

Legal Aspects of Medical Care in California Juvenile Justice Institutions*

I. INTRODUCTION

Despite the professed intentions of juvenile codes and personnel as well as numerous child welfare groups, the health care services provided to juveniles in state institutions are often inadequate and in some cases shockingly so.¹ This article will explore the current status of medical care in several juvenile institutions, what the rights to medical care are in state institutions, and various means of implementing those rights. The focus will be on California law and institutions, with occasional discussion of other jurisdictions where appropriate.

The primary concern of this article is medical care. Accordingly, unless otherwise indicated, the use of the term "treatment" will refer only to medical-dental treatment,² rather than more general uses of

*The editors wish to thank Brian C. Lysaght for completing the preparation of this article after the untimely death of the author.

¹A staff member of an Eastern juvenile institution came on duty one evening, and discovered that one of the boys in his wing had slit his wrists in a suicide attempt. The boy was still bleeding. Shaken, the staff member notified those staff members who had been on duty for several hours. They replied that they were aware of the problem. No doctor came that night, or indeed, for the next eight hours. No other care was provided the child. *Inmates of Boys' Training School v. Affleck*, 346 F. Supp. 1354, 1361-62 (D. R.I. 1972).

Randy J. was brought to the San Francisco Juvenile Hall in 1970. His behavior was so bizarre and erratic that his attorney moved in juvenile court that he be sent to the city's psychiatric ward for children for diagnosis. The court denied the motion on the grounds that Randy had been seen by the juvenile hall psychologist, and that the psychiatric ward was too expensive. A few months later, Randy collapsed. Subsequent diagnosis: brain tumor. Letter from Peter Bull, Co-director, Youth Law Center, San Francisco, November 1, 1973.

Johnny M. was confined to the San Francisco Juvenile Hall in 1968. He complained of various health problems to the supervisors and administrators, but he was not allowed to see a physician. For three months Johnny complained, and requested medical attention. When he was finally allowed to see a doctor, he had lost 30 pounds. Johnny had been suffering from undiagnosed diabetes. Interview with Peter Bull, Co-director, Youth Law Center, San Francisco, November 20, 1971.

²Plotkin, *Enforcing Prisoners' Rights to Medical Treatment*, 9 CRIM. L. BULL. 159 (March 1973); Comment, *Constitutional Limitations of Prisoners' Rights to Medical Treatment*, 44 MISS. L.J. 525 (June 1973); Zalman, *Prisoners' Rights to Medical Care*, 63 J. CRIM. L. & CRIMINOL. 185 (1972); Sneiderman, *Prisoners and Medical Treatment: Their Rights and Remedies*, 4 CRIM. L. BULL. 450 (1968);

the term which may be synonymous with "rehabilitation,"³ or inclusive of the entire scope of the care of juveniles outside the courtroom.⁴ In addition, this article will be restricted to the medical care problems of institutionalized juveniles. Although many California juveniles are placed on probation or in foster homes, it is at least arguably true that it is institutionalization that represents the greatest potential for limitations on medical care.⁵

II. MEDICAL CARE IN CALIFORNIA JUVENILE JUSTICE INSTITUTIONS

A. C.Y.A. INSTITUTIONS

The California Youth Authority, a division within the California Human Resources Agency, is the principal administrative body responsible for institutionalized juveniles in California. The C.Y.A. receives commitments from both juvenile and criminal courts, under either Welfare and Institutions Code sections 601 and 602⁶ or section 1700 *et seq.*⁷ The C.Y.A. maintains three reception center-clinics, seven schools and five camps for youths throughout the state. The population of these facilities as of September 1, 1973, was slightly more than 4000, ranging from a low of 43 at the Ventura Reception Center and Clinic to a high of 1,051 at the Youth Training School.⁸ The Youth Authority establishes the medical care standards for all of these centers.⁹

Campbell v. Beto, 460 F.2d 765 (5th Cir. 1972); Newman v. Alabama, 349 F. Supp. 278 (M.D. Ala. 1972).

³Note, *The Courts, The Constitution and Juvenile Institutional Reform*, 52 B.U.L. REV. 33, 42 n. 79. See also Kapner, *The Juvenile's Right to Treatment — The Next Step*, 47 FLA. B.J. 228, 229 (April 1973); Pyfer, *The Juvenile's Right to Treatment*, 6 FAM. L.Q. 279 (Fall 1972); Gough, *The Beyond Control Child and the Right to Treatment: An Exercise in the Synthesis of Paradox*, 16 ST. LOUIS U.L.J. 182 (1972); Faust, *Implementing the Juvenile's Right to Treatment*, 6 CLEARING. REV. 256 (1970); Kittrie, *Can the Right to Treatment Remedy the Ills of the Juvenile Process?*, 57 GEO. L.J. 848 (1969); Ketcham, *The Unfulfilled Promise of the Juvenile Courts*, 7 CRIME & DELIN. 97 (1961); Wyatt v. Stickney, 325 F. Supp. 781, 784 (M.D. Ala. 1971); Rouse v. Cameron, 373 F.2d 451, 453 (D.C. Cir. 1966).

⁴Kapner, *The Juvenile's Right to Treatment — The Next Step*, 47 FLA. B.J. 228, 229 (April 1973); Essay, *The Treatment of Juveniles at Utah State Industrial School*, 1972 UTAH L. REV. 555 (1972); State v. Shaw, 93 Ariz. 40, 47, 378 P.2d 487, 491 (1963).

⁵Most juveniles on probation can qualify for medical services under the social welfare programs administered by federal and state governments. In cases where this is not so, the C.Y.A. has provided funds for medical care. Interview with Dan Doyle, Legal Counsel for C.Y.A., Sacramento, November 13, 1973.

⁶CAL. WELF. & INST. CODE § 601, 602 (West 1972).

⁷CAL. WELF. & INST. CODE § 1700 *et seq.* (West 1972).

⁸Total population in Youth Authority institutions as of September 1, 1973. Statistical data provided by California Youth Authority.

⁹CAL. WELF. & INST. CODE §§ 1751, 1755 (West 1972).

According to C.Y.A. brochures and personnel, health facilities at C.Y.A. institutions are divided into the reception centers, which have extensive medical resources, and the schools and camps, which have more rudimentary resources. The first stop for a young person committed to the C.Y.A. will be a reception center clinic. For a period of three to four weeks, the juvenile will undergo a thorough examination. The diagnosis will involve social, religious, education, medical and psychological evaluation. Some parole violators also will come to the reception center, and occasionally a ward will be returned from a school or camp for specialized medical, dental and psychiatric services. Each reception center has a 20-30 bed hospital, general hospital service, and outpatient care. Major surgery is performed at all the reception centers but Ventura. The basic staff consists of two physicians and surgeons, two psychiatrists, three to five dentists, a nursing staff, an X-ray technician, a lab technician and dental assistants.¹⁰

When the diagnostic study is completed, the ward is sent to one of the schools (and later, perhaps to one of the camps). The schools have facilities for general medical care, minor surgery, minor illnesses and maintenance dentistry. For major problems, a ward will be transferred to a reception center clinic, or sent to a local hospital. C.Y.A. claims to have as many doctors, nurses and beds as the population warrants in the schools. Consultative services are also available.¹¹

Each month, medical and dental officers must complete a form regarding their activities.¹² These forms have spaces for 26 entries, ranging from number of outpatient contacts to immunizations, and from X-ray examinations to electroencephalograms. The forms are tabulated by the month and by the year. These statistics and other reports of the C.Y.A. reveal two facts: (1) the number of medical contacts by C.Y.A. youths is extremely high,¹³ and (2) the quantity of effort expended by C.Y.A. in meeting these needs is correspondingly high.¹⁴ Of course these figures do not pretend to reflect either

¹⁰CAL. DEPT. OF THE YOUTH AUTHORITY, PSYCHIATRISTS AND PHYSICIANS IN REHABILITATION PROGRAMS FOR DELINQUENT YOUTHS 1 (undated).

¹¹*Id.* at 2.; Roster of medical/dental staff for each C.Y.A. institution, and Total of Medical Personnel in the California Youth Authority, both provided by California Youth Authority and on file in law review office of U.C.D. School of Law.

¹²Medical form: YA 8.200; dental form: YA 8.218.

¹³For fiscal 1972-73, the average daily sick was 950 out of a population of 4000. CAL. DEPT. OF THE YOUTH AUTHORITY, SOME STATISTICAL FACTS ON THE CALIFORNIA YOUTH AUTHORITY 23-24 (February 1973).

It should also be noted that the quantity of medical problems is diminished somewhat by CAL. WELF. & INST. CODE § 733 (West 1972) which states: "No ward of the juvenile court . . . who is suffering from any contagious, infectious, or other disease which would probably endanger the lives or health of the other inmates of any state school shall be committed to the Youth Authority."

¹⁴The outpatient contacts for 1972-73 were 246,060. CAL. DEPT. OF THE

the level of fabricated medical problems in (1), or the quality of the care in (2). However, on paper it appears that the C.Y.A. is making an exemplary effort to deal with the medical needs of the children.

B. JUVENILE HALLS

Each county in the state must maintain a juvenile hall, although two or more of them may establish and operate a joint juvenile hall.¹⁵ The principal function of the halls is to house pre-trial detainees and other juveniles awaiting permanent placement. The halls are operated and administered by the Board of Supervisors in each county, with responsibility for control and management delegated to the County Probation Officer.¹⁶ The halls vary in size according to the population of each county. The counties pay all the expenses of such facilities,¹⁷ save for those costs they can persuade the federal government, the state, or the youths' parents to absorb.¹⁸ The C.Y.A. has the authority to establish standards for the halls, and to make regular inspections to see that the standards are maintained.¹⁹

In terms of treatment, both the availability of medical statistics and the level of medical care provided decline in the case of juvenile halls. Each county's Board of Supervisors is autonomous and has sole authority for financing of the juvenile halls. The overall conditions of the halls predictably vary from county to county; but conditions are generally bad, and medical care suffers accordingly. The medical needs of the children in these halls are probably as high as the needs of persons committed to C.Y.A., although no empirical data is available. Health officers describe a decline in drug-related medical problems and a high rate of dental care needs. And while the C.Y.A. may not accept youths with communicable diseases, juvenile halls have no such proscription. There seem to be problems ranging from sore throats to diet, trauma, and venereal disease.²⁰

YOUTH AUTHORITY, SOME STATISTICAL FACTS ON THE CALIFORNIA YOUTH AUTHORITY 23-24 (February 1973).

¹⁵CAL. WELF. & INST. CODE § 850 (West 1972), CAL. WELF. & INST. CODE § 870 (West 1972).

¹⁶CAL. WELF. & INST. CODE § 852 (West 1972).

¹⁷CAL. WELF. & INST. CODE § 850 (West 1972).

¹⁸CAL. WELF. & INST. CODE §§ 887, 900-914 (West 1972).

¹⁹CAL. WELF. & INST. CODE § 509, 509.5 (West 1972). 52 OPS. CAL. ATTY. GEN. 178 (1969). Counties may also establish juvenile homes, ranches, camps and forestry camps, CAL. WELF. & INST. CODE § 881 (West 1972); 24-hour schools, CAL. WELF. & INST. CODE § 940 (West 1972); and Youth Correction Centers, CAL. WELF. & INST. CODE §§ 1850, 1851 (West 1972). These institutions are similarly under the authority of the County Board of Supervisors and the Probation Officer. The C.Y.A. also sets standards for these facilities, CAL. WELF. & INST. CODE § 885 (West 1972), and may withhold funds if the standards are not complied with, CAL. WELF. & INST. CODE § 887 (West 1972). The homes, ranches, camps and forestry camps are limited to a maximum of 100 wards, CAL. WELF. & INST. CODE § 886 (West 1972).

²⁰CAL. DEPT. OF THE YOUTH AUTHORITY, FISCAL YEAR MEDICAL ACTIVITIES

As mentioned earlier, the C.Y.A. has statutory authority to establish standards for the halls. It is only since 1969 that the C.Y.A. has had this authority, and it is somewhat limited. The C.Y.A. establishes the standards, and it regularly inspects to determine if they are being met. If they are not met, the only sanction which the C.Y.A. may employ is to rate the hall "disapproved." The C.Y.A. may not close the halls or affect funding. Few, if any, of the juvenile halls in California meet the C.Y.A. Standards.²¹ It might be useful here to compare the medical standards with the conditions in the juvenile halls as revealed by one of few empirical studies in this area, the "Wald Survey."²² First, C.Y.A. Standards declare:

Medical care and treatment is to be available to all detained minors in need of such services. If there is no medical staff at the juvenile hall, medical care must be provided through arrangements with other agencies in the county qualified to provide such services.²³

Of the 25 halls surveyed, only 14 had a nurse or doctor who was either at the hall full time or visited the hall on a regular basis. The remaining halls would take a minor to a doctor if he complained of illness or was injured.²⁴

As to the level and availability of care, Wald consulted the juveniles themselves. The study recognized the possibility that "responses . . . were biased or unrepresentative" and that "minors exaggerated illnesses for which they did not receive attention."²⁵ The responses are instructive, nevertheless.

Eight minors in six halls reported having been ill and not being able to see a doctor or having had to wait a long time before being taken to one. Their complaints ranged from the fact that the probation officers controlled access to the doctor and refused to believe their claims of illness, to having fainted without being examined. In two halls both of the minors indicated it was difficult to see a doctor. In the other four halls, we had reports of good care as well as of bad care.

In three halls, minors reported that they would not reveal illnesses because they would then be put into medical isolation. In the re-

(1972-73) (1973); CAL. DEPT. OF THE YOUTH AUTHORITY, FISCAL YEAR DENTAL ACTIVITIES (1972-73) (1973).

Shirley Pricer, R.N., Public Health Office nurse assigned to Yolo County Juvenile Hall, described virtually the same level and type of medical problems. Interview, Broderick, California, October 20, 1973.

²¹Interview with Peter Bull, *supra* note 1.

²²WALD, CALIFORNIA'S JUVENILE DETENTION FACILITIES: A SURVEY, 1972 (unpublished draft) [hereinafter cited as WALD SURVEY].

²³CAL. DEPT. OF THE YOUTH AUTHORITY, STANDARDS FOR JUVENILE HALLS, VIII-C, 28 (1973).

²⁴WALD SURVEY, *supra* note 22, at 125. For example, the Yolo County juvenile hall, with only a 17-person capacity, does not find it practicable to hire a full-time medical staff. Medical services are provided by the Public Health Department, and a registered nurse comes in three days a week.

²⁵*Id.*

maining halls (4), the minors had never been ill or reported having received good treatment.²⁶

The C.Y.A. Standards also stipulate:

Within 48 hours after admission, it is recommended that each minor receive a medical examination by a physician. If visual examination or other information at the time of admission indicates that medical attention may be needed, the minor shall be examined at once by a licensed physician.²⁷

Six counties in the survey claimed that minors were examined by nurses within 24 hours of admission. Minors in two of the counties claimed they had not been examined. In two counties, wards were to receive exams "within a few days [of admission]." Again, minors in one denied the veracity of the statement. In two counties a medical questionnaire substituted for physical exams, and in 15 counties juveniles would not receive any physical exam unless they were physically ill (although seven of these counties made "spot checks" for bruises).²⁸ One instance provides an example of the quality of medical exams which have been given. In 1969, a juvenile was admitted to the San Francisco Juvenile Hall, examined, and confined to the girls' cottages. Two weeks later, another official discovered a slight discrepancy: the juvenile was a transvestite boy.²⁹

Other observations in the study relating to medical care were: 1) for the most part the halls were clean ("which is not surprising since . . . the minors were required to clean the halls several times a day"); 2) daily showers were provided in all halls; 3) several halls had temperature problems; and 4) the supplying of fresh under- and outer-garments was sadly deficient.³⁰

The C.Y.A. is attempting to remedy the deficient nature of California's juvenile halls. The general philosophy of the reform was to avoid the closing of the halls if possible. The C.Y.A. has focused on specific deficiencies each year, and sought to bring all halls up to standard with regard to the deficiency. In 1972-73, the C.Y.A. sought to implement medical examinations within 48 hours of admission, and achieved some success: examinations are now regularly conducted in all but two halls, although nurses rather than physicians conduct many of them. There is some indication that C.Y.A. will become more aggressive with regard to upgrading juvenile hall conditions in the next year.³¹

²⁶*Id.* at 125-26.

²⁷CAL. DEPT. OF THE YOUTH AUTHORITY, STANDARDS FOR JUVENILE HALLS, VIII-C, 28 (1973).

²⁸WALD SURVEY, *supra* note 22, at 44-45.

²⁹Letter from Peter Bull, Co-director, Youth Law Center, November 1, 1973.

³⁰WALD SURVEY, *supra* note 22, at 123-24.

³¹Interview with Dan Doyle, Legal Counsel, California Youth Authority, Sacramento, November 13, 1973.

The other county facilities mentioned are numerous,³² but again, little statistical data is available. The majority do not have regular full- or part-time medical staffs, and many are isolated from communities where regular medical care would be available.³³

III. CURRENT LAW RELATING TO MEDICAL CARE IN JUVENILE INSTITUTIONS

A. CALIFORNIA STATUTORY LAW

The Welfare and Institutions Code, Divisions 2 and 2.5,³⁴ is the main body of statutory law relating to dependent juveniles and wards of the court. Scant attention is given to the issue of medical care in the Code, and the majority of sections reflect the attitude of *parens patriae* which has dominated the entire field of juvenile justice for so long. The doctrine of *parens patriae* was "based on an equity notion that the intervention of the court is justified when there is a danger to the health and welfare of the child. When these needs are not met by parental attention, the state may substitute the required guidance and care."³⁵ In effect, the state becomes the parent,³⁶ and the institution is to be as near as possible a substitute for the home.³⁷ This doctrine has been codified in many juvenile justice statutes, including California's. When California must take a minor from his parents, the goal is "to secure for him custody, care, and discipline as nearly as possible equivalent to that which should have been given by his parents."³⁸ Deference to the parents is a common theme of the older code sections, however, the C.Y.A. and juvenile halls retain far reaching authority.³⁹

The child under both C.Y.A. and juvenile hall authority has a general right to medical, surgical and dental care, if approved by the physician, probation officer, and parents or court⁴⁰ (juvenile hall) or

³²See note 19, *supra*.

³³CALIFORNIA CONTINUING EDUCATION OF THE BAR, CALIFORNIA JUVENILE COURT PRACTICE, Appendix C, 205-223 (1968) (based on information provided by California Youth Authority).

³⁴CAL. WELF. & INST. CODE, Divisions 2 and 2.5 (West 1972).

³⁵Lipsitt, *Due Process as a Gateway to Rehabilitation in the Juvenile System*, 49 B.U.L. REV. 62, 62 (1969).

³⁶Note, *The Constitution and Juvenile Delinquents*, 2 MONT. L. REV. 307, (Summer 1971).

³⁷*In re Savoy*, Nos. 70-4808 & 70-4714 (D.C. Juv. Ct., October 13, 1970) (slipsheet opinions); Note, *The Courts, The Constitution and Juvenile Justice Institutional Reform*, 52 B.U.L. REV. 33, 39 (Winter 1972).

³⁸CAL. WELF. & INST. CODE § 502 (West 1972).

³⁹*Id.*; the purpose also is ". . . 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."

⁴⁰CAL. WELF. & INST. CODE § 739 (West Supp. 1974).

if recommended by the physician and approved by the C.Y.A.⁴¹ The child has the right to protection from the communicable diseases of other wards.⁴² The parent has the above-mentioned right to approve of any medical, surgical and dental care of wards in juvenile hall,⁴³ and the court will authorize the care only in cases of emergency⁴⁴ when the parent cannot be found,⁴⁵ or when the parent is in some way responsible for the condition requiring treatment.⁴⁶ The parents are theoretically responsible for costs;⁴⁷ however, the probation officer may determine the inability of the parents to pay, and waive the charges.⁴⁸ This in fact occurs in the overwhelming majority of cases.⁴⁹

The C.Y.A. and juvenile halls have an enormous grant of power over the juveniles in their charge, but especially so in the area of medical care; for it is their officers who make the initial determinations of whether medical care is necessary.⁵⁰ As discussed earlier, the C.Y.A. has the power to establish the standards for virtually all juvenile institutions as well as to inspect,⁵¹ to use other private and public facilities,⁵² and to commit youths to various other state institutions for diagnosis and treatment.⁵³

Recently, several new laws have been enacted which limit the *parens patriae* concept in the area of medical-sexual needs of female dependents and wards. Female juveniles now have the same rights to therapeutic abortions which girls on the outside have, with confinement not a restriction.⁵⁴ A pregnant female also has the right to summon and receive the service of any physician of her choice to determine her pregnancy. If she is indeed pregnant, she may receive the necessary services. If she incurs expenses for services not normally provided in the facility, she must pay for them.⁵⁵ The other new law gives institutionalized girls rights which girls living at home might

⁴¹CAL. WELF. & INST. CODE § 1755.3 (West 1972).

⁴²CAL. WELF. & INST. CODE § 733 (West 1972).

⁴³CAL. WELF. & INST. CODE § 739 (West Supp. 1974).

⁴⁴*Id.*

⁴⁵*Id.*

⁴⁶42 OPS. CAL. ATTY. GEN. 49 (1963).

⁴⁷CAL. WELF. & INST. CODE §§ 900-914 (West 1972 and West Supp. 1974).

⁴⁸CAL. WELF. & INST. CODE § 905 (West 1972).

⁴⁹Interview with Leroy Ford, Chief Probation Officer, Yolo County Juvenile Hall, Woodland, November 2, 1973. Mr. Ford stated that at the most, 25 per cent of the parents are able to contribute for the support and care of their children in institutions.

⁵⁰CAL. WELF. & INST. CODE §§ 739 (West Supp. 1974) and 1755.3 (West 1972).

⁵¹CAL. WELF. & INST. CODE § 509 (West Supp. 1974) and §§ 509.5, 885, 1757, 1760.7 (West 1972).

⁵²CAL. WELF. & INST. CODE § 1753 (West 1972).

⁵³CAL. WELF. & INST. CODE §§ 708, 1755.5, 1756 (West 1972) and § 1753.1 (West Supp. 1974).

⁵⁴CAL. WELF. & INST. CODE § 519 (West Supp. 1974).

⁵⁵CAL. WELF. & INST. CODE §§ 521 and 1774 (West Supp. 1974).

enjoy only in theory: the right to use materials necessary for the menstrual cycle, reproductive system and birth control.⁵⁶ And the girls must be notified of these rights — they must be posted where they can be easily read.⁵⁷

B. ADMINISTRATIVE REGULATIONS

The general tenor of administrative law in California is reflected in the C.Y.A. Manual of Health Services. Medical and dental officers are enjoined to provide both “a quality of professional attention and care consistent with the high standards of modern medicine and dentistry” and “the greatest possible economy consistent with a high quality of medical care.”⁵⁸ The various rules and regulations proffered in the manual are generally unremarkable, providing general statements with regard to duties of various officers,⁵⁹ examinations of juveniles,⁶⁰ and care and handling of medical property and supplies.⁶¹ An enormous amount of space is devoted to medical records and reporting forms.⁶² Curiously, more space is devoted to physical standards and examination of employees⁶³ than to the juveniles.⁶⁴ Preventive medicine is stressed, with medical officers enjoined to make regular inspections for general sanitation of the food service, water supply, sewers, living quarters and pools,⁶⁵ and to insure the immunization of the juveniles.⁶⁶ The same tension between *parens patriae* and the concept of the juveniles as individuals with rights unto themselves which was present in the Welfare and Institutions Code is also manifest in the Manual, as parental consent is required for any service or operation;⁶⁷ however, the female juveniles have certain abortion rights which accrue to them directly.⁶⁸

The California Administrative Code, while it contains several sec-

⁵⁶CAL. WELF. & INST. CODE §§ 520 and 1753.7 (West Supp. 1974).

⁵⁷CAL. WELF. & INST. CODE §§ 521 and 1774 (West Supp. 1974).

⁵⁸CAL. DEPT. OF THE YOUTH AUTHORITY, MANUAL OF HEALTH SERVICES § 0030 (1971).

⁵⁹*Id.* at §§ 0030, 0050, 0060-65.

⁶⁰*Id.* at §§ 0200-204, 0130-135.

⁶¹*Id.* at §§ 0400-404, 0420-425.

⁶²*Id.* at §§ 0100-116, 0135, 0500, 0510, 0601.

⁶³*Id.* at §§ 0204, 0205, 0340, 0600, 0601, 0620, 0630-652.

⁶⁴*Id.* at §§ 0200-204.

⁶⁵*Id.* at §§ 300-308.

⁶⁶*Id.* at §§ 320, 323, 324, 330.

⁶⁷General parental consent forms are obtained when the juvenile arrives. *Id.* at § 235. Specific consent must be obtained for “unusual, serious, major, specific procedures, *Id.* at § 236, and before transfer to another institution for an operation. *Id.* at § 238. Specific consent is not necessary in emergencies “where life and health are of utmost concern, and where delay while attempting to obtain the appropriate consent would endanger the patient.” *Id.* at § 237.

⁶⁸An abortion must be approved by both the physician and C.Y.A. authorities, but there is no mention of any parental role in the guidelines. *Id.* at § 239.

tions relating to medical care of adult prisoners, does not devote any section to medical care of institutionalized juveniles.⁶⁹

C. CASE LAW

California case law related to medical care in juvenile institutions is sparse. An explanation of this lack of litigation might best begin with a short review of the history of judicial concern for conditions of juvenile confinement in the U.S. For many years, the courts maintained the traditional "hands off" attitude which was also applied to conditions of adult confinement.⁷⁰ In other words, the judiciary refused to inquire into the existence of juvenile treatment facilities, and into the suitability of such facilities for treatment.⁷¹ To this day, the Supreme Court has not accepted a case dealing with the pre- or post-adjudication stages of the juvenile process.⁷² The Court did not even deal with due process in the juvenile courts until 1966.⁷³

A breakthrough of sorts came in the late 1960's, when some courts expressed a willingness to order juvenile institutions to provide "treatment" (used here in its rehabilitative sense).⁷⁴ From there

⁶⁹15 CAL. ADM. CODE §§ 1050-1053, 1161-64.

⁷⁰See pp. 15-16, *infra*.

⁷¹*Gault v. Board of Directors*, 103 Ariz. App. 397, 442 P.2d 844 (1968); *In re Wiggins*, 425 P.2d 1004 (Okla. Ct. Crim. App. 1967); *Carter v. Montoya*, 75 N.M. 730, 410 P.2d 951 (1966); *Miller v. Overholser*, 206 F.2d 415 (D.C. Cir. 1953); *State ex rel Sowder v. Superior Court*, 105 Wash. 684, 179 P. 79 (1919); *In re Ragan*, 125 La. 121, 51 So. 89 (1910).

⁷²Mr. Justice Fortas did refer to the inadequacy of custodial and treatment facilities and policies, and said that review of them may not be within judicial competence. *Kent v. U.S.*, 383 U.S. 541, 543 (1966). The Supreme Court has noted that legal problems in the detention phase of juvenile proceedings would be "unique" in comparison to problems in the adult system, but failed to give any indication of how the problems would be unique, and what the consequences of this uniqueness would be for judicial disposition. *In re Gault*, 387 U.S. 1, 31 n. 48 (1967).

⁷³*Kent v. U.S.* 383 U.S. 541 (1966). While it is beyond the scope of this article to tread the familiar ground of due process rights in juvenile adjudications, it should be noted that juveniles have been accorded the right to counsel, *Id.*, to timely notice of the proceeding and of the nature of the charges filed against them, *In re Gault*, 387 U.S. 541 (1967), and the right to confront and cross-examine witnesses, *Id.* The standard of proof in delinquency adjudications is now the same as that in criminal trials, *In re Winship*, 397 U.S. 358 (1970).

However, the Supreme Court has also held that the right to a jury trial in state delinquency hearings is not constitutionally mandated, *McKiever v. Pennsylvania*, 403 U.S. 528 (1971). In addition pre-trial rights were never included in the decisions, *In re Gault*, 387 U.S. 1, 13 (1967), although some lower courts have accorded them, *In re Gary W.*, 5 Cal. 3d 296, 96 Cal. Rptr. 1, 486 P.2d 1201 (1971); *In re Marsh*, 40 Ill. 2d 53, 237 N.E.2d 529 (1968); *In re Ronny*, 40 Misc. 2d 194, 242 N.Y.S.2d 844 (1963); *State v. Shaw*, 93 Ariz. 40, 378 P.2d 487 (1963).

⁷⁴*In re Harris*, 2 Crim. L.R. 2412 (Cook County Juv. Ct., Dec. 22, 1967) (either treatment be provided to the juveniles or they would be transferred to other institutions); *In re Owens*, 9 Crim. L.R. 2415 (Cook County Cir. Ct., July 9,

it was only a short step for the courts to begin to consider the adequacy of treatment⁷⁵ which in some cases considered health or medically-related aspects.⁷⁶ Judicial review of medical care did not come until the 1970's. In *In re Savoy*⁷⁷ and *Juvenile Detention Center — Baltimore City Jail*,⁷⁸ lower courts considered the adequacy of the institutions' medical facilities as part of general allegations of the unsuitability of the institutions. The Court in *In re Savoy* did not find the provisions of medical care inadequate, but it did scrutinize them carefully to reach that conclusion.

One recent Rhode Island case may prove to be of great significance to California cases in the medical care area. In *Inmates v. Affleck*⁷⁹ the court directly examined the medical care provided in a boys' reformatory. There was evidence of a suicide attempt which did not receive medical attention for eight hours, and none thereafter,⁸⁰ and of several other suicide attempts without subsequent medical or psychiatric care;⁸¹ no nurse or doctor was on regular duty or made regular visits;⁸² the medicine cabinet was inaccessible and medicine was not given out to the youths;⁸³ and medical care was generally inadequate.⁸⁴ The Court, operating under a statute⁸⁵ delineating a purpose of confinement substantially the same as the Cali-

1971) (ordered that counseling must begin for juveniles who have spent over 5 days in solitary or who have been treated with tranquilizers). See also *White v. Reid*, 125 F. Supp. 647, 650 (D.C. Cir. 1954) where it is stated that unless the institution is primarily concerned with the child's well-being and rehabilitation, ". . . it seems clear commitment to such an institution is by reason of conviction of a crime and cannot withstand an assault for violation of fundamental constitutional safeguards."

⁷⁵*Baker v. Hamilton*, 345 F. Supp. 345 (W.D.Ky. 1972); *Boone v. Danforth*, 463 S.W.2d 825 (Mo. 1971); *State ex rel. Londerholm v. Owens*, 197 Kan. 212, 416 P.2d 259 (1966); *In re Rich*, 125 Vt. 373, 216 A.2d 266 (1966); U.S. *ex rel. Stinnett v. Hegstrom*, 178 F. Supp. 17 (D. Conn. 1959); *White v. Reid*, 125 F. Supp. 647 (D.C.C. 1954).

⁷⁶*Martarella v. Kelley*, 349 F. Supp. 575 (S.D.N.Y. 1972); *Nelson v. Heyne*, 355 F. Supp. 451 (N.D. Ind. 1972); *Juvenile Detention Center — Baltimore City Jail*, Supreme Bench of Baltimore City, August 3, 1971 (slipsheet citation); *In re Owens*, 9 Crim. L.R. 2415 (Cook County Cir. Ct. July 9, 1971); *Lollis v. N.Y. State Dept. of Social Services*, 322 F. Supp. 473 (S.D.N.Y. 1970); *Pena v. N.Y. State Dept. of Social Services*, 322 F. Supp. 473 (S.D.N.Y. 1970).

⁷⁷Nos. 70-4808, 70-4714 (D.C. Juv. Ct. October 13, 1970) (slipsheet citations).

⁷⁸Supreme Bench of Baltimore City, August 3, 1971 (slipsheet citation).

⁷⁹346 F. Supp. 1354 (D.R.I. 1972).

⁸⁰*Id.* at 1361-62.

⁸¹*Id.* at 1359.

⁸²*Id.* at 1361.

⁸³*Id.* at 1361.

⁸⁴*Id.* at 1359.

⁸⁵The Rhode Island statute declared the purpose of judicial intervention was to secure for the juvenile ". . . custody, care, and discipline as nearly as possible equivalent to that which should have been given by his parents." R.I. GEN. LAW § 14-1-2 (1970); to provide the juvenile with "instruction and reformation, not punishment." R.I. GEN. LAW § § 13-4-1 (1970), 13-4-13 (Supp. 1973), 13-4-15 (Supp. 1973).

ifornia statute,⁸⁶ found the conditions of medical care unsatisfactory and discriminatory and ordered the defendant to provide certain minimum conditions of confinement.⁸⁷

Similarly in California, suit was recently brought to close the Yolo County Juvenile Hall.⁸⁸ Petitioners' brief cited many conditions which were not in conformance with the standards set forth by the C.Y.A. A significant number of these were related to medical care. Petitioners alleged that C.Y.A. Standard VIII C, which recommends medical examinations within 48 hours, had not been met by the Hall. Until August, 1972, no physician or nurse regularly performed physical examinations.⁸⁹ Several minors with trenchmouth spent several days at the Hall before the probation officer discovered the condition.⁹⁰ After August, 1972, a nurse was scheduled to spend Monday and Thursday mornings at the Hall.⁹¹ The nurse was unable to meet this schedule. When she was sick for two weeks, no replacement was found. And several juveniles testified they had not seen the nurse for three weeks.⁹² Even if the schedule had been maintained, it would still have been below the C.Y.A. Standards.⁹³

The petition also alleged that the Hall was derelict in supplying medical and psychiatric services.⁹⁴ The brief relied on the Welfare and Institutions Code⁹⁵ and C.Y.A. Standards⁹⁶ to establish the level of care which was required, and cited numerous suicide attempts and injuries which were met with apathy and neglect⁹⁷ as evidence of failure to provide the necessary care. The Hall authorities mooted

⁸⁶ Compare it with CAL. WELF. & INST. CODE § 502 (West 1972), *infra* at 7.

⁸⁷ *Inmates of Boys' Training School v. Affleck*, 346 F. Supp. 1354, 1373 (D.R.I. 1972).

⁸⁸ *In re Yolo County Juvenile Hall*, No. 5326, (Superior Ct., Yolo County, April 23, 1973).

⁸⁹ Petitioner's Brief at 78, *In re Yolo County Juvenile Hall*, No. 5326 (Superior Ct., Yolo County, April 23, 1973) [hereinafter cited as Petitioner's Brief].

⁹⁰ *Id.* at 78 n. 152.

⁹¹ *Id.* at 78.

⁹² *Id.* at 78 n. 153.

⁹³ *Id.* at 78-79.

⁹⁴ *Id.* at 79.

⁹⁵ CAL. WELF. & INST. CODE, §§ 739, 852 (West Supp. 1974 and West 1972).

⁹⁶ CAL. DEPT. OF THE YOUTH AUTHORITY, STANDARDS FOR JUVENILE HALLS, VIII-B, VIII-C, 28 (1973).

⁹⁷ Petitioner's Brief, *supra* note 89, at 80 n. 156. A young girl suffering from claustrophobia was locked in her room by a supervisor and proceeded to bang her head against the wall. Another girl attempted to commit suicide by hanging herself from her window. The supervisor commented, "She played a good suicidal role that time." One girl identified by hall records as having "a sex problem" and "very unstable, mentally" attempted or simulated an attempt at suicide. A young boy, with a hall record of volatility, became hysterical upon being rebooked into Juvenile Hall and stabbed another boy. Another boy, who the Yolo staff were aware had attempted suicide at Sacramento Juvenile Hall, tried it again upon admission to Yolo. No attempt to prevent a recurrence had been made.

out most of the allegations relating to medical care by taking the remedial steps urged in the brief, but the eventual holding of the Superior Court found the hall was "not being operated and maintained as a suitable place for confinement of minors for the failure to examine within 48 hours and for such health-related reasons as overcrowding, fire and safety hazards, unsanitary conditions in the infirmary, and general unsanitary conditions in the hall."⁹⁸

The question then arises: Why has there been so little litigation in this area? It is not for lack of a problem — the few cases described amply demonstrate that not all is well in our juvenile institutions. Perhaps it is simply that judicial receptivity to litigation over general conditions in juvenile institutions has not been very high. Prison litigation is only recently receiving attention, and juvenile institution litigation is in an even more primitive state of development.

This newness is demonstrated by the fact that C.Y.A. has not had a case involving medical care decided against it at the trial or appellate level. None of the cases have charged inadequacy of medical care facilities. Most of them involve allegations that treatment, although available, was not received or not promptly received, and most boil down to questions of fact.⁹⁹

One possible reason for the lack of lawsuits may be the willingness of C.Y.A. to settle rather than litigate. This was the case with many of the allegations in the complaint in *In re Yolo County Juvenile Hall*. The elimination of specific grievances may be laudable; however, it also eliminates the possibility of a judicial ruling on the same; and as one court has noted, the situation could change again.¹⁰⁰

In the Juvenile Hall context, a major bar to litigation may be the reluctance of administrators to divulge information or even to admit that problems exist.¹⁰¹ Of course with adequate discovery there is no reason for this to be a significant impediment to future lawsuits.¹⁰²

⁹⁸*In re Yolo County Juvenile Hall*, No. 5326, 11-13 (Superior Court, Yolo County, April 23, 1973).

⁹⁹Interview with Dan Doyle, Legal Counsel, C.Y.A., Sacramento, November 13, 1973.

¹⁰⁰*Nolan v. Fitzpatrick*, 451 F.2d 545, 551 (1st Cir. 1971).

¹⁰¹Conversation in California Youth Authority administrative office, Sacramento, October 18, 1973.

¹⁰²The WALD SURVEY, *supra* note 22 concludes with the statement that "[m]ost superintendents recognized weaknesses in their halls and were trying to improve the facility and program." This optimism is not completely justified by interviews conducted in connection with this article. The meritorious intentions were present where the problems were indeed recognized — but it was often the case that problems were not recognized. Allowing for the relatively difficult position of probation officers with regard to financial sources for their facilities, interviews with probation officers invariably encountered sunny descriptions of bleak facilities, a basic unwillingness to provide basic information (justified as protection of confidentiality of the minors), and a relative lack of concern about medical care.

IV. THE MINIMAL STANDARD

In any determination of a minimum level of medical care in juvenile institutions, the analogy to conditions in adult facilities serves as a useful starting point.¹⁰³ In fact, the few reported cases dealing with medical care in juvenile facilities have utilized the standards of care in adult facilities and have relied on cases dealing with medical rights in prisons.¹⁰⁴

Of course, the health care situation in adult correctional institutions is hardly idyllic. Not infrequently the care given to inmates has been so poor that it actually worsens the existent medical conditions.¹⁰⁵ Institutional hospitals are often unsanitary¹⁰⁶ and lack much of the basic equipment necessary for the practice of medicine.¹⁰⁷

¹⁰³ For comparisons of health and medical conditions in prisons and juvenile institutions, see Note, *The Courts, The Constitution and Juvenile Institutional Reform*, 52 B.U.L. REV. 33, 52-57 (1972).

There are also analogies to be drawn between dependent juveniles and the civil commitment of adults. In both cases the purpose of the confinement is the same: to protect the individual, to remove him from neglect, and to give him the treatment he needs to remedy the physical or emotional problem which has rendered him incapable of managing his own affairs. See, e.g., *Rouse v. Cameron*, 373 F.2d 451, 453 (D.C. Cir. 1966); *Robinson v. California*, 370 U.S. 660 (1962).

There are, however, several problems in analogizing from the mental health area to juvenile justice, which have been noted by commentators. See Note, *A Right to Treatment for Juveniles?*, 1973 WASH. U. L.Q. 157, 174, n. 74 (Winter 1973); Kittrie, *Can the Right to Treatment Remedy the Ills of the Juvenile Process?*, 57 GEO. L.J., 848, 862 n. 62 (1969); Comment, *Juvenile Law — An Important Step Towards Recognition of the Constitutional Right to Treatment*, 16 ST. LOUIS U. L.J. 340, 344 n. 28 (1972). These authors theorize that statutes which can be used to recognize a right to care and treatment for mentally ill individuals in institutions cannot be used to analogize comparable rights for juveniles. The primary stumbling block is statutes which provide for mentally disturbed juveniles to be diverted to the mental health system. See CAL. WELF. & INST. CODE § 703 *et seq.* (West 1972).

¹⁰⁴ *Juvenile Detention Center — Baltimore City Jail*, Supreme Bench of Baltimore City, August 3, 1971; *Martarella v. Keeley*, 349 F. Supp. 575 (S.D.N.Y. 1972); *Inmates of Boys' Training School v. Affleck*, 346 F. Supp. 1354 (D.R.I. 1972).

¹⁰⁵ Prisons: Alexander, *The Captive Patient: The Treatment of Health Problems in American Prisons*, 5 CLEARING. REV. 16 (May 1972).

Juvenile Institutions: THE PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND THE ADMINISTRATION OF JUSTICE — U.S. TASK FORCE: JUVENILE DELINQUENCY AND YOUTH CRIME REPORT 145 n. 13 (1967) [hereinafter cited as TASK FORCE].

¹⁰⁶ Prisons: "Hospitals did not normally possess customary antiseptic quality normally expected of a hospital or medical facility [or] impart . . . [an] aura of overall cleanliness." ". . . dirty linen left lying in hallways; open catheter receptacles in rooms; presence of foul odors. . . ." ASSEMBLY SELECT COMMITTEE ON PRISON REFORM AND REHABILITATION, AN EXAMINATION OF CALIFORNIA'S PRISON HOSPITALS, 13 (November 1972) [hereinafter cited as ASSEMBLY COMMITTEE].

Juvenile Institutions: ". . . two or three halls . . . were quite dirty. . . ." ". . . there was dirt and dust throughout the hall, the hall was foul smelling. . . ." WALD SURVEY, *supra* note 22, at 124.

¹⁰⁷ ASSEMBLY COMMITTEE, *supra* note 106 at 15.

Procedures followed in the institutions for providing medical care are often negligent,¹⁰⁸ and the physicians and staffs have come under severe criticism from both inmates and commentators.¹⁰⁹ The courts, while sometimes denying their ability to evaluate medical conditions in prisons,¹¹⁰ have at other times acquired such expertise, and have

¹⁰⁸ Prisons: "... unless they showed outward signs of illness or injury, they would not be referred to a doctor." "... for too many valid cases of illness or injury are not believed or misdiagnosed." ASSEMBLY COMMITTEE, *supra* note 106, at 16.

Juvenile Institutions: "... halls would take a minor to a doctor if he complained of illness or was injured." "... minors ... reported having been ill and not being able to see a doctor or having had to wait for a long time before being taken to one ... the probation officers controlled access to the doctor and refused to believe their claims of illness. ..." WALD SURVEY, *supra* note 22, at 125.

¹⁰⁹ Prisons: The prison doctor may see himself as "personally responsible for the prison's medical supplies ... all to be jealously guarded against the inmate. ..." Rundle, *Medical Uncare for Prisoners*, 1 PRISON RIGHTS NEWSLETTER 53-54 (1971).

Juvenile Institutions: "There is a locked medicine chest available ... their medicine is not given to them." *Inmates of Boys' Training School v. Affleck*, 346 F. Supp. at 1361 (D.R.I. 1972). "A supervisor ... chose to disbelieve a minor who told her that she required pills for her goiter condition." Petitioner's Brief, *supra* note 89, at 82 n. 162.

Prisons: The doctor "assumes every patient is trying to con him" and may resist complaints. The doctor may find himself making moral judgments which affect his treatment of different patients, particularly those with self-inflicted wounds. Rundle, *supra*, at 53-54.

Juvenile Institutions: After a young girl attempted to commit suicide by hanging herself, the comment was "She played a good suicidal role that time." Petitioner's Brief, *supra* note 89, at 80 n. 156.

Prisons: "Prison doctors are officials of the prison and as such are subject to the same pressures and needs for personal justification as are other administrators, particularly where the inmate is suing for damages for inadequate treatment." Rundle, *supra*, at 53-54.

Juvenile Institutions: "At the hearing, respondents took the position that the failure to provide psychiatric services was attributable either to the unavailability of such services or the unwillingness of hospitals and the Mental Health Clinic to provide them ... sufficient services are available ... it does not appear that respondents have sought to take advantage of existing facilities and services ... weekly consultations with ... the Mental Health Clinic were discontinued because none of the juvenile hall staff asked ... any questions." Petitioner's Brief, *supra* note 89, at 81.

Prisons: "... marked lack of concern about inmates' well-being. ..." "... openly hostile toward certain inmates seeking medical attention. ..." "... the victim of a knife wound [lay] ... in a hospital for over two hours, awaiting the doctor who had decided to stop off for breakfast." ASSEMBLY COMMITTEE, *supra* note 106, at 14 and 17.

Juvenile Institutions: *Inmates of Boys' Training School v. Affleck*, 346 F. Supp. 1354, 1359, 1361-62 (D.R.I. 1972) and Petitioner's Brief, *supra* note 89, at 80 n. 156 describe numerous suicide attempts met with apathy and which receive little follow-up care.

¹¹⁰ *Ford v. Board of Managers*, 407 F.2d 937, 940 (3rd Cir. 1969); *Belk v. Mitchell*, 294 F. Supp. 800, 802 (W.D.N.C. 1968); *Cullum v. California Dept. of Corrections*, 267 F. Supp. 524 (N.D. Cal. 1967); *Childs v. Pegelow*, 321 F.2d 487 (4th Cir. 1963); *Golub v. Krinsky*, 185 F. Supp. 783 (S.D.N.Y. 1960); see Note, *Beyond the Ken of the Courts: A Critique of Judicial Refusal to Review*

not been loath to apply it.¹¹¹

At minimum, however, the standards of medical care in juvenile justice institutions should be the equal of that required in adult facilities. Anything less might result in serious equal protection problems.¹¹²

Of course it may well be that the proper standard of care for juveniles would significantly exceed that accorded adults.¹¹³ The avowed purpose of institutionalization of adult offenders is imprisonment, separation from the population at large. Secondary considera-

the Complaints of Convicts, 72 YALE L.J. 506, 508 n. 12 (1963); Turner, *Establishing the Rule of Law in Prisons: A Manual for Prisoners' Rights Litigation*, 23 STAN. L. REV. 473 n. 2 (1971).

¹¹¹ *Campbell v. Beto*, 460 F.2d 765 (5th Cir. 1972); *Newman v. State of Alabama*, 349 F. Supp. 278 (M.D. Ala. 1972); *Collins v. Schoonfield*, 344 F. Supp. 257 (D. Md. 1972); *Holt v. Saver*, 309 F. Supp. 362 (E.D. Ark. 1970), *aff'd*, 442 F.2d 304 (8th Cir. 1971); *Jones v. Wittenberg*, 330 F. Supp. 707 (N.D. Ohio 1971), *aff'd sub nom.*, *Jones v. Metzger*, 456 F.2d 854 (6th Cir. 1972); *Wayne County Jail Inmates v. Wayne County Board of Commissioners*, No. 173217 (Mich. Cir. Ct., May 25, 1971), 5 CLEARING. REV. 108, Clearinghouse No. 5035 (June 1971); *Pennsylvania ex rel. Bryant v. Hendrik*, 7 Crim. L.R. 2463 (Pa. C.P., Philadelphia County, August 11, 1970), *aff'd* *Pennsylvania v. Hendrick*, No. 625 (Pennsylvania Sup. Ct., August 2, 1971), 5 CLEARING. REV. 421 (November 1971); *Ramsey v. Ciccone*, 310 F. Supp. 600 (M.D. Mo. 1970); *Peek v. Ciccone*, 288 F. Supp. 329 (E.D. Mo. 1968); *Wright v. McMann*, 387 F.2d 519 (2d Cir. 1967); *Talley v. Stephens*, 247 F. Supp. 683 (E.D. Ark. 1965); *Pisacano v. State*, 8 App. Div. 335, 188 N.Y.S.2d 35 (1965).

¹¹² Where such a disparity exists, a successful challenge might be mounted by use of either of the two standard Equal Protection arguments: (a) that the right to medical care in juvenile institutions is a "fundamental right," which the state, by incarcerating the juvenile, was denying him, or (b) the classification (between adults and juveniles) is an irrational one which serves no legitimate state interest. See Note, *A Right to Treatment for Juveniles?*, 1973 WASH. U. L.Q. 157, 163 n. 25 (1973); Kittrie, *Can the Right to Treatment Remedy the Ills of the Juvenile Process?*, 57 GEO. L.J. 848 (1969); Comment, *Juvenile Law — An Important Step Toward Recognition of the Constitutional Right to Treatment*, 16 ST. LOUIS U. L.J. 340 (1972); Note, *Developments in the Law — Equal Protection*, 82 HARV. L. REV. 1065, 1127-31 (1969).

A strong boost to the idea that medical care is a fundamental right can be found in the concurring opinion of Justice Douglas in *Roe v. Wade*, 410 U.S. 113, 213 (1973) where it is stated that: "... freedom to care for one's health and person, ... though fundamental [is] ... subject to regulation on a showing of 'compelling state interest.' "

¹¹³ Note, *A Right to Treatment for Juveniles?*, 1973 WASH. U. L.Q. 157, 163 n. 25 (1973). The author points to several cases where the judicial attitude expressed is that if the right to treatment (used here in a rehabilitative sense) is based on substantive due process, what is "substantively due" depends on the reason the person is in the institution. Using this line of reasoning, juveniles would be entitled to "more" treatment (and presumptively greater rights to medical treatment) than adult prisoners. The problem is that this analysis could be intra-institutionally applied as well as inter-institutionally, so that dependent juveniles would be entitled to more treatment than wards. This extension could be avoided by a stress on the administrative absurdity of differentiation within the institution, and perhaps by arguments relying on equal protection. See *Dobson v. Cameron*, 383 F.2d 519, 523-24 (D.C. Cir. 1967) (Burger, J., concurring); *State v. Pooley*, 278 Minn. 67, 73, 153 N.W.2d 143, 146 (1967); *In re Jones*, 432 Pa. 44, 246 A.2d 356 (1968).

tions are rehabilitation and training.¹¹⁴ The imprisonment of adults has overtones of punishment, deterrence and retribution.¹¹⁵ Juveniles, on the other hand, are institutionalized primarily for rehabilitation and care, and theoretically no penal or retributive consequences attach to their confinement.¹¹⁶ Some authorities view this as something of a "trade off": in exchange for the relinquishing of procedural safeguards, the child receives more care and individualized treatment than his adult counterpart.¹¹⁷ Thus while juveniles may or may not be entitled to greater attention in this area than adults, it is at least clear that it would be constitutionally impermissible to afford them less.

In terms of the applicable standard for adults, the present state of the law, as with other areas of prison rights litigation, is in the developmental stage. Prisoners are no longer "slaves of the state,"¹¹⁸ and it is generally conceded that the state is obligated to furnish basic medical services to inmates.¹¹⁹ Where these are inadequate or nonexistent, inmates may seek a remedy either through habeas cor-

¹¹⁴ The California Penal Code establishes three purposes for the different adult institutions within its purview:

1. The "primary purpose" is imprisonment of offenders who seem capable of moral rehabilitation and restoration to good citizenship, CAL. PEN. CODE § 2002 (West 1970).
2. The purpose is to provide confinement, industrial and other training, treatment, and care, CAL. PEN. CODE §§ 2022, 2032 (West 1970).
3. The purpose is to provide custody, care, industrial, avocational and other training, CAL. PEN. CODE §§ 2048.1, 2049.1 (West 1972).

¹¹⁵ *Inmates of Boys' Training School v. Affleck*, 346 F. Supp. 1354, 1363 (D.R.I. 1972) (construing a statutory scheme similar to California's).

¹¹⁶ When a Penal Code institution houses juveniles as well as adults, the emphasis of the purpose clause changes:

The purpose is "... to provide custody, care, industrial, vocational and other training, guidance and reformatory help for young men, too mature to be benefited by the programs of correctional schools for juveniles and too immature in crime for confinement in prisons."

CAL. PEN. CODE § 2036 (West 1970).

This purpose clause is identical to the clause stating the purpose of the Youth Training School, CAL. WELF. & INST. CODE § 1251 (West 1972). See also CAL. WELF. & INST. CODE § 502 (West 1972), CAL. WELF. & INST. CODE § 1002 (West 1972) C.Y.A. given power to establish schools "... to promote the well-being, education, and reformation of the inmates ...", CAL. WELF. & INST. CODE § 1700 (West 1972). The purpose of the C.Y.A. is "... to protect society more effectively by substituting for retributive punishment methods of training and treatment directed toward the correction and rehabilitation of young persons found guilty of public offenses."

¹¹⁷ *In re Rich*, 125 Vt. 373, 216 A.2d 266 (1966). For discussion of the trade-off analysis, see Note, *The Courts, The Constitution and Juvenile Institutional Reform*, 52 B.U.L. REV. 33, 36-37, 42-43 (Winter 1972).

¹¹⁸ *Ruffin v. The Commonwealth*, 62 Va. (21 Gratt.) 790, 796 (1871).

¹¹⁹ RUBIN, *THE LAW OF CRIMINAL CORRECTIONS*, 294-95. See also Sneiderman, *Prisoners and Medical Treatment: Their Rights and Remedies*, 4 CRIM. L. BULL. 450 (July-August 1968).

pus,¹²⁰ or in the case of state prisoners, under section 1983.¹²¹

The response of the judiciary to these actions, while often negative,¹²² is nevertheless sympathetic where gross denials of medical care have occurred.¹²³ Courts are willing to intervene under the auspices of the 8th Amendment where there has been a total denial of medical care;¹²⁴ where care was denied to inmates who entered the institution with existing problems,¹²⁵ or chronic conditions;¹²⁶ where

¹²⁰ *Coffin v. Reichard*, 143 F.2d 443, 445 (6th Cir. 1944), *cert. denied*, 325 U.S. 887 (1945):

A prisoner is entitled to the writ of habeas corpus when, though lawfully in custody, he is deprived of some right to which he is lawfully entitled even in his confinement, the deprivation of which serves to make his imprisonment more burdensome than the law allows or curtails his liberty to a greater extent than the law permits.

¹²¹ 42 U.S.C. §1983 (1974). See Plotkin, *Enforcing Prisoners' Rights to Medical Treatment*, 9 CRIM.L. BULL. 159 (1973); *Monroe v. Pape*, 365 U.S. 167 (1961); *Williams v. Field*, 416 F.2d 483 (9th Cir. 1969); *Ury v. Santee*, 303 F. Supp. 119 (N.D. Ill. 1969); *Bell v. Hosse*, 31 F.R.D. 181 (D. Tenn. 1962).

¹²² For an excellent discussion, see Note, *Beyond the Ken of the Courts: A Critique of Judicial Refusal to Review the Complaints of Convicts*, 72 YALE L.J. 506 (1963).

The "hands off" position adopted by some courts seems to spring from their own supposed evaluative incompetence and a desire to defer to the "presumed administrative expertise of prison officials." Turner, *Establishing the Rule of Law in Prisons: A Manual for Prisoners' Rights Litigation*, 23 STAN. L. REV. 473, 473 n. 2 (1971). See also *Ford v. Board of Managers*, 407 F.2d 937, 940 (3rd Cir. 1969); *Campbell v. Wainwright*, 416 F.2d 949, 950 (5th Cir. 1959); *Carswell v. Wainwright*, 413 F.2d 1044, 1045 (5th Cir. 1969); *Startti v. Beto*, 405 F.2d 858, 859 (5th Cir. 1969); *Douglas v. Sigler*, 386 F.2d 684, 688 (8th Cir. 1967); *Walker v. Blackwell*, 360 F.2d 66, 67-68 (5th Cir. 1966); *Walker v. Pate*, 356 F.2d 502, 504 (7th Cir. 1966); *Tabor v. Hardwick*, 224 F.2d 526, 529 (5th Cir. 1955), *cert. denied*, 350 U.S. 971 (1956); *U.S. ex rel. Lawrence v. Ragen*, 323 F.2d 410, 412 (7th Cir. 1963); *Childs v. Pegelow*, 321 F.2d 487, 489-90 (4th Cir. 1963), *cert. denied*, 376 U.S. 932 (1964); *U.S. v. Radio Station WENR*, 209 F.2d 105, 107 (7th Cir. 1953); *Adams v. Ellis*, 197 F.2d 483, 485 (5th Cir. 1952); *Powell v. Hunter*, 172 F.2d 330, 331 (10th Cir. 1949); *Belk v. Mitchell*, 294 F. Supp. 800, 802 (W.D.N.C. 1968); *Siegel v. Ragen*, 180 F.2d 785, 788 (7th Cir. 1950), *cert. denied*, 339 U.S. 990 (1950); *Kelly v. Dowd*, 140 F.2d 81, 82-83 (7th Cir. 1944), *cert. denied*, 321 U.S. 783 (1944); *Blythe v. Ellis*, 194 F. Supp. 139, 139-40 (S.D. Texas, 1961).

¹²³ *U.S. ex rel. Hyde v. McGinnis*, 429 F.2d 864, 865 (2d Cir. 1970); *Bishop v. Cox*, 320 F. Supp. 1031, 1032 (W.D. Va. 1970); *Jackson v. Bishop*, 268 F. Supp. 804 (E.D. Ark. 1967), *vac.*, 404 F.2d 571 (8th Cir. 1969).

¹²⁴ *Campbell v. Beto*, 460 F.2d 765, 768 (5th Cir. 1972); *Coppinger v. Townsend*, 398 F.2d 392, 394 (10th Cir. 1968); *Wright v. McMann*, 387 F.2d 519 (2d Cir. 1967); *Argentine v. McGinnis*, 311 F. Supp. 134, 137-38 (S.D.N.Y. 1969); *Austin v. Harris*, 226 F. Supp. 304, 308-09 (W.D. Mo. 1964); *McCullum v. Mayfield*, 130 F. Supp. 112, 114-115 (N.D. Cal. 1955). *But see* *Cummins v. Ciccone*, 317 F. Supp. 342 (W.D. Mo. 1970) which states that a single denial is not enough — a pattern must be established to state a cause of action.

¹²⁵ *Hughes v. Noble*, 295 F.2d 495 (5th Cir. 1961); *Coleman v. Johnston*, 247 F.2d 273 (7th Cir. 1957).

¹²⁶ *Tolbert v. Eyman*, 434 F.2d 625 (9th Cir. 1970); *Blanks v. Cunningham*, 409 F.2d 220 (4th Cir. 1969); *Riley v. Rhay*, 407 F.2d 496 (9th Cir. 1969); *Redding v. Pate*, 220 F. Supp. 124 (N.D. Ill. 1963); *Pisacano v. State*, 8 App. Div. 2d 335, 188 N.Y.S.2d 35 (4th Dept. 1969).

brutality, deliberate mistreatment¹²⁷ or "deliberate indifference"¹²⁸ occurred; or where the officials themselves were countermanding a physician's order or refusing to follow a physician's instructions.¹²⁹ However, courts will not intervene where the only issue is a difference of opinion between a prisoner and a physician,¹³⁰ or where an inmate alleges that *negligent* denial of medical care is cruel and unusual punishment.¹³¹ In the later case courts have denied relief under the Constitution and have relegated prisoners to the use of a tort remedy.¹³²

In some cases the attacks on medical care have been included in

¹²⁷ Haines v. Kerner, 404 U.S. 519 (1972); Edwards v. Duncan, 355 F.2d 993 (4th Cir. 1966).

¹²⁸ U.S. *ex rel.* Hyde v. McGinnis, 429 F.2d 864, 867 (2d Cir. 1970); Church v. Hegstrom, 416 F.2d 449, 451 (2d Cir. 1969); Ramsey v. Ciccone, 310 F. Supp. 600, 605 (W.D. Mo. 1970); Sawyer v. Sigler, 320 F. Supp. 690, 696 (D. Neb. 1970), *aff'd*, 445 F.2d 818 (8th Cir. 1971); Tijerina v. Ciccone, 324 F. Supp. 1265, 1267 (W.D. Mo. 1971); Talley v. Stephens, 247 F. Supp. 683, 687 (E.D. Ark. 1965).

¹²⁹ Campbell v. Beto, 460 F.2d 765, 768 (5th Cir. 1972); Martinez v. Mancusi, 443 F.2d 921, 924 (2d Cir. 1970); Tolbert v. Eyman, 434 F.2d 625, 626 (9th Cir. 1970); Newman v. Alabama, 349 F. Supp. 278, 281 (N.D. Ala. 1972); Sawyer v. Sigler, 320 F. Supp. 690, 695 (D. Neb. 1970), *aff'd*, 445 F.2d 818 (8th Cir. 1971); Black v. Ciccone, 324 F. Supp. 129 (W.D. Mo. 1970).

¹³⁰ Shields v. Kunkel, 442 F.2d 409, 410 (9th Cir. 1971); Paniagua v. Moseley, 451 F.2d 228, 230 (10th Cir. 1971); Dominguez v. Moseley, 431 F.2d 1376 (10th Cir. 1970); Flint v. Wainwright, 433 F.2d 961, 962 (5th Cir. 1970); Coppinger v. Townsend, 398 F.2d 392, 394 (10th Cir. 1968); Stiltner v. Rhay, 371 F.2d 420, 421 (9th Cir. 1967), *cert. denied*, 387 U.S. 948 (1967); Lee v. Stynchcombe, 347 F. Supp. 1076, 1080-81 (N.D. Ga. 1972); Tijerina v. Ciccone, 324 F. Supp. 1265, 1267-68 (W.D. Mo. 1971); Willis v. White, 310 F. Supp. 205, 207 (E.D. La. 1970); Reynolds v. Swenson, 313 F. Supp. 328, 329-30 (D.C. Mo. 1970); Prewitt v. Arizona *ex rel.* Eyman, 315 F. Supp. 793, 794 (D. Ariz. 1969); Mayfield v. Craven, 299 F. Supp. 1111, 1113 (E.D. Cal. 1969); Ayers v. Ciccone, 300 F. Supp. 568, 573 (W.D. Mo. 1968), *cert. denied*, 396 U.S. 943 (1969).

¹³¹ Kontos v. Prasse, 444 F.2d 166, 166 (3d Cir. 1971); Shields v. Kunkel, 442 F.2d 409, 410 (9th Cir. 1971); U.S. *ex rel.* Hyde v. McGinnis, 429 F.2d 964, 866 (2d Cir. 1970); Haggerty v. Wainwright, 427 F.2d 1137, 1138 (5th Cir. 1970); Mayfield v. Craven, 433 F.2d 873, 874 (9th Cir. 1970); Church v. Hegstrom, 416 F.2d 449, 451 (2d Cir. 1969); Bradford Audio Corp. v. Pious, 392 F.2d 67, 72 (2d Cir. 1968); Schack v. Florida, 391 F.2d 593, 594 (5th Cir. 1968), *cert. denied*, 382 U.S. 916 (1968); Stiltner v. Rhay, 371 F.2d 420, 421 (9th Cir. 1967); Thompson v. Blackwell, 374 F.2d 945, 946 (5th Cir. 1967); Snow v. Gladden, 338 F.2d 999, 1000 (9th Cir. 1964); Barnes v. Dorsey, 354 F. Supp. 179, 183 (E.D. Mo. 1973); Robinson v. Jordan, 355 F. Supp. 1228, 1230-31 (N.D. Tex. 1973); Bishop v. Cox, 320 F. Supp. 1031, 1032 (W.D. Va. 1970); Hopkins v. County of Cook, 305 F. Supp. 1011, 1012 (N.D. Ill. 1969); Goodchild v. Schmidt, 279 F. Supp. 149, 150 (E.D. Wis. 1968). But negligence was held to state a claim in McCrossen v. State, 277 App. Div. 1160, 101 N.Y.S.2d 591 (1950), *leave to appeal denied*, 302 N.Y. 950, 98 N.E.2d 117 (1950).

And it has been held that negligence of an administrator or physician will not be allowed to be raised under § 1983 even if the act might otherwise constitute malpractice. Smith v. Schneckloth, 414 F.2d 680, 681 (9th Cir. 1969).

¹³² Ramsay v. Ciccone, 310 F. Supp. 600, 605 (W.D. Mo. 1970); Nettles v. Rundle, 10 Cr. L. Rep. 221 (E.D. Pa. 1971), *aff'd*, 453 F.2d 889 (3d Cir. 1971).

class action suits under section 1983 charging that the total conditions of confinement constituted cruel and unusual punishment.¹³³ These broad attacks on the entire prison system contained allegations of both the unavailability¹³⁴ and inadequacy¹³⁵ of medical care.

Thus if pure symmetry was required the minimal standard of medical care which a juvenile in a California institution would be able to claim would be a right to "reasonable and adequate medical care."¹³⁶ This would include reasonable medical exams at admission and regularly thereafter,¹³⁷ access to sick call at all reasonable times,¹³⁸ adequate and qualified medical staff,¹³⁹ proper dental attention,¹⁴⁰ treatment for special medical problems,¹⁴¹ sanitary¹⁴² and healthy basic conditions of confinement,¹⁴³ and adequate suicide prevention techniques.¹⁴⁴ To this minimum, any statutory or administrative standards for juveniles would be added. The federal cases have shown that individual suits (and presumably class actions) charging deprivation of medical care which shocks the conscience, total deprivation of medical care, intentional deprivation of medical care, deliberate indifference resulting in deprivation of medical care, administrative interference with physicians' orders for medical care, and denial resulting from gross negligence, reckless disregard, or callous inattention would be favorably received. Class action suits would be utilized to challenge unavailability and inadequacy of medical care. Negligent denial of medical care, and denial of statutory and

¹³³ *Inmates of Cook County Jail v. Tierney*, No. 68-C (N.D. Ill. August 22, 1968); *Jones v. Wittenberg*, 330 F. Supp. 707 (N.D. Ohio 1971), *aff'd sub nom.* *Jones v. Metzger*, 456 F.2d 854 (6th Cir. 1972); *Hamilton v. Love*, 328 F. Supp. 1182 (E.D. Ark. 1972).

¹³⁴ *Holt v. Sarver*, 309 F. Supp. 362 (E.D. Ark. 1970), *aff'd*, 442 F.2d 304 (8th Cir. 1971); *Wayne County Jail Inmates v. Wayne County Board of Commissioners*, No. 173217 (Mich. Cir. Ct., May 25, 1971), 5 CLEARING. REV. 108 (1971).

¹³⁵ *Boyle v. Madigan*, (N.D. Cal. 1970); *Brenneman v. Madigan*, (N.D. Cal. 1970); *Curley v. Gonzales*, Civ. Nos. 8372, 8373 (D.N.M. Feb. 13, 1970); *Jones v. Wittenberg*, 330 F. Supp. 707 (N.D. Ohio 1971), *aff'd sub nom.* *Jones v. Metzger*, 456 F.2d 854 (6th Cir. 1972); *Pennsylvania ex rel. Bryant v. Hendrick*, 7 CRIM. L.R. 2463 (Pa. C.P., Philadelphia County, Aug. 11, 1970), *aff'd*, *Pennsylvania v. Hendrick*, No. 625 (Pa. Super. Ct. Aug. 2, 1971), 5 CLEARING. REV. 421 (November, 1971).

¹³⁶ *Newman v. Alabama*, 349 F. Supp. 278, 281 (M.D. Ala. 1972): prisoners entitled to "basic elements of adequate medical treatment;" *Talley v. Stephens*, 247 F. Supp. 683, 687 (E.D. Ark. 1965): inmates "entitled to demand reasonable medical attention for injuries and disabilities."

¹³⁷ *Collins v. Schoonfield*, 344 F. Supp. 257, 277 (D. Md. 1972).

¹³⁸ *Talley v. Stephens*, 247 F. Supp. 683, 687 (E.D. Ark. 1965).

¹³⁹ *Jones v. Wittenberg*, 330 F. Supp. 707, 718 (N.D. Ohio 1971) *aff'd sub nom.* *Jones v. Metzger*, 456 F.2d 854 (6th Cir. 1972).

¹⁴⁰ *Collins v. Schoonfield*, 344 F. Supp. 257, 277 (D. Md. 1972).

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Jones v. Wittenberg*, 330 F. Supp. 707, 718 (N.D. Ohio 1971) *aff'd sub nom.* *Jones v. Metzger*, 456 F.2d 854 (6th Cir. 1972).

¹⁴⁴ *Collins v. Schoonfield*, 344 F. Supp. 257, 277 (D. Md. 1972).

administrative standards of care could also be challenged in the courts.¹⁴⁵

V. IMPLEMENTATION OF THE RIGHT TO MEDICAL CARE

If the rights of adult prisoners to medical care are regarded as the minimal rights of juveniles in institutions, certain problems follow. One of the most crucial is enforcement. Various theories might be advanced,¹⁴⁶ but all of these would be based on the presumption of an advocate who was aware of the juveniles' deprivation and could then act upon it in the courts. Because of their age, education, inexperience, and length of confinement, juveniles may lack both knowledge of their rights to medical care and an ability to secure legal assistance in enforcing such rights. Parents who were indifferent to or neglected the child, or who may be responsible for the commitment may not be receptive to the complaints issuing from the institution, if indeed the child can make contact at all. The attorney who represented the child in the adjudication phase would in all likelihood have been retained by the parents or the court, so that the child himself lacks a continuing attorney-client relationship once he is confined.

The informational aspect of the problem could be handled in much the same way as it was for the female juveniles' rights to birth control and pregnancy information: the statute granting these rights contained a clause requiring notice of such rights.¹⁴⁷ Similar notice

¹⁴⁵ The area of torts seems a truly fertile, although relatively untapped remedy within the state system. Federal prisoners may also have the option of suing under the Federal Tort Claims Act, 28 U.S.C. § 2671 *et seq.* (1965), *U.S. v. Muniz*, 374 U.S. 150 (1963); *Close v. U.S.*, 397 F.2d 686 (D.C. Cir. 1968). Several states find the requisite duty in the common law, *State ex rel. Morris v. National Surety Co.*, 162 Tenn. 547, 39 S.W.2d 581 (1931); *Hunt v. Rowton*, 143 Okla. 181, 288 P.2d 342 (1930); *Spicer v. Williams*, 191 N.C. 487, 132 S.E. 291 (1926); *Kendrick v. Adamson*, 51 Ga. App. 402, 180 S.E. 647 (1935); *Smith v. Slack*, 125 W. Va. 812, 26 S.E.2d 387 (1943); however, a majority of states have imposed a statutory duty on officials to use ordinary care to protect a prisoner's life and health, and upon breach, prisoners have been able to collect damages. 14 A.L.R.2d 353, 354-58.

In California there are several statutes and administrative regulations imposing this type of duty. CAL. PEN. CODE § 673 (West 1970); CAL. GOV'T. CODE § 845.6 (West 1970); RULES OF THE DIRECTOR OF CORRECTIONS AND OF THE WARDENS AND SUPERINTENDENTS, Issued Pursuant to CAL. PEN. CODE § 5058 (West 1970) D-4601-07. A few successful suits have been brought by prisoners in California for violations of the relevant duty. *Sanders v. County of Yuba*, 247 Cal. App. 2d 748, 55 Cal. Rptr. 852 (1967). Disadvantages to the tort remedy are possible jury bias against an "inmate plaintiff" and a tendency by some courts to hold that only statutory sanctions are available for statutory violations. *Carder v. Steiner*, 225 Md. 271, 170 A.2d 220 (1961); *Bush v. Babb*, 23 Ill. App. 2d 285, 162 N.E.2d 594 (1959); *State v. Ferling*, 220 Md. 109, 151 A.2d 137 (1959).

¹⁴⁶ See notes 112, 120, 121, 145 *supra*.

¹⁴⁷ See note 57 *supra*.

could be posted for rights to basic medical care, although specificity would be a problem. The important point to convey would be that the child has a right to treatment for his physical ailments, and that there is someone he can see if he does not feel he is getting the correct treatment.

This raises the next problem: whom might the child see? The state should be able to provide some type of counselor who would visit the institution on a regular basis, consult with the juveniles and hear any complaints, verify the complaints, and take them to the responsible administrators or secure legal assistance for the juvenile. This should be true for both C.Y.A. and county institutions. An ombudsman within the C.Y.A. would be able to meet all these criteria. He should be guaranteed an independent status within that agency, and could rely on the standards and inspections which the C.Y.A. has begun to promulgate (and which should be increased). The scope of his review would extend to all juvenile institutions, and his status would give him an insight into the positions of both juveniles and institutions. He, or his staff, might also be able to testify in any cases which did occur.

The courts would also have certain problems. Standards of review would have to be developed. Much of this could be done by reliance on the cases involving adult prisoners.¹⁴⁸ In cases involving individuals, courts would have to subjectively determine whether the individual had received proper treatment. In class actions, an objective standard would have to be used. The court could compare institutions, staff, staff-inmate ratios, expenses, and medical facilities and procedures with some norm or with the treatment received in the home. If courts were leery about undertaking such a task, they might create panels of review, to establish standards and hear complaints, with only appeals going to the court itself. Or the court might rely on the ombudsman for these resources.

The court would also have to formulate remedies. In individual cases, the courts could rely on tort law.¹⁴⁹ In class actions, we have seen several remedies the courts could take: ordering compliance with the statute or regulation, or mandating certain changes. Although courts in most cases lack the ability to ensure funding, they do have the authority to enjoin further commitments, to release all prisoners, or to close the facility if changes are not made.

All of these remedial steps require funding, which may not be available, and personnel which may not be obtainable even if the funds are provided. But these very great obstacles do not justify

¹⁴⁸ See text at notes 118-132 *supra*.

¹⁴⁹ See note 145 *supra*.

inaction, for “inadequate resources can never be a justification for the state’s depriving any person of his constitutional rights.”¹⁵⁰

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¹⁵⁰ *Hamilton v. Love*, 328 F. Supp. 1182, 1194 (E.D. Ark. 1971).