to the N.P.P.A. criticizes the present provision as bringing in the atmosphere of a prosecution, or at least an adversary aspect which should be avoided. However, there are situations where facts must be established and the court or its staff should not be required to be both judge and advocate. The need to have evidence presented by the county attorney was emphasized by the juvenile court judges in discussions at their annual institute. (See also Op. Atty. Gen., 121-B, June 9, 1948.)

Subdivision 4. This subdivision makes mandatory and elaborates upon the provision of 260.08, first paragraph, sentence 9, which states that "In any case the judge may appoint some suitable person to act in behalf of the child." The Judges' Code, page 6, recommends the appointment of a guardian ad litem when the child's parents are minors or incompetent. The Standards, page 55, recommend appointment of a guardian ad litem where the child is without a parent or guardian, or where they are hostile to his interests. Wisconsin, section 48.25, subd. 5, permits the court to appoint a guardian in any case in which it feels such an appointment is desirable. (The Minnesota Supreme

Court, in In Re Wretlind, 1948, 225 Minn. 554, 32 NW 2d 161, held that a probate court, because of failure to appoint a guardian ad litem and require service of process upon him had no jurisdiction to order the commitment of a twelve year old allegedly incompetent child to the state school for the feeble minded, nothwithstanding the personal appearance of the child's mother and stepfather, who, having filed the petition initiating the proceedings, were adversary parties, and notwithstanding the appearance of the county attorney.) The procedure followed in appointing a district court guardian ad litem is included to provide some uniformity throughout the state in the appointment of a guardian ad litem.

Subdivision 5. Proposed subdivision 5 is intended to state the circumstances under which a court may either excuse or waive the presence of the minor, his parents, or guardian. Section 260.08, first paragraph, second sentence and third from the last sentence, require the person having custody or control of the child to appear with the child. Various attorney general's opinions have interpreted these provisions to mean that the presence of the child is not specifically required at the hearing. (See Op's. Atty. Gen. 268-H, June 11, 1931, 268-B, Aug. 31, 1939, and No. 203, P. 360, 1952.) However, in all of these cases the children were infants. Dean Wigmore and Professor Paulson would not allow the presence of a child to be waived in a delinquency proceeding because they feel that the child cannot make a truly effective reply to evidence unless he knows what it is and who said it. (See Wigmore on Evidence, Vol. 5, 3 ed., sec. 1400 and Paulson, 41 Minn. Law Review 547, at 561.) The "Standards", page 58, are contrary to Wigmore and Paulson to the extent that they would allow waiver of the child from the hearing if his counsel is allowed to remain. The Judges' Code, page 7, permits temporary waiver of the child or his parents at any time, without mention of the presence of counsel. The new Standard Juvenile Court Act, section 17, and Wisconsin, section 48.25, subd. 1, permit the court to waive the presence of the child, only, at any stage of the proceedings. Proposed section 22, subdivision 5, is an attempt to steer a middle course here, by giving the court the authority, when it is in the best interests of the minor to do so, to waive the presence of the minor in court in any proceeding except delinquency proceedings. It is intended that the provision stating that the minor may be temporarily excused from a delinquency hearing after delinquency is determined will give the minor the right to be in court and confront witnesses, yet will authorize the court to excuse him temporarily during the disposition stage to talk to his parents or others about matters which might undermine the minor's confidence in his parents. When it is in the best interests of the minor to do so, the court may also temporarily excuse the parents from the hearing. This provision is intended to give the parent the right to be at the hearing, yet authorizes the court to excuse them for the purposes of conferring with the minor out of their presence. The last sentence of subdivision 5 is intended to assure the absent person of some sort of representation during his absence.

Subdivision 6. This provision is new. The idea is derived from Minnesota Statutes, section 572.12, clause (b) - the Uniform Arbitration Act, and Title 5 of the U.S. Code, section 1006 (c) - the Federal Administrative Procedure Act. The proposal is intended to outline the basic rights of the individuals involved in the hearing without codifying the rules of evidence, many of which are inappropriate to the setting and unnecessary in a case tried before a judge rather than a jury.

Section 23. [260.161] [RECORDS] Subdivision 1. The juvenile court judge shall keep a minute book in which he shall enter minutes of all proceedings of the court in each case, including findings, orders, decrees, and judgments, and any evidence which he feels it is necessary and proper to record. Juvenile court legal records shall be deposited in files and shall include the petition, summons, notice, clerk's certificate of mailing or publication, minutes of the court, findings, orders, decrees, judgments, and motions. The legal records maintained in this file shall be open at all times to the inspection of any minor to whom the records relate, and to his parent and guardian.

Subd. 2. Except as provided in this subdivision and in subdivision 1, none of the records of the juvenile court, including legal records, shall be open to public inspection or their contents disclosed except by order of the court. The records of juvenile probation officers and county home schools are records of the court for the purposes of this subdivision. This subdivision does not apply to proceedings under sections 42 and 43. The court shall maintain the confidentiality of adoption files and records in accordance with the provisions of laws relating to adoptions.

Subd. 3. Peace officers' records of children shall be kept separate from records of persons 18 years of age or older and shall not be open to public inspection or their contents disclosed to the public except by order

of the juvenile court. A peace officer shall not take fingerprints or photographs of a child taken into custody for any purpose, without the consent of the juvenile court. Any person violating any of the provisions of this subdivision shall be guilty of a misdemeanor.

Comment: The existing sections comparable to subdivision 1 are 260.03, sentence 4, and 260.06. The existing section comparable to subdivision 2 is 260.24, the last 3 sentences.

Subdivision 1. The proposals contained in subdivision 1 differ from the existing provisions in the following ways: (1) There is no population limitation in subdivision 1 as there is in 260.06. Subdivision 1 is intended to provide a uniform record keeping system for all of the state's juvenile courts, both probate and district. The district courts are required to keep "judgment books" under the provisions of section 485.07, and the district court of Ramsey County is instructed to keep a "juvenile record" by the provisions of 260.03, subdivision 1, sentence 4. The first sentence of subdivision 1 of this proposal is substantially a restatement of the first sentence of 260.06, which relates to records in the probate juvenile courts, adding "findings" to the entries required in the minute book. (2) Sentence 2 states that juvenile court legal records shall be preserved in a file, not in a record book as is suggested by the language of 260.06. This method of keeping records, coupled with an index, is approved by the Attorney General in an opinion dated March 25, 1930, (Op. Atty. Gen'l., 268-L), which was based upon an earlier but substantially similar version of 260.06. The "Standards", page 90, state that the legal records should include substantially what is included in subdivision 1, and specifically excepts the social history, page 91. The new Standard Juvenile Court Act, section 32, agrees. The Judges' Code, pages 3 and 7, provides for the keeping of records on "standard legal forms". Wisconsin, section 48.26, subd. 2, provides that juvenile court records shall be kept in books or files. (3) The last sentence of subdivision 1 gives the minor and his parent or guardian the right of access to the court's legal records, but not to the records of the probation officer or county home school, as is possible under existing law, (see comments to subdivision 2). (4) Subdivision 1 does not mention appeals, as does 260.06, because appeals are treated in section 45.

Subdivision 2.is substantially a rewording of 260.24, the last 3 sentences, except for the following changes. The stronger wording of the first sentence of subdivision 2 is derived from Wisconsin, section 48.26, subd. 2, sentence 2. The wording of the new Standard Juvenile Court Act, section 32, is essentially similar. However, it provides additionally that the court's "legal" records are open not only to the child or his parent or guardian, but to "parties having a legitimate

interest in the case, their duly authorized attorneys, and any institution or agency to which legal custody has been transferred." The court's "social" records are open only to the court and certain agencies, or upon court order. The "Standards", page 90, agree with this position. Professor Paulson states that casework reports, even in the disposition stage, should be available to the child's attorney upon request (41 Minn. Law Review 567). Existing Minnesota law, section 260.24, apparently gives a child, or his parent or guardian, the right to inspect the records of probation officers and county home schools. The other change made in subdivision 2 from 260.24 is the addition of the last sentence. Because the provisions relating to confidentiality in the adoption law are somewhat different than the proposed provisions, the inclusion of the last sentence is intended to avoid any conflict.

Subdivision 3. The provisions of this subdivision are new. Both the old Standard Juvenile Court Act, section 15, subd. 5 & 6, and section 28, and the Judges' Code, pages 3 and 5, forbid the taking of photographs and fingerprints of children without the consent of the judge, and require that peace officers' records of children be kept separate from adults and closed to public inspection. The "Standards", pages 49 and 50, agree. The new Standard Juvenile Court Act, however, does not contain these provisions. Wisconsin, section 48.26 (1), restricts access to peace officers' records relating to children, which must be kept separate from records of those 18 or over, but does not restrict the taking of fingerprints or photographs, at least not in their juvenile code.

[DETENTION]

Section 24. [260.165] [TAKING CHILD INTO CUSTODY] Subdivision 1. No child may be taken into immediate custody except:

(a) With an order issued by the court in accordance with the provisions of section 18, subdivision 5, or by a warrant issued in accordance with the provisions of section 20, or

(b) In accordance with the laws relating to arrests; or

(c) By a peace officer

(1) When it is reasonably believed that a child has run away from his parents, guardian, or custodian, or

(2) When a child is found in surroundings or conditions which endanger the child's health or welfare,

(d) By a peace officer or probation or parole officer when it is reasonably believed that the child has violated the terms of his probation, parole, or other field supervision.

Subd. 2. The taking of a child into custody under the provisions of this section shall not be considered an arrest.

Comment: The existing comparable section is 260.23 which reads: "Nothing in sections 260.01 to 260.34 shall be construed to forbid the arrest of any person with or without warrant as is now or hereafter may be provided by law or to forbid the issue of warrants by magistrates as so provided."

The provisions of proposed section 24 are intended to outline the circumstances in which a child may be taken into immediate custody. (Minnesota Statutes, Chapter 629, contains the law of Minnesota relating to arrests.)

In addition to authorizing the taking of a child into immediate custody under the laws relating to arrest, which was what 260.23 provided, subdivision 1 of this section incorporates in clause (a), the court's authority to take a child into immediate custody under the provisions of proposed section 18, subd. 5, and proposed section 20. Subdivision 1 (c) gives a peace officer the authority to take the child into immediate custody under the additional enumerated circumstances. Both provisions of subdivision 1 (c) are recommended by the new Standard Juvenile Court Act, and Wisconsin, section 48.28 (1), (c) & (e). The provisions of subdivision 1 (d) are new and are derived from Wisconsin, section 48.28 (1). Both the new and the old Standard Juvenile Court Acts, Wisconsin, sec. 48.28, and the Judges' Code, page 5, generally are more restrictive in their definition of the situations in which a child may be taken into immediate custody. However, Professor Paulson, in "Fairness to Juvenile Offenders", 41 Minn. Law Review 547, at 551 argues as follows:

> "The protection of children requires that police have broader powers to take juveniles into custody than to arrest adults. A policeman should be able to detain a child if he has reasonable grounds to believe that the child is delinquent. This proposal would extend a policeman's authority beyond the provisions of the Standard Juvenile Court Act which provides "any child found violating any law or ordinance, or whose surroundings are such as to endanger his welfare" may be taken into custody. If a policeman without a warrant is powerless unless he finds the child violating a law, the restriction is unrealistic. He may possess information short of personal knowledge of a law violation (indeed the knowledge may be an act not illegal according to the criminal law at all) which strongly supports a belief that a child is delinquent. In such cases, for the benefit of the

child, an officer should be able to act. If the youngster, after being taken into custody, is treated in accordance with the provisions of the Juvenile Court Acts, his rights are adequately protected."

Both the new and the old Standard Juvenile Court Acts, the Judges' Code, and Wisconsin provide, as in subdivision 2, that "taking into custody under this section shall not be considered an arrest".

Section 25. [260.171] [RELEASE OR DETENTION] Subdivision 1. When a child is taken into custody as provided in section 24, the parent, guardian, or custodian of the child shall be notified as soon as possible. Except where the immediate welfare of the child or the protection of the community require that the child be detained, the child shall be released to the custody of his parent, guardian, custodian, or other suitable person on the promise of such person to bring the child to the court, if necessary, at such time as the court may direct. If the person taking the child into custody believes it desirable he may request the parent, guardian, custodian, or other person designated by the court to sign a written promise to bring the child to court as provided above.

Subd. 2. If the child is not released as provided in subdivision 1, the person taking the child into custody shall notify the court as soon as possible of the detention of the child and the reasons for detention. The child may be detained in a place of detention specified in section 26 for not longer than 24 hours, excluding Saturdays, Sundays and holidays, after the taking into custody unless an order for detention, specifying the reason for detention, is signed by the judge or referee. No child may be held longer than 48 hours, excluding Saturdays, Sundays or holidays, after the taking into custody unless a petition has been filed and the judge or referee determines that the child shall remain in custody, or unless the court refers the matter to the prosecuting authority in accordance with the

provisions of section 16. The parent, guardian, or custodian of the child shall be notified of the place of detention as soon as possible.

Subd. 3. If continued detention is not ordered, the court or designated officer shall release the child in the manner provided in subdivision 1. The court may require the parent, guardian, custodian, or other person to whom the child is released to post such bail or bond as may be approved by the court which shall be forfeited to the court if the child does not appear as directed. The court may also release the minor on his own promise to appear in juvenile court.

Comment: The existing comparable provision is the last sentence of section 260.08, which states; "In all such proceedings, such child may be released into custody of the parent, guardian, or custodian". Prior to 1945 this provision read as follows:

> "Except as hereinafter in this act provided, whenever any officer takes a child into custody he may accept the promise of the parent, guardian or custodian to be responsible for the presence of the child in the court at the time fixed. Thereupon such child may be released in the custody of the parent, guardian, or custodian, or in the custody of a probation officer or other person designated by the court. If not so released, such child shall be taken immediately to a place of detention designated by the court, at the expense of the county, and the officer taking him shall immediately notify the court and shall file a petition when directed to do so by the court."

This provision was incorporated into the law by an act of the extra session of 1937 (Ex. 1937, ch. 79, s. 3). It was sponsored by the Probate Judges' Association to improve procedures involving juveniles, (see 22 Minnesota Law Review 251, note). The provision was repealed by an act of the 1945 session (Laws 1945, ch. 517, s. 3). No reason for the repeal is given in comments on current legislation in the Minnesota Law Review, (see 32 Minnesota Law Review 398).

The procedure outlined in proposed section 25 is substantially the same as the procedure outlined in the latest draft of the Standard Juvenile Court Act, with the following exceptions. The new Standard act requires the signed promise of the parent prior to release of the child to his parent. Proposed subdivision 1 would make this procedure permissive in Minnesota, which is the method used in Wisconsin, section 48.29 (1). The new Standard Act also requires the officer taking custody to state the reasons for his action in a report to the detention facility and requires both the officer and the detention facility to

notify the court of the child's detention. Wisconsin, section 48.29, is substantially similar to proposed section 25, with some procedural variations. The "Standards", page 45, recommend that a child should not be detained in a jail for longer than 24 hours, irrespective of Sundays or holidays, without the filing of a petition to bring him before the court.

Section 26. [260.175] [PLACE OF DETENTION] A child may be detained as provided in section 25, subdivision 2, in one of the following places:

(a) A detention home; or

(b) A licensed facility for foster care, in accordance with the laws relating to facilities for foster care; or

(c) A suitable place designated by the court if the place is not required to be licensed as a facility for foster care or if no licensed facility for foster care is available; or

(d) A room entirely separate from adults in a jail, lockup, police station, or other facility for the detention of adults. A child may be detained in such a facility only if he is alleged to be delinquent or to have violated the terms of his probation, parole, or other field supervision and if the child's habits, conduct, or condition constitute a menace to himself to the extent that he cannot be released or cannot be detained in a place described in clauses (a), (b), or (c).

Comment: This section is new to the juvenile court act. Its provisions are intended to specify the places in which a child may be detained. It is based, in part, upon existing Minnesota law relating to facilities available for the detention of children.

The provisions of clause (a) and (b) are based upon Minnesota Statutes section 257.081, subd. 4, which defines "facility for foster care" and includes "detention homes" in the definition of a facility for foster care. The commissioner of public welfare has the authority to license these facilities under Minnesota Statutes, section 257.101. These facilities provide substitute parental care for children under the age of 16 or for those over 16 if mentally retarded and in need of the

care given to children under 16 (Minnesota Statutes, section 257.081, subd's. 4 and 6).

The provisions of clause (c) are derived from the second sentence of Minnesota Statutes, section 636.07, which will be amended by section 55 of this proposed bill. The provisions of clause (c) are recommended by the "Standards", at pages 37 and 38, the old Standard Juvenile Court Act, section 16, the proposed new Standard Juvenile Court Act, section 15, and the Judges' Code, page 5. Clause (c) is intended to provide the court with the authority to place a child in a home, instead of a jail, in a situation where no detention home or facility for foster care is available and where the child should not be put in a jail.

Clause (d) authorizes the detention of a child in an adult lockup under certain stated conditions. The provisions of clause (d) agree substantially with the recommendations of the "Standards", page 46. The old Standard Juvenile Court Act, section 15 (3), and the new Standard Juvenile Court Act, section 15, are similar to clause (d), except that they contain no statement of the conditions under which a child may be jailed. Wisconsin, section 48.30 (d), and the Judges' Code, page 5, state the conditions under which a child may be jailed. None of the above provide a minimum age limit for the jailing of children, as is established in existing section 636.07.

Other existing statutes relating to the jailing of children and minors are section 242.15, which gives the Youth Conservation Commission the authority to disapprove jails which might be used to confine a convicted offender under age 21 or a child found to be delinquent by a juvenile court; section 256.02, which authorizes the commissioner of public welfare to investigate prisons and jails and examine plans for new jails and lockups, and have advisory supervision over them; and section 641.14, which requires the sheriff or his deputy to keep those under age 16 separate from other prisoners in a jail.

[DISPOSITIONS]

Section 27. [260.181] [GENERAL PROVISIONS] Subdivision 1. [DISMISSAL OF PETITION] Whenever the court finds that the minor is not within the jurisdiction of the court or that the facts alleged in the petition have not been proved, it shall dismiss the petition.

Subd. 2. [CONSIDERATION OF REPORTS] Before making a disposition in a case, or terminating parental rights, or appointing a guardian for a child the court may consider any report or recommendation made by the

county welfare board, probation officer, or licensed child placing agency, or any other information deemed material by the court.

Subd. 3. [PROTECTION OF RELIGIOUS AFFILIATION] The court, in transferring legal custody of any child or appointing a guardian for him under the laws relating to juvenile courts, shall place him so far as it deems practicable in the legal custody or guardianship of some individual holding the same religious belief as the parents of the child, or with some association which is controlled by persons of like religious faith with the parents.

Subd. 4. [TERMINATION OF JURISDICTION] The court may dismiss the petition or otherwise terminate its jurisdiction at any time when it feels it is in the best interests of the minor to do so. Unless otherwise terminated by the court, the jurisdiction of the court terminates when the individual is no longer a minor.

Comment: There is no existing provision comparable to subdivision 1. The existing provisions comparable to subdivisions 2, 3, and 4 are found in sections 260.11, the sixth sentence; 260.20; and 260.02, the last sentence, respectively.

Subdivision 1. There is no existing provision comparable to subdivision 1. The purpose of the subdivision is to make clear to the court its duty not to interfere where it has no authority to do so. The proposal is the same as Wisconsin's Code, section 48.33.

Subd. 2. The existing comparable provision is found in section 260.11, the sixth sentence, which reads "Before making an order of final commitment to the commissioner of public welfare, provided by this section, the court shall consider such evidence, report, or recommendation as the county welfare board may make concerning the case". Proposed subdivision 2 differs from the existing law in the following ways. First, the proposal applies to any step taken by the court, not just "final commitment". Second, because of this first change the committee felt that the proposal should be permissive not mandatory, as it is now, to avoid having a disposition fail because this procedural step has not been taken. Third, the word "evidence", is not used because it was decided that the word has technical meanings undersirable to the purpose of the section. Fourth, the court is authorized to consider the report

of a probation officer, licensed child placing agency, or other material information, as well as the report of the county welfare board.

Subdivision 3. The existing comparable provision is section 260.20. The proposal is the same as existing law except that the language describing the legal relationship existing between child and adult is changed to conform with proposed definitions, and the reference to juvenile court laws is not restricted to particular sections, to avoid problems arising from subsequent amendments and additions. The new Standard Juvenile Court Act, section 23, the old Standard Juvenile Court Act, section 19, and the Judges' Code, page 11, contains similar provisions. Wisconsin's Code does not contain such a provision.

Subdivision 4. The existing comparable provision is found in section 260.02, the last sentence, which, in reworded form is the last sentence of the proposal. The first sentence is derived from the new Standard Juvenile Court Act, section 18, (4) a, except that the new Standard Juvenile Court Act adds "the best interests of the public" as a criterion for the termination of jurisdiction.

Section 28. [260.185] [DISPOSITIONS; DELINQUENT CHILD] Subdivision 1. If the court finds that the child is delinquent, it shall enter an order making any of the following dispositions of the case which are deemed necessary to the rehabilitation of the child:

(a) Counsel the child or his parents, guardian, or custodian;

(b) Place the child under the supervision of a probation officer or other suitable person in his own home under conditions prescribed by the court including reasonable rules for his conduct and the conduct of his parents, guardian, or custodian, designed for the physical, mental, and moral well-being and behavior of the child;

(c) Subject to the supervision of the court, transfer legal custody of the child to one of the following:

(1) A child placing agency; or

(2) The county welfare board; or

(3) A reputable individual of good moral character; or

(4) A county home school, if the county maintains a home school or enters into an agreement with a county home school;

(d) Transfer legal custody by commitment to the youth conservation commission;

(e) If the child is found to have violated a state or local law or ordinance which has resulted in damage to the property of another, the court may order the child to make reasonable restitution for such damage;

(f) If the child is in need of special treatment and care for his physical or mental health, the court may order the child's parent, guardian, or custodian to provide it. If the parent, guardian, or custodian fails to provide this treatment or care, the court may order it provided.

Subd. 2. Except when legal custody is transferred under the provisions of subdivision 1, clause (d), the court may, within 90 days, expunge the adjudication of delinquency.

Subd. 3. When it is in the best interests of the child to do so and when child has admitted the allegations contained in the petition before the judge or referee, but before a finding of delinquency has been entered, the court may continue the case for a period not to exceed 90 days. During this continuance the court may enter an order in accordance with the provisions of subdivision 1, clauses (a) or (b) or enter an order to hold the child in detention for a period not to exceed 15 days on any one order for the purpose of completing any consideration, or any investigation or

examination ordered in accordance with the provisions of section 21.

Subd. 4. All orders for supervision under subdivision 1 (b) shall be for an indeterminate period unless otherwise specified by the court, and shall be reviewed by the court at least annually. All orders under subdivision 1 (c) shall be for a specified length of time set by the court. However, before an order has expired and upon the court's own motion or that of any interested party, the court has continuing jurisdiction to renew the order or, after notice to the parties and a hearing, make some other disposition of the case, until the individual is no longer a minor. Any person to whom legal custody is transferred shall report to the court in writing at such periods as the court may direct.

Subd. 5. When the court transfers legal custody of a child to any licensed child placing agency, county home school, county welfare board, or the youth conservation commission, it shall transmit with the order transferring legal custody a copy of its findings and a summary of its information concerning the child.

Comment: The existing comparable provisions are found in sections 260.10, 260.13, 260.14, 260.16, and 260.18. Exact references are found under the discussion of each subdivision and clause, below.

The outline of this proposal follows the outline of Wisconsin, section 48.34. The important changes from existing Minnesota law are as follows: First, the court does not appoint a guardian for a child found to be delinquent; second, the addition of a provision expressly authorizing the court to require the child to make restitution for the damage he has done; and third, the addition of a provision expressly authorizing the court to order specialized treatment for the child. (The appointment of a guardian will follow the termination of parental rights.)

Existing Minnesota law may be compared to the proposals of section 28 as follows:

Subdivision 1. Clause (a). The provisions of this clause are not expressly stated in existing Minnesota law. The language of this clause is that of Wisconsin, section 48.34 (1) a.

Clause (b). Existing comparable provisions are found in section 260.13, the first part of the first sentence, and the first part of the second sentence. The proposal differs from the first part of the first sentence of 260.13 in that the proposal requires a finding of delinquency before this disposition can be made. (Subdivision 3 of proposed section 28 permits the court to make dispositions found in subdivision 1, clauses (a) or (b), without a recorded finding of delinquency.) The proposal also differs from existing law in that it authorizes the court to place the child under the supervision of not only a probation officer but also a "suitable person". The juvenile judges feel this provision is essential in counties where probation service is unavailable or limited. A further change from existing law is the inclusion of language giving the court authority to set conditions for the conduct of the child's parents. Wisconsin's Code, section 48.34 (1) b, and the old Standard Juvenile Court act, section 18 (4), contain similar provisions. (In the case of Young v. McLaughlin, 126 Colo. 188, 247 P 2nd 813, 31 Am. Jur., Juvenile Courts, 43, the court, in essence, made the following statement. When a child is adjudicated as dependent he may be committed to the state home or to any other custodian as may be determined by the court; but if he is assigned to a parent, the parent acts not as such, but as a representative of the state, and is subject to visitation or inspection by state authorities; and the court may require reports as to the care and training of the child as well as the ability to care for it, and may impose conditions for the care of the child or may change its guardianship if at any time it is made to appear that the present guardianship is detrimental to the child or unsatisfactory to the court.)

Clause (c). Item 1 restates existing law under section 260.13, sentence 2, where the court may commit a child to an "institution established by law or incorporated under the laws of this state that may care for delinquent children." Item 2 is new for the three large counties; the probate juvenile courts may have this authority under the provisions of the first sentence of section 260.16; the welfare boards have authority to handle delinquents under the provisions of 393.07, subdivision 1. Item 3 restates existing law found in section 260.13, sentence one, where the court may place the child in a "suitable family home". The "Standards", page 65, recommends giving the court authority to place

a delinquent child with an individual and the new Standard Juvenile Court act, section 18 (1), contains such a provision. Item 4 restates existing law found in section 260.14, sentence 5, but adds authority for a county not having a county home school to enter into an agreement with a county having one.

Clause (d). This clause restates existing law found in section 260.13, sentence 2.

Clause (e). There is no existing comparable provision in the juvenile court act. The proposal is derived from Wisconsin's Code, section 48.34 (1) e. The Judges' Code, page 8, contains a similar provision. The "Standards", and the Standard Juvenile Court Acts, old and new, do not mention such a disposition. Wisconsin qualifies its provisions by stating that the damage must be "intentional".

Clause (f). The closest existing comparable provision is found in section 260.10, where authority to order treatment is not clear. The proposal of clause (f) is derived from Wisconsin's Code, section 48.34 (1) f. The "Standards", page 64-66, favor such a provision. The old Standard Juvenile Court Act, section 18, (3) and (4), and the new Standard Juvenile Court Act, section 18 (4) b, contain such provisions. Costs of treatment, care, and examination are considered in section 41.

Subdivision 2. This subdivision is new. It is intended that this subdivision may be used in those cases in which the court desires to have no record of the child. This procedure will protect the child more adequately than he is presently protected under "informal" handling by the court.

Subdivision 3. The existing comparable provision is found in section 260.13, the first part of sentence one, where the court is authorized to continue the hearing from time to time without, apparently, any adjudication of delinquency, and place the child on probation. The proposals of this clause also attempt to provide "informal" handling, that is, handling with a minimum of court record, while safeguarding the rights of the child. The "Standards", pages 43 and 44, and the new Standard Juvenile Court Act, section 18 (1) a, approve of this "informal" probation after a petition and hearing. The Judges' Code, Wisconsin, and the old Standard Juvenile Court Acts provide for this informal handling at an earlier stage, generally the petition stage.

Subdivision 4. Existing comparable provisions are found in section

260.13, sentence one and four, and section 260.14, sentence four. The proposals of this subdivision are derived from Wisconsin's Code, section 48.34, subdivision 3. The time limits, except for the age limit of 21, are new and are intended to eliminate court control when it is no longer necessary. (Y.C.C. control of a delinquent ends at age 21 under section 242.26.) The requirement that the child be returned to court for a new disposition corresponds to the old requirement of section 260.13, sentence one, where the child is "subject to be returned to the court for further or other proceedings whenever .... necessary". Requiring a hearing for a new disposition also is intended to afford some protection for the child who has failed as a probationer and who will be referred for prosecution. The new Standard Juvenile Court Act, section 18 (a) contains similar provisions. This subdivision is not intended to encompass the situation where new evidence has been discovered, a situation covered in section 44.

Subdivision 5. The existing comparable provision is section 260.18. The proposal differs from existing law in that it requires the court to send a summary of its information concerning the child, and adds. child placing agency, county welfare board, and county home school to those receiving this information. The new Standard Juvenile Court Act, section 18 (5) contains such a provision. (The commissioner of public welfare receives this information under the provisions of the proposed section dealing with neglect dispositions.)

Section 29. [260.191] [DISPOSITIONS; NEGLECTED OR DEPENDENT CHILD]

Subdivision 1. If the court finds that the child is neglected or dependent, it shall enter an order making any of the following dispositions of the case:

(a) Place the child under the protective supervision of the county welfare board or child placing agency in his own home under conditions prescribed by the court directed to the correction of the neglect or dependency of the child;

(b) Transfer legal custody to one of the following:

(1) A child placing agency; or

(2) The county welfare board;

(c) If the child is in need of special treatment and care for his physical or mental health, the court may order the child's parent, guardian, or custodian to provide it. If the parent,

guardian, or custodian fails to provide this treatment or care, the court may order it provided.

Subd. 2. All orders under this section shall be for a specified length of time set by the court not to exceed one year. However, before the order has expired and upon its own motion or that of any interested party, the court has continuing jurisdiction to renew the order or, after notice to the parties and a hearing, make some other disposition of the case, until the individual is no longer a minor. Any person to whom legal custody is transferred shall report to the court in writing at such periods as the court may direct.

Subd. 3. When the court transfers legal custody of a child to any licensed child placing agency, or the county welfare board, it shall transmit with the order transferring legal custody a copy of its findings and a summary of its information concerning the child.

Comment: The existing comparable provisions are found in sections 260.11, 260.12, and 260.18. Exact references are found under the discussion of each subdivision and clause, below.

The outline of this proposal follows the outline of Wisconsin, section 48.35. The important change from existing Minnesota law is that the court does not appoint a guardian for a child who is neglected or dependent. (The appointment of a guardian will follow the termination of parental rights.)

Existing Minnesota law may be compared to the proposals of section 29 as follows:

Subdivision 1. Clause (a). The existing comparable provision is found in section 260.11, sentence two. The proposal differs from existing law in that it specifies the county welfare board or child placing agency as the supervising authority, and elaborates on the purposes of this supervision. The new Standard Juvenile Court Act, section 2 (k), contains similar language, as does the discussion in the "Standards", page 19.

Clause (b). The existing comparable provisions are

found in section 260.11, sentence one, where the court may "commit the child to the care of the commissioner, or to ... some reputable citizen of good moral character, or to ... some (accredited) association", and in sentence three where the court may place the child in the "temporary care or custody of the county welfare board or an (accredited) association". The proposal differs from the existing law in that the transfer of legal custody does not terminate parental rights, which will be a separate proceeding, as does a "final commitment" under the present law. (However, the present law, 260.12, sentence one, apparently allows the court to order something less than a final commitment to the commissioner, association, or individual because of the language stating that these persons become the guardians of the ward "unless otherwise ordered"). The proposal also differs from existing law in that the court cannot transfer legal custody to the commissioner, because parental rights are not terminated at this stage of proceedings and the commissioner cannot therefore be appointed guardian. If special care is available only from the commissioner, the child may receive this care through the grant of legal custody to the commissioner's agent, the county welfare board. A final change is that the court may not transfer legal custody to an individual, because the child placing agencies or the county welfare boards are specialists in placing neglected or dependent children.

Clause (c). The existing comparable provision is found in section 260.11, sentence four. The proposal differs from the existing law in that it does not require the court to authorize the county welfare board to provide this treatment, and it does not deal with expenses, which are treated in section 41.

Subdivision 2. The existing comparable time limitation is found in section 260.11, sentence three, where the court may place the child in "temporary care" of the welfare board or association. The proposal is derived from Wisconsin's Code, section 48.35, subdivision 2. The requirement that the child be returned to court for a new disposition corresponds with the present language providing for a continuance of the hearing from time to time. The new Standard Juvenile Court Act, section 18 (a) contains similar provisions. This subdivision is not intended to encompass the situation where new evidence has been discovered, a situation covered in section 44.

Subdivision 3. The existing comparable provisions are found in section 260.11, sentence seven, and section 260.18. The proposal differs from 260.18 in that it requires the court to send a summary of its informa-

tion concerning the child, and adds child placing agency and county welfare board to those receiving this information. The new Standard Juvenile Court Act contains such a provision in section 18 (5).

NOTE: Under the provisions of this proposal, a dependent or neglected child cannot be placed in a county home school, as is possible under 260.14, or an industrial home school, as is possible under 636.29 (St. Louis County). The reason for this is that the county home schools primarily house delinquents and the industrial home schools primarily house women convicted of crimes. Mixing of neglected children with delinquents is condemned by the "Standards", page 66.

Section 30. [260.195] [CHILDREN OF DIVORCED OR SEPARATED PARENTS, ANNULLED MARRIAGES; TEMPORARY ORDERS; MODIFICATION OF DISTRICT COURT ORDERS] During the pendency of proceedings under section 13, subdivision 2 (e), and on application of the husband or the wife, the juvenile court may make temporary orders concerning the care, custody, and maintenance of minors, and may make such other temporary orders relating to the persons or property of these minors as it considers necessary and proper. Until the juvenile court makes an order or determination under the provisions of this section or section 31 or 32, the orders of the district court relating to the care, custody, and maintenance of minors, made pursuant to the laws relating to annulment of marriage, divorce, or separation, are in effect.

Comment: This section is new. It is intended to authorize the juvenile court to take temporary action in regard to children whose parents are divorced or separated, or whose parents' marriage is annulled, or to modify prior orders of a district court. The language of the first sentence of this section is derived from section 518.16, which deals with temporary orders of a district court during the pendency of a divorce, separation, or annulment proceeding. The last sentence of this section is intended to keep the orders of the district court in effect until the juvenile court takes action.

Section 31. Minnesota Statutes 1957, section 518.17, is amended to read:

~~518.17~~. 260.201. [CHILDREN OF DIVORCED OR SEPARATED PARENTS, ANNULLED MARRIAGES; PERMANENT ORDERS] ~~Upon adjudging~~ After a court has adjudged the

nullity of a marriage, or a divorce or separation, the juvenile court may make such ~~further~~ order as it deems just and proper concerning the care, custody, and maintenance of the minor children of the parties and may determine with ~~which of the parents they, or any of them, shall remain, having due regard to the age and sex of such children~~ whom they shall remain.

Comment: This section is new to the juvenile court act and amends and renumbers section 518.17, which presently relates to district court orders concerning permanent custody. The changes from section 518.17 are as follows. The language of section 518.17 relating to the court's consideration of the age and sex of the children is omitted to give the juvenile court a free hand in seeking the best solution of the problem of the custody of the child. Another change from section 518.17 is found in the wording of the last line of the section, relating to the persons getting custody. Under existing wording there may be some question of the court's authority to place a child in the custody of someone other than a parent.

Section 32. Minnesota Statutes 1957, section 518.18, is amended to read:

~~518.18~~ 260.205. [CHILDREN OF DIVORCED OR SEPARATED PARENTS, ANNULLED MARRIAGES; MODIFICATION OF PERMANENT ORDERS] The juvenile court may afterward, from time to time, on the petition of either parent, revise and alter such order concerning the care, custody, and maintenance of the children, or any of them, and make such new order concerning them, as the circumstances of the parents and the benefit of the children shall require.

Comment: This section is new to the juvenile court act. It renumbers and amends section 518.18 of the divorce law. The only change is the designation of the court by the addition of the word "juvenile" before the word "court".

Section 33. [260.211] [EFFECT OF JUVENILE COURT PROCEEDINGS] Subdivision 1. No adjudication upon the status of any child in the jurisdiction of the juvenile court shall operate to impose any of the civil disabilities imposed by conviction, nor shall any child be deemed a criminal

by reason of this adjudication, nor shall this adjudication be deemed a conviction of crime. The disposition of the child or any evidence given by the child in the juvenile court shall not be admissible as evidence against the child in any case or proceeding in any other court, nor shall the disposition or evidence disqualify a child in any future civil service examination, appointment, or application.

Subd. 2. Nothing contained in this section shall be construed to relate to subsequent proceedings in juvenile court, nor shall preclude the juvenile court, under circumstances other than those specifically prohibited in subdivision 1, from disclosing information to qualified persons if the court considers such disclosure to be in the best interests of the child or of the administration of justice.

Comment: This proposal elaborates upon existing section 260.19 and that portion of section 260.21 which reads "The adjudication of a juvenile court that a child is delinquent shall in no case be deemed a conviction of a crime".

The language of subdivision 1 is substantially the same as that of the new Standard Juvenile Court Act, section 34. Wisconsin's Codes, section 48.38, subdivision 1, is the same. The Judges' Code, page 10, is substantially similar.

The provisions of subdivision 2 which authorize the court to make limited disclosures is derived from Wisconsin's Code, section 48.38, subdivision 2. The proposition is supported by the "Standards", page 90 (citing Wigmore). Testimony given in a juvenile court case may be necessary to attack the credibility of a child as a witness, for example, in situations where a female child has accused an adult of a sex offense.

Section 34. [260.215] [JUVENILE COURT DISPOSITION BARS CRIMINAL PROCEEDING] Subdivision 1. A violation of a state or local law or ordinance by a child before becoming 18 years of age is not a crime unless the juvenile court refers the matter to the appropriate prosecuting authority

in accordance with the provisions of section 16.

Subd. 2. Except for matters referred to the prosecuting authority under the provisions of section 16, any peace officer knowingly bringing charges against a child in a court other than a juvenile court for violating a state or local law or ordinance is guilty of a misdemeanor. This subdivision does not apply to complaints brought for the purposes of extradition.

Comment: This section is new. Subdivision 1 is based upon Wisconsin's Code, section 48.39. The new Standard Act, section 34, and the Judges' Code, page 10, contain similar provisions. Subdivision 1 of this proposed section differs from subdivision 1 of the preceeding proposed section in that the former relates primarily to the violation while the latter relates primarily to the status of the child. The provisions of subdivision 1 are intended to eliminate the jurisdictional problems arising from the district court's original jurisdiction over all criminal matters, (Minn. Const. Art. 6, Sec. 5). The legislature has the authority to define what is or is not a crime. If the legislature adopts the provisions of subdivision 1, it will say, in effect, that a violation of a state or local law or ordinance by a child, before his 18th birthday, is not a crime unless the juvenile court refers the matter to the appropriate prosecuting authority. This, hopefully, would answer the unanswered question of the Pett case, _____ Minn. _____, May 16, 1958. In that opinion the court made the following statement: "As to whether, under 260.21, a juvenile court is empowered in its discretion to refuse to order prosecution of a juvenile for the commission of a felony as serious as murder, notwithstanding the provisions of Minn. Const. Art. 6, section 5, we need not now consider. When such a crime has been committed by a juvenile who is thereafter subjected to the jurisdiction of the juvenile court, we doubt that the latter would ever exercise its discretion under section 260.21 to refuse to order his prosecution therefor in district court. If such an event should take place the validity of the proceedings giving it effect may then be determined."

Subdivision 2 is new and is intended to correct the situation where peace officers knowingly bring children into criminal court instead of juvenile court. The qualification relating to indictments is necessary to protect persons involved in indictment proceedings brought for the purpose of extraditing a child from another state.

[TERMINATION OF PARENTAL RIGHTS]

Section 35. [260.221] [GROUNDS FOR TERMINATION OF PARENTAL RIGHTS]

The juvenile court may, upon petition, terminate all rights of parents to a

child in the following cases:

(a) With the written consent of parents who for good cause desire to terminate their parental rights; or

(b) If it finds that one or more of the following conditions exist:

(1) That the parents have abandoned the child; or

(2) That the parents have substantially and continuously or repeatedly refused to give the child necessary parental care and protection; or

(3) That, although the parents are financially able, they have substantially and continuously neglected to provide the child with necessary subsistence, education, or other care necessary for his physical or mental health or morals or have neglected to pay for such subsistence, education or other care when legal custody is lodged with others; or

(4) That the parents are unfit by reason of debauchery, intoxication or habitual use of narcotic drugs, or repeated lewd and lascivious behavior, or other conduct found by the court to be likely to be detrimental to the physical or mental health or morals of the child; or

(5) That following upon a determination of neglect or dependency, reasonable efforts, under the direction of the court, have failed to correct the conditions leading to the determination.

Comment: In essence the provisions of this section are intended to state the grounds for which the court may terminate a parent's rights to a child. This proceeding may be brought initially, without a

previous finding of dependency or neglect, on grounds described in clause (a) or clause (b), items 1 through 4. The proceeding may also be brought after a finding of neglect or dependency under clause (b), item 5. The comparable procedure found in existing law is the "final commitment" procedure found in sections 260.11 and 260.12, a proceeding based upon the finding of neglect or dependency, which are presently defined in section 260.01.

The provisions of proposed section 35, clause (a) and clause (b), items 1 through 4, are derived from and are nearly identical to Wisconsin's Code, section 48.40, subdivision 1 and subdivision 2 (a through d). With the exception of clause (a) and clause (b), items 1 and 5, the provisions of proposed section 35 state situations of neglect in a stronger manner than stated in the definition of neglect. The stronger statement is necessary to prevent abuse of the procedure of terminating parental rights without a prior neglect adjudication. Item 5 of clause (b) is not included in the Wisconsin Code and is recommended to take care of those situations where efforts to correct the neglect or dependency under court direction have failed.

The "Standards" discuss termination of parental rights at page 79. The old Standard Juvenile Court Act termination proceeding is set out in section 23. The new Standard Juvenile Court Act gives the juvenile court jurisdiction over the termination of parental rights in section 7 (4), but does not specify the procedure to be followed.

Section 36. [260.225] [VENUE] Venue for proceedings for the termination of parental rights is either the county where the child resides or is found. However, if a court has made an order under the provisions of sections 28 or 29, and the order is in force at the time a petition for termination of parental rights is filed, the court making the order shall hear the termination of parental rights proceeding unless it transfers the proceeding in the manner provided in section 15, subdivision 2.

Comment: As discussed under the proposed section relating to venue, section 15, the existing comparable venue provisions are found in 260.02, 260.07, 260.08 (first sentence) and 260.22, subdivision 2. As previously discussed, venue under existing law is the same as that stated above in proposed section 36. Proposed section 36 is intended to complement proposed section 15, (venue), by providing that the court which heard the delinquency, dependency, or neglect proceedings involving these same children, whose orders are still in effect, shall hear the termination proceeding, unless the court transfers the case as provided in section 15, subdivision 2.

Section 37. [260.231] [PROCEDURES IN TERMINATING PARENTAL RIGHTS] Subdivision 1. Any reputable person, including but not limited to any agent of the commissioner of public welfare, having knowledge of circumstances which indicate that the rights of a parent to his child should be terminated, may petition the juvenile court in the manner provided in section 17, subdivisions 2 and 3.

Subd. 2. The termination of parental rights under the provisions of section 35 shall be made only after a hearing before the court, in the manner provided in section 22.

Subd. 3. The court shall have notice of the time, place, and purpose of the hearing served on the parents in the manner provided in sections 18 and 19, except that personal service shall be made at least 10 days before the day of the hearing; published notice shall be made for three weeks, the last publication to be at least 10 days before the day of the hearing; and notice sent by certified mail shall be mailed at least 20 days before the day of the hearing. A parent who consents to the termination of parental rights under the provisions of section 35, clause (a), may waive in writing the notice required by this subdivision; however, if the parent is a minor or incompetent his waiver shall be effective only if his guardian ad litem concurs in writing.

Subd. 4. No parental rights of a minor or incompetent parent may be terminated on consent of the parents under the provisions of section 35, clause (a), unless the guardian ad litem, in writing, joins in the written consent of the parent to the termination of his parental rights.

Comment: The existing comparable procedural provisions are found in sections 260.07 and 260.08 and are the procedures required in all dependency and neglect proceedings, which may result in "final commitment" and the termination of parental rights.

The proposals of this section embody proposals of previous procedural sections except as follows. In subdivision 3, the time requirements for service of notice are longer. The time limits are those of Wisconsin, section 48.42, subd. 1, except for the time limit for published notice, which is the same as existing Minnesota law, section 260.08, sentence 7. The last sentence of subdivision 3 and all of subdivision 4 are safeguards intended to protect the minor or incompetent parent.

Section 38. [260.235] [DISPOSITION; PARENTAL RIGHTS NOT TERMINATED; NEGLECT, DEPENDENCY] If, after a hearing, the court does not terminate parental rights but determines that conditions of neglect or dependency exist, the court may find the child neglected or dependent and may enter an order in accordance with the provisions of section 29.

Comment: The provisions of this section compare to existing dispositions, short of final commitment, available under the provisions of sections 260.11 and 260.13. It was felt that the court should be able to do something less than terminate parental rights when appropriate. A disposition under this section would arise in the situation where there has been no prior neglect or dependency proceeding.

Section 39. [260.241] [TERMINATION OF PARENTAL RIGHTS; GUARDIAN] Subdivision 1. If, after a hearing, the court finds that one or more of the conditions set out in section 35 exist, it may terminate parental rights. If the court terminates parental rights of both parents, or of the mother if the child is illegitimate, or of the only living parent, the court shall order guardianship and legal custody of the child transferred to:

(a) The commissioner of public welfare; or

(b) A licensed child placing agency; or

(c) A reputable individual of good moral character.

Subd. 2. The guardian appointed by a juvenile court under the provisions of this section has charge of the person of the child. This guardian has the right to make decisions affecting the person of the child, including but not limited to the right to consent to marriage, enlistment in the armed forces, to medical, surgical, or psychiatric treatment, and adoption. The guardian has legal custody of the child unless legal custody is given by the court to another person. If legal custody is given by the court to another person, the guardian has the right and responsibility of reasonable visitation, except as limited by court order. A juvenile court guardianship does not include the guardianship of any estate of the child.

Subd. 3. A certified copy of the findings and the order terminating parental rights, and a summary of the court's information concerning the child shall be furnished by the court to the commissioner or the agency to which guardianship is transferred. The orders shall be on a document separate from the findings. The court shall furnish the individual to whom guardianship is transferred a copy of the order terminating parental rights.

Comment: The existing comparable provisions are found in sections 260.11, sentence one; 260.12, sentence two; 260.16, sentence one; and 260.18. Existing provisions are discussed in detail under each subdivision, below.

The proposals of this section follow the form of the Wisconsin Code, section 48.43, except that the definition of the powers of a juvenile court guardian are placed here instead of the definition section. A further difference from Wisconsin law is that the proposals of this section do not authorize the court to terminate the parental rights of only one parent, a provision which probably has more bad features than good.

Subdivision 1. Except in clause (c), where reputable "individual" is used instead of reputable "citizen" the persons who may be appointed guardian under the provisions of this proposal are the same as those who may be appointed guardian under existing law after a final commit-

ment order in a dependency and neglect situation. (See sections 260.11, sentence one, and 260.12, sentence one.) Under the existing section 260.16, sentence one, the probate court may appoint as guardian of a delinquent child the commissioner of public welfare, an institution or association incorporated for the care of delinquent children, or any suitable city, county, or state institution. The proposals of this subdivision would allow a district juvenile court or a probate juvenile court to appoint any of the itemized persons to be guardian of the child after parental rights are terminated.

Subdivision 2. The existing comparable provision is found in 260.12, paragraph 1. Together with the proposed sections on dispositions, the proposed definition of "legal custody" attempts to more clearly define the legal relationships existing between children and adults. The rights of a guardian of the person appointed by a juvenile court as outlined in the proposed definition are derived basically from Wisconsin's Code, section 48.02 (9), which in turn is derived from the "Standards", pages 17 and 73. The next to the last sentence and modifications to the Wisconsin definition are derived from the new Standard Juvenile Court Act, section 2 (h). The last sentence of the definition is derived from existing Minnesota law, section 260.12, sentence 1.

Subdivision 3. The existing comparable provision is found in 260.18. The proposal differs from the existing law in that it applies to an agency and the individual appointed guardian, as well as to the commissioner. The provision also spells out the different procedures to be followed in each type of appointment.

Section 40. [260.245] [CHANGE OF GUARDIAN; TERMINATION OF GUARDIANSHIP.] Upon its own motion or upon petition of an interested party, the juvenile court having jurisdiction of the child may, after notice to the parties and a hearing, remove the guardian appointed by the juvenile court and appoint a new guardian in accordance with the provisions of section 39, subdivision 1, (a), (b), or (c). Any child 14 years of age or older who is not adopted but who is placed in a satisfactory foster home, may, with the consent of the foster parents, join with the guardian appointed by the juvenile court in a petition to the court having jurisdiction of the child to discharge the existing guardian and appoint the foster parents as guardians of the child. The authority of a guardian appointed by the juvenile court terminates when the individual under guardianship is no longer

a minor.

Comment: The existing comparable section is 260.37. The proposal differs from the existing section in the following ways. In addition to being a rewording, the proposal is also a rearrangement and elaboration upon 260.37. The proposal also differs from the existing section in that it specifies the procedure to be used in changing guardians and it applies to all juvenile court guardianships, not just guardianships in which the commissioner is the guardian. A final difference from existing law is the deletion of the second sentence of 260.37, dealing with return of a pauper to the county of his poor relief settlement. It was felt that this provision was inoperative because the jurisdiction of the juvenile court ceases at age 21 so that it could not initiate any action.

[COSTS AND EXPENSES]

Section 41. [260.251] [COSTS OF CARE] Subdivision 1. Except where parental rights are terminated, whenever legal custody of a child is transferred by the court to someone other than its parents, or whenever the child is placed by the court with someone other than its parents, or whenever a minor is given physical or mental examinations or treatment under order of the court, and no provision is otherwise made by law for payment for the care, examination, or treatment of the minor, these costs are a charge upon the welfare fund of the county in which proceedings are held upon certification of the judge of juvenile court. The court may inquire into the ability of the parents to support the minor and, after giving the parents a reasonable opportunity to be heard, may order the parents to pay, in the manner and to whom the court may direct, such sums as will cover in whole or in part the cost of care, examination, or treatment of the minor. If the parents fail to pay this sum without good reason, they may be proceeded against for contempt, or the court may inform the county attorney, who shall proceed against the parents to collect the unpaid sums, or both.

Subd. 2. [COURT EXPENSES] The following expenses are a charge upon

the county in which proceedings are held upon certification of the judge of juvenile court or upon such other authorization provided by law:

(a) The fees and mileage of witnesses, and the expenses and mileage of officers serving notices and subpoenas ordered by the court, as prescribed by law.

(b) The expenses for travel and board of the juvenile court judge when holding court in places other than the county seat.

(c) The expense of transporting a child to a place designated by a child placing agency for the care of the child if the court transfers legal custody to a child placing agency.

(d) The expense of transporting a minor to a place designated by the court.

(e) Reasonable compensation for an attorney appointed by the court to serve as counsel or guardian ad litem.

Subd. 3. [LEGAL SETTLEMENT] The county charged with the costs and expenses under subdivisions 1 and 2 may recover these costs and expenses from the county where the minor has legal settlement for poor relief purposes by filing verified claims which shall be payable as are other claims against the county. A detailed statement of the facts upon which the claim is based shall accompany the claim. If a dispute relating to poor relief settlement arises, the county welfare board of the county denying legal settlement shall send a detailed statement of the facts upon which the claim is denied together with a copy of the detailed statement of the facts upon which the claim is based to the commissioner of public welfare. The commissioner shall immediately investigate and determine the question of poor relief

settlement and shall certify his findings to the county welfare board of each county. The decision of the commissioner is final and shall be complied with unless, within 30 days thereafter, action is taken in district court as provided in Minnesota Statutes, sections 261.08 and 261.09.

Comment: Existing comparable provisions are as follows: Subdivision 1, 260.11, sentence 4, 260.25, and 260.29; Subdivision 2, 260.08, paragraph 2, sentence 3, 260.11, sentence 8, and 260.29; Subdivision 3, 260.30 and 260.31.

Subdivision 1. Existing section 260.29 puts the cost of care of delinquent, neglected or dependent children upon the county, in counties of under 50,000, when the child is in the custody of the court or during continuance. Proposed subdivision 1 differs from existing law in that there is no population limitation and in specifically designating the fund to be charged. The language used is that of the new Standard Juvenile Court Act, section 20. Existing section 260.11, sentence 4, authorizes the court, through the county welfare board, to order remedial care and treatment for neglected and dependent children at county expense. The proposals of this section differ from existing law in that no population limitation is specified, and the section applies to all cases of transfer of legal custody or placement of a child in a home other than its own. Existing section 260.25 gives courts in counties of over 40,000 population the authority to investigate the financial ability of parents and require them to pay support for their children if found to be delinquent, neglected or dependent. The proposal eliminates the population limitation and does not restrict the court's inquiry to support only. The provision authorizing the court to inform the county attorney to seek collection of this money is derived from the Judges' Code, page 7. The provisions of this subdivision follow closely the provisions of Wisconsin's Code, section 48.47, and the new Standard Juvenile Court Act, section 20. The latter act, however, places the responsibility on the parents in the first instance. While this approach is desirable it was felt that practical defects make it unworkable.

Subdivision 2. The expenses listed as a charge upon the county in proposed subdivision 2 are found presently in the following sections. Fees and mileage of witnesses and officers and travel expenses of the judge found in clauses (a) and (b) are presently found in 260.29. The proposal differs from existing law in that it applies to all counties, not just those under 50,000 population, and in making no mention of the mileage rate, which is covered in various places in the statute books. Mileage for witnesses, for example, is covered in section 357.22. Transportation of a child under the circumstances described in clause (c) is essentially the same as the existing law, 260.11, sentence 8. Clause (d) is new and is intended to cover

those situations not covered elsewhere in the law. Attorney's fees, clause (e), are found in 260.08, paragraph 2, sentence 3.

Subdivision 3. Existing sections 260.30 and 260.31 describe the procedure to be followed when a dispute arises as to legal settlement of a delinquent, neglected or dependent child. The proposal differs from existing law in the following ways: Legal settlement is not a basis for changing venue; the county welfare board and not the judge of juvenile court handles the claim; requiring a detailed statement of the facts to accompany the claim; and in specifying "poor relief settlement" as the kind of legal settlement required, which is the present interpretation of the law; Op. Atty. Gen'l., 268-H, July 15, 1957.

[JURISDICTION OVER PERSONS CONTRIBUTING TO THE DELINQUENCY OR NEGLECT OF CHILDREN]

Section 42. [260.255] [JURISDICTION OVER PERSONS CONTRIBUTING TO DELINQUENCY OR NEGLECT; COURT ORDERS] Subdivision 1. The juvenile court has jurisdiction over persons contributing to the delinquency or neglect of a child under the provisions of subdivisions 2 and 3.

Subd. 2. If in the hearing of a case of a child alleged to be delinquent or neglected it appears by a fair preponderance of the evidence that any person has violated the provisions of Minnesota Statutes, section 260.27, the court may make any of the following orders:

(a) Restrain the person from any further act or omission in violation of Minnesota Statutes, section 260.27; or

(b) Prohibit the person from associating or communicating in any manner with the child; or

(c) Provide for the maintenance or care of the child, if the person is responsible for such, and direct when, how, and where money for such maintenance or care shall be paid.

Subd. 3. Before making any order under subdivision 2 the court shall issue an order to show cause, either upon its own motion or upon a verified petition, specifying the charges made against the person and fixing the

time and place of the hearing. The order to show cause shall be served personally and shall be heard in the same manner as provided in other cases in the juvenile court.

Comment: The provisions of this section are new, and are intended to empower a court to make protective orders for the benefit of the child, rather than provide criminal prosecution for an offender. These proposals are derived from Wisconsin's Code, section 48.44 and 48.45, with some procedural changes and some limitations on the scope of the court's authority to make orders.

Section 43. [260.261] [JURISDICTION OF CERTAIN JUVENILE COURTS OVER OFFENSE OF CONTRIBUTING TO DELINQUENCY OR NEGLECT] In counties having a population of over 100,000 the juvenile court has jurisdiction of the offenses described in the Minnesota Statutes, section 260.27. Prosecutions hereunder shall be begun by complaint duly verified and filed in the juvenile court of the county. If the defendant is found guilty, the court may impose conditions upon him and, so long as he complies with these conditions to the satisfaction of the court, the sentence imposed may be suspended.

Comment: This section is the same as existing section 260.28 except that the population limitation is raised from 33,000 to 100,000 to harmonize with the population limitation applied throughout this act to matters relating to district juvenile courts. The district juvenile courts are the only juvenile courts having criminal jurisdiction under existing law.

[REHEARING AND APPEAL]

Section 44. [260.281] [NEW EVIDENCE] A child whose status has been adjudicated by a juvenile court, or his parent, guardian, custodian or spouse may, at any time within 90 days of the filing of the court's order, petition the court for a rehearing on the ground that new evidence has been discovered affecting the advisability of the court's original adjudication or disposition. Upon a showing that such evidence does exist the court shall order a new hearing and make such disposition of the case as the facts and

the best interests of the child warrant.

Comment: The existing comparable provision is the last sentence of section 260.11, which reads as follows: "The parent or attorney for any such child committed (as neglected or dependent) may petition the juvenile court which made the commitment for the discharge of the child."

The provisions of proposed section 44 are derived from Wisconsin's Code, section 48.46. The new Standard Juvenile Court Act, section 18 A, has a similar proceeding for modifying or revoking a decree. The "Standards", page 69, endorse the procedures of proposed section 44.

Section 45. [260.291] [APPEAL] Subdivision 1. An appeal may be taken to the supreme court by the aggrieved person from an order adjudging a child to be dependent, neglected, or delinquent, or from a final order affecting a substantial right of the aggrieved person. The appeal shall be taken within 30 days of the filing of the appealable order. The clerk of court shall notify the person having legal custody of the minor of the appeal. Failure to notify the person having legal custody of the minor shall not affect the jurisdiction of the appellate court. The order of the juvenile court shall stand, pending the determination of the appeal, but the supreme court may in its discretion and upon application stay the order.

Subd. 2. The appeal is taken in the manner in which appeals in civil actions are taken from the district court. The appeal may be taken upon

(a) The records of the juvenile court and a narrative statement of the facts certified by the judge; or

(b) A transcript of a stenographic record. A stenographic record may be taken at the original hearing at the expense of the requesting party, or upon order of the court, at the expense of the county.

Comment: The existing comparable provisions are found in 260.06.

The above proposal differs from existing law in that an appeal from a probate juvenile court is taken directly to the supreme court, instead of to the district court. (Direct appeal to the supreme court from a probate court inheritance tax decree is allowed under 525.74) Also, no jury trial is allowed on an appeal from the probate juvenile court. (See section 22, subdivision 1, and commentary for discussion of the right to jury in juvenile courts.) Another change from existing law is that an appeal may be taken from various orders of the juvenile court, not just an order appointing a guardian or an order of final commitment. Appeal from any order of the juvenile court is found in Wisconsin's Code, section 48.47; the Judges' Code, page 10; the old Standard Act, section 29; and the new Standard Act, section 33. The appeal may be taken upon the records of the juvenile court and narrative statement by the judge or upon a transcript of a stenographic record. The former method is the method used in an appeal taken directly to the supreme court from a probate court inheritance tax decision, section 525.74, and is the method recommended by the Judges' Code, page 10, and the new Standard Act, section 33. An appeal taken upon a transcript of a stenographic record is presently the method used in certain cases in those district juvenile courts utilizing a court reporter.

[CONTEMPT]

Section 46. [260.301] [CONTEMPT] Any person knowingly interfering with an order of the juvenile court is in comtempt of court.

Comment: The existing comparable section is 260.26. The proposal adds the word "knowingly" and simplifies the language of the section. This proposal is in addition to the general contempt provisions found in chapter 588 of Minnesota Statutes. (See also section 613.69).

[MISCELLANEOUS]

Section 47. Minnesota Statutes 1957, section 259.23, subdivision 1, is amended to read:

Subdivision 1. The ~~district~~ juvenile court shall have original jurisdiction in all adoption proceedings. The proper venue for an adoption proceeding shall be the county of the petitioner's residence.

Comment: This section of the adoption law is amended to make it conform with the proposed juvenile court act, which gives the juvenile courts jurisdiction over adoptions.

Section 48. Minnesota Statutes 1957, section 259.24, subdivision 1, is amended to read:

Subdivision 1. No child shall be adopted without the consent of his parents and his guardian, if there be one, except in the following instances:

(a) Consent shall not be required of the father of an illegitimate child.

(b) Consent shall not be required of a parent who has abandoned the child, or of a parent who has lost custody of the child through a divorce decree, and upon whom notice has been served as required by section 259.26.

(c) Consent shall not be required of a parent <u>whose parental rights to the child have been terminated by a juvenile court or</u> who has lost custody of a child through a final ~~judgment~~ <u>commitment</u> of the juvenile court or through a decree in a prior adoption proceeding.

(d) Consent shall not be required of a parent who has been adjudged insane or incompetent by a court of competent jurisdiction.

(e) If there be no parent or guardian qualified to consent to the adoption, the consent may be given by the commissioner.

(f) The director or agency having authority to place a child for adoption pursuant to section 259.25, subdivision 1, shall have the exclusive right to consent to the adoption of such child.

Comment: This amendment to the adoption law is necessary to make clear the distinctions between loss of custody of a child through a "final commitment" order under the present law and a "transfer of legal custody" under the proposed law. The former is equivalent to "termination of parental rights" in the proposed law. Both "final commitment" and "termination of parental rights" have the effect of placing the child in an adoptive status, while a "transfer of legal custody" does not.

Section 49. Minnesota Statutes 1957, section 259.26, subdivision 3, is amended to read:

Subd. 3. Where a child is adjudicated a dependent or neglected child and a court of competent jurisdiction has appointed a permanent guardian, or where a juvenile court has appointed a guardian after terminating parental rights, no notice of hearing need be given to the parents.

Comment: This amendment to the adoption law is necessary to make certain that no notice need be given to parents whose rights to their child have been terminated by a juvenile court under the procedures specified in the proposed juvenile court act.

Section 50. Minnesota Statutes 1957, section 259.27, is amended to read:

Upon the filing of a petition for adoption of a child the clerk of court shall immediately transmit a copy of the petition to the commissioner of public welfare. The commissioner shall verify the allegations of the petition, investigate the conditions and antecedents of the child for the purpose of ascertaining whether he is a proper subject for adoption, and make appropriate inquiry to ascertain whether the proposed foster home and the child are suited to each other. The report of the county welfare board submitted to the commissioner of public welfare bearing on the suitability of the proposed foster home and the child to each other shall be confidential, and the records of the county welfare board or the contents thereof shall not be disclosed either directly or indirectly to any person other than the commissioner of public welfare or a judge of the ~~district~~ court having jurisdiction of the matter. Within 90 days after the receipt of said copy of the petition the commissioner shall submit to the court a full report in writing with his recommendations as to the granting of the petition. If such report is not returned within the 90 days, without fault of petitioner,

the court may hear the petition upon giving the commissioner five days notice by mail of the time and place of the hearing. If such report disapproves of the adoption of the child, the commissioner may recommend that the court dismiss the petition. No petition shall be granted until the child shall have lived six months in the proposed home, subject to a right of visitation by the commissioner or an agency or their authorized representatives. Such investigation and period of residence may be waived by the court when the petition for adoption is submitted by a step-parent or when, upon good cause being shown, the court is satisfied that the proposed foster home and the child are suited to each other, but in either event at least ten days notice of the hearing shall be given to the ~~director~~ commissioner by registered mail. The reports of investigations shall be a part of the court files in the case, unless otherwise ordered by the court.

Comment: This amendment to the adoption law eliminates a reference to the district court, which will no longer have jurisdiction over adoptions, and changes the obsolete reference to "director" to "commissioner"

Section 51. Minnesota Statutes 1957, section 259.28 is amended to read:

Upon the hearing,

(a) if the court shall find that it is in the best interests of the child that the petition be granted, a decree of adoption shall be made and recorded in the office of the clerk of court, ordering that henceforth the child shall be the child of the petitioner. In the decree the court may change the name of the child if desired. After the decree is granted the clerk of the ~~district~~ juvenile court shall immediately mail a copy of the recorded decree to the commissioner of public welfare;

(b) if the court is not satisfied that the proposed adoption is in the best interests of the child, the court shall deny the petition, and

~~may~~ shall order the child returned to the custody of the person or agency legally vested with permanent custody or certify the case for appropriate action and disposition to the court having jurisdiction to determine the custody and guardianship of the child.

Comment: These amendments to the adoption law eliminate the reference to the district court in clause (a), and require the court to either return the child to the person or agency legally vested with custody or to the court having jurisdiction, when the adoption is denied in clause (b).

Section 52. Minnesota Statutes 1957, section 259.32, is amended to read:

Any order, judgment, or decree of ~~the district~~ a court pursuant to the provisions of sections 259.21 to 259.32 may be appealed to the supreme court by any person against whom any such order, judgment, or decree is made or who is affected thereby as are appeals from said court in other ~~civil~~ matters.

Comment: This amendment to the adoption law eliminates the reference to the district court.

Section 53. Minnesota Statutes 1957, section 260.36 is amended to read:

When the commissioner of public welfare shall find that a child transferred to his guardianship after parental rights to the child are terminated or that a child committed to his guardianship as a dependent or neglected child is handicapped physically or whose mentality has not been satisfactorily determined or who is affected by habits, ailments, or handicaps that produce erratic and unstable conduct, and is not suitable or desirable for placement in a home for permanent care or adoption, the commissioner of public welfare shall make special provision for his care and treatment designed to fit him, if possible, for such placement or to become self-

supporting. The facilities of the commissioner of public welfare and all state institutions, the Minnesota general hospital, and the child guidance clinic of its psychopathic department, as well as the facilities available through reputable clinics, private child-caring agencies, and foster boarding homes, accredited as provided by law, may be used as the particular needs of the child may demand. When it appears that the child is suitable for permanent placement or adoption, the commissioner of public welfare shall cause him to be placed as provided in section 260.35. If the commissioner of public welfare is satisfied that the child is feebleminded he may bring him before the probate court of the county where he is found or the county of his legal settlement for examination and commitment as provided by law.

Comment: This amendment relates to the powers of the commissioner of public welfare and makes certain that children under his guardianship after parental rights are terminated under the proposed juvenile court act may be examined or treated as provided in this section.

Section 54. [518.161] [CUSTODY OF CHILDREN ON JUDGMENT; DECREE FILED IN JUVENILE COURT] <u>When the court adjudicates a marriage to be annulled, or the parties divorced or separated, and if the parties have minor children, the clerk of the district court shall immediately file a certified copy of the decree with the juvenile court of the county.</u>

Comment: This section is new to the divorce law. Since the proposed juvenile court act gives the juvenile court jurisdiction over children of divorce, separation, or annullment, this provision is necessary to initiate proceedings concerning the permanent custody and support of the children in juvenile court.

Section 55. Minnesota Statutes 1957, section 636.07, is amended to read:

Every sheriff or other person having charge of a minor under the age of 18 years, chargeable with any crime, shall provide a separate place of confinement for him, and under no circumstances place him with grown-up

prisoners. ~~No court or magistrate shall commit a minor under the age of 14 years to a jail, lockup, or police station pending hearing or trial, and, when he is unable to procure bail, he may be committed to the care of the sheriff or other public officer, or to the probation officer, who shall keep him in some suitable place provided by the city or county.~~ Every minor while in confinement shall be provided with good reading matter, and his relatives and friends likely to exert a good influence over him shall at all reasonable times be permitted to visit him.

Comment: Because the proposed juvenile court act specifies detention procedures in detail, the second sentence of this section will be obsolete.

Section 56. [REPEALER] Minnesota Statutes 1957, sections 260.01 to 260.04, 260.06 to 260.08, 260.10 to 260.26, 260.28 to 260.34, and 260.37 are hereby repealed.

Comment: This section repeals the existing juvenile court act except for section 260.05, which is a special law dealing with the bailiff of Ramsey County, section 260.09, which deals with probation officers and which is the subject of study by the Commission on Juvenile Delinquency, Adult Crime, and Corrections, and 260.27, which is the crime of contributing to the delinquency or neglect of a child.

Section 57. [SAVINGS CLAUSE] All orders, decrees, and judgments made by a court under the provisions of any law repealed by section 56 are in effect until modified or revoked by a court of competent jurisdiction or by operation of law.

Section 58. [EFFECTIVE DATE] This act takes effect on July 1, 1959.

Comment: Delaying the effective date of the act until this time will enable interested parties to acquaint themselves with its provisions before it takes effect.

Chap. 817
S.F. 1319

APPENDIX 1

AN ACT

RELATING TO AN INTERIM COMMISSION ON PUBLIC WELFARE LAWS; AND APPROPRIATING MONEY THEREFORE

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. A commission is created with authority to study all laws relating to programs administered by the department of public welfare, except corrections programs, with a view toward revising and codifying existing laws and recommending improvements requiring legislation.

Sec. 2. The commission shall consist of five senators to be appointed by the committee on committees in the senate, and five members of the house of representatives to be appointed by the speaker. Members of the commission shall serve without compensation.

Sec. 3. The commission is authorized to designate and appoint citizen advisory committees to give assistance, consultation and advice on matters relating to the study directed by this act. The size and number of such committees is left to the discretion of the commission. Members of the advisory committees shall serve without compensation.

Sec. 4. The commission has the power and authority to hold meetings at such times and places as it may designate and to conduct hearings. It shall select from its membership a chairman and such other officers as it deems necessary.

Sec. 5. The commission is authorized to act from the time its members are appointed until the commencement of the next regular session of the state legislature and shall report its findings and recommendations to the 1959 session of the legislature.

Sec. 6. Members of the commission and the advisory committees provided for in section 3, shall be reimbursed for all expenses incurred in the performance of commission duties, within the limit of the appropriation provided. The commission is authorized to purchase stationery and supplies and to employ a staff director, clerical assistance and such other experts and assistants as it considers necessary for carrying out the provisions of this act. The commission shall use the available facilities and personnel of the Legislative Research Committee unless the commission by resolution determines a special need or reason exists for the use of other facilities or personnel. Reimbursement for expenses incurred shall be made pursuant to the rules governing state employees.

Sec. 7. The sum of $30,000 is hereby appropriated from moneys

in the state treasury, not otherwise appropriated, to the commission for the purposes enumerated in this act. Abstracts for the payment of warrants shall be signed by the chairman and one other member.

Approved April 27, 1957.

APPENDIX 2

PUBLIC WELFARE LAWS COMMISSION

1957-1959

MEMBERSHIP

SENATORS

The Honorable Fay George Child
State Senator
Maynard, Minnesota

The Honorable Grover C. George
State Senator
Goodhue, Minnesota

The Honorable B. G. Novak
State Senator
747 Van Buren Avenue
St. Paul 4, Minnesota

The Honorable Henry Nycklemoe
State Senator
Fergus Falls, Minnesota

The Honorable Joseph Vadheim, Secretary
State Senator
Tyler, Minnesota

REPRESENTATIVES

The Honorable Moppy Anderson
State Representative
Preston, Minnesota

The Honorable Dr. J. J. Kelly
State Representative
Marshall, Minnesota

The Honorable Sally Luther,
Vice Chairman
State Representative
1937 Kenwood Parkway
Minneapolis, Minnesota

The Honorable George E. Murk
State Representative
3357 Lincoln Street
Minneapolis, Minnesota

The Honorable Howard Ottinger,
Chairman
State Representative
Chaska, Minnesota

APPENDIX 3

Committee Members
of the
Advisory Committee on Laws Relating to Children and Juvenile Courts
as created by the
Public Welfare Laws Interim Commission

The Honorable Thomas Tallakson -- CHAIRMAN
Judge of Fourth Judicial District, Juvenile Division
Hennepin County Court House
Minneapolis 15, Minnesota

Dr. C. Wilson Anderson, Executive Director
Family and Children's Service of Hennepin County
404 South 8th Street
Minneapolis, Minnesota
(Representing non-sectarian children's services)

Capt. Clifford Bailey, President
Juvenile Officers' Association
Court House
Minneapolis, Minnesota
(Representing the Juvenile Officers' Association)

A. Whittier Day, Chairman
Youth Conservation Commission
State Office Building
St. Paul, Minnesota
(Representing Y.C.C.)

John Donohue, Chief Probation Officer
Ramsey County Probation Department
Ramsey County Court House
St. Paul, Minnesota

Msgr. J. Richard Feiten
Diocesan Bureau of Catholic Charities
Winona, Minnesota
(Representing Catholic children's services)

Rev. E. B. Glabe, Executive Secretary
Lutheran Children's Friend Society
3606 Edmund Boulevard
Minneapolis 6, Minnesota
(Representing Protestant children's services)

Mrs. Irene Jacobson, Executive Secretary
Sibley County Welfare Board
Gaylord, Minnesota
(Representative chosen by the Association of County Welfare Executives)

APPENDIX 3 (cont.)

The Honorable Paul Kimball, Jr.
Judge of Probate
Austin, Minnesota
(Representative chosen by the Juvenile Judges Association)

The Honorable Henry Nycklemoe
State Senator
Fergus Falls, Minnesota
(Official representative of the Public Welfare Laws Commission)

Professor Maynard Pirsig
Law School
University of Minnesota
Minneapolis, Minnesota
(Representative chosen by the Minnesota State Bar Association)

The Honorable Marcus Reed, President
Juvenile Judges' Association of Minnesota
Judge of Probate
Bemidji, Minnesota
(Representing the Juvenile Judges' Association)

Mrs. Roberta Rindfleisch, Director of the Division of Child Welfare
Department of Public Welfare
117 University Avenue
St. Paul, Minnesota
(Representing the Public Welfare Department)

Mr. Len Schneiderman, Executive Director
Jewish Family Services
5th and Washington
St. Paul, Minnesota
(Representing Jewish children's services)

George M. Scott, Hennepin County Attorney
400 Court House
Minneapolis 15, Minnesota
(Representative chosen by the County Attorney's Association)

The Honorable E. R. Selnes
Judge of the 6th Judicial District
Glenwood, Minnesota
(Representative chosen by the District Court Judges' Association)

Mrs. C. A. Sundberg, Legislative Chairman
Minnesota Congress of Parents and Teachers
1214 - 30th Avenue N.E.
Minneapolis, Minnesota
(Representative chosen by the Minnesota Congress of Parents and Teachers)

Roger J. Wolfe
Le Sueur County Board of Commissioners and Welfare Board
Kasota, Minnesota
(Representative chosen by the County Commissioners' Association)

CONSULTANTS:

Representative Howard Ottinger)
Representative Sally Luther) Executive Committee of the
Senator Joseph Vadheim) Public Welfare Laws Commission

Morris Hursh, Commissioner of Public Welfare

James Bradford, Assistant Attorney General attached to the Public Welfare Department

Philip Olfelt, Executive Secretary, Public Welfare Laws Commission

APPENDIX 4

Drafting Subcommittee
of the
Advisory Committee on Laws Relating to Children and Juvenile Courts

Dr. C. Wilson Anderson, Chairman

James Bradford

Msgr. J. Richard Feiten

Judge Paul Kimball, Jr.

Judge Marcus Reed

Judge E. R. Selnes

Ex Officio:

Judge Thomas Tallakson

Philip Olfelt

APPENDIX 5*

COMPARATIVE TABLES

MINNESOTA STATUTES 1957				PROPOSED JUVENILE COURT ACT		
Section	Subdivision	Paragraph	Sentence	Section	Subdivision	Sentence
260.01			1	2	6	
			2	2	10	
			3	2	5	
			4	2	3	
260.02		1	1	3	1	
				13	1, 2	
		1	2	22	1	1
		1	3	3	4	
				13	1, 2	
		1	4	15	1	
		2		2	2	
		3		27	4	
260.03	1			3	2	
	2			3	3	
260.04				6		
260.06		1	1	23	1	
		1	2	45	1	
		1	3	3	4	
		2, 3, 4		45		
260.065				11		
260.07				15	1	

* This table compares repealed sections of chapter 260 of Minnesota Statutes, 1957, with the Proposed Juvenile Court Act. Except for complete repeals it does not show the changes made to existing law. These changes are discussed in more detail in the commentary to each proposed section.

COMPARATIVE TABLES

MINNESOTA STATUTES 1957 Section	Subdivision	Paragraph	Sentence	PROPOSED JUVENILE COURT ACT Section	Subdivision	Sentence
260.07				17		
260.08	1		1	15	1	
				18	1	
	1		2	18	1	
				19	1 (a)	
	1		3	4		
	1		4	19	1 (a)	
	1		5	19	1 (a), 3	
	1		6	18	2	
	1		7	19	1 (b)	
	1		8	Repealed. See commentary to section 18, subd. 2. See also section 13, subd. 2 (a) and (b) and commentary.		
	1		9	22	4	
	1		10	18	3	
				19	1 (c)	
	1		11	19	1 (a)	
	1		12, 13	20		
	1		14	19	3	
				22	1	1
	2		1	17	2	2
				22	3	
	2		2	22	2, 5, 6	
	2		3	41	2 (e)	
	3		1	21		

COMPARATIVE TABLES

MINNESOTA STATUTES 1957 Section	Subdivision	Paragraph	Sentence	PROPOSED JUVENILE COURT ACT Section	Subdivision	Sentence
260.08		3	2	25		
260.10			1	7		
			2	21		
260.11 - generally				29		
260.11 - specific sentences			3	22	1	2
			4	41	1	
			5	1	2	
			6	27	2	
			8	41	2 (c)	
			9	44		
260.12		1		39	1, 2	
		2		Repealed. See commentary to section 18, subd. 2. See also section 13, subd. 2 (a) and (b), and section 35, and commentary.		
		3		19	3	
260.13				28		
260.14				8		
260.15				9		
260.16				28		
260.17				Repealed. Unnecessary to Juvenile Court Act; covered by Probate Code.		
260.18				28	5	
				29	3	
				39	3	

APPENDIX 5 (CONT'D.)

COMPARATIVE TABLES

MINNESOTA STATUTES 1957				PROPOSED JUVENILE COURT ACT		
Section	Subdivision	Paragraph	Sentence	Section	Subdivision	Sentence
260.19				33		
260.20				27	3	
260.21			1, first clause	33		
			1, second clause	16		
260.22	1			14		
	2			15	2	
260.23				24		
260.24			1	22	1	3
			2, 3, 4	23	2	
260.25				41	1	
260.26				46		
260.28				43		
260.29				41	1, 2	
260.30				41	3	
260.31				41	3	
260.32				12		
260.33				1	2	
260.34				Repealed. Obsolete.		
260.37				40		

SENATE JUDICIARY
Sub-Committee Report

Members: Feidt, Chairman; Dosland; Kalina

The undersigned subcommittee having met and considered S.F. 391 recommends the bill to pass with the following amendments to the typewritten bill:

Section 1. In subdivision 1, line 1, strike the number "46" and insert in lieu thereof the number "47".

Section 2. In subdivision 1, line 2, strike the number "46" and insert in lieu thereof the number "47".

In subdivision 5, clause (a), line 2, after the word "ordinance" and before the semicolon insert the following; ",except as provided in section 30, subdivision 1".

In subdivision 8, line 4, strike the number "39" and insert in lieu thereof the number "40"; and in line 5 of the same subdivision strike the number "41" and insert in lieu thereof the number "42".

Section 3. In subdivision 2, line 5, strike the number "46" and insert in lieu thereof the number "47".

Section 9. In line 8, strike the number "46" and insert in lieu thereof the number "47".

Section 13. In subdivision 1, line 4, after the words "to be delinquent" and before the word "neglected" insert the following "a juvenile traffic offender,".

In subdivision 2, insert in line 2 before the words "The juvenile court" the following; "Except as provided in clauses (d) and (e),". In the same subdivision, clause (a), line 3, strike the number "35" and insert in lieu thereof the number "36" and strike the number "40" and insert in lieu thereof the number "41". In the same subdivision, clause (b), line 4, strike the number "35" and insert in lieu thereof the number "36" and strike the number "40" and insert in lieu thereof the number "41". In the same subdivision, clause (d), line 1, insert after the words "juvenile court" and before the words "shall proceed" the following; "in those counties in which the judge of the probate-juvenile court has been admitted to the practice of law in this state." In the same subdivision, add the following sentence to clause (d); "In those counties in which the judge of the probate-juvenile court has not been admitted to the practice of law in this state the district court shall proceed under the laws relating to adoptions in all adoption matters." In the same subdivision in clause (e), line 4, insert after the sentence ending with the word "separation" and before the sentence beginning with the words "A certified" the following; "In those counties having a domestic relations division in the district court, the domestic relations division of the district court has jurisdiction over the matters specified in this clause. In those counties in which the judge of the probate-juvenile court has not been admitted to the practice of law in this state the district court has jurisdiction over the matters specified in this clause. In all other counties".

Section 15. In subdivision 1, line 5, after the word "proceedings" strike the words "may also" and insert in lieu thereof the word "shall". In line 5, of the same subdivision, after the word "county" insert the following; "of his residence or the county".

Section 19. In subdivision 2, line 2, strike the number "37" and insert in lieu thereof the number "38".

Section 22. In subdivision 1, line 2, strike the number "43" and insert in lieu thereof the number "44". In the same subdivision, line 7, strike the number "46" and insert in lieu thereof the number "47".

Section 23. In subdivision 2, line 8, strike the number "42" and insert in lieu thereof the number "43"; and strike the number "43" and insert in lieu thereof the number "44".

In subdivision 3 of the same section, line 5, after the words "shall not take" strike the words "fingerprints or".

Section 28. In subdivision 1, after clause (d), add the following; "(g) If the child is found to have committed any offense which, if committed by an adult, would constitute a felony, and the court believes that it is in the best interests of the child and of public safety that the drivers license of the child be cancelled until his eighteenth birthday, the court may recommend to the commissioner of highways the cancellation of the child's license for any period up to the child's eighteenth birthday, and the commissioner is hereby authorized to cancel such license without a hearing. At any time before the termination of the period of cancellation, the court may, for good cause, recommend to the commissioner of highways that the child be authorized to apply for a new license, and the commissioner may so authorize."

Before Section 30, insert the following new section 30 and renumber the remaining sections: "Sec. 30. [260.193] [JUVENILE TRAFFIC OFFENDER; PROCEDURES; DISPOSITIONS.] Subdivision 1. A child who violates a state or local traffic law, ordinance, or regulation, shall be adjudicated a "juvenile traffic offender" and shall not be adjudicated delinquent, unless the court finds as a further fact that the child is also delinquent within the meaning and purpose of the laws relating to juvenile courts.

Subd. 2. When a child is alleged to have violated any state or local traffic law, ordinance, or regulation, the peace officer making the charge shall file a signed copy of the notice to appear, as provided in Minnesota Statutes, Section 169.91 with the juvenile court of the county in which the violation occurred, and the notice to appear has the effect of a petition and gives the juvenile court jurisdiction.

Subd. 3 Before making a disposition of any child found to be a juvenile traffic offender, the court shall obtain from the department of highways information of any previous traffic violation by this juvenile.

Subd. 4. If after a hearing the court finds that the welfare of a juvenile traffic offender or the public safety would be better served under laws controlling adult traffic violators, the court may transfer the case to any court of competent jurisdiction presided over by a salaried judge if there is one in the county. The juvenile court transfers the case by forwarding to the appropriate court the notice to appear issued by the peace officer together with an order of transfer. The courto to which the case is transferred shall proceed with the case as if the jurisdicition of the juvenile court had never attached.

Subd. 5. If the juvenile court finds that the child is a juvenile traffic offender, it may make any one or more of the following dispositions of the case:

(a) Reprimand the child and counsel with the child and his parents;

(b) Continue the case for a reasonable period under such conditions governing the child's use and operation of any motor vehicles as the court may set;

(c) Require the child to attend a driver improvement school if one is available within the county;

(d) Recommend to the highway department suspension of the child's drivers license as provided in Minnesota Statutes, Section 171.16;

(e) If the child is found to have committed two moving violations or to have contributed to an accident involving death, injury, or physical damage in excess of $100, the court may recommend to the commissioner of highways the cancellation of the child's license until he reaches the age of 18 years, and the commissioner is hereby authorized to cancel the license without hearing.

Subd. 6. The juvenile court shall report the disposition of all juvenile traffic cases to the commissioner of highways, as provided in Minnesota Statutes, Section 171.16, on the standard form provided by the highway department under Minnesota Statutes, Section 169.95.

Subd. 7. The juvenile court records of juvenile traffic offenders shall be kept separately."

In original section 30, in line 5, before the word "court", strike the word "juvenile". In line 11, strike the number "31" and insert in lieu thereof the number "32"; and strike the number "32" and insert in lieu thereof the number "33".

In original section 31, in line 6, strike the underlined word "juvenile". In line 6 of the same section after the word "court" insert the following; "as provided in section 13, subdivision 2 (e)". Add the following sentence to original section 31; "When determining with whom they shall remain, the court shall give primary consideration to the welfare of the children."

In original section 32, in line 5, strike the underlined word "juvenile". In line 5 of the same section after the word "court" insert the following; "as provided in section 13, subdivision 2(e)".

In original section 37, subdivision 2, line 2, strike the number "35" and insert in lieu thereof the number "36".

In subdivision 3 of the same section, line 10, strike the number "35" and insert in lieu thereof the number "36".

In subdivision 4 of the same section, line 3, strike the number "35" and insert in lieu thereof the number "36".

In original section 39, subdivision 1, line 3, strike the number "35" and insert in lieu thereof the number "36".

In original section 40, line 7, strike the number "39" and insert in lieu thereof the number "40".

In original section 41, subdivision 1, beginning in line 3, after the words "court to" strike the words "someone other than its parents" and insert in lieu thereof the following; "a county welfare board, or when legal custody is transferred to a person other than the county welfare board, but under the supervision of the county welfare board,". In line 5, of the same subdivision after the words "its parents" insert the following; "pursuant to section 26, clauses (a), (b), or (c)". In line 10 of the same subdivision strike the word "fund" and insert in lieu thereof the word "funds".

In original section 47, in line 3, after the words "Subdivision 1" insert the following "Except as provided in section 13, subdivision 2,".

In original section 51, in line 10, after the words "the clerk of", strike the word "~~the~~". In line 11 of the same section strike the underlined word "juvenile".

In original section 57, in line 3, strike the number "56" and insert in lieu thereof the number "57". Add the following to original section 57; "Nothing in this act shall be construed to amend or modify any of the provisions of Laws 1955, Chapter 353, as amended by Laws 1957, Chapter 664. The provisions of this section are in addition to the provisions of Minnesota Statutes, Section 645.35."

Signed:

Senator Daniel S. Feidt

Senator William B. Dosland

Senator Harold Kalina