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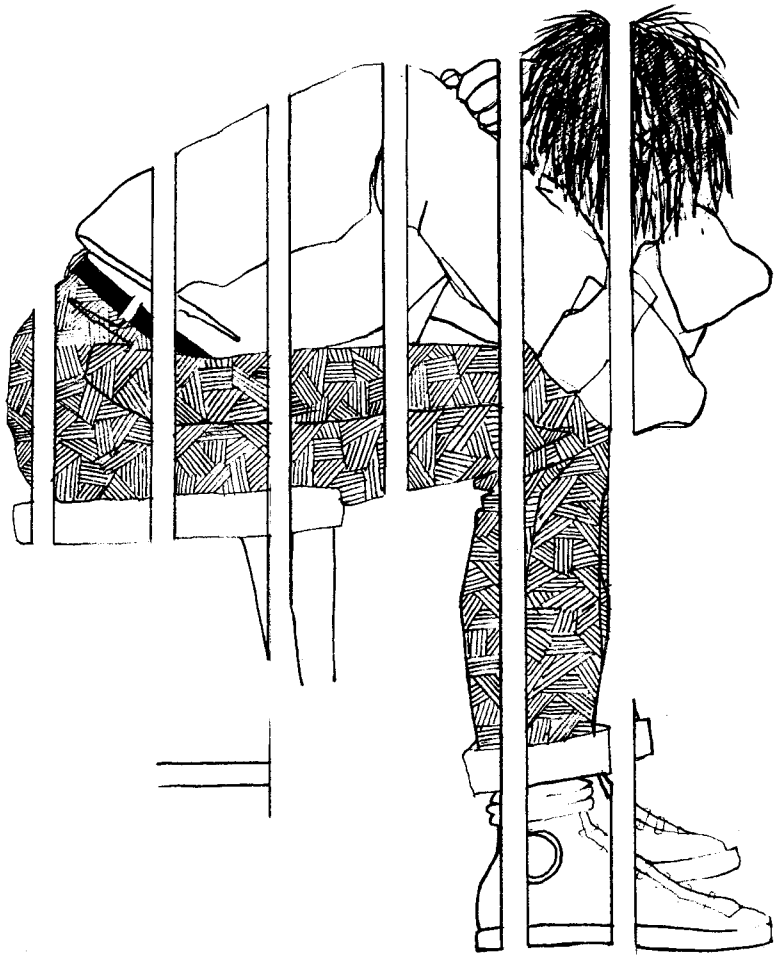

The Juvenile Causes Act[1] was established in Maryland to provide for a program of treatment, training, and rehabilitation consistent with the child's best interest and the interest of the public.[2] The state historically has maintained a *parens patriae* status of sovereign guardianship over juveniles.[3] It is under this status that the state exercises its power over juveniles and provides specific constitutional rights to those under its jurisdictional control.[4]

Although a juvenile proceeding is not a criminal proceeding, it is not devoid of criminal aspects merely because it has been given a civil label.[5] The fourteenth amendment plays an important role in juvenile proceedings.[6] Even though these proceedings take on an informal color, rules of practice, procedure, evidence, and standards of fairness must be observed.[7] The constitutional requirements regarding juveniles must be met.[8]

Taking a Child into Custody

The Juvenile Causes Act provides various methods for taking a child into custody.[9] The court may issue a writ of attachment.[10] A law enforcement officer may take the child into custody pursuant to the laws of arrest.[11] If a law enforcement officer or other person authorized by the court has reason to believe the child is in immediate danger and his removal is necessary for his protection, the child may be taken into custody.[12] If the child is a runaway,[13] a law enforcement agent or court authorized party may take the child into custody.[14]

A police officer may make a warrantless arrest of any person who commits or at-

tempts a felony or misdemeanor in his presence or view.[15] He may arrest any person who he reasonably believes has committed the offense when he has probable cause to believe a felony or misdemeanor is being committed within his presence or view.[16] A police officer may also arrest any person he has probable cause to believe has committed a felony or misdemeanor regardless of whether the crime was committed in his presence or view.[17] This section of the Crimes and Punishments Article[18] also provides for other grounds for warrantless arrests.[19] Basically, if a misdemeanor or felony is not committed within the officer's presence or view, probable cause is required for an arrest.[20]

The Juvenile Causes Act affords a law enforcement officer the power to take a child into custody pursuant to the laws of arrest.[21] In *In re Appeal No. 245*,[22] deputy sheriffs investigating a bicycle theft "understood" the juvenile had been seen riding around on a bike similar to the stolen one.[23] The police officers testified that they had reason to believe the juvenile was involved with the theft.[24] The court concluded that the taking of the child into custody was unlawful because there was no probable cause pursuant to the laws of arrest.[25] The court also noted that mere suspicion is not equivalent to probable cause and is therefore insufficient for a juvenile arrest.[26]

Detention and Shelter Care Responsibilities of Police

Once the juvenile is taken into custody, the law enforcement officer must follow specific statutory proceedings.[27] He has to notify the child's parents or guardians.[28] The child may be released if the parents or guardians promise, in writing, to return the child when requested by the court.[29] The officer may refer the case to an intake officer or the court if the child requires detention and shelter care.[30] Only an intake officer or the juvenile court can authorize detention or shelter care.[31]

Since pre-adjudicatory detention or shelter care is not equivalent to taking the child into custody, section 3-815 of the Juvenile Causes Act does not require a showing of probable cause to detain or shelter the child.[32] Provisions for a hearing and notice of the hearing regarding determinations for detention or shelter care are present in the statute.[33] There are also statutory limitations on where the child may be placed.[34] A police officer can only refer the child for placement.[35] However, the child can be placed into detention or shelter care prior to any hearing, and without a showing of probable cause if, (1) the child is likely to leave the jurisdiction; (2) it is necessary to protect the child or public interest; or (3) there is no person available to provide supervision and care for the child.[36]

Investigative Procedures

A. Confessions One of the most litigated issues on appeal concerns the confessions of juveniles. The landmark case of *In re Gault*[37] held that when juveniles are in custodial interrogation, they must be provided with adequate *Miranda*[38] warnings.[39] Any waiver of these rights must be knowingly and intelligently given.[40]

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mere suspicion is not equivalant to probable cause

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In *In re Appeal No. 245*,[41] the juvenile was confronted at his home by police officers investigating a series of thefts.[42] By placing the juvenile in the back seat of the police vehicle, the juvenile was subjected to custodial interrogation within the meaning of the *Miranda* decision.[43] The court held that the juvenile did not knowingly waive his privilege against self-incrimination and right to counsel when inculpatory statements were given to the investigating officers.[44] The trial court is required to look at the "totality of the circumstances" surrounding the waiver.[45] The age of the juvenile alone will not render a waiver invalid.[46] It is also true that age coupled with a low intelligence will not render a waiver of constitutional rights invalid.[47]

In *King v. State*,[48] the court upheld the rape and assault conviction of a fourteen-year-old characterized as a slow reader and slow learner.[49] The elements of age and intelligence in waiving constitutional rights were considered, but under the totality of the circumstances, the state had met its burden of proving a voluntary waiver.[50]

In *Wiggins v. State*,[51] the court upheld a first-degree murder conviction of a fifteen-year-old based on a knowing and intelligent waiver of constitutionally guaranteed rights.[52] This waiver was challenged strictly on the element of age and the state met its burden of proving voluntariness.[53] In this case, earlier statements which were not shown to be free and voluntary did not preclude admission of inculpatory statements given six days later.[54]

In *King*, the failure of an interrogating officer to allow the father of the fourteen-year-old to see his child, did not render the admission by the juvenile invalid.[55] In *Miller v. State*,[56] the sixteen-year-old was given *Miranda* warnings and questioned for an hour and thirty-five minutes during which time he denied any implications that he was involved in a murder.[57] He was fed and then requested to speak with the officers, waived his rights, and gave inculpatory statements.[58] His conviction was upheld as free and voluntary.[59]

In applying the totality of the circumstances test, the court in *Walker v. State*,[60] rendered the confession invalid and therefore inadmissible.[61] The sixteen-year-old was detained without being given *Miranda* warnings, was not allowed to speak to his mother and was shown photographs depicting the murder scene in gory detail.[62] The court stated that age alone will not invalidate a waiver but under the totality of the circumstances, the waiver was not freely and voluntarily given.[63]

In *In re Appeal No. 245*,[64] the court also held that the "fruits of the poisonous tree" doctrine announced in *Wong Sun v. United States*,[65] applied to confessions by juveniles. Since the officers lacked probable cause to take the juvenile into custody, statements made during the interrogations were inadmissible as fruits of the poisonous tree.[66]

B. Judicial and Extrajudicial Identifications The United States Supreme Court in *United States v. Wade*[67] and *Gilbert v. California*,[68] held that under the sixth and fourteenth amendments, a defendant has a constitutional right to counsel in post-indictment pretrial lineups where the accused is exhibited for identifying witnesses.[69] In evaluating the *Wade* requirements, the Maryland Court of Special Appeals erroneously applied the right to counsel to pre-indictment proceedings as well.[70] After *Kirby v. Illinois*[71]

was decided, the Court abandoned the application of right to counsel in pre-indictment proceedings.[72]

In *Jackson v. State*,[73] this abandonment was predicated on the rationale that the accused does not face an adversarial system of justice until he is accused (indicted) by the prosecution.[74] The *Jackson* court makes the distinction that juvenile proceedings are not criminal proceedings.[75] At the time of the lineup in *Jackson*, the juvenile defendant had not been arraigned.[76] No indictment or information had been filed against him.[77] The court further stated that even if proceedings in juvenile court could be deemed adversarial, the defendant had no sixth amendment right to counsel.[78]

In *In re Appeal No. 504*,[79] extrajudicial identification of the juvenile was made promptly on the scene by a witness.[80] A police officer responded to a call and saw a juvenile fitting the physical description of the suspect.[81] The juvenile was running and winded about five blocks from the scene.[82] He accompanied the police officer back to the scene where he was identified.[83] The court held that absent any elements of unfairness, the identification was legal and admissible.[84] The court also held that even if the taking into custody of the juvenile was unlawful, the identification was not "tangible" fruit of the poisonous tree and was still admissible evidence.[85]

C. Search and Seizure In *Payton v. New York*,[86] the United States Supreme Court held that the fourth amendment prohibited the police from making a warrantless and nonconsensual entry into a suspect's home in order to make a routine felony arrest.[87] The Court of Special Appeals in *In re Anthony F.*,[88] held that *Payton* applies equally to juveniles and to adults.[89] In *In re Anthony F.*, a juvenile's sixteen-year-old sister consented to police entry into the juvenile's home to take him into custody without a warrant or writ of attachment.[90] The police officers testified that there was no verbal communication from the sister who answered the door.[91] She simply opened it to admit them.[92] The court held that she was competent to consent and the entry was valid.[93]

Tate v. State,[94] concerned the issue of parental consent to conduct a search for evidence.[95] In *Tate*, a seventeen-year-old was convicted of rape, kidnapping and unlawful use of a handgun in the commission of a violent crime.[96] The defendant's mother had authority to consent to the search of her son's bedroom which yielded incriminating evidence.[97] The court held that a consent to a search given by a party who possesses common authority over the premises is valid against an absent nonconsenting person with whom that authority is shared.[98]

In *McCray v. State*,[99] the defendant's father invited the police officers in and consented to the search of his son's room.[100] The police found stolen property in the area where the son slept.[101] The court held that a consensual search was an exception to the warrant requirement and the father had authority to consent to a search of the premises.[102]

The Education Article of the Maryland Annotated Code[103] provides that a principal, assistant principal, or school security guard may search a student on school

premises if he has a reasonable belief that the student has possession of an item which violates the criminal law.[104] The statute[105] also provides for search of the physical plant or lockers.[106]

Public schools may also utilize drug detecting dogs without offending the fourth amendment.[107] However, once the dog alerts authorities to the presence of contraband, a search warrant must be issued before the area may be searched.[108]

The scope and extent of school searches has been a topic of great litigation.[109] The controversies center over the applicability of the fourth amendment to juveniles, the exclusionary rule, and the standard required to justify a search and seizure.[110] The Maryland statute[111] requires "reasonable belief" for a search of the person of a juvenile.[112] There is no standard codified in the statute for locker searches, although the Attorney General[113] has stated that a search warrant is required for opening a locker or physical appurtenance when a drug-detecting dog is used.[114] Maryland requires probable cause for a search warrant to be issued.[115] Therefore, probable cause is necessary for searching a locker when a dog is used for detection of contraband.[116]

In *In re Dominic W.*,[117] the court addressed the issues of the applicability to juveniles of the fourth amendment, the exclusionary rule, and the standard required for school searches.[118] The case held that the fourth amendment and the exclusionary rule apply to school searches.[119] The opinion stated that the authority to search provided in the statute constitutes governmental action sufficient to invoke the fourth amendment.[120] When this case was decided, the statute required probable cause to search a student.[121] The language was changed in subsequent amendments, substituting the requirement of "reasonable belief" for probable cause.[122]

In January of this year, the United States Supreme Court decided *New Jersey v. T.L.O.*[123] That case concerned the search of the purse of a fourteen-year-old suspected of smoking in a school lavatory.[124] The Court held that the fourth amendment protection applied to searches by school officials as well as law enforcement officers.[125] It also recognized that school children have a legitimate expectation of privacy.[126] A search of the child's person is a severe violation of the privacy right.[127] However, since the fourth amendment protects against unreasonable searches and seizures, the Court focused on whether the search was justified at its inception and was reasonably related in scope to the circumstances that justified the intrusion.[128] The Court held that such a search will be permissible in scope when measures adopted are reasonably related to the objectives of the search.[129]

Additionally, the case pointed out that school officials do not need a warrant before searching a student under their authority.[130] The Court was very clear in stating that school officials do not need probable cause to search a student.[131] The legality of the search depends simply on the reasonableness under all the circumstances.[132] In so holding, the Supreme Court reversed the New Jersey Supreme Court's decision to suppress the evidence of the search.[133]

It appears that the school search statute in Maryland[134] anticipated the *New Jersey v. T.L.O.*[135] decision. Amendments to the statute substituted the probable cause requirement for a reasonable belief.[136]

The Maryland statute also distinguishes the search of the student and the search of the school.[137] Based on the holding of *New Jersey v. T.L.O.*,[138] the Maryland statute may be interpreted to focus on the reasonableness of the search.[139] The test the Supreme Court announced was to balance the needs of the school and the state in maintaining order and discipline in the school system and the privacy interests of the student.[140] In light of *New Jersey v. T.L.O.*, the Maryland statute may be given a broad interpretation permitting greater discretion to lie with the school and less privacy and protection for the student.[141]

D. Discovery The Maryland Rules of Procedure allow for an open-file policy in discovery procedures regarding delinquent[142] or contributing[143] cases.[144] The provisions require the state to furnish the respondent with information or knowledge favorable to the respondent.[145] The state must release information regarding search and seizure, wiretaps and eavesdropping, statements by the respondent, and prehearing identification of the respondent by witnesses.[146] The rule[147] also sets forth protected matters, procedures for discovery, and a continuing duty to disclose.[148] In CINS[149] (Children in Need of Supervision) or CINA[150] (Children in Need of Assistance) proceedings, the court may order discovery upon a showing of good cause.[151]

E. Diversion and Station Adjustment Programs In addition to the Juvenile Services Administration, some jurisdictions have established diversion or station adjustment programs.[152] These programs are usually administered through the law enforcement agencies by a special group of youth trained officers.[153] The programs are alternatives to the intake process of the juvenile court.[154] They provide limited treatment and rehabilitation for juvenile offenders who have committed minor offenses.

The Court Sanctioned Pre-Intake Adjustment Program in Baltimore City is an example of station adjustment.[155] The program is comprised of police officers trained as youth-service officers and is administered by the Baltimore City Police Department.

A juvenile can be accepted into the adjustment program by contact directly with a youth service officer or by referral from another law enforcement officer. In order to accept the juvenile, five parties must agree that this program is in the best interest of the child. That is, the complainant, the juvenile, the parents or guardians, the arresting officer (who may also be the complainant), and the youth service officer must approve of adjustment. If there is no agreement, the juvenile is referred to the intake process and the juvenile court system.

Once the child is accepted, there are four basic options available to the youth service officer. The least restrictive option is to "warn and release." The police officer may take the child into custody and refer him to the youth service officer who will talk to the juvenile, warn him of the behavior, and release him to his home (the youth service officer may do this on the scene).

The second alternative is limited counseling. The youth service officer is trained to provide counseling services and may do so for up to a ninety-day period. The officer may dismiss the child at any time he feels the behavior has been corrected. The officer may also extend the time for an additional ninety-days by submitting a written request to a juvenile court judge setting forth the reasons for the extension.

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The third option is for the youth service officer to refer the juvenile to an agency. The Youth Services Division cooperates with many private and public agencies. The services available include medical care, dental care, psychological treatment, single parent counseling as well as family and individual counseling. The youth service officer makes the initial determination for treatment and maintains contact with the child, monitoring the care provided. The agencies are required to submit forty-five and ninety-day progress reports to the officer.

The fourth available option is to place the juvenile in a work setting. Some of the local employers cooperate with this program and reserve positions for referred children. The children receive wages and may have the opportunity for permanent employment after the ninety-day referral period. The officer monitors the child's progress throughout this alternative.

The basic philosophy of the diversion and station adjustment programs is to focus on what can be done to help the child. Rehabilitation is the primary concern. It is a method of "preventive maintenance", treating the problem juvenile at the initial stages before serious offenses are committed. One source stated that out of every one-hundred juveniles in the adjustment program of Baltimore City, only thirteen are repeat offenders.

Conclusion

The juvenile justice system has developed because of the need to treat children differently than adults.[156] The difference extends to the procedures used by law enforcement agencies that come into contact with juveniles. The purposes of the Juvenile Causes Act[157] in Maryland is to provide for the best interests of the child consistent with the interest of public safety.[158]

The juvenile has been afforded specific constitutional rights and guarantees.[159] However, those rights are not absolute and are balanced by the rehabilitative goals of the juvenile justice system.[160] Since the courts treat juveniles differently than adults, they do not have all the constitutional protections afforded to adults.[161] The deprivation of those rights is often rationalized by the fact that the juvenile system is a civil rather than criminal system.[162] The goal is to rehabilitate and not to punish.[163]

The broader issue is whether the juvenile justice system accomplishes that goal. Police procedures have been tailored by the courts in an effort to accomplish that goal.[164] All too often, the courts focus their attention on the needs of the system. The needs of the system are not always the needs of the child.

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Notes

[1]MD. CTS. & JUD. PROC. CODE ANN. § 3-801 (1984).
[2]*Id.*
[3]*In re Gault*, 387 U.S. 1 (1967); *Wentzel v. Montgomery County Hospital, Inc.*, 293 Md. 685, 447 A.2d 1244 (1982), *cert. denied*, 459 U.S. 1147 (1983).
[4]*Id.*
[5]*In re Gault*, 387 U.S. 1 (1967); *In re Winship*, 397 U.S. 358 (1970).
[6]*Id.*
[7]*In re Johnson*, 254 Md. 517, 255 A.2d 414, *appeal dismissed*, 403 U.S. 926 (1969); MD. CTS. & JUD. PROC. CODE ANN. § 3-801 (1984).
[8]*In re Glenn H.*, 43 Md. App. 510, 406 A.2d 444 (1979).
[9]MD. CTS. & JUD. PROC. CODE ANN. § 3-814 (1984).
[10]*Id.*
[11]*Id.*
[12]*Id.*
[13]*Id.*
[14]MD. CTS. & JUD. PROC. CODE ANN. § 3-816 (1984).
[15]MD. ANN. CODE art. 27, § 594B (Supp. 1984).
[16]*Id.*
[17]*Id.*
[18]*Id.*
[19]*Id.*
[20]*Id.*
[21]MD. CTS. & JUD. PROC. CODE ANN. § 3-814 (1984).
[22]*In re Appeal No. 245*, 29 Md. App. 131, 349 A.2d 434 (1975).
[23]*Id.*
[24]*Id.*
[25]*Id.*
[26]*Id.*; *Henry v. United States*, 361 U.S. 98 (1959).
[27]MD. CTS. & JUD. PROC. CODE ANN. § 3-814 (1984).
[28]*Id.*
[29]*Id.*
[30]*Id.*; MD. CTS. & JUD. PROC. CODE ANN. § 3-815 (1984).
[31]MD. CTS. & JUD. PROC. CODE ANN. § 3-815 (1985).
[32]*Id.*
[33]*Id.*
[34]MD. CTS. & JUD. PROC. CODE ANN. § 3-816 (1984).
[35]MD. CTS. & JUD. PROC. CODE ANN. § 3-815 (1984).
[36]*Id.*
[37]*In re Gault*, 387 U.S. 1 (1967).
[38]*Miranda v. Arizona*, 384 U.S. 436 (1966).
[39]*In re Gault*, 387 U.S. 1 (1967).
[40]*Miranda v. Arizona*, 384 U.S. 436 (1966).
[41]*In re Appeal No. 245*, 29 Md. App. 131, 349 A.2d 434 (1975).
[42]*Id.*
[43]*Id.*
[44]*Id.*
[45]*Miller v. State*, 251 Md. 362, 247 A.2d 362 (1968); *Green v. State*, 236 Md. 334, 203 A.2d 870 (1964); *King v. State*, 36 Md. App. 124, 373 A.2d 292 (1977).
[46]*Id.*; *Wiggins v. State*, 4 Md. App. 95, 241 A.2d 424 (1968); *State v. Hance*, 2 Md. App. 162, 233 A.2d 326 (1967).
[47]*Id.*
[48]*King v. State*, 36 Md. App. 124, 373 A.2d 292 (1977).
[49]*Id.*
[50]*Id.*
[51]*Wiggins v. State*, 4 Md. App. 95, 241 A.2d 424 (1968).
[52]*Id.*
[53]*Id.*
[54]*Id.*
[55]*King v. State*, 36 Md. App. 124, 373 A.2d 292 (1977).
[56]*Miller v. State*, 251 Md. 362, 247 A.2d 530 (1968).
[57]*Id.*
[58]*Id.*
[59]*Id.*
[60]*Walker v. State*, 12 Md. App. 685, 280 A.2d 260 (1971).
[61]*Id.*
[62]*Id.*
[63]*Id.*
[64]*In re Appeal No. 245*, 29 Md. App. 131, 349 A.2d 434 (1975).
[65]*Wong Sun v. United States*, 371 U.S. 471 (1963).
[66]*In re Appeal No. 245*, 29 Md. App. 131, 349 A.2d 434 (1975).
[67]*United States v. Wade*, 388 U.S. 218 (1967).
[68]*Gilbert v. California*, 388 U.S. 263 (1967).
[69]*Id.*
[70]*Palmer v. State*, 5 Md. App. 691, 249 A.2d 482 (1969).
[71]*Kirby v. Illinois*, 406 U.S. 682 (1972).
[72]*Jackson v. State*, 17 Md. App. 167, 300 A.2d 430 (1973).
[73]*Id.*
[74]*Id.*
[75]*Id.*
[76]*Id.*
[77]*Id.*
[78]*Id.*
[79]*In re Appeal No. 504*, 24 Md. App. 715, 332 A.2d 698 (1975).
[80]*Id.*
[81]*Id.*
[82]*Id.*
[83]*Id.*
[84]*Id.*
[85]*Id.*
[86]*Payton v. New York*, 445 U.S. 573 (1980).
[87]*Id.*
[88]*In re Anthony F.*, 49 Md. App. 294, 431 A.2d 1361 (1981).
[89]*Id.*
[90]*Id.*
[91]*Id.*
[92]*Id.*
[93]*Id.*
[94]*Tate v. State*, 32 Md. App. 613, 363 A.2d 622 (1976).
[95]*Id.*
[96]*Id.*
[97]*Id.*
[98]*Id.*
[99]*McCray v. State*, 236 Md. 9, 202 A.2d 320 (1964).
[100]*Id.*
[101]*Id.*
[102]*Id.*
[103]MD. EDUC. CODE ANN. § 7-307 (1985).
[104]*Id.*
[105]*Id.*
[106]*Id.*
[107]65 Op. Att'y Gen. 201 (1980).
[108]*Id.*
[109]*State Ex Rel T.L.O.*, 178 N.J. Super. 329, 428 A.2d 1327 (1980).
[110]*Id.*
[111]MD. EDUC. CODE ANN. § 7-307 (1985).
[112]*Id.*
[113]65 Op. Att'y Gen. 201 (1980).
[114]MD. ANN. CODE art. 27, § 551 (Cum. Supp. 1984).
[115]*Id.*
[116]65 Op. Att'y Gen. 201 (1980).
[117]*In re Dominic W.*, 48 Md. App. 236, 426 A.2d 432 (1981).
[118]*Id.*
[119]*Id.*
[120]*Id.*
[121]*Id.*
[122]MD. EDUC. CODE ANN. § 7-307 (1984).
[123]*New Jersey v. T.L.O.*, 105 S.Ct. 733 (1985).
[124]*Id.*
[125]*Id.*
[126]*Id.*
[127]*Id.*
[128]*Id.*
[129]*Id.*
[130]*Id.*
[131]*Id.*
[132]*Id.*
[133]*Id.*
[134]MD. EDUC. CODE ANN. § 7-307 (1985).
[135]*New Jersey v. T.L.O.*, 105 S.Ct. 733 (1985).
[136]MD. EDUC. CODE ANN. § 7-307 (1985).
[137]*Id.*
[138]*New Jersey v. T.L.O.*, 105 S.Ct. 733 (1985).
[139]*Id.*
[140]*Id.*
[141]*Id.*
[142]MD. CTS. & JUD. PROC. CODE ANN. § 3-801 (1984).
[143]MD. CTS. & JUD. PROC. CODE ANN. § 3-831 (1984).
[144]MD. R. PROC. 909.
[145]*Id.*
[146]*Id.*
[147]*Id.*
[148]*Id.*
[149]MD. CTS. & JUD. PROC. CODE ANN. § 3-801 (1984).
[150]*Id.*
[151]MD. R. PROC. 909.
[152]Note, *Juvenile Delinquents: The Police, State Courts, and Individualized Justice*, 79 HARV. L. REV. 775 (1966).
[153]*Id.*
[154]*Id.*
[155]The information regarding the Court Sanctioned Pre-Intake Adjustment Program of the Youth Services Division of the Baltimore City Police Department was provided most graciously by Lieutenant Charles Codd, Director of the Program.
[156]*In re Gault*, 387 U.S. 1 (1967).
[157]MD. CTS. & JUD. PROC. CODE ANN. § 3-801 (1984).
[158]MD. CTS. & JUD. PROC. CODE ANN. § 3-802 (1984).
[159]*In re Gault*, 387 U.S. 1 (1967); *In re Winship*, 397 U.S. 358 (1970).
[160]*See generally In re Gault*, 387 U.S. 1 (1967).
[161]*Id.*
[162]*Id.*
[163]*Id.*
[164]MD. CTS. & JUD. PROC. CODE ANN. § 3-801 (1984); MD. R. PROC. 901.