



Summer 1993

Criminal Procedure - The Fifth Amendment Privilege against Self-Incrimination Applies to Juvenile in Court-Ordered Psychological Evaluations: *State v. Christopher P.*

Paul R. Owen

Recommended Citation

Paul R. Owen, *Criminal Procedure - The Fifth Amendment Privilege against Self-Incrimination Applies to Juvenile in Court-Ordered Psychological Evaluations: State v. Christopher P.*, 23 N.M. L. Rev. 305 (1993).

Available at: <https://digitalrepository.unm.edu/nmlr/vol23/iss2/7>

CRIMINAL PROCEDURE—The Fifth Amendment Privilege
Against Self-Incrimination Applies to Juveniles in Court-
Ordered Psychological Evaluations:
State v. Christopher P.

I. INTRODUCTION

In *State v. Christopher P.*,¹ the New Mexico Supreme Court extended the United States Constitution's privilege against self-incrimination to juveniles who are required to submit to a court-ordered psychological examination to determine their amenability to treatment in the juvenile justice system. This step reiterates the court's determination to provide juveniles with the same rights and privileges that adults enjoy while upholding the validity of psychological examinations properly limited in scope.²

This Note examines *Christopher P.* in light of United States Supreme Court decisions on the subject of constitutional rights in juvenile justice proceedings, analyzes how the holding in *Christopher P.* comports with the structure of New Mexico statutory and case law, and examines the effect that *Christopher P.* will have on future New Mexico juvenile justice proceedings.

II. STATEMENT OF THE CASE

On February 23, 1988, fifteen-year-old Christopher P. was charged with two counts of first degree murder, conspiracy to commit first degree murder, and two counts of tampering with evidence in a petition filed with the children's court.³ On the same day, the children's court attorney filed a motion to transfer the case to district court pursuant to section 32-1-30 of the New Mexico Children's Code.⁴ Pursuant to the statute, the trial court judge split the transfer proceedings into two parts. In the first, the judge found that it was reasonable to believe that Christopher committed the alleged acts. In the second, the trial judge considered Christopher's amenability to treatment as a child.⁵

As part of the amenability consideration, the judge ordered Christopher, over his counsel's objection, to submit to a psychological evaluation in which he was also ordered to discuss the specific acts with which he was

1. 112 N.M. 416, 816 P.2d 485 (1991).

2. See *id.*

3. *State v. Christopher P.*, 111 N.M. 80, 82, 801 P.2d 662, 664 (Ct. App. 1990).

4. *Christopher P.*, 112 N.M. at 417, 816 P.2d at 486. Compare N.M. STAT. ANN. § 32-1-30 (Repl. Pamp. 1989) (discretionary transfer to district court) with N.M. STAT. ANN. § 32-1-29(A) (Repl. Pamp. 1989) (transfer provision requiring the trial judge to make specific findings prior to a transfer).

5. *Christopher P.*, 112 N.M. at 417, 816 P.2d at 486.

charged.⁶ In the evaluation, Christopher discussed the acts with which he was charged and his feelings about them. His counsel and the children's court attorney both watched the evaluation through a one-way mirror. The psychologist relied, at least in part, on Christopher's discussion of the alleged acts in his determination that Christopher was not amenable to treatment as a child.⁷

The transfer motion was granted and Christopher immediately appealed, claiming, among other things, that his Fifth Amendment privilege against self-incrimination⁸ was violated by the court's order to discuss the alleged crimes in the psychological evaluation.⁹ The court of appeals rejected Christopher's appeal and affirmed the transfer order.¹⁰ The New Mexico Supreme Court granted certiorari and reversed the court of appeals, finding that Christopher's Fifth Amendment rights were violated by the trial court's order to discuss the alleged crimes with the psychologist.¹¹

III. HISTORICAL BACKGROUND

A. *United States Supreme Court Precedent*

Four United States Supreme Court decisions provide the framework for considering the application of the Fifth Amendment self-incrimination privilege to court-ordered psychological examinations used to determine amenability in juvenile transfer proceedings. *Estelle v. Smith*¹² examined whether inculpatory statements made by an adult criminal defendant in a court-ordered psychological examination to determine competency to stand trial could be introduced in the subsequent sentencing proceeding.¹³ The Court held that, even though the statements were not being introduced in the guilt-determination phase of the judicial proceeding, "[g]iven the gravity of the decision to be made at the penalty phase, the State is not relieved of the obligation to observe fundamental constitutional guarantees."¹⁴

The issue of whether constitutional standards apply to juvenile transfer proceedings in general was answered in the affirmative by the Supreme Court in *Kent v. United States*.¹⁵ The *Kent* court held that, despite the informal nature of many juvenile court proceedings, those proceedings "must measure up to the essentials of due process and fair treatment."¹⁶

6. *Id.* The judge ordered that the psychologist's testimony "could be used only for the amenability portion of the transfer hearing and for no other purpose." *Id.*

7. *Id.*

8. The Fifth Amendment of United States Constitutional was made applicable to the states through the Fourteenth Amendment in *Malloy v. Hogan*, 378 U.S. 1 (1964).

9. *Christopher P.*, 112 N.M. at 417, 816 P.2d at 486.

10. *State v. Christopher P.*, 111 N.M. 80, 81, 801 P.2d 662, 663 (Ct. App. 1990).

11. *Christopher P.*, 112 N.M. at 417, 816 P.2d at 486.

12. 451 U.S. 454 (1981).

13. *Id.* at 468.

14. *Id.* at 463.

15. 383 U.S. 541 (1966).

16. *Id.* at 562.

The only specific constitutional right held applicable to transfer proceedings in *Kent* was the right to the assistance of counsel.¹⁷ Nevertheless, the Court took pains to stress the critical importance of the juvenile transfer proceeding.¹⁸

One year later, in *In re Gault*,¹⁹ the Supreme Court again considered the issue of the application of constitutional protections to juveniles. The *Gault* court held that "the constitutional privilege against self-incrimination is as applicable in the case of juveniles as it is with respect to adults."²⁰ Although the *Gault* holding deals specifically with self-incrimination, it does not squarely answer the question presented in *Christopher P.*, for the *Gault* court was addressing the delinquency determination stage of the juvenile proceeding, as opposed to the amenability determination in the transfer proceeding.²¹

Finally, in *Lefkowitz v. Turley*,²² the United States Supreme Court stated conclusively that:

[t]he [Fifth] Amendment not only protects the individual against being involuntarily called as a witness against himself in a criminal prosecution but also privileges him not to answer official questions put to him in any other proceeding, civil or criminal, formal or informal, where the answers might incriminate him in future criminal proceedings.²³

B. New Mexico Statutory Provisions

The Children's Code of New Mexico²⁴ has as its stated purpose, among other objectives, "[t]o provide judicial and other procedures through which the provisions of the Children's Code are executed and enforced and in which the parties are assured a fair hearing *and their constitutional and other legal rights are recognized and enforced.*"²⁵ In addition, the Code specifically states that children being subjected to the juvenile justice system are "entitled to the same basic rights as an adult, except as otherwise provided in the Children's Code."²⁶

17. *Id.* at 557.

18. *Id.* at 556.

19. 387 U.S. 1 (1967).

20. *Id.* at 55.

21. See generally *id.* In New Mexico, the transfer proceeding precedes any adjudicatory hearing of the merits on a petition alleging a delinquent act. N.M. STAT. ANN. §§ 32-1-29 to -30 (Repl. Pamp. 1989). The *Gault* Court specified, however, that it is "clear that the availability of the [self-incrimination] privilege does not turn upon the type of proceeding in which its protection is invoked, but upon the nature of the statement or admission and the exposure which it invites." *Gault*, 387 U.S. at 49.

22. 414 U.S. 70 (1973).

23. *Id.* at 77 (citing *McCarthy v. Arndstein*, 266 U.S. 34, 40 (1924)). The *Gault* Court quoted similar language from *Murphy v. Waterfront Commission*, 378 U.S. 52, 94 (1964). *Gault*, 387 U.S. at 47-48.

24. N.M. STAT. ANN. §§ 32-1-1 to -59 (Repl. Pamp. 1989, Cum. Supp. 1992).

25. *Id.* § 32-1-2(E) (emphasis added).

26. N.M. STAT. ANN. § 32-1-27(A) (Repl. Pamp. 1989). In addition, section 32-1-27 provides in subsections (C), (E), and (F) significant specific extensions of constitutional provisions to juveniles, including the right to be informed of their constitutional rights, *id.* at (C), the right not to have

Two sections of the Children's Code provide for transfer of a juvenile to district court: sections 32-1-29 and 32-1-30. For purposes of this Note, the main difference between the two sections is that in section 32-1-29, the judge must find that "the child is not amenable to treatment or rehabilitation as a child through available facilities."²⁷ If transfer is sought under section 32-1-30, however, the judge must merely consider the child's amenability to treatment, not make a conclusive finding on that issue.²⁸ The transfer in *Christopher P.* was sought pursuant to section 32-1-30, the discretionary transfer provision.²⁹

C. *New Mexico Precedent*

The New Mexico Court of Appeals succinctly stated the breadth of Fifth Amendment protections in New Mexico by stating that "[the Fifth Amendment] privileges a defendant not to answer questions put to him in any proceeding, civil or criminal, formal or informal, where the answers might tend to incriminate him in future criminal proceedings."³⁰ On the other hand, "[a]s a practical matter, if [self-incriminatory statements can] not be used to convict, then they [are] not self-incriminatory. If they [are] not self-incriminatory, then there [is] no Fifth Amendment privilege to be asserted."³¹ Similarly, the court of appeals in *State v. Romero*³² stated that "[t]he privilege against self-incrimination does not turn upon the type of proceeding, but the exposure involved."³³

New Mexico has previously considered whether a children's court judge may order a psychological examination for the purposes of determining amenability. In *State v. Doe*,³⁴ the court held that since no inculpatory statements were involved, the defendant's Fifth Amendment rights were

any of their statements used against them unless a waiver is made, *id.* at (C) and (E), and the right not to have any "confessions, statements or admissions . . . introduced against [children] under the age of fifteen years prior to an adjudication on the allegations of the petition," *id.* at (F).

27. N.M. STAT. ANN. § 32-1-29(A)(4)(b) (Repl. Pamp. 1989).

28. *Id.* § 32-1-30(A)(4); see also *State v. Doe*, 100 N.M. 649, 674 P.2d 1109 (1983).

29. *Christopher P.*, 112 N.M. at 417, 816 P.2d at 486.

30. *Rainbow Baking Company of Albuquerque, Inc. v. Apodaca*, 88 N.M. 501, 504, 542 P.2d 1191, 1194 (Ct. App. 1975). The *Rainbow Baking* court was concerned with whether a defendant in a civil proceeding could invoke the Fifth Amendment privilege against self-incrimination in anticipation of his statements being used against him in subsequent criminal proceedings. *Id.* at 504, 542 P.2d at 1194.

31. *State v. Urioste*, 95 N.M. 712, 715, 625 P.2d 1229, 1232 (Ct. App. 1980). The *Urioste* court held that even though the defendant's self-incriminating statements made during the trial of a co-defendant could not be used against the defendant in subsequent state court proceedings, they might be used in a federal determination of the defendant as a habitual offender. Thus, the privilege was properly invoked. *Id.* at 715, 625 P.2d at 1232.

32. 96 N.M. 795, 635 P.2d 998 (Ct. App. 1981). The *Romero* court held that immunity from use of compelled testimony could be ordered pursuant to N.M. R. EVID. 412, N.M. R. CRIM. P. 58, or N.M. STAT. ANN. § 31-3A-1 (Repl. Pamp. 1984) and that defendants could thus be required to testify in a children's court proceeding. *Romero*, 96 N.M. at 796-97, 635 P.2d at 999-1000. The *Romero* court was careful to point out that the defendants' testimony "could not be used against them directly or indirectly," and that "the compelled testimony could not be used against them in any respect." *Id.* at 797, 635 P.2d at 1000.

33. *Romero*, 96 N.M. at 797, 635 P.2d at 1000.

34. 97 N.M. 263, 639 P.2d 72 (Ct. App. 1981).

not implicated.³⁵ Under *Doe*, a juvenile may be ordered to submit to a psychological examination for the purposes of determining amenability.³⁶

D. Sister Jurisdictions' Case Law Background

Other jurisdictions are in harmony with New Mexico in allowing court-ordered psychological examinations of juveniles pursuant to amenability determinations.³⁷ In none of these authorities, however, was the issue of a court-ordered discussion of the alleged delinquent acts in the examination raised. Only one case, *R.H. v. State of Alaska*,³⁸ has squarely addressed the question of inculpatory statements in a court-ordered psychological examination for the purposes of assessing amenability in transfer proceedings.

The *R.H.* decision relied heavily on *Estelle v. Smith*. Noting the adversarial nature of waiver (transfer) proceedings and the significantly larger sentences that the juvenile would be exposed to if transferred to district court, the *R.H.* court held that no psychological examination could be compelled in a waiver (transfer) proceeding.³⁹ The *R.H.* court so held despite the fact that the trial judge went to extreme lengths to ensure that any inculpatory statements would not be forced out of the child and, if they were, they would be inadmissible at any other phase of the child's judicial proceedings.⁴⁰

IV. RATIONALE OF THE *CHRISTOPHER P.* COURT

The *Christopher P.* court's analysis began by examining the relevant New Mexico statutes dealing with the extension of constitutional rights

35. *Id.* at 266, 639 P.2d at 75. The *Doe* court distinguished the facts in the case before it from *Estelle v. Smith*, 451 U.S. 454 (1981), by stressing that no inculpatory statements were at issue in *Doe*. *Doe*, 97 N.M. at 266, 639 P.2d at 75. *Estelle* held that inculpatory statements made in a court-ordered psychological examination for the purposes of assessing competency to stand trial could not be introduced in the subsequent sentencing proceeding. *Estelle*, 451 U.S. So. 2d at 468.

36. *Doe*, 97 N.M. at 265, 639 P.2d at 74.

37. *Lippold v. State*, 365 So. 2d 1015 (Ala. Crim. App. 1978), *writ denied*, 365 So. 2d 1022 (1979); *Matter of Appeal in Pima County, Juvenile Action No. J-77027-1*, 679 P.2d 92 (Ariz. Ct. App. 1984); *State in Interest of Bruno*, 388 So. 2d 784 (La. 1980); *Commonwealth v. Dotson*, 429 A.2d 682 (Pa. 1981).

38. 777 P.2d 204 (Alaska Ct. App. 1989).

39. *Id.* at 211.

40. The *R.H.* court stated:

[Trial] Judge Hodges took elaborate precautions to safeguard R.H.'s privilege against self-incrimination and his right to counsel. The judge directed that R.H.'s attorney have the right to be present with R.H. during the examinations . . . that R.H.'s examiners be precluded from discussing their findings with the state, and he directed that their written reports be submitted to the court under seal for an initial screening by R.H.'s counsel. R.H.'s counsel was to be given an opportunity to raise self-incrimination objections to any specific information in the reports dealing with the facts of the case. Defense objections were to be ruled upon by a judge other than the judge presiding over the waiver hearings No further use of the report, beyond the waiver stage, was to be allowed.

Id. at 207. Also see *Christopher P.*, in which the only precaution against self-incrimination was the trial judge's order that the psychologist's testimony would not be admissible at any other phase of *Christopher's* judicial proceedings. *Christopher P.*, 112 N.M. at 417, 816 P.2d at 486.

to children's court proceedings.⁴¹ Thereafter, in its first substantive passage, the court made it clear that it considers transfer proceedings a critical part of the juvenile defendant's exposure to the juvenile justice system, thereby signaling the ultimate holding that Fifth Amendment privileges against self-incrimination are applicable to transfer proceedings.⁴² Citing *Gault* and *Kent*, the supreme court made the generalized observation that the transfer proceeding is extremely important to the juvenile and has significant consequences for him.⁴³ From this finding, the application of the *Gault* provision that "the availability of the privilege does not turn upon the type of proceeding in which its protection is invoked, but upon the nature of the statement or admission and the exposure which it invites" logically follows.⁴⁴

The supreme court was careful to distinguish the type of psychological evaluation in *Christopher P.*, in which the defendant was ordered to discuss the crimes with which he was charged, from a permissible court-ordered psychological evaluation, in which the defendant is not compelled to make inculpatory statements.⁴⁵ In its examination of other jurisdictions' case law on the subject, the court was quick to point out that all other jurisdictions which allow court-ordered psychological evaluations for the purposes of amenability determinations in transfer proceedings have not considered the question regarding self-incrimination as presented in *Christopher P.*⁴⁶ The court did, however, take notice of *R.H. v. State*,⁴⁷ in which the Alaska Court of Appeals held that psychological evaluations may not be ordered by the court because of the possibility of self-incrimination.⁴⁸

Finally, the supreme court distinguished the evaluation ordered in *Christopher P.* from that allowed in *State v. Doe* by stressing the fact that the child in *Christopher P.* was forced to make self-incriminatory statements.⁴⁹ Because a transfer proceeding has such dire consequences for the juvenile, the court held that the Fifth Amendment privilege against self-incrimination does apply to those proceedings.⁵⁰ Even in its holding,

41. *Christopher P.*, 112 N.M. at 418, 816 P.2d at 487. The court discussed N.M. STAT. ANN. § 32-1-2(B), (D) and (E) (Repl. Pamp. 1989) (subsections which stress the protective nature of Children's Code purpose) and N.M. STAT. ANN. § 32-1-27(A) (Repl. Pamp. 1989) (extending to children the same basic privileges guaranteed adults).

42. *Christopher P.*, 112 N.M. at 417, 816 P.2d at 486.

43. *Id.* at 418, 816 P.2d at 487. Additionally, the court cited Martin Forst & Martha-Elin Blomquist, *Cracking Down on Juveniles: The Changing Ideology of Youth Corrections*, 5 NOTRE DAME J.L. ETHICS & PUB. POL'Y 323, 339 (1989). *Id.*

44. *Christopher P.*, 112 N.M. at 417, 816 P.2d at 486.

45. *Id.* at 419, 816 P.2d at 488.

46. *Id.* at 418; 816 P.2d at 487. The court discussed *Lippold v. State*, 365 So. 2d 1015 (Ala. Crim. App. 1978), writ denied, 365 So. 2d 1022 (1979), Matter of Appeal in Pima County, Juvenile Action No. J-77027-1, 679 P.2d 92 (Ariz. Ct. App. 1984), *State in Interest of Bruno*, 388 So. 2d 784 (La. 1980), and *Commonwealth v. Dotson*, 429 A.2d 682 (Pa. 1981).

47. 777 P.2d 204 (Alaska Ct. App. 1989); see also *infra* notes 38-40 and accompanying text.

48. *Christopher P.*, 112 N.M. at 418, 816 P.2d at 487.

49. *Id.*

50. *Id.* at 419-20, 816 P.2d at 488-90.

however, the court explicitly stated that "[w]e do not suggest the privilege excludes a court ordered evaluation properly limited in scope."⁵¹

V. ANALYSIS AND IMPLICATIONS

By focusing on the extreme importance of the transfer proceedings to the juvenile, the *Christopher P.* court is certainly in line with the United States Supreme Court's view of those proceedings as discussed in *Kent v. United States*.⁵² This characterization of transfer proceedings allows the court to surmount the barrier erected by *State v. Urioste*,⁵³ which stated that if a statement could not be used to convict; it could not be characterized as incriminatory.⁵⁴

The supreme court's survey of the approaches taken in other jurisdictions regarding the problem of self-incrimination in transfer proceedings is, however, incomplete. The court failed to recognize *Ex Parte Whisenant*,⁵⁵ in which the Alabama Supreme Court issued a holding remarkably similar to that at which the court in *Christopher P.* arrived. Consequently, the court deprived itself of a potent buttressing precedent from a sister jurisdiction. The *Whisenant* majority, in a very succinct opinion, held that because the Fifth Amendment privilege against self-incrimination was such a fundamental privilege, it could not be undermined by allowing self-incriminatory statements to be introduced in transfer proceedings.⁵⁶ While the *Whisenant* case dealt with the probable cause portion of a transfer proceeding and did not involve a psychological evaluation, the discussion of self-incriminatory statements and the fundamental nature of the privilege against self-incrimination is particularly applicable to the *Christopher P.* case.⁵⁷

Similarly, by failing to take note of several cases which have holdings contrary to the one in *Christopher P.*, the supreme court failed to take advantage of an opportunity to distinguish those contrary cases.⁵⁸ Distinguishing these cases would have been an easy task, for none addressed the importance of the transfer proceeding to the child or the consequences that result from a decision to transfer.⁵⁹

51. *Id.* at 420, 816 P.2d at 489. Presumably, the court was preempting claims that the *Christopher P.* decision overruled *Doe*, which allowed court-ordered psychological evaluations in transfer proceedings.

52. 383 U.S. 541 (1966); see also *supra* notes 15 through 17 and accompanying text.

53. 95 N.M. 712, 625 P.2d 1229 (Ct. App. 1980).

54. *Id.* at 715, 625 P.2d at 1232.

55. 466 So. 2d 1006 (Ala. 1985).

56. *Id.* at 1008.

57. *Id.*

58. *In re G.B.K.*, 376 N.W.2d 385 (Wis. Ct. App. 1985), *In re C.J.P.*, 650 S.W.2d 465 (Tex. Ct. App. 1983), and *State v. Holland*, 635 P.2d 142 (Wash. Ct. App. 1981) all have fact patterns remarkably similar to the one in *Christopher P.*, but all hold that the Fifth Amendment privilege against self-incrimination is not available to defendants in court-ordered psychological evaluations in juvenile transfer proceedings.

59. See *In re G.B.K.*, 376 N.W.2d 385 (Wis. Ct. App. 1985); *In re C.J.P.*, 650 S.W.2d 465 (Tex. Ct. App. 1983); *State v. Holland*, 635 P.2d 142 (Wash. Ct. App. 1981).

Also, the court never mentioned the New Mexico Constitution's privilege against self-incrimination.⁶⁰ The door was open for the court to emphasize New Mexico's sovereignty and to ensure the decision against reversal by the United States Supreme Court, but the court failed to discuss the issue.⁶¹

The impact of *Christopher P.* is bound to be limited by the nature of the issue. New Mexico courts had already decided in *Doe* that court-ordered psychological evaluations for the purposes of determining amenability in transfer proceedings are permissible.⁶² *Christopher P.* limits the scope of those hearings so as to allow the child to refuse to answer questions which call for self-incriminatory answers. The court of appeals considered the question of the effectiveness of a psychological evaluation to determine amenability to treatment for an offense when the child is not allowed to discuss the offense with the psychologist.⁶³ The New Mexico Supreme Court's decision to allow the child to refuse to discuss the crime with which he is charged may be a drawback of the *Christopher P.* holding.⁶⁴ Despite the aim of the Children's Code "to provide appropriate and distinct dispositional options for treatment and rehabilitation,"⁶⁵ a judge presiding over a transfer proceeding will no longer be allowed to consider the child's feelings about the crime with which he is charged in determining how amenable the child is to treatment within the juvenile justice system for that crime.

The *Christopher P.* court's emphasis is upon protecting the constitutional rights of the child. Although how the child feels about the crime with which he is charged may be important to a psychologist's evaluation of the amenability to treatment of the child, that consideration takes a back seat to the self-incrimination privilege in *Christopher P.* The court gives no guidance as to how future psychological examinations for the purposes of determining amenability should be administered in order to avoid self-incrimination problems.

Although the Alaska courts in *R.H. v. State* struck down any court-ordered psychological evaluation for the purposes of determining amenability,⁶⁶ the elaborate precautions that the Alaska trial court took might be instructive to a New Mexico Children's Court judge ordering a post-*Christopher P.* psychological evaluation.⁶⁷ Specifically, a post-*Christopher P.* court ordering a psychological evaluation should certainly instruct the

60. N.M. CONST. art. II, § 15 ("No person shall be compelled to testify against himself in a criminal proceeding . . .").

61. While beyond the scope of this note, the expansion of individual rights through the New Mexico State Constitution is an interesting topic. The court's failure to discuss this issue leaves open the question of whether the New Mexico Constitution's privilege against self-incrimination is merely a restatement of the Federal Constitution's, or if the state constitution's privilege is a broader or leaner one than the federal.

62. See generally *Doe*, 97 N.M. 263, 639 P.2d 72 (Ct. App. 1981).

63. *State v. Christopher P.*, 111 N.M. 80, 82, 801 P.2d 662, 664 (Ct. App. 1990).

64. See generally *Doe*, 97 N.M. 263, 639 P.2d 72 (Ct. App. 1981).

65. N.M. STAT. ANN. § 32-1-2(D) (Repl. Pamp. 1989).

66. 777 P.2d 204, 205 (Alaska Ct. App. 1989).

67. See *supra* note 40.

evaluator to limit the evaluation so as not to touch upon any matters for which the child is before the court. Beyond such an instruction, a court might order that the child's attorney be present during an evaluation, and that the attorney be allowed to raise self-incrimination objections at the hearing or upon a review of a report from the evaluator.⁶⁸

An interesting point to consider is that the issue discussed in *Christopher P.* may be eclipsed by a revision of the Children's Code. Currently, a proposed revision to the code calls for the elimination of the current transfer provisions.⁶⁹ In their place, a system is proposed in which no child would be subjected to adult court proceedings unless she is sixteen or seventeen years old at the time of the offense and is indicted for first-degree murder.⁷⁰ Such a child would be termed a "serious youthful offender" and would automatically be tried in adult court.⁷¹ The proposed changes provide for two additional categories of delinquent children, "youthful offenders" and "delinquent offenders."⁷²

Furthermore, considerations of whether the child is amenable to treatment in the juvenile justice system, as well as other factors contained in the current transfer provisions, are contained the decision of which sanctions to levy against a juvenile who is adjudicated delinquent.⁷³ If the proposed revision is enacted, the *Christopher P.* holding would probably apply to the amenability determination in the sentencing phase because the application of adult or child sanctions is as of equal importance to the child as whether she will be tried in juvenile or adult court.⁷⁴

VI. CONCLUSION

The *Christopher P.* decision reiterated the New Mexico Supreme Court's commitment to providing children involved in the juvenile justice system the same rights and privileges afforded to adults. The holding is in

68. These precautions were all followed by the trial judge in *R.H.* See *supra* note 40.

69. See N.M. STAT. ANN. §§ 32-2-1 to -31 (Tentative Draft Oct. 22, 1992).

70. *Id.* § 32-2-3(J).

71. N.M. STAT. ANN. § ____ [Serious Youthful Offenders in Adult Sentencing Provisions] (Tentative Draft, November 16, 1992). If found guilty of a lesser offense, her punishment may be that of either a child or adult. *Id.* at § ____ (G). If convicted of first degree murder, the child is sentenced as an adult but the court is not required to impose a mandatory sentence. *Id.* at § ____ (F).

72. N.M. STAT. ANN. § 32-2-3(C), (J) (Tentative Draft November 16, 1992). The distinction between the two categories is that youthful offenders are those children who would be subject to transfer under existing provisions, while delinquent offenders are all other juveniles charged under the Children's Code. *Id.* Delinquent offenders will be subject only to juvenile sanctions. *Id.* § 32-2-19. Youthful offenders may have adult or juvenile sanctions levied upon them, in the discretion of the trial judge. *Id.* § 32-2-20.

73. *Id.* § 32-2-20(C). Under the proposed revision, the judge is required to make an amenability determination based on factors set forth in the appendix of the *Kent* opinion. *Id.*

74. *Christopher P.*, 112 N.M. at 418, 816 P.2d at 487 (discussing the importance to the child of being subjected to adult criminal sanctions). The importance of observing defendants' constitutional rights in sentencing proceedings was discussed in *Estelle*, 451 U.S. at 463. The defendant in *Estelle* was subject to capital punishment, but the Court held later that the *Estelle* holding applied to non-capital punishment cases. See generally *Buchanan v. Kentucky*, 483 U.S. 402 (1987).

agreement with the trend of United States Supreme Court cases on the subject and does not contradict holdings from other jurisdictions. Juveniles involved in post-*Christopher P.* transfer proceedings can be assured that their privilege against self-incrimination will be protected in all aspects of that proceeding. Finally, the holding in *Christopher P.* will continue to have substantial importance to juveniles accused of a crime in proceedings under the current New Mexico Children's Code and any revisions currently being considered.

PAUL R. OWEN