aquaplanes, surfboards or other similar contrivances" on the waters of this State so as to "assure compatible use of state waters and best protect the public safety." Act 303, P.A. 1967, Sec. 12, being M.C.L.A. § 281.1012, M.S.A. § 18.1287(12).

After a review of the proposed regulations, in their factual setting, it is my opinion that such regulations are within the statutory authority of the Department of Natural Resources. I perceive, therefore, no legal impediment to the Department adopting such regulations.

FRANK J. KELLEY,
Attorney General.

7006243

CORRECTIONS, DEPARTMENT OF: Authority over youthful trainees.
YOUTHFUL TRAINEE ACT: Commitments under.
CONSTITUTIONAL LAW: Due process.

Youthful trainee act is unconstitutional as violative of due process clauses of state and federal constitution in that commitment of criminal defendants to state institution occurs without determination of guilt.

No. 4703 June 24, 1970.

Mr. Gus Harrison, Director
Department of Corrections
Stevens T. Mason Building
Lansing, Michigan

You have asked whether one committed to the Department of Corrections as a youthful trainee pursuant to Act 301, P.A. 1966,[1] may be released from custodial supervision by the Department of Corrections, pursuant to Section 6(d) of Act 210 of the Public Acts of 1966,[2] prior to expiration of his court-imposed term of commitment, and whether or not such release would require prior approval of the committing court.

Section 4 of Act 210, P.A. 1966, gives the Department of Corrections jurisdiction, "subject to constitutional powers vested in the executive and judicial departments of the state." over (*inter alia*) "youthful trainee institutions and programs for the care and supervision of youthful trainees."[3]

Section 6(d) thereof, cited *supra*, empowers the director, with approval of the Corrections Commission, to promulgate rules and regulations (*inter alia*):

> "For the management and control of . . . youthful trainee institutions and programs for the care and supervision of youthful trainees separate and apart from persons convicted of crimes within the jurisdiction of the commission. Such rules may permit the use of

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[1] M.C.L.A. § 762.11 et seq.: M.S.A. 1970 Cum. Supp. § 28.853(11) et seq.
[2] M.C.L.A. § 791.206; M.S.A. 1970 Cum. Supp. § 28.2276(d).
[3] M.C.L.A. § 791.204; M.S.A. 1970 Cum. Supp. § 28.2274.

portions of penal institutions in which persons convicted of crimes are detained. Such rules shall provide that decisions as to the removal of the youth from the youthful trainee facility or the release of the youth from the supervision of the department of corrections shall be made by the department of corrections. . . ."[4]

It is also relevant to note subparagraph (g) of Section 6, which provides in pertinent part:

"... for the transfer, with approval of the state director of social services, of youthful trainees to the department of social services for admission to any of its facilities for youth. . . ."[5]

The youthful trainee act, Act 301, P.A. 1966, provides for the establishment of youthful trainee status for any individual between the ages of 17 and 20 when such individual is alleged to have committed a criminal offense between his seventeenth and twentieth birthdays,[6] and allows for permissive application to a youth over 15 years of age "whose jurisdiction has been waived under the provisions of section 27 of Chapter 4 of this act."[7]

Section 11 of the youthful trainee act provides that:

"When any youth is alleged to have committed a criminal offense between his seventeenth and twentieth birthdays, the court of record having jurisdiction of such criminal offense may with the consent of either the affected youth or his legal guardian or guardian ad litem elect to consider and assign such youth to the status of youthful trainee."[8]

Section 12 provides that:

"The court of record, having jurisdiction over the criminal offense referred to in section 1, may at any time terminate its consideration of the youth as a youthful trainee or, once having assigned the youth to the status of a youthful trainee, may at its discretion revoke such status at any time prior to the youth's final release. Such termination of consideration, or such revocation of status as a youthful trainee, shall serve to reinstate the criminal case against such youth at the point interrupted when the consideration as a youthful trainee was commenced. No information divulged by the youth, subsequent to the commencement of consideration of the youthful trainee status, may be admissible as evidence in the criminal case. Should the status of a youthful trainee be revoked and sentence imposed under criminal procedure, the court in imposing sentence shall specifically grant credit against the sentence for time served as a youthful trainee in an institutional facility of the department of corrections."[9]

[4] M.C.L.A. § 791.206; M.S.A. 1970 Cum. Supp. § 28.2276.
[5] Ibidem.
[6] M.C.L.A. § 762.11; M.S.A. 1970 Cum. Supp. § 28.853(11).
[7] M.C.L.A. § 762.15; M.S.A. 1970 Cum. Supp. § 28.853(15).
[8] M.C.L.A. § 762.11; M.S.A. 1970 Cum. Supp. § 28.853(11).
[9] M.C.L.A. § 762.12; M.S.A. 1970 Cum. Supp. § 28.853(12).

Section 13 provides:

"If a youth is assigned to the status of a youthful trainee and the underlying charge is an offense punishable by imprisonment in a state prison for a term of more than 1 year, the court shall (a) commit the youth to the department of corrections for custodial supervision and training for a period not to exceed 3 years in an institutional facility designated by the department for such purpose or (b) place the youth on probation for a period not to exceed 3 years. A youth placed on probation shall be under the supervision of a probation officer or community assistance officer appointed by the corrections commission. Upon commitment to and receipt by the department of corrections, a youthful trainee shall be subject to the direction of the department of corrections."[10]

Section 14 provides:

"An assignment of a youth to the status of youthful trainee, as provided in this chapter, shall not be deemed to be a conviction of crime and such person shall suffer no civil disability, right or privilege following his release from such status because of such assignment as a youthful trainee. Unless such person shall be later convicted of the crime alleged to have been committed, referred to in section 1, all proceedings relative to the disposition of the criminal charge and to the assignment as youthful trainee shall be closed to public inspection, but shall be open to the courts of the state, the department of corrections, the department of social services and law enforcement personnel in the performance of their duties and such information may only be used for the performance of such duties."[11]

Thus, the youthful trainee act provides that a youth charged with a criminal offense may, without having had a trial, or without any determination that he did in fact commit the act as alleged, be confined in a penal institution in which persons convicted of crimes are detained."[12]

Such commitment is clearly violative of the constitutional rights of the defendant to the essentials of due process and fair treatment, as established by the United States Supreme Court in *In re Gault*.[13] This rule was later reaffirmed and re-emphasized in *In the Matter of Samuel Winship*,[14] in which the court, after reviewing the history of the requirement that guilt of a criminal charge be established by proof beyond a reasonable doubt, "of every fact necessary to constitute the crime with which he is charged,"[15] held that "the same considerations which demand extreme caution in factfinding to protect the innocent adult apply as well to the innocent child."[16] The high court was not impressed

[10] M.C.L.A. § 762.13; M.S.A. 1970 Cum. Supp. § 28.853(13).

[11] M.C.L.A. § 762.14; M.S.A. 1970 Cum. Supp. § 28.853(14).

[12] *Supra*, notes 4 and 8.

[13] 387 US 1, 13 (1967).

[14] No. 778, October term, 1969, 38 LW 4253 (3-31-70).

[15] Ibidem.

[16] Ibidem.

with the fiction that the proceedings are not called a criminal prosecution, but are designed to save rather than to punish the child.[17]

Therefore, the loss of liberty of a youth committed to the Department of Corrections as a youthful trainee is obnoxious to due process, as above set forth, and you are advised that the youthful trainee act is void as unconstitutional under *Gault* and *Winship*.

It might be added that the confinement of an unconvicted youth in a penal institution would be unconstitutional under the ruling of the Michigan Supreme Court in *In re Maddox*.[18]

It is notable that the Circuit Court for the County of Washtenaw by a three-judge panel held Act 301, P.A. 1966, invalid as unconstitutional, being on its face in direct violation of the 5th and 14th Amendments of the United States Constitution.[19] A copy of the opinion of the court in *Wilson* is attached hereto and made a part hereof.

Accordingly, you are advised that due to the invalidity of the statute, all persons committed under Act 301, P.A. 1966, except those who pled guilty or were found guilty in accordance with due process, are entitled to be released, there being no authority to hold them in custody.[20]

FRANK J. KELLEY,
Attorney General.

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[17] And see *Gault*, op cit, at 27.

[18] 351 Mich. 358 (1958).

[19] *People of the State of Michigan v. Wendell Wilson* (1968), Circuit Court for the County of Washtenaw, CR 1674, Honorable James R. Breakey, Jr., Honorable William Ager, Honorable John W. Conlin sitting en banc.

[20] I am aware that in *People v. Roberson* (3/26/70—No. 7198) the court of appeals had before it a matter involving a youthful trainee who had been assigned that status under the youthful trainee act and did not declare the act to be unconstitutional. This issue, however, was not before the court. In that case the minor *had pleaded guilty* before being sent to the training unit at Ionia and later had his youthful trainee status along with his probation terminated without formal proceedings. The court held therein that, under the *Gault* doctrine, the minor was entitled to the same rights to a hearing as an adult probationer and remanded the case to circuit court.