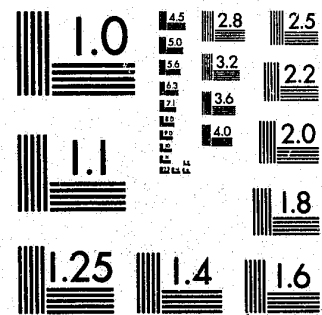


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A COMPARATIVE ANALYSIS OF
STANDARDS AND STATE PRACTICES

NCJRS

MAR 24 1977

ACQUISITIONS

POLICE-JUVENILE OPERATIONS

VOLUME II OF IX

Working Papers of the National Task Force
to Develop Standards and Goals for Juvenile
Justice and Delinquency Prevention

Prepared under Grant Number 75-TA-99-0016 from the
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National Institute for Juvenile Justice and
Delinquency Prevention
Office of Juvenile Justice and
Delinquency Prevention
Law Enforcement Assistance Administration
U.S. Department of Justice

PREFACE TO WORKING PAPERS

Task Force Origin and Mission

The National Task Force to Develop Standards and Goals for Juvenile Justice and Delinquency Prevention was initiated as part of Phase II of the standards and goals effort undertaken by the Law Enforcement Assistance Administration (LEAA) of the U.S. Department of Justice.

The original portion of this effort (Phase I) led to the establishment of the National Advisory Commission on Criminal Justice Standards and Goals in October of 1971. To support the work of the National Advisory Commission, special purpose Task Forces were created, each concentrating on a separate area of concern in criminal justice. The efforts of the Task Forces resulted in the completion of five reports: Courts; Police; Corrections; Criminal Justice System; and Community Crime Prevention. In addition, the National Advisory Commission itself produced an overview volume entitled A National Strategy to Reduce Crime. Following the completion of these works in 1973, the National Advisory Commission was disbanded.

In the Spring of 1975, LEAA established five more Task Forces coordinated by a newly created National Advisory Committee to carry out the work of Phase II. The five Task Forces were Private Security; Organized Crime; Civil Disorders and Terrorism; Research and Development; and, of course, the Task Force to Develop Standards and Goals for Juvenile Justice and Delinquency Prevention.

From the beginning there was a recognition that the work of the Juvenile Justice and Delinquency Prevention Task Force was much broader than the other four groups. The charge of the Juvenile Justice Task Force was to supplement virtually all of the work of the Phase I National Advisory Commission with a "juvenile" version of the original adult-oriented standards and goals statements.

In all, the Task Force met ten times, for two or three days each time, in public meetings in various parts of the nation. At these meetings the Task Force was able to solidify its group philosophy, analyze the issues of importance in juvenile justice and delinquency prevention, direct the writing of standards and commentaries, review and modify draft material, and react to National Advisory Committee recommendations. The final results of the Task Force's efforts are set forth in the forthcoming volume on Juvenile Justice and Delinquency Prevention, soon to be published by LEAA.

Throughout its work process, the Task Force had the benefit of staff assistance. The American Justice Institute (AJI) of Sacramento, California, received a grant from LEAA to support the work of the Task Force.

Task Force Working Procedures and Use of Comparative Analyses

The time and resources provided to accomplish the challenging task of producing the standards volume did not allow the Task Force to conduct new research in juvenile justice and delinquency prevention. However, the Task Force did utilize a methodology which assured the incorporation of the best scholarship and state-of-the-art knowledge currently available.

This methodology involved identifying the major issues or questions which needed to be resolved before the Task Force could promulgate standards. Comparative Analyses were then constructed around each of these issues. Each Comparative Analysis begins with a comparison of the positions taken on the issue by other standard-setting organizations--previous Task Forces, Commissions, etc. The Comparative Analyses also consider the current practice of each state with regard to the issue in question.

These background materials were designed not only to make Task Force members aware of the various positions that had been taken with regard to a particular issue, but also to provide the Task Force with a complete analysis of the arguments for and against the full range of options presented.

Using the Comparative Analyses as a basis for its discussion and deliberation, the Task Force then directed the staff and consultants to prepare standards and commentaries in line with the positions which it took in each of these areas. This process proved to be very productive for the Task Force members. It allowed informed consideration of the pertinent issues prior to the adoption of any particular standard.

Compilation of Working Papers

Following completion of the Task Force's work, it was clear to members of the AJI staff and officials at LEAA that the Comparative Analyses prepared to assist the Task Force in its preparation of the standards volume could be useful to other groups. In particular, it was recognized that states and localities which plan to formulate standards or guidelines for juvenile justice and delinquency prevention will need to traverse much of the same territory and address many of these same questions. As a result, LEAA's National Institute for Juvenile Justice and Delinquency Prevention provided the AJI staff with a grant to compile the materials in their present form.

The Comparative Analyses have been organized in a series of nine volumes of Working Papers, each devoted to a particular aspect of juvenile justice and delinquency prevention. (A complete table of contents of each of the volumes is set forth in the appendix.) Some subjects have been analyzed in considerable detail; others, because of limited time or consultant resources, have been given abbreviated treatment. Thus, while it is recognized that these Working Papers do not present a comprehensive examination of all of the important issues in juvenile justice--or even of all of the issues considered by the Task Force--they do represent a useful survey of a wide range of subjects, with a wealth of data on many of the particulars. Using these materials as groundwork, other groups with interests in individual facets of the juvenile system may wish to expand the research as they see fit.

Although the Comparative Analyses should not be taken to represent the Task Force's views--they were prepared by project consultants or research staff and were not formally approved by the Task Force or reviewed by the National Advisory Committee--it was decided that it would be helpful to outline the position taken by the Task Force on each of the issues. Therefore, the AJI staff reviewed each of the Comparative Analyses and added a concluding section on "Task Force Standards and Rationale" which did not appear in the materials when they were considered by the Task Force.

A more thorough exposition of the Task Force's views can be found in the forthcoming volume on Juvenile Justice and Delinquency Prevention, which should, of course, be consulted by those considering these Working Papers.

The efforts of the many consultants and research assistants who prepared the drafts of these materials is gratefully acknowledged. Any errors or omissions are the responsibility of the American Justice Institute, which reviewed the materials and assembled them in their present form.

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FOREWORD

Over the past ten years, a number of national efforts have developed regarding juvenile justice and delinquency prevention standards and model legislation. After the enactment of the Juvenile Justice and Delinquency Prevention Act of 1974 (Pub. L. 93-415) and in conjunction with LEAA's Standards and Goals Program, many States started formulating their own standards or revising their juvenile codes.

The review of existing recommendations and practices is an important element of standards and legislative development. The National Institute for Juvenile Justice and Delinquency Prevention (NIJJDP) has supported the compilation of the comparative analyses prepared as working papers for the Task Force to Develop Standards and Goals for Juvenile Justice and Delinquency Prevention in order to facilitate this review. Over one hundred issues, questions, and theories pertaining to the organization, operation, and underlying assumptions of juvenile justice and delinquency prevention are covered in the analyses. These are divided into nine volumes: Preventing Delinquency; Police-Juvenile Operations; Court Structure; Judicial and Non-Judicial Personnel and Juvenile Records; Jurisdiction-Delinquency; Jurisdiction-Status Offenses; Abuse and Neglect; Pre-Adjudication and Adjudication Processes; Prosecution and Defense; and Juvenile Dispositions and Corrections.

The materials discussed in these reports reflect a variety of views on and approaches to major questions in the juvenile justice field. It should be clearly recognized in reviewing these volumes that the conclusions contained in the comparative analyses are those of the Task Force and/or its consultants and staff. The conclusions are not necessarily those of the Department of Justice, LEAA, or NIJJDP. Neither are the conclusions necessarily consistent with the recommendations of the Advisory Committee on Standards that was established by the Act, although the Committee carefully considered the comparative analyses and endorsed many of the positions adopted by the Task Force.

Juvenile justice policies and practices have experienced significant changes since the creation of the first juvenile court in 1899. The perspective provided by these working papers can contribute significantly to current efforts to strengthen and improve juvenile justice throughout the United States.

James C. Howell
Director
National Institute for Juvenile Justice
and Delinquency Prevention
January, 1977

INTRODUCTION

Volume II: Police-Juvenile Operations

This volume contains eleven Comparative Analyses of important issues concerning the Police and Juvenile Justice and Delinquency Prevention. These issues, articulated as central questions concerning the role, function and operation of police agencies, are listed in the table of contents.

The first three issues concern police policy formulation. They explore various options concerning the possible roles and responsibilities of the police. Pro and con arguments are presented for each important option.

The Comparative Analyses then turn to an evaluation of the proper scope of the police authority to detain and arrest juveniles (Issue 4). Issue 5 extends this line of inquiry to a consideration of the authority of the police to protect children.

Issues 6 through 9 deal with the important questions of whether the law of arrest should apply equally to juveniles and adults. In addition, they explore the difficult issue of how much discretion the police should be allowed and how it can be regulated. They also raise questions about the police roles and procedures at each stage of juvenile justice processing from prevention to taking a juvenile into custody, to detaining the juvenile and transporting the juvenile to detention or shelter care.

Issue 10 speaks to possible mechanisms for relationships between police agencies and the court, and particularly juvenile intake units.

Issue 11 describes various alternatives for organizing police services to handle juvenile matters.

An appendix concludes the volume. It contains notes concerning the use of arrest warrants by the police. Current practices are reviewed. Though discussed by the Task Force, the staff was not directed to develop any standards in this area. The information is included here, however, because the issue is an important one, and likely to be a subject of discussion by state and local groups which will meet in the future to review and promulgate standards.

Richard Kobetz and Betty Bosarge of the International Association of Chiefs of Police served as project consultants and were the primary contributors of material contained in this volume. We are indebted to the Honorable Ted Rubin for the material contained in Issue 10 and the appendix. Robert Montilla also contributed his ideas.

Since many changes have been made to the text of the Comparative Analyses, the responsibility for any errors or omissions rests with the American Justice Institute, which prepared these Working Papers for the Task Force and assembled them in this form for the National Institute for Juvenile Justice and Delinquency Prevention.

1. Issue Title: Police Roles and Responsibilities--What are the proper roles and responsibilities of the police in juvenile justice and delinquency prevention?

2. Description of the Issue:

There are great differences in the way police departments perceive and carry out their roles and responsibilities. These different "styles" of policing are often found to be related to the fact that police policy mirrors the differences which are found among and between communities; that is, police policy is an expression of community standards.

The question to be addressed here concerns what the proper role of the police should be toward juveniles--is it strictly an enforcement role? Is it strictly a prevention role? Is it a combination of both?

Related questions are: How should police responsibility for protecting the integrity of the law be administered? What part should the police play in enforcing the law and maintaining order with respect to juveniles? What is the proper police leadership role in formulating juvenile justice and delinquency prevention policy, and for seeing that other agencies discharge their responsibilities to juveniles and to the justice system?

3. Summary of Major Positions:

The police role in society has two dimensions: the "reactive" role and the "proactive" role.

The reactive role is the traditional police role of controlling crime. It involves police activities directed toward enforcement of the criminal law.

The second dimension of policing, the "proactive" role, involves the participation of police in activities designed to prevent crime and delinquency; this is commonly known as the crime prevention function. In their crime prevention role, police develop and participate in community relations programs, advise citizens on methods of self-protection, and so forth. This presents role identity problems for the police officer, however, since the officer may view the enforcement of the criminal law as his main concern. Crime prevention can be viewed as "social work," a role which police often see as taking time away from what they consider to be their primary role--the apprehension of criminals. This "role identity" problem often affects the outlook of officers in the manner in which they interact with citizens. Moreover, while occasions for police intervention may result from police initiative, the majority of interventions originate in citizens'

complaints. In either case, police work is heavily demand-oriented and the type of police response that takes place is likely to mirror community expectations.

Although the police and the public perceive the primary police role to be one of criminal law enforcement, the majority of reactive police work actually involves what is known as "low-visibility" policing, or "peacekeeping" (solving domestic disputes, traffic enforcement, etc.). Because the police role involves "peacekeeping" functions, as well as criminal law enforcement functions, the police officer must possess a wide variety of skills which enable him to temporarily defuse hostile situations and to refer complex problems to others for further attention.

There has been considerable debate concerning exactly what the dimensions of the police role and responsibilities in a democratic society should be. What the police do, or should do, is determined largely on an ad hoc basis by a number of factors which influence their involvement in responding to various government or community needs.

In juvenile justice and delinquency prevention, the police also function in both reactive and proactive roles, although there is a heavy emphasis on the proactive function. The role of the police-juvenile officer is considered to be a crucial one primarily because his contact with the juvenile generally constitutes the beginning of remedial treatment--the police serve as the entry point into the juvenile justice system. To a large degree, the police officer's attitude and demeanor toward the juvenile will determine the minor's conception of all ensuing procedures and may structure the child's beliefs, not only about the police and other professionals in the juvenile justice system, but more importantly, it may influence the child's conception of himself.¹ As the President's Commission on Law Enforcement and the Administration of Justice states, whether or not a child becomes involved in the juvenile justice system depends upon the outcome of his initial encounter with the police.²

There are several problems inherent in determining whether the police role in juvenile justice and delinquency prevention should be primarily an enforcement one, a prevention one, or a combination of both.

The International Association of Chiefs of Police states, the objective sought by the police handling juvenile offenders, even those guilty of serious crimes, should be protection and rehabilitation.³

Proponents of a "strict" law enforcement role cite statistics which illustrate a startling amount of contact and interaction between the police and juveniles. These proponents include some police chiefs who feel that the police are a crime control agency and should limit their work with juveniles to crime suppression only.⁴

Conversely, other police chiefs argue that the police role in juvenile justice should be primarily one of delinquency prevention, a role which stems from the demands of society for the differential treatment of children.⁵ One of the leading proponents of the prevention role as the primary function of police in juvenile justice was August Vollmer, former chief of police of Berkeley, California, and the "father of modern law enforcement." In 1928, Vollmer employed a trained social worker to head the department's juvenile program, arguing that the police officer in the field was a criminologist and that the police department was a "social agency" with a responsibility for resolving social situations at the community level.⁶ Like Vollmer, some police administrators today orient their police-juvenile activities toward the "social work" function, with juvenile officers serving somewhat in the role of "quasi-probation officers."⁷

The "middle-of-the-road" position is taken by the International Association of Chiefs of Police, the Missouri Council on Criminal Justice, and IJA/ABA Juvenile Justice Standards Project, and the President's Commission on Law Enforcement and the Administration of Justice, as well as the majority of police administrators in the United States.

The IACP points out that most police departments operate juvenile programs that combine the law enforcement and delinquency prevention roles, working with the juvenile court to determine a role which is most suitable for the community.⁸ The Missouri Council on Criminal Justice advises police-juvenile officers that "pure prevention of delinquency is a myth" and that the police officer "cannot prevent delinquency"; however, the police can help contain it by intervening into young lives at a time when authoritative action may be necessary to impress on children and their parents that certain behavior is socially and legally unacceptable.⁹ The IJA/ABA Juvenile Justice Standards Project states that most police view themselves as "primary diversion and treatment agencies" and use courts "reluctantly only when punishment seems appropriate."¹⁰ The President's Commission on Law Enforcement and the Administration of Justice recommends that the police serve as both a crime suppression and delinquency prevention agency, "conserving the juvenile court for dealing with repeat and serious offenders."¹¹

J.Q. Wilson's "service style" of policing, which implies both fairly intense police reaction to disorder and a high degree of face-to-face communication and cooperation between the police and parents of children who create disorders seems to be responsive to communities that expect and need a police policy which takes a middle-of-the-road position on this issue.

4. Summary of Positions Recommended by Major Standards Groups:

| IACP (1973) | Missouri Coun. on Crim. Just. (1975) | Juv. Just. Stan. Project (1973) | Pres. Comm. on Law Enf. (1967) | A. Vollmer & Minority of Police Chiefs | Minority of Police Chiefs |
|--|---|---|--|--|--|
| "Most police departments operate juvenile programs that combine the law enforcement and delinquency prevention roles and the police should work with the juvenile court to determine a role that is most suitable for the community." (Advocates an evenhanded combination of law enf. and delinquency prevention roles.) | Argues that the police officer cannot prevent delinquency but can help contain it. (Advocates an evenhanded combination of law enf. and delinquency prevention roles.) | "Most police view themselves as primary diversion and treatment agencies and use courts only when punishment seems appropriate." (Advocates combination of law enf. and delinquency prevention roles but places more emphasis on prevention role.) | Recommends that police serve as both a crime suppression & delinquency prevention agency, "conserving the juvenile court for dealing with repeat & more serious offenders." (Advocates combination of law enf. & delinquency prevention roles.) | "The police officer in the field is a criminologist & the police dept. is a social agency with a responsibility for resolving social situations at the community level." (Advocates strict delinquency prevention role for police.) | Argue that police are a crime control agency and should limit their work with juveniles to crime prevention only. (Advocate strict law enforcement role.) |

Summary of Positions:

- I. Advocates strict law enforcement role only - Small minority of police chiefs.
- II. Advocates strict delinquency prevention role only - Small minority of police chiefs.
- III. Advocates combination of law enforcement and delinquency prevention roles - Four standard setting groups.

5. Analysis of the Issue :

The issue involves the role of the police in juvenile justice and delinquency prevention. There are three possible role options: (1) a strict law enforcement (or crime suppression) role; (2) a strict delinquency prevention (or "quasi-probation officer") role; and (3) a "middle-of-the-road" combination of both roles.

The first option is to restrict police-juvenile officers to the role of law enforcement officers only. In this role they would function solely to suppress crime among juveniles, a role which some police chiefs believe is necessary in view of the startling increases in the amount of juvenile crime over the past decade. For example, in New York City alone, over one-quarter of all crimes involve juveniles.¹² The U.S. Justice Department FBI Uniform Crime Reports figures for 1974 show a 32 percent increase in the number of juvenile offenders under the age of 18 apprehended for index crime offenses between 1969 and 1974.¹³ Between 1960 and 1974, the increase in the number of juveniles under the age of 18 arrested for index crime offenses was even more startling--143 percent.¹⁴ For this reason, some police chiefs argue that the police should be devoting their scarce resources to the suppression of juvenile criminal activities, eliminating the "social work" frills. If this position is chosen, it would mean advocating that all police agencies cease their delinquency prevention activities and concentrate all their resources on the suppression of juvenile crime.

The second option is to heavily de-emphasize the law enforcement role when dealing with juveniles and concentrate police-juvenile manpower on delinquency prevention activities, with the police-juvenile officers serving more in the roles of "social worker" or "quasi-probation officer." Those who criticize this option do so because they see a tendency to undertake activities which can fall beyond conventional, legalistic police work and involving rehabilitative activities.¹⁵ In such departments, police-juvenile officers are more client-oriented and are likely to be found investigating not only circumstances surrounding the commission of crimes, but also home situations, including the interpersonal relationships between the juvenile, his parents and siblings. In its purest form, such a department would have not only a juvenile bureau, but would expand this function to a "Family Bureau." Such a role may or may not also place heavy emphasis on diverting juveniles by placing them on "unofficial" probation, a practice which the International Association of Chief of Police has labeled as "unacceptable" and recommends be "prohibited."¹⁶

The third option, and one which is widely recommended and practiced, is to view the police role in juvenile justice as an evenhanded combination of the law enforcement and prevention functions, emphasizing neither at the expense of the other, yet striving to divert many juveniles from the formal adjudicatory processes. If

this option were selected, the police-juvenile officer would function both as a police officer in the detection and suppression of crimes committed by juveniles and as a social service worker who would attempt to contain delinquency by participating in recreational programs, lecturing in schools on the police role in society, and working in a community relations function with both delinquent and non-delinquent youths in the community. This option is clearly the most acceptable one to the majority of police administrators in the United States and to the major standard-setting groups.

6. Task Force Standards and Rationale:

Chapter 4 of the Task Force report contains six standards and commentaries which speak to the roles and responsibilities of the police in juvenile justice and delinquency prevention (Standards 4.1 through Standard 4.6).

Three of these standards specifically relate to this issue. They are:

Standard 4.1 Police Policy as an Expression of Community Standards

The police role in juvenile justice and delinquency prevention should be responsive to the needs of the community. The police should function in both an enforcement and prevention capacity, emphasizing neither role at the expense of the other.

Standard 4.2 Responsibility of the Police in Protecting the Integrity of the Law

The objective of the police in protecting the integrity of the law should be twofold: (1) to enforce the law and maintain order; and (2) to ensure impartiality in enforcement.

Standard 4.6 Participation in Policy Formulation Efforts

Police chief executives should broaden the scope of participation in police policy-formulation efforts affecting juveniles to include lay persons, other juvenile justice system personnel, community youth service groups, educators and other persons and/or groups in the community who work in a youth-serving capacity.

In promulgating these six standards, the Task Force has articulated the following recommended principles: The Task Force acknowledges the need for different styles of policing in different communities. Police policy should reflect community standards. To make policy more visible, guidelines need to be established and set forth in writing, particularly to provide guidance for the police when handling juveniles. There is a need to acknowledge the need for procedural differences, and a preference for using the least coercive option for firmly and fairly protecting the integrity of the law, protecting the juvenile and recognizing the right to autonomy of the family.

Footnotes:

- ¹Illinois Institute for Continuing Legal Education, Illinois Juvenile Law and Practice, Springfield, Ill.: Illinois Bar Center, 1974, pp. 2-6, 2-7.
- ²The President's Commission on Law Enforcement and the Administration of Justice, The Challenge of Crime in a Free Society, Washington, D.C.: U.S. Government Printing Office, 1967, p. 78.
- ³Kobetz, R. and Bosarge, B. Juvenile Justice Administration, Gaithersburg, MD: The International Association of Chiefs of Police, 1973, p. 112.
- ⁴Ibid., p. 163.
- ⁵Ibid.
- ⁶Vollmer, A. Police in Modern Society, Berkeley, California: University of California Press, 1938.
- ⁷Kobetz and Bosarge, ibid.
- ⁸Ibid., pp. 163-164.
- ⁹Gomolak, N. Missouri Police-Juvenile Officer Manual Guide, Columbia, MO: Missouri Council on Criminal Justice, 1975, p. 23.
- ¹⁰Institute for Judicial Administration, Juvenile Justice Standards Project Final Report Planning Phase, 1971-72, New York: NYU School of Law, 1973, p. 204.
- ¹¹The President's Commission on Law Enforcement and the Administration of Justice, ibid.
- ¹²New York City Police Department, Youth Aid Division Annual Report, 1973.
- ¹³The "index crimes" are those considered to be the most serious in nature and include murder and non-negligent manslaughter, aggravated assault, forcible rape, robbery, burglary, larceny and motor vehicle theft. Kelley, C. Crime in the U.S.--1974, Washington, D.C.: U.S. Department of Justice, 1975, p. 183.
- ¹⁴Ibid., p. 182.
- ¹⁵Kobetz and Bosarge, ibid., p. 163.
- ¹⁶Ibid., pp. 166-167.

1. Issue Title: Developing Delinquency Prevention Policy--
What is the proper role of the police in the development of juvenile justice and delinquency prevention policy?

2. Description of the Issue:

In law enforcement operations, the development of policy statements is necessary and useful, as "policy" is a formal pronouncement providing the basis for procedures and standing instructions ordering personnel to act in prescribed ways under specified conditions in order to achieve desired objectives. What should the role of the police be in taking the initiative to develop local policy concerning juvenile justice and delinquency prevention in the community?

3. Summary of Major Positions:

In police juvenile operations, the development of policy statements is necessary and useful for several reasons:

1. Policy statements define the broad objectives of the police, consistent with the philosophical tenets upon which a democratic society is based.
2. They provide a basis for the exercise of police discretion.
3. They provide the basis for the development of guidelines for police conduct by defining limits which demand that which must be and prohibit that which must not be.
4. They provide the basis for developing standards against which each individual police agency may measure its posture on specific issues.
5. They instruct and enlighten persons outside of law enforcement and thereby tend to shape the public's expectations of the police.¹

In order to be effective, police policy must be made by citizens and by the police at the local level; as the International Association of Chiefs of Police argues, no national standard-setting group "can present a detailed procedural guide for the diverse regional and local needs of the police in juvenile operations."²

However, both the IACP and Kenney and Pursuit do suggest that policy guidelines "of a broad general nature" pertaining to juvenile operations should be developed to guide the needs of local law enforcement.³

Of the major standard-setting groups, the American Bar Association, the President's Commission on Law Enforcement and the Administration of Justice, the National Advisory Commission on Criminal Justice Standards and Goals, and the International Association of Chiefs of Police have developed standards on the development of police policy guidelines.

The American Bar Association, in its Standards Relating to the Urban Police Function, addressed itself to both the role of the local executive in the development of policy and the need to obtain citizen input. Stressing that policy formulation should be a joint activity between the local executive, the municipal governing body, and the police chief, the ABA states:

In general terms, the chief executive of a municipality should be recognized as having the ultimate responsibility for his police department and, in conjunction with his police administrator, and the municipal legislative body, should formulate policy relating to the nature of the police function, the objectives and priorities of the police in carrying out this function, and the relationship of these objectives and priorities to municipal strategies.⁴

With reference to the method of policy-making, the ABA stresses the need for citizen involvement: "In its development of procedures to openly formulate, implement and reevaluate police policy as necessary, each jurisdiction should be conscious of the need to effectively involve a representative cross-section of citizens in this process."⁵

The President's Commission on Law Enforcement and the Administration of Justice has developed the following standard: "To the greatest feasible extent, police departments should formulate policy guidelines for dealing with juveniles."⁶

The National Advisory Commission on Criminal Justice Standards and Goals, in its volume The Police, also addressed itself to juvenile justice policy development: "The chief executive of every police agency immediately should develop written policy governing his agency's involvement in the detection, deterrence, and prevention of delinquent behavior and juvenile crime."⁷

The International Association of Chiefs of Police recommends that the police develop juvenile justice policy in cooperation with the juvenile court: "It is recommended that police departments and

the juvenile court adopt mutually agreeable written policies pertaining to the disposition of juvenile cases at the police level; such policies should clarify the use of discretionary judgment in police disposition of juvenile cases; furthermore, such policies should be approved by the chief of police before adoption by the juvenile unit."⁸

The IACP further advises that where sound policy would conflict with prevailing legislative and judicial directives, the police administrator should present his viewpoints to those responsible for existing laws and procedures which affect police operations and rely upon discussions and logical reasoning to change existing conditions.⁹

4. Summary of Positions Recommended by Major Standards Groups:

| ABA (1972) | President's Commission on Law Enf. & Admin of Justice (1967) | National Advisory Comm. on Criminal Justice Standards & Goals (1973) | IACP (1973) |
|---|--|--|--|
| <p>The chief executive of a municipality should have ultimate responsibility for his police department and in conjunction with the police chief and the municipal legislative body should formulate policy relating to the police function ... "In its development of procedures to openly formulate, implement and reevaluate police policy, each jurisdiction should be conscious of the need to effectively involve a representative cross-section of citizens in this process." (Recommends that citizens have input into police policy-making and that chief executive of a municipality be primarily responsible for policy development.)</p> | <p>"To the greatest feasible extent, police departments should formulate policy guidelines for dealing with juveniles." (Recommends that police chief be responsible for developing police-juvenile policies.)</p> | <p>"The chief executive of every police agency immediately should develop written policy governing his agency's involvement in the detection, deterrence and prevention of delinquent behavior and juvenile crime." (Recommends that the police chief be responsible for developing police juvenile policies.)</p> | <p>"Police departments and the juvenile court should develop mutually agreeable written policies pertaining to disposition of juvenile cases at the police level." (Recommends that the police chief be responsible for developing police-juvenile policies, with juvenile court input.)</p> |

Summary of Positions:

- I. Policies should be developed by municipal chief executive - 1
- II. Policies should be developed by municipal police chiefs - 3
- III. Policy development should have citizen input - 1
- IV. Policy development should have juvenile court input - 1

5. Analysis of the Issue:

Considering the evident need for police policy guidelines as demonstrated by the positions taken by four major standard-setting groups, it becomes apparent that a standard should be developed which clearly sets forth the role of the police administrator in the development of juvenile justice and delinquency prevention policy. The policy guidelines governing police-juvenile activities must be clearly stated, easily understood, meet the needs of the community and the police department for delinquency prevention and control, and be realistic, for, as James Q. Wilson points out, "if the police administrator persists in formulating ambiguous or equivocal policies, the patrolman (who is charged with carrying out these policies) is likely to perceive them as unrealistic or irrelevant."¹⁰

When drafting a standard on the role of the police administrator in the development of juvenile justice and delinquency prevention policy, there are two major options:

1. Police policy development should be the primary responsibility of the municipal chief executive, with input from the police chief, the local governing body, and citizens; or
2. Police policy development should be the primary responsibility of the police chief, with input from the juvenile court, citizens and the local governing body.

If Option One were selected, as the American Bar Association recommends, police administrators would be held more accountable for their actions than they are in many jurisdictions today and the elected municipal governing body would be able to exert greater control over police actions in juvenile justice and delinquency prevention. As the ABA states, existing mechanisms for providing positive guidance and direction to the police are grossly inadequate, both from the standpoint of the community and from the standpoint of the police; for the most part, it is not at all clear how the important policy decisions affecting the police are actually made.¹¹

Opponents of this option argue that most municipal police departments are deliberately organized to insulate themselves from locally elected officials and therefore from the citizens as well; organizational structures of this nature were designed to put an end to the influence of machine politics in police activities. The police chief reports directly to the chief executive of the municipality, but many chief executives have adopted a "hands-off" attitude toward the police department; the "giving of independence" to the police continues to be one of the major campaign promises commonly made by candidates for mayor.¹² Therefore, as the ABA argues, on the basis of the above observations, despite the common claims that policing is a responsibility of local government, municipal government in effect sometimes exercises relatively little influence over police operations.¹³ In order to strengthen the role of the

chief executive, and thereby the citizens, the ABA argues that mayors and city managers in conjunction with their police administrators and the municipal legislators should have the responsibility for openly formulating the policies relating to the nature of the police function within the local community, the objectives and priorities of the police in carrying out this function, and the relationship of these objectives and priorities to general municipal strategies dealing with social problems.¹⁴

Opponents of this view argue that this is a return to direct city hall involvement in the development of police policy and will constitute an abandonment of the principles that have been identified with good police administration and professionalism in recent years. With the lessons of Watergate in mind, the delegation of the chief responsibility for police policy-making in any aspect of police operations, including juvenile justice, to elected officials, would be viewed by many as a return to the corrupt practices that pervaded police operations prior to the move toward separating the police from city hall and politics, although the ABA argues that it does not necessarily follow that greater responsibility for the chief executive of a municipality and a closer working relationship between him and his police agency will produce these consequences.¹⁵

If Option Two were selected, as the President's Commission on Law Enforcement and the Administration of Justice, the National Advisory Commission on Criminal Justice Standards and Goals, and the International Association of Chiefs of Police recommend, the police chief would be primarily responsible for the development of juvenile justice and delinquency prevention policy, with input from the juvenile court, citizens and the local governing body.

In stressing the need for the police administrator to develop the policy of his department, J.Q. Wilson argues that the administrator becomes attuned to complaints: If he cannot make and enforce policies that prescribe how officers ought to "handle situations," then "he will develop a system to defend his organization" against outside attacks or interference.¹⁶ Therefore, the President's Commission on Law Enforcement and the Administration of Justice recommends that it is necessary to recognize the importance of the administrative policy-making function of the police and to take appropriate steps to make this a process which is systematic, intelligent, articulate and responsive to external controls appropriate in a democratic society, a process which anticipates social problems and adapts to meet them before a crisis situation arises.¹⁷

As the President's Commission pointed out, police departments that have formulated policies relating to juvenile offenders have been quite open and frank in making these policies public and thereby obtaining community input into the policy-making process.¹⁸

Conversely, it can be argued that the police, when left alone to make policy, have generally failed to develop policies for dealing with crime and potential crime situations. As the President's Commission states, many police administrators are caught in a conflict between their desire for effective, aggressive police action and the requirements of law and propriety; direct confrontation of policy issues would inevitably require the police administrator to face the fact that some police practices, although considered effective, do not conform to constitutional, legislative or judicial standards.¹⁹ Therefore, some police administrators may adopt a "let sleeping dogs lie" approach, avoiding a direct confrontation, and are thus able to support "effective" practices without having to decide whether they meet the requirements of law.²⁰

6. Task Force Standards and Rationale:

The Task Force articulated a definite preference for broadening the policy making role. Two standards give particular expression to the Task Force's views.

Standard 4.1 Police Policy as an Expression of Community Standards

The police role in juvenile justice and delinquency prevention should be responsive to the needs of the community. The police should function in both an enforcement and prevention capacity, emphasizing neither role at the expense of the other.

Standard 4.6 Participation in Policy-Formulation Efforts

Police chief executives should broaden the scope of participation in police policy-formulation efforts affecting juveniles to include lay persons, other juvenile justice system personnel, community youth service groups, educators and other persons and/or groups in the community who work in a youth-serving capacity.

Footnotes:

- ¹Kobetz, R. The Police Role and Juvenile Delinquency, Gaithersburg, MD: The International Association of Chiefs of Police, 1971, p. 125.
- ²Ibid., p. 130.
- ³Ibid., and Kenney, J. and Pursuit, D. Police Work with Juveniles and the Administration of Juvenile Justice, Springfield, Ill.: Charles C. Thomas, 1975, pp. 116-118.
- ⁴American Bar Association, Standards Relating to the Urban Police Function, New York: Institute for Judicial Administration, 1972, p. 11 (Standard 2.5).
- ⁵Ibid., p. 14 (Standard 4.5).
- ⁶The President's Commission on Law Enforcement and the Administration of Justice, The Challenge of Crime in a Free Society, Washington, D.C.: U.S. Government Printing Office, 1967, p. 79.
- ⁷National Advisory Commission on Criminal Justice Standards and Goals, The Police, Washington, D.C.: U.S. Government Printing Office, 1973, p. 221 (Standard 9.5).
- ⁸Kobetz, R. and Bosarge, B. Juvenile Justice Administration, Gaithersburg, MD: The International Association of Chiefs of Police, 1973, p. 164.
- ⁹Kobetz, ibid., pp. 130-131.
- ¹⁰Wilson, J. Varieties of Police Behavior, Cambridge, MA: Harvard University Press, 1968, p. 66.
- ¹¹American Bar Association, ibid., pp. 78-79.
- ¹²Ibid., p. 82.
- ¹³Ibid., p. 83.
- ¹⁴Ibid., p. 84.
- ¹⁵Ibid., p. 85.
- ¹⁶Wilson, ibid., pp. 70-71.
- ¹⁷The President's Commission on Law Enforcement and the Administration of Justice, Task Force Report: The Police, Washington, D.C.: U.S. Government Printing Office, 1967, p. 18.
- ¹⁸Ibid., p. 17.
- ¹⁹Ibid.
- ²⁰Ibid.

1. Issue Title: Police Cooperation with Other Agencies--What arrangements should be developed to facilitate cooperation between the police and public and private youth-serving agencies?

2. Description of the Issue:

Police officers cannot effectively control and prevent crime without the support and assistance of the community, schools, social service agencies, other components of the juvenile justice system, and youth service bureaus. What guidelines should be developed to ensure and facilitate cooperation between the police and both public and private youth serving agencies?

3. Summary of Major Positions:

If the police are going to effectively prevent, contain and control juvenile delinquency and youth crime, it is necessary to develop close working relationships and liaison programs with community youth-serving agencies, both public and private. In order to divert youths from the formal machinery of the juvenile justice system, it is necessary that the police be familiar with the services available in the community and develop procedures for securing such services.

Many standard-setting groups in the law enforcement, legal, judicial and criminal justice disciplines have advocated adoption of the "team approach" concept in helping youth. This "team approach" concept involves working with a child in youth service bureaus which have available the services of professionals from many socio-medical disciplines who are able to jointly diagnose the problems of the child and develop a coordinated program for dealing with these problems.

This position has been advocated by the Missouri Council on Criminal Justice, the National Advisory Commission on Criminal Justice Standards and Goals, the Juvenile Justice Standards Project, the American Bar Association, the International Association of Chiefs of Police, and the President's Commission on Law Enforcement and the Administration of Justice.

The Missouri Council on Criminal Justice stated that police agencies must be cognizant of all community resources and accepting of such assistance and that involved agencies should develop written guidelines and agreed upon procedures for cooperation between their respective staffs.¹ Similarly, the National Advisory Commission, in its report on police, stated that "every police agency should cooperate actively with other agencies and organizations, public and private, in order to employ all available resources to detect and deter delinquency and combat juvenile crime."²

The IJA/ABA Juvenile Justice Standards Project and the ABA also took similar positions. The Standards Project advised that police administrators should work collaboratively with both public and private agencies in: (1) Ensuring that adequate services are available in various neighborhoods and precincts and that referrals can be made to such services; and (2) ensuring that joint policies and common understandings for referrals are reached whenever necessary.³ The ABA recommends that "police should be provided with effective methods for carrying out the full range of governmental responsibilities delegated to them; adequate development of such methods requires ... arrangements for police officers to make referrals to the various private and public services and resources available in the community, and the existence of sufficient resources to meet community needs...."⁴

The IACP recommends that "police should lend active support in the organization, management, administration and/or policy deliberations of community youth service bodies where such participation will tend to prevent delinquency and crime."⁵ The IACP further recommends that:

1. Police should provide initiative and leadership in the formation of needed youth serving organizations within the community where none exist, but should encourage non-police leaders to take over and carry on the activities rather than expending official department time and funds.⁶
2. Police should, as a matter of policy, be officially represented and participate in civic, religious and social community organizations and functions through which public order can be promoted.⁷
3. Police should actively undertake the organization of neighborhood or community councils as an official part of the department's crime prevention program. These citizens groups ... should be considered an adjunct of the police department in its effort to control delinquency and crime among the community's juveniles, and, as such, should be an official responsibility assigned to the department's community relations unit.⁸
4. Police should take an active role in the establishment of interdisciplinary Juvenile Justice Coordinating Councils on the community level.⁹

The President's Commission on Law Enforcement, in its standards, dealt more specifically with police cooperation with youth service bureaus, stating that: "Police forces should make full use of the central diagnostic and coordinating services of the youth service bureau."¹⁰

In summary, five national standard setting groups and at least one state standards group have recommended that the police work cooperatively with public and private youth service agencies to provide more effective juvenile justice and delinquency prevention services to youths.

4. Summary of Positions Recommended by Major Standards Groups:

| Missouri Council on Criminal Justice (1975) | Nat. Advisory Comm. on Crim. Just. Standards and Goals (1973) | Juvenile Justice Standards Proj. (1973) | ABA (1972) | IACP (1971 and 1973) | President's Comm. on Law Enforcement (1967) |
|--|---|--|--|--|---|
| "Police agencies must be cognizant of all community resources and accepting of such assistance." | Every police agency should cooperate actively with other agencies and organizations, public and private, in order to employ all available resources to detecting and deterring delinquent behavior and combating juvenile crimes. | Police administrators should work with both public and private agencies in (1) ensuring that adequate services are available for referrals; and (2) ensuring that joint policies and common understandings for referrals are reached when necessary. | Arrangements should be made for police officers to make referrals to public and private resources in the community and there should be sufficient resources to meet these needs. | Police should provide leadership in establishing youth serving organizations and should actively participate in the organization, administration, management, policy deliberations of such groups. | Police forces should make full use of the central diagnostic and coordinating services of the youth service bureau. |

Summary of Positions:

- I. Police departments should make full use of youth service agencies for referrals - 6
- II. Police departments should take an active role in establishing and coordinating youth services - 3

5. Analysis of the Issues:

It is commonly agreed among the major standard-setting groups that police departments should make full use of youth service agencies for referrals. However, there is a divergence of opinion concerning the extent of the police involvement in the establishment, administration, management and policy deliberations of such agencies as juvenile justice coordinating councils and youth service bureaus. Therefore, in drafting a standard on the role of the police in cooperating with other agencies in juvenile justice and delinquency prevention, there are two possible options:

1. Police departments should make full use of public and private community youth service agencies but should limit their involvement in these agencies to making referrals; or
2. Police departments should make full use of public and private youth service agencies for referrals of juveniles and should also take an active role in the organization, administration, management and policy deliberations of juvenile justice coordinating councils and youth service bureaus.

If Option One were selected, police officers would make full use of existing public and private youth service agencies for the referral or diversion of juveniles who come to police attention. The advantage of this option is that it allows the police department to maintain an independent position in deciding whether to counsel and release juveniles, refer them to an agency for treatment or refer them to the juvenile court intake service. It would permit police departments to work out independent agreements for participating in police-school liaison programs and recreational programs, for example, without putting any pressure on the police chief to participate in these programs. This option is supported by some police administrators who adhere to the "crime control" model of law enforcement and argue that police should not be involved in "social work"; these administrators will utilize existing services, but will avoid taking an active role in analyzing the need for new services and establishing new youth service programs.

Police administrators who adhere to this traditional police philosophy try to avoid assuming duties that are not clearly and directly derived from the legal responsibilities which they have been given.¹¹ This position is also supported by many professionals from juvenile probation and parole services, juvenile court intake services, juvenile court judges, and social workers, who feel that to "allow" the police an active role in the development and policy formulation of community delinquency prevention activities would "usurp judicial or social work prerogatives."¹²

If Option Two were selected, the police would not only utilize public and private youth service agencies for referrals, but would also take an active role in the establishment, administration, management and policy deliberations of these agencies, becoming part of a coordinated community juvenile justice system. As the IACP argues, no community juvenile justice system can operate effectively without total police participation and cooperation, for it is the police, by virtue of being the entry point into the juvenile justice system, who ultimately decide which children should be processed into the system; a juvenile justice system without police participation is a non-system, for a system cannot function without the equal participation of every member.¹³

The ABA argues that if the police officer is to have a broad range of responsibilities, he ought to be provided with the methods by which his responsibilities can be effectively carried out; however, there is reason to believe that in the average community, for a variety of reasons, existing community resources are inadequate to meet the need and that those which exist are already overtaxed and are simply not geared to deal with the kinds of aggravated problems that commonly come to police attention.¹⁴ In addition, many of these agencies are generally inaccessible during the hours when they could be most helpful to the police. As the ABA states, "the police are in a unique position to identify these inadequacies."¹⁵ For these reasons, it is recommended by the IACP, the IJA/ABA Juvenile Justice Standards Project and the ABA that police take an active role in ensuring that there are adequate public and private youth-serving agencies in the community to meet the diverse needs of the juvenile population. A middle position would find the police acting as advocates for the development of needed services but not running these services themselves. As the IJA/ABA Juvenile Justice Standards Project points out, police administrators, because of their knowledge of deficiencies in this area, should focus public attention on: (1) Gaps in public and private resources which must be filled in order to meet the needs of juveniles and their families; and (2) the unwillingness of existing agencies and institutions to respond to these needs.¹⁶

6. Task Force Standards and Rationale:

Chapter 6 of the Task Force report deals with the Role of the Police in Implementing a Comprehensive Delinquency Control and Prevention Program. Several standards in this chapter deal with relationships between the police and other public and private organizations.

Standard 6.3 Relationships with Youth Service Bureaus

Police departments should make full use of the diagnostic and coordinating services of youth service bureaus for the referral of juveniles and, where appropriate, should also take an active role in their organization and policy deliberations.

Standard 6.4 Police-School Liaison

The police should make every effort to develop effective delinquency prevention programs in the schools through collaborative planning with school administrators and student leaders. All junior and senior high schools should seek to implement a school liaison officer program with their local police department. With the specification that the police officer be trained and qualified to serve in an educational and counseling role. Police chiefs, school administrators and student leaders should also cooperatively develop guidelines for police-school liaison.

Standard 6.5 Participation in Recreational Programs

Police departments should take an active leadership role in the development of community recreational programs for juveniles, but the police should not operate such programs themselves. A supplemental role of the police should be to encourage community support of recreational programs, with officers volunteering to participate in such activities during their off-duty hours in the same manner as other responsible citizens.

The Task Force took the position that police should advocate the development of needed services and, in some cases, take a leadership role in their development. Nevertheless, the Task Force believed that police should not operate programs which can or should be operated by other public or private organizations.

1. Issue Title: Police Arrest Authority--What is the scope of the police authority to detain and arrest juveniles?

2. Description of the Issue:

The issue is whether the police have any statutory authority to detain and arrest juveniles and, if so, the nature and extent of this authority. Is this authority clearly stated in the state statutes? If not, should the statutes be modified to more precisely delineate the scope of the police authority to detain and arrest juveniles? Is there a distinction between "taking a child into custody" and "arresting" him? If so, does the language of the governing statutes need to be modified in order to clarify this distinction? If the authority of police to arrest persons for criminal conduct is not questioned, should the police have the same power to arrest juveniles in cases involving non-criminal conduct, i.e., conduct which would not be a crime if committed by an adult? Is there statutory authority for the police to intervene in the non-criminal conduct of juveniles? If so, what is the scope of this authority? Is it too broad or too narrow? What statutory changes are necessary, if any, to more clearly delimit this authority?

3. Summary of Major Positions:

The Uniform Juvenile Court Act of the National Conference of Commissioners on Uniform State Laws¹ states that a child may be taken into custody:

1. Pursuant to an order of the court under this Act;
2. Pursuant to the laws of arrest;
3. By a law enforcement officer (or duly authorized officer of the court) if there are reasonable grounds to believe that the child is suffering from illness or injury or is in immediate danger from his surroundings, and that his removal is necessary; or
4. By a law enforcement officer (or duly authorized officer of the court) if there are reasonable grounds to believe that the child has run away from his parents, guardian or other custodian.

Similar provisions are contained in the Legislative Guide for Drafting Family and Juvenile Court Acts (U.S. Department of Health, Education and Welfare Children's Bureau)² and the state statutes of Ohio³ and Utah.⁴ The statutes of most other states also contain

similar provisions, although the language is frequently much broader. For example, New Jersey allows an officer to take custody of a child if he has "reasonable cause to believe that the juvenile is in need of supervision."⁵ Florida permits the taking into custody of a child when he is in such condition or surroundings that his welfare requires that he be immediately taken into custody;⁶ Wisconsin also has a similar provision.⁷

The Uniform Juvenile Court Act emphasizes the notion that police do not "arrest" a child; rather, they "take him into custody." The Uniform Act utilizes the following language:

"The taking of a child into custody is not an arrest, except for the purpose of determining its validity under the Constitution of this state or of the United States."⁸

This provision implies a protective, and not a punitive, detention. A recent study⁹ has indicated that 36 states utilize this phraseology; among them are Georgia,¹⁰ Illinois,¹¹ Minnesota,¹² Ohio,¹³ and Wisconsin.¹⁴ Of the 36, fifteen specifically state that taking a juvenile into custody does not constitute an arrest.¹⁵

In conclusion, police authority to detain and arrest juveniles derives from state statutes which direct the police to protect lives and property. These criminal statutes speak in terms of all persons who violate them and apply to juveniles as well as adults. However, once it has been established that a juvenile is a violator, an alternate procedure may be required, but up to that point the legal structure for the police operation is the same as with an adult.¹⁶ In addition, some state juvenile court laws and the Uniform Juvenile Court Act authorize action by the police in situations where it would not be authorized in the case of similar conduct by an adult--cases which do not involve violations of law. However, many state statutes do not grant this additional authority to the police; in such states the authority of police must be inferred from general provisions (this is frequently referred to as the "doctrine of protective custody").

4. Analysis of the Issue:

The necessity of providing the police with the authority to detain and arrest juveniles is justifiable on grounds of Constitutional law and public policy. The Constitution of the United States guarantees the right of the people to be protected and safeguarded; public policy demands that those who commit criminal acts be prosecuted for their crimes. This applies equally to juveniles who violate laws as well as adults.

While all state statutes grant the police the power to detain and arrest juveniles, a problem arises when one attempts to limit the broadness of the scope of police authority in dealing with juveniles.

Many statutes which authorize police to detain and arrest juveniles are vague and have served as the basis for decisions which seem highly inequitable.¹⁷ This problem becomes particularly evident when police are authorized to detain and arrest juveniles for conduct which is not criminal when committed by an adult. The question revolves around whether the police should have the authority in the first place to detain and arrest juveniles for non-criminal conduct. Many states, the National Conference of Commissioners on Uniform State Laws¹⁸ and the U.S. Department of Health, Education, and Welfare¹⁹ answer in the affirmative. These state statutes, the Uniform Juvenile Court Act, and the Legislative Guide for Drafting Family and Juvenile Court Acts give the police broad jurisdictional powers to take juveniles into custody for acts which fall short of being criminal behavior, such as "in danger of leading an idle, dissolute or immoral life." However, Samuel M. Davis, in Rights of Juveniles, points out that there is a "potential abuse inherent in the broad jurisdictional power to take a child into custody, specifically in situations involving non-criminal conduct."²⁰ As Davis argues:

This is not to say that the broad grant of jurisdiction is improper per se. Many young people are in need of help for reasons that fall short of criminal behavior, and their problems ought to be brought to the attention of the juvenile authorities. But the broad jurisdictional power should not be abused by using it as a subterfuge to avoid, for example, the requirements of probable cause or other custody for what amounts to criminal conduct.²¹

Perhaps the powers of the police to intervene in conduct of juveniles ought to be broader than it is in the case of adults.²² Broad authority may be necessary for the protection of youths and may not necessarily be a means of abrogating their rights.²³ Otherwise, the police may be powerless to take action when there is a clear indication that a child is "in trouble" and needs help, yet there is no evidence that he has violated a law.

Police generally take such action, although very few state juvenile court laws actually authorize them to do so. Most police departments infer their authority to take action through the "doctrine of protective custody." Nevertheless, as Kenney and Pursuit point out, the legal basis for a police officer to take a child, or any other, person who has not violated the law into custody against that person's will without making an arrest, is nebulous.²⁴ While the authority is clear where the person agrees

to cooperate, or at least may be easily made clear by statute, it is not so clear where the person does not agree that he needs the benevolent intervention of the state. Kenney and Pursuit argue that statutory authority is definitely required to meet this situation. However, only the Uniform Juvenile Court Act²⁵ and a few state statutes have such a provision at present.

On the other hand, Davis, in Rights of Juveniles, questions whether it should be solely a police decision when the broad jurisdictional power is invoked to take into custody a youth who is not charged with a criminal violation but, rather, for example, is "in danger of leading a dissolute life."²⁶ He argues that police officers are "generally poorly equipped to make this decision, and the possibility of abuse is too hazardous to allow them to exercise it unchecked."²⁷ Nevertheless, Davis does agree that juveniles "in trouble" should receive help, but recommends that "someone other than the officer in the street" should assume the primary responsibility in the decision-making process.²⁸ Davis recommends that the states revise their statutes, as New York²⁹ has done, to require that the juvenile court issue a summons in order to take a juvenile into custody for non-criminal behavior.³⁰ Under this plan, the police would have the authority to arrest juveniles only when they are committing an act that if performed by an adult would justify an arrest; if the juvenile's conduct indicates anything less than criminal behavior, the police officer would obtain a summons from the juvenile court judge. This would remove the decision from the police officer on the beat and lodge it with the juvenile court judge, who "understands more about youth, youth problems, and the realities of the juvenile justice system and is better able to assimilate this knowledge and place it in a proper context."³¹ Davis argues that requiring a summons to be issued whenever protective jurisdiction is to be invoked seems to be reasonable in light of the gravity and far-reaching effects of the decision to be made.³²

Another question arises when examining existing state statutes concerning the language distinctions between "arresting" a child and "taking him into custody." At present, 36 states and the Uniform Juvenile Court Act³³ favor the words "take into custody" instead of "arrest" and the trend seems to be in this direction. The use of the words "taken into custody" may be viewed as an attempt to circumvent the harshness of the criminal justice system; the use of the word "arrest" is thereby avoided and the juvenile is free to state that he has not been "arrested." Conversely, it may be argued that avoidance of the term "arrest" may be read as an attempt to avoid the traditional limitations on the arrest powers of the police.³⁴

Finally, there is the question of whether the police should be actually empowered, by state statute, to serve the process of the juvenile court, since appellate courts have uniformly characterized juvenile courts as civil courts and many municipal police agencies

are forbidden to serve civil process. Until the Uniform Juvenile Court Act³⁵ was published, no state provided for the issuance of a warrant (taking into custody order) by a judge prior to the apprehension of a child. However, since then some states have made special provisions for the service of the process of the juvenile court.³⁶ As the National Juvenile Law Center argues, the statutes should be amended in delinquency cases to require that a sworn complaint be presented to the court setting forth reasonable grounds to believe that the child has committed an offense; further, the statutes should clearly require an application for court order prior to apprehension of a child unless a high probability exists that the child would be injured or would flee if it were necessary to first obtain a court order.³⁷

5. Task Force Standards and Rationale:

The Task Force addressed this issue by considering guidelines for taking a juvenile into custody. Standard 5.6 indicates that,

The police are authorized to take into custody all juveniles who violate the criminal statutes and/or ordinances of the local, state or federal government.

In addition, every state should clearly define by statute the authority and guidelines for, and limitations on, taking a juvenile into custody in Families with Service Needs cases and Endangered Child cases.

Whenever a juvenile is taken into custody, the police should:

- a. To the maximum extent possible, take immediate affirmative action to notify the juvenile's parents or guardians; and
- b. Immediately notify the juvenile of his constitutional rights and not take any action which would abridge or deny these rights.

The Task Force had little difficulty in recommending that the police be authorized to take juveniles into custody on the basis of their violating laws which would also lead to an arrest if violated by an adult. In all other cases where taking a juvenile into custody may be desirable, the Task Force recommends that each state specifically set forth this authorization and guidelines for use of this authority. In other words, the Task Force took the position that the scope of police authority to detain, arrest, or take juveniles into custody should be clearly based on statutes.

Footnotes:

- ¹National Conference of Commissioners on Uniform State Laws, Uniform Juvenile Court Act, Sec. 13 (1968).
- ²U.S. Department of Health, Education and Welfare, Children's Bureau, Legislative Guide for Drafting Family and Juvenile Court Acts, Sec. 18 (1968).
- ³Ohio Rev. Stat., Sec. 2151.31.
- ⁴Utah Code Ann., Sec. 55-19-90.
- ⁵N.J. Rev. Stat., Sec. 2A:4-54.
- ⁶Fla. Stat. Ann., Sec. 39-03.
- ⁷Wis. Children's Code, Sec. 48.28(c).
- ⁸Uniform Juvenile Court Act, Sec. 13(b).
- ⁹Ferster, E. and Courtless, T. "The Beginning of Juvenile Justice, Police Practices and the Juvenile Offender," 22 Vand. L. Rev. 567, 583-84 and n.76 (1969).
- ¹⁰Ga. Code Ann., Sec. 24A-1301 (b) (Supp. 1973).
- ¹¹Ill. Ann. Stat. ch. 37, Sec. 703-1(3) (1972).
- ¹²Minn. Stat. Ann., Sec. 260.165(2) (1971).
- ¹³Ohio Rev. Code Ann., Sec. 2151.31 (1971).
- ¹⁴Wis. Stat. Ann., Sec. 48.28(2) (1957).
- ¹⁵Ferster and Courtless, op. cit., at 584 and n. 77.
- ¹⁶Kenney, J. and Pursuit, D. Police Work with Juveniles and the Administration of Juvenile Justice, Springfield, Ill.: Charles C. Thomas, 1975, p. 59.
- ¹⁷National Juvenile Law Center, Law and Tactics in Juvenile Cases, St. Louis: St. Louis University School of Law, 1974, p. 62.
- ¹⁸Uniform Juvenile Court Act, Sec. 13.
- ¹⁹Legislative Guide for Drafting Family and Juvenile Court Acts, Sec. 18.
- ²⁰Davis, S. Rights of Juveniles, New York: Clark Boardman Company, 1974, p. 44.

- ²¹Ibid., p. 45.
- ²²See, for example, Davis, ibid., p. 43 and Kenney and Pursuit, ibid., p. 60.
- ²³Davis, ibid., p. 43.
- ²⁴Kenney and Pursuit, ibid., p. 60.
- ²⁵Uniform Juvenile Court Act, Sec. 13.
- ²⁶Davis, ibid., p. 47.
- ²⁷Ibid.
- ²⁸Ibid.
- ²⁹N.Y. Fam. Ct. Act, Sec. 721 (McKinney Supp. 1972).
- ³⁰Davis, ibid., pp. 47-48.
- ³¹Ibid.
- ³²Ibid.
- ³³Uniform Juvenile Court Act, ibid.
- ³⁴Davis, ibid., p. 44.
- ³⁵Uniform Juvenile Court Act, ibid.
- ³⁶National Juvenile Law Center, ibid.
- ³⁷Ibid.

1. Issue Title: Police Authority to Protect Juveniles--What is the scope of police authority in the protection of juveniles?

2. Description of the Issue:

Many state statutes authorize the police to apprehend children whose health, morals or welfare are threatened. Should the police be authorized to intervene in such circumstances? If so, should the police be required to obtain a warrant in order to take a dependent, neglected, exploited or abused child into custody? What are the responsibilities of the police in the protection of children who are victims of criminal acts, such as child abuse? Should the police intervene to assist minors who are in need of supervision?

3. Summary of Major Positions:

The Uniform Juvenile Court Act¹ of the National Conference of Commissioners on Uniform State Laws authorizes that a child may be taken into custody:

... by a law enforcement officer (or duly authorized officer of the court) if there are reasonable grounds to believe that the child is suffering from illness or injury or is in immediate danger from his surroundings, and that his removal is necessary; or
 ... by a law enforcement officer (or duly authorized officer of the court) if there are reasonable grounds to believe that the child has run away from his parents, guardian or other custodian.

In addition, most state statutes grant very broad authority to police to take juveniles into custody in situations in which they are, in the broadest sense, endangered by their surroundings.² New York has a statute that permits emergency removal by the police of a child whose immediate safety is in peril, as in cases of severe child abuse.³ The Missouri statute authorizes police to apprehend "a child who begs, has no home, lacks proper parental care or guardianship, or lacks means of subsistence."⁴ In addition, the Department of Health, Education and Welfare's Legislative Guide for Drafting Family and Juvenile Court Acts⁵ provides that a child may be taken into custody:

... by a law enforcement officer when he has reasonable grounds to believe that the child is suffering from illness or injury or in immediate danger from his surroundings, and that his removal is necessary; and
 ... by a law enforcement officer when he has reasonable grounds to believe that the child has run away from his parents, guardians or other custodian.

There is a question of whether the broad powers issued to the police to apprehend children who are in need of supervision,

neglected, abused, dependent or exploited are constitutional. M.G. Paulsen and C.H. Whitebread, in Juvenile Law and Procedure, state that if it is constitutional to make a juvenile court adjudication and an authoritative disposition of a "person in need of supervision," then, arguably, the child may be taken into custody because of "probable cause" to believe that the child fits the category.⁶ Nevertheless, whether the Fourth Amendment does permit the police to seize children in such cases is a point yet to be established.

Another question arises concerning the need for the police to obtain a warrant when taking juveniles into custody. The Uniform Juvenile Court Act⁷ provides for the issuance of a warrant prior to the apprehension of a child, and several states have also amended their statutes to include this provision.⁸ The National Juvenile Law Center recommends that such statutes should "require that in child neglect cases a sworn complaint should be presented to the court setting forth reasonable grounds to believe that the child is neglected and that the child's health would be seriously endangered unless he is immediately taken into custody."⁹

4. Analysis of the Issue:

While most state statutes, the National Conference of Commissioners on Uniform State Laws¹⁰ and the Department of Health, Education and Welfare¹¹ grant the police very broad authority to take children into custody when they are endangered by their surroundings, police departments are generally not designed to perform welfare functions. Nevertheless, they are often required to perform these functions due to the 24-hour availability of police services; often the police department is the only public agency available on a round-the-clock basis from which the citizens can request assistance.

However, despite the 24-hour availability of the police, it has been argued that the police are generally "not comfortable" with their incidental welfare role and have "not generally developed the competence to handle complex non-law enforcement problems expertly."¹² Conversely, it can also be argued that the police are increasingly becoming more competent as a result of increased emphasis on education and training in the social sciences and juvenile procedures and therefore many officers throughout the United States do have the competency to perform welfare functions.¹³ The existence of federally funded law enforcement and criminal justice degree programs, from the associate through the doctoral levels, at 666 colleges and universities, is generating an obvious increase in the number of college-educated police officers.¹⁴ In addition, many police departments are hiring college-educated recruits who possess bachelors, masters and doctoral degrees in the social sciences, law, social work and education and who have experienced difficulties finding jobs in their chosen professions due to a surplus of job

candidates in these fields. In recent years, police training academies have also increased the number of hours of training all officers receive in the social sciences due to the impetus of the Omnibus Crime Control and Safe Streets Act, which recommended minimum statewide training standards for all persons who wish to practice police work; as a result, 32 states have enacted minimum statewide training standards laws.¹⁵ Thus, there can be considerable debate concerning the question of whether the police are competent to deal with problems of juveniles other than misbehavior or violations of the criminal laws.

Insofar as child neglect and abuse are concerned, the police are sometimes criticized for failing to respond until the situation becomes a criminal problem; however, as the Juvenile Justice Standards Project points out, the police are "probably better situated than any public agency to detect abuse or neglect of children who are not attending school."¹⁶ The question thus becomes one of deciding how to resolve the dilemma created by the apparent need to strengthen the detection of abuse and neglect vs. the potential for overburdening police and thereby diluting their effectiveness as law enforcement agents. Many police departments throughout the nation follow procedures similar to those of the State of Missouri, which advises police officers to: (1) Secure emergency treatment and care; (2) Immediately report cases of alleged child abuse, neglect, dependency or abandonment to the county welfare department; and (3) Record and investigate immediately all complaints not only to protect the child but as a practical procedure in obtaining evidence.¹⁷

With reference to the need to obtain a warrant, it is generally agreed that a police officer may need to take immediate action to remove a child to prevent him from being harmed; in such cases the officer is acting solely out of concern for the child's welfare. However, Davis, in Rights of Juveniles, advises that whenever circumstances permit, the officer ought to obtain a warrant or summons, and the impartial judicial officer ought to be the one who determines what course of action should be taken.¹⁸ The Missouri provision is similar and states that "unless there is justifiable reason to believe a child is in immediate potential danger, the police officer must have a warrant or permission to enter a home in answer to an abuse or neglect complaint."¹⁹

5. Task Force Standards and Rationale:

The Task Force positions on this issue will be found in the following standards:

Standard 5.3 Guidelines for Police Intercession for the Protection of Endangered Children

Police should have clear authority to intercede and provide necessary protection for children whose health or safety is endangered.

Statutes should specify that:

(a) When the child is endangered in an environment other than his own home, police should remove the child from the danger and make maximum possible efforts to return the child to his home;

(b) When the child is endangered in his own home, police should make maximum possible efforts to protect the child within the home without resorting to removal; and

(c) When the child is endangered in his own home and removal is necessary to protect the child from bodily injury, police should be authorized to remove the child according to the procedures established by the Standard 12.9 on Emergency Removal of Endangered Children from the Home.

Standard 12.9 Emergency Removal of Endangered Children from the Home

Statutes governing emergency removal of Endangered Children from the home should:

(a) Specifically enumerate the types of personnel authorized to undertake removal;

(b) Allow removal only when it is necessary to protect the child from bodily injury and the child's parents or other adult caretakers are unwilling or unable to protect the child from such injury; and,

(c) Authorize removal without prior court approval only if there is not enough time to secure such approval.

Emergency caretaking services should be established to reduce the incidence of removal.

When removal does occur, the child should be delivered immediately to a state agency which:

(a) Has been previously inspected and certified as adequate to protect the physical and emotional well-being of children it receives;

(b) Is authorized to provide emergency medical care in accordance with specific legislative directives; and,

(c) Is required to assure the opportunity for daily visitation by the parents or other adult caretakers.

Within 24 hours of the time the child is removed, the agency responsible for filing Endangered Child petitions should either file a petition alleging that the child is endangered or return the child to the home. If a petition is filed, the court should immediately convene a hearing to determine if emergency temporary custody is necessary to protect the child from bodily injury.

The Task Force recognizes that most states presently authorize police to intercede and provide necessary protection for children whose health or safety is endangered. The Task Force suggests that all states provide explicit statutory authority and guidelines for appropriate police action in these circumstances.

Footnotes:

¹National Conference of Commissioners on Uniform State Laws, Uniform Juvenile Court Act, Sec. 13 (1968).

²See, for example, California Welfare and Institutions Code, Sec. 601 (1972); Minn. Stat. Ann., Sec. 260.165(1)(c) (1971); Ohio Rev. Code Ann., Sec. 2151.31(c) (1971); and Wis. Stat. Ann., Sec. 48.28(1)(c) (1957).

³N.Y. Fam. Ct. Act, Sec. 1024 (McKinney Supp., 1973).

⁴Mo. Ann. Stat., Sec. 210.380 (1962).

⁵U.S. Department of Health, Education and Welfare, Children's Bureau, Legislative Guide for Drafting Family and Juvenile Court Acts, Sec. 18(3)(4) (1968).

⁶Paulsen, M. and Whitebread, C. Juvenile Law and Procedure, Reno, Nev.: National Council of Juvenile Court Judges, 1964, p. 77.

⁷Uniform Juvenile Court Act, Sec. 13(a)(1) and Sec. 20.

⁸For example, Pa. J. Ct. Act, II P.S., Sec. 50-111(1).

⁹National Juvenile Law Center, Law and Tactics in Juvenile Cases, St. Louis: St. Louis University School of Law, 1974, p. 62.

¹⁰Uniform Juvenile Court Act, Sec. 13(a)(1).

¹¹Legislative Guide for Drafting Family and Juvenile Court Acts, Sec. 18(3)(4).

¹²Institute for Judicial Administration, Juvenile Justice Standards Project Final Report Planning Phase, 1971-72, New York: New York University School of Law, 1973, pp. 218-219.

¹³Kobetz, R. and Bosarge, B. Juvenile Justice Administration, Gaithersburg, MD: The International Association of Chiefs of Police, 1973, pp. 158-162.

¹⁴See R. Kobetz (ed.), Law Enforcement and Criminal Justice Education Directory, 1975-76, Gaithersburg, MD: The International Association of Chiefs of Police, 1975.

¹⁵International Association of Chiefs of Police, The Professional Police Registry and Assessment Service, Gaithersburg, MD: The International Association of Chiefs of Police, 1973, p. 3.

¹⁶Institute for Judicial Administration, ibid., p. 219.

¹⁷Gomolak, N. Missouri Police Juvenile Officer Manual Guide, Columbia, MO: Missouri Council on Criminal Justice, 1975, p. 144.

¹⁸Davis, S. Rights of Juveniles, New York: Clark Boardman Company, 1974, p. 49.

¹⁹Gomolak, ibid.

1. Issue Title: Applicability of the Law of Arrest--Is the law of arrest equally applicable to juveniles who commit criminal acts?

2. Description of the Issue:

Police may take juveniles into custody on the same grounds that justify an adult arrest. Are there any limits on the general law of arrest with respect to juveniles? Are there procedural limitations? If so, what are these limitations and how do they affect the police role?

3. Summary of Major Positions:

Every state provides by statute or common law that the police may arrest a juvenile in all cases in which they may arrest an adult, although these laws of arrest are subject to the Fourth Amendment limitations of the U.S. Constitution. A police officer can arrest an adult with or without a warrant, if he has "probable cause" to believe that a crime has been or is being committed and that the person he is arresting is the perpetrator. Generally, police officers can arrest an adult for a misdemeanor only if the misdemeanor is committed within the officer's sight and hearing; otherwise a warrant is necessary.

The Fourth Amendment provides that the people shall be "secure in their persons, houses, papers and effects ... against unreasonable searches and seizures" and that "no warrants shall issue, but upon probable cause, supported by oath or affirmation." The "probable cause" standard is defined by decisions rendered by the U.S. Supreme Court.

When a warrant is requested, the supporting affidavit must contain enough detail so that the judge who is issuing the warrant can make a proper decision.¹ Similarly, an arrest made without a warrant must also be based upon "probable cause" that the person who is being arrested is the one who committed the crime. This standard was applied to juveniles in Davis v. Mississippi,² in which the Supreme Court held that mass roundups of youth are unconstitutional. In addition, the restrictions laid down by the Supreme Court in Terry v. Ohio³ regarding unreasonable investigatory stops without "specific and articulable" probable cause also apply to juveniles.

Although the juvenile court was founded on the principle of being a protective, rather than a punitive, court, the majority of jurisdictions in the United States do not make any special

provisions for the police handling of juveniles.⁴ In addition, the leading Supreme Court decision relating to juveniles, In re Gault,⁵ did not apply to the pre-judicial stages of juvenile proceedings. The courts themselves have fostered the idea that the law of arrest does not apply equally to juveniles.⁶

However, some statutes provide that taking a juvenile into custody is not deemed an arrest "except for the purpose of determining its validity under the Constitution of this State or of the United States."⁷ According to S.M. Davis, in Rights of Juveniles, this "clearly indicates that the law of arrest applies to juveniles in the same manner in which it is applicable to adults."⁸

4. Analysis of the Issue:

Although every state provides by statute or common law that the police may arrest a juvenile in all cases in which they may arrest an adult, there are justifications for differences in procedures. There is general recognition of the fact that the procedures which society approves for the handling of juvenile differs at all levels--including police practice.⁹ The justification for procedural differences rests upon the belief that juvenile offenders are immature and therefore unable to assess their own conduct to the same degree as an adult; in addition, some differences in procedure are justified by the fact that most juveniles who come to police attention by virtue of anti-social conduct, will, upon maturing, develop into law-abiding citizens.

Further justification for differences in procedures, but from a somewhat negative point of view, is found in the fact that certain segments of the juvenile population of a community seem to be committed to anti-social conduct because they belong to a delinquent sub-culture; with these juveniles, police often find it necessary to adopt procedures involving constant vigilance and more aggressive surveillance in the interest of protecting lives and property and promoting the safety and well-being of all citizens.¹⁰

In addition, as the President's Commission on Law Enforcement and the Administration of Justice pointed out, the decision to arrest someone is not simply a mechanical procedure, but is a complicated, though informal, policy-making process in which the police officer must assimilate, often under pressure, the nature of the conduct and the seriousness of the incident and react accordingly; this process is further complicated when dealing with juveniles, since to the existing problem is added a great deal of uncertainty on the part of law enforcement officers concerning their proper role in handling juveniles.¹¹

From a historical viewpoint, juvenile court decisions have always emphasized the differences in procedures--the juvenile court functions in a protective rather than a punitive role;¹² this same emphasis is also made clear in statutory affirmation of the civil nature of the proceedings,¹³ and in statutes describing the protective function of the juvenile court.¹⁴

Nevertheless, the majority of jurisdictions in the United States have not made any special provisions for the handling of juveniles,¹⁵ which has led law enforcement officers to believe that traditional limitations placed on their dealings with adult suspects do not apply when handling juveniles.¹⁶ As Davis argues, it is "no doubt in reliance on the failure of the courts, in particular the Supreme Court, to deal with the issue of arrest that has led officers to conclude that the constitutional safeguards attending an arrest do not necessarily apply with full force to taking a juvenile into custody."¹⁷

However, although the Gault¹⁸ decision specifically avoided the question of police investigatory proceedings, some states have nevertheless been amending their statutes to apply the Miranda¹⁹ ruling, or parts of it, to juveniles.²⁰ For example, juveniles arrested in California must now be given full Miranda warnings by police before any questioning can occur.²¹ The Colorado²² and Connecticut²³ statutes and the Uniform Juvenile Court Act²⁴ make similar provisions. Since the Gault decision, virtually all the courts that have passed on the question of the applicability of the Miranda safeguards to the juvenile process have concluded that the safeguards do apply.²⁵ If this trend continues, the courts would thereby eliminate any procedural differences between juvenile and adult arrests, making the procedures in both, for all practical purposes, the same.

Nevertheless, as Davis points out, "the most that can be said now is that police are uncertain about what is required of them in taking a juvenile into custody."²⁶

5. Task Force Standards and Rationale:

The Task Force concluded that there is a need to develop some different procedures for handling juveniles who commit delinquent acts.

Standard 4.5 Procedural Differences for Handling Juveniles

There should be some procedural differences in police agency operations when handling juveniles. These differences should be based upon sound legal, social

and constitutional principles. For example,

(a) In handling juveniles, the police should be provided with dispositional alternatives such as referral of the child to social service and youth service agencies;

(b) To the maximum extent feasible, the police should be required to notify parents or guardians when a juvenile is taken into custody;

(c) The police should not detain juveniles in facilities which are utilized to detain adults; and

(d) Police should exercise all caution in complying with constitutional standards in the custodial interrogation of juveniles and should not accept an attempt by the juvenile to waive the right against self-incrimination without the advice of counsel.

[See also Standard 5.6 - Guidelines for Taking a Juvenile Into Custody (p. 31 of this volume of Working Papers) and the Commentary to that Standard.]

Footnotes:

¹Aguilar v. Texas, 378 U.S. 108 (1964).

²Davis v. Mississippi, 394 U.S. 721 (1969).

³Terry v. Ohio, 392 U.S. 1 (1968).

⁴Luger, M. "The Youthful Offender," in the President's Commission on Law Enforcement and the Administration of Justice, Task Force Report: Juvenile Delinquency and Youth Crime, Washington, D.C.: U.S. Government Printing Office, 1967, pp. 119, 121.

⁵In re Gault, 387 U.S. 1 (1967) at 13.

⁶See, for example, In re James L., Jr., 25 Ohio Op. 2d 369, 194 N.E. 2d 797 (Juv. Ct. Cuyahoga Co. 1963).

⁷See, for example, Ga. Code Ann., Sec. 24A-1301(b) (Supp. 1973); Tenn. Code Ann., Sec. 37-213(b) (Supp. 1973); and Ohio Rev. Code Ann., Sec. 2151.31 (1971).

⁸Davis, S. Rights of Juveniles, New York: Clark Boardman Company, 1974, p. 40.

⁹Kobetz, R. The Police Role and Juvenile Delinquency, Gaithersburg, MD: The International Association of Chiefs of Police, 1971, p. 72.

¹⁰Ibid.

¹¹The President's Commission on Law Enforcement and the Administration of Justice, Task Force Report: The Police, Washington, D.C.: U.S. Government Printing Office, 1967, pp. 13-14.

¹²See, for example, Ex parte Sharp, 15 Idaho 120, 126-28, 96 P. 563, 564-65 (1908); State v. Monahan, 15 N.J. 34, 38, 104A.2d 21, 23 (1954); and Application of Gault, 99 Ariz. 181, 192, 407 P.2d 760, 768 (1965).

¹³See, for example, Colo. Rev. Stat. Ann., Sec. 22-1-9 (Supp. 1967) and Mass. Gen. Laws Ann., ch. 119, Sec. 53 (1969).

¹⁴See, for example, Ga. Code Ann., Sec. 24A-101 (Supp. 1973) and N.J. Stat. Ann., Sec. 2A:4-2 (1952).

¹⁵Luger, ibid.

¹⁶Davis, ibid., p. 39.

¹⁷Ibid., p. 40.

¹⁸In re Gault, ibid.

¹⁹Miranda v. Arizona, 384 U.S. 436 (1966).

²⁰See, for example, Okla. Stat. Ann., title 10, Sec. 1109(a) (Supp. 1974).

²¹Cal. Welf. & Inst'ns Code, Sec. 625 (1972).

²²Colo. Rev. Stat. Ann., Sec. 22-2-2(3)(c) (Supp. 1971).

²³Conn. Gen. Stat. Ann., Sec. 17-66d(a) (Supp. 1973).

²⁴National Conference of Commissioners on Uniform State Laws, Uniform Juvenile Court Act, Sec. 27(b) (1968).

²⁵Davis, ibid., p. 89.

²⁶Ibid., pp. 40-41.

1. Issue Title: Police Discretion--Should police discretionary decision-making concerning dispositions of juveniles be recognized?

2. Description of the Issue:

The police have traditionally been granted a great degree of discretionary authority in making dispositions of juvenile cases. Is it necessary that police have discretionary powers when dealing with juveniles? Is the exercise of discretion a "pure right" which has been granted to the police? Or is there a legal basis for these broad discretionary powers? If not, should legal guidelines be established? If so, what should these guidelines encompass?

3. Summary of Major Positions:

The use of discretionary judgment by police officers has been a subject of much debate both within the police profession and in academic and legal circles. The writers of the Constitution themselves were reluctant to grant police the use of too much administrative discretion in decisions to detain or arrest; the restrictions imposed to curb unlimited police discretion can be found in Amendments Four, Five and Six of the Constitution, which clearly state that searches, seizures, arrests and prosecutions must be based upon evidence indicating that the accused is indeed believed to be guilty.

Nevertheless, the nature of the police role in a democratic society demands the right of the police to exercise some discretionary judgment in the performance of their duties: The decision to arrest or not to arrest in a particular case cannot be specifically delineated in any manual of procedure due to the diversity of each individual case; thus, although the police were originally conceived to be officers of the administrative branch of government only, they have, in practice, become "quasi-judicial" officers, particularly insofar as juveniles are concerned.¹ Because our system of justice emphasizes "individualized justice," the dispensing of justice requires a considerable amount of discretionary decision-making at the police level.²

When applied to public functionaries, "discretion" has been defined as "the power or right conferred upon them by law of acting officially in certain circumstances, according to the dictates of their own judgment and conscience, uncontrolled by the judgment or conscience of others."³ Roscoe Pound defines "discretion" as "an authority conferred by law to act in certain conditions or situations in accordance with an official's or an official agency's own considered judgment and conscience--an idea of morals, belonging to the twilight zone between law and morals."⁴ Judge Charles D. Breitell defines it as "the power to consider all circum-

stances and then to determine whether legal action is to be taken ... and if so, of what kind and degree and to what conclusion."⁵ As defined by the International Association of Chiefs of Police, "discretion" is not simply the decision to arrest or not to arrest; it is the choice between two or more possible means of handling a situation confronting the police officer.⁶

But do the police have the right to exercise discretion? If so, is this a "pure right" or are there legal precedents establishing this right?

It has been argued that police officers have a "pure right" to exercise discretion in the performance of their duties: In any action involving people, there will always be deviations from the norm--the exercise of discretion can never be completely eliminated where people are involved.⁷ The International Association of Chiefs of Police feels that the police officer must have the "right" to use his own discretionary judgment to suspend or modify certain statutory laws (such as traffic laws), a judgment which must be based upon his training and experience; however, while there is little legal support for the exercise of such discretionary judgment, there is practical support both at the police and judicial levels for "pure right" discretionary decision-making.⁸

Police departments in the United States generally recognize that discretionary powers to enforce the law exist, if not legally, then by tradition. W.R. LaFave of the University of Wisconsin Law School argues that there are three reasons why the police should have the "pure right" to exercise discretion in the enforcement of the law: (1) No legislature has succeeded in formulating a substantive criminal code which clearly encompasses all conduct intended to be made criminal and which clearly excludes all other conduct--poor draftsmanship and a failure to revise the criminal law to eliminate obsolete provisions have contributed to existing ambiguities; (2) not enough financial resources are allocated to make it possible to enforce all the laws against all offenders; and (3) the exercise of discretion seems necessary in the current criminal justice system because of the special circumstances of the individual case, particularly the characteristics of the individual offender which differentiate him from other offenders.⁹

The legal right to exercise discretion derives from the "delegation of authority doctrine" established by the U.S. Supreme Court in 1931,¹⁰ which allowed administrative agencies to develop standards for the enforcement of laws. Although law enforcement agencies are administrative agencies of government, the institutions of administrative law which serve to maintain the legal-rational legitimacy of other branches of government are sometimes inapplicable to the police.¹¹

In addition, the legislatures have, for the most part, ignored the existence of police discretion and have limited themselves to defining only the duties of law enforcement officers. For

example, the Illinois statute states:

It shall be the duty of every sheriff, coroner and every marshal, policeman or other officer of any incorporated city, town or village having the power of sheriff, when any criminal offense or breach of the peace is committed in his presence, forthwith to apprehend the offender and bring him before some judge or magistrate to be dealt with according to law.¹²

The statutes of the other 49 states which define the duties of law enforcement officers are often similar to the Illinois statute. These existing statutes can be interpreted to infer that the state legislatures generally deny the police the right to make discretionary decisions in the performance of their duties. An exception, however, is the New Mexico statute, which supports the use of discretion by the police officer. The statute reads in part:

It is hereby declared to be the duty of every sheriff, deputy sheriff, constable and every other peace officer to investigate all violations of the criminal laws of the State of New Mexico which are called to the attention of any such officer or of which he is aware, and it is also declared the duty of every such officer to diligently file a complaint or information, if the circumstances are such as to indicate to a reasonably prudent person that such action should be taken.¹³

Further, not only have the police been denied the use of discretion in statutes which set forth the duties of police officers, but also in statutes which make it a criminal offense if the officer should neglect to make an arrest for an offense committed in his presence.¹⁴

To overcome this problem, the International Association of Chiefs of Police has recommended that the legislatures in all 50 states "statutorily delegate administrative rule-making authority governing the use of discretionary judgment to law enforcement agencies."¹⁵

With reference to juvenile cases, only the state of Wisconsin has made statutory reference to the right of the police to make discretionary judgments; the Wisconsin statute only implies the use of discretionary judgment in juvenile matters, however, stating:

No child may be taken into immediate custody except ... (b) when in the presence of the officer who takes the child into custody a child has violated a county, town or municipal ordinance or a state or federal law and the officer believes that such action is necessary for the protection of the public interest.¹⁶

In the absence of legislative guidelines on the use of discretion in the differential handling of juvenile offenders, many police departments have established their own departmental guidelines. For example, several departments throughout the United States have issued specific guidelines governing the use of discretion by police-juvenile officers; among them are Milwaukee, Wisconsin,¹⁷ Wichita, Kansas,¹⁸ San Jose, California,¹⁹ and Seattle, Washington.²⁰ In addition, the Illinois Youth Officer Manual recognizes the discretionary power of police-juvenile officers and contains guidelines for its proper use.²¹ Wisconsin²² and Massachusetts²³ have also developed statewide guidelines governing the use of discretion by police-juvenile officers.

Several major standard-setting bodies have formally recognized that police discretion does exist and have called for the drafting of guidelines to govern the use of discretionary decision-making powers. The President's Commission on Law Enforcement and the Administration of Justice recognized the need for guidelines on the use of discretion in police-juvenile operations,²⁴ as did the American Bar Association in its Standards Relating to the Urban Police Function, which stated that: "Since individual police officers may make important decisions affecting police operations without direction, with limited accountability, and without any uniformity within a department, police discretion should be structured and controlled."²⁵ The IJA/ABA Juvenile Justice Standards Project has agreed that there is "almost unanimous opinion that steps must be taken to provide better control and guidance over police discretion in street or stationhouse adjustments of juvenile cases."²⁶

The International Association of Chiefs of Police has gone further and has made the following recommendations regarding the use of discretion by police officers:

1. It is recommended that Federal and state courts support and encourage law enforcement agencies in the development, implementation and review of administrative policies on the use of discretionary judgment.²⁷
2. It is recommended that police administrators officially recognize the existence of discretionary decision making policies in their departments and that they establish administrative procedures to govern the use of such discretion.²⁸
3. It is recommended that all law enforcement agencies revise rules and regulations manuals to include policy guidelines on the use of discretionary judgment and include examples of situations where discretionary judgment to arrest may be utilized by police officers.²⁹

4. It is recommended that all law enforcement agencies conduct training programs at the recruit and in-service levels to affirm the department's position on the use of discretionary judgment and to acquaint officers with situations in which discretion may be exercised.³⁰
5. It is recommended that all law enforcement agencies establish internal procedures to review the exercise of discretionary decision making and to take appropriate disciplinary action when discretion is misused or subverted to a wrong purpose.³¹

4. Analysis of the Issue:

As the American Bar Association states in its Standards Relating to the Urban Police Function, there is "a persistent myth that the responsibility of a police officer is narrowly prescribed by statute and that the police are, in effect, ministerial officers committed to 'enforcing the law without fear or favor.'"³² This myth has been perpetuated by the failure of the state legislatures, with the exception of New Mexico,³³ to statutorily recognize that police discretion not only exists, but is necessary and inevitable, given the limited resources that are available to the police, the oftentimes ambiguous language of the substantive criminal law, the continuance on the books of obsolete laws, and the common practice in the United States of enacting criminal statutes that often express more of a hope than an expectation that the community will conform to these standards.

When confronted with a situation that does not clearly indicate whether he should arrest or not arrest, the police officer must base his decision on the net gain or loss to the community, to the suspect and to himself of the various courses of action open to him; he may have little leeway, as his department may have already determined the considerations upon which he should base his action. As the International Association of Chiefs of Police states:

Although judgment is an element of all discretionary decisions, judgment can be, and often is, removed from the beat officer and exercised by personnel at other levels of command, such as the supervising sergeant, commanding officer and the chief of police. The practical effect of the removal of judgment is to limit the choices available to the beat officer in a given situation. The exercise or control of judgment, insofar as is

possible, by the chief of police and his staff is the essence of centralized control. It involves the recognition and examination of situations where discretion exists, the elimination of choices which are clearly illegal or against the interests of the department, and the establishment of means of control over the selection of valid choices. When departmental guidelines clearly spell out the course of action, the possibility of error on the part of the officer is reduced. If the department does not have clear guidelines determining the course of action to be followed, the officer must exercise discretion with no limits as to alternatives. As a result, the review of his actions can easily be defined by others as "wrong."³⁴

With respect to the exercise of discretion in matters involving juveniles, J.Q. Wilson has pointed out that the police are formally vested with a considerable amount of discretion over juveniles.³⁵ As Wilson explains: "They (the police) can decide, if not whether to intervene (that is decided for them by the citizen who invokes the law) at least how to intervene (to arrest, take into temporary custody, warn and release, and so forth)."³⁶

While it is generally agreed that police have considerable and necessary discretionary powers when dealing with juveniles, the question becomes one of deciding whether these powers should be limited and/or spelled out in detailed guidelines which govern the use of discretion. Wilson suggests that the police administrator can influence the use of discretion significantly by setting guidelines on how such cases will be handled and by devoting, or failing to devote, specialized resources (in the form of juvenile officers, for example) to these matters.³⁷ It is further argued that guidelines governing the use of discretion are necessary because of the large amounts of informal adjustments made by the police in juvenile matters. In many cities, for example, the police adjust over 50 percent of the cases in which they become involved.³⁸ The departments which have issued guidelines on the use of discretion are clearly the exception, and, as the IJA/ABA Juvenile Justice Standards Project points out, police officers in most departments are typically left to their own devices in deciding how to handle individual cases--this must raise legitimate cause for concern.³⁹

In addition, it has been demonstrated that, given the lack of guidelines governing the use of discretion, the police handling of juveniles is affected by such factors as race, attitude of the juvenile, type of department ("professional" vs. "informal"), attitude of the victim, and home situation of the minor.⁴⁰ As the President's Commission on Law Enforcement and the Administration of Justice pointed out, the lack of guidelines can not only lead to discriminatory and arbitrary decisions on the part of the police officer, but can also have an opposite effect--that of informally adjusting, at the police level, juveniles who would benefit more if they were dealt with through the formal adjudicatory and dispositional

processes.⁴¹ Thus, discretionary decision-making by the police can work both to the advantage and the disadvantage of the juvenile.

5. Task Force Standards and Rationale:

The Task Force developed two standards which directly emanate from this issue:

Standard 4.4 Development of Guidelines in the Use of Police Discretion

To stimulate the development of appropriate administrative guidance and control over police discretion in juvenile operations, legislatures and courts should actively encourage or require police administrative rule-making.

Police chief executives should establish administrative procedures to structure and control the use of discretion. These should include the development of policy guidelines on the use of discretionary judgment when dealing with juveniles and the development of training programs to acquaint officers with situations in which discretion may be exercised in juvenile operations.

Standard 4.3 Use of Least Coercive Alternative

To respect family autonomy and to minimize coercive state intervention, law enforcement officers, when dealing with juveniles, should be authorized and encouraged to use the least coercive reasonable alternatives consistent with preserving public safety, order and individual liberty.

The Task Force believes there is a need for police discretion, that it should be recognized, and that guidelines should be established to regulate its use. In particular, police department policy plays an important role in establishing these guidelines. These guidelines should be consistent with the principle of the use of the least coercive alternatives available.

Footnotes:

- ¹Kobetz, R. and Bosarge, B. Juvenile Justice Administration, Gaithersburg, MD: The International Association of Chiefs of Police, 1973, p. 117.
- ²Ibid., p. 118.
- ³Black, H. Black's Law Dictionary, St. Paul, Minn.: West Publishing Co., 1957, p. 553.
- ⁴Pound, Roscoe. "Discretion, Dispensation and Mitigation: The Problem of the Individual Special Case," NYU L. Rev., Vol. 35, 1960, pp. 925-926.
- ⁵Breitell, C. "Controls in Criminal Law Enforcement," U. of Chicago L. Rev., Vol. 27, 1960, p. 427.
- ⁶Kobetz and Bosarge, ibid.
- ⁷Ibid., p. 120.
- ⁸Ibid.
- ⁹LaFave, W. Arrest: The Decision to Take a Suspect into Custody, Boston: Little, Brown and Co., 1965, pp. 69-70.
- ¹⁰United States v. Chicago, M., St. Paul and P.R. Co., 282 U.S. 311 (1931) at 324.
- ¹¹Chambliss, W. and Seidman, R. Law, Order and Power, Reading, Mass.: Addison-Wesley Pub. Co., 1971, p. 388.
- ¹²Ill. Rev. Stat., Sec. 82, chap. 125 (1969).
- ¹³Statutes of New Mexico, Sec. 1, art. 1, chap. 39 (1970).
- ¹⁴See, for example, Wis. Stat., Sec. 62.09 (13) (1969) and D.C. Code Ann., Sec. 4-143 (Supp. III 1970).
- ¹⁵Kobetz and Bosarge, ibid., p. 128.
- ¹⁶Wis. Children's Code, Sec. 1(b), ch. 48.28 (emphasis added).
- ¹⁷Milwaukee Police Dept., Rules and Regulations, Rule 32, Sec. 9.
- ¹⁸Wichita, Kan., Police Dept., Duty Manual, Sec. 61.
- ¹⁹San Jose, Calif., Police Department, Police Manual, Bk. 1, Vol. IV, Art. II, Pt. XVIII, Sec. 2118.4 (1970), pp. 60-61.
- ²⁰City of Seattle Dept. of Police, Gen. Order Number 71-16 (July 28, 1971) amending Manual of Rules and Regulations, Sec. 3.13.020.

- ²¹Manella, F.; Nedrud, D.; and Taylor, C. The Illinois Youth Officer Manual, Champaign, Ill.: University of Illinois Police Training Institute, 1972, pp. II-6, II-7.
- ²²Wisconsin Dept. of Health and Social Services, Police-Juvenile Manual, 1972, Pt. II, ch. 2, p. 6.
- ²³Massachusetts Governor's Committee on Law Enforcement and the Administration of Justice, Police and Probation Procedures in Juvenile Cases in Massachusetts, 1972, p. 5.
- ²⁴The President's Commission on Law Enforcement and the Administration of Justice, Challenge of Crime in a Free Society, Washington, D.C.: U.S. Government Printing Office, 1967, p. 82.
- ²⁵American Bar Association, Standards Relating to the Urban Police Function, New York: Institute of Judicial Administration, 1972, p. 121.
- ²⁶Institute for Judicial Administration, Juvenile Justice Standards Project Final Report Planning Phase, 1971-72, New York: NYU School of Law, 1973, p. 215.
- ²⁷Kobetz and Bosarge, ibid., p. 132.
- ²⁸Ibid., p. 137.
- ²⁹Ibid., p. 139.
- ³⁰Ibid.
- ³¹Ibid.
- ³²American Bar Association, ibid., p. 117.
- ³³Statutes of New Mexico, ibid.
- ³⁴Kobetz and Bosarge, ibid., p. 119.
- ³⁵Wilson, J. Varieties of Police Behavior, Cambridge, Mass.: Harvard Univ. Press, 1968, pp. 87-88.
- ³⁶Ibid.
- ³⁷Ibid.
- ³⁸Ferster, E. and Courtless, T. "The Beginning of Juvenile Justice: Police Practices and the Juvenile Offender," 22 Vand. L. Rev. 567, 573-583 (1967).
- ³⁹Institute for Judicial Administration, ibid., p. 197.
- ⁴⁰Ibid., p. 198.
- ⁴¹The President's Commission on Law Enforcement and the Administration of Justice, ibid., p. 82.

1. Issue Title: Guidelines for Police Intercession--What guidelines for police intercession are necessary to provide police services to juveniles?

2. Description of the Issue:

Traditional handling of juveniles at the police, court and corrections levels has, for the most part, involved differences in procedures when compared to the handling of adult suspects. Should there be any differences in procedural operations in a police agency if a juvenile is involved instead of an adult suspect?

3. Summary of Major Positions:

The juvenile justice system is based on the concept of parens patriae or the rehabilitative ideal. Because of this orientation, the police have traditionally developed procedures for handling juvenile offenders that differ from those used for adults. Over the past few years, however, the shift from a social to a legalistic approach in the juvenile court system has accelerated rapidly, necessitating several important functional changes in the police role. Where police formerly served only as a doorway to the juvenile courts, recent Supreme Court decisions have placed new restrictions on the police, making it necessary for the legal process to begin when juveniles are first taken into custody.

Although the full effect of these court decisions remains to be seen, there are several aspects of police procedural operations which either need clarification or guidelines. These areas include, for example:

1. Circumstances under which the police are warranted in working with juveniles rather than referring them to the court or another community agency.
2. Criteria to be used by the police in referring children to the court or another community agency.
3. Policy on fingerprinting and photographing of juveniles.
4. Limitations on police-probation officer cooperation and the sharing of information.
5. Guidelines on the release of information about juvenile suspects to the media.
6. Criteria for detaining a juvenile at the police level.

To adequately perform their role in juvenile justice, the police have several dispositional alternatives open to them, some of which are not applicable to adults. These alternatives include:¹

1. Release, either at the point of initial contact or at the station.
2. Release accompanied by an official report describing the encounter with the juvenile.
3. Release to parent or guardian accompanied by an official reprimand.
4. Referral to other agencies when it is believed that some rehabilitative program ought to be set up after more investigation.
5. Referral to the juvenile court without detention.
6. Referral to the juvenile court with detention.

None of the national standard-setting groups has directly addressed the question of whether there should be any differences in procedural operations of a police agency if a juvenile is involved instead of an adult suspect. However, they have established standards on several procedural issues which directly relate to this question. Some of these procedural issues will be examined in order to arrive at options for the development of a standard on whether procedural differences should be permitted.

With respect to police investigations of juvenile offenders, it has been common practice in many departments for the police to conduct social background investigations. Considering this issue, the International Association of Chiefs of Police has developed the following policy guideline: "Police should concentrate their attention on investigation of the circumstances surrounding the commission of offenses and the identity of offenders, branching out into social background investigations only to the extent required to ensure adequate evaluation for the intelligent disposition of the cases which are handled without referral to court."²

The IACP also addressed the question of procedural differences in the investigation of crimes committed by juveniles, stating: "When gathering evidence of an offense, there must be no difference in procedural operations within a police agency if a juvenile is involved instead of an adult suspect; every care must be exercised to assure the rights of the child as he is guaranteed the same rights as an adult."³

The President's Commission on Law Enforcement and the Administration of Justice dealt with the issue of "station adjustments": "Station adjustment should be limited to release and referral; it should not include hearings or the imposition of

sanctions by the police."⁴ Thus, the Commission argues for procedural similarities in both juvenile and adult station adjustment procedures. The State of Illinois, also discussing station adjustments, recommends different procedures for handling very young juveniles as compared to older juveniles and adults: "A serious offense, usually classified as a felony, would ordinarily call for a court filing. A child of tender years might commit an offense which would be considered very serious; however, he might not be dealt with in the same manner as the older juvenile--by process of court filing."⁵

The greatest amount of procedural differences occur in the area of taking a child into custody. While all 50 states statutorily permit law enforcement officers to arrest a juvenile on the same grounds that an adult can be arrested, these state statutes typically require police officers to handle juveniles in a special way, e.g., to notify parents, a probation officer or the juvenile court upon apprehension of the child. The statutes permit police officers to take juveniles into custody for circumstances in which they would not be permitted to take an adult into custody, e.g., runaway, sickness or injury which requires treatment, in need of supervision, neglected, dependent, and so forth. Pointing out the differences in procedure, the IACP has made the following recommendations:

1. The officer who takes a juvenile into custody or has taken any official action with the child has the responsibility of notifying the parents or legal guardians of the child as soon as possible.⁶
2. The police must not only inform parents or legal guardians of all facts pertaining to the unlawful behavior of their children, but should also seek the cooperative involvement of the parents in the corrective process.⁷

The President's Commission, on the other hand, advocates the same procedures as adults receive: "Custody of a juvenile (both prolonged street stops and stationhouse visits) should be limited to instances where there are objective, specifiable grounds for suspicion."⁸

With reference to the issue of diversion, there are great disparities between police procedures in juvenile and adult cases. The question arises as to whether police should have the authority to divert juveniles who have broken criminal laws from the court system. The President's Commission suggested that minor infractions might be dismissed with a warning, moderately serious infractions be followed by a referral to a youth service bureau, and major infractions to a court.⁹ Similarly, the IACP recommends that "state and/or municipal juvenile statutes should be rewritten to include specific criteria for the diversion from adjudication of certain classes of

misdemeanants and first offenders; these revised statutes should clearly state that any exercise of discretion by police and court intake officers to divert a juvenile from formal adjudicatory procedures must result in the placement of the juvenile in a formally structured rehabilitative program."¹⁰

The above examples illustrate some of the existing differences in the procedural handling of juveniles and adults, as well as the divergence of opinion among major standard-setting groups as to whether police should be permitted to apply different procedural operations in the handling of juvenile offenders.

4. Summary of Positions Taken by Major Standards Groups:

| IACP (1971 & 1973) | Pres. Comm. on Law Enf. & Admin. of Justice (1967) | State of Illinois (1974) | All 50 States (By Statute) |
|---|--|--|--|
| <p>Recommends procedural differences in:</p> <ol style="list-style-type: none"> 1. Conducting social background investigations; 2. Handling a juvenile after he has been taken into custody; 3. Diverting juvenile from formal adjudicatory process. <p>Recommends NO procedural differences in investigation of crimes.</p> | <p>Recommends NO procedural differences in station adjustment process.</p> <p>Recommends NO procedural differences in taking a juvenile into custody.</p> <p>Recommends procedural differences in diverting a juvenile from formal adjudicatory process.</p> | <p>Recommends procedural differences in station adjustment of <u>very young juveniles</u>.</p> | <p>Recommends procedural differences in methods of handling a juvenile after he has been taken into custody by police.</p> |

5. Analysis of the Issue:

There is a need to develop a standard which specifically addresses itself to the question of whether there should be any differences in procedural operations of a police agency if a juvenile is involved instead of an adult suspect. There are two options:

1. There should be some procedural differences in police agency operations when handling juvenile, rather than adult, suspects; however, these procedural differences should be based on sound legal principles and should not abrogate the constitutional rights of juveniles.
2. There should not be any procedural differences whatsoever in the police handling of juvenile suspects; juveniles are entitled to receive the same treatment as adults.

If Option One is selected, the Task Force will be giving credence to the long-held practice of maintaining separate criminal and juvenile justice systems, upholding the principle that juveniles are entitled to constitutional rights and safeguards but should benefit from some procedural differences in agency operations as they move through the system. The objective of these procedural differences should be to protect children from the harsher aspects of the criminal justice system; indeed, there are procedural differences in the handling of children which are not only widely practiced but are mandated by statute, e.g., in many states police are statutorily prohibited from placing children in the same jail cells with adult suspects.

Those who favor procedural differences in the handling of juveniles at the police level express a "concern that children not be dumped in an impersonal way in jails or detention centers."¹¹ This same concern for the welfare of children has been expressed in state statutes which typically require police officers to handle arrested juveniles in a special way, e.g., to notify parents.

In addition, the system of "community adjustments" at the police level for minor offenders is preferred by the juvenile courts; the police are authorized to use discretion to release many juvenile offenders to the custody of their parents, who agree to provide the necessary supervision of the child. This community adjustment procedure, which is supported by the President's Commission on Law Enforcement and the Administration of Justice,¹² the International Association of Chiefs of Police,¹³ the National Council on Crime and Delinquency,¹⁴ the State of Illinois¹⁵ and many police administrators and juvenile court judges, sidesteps the adjudicatory process and emphasizes the differential treatment of juvenile offenders.

Therefore, as the President's Commission argued, police practices in the differential handling of juvenile offenders should continue as at present but with two significant changes: (1) Cases deemed suitable for adjustment would be referred to a mandatory intake youth service agency, within a neighborhood services center, and (2) the categories of cases that could be referred by the police directly to the juvenile court would be restricted.¹⁶

If this option were selected, it would be necessary to also consider the drafting of guidelines pertaining to the various aspects of police handling of juveniles, e.g., taking a child into custody, detention, diversion, and so forth.

If Option Two were selected, the differential handling of juveniles by the police would cease and juveniles would be accorded the same treatment as adults. While this option is not acceptable to the majority of police administrators and juvenile court judges, it is, however, preferred by many attorneys and liberal reformers who desire that juveniles be guaranteed the same constitutional rights and liberties as adults and therefore the same treatment. Although there appears to be a trend in favor of extending to juveniles the same rights to which criminal defendants are entitled, as was demonstrated in the Gault case,¹⁷ there are still many areas where the law is yet unsettled, for example in the application of adult arrest rules to juveniles.¹⁸ Considering the issue of arrest as one area in which there are procedural differences, it can be argued that police authority should be restricted to intervention in criminal-type situations only and under traditional Fourth Amendment arrest restrictions; however, as the IJA/ABA Juvenile Justice Standards Project points out, it must be recognized that the police undoubtedly need authority to intervene in many situations involving juveniles without having to invoke the arrest power.¹⁹

Therefore, it appears that this option is not feasible in its totality, for if a standard were adopted which guarantees children the same procedural applications as adults, a large aspect of intervention with juveniles--that of protecting them (non-arrest apprehensions, etc.)--would be circumscribed insofar as the police are concerned.

6. Task Force Standards and Rationale:

Chapter 5 of the Task Force report is devoted to various aspects of this issue. It is entitled Guidelines for Police Intercession and Operations in Providing Services to Juveniles. Fifteen standards are presented in this chapter, and each standard recommend guidelines for police intercession at various stages of the intercession process. Rather than repeat each of the standards here

the reader is referred to the Task Force report.

The Task Force concluded that guidelines for police intercession are necessary, not only for juveniles who are alleged to have committed delinquent acts, but for juveniles who may be Endangered, or who fall with the Families with Service Needs classification, as well.

The Task Force recognized the tremendous number of contacts the police have with juveniles and that normally these contacts are made in the absence of direct supervision. Without guidelines the well meaning police officer may be caught between two facets of his dual role of "catcher" of criminals and "helper or protector." Guidelines provide the expression of police policy which the officer may need to handle this role conflict.

Footnotes:

- ¹Kobetz, R. The Police Role and Juvenile Delinquency, Gaithersburg, MD: The International Association of Chiefs of Police, 1971, p. 104, and National Advisory Commission on Criminal Justice Standards and Goals, Corrections, Washington, D.C.: U.S. Government Printing Office, 1973, pp. 264-265.
- ²Kobetz, ibid., p. 137 (Policy Guide #27).
- ³Ibid., p. 132 (Policy Guide #4).
- ⁴The President's Commission on Law Enforcement and the Administration of Justice, The Challenge of Crime in a Free Society, Washington, D.C.: U.S. Government Printing Office, 1967, p. 83.
- ⁵Illinois Institute for Continuing Legal Education, Illinois Juvenile Law and Practice, Springfield, Ill.: Illinois Bar Center, 1974, sec. 2, p. 11.
- ⁶Kobetz, ibid., p. 132 (Policy Guide #5).
- ⁷Ibid., (Policy Guide #6).
- ⁸The President's Commission on Law Enforcement and the Administration of Justice, ibid., p. 79.
- ⁹Ibid., p. 83.
- ¹⁰Kobetz, R. and Bosarge, B. Juvenile Justice Administration, Gaithersburg, MD: The International Association of Chiefs of Police, 1973, p. 83.
- ¹¹Paulsen, M. and Whitebread, C. Juvenile Law and Procedure, Reno, Nev.: The National Council of Juvenile Court Judges, 1974, p. 79.
- ¹²The President's Commission on Law Enforcement and the Administration of Justice, Task Force Report: Juvenile Delinquency and Youth Crime, Washington, D.C.: U.S. Government Printing Office, 1967, p. 19.
- ¹³Kobetz and Bosarge, ibid., pp. 140-143.
- ¹⁴See, for example, S. Norman, The Youth Service Bureau: A Key to Delinquency Prevention, Paramus, N.J.: The National Council on Crime and Delinquency, 1972.

- ¹⁵Illinois Institute for Continuing Legal Education, ibid., sec. 2, p. 8.
- ¹⁶The President's Commission on Law Enforcement and the Administration of Justice, ibid.
- ¹⁷In re Gault, 387 U.S. 1 (1967).
- ¹⁸National Juvenile Law Center, Law and Tactics in Juvenile Cases, St. Louis: St. Louis University School of Law, 1974, p. 63.
- ¹⁹Institute for Judicial Administration, Juvenile Justice Standards Project Final Report Planning Phase 1971-72, New York: NYU School of Law, 1973, p. 229.

1. Issue Title: Legal and Procedural Guidelines for Intercession--
What legal and procedural requirements are
necessary to insure that the police intercede
properly in providing police services to juveniles?

2. Description of the Issue:

The juvenile court system in recent years has been shifting from its civil orientation to a "junior" criminal court. Moreover, the Supreme Court has handed down several decisions guaranteeing juveniles many of the constitutional legal safeguards afforded to adults. These legal safeguards also, in many instances, apply to the police handling of juveniles. Should police apply the same legal procedures in the pretrial handling of both juveniles and adults?

3. Summary of Major Positions:

Prior to 1966, most juvenile offenders were thought to not be specifically protected by the Constitution. Further, the state treated juveniles in a "non-adversary" manner--the juvenile courts were civil in nature, not criminal. This allowed the child to claim only the right to fair treatment. However, in the mid-1950's, critics of the juvenile justice system began to argue that the laws of arrest and judicial procedure should also be applied to juveniles. As a result of the Supreme Court's decision in the Gault case,¹ juveniles should now receive many of the same legal rights as adults.

Since the Gault case was decided in 1967, many questions concerning juvenile rights in police investigations remain unanswered. As a result, it has not been made clear whether police should apply the same legal procedures in the pretrial handling of a juvenile as with an adult. There has been considerable debate on this issue.

In McKeiver v. Pennsylvania, the Supreme Court held that, given the distinct nature of the juvenile court system, all constitutional requirements surrounding a criminal prosecution do not have to be extended to juvenile proceedings.² Because the Supreme Court left its future movements in the juvenile justice area unclear in the McKeiver decision, the IJA/ABA Juvenile Justice Standards found it essential to focus attention on the question of the circumstances under which greater or lesser protections or intrusions should be allowed and under what rationale.³ The IJA/ABA Juvenile Justice Standards Project raised the following questions:⁴

1. Should greater intrusions than normally permitted for adults under the Fourth Amendment be allowed where the justification is that the intrusions are needed to protect a child from his home environment, to protect a child from himself, or to involve the child in a

necessary treatment program?

2. Should there be protections such as waiver of counsel or consent to search because children, in general, are not as competent as adults to make certain crucial decisions affecting their affairs?

Although the Supreme Court has not determined the extent of the rights of juveniles in the pretrial phase, in recent years several state and federal courts and state legislatures have considered the application of various provisions of the Bill of Rights to juveniles on a piecemeal basis. For example, Colorado,⁵ Connecticut,⁶ and California⁷ have enacted legislation implementing the Miranda⁸ safeguards in the juvenile process. In addition, the Uniform Juvenile Court Act provides that "a child charged with a delinquent act need not be a witness against himself; an extra-judicial statement, if obtained in the course of violation of this Act or which would be constitutionally inadmissible in a criminal proceeding, shall not be used against him."⁹ Jurisdictions that have adopted the Uniform Juvenile Court Act have similar provisions.¹⁰

With reference to police interrogations, the International Association of Chiefs of Police has stated that police must treat juveniles the same as they treat adults: "During interviews or interrogations, as in all police procedures, officers must be sensitive to and respect the basic legal as well as human rights of all persons, adult and juvenile."¹¹

Some states not only apply adult protections to juveniles, but have also formulated special safeguards applicable only to juvenile proceedings. For example, the Missouri Criminal Justice Council advises police that "a court order may be necessary before the police can have a lineup to establish witness identification of juveniles."¹² Similarly, Missouri provides that "neither fingerprints nor a photograph shall be taken of a child taken into custody for any purpose without the consent of the juvenile court judge."¹³

To summarize, none of the major national standard-setting groups has directly addressed the issue of whether police should apply the same legal procedures in the pretrial handling of both juveniles and adults. However, several state and federal courts and state legislatures have been applying some of the provisions of the Bill of Rights on a piecemeal basis to juveniles. So far, no court or legislatures has argued that all adult legal rights necessarily apply to juveniles as well as adults.

4. Summary of Positions on Major Standards Groups:

| IJA/ABA Juvenile Justice Standards Project (1973) | President's Comm. on Law Enforcement (1967) | National Advisory Commission (1973) | IACP (1971) | U.S. Supreme Ct.: <u>McKiever v. Pa.</u> , 1971 | ABA (1972) | Uniform Juvenile Ct. Act (1968) |
|---|---|-------------------------------------|---|---|------------------------------------|---|
| <p>Recommends that attention be focused on questions of:</p> <p>1. Under what circumstances should greater or lesser intrusions be allowed?</p> <p>2. Under what rationale?</p> | <p>Did not address this issue.</p> | <p>Did not address this issue.</p> | <p>Addressed issue of interrogation only and advocates that juvenile be accorded the same legal rights as adults.</p> | <p>All constitutional requirements surrounding a criminal prosecution do not have to be extended to juvenile proceedings.</p> | <p>Did not address this issue.</p> | <p>Addressed issue of interrogation only and advocates that juveniles be accorded same rights as adults (similar provisions adopted by CA, CO, CT, GA, ND, TN, NM, PA, and VT.)</p> |

5. Analysis of the Issue:

There are three basic options for the Task Force to consider in deciding upon recommendations concerning the legal and procedural requirements that are necessary to insure that the police intercede properly in providing police services to juveniles.

1. All state legislatures should revise their statutes to guarantee juveniles the same legal rights as adults in pretrial proceedings.
2. Juvenile proceedings are essentially different in nature than adult criminal proceedings; therefore, all constitutional requirements surrounding an adult criminal prosecution do not necessarily have to be extended to juvenile proceedings. The issue then becomes one of deciding which legal and procedural rights need to be retained.
3. There are certain legal and procedural rights which are not guaranteed adults, which should be guaranteed children. These may be in addition to all those legal and procedural rights associated with Option One, or they may be rights which should be accorded juveniles given the selection of Option Two. If this option is selected, the specific added legal and procedural rights will need to be detailed.

If Option One is selected, the Task Force will advocate the position that the role of the police in the pretrial handling of juveniles should be no different than it is with adults.

Advocates of this position and some post-Gault case law suggest that police have caused children "to suffer overreaching police interrogations, unfair identification procedures, and unreasonable searches and seizures."¹⁴ Therefore, it is argued, the constitutional protections arising from the Fourth, Fifth and Fourteenth Amendments should be totally applicable to children.

If Option Two is selected, the Task Force will advocate the position that some intrusions into the rights of a child are necessary to protect him from himself, from his home environment, or to initiate a necessary treatment program. This option will also permit greater protections for children where necessary, especially in the area of waivers where a child may not be in as good a position as an adult to make a crucial decision affecting his welfare.

The Task Force may want to develop guidelines so that intercession is permitted only in certain circumstances. Advocates of this position argue that this will permit greater protection

for children because it will enable the police to move quickly and confidently when a child is endangered or is endangering others.

Option Three, of course, argues that there are certain legal and procedural rights due children simply because they are children. These might include the right to counsel, the right to consult with one's parents, and so forth.

6. Task Force Standards and Rationale:

Chapter 5 of the Task Force report presents fifteen standards to serve as guidelines for police intercession and operations in providing services to juveniles. These standards, along with other standards presented elsewhere in the volume,* articulate the position of the Task Force on this issue.

The Task Force took the view that additional procedural safeguards are required with juveniles. All of the rights accorded an adult, except the right to bail and the right to a jury trial, need to be extended to juveniles. In addition, there are other special obligations required because they are juveniles; notification of parents is an example.

*See, for example, Standard 4.4 - Development of Guidelines in the Use of Police Discretion; Standard 4.5 - Procedural Differences in Handling Juveniles; Standard 13.2 - Acceptance of an Admission to a Delinquency Petition; Chapter 16 - Defense.

Footnotes:

¹In re Gault, 387 U.S. 1 (1967).

²McKeiver v. Pennsylvania, 403 U.S. 528 (1971).

³Institute for Judicial Administration, Juvenile Justice Standards Project Final Report Planning Phase 1971-72, New York: NYU School of Law, 1973, p. 221.

⁴Ibid.

⁵Col. Rev. Stat. Ann., sec. 22-2-2(3)(c) (Supp. 1971).

⁶Conn. Gen. Stat. Ann., sec. 17-66d(a) (Supp. 1973).

⁷Cal. Welf. & Inst. Code, sec. 625 (1972).

⁸Miranda v. Arizona, 384 U.S. 436 (1966).

⁹National Conference of Commissioners on Uniform State Laws, Uniform Juvenile Court Act, sec. 27(b) (1968).

¹⁰See, for example, Ga. Code Ann., sec. 24A-2002(b) (Supp. 1973); N.D. Cent. Code, Sec. 27-20-27(2) (1974); Tenn. Code Ann., sec. 37-227 (Supp. 1973).

¹¹Kobetz, R. The Police Role and Juvenile Delinquency, Gaithersburg, MD: International Association of Chiefs of Police, 1971, p. 132 (Policy Guide #8).

¹²Gomolak, N. Missouri Police-Juvenile Officer Manual Guide, Columbia, MO: Missouri Criminal Justice Council, 1975, p. 25.

¹³Rev. Stat. Mo., sec. 211.15.

¹⁴Paulsen, M. and Whitebread, C. Juvenile Law and Procedure, Reno, Nev.: National Council of Juvenile Court Judges, 1974, p. 73.

1. Issue Title: Court Review of Police Guidelines--Should the guidelines used by law enforcement in making decisions regarding juvenile processing be reviewed by court and juvenile intake officials? Should juvenile intake guidelines be reviewed with law enforcement officials?

2. Description of the Issue:

National standards and scholar-proposed directions urge greater uniformity in discretionary decisions made by juvenile justice officials at the different processing points. These may be developed autonomously by each subsystem or by each subsystem in conjunction with review by other component agencies. Collaborative review suggests a more systemwide effort to reduce dysfunction in processing and reduce tensions and hostilities particularly between police and courts.

3. Summary of State Practices:

There is little recorded information regarding contemporary practices. The 1973 Texas Statute authorized police officials to warn and release youth not taken into custody or to dispose of cases involving youth taken into custody without referral to the court according to guidelines issued by the police if "the guidelines have been approved by the juvenile court." (Sec. 52.02 and Sec. 52.03).

4. Summary of Positions Recommended by Standards Groups:

NAC (1973)
(Police, 9.5.3)

Recommends every police agency establish written guidelines "in cooperation with courts."

ABA - Urban Police
Function (1973)
(4.1 through 4.5)

Recommends police agencies promulgate administrative rules to achieve a more uniform police decision-making. These should be openly formulated and re-evaluated through a process which utilizes representative citizens.

NAC (1973)
(Corrections, 8.2)

Recommends court-administered intake services; silent as to guidelines; urges court evaluation and monitoring of court intake practices.

5. Analysis of the Issues:

If it is determined that law enforcement guidelines should be reviewed by the family division judge and intake officials, police will claim legitimately that juvenile court intake guidelines should receive their review as well. Where there is interagency disagreement on the merits of a guideline, the agency empowered to make the processing decision should have the authority to resolve a disputed guideline. Issues around the autonomy of police or courts may arise. Further, guidelines may or may not be followed, and should be modified with experience and changing conditions. To adopt an initial guidelines review procedure would lead logically to the subsequent practice of each agency's monitoring its own guidelines and then reviewing this experience both internally and through interagency collaboration.

6. Task Force Standards and Rationale:

This issue is approached through Standard 18.1 - The Court's Relationship with Law Enforcement Agencies. The Task Force encourages the joint formulation of procedures for taking juveniles into custody. Juvenile intake policies and procedures should also be formulated in an atmosphere in which all relevant parties have an opportunity to contribute their views.

Standard 18.1 The Court's Relationship with Law Enforcement Agencies

Family court divisions and law enforcement agencies should develop effective working relationships while retaining the integrity of their unique responsibilities and functions. Written court procedures and rules, reviewed with law enforcement agencies prior to adoption, should clarify the judicial system's requirements and responsibilities for case processing. Similarly, law enforcement agencies should adopt written policies and procedures, following court review, concerning police practices with juveniles.

1. Issue Title: The Organization of Police-Juvenile Operations--
How should the police plan the administration and management of juvenile justice and delinquency prevention services?

2. Description of the Issue:

It has been mandated by statute in all 50 states that the police have a legal responsibility for juvenile crime and in most cases are also statutorily required to intervene in the life of a juvenile to provide protective services. How should the police plan the administration and management of juvenile services? Are specialized police-juvenile units necessary? Should they be required? What guidelines are necessary in the selection of police-juvenile officers? What type of training should be required in police-juvenile procedures, not only for specialized police-juvenile officers, but for all officers in the department?

3. Summary of Major Positions:

Improvements in the police handling of juveniles cannot be achieved simply by promulgating standards or issuing policy statements concerning fairness or the proper exercise of discretion. Significant reform will undoubtedly also require major changes in the way in which the police are organized to deal with juveniles; that is, the kind of personnel that have primary responsibility, their supervision and training, the status and incentives which are provided for working with juveniles.¹

1. Are specialized police-juvenile units necessary and, if so, what guidelines should be recommended for the establishment of these units?
2. What guidelines are necessary in the selection and training of police-juvenile officers? Should all officers in the department be trained in police-juvenile operations?

Standards on the need for juvenile unit specialization have been established by the American Bar Association, the National Advisory Commission on Criminal Justice Standards and Goals, the Missouri Criminal Justice Council, and the International Association of Chiefs of Police.

The ABA, addressing itself to the total organizational structures of contemporary police departments, stated that:

More flexible organizational arrangements should be substituted for the semi-military and monolithic form of organization of the police agency. Police administrators should experiment with a variety of organizational schemes, including those calling for substantial decentralization of police operations, the development of varying degrees of expertise in police officers so that specialized skills can be brought to bear on selected problems, and the substantial use of various forms of civilian professional assistance at the staff level.²

The National Advisory Commission specifically addressed the issue of juvenile unit specialization, developing two standards:

1. Every police agency having more than 15 employees should establish juvenile investigation capabilities: (a) The specific duties and responsibilities of these positions should be based upon the particular juvenile problems within the community; and (b) the juvenile specialists, besides concentrating on law enforcement as related to juveniles, should provide support and coordination of all community efforts for the benefit of juveniles.³
2. Every police agency having more than 75 employees should establish a juvenile investigation unit, and every smaller police agency should establish a juvenile investigation unit if community conditions warrant. This unit: (a) Should be assigned responsibility for conducting as many juvenile investigations as practicable, assisting field officers in juvenile matters, and maintaining liaison with other agencies and organizations interested in juvenile matters; and (b) should be functionally decentralized to the most effective command level.⁴

The Missouri Criminal Justice Council, arguing in support of the need for police-juvenile specialization, states: "The challenge of effective police work with juveniles lends itself to specialization; through the police-juvenile officer will come the expertise the police must have to take a leadership role in the response of the society to juvenile delinquency."⁵

The IACP in 1971 and 1973 developed several standards pertaining to police-juvenile unit specialization, as follows:

1. The decision to establish within any law enforcement agency an individualized specialized position or a separate functional unit to be responsible for all matters relating to juveniles must be based upon an existing and demonstrated need for more effective utilization of department manpower.⁶
2. It is recommended that all police departments in medium to larger cities establish specialized juvenile units; in smaller cities it is recommended that at least one officer be assigned specifically to the police-juvenile function in addition to his regular patrol duties.⁷
3. It is recommended that police administrators with existing juvenile units improve the "status" of such units, where applicable, to ensure that all members of the department recognize that the juvenile unit is a necessary and valuable component of the police organization.⁸
4. It is recommended that police administrators assign one or more trained juvenile specialists to each tour of duty to immediately process juvenile offenders; in smaller departments where there are fewer juvenile specialists, it is recommended that the police chief determine the time periods in which the greatest amount of contacts occur with juveniles and so assign the officer to be available during these periods.⁹

The issue of selection and training of police-juvenile officers was addressed by the National Advisory Commission on Criminal Justice Standards and Goals, the President's Commission on Law Enforcement and the Administration of Justice, the IJA/ABA Juvenile Justice Standards Project, and the International Association of Chiefs of Police.

The National Advisory Commission and the President's Commission concerned themselves with the training of all police officers in juvenile work. As the NAC states: "Every police agency should provide all its police officers with specific training in preventing delinquent behavior and juvenile crime."⁹ The President's Commission has stated that: "All officers should be acquainted with the special characteristics of adolescents, particularly those of the social, racial, and other specific groups with which they are likely to come into contact."¹⁰

Similarly, the IJA/ABA Juvenile Justice Standards Project recommends that police training programs should give high priority in both recruit and in-service training programs to available and desirable alternatives for handling non-criminal juvenile problems.¹¹

The IACP, which dealt specifically with both selection and training, has made the following recommendations:

1. Juvenile officers should, if possible, be selected from the department's experienced line officers. They should be assigned by the juvenile unit commander with the approval of the chief of police (rather than appointed by a civil service or merit commission) on the basis of a departmental written or oral examination. It would be desirable that officers be given some specialized training before beginning their assignment in order for them to obtain necessary knowledge and skills required for this position.¹²
2. Most initial contacts with juveniles are made by officers who are not juvenile specialists. All police officers should receive thorough professional training in juvenile problems, procedures and law. This training should be conducted at the entry or recruit level and supplemented with additional departmental in-service training programs.¹³
3. It is recommended that selection boards established to interview candidates for the position of police-juvenile officer include police command officers and selected individuals from the juvenile justice system and public youth-service agencies.¹⁴
4. It is recommended that police administrators allow qualified officers, who so desire, to pursue careers as police-juvenile specialists, with the same opportunities for promotion and advancement available to other officers in the department.¹⁵
5. It is recommended that state law enforcement training commissions establish statewide standards for the pre-service training of police-juvenile officers.¹⁶
6. It is recommended that police-juvenile officers participate in periodic in-service training programs, either within the department or by attending regional, state and/or national training schools and workshops.¹⁷

To summarize, it has been recommended by national standard-setting groups that specialized police-juvenile units be established and that police-juvenile officers, as well as all officers in the department, receive extensive training in police-juvenile procedures.

4. Summary of Positions Recommended by Major Standards Groups:

| Issue | ABA (1972) | Nat. Adv. Comm. (1973) | IACP (1971 and 1973) | President's Comm. (1967) | Juv. Justice Standards Project (1973) |
|---|--|--|--|---|---|
| Need for Juvenile Unit Specialization | "Specialized skills should be brought to bear on selected problems." | 1. Every police department with more than 15 employees should establish juvenile investigation capabilities. 2. Every police department with more than 75 employees should establish a juvenile investigation unit. | 1. All police departments in medium to large cities should establish specialized juvenile units. 2. Smaller cities should assign at least 1 officer to the specialized juvenile function 3. The status of juvenile units should be improved. 4. Juvenile officers should be assigned to each tour of duty to immediately process juvenile offenders. | | |
| Selection, Qualifications and Need for Training | | Every police agency should provide all its police officers with specialized training in delinquency prevention & juvenile crime. | 1. Juvenile officers should be selected from among the depts. line officers. 2. Juvenile officers should be given specialized training before beginning their assignment. 3. All police officers should receive thorough training in juvenile problems, procedures and law. 4. National standards should be established for pre-service training of police-juv. officers. | All officers should receive training in juvenile matters. | Police training programs at both recruit and in-service levels should give high priority to available alternatives for handling noncriminal juvenile offenders. |

Summary of Positions: I. Police departments should establish specialized juvenile units or designate officers to serve as juvenile officers - 3
II. Police departments should provide training in juvenile matters to all officers - 4

5. Analysis of the Issue:

Although three major national standard setting groups have advocated that police departments establish specialized police-juvenile units or designated officers to serve in a specialized police-juvenile function, there are, nevertheless, two sides to this issue. Therefore, in drafting a standard, the following options must be considered:

1. Every police department should either establish a specialized police-juvenile unit or designate officers to serve as police-juvenile specialists.
2. It is not necessary to establish specialized police-juvenile units: Every officer on the department should be a generalist-specialist who is capable of handling juvenile criminal activities and other problems involving juveniles.

If Option One is selected, police departments will be able to obtain optimum use of their manpower and, it has been argued, provide better police services to the youth of the community. There are distinct advantages to properly conceived specialization in the juvenile area. As the IACP argues, the "well-trained juvenile specialist is a great asset to any police organization. He develops and pursues streamlined procedures with the juvenile court and the receiving and detention facilities. He becomes knowledgeable about the problems of children. He cultivates useful contacts which not only serve as sources of needed intelligence, but also act as resources for promoting rehabilitation ... the juvenile specialist can handle many youth-related problems better and more expeditiously than the patrol officer and can eliminate many of the department's problems with juvenile offenders."¹⁸

In addition, as the Missouri Criminal Justice Council states, the "unique nature of the juvenile court law and juvenile problems attests to the need for specialized police-juvenile officers since the community is most likely to react negatively toward law enforcement procedures that do not effectively and properly cope with juvenile cases; the police-juvenile specialist reduces the opportunity of adverse community criticism of the police."¹⁹

As the ABA and the Missouri Criminal Justice Council argue, this is an age of specialization and police work is no different from other disciplines.²⁰ For example, Dr. Morton Bard, in describing the need for specialists in family crisis intervention, stated:

Considering the highly complex demands made upon the police, it is ridiculous to expect each policeman to have the special skills required in the many situations which arise in a given area. However, as long as the system operates according to the assumption

that each officer must be all things to all people, the men are forced to engage in inappropriate behaviors which only serve to increase public disenchantment and widen the gap between the police and the community. Better community relations can be effected only by skillful performance of expected tasks and not by the time-limited palliatives of special community relations programs.²¹

Conversely, if Option Two is selected, the police chief would require that all line officers handle police-juvenile problems as they confront the officer on patrol. Each officer would be responsible for handling each juvenile case from start to finish, as there would be no juvenile specialists to whom he can turn over the case.

This procedure is favored by those police administrators who see dangers in specialization. For example, as the IACP points out, in the absence of clear policy, specialists sometimes begin to operate on their own, with little communication with the rest of the department; in addition, other officers in the department often develop the tendency to neglect their share of the responsibilities because they feel it is the specialist's function and they do not need to concern themselves--this is clearly poor police practice.²² Furthermore, it has been argued that when a department divides police functions into specialties, the generalist officers fail to develop basic skills in the specialty and do not have an opportunity to learn the skills.²³

Potential difficulty is also seen in the occasional over-dependence of the executive policy-maker on the selective and biased point of view of the specialist from whom he may seek opinions.²⁴

A compromise between these two options has been suggested by some police administrators--that the police department rotate line officers through the specialty assignment--but, as the Missouri Council on Criminal Justice argues, this principle has errors in its basic rationale: "The learning principle of the use of knowledge is violated when the rotation moves the individual back to the line. That officer ceases to use the information and skills that he may have acquired, and thus becomes so ineffective, his rotation was generally a waste."²⁵

Considering the issue of training for police-juvenile officers and all officers in the department in police-juvenile matters, the major standards-setting groups all agree that more training is needed for both groups. In addition to increasing the amount of training in juvenile matters at the recruit level, the IACP also recommends that all police officers, no matter what their assignment or specialty, should receive periodic in-service training in

police-juvenile procedures because they must be familiar with changes in operational procedures and new court rulings regarding police handling of juvenile offenders.²⁶

6. Task Force Standards and Rationale:

Chapter 7 of the Task Force report deals with organization, planning and management of police juvenile justice and delinquency prevention services.

In that Chapter the Task Force calls for specialized organization and specialized training for police who work with juveniles. The Introduction to the chapter states:

By virtue of the nature of his job, the ordinary line officer is usually too much of a generalist to develop the types of expertise appropriate to extensive dealings with juveniles. Therefore, the first standard calls for the creation of a specialized juvenile unit in those departments where the workload warrants such a unit.

Standard 7.1 Organization of Police-Juvenile Operations

Every police agency having more than 75 sworn officers should establish a juvenile investigation unit, and every smaller police agency should establish a juvenile investigation unit if community conditions warrant. This unit:

- a. Should be assigned responsibility for conducting as many juvenile investigations as practicable, assisting field officers in juvenile matters and maintaining liaison with other agencies and organizations interested in juvenile matters; and,
- b. Should be functionally decentralized to the most effective command level.

Police administrators with existing juvenile units should improve the status of such units, where applicable, to ensure that all members of the department recognize that the juvenile unit is a necessary and valuable component of the police organization.

Several standards in Chapter 7 also focus on police personnel. The Introduction to the chapter states:

The personnel selection process should ensure that highly qualified and motivated individuals are assigned

to handle juvenile matters. Thus, the standards indicate that juvenile specialists should be selected from experienced line officers on the basis of examinations (see Standard 7.6). Provision should also be made for proper training of police in the handling of juvenile matters. To meet this need the standards set forth detailed guidelines for training programs for juvenile specialists and nonspecialist officers alike (see Standard 7.7). They also recommend the use of such innovative programs as temporary staff exchanges with juvenile units in different cities and with other juvenile justice agencies within the same city. And they indicate that agencies should encourage their personnel to participate in juvenile justice higher education programs (see Standard 7.8). Finally, the standards highlight the need for clearly defined written controls and disciplinary procedures in juvenile operations (see Standard 7.9).

Footnotes:

- ¹Institute for Judicial Administration, Juvenile Justice Standards Project Final Report Planning Phase 1971-72, New York: NYU School of Law, 1973, p. 193.
- ²American Bar Association, Standards Relating to the Urban Police Function, New York: Institute for Judicial Administration, 1972, p. 21 (Standard 7.10).
- ³National Advisory Commission on Criminal Justice Standards and Goals, The Police, Washington, D.C.: U.S. Government Printing Office, 1973, p. 221 (Standard 9.5).
- ⁴Ibid.
- ⁵Gomolak, N. Missouri Police-Juvenile Officer Manual Guide, Columbia, Mo.: Missouri Council on Criminal Justice, 1975, p. 33.
- ⁶Kobetz, R. The Police Role and Juvenile Delinquency, Gaithersburg, MD: The International Association of Chiefs of Police, 1971, p. 131 (Policy Guide #1).
- ⁷Kobetz, R. and Bosarge, B. Juvenile Justice Administration, Gaithersburg, MD: The International Association of Chiefs of Police, 1973, p. 155.
- ⁸Ibid.
- ⁹National Advisory Commission on Criminal Justice Standards and Goals, ibid.
- ¹⁰The President's Commission on Law Enforcement and the Administration of Justice, The Challenge of Crime in a Free Society, Washington, D.C.: U.S. Government Printing Office, 1967, p. 79.
- ¹¹Institute for Judicial Administration, ibid., pp. 193-196.
- ¹²Kobetz, ibid., (Policy Guide #2).
- ¹³Ibid., p. 133, (Policy Guide #12).
- ¹⁴Kobetz and Bosarge, ibid., p. 158.
- ¹⁵Ibid.
- ¹⁶Ibid., p. 159.

¹⁷Ibid., p. 161.

¹⁸Ibid., p. 154.

¹⁹Gomolak, ibid., p. 31.

²⁰American Bar Association, ibid., pp. 232-234, and Gomolak, ibid., pp. 31-32.

²¹Bard, M. "Alternatives to Traditional Law Enforcement,"
15 Police 20, 21 (Nov.-Dec. 1970).

²²Kobetz and Bosarge, ibid.

²³Gomolak, ibid., p. 32.

²⁴Kobetz and Bosarge, ibid.

²⁵Gomolak, ibid.

²⁶Kobetz and Bosarge, ibid., p. 162.

APPENDIX A
ARREST WARRANTS

APPENDIX A
ARREST WARRANTS

1. Issue Title: Arrest Warrants--Should state juvenile codes authorize the court to issue a warrant of arrest (taking into custody) under specified conditions?

2. Issue Description:

States presently have such provisions as:

California (section 663) authorizes court issuance of a warrant of arrest for the minor if it appears that the conduct and behavior of the minor may endanger the health, person, welfare, or property of the minor or others, or that his home environment may endanger his health, person, welfare, or property.

Pennsylvania [section 18(c)] authorizes court issuance of a warrant of arrest if it appears from an affidavit filed or from sworn testimony before the court that the conduct, conditions, or surroundings of the child are endangering his health or welfare or those of others, or that he may abscond or be removed from the jurisdiction of the court or will not be brought before the court notwithstanding the service of the summons (the warrant shall be in such form and shall be served as prescribed by the Rules of Criminal Procedure).

Florida (Rules of Juvenile Procedure 8.030) authorizes the court to issue an order that a child be taken into immediate custody under specified circumstances if a verified petition has been filed or if a written statement under oath has been given to the court. Law enforcement officers, or authorized agents of the Division of Youth Services, or Division of Family Services may be so authorized.

NOTE: Such orders are used when a minor fails to appear at a scheduled court hearing, when a neglected child requires removal from home and placement into protective custody, when a youth on probation is not reporting in, or cannot be located, and, presumably, in states following the common law of arrest, where a law enforcement official has reasonable ground to believe a misdemeanor offense has been committed by a juvenile other than in the presence of a police officer.

Probably, statutes should provide for the issuance of such a warrant.

Related to this issue is the question whether sworn testimony should be presented to a judge prior to the issuance of such an order. Such a prerequisite would cause difficulties in rural areas, and in most localities during evening and night hours and over weekends. Despite this consultant's preference for a hearing, all statutes and rules examined permit issuance with only an affidavit filed.

1. Issue Title: Arrest Warrants--Should standards urge that law enforcement officials petition the court for an arrest warrant except where law enforcement officials witness an offense occurring or are able to arrest a juvenile law violator within a very short time following the commission of an offense?

2. Issue Description:

The U.S. Supreme Court has stated a general preference for an arrest with a warrant, Beck v. Ohio, 379 U.S. 89 (1964) (an adult case). Nonetheless, the prevailing police practice is to arrest adults and juvenile offenders without warrant. One observer has suggested that when adult arrest warrants are requested, they are issued by judges with less care than used for applications for search warrants. A prerequisite for the issuance of an arrest warrant should be a judicial finding of evidence of probable cause an offense has been committed by a specified juvenile.

NOTE: A directive emphasizing arrest warrants should reduce illegal or unnecessary arrests of juveniles by police officials. Monitoring police compliance with such a directive would be very difficult. An arrest warrant standard is within the general scope of NAC Police, Standard 9.5 which deals with police-court cooperation in developing procedures concerning apprehension and detention of juveniles.

APPENDIX B

COMPLETE LISTING OF COMPARATIVE ANALYSES

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