

Taking Juveniles into Custody: Comparing the Kuwaiti Juveniles Act and the U.S. Legal System

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Abstract

This research paper conducts a comprehensive comparative analysis of the legal frameworks governing the taking of juveniles into custody in Kuwait and the United States. The treatment of juveniles in the criminal justice system is a critical area of concern, as it reflects a society's commitment to safeguarding the rights and well-being of its youth. The study evaluates the need to adopt special procedures for juvenile arrests when compared to adult arrests in Kuwait. The study undertook a comparative analytical investigation of Kuwaiti and American law which are based on different legal systems. The study found that the Kuwaiti legislator should take juveniles' nature, qualities, and characteristics into account, and based on that approach, adopt special procedures regarding juvenile arrests.

Keywords: Adult, arrest, jurisdiction, juvenile, Kuwaiti legislator, US Supreme Court

Introduction

The treatment of juveniles within the criminal justice system is a topic of enduring significance. In the realm of juvenile justice, one fundamental issue is the process of taking juveniles into custody, a critical juncture that can significantly impact their lives and future prospects. Criminal procedural laws govern criminal justice procedures; however, these laws are often too general in their texts and provisions and do not account for the unique social categories regulated by those laws. The criminal legislation regulating juvenile criminal trials is a pertinent example of this generality, as the relevant criminal procedures often do not differentiate between the treatment of adults and juveniles.

The arrest process is one of the most perilous criminal-related procedures before the commencement of trial procedures against juveniles. For instance, a juvenile could be tried as an adult (Bernburg and Krohn, 2006; Siennick and Widdowson, 2022;), even though juveniles generally have accumulated fewer assets with more debt and a smaller net worth during their young adulthood, compared to non-arrested juveniles (Al-Aifan and Al-Mutairi, 2018a). Other studies found that "... institutional responses and disruptions in students' educational trajectories,

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rather than social-psychological factors, are responsible for the arrest-education link” (Kirk and Sampson, 2013, p. 36-62). Moreover, arrested persons have rights, including being provided with a reason for having been arrested, the right to seek legal counsel, and the right to be interrogated within a certain period following the arrest, etc. Unfortunately, most criminal legislation overlooks the unique characteristics and qualities that characterize juveniles and does not adequately address the need to ensconce safeguards, such as guarantees and procedural fairness, that would ensure the protection of those in the juvenile category.

Kuwaiti legislation is a prominent example of this, as the Criminal Procedures and Trials Law No. 17, which was promulgated in 1960, has not adopted a separate *modus operandi* for juveniles, either in the pre-trial stage or during the trial itself. The Kuwaiti legislator issued the Juveniles Act No. 3 in 1983, which regulates the criminal procedures for prosecuting juveniles. The aforementioned notwithstanding, the Kuwaiti legislator disregarded the importance of developing and introducing special processes for juvenile arrests.

The Kuwaiti legislator enacted Law No. 111 in December 2015 to regulate the juveniles’ criminal responsibility. Yet, despite this development, the Kuwaiti legislation did not depart from the general framework adopted by Law No. 3 of 1983—the arrest procedures still referred to the texts and general provisions contained in the Criminal Procedures and Trials Law No. 17 of 1960. By contrast, the United States of America (U.S.) has extensive experience with distinguishing between arrest procedures for juveniles and adults. While it may not be evident in legislative texts, it is prevalent in case law. Moreover, the U.S. and the State of Kuwait provide an interesting comparison because their legal systems have different roots, i.e., the Anglo-Saxon legal system and the Latin legal system, respectively.

This study investigates many questions, such as whether there should be an analogous set of legal rules governing the arrest processes of both adults and juveniles, whether those rules were of a legislative or judicial (judicial principles) nature, and whether law enforcement officials complied with those rules in practice. Other issues that should be clarified include whether the law enforcement officer’s authority to arrest juveniles is as broad as it is for adults, whether their scope covers criminal and non-criminal behavior, and whether it would be appropriate to arrest a juvenile without having a prior judicial warrant, irrespective of whether the behavior constituted a crime. Moreover, do juveniles have certain characteristics that require special rules governing their arrest, and what is the future vision for the current situation and the mechanisms for addressing it?

This study aims to provide knowledge about the legislative organization in the State of Kuwait regarding the need to adopt a special system for juvenile arrests and to compare it with the legislative situation in the U.S. To achieve these

objectives, this study employed a comparative-analytical approach for each of the legislative texts and judicial trends in both countries.

This paper addresses several questions in the following five sections: In the first part, it deals with the extent to which arrest procedure rules can be applied similarly to juveniles and adults. The second part examines the extent of the law enforcement officer's authority to arrest juveniles, and the third section analyzes the most common and frequent arrest cases that occurred without a judicial warrant. In the fourth part, the factors that play a role in juvenile arrests are discussed and analyzed. In the final section, the paper provides an assessment of the future point of view relating to juvenile arrests and the ideal situation.

Applicability of the Law of Arrest

The choice to use the criminal justice system by arresting someone is more than a mechanical routine; it entails informal and perhaps instantaneous subconscious decisions, which should be made against the background of prevailing policies and approved processes. The law enforcement officer must comprehend the nature of the behavior and the significance of the occurrence—frequently rapidly and under duress—and respond appropriately. When dealing with juveniles, the procedure becomes even more complicated, because there is a significant degree of confusion among law enforcement officials regarding their proper role when dealing with juveniles (President's Commission on Law Enforcement and the Administration of Justice, 1967a).

One role of law enforcement is reflected in the historical development of the juvenile court. The protective rather than punitive aspect of the juvenile justice system has been highlighted in court judgments. (*Application of Gault*, 99 Ariz. 181 [1965]; *In re Sharp*, 15 Idaho 120, 96 P. 563, [1908]; *State v. Monahan*, [1954]) The same emphasis is evident in statutory affirmations of the civil nature of the proceedings (Cal. Welf and Inst. Code S.24a-101 [1976]; N.J. Stat. Ann. S. 2a:4-2 [1952], and in statutes describing the protective function of the juvenile court (Ga. Code Ann. S.24 A-101 [1976]; N.J. Stat. Ann. S.2a:4-2 [1952]). This is congruent with article 36 of the Kuwaiti Juvenile Law No. 111 which describes the judicial and protective role of the juvenile court, and the legislator subsequently adopted the first role of a juvenile delinquent, and the second for juveniles who were about to be found delinquent (Al-Rajhi, 2017).

Contrary to the U.S., the Kuwaiti legislator formulated two separate procedures that deal with crimes committed by a juvenile: the first is correctional procedures applied to those who were under the age of 15 at the time the crime was committed, and the second is criminal proceedings for those who committed a crime and have reached the age of 15 but have not reached the age of 18 yet (Nasrallah,

2011). Additionally, it appears that the Kuwaiti legislator, in determining the nature of the legal procedures stipulated in juvenile law, distinguishes between the delinquent juvenile and the juvenile exposed to delinquency, confirming that there could be no doubt that the actions taken against the delinquent juvenile are grounded in criminal legislation—an assertion which can be inferred from the penalties and guarantees established for the juvenile during these proceedings (Al-Dhafiri, 2010).

As for the juvenile exposed to delinquency, there seems to be a shift in the Kuwaiti legislator's policy as it had repealed the provision in Law No. 3 of 1983 that the juvenile's guardian should waive the right to trial and assign jurisdiction to the Juvenile Welfare Committee, a committee of an administrative nature. In the subsequent Law No. 111 of 2015, the legislator gave the Committee the discretion of not having to seek the guardian's consent in delinquency exposure cases (Al-Aifan, 2018).

Given law enforcement's traditional protective function, it is probably reasonable to conclude, before the Supreme Court's landmark *Gault* decision (*In re Gault*, 387 U.S. 1 [1967]), that most U.S. jurisdictions made no specific provisions for the treatment of juveniles (Luger, 1967). It probably is just as fair to assume that law enforcement officials believed that the customary limits put on them when dealing with adults accused of a crime did not apply when dealing with juveniles. Rather, the objective is to safeguard the youth and inculcate respect for the law and its processes in them (Remington et al., 1969). Moreover, in contrast to the situation in the U.S., the Kuwaiti legislator did not regulate the arrest procedures in the Juvenile Act, having left it to the general rules established in the Code of Criminal Procedure and Trials No. 17 of 1960. It can therefore be deduced that the general legal provisions apply to adults and juveniles alike (Al-Aifan and Al-Mutairi, 2018b).

Even in the *Gault* case, the Supreme Court's specific language that its decision did not apply to the prejudicial stages of juvenile proceedings (*In re Gault*, 387 U.S. 1, [1967]),¹ could have given support the notion that constitutional safeguards attending an arrest do not apply with full force when taking a juvenile into custody. In cases where the matter has arisen, some courts ruled that the law of arrest did not extend to juveniles (*In Re James L---*, 25 Ohio Op. 194 [1963]). Legislative pronouncements stating that taking a young person into custody does not constitute an arrest could support this position (Iii. Ann. Stat. Ch. 37, S.703-1 (3) [1972]; Minn. Stat. Ann. S.260.165(2) [1971]; Ferster and Courtless, 1969). Therefore, juveniles in the Kuwaiti legal system may be arrested as adults, based on a judicial order, in the case of *in flagrante delicto*, or according to the conditions of arrest established in articles 53–58 of the Code of Procedure and Criminal Trials (Mahdi,

2003).

On the other hand, certain statutes in the U.S. state that detaining minors is not the same as arresting them, “except for the purpose of determining its validity under the Constitution of this State or of the United States” (Ga. Code Ann. S.24a-1301 (B) [1976]; Ohio Rev. Code Ann. S.2151.31 [1978]; Tenn. Code Ann. S.37-213(B) [1977]; Iowa Code Ann. S.232.2 (49) [Supp. 1979]). Similarly, one court observed: “While the term ‘arrest’ is not to be used to describe taking a juvenile into custody, it will be so used in this opinion for the purpose of evaluating the lawfulness of the search (...) The criteria for the lawful arrest of a juvenile are those applicable to arrest for an adult offense (...) supplemented by criteria contained in rules of court pertaining to juvenile offenses” (*In Re J. B.*, 131 N.J. Super 6, 328 [1974]).

The Kuwaiti legislator used the term pretrial detention, like the one used in the Code of Criminal Procedure and Trials, while the arrest term was not used by the Kuwaiti legislator in juvenile law (Al-Rajhi, 2017). However, article 35 of the Kuwaiti Juvenile Law No. 111 provides that “the rules and procedures of the Code of Criminal Procedure and Trials are followed before the Juvenile Court unless otherwise provided for by the provisions of this Law.” It is worth noting that the Standard Juvenile Court Act (1959), passed in 1959, stated that taking a juvenile into custody “shall not be deemed an arrest,” whereas the Uniform Juvenile Court Act (1968), enacted after the Supreme Court’s decision on Gault, states that being taken into custody is not deemed an arrest “except for the purpose of determining its validity under the Constitution of this State or the United States.” The pattern points to the conclusion that the law of arrest applies to juveniles in the same way as it does to adults. The lack of judicial rulings on the subject is likely due to most courts’ perception that the law of arrest is so clearly defined.²

At the very least, Kuwaiti law enforcement officers are unsure of what they are required to do when taking a minor into custody. However, because juvenile proceedings are not considered criminal, law enforcement officers have far greater discretion in dealing with juveniles than adults (Wilson, 1968a; Ferster and Courtless, 1969). Under Kuwaiti law, an officer who contemplates arresting juveniles must adhere to the same restrictions in the Criminal Procedures and Trials Code that apply to adults.

The Broadness of Jurisdiction to take into Custody.

For juveniles, the link between governmental power and individual liberty has received little consideration. Yet, because of the juvenile court’s protective role, when authority is exerted on behalf of a young person, it almost always starts with such a minor being harmed in some way (Kenney and Pursuit, 1965; Paulsen,

1965).

The authority of the juvenile justice system, which originates from the original goals of the juvenile court concept, is broad, embracing any children in need of aid for whatever reason. This sweeping approach represents a continuation of the philosophy that spawned the juvenile court movement in the last century. The concern for children's welfare prevalent from the early through the latter part of the century produced a juvenile court that was protective, designed to function *in loco parentis* for orphans, runaways, and all sorts of wayward children. By nature, its embrace was all-encompassing.

Setting aside neglect and dependency, the juvenile court's vast jurisdictional reach encompasses conduct that would be illegal for an adult, and a wide range of other, more general, teenage misconduct. A typical juvenile court's intake comprises a wide range of children facing difficulties, whether the "trouble" is merely truancy, youthful crime—that is, behavior that society considers lawful when committed by youth but not when committed by adults—or something less serious. This method enforces both the criminal code and a broader code of juvenile behavior, which includes responsibilities owed by children to both their parents and school authorities. The introduction of the "incurability" category signaled the establishment of a broader rule of conduct. This status is endemic to youth; if children demonstrate defiant attitudes that cannot be managed by their parents or school officials, the juvenile court may interfere in non-criminal cases (The President's Commission on Law Enforcement and the Administration of Justice, 1967b).

The Kuwaiti legislator adopted a similar approach to that of the U.S. legislator in delinquency cases, in which cases the Kuwaiti legislator adopted behaviors that are sometimes considered crimes (such as A and E of article 1/3 of the Juvenile Law), in which instances the Kuwaiti legislator's position was criticized (Nasrallah, 1995). In article 1/3 of the Kuwaiti Juvenile Law, the legislator defined that the juveniles exposed to delinquency are from one of the following cases:

- A. If they mingled with perverts, suspects, misbehaving suspects, or have joined terrorist or extremist groups.
- B. If they are ill-behaved, uncontrolled by their parents, caregivers, guardians, or mothers.
- C. If there is a beggar, it is an act of begging to offer trivial goods or services or to beg for charity by any means, which is not a sustainable resource for living.
- D. If they have a physical, mental, psychological, or mental illness or mental weakness in a way that affects their ability to perceive or

choose so that they are afraid for their safety or that of others.

- E. Imitating the opposite sex and embracing extremist ideas and beliefs such as satanism and religious extremism.

While definitions of “incorrigibility,” “unruly,” “unmanageable,” and “ungovernable” vary somewhat in the U.S. legal system, many are similar to the State of Georgia’s:

“(g) ‘Unruly child’ means a child who:

- (1) while subject to compulsory school attendance is habitually and without justification truant from school; or
- (2) is habitually disobedient of the reasonable and lawful commands of his parent, guardian or other custodian, and is ungovernable; or
- (3) has committed an offense applicable only to a child; or
- (4) without just cause and without the consent of his parent or legal custodian deserts his home or place of abode; or
- (5) wanders or loiters about the streets of any city, or in or about the highway or any public place, between the hours of 12:00 o’clock midnight and 5:00 o’clock a.m.; and
- (6) the act of disobeying the terms of supervision contained in a court order which has been directed to a child who has been adjudicated unruly.
- (7) patronizing any bar where alcoholic beverages are being sold, unaccompanied by the child’s parents, guardian, or custodian; or possessing alcoholic beverages.
- (8) in any of the foregoing, needs supervision, but not of treatment or rehabilitation ...” (Ga. Code Ann. S.24a-401(G) [Supp. 1979])

In both U.S. and Kuwaiti legal systems law enforcement officers’ power to intervene in juvenile behavior should be more extensive than it is for adults. If an officer has reasonable grounds to believe that a juvenile is delinquent or in need of assistance or supervision for any reason, the officer should be able to take the child into custody. Otherwise, the police may be powerless in situations where a child is “in trouble,” but not to such an extent as to violate the law. Thus, extensive authority is essential to safeguard children and adolescents, but this does not imply denying their rights. Even if offers are needed, the system should consider the context for detainment. It is concerning that offers may believe that restrictions on adult behavior do not apply to juveniles.

Indeed, the broad powers and discretion afforded to law enforcement officers are congruent with the American concept of a young person being “taken into custody,” rather than “arrested,” implying a protective rather than punitive incarceration (*In Re James L---*, 25 Ohio Op. 194 [1963]); Iii. Ann. Stat. Ch. 37, S.703-1 (3) [1972];

Minn. Stat. Ann. S.260.165(2) [1971]; Ferster and Courtless, 1969).³ On the one hand, the phrase “taken into custody” may soften the harshness of the criminal justice system, by protecting children from the stigma of arrest, or allowing them to claim that they have never been “arrested” on employment applications. Yet, avoiding the term “arrest” could be interpreted as an attempt to circumvent the law enforcement officers’ customary arrest powers.

Another example may suffice to illustrate the potential abuse inherent in the broad jurisdictional power to take a child into custody, specifically in situations involving noncriminal conduct: A California appellate court was asked to reconsider a juvenile court’s conclusion that a sixteen-year-old teen who had admitted selling marijuana was in danger of pursuing a “dissolute existence.” Even though the judgment was reversed due to a lack of adequate evidence, the appellate court showed no concern about the youngster being detained without a warrant or probable cause (*In Re Daniel R.*, 274 Cal. App. 2d 749, 250 [1969]). There was thus *some* indication of criminal conduct in the case; in fact, this conduct furnished the basis for the adjudication. However, the juvenile has not been adjudicated as a ward of the court on an allegation that he violated a criminal law, but rather on an allegation that he was in danger of leading an idle, dissolute, lewd, or immoral life, supported by *some* evidence, however slight (in fact, insufficient), that he had engaged in criminal conduct. This suggests that, in the absence of probable cause to believe the teen had committed a crime, the police used the much broader “protective” jurisdiction, which allows a teen to be taken into custody if he is “seriously endangered in his surroundings” or “in danger of leading an idle, dissolute, lewd, or immoral life.” It should also be noted that, particularly in a case where the evidence is weak, and incorrigibility adjudication can be sought for what amounts to criminal (or delinquent) conduct since the standard of proof required to establish an act of delinquency is much more stringent.

The problem regarding encounters between law enforcement officers and juveniles in the street does not exist in Kuwait as past practice proves that cases of delinquency exposure (noncriminal behaviors) are not usually discovered by the juvenile police but reported to the Juvenile Welfare Committee by juveniles’ families, and decisions are made in their interests, often resulting in the juvenile being admitted to a correctional institution, depending on the circumstances of each case. However, since the Kuwaiti Juvenile Law does not control the arrest process, the requirements to make an arrest are the same for both adults and juveniles (Al-Rajhi, 2017).

In *re Daniel R.* (1969), the broad jurisdictional power authorizes law enforcement officers to detain juveniles for criminal law offenses in instances where they would not be permitted to detain adults. This is not to imply that the broad field

of jurisdiction is unconstitutional in and of itself. Many young people require assistance for reasons other than criminal behavior, and their problems should be brought to the attention of the juvenile justice system. However, the broad jurisdictional power should not be abused. For example, the requirements of probable cause or other constitutional rights when a child is taken into custody for what amounts to criminal conduct.

The risk of abuse in this area is at least as high as it was in the past when dealing with adults under vagrancy laws. In one of the Florida cases, (*B.A.A. v. State*, 1978), a juvenile appealed against the finding that she had violated the State's "loitering and prowling" statute. After a police officer noticed her approaching automobiles that had stopped at a junction and engaging the drivers in conversation, the juvenile was arrested. She was arrested based on the officer's belief that she was soliciting prostitution.

In reversing a lower court's decision to uphold the trial court's finding, the supreme court observed that "there are no specific and articulable facts which would reasonably warrant a finding that the public peace and order were threatened or that safety of persons or property was jeopardized by the actions of the juvenile." The court further noted: "The statute is not to be used as a 'catch-all' provision [w]hereby citizens may be detained by police and charged by prosecutors when there is an insufficient basis to sustain a conviction on some other charge" (*B.A.A. v. State*, 1978, p. 306).

Taking Juveniles into custody without a warrant

The difficulty of apprehending juveniles is exacerbated by the fact that most are apprehended without a warrant, frequently when they are caught committing a crime or when an officer encounters circumstances that appear to warrant it (Sussman and Baum, 1968). The discrepancy in the treatment of adults and juveniles is likely at its peak currently because the choice to take youth into custody is primarily the police's decision. Even though most arrests are made without a warrant, the law favors the detached opinion of a magistrate in the criminal process, rather than the subjective assessment of a police officer on the beat (*Giordenello v. United States*, 1958). This is not to say that an arrest without a warrant is necessarily improper or, for that matter, a practice to be discouraged. It simply suggests that whenever the circumstances permit a choice to be made, a warrant should be obtained, the issuance of which is based on a magistrate's impartial, objective judgment (*Wong Sun v. United States*, 1963). After all, the requirement of a warrant is a safeguard that is bypassed whenever a warrantless arrest is made (*Beck v. Ohio*, 1964). The same can be said in Kuwait since the assessment of the evidence and the decision to arrest are initially at the discretion of the law enforcement officer but

are monitored by a competent investigator, and then the court.

To be sure, a police officer should have the ability to detain an individual—adult or minor—without a warrant if he has a reasonable suspicion that the person has broken the law. Most jurisdictions provide by statute that a juvenile may be taken into custody according to the laws of arrest (Ga. Code Ann. S.24a – 1301 (A) (2) [1976]; N.Y. Fam. Ct. Act S.721 [McKinney 1975]; Ohio Rev. Code Ann. S.2151.31(B) [1978]; Tenn. Code Ann. S.37-213(A)(2) [1977]). In the same vein, article 54/1 of the Kuwaiti Criminal Procedures and Trials Code states “The policeman has the right to arrest without a court order in the following circumstances: if he has strong evidence that a person had committed a felony.” There is no doubt that this legal provision includes both adults and juveniles in terms of applicability (Al-Aifan and Bouarki, 2022).

The police’s authority to arrest persons for legal violations is not questioned at all, nor is there any reason their power to arrest for legal violations should be limited when dealing with juveniles. The actual question is whether a police officer should have the same authority in circumstances involving noncriminal behavior, such as whether a young person is “at risk of leading an indolent, dissolute, vulgar, or immoral life.”

Most states in both the U.S. and Kuwaiti legal systems grant very broad authority to police officers to take juveniles into custody in situations involving noncriminal conduct, when they are, in the broadest sense, endangered by their surroundings (Minn. Stat. Ann. S.260.165(1)(C) [1971]; Ohio Rev. Code Ann. S.2151.31(C) [1978]; Wis. Stat. Ann. S.48.19(1) (D) [1979]). As previously indicated, these statutes imply that detaining a juvenile is fundamentally at the police’s discretion. Should the broad jurisdictional power be used to arrest a young person who is not charged with a criminal violation but is “at risk of leading a dissolute life,” for example? Law enforcement officers are frequently ill-equipped to make such decisions, and the potential of abuse is significant not to attend to the matter. To be sure, juveniles who are “in trouble” should be helped, but the decision-making process should be led by someone other than the average “cop on the street.” Under the Kuwaiti Criminal Procedures and Trials Code, some cases do not constitute crimes in which a law enforcement officer can arrest juveniles and adults, including article 52 of the Code of Criminal Procedure and Trials, which empowers the officer to arrest every person around him on suspicion, as well as article 55/1 of the same law that gives the officer the right to arrest those who practice begging (Hosni, 1995).

The Juvenile Jurisdiction Act in New York provides a reasonable solution to the problem. According to the law, persons under the age of sixteen may be taken into custody without a warrant only if they were committing an act that would

justify an arrest if undertaken by an adult. As a result, the statute forbids bringing children into custody on the grounds that they require supervision, because “there is no such urgency that the problem cannot be dealt with by summons” in such cases (Hosni, 1995).

If juveniles violate a criminal law under this statutory scheme, they can be taken into custody on the same basis as an adult. If the juveniles’ conduct or surroundings indicate something less than criminal behavior, New York law does not authorize taking them into custody; rather, one may make an application to a judicial officer for issuance of a summons, presumably upon presenting the magistrate with evidence indicating that the juveniles require supervision.

As explained in the Committee Comment following Section 721, there is no situation in which a minor requires supervision that cannot be managed by a summons. This is a practical, workable method that transfers the decision from the “cop on the beat” to the juvenile court judge, who has a greater understanding of youth, youth-related problems, and the realities of the juvenile justice system, and is better able to integrate and contextualize this information. Wherever practicable, the criminal justice system favors acquiring a warrant over the police’s ability to assess evidence and make on-the-spot arrest decisions. A comparable set of regulations should apply to the juvenile justice system in Kuwait. Considering the gravity and far-reaching consequences of the decision to be taken, requiring a summons to be issued whenever protective jurisdiction is to be invoked appears acceptable.

In this matter, the Kuwaiti legislator disagrees with the legislator in the State of New York, considering that in determining conduct that constitutes a crime, the Kuwaiti legislator does not discriminate between adults and juveniles; therefore, there is no legislation in Kuwait that deals with crimes for juveniles only, and therefore do not apply to adults (Al-Saeed, 2008).

However, in those cases, a police officer could face juveniles in public places to resolve the issue according to the Kuwaiti Child Protection Law No. 21 of 2015. That law establishes centers for childhood protection that are empowered with receiving complaints of child-at-risk cases, be it from police stations or elsewhere. According to article 76 of the law, children are considered in danger when they are at risk of any form of physical, psychological, emotional, sexual, or negligent harm, or in a situation that threatens the integrity of their upbringing. Article 77 provides that child protection centers are established in each of the state’s governorates, which belong to the Supreme Council for Family Affairs, and therefore specialize in the following:

- (a) Complaints of child endangerment provided for in article 76, whether submitted by the child itself, the child's caregiver, a relative, or a professional associated with the child.
- (b) Take all necessary measures to treat children at risk of any kind of harm.
- (c) Cases may arise, of course, in which the child's immediate safety is in peril, and in such cases, the officer may need to act immediately to prevent harm from coming to the child.

Article 79 provides that "Child protection centers take the following measures as they see: ... 4 - Recommending to the competent court to temporarily place the child in the child protection center of his area of residence until the risk is eliminated, and the center will treat him health, psychologically and socially in accordance with the procedures established in this law."

An officer responded to the report of a babysitter who saw a five-year-old child lying on the floor of a furnace room, her hands tied behind her back, her head beneath the water heater, and blood on her face from what seemed to be strap marks, according to the facts of an Arizona case (*State v. Hunt*, 1965). In a circumstance like this, a police officer should undoubtedly be able to act promptly to remove the youngster from immediate danger. In such an event, New York's legislation has a provision that allows for emergency removal. The officer acts out of concern for the child's safety in those situations (New York Family Court Act, 1979). Other situations may elicit the same level of concern and necessitate the same rapid response. It is a question of degree, and the officer's job is to determine that degree, and then decide on a course of action. However, whenever the circumstances allow, he should get a warrant or summons, and the impartial judicial official should be the one to decide the course of action to be taken.

The Kuwaiti legislator, though, through the provisions of the Children's Law, has allowed all necessary measures to be taken to protect the child, including measures that are urgent and which can be taken without the need for court authorization. It, therefore, is critical to understand in this regard that the Kuwaiti legislator passed the juvenile law to address the criminal responsibility of juveniles, while it endeavored to safeguard the child when promulgating the law on the protection of children. It can therefore be concluded that the Juvenile Act deals with cases where the juvenile is deemed an offender, while the Child Protection Act deals with cases where the child is victimized (Al-Mutairi, 2019).

The Decision to take into Custody: The Criteria

Interactions between adolescents and law enforcement officers are an important part of the juvenile justice system. The police are a minor's first point of contact with the juvenile justice system, and this puts in motion forces of informal

decision-making that may influence whether or not the young person will become trapped in the juvenile justice system. In many circumstances, the minor is found breaking the law or is being sought in connection with a specific incident. However, it is also common that no specific action has been performed—that is, the police officer senses something is wrong through means other than actual observation (The President's Commission on Law Enforcement and the Administration of Justice, 1967c; Maciver, 1967). In such situations, officers have options: they could do nothing; they could stop the juveniles, and inquire about their names, addresses, and destinations; they could search them, and order them to disperse; they could send or take them home and advise their parents to keep their children off the streets; or they could take them to the station for further questioning or checking (The President's Commission on Law Enforcement and the Administration of Justice, 1967c).

In the U.S., the law enforcement officer's response to on-the-street adolescent situations varies widely from one department to the next (Swanson, 1969). The degree of discretion employed is largely determined by the relevant department's policies, attitudes, and philosophy. A highly professional department has limited discretion and responds to juvenile problems with greater formality (i.e., more "arrests," and referrals to juvenile court) than the fraternal department, which has great discretion and tends to dispose of many juvenile cases without the need for further formal action or referral to a juvenile court or other agency.

The professional department is described as "one governed by values derived from general, impersonal rules which bind all members of the organization and whose relevance is independent of circumstances of time, place, or personality." On the other hand, the fraternal department is depicted as one that "relies to a greater extent on particularistic judgments, that is judgments based on the significance to a particular person of his particular relations to particular others." Further distinguishing characteristics are that the professional department recruits officers from the general population and promotes officers based on merit, whereas the fraternal department tends to recruit officers from the neighborhoods where they would work and bases promotions on tenure (Wilson, 1986a, 1968b).

Conversely, since Article 47 of the Juveniles Act has established the department of police juveniles, and because the State of Kuwait is a small country, there is therefore only one department called "the Juvenile Protection Department," which resorts administratively under the Ministry of the Interior. As a result, the hypothesis of policy differences between the departments is not envisaged here.

Consequently, whether explicitly or implicitly understood, U.S. law enforcement officers' approach to a street situation may be influenced to a large degree by departmental practice. More subtle considerations could influence this

decision, though. If they suspect something has happened or is about to happen but lack concrete evidence, their subjective sentiments about individuals of a specific race, hair length, clothing style, or other physical attributes, as well as the juvenile's behavior and attitude—whether he is cooperative and courteous, or disrespectful, defiant, or apathetic—may direct their conduct (Duke Law Journal, 1971; Ferster and Courtless, 1969; The President's Commission on Law Enforcement and the Administration of Justice, 1967c). In the absence of any "legal" foundation, the youth's reluctance or equivocation could very well be the reason for his arrest (President's Commission on Law Enforcement and the Administration of Justice, 1967a).

The Decision to take Juveniles into Custody: The Respective Views

There may be a confluence of opposing attitudes in street encounters. For example, police officers believe that the ability to stop people on the street, ask questions, and detain them for further investigation is critical to efficient law enforcement (*Terry v. Ohio*, 1969). This is no less true with juveniles (*In Re Lang*, 44 Misc. 2d 900, 255 N.Y.S.2d 987 [1965]). Furthermore, officers on the street serve as authority figures, setting the tone for law enforcement on their beats and ensuring that order and regularity are maintained. Anything that looks to be out of the ordinary raises suspicion and increases the possibility that the officer will interfere (Chevigny, 1969; Swanson, 1969). If the officer's authority is questioned, they may feel threatened, and it may appear as a deviation from the norm and a threat to the established order. Such a challenge to their authority is likely to be taken seriously and may be answered with a harsh (i.e., official) response (Chevigny, 1969; Wilson, 1968b).

A youth's pre-existing beliefs toward police officers are usually affirmed or changed by his first experience with such an officer, depending on the latter's handling of the incident. As a result, the officer's attitude—whether it generates respect or antipathy—may have a significant impact on the youth. The interaction of those attitudes may have a bearing on whether the child is taken into custody or freed (National Council on Crime and Delinquency, 1961). Juveniles have specific traits that necessitate specialized treatment. When young people first face the juvenile justice system, they may feel isolated and perceive police officers, as well as other forms of authority as demanding, judgmental, and aggressive (Ketcham, 1965). The evidence suggests that, despite efforts to protect children, juvenile proceedings have the same stigmatizing effect as a criminal prosecution on a child's level of understanding and experience (Baum and Wheeler, 1968; Maher and Stein, 1968; Tappan, 1950).

Because children are extremely vulnerable to even small forms of influence, they must be treated with far more caution and understanding than adult criminals.

At this point, a minor's opinion of the administration of justice must be one of fairness because, if this perception is created, the rehabilitation process has already begun (Maciver, 1966; Paulsen, 1957). Failing that, the youth may develop a dislike for lawful authority and an innate resentment of the justice they observe (The President's Commission on Law Enforcement and the Administration of Justice, 1967c; Wheeler et al., 1966). It follows that concerns about the consequences of encounters between the youth and the police are justified. Law enforcement officers' image of themselves as a crucial, functioning part of the rehabilitative process is implicit (Remington et al., 1969).

Conclusions

The comparative analysis of the Kuwaiti Juveniles Act and the U.S. legal systems in the context of taking juveniles into custody has offered valuable insights into the complexities and nuances of juvenile justice. Based on a general examination, we found that the U.S. legal system is rife with differences between legislative texts, judicial applications, and practical practices by the police regarding the procedure of arrest, mostly due to its reliance on case law. We concluded that there is no fundamental or substantive difference between Kuwaiti and American legislation at the level of legislative texts, given that both legislations do not adopt special provisions for juvenile arrest procedures. Nevertheless, by examining the scope of the police's power to arrest, we found that the police have broad, unchecked powers to discriminate between adults and juveniles. There is no doubt that this broad authority gives law enforcement officers the discretion to deal with criminal and other behaviors, regardless of whether adults or juveniles are encountered. The Kuwaiti law did not stop with the law on juveniles' criminal responsibility but recently added a law for child protection, whereby the law enforcement officer is permitted to follow a different arrest procedure whenever the circumstances require the protection of the minor's security and safety. This is the position of most state laws in the U.S. too.

This study concluded that—as a general rule—the arrest is based on judicial permission, but that some urgent or exceptional circumstances may warrant deviations from this procedure without obtaining prior permission. By examining the legal texts of the State of Kuwait and the U.S., we found that both countries' legal texts take this into account, without the need of having to expand the extent of these powers or cases. Unlike the State of Kuwait, police departments in the U.S. have adopted many different policies regarding juvenile arrests and protocols, and there is no doubt that the situation in the U.S. is not ideal. This situation

notwithstanding, law enforcement officers in the U.S. have more options for on-the-spot interactions with juveniles in the street than their peers in the State of Kuwait. This measure of discretion in their authority provides U.S. officials greater flexibility to effectively deal with daily situations that they confront.

It is recommended that the Kuwaiti legislator must take the nature, qualities, and characteristics peculiar to juveniles into account, and based thereon, must adopt special procedures regarding juvenile arrests, such as giving a verbal warning and releasing the juvenile; conducting a meeting with the juvenile, the parent(s), teachers or other people of relevance; referring the juvenile to Youth Services or another community agency, or making a non-custodial arrest using a juvenile summons and complaint and a promise to appear in court. Additionally, juveniles who are brought to the police department must always be separated from adult offenders. If there are no adult offenders in the booking area, the juvenile may be placed there. Juveniles have the same constitutional rights as adult suspects and must be advised of their rights. This applies to in-custody arrests and interviews conducted outside of the police department (e.g., the child's home, or a hospital room). When juveniles are re-interviewed by officers, the officer must advise them of their rights again. The juvenile's parent or guardian must be present during the interview. The protection and rehabilitation of juvenile offenders are integral to the overall goals of justice and social welfare, and this paper contributes to these essential discussions.

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The authors declare that there are none.

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Notes

¹criminal proceedings apply in juvenile proceedings. If a particular right applies, its applicability must rest on a finding that it is required in order to assure fundamental fairness in the proceedings as determined by due process standards of the Fourteenth Amendment.

² With respect to other issues that have produced a flood of judicial opinions, this assumption has been made. Courts often will assume, without discussion, that constitutional safeguards relating to police interrogation apply to juvenile proceedings. Likewise, courts frequently will assume, *sub silentio*, that the Law of Search and Seizure is applicable to the juvenile process. These underlying assumptions have resulted from the extension of Gault's Mandate into the investigatory stages of juvenile proceedings.

³ One study indicated that 36 jurisdictions employ the substituted phraseology; Ferster, E. Z., and Courtless, T. F. (1969). The beginning of juvenile justice, police practices, and the juvenile offender, *Vanderbilt Law Review*, 22(3), 583–589. Of the 36 listed, 15 specifically provide that taking a juvenile into custody does not constitute an arrest.

References

- Al-Aifan M (2018) Legal framework for reform measures in Kuwait juvenile law: Comparative study. *Journal of Gulf and Arabian Peninsula Studies*, 67–85.
- Al-Aifan M and Bouarki H (2022) *Explanation of the Kuwaiti Penal Code Procedures and Trials*, 365–370. Kuwait University Publication.
- Al-Aifan M and Al-Mutairi Y (2018a) Trial of juveniles as adults, a means to confront juvenile delinquency: A study in American law compared to Kuwaiti law. *Journal of Law, Kuwait University*, 13–63.
- Al-Aifan M and Al-Mutairi Y (2018b) Prosecuting young people as adults to face the criminality of young people, study in U.S. law compared to Kuwaiti law, *Law Journal*, 51–60.
- Al-Dhafiri F (2010) *Principles of the Kuwaiti Penal Code*, 516–520. Kuwait University Publication
- Al-Mutairi Y (2019) *Explaining Kuwait's Penal Code*, 167–180. Kuwait University Publication
- Al-Rajhi B (2017) *Explaining Kuwait's Juvenile Law*, 290–295. Kuwait University Publication
- Al-Saeed K (2008) *Law of Criminal Procedures and Trials*. Kuwait City: Al-Culture Publisher.
- B.A.A. v. State*, 1978 So. 2d 304.
- Baum M and Wheeler S (1968) Becoming an inmate. In S. Wheeler (Ed.), *Controlling Delinquents* (pp. 153), Hoboken: Wiley.
- Beck v. Ohio*, 1964 U.S. 89.
- Bernburg JG and Krohn MD (2006) Labeling, life chances, and adult crime: The direct and indirect effects of official intervention in adolescence on crime in early adulthood, *Criminology*, 41(4): 1287–1318.
- Chevigny P (1969) *Police Power: Abuses in New York City*. U.S. Department of Justice.
- Duke Law Journal (1971) Socio-legal aspects of racially motivated police misconduct. *Duke Law Journal*, 751–783.
- Ferster EZ and Courtless TF (1969) The beginning of juvenile justice, police

- practices, and the juvenile offender, *Vanderbilt Law Review*, 22(3): 83589.
- Giordenello v. United States*, 1958 U.S. 480.
- Hosni MN (1995) *Explanation of the Code of Criminal Procedure*. Arab Renaissance House.
- Kenney JP and Pursuit DG (1965) *Police Work with Juveniles*, (3rd ed.) Springfield: Charles C. Thomas.
- Ketcham OW (1965) Legal renaissance in the juvenile court. *Northwestern University Law Review* 585–595.
- Kirk DS and Sampson RJ (2013) Juvenile arrest and collateral educational damage in the transition to adulthood. *Sociology of Education* 86(1): 36–62.
- Luger M (1967) The youthful offender. In *Task Force Report: Juvenile Delinquency and Youth Crime*, 199 and 121.
- Maciver RM (1966) *The Prevention and Control of Delinquency*. Oxfordshire: Routledge.
- Mahdi AR (2003) *General Rules in Criminal Procedure*. Arab Renaissance House.
- Maher B and Stein E. (1968) The delinquent's perception of the law and the community. In S. Wheeler (Eds.,) *Controlling Delinquents*. Hoboken: Wiley.
- National Council on Crime and Delinquency. (1961) *Standards and Guides for the Detention of Children and Youth*, 23. New York: National Council on Crime and Delinquency.
- Nasrallah F (1995) *Explaining Kuwait's Juvenile Law*, 413–430. Kuwait University Publication
- Nasrallah F (2011) *Explaining Kuwait's Penal Code*, 453–457. Kuwait University Publication.
- New York Family Court Act, 51024 (1979).
- Paulsen MG (1957) Fairness to the juvenile offender. *Minnesota Law Review*, 41: 547–551
- Paulsen MG (1965) The Expanding Horizons of Legal Services, *Vanderbilt Law Review*, 67(4): 267–269
- Remington FJ, Newman DJ, Kimball EL, Melli M and Goldstein H (1969) *Criminal Justice Administration* (pp. 959), U.S. Department of Justice.
- Sibron v. New York*, 1969 U.S. 40
- Siennick SE and Widdowson AO (2022) Juvenile arrest and later economic attainment: Strength and mechanisms of the relationship. *Journal of Quantitative Criminology*, 38: 23–50.
- Standard Juvenile Court Act, S.16, 6th. ed. (1959).
- State v. Hunt*, 1965 Ariz. 208.
- Sussman FB and Baum FS (1968) *Law of Juvenile Delinquency*, (3rd ed.) Dobbs

- Ferry: Oceana Publications.
- Swanson LD (1969) Police and Children. In R. S. Cavan (Ed.), *Readings in Juvenile Delinquency* (pp. 361). Philadelphia: Lippincott.
- Tappan P (1950) Unofficial delinquency, *Nebraska Law Review*, 29, 547–548
- Terry v. Ohio*, 1968 U.S. 1
- The President's Commission on Law Enforcement and the Administration of Justice. (1967a). *Task Force Report: The Police*.
- The President's Commission on Law Enforcement and the Administration of Justice. (1967b). *Task Force Report: Juvenile Delinquency and Youth Crime*.
- The President's Commission on Law Enforcement and the Administration of Justice. (1967c). *The Challenge of Crime in a Free Society*.
- Uniform Juvenile Court Act S.13(B) (1968).
- Wheeler S, Cottrell LS and Romasco A (1966) *Juvenile Delinquency: Its Prevention and Control*. New York: Russel Sage Foundation.
- Wilson JQ (1968a) The police and the delinquent in two cities. In S. Wheeler (Ed.), *Controlling Delinquents*. Hoboken: Wiley.
- Wilson JQ (1968b) *Varieties of Police Behavior: The Management of Law and Order in Eight Communities*. Cambridge: Harvard University Press.
- Wong Sun v. United States*, 1963 U.S. 471.