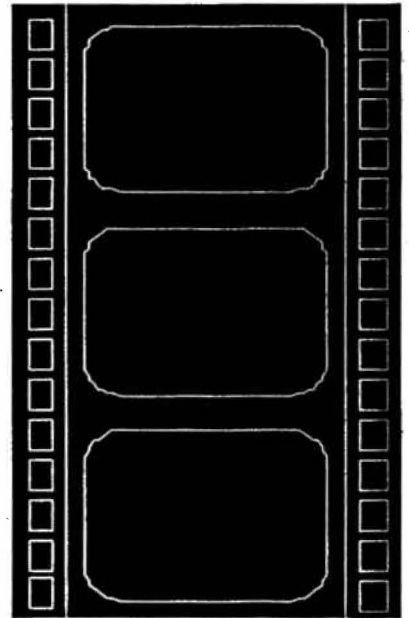
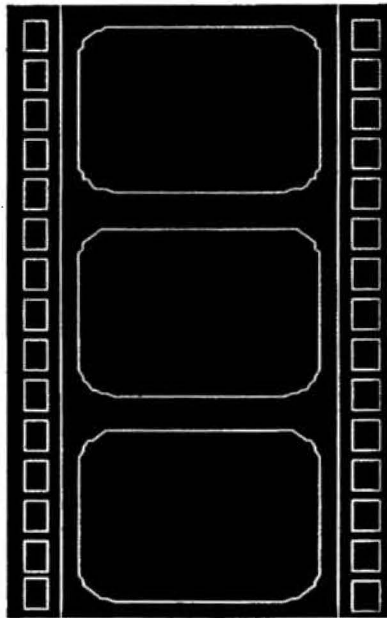
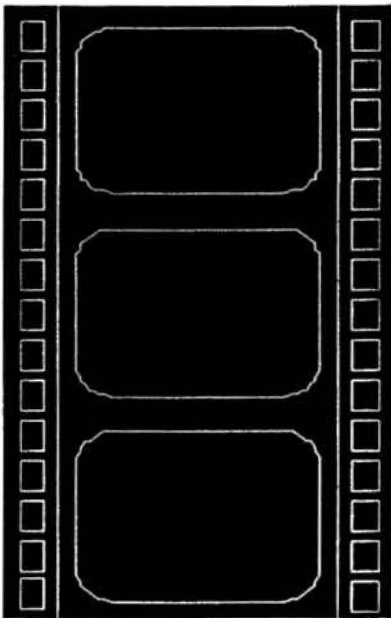


**SUPPLEMENTAL MATERIAL**

**P.L. 94-142**



# Education for All Handicapped Children Act

P.L. 94-142

By Don Barbacovi, AASA legislative intern.

On November 29, 1975, President Ford signed into law the Education for All Handicapped Children Act, P.L. 94-142. This legislation contains extensive amendments to the Education of the Handicapped Act (EHA), particularly Part B which provides assistance to the states in the initiation, expansion, and improvement of programs for the education of the handicapped.

With the passage of P.L. 94-142, the role of the federal government in the education of the handicapped has significantly increased, and the responsibilities of local and state education agencies has been dramatically altered. The law includes provisions designed to ensure that all handicapped children have a free and appropriate public education available, to ensure that the rights of handicapped children and their parents are protected, and to assist state and local education agencies in providing this education.

The proposed regulations to implement P.L. 94-142 has been developed with considerable public participation and input, to a degree heretofore unheard of in government circles. A fundamental issue addressed by many of the participants concerned the amount of detail and the degree of specificity necessary to implement the new law. A majority of participants expressed a concern that the Bureau of Education for the Handicapped (BEH) would tend to over-regulate. However, in the preamble to the proposed regulations BEH states that, "Since the Statute is already so specific on many points, and since the law does not become fully effective until Oct. 1, 1977, the Department feels that the most rational approach to follow is (1) to write minimum regulations at this time, and (2) to amend and revise such regulations as need and experience dictate." Consequently such items as criteria for eligibility for special education services (except specific learning disabilities), specific timelines for due process procedures, and forms developed by state or local education agencies are still within the domain of the state and local education agency.

The following series of questions and answers are based on a fourth draft of the proposed rules and regulations to be published in late December or early January. Because of the length of the proposed regulations this summary does not attempt to address all sections. Furthermore, this is not intended to be an indepth analysis of the proposed regulations; but rather an effort to sensitize school personnel to the scope of P.L. 94-142 which has been labeled a "Civil Rights Act for the Handicapped."

## SCOPE

### What Is the Purpose of P.L. 94-142?

P.L. 94-142 purports to:

- insure that all handicapped children have available to

them a free appropriate public education which includes special education and related services to meet their unique need;

- insure that the rights of handicapped children and their parents are protected;
- assist states and localities in providing for the education of all handicapped children; and
- assess and insure the effectiveness of efforts to educate those children.

### Who Will Pay for These Expanded Services?

To assist the state and local education agencies the federal government has authorized expenditure levels that could reach \$3.16 billion by fiscal year 1982.

### Who Is Covered?

State and local education agencies are required to serve all handicapped children ages three to 18 by Sept. 1, 1978, and ages three to 21 by Sept. 1, 1980. However, services for those children ages three to five and 18-21 may not be applicable if such a requirement is inconsistent with state law or practice, and court orders. Nevertheless, every state must make a free appropriate public education available to all handicapped children ages six to 17.

### Who Is Handicapped?

"Handicapped children" means those children evaluated by qualified professionals as being mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, or children with specific learning disabilities. However, within each state, there is a statutory limit of 12 percent on the number of handicapped children identified and a two percent limit on specific learning disabilities.

### Who Is Responsible?

The provisions of P.L. 94-142 apply to all states and trust territories and to all political subdivisions within the state involved in the education of handicapped children. These subdivisions include (1) the state education agency, (2) all local and intermediate education agencies, (3) other state agencies such as the Departments of Mental Health and Welfare, state correctional facilities and (4) those private schools who have handicapped children referred or placed by a state or local education agency.

### What Is a Free Appropriate Public Education?

A free appropriate public education refers to special education and related services which (a) are provided at public expense under public supervision and direction and

without charge, (b) meet the standards of the state educational agency, (c) include preschool, elementary school, or secondary school education, and (d) are provided in conformity with an individualized education program.

### **What Is Meant by Related Services?**

Related services means transportation and such developmental, corrective, and other support services as are required to help a handicapped child benefit from special education. This includes speech pathology and audiology, psychological services, physical and occupational therapy, early identification and assessment of handicapped conditions in children, school social work services, counseling services (including parent counseling and training, providing parents with information about child development, and assisting parents in understanding the special needs of their child), and medical services for diagnostic or evaluation purposes.

### **Are There Conditions for Assistance?**

To obtain assistance, states must submit an annual program plan. This plan must assure a free appropriate public education for all handicapped children within the prescribed timelines and give assurances relating to such items as public participation, types of facilities, personnel and services, confidentiality of personally identifiable information, procedural safeguards, least restrictive alternatives, monitoring procedures, and numerous other stipulations.

For local education agencies to receive payments under the act, they must submit an application to the state education agency. Each local application must include provisions relevant to:

- confidentiality of personally identifiable information;
- assurances of full educational opportunity goals;
- personnel development;
- parent involvement in plan development;
- handicapped participation in regular education programs in the least restrictive alternative;
- assurances that federal dollars are used for excess cost;
- public accessibility to records and information;
- individualized educational plans; and
- procedural safeguard guarantees.

### **What Is Meant by a Full Educational Opportunities Goal?**

Each state and local education agency must take steps to insure that handicapped children have available to them the variety of programs and services available to nonhandicapped children, including art, music, industrial arts, home economics, vocational education, physical education and nonacademic and extracurricular services and activities.

### **Are There Priorities in the Use of Part B Funds?**

There are two priorities, the first being those handicapped children who are not receiving any education, and secondly, those handicapped children who are "underserved." That is, those children within each disability with the most severe handicaps who are receiving some, but not all, of the special education and related services specified in the individualized education programs of those children.

### **Can a State Use Local Education Allocations To Provide Direct Services to Handicapped Children?**

A state can use the payments which would have been available to a local education agency and provide special education and related services directly to handicapped children residing in the area served by the local education

agency, if the state determines that the local agency (a) is unable or unwilling to establish and maintain programs of free appropriate public education, (b) is unable or unwilling to be consolidated with other local educational agencies in order to establish and maintain programs, or (c) has one or more handicapped children who can best be served by a regional or state center designed to meet the needs of such children.

## **INDIVIDUALIZED EDUCATION PROGRAMS**

### **What Is an Individualized Education Plan (IEP)?**

The term IEP means a written statement (program) for each handicapped child which includes: (a) statement of present levels of educational performance, (b) statement of annual goals, including short term instructional objectives, (c) statement of specific educational services to be provided, (d) statement regarding extent to which child will be able to participate in regular programs, (e) projected date for initiation and anticipated duration of such services, and (f) appropriate objective criteria and evaluation procedures for determining, at least on an annual basis, whether instructional objectives are being met.

### **Who Has the Responsibility for Developing the IEP?**

Local and intermediate education agencies must develop, or revise, whichever is appropriate, an IEP program for every handicapped child at the beginning of the school year, and review (or if appropriate, revise) its provisions periodically, but at least annually.

### **How Is the IEP Developed?**

The IEP is developed in a planning conference, which the local education agency is responsible for initiating. For a handicapped child who is currently receiving special education, a planning conference must be held early enough so that the IEP is developed by the beginning of the next school year. For a handicapped child who is not currently receiving special education, an individualized planning conference must be held within thirty days of a formal determination that the child is handicapped.

### **Who Participates in the Planning Conference?**

Local education agencies shall insure that an individualized planning conference at the minimum includes the following participants:

- a representative of the local education agency (other than child's teacher) who is in the field of school administration, supervision or special education and meets state certification requirements;
- the child's teacher or teachers, special or regular;
- one or both of the child's parents; and
- where appropriate, the child.

### **What Is the Local Education Agency's Responsibility for Parent Participation in the IEP Process?**

Each local education agency must take steps to insure that one or both parents are present at the planning meeting or are afforded the opportunity to participate, including scheduling the meeting at a mutually agreed upon time and place. If neither parent can attend, the local education agency must use other methods to insure parent participation, including individual or conference telephone calls. Furthermore, the local education agency shall take whatever action is necessary to insure that the parent under-

stands the proceedings, including making arrangements for interpreters for parents who are deaf or whose native language is other than English.

### **Can a Planning Conference Be Held Without a Parent in Attendance?**

Planning conferences may be held without parents if:

- a parent furnishes a written waiver of both parents' right to participate, or

- the local education agency is unable to convince the parents that they should attend. In this case, the local education agency must have a record of its attempts to arrange a mutually agreed upon time and place, such as:

- (1) detailed records of telephone calls made or attempted and the results of those calls,
- (2) copies of correspondence sent to the parents and any responses received, and
- (3) detailed records of visits made to the parents' home or place of employment and the results of those visits.

## **PERSONNEL DEVELOPMENT**

### **Does P.L. 94-142 Provide a System of Personnel Development?**

The law does provide for a comprehensive system of personnel development via the state's annual program plan which must include a description of programs and procedures to develop and implement such a system. The plan must include the inservice training of general and special educational instructional and support personnel, detailed procedures to insure that all personnel necessary to carry out the purposes of the Act are appropriately and adequately prepared and trained, and effective procedures for acquiring and disseminating information to teacher and administrators of programs for handicapped children, to assist them in providing an appropriate education.

### **Are There Incentives for Classroom Personnel To Pursue Extra Learning?**

The proposed regulations stipulate that the states annual program plan must provide for the use of incentives to insure participation by teachers, such as released time, payment for participants, options for academic credit, salary credit, certification renewal, or updating professional skills.

## **PRIVATE SCHOOLS**

### **Who Is Responsible for the Development of the IEP for Children Placed in Private Schools?**

If a local or intermediate education agency places, or has placed, a child in a private school setting then that agency is responsible for the development of the IEP. Furthermore, that agency shall insure that provision is made for a representative from the private school, which may be the child's teacher, to participate in the planning conference.

### **What Responsibilities Do Local Education Agencies Have in Placing Handicapped Children in Private Schools?**

If a handicapped child is placed in or referred to a private school or facility by the state or local education agency they must (a) provide special education and related services in conformance with an IEP which (b) is provided at no cost to the parents or guardians, (c) meets education

standards of the state educational agency which apply to public agencies, and (d) have all the rights of a handicapped child that are served by a public agency.

### **Who Has Fiscal Responsibility for Handicapped Children in Private Schools?**

If a handicapped child is placed in or referred to a private school or facility, the financial responsibility for the child's education remains with the state or local education agency. If a handicapped child has available a free appropriate public education in a local education agency that is in or readily accessible from the child's home community, and the parents choose to place the child in a private school, neither the state nor the local education agency is required to pay for the child's education. However, the child benefits to the extent other children in private schools benefit.

## **PROCEDURAL SAFEGUARDS**

### **Are There Due Process Procedures for Parents and Children?**

There are a number of specific procedures written into the law, and expanded in the proposed regulations, to protect the rights of children and parents. These safeguards include: due process, nondiscriminatory testing, least restrictive alternative, native language, confidentiality and the right to representation.

### **May Parents of Handicapped Children Obtain an Evaluation Independent of That Provided by the Education Agency?**

The parents of a handicapped child must be afforded the opportunity to obtain an independent educational evaluation. If the parent initiates the evaluation procedure the education agency is not required to pay for the evaluation. However, the results of such an evaluation must be considered by the education agency in any decision made with respect to the child's education and may be presented as evidence at a hearing regarding the child.

### **Are There Times When the Local or State Education Agency Will Be Required To Pay for an Independent Evaluation?**

If the parent requests that an independent evaluation be provided by the local or state education agency and the agency grants the requests, the cost must be at public expense. However, if the agency does not grant the parents' request and the parent presents a complaint, the question of an independent evaluation at public expense may be subject to a hearing.

### **When Are Education Agencies Required To Give Parents Prior Notice?**

Written notice must be given to the parents of a handicapped child before the education agency (a) proposes to initiate (or refuses to initiate) or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education, and (b) parental consent must be obtained before a formal evaluation is conducted.

### **What Needs To Be Included in This Notice?**

The prior notice must describe in detail the proposed action and reasons for it. In the event of a refusal by the education agency, the agency must be prepared to identify

the evaluation procedures, texts, records, or reports on which the refusal is based, and inform the parents of their right to a hearing to challenge the proposal or refusal. Furthermore, the notice must be provided in the native language of the parent, unless it is clearly not feasible to do so.

**When Is a Formal Evaluation Necessary?**

A formal evaluation must be conducted before any action is taken with respect to: (a) the initial placement or denial of a handicapped child in a special education program, or (b) the transfer or denial of transfer of a child from a special education program to full-time regular class placement. Furthermore, any change in a child's special education placement (self-contained special class to resource room) must be based on: (a) the child's current individualized education program, (b) any other information relating to the child's current educational performance, and (c) existing formal evaluation information which is not more than two years old.

**Who Determines That a Child Is Handicapped?**

The interpretation of the evaluation data and the subsequent determination of the child's educational placement are made by a group of persons knowledgeable about the child, the meaning of the evaluation results, the placement options and the personnel available to provide special education and related service.

**What Is Meant by the Least Restrictive Environment?**

Each state educational agency shall insure that to the maximum extent appropriate, handicapped children are educated with children who are not handicapped and that special classes, separate schooling or other removal of handicapped children from the regular educational environment occurs only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

**ALLOCATION OF FUNDS**

**How Will a State Receive Funds Under P.L. 94-142?**

Each state is entitled to an amount equal to the number of handicapped children aged three through 21 in the state who are receiving special education and related services multiplied by the applicable percentage of the national average per pupil expenditure (approximately \$1,250). The percentages are:

Fiscal 1978	5 percent	\$387 million
Fiscal 1979	10 percent	\$775 million
Fiscal 1980	20 percent	\$1.2 billion
Fiscal 1981	30 percent	\$2.32 billion
Fiscal 1982	40 percent	\$3.16 billion

Remember that these are *authorized spending levels*, and monies must still be appropriated.

**How Will the State Distribute the Money It Receives?**

Of the funds received by any state for fiscal year 1978, 50 percent may be used by the state and 50 percent must be distributed to local educational agencies in the state. Of the funds received by any state for fiscal year 1979 and thereafter, 25 percent may be used by the state and 75 percent must be distributed to the local educational agencies in the state.

**What Can the State Do With the Money It Receives?**

The proposed regulations stipulate that the funds may be used for:

- approval, supervision, monitoring, and evaluation of the effectiveness of local programs and projects for the education of handicapped children,
- administration of the annual program plan and for planning at the state level, and
- technical assistance to local education agencies.

**What Can a Local Education Agency Do With the Money It Receives?**

A local education agency must use the money it receives to pay for the "excess cost" of educating handicapped children. Excess costs mean those costs which are for special education and related services, and which are above the costs of regular education for an elementary or secondary school student in the local education agency.

**What If a Local Education Agency Is Serving All Its Handicapped Students?**

If a state determines that a local education agency is adequately providing a free appropriate public education to all handicapped children residing within its boundaries, the state may reallocate funds made available to local education agencies to other local agencies within the state that are not adequately providing special education and related services to the handicapped.

**May Funds Received Under the Act Be Used To Supplement or Supplant Local and State Funds?**

If the state education agency provides clear and convincing evidence that all handicapped children have available to them a free appropriate public education, the U.S. Commissioner of Education may waive the requirement that funds must be expended on "excess costs."

**May the Commissioner Withhold Payments?**

The U.S. Commissioner may withhold funds given to the state educational agency if that agency has substantially failed to comply with some of the major requirements of this Act. Furthermore the Commissioner may, after notifying the state educational agency, withhold further payments to the state under the federal programs specifically designed for handicapped children under the following titles:

- Part A of Title I of the Elementary Secondary Education Act,
- Title III of the Elementary Secondary Education Act (innovative programs) and its successor, Part C, Educational Innovation and Support, Section 431 of P.L. 93-380, and
- The Vocational Education Act.

**Specific Learning Disabilities**

The proposed regulations implementing the specific learning disabilities section were published in the *Federal Register*, Nov. 29, 1976, page 52404. A 120-day comment period has been set "in order to provide the public the opportunity to critically evaluate not only the specific requirement of the proposed regulations, but to examine the efficacy of this approach in determining the existence of specific learning disabilities as well." Comments must be received by March 28, 1977. ■

## Appeal Editorial

# Declining quality

Declining quality of education has been a steadily worsening problem and a matter of growing concern in Nevada in recent years. There have been alibis and buck-passing but the simple fact is youngsters are graduating from high school knowing less and less. You just don't realize how bad it is until you get an unintelligible letter from a high school senior girl or see a high school boy stymied by the challenge of making change from a five-dollar bill.

The Nevada Legislature is tackling the problem of declining quality of education on at least two fronts: compulsory attendance and performance standards for graduation from high school. The actions have elicited comments from a member of the State Board of Education — most of which miss the mark.

Both the Senate and the Assembly are suggesting the lowering of the age of compulsory attendance from 17 to 16. (AB 110 and SB 119). The argument is: any kid who's there against his will isn't going to perform anyway.

There is an Assembly bill that would require seniors to pass tests on reading writing and arithmetic before qualifying for graduation.

Cynthia Cunningham, a state education board member, says "hooray" for the former and "boo" on the latter. We believe she's got it backwards.

AB 110 on compulsory attendance would allow eighth grade graduates to slip out of full-time high school attendance to accept employment or enter an apprenticeship. That's fine. Any 16-year-old who knows where he or she wants to go in the trades should be encouraged.

The Nevada Taxpayers Association, an organization we can agree with 99 times out of a hundred, says all compulsory education should be abolished. The NTA occasionally suggests throwing the baby out with the bathwater when it comes to cutting education costs — and this is one of those times. The offer to lower the age from 17 to 16 is apparently on the order of a compromise with NTA.

Student: "I can't stand it. One more day in Miss Goober's English class and I'll throw up. I'm gonna get me a job and make some money and quit wasting my time!" There's not a high school student, past or present, who hasn't said that out loud or to himself at one point in time.

Drop mandatory attendance and you'd probably lose most of your marginal and failing high school students. That would probably thrill the school district and the taxpayers association. But what about the rest of us citizens who will have to feed and house those functional illiterates and their offspring?

Wouldn't it be wiser to insist those who need it the most stay in school and hope maybe, through exposure, some learning might be absorbed through osmosis?

That brings us to part two — setting up minimum standards. Begging your pardon Ms. Cunningham, but why shouldn't the legislature set minimum standards — since the school boards around the state refuse to. Sad fact is, educators have been lowering graduation standards to meet the steadily declining quality of their classroom product

What's the present situation? A student can collect a diploma by doing little else but showing up regularly and contributing to the superintendent's federal impact statement. That be the lone criterion, dropping attendance laws is a reasonable request.

Just suppose we were to keep the attendance requirement. And then suppose we were able to warn a student, say mid-way through his junior year, that he would have to meet certain minimum requirements or he will get no diploma.

No diploma? Little chance to get a job in the business world? Not qualified to hold most of the state jobs offered? Be a hiring prospect unpopular with even unpicky people like military recruiters?

Being denied a diploma that means something might be a bigger motivation than automatically receiving one that means nothing.

We don't think for a minute that setting up a program for browbeating Nevada's high school students is going to provide the final answer to the problem.

The crafts are honorable professions and are fine career goals. Those interested in crafts and skills should receive encouragement and assistance in reaching their goals. But even the potter, the welder and the auto mechanic have to know how to read, add a column of figures and make change.

There will be some who won't perform and a few who can't perform. No amount of effort can change that. But, we do not think it is unreasonable to expect a teenager to stay in school long enough, under pressure of the law if necessary, to learn the basic tools of survival.

And it's about darn time somebody stood up and told our educational executives what is acceptable and what is not acceptable from our graduating seniors.

The quality of education is in an obvious and steady decline. The legislators are correct in seeking to set standards for graduates. The educators themselves have pretty well indicated they can't handle it.

And we urge the legislators to not get stampeded into a decision to cut compulsory school attendance. Lowering or dropping compulsory attendance is a short-cut proposal offered by experts seeking to treat a symptom instead of the disease.

JUVENILE DIVISION  
OF THE

*Ninth Judicial District Court*

*Douglas and Lyon Counties  
State of Nevada*

NOEL E. MANOUKIAN  
DISTRICT JUDGE

PROBATION OFFICERS:  
JAMES H. ESTABROOK  
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PHONE 782-5176

DOUGLAS COUNTY COURTHOUSE  
MINDEN, NEVADA  
89423



February 7, 1977

Don Rhodes  
Chief Deputy Research Division  
Nevada Legislature Council Bureau  
Legislative Building  
Carson City, Nevada 89710

Dear Don,

As relates to your question as to my thinking on lowering the mandatory school attendance age to 16, I have the following observations:

Like most things the implications of such an act would depend on several variables such as:

1. The employment situation in the community.
2. The attitudes of the kids under concern.
3. The attitudes of the people in the community towards the young people under concern.
4. The existence of desirable alternatives to school.
5. The level of preparedness of the 16 year olds in question to accept responsibility and discipline themselves.

Etc.

There are several questions that come to mind.

1. Is the decision to lower the mandatory school attendance age based on the welfare of the youth involved or does the logic of "why the age should be lowered" follow from the desire of the schools to be rid of the responsibility?

Don Rhodes  
February 7, 1977  
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2. More than 50% of all crime is now perpetuated by relatively undisciplined and irresponsible teenagers. What are the long range implications of our inability to enforce restrictions and the increasing liberalization of cultural restraints?
3. Why have many traditional values lost their appeal to youth?

There are alot of questions it seems to me that should not only be asked but also answered intelligently before we drift into a course of action whose consequences we may not want.

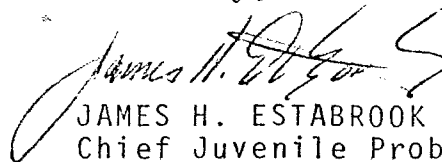
In Summary:

The social consequences of lowering the mandatory age for school attendance will depend on the cultural climate in a given community. If jobs are readily available, the youth involved relatively disciplined and there is broad based acceptance of the move, then it will probably have few negative results.

A deficiency in any of the three basic conditions above would cause problems that could exacerbate what is already a serious problem with youth, and the only institution to benefit would be the high schools.

The problem of what to do with difficult teenagers - and who should or is capable of dealing with them may well become the most pressing social concern of the age.

Sincerely,



JAMES H. ESTABROOK  
Chief Juvenile Probation Officer

cc: Noel E. Manoukian,  
District Judge

JHE:nc