

Is *Juvenile Justice* just too **SLOW?**

by **Jeffrey A. Butts** and **Joseph B. Sanborn Jr.**

*Unlike adults,
children have no right
to a speedy trial, and
usually don't get one.*

Many states have established time standards for the juvenile court's handling of young offenders.¹ While statutes and case law cannot extend to juveniles the federal constitutional right to speedy trial, they have introduced a greater expectation of timeliness in the juvenile court process. In some jurisdictions, this expectation has been enough to provoke prejudicial dismissal of delinquency charges when delays have exceeded statutory requirements. Other states, however, have

acted to restrict or even deny speedy trial for juveniles, and the subject appears to be an increasingly divisive one among courts and legislatures. As the juvenile court process becomes more

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1. This discussion relates only to delinquency offenders, or youths charged with law violations that would be considered criminal if they were adults. It does not address the timing of the court process for non-offenders, including those charged with "status" violations such as truancy and curfew.



Article VI.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime

shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

The Sixth Amendment right to a speedy trial has never been held to apply to children

formalized and retributive, the issue of speedy trial for juveniles may have to be examined more closely by the states.

The Sixth Amendment to the U.S. Constitution guarantees any American citizen involved in a criminal prosecution the right to a “speedy and public trial.” The U.S. Supreme Court held in *Klopper v. North Carolina* (1967) that the right to a speedy trial is as “fundamental as any of the rights secured by the Sixth Amendment.” In 1972, the Court further established the importance of speedy trial in its most definitive case on the matter, *Barker v. Wingo*. Since *Barker*, it has been largely up to the state courts to regulate application of Sixth Amendment speedy trial rights. Juveniles charged with delinquency offenses, however, cannot assert this right in most jurisdictions. As with several other rights enjoyed exclusively by adults (such as trial by jury and consideration of bail), a federal right to speedy trial is not provided for juveniles.

Speedy trial was not among the basic due process rights enumerated by the Supreme Court’s landmark *In re Gault* (1967) ruling, which established that defendants in juvenile court should have the right to counsel and to proper notice of charges, the right to cross-examine witnesses, and the privilege against self-incrimination. Furthermore, *Gault* subjected juvenile court proceedings only to the due process clause of the Fourteenth Amendment and not to the potentially more demanding Sixth Amendment.

Clearly, there are reasons to be concerned about the speed of the juvenile court’s process for handling delinquent offenders. Delays in juvenile justice may be uniquely harmful. Adolescents are socially, emotionally, and cognitively different from adults. Particularly during stressful circumstances, adolescents exhibit a sense of “futurelessness” in evaluating the possible risks associated with personal behavior and choices.² Negative consequences that *might* be enforced sometime in the future do not exert much influence over a ju-

venile’s behavior. The very nature of adolescent psychology reduces the perceived immediacy of delayed sanctions—even delays considered routine in adult court.

A slow court process also reduces the ability of the juvenile justice system to intervene in the budding careers of young, repeat offenders. Previous studies have found that half of all first-time young offenders referred to juvenile court will return at least once more before reaching the age of majority.³ In Phoenix, a study of 1,505 first-time offenders revealed that a majority (57 percent) recidivated at least once following their first arrest—a third of those within three months.⁴ If the juvenile court process routinely takes at least three months, it is virtually guaranteeing (at least in Phoenix) that a third of all repeat offenders will not receive any court intervention until after their second arrest.

Processing times of 90 days or more are quite common in U.S. juvenile courts. A recent study funded by the federal Office of Juvenile Justice and Delinquency Prevention found that nearly half of all formal delinquency cases in large jurisdictions take more than 90 days to reach disposition.⁵ Even the most lenient of professional juvenile court standards, those promulgated by the National District Attorneys Association, set 90 days as the *maximum* time frame for delinquency dispositions. And if the study’s results are any indication, juvenile court processing time may be getting even longer: the median number of days required for juvenile court dispositions climbed 26 percent nationwide between 1985 and 1994.

In many cases, the juvenile court process already takes considerably longer than 90 days. In Baltimore, for example, juvenile justice officials have recently labored to reduce the time between arrest and juvenile court action for young offenders released pending trial. Their efforts succeeded in drastically reducing the average delay between arrest and trial from nine months to four—still a far cry from the 90-day standard.⁶

What does it mean when the juvenile court process takes nine months? Imagine how long the school year seems to 14- and 15-year-olds. If they vandalize a neighbor’s home on the first day of a new school year and then avoid going to juvenile court until the last day before summer vacation, should we expect this process to influence their behavior? During nine months of waiting, how many new offenses will they commit? How many friends will they entertain with the story of how they were arrested in September and then “nothing happened?” Are such delays partly responsible for the poor reputation of the juvenile court? Are they at least one reason the juvenile court is derided by many as a “slap on the wrist?”

How speedy should it be?

Timeliness is just as important in juvenile court as in criminal court, but how speedy should the juvenile court process be? Several sets of professional standards are available to answer this question. Taken together, the consensus of existing professional opinion appears to be that for delinquency cases not involving youth held in pretrial detention, adjudication should occur within 30 to 65 days. For cases involving detained youth, the standards suggest adjudication within 15 to 30 days.

For example, the Institute of Judicial Administration and the American Bar Association co-authored 23 separate volumes of juvenile justice standards between 1977 and 1980, declaring in one that “juvenile court cases should always be processed without unnecessary delay” in order

2. Grisso, *Society’s Retributive Response to Juvenile Violence: A Developmental Perspective*, 20 LAW AND HUM. BEH. 234 (1996).

3. Snyder and Sickmund, *JUVENILE OFFENDER AND VICTIMS: A NATIONAL REPORT 158* (Washington, D.C.: Office of Juvenile Justice and Delinquency Prevention, 1995).

4. Burgess, *RECIDIVISM OF JUVENILE BURGLARS: A PERCEPTUAL VIEW OF SPECIFIC DETERRENCE* (Phoenix, Ariz.: Maricopa County Juvenile Court, 1982).

5. Butts, *Necessarily Relative: Is Juvenile Justice Speedy Enough?*, 43 CRIME & DELINQ. 3 (1997).

6. Authors’ communication with Baltimore City Office of the Public Defender (1998); Butts and Halemba, *WAITING FOR JUSTICE* (Pittsburgh: National Center for Juvenile Justice, 1996).

to “effectuate the right of juveniles to a speedy resolution of disputes” and to be consistent with the “public interest in prompt disposition” of these disputes. The standards suggest that cases involving non-detained juveniles should take no more than 30 days to reach adjudication, and cases involving detained juveniles should be adjudicated in 15 days or less.⁷

Juvenile justice standards were also developed in 1980 by the National Advisory Committee (NAC) for Juvenile Justice and Delinquency Prevention, established in 1974 by the federal Juvenile Justice and Delinquency Prevention Act. The NAC standards advise that the time between police referral and adjudication should be limited to 65 days in cases involving non-detained juveniles and 18 days in cases involving detained juveniles.⁸

The ABA’s National Conference of State Trial Judges in 1985 provided guidance on issues related to case processing, including case flow management, calendaring, continuances, setting trial dates, and delay reduction programs. The standards

recommend that juvenile court adjudication hearings be held within 15 days of admission to detention for juveniles in custody and within 30 days following the filing of a delinquency petition for non-custody cases.⁹

Most recently, the National District Attorneys Association has issued a number of professional standards for

the handling of delinquency cases, providing guidelines for case screening, the determination of legal sufficiency, plea agreements, transfer to adult court, and prosecutor practices related to adjudication and disposition. The standards suggest that no more than 30 days should elapse before adjudication in cases involving detained youth; no more than 60 for non-detained youth.¹⁰

Statutory provisions

Professional standards offer a common framework for good practice and establish an expectation of timeliness. Voluntary standards, however,

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Five jurisdictions allow more than 90 days to pass before requiring adjudication: juvenile courts in Illinois, New Mexico, and Virginia allow 120 days from the filing or service of the delinquency petition, and courts in Michigan and Nebraska have until 180 days after the petitioning date. And in 16 jurisdictions, the statutory deadline for adjudication may be extended—in Nevada, for example, courts may extend the deadline by as much as one year. Other states permit extensions only in “exceptional” or “extraordinary” cases.

More than half of the 27 jurisdictions with general speedy trial protections have determined whether their rules and statutes for speedy adjudication should be interpreted as “mandatory” or merely “directory.” This distinction is critical in assessing the degree to which a statute actually provides juveniles with the right to speedy trial. Cases that fail to reach adjudication within the limits provided by “directory” speedy trial rules can be dismissed without prejudice,

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and filing a new petition against the same juvenile can reinstate the dismissed charges. Cases failing to meet “mandatory” provisions, on the other hand, are usually dismissed with prejudice, and the youth can never be brought back to court on those charges. As of 1998, juvenile speedy trial limits had been interpreted as “mandatory” (for at least some cases) in only eight states (see Table 1).

may not be effective if the people responsible for managing the court process are chronically unable to make the grade and are held to no consequences. Perhaps for this reason, many states have concluded that time limits on delinquency case processing require the force of statutes or court rules. More than half (27) have statutes or court rules that place a time limit on adjudication for all delinquency cases handled in juvenile court. The extent of the time limit varies, as does the definition of when the adjudication deadline “clock” starts to run. Twenty-two jurisdictions require adjudication within 30 to 90 days, either from the time a youth is taken into custody, the time a delinquency petition is filed or served, or the time of a youth’s initial appearance in court for an arraignment or plea hearing (see Table 1,

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Detained juveniles. Nearly all jurisdictions (43) set a maximum allowable adjudication time at least for juveniles held in detention facilities (see Table 2, page 22). Limiting the timing of adjudication only for youths in secure custody, however, is a relatively weak form of speedy trial protection. The real purpose of these provisions is to curtail the use of extended pretrial detention and not to

7. Institute of Judicial Administration and American Bar Association, STANDARDS RELATING TO PRETRIAL COURT PROCEEDINGS 21 and STANDARDS RELATING TO INTERIM STATUS 11 (Cambridge, Mass.: 1980).

8. Office of Juvenile Justice and Delinquency Prevention, STANDARDS FOR THE ADMINISTRATION OF JUVENILE JUSTICE: REPORT OF THE NATIONAL ADVISORY COMMITTEE FOR JUVENILE JUSTICE AND DELINQUENCY PREVENTION (Washington, D.C.: 1980).

9. National Conference of State Trial Judges, STANDARDS RELATING TO COURT DELAY REDUCTION (Chicago: American Bar Association, 1985).

10. Shine and Price, *Prosecutors and Juvenile Justice: New Roles and Perspectives*, in Schwartz, ed., JUVENILE JUSTICE AND PUBLIC POLICY: TOWARD A NATIONAL AGENDA (New York: Lexington Books, 1992).

Table 1 Speedy-trial provisions for juveniles in 27 jurisdictions

State	Clock Starts:		Days to adjudication deadline	Continuances*
	appearance/hearing	Initial Filing/service of petition		
	Taken into custody			
Arizona		■	60 Time limit written/interpreted as directory.** Deadline clock may be paused for certain case events.	
California		■	30 Deadline clock may be paused for certain case events.	
Colorado		■	60 Jury trials are exempt from deadline. A new time-limit clock begins when transfer to adult court is denied or a case originating in adult court is transferred to juvenile court.	
Florida	■		90 Time limit written/interpreted as mandatory.*** Deadline clock begins at custody or petitioning, whichever is first. Trial must start by the deadline. Deadline clock may be paused for certain case events.	For <i>exceptional</i> causes.
Georgia		■	60 Time limit written/interpreted as mandatory.	
Idaho		■	90 Trial must start by the deadline.	For "good cause."
Illinois		■	120 Time limit written/interpreted as directory. Deadline clock may be paused for certain case events.	
Indiana		■	60 Deadline clock may be paused for certain case events.	90 days
Iowa		■	60 Time limit written/interpreted as directory.	For "good cause."
Louisiana		■	90 Time limit written/interpreted as mandatory. Trial must start by the deadline.	For "good cause."
Maryland		■	60 30-day limit for unsuccessful adult-court transfer cases. Deadline clock reset after transfer hearing.	For <i>extraordinary</i> causes.
Massachusetts		■	30 60 days allowed for jury trials. A new time-limit clock begins when transfer to adult court is denied or a case originating in adult court is transferred to juvenile court.	
Michigan		■	180 Deadline clock may be paused for certain case events.	For "good cause."
Minnesota		■	60 90 days allowed for "extended jurisdiction" cases. Time limit written/interpreted as directory. Trial must start by the deadline.	For "good cause."
Mississippi		■	90 Time limit written/interpreted as mandatory. Deadline clock may be paused for certain case events.	
Nebraska		■	180 Time limit written/interpreted as directory.	
Nevada		■	60 Time limit written/interpreted as directory.	1 year if extension serves "interests of justice."
New Hampshire		■	30 Time limit written/interpreted as mandatory.	14 days
New Mexico		■	120 Time limit written/interpreted as mandatory. Trial must start by the deadline. Deadline clock reset after juvenile competency hearing.	60 days for "good cause." State supreme court can grant unspecified extensions in exceptional circumstances.
New York		■	60 Time limit written/interpreted as mandatory. Trial must start by the deadline.	30 days
North Dakota		■	30 Time limit written/interpreted as directory.	For "good cause."
South Carolina		■	40 Time limit written/interpreted as directory.	For "good cause."
Tennessee		■	90	For "good cause."
Virginia		■	120	
Washington		■	60 Time limit written/interpreted as mandatory. A new time-limit clock begins when transfer to adult court is denied or a case originating in adult court is transferred to juvenile court. Deadline clock may be paused for certain case events.	
Wisconsin		■	30 Deadline clock may be paused for certain case events.	
Wyoming		■	60 Time limit written/interpreted as directory.	For "good cause."

* Unless indicated, no time limits are placed on the duration of continuances.

** Failure to comply with directory time limits can result only in dismissal of charges without prejudice and thus charges may be reinstated.

*** Failure to comply with mandatory time limits results in dismissal of charges with prejudice and charges may not be reinstated.

Source: Authors' review of state court rules and statutes governing the handling of delinquency matters as of 1998.

Note: Table summarizes provisions in statute or state court rules. In some jurisdictions, local court rules may also be used.

create a general expectation of speedy trial for all delinquency cases. Most juvenile offenders (80 percent) are not detained during the juvenile court process preceding final disposition.¹¹ Thus, the vast majority of delinquency cases are not affected by statutory limits on the timing of adjudication for detained youths.

For the most part, adjudication deadlines for detention cases are somewhat stricter than the time limits for delinquency cases in general. Alaska juvenile courts, for example, must adjudicate cases involving detained youth within 30 days of the youth being placed in detention, even though the state sets no deadline for non-detention delinquency cases. Georgia requires its juvenile courts to bring detention cases to trial within 10 days, although non-detention cases can take as long as 60 days. And New York allows only 3 days for some detention offenses.

Other states have deadlines that are far less strict. Nebraska allows juvenile court adjudication to occur 180 days after the filing of the delinquency petition, regardless of whether the juvenile is in secure detention. South Carolina and South Dakota allow 90 days for adjudication in cases involving detained youth, while Michigan courts are permitted 63 days.

Trends in case law

Until the U.S. Supreme Court addresses the concept of a juvenile's right to speedy trial, young people involved in delinquency proceedings will not enjoy the same federal constitutional rights afforded adult criminal defendants. However, a few state

courts have interpreted the Supreme Court's Fourteenth Amendment analysis in *In re Gault* (1967) and *In re Winship* (1970) as indicating at least the possibility that other rights—including speedy trial—may apply to juveniles.¹²

Trial and appellate courts in some states have extensive records of case law that come close to providing a form of speedy trial to juvenile offenders. Florida courts have published opinions in 34 juvenile speedy trial cases since 1973; Georgia courts have published 11 since 1953; New York, 93 since 1977; and Washington, 10 since 1983. Together, these four

of Appeals of New Mexico. The case, *In the Matter of Darcy S.*, involved a youth who was eventually transferred to criminal court. Prosecutors had argued that a 15-month delay prior to the initiation of transfer proceedings was irrelevant because speedy trial protections did not apply until a case actually arrived in criminal court following a waiver of juvenile court jurisdiction. The court of appeals ultimately accepted the 15-month delay, but it strongly disagreed with the state's reasoning. In its opinion, the court stated flatly that youth brought to juvenile court in New Mexico had the right to a speedy trial:

We hold that constitutional speedy-trial requirements guaranteed under the Sixth Amendment of the United States Constitution also apply in children's court proceedings in New Mexico.

The New Mexico case was also significant for how the opinion was crafted. To conclude that the delay did not necessarily violate the Sixth Amendment, the court used the four-factor "Barker Balancing Test" developed in the 1972 U.S. Supreme Court case

Barker v. Wingo, which defined the parameters of speedy trial for criminal defendants. The New Mexico court's reliance on *Barker* underscored the fact that juveniles were being afforded a speedy trial right equivalent to that of adult defendants.

A similarly strong statement of a juvenile's right to a speedy trial comes from a 1993 case by the Court of Special Appeals of Maryland. As in the New Mexico decision, *Berryman v. Maryland* involved a youth transferred to criminal court. In affirming a lower court conviction for distribution of a controlled substance, the Court of Special Appeals ruled that the speedy-trial protections provided in the Maryland "Declaration of Rights" and the Sixth Amendment to the U.S. Constitution applied to juveniles as well as adults. Still, the Maryland court accepted a pretrial delay

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states are responsible for more than two-thirds of the juvenile speedy trial opinions published by state courts as of 1998.

It is probably more than a coincidence that much of the case law interpreting the application of speedy trial rules in the juvenile justice system originates in these four states: they all have interpreted their juvenile speedy trial statutes as "mandatory" rather than "directory." The right to a speedy trial in the adult justice system has also been most contentious when courts have attempted to enforce dismissal sanctions as a remedy for violations of speedy trial.¹³

Constitutional rights. A few of the cases published by state courts have expressed unambiguous support for a juvenile's right to speedy adjudication. One of the clearest statements came in a 1997 case from the Court

11. Juvenile Court Statistics (Washington, D.C.: Office of Juvenile Justice and Delinquency Prevention, Annual).

12. Choper, *Consequences of Supreme Court Decisions Upholding Individual Constitutional Rights*, 83 MICH. L. REV. 1 (1984).

13. Isaacson, *Speedy Trial Act of 1974—Dismissal Sanction for Noncompliance with the Act: Defining the Range of District Courts' Discretion to Dismiss Cases with Prejudice*, 79 J. OF CRIM. L. & CRIM. (1988).

Table 2 Required adjudication time in detention cases

State	Clock Starts:		Days to adjudication deadline	Continuances*
	Filing/service of petition	Initial appearance/hearing		
Alaska	■	■	30	For "good cause."
Arizona			30	
Arkansas	■		14	For "good cause."
California	■		15 Excludes weekends/ holidays.	
Colorado	■		60 Clock starts at detention hearing or first appearance, whichever is earlier.	
Connecticut	■		15	Upon review hearing.
DC		■	30 45 days for some offenses. Trial must start by deadline. Deadline applies only in secure detention cases.	30 days; more than one continuance is permitted.
Delaware	■		30 If deadline missed, upon defendant motion, court is required to fix trial date in 72 hours or grant continuance.	
Florida		■	21 Trial must start by deadline.	For "good cause." Must be reviewed every 72 hours, excluding weekends/holidays.
Georgia		■	10	
Hawaii	■		7	7 days
Idaho		■	45 Trial must start by deadline.	For "good cause."
Illinois	■		15 45 days for some offenses.	30 to 70 days, depending on the severity of offense.
Indiana		■	20 Excludes weekends/ holidays.	
Iowa	■		7	
Louisiana		■	30 Trial must start by deadline.	For "good cause."
Maryland	■		30	30 days. 2nd extension allowed in unsuccessful transfer cases.
Massachusetts		■	21 60 days allowed for jury trials.	
Michigan	■		63	
Minnesota		■	30 Trial must start by deadline.	For "good cause."
Mississippi	■		21	For "good cause."
Nebraska		■	180	
New Hampshire		■	21	14 days
New Jersey	■		30 If deadline missed, upon defendant motion, court is required to fix trial date in 72 hours or grant continuance.	For "good cause."
New Mexico		■	30 Trial must start by deadline. Clock starts at detention hearing, petition filing or finding of competence, whichever is latest.	
New York		■	3 14 days for some offenses. Trial must start by deadline.	3 days
North Carolina	■		5	Upon review hearing.
North Dakota	■		14	For "good cause."
Ohio		■	10	For "good cause."
Oklahoma		■	30 10 days if youth being held in secure detention.	10 or 60 days; 10 days if detention is secure. Murder cases can be extended twice.
Oregon		■	28 Trial must start by deadline. Deadline does not apply to murder offenses.	28 days
Pennsylvania		■	10	10 days
Rhode Island	■		30	30 days
South Carolina	■		90 Deadline applies only in secure detention cases.	For "exceptional circumstances."
South Dakota	■		90	If youth is in a treatment program of specified duration.
Tennessee	■		30	
Texas		■	10 Excludes weekends/ holidays.	For "good cause."
Vermont		■	15	
Virginia	■		21 Deadline applies only in secure detention cases. Deadline also applies to transfer hearings.	
Washington		■	30	
West Virginia	■		30 Jury trials exempt.	For "good cause."
Wisconsin		■	20	
Wyoming		■	60 Deadline also applies to transfer hearings.	

* Unless indicated, no time limits are placed on the duration of continuances.

Source: Authors' review of state court rules and statutes governing the handling of delinquency matters as of 1998.

Note: Table summarizes provisions in statute or state court rules. In some jurisdictions, local court rules may also be used.

of 20 months as within the limits of the Sixth Amendment.

Other states have made equally compelling claims for a juvenile's right to speedy trial based not on the Sixth Amendment to the U.S. Constitution but on the Fourteenth Amendment's due process clause. This approach closely parallels the U.S. Supreme Court's reasoning in *Gault*, where the Court endorsed the view that even juvenile court procedures should maintain at least the "essentials" of due process. In 1985, for example, the Appellate Court of Illinois (First District, Second Division) vacated juvenile court adjudications for four Cook County youths because their adjudication hearings were not held until more than 700 days after arraignment (*Illinois v. A.J., T.M., L.R. and J.R.*). The court held that the 700-day delay amounted to a "fundamental deprivation of due process."

Similarly, in 1994 the Supreme Court of South Dakota made explicit its view that the due process clause conferred upon juveniles the right to a timely court process:

Conspicuously absent from the United States Supreme Court decision in *Gault* is the constitutional right to a speedy trial in a delinquency proceeding. The Supreme Court has yet to address this issue. Nevertheless, this court concludes that the due process clause of the 14th Amendment to the United States Constitution and Article VI, s 7, of the South Dakota Constitution, provide juveniles with the right to a speedy trial (*South Dakota v. Jason Jones*, 1994).

Statutory rights. While arguments such as those presented in the New Mexico and South Dakota cases are still relatively rare, it has become quite common for courts to enforce statutory time limits on the juvenile court process. In 1983, for example, the New Hampshire Supreme Court found that juvenile court charges should be dismissed if a juvenile court fails to meet the statutory deadline for adjudication and the delay was not due to actions of defense

counsel (*In re Eric C.*, 1983). And appellate courts in Minnesota, Washington, New York, and, most notably, Florida have also dismissed delinquency proceedings due to violations of speedy trial statutes.

These courts have dismissed the delinquency proceedings for a variety of reasons, including:

- Failure by prosecutors to properly state the reasons for extending the speedy trial deadline;
- A delay of more than one year between arrest and adjudication;
- Failure by prosecutors to provide proper notice of a hearing, resulting in a more than 90-day delay;

Some state courts have either explicitly denied a speedy trial right to juveniles or severely limited its application.

- Misplacement of a case file by the court clerk's office;
- Filing by prosecutors of a motion to extend a speedy trial period after the deadline had passed;
- Failure to respond in a timely fashion to a juvenile's motion for dismissal due to violation of the speedy trial statute;
- Filing by prosecutors of a nolle prosequi motion to reinstate charges after the expiration of the speedy trial deadline.

Speedy trial denial or restriction. Not all case law from state courts has been supportive of extending speedy trial protection to juveniles. Some state courts have either explicitly denied a speedy trial right to juveniles or severely limited its application because they have not considered juvenile court proceedings "criminal." In 1985, for example, the Appellate

Court of Illinois (First District, Fifth Division) denied the appeal of a juvenile who claimed that the lower court's failure to hold an adjudication hearing within the deadline set by statute violated his Sixth Amendment rights (*Illinois v. M.A.*). The appellate court found that while the lower court had clearly refused to comply with the Illinois statute that called for the dismissal of delayed cases, this refusal did not violate the juvenile's rights because juvenile court proceedings were thought to be separate and distinct from criminal court proceedings. The same reasoning was used recently in another case from Illinois' second district appellate court (*In re J.J.M.*, 1998).

Kansas has explicitly denied juveniles the right to a speedy trial. In a 1987 case, the Court of Appeals of Kansas heard the case of a delinquent minor whose adjudication by a magistrate court was upheld by a county district court (*In re T.K.*). The minor appealed for dismissal on the grounds that the court had not held de novo review within 30 days as was specified in the

criminal code. In affirming the lower court's decision, the court of appeals held that juveniles did not have a constitutional right to speedy trial in proceedings conducted under the Kansas juvenile offenders code, and that the statutory requirement of de novo review within 30 days was not intended as a codification of the right to speedy trial for juveniles.

Even states with long records of litigation over juvenile speedy trial have sometimes been careful to avoid conferring a truly enforceable right to juveniles. For example, a 1992 case from the Florida Supreme Court, *R.J.A. v. Foster*, endorsed the concept of juvenile speedy trial but clearly limited its application. The case involved the question of whether juveniles are denied speedy trial if adjudication occurs after the 90-day period mandated by Florida statute, a viola-

tion of which required dismissal with prejudice. State court rules, however, provided an additional 10-day "grace period" for holding adjudication hearings. The state supreme court ruled narrowly that use of the 10-day grace period did not violate a juvenile's right to speedy trial because speedy trial was procedural rather than substantive and fell within the court's discretion.

A fundamental right

States remain divided on the question of speedy trial for juvenile offenders. Some jurisdictions provide juveniles with what amounts to a statutory right to speedy trial (e.g., Florida, New York, Washington). It has become relatively common in these jurisdictions for higher courts to enforce dismissal sanctions when adjudication times exceed statutory deadlines. A few states have even suggested that juvenile speedy trial may be a constitutional matter (e.g., New Mexico, South Dakota).

Other jurisdictions, however, severely limit or even deny juveniles the right to timely adjudication. Courts have explicitly denied a speedy trial right to juveniles in Alabama, Kansas, and North Carolina. And several states have recently reduced the scope of their statutory protections against juvenile court delays. Oregon, for example, eliminated its juvenile speedy trial rule in 1995. New Hampshire amended its speedy trial rule in 1997 to create a new 14-day extension. In New Mexico, one of the few states to confer a true speedy trial right to juveniles, legislators voted in 1997 to lengthen the state's adjudication deadline from 90 to 120 days.

Eventually, the U.S. Supreme Court may have to consider whether young offenders should have a constitutional right to speedy trial and, if so, what the limits of that right should be. Of course, even if the Supreme Court were to apply the Sixth

Amendment to the juvenile court process, this measure alone would not adequately protect juveniles from unreasonable court delays. In clarifying the definition of speedy trial for adults, the Supreme Court once ruled that a pretrial delay of five years did not necessarily violate the Sixth Amendment. Obviously, if a juvenile speedy trial right were to be created and enforced, the threshold for Sixth Amendment violations would have to be consistent with the characteristics of adolescents and the time-limited jurisdiction of the juvenile court.¹⁴

It is time for policymakers to make timely adjudication a reality.

Due to a range of factors that include the Supreme Court's *Gault* decision, juvenile courts in the United States have been compelled during the past 30 years to provide greater due process rights to delinquent offenders. This expansion of due process rights has altered the atmosphere of the juvenile court in fundamental ways, and not always in ways anticipated by reformers. As foretold by Justice Potter Stewart in his dissent to *Gault*, the introduction of greater due process for juveniles may have had the unintended effect of enabling states to make juvenile courts even more like their criminal counterparts. Indeed, critics of today's juvenile court system argue that it has openly abandoned its putative heritage of diagnosis and treatment in favor of a just-deserts orientation.

Not surprisingly, the supposed informality and expeditiousness of the juvenile courts has been the Su-

preme Court's rationale for not extending fuller due process rights to juveniles. When the Court refused in *McKeiver v. Pennsylvania* (1971) to provide juveniles with the right to jury trial, it reasoned that the special atmosphere of juvenile courts could be damaged by the imposition of juries. In other words, further increases in due process might make the juvenile court process too cumbersome.

How informal and expeditious must juvenile courts be to justify the continued denial of basic due process rights to juveniles? Many juvenile courts are currently unable to provide timely adjudication, and they are not likely to be able to do so without significant new incentives. Even in jurisdictions that have attempted to guard against excessive juvenile court delays by enacting statutory deadlines for adjudication, appellate courts have often not been willing to enforce these deadlines. It is time for policymakers to make timely adjudication a reality or stop using the illusion of expeditiousness as a justification for depriving juveniles of a fundamental constitutional right. ⚖️

14. The argument is sometimes made that a slow adjudication process does not penalize many youth because few delinquency proceedings are adversarial. There is no national source of data on the tenor of delinquency adjudications, but an informal investigation by the authors indicated that the proportion of juvenile court adjudications that involve a genuine defense ranges from 5 percent to 20 percent (Source: Authors' correspondence with Judge John Steketee, Grand Rapids, Michigan; Judge Ernest DiSantis, Erie, Pennsylvania; Rich Atkins, Administrative Office of the Illinois Courts; and Steven Harper, Miami-Dade County Public Defenders Office, Miami, Florida). Moreover, adjudication hearings appear to be contested more often in jurisdictions where the juvenile court process is perceived to involve significant jeopardy for young offenders.