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## Constitutional Law - Juvenile Law - The Transfer of a Child from Juvenile Court to Adult Court: *State v. Doe*

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CONSTITUTIONAL LAW—JUVENILE LAW—The Transfer of a Child from Juvenile Court to Adult Court: *State v. Doe*

I. INTRODUCTION

In *State v. Doe*,<sup>1</sup> the New Mexico Supreme Court held that a children's court may transfer jurisdiction of a juvenile to adult court, pursuant to N.M. Stat. Ann. section 32-1-30 (1978),<sup>2</sup> even though it is uncontested that the juvenile is amenable to treatment in juvenile facilities.<sup>3</sup> Moreover, the decision permits the children's court to transfer jurisdiction without giving specific reasons beyond general findings which simply track the statutory requirements for transfer.<sup>4</sup> The supreme court construed section 32-1-30(A)(4) as requiring only that the court *consider* a child's amenability to treatment before transferring jurisdiction over the child.<sup>5</sup> The *Doe* court found that the children's court had met the statutory requirement by hearing evidence concerning the advantages and disadvantages of the treatment available.<sup>6</sup>

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1. 100 N.M. 649, 674 P.2d 1109 (1983).

2. N. M. Stat. Ann § 32-1-30 (1978) provides in pertinent part:

A. [A]fter a petition has been filed alleging a delinquent act, the court may, before hearing the petition on its merits, transfer the matter for prosecution in the district court if:

(1) the child was fifteen years of age or more at the time of the conduct alleged to be a delinquent act, and the alleged delinquent act is murder . . . or when the child was sixteen years of age or more and the alleged act is assault with intent to commit a violent felony . . . or kidnapping . . . or aggravated battery . . . or dangerous use of explosives . . . or felony criminal sexual penetration . . . or robbery . . . or aggravated burglary . . . or aggravated arson . . . and

(2) a hearing on whether the transfer shall be made is held . . . and

(3) notice in writing . . . of the hearing is given . . . and

(4) *the court has considered whether the child is amenable to treatment or rehabilitation as a child through available facilities*; and

(5) the court makes a specific finding upon the hearing that there are reasonable grounds to believe that the child committed the alleged delinquent act.

[Emphasis added].

3. 100 N.M. at 650-51, 674 P.2d at 1110-11.

4. *Id.* at 653, 674 P.2d at 1113 (Sosa, J., dissenting). The children's court found that:

(1) the child was 16 years of age or older at the time of the alleged acts; (2) there were reasonable grounds to believe the child committed the alleged delinquent acts; and (3) the court had considered whether the child is amenable to treatment or rehabilitation as a child through available facilities.

*State v. Doe*, No. 7138, slip. op. at 1 (N.M. Ct. App. Aug. 10, 1983), *printed in State v. Doe*, 100 N.M. 649, 653, 674 P.2d 1109, 1113 (1984)(Sosa, J., dissenting). Compare the findings with the statutory requirements, *supra* note 2.

5. 100 N.M. at 651, 674 P.2d at 1111. The statute is quoted in pertinent part *supra* note 2.

6. 100 N.M. at 651, 674 P.2d at 1111.

The question whether the lower court's failure to articulate specific reasons for the transfer violated the child's due process rights was not directly addressed by the supreme court majority.<sup>7</sup> Justice Sosa, however, did raise that issue in his dissent.<sup>8</sup> This Note will examine whether due process requires the children's court to delineate specific reasons for the transfer of a child considered amenable to treatment.

## II. STATEMENT OF THE CASE

Doe, a sixteen-year-old, was charged in the children's court with committing delinquent acts of aggravated battery, criminal sexual penetration, and attempted first degree murder of a five-year-old child.<sup>9</sup> The children's court granted the state's pretrial motion for transfer of the case to adult court pursuant to section 32-1-30.<sup>10</sup> The children's court's findings supporting the transfer simply reiterated the statutory language.<sup>11</sup>

Doe appealed on the ground that the transfer was an abuse of discretion, inasmuch as he had been shown to be amenable to treatment in the available juvenile facilities.<sup>12</sup> The court of appeals remanded the case to

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7. *Id.* at 650-51, 674 N.M. at 1110-11. Note also that this issue was not addressed in either the court of appeals' opinion or the parties' briefs. See *State v. Doe*, No. 7138, slip. op. at 1-8 (N.M. Ct. App. Aug. 10, 1983), *printed in* *State v. Doe*, 100 N.M. at 653-57, 674 P.2d at 1113-17 (Sosa, J., dissenting); Brief for Appellant, *State v. Doe*, 100 N.M. 649, 674 P.2d 1109 (1983) [hereinafter cited as Brief for Appellant]; Brief for Appellee, *State v. Doe*, 100 N.M. 649, 674 P.2d 1109 (1983) [hereinafter cited as Brief for Appellee]. [The Brief for the Appellant and the Brief for the Appellee are available from the New Mexico Supreme Court Library and from the University of New Mexico Law Library.]

8. See 100 N.M. at 652, 674 P.2d at 1112 (Sosa, J., dissenting).

9. *State v. Doe*, No. 7138, slip. op. at 1 (N.M. Ct. App. Aug. 10, 1983), *printed in* *State v. Doe*, 100 N.M. at 653, 674 P.2d at 1113 (Sosa, J., dissenting); Brief for Appellee at 2.

10. *Doe*, 100 N.M. at 650, 674 P.2d at 1110.

11. The findings of the children's court are quoted *supra* note 4. The statute is quoted in pertinent part *supra* note 2.

12. The testimony in the children's court indicated that the defendant was amenable to treatment and could be rehabilitated through available facilities for children. *State v. Doe*, No. 7138, slip. op. at 3 (N.M. Ct. App. Aug. 10, 1983), *printed in* *State v. Doe*, 100 N.M. at 654, 674 P.2d at 1114 (Sosa, J., dissenting); Brief for Appellant at 2, 4; Brief for Appellee at 3, 4. Doe had not previously been in trouble with the law. *State v. Doe*, No. 7138, slip. op. at 1 (N.M. Ct. App. Aug. 10, 1983), *printed in* *State v. Doe*, 100 N.M. at 654, 674 P.2d at 1114 (Sosa, J., dissenting). He had experienced only minor school problems. *Id.*

Testimony indicated that treatment for violent sexual offenders is a long-term process. Brief for Appellant at 2. One psychologist testified that the New Mexico Boys' School at Springer had a limited program that could offer only one hour of treatment per week. *Id.* at 3. Another psychologist testified, however, that while the juvenile was in residence at the school at Springer he could be committed to the New Mexico State Hospital for a 60-day treatment program and recommitted for additional six-month periods, if necessary. *State v. Doe*, No. 7138, slip. op. at 2 (N.M. Ct. App. Aug. 10, 1983), *printed in* *State v. Doe*, 100 N.M. at 654, 674 P.2d at 1114 (Sosa, J., dissenting). Testimony suggested that this child would probably need the additional commitments for successful treatment. Brief for Appellant at 2. At the time of the trial, the program at the New Mexico State Hospital was full and had 12 persons on its waiting list. *Id.*

Testimony suggested that there was more flexibility in the adult system because there were opportunities for transfer to specialized sex offender treatment programs for adults in other states. *Id.* at 4. Although sex offender treatment for adults was available through the New Mexico State

the children's court for specific findings regarding the feasibility of treating and rehabilitating Doe within the time constraints of juvenile court jurisdiction.<sup>13</sup> The court of appeals stated that in order to transfer a child who is shown to be amenable to treatment in juvenile facilities the children's court must find that the juvenile treatment facilities are inadequate for the child's needs and that the implementation of an adequate treatment program is not feasible within the time that the court will have jurisdiction over the child.<sup>14</sup>

The New Mexico Supreme Court granted certiorari and reversed the court of appeals.<sup>15</sup> The supreme court found that a children's court may transfer jurisdiction of a juvenile amenable to treatment in juvenile facilities to adult court without stating specific reasons.<sup>16</sup>

### III. DISCUSSION AND ANALYSIS

The New Mexico Supreme Court used legislative intent and statutory analysis in *State v. Doe* to determine the requirements for transferring jurisdiction of a juvenile to adult court under section 32-1-30(A)(4).<sup>17</sup> Accordingly, it determined that "[t]he fact that the Children's Court heard evidence of the advantages and disadvantages of the two alternatives is indicative that it 'has considered' the matter within the purview of the statute."<sup>18</sup> The unarticulated result of this holding is that the children's

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Hospital, Doe would not be eligible for that program until he was 18. *Id.* at 3. Until that time the child would have to be treated at a juvenile facility (probably the Boys' School at Springer). *Id.* at 4.

13. *State v. Doe*, No. 7138, slip. op. at 7 (N.M. Ct. App. Aug. 10, 1983), printed in *State v. Doe*, 100 N.M. at 657, 674 P.2d at 1117 (Sosa, J., dissenting). When a child is transferred to an agency for the care and rehabilitation of delinquent children for more than 15 days, court jurisdiction is terminated. N.M. Stat. Ann. § 32-1-12(C) (1978). When the child has not previously been under agency care, the court can enter a judgment vesting legal custody of the child in the agency for a maximum of two years. *Id.* § 32-1-38(A).

14. *State v. Doe*, No. 7138, slip. op. at 7-8 (N.M. Ct. App. Aug. 10, 1983), printed in *State v. Doe*, 100 N.M. at 657, 674 P.2d at 1117 (Sosa, J., dissenting).

15. 100 N.M. at 651, 674 P.2d at 1111.

16. *Id.* at 650-51, 674 P.2d at 1110-11.

17. See *id.* Prior to the enactment of § 32-1-30 in 1975, 1975 N.M. Laws ch. 320 § 4, children's court judges had no discretionary power to transfer juveniles to adult court. *Doe*, 100 N.M. at 650, 674 P.2d at 1110. N.M. Stat. Ann. § 32-1-29 (1978) was the only juvenile transfer statute prior to 1975. *Doe*, 100 N.M. at 650, 674 P.2d at 1110. Section 32-1-29 required that the children's court find that the juvenile was not amenable to treatment in the available juvenile facilities. *Id.* Thus, the *Doe* court concluded that the legislature intended to allow more judicial discretion in juvenile transfers. *Id.* The court went on to state that the statute "is clear and unambiguous." *Id.* at 651, 674 P.2d at 1111. The section "requires only the consideration by the children's court of the child's amenability before the children's court makes its findings." *Id.* [emphasis in original].

It is ironic, in light of *Ammerman v. Hubbard Broad., Inc.*, 89 N.M. 307, 551 P.2d 1354 (1976), that the supreme court relied on legislative intent and statutory analysis to determine lower court procedure. In *Ammerman*, the supreme court held that the New Mexico Constitution gives the supreme court, and not the legislature, the right to promulgate court procedure. *Id.* at 312, 551 P.2d at 1359.

18. 100 N.M. at 651, 674 P.2d at 1111.

court need not supply a statement of the specific reasons for the transfer of a juvenile to district court under section 32-1-30.

Justice Sosa, dissenting in *State v. Doe*, noted that a juvenile has a right to due process and fair treatment.<sup>19</sup> He cited *Kent v. United States*<sup>20</sup> as United States Supreme Court precedent for the proposition that due process requires a statement of specific reasons for transfer decisions, including a statement of the facts.<sup>21</sup> According to *Kent*, this statement of reasons should be sufficiently specific so that the higher courts need not make a decision based on the assumption that the statutory requirements for transfer were met.<sup>22</sup>

Justice Sosa concluded that a statement of reasons is constitutionally mandated in juvenile transfer proceedings pursuant to section 32-1-30.<sup>23</sup> This Note will illustrate the correctness of Justice Sosa's conclusion by applying the United States Supreme Court's two-part inquiry to determine

19. *Id.* at 652, 674 P.2d at 1112 (Sosa, J., dissenting). Although the right to due process in juvenile court proceedings might seem obvious, it must be remembered that the court exercises *parens patriae* power in the assessment of the child's needs. *Parens patriae* means "parent of the country" and "refers traditionally to the role of the state as sovereign and guardian of persons under legal disability." Black's Law Dictionary 1003 (5th ed. 1979). The judge, therefore, rather than promoting an adversarial atmosphere, functions in a parental capacity in relation to the child. Handler, *The Juvenile Court and the Adversary System: Problems of Function and Form*, 1965 Wis. L. Rev. 7, 10. Traditionally, the child was not brought before the court to be accused and to defend himself. *Id.* The juvenile court, functioning as a parent, was concerned only with determining what was best for the juvenile. *Id.* The child, therefore, was not viewed as needing the constitutional protections implicit in due process. *Id.* It was not until *Kent v. United States*, 383 U.S. 541 (1966), and *In re Gault*, 387 U.S. 1 (1967), that the due process rights of juveniles became firmly established. See S. Davis, *Rights of Juveniles, The Juvenile Justice System* 4-6 to 4-7 (2nd ed. 1984).

20. 383 U.S. 541 (1966). *Kent* found that the "full investigation" required by the District of Columbia transfer statute entitled a juvenile to a hearing, to counsel (with access to all pertinent records), and to a statement of the reasons for transfer. *Id.* at 553-54. The Court stated that the juvenile court did not have complete latitude in the juvenile transfer decision. *Id.* at 553. The statute "assumes procedural regularity sufficient . . . to satisfy the basic requirements of due process and fairness." *Id.* Thus, in order to allow for meaningful review by the appellate courts, the children's courts must provide "a statement of the reasons motivating the [transfer] including . . . a statement of the relevant facts." *Id.* at 561. This statement of reasons should be sufficiently clear so that the higher courts need not make assumptions in order to determine whether the statutory requirements for transfer were met. *Id.*

21. 100 N.M. at 652, 674 P.2d at 1112 (Sosa, J., dissenting). Initially, *Kent* was viewed primarily as an interpretation of a particular transfer statute rather than an interpretation of the United States Constitution. S. Davis, *supra* note 19, at 4-7. The treatment of *Kent* in *In re Gault*, 387 U.S. 1, 12-31 (1967), has led some authorities to believe that *Kent* rests on principles of due process. See S. Davis, *supra* note 19, at 4-7; Parker, *Juveniles in the Criminal Courts: A Substantive View of the Fitness Decision*, 23 UCLA L. Rev. 988, 1003 (1976); Schornhorst, *The Waiver of Juvenile Court Jurisdiction: Kent Revisited*, 43 Ind. L.J. 583, 585-88 (1968).

New Mexico, however, has never retreated from its early determination that *Kent* is not based on constitutional principles. See *Neller v. State*, 79 N.M. 529, 530-31, 445 P.2d 949, 951-52 (1968); *State v. Acuna*, 78 N.M. 119, 121, 428 P.2d 658, 660 (1967). Also note that, in *Doe*, only the dissent mentioned *Kent* and *Gault*. See 100 N.M. at 652, 674 P.2d at 1112 (Sosa, J., dissenting). This omission suggests that the majority did not consider these cases to be relevant.

22. 383 U.S. at 561.

23. 100 N.M. at 652-53, 674 P.2d at 1112-13 (Sosa, J., dissenting).

the minimal judicial procedure constituting due process of law.<sup>24</sup> This analysis addresses two questions. First, do the child's interests fall within the meaning of liberty protected by the fourteenth amendment?<sup>25</sup> Second, if the child's interests are protected, is the requested judicial procedure necessary to protect the child's liberty interest?<sup>26</sup>

#### A. *Do the Child's Interests Fall Within the Meaning of Liberty Protected by the Fourteenth Amendment?*

The United States Supreme Court has made clear that children have liberty rights that are protected against state infringement by the fourteenth amendment.<sup>27</sup> Commitment to a civil or criminal institution for either rehabilitation or retribution is a deprivation of liberty at the hands of the state because "[i]t is incarceration against one's will."<sup>28</sup> A transfer to adult court creates the probability that the child will be deprived of liberty for a longer period of time and under more punitive conditions.<sup>29</sup> The fourteenth amendment, therefore, requires that a court demonstrate the

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24. The United States Supreme Court currently uses a two-part test to determine what procedure, if any, constitutes due process of law. The threshold question is whether the threatened interest is "encompassed in the fourteenth amendment's protection of liberty and property." *Board of Regents v. Roth*, 408 U.S. 564, 569-70 (1972). The second part of the test examines whether the requested procedure is necessary to protect adequately the threatened interest. The precise content of the second part of the test is set forth in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976):

[The] identification of the specific dictates of due process generally requires consideration of three distinct factors: First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

For cases using this two-part test, see *Santosky v. Kramer*, 455 U.S. 745 (1982); *Little v. Streater*, 452 U.S. 1 (1981); *Marshall v. Jerrico, Inc.*, 446 U.S. 238 (1980); *Mackey v. Montrym*, 443 U.S. 1 (1978); *Memphis Light, Gas & Water Div. v. Craft*, 436 U.S. 1 (1977); *Dixon v. Love*, 431 U.S. 105 (1977); *Ingraham v. Wright*, 430 U.S. 651 (1977).

25. See *Board of Regents v. Roth*, 408 U.S. 564, 569-70 (1972).

26. See *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

27. See, e.g., *Ingraham v. Wright*, 430 U.S. 651, 673-74 (1977); *Planned Parenthood v. Danforth*, 428 U.S. 52, 60, 74 (1976); *Goss v. Lopez*, 419 U.S. 565, 574-75 (1975); *Tinker v. Des Moines Indep. Community School Dist.*, 393 U.S. 503, 506 (1969); *In re Gault*, 387 U.S. 1, 13, 27-28 (1967).

28. *Breed v. Jones*, 421 U.S. 519, 530 (1975) (quoting *In re Gault*, 387 U.S. 1, 50 (1966)). See also *Parham v. J.R.*, 442 U.S. 584, 599-600 (1979); *Addington v. Texas*, 441 U.S. 418, 425 (1979).

29. By transferring Doe to the district court, the children's court increased his potential maximum sentence from two years of treatment in a juvenile correction center to 36 years in an adult prison. See N.M. Stat. Ann. § 32-1-38 (1978) (agency jurisdiction); Brief for Appellee at 8 (maximum adult sentence). Even though the children's court judge indicated that he, as the judge who would preside in the adult court, had no intention of sending this child to the penitentiary, Brief for Appellant at 5, it is still conceivable that the child would have been sent there as a result of the transfer. Note that N.M. Stat. Ann. § 32-1-30(C) (1978) precludes the children's court judge from presiding over the adult court case if any party objects. Arguably, the judge's statement offers little protection from incarceration.

procedural regularity and care implicit in the words "due process" in making juvenile transfer decisions.<sup>30</sup>

*B. Is the Requested Procedure, a Statement of the Specific Reasons for Transfer, Necessary To Protect the Child's Liberty Interest?*

In order to determine whether a particular judicial procedure constitutes "due process of law," three factors must be weighed: (1) the private interest at stake; (2) the risk that the official action will erroneously deprive the individual of the private interest and the probable value of the proposed procedural safeguards in reducing that risk; and (3) the government's interest in protecting the individual's interests, society's interest in a just judicial system, and the integrity of the fiscal and administrative structure of the government.<sup>31</sup> Each of these factors will be analyzed separately in order to determine whether due process demands that a children's court judge articulate the reasons for transferring a juvenile to adult court.

1. The Private Interest at Stake

Doe's private liberty interest was to be treated as a child rather than as an adult by the judicial system.<sup>32</sup> The United States Supreme Court in *Kent v. United States* termed this interest "critically important."<sup>33</sup> Its importance stems partially from the emphasis that all states, including New Mexico, place on juvenile rehabilitation and treatment.<sup>34</sup>

Doe presumably did not want to be sent to the penitentiary. Doe, therefore, sought individualized therapeutic treatment, a shorter confinement, and the protections of confidentiality.<sup>35</sup> The possibility of a long

30. See *Kent*, 383 U.S. at 553-54; *In re Gault*, 387 U.S. at 27-28.

31. See *supra* note 24.

32. In New Mexico, the right to be treated as a child is viewed as a statutory, rather than a constitutional, right. *State v. Doe*, 91 N.M. 506, 508, 576 P.2d 1137, 1139 (Ct. App. 1978). The purpose of the New Mexico Children's Code is, "consistent with the protection of the public interest, to remove from children committing delinquent acts the consequences of criminal behavior and to substitute therefor a program of supervision, care and rehabilitation." N.M. Stat. Ann. § 32-1-2(B) (1978).

33. 383 U.S. at 556.

34. See American Bar Association, Juvenile Justice Standards Project, Standards Relating To Transfer Between Courts I (1977); Stramm, *Transfer of Jurisdiction in Juvenile Court*, 62 Ky. L.J. 122, 143 (1973); see N.M. Stat. Ann. § 32-1-2(B) (1978), quoted in pertinent part *supra* note 32.

This rehabilitative purpose arises from the belief that children are basically good and still malleable. *In re Gault*, 387 U.S. at 15-16. It is the duty of the children's court, through treatment and rehabilitation, to facilitate the child's return to society as a contributing member wherever possible. Stramm, *supra*, at 134-37. Thus, transfer is an admission that the children's court cannot or does not want to provide for the child as a child through the judicial and rehabilitative system. *Id.* at 145. Accordingly, when a juvenile court transfers its jurisdiction over a child to the district court, it levies its gravest sanction. Parker, *supra* note 21, at 996.

35. In New Mexico, legislation protects the confidentiality of the child's court records, see N.M. Stat. Ann. §§ 32-1-44 to -45 (1978), and his identity on appeal, see *id.* § 32-1-39, when he is prosecuted by the children's court. A child tried as an adult in the district court, however, loses this

sentence increased the likelihood that Doe would spend at least part of his sentence incarcerated in the state penitentiary. If Doe were placed in the penitentiary, he would be imprisoned with adult offenders. He would be likely to experience sexual and physical abuse from the other inmates.<sup>36</sup> In addition, prison guards might subject him to cruel and deliberate punishment.<sup>37</sup> The impact of these experiences on Doe could lead to an increased negative self-image, severe psychic stress, an increased knowledge of criminal techniques and criminal contacts, and an increased likelihood of suicide.<sup>38</sup> These results, combined with the stigma of incarceration, would decrease, if not eliminate, Doe's chances of reentering society as a constructive member.<sup>39</sup> Juveniles jailed in facilities with adults manifest a high recidivism rate.<sup>40</sup> Doe wanted the benefits of treatment tailored to his juvenile needs so that he would have a chance to reenter society as a constructive member. Doe's private interest, therefore, was critically important.

## 2. The Risk that the Official Action Will Erroneously Deprive the Individual of the Private Interest and the Probable Value of the Proposed Procedural Safeguards in Reducing the Risk

Under the minimum transfer requirements after *Doe*, a children's court judge does not have to articulate his reasons for transfer. Thus, there is no guarantee that he will go through the process of determining whether his reasons for transfer are in accordance with the statutory transfer criteria and New Mexico's policy of rehabilitating children.<sup>41</sup> *Doe* creates a significant risk that a juvenile who could have been treated and reintegrated into society through the juvenile justice system will be transferred to adult court and subsequently imprisoned. The gravity of this risk is intensified in light of evidence that judges transfer children to district courts for reasons which are not consistent with juvenile court policy.<sup>42</sup>

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right to confidentiality. Moreover, if convicted of a felony, he may lose his voting privileges, see N.M. Const. art. VII § 1; N.M. Stat. Ann. § 31-13-1 (1978), and his right to hold an office of trust in New Mexico, see *id.* § 31-13-1.

36. See Community Research Forum of the University of Illinois, Forum on Deinstitutionalization: Selected Readings on Children in Adult Jails and Lockups 14, 17 (1980); Stramm, *supra* note 34, at 144, 146; Schornhorst, *supra* note 21, at 587.

37. Community Research Forum of the University of Illinois, *supra* note 36, at 17. Both the nature of Doe's crime and his age increase the likelihood that guards and prisoners will abuse Doe.

38. *Id.* at 14, 18, 26.

39. See *id.* at 19; Stramm, *supra* note 34, at 144, 146, 152.

40. Community Research Forum of the University of Illinois, *supra* note 36, at 18; Stramm, *supra* note 34, at 146. Note also that as non-incarcerated juvenile delinquents grow older, their recidivism rate drops. D. Mann, *Intervening with Convicted Serious Juvenile Offenders* 13 (1976).

41. See *supra* note 34 and accompanying text (discussing the New Mexico policy concerning juvenile rehabilitation).

42. One study found through a questionnaire that judges transferred juveniles because: (1) there were issues of contestable fact which would cause the case to be prolonged; (2) the case was hopeless;

Moreover, *Doe* suggests that the risk of a juvenile's erroneous transfer is not only grave, but irreversible. The erroneously transferred child's only recourse is appeal. The New Mexico Supreme Court's narrow reading of section 32-1-30 suggests that an appealable transfer error occurs only if: (1) the child is not the required age; (2) the child is not accused of one of the delineated crimes; or (3) the court has not heard evidence concerning the child's amenability to treatment.<sup>43</sup> Hearing evidence on a child's amenability to treatment does not necessarily demonstrate that the court carefully and rationally evaluated the evidence, nor does it create a record of the judge's reasoning. If an appellate court is limited to determining whether the children's court went through the motions of hearing evidence, it will not be able to provide meaningful review for children amenable to treatment.<sup>44</sup> Thus, the *Doe* majority's narrow construction of section 32-1-30 essentially precludes appeal on any ground, including abuse of discretion.<sup>45</sup> The harm to children erroneously transferred to adult court is magnified, therefore, by virtue of the irreversible nature of the transfer decision.

A procedural safeguard requiring that a children's court judge specify the reasons for the transfer of a juvenile to adult court would reduce the risk of erroneous transfer. It would increase the likelihood that the judge would carefully and logically consider the transfer evidence. The statement of specific reasons would allow meaningful review by providing a record and specific grounds for appeal.<sup>46</sup>

### 3. The Government's Interest in Protecting the Individual's Interests, Society's Interests, and the Integrity of the Fiscal and Administrative Structure of the Government

As the representative of the government, the court has three interests to balance in a transfer proceeding: (1) a *parens patriae* interest in the

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(3) the offense was serious and occurred subsequent to treatment for another offense; (4) the child needed to be punished for his attitude; and (5) there were better sources of treatment for adults than children and the public safety would be better protected by having the child receive that superior treatment. Advisory Council of Judges, National Council on Crime and Delinquency, *Transfer of Cases Between Juvenile and Criminal Courts: A Policy Statement*, 8 Crime & Delinq. 3, 5 (1962). Another author reported that judges transfer juveniles because: (1) the child is dangerous to the community; (2) the child is older; (3) of the presence of co-offenders over 18; (4) the burden of proof for adult court is higher (thus advantageous for a juvenile to be tried there if there are serious factual disputes involved); and (5) the penalty is less in the adult court (probation versus a fine). Buss, *Waiver of Jurisdiction in Wisconsin Juvenile Courts*, 1968 Wis. L. Rev. 551, 552-54.

43. 100 N.M. at 651, 674 P.2d at 1111. See *supra* note 2.

44. See 100 N.M. at 651, 674 P.2d at 1111 (Sosa, J., dissenting).

45. *Id.*

46. Provision of a statement of reasons for transfer allows for both procedural and substantive appeals. Procedural appeals would include appeals based on the court's provision of an inadequate statement of reasons for transfer. Substantive appeals would include appeals of transfer decisions based on reasons in violation of the statutory requirements. The statutory requirements are quoted in pertinent part *supra* note 2.

child;<sup>47</sup> (2) an interest in a just judicial system;<sup>48</sup> and (3) an interest in avoiding the cost and burden of any additional proceedings.<sup>49</sup>

First, the court, as the “parent” of the child, has an interest in returning the child to society as a contributing member. Requiring the provision of a statement of reasons for transfer effectively requires that the judge both consider and preserve his reasons for transfer in a permanent record for judicial review. Thus, a statement of reasons decreases the risk that the court will erroneously transfer a child who might otherwise have been rehabilitated and returned to society as a contributing member in accordance with the state’s *parens patriae* interest.

Second, the court has an interest in a just judicial system which provides for the rehabilitation of children when feasible and for the transfer of children whose rehabilitation is not feasible. Lessening the risk of error in juvenile proceedings serves both of the court’s interests in a just system. By encouraging considered transfers and allowing meaningful review, a statement of specific reasons will facilitate the development of a body of transfer law consistent with both the statutory criteria and the public policy favoring rehabilitation whenever possible.

Third, the court has an interest in avoiding any additional administrative burdens and costs. Specific reasons for transfer should already exist in the judge’s mind. Thus, the cost of provision of a statement of reasons should be minimal as it requires only the time it takes the judge to record those reasons. The benefits of the additional procedures to the juvenile far outweigh any increased burden of cost to the state.

#### IV. CONCLUSION

The foregoing analysis demonstrates that the children’s court violated Doe’s due process rights by failing to state the specific reasons for his transfer. Doe had a liberty interest which is protected by the fourteenth amendment. Doe’s private interest to be tried as a child was a “critically important” interest with serious ramifications for his future.<sup>50</sup> The decision in *Doe* creates a significant risk that a child will be erroneously and irreversibly deprived of this interest. There is no substantial interest of the court, as the state’s representative, which outweighs the risk of depriving a child of this critical interest. Due process, therefore, requires that the court provide, at a minimum, a statement of specific reasons for transfer before depriving a child of treatment in a juvenile facility by transferring him to an adult court. Yet, *State v. Doe* stands for the prop-

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47. *Santosky v. Kramer*, 455 U.S. 745, 766 (1982). See *supra* note 19 and accompanying text for a definition of the *parens patriae* interest.

48. *Mathews v. Eldridge*, 424 U.S. 319, 348 (1976).

49. *Id.*

50. *Kent v. United States*, 383 U.S. 541, 556 (1966).

osition that a child transferred under section 32-1-30 who is amenable to treatment and who meets the age and crime statutory criteria lacks a basis to appeal his transfer as long as the court has heard evidence on his amenability to treatment.

Requiring a statement of reasons pursuant to section 32-1-30 will lead to fewer erroneous transfers of juveniles to adult court. It will not bar the transfer of a child not amenable to rehabilitation in the available facilities within the time constraints of the juvenile court jurisdiction. As children's court judges begin to articulate their reasons for transfer, other factors in the juvenile system contributing to transfers will surface. For instance, if the lack of available facilities or the constraints of the children's court jurisdiction<sup>51</sup> constitute significant reasons for transferring juveniles, public policy advocating rehabilitation may lead to the opening of more juvenile facilities and/or the changing of the children's court jurisdiction.

The issue of the child's due process rights in transfer proceedings pursuant to section 32-1-30 needs to be directly addressed by the New Mexico Supreme Court. This is a procedural issue and, as such, is the prerogative of the supreme court.<sup>52</sup> Thus, the supreme court can resolve this issue on its own initiative. In the alternative, attorneys of juveniles transferred to adult court must begin to request statements of the specific reasons for transfer from the children's courts. They can then appeal any transfer decisions for which the judge fails to provide the requested statement on procedural due process grounds and force the supreme court to face the issue squarely.

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51. See N.M. Stat. Ann. §§ 32-1-12, 32-1-38 (1978).

52. *Ammerman v. Hubbard Broad., Inc.*, 89 N.M. 307, 312, 551 P.2d 1354, 1359 (1976).