Governor's Adult and Juvenile Justice Advisory Committee

Standards and Goals for the New Jersey Criminal Justice System: Final Report

New Jersey State Law Enforcement Planning Agency
Dissemination Document No. 27

State of New Jersey

BRENDAN T. BYRNE
Governor

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(The final report of the Governor's Adult and Juvenile Justice Advisory Committee was prepared entirely by project staff and Advisory Committee members. Special acknowledgement is extended to all State, county and local officials, institutions and agencies who willingly provided statistical data and guidance in development of the standards and goals and accompanying narrative. Thanks is also extended to private agencies and citizens who shared information in preparation of this document. This document is published and disseminated under United States Department of Justice Grant 75-DF-02-0010 and 75-ED-02-0002 in accordance with the ongoing responsibility assigned to the State Law Enforcement Planning Agency by Public Law 94-503).

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STATE HOUSE ANNEX
TRENTON, N.J. 08625
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August 26, 1977

The Honorable Brendan T. Byrne
State House
Trenton, New Jersey 08625

Dear Governor Byrne:

I was extremely pleased to have represented you at the final meeting of the Governor's Adult and Juvenile Justice Advisory Committee on Standards and Goals when the completed report was presented containing over three hundred recommendations for improvements of the criminal justice system in New Jersey. To bring together the leaders from the criminal justice community around our State as well as from private interest groups and concerned citizens over a two year period and to draw together their best thinking from diverse points of reference, arriving in large part at consensus conclusions, seems to me to have been a significant achievement.

Your long-standing interest in the criminal justice system and the need you perceived for a catalyst to initiate a mechanism for change prompted the formation of the Advisory Committee two years ago. Diligent and at times painstaking research, spirited discussions, long hours of choosing language to express clearly thoughts that needed wide understanding characterized the ingredients that achieved this result.

As with any undertaking of this magnitude, its findings are not entirely void of controversy. It was not expected that all the recommendations would be adopted by practitioners without question. The work will serve to stimulate discussion, to establish benchmarks for measuring progress, to set forth a broad plan for administrative and legislative action that can have lasting salutary results for our State.

The many individuals who made contributions to this effort are to be thanked and congratulated for a job well done. I particularly single out four very busy people who thought Standards and Goals important enough to exert considerable time, effort and talent in leadership positions, Joseph P. Lordi, Chairman, and subcommittee chairpersons, Judith Yaskin, Marcia Richman and Leon Trusty.

It is my hope, and I am sure that of the committee, that the necessary steps can now be taken to proceed toward implementation.

Sincerely yours,

William F. Hyland
Attorney General

WFH/rmc

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OF ESSEX COUNTY

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June 24, 1977

The Honorable Brendan T. Byrne
State House
Trenton, New Jersey 08625

Dear Governor Byrne:

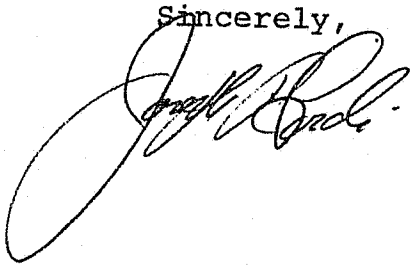
Since your appointment of the Governor's Adult and Juvenile Justice Advisory Committee in October 1975, the fifty-four members have been developing standards and goals for the improvement of the criminal justice system in New Jersey. At the Advisory Committee meeting of October 29, 1975, you directed us to examine the criminal justice system in New Jersey and make recommendations for improvement. We are pleased to present the completed document to you today.

Following the October 1975 conference, the Committee was broken down into four sub-committees which have been meeting regularly in order to complete the project. The final product is a tribute to those persons who contributed substantial time and effort in the preparation of this comprehensive study and report. The caliber and expertise of the people appointed by you to the Committee makes this report a significant contribution to the future of our criminal justice system.

Recognition should also be given to the many experts in the criminal justice community who contributed their time and efforts although not formal members of the Committee. We were able to draw upon the knowledge and experience of these people from institutions of higher education, the Courts, State agencies, and public and private interest groups. With their assistance, the Committee was better able to examine the criminal justice system and draft standards and goals for its improvement.

At the present time, our society is experiencing social change which is placing an extreme burden upon the criminal justice system. It is our hope that these standards and goals will stimulate an interest in improving the present system and updating it to conform with today's needs. When these recommendations are reviewed by members of the Legislature and by the criminal justice community, it is hoped that their adoption will enable New Jersey to remain a leader in the criminal justice field.

Sincerely,



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June 24, 1977

The Honorable Brendan T. Byrne
State House
Trenton, New Jersey 08625

Dear Governor Byrne:

In response to the six volume study published by the National Advisory Commission on Criminal Justice Standards and Goals in January, 1973, New Jersey was awarded a two year federal discretionary grant in April 1975, to compare the national standards with New Jersey's justice system and where applicable, recommend standards and goals for our justice system. Using the national standards as points of reference, the 54 member Governor's Adult and Juvenile Justice Advisory Committee appointed by you began deliberations in October 1975.

I am most pleased to inform you that the resulting study not only meets the original objectives of the project and your charge to the Advisory Committee members to "develop standards and goals to improve the justice system in our State" but, in my estimation, exceeds them. This is directly attributable to the caliber of the committee members, their dedication and enthusiasm for the tasks and the assistance and support afforded their deliberations by the criminal justice system in the State.

Advisory Committee members, representing major criminal justice agencies, public and private interest groups and private citizens, met at least once a month, and many times more often, with frequent evening sessions in order to complete the report. When additional information was required, expertise was drawn from a network of liaison personnel and experts from criminal justice agencies and organizations. The product of their efforts, 311 standards and goals, details a blueprint for improving the effectiveness and efficiency of our justice system.

I would also like to comment on the staff, five professionals whose energy and zeal matched that of the Advisory Committee members. Their burden was substantial in coordinating Committee activities, extensive research, articulating the various points of view in the narrative sections, especially the problem assessment sections, and generally serving as the major resource for an undertaking this comprehensive.

Respectfully,

John J. Mullaney

John J. Mullaney
Executive Director

FOREWORD

On October 20, 1971, the Law Enforcement Assistance Administration appointed the National Advisory Commission on Criminal Justice Standards and Goals (NAC) to formulate for the first time national standards and goals for crime reduction and prevention at State and local levels. After two years of concentrated research, NAC issued some 500 specific standards and recommendations constituting a strategy to reduce crime and improve criminal justice systems around the nation. To continue the effort initiated by the National Advisory Committee, LEAA developed a national strategy designed to assist states in developing and implementing recommended standards and goals.

The State of New Jersey, through the State Law Enforcement Planning Agency (SLEPA) joined the effort in October, 1973 by holding a Statewide Conference on Criminal Justice Standards and Goals. The conference was designed to give exposure to the national standards and recommendations and to investigate possibilities for improvement in New Jersey's criminal justice system. The New Jersey justice system was already in substantial agreement with many of the national recommendations. However, conference participants, representing a cross section of the State's justice system, favored further development of standards and goals in New Jersey, preferably through creation of a task force or committee.

Subsequently, the Governor of New Jersey announced his support for a combined State, local and citizen effort to adopt standards and goals as a means of improving the justice system. In response, SLEPA applied for and received in early 1975 a two-year LEAA discretionary grant. Funds totaling $271,494 were awarded to support staff and materials for this effort. The New Jersey standards and goals process began in April, 1975 with the acquisition of a six-member staff to serve as a resource to a committee to be appointed by the Governor.

A study plan was developed based on research which detailed a comparison of the New Jersey system with national standards and recommendations and outlined areas needing improvement. Flow charts were developed to pinpoint problem areas at each step of the system.

On October 29, 1975 at a conference in North Brunswick, the 54-member Adult and Juvenile Justice Advisory Committee appointed by Governor Brendan T. Byrne was convened and officially charged by the Governor with the responsibility of examining the criminal justice system and where necessary recommending standards and goals. Membership in the Committee was drawn from all segments of the adult and juvenile justice system, related social service agencies, citizen groups, scholars and local government. Dr. Robert Knowlton, Professor of Law at Rutgers University, was appointed Advisory Committee Chairman. For reasons of health, Professor Knowlton resigned shortly thereafter and Essex County Prosecutor Joseph P. Lordi was appointed Chairman.

At the October conference, the Advisory Committee was organized into four subcommittees, each designed to reflect a cross section of the Committee in an effort to facilitate interaction and rounded discussion and to ensure the compatability of recommended standards. Subcommittees were assigned specific areas to study, evaluate and draft standards in response thereto. Subcommittee I, chaired by Judith Yaskin, was assigned the subjects of court organization; judicial selection, education and training; administration of corrections and victim assistance. Subcommittee II, chaired by Marcia Richman, was given responsibility for the entire juvenile justice system covering pre-adjudication alternatives, community involvement in delinquency prevention, detention and shelter care, judicial process, dispositions and corrections. Chaired by Leon Trusty, Subcommittee III was assigned organization of police services, police role, community crime prevention and police personnel. Subcommittee IV, under the leadership of Joseph P. Lordi, assumed responsibility for pretrial processing, trial preparation, prosecution and defense, sentencing, parole and probation.

Subcommittees met on a monthly basis to discuss assigned topics, review related material and formulate standards. To facilitate subcommittee deliberations, staff prepared analyses of relevant problems; comparisons of New Jersey laws, administrative regulations, policies and practices with various national standards and recommendations and drafted standards. Standards proposed by such groups as NAC, American Bar Association, American Correctional Association, Institute of Judicial Administration/ American Bar Association Joint Study Commission, National Advisory Committee Task Force on Juvenile Justice and Delinquency Prevention, National Council on Crime and Delinquency and the U.S. Department of Health, Education and Welfare were consulted. Reports, statistics and research from criminal justice agencies in the State and around the nation were compiled by staff for use in subcommittee deliberations. In addition, each subcommittee was assisted by a core of liaison representatives from State and local criminal justice agencies. Recognized experts and scholars in the various fields of con-

centration also assisted subcommittee efforts. Approximately 250 interested and concerned practitioners and citizens contributed directly to the New Jersey standards and goals process.

Upon completion of study and formulation of standards in each topic area, subcommittee reports were presented to the Advisory Committee as a whole at adoption conferences. During such conferences, subcommittee members presented their findings and standards, dicussions were held and the standards were adopted by the Committee with the understanding that, where necessary, standards would be reconsidered in light of recommendations made at the conferences.

The accompanying narrative reports, which were prepared by staff to assist the subcommittee in its study of assigned areas and to aid the Committee in understanding the deliberations and recommendations of each subcommittee, were not voted on by the Committee as a whole. Committee members were given the opportunity to review, comment and recommend changes to narrative sections although several chapters were approved by the individual subcommittees responsible for those areas.

Adoption conferences were held in March 1976, October 1976 and March 1977. On June 23, 1976, the Advisory Committee met as a whole, not for the purpose of adopting standards but to discuss the progress of the Committee and exchange ideas. Informal subcommittee work sessions were also held.

On May 2, 3 and 16, 1977 open meetings were held at SLEPA for the purpose of presenting and discussing separate opinions and dissents and to provide Committee members with a final opportunity to recommend changes in the narrative sections. Subcommittee chairpersons also met in an attempt to eliminate conflicts in the report. Conflicts and contradictions were worked out where possible and in most instances, subcommittee chairpersons were able to arrive at acceptable compromises. Only one conflict could not be resolved regarding the creation of a separate versus a combined paroling authority for adults and juveniles.

This document, entitled *Standards and Goals for the New Jersey Criminal Justice System,* which embodies 311 standards and over 225 pages of narrative, constitutes the final report of the Governor's Adult and Juvenile Justice Advisory Committee. At the concluding conference on June 24, 1977, this report was presented to Attorney General William F. Hyland who accepted it on behalf of Governor Byrne.

Document Format

In keeping with the Advisory Committee's treatment of the adult and juvenile justice systems as separate entities, this document is organized into Adult Criminal Justice System and Juvenile System sections. Standards for each system are presented at the beginning of each section to highlight their importance and for ease of reference.

Following the standards are the narrative chapters, arranged to simulate as much as possible the chronological flow of the criminal justice process. Each narrative chapter contains an introduction outlining the subject, followed by a problem assessment which identifies relevant difficulties and problem areas needing improvement. The section entitled "New Jersey's Status in Comparison with the National Standards" is an analysis of existing New Jersey law, regulations and practices in light of various national recommendations. Each chapter concludes with a commentary section which expresses the intent of the Committee in recommending its specific standards and proposals, identifies major areas of debate during subcommittee deliberations, clarifies certain concepts embodied in the standards and in some cases offers suggestions for implementation. The Victim Assistance and Community Crime Prevention chapters also include Supporting Methodology sections which recommend criteria and strategies considered important for implementation but not appropriate for inclusion in the standards.

All separate statements and dissenting opinions of Advisory Committee members are included in the appendices to this report. Tables of court rules, statutes and court cases are also attached for reference purposes.

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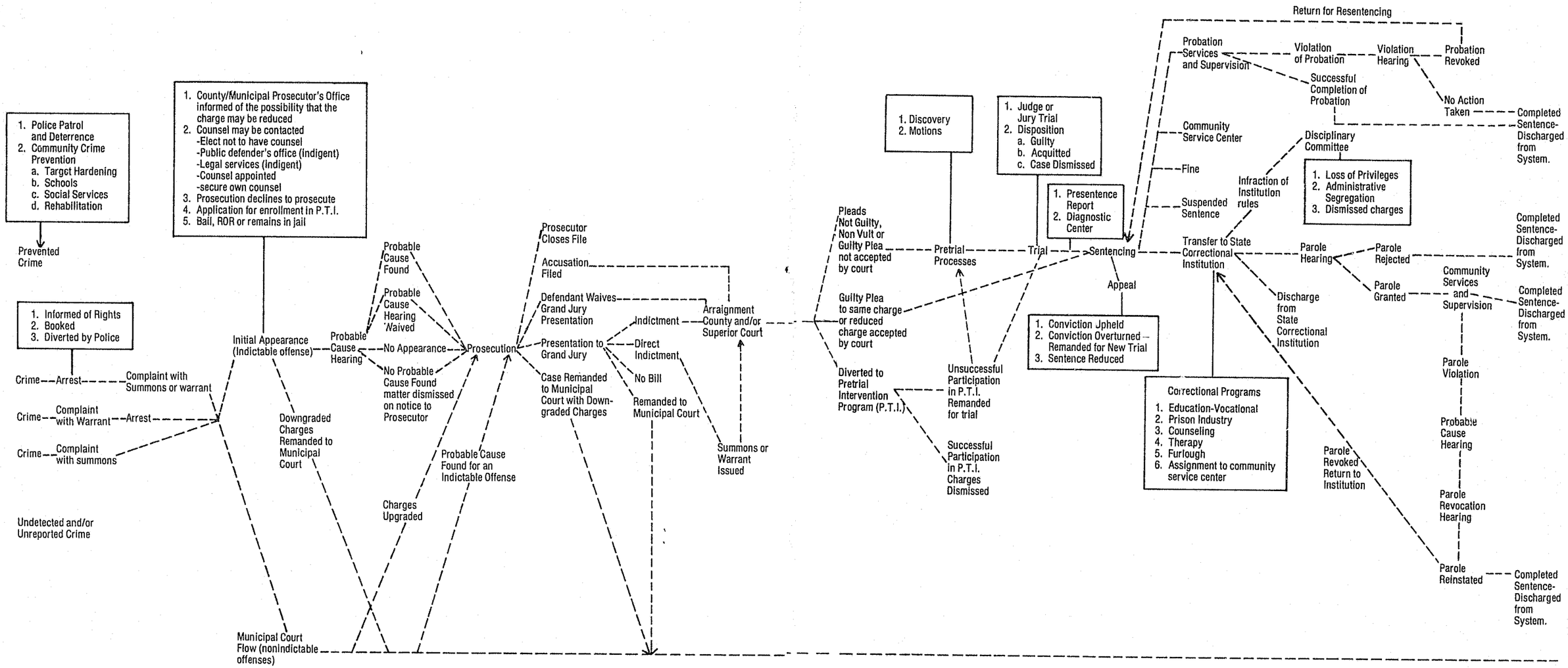
SECTION I

ADULT JUSTICE SYSTEM

Flow Chart of The Adult Justice System
For Indictable Offenses



STANDARDS FOR THE ORGANIZATION OF POLICE SERVICES

Standard 1.1 Organization of Municipal Police Services

Every municipal government should provide complete and competent police service through an organizational structure that most effectively and efficiently meets its responsibility. The Legistature and State and county level agencies should support development of effective and efficient organization of police services.

1. Legislation should mandate that at a minimum every municipality provide for or have access to a full range of police services, 24 hours a day, seven days a week.
2. Legislation should mandate that every municipality unable to provide 24-hour, seven days a week patrol service should arrange for patrol services by formal agreement or contract with another municipality or county agency.
3. Legislation should provide for countywide or regional investigative and support services for each municipality not providing such services. Such services should include but not be limited to:
   a. Dispatching services.
   b. Investigators for areas such as violent, property, white collar, narcotics and organized crime.
   c. Tactical and conflict management units.
   d. Crime analysis and criminal information systems.
   e. Crime prevention-target hardening specialists. (See Community Crime Prevention Standard 4.6)
   f. Basic and in-service training.
   g. Physical evidence technicians.
   h. Police legal advisors.
   i. Mobile laboratories.
   j. Juvenile aid officers. (See Pre-Adjudication Alternatives Standards 1.1-1.6.)

All police agencies that do not have the frequency of need and financial resources to hire and adequately train specialists should rely on a countywide or regional law enforcement agency to provide investigative and support services. The Legislature and State level agencies should ensure that these services are provided in a manner that is responsive to the needs of each municipality on an on-call as needed basis and within a reasonable period of time.

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* See Community Crime Prevention Standard 4.6.

Standard 1.2 State Financial Assistance for Areawide Police Services

State level financial assistance should support delivery of patrol services by municipalities or combinations of municipalities, with investigative and other support services provided by countywide or regional agencies. Financial assistance should provide start-up funds for:

1. Regionalization of specific police services: the creation of county (or multi-countywide) investigative or support service (as listed in Standard 1.1) systems.*
2. Total consolidation of local police services: the merging of two or more police agencies to provide 24-hour, seven days a week police services.
3. Partial consolidation of police services: the merging of specific functional units of two or more agencies such as patrol, investigative or support services.*
4. Contracting for total police services: the provision of all police services by contract with another government (city with city, city with county, county with county, county with city, or county with state).
5. Contracting for specific police services: the provision of limited police services by contract with another police or criminal justice agency.

Municipalities and counties should receive technical assistance grants for studying the feasibility of combining or contracting police services. In-state technical assistance capabilities should be developed instead of relying on out-of-state consultants.

State financial assistance should be provided to facilitate consolidation, contracting and regionalization of police services for the following costs:

1. Extraordinary administrative and operating costs incurred by the newly formed police agency as a result of implementation of a joint program, contract or consolidation.

2. New services not previously provided or additional cost of services resulting from a joint program, contract or consolidation.

3. Equipment or supply change over.

4. Increases in personnel.

Standard 1.3 Commission on Local Police Services

Legislation should be enacted to establish a Commission on Local Police Services (COLPS) to improve the effectiveness and efficiency of the local police agencies. The membership of COLPS should include the Attorney General as chairman, the Superintendent of State Police; representatives chosen by the membership of the New Jersey Association of Chiefs of Police, Police Administrators of the State of New Jersey, the New Jersey State Patrolmen's Benevolent Association, Inc., the New Jersey State League of Municipalities, New Jersey Association of Chosen Freeholders, the New Jersey State Lodge of the Fraternal Order of Police, the criminal justice professors at New Jersey colleges and the New Jersey Association of Criminal Justice Planners; a representative of a minority group, a woman's group and at least two public groups.

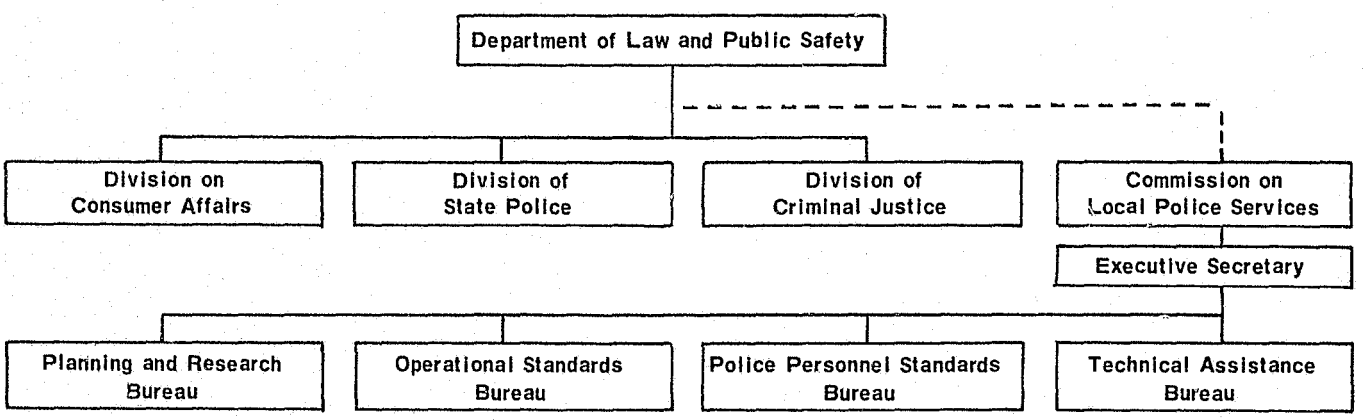
COLPS should appoint an executive secretary or director to supervise the creation of COLPS and to administer the daily activities of the COLPS staff. The staff of COLPS should be composed of a permanent staff assisted by part-time advisors, consultants and specialists who operate on an on-call as-needed basis. The Commission should avoid giving permanent full-time status to staff for studies and projects which are short-term in duration. The COLPS permanent staff should have a broad variety of educational and work experience backgrounds in areas such as police recruitment, selection, training, administration and supervision; behavioral science; research methods; modern management and administration technology; practice of criminal law and drafting legislation. COLPS should utilize the experience and resources of State level agencies which provide services to local police agencies by consolidating the appropriate functions and personnel under one Commission.

COLPS[1] should be in the organizational structure of the Department of Law and Public Safety as represented below:

[1] The Commission should enjoy divisional status within the Department of Law and Public Safety.

The Commission should have policy-making and advisory authority in the establishment of standards for police services. COLPS should have four bureaus with the following responsibilities:

1. A planning and research bureau to:
   a. Review existing and proposed criminal statutes and other laws affecting police agencies and commenting to the Legislature on their appropriateness, enforceability, clarity and ambiguity.
   b. Develop in cooperation with local police agencies interjurisdictional crime control, crime prevention, order maintenance and mutual aid plans.
   c. Represent the interests of local police agencies, upon request by them, before State agencies.
   d. Facilitate coordination of federal and State agency activities which provide assistance to local police agencies including the Department of Transportation, State Law Enforcement Planning Agency, Department of Health, Department of Defense, Department of Civil Service and Division of State Police.
   e. Develop a statewide communication plan.
   f. Initiate through specific local police agencies innovative demonstration projects in areas such as police tactics, strategies, methods and procedures.
2. A Police Personnel Standards Bureau to:
   a. Carry out the Police Training Commission's present training functions.
   b. Implement the police personnel standards as outlined in the Governor's Adult and Juvenile Justice Advisory Committee Standards on Police Personnel.
   c. Develop a statewide Training Master Plan aimed at providing all police personnel with necessary basic, in-service, specialized and management training. The plan should project the facilities and training personnel necessary to implement the plan.



3. An Operational Standards Bureau to establish minimum and optimum standards for:
   a. Providing regional police services.
   b. The level and quality of police services.
   c. The delivery of patrol and specialized services.
   d. Defining roles and duties of police agencies and police officers.
   e. Equipment.
   f. Policy and procedure manuals.
4. A Technical Assistance and Management Consultation Bureau to provide:
   a. Consultation for long range department-wide administration, operations, management and feasibility studies.
   b. General technical assistance in developing and implementing plans dealing with specific problems.
   c. Technical assistance for implementation of standards.

Standard 1.4 Minimum and Model Standards for Police Services

The Commission on Local Police Services should establish both minimum and model standards for the delivery of police services in New Jersey.

Minimum standards should be mandated to ensure that citizens throughout the State receive uniform police services consistent with the following:

1. Every municipality should be covered by 24-hour, seven days a week patrol services provided by full-time police officers who meet State standards for selection and training.
2. Every municipality and municipal police agency should have access to 24-hour investigative and other services to support patrol activities by either a local, countywide or regional agency. (See Standard 1.1.)
3. Every police agency should allocate personnel based on a written plan which includes information from crime analysis, workload analysis and a survey of community needs.
4. All police agencies should meet minimum statewide standards for recruitment, selection, basic and in-service training and promotion of police personnel. (See Police Personnel Standards.)
5. Every police agency should develop a policy, procedure and rule manual consistent with minimum statewide standards. (See Police Role Standards.)

Model standards should be developed to increase the effectiveness and efficiency of police agencies above minimum standards. Police agencies should be encouraged to achieve these standards through financial and technical assistance to facilitate their implementation.*

Standard 1.5 Implementation and Enforcement of Police Standards

Implementation of minimum standards (as discussed in Standard 1.4) should be the responsibility of the administrative head of each police agency and all municipal and county governments or relevant governmental units.

COLPS should monitor on a continuous basis the implementation of both minimum and model police standards. At least annually COLPS should issue reports on the compliance of municipal, county and regional law enforcement agencies.

1. Advisory reports should be issued to each police agency, chief executive of the respective municipal government and governmental body indicating areas in which they are in compliance and noncompliance with minimum and model standards.
2. Advisory reports on each police agency's level of compliance with minimum and model standards should be issued to the mass media covering that agency's jurisdiction.

Police agencies which meet minimum standards should be certified by COLPS. The certification process should operate as follows:

1. All existing police agencies should receive temporary certification until COLPS evaluates their compliance with statewide minimum standards for police service.
2. Once evaluated COLPS should either recertify the agency or issue a notice of noncompliance with a reasonable time limit for compliance.
3. A report on noncompliance should be forwarded to the Attorney General for appropriate action.
4. Any municipality seeking to establish a police agency should be required to submit a plan and time table for achieving compliance with minimum standards to COLPS before receiving temporary certification.
5. Every police agency should be recertified at least every five years.

Funding for police agencies should be contingent upon compliance with minimum standards for police services.

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* Model standards should be developed for all aspects of police work including but not limited to: personnel, recruitment, selection, training and promotion; management and administration; policies and procedures; police/community physical planning; command and control planning; cooperation and coordination between police agencies and other elements of the criminal justice system; specialized functions such as juvenile operations, investigations, crime analysis, crime prevention and evidence technicians; police agency size based on demographic data, crime rate and calls for police service; use of professional expertise from the medical, business, educational and behavioral science fields.

POLICE PERSONNEL STANDARDS

Standard 2.1 General Principle of Police Personnel Standards

The objective of a police agency is not only to enforce the law but to maintain order. Order maintenance requires an officer to possess the ability to manage conflict rather than suppress it. Effective conflict management* is facilitated when police officers are properly educated, selected, trained and rewarded for performance.

Effective and efficient police work requires police officers who are emotionally stable, intelligent, representative of the community to be policed, of good character and who possess an understanding of:

1. The dynamics of human behavior.
2. The cultural characteristics of groups living and working within the community.
3. The social and psychological needs of people.
4. Human emotions in a time of crisis.

Standard 2.2 Authority to Establish Uniform Statewide Personnel Standards for Police Officers

Legislation should be enacted to expand the authority of the Police Training Commission (PTC) or to establish a Commission on Local Police Services (COLPS) to encompass the establishment of uniform statewide standards for the recruitment, selection, education, training and promotion of police personnel which should be implemented by the Department of Civil Service and all police agencies. Within COLPS or the PTC there should be a Police Personnel Standards Bureau (PPSB). This legislation should mandate that:

1. For membership of the Commission see Organization of Police Services Standard 1.3.

2. The PPSB should have (or utilize the services on a contract basis of) qualified staff with experience in police selection theory and practice, psychiatric and psychological testing, mental ability and physical ability testing, modern personnel administration, behavioral science and research methods, education and training, recruiting, modern management and administration technology and personnel with police experience.

3. The PPSB and all the personnel standards contained herein should apply to all police agencies presently covered under the Police Training Act.[1]

4. The PPSB should establish and periodically update statewide uniform standards for recruitment, selection, education, training and promotion of police officers which are job-related and consistent with Federal Equal Employment Opportunity Commission (FEEOC) guidelines.

5. The PPSB should validate, through the use of proven research methods, the recruitment, education, selection, training and promotion standards to ensure that they are job-related and consistent with FEEOC guidelines.

6. The PPSB should validate or assemble a group[2] to validate physical, mental ability and psychological tests for determining the qualifications of police applicants which have been developed by nationally funded study groups. When valid tests cannot be found, the PPSB should develop or commission to be developed validated tests for use by police agencies throughout the State. (See Standard 2.9.)

7. The PPSB should validate or assemble a group[2] to validate nationally developed ability and aptitude tests for determining the qualifications of police officers for promotion and selection for specialized functions. If nationally developed tests cannot be found the PPSB should develop or commission a study group to develop validated ability and aptitude tests for use by all police agencies in New Jersey. (See Standard 2.22.)

8. The PPSB should develop or assemble a study group[2] to develop for use by all police agencies in the State a valid scoring system based on physical, mental, psychological, background and achievement characteristics to be used in ranking the qualifications of police applicants. (See Standard 2.8.)

9. The PPSB should develop or assemble a study group[2] to develop job-related scoring systems for ranking the qualifications of police officers for promotion or assignment to specialized functions. (See Standard 2.21.)

10. The PPSB should provide technical assistance services to local police agencies for implementing standards for recruitment, education, selection, training, promotion and management.

11. The PPSB should ensure that the standards are met by inspecting for local compliance and certifying as competent to exercise police authority only those police officers who have met mandated selec-

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* Conflict management is the application of nonauthoritarian police techniques during interpersonal and group conflicts which results in reductions of hostilities and provides disputants with alternatives to conflict rather than an escalation to violence, assault, injuries, death and/or arrests.

[1] All police agencies not covered under this Act should endeavor to meet these standards.

[2] The Department of Civil Service could be commissioned to validate tests and develop scoring systems for use by all New Jersey police agencies.

tion and training standards.

12. Funds should be appropriated to enable the PPSB to acquire the needed staff and provide technical assistance and financial incentives for implementation of standards established by the PPSB.

The Legislature should abandon its practice of passing special legislation which waives selection requirements for individual police applicants who do not meet minimum selection standards. All police agencies should meet or exceed the police personnel standards established by the Governor's Adult and Juvenile Justice Advisory Commission on Criminal Justice Standards and Goals and the PPSB.

Standard 2.3 Financial Incentives to Police Agencies for Compliance with Police Personnel Standards and State Financing of Police Academies

The State of New Jersey should, by 1980, reimburse every local police agency which meets the minimum recruitment, selection, education, training and promotion standards for at least 25% of the total funds expended by the agency in payment of all salaries for a period of at least two years after initial compliance is determined.

Every police agency should be reimbursed by the State of New Jersey for 100% of the salary of police officers while attending training academies or be provided with appropriate financial incentives for every police employee's satisfactory completion of any State mandated and approved police training program.

Every police agency should be reimbursed or provided by the State of New Jersey with start-up funds for implementation of recruitment, selection and promotional standards for a period not to exceed two years unless it is demonstrated that the program requires more than two years for implementation.

Standard 2.4 General Police Recruiting

Every police agency should ensure the availability of qualified applicants to fill police officer vacancies by aggressive recruitment efforts.

1. The police agency should administer its own recruitment program.
   a. The agency should assign to specialized recruitment activities employees who are thoroughly familiar with the policies and procedures of the agency and with the ideals and practices of professional law enforcement.
   b. Agencies without the expertise to recruit police applicants successfully should seek expertise from the Department of Civil Service or form cooperative personnel systems with other police agencies that are likely to benefit from such an association. Every police agency, however, should retain administrative control of its recruitment activities.

2. The police agency should direct recruitment exclusively toward attracting the best qualified candidates. In so doing it:
   a. Should make college-educated applicants a target of recruitment efforts.
   b. Should concentrate recruitment resources according to the agency's need for personnel from various ethnic backgrounds.
   c. Should concentrate recruitment resources on attracting females into applying for positions as sworn police officers.
   d. Should seek individuals with an ability to speak a language spoken by a sizeable portion of the community or who are familiar with the people and culture of the community acquired by living in the community.

3. Every police agency immediately should ensure that it presents no artificial or arbitrary barriers —cultural or institutional—to discourage qualified individuals from seeking employment or from being employed as police officers. Affirmative action programs that seek to recruit minorities should be developed regardless of the ethnic make-up of the community and should at least attempt to provide an ethnic make-up in each police agency which reflects the ethnic composition of the community to be served. The PPSB should provide technical assistance to police agencies in the development of affirmative action programs. The affirmative action program should ensure an adequate pool of qualified minority applicants.
   a. Selection, training, promotion and salary policies are not discriminatory.
   b. Career paths for women and minorities should allow each individual to attain a position classification commensurate with his/her particular degree of experience, skill and ability.
   c. Separate police organizational entities composed solely of women should be abolished except those which are identified by function or objective, such as a female jail facility within a multi-unit police organization.

4. Every police agency should immediately ensure that there exists no agency policy that discourages qualified women from seeking employment as sworn or civilian personnel or prevents them from realizing their full employment potential.

5. To facilitate the recruitment of women and minorities police agencies should ensure that:

6. Where the pool of college-educated, ethnic and female applicants does not elicit qualified appli-

cants, intensified recruitment programs should be implemented to create larger pools of such applicants.

7. The police agency and Department of Civil Service should seek professional assistance—such as that available in advertising, media and public relations firms—to research and develop increasingly effective recruitment methods.

8. The police agency and Department of Civil Service should evaluate the effectiveness of all recruitment methods continually so that successful methods may be emphasized and unsuccessful ones discarded.

Standard 2.5 Police Salaries

Local government should establish and maintain salaries that attract and retain qualified personnel for police work. Police salaries should reward the productivity of police officers on an individual basis.

1. Every local government should establish an entry-level sworn police personnel salary that enables the agency to compete successfully with other employers seeking individuals of the same age, intelligence, abilities, integrity and education.

2. Every local government should establish a wide salary range within its basic occupational classification, with the maximum salary sufficient to retain qualified personnel by providing them with the opportunity for significant salary advancement without promotion to supervisory or management positions.

3. Every local government should establish a salary review procedure to ensure the automatic annual adjustment of police salaries to reflect the prevailing wages in the local economy and to meet the competition from other employers. The criteria applied in this annual salary review procedure should not be limited to cost of living increases, average earnings in other occupations or other economic considerations which, applied in isolation, can inhibit effective salary administration.

4. Every local government should establish a sufficient salary separation between job classifications to provide promotional incentives and to retain competent supervisors and managers.

5. Every local government should provide its police agency's chief executive with a salary that is commensurate with the responsibility of the office.

6. Every local government should establish within its salary structure a merit system that rewards demonstrated excellence in the performance of assigned duties.

Standard 2.6 Police Selection Standards

The PPSB should establish and periodically update statewide uniform standards for the selection of police officers. The Department of Civil Service and all police agencies should implement those standards. Selection standards should be job-related and consistent with Federal Equal Employment Opportunity guidelines. The standards should cover the following criteria:

1. Character, with consideration given to the responsibilities of police officers; the need for public trust and confidence in police personnel; contemporary conceptions of acceptable behavior and mores of differing communities; activities of police candidates prior to application for police service which would indicate potential weaknesses in character which may be exploited by criminal elements or predispose a candidate to participate in illegal or unethical conduct; defining *N.J.S.A.* 40A:14-22 by listing the types of crimes for which candidates should be disqualified under the moral turpitude provision and elucidating what is considered good moral character.
2. Personality profile, with consideration given to the need for personnel who are psychologically healthy and capable of enduring emotional stress.
3. Education, with consideration given to the mental skills and knowledge necessary to perform the police function properly.

The PPSB should validate the selection standards through the use of proven research methodologies.

Standard 2.7 The Selection Process

Legislation should be enacted mandating every police agency to employ or utilize other agencies or departments to employ a formal process for the selection of police officers which meets minimum uniform statewide standards established by the Police Personnel Standards Bureau (PPSB). This process should include a written test on mental ability and aptitude, an oral interview, a physical examination, a psychological examination or test and an in-depth background investigation prior to appointment.

1. All tests and examinations should be job-related and consistent with Federal Equal Employment Opportunity Commission guidelines.

2. Police departments that can allocate manpower and resources to a comprehensive police selection process should administer these tests and examinations under the supervision of qualified personnel. If a police department cannot allocate resources for a comprehensive selection process, examinations and tests should be administered on a regional basis by an agency with statewide jurisdiction such as the Department of Civil Service or by police training academies. Similarly, background investigations should be performed by the county prosecutor's office only if the police agency does not have sufficient resources.

3. All personnel who administer and interpret examination results should be trained and certified for this function by the PPSB or the Department of Education.

4. A random sample of tests and examinations which require interpretation should be annually audited to ensure proper interpretation of results and provide feedback on the performance of test administrators for the purpose of identifying needs for future training of test administrators and their recertification.

5. Scoring systems for ranking the qualifications of each police applicant should include characteristics such as test scores, educational achievement, ability to communicate with a sizable portion of the community and knowledge of the community's culture.

Standard 2.8 Development and Validation of a Selection Scoring System

The PPSB should assemble a competent group of police practitioners in cooperation with the Department of Civil Service, behavioral scientists and personnel administrators to validate nationally funded selection scoring systems or research, develop and validate a selection scoring system which balances physical, mental, psychological and achievement characteristics and background factors that are reliable and valid predictors of police officer performance for use by all appointing authorities responsible for selecting police officers. Background factors should include the ability to communicate with a sizable portion of the community and knowledge of the culture, mores and people in the community to be policed gained by living in the community. This group:

1. Should identify those characteristics that are valid and reliable predictors of a police applicant's value—to self, the police agency and the public—as a police officer.

2. Should determine the relative values of characteristics such as education level, aptitude test scores, psychological test scores and background factors and levels within characteristics, as predictors of police officer performance and should develop a system for representing these values numerically and combining them to arrive at a score.

3. Should recommend for various types of police agencies operating under various conditions the minimum qualifying scores that validly and reliably predict performance that warrants hiring and provide any technical assistance necessary for the agency to validate these scores and the criteria on which they are based.

Standard 2.9 Development of Job-Related Ability and Personality Inventory Test for Police Applicants

The PPSB should assemble a competent group of police practitioners and behavioral scientists to validate nationally developed psychological tests and personality profile inventories for use by all police agencies or the Department of Civil Service for screening police applicants. The Department of Civil Service should continue to expand the criteria included on Civil Service tests for measuring the mental abilities and aptitude of police applicants. The application of nationally developed police applicant mental ability and aptitude tests should be studied by the Department of Civil Service and/or the PPSB and a competent group of police practitioners to determine their validity in testing New Jersey police applicants. New Jersey should develop mental ability and psychological tests only if national studies have been proven to be invalid. The tests and personality profile inventories should be job-related and consistent with FEEOC guidelines.

1. The research should identify the personality profile, mental skills, aptitude and knowledge necessary for successful performance of various police tasks. The research should include a random sample of minority and female police officers as well as a random sample of the police population as a whole.

   a. The functional complexity of the police mission should be defined specifically, following a comprehensive analysis of the police tasks which involves police officers and a random sample of the civilian population of New Jersey in the process;
   b. Various mental skills, knowledge levels and personality profiles should be defined and matched to the police function.

2. Based on results of this research, tests or test models and personality profile norms should be developed and validated to determine reliably whether an applicant is qualified to perform the tasks of the position applied for.

Standard 2.10 Psychological Testing Examinations and Observations

Legislation should be enacted mandating that all police applicants be psychologically screened to determine whether they are emotionally stable and capable of performing under stress. The process of psychological screening should include the following elements:

1. Every police department must utilize the services of a qualified psychologist* certified to examine

* The definition of a qualified psychologist is a psychologist licensed by the New Jersey Board of Psychological Examiners. To be licensed, a psychologist must have a Ph.D. in psychology, two years of supervised training and take a written and oral examination.

police candidates prior to appointment. The New Jersey Board of Psychological Examiners should determine which psychologists are qualified to psychologically examine and test police applicants and certify only those psychologists to perform psychological screening of police applicants. It is preferred that psychological organizations, institutes or clinics administer psychological examinations on a regional basis. Psychological examiners should be periodically recertified based on performance evaluations by the PPSB.

2. The PPSB should periodically determine the effectiveness of psychological screening by comparing the recommendations of psychological screeners with data provided by police agencies concerning the performance of police officers who have been screened. The PPSB should query police agencies concerning the effectiveness of psychologists in examining police candidates and pass this information on to the New Jersey Board of Psychological Examiners.

3. As an alternative to each police agency hiring its own psychologists, a pool of qualified psychologists should be provided at regional centers by the State on an as-needed basis.

4. In those cases where a psychologist rates a candidate as marginal or possessing potential emotional problems which may surface under acute or chronic stress, the candidate should be examined independently by another psychologist and a joint evaluation filed.

5. Psychological tests can be administered and scored by laypeople if purely objective in nature but all interpretations of tests and examinations should be performed by qualified, certified psychologists.

6. Psychological tests and examinations for police officers which are validated and job-related should be used on a uniform basis throughout the State, but until such tests and examinations are developed existing tests and examinations should be used.

7. Psychological tests should be administered while police recruits are attending police academies.

8. During a police recruit's probationary period of employment, which should be at least one year, field training officers and supervisors should rate recruits on their ability to handle emotional stress and their general behavior and demeanor while performing police duties.

9. Every police agency should establish procedures and guidelines for evaluating a recruit's ability to perform under stress and general behavior and demeanor while performing police duties or utilize procedures and guidelines developed by the Police Personnel Standards Bureau.

10. Police recruits who are rated as having potential psychological problems during the probationary period of employment or while attending a police academy should be re-examined by a qualified psychologist.

11. Police applicants, trainees or probationary recruits who are not certified by the Police Personnel Standards Bureau as qualified to perform police work for psychological reasons, should have the right to appeal the decision to the Department of Civil Service's Medical Review Board or a similarly composed board.

12. Funds should be appropriated to reimburse each police agency for the cost of psychological examinations.

Standard 2.11 Oral Interviews

Every applicant for a position as a law enforcement officer should be subjected to an oral interview by a panel of three individuals prior to appointment. Interview panels should be frequently reconstituted and composed of a representative of the community to be policed, the police agency and local government. Oral interviewers should receive at least two hours of training in proper interview technique and procedure prior to taking part in oral interviews. The panel should rate the candidate on a number of factors and issue a recommendation to the employer for hiring or not hiring the applicant.

The PPSB should develop and promulgate a standardized process and series of questions to be used by all police agencies to elicit responses which will enable oral review panels to rate a candidate on several characteristics which cannot be discovered by testing and background investigations. The characteristics to be reviewed and questions asked by oral review panels should be consistent with FEEOC guidelines. The PPSB should define those characterisics and include those which are appropriate in the standardized interview process.

Standard 2.12 Background Investigation

Legislation should be enacted mandating that the background of all applicants for positions as sworn police officers be investigated. Each applicant after initial physical performance, mental ability and psychological testing who is being seriously considered for a position as sworn police officer, should receive a comprehensive background investigation. The background investigation should determine whether applicants have character consistent with the following criteria: honesty, reliability, adaptability, industriousness, motivation, respect for authority and contemporary morality.

Background investigations should involve the following procedures:

1. A questionnaire completed by applicants covering their personal, social, marital and familial relationships; financial, educational, residential, cri-

minal, health, employment and military history; and their citizenship.

2. Information on the questionnaires should be verified through personal and telephone interviews with the applicant and people associated with the applicant such as employers, classmates, teachers, neighbors and landlords.

3. Personal records should be presented by the applicant such as birth and marriage certificates, annulment and divorce papers, unemployment records, military discharges, driver's license and automobile registration.

4. Fingerprints should be obtained and checked with local, State and federal law enforcement agencies to verify criminal history.

5. All applicants should have access to the complete record of a background investigation within ten days after it is requested.

Applicants should receive only one background investigation regardless of the number of New Jersey law enforcement agencies they apply to for employment. Information obtained through background investigations should be stored by the police agency that performed the investigation for a period not to exceed five years. The information should not be placed in computer form.

The names of all applicants on whom background investigations have been performed and the agency that administered the investigation should be maintained in a file by the PPSB. Before a police agency investigates the background of an applicant it should contact the PPSB to determine whether an investigation has been conducted in order to avoid duplication. Each agency seeking to obtain the record of a background investigation should update the record.

Comprehensive background investigations should be administered by police departments only when they can allocate sufficient manpower to expend an average of 40 hours per applicant for investigation. Agencies for which adequate resources do not exist for administering comprehensive background investigations should utilize the services of the County Prosecutor's Office.

All personnel involved in investigating backgrounds of police applicants should receive training in:

1. Procedures and standards for investigating police applicant's backgrounds.
2. Skills and techniques of interviewing.

Standard 2.13 Review of Selection Decisions

Every police agency should select the best qualified applicants for positions as police officers. Applicants should not be disqualified for a position as police officer on the basis of non-job-related factors such as race, color, creed, sex, religion, national origin or political affiliation.

Every police agency should develop written policy to be disseminated to the public concerning standards and procedures for selecting police officers. The policy should include a procedure for informing police applicants concerning the reasons for which they were not hired and methods for appealing selection decisions.

1. Police applicants who are rated as qualified or unqualified for employment for any reason should be notified in writing. Those who are rated as unqualified should be notified as to the reasons for disqualification within ten days of disqualification.

2. The applicant should be afforded the opportunity to appeal the decision if the applicant determines that the decision was based on incorrect information or discrimination.

3. Appeals should be reviewed by an impartial three-member board composed of a representative from the PPSB, local police agencies and the public sector.

4. The appellant should have the opportunity to be represented by counsel and present evidence and testimony concerning the candidate's qualifications at a review hearing.

5. The review board should decide on the merits of each case and make a recommendation to the hiring agency. The decision should not be binding but advisory.

Standard 2.14 Preparatory Training for Police Officers

For the safety of the public and the individual police officer, legislation should be enacted mandating every sworn police officer in New Jersey to complete successfully the State mandated minimum basic training prior to being authorized to exercise police authority.* No appointment to positions as sworn police officers should be made until the individuals have been accepted into a specific police academy class. Police agencies should make appointments coincide with entrance of a recruit into a police academy. Temporary certification should be issued to police recruits following the successful completion of basic training. This certification should be made permanent upon the successful completion of field training and a one year probationary period (which should commence with appointment of the police officer).

Standard 2.15 Private Security Guards

Legislation should be enacted mandating all pri-

* Police authority as referred to herein includes enforcing the laws and ordinances of the State and municipality, keeping the peace, carrying a weapon and using force if necessary to fulfill these duties.

vate security guards who are authorized to carry a firearm to receive firearms training, qualify with the weapon and be trained as to the laws and proper procedures for the use of firearms and force at a PPSB-approved academy. The expense of the training should be assumed by the organizations utilizing private security guards.

Standard 2.16 Selection, Training and Assignment of Special Police Officer Reserves

Every community with a need to supplement the regular police force to meet seasonal or emergency needs should organize special police officers into a reserve system. Special police reserve officers should only be assigned on a 40-hour week basis when temporary increases in population or emergencies significantly overburden a police agency. Part-time special police officers should only be used to supplement a police agency's manpower needs during emergencies, to correct unique deployment problems or to meet manpower shortages until full-time police officers can be hired and trained.

Every police agency should consider a special police reserve system as a potential career development program. Individuals who successfully perform the duties of a special police officer should be given the opportunity if qualified to obtain additional training and join the ranks of sworn police officers.

To realize the maximum benefit from special police officer reserve programs legislation should be enacted mandating that every police agency:

1. Should establish recruitment and selection standards equivalent to those for regular sworn personnel except that the reserve specialist should be selected on the basis of those limited duties which will be performed.
2. Should provide reserve generalist training equivalent to that provided regular sworn personnel if the duties are the same as regular police officers and should provide reserve specialist training required by the specialty to which the reservist will be assigned.
3. Should ensure that the reserve training program meets or exceeds State standards that regulate the training of regular, part-time or reserve officers.
4. Should assign the reserve generalist to supplement regular police personnel in the day-to-day delivery of police services and assign the reserve specialist to perform services within a particular field of expertise.
5. Should establish a reserve in-service training program equivalent to that for regular sworn personnel.
6. Should furnish the generalist reserve officer with the same uniform and equipment as a regular sworn officer only upon the completion of all training requirements. Until all reserve generalist training requirements are completed, uniforms should readily identify reserve officers, and reserve officers should perform duties only under the direct supervision of a regular sworn officer.

The Police Personnel Standards Bureau (PPSB), in cooperation with police academies and law enforcement agencies, should be authorized by legislation to develop a minimum basic training course for special police officers that is feasible to implement given the short term, part-time nature of special police assignments. Where appropriate, special police trainees should be permitted to substitute college level police science courses for basic training. Such substitution should be approved by the PPSB. Firearms training should be provided at PPSB-approved police academies. Special police trainees should successfully pass a job-related test and qualify with firearms prior to being authorized to exercise police authority.

Where possible, special police officers should be assigned to narrowly defined duties in which specific training has been obtained. Special police who are hired to work as traffic guards, watchmen, dispatchers, parking attendants, clerks, meter maids or school crossing guards should not be assigned to patrol duties unless they have received patrol training.

Standard 2.17 Probationary Period and Field Training for Police Recruits

Legislation should be enacted mandating every police agency to provide newly appointed police officers with coached field training immediately upon completion of the police academy basic training course and extend the probationary period to one year. The probationary period should commence upon the recruit's appointment.

Newly appointed police officers should not be assigned to patrol duties without having received field training from a police officer trained and certified as a field trainer. The field training program should include the following elements:

1. A minimum of four months of field training with a sworn police employee who has been certified as a training coach.
2. Rotation in field assignments to expose the employee to varying operational and community experiences.
3. Documentation of employee performance in specific field experiences to assist in evaluating the employee and to provide feedback on training program effectiveness.

Only police officers with the ability to convey essentials of the job to others and the desire to develop new employees should be selected as field trainers.

Training for field trainers should include but not be limited to the following:

1. The supervisor's role.
2. Supervision and human behavior.
3. Personnel evaluation.
4. Problem solving techniques.
5. Teaching methods.
6. Selection processes.
7. Counseling.
8. Partner relations.

Field trainers should be responsible for bridging the gap between what is learned at the training academy and the realities, problems and ordinances of each individual community.

Standard 2.18 In-Service Training*

The Police Personnel Standards Bureau (PPSB), in cooperation with police academies and police agencies in New Jersey should define and annually review/update a multi-topic, job-related, in-service training curriculum for patrol officers, officers performing specialized functions and superior officers as determined by surveys of training needs. Legislation should be enacted mandating every police agency to require all available officers to participate in annual in-service training. The number of hours of training for each officer should be determined on the basis of the curriculum developed by the PPSB.

The in-service training curriculum should include a combination of courses to be provided at training academies and within each police department. In-service training should be designed to maintain, update and improve the necessary knowledge and skills of each position. Where feasible, training officers for each police agency should attend statewide in-service training programs designed for generalist police officers and return to their respective agencies to pass on the skills and knowledge obtained during those programs instead of sending large numbers of officers to expensive out-of-house training programs.

Training for newly promoted officers and officers newly assigned to specialized functions should occur within six months of the new assignment. Every police agency should ensure that the information presented during annual and routine training is included, in part, in promotion examinations and that satisfactory completion of training programs is recorded in the police employee's personnel folder in order to encourage active participation in these training programs.

Every police training academy serving more than one police agency should enable the police chief executives of participating agencies to choose for their personnel, elective subjects in addition to the minimum mandated training. Every police agency should be required to submit an in-service training plan annually for the approval of the PPSB. The plan should include the projected in-house and out-of-house training programs for the coming year.

Standard 2.19 Instruction Quality Control

Every police training entity should immediately develop quality control measures to ensure that training performance objectives are met. Every training program should ensure that the instructors, presentation methods and training materials are the best available. Every police training academy and every police agency providing training should ensure that all its instructors are qualified by experience, education and training. All trainers should be certified as qualified by the PPSB.

Standard 2.20 Planning and Evaluating Training Programs

Every police academy and agency should recognize the importance of evaluation for determining the effectiveness of training and in planning future training. Evaluation of police training should include the following:

1. Every police academy and agency providing training should establish specific objectives and a curriculum for each in-house training program.
2. Every police agency providing training should ensure that its training programs meet the needs of the community as well as the police.
3. The Police Personnel Standards Bureau (PPSB) should monitor all basic and in-service training programs through periodic review of the objectives, curricula and instructor performance. Reports should be prepared by the PPSB outlining the training performance of each training academy and agency with recommendations for improvements.
4. Each training academy and police agency should periodically evaluate the quality of instructors.

Standard 2.21 Development of Job-Related Scoring Systems for Selecting Personnel for Promotion and Specialized Assignment

The Police Personnel Standards Bureau should authorize a professionally recognized task force to develop a scoring system for objectively ranking the qualifications of personnel for promotion and specialized assignments. The task force should involve a competent body of police practitioners, behavioral scientists and personnel administrators in the development process. The scoring systems should be developed for applicability to the Depart-

* See Community Crime Prevention Standard 4.7.

ment of Civil Service and/or police agencies throughout New Jersey.

The scoring systems should assign a numerical weight to each of the following factors:

1. Educational achievement level.
2. Training achievement level.
3. Number of years of experience in police work.
4. Scores on job-related promotional and specialty tests.
5. Annual performance evaluations.
6. Oral interviews.

Those individuals with the highest total scores should be considered for promotion.

Standard 2.22 Development of Job-Related Tests for Selecting Officers for Specialization and Promotion

The Police Personnel Standards Bureau should authorize a professionally recognized organization or study group to develop job-related tests for use in selecting police officers for promotion and specialized assignments. The organization or group should involve in the process of test development a competent body of behavioral scientists with experience in the development of aptitude and ability tests and police practitioners.

Tests should measure candidates on their knowledge and aptitude directly related to each type of specialty and superior position being applied for. The tests should be based on research which: (1) Identifies the specific role, task and performance objectives for each position. These perceptions should be compared with actual practice. (2) Clearly establishes the knowledge and skill requirements for each position. Candidates for promotion and specialized assignment should be informed in advance of the subjects on which they will be tested and the sources of information on those subjects such as books, reports, training and education programs.

Standard 2.23 Model Standards for the Promotion, Training and Education of Officers of Superior Rank

The Police Personnel Standards Bureau (PPSB) should develop model standards to be used by police agencies and communities throughout the State for determining whether an officer has appropriate qualifications for promotion. The standards should be flexible and provide a balance between varying levels of education and training achievement with work experience. An officer who has successfully completed an extensive range of job-related educational and/or training should qualify for promotion after fewer years of police experience than an officer who has not obtained higher education or training. By 1981 all police officers seeking promotion should be required to achieve the minimum qualification.

The PPSB should establish a minimum job-related training curriculum for officers of superior rank which is consistent with the level of responsibility and functions of the position. Officers should receive and successfully complete at least 100 hours of job-related training or the educational equivalent and one year on probation prior to promotion. If an officer fails to be promoted upon completion of these requirements, he or she should be allowed to appeal the decision to the independent review board described in Standard 2.13.

Superior officers should be required to participate and successfully complete 20 hours of job-related in-service training or the educational equivalent every year. The PPSB should identify educational courses which can be substituted for the training curriculum.

Educational and training requirements for supervisory, middle management and executive positions should be based on research which identifies specific roles, tasks and performance objectives of superior level positions as well as supervisory, managerial and administrative needs of New Jersey police agencies.

The minimum training or education equivalent for police superiors should include but not be limited to:

1. Traditional and modern organization theory.
2. System analysis of organizations.
3. Managerial behavior.
4. Managing organizational change.
5. Planning, evaluation and control for programs and organizations.
6. Supervisory techniques and role.
7. Manpower allocation and distribution.
8. Policy and procedure development.
9. Personnel management.
10. Record keeping and simplification of reports.
11. Planning, programming and budgeting systems.
12. Motivation in organization.
13. Criminal justice system cooperation and coordination.

Training and education programs for police superiors should, whenever possible, combine sound police management subject matter with modern business and public administration techniques.

Standard 2.24 Model Standards for Selection for Specialized Assignment

The Police Personnel Standards Bureau (PPSB) should develop model standards to be used by police agencies and communities throughout the State for determining whether an officer has appropriate qualifications for assignment to each specialized function. Based on the model standards for each specialized area every police agency should establish written policy defining specific criteria for the selection and placement of specialist personnel so that they

are effectively matched to the requirements of each specialty. The PPSB should determine, through research, whether the model standards are appropriate and make any necessary adjustments.

By 1981 all police agencies should develop standards which are consistent with the PPSB model standards.

1. Every police agency should disseminate agency-wide written announcements describing anticipated specialist position openings. These announcements should include:
   a. The minimum personnel requirements for each position; and
   b. The specialized skills or other attributes required by the position.

2. Every police agency should establish written minimum requirements for every specialist position. These requirements should stipulate the required:
   a. Length and diversity of experience;
   b. Formal education; and
   c. Specialized skills, knowledge and experience.

3. Every police agency should establish written training requirements for each specialty. These requirements may include:
   a. Formal preassignment training; and
   b. Formal on-the-job training.

4. Every police agency should require satisfactory completion of an internally administered internship in any specialist position before regular assignment to that position.

Standard 2.25 Educational Incentives for Police Officers

Every police agency should immediately adopt a formal program of educational incentives to encourage police officers to achieve a college-level education. Colleges and universities, particularly those providing educational programs expressly for police personnel, should schedule classes at a time when police officers can attend.

1. When it does not interfere with efficient administration of police agencies, duty and shift assignments should be made to accommodate attendance at local colleges; any shift or duty rotation system should also be designed to facilitate college attendance.

2. Financial assistance to defray the expense of books, materials, tuition and other reasonable expenses should be provided to a police officer when:
   a. Enrolled in courses or pursuing a degree that will increase, directly or indirectly, his or her value to the police service; and
   b. Job performance is satisfactory.

3. Incentive pay should be provided for the attainment of specified levels of academic achievement. Educational incentive pay should escalate with attainment of higher levels of education and higher ranks.

4. The State Department of Higher Education should require all colleges and universities, particularly those providing educational programs expressly for police personnel, to schedule classes at hours and locations that will facilitate the attendance of police officers.
   a. Classes should be scheduled for presentation during daytime and evening hours within the same academic period, semester or quarter;
   b. When appropriate, colleges and universities should present classes at locations other than the main campus so police officers can attend more conveniently;
   c. College-level courses should not be presented in police departments or facilities.

Standard 2.26 Personnel Evaluation for Promotion and Advancement

Every police agency should immediately begin a periodic evaluation of all personnel in terms of their potential to fill positions of greater responsibility. The selection of personnel for promotion and advancement should be based on criteria that relate specifically to the responsibilities and duties of the higher position.

1. Every agency periodically should evaluate the potential of every employee to perform at the next higher level of responsibility.

2. Every agency should require that personnel demonstrate the ability to assume greater responsibility prior to promotion or advancement and should continue to observe employee performance closely during a probationary period of at least one year from the date of promotion or advancement.

STANDARDS FOR POLICE ROLE: POLICIES, PROCEDURES AND RULES

Standard 3.1 Establishment of Model Policy, Procedure and Rule Manuals

The Commission on Local Police Services should engage in a continuous process of developing model manuals to assist police agencies in developing departmental policy, procedure and rule statements. The model manuals should be based on extensive research which identifies generally accepted policies and procedures and innovative policies and procedures which are proven effective through experimental testing in police agencies. Supplements to the manuals should be disseminated to all police agencies listing new court rules, court decisions and statutes which impact on police agencies.

Standard 3.2 Statutory Reform

The Commission on Local Police Services should have continuous responsibility for evaluating statutes relating to police authority and annually recommending to the Legislature needed additions, deletions and clarification. All recommendations should be based on research involving surveys of police, prosecution, courts, public defender and correctional personnnel; attitude surveys of the public concerning what behavior they want to be outlawed; and analyses of judicial dispositions of criminal cases especially in the areas of sentencing disparities and judicial discretion. The Commission should:

1. Analyze statutes relating to police authority and powers and recommend appropriate modifications to the Legislature.
2. Analyze statutes affecting the recruitment, selection, training and promotion of police officers and recommend appropriate modifications to the Legislature.
3. Analyze court rules, court decisions and statutes covering police operational procedures and recommend modifications to the courts and Legislature.
4. Identify those criminal statutes which are vague, ambiguous and for which enforceability is impractical and make specific recommendations to the Legislature.
5. Recommend other statutory additions, deletions or modifications in other areas as deemed appropriate for increasing the effectiveness of law enforcement.

Standard 3.3 Agency Policy and Procedure

Every police chief executive should develop, with input from COLPS, police officers, representatives of local government and the community, written policy and procedure statements.* Policies and procedures should include but not be limited to the following:

1. Identify a priority of services that should be provided by the police agency and those services which can be provided by other public and private agencies.
2. Identify those crimes which are of a priority nature.
3. Establish a policy, procedure and rule manual based on agency priorities and which addressess all situations in which police officers will be confronted.
4. Establish procedures for receiving, investigating and adjudicating informal complaints against police officers.

The public should be informed through the mass media as to police agency policies and priorities.

* See Community Crime Prevention Standard 4.6 and Pre-Adjudication Alternatives Standards 1.1-1.6.

STANDARDS FOR COMMUNITY CRIME PREVENTION

Standard 4.1 Establishment of a Uniform Statewide Building and Community Security Code

The State should enact an amendment to the present State Building Code to incorporate a Uniform Building Security Code. Local governments should be authorized to establish local security codes that equal or exceed the State code. The formulation of the code should be done in cooperation with building, fire and public safety departments, utilizing the

expertise of urban planners, architectural firms, security companies and officials from communities that already have such codes. The codes should take into account the least costly alternatives for implementation.

Two aspects should be considered in developing these codes: building security and security of the area surrounding the buildings. The codes should differentiate between existing structures and those to be constructed in the future. Minimum requirements for new structures and/or new uses should include:

a. Adequate lighting;
b. Visible entrances and exits;
c. Secure doors, windows, locks, latches;
d. Alarms; and
e. Street and housing identification.

Buildings constructed in the future should meet these criteria and aspects of environmental design such as:

a. Maximum density of housing;
b. Juxtapositioning of access paths and housing to facilitate surveillance from within and outside;
c. Quality of building materials;
d. Adequate recreation facilities and parks;
e. Adequate space between buildings;
f. Entrances and access paths free from obstacles for visibility; and
g. Juxtapositioning safe zones with other areas.

Building security codes should be developed for industries, businesses, multi-dwelling apartments and homes built after a date mandated by legislation.

Standard 4.2 Enforcement of Building Security Codes

The means of enforcing building security codes covering public and private buildings should be carried out by local government through security surveys followed by a notice of violations. Manpower for conducting surveys of businesses, industries, apartment dwellings and newly constructed homes (before sale) must include crime prevention officers where available, fire officers, building inspectors or a combination of the three trained in security inspection methods. Failure to comply with security codes should result in a notice identifying violations. Follow-up surveys should be performed within a reasonable time, depending on the extensiveness of violations and citations issued for continued violations. Compliance as a condition for obtaining government contracts, loans or grants should be used to enforce the code at the State and local level. Homeowners should be allowed and encouraged to request security surveys but compliance with recommendations should be optional.

* See Standard 4.6, "Establishment of Regional Crime Prevention Bureaus and Activities" and "Supporting Methodology for Standards" for implementation of this standard.

Standard 4.3 Mass Media Crime Prevention

Liaison between law enforcement officials and the mass media (television, radio and newspapers) should be established to utilize public service time for airing crime prevention messages. Mass media crime prevention should present individuals and business people with methods for protecting their property, families and persons from a broad range of crimes including burglary, robbery, assault, consumer fraud, vandalism and shoplifting. Messages should also be aimed at increasing the reporting of crimes and suspicious activities by informing the public as to what to look for and how to report it.

Standard 4.4 Identification and Recovery of Stolen Property

Methods for identification and recovery of stolen property should be improved. Such improvements should include changes in legislation and procedure.

1. *N.J.S.A.* 45:22-34 should be amended to cover:
   a. Repair service businesses that sell used merchandise;
   b. Sale and trade-in of used merchandise;
   c. The description of merchandise forwarded to local police to include any and all serial numbers, identification marks and signatures; and
   d. Purposeful failure to comply with or conspiracy to ignore this statute should be a misdemeanor.

2. All statutes covering the possession, sale, transfer, acquisition and handling of used merchandise should be enforced aggressively by law enforcement investigative personnel and/or crime prevention officers.* To facilitate implementation of this standard and enforcement of *N.J.S.A.* 45:22-34 the Attorney General's office should:
   a. Order the State Criminal Information System (SCIS) to develop a statewide standardized form for the recording of used merchandise as mandated by *N.J.S.A.* 45:22-34. This form should allow easy transference of information to the SCIS.
   b. Ensure that there is adequate manpower for the SCIS to receive and compute queries 24 hours a day, seven days a week and on holidays.

3. Crime prevention bureaus through implementation of Standard 4.3, "Mass Media Crime Prevention" should encourage individuals and businesses to maintain a list of identification numbers and descriptions for all valuable portable items such as televisions, radios, stereos, appliances, typewriters, adding machines and tools. All retailers should distribute,

free of charge, a form developed by SCIS and distributed by local law enforcement agencies or crime prevention bureaus by which customers can list serial numbers and descriptions of merchandise purchased and other portable valuables at home. Individuals seeking to purchase used merchandise from others should be encouraged to contact local law enforcement agencies to check the serial numbers and description of the merchandise against stolen property reported in the SCIS.

Standard 4.5 Property Insurance Rate Reductions for Participation in Operation Identification and Security Survey Programs

The State Department of Insurance should contact insurance companies to develop a rate policy that assigns lower insurance rates to home owners, businessmen and industries for implementing operation identification and security survey recommendations. Participants should receive certification of implementation that can be forwarded to insurance companies.

Rate policy reductions should be coordinated with the Crime Indemnity Program of New Jersey which is sponsored by the Department of Insurance. It should also be coordinated with the Federal Crime Insurance Program for Commercial and Residential Policies which is sponsored by the Federal Insurance Administration of the United States Department of Housing and Urban Development. (See "Supporting Methodology" of this chapter).

Standard 4.6 Establishment of Regional Crime Prevention Bureaus and Activities

Law enforcement agencies should establish and disseminate to the public and every agency employee, written policy acknowledging that crime defies jurisdictional boundaries and that crime prevention is a legitimate function of law enforcement personnel. This policy should indicate that police efforts in this area depend upon public participation.

Law enforcement agencies and local governments within each county and region of the State should develop a coordinated crime prevention program through the establishment of crime prevention bureaus which transcend municipal boundaries. Crime prevention bureaus should have the following functions:

1. To encourage members of the public to take an active role in preventing crime through:
   a. Providing information leading to the arrest and conviction of criminal offenders;
   b. Participating in target hardening activities;
   c. Becoming involved in identification and recovery of stolen property programs including enforcement of *N.J.S.A.* 45:22-34, 2A:111-25, 2A:111-26
2. Assist in the establishment of volunteer neighborhood security programs that involve the public in neighborhood crime prevention and reduction.
3. Provide residential, business and industry security surveys.
4. Establish liaison with the mass media to implement Standard 4.3, "Mass Media Crime Prevention."
5. Foster and coordinate activities in established civic, social, professional, public and private organizations to prevent crime through programs dealing with social and economic correlates to crime* such as:

   a. Drug abuse;
   b. Education and job skill deficiencies;
   c. Unemployment of youths;
   d. Broken homes;
   e. Psychological and family problems;
   f. Unemployment for ex-offenders and hard core unemployables;
   g. Lack of recreation;
   h. Mental and physical health problems.

6. To develop an annual report on the activities and results produced by the crime prevention bureau and to present the report at a public meeting.
7. Develop any other activities as deemed necessary.

Crime prevention bureau activities should be based on crime analysis studies and coordinated with other law enforcement strategies. Such studies should either be done locally or through the State Uniform Crime Report and should identify:

   a. Types of crimes committed;
   b. Geographic location of crime;
   c. Time of day specific crimes occur;
   d. *Modus operandi* of criminals; and
   e. Suspects: age, sex, employment status, residence and other personal characteristics.

Standard 4.7 Training and Technical Assistance for Crime Prevention

Crime prevention training should be developed by the Police Training Commission (PTC) in several areas:

   a. Training for crime prevention specialists operating in crime prevention bureaus in target hardening and security surveying;

* See also Administration of Corrections Standards 11.17-11.19 and Community Involvement Standards 2.1-2.16 and "Supporting Methodology" of this chapter.

b. Training in public speaking for officers who frequently address public groups;

c. Minimum training for patrol officers and investigators in target hardening.

Such training should be made available not only to police officers, but to police reserve, special police, fire officers, building inspectors and civilian specialists.

The Police Training Commission should expand its technical assistance capabilities to include crime prevention. PTC technical assistance should provide aid to regional crime prevention efforts in developing and coordinating crime prevention bureaus and developing community initiatives in other public and private agencies.

Standard 4.8 Establishment of a Clearinghouse for Crime Prevention Materials and Information

The State library should establish a clearinghouse for crime prevention materials and information to be provided upon request to local communities, crime prevention bureaus and libraries. The library should collect information developed by various law enforcement agencies throughout the country, security companies and national associations. Such information should include crime prevention:

a. Movies and slides;
b. Pamphlets, posters and stickers;
c. Books and reports.

STANDARDS FOR PROSECUTION AND DEFENSE

Prosecution

Standard 5.1 The Function of the Prosecutor

The county prosecutor is the chief law enforcement official in the county. The office of prosecutor is an agency of the executive branch of government which is charged with the duty to see that the laws are faithfully executed and enforced in order to maintain the rule of law. His responsibilities include the detection, apprehension and prosecution of persons accused of crimes. He is both an administrator of justice and an advocate; he must exercise sound discretion in the performance of his functions. The duty of the prosecutor is to seek justice, not merely to convict.

It is the duty of the prosecutor and his assistants to know and be guided by the standards of professional conduct as defined in codes and canons of the legal profession and in these standards.

Standard 5.2 Assuring High Standards of Professional Skill

The county prosecutor must have been admitted to the practice of law in New Jersey for at least ten years.

The offices of county prosecutor and his staff should be full-time occupations. Professional competence should be the only basis for selection for prosecutorial office. The prosecutor should be authorized to serve a minimum term of five years at an annual salary equal to that of the county court judge.

Prosecutors should select their staffs on the basis of professional competence without regard to partisan political influence. In order to achieve the objective of professionalism and to encourage competence in such offices, compensation for staffs should be commensurate with the high responsibilities of the office and comparable to the compensation of their peers in the private sector.

Standard 5.3 The Prosecutor's Investigative Role

One of the prosecutor's duties is to represent the State in court. He should cooperate with the police in their investigation of crime. Each prosecutor also should have investigatorial resources at his disposal to assist him in case preparation, to supplement the results of police investigation when police lack adequate resources for such investigation and when appropriate to undertake initial investigations of possible violations of the law.

A prosecutor has the obligation to detect and arrest, as well as to obtain indictments and prosecute them, and is under duty to investigate suspicious situations and determine facts in the process of detecting and arresting.

The prosecutor should be given the power, independent of the grand jury but subject to appropriate safeguards, to issue subpoenas requiring potential witnesses in criminal cases to appear for questioning. Upon unjustified failure to appear for questioning or to respond to specific questions, such witnesses should be subject to possible contempt penalties of the court, initiated by the prosecutor. This power should be granted only upon limitation of the grand jury function as described in Standard 9.1, "Limitation of the Grand Jury Function."

The office of the prosecutor should review all applications for search warrants prior to their submission by law enforcement officers to a judge for approval; no application for a search warrant should be submitted to a judge unless the prosecutor or assistant prosecutor approves the application.

Standard 5.4 Interrelationship of Prosecution Offices Within the State

Each county should have at least one full-time prosecutor and the supporting staff necessary for effective prosecution. Local authority and responsibility for prosecution should be properly vested at the county level. The State Attorney General should have general supervisory power over the prosecutors and should use the powers of his office to coordinate and make uniform the enforcement policies of the State.

The county prosecutors should also assist in the coordination of enforcement policies of their offices to improve the administration of justice and assure the maximum practicable uniformity in the enforcement of the criminal law throughout the State. An association of prosecutors should be established to this end.

In cases where questions of law of statewide interest or concern arise which may create important precedents, the prosecutor should consult with the Attorney General of the State.

A central pool of supporting resources and manpower, including but not limited to laboratories, investigators, accountants, special counsel and other experts, to the extent needed should be maintained by the State government and should be available to all prosecutors.

While we retain our present Municipal Court system all prosecutions should be presented by a prosecuting attorney.

Standard 5.5 Salaries of Assistant Prosecutors; Full-Time Devotion to Duty; Tenure

Assistant prosecutors required to devote their full time to the duties of their office shall receive annual salaries to be fixed by the appropriate authority on recommendation of the county prosecutor.

A county prosecutor who devotes his entire time to the duties of his office, in accordance with the provisions of P.L. 1970, c.6 (*N.J.S.A.* 2A:158-1.1) may in his sole discretion appoint assistant prosecutors in his office to permanent positions in the classified service without competitive examination. Such appointment shall be made from those assistant prosecutors in his office who have served at least three years in the aggregate as an assistant county prosecutor or Deputy Attorney General in the Division of Criminal Justice and such persons shall be required to devote their entire time to the performance of their official duties. The number of such assistant prosecutors appointed to permanent positions shall be limited to a specified percent of assistant prosecutors serving in any given county. Such assistant prosecutors as shall be appointed to permanent positions shall not be removed from such positions except in the manner provided under the provisions of Title 11 of the Revised Statutes relating to permanent employees in the classified service.

Each county prosecutor shall appoint one assistant prosecutor who shall be designated as first assistant prosecutor; however, the provision of permanent positions shall not apply to the position of first assistant prosecutor.

Standard 5.6 Regulation Concerning Political Activity

No prosecutor, assistant prosecutor, detective, investigator or other person employed in the office of the county prosecutor may engage in any political activity at any time whether on or off duty, except:

1. That he or she may make political contributions and purchase tickets to political affairs in an aggregate not to exceed $100 annually and for which a written receipt is obtained; and
2. That he or she may attend affairs held for political purposes.

The above rule prohibits but is not limited to the following activities:

1. Any candidacy for elective public or political office.
2. Any holding of an office in or employment with or any working actively on behalf of any political party, organization or club.
3. Any participation in any political campaign.
4. Any exhibiting of signs concerning political candidates on one's person, vehicle or home.
5. Any use of one's name in connection with any political material.
6. Any sale or distribution of tickets to any affair held for any political purpose whatsoever (this prohibition includes but is not limited to any affair held by or on behalf of any candidate for or incumbent of any public or political office or by or on behalf of any political party, organization or club).
7. Any soliciting or accepting of any contribution either directly or through a third person to or on behalf of any candidate for public or political office, to or on behalf of any political organization or for any other political purposes whatsoever.
8. Any use of one's official influence to modify the political action of another.
9. Any working at the polls during election time or as an election official at any time.

Standard 5.7 Discretion in the Charging Decision

In addressing himself to the decision whether to charge, the prosecutor should first determine whether there is evidence which would support a conviction. A prosecutor shall not institute or cause to be instituted criminal charges when he believes that the charges are not supported by probable cause.

The prosecutor is not, however, obliged to present all charges which the evidence might support. The prosecutor may in some circumstances and for good cause consistent with the public interest decline to prosecute.

Standard 5.8 Discretion as to Non-Criminal Disposition

The prosecutor should explore the availability of non-criminal disposition, including programs of rehabilitation, formal or informal, in deciding whether to press criminal charges; especially in the case of a first offender, the nature of the offense may warrant non-criminal disposition.

Prosecutors should be familiar with the resources of social agencies which can assist in the evaluation of cases for diversion from the criminal process.

Standard 5.9 Relations with the Police and Probation Department

The prosecutor should provide legal advice to the police concerning police functions and duties in criminal matters.

The prosecutor should cooperate with police in providing the services of his staff to aid in training police in the performance of their function.

The prosecutor should foster cooperation with the probation department in an atmosphere of mutual respect and integrity.

Standard 5.10 Prompt Disposition of Criminal Charges

It is unprofessional conduct for a prosecutor intentionally to use procedural devices for delay for which there is no legitimate basis.

The prosecutor function should be so organized and supported with staff and facilities as to enable it to dispose of all criminal charges promptly.

Standard 5.11 Conflicts of Interest

A prosecutor should avoid the appearance or reality of a conflict of interest with respect to his official duties.

Standard 5.12 Availability for Plea Discussions

The prosecutor should make known a general policy of willingness to consult with defense counsel concerning disposition of charges by plea.

It is unprofessional conduct for a prosecutor to engage in plea discussions directly with an accused who is represented by counsel, except with counsel's approval. If the accused refuses to be represented by counsel, the prosecutor may properly discuss disposition of the charges directly with the accused; the prosecutor would be well advised, however, to request that a lawyer be designated by the court.

If the prosecutor finds he is unable to fulfill an understanding previously agreed upon in plea discussions, he should give notice promptly to the defendant and cooperate in securing leave of the court for the defendant to withdraw any plea and take other steps appropriate to restore the defendant to the position he was in before the understanding was reached or plea made.

A prosecutor may not properly participate in a disposition by plea of guilty if he is aware that the accused persists in denying guilt or the factual basis for the plea, without disclosure to the court.

Standard 5.13 Filing Procedures and Statistical Systems

The prosecutor's office should have an efficient file control system and a statistical system, either automated or manual, sufficient to permit the prosecutor to evaluate and monitor the performance of his office.

Each prosecutor's office should develop a detailed statement of office practices and policies for distribution to every assistant prosecutor. These policies should be reviewed every six months. The statement should include guidelines governing screening, diversion and plea negotiations, as well as other internal office practices. This should all be contained in a manual which would be distributed to new personnel.

Standard 5.14 Training and Education

Education programs should be utilized to assure that prosecutors and their assistants have the highest possible professional competence. Attendance should be mandatory for newly appointed prosecutors at these prosecutor training courses. The course should be completed either prior to taking office or within a specified time period after assuming office. In-house training programs for new assistant prosecutors should be available in all prosecution offices. All prosecutors and their assistants should attend a formal prosecutor's training course each

year, in addition to the initial orientation and training course.

Training programs should also be instituted for other new personnel and for the continuing education of the prosecutorial staff.

Standard 5.15 Opening Statement

In his opening statement the prosecutor should confine his remarks to evidence he intends to offer which he believes in good faith will be available and admissible and a brief statement of the issues in the case. It is unprofessional conduct to allude to any evidence unless there is a good faith and reasonable basis for believing that such evidence will be tendered and admitted in evidence.

Standard 5.16 Selection of Jurors

In those cases where it appears necessary to conduct a pretrial investigation of the background of jurors the prosecutor should restrict himself to investigatory methods which will not harass or unduly embarrass potential jurors or invade their privacy and, whenever possible, he should restrict his investigation to records and sources of information already in existence.

The opportunity to question jurors should be used solely to obtain information for the intelligent exercise of challenges.

Standard 5.17 Relations with Jury

It is unprofessional conduct for the prosecutor to communicate privately with persons summoned for jury duty or impaneled as jurors concerning the case prior to or during the trial. The prosecutor should avoid the reality or appearance of any such improper communications.

The prosecutor should treat jurors with deference and respect, avoiding the reality or appearance of currying favor by a show of undue solicitude for their comfort or convenience.

After verdict, the prosecuting attorney should not communicate with jurors about the case.

Standard 5.18 Presentation of Evidence

It is unprofessional conduct for a prosecutor knowingly and for the purpose of bringing inadmissible matter to the attention of the judge or jury to offer inadmissible evidence, ask legally objectionable questions, or make other impermissible comments or arguments in the presence of the judge or jury.

It is unprofessional conduct for a prosecutor to permit any tangible evidence to be displayed in the view of the judge or jury which would tend to prejudice fair consideration by the judge or jury until such time as a good faith tender of such evidence is made.

It is unprofessional conduct to tender tangible evidence in the view of the judge or jury if it would tend to prejudice fair consideration by the judge or jury unless there is a reasonable basis for its admission in evidence. When there is any doubt about the admissibility of such evidence it should be tendered by an offer of proof and a ruling obtained.

Standard 5.19 Relations with Prospective Witnesses

It is unprofessional conduct for a prosecutor to compensate or to offer to compensate a witness, other than an expert, for giving testimony, but it is not improper to reimburse an ordinary witness for the reasonable expenses of attendance upon court, including transportation and loss of income, provided there is no attempt to conceal the fact of reimbursement.

In interviewing a prospective witness it is proper when the prosecutor deems necessary for the prosecutor or his investigator to caution the witness concerning possible self-incrimination and his possible need for counsel.

Standard 5.20 Examination of Witnesses

The interrogation of all witnesses should be conducted fairly, objectively and with due regard for the dignity and legitimate privacy of the witness, and without seeking to intimidate or humiliate the witness unnecessarily.

The prosecutor's belief that the witness is telling the truth does not necessarily preclude appropriate cross-examination in all circumstances, but may affect the method and scope of cross-examination. He should not misuse the power of cross-examination or impeachment to discredit or undermine a witness if he knows the witness is testifying truthfully.

It is unprofessional conduct for a prosecutor to call a witness who he knows will claim a valid privilege not to testify, for the purpose of impressing upon the jury the fact of the claim of privilege.

It is unprofessional conduct to ask a question which implies the existence of a factual predicate which the examiner cannot support by evidence.

Standard 5.21 Relations with Expert Witnesses

A prosecutor who engages an expert for an opinion should respect the independence of the expert and should not seek to dictate the formation of the expert's opinion on the subject. To the extent necessary, the prosecuting attorney should explain to the

expert his role in the trial as a witness called to aid the fact-finders and the manner in which the examination of witnesses is conducted.

Standard 5.22 Argument to the Jury

The prosecutor may argue all reasonable inferences from evidence in the record. It is unprofessional conduct for the prosecutor intentionally to misstate the evidence or mislead the jury as to the inferences it may draw.

It is unprofessional conduct for the prosecutor to express his personal belief or opinion as to the truth or falsity of any testimony or evidence or the guilt of the defendant.

The prosecutor should not use arguments calculated to inflame the passions or prejudices of the jury.

The prosecutor should refrain from argument which would divert the jury from its duty to decide the case on the evidence, by injecting issues broader than the guilt or innocence of the accused under the controlling law, or by making predictions of the consequences of the jury's verdict.

Standard 5.23 Facts Outside the Record

It is unprofessional conduct for the prosecutor intentionally to refer to or argue on the basis of facts outside the record whether at trial or on appeal, unless such facts are matters of common public knowledge based on ordinary human experience or matters of which the court may take judicial notice.

Standard 5.24 Disclosure of Evidence and Discovery

It is unprofessional conduct for a prosecutor to fail to disclose to the defense at the earliest feasible opportunity evidence which would tend to negate the guilt of the accused or mitigate the degree of the offense or reduce the punishment.

The prosecutor should comply in good faith with discovery procedures under the applicable law.

It is unprofessional conduct for a prosecutor intentionally to avoid pursuit of evidence because he believes it will damage the prosecution's case or aid the accused.

Standard 5.25 Exploitation of Office

The prosecutor should not exploit his office by means of personal publicity connected with a case before trial, during trial and thereafter.

Standard 5.26 Sentencing

The prosecutor should not make the severity of sentences the index of his effectiveness. To the extent that he becomes involved in the sentencing process, he should seek to assure that a fair and informed judgment is made on the sentence and to avoid unfair sentence disparities.

Where sentence is fixed by the judge without jury participation, the prosecutor should be permitted to appear and make his general recommendation known; however, ordinarily he should not make any specific recommendation as to the specific term of imprisonment unless such a recommendation is requested by the court or he has agreed to make a recommendation as the result of plea discussions.

The prosecutor should assist the court in basing its sentence on complete and accurate information for use in the presentence report. If incompleteness or inaccurateness in the presentence report comes to his attention, he should take steps to present the complete and correct information to the court and defense counsel.

Standard 5.27 Courtroom Decorum

The prosecutor should support the authority of the court and the dignity of the trial courtroom by strict adherence to the rules of decorum and by manifesting an attitude of professional respect toward the judge, opposing counsel, witnesses, defendants, jurors and others in the courtroom.

When court is in session the prosecutor should address the court, not opposing counsel, on all matters relating to the case.

It is unprofessional conduct for a prosecutor to engage in behavior or tactics purposefully calculated to irritate or annoy the court or opposing counsel.

A prosecutor should comply promptly with all orders and directives of the court, but he has a duty to have the record reflect adverse rulings or judicial conduct which he considers prejudicial. He has a right to make respectful requests for reconsideration of adverse rulings.

A prosecutor should be punctual in attendance in court and in the submission of all motions, briefs and other papers. He should emphasize to all witnesses the importance of punctuality in attendance in court.

Prosecutors should take leadership in developing, with the cooperation of the courts and the bar, a code of decorum and professional etiquette for courtroom conduct.

Standard 5.28 Calendar Control

Control over the trial calendar should be vested in the court. The prosecuting attorney should advise the court of facts relevant in determining the order of cases on the calendar, and set forth reasons for any delay.

Standard 5.29 Duty to Improve the Law

It is an important function of the prosecutor to seek to reform and improve the administration of criminal justice. When inadequacies or injustices in the substantive or procedural law come to his attention, he should stimulate efforts for remedial action.

Defense

Standard 5.30 Role of Defense Counsel

Counsel for the accused is an essential component of the administration of criminal justice. A court properly constituted to hear a criminal case must be viewed as a tripartite entity consisting of the judge (and jury, where appropriate), counsel for the prosecution, and counsel for the accused.

The basic duty the lawyer for the accused owes to the administration of justice is to serve as the accused's counselor and advocate, with courage, devotion and to the utmost of his learning and ability, and according to law.

The defense lawyer, in common with all members of the bar, is subject to standards of conduct stated in statutes, rules, decisions of court, and codes, canons or other standards of professional conduct. He has no duty to execute any directive of the accused which does not comport with law or such standards. It is the duty of every lawyer to know the standards of professional conduct as defined in codes and canons of the legal profession to the end that his performance will at all times be guided by appropriate standards. The functions and duties of defense counsel are governed by such standards whether he is assigned or privately retained.

Standard 5.31 Public Defender Selection, Term, Salaries, Organization

New Jersey's statewide public defender system, established in 1967 pursuant to *N.J.S.A.* 2A:158A-1, et. seq., should be continued and improved where possible. The provisions of *N.J.S.A.* 2A:158A-1, et. seq., with respect to the appointment, term, authority and duties of the Public Defender should be continued. Adequate funding should be provided by the State Legislature for the Office of the Public Defender to carry out all of its statutory responsibilities.

Public defenders should select their staffs on the basis of professional competence without regard to partisan, political influences. In order to achieve the objective of professionalism and to encourage competence in such offices, compensation for staffs should be commensurate with the responsibilities of the office and comparable to the compensation of their peers in the private sector.

Education programs should be utilized to assure that public defenders and their assistants have the highest possible professional competence. Attendance should be mandatory for newly appointed defenders at these training courses. The course should be completed either prior to taking office or within a specified time period after assuming office. In-house training programs for new assistant defenders should be available in all public defender offices. All public defenders and their assistants should attend a formal training course each year, in addition to the initial orientation and training course.

Training programs should also be instituted for other new personnel and for the continuing education of the staff.

Standard 5.32 Inmate Counsel

Counsel should be available at penal and correctional institutions to advise any inmate desiring to appeal or collaterally attack his conviction. An attorney also should be provided to represent: an indigent inmate of any detention facility at any proceeding affecting his detention or early release; an indigent parolee at any parole revocation hearing; and an indigent probationer at any proceeding affecting his probationary status.

Standard 5.33 Public Activity

The public defender should seek to maintain his office and the performance of its function free from political pressures that may interfere with his ability to provide effective defense services. He should assume a role of leadership in the general community, interpreting his function to the public and seeking to hold and maintain their support of and respect for this function.

The relationship between the law enforcement component of the criminal justice system and the public defender should be characterized by professionalism, mutual respect and integrity. It should not be characterized by demonstrations of negative personal feelings on one hand or excessive familiarity on the other.

Standard 5.34 Communication

Prompt and effective communication with a lawyer should be guaranteed by statute or rule of the court.

To ensure the privacy essential for confidential communication between lawyer and client, adequate facilities should be available for private discussions between counsel and accused in jails, prisons, court houses and other places where accused persons must confer with counsel.

Standard 5.35 Referral Service for Criminal Cases

To assist persons who wish to retain counsel

privately and who do not know a lawyer or how to engage one, a referral service should be established for criminal cases. The referral service should maintain a list of lawyers willing and qualified to undertake the defense of a criminal case; it should be so organized that it can provide prompt service at all times.

The availability of the referral service should be publicized. In addition, notices containing the essential information about the referral service and how to contact it should be posted conspicuously in police stations, jails and wherever else it is likely to give effective notice.

Standard 5.36 Prohibited Referrals

It is unprofessional conduct for a lawyer to compensate others for referring criminal cases to him.

It is unprofessional conduct for a lawyer to accept referrals by agreement or as a regular practice from law enforcement personnel, bondsmen or court personnel.

It is unprofessional conduct to accept referrals of criminal cases regularly except from an authorized referral agency or a lawyer referring a case in the ordinary course of practice.

Regulations and licensing requirements governing the conduct of law enforcement personnel, bondsmen, court personnel and others in similar positions should prohibit their referring an accused to any particular lawyer and should require them, when asked to suggest the name of an attorney, to direct the accused to the referral service or to the local bar association if no referral service exists.

Standard 5.37 Relationship With Client; Control and Direction of Case

Defense counsel should seek to establish a relationship of trust and confidence with the accused. The lawyer should explain the necessity of full disclosure of all facts known to the client for an effective defense, and he should explain the obligation of confidentiality which makes privileged the accused's disclosures relating to the case.

The conduct of the defense of a criminal case requires trained professional skill and judgment; therefore, the technical and professional decisions must rest with the lawyer without impinging on the right of the accused to make the ultimate decisions on certain matters. The decisions which are to be made by the accused after full consultation with counsel include: (i) what plea to enter; (ii) whether to waive jury trial; (iii) whether to testify in his own behalf; (iv) whether to appeal, and (v) whether to waive any constitutional rights.

The decisions on what witnesses to call, whether and how to conduct cross-examination, what jurors to accept or strike, what trial motions should be made and all other strategic and tactical decisions are ordinarily the province of the lawyer after consultation with his client. However, the lawyer must always recognize that he is engaged in the service of his client. He should, therefore accede to all reasonable requests of the client.

If a disagreement on significant matters of tactics or strategy arises between the lawyer and his client, the lawyer should make a record of the circumstances, his advice and reasons, and the conclusion reached. The record should be made in a manner which protects the confidentiality of the lawyer-client relationship.

Standard 5.38 Conflict of Interest

At the earliest feasible opportunity defense counsel should disclose to the defendant any interest in or connection with the case or any other matter that might be relevant to the defendant's selection of a lawyer to represent him.

Except for preliminary matters such as initial hearings or applications for bail, a lawyer or lawyers who are associated in practice should not undertake to defend more than one defendant in the same criminal case if the duty to one of the defendants may conflict with the duty to another. The potential for conflict of interest in representing multiple defendants is so grave that ordinarily a lawyer should decline to act for more than one of several co-defendants except in unusual situations when, after careful investigation, it is clear that no conflict is likely to develop and when the several defendants give an informed consent on the record to such multiple representation.

In accepting payment of fees by one person for the defense of another, a lawyer should be careful to determine that he will not be confronted with a conflict of loyalty since his entire loyalty is due the accused. It is unprofessional conduct for the lawyer to accept such compensation except with the consent of the accused after full disclosure. It is unprofessional conduct for a lawyer to permit a person who recommends, employs, or pays him to render legal services for another to direct or regulate his professional judgment in rendering such legal services.

It is unprofessional conduct for a lawyer to defend a criminal case in which the lawyer's partner or other professional associate is or has been the prosecutor.

Standard 5.39 Prompt Action to Protect the Accused

Many important rights of the accused can be protected and preserved only by prompt legal action. The lawyer should inform the accused of his rights forthwith and take all necessary action to vindicate such rights. He should consider all procedural steps which in good faith may be taken, including, for example, motions seeking pretrial release of the accused, obtaining psychiatric examination of the ac-

cused when a need appears, moving for a change of venue or continuance, moving to suppress illegally obtained evidence, moving for severance from jointly charged defendants, or seeking dismissal of the charges.

A lawyer should not act as surety on a bail bond either for the accused or others.

Standard 5.40 Advice and Service on Anticipated Unlawful Conduct

It is a lawyer's duty to advise his client to comply with the law but he may advise concerning the meaning, scope and validity of a law.

It is unprofessional conduct for a lawyer to agree in advance of the commission of a crime that he will serve as counsel for the defendant, except as part of a bona fide effort to determine the validity, scope, meaning or application of the law, or where the defense is incident to a general retainer for legal services to a person or enterprise engaged in legitimate activity.

Standard 5.41 Duty to Keep Client Informed

The lawyer has a duty to keep his client informed of the developments in the case and the progress of preparing the defense.

Standard 5.42 Obligations to Client and Duty to Court

Once a lawyer has undertaken the representation of an accused his duties and obligations are the same whether he is privately retained, appointed by the court, or serving in a legal aid or defender system.

Standard 5.43 Duty to Investigate

It is the duty of the lawyer to conduct a prompt investigation of the circumstances of the case and explore all avenues leading to facts relevant to the case. The investigation should always include efforts to secure information in the possession of the prosecution and law enforcement authorities. The duty to investigate exists regardless of the accused's admissions or statements to the lawyer of facts constituting guilt or his stated desire to plead guilty.

Standard 5.44 Illegal Investigation

It is unprofessional conduct for a lawyer knowingly to use illegal means to obtain evidence or information or to employ, instruct or encourage others to do so.

Standard 5.45 Advising the Defendant

After informing himself fully on the facts and the law, the lawyer should advise the accused with complete candor concerning all aspects of the case, including his candid estimate of the probable outcome.

It is unprofessional conduct for a lawyer intentionally to understate or overstate the risks, hazards or prospects of the case to exert undue influence on the accused's decision as to his plea.

The lawyer should caution his client to avoid communication about the case with witnesses, except with the approval of the lawyer, to avoid any contact with jurors or prospective jurors, and to avoid either the reality or the appearance of any other improper activity.

Standard 5.46 Guilty Plea When Accused Denies Guilt

If the accused discloses to the lawyer facts which negate guilt and the lawyer's investigation does not reveal a conflict with the facts disclosed but the accused persists in entering a plea of guilty, the lawyer may not properly participate in presenting a guilty plea, without disclosure to the court.

Standard 5.47 Duty to Explore Disposition Without Trial

Whenever the nature and circumstances of the case permit, the lawyer for the accused should explore the possibility of an early diversion of the case from the criminal process through the use of other community agencies.

When the lawyer concludes, on the basis of full investigation and study, that under controlling law and the evidence a conviction is probable, he should so advise the accused and seek his consent to engage in plea discussions with the prosecutor, if such appears desirable.

Ordinarily the lawyer should secure his client's consent before engaging in plea discussions with the prosecutor.

Standard 5.48 Courtroom Conduct

The lawyer should support the authority of the court and the dignity of the trial courtroom by manifesting an attitude of professional respect toward the judge, opposing counsel, witnesses and jurors. When the court is in session defense counsel should address the court and should not address the prosecutor directly on any matter relating to the case. It is unprofessional conduct for a lawyer to engage in

behavior or tactics purposefully calculated to irritate or annoy the court or the prosecutor.

The lawyer should comply promptly with all orders and directives of the court which are within the court's jurisdiction, but he has a duty to have the record reflect adverse rulings or judicial conduct which he considers prejudicial to his client's legitimate interests. He has a right to make respectful requests for reconsiderations of adverse rulings and should seek stays of the effects of such rulings pending appeal where the client's interests may be otherwise irreparably harmed.

Standard 5.49 Selection of Jurors

The opportunity to question jurors should be used solely to obtain information for the intelligent exercise of challenges.

Standard 5.50 Relations with Jury

The defense attorney should treat jurors with deference and respect, avoiding the reality or appearance of currying favor by a show of undue solicitude for their comfort or convenience.

After verdict, the defense counsel should not communicate with jurors about the case. If the lawyer has reasonable grounds to believe that the verdict may be subject to legal challenge, he may request that the court communicate with jurors for that limited purpose, upon notice to opposing counsel.

Standard 5.51 Opening Statement

In his opening statement a defense counsel should confine his remarks to a brief statement of the issue in the case and evidence he intends to offer which he believes in good faith will be available and admissible.

Standard 5.52 Presentation of Evidence

It is unprofessional conduct for a lawyer knowingly and for the purpose of bringing inadmissible matter to the attention of the judge or jury to offer inadmissible evidence, ask legally objectionable questions, or make other impermissible comments or arguments in the presence of the judge or jury.

It is unprofessional conduct to permit any tangible evidence to be displayed in the view of the judge or jury which would tend to prejudice fair consideration of the case by the judge or jury until such time as a good faith tender of such evidence is made.

It is unprofessional conduct to tender tangible evidence in the presence of the judge or jury if it would tend to prejudice fair consideration of the case unless there is a reasonable basis for its admission in evidence. When there is any doubt about the admissibility of such evidence it should be tendered by an offer of proof and a ruling obtained.

Standard 5.53 Examination of Witnesses

The interrogation of all witnesses should be conducted fairly, objectively and with due regard for the dignity and legitimate privacy of the witness, and without seeking to intimidate or humiliate the witness unnecessarily. A lawyer's belief that the witness is telling the truth does not necessarily preclude appropriate cross-examination in all circumstances, but may affect the method and scope of cross-examination. He should not misuse the power of cross-examination or impeachment to discredit or undermine a witness if he knows the witness is testifying truthfully.

It is unprofessional conduct to ask a question which implies the existence of a factual predicate which the examiner knows he cannot support by evidence.

Standard 5.54 Argument to the Jury

In closing argument to the jury the lawyer may argue all reasonable inferences from the evidence in the record. It is unprofessional conduct for a lawyer intentionally to misstate the evidence or mislead the jury as to the inferences it may draw.

It is unprofessional conduct for a lawyer to express his personal belief or opinion in his client's innocence or his personal belief or opinion in the truth or falsity of any testimony or evidence, or to attribute the crime to another person unless such an inference is warranted by the evidence.

A lawyer should not make arguments calculated to inflame the passions or prejudices of the jury.

A lawyer should refrain from argument which would divert the jury from its duty to decide the case on the evidence by injecting issues broader than the guilt or innocence of the accused under the controlling law or by making predictions of the consequences of the jury's verdict.

STANDARDS FOR COURT ORGANIZATION

Standard 6.1 Unified Court System

Courts should be organized into a unified judicial system financed by the State and administered and supervised by the Chief Justice. The Supreme Court should make rules governing the administration, practice and procedure of the court system subject only to the constraints of the Federal and State Constitutions.*

The New Jersey court system should consist of a Supreme Court, Superior Appellate Court and Superior Trial Court. The Superior Trial Court should contain civil, criminal, chancery, municipal and family divisions and subdivisions as justice so requires. There should be statewide uniform standards for the selection, training and compensation of judicial and nonjudicial personnel; court facilities and allocation of personnel and resources. One set of rules for the Superior Trial Court should be reformulated with appropriate distinction for the various divisions. The court system should be organized as below:

Standard 6.2 Supreme Court and Superior Appellate Court

The right to appeal a final determination from Superior Trial Court divisions and State administrative bodies should be made to Superior Appellate Court and the Supreme Court pursuant to the rules of the Supreme Court. Appeals from the Municipal Division should be heard by the appropriate Superior Trial Court division. If the Municipal Courts are improved as recommended herein, appeals should be direct to the appropriate division of the Superior Trial Court.

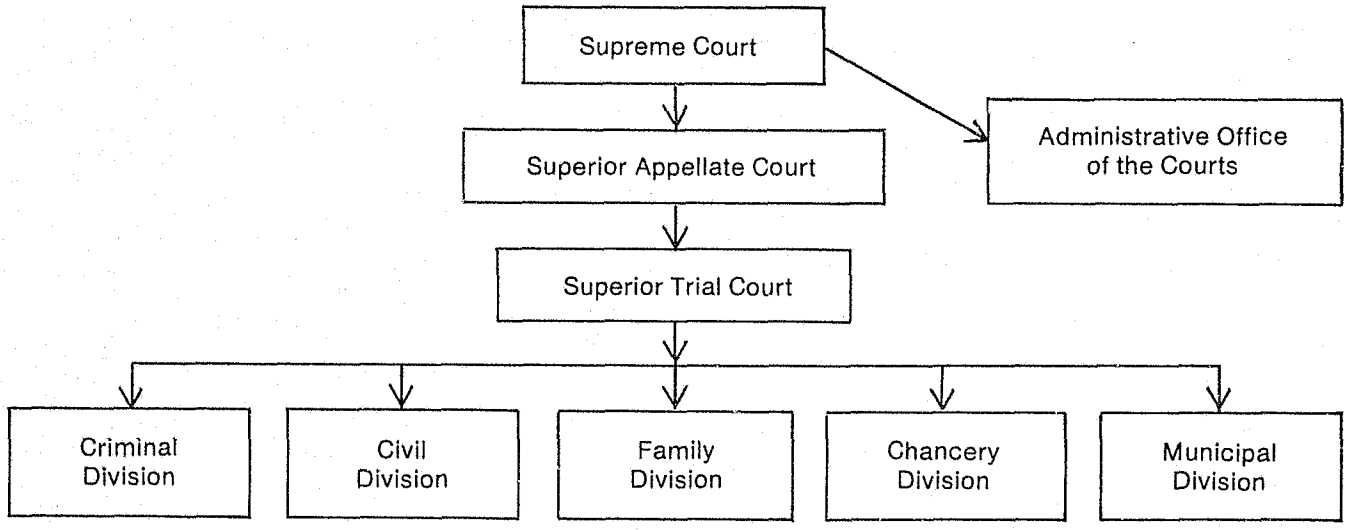
* See Article 6, Section 2, Paragraph 3 of the New Jersey Constitution (1947) and *Winberry v. Salisbury*, 5 N.J. 240 (1950), cert. den. 340 U.S. 877 (1950).

Standard 6.3 Superior Trial Courts

All trial courts should be unified under a single trial court a Superior Trial Court) with Criminal, Civil, Chancery, Family and Municipal Divisions. The Supreme Court may create further subdivisions as justice so requires. Appropriate jurisdiction should be given to each division so that cases can be determined completely and finally in one division. The Superior Trial Court should be the only court of original proceeding having jurisdiction over all cases except matters in which original jurisdiction is vested in an administrative board or agency, Surrogate Court and Appellate Courts.

The divisions of the Superior Trial Court should have the following jurisdictions:

1. The Criminal Division should have jurisdiction of all criminal proceedings including high misdemeanors. Jurisdiction of the Criminal Division should not include the jurisdiction recommended for the Family Division.
2. The Civil Division should have jurisdiction of civil proceedings including general private party litigation, actions by or against governments or agencies, summary and small claims proceedings.
3. The Chancery Division should have jurisdiction over general equity and probate matters except all matters presently under the jurisdiction of the Surrogate Courts.
4. The Family Division should have jurisdiction over all matters affecting the family including juve-



nile law violations, neglected and abused children, adoption, child custody, paternity actions, termination of parental rights, divorce and annulment, mental illness and retardation commitment procedures concerning adults and children, assault offenses in which both victim and alleged offender are members of the same family and other related family matters.

5. The Municipal Division should have original jurisdiction over adjudication of all matters presently adjudicated in local Municipal Courts except those matters designated for the Family Division.

Standard 6.4 Superior Court Family Division

The jurisdiction of the County Court, Superior Court Chancery Division, Juvenile and Domestic Relations Courts and Municipal Courts relating to juvenile delinquency and family matters should be removed from those courts and placed in a Family Court. The Family Court should be a division of the Superior Trial Court and should have jurisdiction over all legal matters related to the family including:

1. Juvenile law violations;
2. Neglected and abused children;
3. Adoption;
4. Child custody;
5. Paternity actions;
6. Termination of parental rights;
7. Divorce and annulment;
8. Mental illness and retardation commitment procedures concerning adults and concerning children.
9. Offenses against children committed by family members.
10. Simple assault offenses in which both the victim and alleged offender are members of the same family;
11. Bastardy;
12. Other related family matters.

The Family Division should have adequate resources to enable it to deal effectively with family problems that may underlie the legal matters coming before it. Where authorized by law trial by jury should be available.

Intake services should be administered under the supervision of the Familiy Division and utilized as an essential resource for thorough disposition of family matters. A major objective should be to resolve family conflicts without recourse to continued adjudication. It should encourage the use of community resources and, where possible, deal informally and in a remedial way with family problems before they become formalized by the institution of legal proceedings. When appropriate, referrals should be made to social, medical or legal resources. Participation in this program should be voluntary, not mandatory, and its personnel should have no power to prevent the institution of legal proceedings.*

Assignments of judges to Family Court should be based on qualifications which include:

1. Interest in the problems of children and families.
2. Awareness of the contribution of modern psychology, psychiatry and social work that he or she can give due weight to the findings of these sciences and professions.
3. Ability to conduct hearings with appropriate temperament without loss of the essential dignity of the court.
4. Prior experience and/or knowledge of family law.

Specialized training should be provided for all persons participating in the processing of cases through the Family Court, including prosecutors, defense and other attorneys and the Family Court judge. Law schools should recognize the need to train attorneys to handle legal matters related to family problems and should develop programs for that training. These programs should have a heavy clinical component.

Standard 6.5 Appointment of Judgeships and Transfer of Judges

Legislation should be enacted mandating that appointment of judgeships to the Superior Trial Court, whether by county or judicial vicinage, be based on weighted caseloads rather than population. At least two judgeships should be appointed from each county. The Chief Justice, however, should be authorized to cross assign all judges to any division of the unified court and any county as shifting caseloads and other interests of justice require. Until the trial court system is fully unified, the legislation governing reimbursement to counties for transfer of judges should be amended to include reimbursement of the total cost of the judges.

Standard 6.6 Municipal Courts

Municipal Courts should be centralized into a division of the Superior Trial Courts with a subdivision in each county. Administration of each subdivision should be centralized at each county seat. Each judge should have the services of a clerk who is responsible for recording court proceedings, swearing witnesses, collecting fees and fines, court room security and other duties designated by the judge.

Judges of this division should be full-time and selected pursuant to Judicial Selection, Education and Training Standards 7.1-7.6. Nonjudicial personnel

* See "Pre-Adjudication Alternatives for Juveniles" chapter for in-depth standards for the administration of intake services.

should be subject to Court Organization Standards 6.8, 6.9 and 6.10.

The division should have original jurisdiction over adjudication of all matters presently adjudicated in local Municipal Courts except those matters designated for the Family Division.

The expense of supporting the Municipal Division should be assumed by the State. The revenues obtained from fees, fines and forfeitures of bail should be apportioned between and among the municipalities in each county in an equitable manner.

Municipal Division courtrooms should be housed in County Court facilities or in existing Municipal Court facilities where adequate. To facilitate the convenience of the public, new facilities should be built if necessary. Nonjudicial support personnel should be subject to personnel standards as outlined in Court Organization Standard 6.8. Scheduling of court cases should be flexible and if necessary for convenience of litigants, court should be in session during evening hours.

Standard 6.7 Court System Financing and Budgeting

The State of New Jersey should assume responsibility for providing all financial support necessary for the effective and efficient operation of all courts. The court system should receive financial support sufficient to permit effective performance of its responsibilities as a coordinate branch of government. The level of support should include adequate salaries for judicial and nonjudicial personnel, necessary operating supplies and purchased services and provision as needed for capital expenditures for facilities and new equipment. The financial operations of the court system should be administered through a unified budget in which all revenues and expenditures for all activities of all courts in the system are presented and supervised.

The court system budget should be prepared by the Administrative Office of the Courts, acting under the supervision of the Chief Justice. A standing committee of judges, drawn from the judicial conference or otherwise constituted, should advise and consult in the preparation of the budget. Advice and consultation of principal auxiliary staff personnel throughout the court system should also be obtained through regular procedures of inquiry and referral.

The Executive Branch of government should receive a copy of the budget before it is submitted to the Legislature, and should be authorized to comment on and make recommendations concerning the budget for the court system, or court unit as the case may be, but should not be authorized to eliminate or reduce budget requests made to the Legislature.

Standard 6.8 Nonjudicial Personnel of the Courts

Nonjudicial court personnel who serve the court such as court attendants and court clerks should be selected, trained, promoted and compensated by the court system. In recognition that the courts are a separate branch of government the Supreme Court should supervise the administration of a judicial personnel system. Through its rule making authority the Supreme Court should establish standards for the selection, classification, training, promotion and compensation of nonjudicial support personnel. The Department of Civil Service should implement these standards and administer the personnel system. Selection procedures and where appropriate tests should be approved by the Supreme Court.

Nonjudicial personnel of the courts should be selected, supervised, retrained and promoted by the court system. Regulations governing nonjudicial personnel should provide:

1. A uniform system of position classification and levels of compensation.
2. A system of open and competitive application, examination and appointment of new employees that reflect the special requirements of each type of position in regard to education, professional certification, experience, proficiency and performance of confidential functions.
3. Uniform procedures for making periodic evaluation of employee performance and decisions concerning retention and promotion.
4. Requirements that discipline or discharge be based on good cause and be subject to appropriate review.
5. Compatibility, so far as possible, with the employment system in the Executive Branch. Transfer of individuals from one system to the other, without impairment of compensation, seniority, or fringe benefits should be facilitated.
6. A set of grievance procedures by which court employees can appeal decisions.
7. Compliance with federal and State Equal Employment Opportunity policy.
8. Court attendants who are armed should be trained in the use of firearms.

Regulations governing nonjudicial employees of the court system should reflect the differences in duties and responsibilities of various types of nonjudicial personnel including the following:

1. Administrative personnel, such as the Administrative Director of the Courts, court executives of subordinate court units and their principal deputies. Administrative personnel should perform duties requiring managerial skills and discretion and should have qualifications that

include general education, appropriate professional experience and education and training in court management or public administration.

2. Professional personnel, to include persons such as examining physicians, psychological and social diagnosticians, appraisers and accountants whose duties require advance education, specialized technical knowledge and the exercise of critical judgment. They should be selected on the basis of their competence within their own profession and adaptability to the working environment of the court system. The procedure for evaluating potential appointees to professional positions should include participation by persons of recognized standing in the professional discipline involved.
3. Confidential employees, which include secretaries and law clerks and other persons whose duties require them to work on a personal and confidential basis with individual judges, judicial officers, administrative officials and professional personnel. Confidential employees should serve at the pleasure of the person for whom they work.
4. Technical and clerical employees. All other employees should be appointed by the chief administrative official of the administrative office in which they are employed.

Standard 6.9 Compensation and Retirement of Judicial and Nonjudicial Personnel

Levels of compensation for nonjudicial personnel should be sufficient to attract and retain highly competent staff. Full-time employees should be covered by medical insurance and, where employed on a permanent basis, by a retirement system that substantially corresponds to that in effect for employees of the Executive Branch.

Continued employment of judicial and nonjudicial personnel over 70 years of age should be contingent upon passing an annual mental and physical examination.

Standard 6.10 Continuing Education of Court Staff

All staff members of the court system should maintain and improve their professional competence through continuing education. The court system should operate or support programs of orientation for new court staff and refresher and developmental programs for experienced staff. Where greater convenience and economy can be achieved, such programs should be operated jointly by several court systems, or on a regional or national basis.

STANDARDS FOR JUDICIAL SELECTION, EDUCATION AND TRAINING

Standard 7.1 Judicial Nominating Process

The New Jersey screening process forms a solid basis for selecting judges but should be modified pursuant to Standards 7.1 through 7.6. All participants in the selection process should make their decisions purely on the merit of the individual and evaluate the candidate only as to whether he or she meets the qualifications of a good judge as delineated by Standard 7.4.

Several elements of the New Jersey judicial selection process should be maintained.

1. The Judicial Selection Committees of the State and county bar associations should continue to forward names of prospective judicial candidates to the Governor for consideration.
2. The Judicial Appointments Committee should continue to assess the professional qualifications of prospective judicial nominees.
3. The Special Investigation Unit of the New Jersey State Police should continue to investigate the background of prospective judicial nominees.
4. The Governor should nominate judicial candidates.
5. The New Jersey Senate should have a constitutional role of "advice and consent" in the nomination of judges.

A selection process should aggressively seek out the best potential judicial candidates through the participation of the bench, the organized bar, law schools and the lay public.

Standard 7.2 Judicial Selection Committees

Judges should be selected as judicial vacancies occur (including the creation of a new judicial office) through a procedure in which the New Jersey Bar Association's State Judicial Selection Committee nominates at least three qualified candidates from a list of candidates forwarded by a county judicial selection committee(s). Judicial selection committees should be composed of at least seven members

representing the bar associations, judiciary and lay public. All members should be appointed on a voluntary basis.

1. A judicial representative on the State Judicial Selection Committee should be appointed by the Chief Justice of the Supreme Court. The judicial representative on each county bar association's selection committee should be appointed by the assignment judge of the respective county. The judicial member should serve as the presiding officer.

2. Two representatives of the public on the State Judicial Selection Committee should not be attorneys and should be appointed by the Governor. Two lay representatives on each county judicial selection committee should be residents of the county, nonlawyers and appointed by the Governor. The lay representatives should be appointed for staggered terms and not of the same political party.

3. The president of the State Bar Association should appoint four representatives to the State Judicial Selection Committee. Four representatives should be appointed by each county bar association president to the respective county bar association judicial selection committees.

Each county judicial selection committee should continue to survey practicing attorneys in the county to determine those who are willing to accept a position as judge. Those who are willing should be asked to answer a questionnaire concerning their background and qualifications as is presently done. A current list of potentially qualified candidates should be maintained and at least five names forwarded to the State Judicial Selection Committee along with the answers to the questionnaire immediately upon notice of a judicial vacancy in the respective county or vicinage. For upper court vacancies in vicinages which include more than one county all of the county selection committees in that vicinage should submit the names of at least three candidates.

The State Judicial Selection Committee should review the questionnaires forwarded by the county selection committees, evaluate the answers on the questionnaire, make inquiries if necessary and submit the names of at least three potentially qualified candidates to the Governor. If all candidates whose names are forwarded to the Governor are considered unqualified by the Governor or the Judicial Appointments Committee, the Governor should request a new list of qualified candidates be submitted by the State Judicial Selection Committee. The Governor may at any time submit names for consideration by the State Judicial Selection Committee. The Committee should evaluate the candidates' qualifications using the same criteria used for screening all other candidates. The State Judicial Selection Committee should have the services of a paid staff to aid in record keeping and clerical tasks and to make inquiries for the Committee.

Standard 7.3 Judicial Appointments Committee

The State Bar Association's Judicial Appointments Committee should continue evaluating the professional qualifications of judicial nominees. The membership of the Committee should include representatives of the judiciary, lay public and bar associations.

1. A judicial representative should be appointed by the Chief Justice of the Supreme Court and serve as presiding officer.

2. Two representatives of the public who are not lawyers should be appointed by the Governor. The lay members should serve for staggered terms and not be of the same political party.

3. The State Bar Association membership should continue as it is currently constituted.

The Judicial Appointments Committee should expand its present format for evaluating the professional qualifications of judicial nominees. The Committee, in cooperation with the judiciary, the State Bar Association and other interested parties should develop a format for determining a candidate's professional qualifications for performing judicial duties from research which clearly identifies the knowledge and skill requirements of judges operating in Appellate and Trial Courts. The identification of appropriate skills and knowledge should be based on an assessment of specific roles, tasks and performance objectives and verified through observation of judges while they are performing their everyday duties.

Judicial nominees should be required to undergo a physical examination and the findings should be considered by the Judicial Appointments Committee. The Appointments Committee should continue to receive and review information provided by the Special Investigations Unit of the State Police concerning the nominees' background.

The professional and personal qualifications of judges who wish to be reappointed should be reexamined by the Judicial Appointments Committee prior to reappointment. Additional information on the judge's performance during the first term of office should include a report from the Supreme Court's Advisory Committee on Professional Ethics. The Governor should appoint judicial candidates within 30 days after they have been cleared by the Judicial Appointments Committee.

The Judicial Appointments Committee should have a paid staff. The responsibility of the staff should include:

1. Record keeping and clerical functions.
2. Investigation via telephone or personal interviews to provide the Committee with information on the nominee's professional qualifications.
3. Expansion and improvement of the format for evaluating the professional qualifications of judicial nominees.

Standard 7.4 Advice and Consent by the Legislature

The Senate should exercise its constitutional role of advice and consent. The Senate should adopt and maintain the following internal rules.

1. The Judiciary Committee should report to the Senate within 60 days of receipt of a judicial nomination with recommendations for, against or otherwise, together with the reasons for such recommendations, plus the vote of each Committee member.
2. In the event that the Judiciary Committee fails to report on any nomination within 60 days, and such nomination is not withdrawn by the Governor, any Senator may move the nomination before the full Senate or the Senate should automatically consider the nomination at its next meeting.
3. The nominee should have the right to receive a hearing, which would be public or private at the discretion of the nominee; where the nominee can demand to know the objections against him and demand the right to respond publicly or privately. Senatorial courtesy* should be abolished by internal Senate rule.

Standard 7.5 Qualifications of a Judge

Persons should be selected as judges on the basis of their personal and professional qualifications for judicial office. Their concept of judicial office and views as to the role of the judiciary may be pertinent to their qualification as judges. Selection should not be made on the basis of partisan affiliation.

Personal and professional qualifications: All persons selected as judges should be of good moral character, emotionally stable and mature, in good physical health, patient, courteous and capable of deliberation and decisiveness when required to act on their own reasoned judgment. They should have a broad general and legal education and should have been admitted to the bar. They should have had substantial experience in the practice, administration, or teaching of law for a term of years commensurate with the judicial office to which they are appointed.

Trial Judges: Persons selected as trial judges should have had substantial experience in the adversary system through preparation, presentation or decision of legal argument and matters of proof according to rules of procedure and evidence.

Appellate judges: The selection of appellate judges by the Supreme Court should be guided by the aim of having an appellate bench composed of individuals having a variety of practical and scholarly viewpoints, including some with substantial experience as a trial judge. Persons selected as appellate judges preferably should have high intellectual gifts and experience in developing and expressing legal ideas and facility in exchanging views and adjusting differences of opinion.

Standard 7.6 Assessment of the Need to Fill Judicial Vacancies and to Provide Support Services

The decision whether a judicial position should be filled is an executive decision which should be based on an assessment of whether it is needed or feasible. To aid in the assessment of such needs the Supreme Court, through the Administrative Office of the Courts, should initiate a study to determine and provide continuous data to appointing authorities concerning:

1. The number of judges needed to process all criminal and civil cases within the specific time limits set by the Supreme Court.
2. The proper ratio of support personnel to each judge to ensure that cases are processed within appropriate time limits. Support personnel include public defenders, prosecutors, probation officers, clerks, stenographers, secretaries and court attendants.

Within 30 days after a judicial vacancy occurs, the Supreme Court or its administrative branch, the Administrative Office of the Courts, should notify the appointing authority as to whether there is a need to appoint a judge or provide supporting staff to ensure that the judge can function on a full-time basis. If there is not enough supporting personnel a judge should only be appointed contingent upon hiring of the needed staff.

Standard 7.7 Establishment of a State Judicial College

A State Judicial College should be established in cooperation with the law schools and schools of criminal justice in New Jersey to provide judges with access to a year-round comprehensive program of education. The curriculum of the college should include three major areas: judicial practice, the social sciences and law. The following elements should be included in the development of a State Judicial College.

1. The teaching staff should be composed of full-time judges on temporary leave from the bench and former judges and should use experts on a part-time basis from various aspects of the criminal justice system, social sciences and administration fields.
2. Courses should be offered at regional locations to allow judges easy access.

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* Senatorial courtesy is the process whereby the Senate accedes to the veto of a single member where a nomination from his or her district is concerned.

3. Class size should be restricted to a limited number of participants to increase individual participation and provide greater individualized instruction.

4. Each judge should be required to participate in at least 12 hours of classroom education per year.

Standard 7.8 Judicial Orientation Training

Judicial orientation training for all newly appointed judges should be extended and provide a combination of required and elective courses.

1. All newly appointed Trial Court judges who have no prior judicial experience should be provided with the equivalent of at least three weeks of judicial orientation training.

2. All newly appointed Municipal Court judges who have no prior judicial experience should be provided with at least seven days of judicial orientation training.

3. Newly appointed judges should attend orientation training prior to assuming the responsibilities of the bench. In any event, a judge must receive orientation training within six months of the judge's appointment.

4. Judicial orientation training should include a series of required courses for each judge and a series of elective courses to allow judges to study intensively subjects in which they have limited knowledge.

Standard 7.9 National Level Education Programs

The Administrative Office of the Courts (AOC) or a State Judicial College should continue to sponsor participation in national judicial education programs to expose large numbers of New Jersey judges to the experiences, outlooks and methods of judges from other court systems throughout the country. National associations, centers and academies should be encouraged to foster education programs in New Jersey.

Standard 7.10 Judicial Education Curriculum

The Administrative Office of the Courts or a State Judicial College should develop an educational curriculum for judges which covers the areas of judicial practice, the social sciences and law. All courses should be oriented directly toward the judicial function.

Standard 7.11 Individualized Education Methodology

Lecture- and discussion-oriented judicial education should be supplemented with a series of education methodologies which enable individual judges or groups of judges to study subjects in depth and at their own pace. The Administrative Office of the Courts or a State Judicial College should develop the following education methods and resources:

1. An automated legal research resource to provide judges, prosecutors and defense attorneys at terminals throughout the State with up-to-date access to statutes, court rules and court decisions.
2. Video and audio tapes for self-teaching which provide individual judges and groups of judges with lectures and discussions on law, procedure and social science relating to the judicial function.
3. Manual or computer self-administered programmed instruction.
4. Workbooks to accompany lecture and discussion presentations.
5. A program of sabbatical leave for the purpose of enabling judges to pursue studies and research relevant to their judicial duties.

Standard 7.12 Judicial Education, Planning and Evaluation

A comprehensive research and evaluation effort should form the basis for planning judicial education. The Administrative Office of the Courts or a State Judicial College should perform research and evaluation tasks.

1. Research should include identification of the necessary skills and knowledge required of judges and judicial problem areas which may benefit from education programs. Such research should be based on surveys of police, court, public defender, prosecution and correctional personnel and the general public.

2. Evaluation of judicial education programs should include continual critique of training programs by both training staff and judges.

STANDARDS FOR THE PRETRIAL PROCESS

Standard 8.1 Summons in Lieu of Continued Detention Following Arrest or in Lieu of Warrant

Upon the apprehension or following the charging of a person for an offense other than the common law felonies of arson, burglary, kidnapping, murder, rape, robbery or sodomy, or the attempt to commit such crimes, a summons should generally be issued in lieu of continued detention following arrest or in lieu of the issuance of an arrest warrant by a judicial officer. Upon the apprehension or arrest of a defendant for such common law felonies, or the attempt to commit such crimes, the defendant should be taken into custody and so remain until a judicial officer determines appropriate release conditions.

All law enforcement officers should be authorized, by court rule and statute, to issue a summons in lieu of continued detention following an arrest without a warrant for offenses other than the specified common law felonies or attempts to commit such crimes. All judicial officers should be given authority to issue a summons rather than an arrest warrant in all cases in which a complaint, accusation or indictment is filed or returned against a person not already in custody.

The summons should be served upon the defendant in the same manner as a civil summons; however, limited detention for identification purposes should be authorized.

I. **Authority of Law Enforcement Officer**—A law enforcement officer, acting without a warrant, who has probable cause to believe that a person has committed any offense other than the common law felonies of arson, burglary, kidnapping, murder, rape, robbery or sodomy, or attempt to commit such crimes, should be required to issue a summons in lieu of continued detention following arrest. Detention may be continued, however, if:

1. The behavior and past conduct of the defendant indicates that his release presents an imminent danger to individuals or to the community;
2. The defendant is under lawful arrest and fails to identify himself satisfactorily or supply required information concerning his identification;
3. The defendant refuses to sign an acknowledgement of receipt of the summons;
4. The defendant has no ties to the community reasonably sufficient to assure his appearance;
5. The defendant has previously failed to appear in response to a summons; or
6. Arrest or detention is necessary to carry out additional legitimate investigation action.

Should a field officer determine the necessity for continued custody, another independent decision should be made by the supervising officer at the police station. Any law enforcement officer who determines a need for continued custody should be required to state the reasons for the decision in writing.

II. **Authority of Judicial Officer**—All judicial officers should be authorized by law to issue a summons rather than an arrest warrant in all cases in which a complaint, accusation or indictment is filed or returned against a person not already in custody.

A. A summons should be issued if the alleged offense is other than the common law felonies of arson, burglary, kidnapping, murder, rape, robbery or sodomy or attempt to commit such crimes; however, an arrest warrant may be issued if:

1. The behavior and past conduct of the defendant indicates that failure to take him into custody presents an imminent danger to individuals or to the community;
2. The defendant has previously willfully failed to respond to a summons or has violated the conditions of any pretrial release program;
3. The defendant has no ties to the community and there is a reasonable likelihood that he will fail to respond to a summons;
4. The whereabouts of the defendant is unknown or the arrest warrant is necessary to subject him to the jurisdiction of the court; or
5. Arrest and detention are necessary to carry out additional legitimate investigative action.

B. At the time of the application for an arrest warrant or summons, the judicial officer should require the applicant to produce such information concerning the defendant which reasonable investigation will reveal. This information should include the defendant's residence, employment, family relationships, past history or response to legal process and past criminal record.

C. Where a crime other than the common law felonies or attempts to commit such crimes has been charged, the judicial officer who determines a need for the issuance of a warrant should be required to state the reasons for the decision in writing.

D. A warrant should generally issue for persons accused of committing the common law felonies of arson, burglary, kidnapping, murder, rape, robbery or sodomy or attempt to commit such crimes; however, a summons in lieu of arrest may be issued at judicial discretion.

III. **Content of Summons**—Whether issued by a law enforcement officer or by a judicial officer, the summons should:

1. Inform the defendant of the offense with which he is charged;
2. Specify the date, time and exact location of the first court proceeding, whether trial or preliminary hearing; and
3. Advise the defendant of the consequences of failing to appear.

Standard 8.2 Criteria for Prosecutorial Screening

It should be recognized that at various times the need exists to terminate formal or informal action against an individual involved in the criminal justice system and that the prosecuting attorney has discretion to do so without court approval prior to indictment. This need may arise where prosecution is not justified or where it would not further the interests of the criminal justice system.

I. A defendant should be screened out of the criminal justice system and criminal prosecution terminated if there is not a reasonable likelihood that the evidence admissible against him would be sufficient to obtain a conviction and sustain it on appeal. In this type of screening decision, the prosecuting attorney should consider the probability of conviction and affirmation of that conviction on appeal.

II. Criminal prosecution should be terminated when the benefits to be derived from prosecution or diversion would be outweighed by the costs of such action. In this determination, the factors to be considered are:

1. Doubt as to the defendant's guilt;
2. The impact of further proceedings upon the defendant and those close to him, especially the likelihood and seriousness of financial hardship or family life disruption;
3. The seriousness of the offense;
4. The value of further proceedings as a deterrent to others which will result from prosecu tion;
5. The value of further proceedings as a deterrent to the defendant, viewed in light of his past criminal conduct, the seriousness of his past criminal activity which might continue in the absence of a deterrent; the possibility that further proceedings might tend to increase the defendant's commitment to criminal activity; and the likelihood that programs available as diversion or sentencing alternatives may reduce the likelihood of recidivism;
6. The value of further proceedings in fostering the community's sense of confidence in the criminal justice system;
7. The cost of prosecution;
8. Any improper motives of the complainant;
9. General nonenforcement of the statute involved;
10. The likelihood of prosecution and conviction of the defendant by another jurisdiction, state or federal; and
11. Any assistance rendered by the defendant in the apprehension or conviction of other defendants and any socially beneficial activity engaged in by the defendant that might be encouraged in others by terminating prosecution.

Standard 8.3 Procedure for Prosecutorial Screening

I. Following the return of an indictment by the grand jury, criminal prosecution should be terminated only by the court.

II. The decision to institute criminal proceedings should be initially and primarily the responsibility of the prosecuting attorney. Where the defendant has not been taken into custody, no complaint should be filed without the review and formal approval of the prosecuting attorney.

III. After a person has been taken into custody or a complaint has been signed, the decision to proceed with formal prosecution should rest with the prosecuting attorney.

A. The prosecuting attorney should have the discretion to terminate criminal prosecution when, based on criteria identified in Standard 8.2, it is counterproductive to prosecute.

B. The prosecuting attorney should have the discretion to dispose of at the municipal level, lesser criminal activity by appropriate changes under the disorderly persons act.

C. The decision to continue formal proceedings should be a discretionary one on the part of the prosecuting attorney and should not be subject to judicial review. Refusal of the prosecuting attorney to screen out of the system should not be the basis for attack upon a criminal charge or conviction.

IV. Written guidelines should be formulated by the prosecuting attorney to structure the exercise of prosecutorial discretion and identify those factors to be considered in the screening decision. Guidelines should reflect local conditions and attitudes and should be available to the public.

V. When the decision to terminate prosecution is made, a written statement of the prosecuting attorney's reasons should be prepared and kept on file. Screening practices within the prosecuting agency should be reviewed periodically to ensure that guidelines are being followed and to assist in their evaluation and revision.

VI. If the prosecuting attorney administratively dismisses a complaint or screens a defendant out of the system, notification should be given to the complainant or victim and the police or the complainant should have recourse to the court. If the court determines that the decision not to prosecute constituted an abuse of discretion, it should order the prosecuting attorney to pursue formal proceedings.

Standard 8.4 First Appearance

Initial appearances on all charges should be scheduled before a judge without unnecessary delay. At this appearance, the defendant should be advised in clear and easily understandable language of the charges against him, of his constitutional rights (including but not limited to his right to pretrial release and to be represented by counsel, appointed if he is indigent) and of the date of his trial or probable cause hearing. If he is entitled to public representation, arrangements for such should be made at this time.

A determination regarding appropriate conditions of pretrial release should also be made by the judge at this time. If a defendant has been conditionally released prior to the first appearance, a reduction of release conditions can be sought at the first appearance.

I. If not released on summons or by any other lawful manner, every arrested person shall be taken before a judge without unnecessary delay but in no instance later than 48 hours after the arrest.

II. Unless the defendant intelligently waives the right to be represented by counsel, no further steps in the proceedings should be taken until the defendant and his counsel have had an adequate opportunity to confer.

III. In all cases not concluded at the first appearance, the judge should decide the question of the defendant's pretrial release. Release should be effected if appropriate.

IV. If the defendant cannot make bail or be otherwise released from continued custody following the first appearance, the detention hearing or the hearing of probable cause should be held without unnecessary delay and in no case longer than ten days following the date of arrest.

Standard 8.5 Pretrial Release

Adequate investigation of defendants' characteristics and circumstances should be undertaken to identify those defendants who can be released prior to trial solely on their own promise to appear for trial. Release on this basis should be made wherever appropriate. If a defendant cannot appropriately be released on this basis, consideration should be given to releasing him under certain conditions, such as the deposit of a sum of money to be forfeited in the event of nonappearance, or assumption of an obligation to pay a certain sum of money in the event of nonappearance or the agreement of third persons to maintain contact with the defendant and to assure his appearance.

Participation by private bail bond agencies in the pretrial release process should be minimized to the fullest extent possible.

Standard 8.6 Alternatives to Pretrial Detention

A court rule should be adopted to develop, authorize and encourage the use of a variety of alternatives to the detention of persons awaiting trial. The use of these alternatives should be governed by the following:

I. Judicial officers on the basis of information provided by the pretrial services agency should select from the list of the following alternatives the least restrictive condition or conditions that will reasonably assure the appearance of the defendant for trial:

A. Release on personal recognizance into own custody without further conditions (ROR).

B. Release on the execution of an unsecured appearance bond executed by the defendant or a third party.

C. Release into the care of a qualified person or organization reasonably capable of assisting the defendant to appear at trial.

D. Release with imposition of restrictions on activities, associations, movements and residence reasonably related to securing the appearance of the defendant.

E. Release on the basis of financial security to be provided by the defendant (bail).

1) Full Cash;
2) 10% Cash;
3) Traditional Bail Bond;
4) Real Estate.

F. Imposition of any other restrictions other than detention reasonably related to securing the appearance of the defendant.

G. Partial detention, with release during certain hours for specified purposes.

H. Detention of the defendant.

II. Judicial officers in determining the likelihood of appearance and selecting the form of pretrial release should consider the nature and circumstances of the offense charged, the weight of the evidence against the defendant, his ties to the community, his record of convictions, if any, and his record of appearance at court proceedings or of flight to avoid prosecution.

III. Participation by private bail bond agencies in the pretrial release process should be restricted to the fullest extent possible.

IV. Willful failure of the defendant to appear before any court as required shall be subject to appropriate sanctions.

Standard 8.7 Procedures Relating to Pretrial Release and Detention Decisions

The following considerations should be included in the formulation of procedures related to pretrial release and detention decisions:

I. A person in the physical custody of a law enforcement agency on the basis of arrest, with or without a warrant, should be taken before a judicial officer without unnecessary delay and in no instance later than 48 hours after arrest.

II. When a person accused of a crime is taken into custody, an investigation by the pretrial services agency should commence without delay to gather information relevant to the pretrial release or detention decision. The nature of the investigation should be limited to facts related to the likelihood of appearance at trial and should include but not be limited to the following:

A. Current employment status and employment history.

B. Present residence and length of stay at such address.

C. Extent and nature of family relationships.

D. General reputation and character references.

E. Present charges against the defendant.

F. Prior criminal record.

G. Prior record of compliance with or violation of pretrial release conditions.

H. Other facts relevant to the likelihood that he will appear for trial or factors which would make flight unlikely.

III. The utilization of bail schedules should be discontinued.

IV. Pretrial detention or conditions substantially infringing on personal liberty should not be imposed unless:

A. The defendant is granted a hearing, as soon as possible, before a judge and where required is accorded the right to be represented by counsel (appointed counsel if he is indigent); and, at the discretion of the judge, the right to present evidence on his own behalf, to subpoena witnesses and to confront and cross-examine the witnesses against him.

B. The judge finds substantial evidence that confinement or restrictive conditions are necessary to assure the presence of the defendant for trial.

C. The judge states on the record his findings of fact, the reasons for imposing detention or release conditions, and the evidence relied upon.

V. Where a decision has been made to detain or impose conditions substantially infringing on the defendant's liberty, the defendant should be authorized to move for judicial review of that decision.

VI. Whenever a defendant is released pending trial subject to conditions, and there is probable cause to believe that the defendant has violated one or more of those conditions, he may be detained pending a hearing. If, after a hearing as described in IV (A) hereof, the judge finds a willful violation of one of the conditions of pretrial release, he should be authorized to impose such different or additional conditions as are appropriate under such circumstances.

Standard 8.8 General Criteria for Diversion

In appropriate cases offenders should be diverted out of the criminal justice system before formal trial or conviction.

I. Such diversion is appropriate where the benefits to society from channeling an offender into an available noncriminal diversion program outweigh any harm done to society by abandoning criminal prosecution. Among the factors that should be considered with respect to diversion are:

A. The nature of the offense;

B. The motivation and age of the offender;

C. The attitude of the victim;

D. Any likelihood that the offender suffers from a mental illness or psychological/physical abnormality which was related to his crime and for which treatment is available;

E. Any likelihood that the crime was significantly related to any other condition or situation such as unemployment or family problems that would be subject to change by participation in a diversion program;

F. Any history of the use of physical violence toward others;

G. Involvement with syndicated crime;

H. A history of anti-social conduct indicating that such conduct has become an ingrained part of the defendant's life-style and would be particularly resistant to change; and

I. Any special need to pursue criminal prosecution as a means of discouraging others from committing similar offenses.

Standard 8.9 Use of Diversion

The State, in cooperation with relevant public and

private noncriminal justice agencies, should develop and implement formally organized programs of diversion, such as pretrial intervention (PTI), that can be applied in the criminal justice process from the time an illegal act occurs to the time of adjudication.

I. In order to provide the opportunity for formalized pretrial diversion to all New Jersey citizens, pretrial intervention programs should be expanded until there is a program available to the residents of each county within the State. Each PTI program should make the most effective use of existing community services and where services for a particular problem are not available, the program should attempt to incorporate such needed services within its programs. Provisions should be made for inter-state transfers.

II. Pretrial intervention programs should operate under a set of written guidelines that ensure periodic review of policies and decisions. The same guidelines should be utilized by prosecutors, program administrators and judges and should specify:

A. The objectives of the program and the types of cases to which it is to apply;
B. The means to be used to evaluate the outcome of diversion decisions;
C. A requirement that the official making the diversion recommendation state in writing the basis for his determination; and
D. A requirement that the agency operating diversion programs maintain a current and complete listing of various resource dispositions available to diversion decisionmakers.

III. Diversion should not be utilized as a substitute for prosecution where the facts of the case are not sufficient to obtain a conviction or where screening is more appropriate.

IV. A plea of guilty should not be considered a condition for enrollment into any diversion program.

V. The factors to be used in determining whether a defendant, following arrest but prior to adjudication, should be selected for diversion to a noncriminal program, should include the following:

1. The nature of the offense.
2. The facts of the case sufficiently establish that the defendant probably committed the act.
3. The motivation and age of the defendant.
4. The willingness of the victim to have no conviction sought.
5. Existence of personal problems, character traits, etc., which may be related to the defendant's crime and for which services are unavailable within the criminal justice system, or may be provided more effectively outside the system and the probability that the causes of criminal behavior can be controlled by proper intervention.
6. Likelihood that the defendant's crime is related to a condition or situation, such as unemployment or family problems that would be conducive to change through the defendant's participation in the diversion program.
7. The needs and interests of the victim and society are served better by diversion than by official processing.
8. The defendant's crime does not constitute part of a continuing pattern of anti-social behavior.
9. The defendant does not present a substantial danger to others.
10. The defendant's crime is not of an assaultive or violent nature, whether in the criminal act itself or in the possible injurious consequences of such criminal act.
11. Likelihood that the arrest has had such a serious effect on the defendant that it would serve as the desired deterrent against repetitive criminal behavior.
12. Prosecution would exacerbate the social problem that led to the defendant's criminal acts.
13. History of the use of physical violence toward others.
14. Any involvement with organized crime.
15. A history of anti-social conduct indicating that such conduct has become an ingrained part of the defendant's life-style and would be particularly resistant to change.
16. The defendant would present a substantial danger to others.
17. The crime is of such a nature that the value of pretrial intervention would be outweighed by the public need for prosecution.
18. Services to meet the defendant's needs and problems are more effectively available through resources not available to the pretrial intervention program.
19. Where the defendant's involvement with other people in the crime charged or in other crimes is such that the interest of the State would be best served by processing his case through traditional criminal justice system procedures.
20. Where the harm done to society by abandoning criminal prosecution would outweigh the benefits to society from channeling an offender into a diversion program.

VI. The statewide system of pretrial intervention should be comprehensively evaluted. The results of any evaluation and subsequent interim evaluations should be distributed to all participating judges, the county prosecutor and the program administrators for the purpose of ensuring the uniformity and effectiveness of PTI programs.

Standard 8.10 Procedure for Diversion Programs

The decision to divert should be made as soon as adequate information can be obtained.

I. Guidelines for making diversion recommendations and decisions should be established and made public. Written guidelines should be promulgated after consultation with the prosecutor and after giving all prosecutorial suggestions due consideration and then should be distributed to all police agencies and judges within the county.

II. Diversion should be permitted only under a court-approved diversion agreement providing for suspension of criminal proceedings on the condition that the defendant participate in the diversion program. This agreement should be between the defendant, prosecutor and court. Uniform procedures should be developed for the formulation of such agreements and their approval by the court. These procedures should contain the following features:

A. Emphasis should be placed on the defendant's right to be represented by counsel during negotiations for diversion and entry and approval of the agreement.

B. Suspension of criminal prosecution for longer than one year should not be permitted.

C. The agreement submitted to the court should contain a full statement of those things expected of the defendant and the reason for diverting the defendant.

D. Upon expiration of the agreement and successful completion of the diversion program, the court should dismiss the prosecution and no future prosecution based on the conduct underlying the initial charge should be permitted.

E. For the duration of the agreement, the prosecutor or the program director should have the authority to advise the court, upon notice to the defendant, that the defendant is not performing his duties adequately under the agreement and if the court determines that the defendant is not, it shall permit the prosecution to be reinstated.

III. Whenever a diversion recommendation is made, the staff member making it should specify in writing the basis for the decision, whether or not the defendant is diverted. These statements should be collected and subjected to periodic review within the respective agency to ensure that diversion programs are operating as intended.

Standard 8.11 Pretrial Services Agency

The State of New Jersey should take action, including the pursuit of enabling legislation or court rule where necessary, to create a centrally coordinated and directed pretrial services agency. This agency should be established as a permanent section within the Administrative Office of the Courts and should be responsible for the supervision, operation of all pretrial release and diversion programs and procedures as well as the development of a comprehensive plan for improving the pretrial process.

I. The pretrial services agency should provide the following services:

A. Operation of diversion programs, such as pretrial intervention.

B. Continuing information gathering necessary for pretrial release and intervention decisions as outlined in Standards 8.7, "Procedures Relating to Pretrial Release and Detention Decisions" and 8.9, "Use of Diversion."

C. Determination of the individual needs of defendants and, where appropriate, emphasize diversion to alternative community-based services (halfway houses, drug treatment programs or any other residential or nonresidential adult programs) based upon identified needs.

D. Provide assistance in assessment, evaluation and classification services for purposes of program planning for sentenced offenders and pretrial detainees.

E. Supervision of defendants released pending trial and assistance to enable defendants to appear at trial.

II. The following principles should be followed in establishing, planning and operating pretrial services:

A. Initiation of pretrial services should in no way imply that the defendant is guilty. Protection of the rights of the defendant must be maintained at every phase of the process.

B. Any information gathered from the defendant shall be privileged.

C. Private specialized community services should be made available to the pretrial services agency where necessary and funds should be provided for their purchase. Services should include but not be limited to the following:

1. Psychiatrists;
2. Clinical psychologists;
3. Social workers;
4. Interviewers; and
5. Education specialists.

Standard 8.12 Comprehensive Pretrial Process Planning

In the initial planning process the pretrial services agency as described in Standard 8.11 should collect the following information:

A. The extent of pretrial detention, including the

number of detainees, the number of days of detention and the range of detention by time periods.

B. The cost of pretrial release programs and detention.

C. The disposition of persons awaiting trial, including the number released on bail, ROR and other nonfinancial conditions, and detained.

D. The number of persons who are granted bail status changes.

E. The disposition of such persons after trial including for each form of pretrial release or detention, the number of persons who were convicted, who were sentenced to the various available sentencing alternatives, and whose cases were dismissed.

F. Effectiveness of pretrial conditions, including the number of defendants who (a) failed to appear, (b) violated conditions of their release, (c) were arrested for another offense during the period of their release.

G. Conditions of treatment of and rules governing persons awaiting trial, including the extent to which such treatment and rules meet the recommendations in the standards.

H. The need for and availability of resources that could be effectively utilized for persons awaiting trial, including the number of arrested persons suffering from problems relating to alcohol, narcotic addiction or physical or mental disease or defects, and the extent to which community treatment programs are available.

I. The length of time required for bringing a criminal case to trial and, where such delay is found to be excessive, the factors causing such delay.

The comprehensive plan for the pretrial process should include the following elements:

A. Assessment of the current status of programs, facilities and policies relating to pretrial release and detention.

B. A plan for improving the programs and facilities relating to pretrial release and detention, including priorities for implementation of the recommendations set forth by this Committee.

C. A means of implementing the plan and requiring approval of the expenditure of funds for, or the continuation of, programs consistent with the plan.

D. A method of evaluating the extent and success of implementation of the improvements.

E. A strategy for processing large numbers of persons awaiting trial during mass disturbances, including a means of utilizing additional resources on a temporary basis.

F. Ascertainment of the statistical requirements necessary for evaluation, planning, and operation of a pretrial release system.

STANDARDS FOR TRIAL PREPARATION

Standard 9.1 Limitation of Grand Jury Function

The function of the grand jury should be limited to investigative purposes and indictment in exceptional circumstances. Indictment should not be required in any other criminal prosecution and a constitutional amendment should be adopted to that effect.

If a direct grand jury indictment is issued in a particular case, no probable cause hearing should be held.

Standard 9.2 Probable Cause Hearing

A consolidated centralized court should be established having jurisdiction over all criminal offenses. Probable cause hearings should be held under the jurisdiction of this court.

A probable cause hearing should be held within two weeks following the commencement of proceedings and should be held in addition to or, whereever possible, as part of the detention hearing referred to in Standard 8.4, "First Appearance." Evidence received at the probable cause hearing should be limited to that which is relevant to a determination that there is probable cause to believe a crime has been committed and that the defendant has committed it. Upon a finding of a probable cause, no further charging document should be required.

Standard 9.3 Speedy Trial Time Limits

Resources should be made available to permit the disposition of all criminal cases within appropriate time limits. Given the necessary resources, all criminal cases involving incarcerated defendants should come to trial within 90 days of arrest and all other trials should be held within six months of filing of the first charging document. Failure to meet these goals should not require dismissal unless it has been determined that there was unnecessary delay in reaching a disposition. An incarcerated defendant who through no fault of his own has not been brought to trial within 90 days of his arrest should be released on conditions he is able to meet.

Standard 9.4 Propriety of Plea Discussions and Plea Agreements

1. In cases in which it appears that the interest of the public in the effective administration of criminal

justice would thereby be served, the prosecuting attorney may engage in plea discussions for the purpose of reaching a plea agreement. He should engage in plea discussions or reach a plea agreement with the defendant only through defense counsel, except when the defendant is not eligible for or does not desire appointment of counsel and has not retained counsel.

2. The prosecuting attorney, in reaching a plea agreement, may agree to one or more of the following, as dictated by the circumstances of the individual case:

a. To make or not to oppose favorable recommendations as to the sentence which should be imposed if the defendant enters a plea of guilty or non vult.
b. To seek or not to oppose dismissal of the offense charged if the defendant enters a plea of guilty or non vult to another offense reasonably related to defendant's conduct; or
c. To seek or not to oppose dismissal of other charges or potential charges against the defendant if the defendant enters a plea of guilty or non vult.

Standard 9.5 Acceptability of a Guilty Plea

The court should not accept a plea of guilty or non vult without first determining that the plea is voluntary, knowledgeable and accurate.

1. As to the voluntariness of the plea, the following means of coercion render the plea unacceptable:

a. Charging or threatening to charge the defendant with offenses for which the admissible evidence available to the prosecutor is insufficient to support a guilty verdict.
b. Charging or threatening to charge the defendant with a crime not ordinarily charged in the jurisdiction for the conduct allegedly engaged in by him.
c. Threatening the defendant that if he pleads not guilty, his sentence may be more severe than that which ordinarily is imposed in the jurisdiction in similar cases on defendants who plead guilty.
d. Failing to grant full disclosure before the plea discussions of all exculpatory evidence material to guilt or punishment.

2. In ascertaining the knowledgeability of the plea, the court should be satisfied that the defendant understands the nature of the charge and the full consequences of his plea.

3. Notwithstanding the acceptance of a plea of guilty, the court should not enter a judgment upon such plea without making such inquiry as may satisfy it that there is a factual basis for the plea.

Standard 9.6 Responsibilities of the Trial Judge

1. The trial judge should not participate in plea discussions.

2. If a tentative plea agreement has been reached which contemplates entry of a plea of guilty or non vult in the expectation that other charges before that court will be dismissed or that sentence concessions will be granted, upon request of the parties the trial judge may permit the disclosure to him of the tentative agreement and the reasons therefore in advance of the time for tender of the plea. He may then indicate to the prosecuting attorney and defense counsel whether he will concur in the proposed disposition if the information in the presentence report is consistent with the representations made to him.

3. When a plea of guilty or non vult is tendered or received as a result of a prior plea agreement, the trial judge should give the agreement due consideration, but notwithstanding its existence he should reach an independent decision on whether to grant charge or sentence concessions.

4. If the trial judge refuses to sentence in accordance with the plea agreement the defendant should have the absolute right to withdraw his guilty plea.

Standard 9.7 Pleading By Defendant; Alternatives

1. A defendant may plead not guilty, guilty, or non vult. A plea of guilty or non vult should be received only from the defendant himself in open court except when the defendant is a corporation, in which case the plea may be entered by counsel or a corporate officer.

2. A defendant may plead non vult or guilty only with the consent of the court.

Standard 9.8 Representation by Counsel During Plea Negotiations

No plea negotiations should be conducted until a defendant has been afforded an opportunity to be represented by counsel. If the defendant is represented by counsel, the negotiations should be conducted only in the presence of and with the assistance of counsel.

Standard 9.9 Pleading to Other Offenses

Upon entry of a plea of guilty or non vult or after conviction on a plea of not guilty, the defendant's counsel may request permission for the defendant to enter a plea of guilty or non vult as to other crimes he

has committed which are within the jurisdiction or coordinate courts of the State. Upon written approval of the prosecuting attorney of the governmental unit in which these crimes are charged or could be charged, the defendant should be allowed to enter the plea.

Standard 9.10 Plea Withdrawal

Prior to sentencing, the court should allow the defendant to withdraw his plea of guilty or non vult whenever the defendant proves that withdrawal is necessary to correct a manifest injustice. In the absence of a showing that withdrawal is necessary to correct a manifest injustice, a defendant may not withdraw his plea of guilty or non vult as a matter of right once the plea has been accepted by the court.

After a defendant has been sentenced, any attempt to withdraw his or her plea of guilty should be made pursuant to those rules governing post conviction relief.

Standard 9.11 Effect of Withdrawn or Refused Plea on Subsequent Proceedings

A plea of guilty or non vult that is withdrawn or refused should not be admissible in evidence against the defendant at trial.

Standard 9.12 Consideration of Plea in Final Disposition

It is proper for the court to grant charge and sentence concessions to defendants who enter a plea of guilty or non vult when the interest of the public in the effective administration of criminal justice would thereby be served.

The court should not impose upon a defendant any sentence in excess of that which would be justified because the defendant has chosen to require the prosecution to prove his guilt at trial rather than to enter a plea of guilty or non vult.

Standard 9.13 Recording the Proceedings and the Agreement of Guilty Pleas

Where a guilty plea is offered, both the plea and any agreement upon which it is based should be placed on the record in open court and preserved. The record should include the court's advice to the defendant, the inquiry into the voluntariness of the plea and the inquiry into the factual basis of the plea.

STANDARDS FOR SENTENCING, PROBATION AND PAROLE

Sentencing

Standard 10.1 General Principles: Statutory Structure

A) All crimes should be classified for the purpose of sentencing into categories which reflect substantial differences in gravity. Each should specify the maximum sentence available for offenses which fall within it.

B) The sentencing system *must* be provided with a wide range of alternatives, with gradations of supervisory, supportive and custodial facilities at its disposal so as to permit a sentence appropriate for various categories of offenses and offenders.

C) The Legislature should not specify a mandatory sentence for any sentencing category or for any particular offense.

Standard 10.2 General Principles

The sentencing system should call for the least restrictive alternative which is most consistent with the protection of the public, the gravity of the offense and the rehabilitative needs of the defendant. Sanction should not exceed the penalties deserved for gravity of offense.

Standard 10.3 Sentencing Guidelines

A) Provision should be made by the Supreme Court for the establishment of sentencing guidelines. Those guidelines should be established as an aid to judges in their sentence determination. The goal of such guidelines should be to serve as an additional tool to aid judges in the imposition of sentences.

B) Judges should be expected to deviate from the guidelines in an appropriate case. Where the judge

does deviate from the guidelines, the reasons for such deviation should be expressed upon the record.

C) The Court should:

1. Collect, develop and maintain statistical information relating to sentencing practices and annually review all sentences imposed in this State, and reassess its guidelines.
2. Cooperate with sentencing courts in developing instructional programs for judges relating to sentencing.
3. Explain sentencing practices and guidelines to the public.

D) The guidelines should establish for each specific offense the sentence which should normally be imposed.

E) The sentencing guidelines should indicate, for each offense:

1. Whether the normal sentence imposed is one of nonconfinement and;
2. If confinement, the length of the term.

F) The court should publish its proposed guidelines.

Standard 10.4 Sentencing Councils

The Supreme Court should establish sentencing councils consisting of three judges. In all cases where the sentencing judge believes that he will impose a sentence which falls outside the guidelines, the sentencing judge should meet with the judges assigned to the sentencing council. The meeting should be preceded by distribution of the presentence report and any other documentary information about the defendant to each of the judges who will participate. The purpose of the meeting should be to assist the judge imposing the sentence in reaching his decision. Choice of the sentence should nevertheless remain the responsibility of the judge who will actually impose it.

Standard 10.5 Appeals

The Supreme Court should promulgate appropriate rules for the appeal of sentence.

Probation

Standard 10.6 Organization of Probation Services

There should be created within the Administrative Office of the Courts a Division of Probation Services to assume responsibility for the administration of all probation services on a statewide basis.

The financing of all personnel and service functions of the Division of Probation Services should be paid for out of the general revenues of the State.

Standard 10.7 Appointment of Probation Director

A director of the Division of Probation Services should be appointed by the Administrative Director of the Courts with the approval of the Chief Justice. The director of the Division of Probation Services should be responsible for the administration of the Division, including policy implementation, procedural decision-making, direction of staff, and the execution of service functions.

Standard 10.8 Probation Services Regions

For the control, direction and execution of all field services within the State, the Division of Probation Services should be divided into regions, which number may be modified based upon workload variations and other operating conditions. Each region should be administered by an assistant director who will report directly to the director of the Division of Probation Services.

Standard 10.9 Offices of Probation Services

There should be located in each county an office of the Division of Probation Services to provide service to all trial courts in that county. In addition, satellite or branch offices should be established in the areas of greatest probationer density in the county to facilitate delivery of the highest level of quality services in the most efficient manner.

Standard 10.10 Staff Responsibilities

The Division of Probation Services should staff pretrial release, pretrial intervention, intake, prepare presentence reports, supervise defendants placed on probation and others committed to their supervision and should perform such other duties as ordered by the Courts.

Standard 10.11 Guidelines for Probation Supervision

The Judiciary should prescribe guidelines governing the type and extent of probation supervision that should ordinarily apply to different types of offenders. The period of mandatory probation supervision should be no longer than five years. General and special conditions of probation should be imposed when appropriate. Special conditions should include payment of costs, fines or restitution, the performance of community services or such other directions as appropriate in the given case.

Standard 10.12 Violation of Probation

If the court determines that a defendant violates the conditions of his probation, it should be authorized to resentence the defendant subject to the statutory maximum for the offense and consistent with guidelines established by the Supreme Court.

Standard 10.13 Revocation of Probation

No probation shall be revoked on the basis of criminal charges until the disposition of such criminal charges.

Standard 10.14 Training

The Division of Probation Services shall be responsible for the development and implementation of a comprehensive training program for probation officers and probation personnel throughout the State.

Parole

Standard 10.15 Unified Parole Authority*

There should be one unified Parole Authority for all institutions of the State of New Jersey. The Authority may establish methods by which paroles in various institutions may be considered. The chairman and the members should be appointed by the Governor with advice and consent of the Senate. The chairman should be the chief administrative officer of the Authority.

Standard 10.16 Parole Application

Parole should apply to all sentences to any county facility where the inmate is sentenced to an aggregate period longer than one year, and to any State correctional facility or prison.

Standard 10.17 Parole Decision Guidelines

The Paroling Authority should establish guidelines consistent with the sentencing guidelines for determining the presumptive release dates of offenders for the offense, or class of offenses, for which the defendant was convicted. The Authority should also establish presumptive penalties upon revocation of parole.

Before the Authority finally promulgates its guidelines, it should publish the proposed guidelines and hold public hearings to allow comments on the guidelines. Thereafter, but at least annually for the first three years and thereafter at least biennially, the Authority should review its guidelines, and publish any changes thereto.

Standard 10.18 Presumptive Parole

Within 30 days after entering an institution for the purpose of serving a sentence of confinement, the inmate should be informed of the presumptive release date.

Standard 10.19 Presumptive Release Guidelines

The Paroling Authority may, after public hearing, establish specific guidelines for reducing or increasing the presumptive release date by a precise number of days for work or for disciplinary infractions.

The Authority's guidelines will prescribe the standards and administrative review procedures governing the imposition of such additions or deductions.

Standard 10.20 Marshaling Resources for Parolees

The Paroling Authority in coordination with the Department of Corrections shall marshal all available resources to aid the reintegration of the parolee to society.

Standard 10.21 Parole Supervision Guidelines

The Paroling Authority may prescribe guidelines governing the type and extent of parole supervision that shall ordinarily apply to different types of offenders. The period of mandatory parole supervision shall be no longer than two years or shall terminate upon expiration of the parolee's maximum sentence where such expiration occurs within the two year period. The supervision period may be extended beyond two years but not longer than the maximum sentence for good cause after a hearing before the authority at which due process protections shall be accorded, subject to the provisions herein.

Standard 10.22 Parole Revocation Guidelines

The Paroling Authority shall establish standards for violation of parole conditions and provide for a violation hearing which affords due process. A pa-

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* Note that this standard conflicts with the Juvenile Dispositions and Corrections Standard 5.41.

rolee whose parole has been revoked should be immediately informed of his next presumptive release date, set according to the guidelines established pursuant to Standard 10.3. The guidelines shall provide that, except in extraordinary circumstances, the penalty for revocation due to violation of technical conditions should initially be confinement in a community release facility, rather than return to prison which is available as a last resort.

Standard 10.23 Decisions to Revoke Parole

No parole shall be revoked on the basis of criminal conduct until the disposition of such criminal charges.

STANDARDS FOR THE ADMINISTRATION OF CORRECTIONS

Standard 11.1 Corrections: General Principle

The long-range goal for the correctional system of New Jersey should be for the State, through the Commissioner of the Department of Corrections, to be responsible for the care and custody of all adult offenders sentenced to custodial terms in excess of six months. The principal recommendation of the Correctional Master Plan Policy Council, that corrections be more locally oriented than at present, should be the guideline in reaching this goal. The prison system should include large centralized institutions to house offenders serving lengthy sentences and/or with histories of violent behavior. All other offenders should be assigned to smaller regional institutions as near as possible to the person's original home. Offenders with custodial sentences should be transferred to regional institutions as they near their release date to facilitate their reintegration into society. Reintegration of all offenders should also include placement in prerelease residential centers located throughout the State.

Counties should continue to be responsible for the operation of facilities housing pretrial detainees and offenders with sentences of six months or less. The Department of Corrections should assume the ownership and operation of all county correctional facilities maintained primarily for the housing of offenders sentenced to terms in excess of six months.

Standard 11.2 Procedure for Implementing General Principles

In order for the Department of Corrections to assume responsibility for the care and custody of all adult offenders sentenced to custodial terms in excess of six months, the following should be accomplished.

1. The statutory sentencing structure should be amended to provide that all adult offenders receiving custodial sentences for indictable offenses in excess of six months be committed to the care and custody of the Commissioner of the Department of Corrections.
2. The Department of Corrections should purchase and assume ownership and operation of all county correctional institutions, workhouses, penitentiaries and jail annexes presently housing offenders sentenced to terms in excess of six months.
3. Pending completion of the State's acquisition of those county facilities designated above, those counties which continue to house offenders sentenced to terms in excess of six months should remain financially responsible for the cost thereof.
4. The State should create, through purchase or construction, regional correctional institutions and prerelease residential facilities for housing offenders sentenced to over six months.

Standard 11.3 Evaluation and Designation of Existing State Facilities

The Department of Corrections should evaluate all existing correctional facilities operated or acquired by it, without regard to their present designation or usage. Each unit, or, where feasible, parts of each unit, should then be designated and thereafter used as a high security central prison, a regional correctional facility, or a residential pre-release center, as described in the standards which follow.

Standard 11.4 High Security Central Prisons

The Department of Corrections should assign to a high security central prison those persons in its custody who have demonstrated a need to be held in maximum security conditions, as a result of the na-

ture of their sentence, their behavior, or other factors. It should be the policy of the Department to use such facilities only where clearly necessary, as determined through a comprehensive classification system. See Standard 11.7.

A full range of programs, including work opportunities, counseling and education programs should be made available on a voluntary basis in such institutions, consistent with clearly mandated security needs.

Standard 11.5 Regional Correctional Institutions

Correctional facilities acquired from counties should be designated, where appropriate, as regional correctional institutions. The State should construct or establish regional correctional institutions as may be necessary. Regional correctional facilities should house offenders with short sentences and other offenders nearing their potential release date. The location of regional institutions should be selected on the basis of proximity to:

1. The communities from which the inmates come.
2. Areas capable of providing or attracting adequate numbers of qualified line and professional staff members of racial and ethnic origin compatible with the inmate population.
3. Areas that have community services and activities to support correctional goals, including social services, schools, hospitals, universities and employment opportunities.
4. Auxiliary correctional agencies
5. Public transportation.

Planning for regional correctional institutions should include no single component or institution housing more than 300 persons.

1. A spatial "activity design" should be developed.
   a. Planning of sleeping, dining, counseling, visiting, movement, programs and other functions should be directed at optimizing the conditions of each.
   b. Unnecessary restrictions on contact between staff and inmates should be eliminated.
   c. Areas for visitation that are private and do not excessively restrict movement should be provided to encourage contact between inmates and visitors.

2. Security elements and detention provisions should not dominate facility design.
   a. Appropriate levels of security should be achieved through a range of unobtrusive measures that avoid the ubiquitous "cage" and "closed" environment.
   b. Environmental conditions comparable to normal living should be provided to support development of normal behavior patterns.
   c. All inmates should be accommodated in individual rooms arranged in residential clusters of 8 to 24 rooms to achieve separation of male and female offenders, and varying security levels and to reduce the depersonalization of institutional living.

3. Applicable health, sanitation, space, safety, construction, environmental and custody codes and regulations must be taken into account.

4. Consideration must be given to resources available and the most efficient use of funds.
   a. Expenditures on security hardware should be minimized consistent with the security needs of the population as determined by the classification system.
   b. Existing community resources should be used for provision of supportive services to the maximum feasible extent.
   c. Facility design should emphasize flexibility and amenability to change in anticipation of fluctuating conditions and needs.

5. Prisoners should be treated in a manner consistent with humane standards. Individual residence space should provide sensory stimulation and opportunity for self-expression and personalizing the environment.

Standard 11.6 Prerelease Residential Facilities

The Department of Corrections should create a network of prerelease residential facilities supervised by the Bureau of Parole throughout New Jersey to facilitate reintegration of inmates from prison and/or jail into the community. The functions of prerelease facilities should include:

1. As part of the continuing classification process, assessing the needs of inmates and developing individual program plans to aid their reintegration into society.
2. Assisting inmates who either reside in the prerelease facility or in the adjacent community in securing employment, medical and dental care, housing, social services, financial assistance, food, clothing, education, training and legal aid.
3. Housing and supervising inmates on work, education and training release and parolees requiring intensive supervision.
4. Actively intervening on behalf of inmates in instances where delivery of services by other agencies, groups or organizations is impeded by bureaucratic procedures.
5. Educating community groups, agencies and organizations as to the needs and problems of inmates and how they can help reduce crime and recidivism through assisting in reintegration efforts.

6. Recruiting community volunteers to work on a one-to-one basis to assist ex-offenders.
7. Performing follow-up studies to determine the effectiveness of the above activities.

Standard 11.7 Classification of Sentenced Adult Offenders

All persons sentenced to the custody of the Commissioner of the Department of Corrections, should be assigned initially to a classification center from which they should be assigned to central or regional correctional institutions or a prerelease facility under a uniform classification system. Classification systems should include the following.

1. Classification policies and procedures should be developed in cooperation with staff from correctional institutions, community-based correctional programs, police and courts.
2. Written policies and procedures for classification should be published for public comment.
3. Classification systems should utilize a team, unit or committee process which is adequately staffed and includes participation of the offender.
4. Classification policy and procedure statements should:
   a. Describe the makeup of the unit, team or committee, as well as its duties and responsibilities.
   b. Define its responsibilities for custody, treatment, employment, rehabilitation and vocational assignments.
   c. Indicate what phases of an inmate program may be changed without unit, team or committee action.
   d. Specify procedures relating to inmate transfer from one program to another.
   e. Prescribe form and content of the classification interview.
   f. Relate policies governing decisions during initial classification and reclassification.
5. Classification decisions should be based on valid external information from police reports, presentence reports, a report from the sentencing judge concerning the purpose of the sentence; and internal reports developed from interviews with the offender and tests.
6. Initial classification should not take longer than a week and review of classification should be undertaken at intervals not exceeding six weeks.
7. Classification criteria should be developed for screening inmates according to their needs and risks into three groups:
   a. Those who are essentially self-correcting and do not need elaborate programming.
   b. Those who require different degrees of community and/or institutional supervision and programming.
   c. Those who require highly concentrated institutional controls and services.
8. Classification and correctional institutions should segregate diverse categories of incarcerated persons, as well as identify offenders with special supervision and treatment requirements as follows:
   a. The mentally ill should not be housed in a correctional facility.
   b. Correctional facilities should be equipped to treat alcohol and drug dependent inmates. Inmates should be diverted to treatment centers when they do not pose a threat to the community.
   c. Prisoners who suffer from various disabilities should have separate housing and close supervision to prevent mistreatment by other inmates. The institutional staff should be alert for inmates who are potential suicide risks. Such inmates should receive immediate medical treatment and supervision. Epileptics, diabetics and persons with other special problems should be treated as recommended by the staff physician.
9. There should be a mechanism for offenders to appeal, administratively, classification decisions consistent with due process of law.
10. Whenever an offender remains in a maximum security institution within six months of his presumptive parole date, there should be a hearing held between the offender and representatives of the Paroling Authority and the Department of Corrections for the purpose of determining a special reintegrative program for the offender.

Standard 11.8 Reintegration of Adult Offenders

The Department of Corrections, in cooperation with other agencies, should establish a system for reintegrating into society all adult offenders sentenced to the custody of the Commissioner of the Department of Corrections. The objective of this standard is to increase each offender's contact with the community as they get closer to release. As offenders proceed from greater confinement to lesser confinement (for example, from a central prison to a regional facility to a prerelease facility) reliance upon institutional programs should be replaced by use of complementary community based correctional programs. Regional institutions and prerelease residential facilities should rely heavily on work, training and educational release programs.

Standard 11.9 Correctional Institution Programs and Services

The Department of Corrections should adopt the following programs for use in central and regional correctional institutions.

1. A program of continuous assessment of the of-

fender's needs and progress, program planning and individualized counseling. The objectives of a continuous assessment program should be to:

a. Assess all inmates in terms of academic and vocational ability, social casework, treatment and rehabilitation needs and make them aware of the services and programs available within the institution and neighboring community.
b. Establish mutually agreed upon goals and objectives for academic, vocational, treatment and/or rehabilitation programs with the offender.
c. Place offenders into programs which best meet the established goals and objectives.
d. Counsel every offender at least once every two months in terms of progress toward the achievement of program goals and objectives, program problems or program revisions.
e. Make each inmate's assessment, goals and objectives, program plan and follow-up counseling reports available to classification and the Paroling Authority.

2. An educational program consisting of learning disability and remedial education programs, an academic learning center for adult education, prevocational experiences and survival skills training, developed in cooperation with the Garden State School District. Emphasis should be placed on individualized instructional materials, with short-term units of study. Para-professionals and volunteers should be utilized as instructors to augment professional staff. Study release opportunities which can be continued after release should be developed in cooperation with local schools.

3. In-house and vocational training release programs which can be continued after release, developed in cooperation with prison industries, the Garden State School District and community vocational training schools.

4. Work release and job placement programs developed in cooperation with State and local employment agencies, employers and unions.

5. Alcohol and drug treatment programs which can be continued at a community treatment facility upon release developed in cooperation with the appropriate divisions of the Department of Health.

6. Counseling, treatment and therapy programs for individuals with problems relating to institutionalization and emotional or psychological problems of a long standing nature.

7. A range of activities to provide physical exercise, available both in the facility and through the use of local recreational resources. Other leisure activities should be supported by access to library materials, television, writing materials, playing cards and games.

Standard 11.10 Education Programs

Every central and regional correctional institution should provide programs for Adult Basic Education, General Education Development (GED) and access to higher education. The Department of Corrections, in conjunction with the Garden State School District, should be responsible for administering all correctional education programs, establishing educational standards and evaluating program effectiveness. The goal of the Garden State School District should be to provide its clients with an opportunity for a positive institutional adjustment by making constructive use of leisure time, by establishing a sound educational atmosphere and by increasing self-worth through personalized assessment and goal setting. Moreover, the Garden State School District should seek to prepare clients for the successful return to the community by providing adequate academic, vocational and life skills training, which will enable them to engage in extended education, meaningful jobs and good interpersonal relationships.

The objectives of education programs in correctional institutions should be to:

1. Increase the reading attainment of each offender at least one grade level for each year of involvement in remedial programs.
2. Improve communication skills in terms of listening, speaking, reading and writing to at least a literacy level. To achieve these objectives bilingual programs should be included.
3. Involve offenders, with appropriate ability, in GED programs which can lead to the acquisition of a High School Equivalency Certifiacte. GED programs should be available in bilingual form.
4. Provide remedial education and learining disability programs for all inmates who need them.
5. Provide vocational assessment and opportunities for the acquisition of at least entry level skills in a variety of vocational training sequences.
6. Provide a pragmatic social educational program from which offenders will acquire basic survival skills. Upon release, an offender should know how to: apply for a job, conduct himself in an interview, maintain a job, make decisions regarding purchases, and be familiar with health, education and social service agencies and resources in his community.

All program curricula should be based on measurable behavioral objectives, so that the offender can continue the study after completing the sentence. Certificates or records of program progress should follow the inmate when he is released, to facilitate entry into a similar community program.

Standard 11.11 Prison Industries

The Department of Corrections should ensure that prison industries provide inmates with skills, experience and work habits that can be useful once the offender leaves prison. Machines and equipment should provide the same range of skills to operate as that used by private industry.

Private companies should be encouraged to establish profit-making product industries either within prison walls or adjacent to prison for the employment of inmates. Such planning should be coordinated with economic planning of the New Jersey Department of Labor and Industry.

The scope of activity of State-Use Industries should be expanded to include more service areas. These activities should be coordinated with the Garden State School District to ensure that inmates are properly trained prior to assignment. The expansion of prison industries into service areas should be accomplished in phases so that State employees assigned to these areas do not lose their jobs. The State should not contract with public agencies or private companies for services that can be provided by inmates either within prison or on work release. Prison industries should include the following areas:

1. Automotive services.
2. Construction and maintenance services.
3. Electrical and air conditioning services.
4. Plumbing.
5. Metalworking.
6. Woodworking.
7. Business machines maintenance.
8. Graphic arts.
9. Drafting.
10. Service activities in the health field.
11. Legal and medical paraprofessional services.
12. Recycling.
13. Landscaping.

Wherever possible, these services should be provided to State, county and local agencies on a bid and/or contract basis. The goals of prison industries should include the following when feasible:*

1. A realistic work environment, including:

   a. A full work day;
   b. Inmate wages based upon work output;
   c. Productivity standards comparable to those of outside world business;
   d. Hiring and firing procedures, within the limits of due process rights;
   e. Transferable training and job skills.

2. Partial reimbursement to the State by inmates for custody costs or restitution payments to victims.
3. Graduated preparation of inmates for release into community. See Standard 11.8, "Reintegration of Adult Offenders."
4. Fixing responsibility, with financial incentives, in the prison industry for job placement of inmates upon release into the community and penalties for nonplacement.
5. Financial incentives to industry for successful reintegration of offenders into the community.
6. Self-supporting or profit-making business operations.

Prison Industries should be divided into two categories and inmates should be assigned appropriately.

1. Only inmates sentenced to extended terms should be assigned to work in industries for which job skills are not directly transferable to work outside prison.

2. Inmates nearing the completion of their sentences, depending on the time required for training, should be assigned to an industry for which comparable jobs exist in the community.

A high degree of coordination should be established between the following groups to coordinate program development and to develop job placements: the Bureau of Parole, the Bureau of Community Services, the Garden State School District, the Department of Labor and Industry, labor unions, the Department of Civil Service, the New Jersey Association of Ex-offender Employment and employers in the public and private sector. The Legislature should provide subsidies and tax relief to all employers that hire offenders and ex-offenders.

Legislation should amend statutes concerning prison industries so that they do not prohibit:

1. Specific types of industrial activity from being carried on by a correctional institution.
2. The sale of products of prison industries on the open market.
3. The payment of full market value or variable wage scales less living expenses and family welfare costs to offenders working in privately operated in-house prison industries and work release.
4. The payment of minimum wages less living expenses and family welfare costs and added work credits for inmates working in prison-use industries which do not pay full market wages.
5. Contracting with private industry.
6. Production of certain goods.
7. The establishment of industries within prisons by private companies.

Standard 11.12 Release Programs

The Department of Corrections should develop

* These goals were adapted from ECON Incorporated, *Analysis of Prison Industries and Recommendations for Change: Study of the Economic and Rehabilitative Aspects of Prison Industry.* Volume VI, Princeton, New Jersey, 1976. See this document for further explanation of these goals.

release programs to be administered primarily from regional correctional institutions and prerelease residential facilities. Release programs from high security centralized facilities should be approved only where appropriate, consistent with the classification process.

1. Since release programs rely heavily on the participant's self-discipline and personal responsibility, the offender should be involved as a member of the program planning team.
2. Released programs have special potential for utilizing specialized community services to meet offenders' special needs. This capability avoids the necessity of service duplication within corrections.
3. Weekend visits and home furloughs should be planned regularly, so that eligible individuals can maintain ties with family and friends.
4. Work release should be made available to persons in all offense categories who do not present a serious threat to others.
5. The offender in a work release program should be paid at prevailing wages. The individual and the work release agency should agree to allocation of earnings to cover subsistence, transportation cost, compensation to victims, family support payments and spending money. The work release agency should maintain strict accounting procedures open to inspection by the client and others.
6. Program location should give high priority to the proximity of job opportunities. Various modes of transportation may need to be utilized.
7. Education or study release should be available to all inmates who do not present a serious threat to others. Arrangements with local school districts and nearby colleges should allow participation at any level required (literacy training, adult basic education, high school or General Education Development equivalency and college level).
8. Arrangements should be made to encourage offender participation in local civil and social groups. Particular emphasis should be given to involving the offender in public education and the community in corrections efforts.
9. Prior to release each offender should be allowed sufficient weekday furloughs in order to find a job, buy clothes, locate a residence and deal with other matters.

Standard 11.13 Conditions of Parole Plans

Successful reintegration and supervision of the parolee is dependent upon the development of reasonable parole plans. At the point of parole the inmate should be given the choice of participating in a parole plan or remaining in prison. The plan should include provisions for participating in community-based correction programs related to his or her needs for successful reintegration and abiding by reasonable conditions.

Parole plans should be revised to include reasonable conditions conforming with accepted norms of the community in which the parolee will live. Conditions of parole should be specific and not include vague and general terms and unenforceable requirements.

Parole plans should be prepared and mutually agreed upon by an institutional parole officer and the inmate and approved by the Paroling Authority.

1. The parole plan should clearly indicate performance objectives to be achieved by the offender.
2. The parole plan should provide for decreasing levels of supervision as provided in Standard 11.15.
3. The parole plan should be consistent with the offender's schooling, employment, residence and other activities necessary for successful reintegration.

Standard 11.14 Parole Administration

The goal of the Bureau of Parole should be the reduction of renewed criminal behavior through surveillance and provision of social services to parolees during their reintegration into the community. To facilitate this goal:

1. An intensive preservice training program for all new parole officers and annual in-service training for all other parole officers should be established. Parole officer training should include policies and procedures for supervising parolees, services available to parolees, parole counseling, community resource development, psychology and sociology of parolees and attitude change. Financial incentives should be given to parole officers who seek additional job-related training or education beyond that required by the Department of Corrections.
2. The number and size of reports should be reduced to allow parole officers to spend more time supervising and assisting parolees.
3. The Bureau of Parole and Bureau of Community Services should be merged into a single bureau to create better coordination of community services for parolees.
4. Specific and detailed written guidelines should be established for the classification of parolees.

Standard 11.15 Parole Classification, Supervision and Services

Specific and detailed written guidelines should be established for the classification, supervision and delivery of parole services. Parolees should be

classified prior to release by an institutional parole officer in terms of types of services needed and required level of supervision. All parolees should be classified into three levels of supervision: intensive, regular and minimum, to be defined in regulations developed by the Bureau of Parole.

1. Intensive supervision should be given to all new parolees who need support services and close supervision.
2. Regular supervision should be given to parolees who are employed and/or appear to be successfully receiving support services.
3. Minimum supervision should be given to parolees who are employed, have completed or are successfully receiving support services and appear to be successfully reintegrating into society.

Specific standards for classifying parolees should be developed consistent with the recommendations of the Correctional Master Plan on this subject.

The Bureau of Parole should develop a work unit system of assignment of cases. Under this system parole officers should have approximately equal workloads. Workloads should be based not on the number of parolees but on the amount of supervision and services required.

Each regional parole office should be provided with community resource specialists and with an adequately staffed manpower service center to meet parolee support needs. The functions of these specialists and service centers should be to assist parole officers in obtaining alcohol or drug treatment, vocational training, education, employment, housing, counseling, clothing, food, family planning, financial assistance and medical and dental treatment for parolees.

Standard 11.16 Cooperation and Coordination Within the Correctional System

All State and local agencies performing functions affecting the correctional system should develop liaison procedures to coordinate and develop resources jointly in order to reduce needless duplication. At a minimum the following agencies should coordinate their activities: the bureaus of the Department of Corrections, the Division of Youth and Family Services, the Garden State School District, Department of Labor and Industry, probation departments and community-based correctional and treatment facilities.

Standard 11.17 Marshaling and Coordinating Community Resources

It should be recognized that preventing crime through the successful reintegration of offenders is the responsibility of social institutions, organizations and agencies of the community as well as the Department of Corrections and other departments of government.

The Department of Corrections, the Paroling Authority and each county jail, correctional institution and community-based correction program should intensify efforts to establish effective working relationships with the major social institutions, organizations and agencies of the community, where relevant, including the following:

1. Employment resources—private industry, labor unions, employment services, civil service systems.
2. Educational resources—vocational and technical, secondary, college and university, adult basic education, private and commercial training, government and private job development and skills training.
3. Social welfare services—public assistance, housing, rehabilitation services, mental health services, counseling assistance, neighborhood centers, unemployment compensation, private social service agencies of all kinds.
4. The law enforcement system—federal, State and local law enforcement personnel, particularly specialized units providing public information, diversion and services to juveniles.
5. Other relevant community organizations and groups—ethnic and cultural groups, recreational and social organizations, religious and self-help groups and others devoted to political or social action.

At the management level, correctional agencies should seek to involve representatives of these community resources in policy development and interagency procedures for consultation, coordinated planning, joint action and shared programs and facilities. Correctional authorities also should enlist the aid of such bodies in the formation of a broadbased and aggressive lobby that will speak for correctional and inmate needs and support community correctional programs.

At the operating level, correctional agencies in coordination with the Paroling Authority should initiate procedures to work cooperatively in obtaining services needed by offenders.

Standard 11.18 Job Opportunities for Offenders and Ex-Offenders

The legislative and executive branches of government should provide incentives to employers to institute or accelerate efforts to expand job opportunities to offenders and ex-offenders. These efforts should include the elimination of arbitrary personnel selection criteria and exclusionary policies based on

such factors as bonding procedures or criminal records. Employers should institute or expand training programs to sensitize management and supervisors to the special problems which offenders and ex-offenders may bring to their jobs.

Barriers to employment of convicted persons based solely on a past conviction should be prohibited unless the offense committed bears a substantial relationship to the functions and responsibilities of the employment. Among the factors which should be considered in evaluating the relationship between the offense and the employment are the following:

1. The likelihood the employment will enhance the opportunity for the commission of similar offenses.
2. The time elapsed since conviction.
3. The person's conduct subsequent to conviction.
4. The circumstances of the offense and the person that led to the crime and the likelihood that such circumstances will recur.

Standard 11.19 Corrections' Responsibility for Citizen Involvement

The Department of Corrections should create: (a) a multi-purpose public information and education unit, to inform the general public on correctional issues and to organize support for and overcome resistance to general reform efforts and specific community-based projects; and (b) an administrative unit responsible for securing citizen involvement in a variety of ways within corrections, including advisory and policy-making roles, direct service roles and cooperative endeavors with correctional clients.

1. The unit should be responsible for coordinating the recommendations in Standard 11.17, "Marshalling and Coordinating Community Resources".

2. The unit responsible for securing citizen involvement should develop and make public a written policy on the selection process, term of service, tasks, responsibilities, and authority for any advisory or policy-making body.

3. The citizen involvement unit should be specifically assigned the management of volunteer personnel serving in direct service capacities with correctional clientele, to include:

a. Design and coordination of volunteer tasks.
b. Screening and selection of appropriate persons.
c. Orientation to the system and training as required for particular tasks.
d. Professional supervision of volunteer staff.
e. Development of appropriate personnel practices for volunteers, including personnel records, advancement opportunities and other rewards.

4. The unit should be responsible for providing for supervision of offenders who are serving in volunteer roles.

5. The unit should seek to diversify institutional programs by obtaining needed resources from the community that can be used in the institution and by examining and causing the periodic re-evaluation of any procedures inhibiting the participation of inmates in any community program.

6. The unit should lead in establishing and operating community-based programs emanating from the institution or from a satellite facility and, on an ongoing basis, seek to develop new opportunities for community contacts enabling inmate participants and custodial staff to regularize and maximize normal interaction with community residents and institutions.

Standard 11.20 Correctional Staff

The Department of Corrections in cooperation with the Department of Civil Service, should establish and periodically upgrade uniform standards for the selection, training, promotion and salaries of correctional personnel working in institutions, parole and community-based programs.

1. All correctional personnel should be required to take a job-related aptitude and ability test and intensive psychological screening prior to hiring.

2. A program of intensive preservice (eight to ten weeks in duration) and periodic in-service training and staff development should be mandatory.

3. A program of preservice and in-service training and staff development should be given all personnel. Provisions of such a program should be a responsibility of the State government. New correctional workers should receive preservice training in the fundamentals of facility operation, laws and court decisions governing correctional institutions, correctional programming and their role in the correctional process. With all workers, responsibilities and salaries should increase with training and experience.

4. A six month probationary period of employment should commence immediately after preservice training is completed and the employee is assigned to work on a full-time basis.

5. Correctional personnel should be responsible for maintenance and security operations as well as for the bulk of the facility's in-house correctional programming for residents.

6. Correctional personnel should receive salaries equal to those of persons with comparable qualifications and seniority in the jurisdiction's police and fire departments.

7. In all instances where correctional personnel engage in counseling and other forms of correctional programming, professionals should serve in a supervisory and advisory capacity. The same professionals should oversee the activities of volunteer workers

within the institution. In addition, they should engage in counseling and other activities as needs indicate.

8. Wherever feasible, professional services should be purchased on a contract basis from practitioners in the community or from other governmental agencies. Relevant State agencies should be provided space in the institution to offer services. Similarly, other criminal justice employees should be encouraged to utilize the facility, particularly parole and probation officers.

9. Correctional personnel should be involved in screening and classification of inmates.

10. Every correctional worker should be assigned to a specific aspect of the facility's programming, such as the educational program, recreation activities or supervision of maintenance tasks.

11. There should be sufficient and adequately trained staff in each of the following areas: security, care, treatment, rehabilitation and administration.

Standard 11.21 Evaluating the Performance of the Correctional System

The Department of Corrections should make performance measurements to evaluate the effectiveness of the correctional system. Evaluations for determining the effectiveness of the correctional system should include measurement of recidivism and the degree of success in reintegrating offenders into the community. Standards for measuring reintegration should be developed. For individuals to be claimed as successes, their success should be clearly related to correctional programs to which they were exposed.

Standard 11.22 Program Evaluation

The Department of Corrections should evaluate correctional programs to determine their effectiveness in achieving program goals. Agencies allocating funds for correctional programs should require such measurements. Program review should entail these four criteria of measurement, and should be performed on an annual basis.

1. **Appropriateness of program goals and objectives.** Programs should be in keeping with the rehabilitative needs of offenders and/or should lead to the development of a viable skill. Vocational training sequences, for example, should be reviewed to determine the need for such skills in communities.

2. **Program impact.** Determination should be made as to the impact of programs on the general offender population. This can be measured by calculating the percentage of offenders who enter programs and remain until completion; conducting subjective interviews with offenders regarding the value of the program; observing classes; noting program placement statistics into related community programs and jobs.

3. **Individual impact.** Records should be maintained which demonstrate program impact on each individual. Performance should be measured by means of standardized pre and post tests. Expected standards of progress should be designed for each offender, so that growth, through programming, can be detected.

4. **Cost analysis.** Program efficiency should be analyzed in terms of numbers of offenders enrolled, staff utilization, length of time and supplies and equipment expenditures. Comparisons should be made with various programs to determine which have the greatest impact on offenders at the lowest costs.

Standard 11.23 Planning and Organization

The Department of Corrections should continue to develop an integrated process of long-, intermediate-, and short-range planning for administrative and operation functions. This should include: . .

1. An established procedure open to as many employees as possible for establishing and reviewing organizational goals and objectives at least annually.
2. A research capability for adequately identifying the key social, economic and functional influences impinging on that agency and for predicting the future impact of each influence.
3. The capability to monitor, at least annually, progress toward previously specified objectives.
4. An administrative capability for properly assessing the future support services required for effective implementation of formulated plans.

These functions should be combined in one organizational unit responsible to the chief executive officer but drawing heavily on objectives, and information from each organizational subunit.

Each agency should have an operating cost-accounting system which should include the following capabilities:

1. Classification of all offender functions and activities in terms of specific action programs.
2. Allocation of costs to specific action programs.
3. Administrative conduct, through program analysis, of ongoing programmatic analyses for management.

Standard 11.24 State Standards for County Jails

Legislation should be enacted giving the Depart-

ment of Corrections authority to establish and enforce uniform statewide standards for county jails. Legislation should provide that:

1. The Department of Corrections continue to establish in cooperation with representatives of the courts, county correctional agencies and public groups, standards for the custody, security, services, treatment, facilities, personnel and other aspects of county jails.
2. The Department of Corrections has authority to enforce minimum standards for county jails administratively and through litigation in the courts. County jail inmates should also be allowed to sue for enforcement of minimum standards.
3. Financial costs which are required to upgrade standards in county jails should be the responsibility of the counties.

Department of Corrections standards for jail staff should be consistent with Standard 11.20 where appropriate. Department of Corrections standards for design of facilities for housing pretrial detainees and/or offenders sentenced to six months or less should conform, where appropriate, to Standard 11.5.

Standard 11.25 Classification in County Jails

Each county or group of counties operating a jail to house pretrial detainees and offenders with sentences of six months or less should develop and put into operation a comprehensive system for the classification of the persons under their control. The classification process should be completed within three days of the inmate's commitment. Information from police, correctional and civilian sources, particularly psychological evaluations, should be utilized.

The purpose of such classification should be to separate those few persons among the jail population who demonstrably require maximum security confinement. All other inmates should be placed in conditions permitting them maximum freedom consistent with the only purpose for which they are confined, that of ensuring that they appear to answer the charges against them, or serve the brief sentence imposed.

The classification system should include a method for the review of decisions by the highest ranking jail administrator.

The Department of Corrections should assist counties in developing and implementing classification systems, and have the authority to enforce this requirement.

STANDARDS FOR VICTIM ASSISTANCE SERVICES

Standard 12.1 Establishment of Victim Assistance Centers

Victim assistance centers should be established throughout the State. The primary function of the centers should be to aid victims of violent crime and, if necessary, their families.

The centers should conduct education programs for the general public and for personnel from criminal justice and social service delivery agencies with which the centers will be relying on for providing assistance to victims. Center staff, paid and volunteer, should be available to provide immediate aid to the victim on a 24 hour, seven days a week basis.

Standard 12.2 Purpose and Functions of Victim Assistance Centers

The functions of the victim assistance centers should be to:

1. Assess the needs of the victim and provide those services (as described in Standard 12.3) at the centers and refer victims to social agencies for other services.
2. Provide educational services
   a. To orient police, prosecution, judicial, medical and social service personnel to the needs of the victim and their responsibility to the victim; and
   b. To provide bilingual information to the public concerning services for the victim.
3. Establish interrelationships with other agencies to meet the needs of the victim.
4. Effectuate change within both the criminal justice and social service delivery systems, where necessary, to provide needed services for the victim.

Standard 12.3 Types of Needs to be Addressed and Services to be Provided by Victim Assistance Centers

Centers should aid victims of violent crimes by

addressing the emergent needs of a victim, or his family, that have arisen because of their victimization by securing from other agencies emergency services such as, but not limited to:

1. Clothing;
2. Food;
3. Rent money or housing;
4. Trauma counseling;
5. Medical health care;
6. Child, homemaker or convalescent services; and
7. Any other emergent needs of the victim or the immediate family.

Centers should provide assistance:

1. In obtaining and filling out forms for medicaid, medicare, worker's compensation, violent crimes compensation and other types of insurance.
2. In reducing bureaucratic requirements and delay in receiving aid from social service agencies.
3. To increase the victim's understanding of basic police, prosecution, defense attorney and court procedures. Such information should be developed in cooperation with police, court, prosecution and defense personnel. Under no circumstances should legal advice be given by center staff.

There is also a need to facilitate appropriate service delivery by public and private agencies for:

1. Protection of unattended property.
2. Transportation where needed for victims from the scene of a crime, hospital and police department.
3. Providing emotionally supportive services for victims by hospitals and medical personnel including follow-up examinations for venereal disease, pregnancy and collecting internal evidence in rape cases.
4. Increasing understanding of criminal justice and social service personnel as to the needs of victims.

Standard 12.4 Violent Crimes Compensation

1. Legislation should be passed to expand the (services) jurisdiction of the Violent Crimes Compensation Board to provide educational and technical assistance aid to victim assistance centers. Two types of educational aid should be provided:
   a. Establishment of a victim assistance information clearinghouse to gather available information from victim assistance programs throughout the country and make it available to local victim assistance centers, police agencies, hospitals, prosecutor offices and courts.
   b. Sponsoring regular conferences to bring together personnel working in the field of victim assistance and compensation to exchange methods and procedures for improving and expanding services to victims. Technical assistance should include assistance in developing administrative procedures and rules and developing resources.

2. Statute or law enforcement agency policies should require that notification concerning violent crimes compensation be provided by law enforcement personnel upon initial contact with the victim.

3. The statutory maximum for victim compensation should be increased to $30,000 per victim and include a provision that in extraordinary cases, if good cause is shown, the board can recommend an increase of the maximum to the Legislature.* The board should periodically report to the Legislature on economic changes affecting the maximum limits.

4. The Violent Crimes Compensation Board should have a sufficient staff to investigate thoroughly each claim within a reasonable time period.

5. The Violent Crimes Compensation Board should have responsibility to:
   a. Seek resolution of conflicts within the laws affecting its operation;
   b. Develop priorities in handling claims; and
   c. Act as an advocate before other State agencies where benefits for victims may be reduced because of the receipt of compensation by a victim from the VCCB.

* Good cause can include catastrophies such as victims left paraplegic or children orphaned as a result of a violent crime

ORGANIZATION OF POLICE SERVICES

Introduction

The effectiveness and efficiency of crime control efforts are determined to a large extent by the degree of organization of police services. The organizational structure of the police system affects the size of police agencies and their scope of activities, level of specialization, standards of service delivery and ability to respond to community needs.

In New Jersey the organizational structure of policing is highly decentralized. This geographically small State has 469 independently operated municipal police agencies. The size of police agencies ranges from one officer to over 1000.

Decentralization and small size of many police agencies limits the response capabilities of the police system and creates difficulties in coordination of law enforcement efforts. Coordination is necessary because many types of crime transcend jurisdictional boundaries and are regional in nature and cause.

Coordination is also needed to reduce the effects of law enforcement policies which vary from municipality to municipality in terms of level of enforcement and priorities. Intensive crime control in one municipality may drive criminals into a neighboring jurisdiction while lax law enforcement in another municipality can diminish the efforts of a neighboring police force.

Department size can determine a police agency's level of specialization for controling crime. Effective crime control requires investigators and services to support investigation such as crime analysis, mobile laboratories, legal advisors, evidence technicians and crime prevention specialists. The sophistication of some criminals and/or difficulty in solving some types of crime such as organized crime, rape, narcotics and burglary requires highly trained investigators. Even in municipal police agencies which have trained investigators, support services may be needed.

The low rate of serious crime and limited fiscal base in some municipalities may not warrant the expenditures required to develop and maintain a fully equiped, trained and supported team of investigators. When a serious crime occurs or an organized form of crime exists, however, there should be resources which a municipality can rely on for prompt assistance. Establishment of countywide or regional investigation and support services has been recommended by law enforcement authorities in order to solve problems of coordination of law enforcement activities and to provide all municipalities with access to prompt investigation services for a broad range of crimes.

Although some law enforcement services are not feasible in certain municipalities, patrol services at the local level can prevent crime, fulfill local service needs and create a feeling of security among the residents. Even in the area of police patrol, however, some municipalities are having financial difficulty operating their own police agency. Many of these municipalities are looking to the State to provide financial assistance so that they can combine or consolidate police services with neighboring municipalities. The success of municipalities in combining services rests with their ability to convince residents concerning both the need and benefits of consolidation or combination. In addition employment, promotion and pension rights of existing police personnel must be ensured.

Most police agencies do not have resources to do the type of research and development necessary to develop standards for delivery of police services in areas such as operations, equipment, personnel, policies and procedures. Similarly, most police agencies need assistance in developing plans for improving management and administration and studies concerning the feasibility of consolidation of municipal police services. Police authorities, therefore, are recommending that a commission be established to do the necessary research and development and to assist each police agency in implementing the resulting standards and plans.

Problem Assessment

The existence of numerous small size police agencies is central to many law enforcement problems in New Jersey. As of 1975 there were 469 municipal police agencies. The number of agencies in each county ranges from a high of 69 in Bergen to a low of five in Cumberland.[1] The geographic area covered by

References for this chapter appear on pages 67 & 68.

these agencies ranges from less than one square mile to over 100 square miles. Table 1 clearly identifies geographic fragmentation of police authority and shows a large number of agencies covering a variety of jurisdictional sizes.

Table 1

Comparison of Geographic Size of Jurisdictions with Number of Municipal Police Agencies

Area in square miles	Number of police agencies
Less than 1	58
1-3	176
4-6	69
7-10	32
11-15	29
16-25	41
26-35	22
36-50	26
51-75	10
75 and over	6

Source: *Crime in New Jersey-1975: Uniform Crime Reports*, Table 1, "Profiles of Incorporated Municipalities in New Jersey," pp. 10-26.

Most police agencies have less than 25 police officers. As shown in Table 2, 115 (24.5%) of the police agencies have less than ten police officers, 184 (39%) have less than 15 officers and 314 (66.7%) have less than 26 police officers.

Table 2

Grouping of Municipal Police Agencies By Police Officer Strengths

Number of Police Officers	Number of Police Agencies	Percentage for Each Grouping
1-9	115	24.5
10-14	69	14.5
15-25	130	27.7
26-50	88	18.8
51-100	36	7.7
101-over	31	6.6

Source: *Crime in New Jersey-1975: Uniform Crime Reports*, Table 2, "Full-Time Municipal Police Employees, 1974-1975 by Region-County-Municipality," pp. 132-140.

Several recent national and state level commissions have attempted to determine the minimum size necessary for a police agency to provide 24 hour police services. The National Advisory Commission on Criminal Justice Standards and Goals (NAC) Police Standard 5.2 recommends that all police agencies with less than ten full-time officers should be consolidated.[2] The Michigan Commission on Criminal Justice recommends adoption of a standard to eliminate all police agencies with fewer than 20 full-time officers.[3] The Governor's Commission on Criminal Justice Standards and Goals in Georgia concluded that police agencies with less than 14 personnel would have difficulty in providing full-time services. These Commissions considered the minimum number of officers needed to provide 24-hour, seven days a week patrol; the minimum number of personnel necessary to provide supervisory, administrative, clerical, dispatch, investigatory and support services; and the average number of days lost to sickness, vacation, training and court. The Georgia Commission, for example, calculated the minimum manpower needs in the following manner:

> To provide minimum full-time patrol, 4.95 men are needed. This figure represents one man on visible patrol for 24 hours a day, 365 days a year. This number is arrived at by the following calculation:
>
> | | |
> |---|---|
> | TOTAL possible number of days per man in one year | 365 |
> | TOTAL number of regular pass days | − 104 |
> | | 261 |
> | Average number of days lost to sickness | − 5 |
> | | 256 |
> | Average number of days lost to vacation | − 15 |
> | | 241 |
> | Average number of days lost to training | − 10 |
> | | 231 |
> | Average number of days lost to court | − 10 |
> | | 221 |
>
> Number of days in year, 365 x 3 (around the clock service) = 1095 divided by number of possible days for one man, 221 = 4.95 men.
>
> In addition to this number, 4.95 personnel are needed to provide dispatch service to these patrol units. This brings the total number of personnel required to 9.9 in order to provide minimum patrol and communication service. In addition, investigation or support personnel are required in the amount of two people, bringing the total to 11.9 personnel. To provide these personnel with supervision, two more people would be required including a chief and one other administrative individual. This brings the total to 13.9 to provide minimum service in any police agency. While it is suggested that police agencies with less than 14 personnel would have difficulty in providing full-time services, it is not recommended that all agencies of less than 14 individually increase their size to a minimum of 14 personnel.[4]

Determination of the optimal size of a police agency is more difficult to calculate because it includes factors such as population, geographic size and crime rate of a community; goals and objectives of a police agency; type and degree of specialization needed or wanted in a police agency; type and severity of social and economic problems of a community; and type of service, order maintenance and law enforcement activities expected by a community.

Some authorities in New Jersey suggest that optimal size of a police agency is 50 personnel,[5] while others, such as the Royal Commission in Great Britain, suggest that 500 personnel is the optimum size.[6]

Many problems associated with size, jurisdictional area and number of police agencies in New Jersey are interrelated. These problems include:

1. Minimum response capability.
2. Geographic fragmentation.
3. Limited functional capacity.
4. Insufficient economy of scale.
5. Inadequate fiscal base to support a full-time police agency.
6. Personnel deficiencies such as training, supervision and overuse of special police.

Police agencies with less than 20 police officers generally have minimum response capabilities and often cannot allocate manpower on the basis of need. Although many agencies are able to assign one or two officers to a shift, the frequency of calls for police service is not equal for all shifts. Some shifts are overstaffed while others are undermanned. According to the Police Training Commission's Police Administrative Services Bureau, approximately 22% of the patrol workload occurs on the midnight to 8 a.m. shift, 33% on the 8 a.m. to 4 p.m. shift and 45% on the 4 p.m. to midnight shift.[7]

The response capability of a small police agency can be crippled by a number of factors. An agency with one or two patrol cars provides little or no back-up for emergencies. A response to a call for assistance, mechanical breakdown of a patrol cruiser, sickness of one or more officers and transporting or booking of an arrestee leaves the municipality unprotected.[8] Some municipalities cannot patrol the streets on certain days because all the officers are in court. Two recognized authorities on police administration emphasize these problems when they state:

> It is easier for the criminal element to identify the location of officers in a small agency. The offender may know, for example, that the department has only one or two police cars to cover the entire city or village. When he sees both vehicles out of service or can otherwise account for both, he can be reasonably certain that the community is left unprotected in terms of immediate response.[9]

Limitations in response capability become increasingly apparent when police agencies attempt to control crime problems and civil disorders which span several municipalities or a region.

Geographic fragmentation of police responsibility is especially accute in densely populated counties where identifiable boundaries between municipalities are unclear. Fragmentation of police jurisdiction can benefit only the criminal. Crime problems in a municipality are often shared by all municipalities within a region. The Director of the Division of Criminal Justice, Department of Law and Public Safety recently emphasized this point by stating that:

> Criminal behavior is not confined within recognized municipal, county or even state boundaries. . . . New Jersey's law enforcement network reflects [geographic fragmentation by dividing responsibility among] 461 municipalities. . . . Many New Jersey citizens are thus served by local law enforcement agencies of small size, a situation which can impede development of the expertise necessary to fight crime efficiently and effectively.[10]

Extensive use of the automobile and integrated system of high speed roads creates tremendous mobility for the criminal. Criminals can live in one municipality, commit a burglary in another and fence goods in still another. All of these activities may take place within a few square miles. The County and Municipal Government Study Commission states that:

> Although there is a growing recognition of the area-wide scope of law enforcement problems in the law enforcement community, public attitudes toward area-wide arrangements are less certain. While the public expects the combination of independent local agencies to perform at a level and quality that can only be expected of a well-organized and well-integrated system, more typical of area-wide structures, residents of most municipalities continue to insist on "local control" of the police function. These and other seemingly contradictory attitudes, in light of the current nature of law enforcement problems and practices, have resulted in inconsistencies, or gaps in the law enforcement response.

Another result of geographic fragmentation has been termed as the spillover effect of law enforcement. Crime spillover from one community to another can result from an uneven commitment among municipalities to control crime.[12] Increased crime control efforts in a municipality can result in a displacement of crime to neighboring jurisdictions. Conversely, inadequate law enforcement in a municipality can produce a haven for criminals and force neighboring jurisdictions to increase their police efforts to compensate for the deficit.

The Advisory Commission on Intergovernmental Relations stated:

> Ironically, spillover of benefits of police service from one community to another is not as great as the spillover of social costs from inadequate police protection. Rigorous law enforcement in one town, in fact, forces violators to establish themselves among more hospitable neighbors. . . . Although the accepted doctrine of 'hot pursuit' allows police officials to follow the trail of a law breaker through the maze of local governments, the less efficient efforts at crime prevention in one community impose heavy costs on the others.[13]

Analysis of crime trends and effectiveness of a police agency's activities is difficult because of the mobility of criminals, spillover effect and geographic

fragmentation of police jurisdictions. Crime patterns are often more clearly detected by analyzing regional trends. Effective crime control and prevention, therefore, is dependent upon the coordination and cooperation of many police agencies within a region. Coordination and cooperation between neighboring police agencies can be a problem. Crowded communication frequencies add to the problem of effective crime control. The large number of police agencies and other public and private organizations utilizing the same radio frequencies reduces responsiveness during emergencies. Some police agencies must share frequencies with other police agencies or public departments, risking overload of existing channels. Emergency communication can be interrupted by nonemergency communications.[14]

The functional capacity of a police agency is directly related to its size and degree of specialization. Small police agencies are staffed primarily by patrol officers who are generalists with a variety of functions. Some law enforcement problems, however, require a certain degree of specialization. Small agencies have less need for specialized services such as criminalistics, identification, investigation and technical communications and therefore it is not cost effective to hire and train specialists. As a result, patrol officers often perform functions which can be handled better by specialists. Patrol officers not trained in investigation procedures have been criticized for not protecting the integrity of a crime scene. For example, evidence may be touched or bodies moved. A recent survey of local police agencies found the availability of specially trained personnel in New Jersey police agencies as follows:

> **Narcotics and drug abuse:** Specialists in this critical area were more frequently used as department size increased. Although only 12% of the smallest departments used such personnel, 40% of the departments in the 5-10 officer range, 80% in the 51-100 range, and 92% in the over-100 range used them.
>
> **Delinquency control:** The pattern was similar to that for narcotics and drug abuse specialists—a steady increase in use paralleling increase in department size.
>
> **Fingerprinting:** For the smallest departments, the percent using the services was 6%; for 5-10 officers 34% ; 11-20 officers 43%; 21-35 officers 59% and departments with 36 or more officers 75%.
>
> **Special investigation:** Only half the departments with fewer than 10 officers used this service, compared with two-thirds of those with 11 to 35 officers.
>
> **Training:** The use of special training personnel was almost universal in departments of over 100 officers, while less than one-third of the smallest departments used such personnel.
>
> **Planning:** While 29% of the largest departments had planning officers to forecast needs and develop resources, 27% of the departments in the 50-100 officer range used such personnel, and only 13% of the departments with 36-50 officers. Fewer than 10% of the smaller departments have planning officers.
>
> **Psychological:** No department with fewer than five officers used a psychologist regularly, even on a contract basis. On the other hand, more than one-third of the departments with 50 or more officers used them.[15]

While there are "widespread feelings that communities are covered or have access to a wide range of specialized services. . .in many areas local response capacities are at best erratic and limited and often nonexistent."[16]

Many police agencies are forced to decide between providing either adequate specialized services or patrol capabilities. When a police agency decides to develop specialized services, often the overall quality of police services is lessened because manpower is spread over too many functions.[17]

Directly related to the size of police agencies and the degree of specialization is the concept of economies of scale. Economy of scale as applied to police agencies means that one agency can do the work of several smaller agencies at less cost than the smaller agencies functioning independently. The NAC recommends consolidating or combining small police agencies in order to bring about more efficient and effective law enforcement when it states:

> Consolidation can frequently upgrade police service and lower its cost. This is often the case when counties consolidate municipal and county police agencies to create a single countywide police force. Because it is larger, the consolidated agency usually has superior resources. Because it eliminates much duplication, it is usually less expensive—citizens get more for their money.[18]

An analysis of studies which describe the feasibility of merging small police departments revealed that some duplication in personnel, facilities and functions can be eliminated by combining several small neighboring police agencies. For example, feasibility studies indicated that if five small police agencies were combined the following benefits are possible.[19] Instead of five dispatchers on duty at all times there would only be one, thus resulting in substantial salary savings. Five police headquarters, each with maintenance, heating and lighting costs, would be replaced by one headquarters. Purchasing of equipment and supplies would be done in greater volume resulting in further savings. Clerical staff could be hired on a full-time basis at less salary expense and officers, therefore, freed to spend more time on patrol.

The County and Municipal Government Study Commission recently conducted a study to determine whether economies of scale were present in municipal police departments.

To find out whether economies of scale were present in municipal police departments, the Commission examined the ratio of nonpersonnel to personnel costs in departments of different-sized New Jersey communities. (A relatively low proportion of nonpersonnel costs should indicate more intensive use of equipment such as the police station, police cars, training facilities, etc.) Municipalities under 25,000 population spent on the average of 16½% of their public safety budgets for nonpersonnel costs, while those over 25,000 averaged 11%, apparently supporting the presence of scale economies and potential saving tax dollars in larger departments.

Using annual municipal cost data, the Commission staff developed a statistical model indicating expenditure requirements for police departments of various sizes. The model—designed to predict what it would cost to run a consolidated department for nine contiguous communities—projected an estimated annual savings to these municipalities of $600,000 or more. Such findings suggest that larger-sized departments can save money as well as deliver specialized services, and that municipalities too small to support such departments individually might still obtain their advantages by joining with other towns to create regional police departments.[20]

Although some administrative theorists and economists suggest that consolidating police agencies will result in cost savings and increase police services, others disagree. Analysts from Indiana University, who have evaluated regionalization and consolidation of police services throughout the country find that countywide or regional consolidation, thus far, has been neither cost effective nor has it increased the level of services to the public.[21]

Consolidation experiences of police administrators and evaluative studies reveal several reasons for an apparent lack of immediate cost savings. First, increases in level of services, training, specialization, manpower and equipment may be required in a newly consolidated agency to upgrade the level of services to an effective level. Second, salaries of some officers may have to be increased to put all officers of equal rank at the same level.[22] Third, personnel not needed as a result of consolidation are kept on the payroll and put in positions for which no need exists. Fourth, some police administrators are reluctant to return unspent budgeted money or reduce budget requests when savings can be made because of a concern that when extra appropriations are needed they may not get it back. As a result, there is an end of the year rush to spend funds even if they are spent on unneeded equipment, supplies, personnel or specialized units. Fifth, increases in population growth, monetary inflation and crime rates create a need for increasing the size and cost of the police agencies.[23]

Potential improvements in delivery of police services resulting from consolidation can also be diminished by a number of other factors. The newly consolidated police agency may not be allocating manpower or developing crime control strategies based on analyzed needs. The philosophy of the agency and officers within the agency may conflict with the community's expectations and needs for service delivery. Traditional concepts of the appropriate roles, functions and tasks of the police may be inadequate. Some modern theorists, for example, suggest that the traditional method of policing by random patrol may be ineffective and that police agencies should gear a substantial portion of resources toward crime analysis-oriented target hardening.[25]

Experiences with consolidating and regionalizing certain police functions in New Jersey such as communications, training and selection of personnel, information systems, crime laboratories and investigations have resulted in significant increases in services, efficiency and effectiveness.[26] Although important tools for crime control, most police agencies cannot afford to develop these capabilities.

A factor related to economies of scale and the ability of an agency to provide adequate patrol and support services is the community's financial ability to support a police agency. The fiscal base of many municipalities limits their ability to support a full-time police agency with adequate support services. Some police agencies which are unable to operate a full-time police force provide police services on a part-time basis utilizing relatively untrained special police with little or no support services. In 1975 there were approximately 61 municipalities with only part-time police services.[27] As indicated earlier, some police authorities suggest that the minimum size of a police agency should be 14 officers, which means that about 180 New Jersey municipalities are undermanned.[28]

It was recently stated that a ten officer police force providing 24-hour, seven days a week coverage requires an expenditure of at least $150,000 per year.[29] For some municipalities this amount represents one third to one half of the yearly revenue. During 1973, New Jersey municipalities, on the average, allocated approximately 24% of their budgets to law enforcement.[30]

In light of these figures many municipalities are concerned about the adequacy of their police agencies and their ability to support them. In a 1970 survey, New Jersey mayors were asked whether they would be willing to provide services jointly with neighboring municipalities and 32% responded affirmatively. This figure is 15% higher than responses to the same question in 1967[31] and is a reflection of increasing pressure on an already overburdened property tax system.

There are many personnel deficiencies which are especially acute in small police agencies. Some of these problems have been addressed in the chapter entitled "Police Personnel" of this report. However, there are additional personnel problems that impinge upon police effectiveness.

Adequate supervision of police officers while existent in many police agencies is nonexistent in others.[32] Agencies with only one or two supervisors cannot supervise patrol officers on all three shifts, seven days of the week.

Providing significant career advancement is difficult in many small police agencies. It is often impossible to take officers from patrol duty in order to send them an in-service training program. Those individuals seeking employment as a police officer or who are already on a police force and are advancement motivated, often seek jobs in larger agencies where advancement opportunities exist. Salaries for patrol officers and superior officers also appear to be significantly higher in larger police agencies.[33] Those officers who would like to attain more education can be hampered when there are not enough officers to allow scheduling of patrol duties around class schedules.

New Jersey's Status in Comparison with the National Standards

State and local law enforcement agencies have been gradually restructuring the organization of police services along the lines recommended by National Advisory Commission (NAC) standards and goals. Legislation authorizing consolidation and mutual agreements for police services are in effect, but at present the Legislature has discontinued appropriating funds for these efforts. Various State and county agencies in New Jersey have been providing interjurisdictional law enforcement funds and services to increase the functional capabilites of municipal police agencies. The following will discuss New Jersey's status in camparison with the NAC standards in three major areas:

1. State level assistance to local police agencies.
2. Organization and coordination of police service.
3. Level of specialized services available in police agencies.

NAC Police Standards 5.2, 5.8, 9.4, 11.3, 12.1, 16.1 and 16.7 recommend that the state provide, at no cost to any police agency, specialists to assist in investigation and operational problems, and services such as crime analysis, information systems, crime laboratories, selection of police recruits, criminal information, training, management consultation, technical assistance and financial assistance. Extensive assistance in these areas is being provided by several New Jersey State level agencies, including the Division of State Police, Division of Systems and Communications, Police Training Commission (PTC), State Law Enforcement Planning Agency (SLEPA), Department of Community Affairs and Department of Civil Service. In providing these services State agencies are consistent with the NAC standards or are in the process of further developing assistance programs.

The Division of State Police provides total police services to municipalities which do not have a local police agency. Municipalities which have full-time or part-time police agencies are supported by other State Police assistance including interjurisdictional investigation services, criminal information, laboratory services, crime analysis and training. Total law enforcement services are provided to 105 municipalities and part-time services to 117 communities with ten or fewer full-time officers. State Police patrol personnel respond to complaints, requests for police service and conduct investigations. Cooperation and assistance is provided by patrol personnel to other law enforcement agencies in crime control and order maintenance activities. Interjurisdictional investigations into activities such as organized crime, narcotics, arson, homicide, auto theft and corruption are conducted by the State Police throughout the State. The Division of Systems and Communications provides immediate responses to inquiries concerning criminal histories, wanted persons and stolen cars or property. Forensic laboratory services are provided by the State Police to test and analyze crime scene and other evidence from criminal cases. Basic and in-service training is provided by the State Police Training Academy at Sea Girt. In-service training includes subjects such as supervision, command, drug enforcement, criminal investigation, juvenile officer, organized crime and management for police chiefs.[34]

The PTC provides assistance to local police agencies in the areas of technical assistance and management consultation. Upon request the PTC's Police Administrative Services Bureau assesses the needs of police agencies and recommends specific courses of action for improving efficiency and effectiveness. Management consultation, for example, includes assessing the feasibility of and developing plans for consolidating the police services of two or more municipalities.

SLEPA provides financial assistance directly and indirectly to local police agencies. Indirect assistance is provided in the form of grants to State and countywide law enforcement agencies engaged in providing investigation and support services to local police agencies. Direct assistance to local police agencies includes grants which are aimed at increasing patrol responsiveness, target hardening-crime prevention, experimentation into team policing, improving police communication and providing special units which proactively respond to crime targets identified through crime analysis evaluations.[35] Technical

assistance including the areas of communications, facility design and information systems is also provided by SLEPA.

Safe Neighborhood funds are distributed through the Department of Community Affair's Division of Local Government Services. These funds are committed to the placement of walking patrol officers in selected neighborhoods.

The Department of Civil Service provides assistance to local police agencies in the areas of selection and promotion of police officers. See the chapter entitled "Police Personnel" in this report for a detailed discussion of the Department's activities in these areas.

The New Jersey County and Municipal Government Study Commission suggests that State assistance to local agencies is dispersed among too many State level agencies, resulting in a lack of uniformity, continuity and coordination. The Commission recommends, therefore, that many of these functions be centralized in one State level unit responsive to the needs of local police agencies. The functions of this unit should include coordination of technical assistance, planning and research, management and administrative services. Conceivably, this unit could implement some of the Commission's other recommendations, which are the formation of minimum standards for law enforcement agencies in areas such as size of police organizations, defining law enforcement capacities which should be available within each jurisdiction, establishing guidelines for delivery of police services and defining roles and duties of police agencies.

The Commission suggests that the most logical location for placing these responsibilities would be in an expanded Police Training Commission.[36] Models on which such a unit could be based are the Police Officer Standards and Training Commissions in California and Georgia.

NAC Police Standards 5.2, 5.4, and 5.5 recommend that police agencies which are geographically close engage in interagency planning for regional crime control and mutual aid during civil disorders and natural disasters. The standards further recommend that the State participate in developing mutual aid plans.

New Jersey police agencies are authorized by law to engage in mutual aid and assistance agreements during emergencies. *N.J.S.A.* 40A:14-156 states that:

> In the event of an emergency the chief or other head of any municipal police department or force or any park police department or system or the mayor or chief executive officer of the municipality may request, from the chief or other head of the police department or force of any municipality, assistance outside the territorial jurisdiction of the department to which such request is directed for police aid, in order to protect life and property or to assist in suppressing a riot or disorder and while so acting, the members of the police department or force supplying such aid shall have the same powers and authority as have the members of the police department or force of the municipality in which such aid is being rendered.

Every State and local government should provide complete and competent police service through an effective and efficient organizational structure according to NAC Police Standards 5.1 and 5.2. These standards suggest that governments which are unable to support a ten officer agency and provide 24-hour police services should arrange for necessary services by combining or contracting police services in any of the following manners:

a. Total consolidation of local government services: the merging of two city governments, or city-county government;
b. Total consolidation of police services: the merging of two or more police agencies or of all police agencies (i.e., regional consolidation) in a given geographic area;
c. Partial consolidation of police services: the merging of specific functional units of two or more agencies;
d. Regionalization of specific police services: the combination of personnel and material resources to provide specific police services on a geographic rather than jurisdictional basis;
e. Metropolitanization: the provision of public services (including police) through a single government to the communities within a metropolitan area;
f. Contracting for total police services: the provision of all police services by contract with another government (city with city, city with county, county with city or city or county with State);
g. Contracting for specific police services: the provision of limited or special police services by contract with another police or criminal justice agency; and
h. Service sharing: the sharing of support services by two or more agencies.

State legislatures are encouraged by the NAC standards to pass enabling legislation to promote consolidation and combination of police agencies.

Consolidation or combination of police agencies has been done on a limited scale even though there is a great need. There are approximately 61 municipalities which provide only part-time police services and 115 agencies with less than ten full-time officers. Many of the 184 police agencies with fewer than 15 full-time officers have neither adequate investigative nor supporting staffs. Municipalities which cannot support complete police services are able to combine or contract police services with other municipal or county governments pursuant to New Jersey statutes.

The Interlocal Services Act authorizes municipalities to provide police services with other jurisdictions through two types of agreements. Municipalities can provide police services by consolidating police functions through intermunicipal, county-

municipal, State-municipal or special district-municipal contracts.[37] Police services can also be provided by two or more municipalities through joint service agreements.[38]

According to the Department of Community Affairs only eight percent of the municipalities responding to a 1974 survey are engaged in cooperative agreements with other municipalities to provide patrol services. Many of these agreements, however, are invoked only during emergencies. Thirty-five percent of the municipalities responding to the survey are involved in cooperative agreements for dispatching services.[39] Total consolidation of local police services has occurred in recent years in three areas of the State: Howell Township and the Borough of Farmingdale; Clinton Township and Lebanon Borough; and West Deptford Township and the National Park Borough.

The State Law Enforcement Planning Agency has been funding regional consolidation in several areas of law enforcement which is consistent with NAC Police Standard 5.2. Four counties have received SLEPA grants to establish countywide dispatching services involving most of the police agencies. Four county prosecutor offices have received grants to provide, equip and train evidence technicians to assist law enforcement agencies in securing, collecting and preparing evidence found at the scene of a criminal act. Eight counties have received grants to establish countywide sex crime analysis units specifically aimed at combating rape. Countywide police legal advisory units have been established in six counties and are planned for one other county to assist municipal police agencies in developing legally sufficient procedures. Twelve countywide narcotic units and four organized crime units which utilize investigators from the county prosecutor's staff and officers allocated to the unit by municipal police departments have been established to secure increased indictments.[40]

NAC Police Standards 9.1, 9.2, 9.3, 9.5 through 9.11, 11.1, 12.1 and 12.3 recommend that every police agency evaluate its need for specialists and, where necessary, utilize specialists in the areas of juvenile operations, traffic operation, criminal investigation, special and crime tactical forces, vice operations, narcotics and drug investigations and intelligence operations. As stated previously, the adequacy of specialization in these areas varies from community to community. Some municipal police agencies have specialists in these areas and others rely on countywide or State units for specialized services.

Commentary

The Advisory Committee has recommended a police system of decentralized patrol by municipalities or combinations of municipalities backed up by countywide or regional agencies providing investigative and other support services. Rather than establish a standard for the minimum size of all police agencies, as did the NAC, it was decided that provision of 24-hour patrol services by properly selected and trained police officers would be preferable since minimum patrol needs vary from community. For example, while one community needs a minimum of 14 patrol officers, another can function with only five.

This recommendation is not aimed at preventing police agencies from developing their own investigative and support services. It was concluded that decentralized patrol supported by centralized support services is the best way to ensure that all citizens are protected by a full range of police services. This method would overcome some of the police problems in New Jersey such as response capability, geographic fragmentation, functional capacity, economy of scale and fiscal inadequacies. Programs already in operation in New Jersey are demonstrating the value of centralized support services. To support development of countywide and regional investigative and support services it is recommended that the State provide start-up funds.

The Advisory Committee supports the right of small communities to provide their own patrol services. It does, however, recommend that wherever feasible, communities consider combining or contracting with other communities for the provision of patrol services. Such agreements can upgrade the quantity, quality and responsiveness of patrol services. To support these efforts it is recommended that the State provide significant financial incentives to local communities for combining, contracting or consolidating patrol services. To facilitate such efforts there is a need to amend the Interlocal Services Act to specifically address police services.

The need to upgrade the standards of police service and coordinate State level assistance to local police agencies is highlighted by the recommendation to establish a Commission on Local Police Services (COLPS). A major issue in discussing such a Commission was whether it should, in fact, be a Commission or a division within the Department of Law and Public Safety. The argument in favor of a division was that it would have more power in enforcing standards, be easier to administer and would lead to better coordination of State level services to local police agencies. The argument in favor of a Commission was that it would be more responsive to the needs of local police agencies and governments, have a better working relationship with local police

agencies and it would be politically easier to implement.

A major objective of COLPS would be to improve the effectiveness and efficiency of local police services. Central to this objective is establishment of uniform statewide standards in the area of personnel practices and operations. In fulfillment of this function it is recommended that both minimum and model standards be established. Minimum standards are those standards which all police agencies should meet in order to be certified by COLPS. Model standards are standards which police agencies would not be required to achieve but which, if achieved, would significantly improve their efficiency and effectiveness. Minimum standards, for example, should include but not be limited to delivery of 24-hour patrol services; access to 24-hour investigative and support services; personnel standards as outlined in the Police Personnel Standards; and development of policy, procedure and rule manuals. Model standards, on the other hand, should be regarded as ultimate goals, objectives, procedures or plans which not only provide for at least minimum services but result in an agency reaching its fullest potential. For example, if the minimum amount of supervisory training is 80 hours, the model may be 160 hours.

The Advisory Committee decided that compliance with minimum standards can best be achieved by relying on informal pressures rather than the threat to remove police authority from an agency. The Committee, therefore, recommended that evaluation reports by COLPS on each police agency's level of compliance with minimum and model standards be released to the mass media. Citizens in each community discovering that their police service is inadequate will pressure local government to make necessary changes. Failure to achieve minimum standards can also be used by insurance companies in determining rates charged or whether to issue insurance to a police agency. Those injured or relatives of those killed by police officers could use a report of noncompliance with minimum standards (especially training standards) as a basis for a liability suit. Should these informal pressures fail to ensure compliance it is recommended that reports be forwarded to the Attorney General for appropriate legal action. State and federal funds can also be withheld pending compliance with minimum standards.

A second major objective of COLPS is to initiate and coordinate State level assistance for local police agencies. In creating COLPS a dual State responsibility for local police services would exist. The State Police would continue providing operational assistance to local police agencies and communities while COLPS would provide planning, research and management technical assistance. To facilitate achievement of these objectives, the Advisory Committee recommended consolidation of the functions of several State level agencies into COLPS.

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[38]*N.J.S.A.* 40:8B to 40:8B-1.

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POLICE PERSONNEL

Introduction

Police recruitment, selection, training and promotion are interdependent processes central to effective policing. A breakdown of any one of these processes can seriously cripple the efficiency and effectiveness of a police agency.

The various functions, pressures and responsibilities associated with police work places a great burden upon the selection, training and promotional processes. Police officers are not only law enforcers but function as mediators of community and family disputes, social workers, medics and counselors. The authority to arrest and use lethal force gives officers power over life, death and the destinies of many people. These factors combined with danger place stress on officers experienced by few others in society. Selection, training and promotion, therefore, should ensure that police officers are capable of handling the duties and pressures of their positions.

An objective of recruitment and selection programs should be to select and recruit individuals possessing high levels of maturity, intelligence, common sense and motivation and who are representative of the communities to be policed. A further objective of the selection process should be that of screening out through testing, interviewing, investigating and supervising, those individuals who lack the appropriate characteristics.

Just as training cannot compensate for a deficient selection process, a good selection process cannot be a substitute for effective training. Once selected, police officers should receive a comprehensive training program to provide skills and knowledge necessary to perform their duties. Training for patrol officers should not only deal with law enforcement knowledge and skills but should include dynamics of human behavior, social subcultures, interpersonal communication and community relations.

The promotional system is as integral to effective policing as the other factors. Officers of superior rank make up 27% of police personnel forces in New Jersey and generally determine how the other 73% perform their duties. Just as the selection and training processes for the patrol force can determine its quality, so too, the quality of superior rank officers can be determined by the processes of promotion and specialized training. The decisions of command officers affect not only the daily activities but also the future effectiveness and efficiency of police agencies.

Problem Assessment

Recruitment of Police Officers

Ensuring equal opportunities for ethnic minorities and women in the ranks of sworn police officers is a problem in New Jersey as well as throughout the United States. Recent studies reveal that women and ethnic minority persons have particular skills, attributes and knowledge which are beneficial to policing.

The most comprehensive study of female police officers was performed in Washington, D.C. in which newly appointed female officers and male officers were compared on a number of performance criteria. The study revealed both positive and negative findings. The positive findings include:

1. New women obtained results similar to those of comparison men* in handling angry or violent citizens.
2. New women and comparison men showed similar levels of respect and general attitude toward citizens.
3. New women and men were given similar performance ratings in several patrol skills.
4. Comparison men were more likely than new women to have been charged with unbecoming conduct.
5. Citizens showed similar levels of respect and similar general attitudes toward new women and comparison men.
6. Citizens interviewed about police response to their calls for assistance expressed a high degree of satisfaction with both male and female officers.
7. Citizens who had observed policewomen in action said they had become somewhat more favorably inclined toward policewomen.
8. Citizens and trained observers rated new women about the same as comparison men in handling threatening behavior.
9. Patrolwomen felt that their patrol skills were as good as patrolmen's in most cases.
10. Women were better at questioning a rape victim and there was no difference between men and women in skill at arresting prostitutes.[1]

There were some negative findings of the study which included the following:

1. There was little change in the attitudes of pa-

*"New women" refers to newly appointed female police officers and "comparison men" refers to newly appointed male police officers.

References for this chapter appear on pages 85 & 86.

trolmen toward policewomen between the start and the conclusion of the experiment.
2. Patrolwomen felt that police supervisors were more critical of patrolwomen than of men. Patrolmen felt there was no difference.
3. Police officials in an anonymous special survey gave new women lower ratings than comparison men on ability to handle domestic fights and street violence and on general competence. Women were rated equal to men in handling upset or injured persons.
4. Patrolmen doubted that patrolwomen were the equal of men in most patrol skills.
5. Patrolmen, patrolwomen and police officials agreed that men were better at handling disorderly males.
6. Citizens believed that men and women were equally capable of handling most patrol situations, but they were moderately skeptical about the ability of women to handle violent situations.[2]

The representation of women compared with men in the ranks of sworn police officers is extremely disproportionate. During 1975, there were only 358 sworn women police officers out of the 22,713 full-time sworn police officers in New Jersey.[3]

Several national and State studies resulting in part from the civil disorders of the 1960's have recommended increasing the number of black and Hispanic Americans in the ranks of sworn police officers. The Governor's Select Commission on Civil Disorders, State of New Jersey, recommended that greater efforts be made to recruit police officers from black and Spanish-speaking communities and that qualified black lieutenants and captains be placed in operational command positions, including precinct commands.[4] The President's Commission on Law Enforcement and Administration of Justice revealed that the policing of black and Spanish-American communities by only white police officers has created a feeling among residents of discriminatory and unjust law enforcement by an army of occupation. The Commission further stated that minority officers policing minority neighborhoods can improve police/community relations and result in better policing since the officers have a better understanding of the culture, mores and language of the community.[5]

Ethnic minority representation continues to be a problem in New Jersey. Although the Department of Civil Service received grants from the State Law Enforcement Planning Agency from 1973 to 1975 to develop procedures for actively recruiting minority members for such positions as municipal police officers and State correction officers, those activities produced poor results evidenced by the fact that only 15% of the applicants were from minority groups.[6] Presently, there are no Department of Civil Service programs designed for the recruitment of minorities. As of 1974, 27% of the population of New Jersey 16 years of age and over was composed of nonwhite, minority residents.[7]

A recent survey of municipal police departments indicates that the percentage of blacks is significant in some large departments (as shown in Table 1) but in none of the departments surveyed was the proportion of blacks on the police force close to the proportion of blacks in the community.

The 1970 U.S. Census did not differentiate between whites and Spanish-speaking or Hispanic people, thus making a comparison between the percentage

Table 1

Racial Makeup of Police Department and Large Cities

City	Police Department Census				1970 Municipal Census			
	% White	% Black	% Hispanic	% Other	% White	% Black	% Hispanic	% Other
Atlantic City	73	26	1	—	55	44	—	1
Camden	76	22	2	—	60	39	—	1
East Orange	67	31	1	—	46	53	—	1
Elizabeth	94	4	—	2	83	16	—	1
Jersey City	92	6	2	—	72	21	6*	1
Newark	77	20	2	—	44	54	—	1
Paterson	89	8	3	—	72	27	—	1
Trenton	87	13	<1	—	61	38	—	1

* The 1970 U.S. Census did not separate Hispanic data from the white category; however, Hudson County did.

Source: Police department data obtained through survey by Standards and Goals and Planning Sections of the State Law Enforcement Planning Agency, April-May, 1976. Census data from Bureau of the Census, U.S. Department of Commerce, *1970 Census of Population: New Jersey*, Washington, D.C., U.S. Gov't. Printing Office, 1971.

of Hispanic police officers and the Hispanic population difficult.

A survey of smaller police departments indicates that in many municipalities there is little or no ethnic minority representation on police departments even though the community or surrounding communities have significant minority populations. Table 2, for example, includes figures comparing the ethnic composition of police departments with the city populations in Hudson County.

Data from Atlantic, Camden, Ocean, Monmouth, Passaic and Union Counties reveal a similar although in some cases less significant trend with many departments composed 100% of white officers or a low percentage of minorities. Many of the police departments with a low percentage of minorities, however, are located in communities with a very low percentage of black and Hispanic populations.

A problem which may conflict with the goal of increasing the proportion of minority representation in police departments is that of raising the education levels of new recruits. Presently, only eight of the 170 municipalities in New Jersey under the jurisdiction of the Department of Civil Service require formal education beyond the high school level, such as 45 or 60 hours of college credits.[8]

The NAC and ABA standards recommend that the education level of police officers be increased. Some of the reasons for increasing the education level include:

1. The education level of the general public will soon surpass the high school level.
2. A college or university education may provide knowledge about human behavior and social problems that will be useful to officers in the performance of their duties.
3. A college or university education may broaden an individual's understanding and thus increase his tolerance of minorities and subcultures in the community by exposing students to differing philosophies, values, cultures and opinions.

Although such knowledge will help a police officer to understand, tolerate and communicate effectively with people possessing differing backgrounds, some of the skills required to perform police work cannot be learned in the classroom or academy. James Q. Wilson states:

> The patrolman is neither a bureaucrat nor a professional, but a member of a craft. As with most crafts, his has no body of generalized, written knowledge nor a set of detailed prescriptions as to how to behave—it has, in short neither theory nor rules. Learning in the craft is by apprenticeship, but on the job and not in the academy. . .the members of the craft, conscious of having a special skill or task, think of themselves as set apart from society, possessors of an art that can be learned only by experience and in need of restrictions on entry into their occupation.[9]

Whether or not a college education can provide knowledge that will be beneficial to a patrol officer may need to be decided in the future. Nevertheless, as Egon Bittner stated in a lecture at the Federal Bureau of Investigation Academy, police depart-

Table 2

Racial Makeup of Police Departments and Communities in Hudson County

City	Police Department Census				1970 Census Figures			
	% White	% Black	% Hispanic	% Other	% White	% Black	% Hispanic	% Other
Bayonne	96	3	<1	—	92	4	3	<1
East Newark	100	—	—	—	88	—	12	<1
Guttenberg	100	—	—	—	89	<1	10	<1
Harrison	100	—	—	—	92	<1	7	<1
Hoboken	91	3	6	—	62	4	32	2
Jersey City	92	6	2	—	69	21	9	1
Kearney	100	—	—	—	97	<1	2	<1
North Bergen	100	—	—	—	92	<1	8	<1
Secaucus	100	—	—	—	97	1	1	<1
Union City	95	2	2	—	58	1	40	1
Weehawken	100	—	—	—	78	<1	20	1
West New York	100	—	—	—	56	1	42	1
Hudson County Police Dept.	95	2	2	—	74	10	15	1

Source: Information sent to the New Jersey State Law Enforcement Planning Agency from William J. Downey, Jr., Criminal Justice Planner, Office of the County Prosecutor, Hudson County, New Jersey, April 29, 1976.

ments will be more likely to find motivated, intelligent and gifted recruits in the colleges:

> The man on whom my life may depend who has no body of knowledge to fall back on is recruited from a continuously contracting base of high school graduates. Larger and larger segments of the more talented, aspiring, wise and gifted individuals are going to college. The wisest and most gifted individuals should be policemen not because there exists a body of technical knowledge that is difficult to master but precisely because there is no body of knowledge. Police officers must learn much of their job by themselves, on the job.[10]

Personnel from the New Jersey Office of the Public Advocate indicate that as of this date there have been no court decisions suggesting that police departments which require police applicants to possess an associate degree are discriminating against minority applicants. They further stated that should a suit charging discrimination be filed against a police department, the police department may have to demonstrate statistically that police work requires more than a high school degree. Recently, however, a large percentage of police candidates (46%) entering police academies had at least some college credits, of whom 11% had bachelor degrees and four percent associate degrees.[11]

This trend, although significant, does not meet the NAC Police standards which recommend that all police recruits have at least 30 college credits. The Police Training Commission (PTC) states that:

> If the policing system in our state is beginning to attract better educated individuals, it is by accident and not by design. Current economic problems have enabled police agencies to benefit from a pool of more highly educated applicants. As the economy improves, the caliber of police applicants might very well decline, unless positive steps are taken to ensure high quality applicants.[12]

One of the means by which individuals with special expertise or higher education can be attracted to police work is through salary levels which enable police agencies to compete successfully with other employers seeking individuals of the same age, intelligence, abilities and education. The NAC recommends that entry level salaries "should be at least equal to any minimum entry level salary set by the state."[13] Salaries for police officers in New Jersey vary substantially with many municipal police departments offering salaries considerably less than the State. Salary levels for State Police troopers range from $13,308 per year for new recruits to a maximum of $16,920 per year.*

A recent survey of over 500 police agencies throughout New Jersey revealed that starting salaries for patrol officers range from below $6,999 per year to over $13,000 per year. The highest salary paid to patrol officers ranges from $7,999 per year to over $15,000 per year. Generally, smaller, rural and less affluent communities offer salaries substantially less than the State Police.

Table 3 illustrates that most police departments offer salaries that are substantially less than the State Police. In addition, most police departments pay maintenance allowance for police officers which ranges from $100 to $600 per year. The high allowances are usually paid to plainclothes officers, while uniformed officers either receive a 100% reimbursement for the cost and cleaning of uniforms or $100 to $150 per year for uniforms.[14]

Providing pay incentives for people with college educations to enter police service or for active police officers to attend college is another mechanism for increasing the educational level of police officers. During the 1974-1975 academic year, 4,512 law enforcement officers (representing 20% of the police officers in New Jersey) were enrolled in one of 24 New Jersey colleges and universities providing criminal justice programs.[15] Many police departments and the State Police, however, do not provide educational incentive pay to encourage officers to attend college. According to a recent survey of over 400 police agencies, about 25% provide incentive pay for officers who attend or graduate from a college or university.[16]

Selection of Police Officers

New Jersey had made significant progress in developing procedures for the selection of police officers. The State Department of Civil Service, through a sophisticated research process, has developed a valid and reliable mental ability examination and a physical performance test for ranking police applicants. The objectives were to develop an examination which measured those mental attributes considered necessary for adequate on-the-job police performance and to eliminate any questions which discriminated against racial minority applicants consistent with the Federal Equal Employment Opportunity Commission guidelines. The development of the mental abilities examination involved a five step process:

Step 1: *Job Analysis* - Interviews were conducted with police incumbents and their supervisors for the purpose of determining job duties and identifying worker characteristics related to job success.

Step 2: *Test Development* - An examination based on the job analysis information was developed. Content validity was established at this point.

Step 3: *Criterion Development* - Criterion measures were developed in order to evaluate the incumbent's job performance. Individuals in a department were asked to rate each incum-

* The salaries include a $3,000 taxable maintenance allowance.

Table 3

Salary Ranges of Police Officers in New Jersey

Year	No. of Police Depts.	Starting Salary	Year	No. of Police Depts.	Highest Salary
1975	3	Below 6,999	1975	10	Below 7,999
1974	1				
1975	9	7,000-7,999	1975	12	8,000-8,999
1974	3		1974	2	
1975	35	8,000-8,999	1975	23	9,000-9,999
1974	12		1974	1	
1975	97	9,000-9,999	1975	36	10,000-10,999
1974	6		1974	5	
1975	76	10,000-10,999			
		11,000-11,999	1974	15	12,000-12,999
1975	29		1975	93	
			1974	5	
1975	8	12,000-12,999	1975	88	13,000-13,999
1975	1	13,000-13,999	1975	55	14,000-14,999
1975	0	14,000 & over	1975	10	15,000 & over

Source: Data obtained from the *New Jersey Municipal Salary Report,* New Jersey State League of Municipalities, Trenton, New Jersey, October, 1975, pp 39-77.

NOTE: Negotiations over salaries caused delay in adoption of 1975 salary ordinances in numerous counties. Therefore, 1974 salaries are given in some instances. Starting salaries are not given for 131 departments.

bent on 23 performance traits.

Step 4: *Administration* - The examination was given to a sample of job incumbents representative of the typical candidate population. Criterion information was gathered on these incumbents.

Step 5: *Data Analysis* - The data were statistically analyzed in order to determine the job-relatedness of the test.[17]

Those items found to be non job-related or racially discriminatory were eliminated from the examination. The resulting examination includes three subtests which are aimed at measuring the major attributes considered necessary for adequate on-the-job police performance. These subtests are: a police forms completion subtest, designed to measure the ability to complete and interpret actual police forms; a discretionary situations subtest, designed to measure common sense or judgment and their related knowledge, skills and abilities; a public relations subtest, designed to measure knowledge, skills and abilities necessary for successful interpersonal relationships.[18]

The Department of Civil Service utilized a similar process for developing a physical performance test which used a job analysis study to determine the physical activities a police officer must be able to perform. The resulting physical performance examination eliminated many elements of previous physical examinations that either discriminated against women or were non job-related such as sit-ups, squat thrusts, chin-ups, gripping strength and a lifting and running test. The present exam consists of four events: 1)Dummy drag (rescue, handling drunks); 2) Agility dodge run (pursuit); 3) Wall scale (surmounting obstacles) and 4) Running broad jump (clearing open areas). The skills required to perform these events successfully are those used on the job by experienced police officers. Each candidate must attain a 70% average on the entire exam. The following is a breakdown of the minimum passing scores for each event:

1) Dummy drag - 12.0 secs.
2) Agility dodge run - 50.6 secs.
3) Wall scale - 09.0 secs.
4) Broad jump - 7 feet[19]

Despite the efforts by the Department of Civil Service to develop entrance examinations for police officers which are job-related and consistent with equal employment guidelines, there are a number of

problems with standards and procedures for the selection of police officers in New Jersey.

Standards for the selection of police officers have not developed progressively with the increasing complexity of police work and the resulting demands on police officers. There has been no significant change in the statutory entrance requirements for police officers in New Jersey since 1945.[20]

There are no statutory requirements in New Jersey that mandate a background investigation on police applicants. The lack of uniform statewide standards has resulted in extreme variations in quality and thoroughness of background investigations.[21]

The Special Investigations Unit of the New Jersey State Police has developed a comprehensive program for evaluating the backgrounds of State Police applicants, their families and associates. The background surveys require approximately 35 to 40 hours to complete and include investigations of the applicant's character, military history, past and present residences, employers and fellow employees and the criminal history and financial status of the applicant and family. The cost of such investigations is high and therefore prohibitive for most law enforcement agencies in New Jersey. The State Police, however, allocate funds for a comprehensive background investigation because the return in the quality of manpower outweighs the expense of the investigation. Presently the Special Investigations Unit has 12 personnel: two administrators and 10 investigators. During 1973, 1974 and 1975 the Unit averaged 758 background investigations per year. The State Police do not perform background investigations for municipal police department candidates.

The lack of definition of present State standards relating to what is an acceptable background for police applicants poses another problem. The only statutory guidelines are found in *N.J.S.A.* 40A: 14-22 which states:

> No person may be appointed as a member of a police department unless he '...is of good moral character, and has not been convicted of any criminal offenses involving moral turpitude.'

The above statement is too broad and does not define what is good moral character and what offenses involve moral turpitude. As a result, local appointing authorities must apply their own subjective interpretations which vary from municipality to municipality.[22]

A related problem is the manner in which police candidates should be tested to determine whether they are emotionally mature, healthy and balanced as well as to predict later job performance so that those who are not suited for police work can be eliminated from consideration for police positions.

Presently many psychological techniques and tests lack the validity to predict future job performance and are limited in their usefulness to screening out applicants with severe emotional disorders.[23] Candidates with marginal emotional disorders and who may break down under pressure may not be screened out. Due to the highly technical nature of psychological tests the results are subject to misinterpretation by untrained personnel. The Medical Review Board of the State Department of Civil Service, composed of a psychologist, psychiatrist and a representative of the Department of Civil Service, reversed 98 (57%) of 169 cases in which local appointing authorities had declared that applicants were rejected for employment for psychological and/or psychiatric reasons.[24]

There are no statutes requiring that a police applicant be examined for emotional stability by a licensed psychologist or psychiatrist prior to appointment to a county or municipal police position. *N.J.S.A.* 52: 17B-71 (c), Police Training Act, permits the Police Training Commission (PTC) to "prescribe psychological and psychiatric examinations for police recruits" while in a PTC-approved training school. The PTC, however, does not prescribe psychological examinations because it is waiting until such examinations are validated through intensive research. Department of Civil Service personnel confirmed the need for such validation.

According to a recent survey by the County and Municipal Government Study Commission, approximately one-third of the police departments with 50 or more officers employ psychologists. It is not known how many of these psychologists are used to administer psychological tests but it is apparent from this data that a large number of New Jersey police departments do not utilize psychologists for administering psychological tests.[25]

Another problem is the lack of uniform standards operating in non-Civil Service police departments in New Jersey for testing a police applicant's mental and physical abilities. Presently 287 of the 469 municipal police departments are not under Civil Service jurisdiction and are free to set their own standards, consistent with statutory restrictions.[26] Most of these municipalities require a passing grade on a written and physical examination.[27] Many of these police departments are small and are not able to afford the cost of validating the job-relatedness of the written and physical examinations to ensure that they are consistent with Federal Equal Employment Opportunity Commission guidelines. It was only after extensive research that the Department of Civil Service was able to develop validated job-related mental and physical examinations without racial and sex biases.

Police Training

New Jersey can be regarded as a leader in police officer training. Ten of the 15 regional police academies approved by the Police Training Commission provide over 400 hours of basic training

which ranks favorably with the rest of the nation. In addition to basic training programs the PTC has the responsibility for establishing a minimum curriculum for the academies and certifying instructors. The Police Training Commission is also involved in upgrading future basic training programs through integration of research findings and training modules from at least four major training programs developed in various parts of the country. Despite these advances in police training in the State, a number of problems have been revealed through research.[28]

Some newly appointed police officers perform all the duties of a permanent police officer for a period of time up to 18 months without having to complete and pass minimum police basic training requirements.[29] Many of the duties performed require a high level of judgment concerning "when" and "how" force should be applied. The authority to use force should not be entrusted to an untrained recruit. The potential for making mistakes is high for trained police officers and increases proportionately for officers who have received less training. Many police-community relations problems,[30] as well as deaths and injuries to police officers and civilians, have resulted from overreactions and/or use of improper police procedures which are sometimes due to a lack of training. Suits have been filed against municipalities in which untrained police officers have injured a civilian.[31]

Police department policy in some municipalities prohibits using untrained officers on routine patrol but in other departments untrained officers are utilized for patrol with authority to use firearms and exercise powers of arrest.[32] Effective police work requires more than knowledge in use of firearms. Present police training academies require recruits to complete an average of 408 hours of training which include procedures for handling domestic disputes and decision making; criminal law and procedure for investigating crimes and taking suspects into custody; and a broad range of human behavior skills such as community relations, ethics, group behavior, personal communication and youth relations. Several extensive studies of New Jersey law enforcement agencies which have recognized the importance of pre-service training have recommended that all law enforcement personnel be required to complete basic training before being authorized to exercise police authority.[33] The NAC states that:

> The public will not permit a doctor, lawyer, teacher, barber or embalmer to practice until he successfully completes a specified training program . . . . Only a few states . . . require that training be completed prior to exercising police authority. . . the powers of arrest and the potential for injury and death are too great to allow policemen to practice their profession without adequate training.[34]

The large number of untrained and armed special police officers who are exercising police authority is a related problem. *N.J.S.A.* 40A:14-146 states that the governing body of a municipality may appoint special police officers for terms not exceeding one year, with no limitation on the number of separate consecutive appointments of an officer. Special police officers exercise "the same powers...as may be exercised by a municipal policeman pursuant to law . . . ."[35]

In 1975 the Police Training Commission sent a questionnaire to municipalities throughout the State requesting information on the use of special police officers. The 542 municipalities that responded indicated there were a total of 4,445 special police officers compared with 16,489 regular officers. Of the 495 municipalities that have police departments, 384 of them (77.6%) utilize special police officers. The survey showed that 3,206 special officers were employed on a year-round basis and 20% of the municipalities with police agencies used special police for more than 20 hours a week. Fifty-two police agencies worked special police for more than 40 hours per week.[36]

The PTC survey also revealed that of most municipalities responding, 48% of the special police officers received 40 hours or less training and 7.3% received no training. This is substantially less than the minimum 280 hours mandated for regular officer basic training and the average number of hours provided by the State's 15 PTC-approved training academies, which is 408 hours. The County and Municipal Government Study Commission stated the main reason for use of special police officers is:

> ...financial; it cost more money to hire, train and maintain a person full-time than part-time. Another reason, far less supportable, is evasion of State training requirements.[37]

Another problem with police training in New Jersey is the lack of in-service training for police officers. Presently, there is no State requirement for in-service training. Since 1967 the PTC has had legislative authority to establish standards and minimum curriculum requirements for in-service training,[38] but funds have not been appropriated to the PTC for this purpose.

The importance of in-service training cannot be overstated. The average number of hours required for basic training is equivalent to one semester of college study.[39]

The NAC states that:

> Keeping the good police officer up to date requires continual instruction. Most of it can be accomplished by in-service training given during the normal routine of service.
>
> This report recommends that each police officer receive at least 40 hours of in-service training a year. This training should be more than a mere formality. It should be recorded in the police officer's personnel record and taken into consideration for promotion and specialized assignment. In large agencies, decentral-

ized training should be available at each police station. One police officer should be given responsibility to oversee in-service training.[40]

A questionnaire by the County and Municipal Government Study Commission revealed that only 54% of the responding departments, primarily the larger departments, had some form of in-service training program. Many departments, especially small departments, have limited manpower which makes it difficult to take officers off the street for in-service training.

A 1974 PTC survey of in-service training programs in New Jersey found that two-thirds of the in-service training was administered within the municipal police departments and 194 police agencies (46.7% of those responding to the survey) indicated the designation of departmental training officers. Of this 194, however, no more than 53 (27.3%) have received Police Training Instructor training and certification by the PTC.[41]

Upon assessing the types of training provided, the PTC determined that present training is basically skill-oriented and there is a serious lack of in-service training in several key areas that affect the efficiency of police operations. In a planning report the PTC stated:

> There is a discernable lack of courses in administration, supervising and management. In other words, little in-service training is provided for those in superior ranks who account for approximately 27% of the police population and who directly affect the other 73%.[42]

The following quote best summarizes the findings on New Jersey's in-service training:

> . . . the lack of uniformly high quality in-service training opportunities for all local police officers is a serious detriment to effective local law enforcement service. Every police officer, from the newest patrolman to the veteran chief of police, should not only have the chance, but the obligation, to keep abreast of new knowledge, skills and techniques, by taking regular courses in areas especially pertinent to his duties.[43]

The lack of training for police officers in crisis intervention and conflict management procedures and methods also poses a problem. A good portion of police work involves intervention in interpersonal or group conflicts. Analysis of citizens' requests for police service indicates that approximately one in every five police cars is dispatched to an interpersonal conflict such as a quarrel between family members or friends, disturbance between teenagers and an irate resident, a landlord-tenant or consumer-merchant dispute, a disturbing the peace complaint, a labor strike or public demonstration.[44] These situations ordinarily do not involve a violation of law, but the procedures and methods used by police officers in handling them can determine whether a peaceful settlement or a violent and destructive escalation of hostilities results. Very little training is provided in New Jersey that aids police officers to mediate group and interpersonal conflicts.

In communities across the country benefits resulting from intensive conflict management and crisis intervention training include reductions in assaults and crimes between citizens and police and improved police/community relations.[45] There is a variety of methods for implementing crisis intervention training but the key element is the same; to provide officers with alternatives to the authoritarian approach to police work. Police officers are taught:

1. How properly to interpret behavior;
2. How to deal with concepts of authority and self-esteem in conflict situations;
3. How to understand their own feelings in dealing with other people;
4. How to utilize conciliatory and non-authoritarian methods for calming situations and providing alternatives to conflict.[46]

The National Institute for Law Enforcement and Criminal Justice utilized the experiences of police departments throughout the country to develop an intensive conflict management training package for use by any police department.[47]

The potential benefits of implementing crisis intervention and conflict management training in New Jersey are significant. In 1974 there were 3,178 assaults on police officers, 28.5% of which occurred while officers were responding to family fights, tavern disorders and other disturbances. One percent occurred in handling mentally deranged persons and 2.8% while responding to civil disorders.[48] Other studies indicate that 40% of the time lost by line duty police officers results from injuries received while responding to disturbance calls.[49]

Another problem is that most police training academies operate on a part-time basis, as needs arise. Five of the 15 academies do not have full-time administrative staff and practically all academies do not employ full-time professional teaching staffs. Most instructors are working law enforcement officers on loan from their regular jobs.[50] In addition, the under-utilization of the resources and physical plants in which county academies are located is not cost-effective and wastes already limited financial resources. Authorities on police training in New Jersey indicate that the quality of training and standards of performance expected of trainees vary greatly among academies and are lower at regional academies than at the State-run residential academy at Sea Girt.[51]

The primary reason for having regional academies is that they enable police recruits to be trained close to home by local instructors familiar with local needs. Analysis to date, however, suggests that given the present level of training in New Jersey from a cost and quality standpoint the number of academies

should be reduced to facilitate hiring and training of full-time instructors and optimum use of training facilities. If there is a significant increase in in-service training, on the other hand, such a reduction may not be needed.

Most police departments in New Jersey do not have designated departmental training officers who are responsible for educating police personnel as to departmental policies, procedures and specific community problem areas. The function of a departmental training officer should be to bridge the gap between the training received at a regional academy and local differences in police responsibility. Only 28% of the agencies with in-service training indicated that they conducted in-service training programs within their agencies while 72% relied on other agencies to conduct in-service training.[52]

In-service training includes field training for newly assigned officers who have just finished basic training. Basic training is aimed at providing police recruits with training in proper methods for performing police duties. After the academy the key to effective training is the field training officer. One task of the field training officer is to show officers how to apply what they have learned in the academy to field situations. Authorities on police administration in New Jersey frequently state, however, that field training officers negate some methods learned by officers in training academies. Some field trainers do not exemplify proper police procedure in their daily work while others are not interested in being trainers. In some cases field trainers may never have learned to perform their duties according to proper police procedures or they find it easier to utilize other methods.

In some New Jersey communities work contracts mandating that assignments be based on seniority inhibit using the best patrol officers as field trainers. Recruits are usually assigned night duty and the most experienced officers are permitted to select only day shifts if they so desire. Lack of incentives for officers to remain on patrol results in some of the best qualified leaving patrol assignments for other more rewarding work. Higher salaries and other factors encourage many of the best officers to seek promotion to higher ranks and speciality areas while many less effective patrol officers remain in patrol ranks, often left with the responsibility of training new officers.

The NAC points out the importance of field trainers in the following statement:

> The most important element of an effective basic police field training program is the field training officer or coach. The development of the new officer is in this man's hands. The selection, training and continued preparation of the coach are crucial. The best field officer will not necessarily become the best coach. While operational performance is one criterion, the ability to convey essentials of the job to others and the desire to develop new employees are at least as important.
>
> Once the coach has been selected he must be trained. He must be kept up-to-date on the subjects he is teaching. A coach can nullify much of the basic training given a new employee or he can greatly reinforce that same training.[53]

To develop effective field trainers, NAC states, departments should offer incentives in the form of increased salaries, promotions and a distinct uniform patch to encourage qualified officers to seek out field training positions. They should also be trained in subjects such as the supervisor's role, supervision and human behavior, personnel evaluation, problem-solving techniques, teaching methods, counseling and partner relations.[54]

Another problem is that there is very little evaluation of training programs through observation of on-the-job police officer performance and academy instructor classroom performance. Data from such observations should be gathered and analyzed to determine what improvements can be made in academy training.

A complaint of some police officers is that academy training does not always reflect the realities and problems of actual police work. Although the PTC initially certifies academy instructors there is no effective mechanism for determining instructor quality and thus providing feedback to instructors on whether their performance is relevant, or for improving instructor training and recertifying instructors. Presently the PTC does not have resources to provide this function and administrators of the training academies do not necessarily possess the appropriate skills with which to evaluate instructor performance. In addition, there are limits to the ability of students to evaluate effectively an instructor's qualifications.[55]

There is a need for additional Police Training Commission staff with knowledge in modern teaching and management/administration techniques. According to interviews with PTC staff, implementation of several of the NAC training standards require personnel with experience in modern teaching techniques such as role playing, programmed learning and situation simulation. Each of these techniques has been proven very effective in police departments throughout the country for teaching certain types of knowledge to police trainees. The PTC also needs diversified personnel with knowledge and experience in modern management and administrative techniques to facilitate the development of in-service management and supervision training programs. A management expert could also assist the PTC Police Administrative Services Bureau (PASB) which provides management consulting services to police agencies.

Promotion and Selection of Police Officers for Specialized Assignment

As a result of surveys of over 80 police departments in New Jersey, the Police Training Commission found that many police departments have inadequate supervision and management capabilities. Many police agencies are poorly organized; manpower is not used efficiently; supervision and administration is inadequate; and data collection and record keeping is insufficient for effective management and deployment of personnel. The PTC has identified some of the inadequacies as follows:

1. Patrol manpower is seldom deployed in proportion to workload. Shifts are usually staffed with equal manpower, even though, according to PASB experience, approximately 22 percent of the workload occurs on the midnight to 8 a.m. shift, 33 percent on the 8 a.m. to 4 p.m. shift and 45 percent on the 4 p.m. to midnight shift. As a result, some shifts are badly overworked and others are underutilized.
2. Many departments employ an excess of superior officers assigned to duties that are not commensurate with their ranks. They are used to perform clerical and other auxiliary duties that should be performed by civilian personnel.
3. In many of the smaller agencies, special police officers are used to perform the regular patrol function. In most instances, these special police officers have received little or no training.
4. Many departments do not provide adequate field supervision over patrol officers.
5. Both short- and long-range planning are lacking in many departments. Problems that arise are resolved on a crisis basis.
6. Many departments operate under outdated, incomplete rules and regulations.
7. Most departments do not have effective department orders systems. Policies and procedures are seldom clearly defined in written orders.[56]

Part of the problem of inadequate supervision and administration stems from the system used for selecting police officers for promotion to management, supervisory and administrative positions. According to the PTC and other police authorities, promotion is not strictly based on merit but significantly based on nonjob-related criteria such as seniority.[57]

Promotional systems implemented by most police departments and the Department of Civil Service fall considerably short of the NAC standards in that job-related promotional tests and methods for ranking an officer's qualifications have not been developed. The Department of Civil Service is in the process of developing job-related promotional tests. The rankings of a police officer's qualifications for promotion should balance each prospective candidate's education and training achievements, years of police experience, scores on promotional tests and performance ratings. Currently the Department of Civil Service provides a 70% to 30% weighted balance between the promotional test score and seniority respectively, but does not account for education and training achievement and performance ratings.

Supervisory, management and administrative training for newly promoted police officers are limited. Many officers do not receive such training prior to or after promotion. According to a recent survey by the PTC there were approximately 4,315 police superiors (excluding detectives) in New Jersey during 1974 which include sergeants, lieutenants captains, deputy chiefs and chiefs of police. Only 798 police officers, however, participated in management, supervision and administration training programs during 1974.[58] In the words of the PTC, "little in-service training is provided for those in superior ranks who account for approximately 27 percent of the police population and who directly affect the other 73 percent."[59]

New Jersey's Status in Comparison With the National Standards

Recruitment of Police Officers

The National Advisory Commission (NAC) Police Standards 13.3 and 13.6 recommend that law enforcement agencies develop programs to recruit large numbers of minority group members and women into positions as sworn police officers and that no barriers—cultural or institutional—are employed to discourage qualified individuals from seeking employment. The New Jersey Department of Civil Service conducted a program from 1973 to 1975 which was aimed partially at the recruitment of minority group members into police work, but the program has been discontinued. Department of Civil Service personnel indicated that the present high unemployment rate in New Jersey has resulted in large numbers of minority group members applying for police positions. Data from a Standards and Goals survey reveal that many police departments in communities with large numbers of blacks and Hispanics have not achieved proportional representation.

Uniform Crime Reports indicate that in 1975 only 358 of the 22,713 police officers in New Jersey were females. Research by Standards and Goals staff has not found significant efforts in New Jersey to recruit women as sworn police officers; in fact some resistance by police officers in regard to the concept has been found.

Upgrading the education level of police officers by establishing programs to actively recruit college students and graduates and provide incentives for them to seek employment as police officers is recommended in NAC Police Standards 13.2 and 15.2. Currently only eight out of 170 municipalities under the jurisdiction of the Department of Civil Service require police applicants to have 45 to 60 college or university credits. Although 46% of a recent class of police recruits attending police academy basic training have some college credits, this appears to be a result more of high unemployment rather than a concerted effort to recruit individuals with college education. A program from 1973 to 1974 sponsored by the Department of Civil Service aimed in part at recruiting college students or graduates into police work, in actuality did very little college recruiting according to a final evaluation report.

Many police departments do provide financial and other incentives, such as scheduling patrol shifts, to encourage police officers to attend college. According to a 1975 survey by the New Jersey League of Municipalities approximately 25% of the police agencies provide financial incentives to police officers for credits successfully completed at a college or university. During the 1974-1975 academic year, approximately 20% of the law enforcement officers in New Jersey were enrolled in a college or university.

In order to enable police agencies to compete successfully with employers in the private and public sector for individuals of the same age, intelligence, abilities, integrity and education, NAC Police Standard 14.1 recommends that salaries be at least equal to salaries set by the State. Some of the variables to be considered in setting police salaries include specific functions to be performed by the agency, economy of the area to be served by the agency and availability of qualified applicants in the local labor market.

The salary of State Police troopers in New Jersey ranges from $13,308 per year to a maximum of $16,920 per year.* Data from a survey by the New Jersey League of Municipalities reveals that very few police agencies in New Jersey offer salaries which are competitive with those of the State Police. The median starting salary range of local police agencies for patrol officers is $9,000-$9,999 per year and the median maximum salary range for patrol officer is $12,000-$12,999 per year.

Selection of Police Officers

The National Advisory Commission Police Standard 13.4 recommends that every state enact legislation establishing a state commission composed of representatives of local law enforcement agencies, other members of the criminal justice system and local government officials to develop and enforce state minimum mandatory standards for the selection of police officers. The commission should certify as competent to exercise police authority only those police officers who have met mandated standards relating to age, physical performance, character, emotional and psychological health, education and mental ability. New Jersey does not have a commission consistent with this recommendation. The State Department of Civil Service has established standards consistent with NAC Police Standards 13.4, 20.1 and Recommendation 13.1 relating to age, physical performance and mental ability, but these standards do not apply to the 287 municipal police agencies not under the jurisdiction of Civil Service. These NAC standards and recommendation suggest that mental ability and physical performance examinations be validated based on research identifying the knowledge, mental skills, aptitude and physical skills required of a police officer for effective performance of police duties. There are no uniform statewide minimum standards for character, emotional and psychological health and education of police applicants consistent with the NAC standards.

According to National Advisory Commission Police Standard 13.4, the state commission should establish minimum standards that incorporate compensating factors such as education, language skills or experience in excess of that required if such factors can overcome minor deficiencies an applicant may have in relation to physical requirements such as age, height or weight. In New Jersey there are no height or weight restrictions and police applicants may seek special legislation if they do not fall within the 18 to 35 age requirement.

Every police agency, states NAC Police Standard 15.1, should require as a condition of employment the completion of at least 60 semester credits at an accredited college or university. The standard states that by 1978 every police agency should require that police applicants complete 90 college credits and by 1982, 120 credits. Those individuals who do not satisfy this requirement may be employed with a condition that college credits be obtained within a specified period of time.

In New Jersey there are presently no statutes requiring a minimum education level. *N.J.S.A.* 40A:14-22 mandates that police applicants be able to read, write and speak the English language well and intelligently. The Department of Civil Service and most police departments not under Civil Service jurisdiction require police applicants to have a high school diploma or G.E.D. certificate Eight of the 170 municipal police departments under Civil Service jurisdiction require police applicants to have 30 to 45 college or university credits. From January, 1974 to June, 1975 about 46% of the new recruits attending

* These salaries include $3,000 in taxable maintenance allowance.

PTC-approved training academies had attended college; 31% had some college credits, four percent had associate degrees and 11% had bachelor degrees. During the 1974-1975 academic year, 4,512 law enforcement officers (up 12.6% from the previous year) were enrolled in one of the 24 New Jersey colleges and universities providing criminal justice programs. These 4,512 represent 21% of the 21,099 sworn officers in New Jersey, as of 1974.

NAC Police Standard 13.5 recommends that every police agency measure an applicant's mental ability through the use of job-related mental ability or aptitude tests which meet requirements of the Federal Equal Employment Opportunity Commission (FEEOC) guidelines. As described in the problem assessment, the Department of Civil Service has developed a job-related mental ability test which it administers to police applicants for positions in 170 police departments, representing 67% of the municipal police officers in New Jersey. Most of the 287 municipal police departments not utilizing the police selection services of the Department of Civil Service require a passing grade on some form of written examination. The monetary cost and need for a sample of police officers large enough to validate statistically an ability test preclude the development by most police departments of job-related tests consistent with FEEOC guidelines.

NAC Police Standard 13.5 recommends that each police agency retain the services of a qualified psychologist or psychiatrist to conduct psychological testing of police applicants in order to screen out those who have mental disorders or are emotionally unfit for police work. The standard suggests that psychological tests should also be used to predict which applicants would have the best potential as an effective police officer. According to a recent survey approximately one-third of the police departments with 50 or more officers use psychologists. Although the NAC standards recommend psychological or psychiatric examinations of police applicants, many authorities indicate that most psychological tests have not been validated as adequate predictors of job performance. The National Advisory Commission recognized this fact when it stated that psychological tests should be utilized "when scientific research establishes the validity and reliability of such a predictor" (NAC Police Standard 13.5).

Background investigations of police applicants should be conducted by every police agency and personal interviews and polygraph examinations used where appropriate (NAC Police Standard 13.5). Rejection of a candidate should be for job-related reasons and not based on an applicant's arrest or conviction record alone without consideration of circumstances and dispositions. As indicated in the problem assessment, there are extreme variations in the quality and thoroughness of background investigations in New Jersey. The thoroughness depends on the amount of resources a police department can expend and the training of the background investigator. Many police departments are too small to afford the expense of a comprehensive background investigation. The use of polygraph examinations as an employment screening device is illegal pursuant to *N.J.S.A.* 2A:170-90.1. According to *N.J.S.A.* 40A:14-22, no person may be appointed as a member of a police department unless he ". . . is of good moral character, and has not been convicted of any offense involving moral turpitude." The statute, however, is vague and lends itself to the interpretation of the appointing authority regarding what constitutes "good moral character" and what offenses involve moral turpitude.

Police Training

The following information has been synthesized from the New Jersey Police Training Commission's report entitled *Planning to Determine the Future Role of the Commission* and the County and Municipal Government Study Commission's *Aspects of Law Enforcement in New Jersey.*

New Jersey is consistent with several of the National Advisory Commission standards on police training. The establishment of the New Jersey Police Training Commission, the make-up of its membership and its statutorily mandated functions are consistent with National Advisory Commission Police Standard 16.1. The only major element missing relating to Standard 16.1 is that the State does not reimburse police agencies for 100% of the salary or provide State-financed incentives for every police employee's satisfactory completion of State mandated training. *N.J.S.A.* 52:17B established the Police Training Commission (PTC) which develops minimum curriculum requirements for the mandated training of police; prescribes standards; approves and issues certificates of approval to existing regional, county, municipal and police chief association police training schools; consults and cooperates with colleges and universities within the State in developing specialized courses of study for police officers in police science and administration; and appoints an executive secretary to perform general administrative functions. The PTC is composed of 10 members: two citizens appointed by the Governor; the president or representative of: the New Jersey State Association of Chiefs of Police, the New Jersey State Patrolman's Benevolent Association, Inc., the New Jersey League of Municipalities, the New Jersey State Lodge, Fraternal Order of Police; the Attorney General; the Superintendent of State Police; the Commissioner of Education and the Special Agent in Charge of the State of New Jersey for the Federal Bureau of Investigation.

NAC Police Standards 16.1, 16.2 and 16.3 recommend that minimum basic training of 400 hours in

duration be established for sworn police personnel prior to exercising the authority of their position. Without defining its terms the standards recommend that basic training be of sufficient duration and content to prepare police officers for the functions and tasks of their positions. The Police Training Commission mandates a minimum of 280 hours of training for police officers. As of January 1, 1975 the median number of course hours for the 15 training academies in the State was 419 hours, with the number of training hours among them ranging from 294-554 hours. The PTC is updating its training methodology based on major research efforts aimed at determining the roles, duties, tasks and performance objectives of police officers. *N.J.S.A.* 52:17B-69 permits newly appointed police officers to exercise the authority of their position up to 18 months before having to complete basic training. There is no similar New Jersey law regarding the training of special police officers, even though they may have the authority of arrest and may exercise other police powers.

Provisions for choosing elective subjects in addition to the minimum mandated training and additional training during the first year of employment in areas such as law, psychology and sociology relating to interpersonal communication, police role and community relations are recommended in NAC Police Standards 16.2 and 16.3. The PTC curriculum provides 41 hours for electives but the actual number varies from academy to academy. Additional formal training for full-time sworn police employees during the first year of employment is not mandated in New Jersey. The Police Training Commission requires subjects related to the areas mentioned above in the basic training course, including but not limited to: 20 hours of criminal law; 22 hours covering arrest, search and seizure; two hours on constitutional law and 30 hours of human relations training. The training in human relations covers such areas as ethics, group behavior, mentally and physically handicapped people, personal communications and youth relations.

It is further suggested in NAC Police Standard 16.3 that additional training methods should include self-paced training material, documentation of employee performance in specific field experiences, periodic meetings between the field trainer, employer and training academy staff and a minimum of two weeks' additional training six months following the completion of basic training. New Jersey's academies do not utilize self-paced correspondence materials as a training method and there does not appear to be very much evaluation of training through the observation of employee performance. There is very little feedback from trainees, their immediate supervisors, agency administrators and elected officials and presently there is no mandated in-service training offered at the academies.

For individuals who are deficient in their training performance but demonstrate potential for satisfactory performance NAC Police Standard 16.3 advises remedial training. The PTC prescribes coaching and re-examination procedures for trainees who fail an exam or firearms qualification. If the trainee fails the second test the subject must be repeated. The sending or appointing police agency must pay for repeat courses and therefore has the option to dismiss a trainee.

NAC Police Standard 16.3 recommends that training be provided by every agency so that employees assigned to a specialized task can perform it acceptably. Academies in New Jersey do offer specialized training; however, it is the responsibility of the individual departments to ensure that promoted officers are trained in specialized assignments. There is no centralized control over specialized training efforts and no mandated specific training requirements for specialists. New Jersey also lacks minimum requirements for supervisory and management training for promoted officers.

The development and improvement of interpersonal communications skills of all officers and programs that bring together officers, personnel from other elements of the criminal justice system and the public to discuss the role of the police officer is advised by NAC Police Standard 16.4. Few police agencies or schools use police officers who are professionally trained in interpersonal communications. Three hours in personal communication are presently mandated by the Police Training Commission. In addition, several other PTC - mandated courses provide training which includes some aspects of interpersonal communications such as community relations, youth relations, report writing and patrol practices. Many police departments, especially those with police/community relations officers, develop programs (through a speaker's bureau program) that bring the public, criminal justice system personnel and police officers together to discuss roles and mutual problems.

NAC Police Standard 16.5 suggests every police agency provide 40 hours of annual formal in-service training. Currently there is no State-mandated requirement that police officers complete in-service training. A survey conducted by the PTC in 1974 indicated that participation in in-service training has increased. There is a serious lack of training for police officers functioning in supervisory and management positions. In 1971, the Police Training Commission distributed an "In-Service Directory" (presently being updated) which listed those programs offered by nonpolice agencies. Currently five colleges offer baccalaureate degree programs in criminal justice and the State University offers master and doctorate degrees in criminal justice. This is in agreement with NAC Police Standard 16.7.

According to NAC Police Standard 16.6, every police agency should provide training programs that

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emphasize student-oriented instruction methods. The NAC recommends the training sessions include student involvement in training through instructional techniques such as role playing, situation simulation, group discussions, reading and research projects and utilization of individual trainee response systems. The PTC instruction methods course that each instructor must take before being certified does not include the teaching methods described above. Presently, lectures are the most widely utilized method of instruction with role play, situation simulation, research projects and response systems used on a very limited scale. The use of team teaching, preconditioning materials, programmed instruction and computer assisted instructions all of which are recommended by the National Advisory Commission, are not being utilized in New Jersey.

Every police training academy and police agency should, according to NAC Police Standard 16.6, ensure that all its instructors are certified by the State by requiring certification for special training subjects based on work experience and educational and professional credentials. The PTC does not certify instructors for specific training subjects; however, requirements for regular instructor certification include a minimum of two years of law enforcement experience, a high school diploma or equivalent and completion of an instructor's training course. Certification is achieved by filing an application with the Police Training Commission that is approved by the police chief, endorsed by the academy director and renewed and approved by the PTC. Last year 629 instructors were certified as instructors, 74 of whom were certified as special instructors.

The current instruction methods course that must be completed prior to certification consists of 30 hours as compared to the minimum 80-hour instructor training program recommended by the NAC. PTC Rule 13:1-3.6 states that regular instruction certification will be renewed by the Police Training Commission at the beginning of the year which is partially consistent with NAC Police Standard 16.6. Renewal of certification is not based on evaluation of the instructor's performance by the training academy or Police Training Commission.

NAC Police Standard 16.1 recommends that all sworn police officers who have satisfactorily completed basic training should be certified. *N.J.S.A.* 52:17B-71(e) states that the PTC is empowered to certify all police officers who successfully complete basic police training.

The National Advisory Commission Police Standard 16.7 suggests that certification of a police basic training program requires training facilities to operate nine months of the year and, where appropriate, establish cooperative training academies and strategically located criminal justice training centers. The State-operated academy provides seven basic training cycles a year, each 10 weeks in duration.* Ten other academies operate nine months of the year. The State-operated academy is the only residential academy in operation year-round. Presently there are 15 PTC-certified police academies operating in the State. There are no criminal justice training centers in New Jersey.

The evaluation of each police training instructor should be accomplished through periodic monitoring of their presentation (NAC Police 16.6) and an advisory committee should review and evaluate training programs (NAC Police 16.2). New Jersey has no uniform program of instructor evaluation. Nine of the 15 academies have some form of an advisory committee which reviews the training programs but evaluations of procedures and techniques of academy staff need significant improvement. New Jersey's State Police Academy currently utilizes the technique of having the trainee critique the training programs six months following graduation. The Academy acknowledges these critiques are used in making appropriate changes.

Rotation of police training instructors through operational assignments to keep them current with the problems and needs of police officers, use of outside instructors whenever their expertise and presentation methods can be used and the assessment of the workload of each instructor are recommended in NAC Police Standards 16.6 and 16.3. Many departments utilize rotation as a method of gaining exposure in a variety of police functions. The majority of instructors in New Jersey are sworn police personnel who are part-time instructors, which obviates the need for rotation back into police assignments. Instructors who are not police officers, but who have expertise in specialized areas are also certified and utilized primarily by county academies. Sea Girt and the city academies use outside instructors only when full-time staff do not have the expertise in certain subjects. Each training director is responsible for managing his respective academy, but it is not known if assessments are made concerning the workload of instructors.

NAC Police Standard 16.6 recommends that each training academy restrict formal classroom training to a maximum of 25 trainees for more efficient learning. New Jersey's training classes exceed the recommended maximum of 25 students. In Fiscal Year 1974 the average class size was 47 whereas the average class size from 1969 to 1974 was 45.

Each police station should be provided with a certified training instructor, audio-visual equipment and home study materials, states NAC Police Standard 16.5. A PTC survey reveals that 194 municipal police departments (42%) have designated training officers, some of whom are certified. Approximately 68% of the local police departments have less than 25 officers which raises questions regarding the

* Some of these cycles run concurrently.

feasibility of full-time training officers. The Police Training Commission has provided each training academy with audio-visual equipment which includes a sight-sound projector, film strip projector, phonograph, overhead projector, screens, easels and IACP Program material for use in the sight/sound program. A film library of approximately 60 titles is maintained by the PTC and administered by the Division of Motor Vehicles. Home study or correspondence training materials are not utilized by the training academies.

Promotion and Selection of Police Officers for Specialized Assignment

According to NAC Police Standards 17.1 and 17.3 every police agency should develop a merit system for the promotion of police officers which considers the employee's job performance, training, education and scores on job-related mental aptitude tests. Nonjob-related bonus points for seniority, military service and heroism should not be considered in ranking officers for promotion according to the NAC standards. It is recommended by NAC Police Standards 17.1 and 17.2 that each police agency establish a program of continuous evaluation of employee performance and qualifications in order to identify those who are suitable for advancement and guide them toward achieving their full potential by providing education and training opportunities.

Formal evaluation of an officer's potential or qualifications for promotion is delayed frequently until a promotional test is completed. Promotion in police agencies under Department of Civil Service jurisdiction is primarily based on the score achieved on a promotional test and seniority. Job-related promotional tests are being developed by the Department of Civil Service. Individuals can score lower on the test than others and still be promoted over the latter if they have enough seniority. Criteria such as educational and training achievement and job performance ratings do not appear to be primary considerations in promotional decisions.

NAC Police Standard 9.2 recommends that every police agency establish minimum requirements for police officers to be considered for assignment to specialized functions. These requirements should include length and diversity of work experience, formal education, specialized skills and aptitude. The primary criteria for appointment to the majority of specialized assignments in New Jersey appear to be approval of the Chief of Police and seniority.

Commentary

The Advisory Committee recognizes the interdependence of all elements of the police personnel system-recruitment, selection, training, promotion and compensation. Without an aggressive recruitment process and adequate compensation, the pool of qualified individuals from which police recruits are selected will be limited in quality and quantity. The selection process determines the level of intelligence, motivation, character, common sense, emotional stability and maturity of police officers. Police officers with high ratings in these factors have the potential to learn readily, perform duties effectively and efficiently and assume greater responsibilities upon promotion or assignment to specialized functions. A failure of any aspect of the personnel process would seriously cripple the efficiency and effectiveness of a police agency. The overall orientation of the community and police agency concerning the role of police officers determines how they are recruited, selected, trained, educated and promoted.

Standards 2.1 and 2.2 are designed to provide a focal point from which the rest of the personnel standards emanate. The philosophy of the Committee concerning the police role and how it is related to personnel standards is described in Standard 2.1. In Standard 2.2 the Committee recommends the creation of a Police Personnel Standards Bureau (PPSB) either within the Police Training Commission or a Commission on Local Police Services as described in Organization of Police Services Standard 1.1. Responsibility for the development of standards for personnel should be placed in one agency because the interdependence of the recruitment, selection, training, education and promotion processes requires continuity and a high degree of coordination.

To assist local police agencies and the Department of Civil Service in implementing a uniform job-related personnel process the standards recommend that the PPSB assemble study groups to validate nationally developed physical, mental ability and psychological tests for the selection of police officers or to develop them if valid tests cannot be found. A similar process is recommended for developing ability and aptitude tests and scoring systems for promoting or selecting officers for specialized assignment.

To facilitate implementation of personnel standards the Committee recommends that local law enforcement agencies be provided with financial assistance. This is to avoid in part the contradictory situation of the State establishing standards for which the local government must, and is often unable to, pay the cost.

In recognizing deficiencies in the results of police recruitment efforts the Committee recommends concentrating recruitment efforts on minority group members, women and college-educated individuals. The Committee does not intend that standards for

recruitment be altered to facilitate this goal but that there is an adequate pool of qualified applicants from these groups.

In regard to police salaries the Committee concluded that the State should not establish standards for police officer salaries because the cost of living and levels of police service vary significantly from one part of the State to another. The Committee therefore recommends that each community take into consideration a number of factors in establishing salaries which will attract and retain qualified personnel for police work.

Standards 2.6 through 2.13 are aimed at increasing the uniformity, consistency, visibility, objectivity and safeguards against abuse of the personnel selection standards and selection processes throughout New Jersey. The establishment of job-related selection standards by the PPSB and their implementation by the Department of Civil Service and all police agencies is a primary goal of these standards.

The Committee concluded that the process for selecting police officers is incomplete unless it includes the following: a job-related test on mental ability and aptitude, a job-related physical ability test, an in-depth background investigation, psychological tests or examinations prior to appointment and an oral interview. Each of these steps provides a type of information not found through the others and in some instances serves as a check on the others.

Mechanisms for developing valid selection scoring systems, aptitude tests and psychological profiles to be used by all police agencies in selecting from police applicants are recommended by the Committee because the expense required to perform these tasks is prohibitive for all except the largest police agencies. The intent of the Committee is that the PPSB assemble a group(s) of police officials that are responsive to the needs of local police agencies and behavioral scientists to validate nationally developed scoring and testing systems rather than duplicate the same process and thus waste resources.

Extensive discussions concerning the adequacy of existing mechanisms for determining the emotional stability of police applicants prompted the Committee to recommend a multiphase psychological evaluation process. Two main problems were identified in Committee discussions of this topic: extreme variations in interpretation of psychological examination results by different psychologists and abuse by some police agencies and psychologists in subverting the objective of the process.

Oral interviews of police applicants can reveal many qualities that are hidden during the other elements of the selection process. The Advisory Committee found that most police agencies utilize the interview process for screening applicants but found broad disparities in the methods of utilizing it. The Committee recommmends that the PPSB develop a standardized oral interview process for use by police agencies because of: the complex nature of characteristics to be observed during interviews; the potential of interviews to purposely or inadvertently bias the results; and the difficulty in agreeing on what are appropriate characteristics to consider. Inclusion of a representative of local government, the police agency and community on oral interview panels is an attempt to balance interests of these three groups in the selection process.

Mandatory background investigations of police applicants are recommended in order to identify factors in the background of candidates that can indicate potential weaknesses in character, emotional stability or economic status which may be exploited by criminal elements or predispose a candidate to participate in illegal or unethical conduct. Background investigation can serve as a check on other elements of the selection process and identify potential problems which should be further investigated during oral interviews and psychological examinations.

The Committee recommends that police applicants be provided with a mechanism for challenging and further raising the visibility of selection decisions. If police applicants determine that they have been disqualified because of discrimination or misinformation, they should be able to appeal the decision to a review board independent of the police agency. It is not intended that the review board be judicial or appellate in nature but merely a fact-finding body. Recommendations by the board should not be binding on the hiring agency. It should be noted, however, that should a suit be filed by the applicant against the hiring agency because of discrimination, for example, the findings of the board could be used as supportive evidence.

Standards 2.14 through 2.16 are aimed at prohibiting police officers, private security guards and special police officers from exercising police authority or carrying a firearm prior to appropriate training and qualification as defined by the PPSB. The Committee concluded that in a profession where an individual's decision can mean life, death or injury, the decision maker should be trained in the proper use of force and decision making.

Standards 2.17 through 2.20 are recommended based predominately on information already discussed in the problem assessment and status sections of this report. They refer to ensuring that all police officers receive field training prior to being assigned to one-man patrol; expansion of the probationary period of employment for police officers to one year; a significant and mandatory expansion of in-service training for police officers; and mechanisms for improving the quality of and planning for training programs. Although the Committee considered many proposals concerning the types of courses that should be offered and the emphasis of in-service

training, it refrained from making extensive recommendations in this area because more research was required.

In order to increase the uniformity, visibility and objectivity of the processes for promoting and selecting police officers for specialized assignment, the Committee recommends Standards 2.21 through 2.26. It was recognized that institutions such as the Department of Civil Service and police unions were brought into the selection and promotional processes in part because of abuses by local government and/or police agencies in terms of favoritism, politics and discrimination. Even though these developments have occurred, in many respects the selection and promotion processes are still not job-related and objective. The standards recommend, therefore, that scoring systems for rating each officer's qualifications be expanded to include educational achievement, training, performance evaluations and oral interviews as well as test scores and years of experience.

Promotional tests should be similarly improved to measure the applicant's knowledge of information that will be useful in the position being applied for. Applicants should be apprised beforehand as to how and where to find that knowledge.

The Committee recommends that the PPSB develop model standards which can be used by police agencies throughout the State in determining whether an officer has appropriate qualifications for promotion. Such standards should provide a balance between educational and training achievements and experience. It is also recommended that officers successfully complete promotional training and a probationary period on the new assignment prior to being appointed because of the difficulty of demoting an officer for failure to perform the new tasks.

Although the Committee recognized the importance of higher education for increasing the effectiveness and efficiency of a police agency, it refrained from recommending higher education standards for new police applicants. Even though there is a general belief that higher education can be benefical to all police officers, significant statistical evidence to support this claim is not available. The lack of evidence does not mean that the concept is wrong.

A number of reasons for the lack of evidence has been proposed. Colleges may not be gearing their courses to meet the needs of police officers or some professors may lack adequate knowledge of line police work. On the other hand, there may be resistance of noncollege-educated police officers to accept the ideas presented by college-educated officers. Evaluations of the effectiveness of police officers are often done by noncollege-educated officers.

Whether or not college education is beneficial for the patrol officer, the Committee does find significant evidence in the deficiencies of police administration and management to suggest that command level administrative and specialized functions can be performed much better by officers who receive job-related education in subjects such as public or business administration, system analysis and the social and physical sciences. The Committee, therefore, recommends a series of methods by which police agencies can encourage officers to attain higher education.

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[26]*N.J.S.A.* 40A:14-122.

[27]County and Municipal Government Study Commission, *Aspects of Law Enforcement in New Jersey*, March, 1976, p. 4-5.

[28]The following problems were identified through interviews with authorities on New Jersey police training and in those references cited herein.

[29]*N.J.S.A.* 52:17B-69 extends the time within which an officer must complete training to 18 months under prescribed circumstances.

[30]Governor's Select Commission on Civil Disorder, *Report for Action*, p. 164.

[31]See *McAndrew v. Mularchuk*, 33 N.J. 172 (1960).

[32]County and Municipal Government Study Commission, *Aspects of Law Enforcement in New Jersey*, March, 1976, p. 5-9.

[33]The Commission to Study the Causes and Prevention of Crime in New Jersey, *A Survey of Crime Control and Prevention in New Jersey: Findings and Recommendations*, Trenton, New Jersey, March, 1968; and County and Municipal Government Study Commission, *Aspects of Law Enforcement in New Jersey: Findings and Conclusions*, Trenton, New Jersey, October, 1975, p. 2-18.

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[50]County and Municipal Government Study Commission, *Aspects of Law Enforcement in New Jersey: Findings and Conclusions*, October, 1975, pp. II-12 and II-13.

[51]County and Municipal Government Study Commission, *Aspects of Law Enforcement in New Jersey*, March, 1976, p. V-11.

[52]New Jersey Police Training Commission, *The New Jersey In-Service Training Report*, p. 6.

[53]National Advisory Commission, *Report on Police*, p. 396.

[54]Ibid., pp. 396, 397.

[55]New Jersey Police Training Commission, *Planning to Determine the Future Role of the Commission*, p. 120.

[56]Ibid., pp. 177-181.

[57]Ibid.

[58]Some of the officers may have participated in more than one management, supervision and administration course—thus inflating this total. New Jersey Police Training Commission, *The New Jersey In-Service Training Report*, pp. 7, 18.

[59]New Jersey Police Training Commission, *Planning to Determine the Future Role of the Commission*, p. 120.

POLICE ROLE: POLICIES, PROCEDURES AND RULES

Introduction

The manner in which police officers perform their duties depends in large part upon the policies, procedures and rules established by the police agency and local government. Policies, procedures and rules provide guidance by indicating the objectives, boundaries and methods within which a police officer must operate.

The existence of guidelines is essential for the police officer and the public. The police officer needs guidance not only in what should not be done, but also in the most effective and efficient methods of operation. Without standard operating procedures and agency policy the police officer is left to establish policy and innovate procedures on the street. The public needs to be informed of agency policy and procedure so that it knows what to expect from the police.

The vast majority of police agencies in New Jersey do not have written policy and procedure statements. Some guidance is provided by rule manuals and general orders but in many police agencies they are outdated and lack sufficient specificity.

Various State and federal commissions have identified areas where policies and procedures need to be developed. Some of these areas include police-juvenile relations, when to arrest or refrain from arresting, issuance of orders to individuals regarding their movements, conflict management and crisis intervention.

Although policies, procedures and rules should be developed for as many police activities as possible, it should be recognized that the diverse, complex and unique nature of police work makes it impossible to develop them for all contingencies. There will always be some decisions to be made concerning how, when and where police authority should be exercised. Recommendations by authorities on police administration, therefore, suggest that the aim of policies and procedures is not to eliminate discretion but to structure and guide it.

Effective implementation of policies and procedures includes several methods. Participation of line police officers and the public is essential not only to receive their input but also as a mechanism to secure their acceptance. Policies and procedures must reflect the realities of police work, not just vague concepts and ideals. Constant repetition through training and supervision is needed to reinforce accepted policies and procedures.

Problem Assessment

New Jersey statutes and court decisions provide little guidance concerning the role of police. In *Smith v. Township of Hazlet*, the Supreme Court of New Jersey referred to the authority to define the police role as follows:

> The power to establish, maintain, regulate and control the police department, to appoint personnel, to prescribe their respective powers, functions and duties and to fix rules and regulations for the government of the police department and the police force is very explicitly and broadly given to the municipal governing body. The chief of police derives no power or authority directly from the statute, it cannot be said that his is a statutory office. Rather his powers are derivative in the sense that they are to be found in ordinances, resolutions, rules and regulations adopted and promulgated by the governing body in the exercise of its broad statutory responsibility. Presumably the day to day administration of the department rests with the chief of police and the delegations to him of administrative powers may well be in the public interest as enhancing departmental efficiency.[1]

Although broad authority has been delegated to the municipality for establishing policies, standard operating procedures and rules, many municipalities have not assumed this responsibility. Staff of the Police Training Commission's (PTC) Police Administrative Services Bureau (PASB) concluded, after extensive management surveys in over 80 police agencies, that most police agencies do not have written and clearly defined policies and standard operating procedures. Statements of rules and regulations in some agencies have not been updated in 20 to 40 years. PASB surveys revealed that:

- Administrators fail to define lines of responsibility and authority in written form.
- Many departments operate under outdated and incomplete rules and regulations.
- Most departments do not have effective order systems.
- Policies and procedures are seldom clearly defined in written orders.
- One-man patrol car back-up procedures are seldom defined in written orders. This failure may result in risks to the safety of officers.

References for this chapter appear on page 92.

> Many departments do not have effective investigative case assignment, review and follow-up reporting procedures.
>
> Most departments do not have adequate property and evidence control procedures . . . . This deficiency leads to difficulty in establishing the chain of custody of evidence and inability in security and safeguarding evidence and property.
>
> Most departments have not developed report-writing guides.[2]

This Committee found a need for the establishment of policies and procedures in several areas. The Committee recognized the broad area of police discretion in handling of juveniles and recommended standards to create greater uniformity in the treatment of juveniles. Pre-Adjudication Alternatives Standard 1.1 recommends that statewide guidelines be developed and distributed for assimilation into police agency manuals to make police-juvenile procedures uniform throughout the State. Pre-Adjuication Alternatives Standard 1.2 recommends that every police agency establish policies and procedures in a broad range of areas for the handling of juveniles. While the Advisory Committee does not recommend that police agencies develop policies and procedures to govern issuance of summons in lieu of arrest, Pretrial Process Standard 8.1 does provide a series of procedures and guidelines to assist police in decision making.[3]

The PASB has concluded that deficiencies in policies, procedures and rules are not isolated to a few police agencies but are found in varying degrees in almost every police agency surveyed. Consequently, the PASB postulates that such deficiencies exist in many of the remaining agencies which have not been surveyed.[4]

Staff of the PASB has further indicated that since 1974 more than half of the police agencies in New Jersey have developed or are in the process of developing rule manuals. Approximately a dozen police agencies, however, have policy and standard operating procedure manuals.

Policy statements are different from rules and standard operating procedures. Policy is the general course or direction of an organization within which the activities of the personnel and units must operate. The establishment of general administrative policy guidelines relates to and complements the main objectives of the organization. A policy statement can be used to identify the limits of authority and the guiding principles, values and objectives of the police agency. A rule or standard operating procedure (the latter is generally considered less restrictive) tells a subordinate exactly what and what not to do in a prescribed situation. The essence of a rule is its inflexibility, whereas standard operating procedures can be implemented in different ways depending on specific needs of each situation. Lack of flexibility removes the opportunity for individual discretion, initiative and judgment.[5]

> The difference between policies, procedures and rules might be illustrated in an agency's decision to identify the true level of crime. That decision would require an agency policy to report crime honestly. A number of procedures might then be established describing how reports are to be completed and approved. Finally, rules might be established to set limits on the conduct of personnel following these procedures. For example, a rule might require a written report each time a radio car is dispatched to a reported crime, whether a crime is found to have been committed or not.[6]

Police officers are among the most important policy makers in the criminal justice system despite widespread assumptions to the contrary. No other governmental agency delegates as much policy making authority to subordinate line employees as do police agencies.[7]

Many of the noncontroversial, mechanical and administrative aspects of police work are guided by strict and elaborate rules and regulations. Established rules govern such matters as appearance and conduct of officers, use of vehicles, receipt of complaints, record keeping and transportation of nonpolice personnel. In many agencies the law enforcement and order maintenance role is unguided by practical statutes, court decisions, specific written agency policies and procedures and rule statements.

Judicial decisions, especially in the area of defendants' rights, generally are confined to specific facts of a case rather than establishing guidelines with consideration for police needs.[8] The police role is constantly altered with changes in philosophy and interpretations of the United States Supreme Court and other appellate courts.

Laws are frequently passed without regard to enforceability. Statutes are often broad, vague, ambiguous and define police authority in mandatory terms rather than with realistic discretionary limits. The statute setting forth the task of the New Jersey Criminal Law Revision Commission emphasized this when it stated:

> It shall be the duty of the commission to study and review the statutory law pertaining to crimes, and disorderly persons, criminal procedure and related subject matter as contained in Title 2A of the New Jersey Statutes and other laws and prepare a revision or revisions thereof for enactment by the Legislature. It shall be the purpose of such revision or revisions to modernize the criminal law of this State so as to embody principles representing the best in modern statutory law, to eliminate inconsistencies, ambiguities, outmoded and conflicting, overlapping and redundant provisions and to revise and codify the law in a logical, clear and concise manner. (L. 1968, c. 281, 4, N.J.S. 1:19-4).[9]

In light of the problems with statutes covering crimes and public order the police must interpret behavior

and choose from alternative reactions in situations which may involve conflicting police objectives.

A discretionary decision is required when the objective of strict enforcement of a law conflicts with the objective of maintaining the peace. For example, an officer may refrain from arresting a youth for possession of a drug at a rock concert in order to avoid causing a riot. The objective of order maintenance conflicts with the objective of maintaining good police community relations when an officer is confronted with a decision whether to order a group of noisy youths gathered on a street corner to move along.

Discretionary decisions made during order maintenance situations are a result of the vagueness and ambiguity of statutes concerning matters such as disorderly conduct, disturbing the peace and vagrancy. The police officer's problem is that of defining vagrancy, what is a tolerable level of noise and what behavior constitutes disorderly conduct. Behavior that is considered disorderly conduct one day may be overlooked at other times because of differences in circumstances and emotions. Other policy problems police are left to decide are whether to refrain from arresting a violator because:

1. The police believe the legislative body does not desire enforcement.
2. The police believe the community wants nonenforcement or lax enforcement.
3. A police officer believes another immediate duty is more urgent.
4. A police officer interprets a broad term (such as "vagrancy") in his own unique fashion.
5. A police officer is lenient with one who did not intend the violation.
6. The offender promises not to commit the act again.
7. The statute has long been without enforcement but is unrepealed.
8. Lack of adequate police manpower is believed to require nonenforcement.
9. The police officer believes a warning or a lecture preferable to an arrest.
10. The police officer is inclined to be lenient to those he likes.
11. The police officer sympathizes with the violator.
12. The crime is common within the subcultural group.
13. The victim does not request the arrest or requests that it not be made.
14. The victim is more likely to get restitution without the arrest.
15. The only witness says he will refuse to testify.
16. The victim is at fault in inciting the crime.
17. The victim and the offender are relatives, perhaps husband and wife.
18. Making the arrest is undesirable from the police officer's personal standpoint because of such reasons as the extra effort required, he goes off duty in ten minutes, the record keeping necessary when an arrest is onerous, or he wants to avoid the expenditure of time for testifying in court.
19. The police trade nonenforcement for information or for other favors.
20. The police make other kinds of deals with offenders.
21. The police believe the probable penalty to be too severe.
22. The arrest would harm a psychiatric condition.
23. The arrest would unduly harm the offender's status.[10]

The President's Commission on Law Enforcement and Administration of Justice described in detail areas where policy and standard operating procedures need to be developed. These areas include the use of investigative methods such as infiltration, surveillance and field interrogations; issuances of orders to individuals regarding their movements, activities and whereabouts such as keeping the noise down, move along or break it up; settling disputes between neighbors, landlords and tenants, merchants and customers, husbands and wives; and the protection of the right to free expression and the maintenance of peace.[11]

It has been recognized for many years that law enforcement and order maintenance policies, written or unwritten, vary from community to community. In large cities these policies vary from neighborhood to neighborhood. Policies concerning relations with the public may vary depending upon age, race, sex and whether individuals are residents or nonresidents of a community.

Residents of some communities, for example, do not receive traffic tickets while outsiders driving through are ticketed for speeding. Gambling laws frequently are not enforced against participants in neighborhood poker games while they are enforced against certain types of commercialized gambling. Although arrests are made readily for stranger-to-stranger assaults, assaults between friends or relatives often do not result in arrest even though injuries may be more severe in the latter cases. The decision whether to invoke a field interrogation is often based more on a suspect's appearance or condition of automobile than on information that a crime has occurred. Decisions whether to arrest an individual for disorderly conduct are often made more on the basis of an individual's demeanor than upon any real or supposed threat to the community.

Policies, procedures and rules should be developed for as many police activities as possible, yet this is not always possible due to the diverse and complex nature of police work. There will always be some situations which call for decisions to be made concerning how, when and where police authority should be exercised. Authorities on police administration recommend the aim of policies and procedures be that of structuring and guiding discretion rather than eliminating it.

Numerous federal and State level commissions have concluded that feelings within a community of differential treatment of individuals by police officers, whether justified or not, creates problems for the police and criminal justice system as a whole. Respect for law, police and the justice system is created, maintained or damaged during each contact between police and the public.[12] The cooperation of the public in reporting crime, crime prevention and prosecution of defendants is highly dependent upon relations between the public and police.

An essential element in maintaining respect for law and increasing the cooperation of the public is predictability of police behavior. Predictability is knowing what the response of a police officer will be in a given situation. The California Attorney General's Advisory Commission on Community Police Relations stated:

> Properly developed and clearly articulated policies provide both officers and members of the community with standards against which [police] behavior may be measured. . . . Unless standards exist, it is difficult to determine whether current practices are adequately meeting community needs. . . the development of policies provides an excellent opportunity for law enforcement administration, general government representatives and citizens to cooperatively consider the role they want their police to play in the community.[13]

The predictability of law enforcement is one of the foundations of the legitimacy of government. Without it police authority can be seen as arbitrary and discriminatory. The Constitution ensures some predictability in law enforcement in a variety of ways:

> By prohibiting ex post facto laws and bills of attainder; by the due-process requirement that substantive criminal statutes be stated in as narrow terms as possible in order to prevent the police from having too broad an area of discretion; by prohibiting cruel and unusual punishments; by the due process requirements of fair hearing and the assistance of counsel; by prohibiting enforced self-incrimination; and, above all, by the due-process requirement that only an official expressly authorized by law to act coercively against a citizen may so act. All these constitutional guarantees add up to but two basic principles: that no official may act against a citizen except in accordance with a rule that was in existence before the citizen took the action which has been called into question; and that when he does have to determine whether the citizen committed certain acts which are the pre-conditions for the official action, the official will make as rational a decision as possible, free from any bias and prejudice and arbitrariness.[14]

The more legitimate a government and the authority of police as perceived by the populus, the less coercion will be required to enforce the laws.[15] Max Weber, "Father of Traditional Organization Theory," lists seven characteristics which enhance legitimacy of government, three of which have a direct bearing on this discussion:

1. An organization must be "a continuous organization bound by rules." Everyone is subject to formal equality of treatment; that is, everyone is in the same empirical situation.
2. The organization of offices follows the principle of hierarchy; that is, each lower office is under control and supervision of a higher one.
3. Administrative acts, decisions and rules are formulated and recorded in writing . . . . This applies ...to all sorts of orders and rules.[16]

In recognition of the need for assisting police agencies in the development of policies, procedures and rules, two major documents have been developed in New Jersey. The Police Training Commission has written a manual to assist police agencies in developing rules, regulations and a code of conduct. The Attorney General's Office has developed a model code of conduct for police officers. Still, police agencies need assistance in developing appropriate policies and standard operating procedures. The PTC, NAC, President's Commission and many books detail processes for developing policies, procedures and rules.

In many cases this task requires little more than documenting existing unwritten policies and procedures which are commonly used and accepted. In other areas extensive research should take place. Officers should be observed to determine trends in their activities, problems and issues. Alternative strategies and methods should be developed and experimentation carried out. Many of the LEAA programs funded throughout the country have involved this process in areas such as crisis intervention, conflict management, team policing and preventive patrol.

Police officers should be heavily involved in the development process in order to secure their compliance with those standards which are developed and because they have to live with, operate within and utilize the policies, procedures and rules. The public has a vested interest in participating in the development process because they are the consumers and financiers of the police system. Once policies and procedures are developed, written and disseminated to the public and police, further research is required for validation, refinement and updating.

No matter how detailed, clear and appropriate rules, procedures and policies are, they are useless unless enforced. Numerous books and reports have discussed the difficulty of securing the compliance of police officers with departmental rules and policies must police themselves. Outside agencies such gest that the best method of securing compliance is through internal controls; police officers and agencies must police themselves. Outside agencies such as courts and civilian review boards have little suc-

cess in investigating specific activities and frequently produce significant harm, suspicion and distrust between the police and community. Some of the keys to securing compliance are through involvement of line officers in developing policies, procedures and rules; mechanisms that foster peer group pressure against officers engaging in inappropriate behavior and activities; strong administrative control of the police agency; close supervision; continuous training and retraining; an effective selection process; investigation by internal affairs officers; and the application of sanctions against serious and repeating violators.

New Jersey's Status in Comparison with the National Standards

There are an extensive number of NAC standards concerning the need for and content of police agency policy and procedure statements. The key element of these standards is that the discretion and authority of police officers in as many areas as possible must be guided by written policies and procedures. Essential to the development of polices and procedures is participation of the public and police officers. Following development, both the public and police officers should be informed of policies and procedures through publication and education programs.

NAC Police Standards 1.1, 1.2, 1.3, 2.1, 2.2, 5.3 and 8.1 are general and recommend that every police chief executive establish written policies which identify the agency goals and objectives, agency priorities, services which are legitimate police functions, limits of police authority and limits of discretion. Some of these standards indicate methods for developing policies and procedures. NAC Police Standards 1.4 through 1.7 recommend that every police agency develop written policies and procedures for effective communication with the public, ensuring that police officers understand their role, educating the public about the police role and developing good news media relations. Several NAC Police Standards including 4.2, 4.3, 4.4, 9.5, 9.8, 9.9 and 9.10 suggest that every police agency establish specific policies and procedures for police operational effectiveness within the criminal justice system, diversion, issuance of citations in lieu of arrests, criminal case followup, juvenile operations, tactical forces, vice operations and investigations. Establishment of policies and procedures for internal discipline are recommended in NAC Police Standards 19.1-19.6.

As indicated in the problem assessment, approximately 12 police agencies in New Jersey are equipped with written policy and procedure statements. New Jersey statutory law and court decisions delegate almost total responsibility for establishing the role of the police officer to the chief administrator of each police agency and municipal governing body.

The Police Training Commission's Police Administrative Service Bureau (PASB) has developed a manual for use by police agencies in developing rules and regulations. Since its development in 1974 over half of the New Jersey police agencies have, or are in the process of using, the manual to develop rules and regulations. The PASB manual is divided into several sections. The first section provides an index and summary of court decisions covering conduct unbecoming an officer, use of alchohol or drugs, failure to pay debts, associating with persons of bad character, misuse of firearms, freedom of speech and expression, insubordination, political activities of policemen, civil liability of police officers and municipalities, liability for lack of training of individual police officers and other matters. A second section provides a checklist of suggested rules of conduct. A third provides a sample police manual. A fourth section provides a procedure to develop written directives concerning agency policies, rules and regulations, and procedure statements which can be used by each police agency.

There is no official New Jersey publication which continually updates statutes, Court Rules and court decisions for police officers. The *New Jersey Police Manual* is published annually by a private source and lists New Jersey Statutes and Court Rules relating to law enforcement. One of the major benefits of the PASB manual and the *New Jersey Police Manual* is that areas where statutory and court guidelines do not exist can be identified for policy, procedure and rule development. An analysis of both manuals, however, reveals that police agencies need to develop policies and procedures for extensive areas of police authority, not covered in these manuals, but which are previously mentioned in the problem assessment.

Commentary

The Advisory Committee recognized that the direction, activities and training of a police agency should be formed by agency policies, procedures and rules whether written or unwritten. Written policies and procedures are beneficial to effective law enforcement, police-community relations and the safety of police officers. Without specific and clear policy statements covering all aspects of police work, individual officers are allowed to make policy on the street.

It was recognized that initial policy and procedure development is only a first step. Improved technology, tactics and strategies will result in continual need for policy and procedure development. Refinement will involve a continuous trial and error process in which ineffective procedures are eliminated.

The Committee recognized that the Police Training Commission has done a fine job in developing a model rule manual and concluded that similar work should be done for policies and procedures. Model policy and procedure manuals, where possible, should be developed from nationally funded studies rather than duplicating such studies in New Jersey. Some of the major areas where work needs to be done include conflict management and crisis intervention, traffic law enforcement, police-community relations, diversion of juvenile and adult offenders, handling of mentally ill and criminal investigation.

As a result of Committee discussions three standards were developed. It is recommended that a Commission on Local Police Services, as described in the Organization of Police Services Standards, develop model manuals to assist police agencies in developing departmental policy, procedure and rule statements. Model manuals are essential because most police agencies in New Jersey do not have the resources to perform the research and develop manuals on their own. The Advisory Committee further recommends that police agencies utilize model manuals in establishing departmental guidelines and that priorities of services to be delivered be established. In the latter case it is recommended that each police agency identify those services that should and should not be provided by a police agency. For services that should not be provided the police agency should work with local government to transfer those responsibilities to other public or private agencies. Crime should also be prioritized so that the police agency can concentrate its resources in the most efficacious manner. This was based on the realization that for police agencies to be effective they can no longer be "all things to all people" and must spend more time preventing crime. It is therefore recommended that agency priorities, policies, procedures and rules be disseminated to the public not only for their approval but so they may know what to expect from the police agency and its officers.

Law reform, according to the Advisory Committee, should have continuous input from police, prosecution, court, public defender and correctional personnel and the public. Three major areas where law reform is needed is in the statutes relating to police authority, power and administration; in statutes, court rules and court decisions relating to police procedure; and in the substance of criminal laws.

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COMMUNITY CRIME PREVENTION

Introduction

Crime prevention is a concept which is growing in importance. Authorities are finding that traditional approaches to reducing crime, such as arrest, prosecution, punishment and rehabilitation are not enough. These approaches are reactive, taking place after a crime has occurred which places the criminal justice system one or more steps behind the criminal.

The community, individuals and businesses can prevent themselves and their families from becoming victims of crime through various measures. Such measures include secure doors and windows, alertness and reporting of suspicious activities to the police, engraving identification numbers on personal property, proper display of merchandise, adequate design of buildings and neighborhoods, and participation of the community in various programs to prevent crime and assisting reintegration of ex-offenders into the community through jobs and social programs.

The effectiveness of crime prevention efforts may be reduced by a number of factors. Some crime prevention programs do not allocate resources toward target areas with the greatest need. Citizen apathy as well as resistance by traditional minded police officers hinders crime prevention efforts. The establishment of crime prevention bureaus and building security codes are some of the methods being used to prevent crime.

Problem Assessment

Overall reported crime rates in New Jersey are increasing every year.[1] Rates for index crimes reported to police during 1972, 1973, 1974 and 1975 appear in Table 1.

Many other crimes which appear to cause much greater financial losses[2] are not reported because people often do not realize they have been victimized or because they feel nothing can be done.[3] Such crimes include bankruptcy, consumer and business fraud; government revenue loss, credit card and check fraud, embezzlement and pilferage, insurance fraud, securities theft and fraud and receiving stolen property. For many years police, courts, the prosecution and correctional agencies have been delegated the responsibility for reducing crime. *New Jersey Uniform Crime Reports* reveals that traditional crime-fighting efforts have failed to solve the rising rate of crime.

Some prominent police executives[4] have stated that until society improves the conditions of life, educational and employment opportunities, the moral education of youths and other factors, especially in the inner cities, the crime rate will not slow down. The National Advisory Commission (NAC) has determined that "crime prevention" can be interpreted in several ways depending upon the type of criminal behavior that is to be prevented. In some cases it refers to the solution of social, psychological and economic conditions that lead to the desire to commit crime. In other cases it concerns the elimination of the opportunity for crime through the presence of police patrols, efficient and effective adjudication and rehabilitation, and "target hardening" to prevent commission of crime.

The National Advisory Commission on Criminal Justice Standards and Goals recognized the need to

Table 1

Reported Rates for Index Crime for Years 1972-1975

Index Crime	1972	1973	1974	1975
Murder	483	544	481	500
Forcible Rape	1,245	1,384	1,438	1,382
Robbery	15,437	15,113	15,879	16,273
Atrocious Assault	10,361	11,705	11,763	12,042
Breaking and Entering	88,031	91,739	104,908	111,264
Larceny-Theft	64,723	137,870	175,569	195,374
Motor Vehicle Theft	43,229	41,821	40,096	39,004

Source: *Crime in New Jersey-1975: Uniform Crime Reports*, Table 4, "State of New Jersey Five Year Recapitulation of Offenses, 1971-1975," West Trenton, New Jersey, 1975, p. 31.

References for this chapter appear on page 101.

enlist the cooperation and assistance of institutions, agencies and groups existing in communities to aid in the reduction of crime. The Community Crime Prevention volume of standards details ways that school systems, manpower resources, rehabilitative and social welfare agencies, mental health clinics, labor unions, private businesses and industries, churches, clubs and social organizations as well as individuals can help prevent crime.[5]

The emphasis of the following standards will primarily deal with only one type of crime prevention which will be referred to as citizen initiative, target hardening, crime opportunity reduction or crime displacement. The other types of crime prevention are discussed in other chapters of this report.

There are several problems involved with target hardening.[6] Materials and designs of many homes, businesses and industries allow easy access due to inadequate security measures such as door locks that can be opened with a credit card or screwdriver; poor lighting or obstacles blocking visibility of entrances; merchandise displays which facilitate shoplifting; banks with low counters and no barriers between customer and teller; and flimsy doors and windows. At least half of the breaking and entering offenses occur through front and back doors containing insufficient locking devices.[7] Fire and safety codes for buildings have existed for several years. These codes are enforced by inspectors who issue citations to building owners when codes have been violated. The development of security codes have not kept pace with fire and safety codes.

Most people do not realize how vulnerable they are to robbery, breaking and entering, assault, shoplifting, confidence games and fraud. Informing people on methods to protect their property and person involves considerable expense for production and dissemination. Such methods include television, radio, newspaper, pamphlets, talks by experts to citizens' groups and security surveys.

During the 1975 fiscal year there was $149,574,952 of stolen property reported to New Jersey Law Enforcement Agencies. Of this amount $47,802,750, (32%), of property was recovered by these agencies.[8] Police property rooms or warehouses are stocked with thousands of bicycles, televisions, radios, stereos, kitchen appliances and even automobiles. Much of the recovered property cannot be returned to owners because there are no markings to differentiate one article of the same make and model from another article. Property officers explain that property cannot be given to people just because they claim to have lost a particular item. Some proof of ownership such as a serial number or other differentiating marking must be presented before the stolen article can be returned to the owner.[9]

In many types of property crime the consumer pays the indirect cost of crime through property and health insurance rates and retail prices of merchandise which pass much of the cost of burglaries, robberies, shoplifting, internal thefts and other forms of larceny back to the consumer. The ease with which this transfer of cost is made contributes to a lack of interest in security on the part of the retailer and consumer. Those whose property and person are relatively secure often assume part of the cost for those who are not secure. There are several programs operating in New Jersey which are aimed at solving these problems. The following will describe these programs and problems with the implementation of such programs.

Of the 469 municipal police agencies in New Jersey, 64 have over 50 officers and 155 have over 25 officers. As of 1975 crime prevention bureaus[10] have operated in at least 16 agencies.[12] Community relations bureaus in several other cities have also been involved in target hardening activites.[12] These crime prevention and community relations bureaus have attempted to meet the aforementioned problems with a variety of programs.

Plainfield and Trenton city governments, in conjunction with crime prevention and fire officers and building inspectors, have established building security codes. The Plainfield code, for example, details building security requirements for commercial buildings and apartment complexes and is enforced through periodic building inspections. Some of these security requirements include improved lighting, building materials and locks. Notification is given to the building owner concerning violations of the code and a time limit for repairs. When follow-up inspections reveal a lack of compliance with the recommended repairs citations are issued.

All crime prevention bureaus have at least one officer who has received training for residential and business security inspections from the National Crime Prevention Institute in Louisville, Kentucky. Many have trained other men in their departments to do security surveys. Upon requests, these units survey homes, businesses and industries to point out weaknesses in security and at the same time to recommend improvements. Such improvements may include better locks or latches, lexon plastic to replace glass, better lighting for entrances, bars on windows or alarm systems. The time for making surveys can vary from 15 minutes for apartments to an hour for homes and industries. As an example, the Millville Crime Prevention officer has a seven-page survey for businesses and a four-page survey for homes. The number of security surveys conducted by the crime prevention units varies, depending on the number of requests and the available manpower of the units. Anywhere from five to 60 surveys are conducted per month by crime prevention bureaus in New Jersey. Residential and business security surveys are conducted by officers in the 11 law enforcement agencies with crime prevention bureaus.

The objective of Operation Identification (Opera-

tion I.D.) programs is to enable home owners and business people to mark transportable objects with identification numbers. They are provided with engraving tools with which to etch their social security number, motor vehicle operator's number or other types of identification numbers on such possessions as appliances, tools, bicycles, jewelry, televisions, radios and stereos. Participants are given decals to put on the front and rear entrance doors to notify potential burglars that property within has been marked.

The State Criminal Information System (SCIS) is designed so that the description, serial numbers and other identifiable markings of all stolen property worth over $50.00 can be recorded in a computer data bank. Law enforcement personnel and purchasers of used merchandise can determine whether merchandise has been stolen by contacting the local or regional SCIS terminal.

N.J.S.A. 45:22-34 requires that dealers in used merchandise report the description of all acquisitions on a daily basis to local police agencies. This statute needs to be updated based on the following problems. First, not all dealers are considered by police agencies to be covered by the statute, such as repair service businesses or merchants who receive items as trade-ins. Second, the statute was passed before development of the SCIS. Until a statewide standardized reporting form is utilized by merchants and local police, rapid transference of information to the SCIS is seriously delayed and sometimes ineffectual. In order to encourage law enforcement officers to aggressively check on suspected stolen property, it is necessary that local and regional terminals have operational capabilities at all times.

Crime prevention and community relations officers appear before thousands of citizens at public and private gatherings each year to pass on advice concerning methods to make homes, businesses and individuals more secure. Films and demonstrations are often used to emphasize the message. Pamphlets listing crime prevention steps and engraving tools are made available after the presentation. The areas discussed may include topics such as burglary, robery, shoplifting and internal theft prevention, safety tips, announcements concerning consumer fraud and confidence games.

The quality of the speakers is an important asset for effective crime prevention talks, as this can make the difference between an attentive, concerned audience and an inattentive, unconcerned audience. Some police agencies have even encouraged officers to participate in public speaking courses to increase their communication abilities.

The mass media offers the widest possible exposure as an educational tool concerning crime prevention methods. Federal Communication Commission regulations enable public service programs to be aired by local stations. Police agencies in a number of jurisdictions utilize air-time for participation in talk shows and presenting spot announcements regarding crime prevention tips. Newspapers have been helpful in providing space for crime prevention tips, announcements concerning block association meetings, crime prevention lectures and other related activities and articles aimed at increasing public support for crime prevention.

The objective of programs such as Block Watcher, Neighborhood Watch and Towne Watch is to encourage people to become alert to suspicious or criminal activity and to report it to the police. Participants in these programs can be taught to look for broken or open windows and/or doors, "salesmen" attempting to force entrance into a home, anyone loitering in a parked car with the motor running, anyone concealing merchandise in a store, anyone removing accessories or gasoline from cars, persons walking down the street peering into parked cars and strangers carrying things from a neighbor's home. Identification cards with a blockwatcher number are issued to program participants so that calls can be transferred directly to the police dispatcher. The dispatcher can call the blockwatcher back directly if additional information is required. The number also assures anonymity for the block watcher without fear of reprisal.

A survey of crime prevention and community relations personnel as well as supportive data from SLEPA files indicates that, although large numbers of people have been made aware of Operation I.D., residential surveys and block watching activities through the mass media and presentations, only a small percentage of citizens have participated in these programs. Those programs with higher levels of participation and which also show reductions in some types of crime have involved saturation tactics such as door-to-door canvassing, development of block associations[13] and extensive mass media exposure.[14] Presently, the Plainfield crime prevention bureau exemplifies this approach where target hardening efforts first started in a high crime area. Between 1971 and 1973 breaking and entering, grand larceny and robbery offenses decreased approximately 30% each year. Since then target hardening activities have been expanded to include the whole city. Breaking and entering offenses have been steadily declining every year since 1972 and robberies have similarly decreased citywide, as can be seen in Table 2. Other types of crime not addressed by the program continued to rise during the same period.

From 1973 to 1975 Parsippany-Troy Hills was experiencing an increasing number of bicycle thefts. In 1973, bicycles with a total value worth $13,000 were stolen, while bicycles with a total value worth $25,000 were stolen in 1974. The crime prevention officer attacked the problem through a series of newspaper, television and radio public service mes-

Table 2

Number of Robbery and Breaking and Entering Offenses Reported for Fiscal Years 1973 and 1974, with Percent Change

Offense Reported	July '72-June '73	July '73-June '74	% Change
Robbery	337	278	−17.5%
Breaking and Entering	1318	1138	−13.7%

Source: City of Plainfield, New Jersey, "City-Wide Crime Prevention Unit," Grant #A-39-73, *Quarterly Narrative Report* to the State Law Enforcement Planning Agency, June 30, 1974.

stages, presentations at schools, civic and service club lectures. As a result, bicycle thefts during the first six months of 1975 were reduced by 50% ($6,000 worth of bicycles were stolen during this time period). In Camden where 2,100 people joined a volunteer patrol program called Towne Watch, non-violent crime has dropped 41% in two years.[15]

Evaluations of crime prevention activities in New Jersey are scanty since most of the programs are relatively new. Two major national studies of Operation I.D. indicate that:

(1) Of every 20 homes surveyed that marked property through the Operation I.D. program, 19 have not been burglarized.[16]

(2) Unless Operation I.D. is used by a great majority of the population, the crime statistics in that community are not affected.[17]

Despite the impressive data on the reduction of crimes targeted by crime prevention personnel, there are a number of problems with target hardening programs that have been identified. There is a shortage of manpower and resources to implement crime preventive programs. Law enforcement agencies that have committed the largest ratio of manpower to target hardening activities appear to be showing significant reductions in target crimes. Agencies that have not allocated approporate manpower are having difficulty not only in having an impact on crime, but in providing service to a significant number of the population. Table 3 is a comparison of crime prevention bureau size with population and the number of police officers in the jurisdiction.

Limited manpower and resources is a major problem in New Jersey's crime prevention bureaus. Some bureaus in New Jersey and elsewhere have partially overcome this problem by enlisting the services of a variety of organizations including tactical units, police reserves, fire departments and sworn police officers; building inspectors; volunteer groups such as Boy Scouts, Jaycees, League of Women Voters, PTA's and Chambers of Commerce and individual volunteers. Some prevention personnel recognize that many community service organizations have a sincere desire to help the community fight crime. Such organizations have the expertise and manpower to organize crime prevention efforts on their own. Some crime prevention officers, therefore, view their role in terms of instigating and coordinating crime prevention activities of volunteer groups. Using volunteers can make the difference between a high or low cost crime prevention program. For example, a national survey of Operation Identification Projects indicated that their costs varied.

> from a low of $.78 per household in Grand Rapids, Michigan, to a high of $17 per household in Seattle. Operation I.D. projects reporting recruitment costs below a medium figure of $4 per participant have

Table 3

Comparison of Police Agency, Crime Prevention Bureau & Population Size

Municipality	No. of Officers in Crime Prevention Bureaus 1975	No. of Police Officers in the Law Enforcement Agency—1974	Population of Jurisdiction with Crime Prevention Bureaus (1970 U.S. Census)
Plainfield	5	121	46,862
Trenton	2	321	104,786
Jersey City	4	1,041	260,350
No. Plainfield	3	40	21,796
So. Plainfield	1	44	21,142
Edison	1	133	67,120
Parsippany-Troy Hills	1	73	55,112
Dover Township	1	31	15,039
Millville	1	39	21,336
Elizabeth	1	287	112,654

generally benefited from free advertising donated by the media and volunteer help contributed by businesses and crime organizations. Projects spending more than $4 per participant are usually using paid project staff members to make group presentations and for door-to-door canvassing.[18]

Some crime prevention bureaus effectively use personnel by concentrating efforts on geographic areas or groups that are experienceing the most severe crime problems. Crime prevention personnel can direct their activities through the receipt of weekly, bi-weekly or monthly data which informs them as to the locations and times in which crimes are occurring, the groups of people who are most severely affected by crime, and the age, race, sex and residence of the offenders.

Other crime prevention bureaus dilute their efforts by trying to cover too broad a geographic area concentrating mainly on groups such as civic or service clubs that request assistance. Often those people who are most in need of crime prevention assistance are the last to request it or are not involved in these groups.

In the area of crime prevention resources the cost of producing crime prevention materials such as pamphlets and of purchasing of films is high. Crime prevention officers have suggested a need for technical assistance in the development of inexpensive security techniques, community participation and mass media messages.

There is a lack of support for some crime prevention programs by police officers. Crime prevention officers from some police departments indicated that patrol officers and detectives often do not view crime prevention programs as legitimate functions or "real" police work. They think of the police role mainly in terms of apprehension, enforcement and investigation, even though most of their time is spent performing service functions.

In the case of citizen involvement in crime prevention programs where volunteers patrol areas of a city and report crimes or suspicious activities via portable radios, there have been reports that some police officers harass the volunteers on the street. Police often resent volunteer groups when they infringe on traditional police functions. Police unions and related organizations are concerned that quasi-police units threaten police job security. Substantial police concerns about such groups relate to their qualifications and reliability.[19] Declining morale due to police harassement has caused many volunteers to drop out of prevention programs even though there have been significant reductions in crime—especially burglary.[20]

Citizen apathy is a major hindrance to effective target hardening. Without citizens reporting crime and suspicious activities, cooperating as witnesses in court and participating in Operation I.D. and security survey programs, crime opportunities will increase. The National Victimization Survey of eight impact cities, which included Newark, revealed that the incidence of unreported crimes may be twice as high as reported crime.[21]

There is a need for follow-up surveys to determine the level of community participation in Operation I.D. and security programs as well as to remind people to initiate recommendations for such programs. Some crime prevention personnel state that there is not enough manpower to make substantial initial contacts, much less follow-up surveys.

There is a problem when crime prevention programs displace crime rather than prevent it. Reducing the opportunity to commit crimes does not eliminate the motivation of the criminal to achieve this goal elsewhere.

Two assumptions of the National Crime Prevention Institute are that most criminals operate in geographic areas they are familiar with and within their own capabilities. When they are forced to commit crimes in unfamiliar territory and/or commit different types of crimes for which they are less experienced or which are more open, the chances of making a mistake and getting caught dramatically increase.[22] For example, if a significant number of homes are relatively secure through Operation I.D. or security survey programs the burglar may turn to shoplifting, bicycle theft or robbery. Both alternatives have occurred in the Plainfield area and as a result, Plainfield crime prevention efforts have had to be broadened to include target hardening of other crimes[24] and neighboring jurisdictions[24] have established crime prevention bureaus.

A lack of interjurisdictional coordination of crime opportunity reduction efforts aids criminals who live in one jurisdiction and commit crime in others or transports stolen merchandise from one jurisdiction to another. Aside from exchange of ideas and some resources in the Plainfield area, most crime prevention bureaus operate in isolation from neighboring jurisdictions. One example of this lack of coordination between jurisdictions and prevention bureaus is the Operation I.D. programs. There are three numbering systems used in New Jersy including motor vehicle operator's numbers, social security numbers and numbers used by a private nationwide computerized Operation I.D. program.

Both driver's license and social security numbers have been used in various programs and each has its own drawbacks. When social security numbers are used, problems of identification of recovered stolen property or property found in a suspect's automobile or home arise because the Social Security Administration does not reveal the names corresponding to social security numbers. Police agencies can keep a list of social security numbers and the corresponding names of participants, but if stolen merchandise is transferred to another jurisdiction and recovered by the police it may be impossible to determine ownership unless the jurisdictions are tied together into

one Operation I.D. system or have integrated computer information retrieval systems.

Operation I.D. systems using driver's license numbers can exclude people from the program who do not drive or who frequently relocate from one state to another. Interstate transfer of stolen goods can also complicate this system since some states use similar driver's license number numbering systems.

New Jersey's Status in Comparison with the National Standards

National Advisory Commission (NAC) Police Standard 3.2, recommends that police agencies establish programs that encourage members of the public to take an active role in preventing crime through volunteer neighborhood security programs, enactment of building security inspections of businesses and residences. In addition, police agencies having more than 75 personnel are encouraged to establish specialized crime prevention bureaus to facilitate these activities.*

Sixteen of the 469 municipal police agencies in New Jersey have personnel specifically assigned to do work in target hardening crime prevention. Several police-community relations units have also been involved in some aspects of crime prevention. These personnel have been involved in providing residential and business security surveys, developing security codes and encouraging citizen participation in crime reporting and target hardening. Most crime prevention bureaus and community relations bureaus, however, have enough manpower to cover only a small percentage of the population within their municipalities. For example, five to 60 business and residential surveys are conducted per month in municipalities that have thousands of homes and businesses. Only two municipalities, Plainfield and Trenton, have established building security codes. In addition some crime prevention bureaus that direct their activities to giving crime prevention talks to civic and social community groups miss a large portion of the population that do not attend such fuctions.

The Community Crime Prevention problem assessment suggests that some New Jersey crime prevention bureaus can fulfill the need for more manpower by hiring civilians or recruiting volunteer community groups, neighborhoods or individuals, especially individuals who volunteer as police reserve officers. Such activities relate to NAC Police Standard 10.1 and 10.2.

Many civic, social and professional groups in New Jersey have developed volunteer crime prevention programs either on their own or as a result of a crime prevention bureau's initiatives. For example, the Jaycees are presently sponsoring an operation identification program throughout New Jersey. In Camden 2,100 people joined a volunteer patrol program called Towne Watch. Plainfield crime prevention officers have helped establish over 60 block associations. Civilians have also been hired on crime prevention bureaus to supplement police manpower and to contribute nonlaw enforcement skills, such as knowledge in community organizing.

In order to facilitate the use of sworn police and civilian personnel in target hardening, a certain amount of preparatory and in-service training is needed. Presently, law enforcement agencies in New Jersey send crime prevention officers to the National Crime Prevention Institute in Louisville, Kentucky to receive such training. In some cases these officers have returned to their agencies to conduct training classes which prepare others for target hardening work.

The expense of transporting and training crime prevention personnel at the Crime Prevention Institute prohibits training the large number of personnel necessary to implement target hardening activites. (Related NAC Standards include Police Standards 16.3 and 16.5).

New Jersey provides technical assistance in several areas to local law enforcement agencies but not in the area of target hardening. NAC Police Standard 11.3 recommends that every state provide management consultation and technical assistance to all police agencies within the state to evaluate the effectiveness of programs and make recommendations.

The most effective crime prevention bureaus appear to be those that pinpoint geographic areas where crime has increased significantly, or groups of people that have the greatest crime problems and specific crimes.

NAC Standards most directly relating to target hardening programs based on crime analysis include Criminal Justice System Standards 4.3, 4.2 and 4.8. Some crime prevention bureaus in New Jersey are able to concentrate efforts through a manual or computer assisted crime analysis system. Other bureaus, however, base their activities primarily in response to requests for services.

Another factor leading to the success of target hardening efforts is interjurisdictional coordination and exchange of information. NAC standards relating to these area include Police Standards 4.2, 5.2 and 24.4. Although significant progress has been made in integrating information and police telecommunication systems in New Jersey, there has been very little coordination of crime prevention efforts across jurisdictional boundaries.

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* See also the following NAC standards covering the subject of NAC Police 3.2; NAC Police 1.4; NAC Community Crime Prevention 5.5, 9.1, 9.2, 9.4, 9.5 and 9.6. ABA Police Function Standard 3.3 (V) recommends establishment of building security codes similar to fire prevention codes.

Supporting Methodology for Standards

The Community Crime Prevention standards are aimed at providing an integrated multi-phased approach to crime prevention. In addition to the criteria and recommendations presented in the standards, the following information presents several alternative methods for their implementation.

Standard 4.3, "Mass Media Crime Prevention," recommends that law enforcement officials develop a liaison with the mass media (television, radio and newspapers) to utilize public service time for airing crime prevention messages. Such a liaison should involve not only local media but also media that covers large parts of the State such as major newspapers, radio and television networks. The following types of activities should be developed through a cooperative effort between media personnel, law enforcement officials and crime prevention officers:

1. Crime prevention question and answer programs in which individuals can ask questions related to criminal justice and crime prevention. Inquiries can be answered immediately or researched and reported at a later time.
2. Crime prevention advertisements which present methods by which individuals and businesses can protect their property, families and persons from a broad range of crimes including robbery, assault, consumer fraud, vandalism and shoplifting.
3. Encourage individuals and businesses to keep a list of serial numbers, makes and models of all valuable portable objects such as televisions, radios, typewriters, stereos, appliances, jewelry, adding machines and tools.
4. Messages aimed at encouraging individuals to report crimes or suspicious behavior by indicating how to report it and what to watch for such as:
   a. Strangers entering a neighbor's house when it is unoccupied;
   b. Strangers loitering or strange cars in the neighborhood, school area and parks;
   c. Broken or open windows or doors;
   d. Suspicious looking people attempting to force entrance into a home;
   e. Offers of merchandise at extremely low prices;
   f. Strangers leaving one car and driving off in another;
   g. Anyone removing accessories, license plates or gasoline from cars;
   h. Anyone in a store concealing merchandise on their person;
   i. Persons seen entering or leaving a business place after hours;
   j. Sounds of breaking glass or any other loud explosive noise;
   k. Any vehicle parked with the motor running;
   l. Persons walking down the street peering into each parked car;
   m. Display of weapons, guns, knives;
   n. Strangers carrying appliances, household goods, luggage or other bundles from a neighbor's home;
   o. Injured person.*

Standard 4.6, "Establishment of Regional Crime Prevention Bureaus and Activities," is aimed at providing a coordinated and comprehensive approach to developing the community capability to prevent crime by hardening crime targets and initiating community crime prevention activities in established civic, social, professional, public and private organizations to deal with social and economic characteristics of offenders which appear to be correlated with criminal behavior. In the function of fostering and coordinating community programs in established groups to deal with social and economic problems, crime prevention bureaus should not become involved in the day-to-day operation of the programs. Such programs can include:

1. Crime prevention programs in schools;
2. Stay-in-school programs;
3. Recreation;
4. Counseling for youths and families;
5. Crisis intervention counseling-hot lines;
6. Drug abuse prevention and rehabilitation;
7. Job training;
8. Part-time and summer hiring of youths;
9. Employment for ex-offenders and hardcore unemployables;
10. Big Brother, Boy Scouts, Girl Scouts, YMCA

Manpower for crime prevention bureaus can include any of the following, as long as they have the appropriate training and experience to perform their duties:

a. Police officers;
b. Civilian specialists in community development and organizing, press relations, target hardening;
c. Community services officers;
d. Fire officers;
e. Building inspectors;
f. Special and reserve officers.

Local governments and law enforcement agencies should determine which type of administrative structure should oversee regional crime prevention bureaus. Alternatives for implementing regional bureaus include the following:

a. Police departments serving large cities;
b. Mutual service agreements to consolidate crime prevention activities of several small and medium sized police departments;
c. Task forces made up of representatives from several municipalities;
d. Sheriffs' offices;
e. County police agencies;
f. Prosecution offices;
g. Privately funded agencies.

* These activities are listed in National Advisory Commission, *Report on Community Crime Prevention*, p. 315.

Commentary

The Crime Prevention Standards and Methodology are aimed at developing guidelines for a comprehensive program to reduce the opportunities for offenders to commit crimes. It has become increasingly clear that crime reduction requires a high level of citizen involvement. The standards and methodology are aimed at creating greater citizen involvement in programs to reduce crime opportunity.

The establishment of a State office of crime prevention was rejected as a needless bureaucratic expense in favor of establishing regional crime prevention bureaus to coordinate interjurisdictional crime prevention efforts. The functions that could have been performed by a single State agency are allocated to appropriate existing agencies or the regional bureaus. Such functions include: mass media and public education crime prevention training and technical assistance, development of a clearinghouse for crime prevention information, development of a model building security code and other legislation and pursuance of property insurance rate reductions for participants in crime prevention programs. This approach will avoid the creation of another State super agency with the resultant hiring of additional administrative, staff and clerical employees. The creation of such an agency far removed from the crime prevention bureaus would create too many bureaucratic requirements and excessive paperwork without adding significantly to its operating efficiency.

These Standards recommend a regional approach to establishing crime prevention bureaus as opposed to local bureaus for several reasons. There are 469 municipal law enforcement agencies in New Jersey, most of which do not have the resources to establish a crime prevention bureau or assign personnel to work in that area. Establishment of many small local crime prevention bureaus is not cost effective because it violates the principle of economies of scale which would create an extensive waste of resources. Economies of scale means that one organization can do work cheaper than several small organizations because they can purchase supplies by volume and eliminate the duplications of many functions such as payroll, personnel, training, record keeping, evaluation and planning.

The efforts of many small independent crime prevention bureaus are negated since crime transcends jurisdictional boundaries. Increased efforts against crime in one municipality often result in a displacement of crime to neighboring jurisdictions requiring a high level of coordination between municipalities. This type of coordination does not significantly exist between the many independent municipal police departments. In addition, it is impossible to develop a meaningful picture of crime by only analyzing crime in individual local municipalities because of the displacement effect and mobility of criminals. Crime patterns, therefore, must be analyzed on a regional basis in order that broad short and long range strategies can be developed to account for the many variables influencing crime in individual municipalities.

The Standards recommend the establishment of a Uniform Statewide Building and Community Security Code as opposed to leaving code development to local government. Such a code will establish minimum standards for building and community construction. The development of codes by local governments, since there are more than 500 municipalities in New Jersey, would result in extensive conflicts and uneven building standards which can complicate construction of homes and industries and enforcement of the codes. In addition, only two New Jersey municipalities have developed building security codes.

Standard 4.4 was developed to increase the difficulty and danger of selling stolen property by increasing the capability for identification and recovery of stolen property. There are several statutes covering the sale, possession, transfer and acquisition of used merchandise. These statutes, developed many years ago, need to be updated to keep pace with the increased mobility of the criminal population and modern technological capabilities.

The Standards are aimed at reducing the apathy of citizens and businesses toward crime by providing information on how to protect one's family, property and person. Rebates on insurance rates for participation by residents and business people in crime prevention programs as recommended in the Standards should also increase participation in crime prevention programs. In addition the penalties for violation of building security codes provide further incentive.

References

[1]Improved reporting techniques and increased police efforts to encourage citizens to report crime may account for some of the rise.

[2]The U.S. Chamber of Commerce figures that over 40 billion dollars were lost to white collar crime alone in the United States during 1974. (Chamber of Commerce of the United States, *White Collar Crime,* n.p., 1974, p. 6.)

[3]Philip H. Ennis, *Criminal Victimization in the United States,* Washington, D.C., U.S. Gov't. Printing Office, 1967.

[4]Robert J. Di Grazia, Commissioner of Police, Boston, Massachusetts; Patrick Murphy, Chairman of Police Foundation, Washington, D.C.; Edward M. Davis, Chief of Police, Los Angeles, California; James Parsons, Chief of Police, Birmingham, Alabama; and Hubert Williams, Director of Police, Newark, New Jersey, participating on "Meet the Press," WNBC, T.V., New York, August 4, 1975.

[5]National Advisory Commission on Criminal Justice Standards and Goals, *Report on Community Crime Prevention,* Washington, D.C., U.S. Gov't. Printing Office, 1973.

[6]These problems were identified by crime prevention officers in 11 police departments (Trenton, Plainfield, North Plainfield, South Plainfield, Edison, Jersey City, Dover Township, Parsippany-Troy Hills, Millville, Mercer County Sheriff's Department and Rahway) and community relations officers in three departments (Newark, Paterson and Asbury Park).

[7]Statistics from Plainfield Community Service Unit, December 30, 1974.

[8]State of New Jersey, *Crime in New Jersey-1975: Uniform Crime Reports,* Table 6, "Type and Value of Property Stolen and Recovered 1974-1975," p. 34.

[9]Police property officers in several police departments in New Jersey interviewed by Standards and Goals Staff, SLEPA, September, 1975.

[10]Crime prevention bureaus do target hardening or opportunity reduction work.

[11]See listing of agencies under footnote 6. Other recently funded crime prevention bureaus include those in the Camden, East Orange, Hobokon, Elizabeth and Atlantic City police departments.

[12]Including Newark, Paterson and Asbury Park.

[13]Block Associations are groups of people living in the same neighborhood who get together to deal with neighborhood problems.

[14]Nelson B. Heller, et al., *Operation Identification Projects: Assessment of Effectiveness,* U.S. Dept. of Justice, National Institute of Law Enforcement and Criminal Justice, pp. x, xi.

[15]"War on Crime By Fed-Up Citizens," *U.S. News and World Report,* September 29, 1975, p. 19.

[16]Letter to National Neighborhood Watch Participants from Ferris E. Lucas, Executive Director of the National Sheriffs' Association, Information Sheet #2, January, 1975, p. 2.

[17]Heller, et al., *Operation Identification Projects: Assessment of Effectiveness,* p. x.

[18]Ibid., p. xi.

[19]Peter Freivalds, Curtis Woods and Gloria Richards, *Police Community Relations-1975, Final Report,* LEAA Grant #73A-99-0013, 1975, p. 200.

[20]"War on Crime By Fed-Up Citizens," *U.S. News and World Report,* pp. 19, 20.

[21]The exact level is not known due to differences in Uniform Crime Reports reporting and survey methodology.

[22]The National Crime Prevention Institute School of Police Administration, "Establishing a Crime Prevention Bureau," LEAA Grant #72-DF-99-0009, University of Louisville.

[23]While there has been a reduction in breaking and enterings and robberies because of crime prevention efforts, there has been a 67.8% increase in other larcenies due to displacement. Most of these involved bicycles, shoplifting and motor vehicles. (City of Plainfield, New Jersey, "City-Wide Crime Prevention Unit," Grant #A-39-73, *Quarterly Narrative Report,* to the State Law Enforcement Planning Agency, June 30, 1974.

[24]Including North Plainfield, South Plainfield and Edison.

PROSECUTION AND DEFENSE

Introduction

Following the example of the American Bar Association the prosecution and defense functions are herein placed together so that the aspects of opposing advocates in the administration of criminal justice may be viewed in conjunction with one another. A criminal case provides the setting in which basic values of society come into play. The collective assumptions about freedom and the fundamental rights of all people are brought into focus and either corroborated or rebutted. As has been recognized elsewhere, it is not only the freedom of the accused which is on trial but the means by which justice is served calls into balance the freedom of all, for if the government does not abide by law, no one is safe.

Statutes, court rules and case law confer awesome power on the county prosecutor. The attendant responsibilities are equally formidable. Nevertheless, in criminal prosecutions the state represented by the prosecutor is merely another contending party and is subject to law as well as to the disciplinary rules of decorum, propriety and ethics. Likewise, the right of a criminal defendant to be represented is a fundamental protection in our system. Fairness requires that representation be effective. It would be difficult to overstate, therefore, the importance of explicit guiding principles for defense counsel.

Accountability for the prosecutor is the necessary link which reinforces the strength of public office and fosters confidence. When the Forsythe Report was published in 1968 its indictment of the New Jersey criminal justice system was that it was in fact not a system at all but an unwieldy "sprawl" with no one in charge. In an extraordinary move, the Criminal Justice Act of May, 1970, a direct result of the Forsythe Report, attempted to make county prosecutors accountable to the Attorney General.

The matter of intervention on the part of the Attorney General serves to illustrate the enormous pressures brought upon the prosecutor both from within the State and from constitutional restraints to conduct matters in a manner above reproach. New Jersey prosecutors take initiative in policing themselves and are the first to insist on the highest achievable standards for guidance in professional activity.

Ambiguity of role and lack of funds are two major problems which hamper the defense counsel's role. There has been a lag between the demands implicit in case law requirements for quantitatively and qualitatively increased defense representation. Issues pertaining to the financing of salaries, facilities and all necessary resources are ever present. Problems of role definition and credibility with the client are of special relevance to defense counsel. It is therefore of special importance for effective performance that the duties be clearly spelled out. Part of that spelling out should include an affirmative statement of the defense counsel's duty to accede to all reasonable requests of his client. Any delay of representation is a serious matter and it will be noted that the elimination of both delayed representation and fragmented representation are goals of such high priority as to warrant the most dedicated efforts possible.

Courageous zeal is integral to the adversary process. A lawyer with the best of motives may find himself in a position of uncertainty. Given the seriousness of the enterprise, standards which offer some clarification of the prosecution and defense function are imperative. The standards put forth in this section make no claim to originality; nor should they. The objective was to make explicit recommendations and in many cases to underscore important rules which can be found elsewhere. Whereas unremitting effort was put forth to refrain from sweeping generalities, some ambiguity is perhaps unavoidable in standards written for professionals where creative initiative, judgment and authority is intrinsic. It is anticipated therefore that their usefulness will depend in some measure on the acumen of those entrusted to implement them.

Problem Assessment

Prosecution

As a key figure in our criminal justice system, the prosecutor has authority ". . . at least as sweeping and perhaps greater than the authority of the judge who presides. . . ."[1] The "county prosecutor is the foremost representative of the executive branch of government in law enforcement in his county."[2] Prosecutor's duties combine those of police officer and judge in that they are expected to enforce the law and to protect and respect the rights of persons accused of crime. The American Bar Association Code of Professional Responsibility states: "The responsibility of a public prosecutor differs from that of the usual advocate; his duty is to seek justice, not merely to convict."[3] The prosecutor's influence begins prior to the charging decision and extends on through the entire criminal justice process.

References for this chapter appear on pages 115 & 116.

It is imperative that prosecutors be of the highest caliber that legal training and experience can produce. As a result, New Jersey requires that, prior to appointment, a county prosecutor must have been admitted to the practice of law in the State for at least five years.[4] It has been suggested that since prosecutors occupy a prominent position requiring a high level of authoritative expertise and discretionary powers equal to a judge, they should have salary equity with judges.On similar grounds it has been proposed that county prosecutors be admitted to the practice of law in New Jersey for at least ten years before being eligible for appointment, which is the current requirement for judges. Presently the prosecutor's salary is $40,000 yearly, which is equivalent to a County Court judge. Salaries of assistants range from 30% to 80% of that of prosecutors, or not less than $12,000 and no more than $32,000 per year, which varies from county to county.[5] Salaries of prosecutors and their staff must keep pace with contemporary economic situations if the office is to continue to attract high quality people.

There are virtually no other legislative requirements as to demonstrated ability in criminal law for either prosecutors or their assistants. In light of the paucity of present training programs, the New Jersey Attorney General's Prosecutors Supervisory Section has developed an educational program for prosecutors which could serve as a model for others. Currently it provides an orientation course for all new assistant prosecutors, special topical seminars and an advanced prosecutor training course. Since assistant prosecutors in New Jersey need only to have been admitted to the bar, such a program could be invaluable for both prosecutors and their assistants. Attendance is not now mandatory, but it is felt that in order to maximize the gain from such programs attendance should be required.

New Jersey can be said to be one of the more progressive states in that all county prosecutors in New Jersey are appointed by the Governor with the advice and consent of the Senate.[6] In 1970 the duties of the Judicial Selection Committee were expanded to include the responsiblility for determining the qualifications of prospective prosecutorial nominees. The Committee operates within formal and public guidelines designed to assist the Governor in his choice.

While recognizing the need for maximum autonomy of the prosecutor's office, the intent of the Forsythe Report was to foster accountability. In 1968 following this report, New Jersey became one of the few states where the prosecutor is accountable to the State Attorney General. It is understood that the Attorney General may supersede the prosecutor if the prosecutor should fail to perform his or her duties or when otherwise deemed necessary.[7]

Conflicts of interest should be eliminated wherever possible. One built-in source of possible conflict lies in the fact that in Cumberland, Gloucester, Salem, Sussex and Warren counties the job of prosecuting is a part-time position, which makes it necessary for the incumbent to have a private practice as well. In such cases conflicts of interest may occur when the prosecutor is confronted in the adversary process by a client in his or her private practice. To date 16 counties have full-time prosecutors, the most recent additions being Ocean and Cape May. These two counties, however, still have part-time assistant prosecutors, which also presents potential conflicts of interest. *N.J.S.A.* 2A:158-15.1 states that any county which employs a full-time prosecutor should employ full-time assistant prosecutors also. In a report to the Attorney General, it was held that the caseload of each of these five counties is sufficient to warrant full-time prosecutors.[8]

A disadvantage to assistant prosecutors is the lack of job security since assistants serve "at the pleasure of the prosecutor."[9] Tenure has been proposed as a possible answer to the problem of job insecurity though it is not without its own drawbacks. A major objection voiced by opponents of tenure is that in a competitive job market the freedom to replace unsatisfactory employees gives rise to the highest possible quality of work and restrictions on that liberty would ultimately hamper the system rather than help it. One possible compromise would be to grant tenure to a fixed percentage of assistant prosecutors within a given office. Such a plan would keep some lines flexible so that new talent could be drawn into the office while also offering some incentive for those who desire the security of a tenured position.

Few New Jersey prosecutor's offices operate with the help of comprehensive written guidelines to promote uniformity in policies and procedures. Some offices follow the procedures outlined in the Essex County prosecutor's manual for activities such as screening and plea negotiations. Most counties surveyed stated that guidelines are generally passed along by word of mouth and gathered by observation. Statewide guidelines, which have been in the process of development for nearly two years, are necessary as a step toward uniformity of practice throughout the State and toward reduction of bias on the part of prosecution staff.

Regular exchange of information among members of a given staff and between offices is as necessary as guidelines. It is imperative that the lines of communication between facets of the system and among members of a single office be kept open. Interoffice communication is advisable also because guidelines will sometimes lag behind the times. There are changes in the prevalence of different kinds of crime, in the public's perception of its seriousness and the public's desire for enforcement. Insofar as such factors influence prosecutorial decisions, it is desirable that all New Jersey prosecutors and their assistants be aware of the changes.

Many prosecutors reported that there is little or

no communication between prosecutors and correction agencies. Indeed, some said that they have no notion as to how or to what extent their actions affect other agencies within the system. It has been said, for example, that an assistant prosecutor who recommends a specific sentence is rarely informed as to how the correctional or parole system actually may treat that sentence. There is also little communication between prosecutors and law enforcement agencies, except perhaps in those counties with legal advisory units. The responsibility of legal advisory units is to assist police agencies in developing legally sufficient procedures and provide training in criminal law and procedure. The objective of these units is to reduce improperly filed complaints, insufficient or improper evidence that would result in case dismissal, overcharging and undercharging, with the net result of reducing the waste of police, prosecutor and court resources.

Prosecutors in New Jersey have indicated that the location of information is a serious handicap in the overall organization of their office. In some offices inactive files are mingled with active ones. One county claimed that there is not even a central location for the filing of information. Sometimes the problem is attributable to changes and transitions within the office. Other times the sheer bulk of information is too great to be ordered without automation. Automated or semi-automated filing systems have been mentioned by several county prosecutors as a desirable possibility. It is also imperative that the offices have adequate space, filing facilities and other necessary accoutrements of the position. Prosecutors must have adequate staffs which also include secretarial help.

> Clearly, the Legislature intended to give prosecutors dominant position and the primary responsibility for the enforcement of the criminal laws, not merely by conferring authority on him but by giving him the means of implementing.[10]

Case flow management provides the criminal justice system with a major challenge to be met if justice is to be served. Justice suffers if delayed. Practitioners in the criminal justice system recognize that expeditious and effective court scheduling is critical to the entire system. If the court calendars are congested the goals of a system of 'justice' can be thwarted.

In New Jersey court calendars are scheduled either by the assignment judge or by the court clerk. Other than "jail cases" first, few counties have a policy for priority case scheduling. There is a consensus among prosecutors that priority case scheduling is needed. Priority scheduling means that there is a ranking of importance given to crimes. A priority is assigned to specific categories of crimes and cases involving those crimes will be scheduled first.

A statement on priorities was released at the 1976 New Jersey Prosecutor's Convention. It was decided that primary consideration should be given to the detention, arrest and prosecution of certain crimes which were labeled "impact offenses." "Impact offenses" are those crimes which are considered the greatest intrusion upon individual freedom and include all serious crimes against the person and breaking and entering of a dwelling.[11]

One of the prosecutor's most important discretionary responsibilities is the decision whether to charge a suspect. Most agree that discretion is a necessary and even desirable aspect of the system. The "probable cause" criterion which applies to arrest, is of course weaker than the "beyond a reasonable doubt" criterion which applies to conviction. This factor alone would guarantee that many suspects come within the purview of the system who are not, in fact, prosecuted and this decision is made by the prosecutor. Aside from questions about the strength of the State's case, questions must be determined about the social costs and benefits of proceeding against various kinds of crime. It is not necessarily desirable to prosecute all varieties of violations with equal zeal.

Discretion, however necessary, is subject to abuse. Its dangers can be minimized by keeping the quality of the prosecutor's work as high as possible; reducing the incidence of conflict of interest as much as possible; establishing comprehensive written guidelines for the exercise of discretion; facilitating communication as to current practices both within and between prosecutorial offices in the various jurisdictions; and generating and actually using enough data about each potential defendant. The importance of adequate data for decision-making is obvious. Information should be collected for the special needs of certain categories of offenders such as juveniles and people with drug and alcohol-related problems.

Although most prosecutors are circumspect in their comments to the jury in the courtroom, lines of permissibility are sometimes crossed during the course of a trial. A prosecutor's job, not only to gain a conviction but to also seek justice, necessitates all concerned to be aware of the possible sanction of crossing the narrow lines of permissibility, specifically reversal upon repeal by a defendant. Whereas most prosecutors would not risk the reversal of a conviction with a flagrantly impermissible comment, remarks which are on the periphery are equally undesirable and may also jeopardize the "thoroughly deserved conviction."[12]

Defense

Defendants in felony trials or high misdemeanors as it is termed in New Jersey are constitutionally entitled to be represented by counsel and since the early 1960's,[13] if unable to retain private counsel they have a right to publicly provided attorneys.

Only recently, however, has the subject of inadequate representation been the focus of attention.[14] In order to evaluate representation it is necessary to be clear as to what constitutes "adequate" representation. That task is not an easy one:

> Few subjects in the administration of criminal justice are more in need of clarification than the role of the defense lawyer in a criminal case. Not only the public but also the legal profession itself—judges not excluded—at times manifest grave misconceptions and uncertainties as to the defense lawyer's function, the limits of proper conduct, and his relationship to the client. Perhaps most important, there is a lack of understanding of the reasons and rationale for certain standards of professional conduct and rules of decorum which have evolved over centuries to blunt the collisions between the advocates under the adversary system.[15]

Though both sides in our adversary system of justice are equally bound by rules of law and standards of professional ethics, it has been considered intrinsic to the system that only one side can appeal its defeats on grounds of error, unprofessional or improper conduct.

Double jeopardy has always been the definitive consideration in inhibiting appeals by the State in criminal cases.[16] A not guilty verdict does not so readily lend itself to judicial reversal. Prosecutors, however, are vulnerable to reversals and therefore it is to be expected that more rigorous, cautious and finely articulated rules of procedure and conduct would evolve in the sphere of prosecutorial activity. The role of defense counsel in criminal cases has been less sharply defined and in fact there is widespread misunderstanding of defense counsel's role.

The American Bar Association cites the news media as one source of confusion in regard to that role. Both editorial treatment and news stories, it says, reflect conceptual muddiness on the role and function of defense lawyers. Sometimes lawyers who have been performing their professional duties properly are sharply criticized and other lawyers have been spoken of in laudatory terms when their performance overstepped the bounds of tolerable conduct. Lawyers, in fact, are often guilty of recommending tactics or speaking approvingly of successes which only ". . . demean the entire legal profession."[17] This uncertainty over the precise role of a defending attorney persists even though the defense attorney is an absolutely vital figure in our adversary system of justice.

The job of providing counsel for defendants has continued to expand since the U.S. Supreme Court rulings of the 1950's.[18] Prior to *Argersinger v. Hamlin,* 457 U.S. 20 (1972), the right to appointed counsel was applicable only to indictable offenses which had comprised only about ten percent of the criminal court business. In 1972, the U.S. Supreme Court declared: "Absent a knowing and intelligent waiver, no person may be imprisoned for any offense . . . unless he was represented by counsel at trial."[19] In this landmark decision the right to appointed legal counsel was extended to anyone accused of any crime who might go to jail if convicted. The Court's action thereby "added a potential five million cases—a figure some five to fifteen times the existing level—to an already overburdened legal defense network."[20] The New Jersey Supreme Court further affirmed the right to assigned counsel when a defendant is charged with a nonindictable offense. The court ruled with respect to disorderly persons and motor vehicle offenses:

> . . . as a matter of simple justice, no indigent defendant should be subjected to a conviction entailing imprisonment in fact or other consequence of magnitude (including the substantial loss of driving privileges) without first having had due and fair opportunity to have counsel assigned without cost.[21]

Not only has the mandate been extended to include more types of offenses at more stages of the proceedings but opportunities for helping the defendant have proliferated so that the charge of representation has become incalculably more complex.

This ruling notwithstanding, numerous examples of injustice resulting from lack of representation continue to occur. New Jersey, it must be said, scarcely bears the burden of this dereliction alone. A recent article in The New York Times contended that the U.S. Supreme Court guarantee of counsel is often not met across the country.[22] New Jersey sources are understandably reticent when it comes to a discussion of this problem but the National Legal Aid and Defender Association cautions that:

> No inquiry into the justice of a society ought to end with an examination of its laws, as it is the process and procedures by which these laws are implemented which ultimately determine whether or not the society is just.[23]

One source said, cryptically, that the failure to provide representation is "a constant problem of indeterminate size." The remark was intended to convey the fact that although "the failure to implement the requirements of U.S. and state law is one of the most serious problems of our present system, few statistics are available to demonstrate the magnitude of this problem, as most are of low visibility in our system."[24]

While delay of representation is a grave matter, curtailment of rights seems to be even more flagrant where a minor offense is charged. There seems to be at best sporadic defense available in such cases and it tends to vary with the nature of the offense and the indigency of the defendant. Although New Jersey shares the onus of this failure with the rest of the nation it was one of the first states to give strong recognition to the criminal defendant's right to counsel:

> Our state was perhaps the first to direct by legis-

lation that where an indictment has been returned against a defendant who is indigent he shall be entitled to assigned counsel without cost.[25]

It is generally conceded that serious consequences may result from convictions which do not carry a penalty of imprisonment. The loss of one's driver's license, for instance, could be as calamitous as a brief stay in jail for some individuals. Also, many if not most, petty offenses present complex legal and factual issues that may not be fairly tried if not assisted by counsel.[26] However, "the volume of misdemeanor cases, far greater in number than felony prosecutions, may create an obsession for speedy dispositions, regardless of the fairness of the result."[27] A Legal Aid attorney in New York described the municipal proceedings as an "atmosphere of sheer havoc."[28] Elsewhere the misdemeanor trial is characterized by "insufficient and frequently irresponsible preparation on the part of the defense, the prosecution and the court. Everything is rush, rush."[29]

It is difficult to gauge the exact number of unrepresented defendants but:

> Within one northern New Jersey municipality... only two percent of contesting defendants were represented by counsel during the court year 1968-69. In a neighboring municipality attorneys reportedly appeared with 40% of the defendants. The same variance of two percent to 40% was found to exist in a southern shore county.[30]

Another source of information[31] shows that for the 1975-76 court year, 95,077 summonses and 80,132 warrants were filed. During the same time period, only 10,735 defendants charged with nonindictable offenses were represented by assigned counsel. No conclusion can be drawn from any of this data since multiple factors might be at work and additional information is necessary before a meaningful interpretation of the figures can be made, (for example, one would need to know the number of defendants who were adjudged indigent and how many defendants had their own attorney). Still, what data can be culled from the records raises questions. It seems highly unlikely that such a large discrepancy between total cases and the number of assigned counsel can be accounted for by privately retained counsel.

Approximately 40,000 new adult, juvenile and appellate matters were referred to the Office of the Public Defender in the Fiscal Year 1975. In a single county (Essex) 1,380 juveniles were referred and in the Fiscal Year 1976, child abuse cases alone accounted for 960 cases handled by the Office. It is estimated that the overall Office caseload will increase by some ten percent by 1977.[32] While "the movement to expand the availability of counsel is powerful and irreversible,"[33] recruitment of talented lawyers into criminal defense has lagged behind the demand. The reasons for that are multifarious but:

> ...a large obstacle to making criminal defense work more attractive as a career is the ambiguity of the defense lawyer's role, the uncertainty surrounding the standards of professional conduct applicable to its performance, and the public attitude toward lawyers who specialize in this field.[34]

This endeavor to assess some of the problems that beset defense attorneys and to develop standards which serve to guide and clarify the function is an attempt to lessen that uncertainty and ultimately improve the quality of performance.

The problems involved in making defense counsel available and ensuring the adequacy of that defense, are inextricable from problems of requisite funding. In the first place, the profession must be appealing enough to attract the talented students and practitioners in the field. Along with other possible rewards the defense attorney must be able to expect material remuneration at least comparable to what can be anticipated in other areas of legal specialization. Issues of quantity and quality of representation are tied to funding issues in another way: offices that are understaffed because of the lack of financial support are plagued with unwieldy caseloads. Excessive workloads inevitably result in some compromise of either quality or quantity or both.[35] It is often said that public defense should be of the same quality as private counsel. Implicit in that statement is the belief that the competition for clients in private practice tends to foster adequate or better levels of performance than publicly provided attorneys. Whether or not competition on the open market has such a beneficial effect is subject to debate. There does not appear to be evidence that public representation is always, or even generally, worse than private representation.[36] It is recognized however, that there is widespread suspicion that this is the case, and this suspicion is itself a major problem.[37]

Whether privately or publicly retained, counsel is bound to have many ties with the prosecuting office and the court. Far from this interrelationship being detrimental to the role of defense attorney, it is perhaps, essential for the benefit of the client that counsel maintain good relations with the bench and the opposition. Accused persons will pass in and out of the courts but the personnel of which it is composed remain and must carry on the cooperative enterprise.

> ...the accused's lawyer has far greater professional, economic, intellectual and other ties to the various elements in the court system than to his own client. [It must be remembered that:] ...the court system is, in very real terms a social system. The public defender 'lives' with prosecutors and judges. He deals with them week in and week out, talking with them about cases, bargaining, perhaps socializing. His relationship to prosecutors, judges, and other court personnel is permanent.'[38]

Moreover:

> ...the defender plays a role (wittingly or unwitting-

ly, willingly or not) in the life of the community, and has a relationship with the public at large. It is naive and unwise for a public defender office to ignore its relations with the private bar and the public, especially since most defender offices are heavily dependent upon state legislatures for fiscal support. Public relations programs should not be the sole possession of large corporations and police departments (as witness the effective propaganda of oil companies and police lobbying for vastly increased expenditures); defender offices should seek to enhance their credibility with the public at large.[39]

Such features of the defender's environment tend, nevertheless, to push him or her into the role of mediator at some cost or threat to the purity of the commitment to the client. It is not hard to understand how the appearance of fraternization would make the defendants uneasy, not to say cynical, toward the adversary process.

> It comes as no surprise to learn that legally indigent accused are suspicious and distrustful of appointed counsel generally, including public defenders... Many indigent accused at least in urban areas, are often brimming with hostility on initial contact.[40]

To maintain credibility it is important for defense counsel to recognize the continual involvement in a struggle against forces inherent in the practice of the profession.

Skepticism and distrust are most acute when the counsel is a public defender. At least in the case of privately retained counsel, the accused feels a choice has been made. It seems natural to suppose that detachment and lack of concern would be more likely to color the relationship where defense counsel is appointed by the court. When the defender is an employee of the state, in some cases it becomes even more difficult for the accused to believe that counsel is not working with other state employees. Put simply, defendants reason that "any two or more persons receiving money from a common source must have common interests."[41] Hence, it is felt that since prosecutor and defense attorney are co-employees, they cannot really fight with each other and in fact will work together.

Another ground for distrust is the belief among defendants that unlike a private attorney whose livelihood depends upon a reputation of many victories, the public defender 'gets his money' whether skillful or inept.[42] Furthermore, there persists the conviction, not altogether fanciful, that public defenders aspire to become prosecutors and, ultimately, judges. An accused may feel that the defender is at pains to collaborate with the prosecutor in the attempt to further his or her own career.[43]

So it is often against such diffuse currents of antipathy and distrust that the defense attorney undertakes a professional role. In addition to these adversities the American Bar Association states that the defense attorney will not often win if winning is defined in terms of an acquittal for the accused.[44] New Jersey figures for 1973-1974, however, indicate that in completed jury trials 41% of the indictments and accusations resulted in acquittals with 59% of the cases resulting in convictions.[45]

Gaining acquittal is not, of course, always possible; neither is it the only substantial help which defense counsel may provide for the client.

> The defense function in a criminal case is a much broader responsiblity than courtroom advocacy; the duties extend far beyond the courtroom in both time and place.[46]

Addressing the factual issues of the case counsel may find, for example, that on closer inspection the evidence does not support the crime charged. The defendant may have had a passive or secondary role in the crime or there may be other mitigating factors which would support a lesser charge or some other measure of relief for the accused. In some situations, it may be incumbent on defense counsel to enter into plea negotiations. Counsel may also be instrumental in maintaining the employment of the accused while awaiting trial and other services either directly or through pretrial intervention.

It has been alleged that counsel is sometimes appointed after the defendant has already spent some time in jail. Perhaps there are cases when the delay occurs because of the time it takes to establish indigency. If a defendant initially waives the right to counsel and then reverses that decision, there can be a delay in appointment of counsel. Whatever the cause, the phrase 'justice delayed is justice denied' is not merely a cliche; in a delay much is sacrificed in terms of adequate representation and obviously this is a serious problem for public defenders and their clients. The National Legal Aid and Defender Association Recommends:

> Effective representation for every eligible person should be available either when (a) the individual is arrested, (b) the person believes he is under suspicion of having committed or of participating in a crime, or (c) the person believes that a process will commence resulting in a loss of liberty or the imposition of a legal disability, whichever occurs earliest.[47]

The New Jersey Office of the Public Defender adds to that, "in any event upon request." The *Argersinger* decision does not require counsel's presence any earlier than necessary to represent effectively the defendant at trial. However, if basic rights of the accused are to be protected it is of critical importance to engage the defense at the earliest possible opportunity. A delay in appointing counsel of even one or two days could allow a number of procedural irregularities to occur which defense counsel might have obviated.[48] Furthermore, a brief delay is all it takes for certain crucial evidence to disappear.

> In many cases investigation can be effective only if it is begun very soon after the criminal event. Persons at the scene may then recall the presence of other persons and characteristics identifying them which might otherwise be forgotten. Locating witnesses

requires an immediate beginning, particularly in areas where the population is highly mobile. A defense attorney who enters the case early can make that beginning himself, or he can direct the police or investigating authorities toward exculpatory information.

...both defense and prosecution must have enough time before trial to make appropriate use of techniques for identifying weapons, fingerprints, or clothing or to obtain psychiatric evaluations of the defendant or a witness.[49]

Moreover, counsel means advice and sagacious advice requires a thorough understanding of the situation which cannot be gained without sufficient time to assess the facts. If counsel is appointed late in the case it is unlikely there will be the requisite time.

In New Jersey there have been claims where defendants have not been offered counsel or if offered did not understand it was their right. The most common case is where defendants waive their right to counsel because they do not fully comprehend the implications of the waiver. The problems that ensue may not appear to be defender-related though a trained eye could recognize the problems as ones that either would not have arisen or would have been alleviated by expert counsel.

The prevailing opinion of the courts today is that since the objective is to ensure a fair trial, the need for counsel cannot be determined by the seriousness of the crime. The assistance of counsel is the best protection the criminal justice system can offer against conviction of the innocent. Conviction of the innocent is as much to be avoided in Municipal Court as in the courts of general jurisdiction.

While the right to counsel is recognized as fundamental and the importance of counsel's early involvement is generally conceded, the importance of continuity of counsel remains to be stressed.

There are two general case processing systems available to defender offices, namely, stage representation and continuous representation. Stage (or horizontal or zone) representation involves a system whereby each attorney is assigned to one stage of the criminal process and represents only those defendants who pass through that stage on their way to final case disposition. In contrast, continuous (or vertical or one-to-one representation) provides a defendant with only one attorney from the commencement through the trial disposition and sentencing of the case. Many metropolitan public defender offices have adopted a system of stage representation for reasons of apparent processing efficiency and economic feasibility.[50]

It has been reported that in many, if not most cases, one attorney is assigned to represent the accused during the initial stages and then another counsel is assigned later in the case as in "stage representation."

Critics of stage representation contend that the repetition of effort causes inefficient case processing. That is, since each lawyer is contacting the case for the first time, he must re-interview the client. Moreover, often the trial attorney is ignorant of important aspects of the case, not having been present at the preliminary or probable cause hearing (particularly if the case file is slipshod or sparse); consequently, the attorney may have to start from scratch with both prosecution and defense witnesses and may be compelled to re-search aspects of the law. Furthermore, not only does the repetition of effort promote overall inefficiency, but the division of labor hinders effective representation, for it results in a lack of a unified strategy for individual cases.[51]

For example, two individual attorneys might not even communicate with each other. Even if both attorneys are in touch with each other, their respective methods of operating may be quite divergent so that it is difficult for the second attorney to pick up the strands of the initial representation and build his own case.

In addition, stage representation encourages a lack of accountability or responsibility on the part of attorneys for particular clients. Because the attorney has no continuing relationship with his client, he can rationalize his errors. Furthermore, the absence of complete responsibility for each case undermines zealous and dedicated representation necessary in an adversary system.

Finally, the horizontal practice is alienating to the lawyer and depersonalizing and disconcerting for the client. It results in an impersonal attitude on the part of the attorney and may result in a lack of the communication requisite for defense work. Moreover, defendants often feel that they have not received adequate representation from the public defender's office.[52]

The New Jersey Defense Attorneys Interviewed were skeptical of "stage or horizontal representation" for the above reasons. Local sources say that it is imperative that the same person who is called in as counsel at the first stages prepares the case, supervises investigation, does the trial work and remains all the way to the conclusion. Imperative, that is, if the representation is to be the most effective defense that can be achieved. The New Jersey system has been described as a mixture of stage and continuous representation.

Economic factors, statutory requirements and increased indigency have accelerated demands for Public Defender services in both adult and juvenile programs. With sufficient financial support and adequate resources the Office of the Public Defender maintains that there can be a more rational disposition of cases. When represented by the Office, the likelihood of a defendant receiving alternative treatment is increased. For instance, instead of being sent to jail or placed on ordinary probation, defendants may be channeled into a drug program, an alcoholic treatment program or other constructive treatment facilities. Adjudicated juveniles may be placed in drug and psychiatric treatment programs,

foster homes or residential group homes. Not only does such alternative treatment help to relieve the burden on overcrowded institutions, but it represents a substantial savings of public money. Many modern theorists contend that such intervention promises to break the cycle of recidivism.

There are continued efforts to stress Municipal Court disposition of cases whenever possible on the assumption that time and money are saved when indictable matters can be handled expeditiously at the Municipal Court level. Moreover, a defendant who may be incarcerated is spared the unconscionable delay that all too frequently results while awaiting trial in a County Court. As has been noted, Municipal Courts are already strained.

The Office of Inmate Advocacy operates under the auspices of the Public Defender's Office. The program is authorized by statute to represent the interests of inmates in such disputes and litigation as will, in the discretion of the Public Defender, best advance the interests of inmates as a class on issues of general application to them and may represent inmates with any principal department or other departments of State, county or local government. The Office gives inmates of State, county or municipal correctional and detention facilities a means of airing complaints and legally challenging adverse conditions of their confinement. It actively investigates prison and parole practices on a statewide basis and staff members meet regularly with administrators responsible for negotiating fair and equitable solutions to inmate problems. The Office also keeps a check on county facilities and has negotiated the peaceful resolution of three prison disturbances. In Fiscal Year 1976, 2,000 matters requiring assistance were referred to the Office of Inmate Advocacy. Because of budget constraints the Office was able to intervene in only 400 of the 2,000 cases. Though modern theorists on penal reform recognize the importance of acceptable channels for redress of frustrations and tensions, and parole revocation matters handled by the Office have been escalating steadily, the Office of Inmate Advocacy has been written out of the current budget due to lack of funds. Because of financial support from the State Law Enforcement Planning Agency, it is continuing to operate but its existence remains tenuous.

In the face of the extensive responsibilities with which the Public Defender's Office is charged, the need to augment present resources can hardly be disputed. The New Jersey Chief Justice wrote of the necessity of increased support in connection with the growing concern for speedy trials:

> ...present prosecutorial staffs of lawyers in almost every county outnumber legal Public Defenders by an average of two to one, in some counties this imbalance reaching the proportion of three to one or more . . . bearing in mind that the defense of the indigent is constitutionally and statutorily required, and that there can be no trial (speedy or otherwise) without defense...one must anticipate that a massive attack on this problem will necessarily involve additional financial support...It may be necessary to develop... a statutory provision with respect to personnel and expenses of the Public Defender on a county basis.[53]

New Jersey's Status in Comparison with the National Standards

Prosecution

New Jersey case law specifies that the prosecutor is "the chief law enforcement official" of the county, whose responsibility it is to detect, arrest and prosecute criminal offenses[54] and also "not merely to convict but to see that justice is done" (*State v. Orecchio,* 16 N.J. 125 (1954)) but beyond this, the various court rules and statutes follow NAC in leaving the responsiblities of the prosecutor largely undefined, to be pieced out by inference and the reader's prior knowledge of the New Jersey Law. (Court Rules 3:7-2, 2:3, 2:5, 3:13-3, 3:21, 3:4(2), 3:9(3)).

New Jersey Court Rule 1:14 includes a fairly full statement of what the prosecutor may not do, incorporating in toto the ABA Disciplinary Rules. County prosecutors in New Jersey are also subject to disciplinary censure of the ethics committee in their county (*R* 1:20) which includes rules of general application to official and professional conduct.

ABA Prosecution Standard 5.1 recommends that the court have control of the trial calendar. New Jersey practice has been to allow court scheduling to fall to the court clerk or the assignment judge.

Both ABA Prosecution Standard 2.3 and NAC Courts Standard 12.1 urge that all prosecutor's positions be full-time ones. Apart from caseload considerations, this is desirable in order to minimize conflict of interest. The commentary to NAC Courts Standard 12.1 explicitly acknowledges that New Jersey has been moving in the right direction. Sixteen of the counties in New Jersey have full-time prosecutors. Nevertheless, there remain five counties, Cumberland, Gloucester, Salem, Sussex and Warren, which do not. In order to meet the national goal, all counties should employ full-time prosecutors.

National Advisory Commission Courts Standard 12.1 stipulates that a person must have had at least four years practice of law before assuming the office of the prosecutor. *N.J.S.A.* 2A:158-1 exceeds that requirement stating that the "prosecutor must have been admitted to the practice of law in New Jersey for at least five years," whereas it requires an assistant prosecutor merely to have been admitted to the Bar.

NAC Courts Standard 12.5 mandates training courses for prosecutors prior to their taking office, in-house training programs for new assistant prosecutors in metropolitan prosecution offices and formal prosecutors training courses each year for both prosecutors and their assistants. ABA Prosecution Standard 2.6 reads:

> Training programs should be established within the prosecutor's office for new personnel and for continuing education of his staff. Continuing education programs for prosecutors should be substantially expanded and public funds should be provided to enable prosecutors to attend such programs.

While there are no standards for the education and training of either prosecutors or assistants which are comparable to ABA and NAC standards, the Prosecutor's Supervisory Section, Division of Criminal Justice, in New Jersey issued the following information on a recently developed training program for the training of prosecutors and their staff:

> All newly appointed Assistant Prosecutors and Deputy Attorneys General are enrolled in the Prosecutors Training Course which is given by the Prosecutors Supervisory Section pursuant to SLEPA funding. This course is a four-day intensive program that is conducted in residence at a public accommodation within the State of New Jersey. The course curriculum involves all of the areas of criminal law that each newly appointed Assistant Prosecutor or Deputy Attorney General must be familiar with. The lecturers include the most outstanding present and former Prosecutors and Assistant Prosecutors of New Jersey as well as members of the staff of the Division of Criminal Justice. Further the Prosecutors Supervisory Section offers an Advanced Prosecutors Training Course funded by SLEPA which is offered to experienced prosecuting attorneys in the areas of advanced trial tactics and problems. This course is an in-residence course given over a three-day period, and the most outstanding criminal prosecuting and defense attorneys throughout the Nation are invited to lecture at this particular course. Further, the Prosecutors Supervisory Secion offers various specialized course for the benefit of experienced Assistant Prosecutors and Deputy Attorneys General in the areas of Homicide Investigation (five days), Investigation of Criminal Financial Transactions—White Collar Crime and Official Corruption (ten days) and the Investigation of Child Abuse Cases (three days). Also, the Prosecutors Supervisory Section has conducted extremely worthwhile educational programs during the past two annual conventions of the County Prosecutors Association of New Jersey involving such important topics as the investigation of rape and other sex crimes, organized criminal activity, relationship with press, etc. Assistant Prosecutors attend various courses conducted by the New Jersey State Police Training Bureau at Sea Girt in such areas as organized crime, narcotics and sex crimes.

Recommendations on discretion from the 1976 Prosecutor's Convention[55] detail various considerations which legitimately bear on a decision whether to prosecute. They are in agreement with ABA. The latter differs primarily in making it explicit that the prosecution should be informed about and give consideration to whatever facilities and programs there are for noncriminal disposition and that the prosecutor should give no weight to the personal or political advantages or disadvantages which might be reaped from one decision or the other. More controversially, it specifies that the prosecutor should not take into consideration a tendency of juries not to convict persons accused of certain types of offenses.

The National Advisory Commission differs from ABA and *Serious Crime: A Criminal Justice Strategy* in ways which show its heavy utilitarian bias. It says that an accused should be

> screened out of the criminal justice system when the benefits to be derived from prosecution or diversion (sic) would be outweighed by the costs of such action. (NAC Courts Standard 1.1).

It does not face a crucial philosophical question for this approach, namely, whether some "benefit" is derived from the sheer fact that, say, someone who rapes or tortures for kicks is forced to suffer. Specifically, NAC Courts Standard 1.1 lists the following as factors to be weighed in a decision to prosecute: the impact of prosecution on the accused and his or her family, especially in terms of financial hardship or disruption of family; the possible effects of further proceedings on potential offenders other than the accused; the possible effects on the accused, for example, confirming him or her in a criminal career; and the "direct cost of prosecution, in terms of prosecutorial time, court time and other factors." None of these is mentioned by ABA or the New Jersey Prosecutor's Convention recommendation.

The American Bar Association Prosecution Standard 2.4 states that prosecutors should have the necessary "resources" for the effective operation of their office. NAC Courts Standard 12.6, however, specifies that:

> The prosecutor's office should have a file control system capable of locating any case file in not more than 30 minutes after demand, and a statistical system, either automated or manual, sufficient to permit the prosecutor to evaluate and monitor the performance of his office.

New Jersey falls short of this standard. Some prosecutors have indicated that they have serious difficulty in locating files. Several have expressed the conviction that automated or semi-automated filing systems would carry them a long way toward compliance with NAC standard.

Both ABA Prosecution Standard 2.5 and NAC Courts Standard 12.7 and 12.4 requires that each prosecutorial office produce a detailed manual of policies and office procedures for internal distribution. New Jersey requires no such manual and is thus not in compliance with the national standards. Presumably one such manual could be produced for the state, with provision for certain details to be decided upon county by county. Such a manual would help

"assure the maximum practicable uniformity" and "eliminate undesirable discrepancies in law enforcement policies" (NAC Courts Standard 12.4(2)).

NAC Courts Standard 12.9 stipulates that the prosecutor "should establish regular communications with correctional agencies for the purpose of determining the effect of his practices upon correctional programs." New Jersey falls short of the NAC standard in that many prosecutors have noted that they have little or no communication with corrections. Indeed, some have stated that they have no notion as to how or to what extent their actions react with those of other agencies. It has been claimed for example that an assistant prosecutor who recommends a given sentence is seldom informed as to how the parole system is likely to deal with an offender who is so sentenced.

NAC Courts Standard 4.11 addresses the question of priority case scheduling. The New Jersey prosecutors issued resolutions on priorities at the 1976 Prosecutor's Conference which recognize that the limitation of resources compel prosecutors to make choices and that such choices should reflect principles rather than whims. They urge that prosecutorial resources be devoted primarily (but not exclusively) to "impact crimes." Impact crimes are, roughly, those crimes which involve the most serious intrusions upon individual freedoms, including serious crimes against the person and breaking and entering of a dwelling. The statement also urges the review of criminal laws in New Jersey with the possibility of retaining only serious offenses within its purview.

Because the hiring and keeping of competent assistants is a major problem for the office of the prosecutor, tenure has been discussed as a possible solution. The NAC Courts Standard 12.2 Commentary says that "job security, such as that which would be provided by making the position of assistant prosecutor a civil service position or its equivalent, might facilitate the hiring of qualified young lawyers." However, the commentary goes on to state that the freedom of action in office management is necessary to assemble a qualified staff. The Commission concluded that the prosecutor must retain the authority to replace less than satisfactory assistants. Tenure is, nevertheless, a subject that New Jersey legislators may wish to consider.

Defense

The ABA and NAC have developed standards and goals for the effective implementation of defense services for the poor and indigent. ABA Defense Services Standard 1.1 and NAC Courts Standard 13.1 state that one objective of the Bar be that of ensuring the provision of competent counsel to all persons who need representation in criminal proceedings. The NAC, however, expands the responsibility of representation, upon request, beginning at the time the individual is either arrested or requested to participate in an investigation. Representation should continue during trial court proceedings and through the exhaustion of all avenues of relief from conviction. *N.J.S.A.* 2A:138A-9 provides for defense services through either the professional staff of the Public Defender's Office or pool attorneys selected from the private Bar.

N.J.S.A. 2A:158A-2 defines indigency as not having the present financial ability to secure competent legal representation and to provide all other necessary expenses of representation. Partial payment is required where a defendant has the means to meet some part of the costs of services (*N.J.S.A.* 2A:158A-14). A person claiming indigency is required to fill out the appropriate form prescribed by the Administrative Director of the Court. The public defender has the power to investigate the defendant's financial status and to determine indigency (*N.J.S.A.* 2A:158A-14).

N.J.S.A. 2A:158A-5 states that the Office of the Public Defender provide legal representation for any indigent formally charged with an indictable offense. The Public Defender's jurisdiction has been enlarged to provide legal representation for any person charged with a disorderly persons offense or a violation of any law, ordinance or regulation of a penal nature where there is a likelihood that the person so charged if convicted, will be subject to imprisonment or, in the opinion of the court, any other consequence of magnitude (*N.J.S.A.* 2A:158A-5.2). The Office has also been given the jurisdiction to provide legal representation for any person on parole from a State correctional institution or otherwise under parole supervision who is charged with violation of parole (*N.J.S.A.* 2A:158-5-1).

New Jersey requires referral to the Office of the Public Defender as early in the proceedings as possible and whenever practicable before arraignment. *N.J.S.A.* 2A:158A-4 requires provisional representation in the event that a final determination of indigency has not been made. Substantial cause must be shown if a lawyer requests to leave a case and withdrawal is only permitted by leave of the court (*State v. Lowry,* 49 N.J. 476 (1967)). Services of the Office of the Public Defender are to be rendered before County Courts of New Jersey, Juvenile and Domestic Relations Courts, the State Parole Board, institutional paroling authorities, Municipal Courts, Appellate Courts and appeals to Federal Courts (*N.J.S.A.* 2A:158A-5; Court Rule 3:22-6(a) and (b); Court Rule 3:27-1.2).

When a person is taken into custody or otherwise deprived of freedom, he should immediately be warned of his right to the assistance of a lawyer. This warning should be followed at the earliest opportunity by the formal offer of counsel preferably by a lawyer, but if that is not feasible, by a judge or

magistrate (ABA Defense Services Standard 5.1 and NAC Courts Standard 13.3). ABA spells out the fact that the offer should be made in words that are easily understood and stated expressly that one who is unable to pay for adequate representation is entitled to have it provided without cost (ABA Defense Services Standard 7.1).

Both standards state that if the defendant refuses the offer of counsel, it must be clear that he or she has the power to make this choice intelligently. If age, mental capacity, experience, the nature or complexity of the case, or any other factor seem to hamper the ability to decide to waive this right, counsel should still be provided (ABA Defense Services Standard 7.2, NAC Courts Standard 13.3). However, if a waiver is accepted it must be in writing and done after the accused has met with counsel at least once. The right to a lawyer must be repeatedly offered throughout all subsequent stages of proceedings at which the defendant appears without counsel (ABA Defense Services Standard 7.3).

Court Rule 3:4-2 requires that the defendant affirmatively and with understanding of the waiver of his or her right state the intention to proceed without counsel or the case is referred to the Office of the Public Defender. New Jersey does not require that an accused consult with a lawyer at least once and a lawyer is not provided for that purpose. The rule does not appear to require that the waiver be in writing. However, it is clear that once refused, counsel should be reoffered at all subsequent stages of the proceedings (*State v. Jenks,* 32 N.J. 109 (1960)).

ABA Defense Services Standard 1.2 recommends that counsel be provided in a systematic manner, according to a plan employing a defender or assigned counsel system or a combination thereof. The local jurisdiction should choose a method of providing counsel which is suited to its needs from the full range of systems (ABA Defense Services Standard 1.3). NAC Courts Standard 13.6 leaves the administration and organization of defender services open to either local, regional or statewide control. However, it does state that defender services should be organized and administered in a manner consistent with the needs of the local jurisdiction. The standard further suggests that financing of defender services be provided by the state. New Jersey differs from the ABA standard in that *N.J.S.A.* 2A:158A-1 et. seq. provides a state system for the defense of indigents. The New Jersey system is more consistent with NAC Court Standard 13.6 which requires only recognition of local needs within a unified system.

In adopting plans for the selection and supervision of assistant or deputy public defenders, the ABA and NAC wanted to ensure the integrity of the relationship between lawyer and client (See ABA Defense Services Standard 1.4 and NAC Courts Standard 13.8). Accordingly, they recommend the public defender be as independent as possible, free from political influence to the same extent as lawyers in private practice. Both studies recommend establishment of independent boards to select and supervise assistant and deputy public defenders.

N.J.S.A. 2A:158A-12 provides for the attorney-client privilege. *N.J.S.A.* 2A:15A-11 states that the duty of the lawyer is the same as if privately employed. The Public Defender is appointed by the Governor, with the advice and consent of the Senate, for a five year term (*N.J.S.A.* 2A:158-4). According to *N.J.S.A.* 2A:158A-3, control of the Office of the Public Defender or assigned counsel is not provided by a board of trustees but is within the Department of the Public Advocate, which has no control over the Office. Attorneys in the Office of the Public Defender are required to adhere to the standards and level of performance established by the New Jersey Supreme Court (*N.J.S.A.*2A:158A-13). Judicial supervision over the public defender and assigned counsel appears to be no greater than lawyers in private practice.

The ABA and NAC require supporting services for attorneys to provide adequate defense (See ABA Defense Services Sandard 1.5, NAC Courts Standard 13.14). Supporting services should include not only those services and facilities needed for an effective defense at trial but also those that are required for effective defense participation in every phase of the process, including investigation, determinations of pretrial release, competence to stand trial, appropriate social services and disposition following conviction. *N.J.S.A.* 2A:158A-5 recommends all necessary services and facilities of representation (including investigation and other preparation) be provided in all cases. According to *State v. Ryan,* 133 N.J. Super. 1 (Somerset County Ct., 1975), an indigent defendant is entitled to the services of an expert without cost when such services are necessary for an adequate defense.

ABA Defense Services Standard 2.1 and NAC Courts Standard 13.5 provide for a method of delivering defense services and distributing assignments to attorneys. The ABA recommends that except where there is need for immediate assignment for temporary representation, assignments should not be made to lawyers merely because they happen to be present in court at the time the assignment is made. A lawyer should never be assigned for reasons personal to the person making the assignments. If the volume of assignments is substantial, the plan should be administered by a competent staff able to advise and assist assigned counsel. The NAC provides for a full-time public defender system and a coordinated assigned counsel system involving substantial participation of the private Bar. The public defender office should have responsibility for compiling and maintaining a panel of attorneys from which a trial judge may appoint an attorney to a particular defendant. The trial court should have the right to add to the panel

of attorneys not placed on it by the public defender. In New Jersey the Public Defender divides the case workload of the Office between the professional staff and the trial pool or pools which are available to serve as counsel on a case basis as needed (*N.J.S.A.* 2A:158A-9; 2A:158A-7 (c-e)).

ABA Defense Services Standard 3.2 and NAC Courts Standard 13.7 agree that the Office of the Public Defender should be staffed with full-time personnel. NAC attempts to establish a salary relationship by providing the public defender with compensation at a rate not less than that of the presiding judge of the trial court of general jurisdiction. The ABA recommends a method of compensation for assigned counsel where such compensation would be determined by the court within specified statutory limits.

N.J.S.A. 2A:158A-4-6, provides for the salaries of the Public Defender, the deputies and assistant public defenders. The salary levels are established by the Public Defender (*N.J.S.A.* 2A:158A-6), pool attorneys are paid on a case basis and assigned counsel are compensated for their expenses (*N.J.S.A.* 2A:158A-7 (d)).

ABA Defense Services Standard 3.3 and NAC Courts Standard 13.13 suggest the Public Defender's Office should be located in a place convenient to the courts and within the neighborhood from which the clients originate. Furthermore, the public defender should be furnished with a library of sufficient size. In the interest of good community relations, the NAC states the public defender should be sensitive to all of the problems of his or her client community. In New Jersey the Office of the Public Defender is headquartered in Trenton and has 18 field offices, including an appellate section in East Orange. The headquarters section is composed of the Public Defender and two assistant public defenders who handle liaison work in the Northern and Southern Regions of the State and supervise the statewide juvenile program as well as the Appeals Section and a pilot Municipal Court program. The present complement of the Office is 166 trial attorneys, 33 appellate attorneys, 138 investigators and pools of private attorneys maintained to participate on a case basis as directed by statute. This practice of maintaining private attorneys ensures interest in the administration of criminal law and expert assistance where required and enables the Public Defender to avoid conflicts of interest where multiple defendants are involved. In accordance with the terms of the Public Defender Act,[56] a schedule of rates for pool attorneys has been established. The Public Defender formulates overall policy and directs the program's administration. The regional offices cover areas comparable to the jurisdictions of Superior Court assignment judges and are responsible for supervising caseloads, maintaining the volunteer attorney pools and supervising reports of cases received and their disposition to headquarters. Assistant Deputy Public Defenders are assigned to a region on the basis of caseload and the number of criminal court judges in each county. In addition to the aforementioned duties, the staff attorneys make court appearances at night, interview witnesses, visit defendants at the various institutions and render emergency assistance in court. The Appeals Section handles all matters of an appellate nature arising in the regional offices and also acts as a clearinghouse, furnishing data on new court decisions and new statutory regulations to all staff members.

Commentary

In developing standards for the prosecution and defense, the Advisory Committee attempted to reach a compromise position between too little and too much detail. A considerable body of case law has evolved to define the role of the prosecutor. This is much less true of the defense counsel's role, but both advocates are governed by the basic professional rules of ethics and propriety. On the one hand members felt it would be remiss to settle for a standard stating only that each advocate was bound by the ethical canons and rules of the profession. On the other hand, it is doubtful that an exhaustive list of prescriptive rules and recommendations to govern the activities of defense and prosecution would be either feasible or desirable.

The recommendations herein represent an attempt to reach a middle ground between the two extremes. In view of the influence and authority wielded by the prosecutor and the incontestable significance of the defense attorney, it was deemed worthwhile to spell out and, in some instances, even underscore legislative mandates, the requirements, responsibilities, duties and expectations of each position. As might be expected, those standards which embodied some departure from either national standards or local practice elicited the most energetic exchange of views.

Prosecution

"Prosecutor" in this report refers to all prosecuting authorities except Municipal Court prosecutors. The Committee concurred on the matter of salary parity between full-time judges and full-time prosecutors. In Standard 5.2 entitled "Assuring High Standards of Professional Skill" the prosecutor has at least as much authority and responsibility as a judge and that equality should be reflected in comparable qualifications as well as in salary.

A standard recommending the requirement of ten

years prior experience in the practice of law was the outcome of the Committee's discussion. Such a requirement exceeds *N.J.S.A.* 2A:158-1, which requires five years prior experience. While there was some discussion of the pros and cons of such a requirement, the Committee ultimately decided that the advantage, other things being equal, of the added maturity and experience encouraged by such a requirement outweighed possible disadvantages.

The area of concern which generated the most intense discussion had to do with the prosecutor's investigative role. More specifically the debate centered on whether or not the prosecutor should have the power to subpoena witnesses. There were strong sentiments in favor of wording the standard so that it stated that the power to issue subpoenas would remain with the court but the prosecutor could apply to the court in much the same manner as for search warrants. Bringing someone in for questioning, independent of the grand jury, is a serious matter and subject to abuse. To subpoena someone to appear for questioning is a seizure and as such presents Fourth Amendment problems. Whereas subpoena power without the intervening application would be more efficient, those opposing this standard held that inefficiency was to be preferred over the possible risk to people's rights. Just as a judicial decision is needed to issue a subpoena to search someone's house in derogation of the Fourth Amendment, the argument continued, so a similar check should be obtained before anyone can be ordered to appear for questioning. Opposing that suggestion was the claim that such a procedure would be prohibitively inefficient, especially in a large county prosecutor's office. Arguing in favor of giving the prosecutor the power of an in-house subpoena, independent of the grand jury, were those who claimed that anything short of that inhibited the investigative process. Since the prosecutor is expressly charged by statute with the responsibility for detection, investigation, as well as arrest and conviction of criminals, that duty should not be thwarted. It was concluded that if the standard limiting the function of the grand jury is enacted, then many of the powers and obligations of the grand jury would fall to the prosecutor's office, in which case it would be imperative that the prosecutor have subpoena power.

The subject of the prosecutor's role in sentencing inspired spirited exchange. The American Bar Association gave weighty reasons for not permitting the prosecutor to make recommendations concerning sentencing. In brief, the ABA argues that in highly publicized cases where the prosecutor's position is made known, the judge might be put in a difficult position. A great deal of political pressure might be brought to bear on the judge whereby he would feel a need to justify his stand to the public. Some felt that though the prosecutor might not take a position in every case, a recommendation from the prosecutor should certainly not be precluded. It was generally agreed that the judge would hear the prosecutor's statement as to the gravity of the situation. The Committee also decided the standard should express that the prosecutor is invited to report the State's position and comment in general terms on the facts that support such a position, but that he would not ordinarily make recommendations.

A county prosecutor "within the orbit of his discretion inevitably has various choices of action and even of inaction" (*State v. Winne,* 12 N.J. 1953, 175). This broad prosecutorial discretion is fundamental to the office and "no rigid code of conduct is possible" or desirable. However, in keeping with the Committee's desire to structure and make more uniform other discretionary decisions, members agreed the decision to charge might be facilitated by the use of guidelines. To that purpose the Committee accepts the guidelines issued by the County Prosecutors Organization:

> A prosecutor may in some circumstances and for good cause consistent with the public interest decline to prosecute notwithstanding that evidence may exist which would support a conviction. A prosecutor may decline to prosecute an offense if, having regard to the nature of the conduct charged and the attendant circumstances he finds that the defendant's conduct:
>
> a. Was within customary license or tolerance, neither expressly negated by the person whose interest was infringed nor inconsistent with the purpose of the law defining the offense;
> b. Did not actually cause or threaten the harm or evil sought to be prevented by the law defining the offense or did so only to an extent too trivial to warrant the condemnation of conviction; or
> c. Presents such other extenuations that it cannot reasonably be regarded as envisaged by the Legislature in forbidding the offense.
>
> Among the factors which a prosecutor may properly consider in exercising his discretion are:
>
> a. The prosecutor's reasonable doubt that the accused is in fact guilty;
> b. The extent of harm caused by the offense;
> c. The disproportion of the authorized punishment in relation to the particular offense or the offender;
> d. Possible improper motives of a complainant;
> e. The prolonged nonenforcement of a statute, with community acquiescence;
> f. The reluctance of the victim to testify;
> g. Cooperation of the accused in the apprehension or conviction of others;
> h. Availability and likelihood of prosecution by another jurisdiction.

New Jersey has a history of commendable concern for prosecutorial quality and performance. It was in this tradition that the Committee adopted the remaining standards which are geared to fostering the highest level of professionalism.

Defense

Standards addressed to matters of propriety and ethical considerations apply to both private and public counsel. In the development of defense standards the Advisory Committee took its lead from the National Advisory Commission and focused on defense services which are publicly financed since public representation is a significant part of all defense services. Most importantly perhaps, is the fact that considerations of finance and resources for public defense so fundamentally affect the fairness of the entire system. If public defenders are underpaid, and their offices understaffed and inadequately equipped, then discriminatory justice inevitably results. In short, the rich then can afford a quality of justice not available to the poor.

Whereas the Committee recognized the difficulties in quantifying workloads for public defenders, the attempt ought to be made to set caseload limits. The National Advisory Commission recommends the following:

> The caseload of a public defender office should not exceed the following: felonies per attorney per year: not more than 150; misdemeanors (excluding traffic) per attorney per year: not more than 400; juvenile court cases per attorney per year: not more than 200; Mental Health Act cases per attorney per year: not more than 200; and appeals per attorney per year: not more than 25.

New Jersey public defenders currently handle approximately 190 high misdemeanor cases per year. Clearly the noblest ideals of justice will be wanting if representation bears the stress of excessive workloads. The need to augment present resources and staff is apparent. Along these lines, members urged that staff be adequate to reduce individual caseloads to something approximating the NAC recommendation.

Although there was ready agreement among Committee members that salaries for public defenders must be sufficient to attract competent and talented lawyers, it could not be decided upon an exact figure which would suffice. After considering various possible analogues to the defender service it was decided to recommend that salaries for public defenders and staff should be commensurate with the responsibilities of the office and comparable to the remuneration received by those in private practice.

The education and training of public defenders was thought to be of vital importance. In order to ensure that public defenders and their assistants evidence the highest professional competence it was proposed that attendance be mandatory for all newly appointed defenders and assistants. Training programs for other new personnel and for the continuing education of the staff was also suggested. The subject of legal referrals elicited a lengthy discussion because it has come to light that arrangements with lay intermediaries have sometimes been made. The American Bar Association specifically considered the undesirable consequences of such arrangements and the Committee agreed with the statement that the: "payment of compensation by a lawyer to another for referring a case violates the canons. . . and where any commission is paid to a law enforcement officer for the referral of cases or other benefits. . . there is the highly undesirable temptation to the officer to make arrests or have his evaluation of probable cause influenced by his desire to obtain compensation from the lawyer to whom the case is referred."

As to recommendations regarding relations with the client, several questions surfaced. If there is a disagreement between the lawyer and his client, what is to be done? Members felt that it is important to state an affirmative duty to comply with all reasonable requests of the client. That raises the question however, of who decides in doubtful cases whether or not a request is in fact reasonable. The statement that a defense attorney should consent to all reasonable requests of the client was written into the standard. The Committee agreed, however, that prior to the question of who decides "reasonableness" it is of the utmost importance to have a complete record of any disputes for the arbitration of such disputes.

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[42]Ibid.

[43]Ibid.

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[49]Ibid.

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[51]Ibid.

[52]Ibid.

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[54]*State v. Winne*, 12 N.J., 152, 96 A. 2d 63 (1953).

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COURT ORGANIZATION

Introduction

A key to efficient administration of justice is the manner in which the court system is organized. The organizational structure, methods of financing and personnel are interrelated factors affecting the quality of justice in the courts and a change or problem with one of these has an effect on the others.

The New Jersey court system is organized into four levels. At the top is the Supreme Court which serves primarily as the State's highest Appellate Court. At the second level is the State Superior Court which functions both as an intermediate court of appeals and a trial court. County trial courts make up the third level and include County Courts, County District Courts and Juvenile and Domestic Relations Courts. Municipal trial courts and Surrogate's Courts for administering probate compose the fourth tier of the court system. The manner in which these courts are organized has resulted in overlapping legal jurisdictions and fragmentation of administrative control and financial responsibility.

Overlapping jurisdiction occurs because courts at the State, county and municipal level have jurisdiction, in many areas, over the same cases. The authority of the Chief Justice to administer the judicial system is limited by his control over court financing. Responsibility for court financing is divided among State, county and municipal governments. The Chief Justice has direct financial control over only part of the Superior and County Court costs while the counties must assume the balance. Municipalities pay all of the municipal court expenses. Financing at the county and municipal levels has resulted in variations in the quality and quantity of court personnel and thus the productivity of the courts.

The prevailing trend in court administration philosophy is that the above problems can be eliminated by creating a fully unified State funded court system.* The result would be a three tiered court system with a Supreme Court, Superior Appellate Court and a Superior Trial Court, with all court costs assumed by the State.

Problem Assessment

Although this report is primarily concerned with problems of the criminal courts, it should be noted that the discussion is also applicable to civil courts. Often the inability of the courts to process civil cases expeditiously and effectively results in individuals bypassing the judicial system to correct their problems. Thus civil problems may become criminal problems.

The structure of the court system in New Jersey results in several courts having concurrent or overlapping jurisdictions over the same types of legal matters. The Superior Court Law Division and County Courts have concurrent criminal jurisdictions while their jurisdictions in several civil law areas are dissimilar. There is a waste of court, attorney and litigant time when the determination of which court has jurisdiction over a particular case results in filings in two or more courts. The difference in jurisdiction, which is based in the constitution and statutes, adds to the complexity of court rules and record keeping. Added complexity and duplication increase public and private costs of litigation when attorneys and judges must review more statutes and court rules than are necessary. The work of the court clerks is made more complicated since they must keep separate files, dockets and indices for Superior and County Courts.

The Superior Court Law Division and County Courts also have concurrent jurisdiction with Municipal Courts in the adjudication of non-indictable offenses and in initial proceedings of indictable offenses. The latter include issuance of warrants and summons, first appearances and probable cause hearings.[1]

During the 1973-1974 court calendar year, 52,206 indictable complaints were referred by Municipal Courts to the county prosecutor for further action. Other complaints totaling 12,942 were referred by Municipal Courts to Juvenile and Domestic Relations Courts during that court year.[2] The referral of a case from one court to another with the resulting duplication of filing, grand jury proceedings and initial court appearances of defendants adds to the cost of criminal processing. There is some question as to whether Municipal Courts have adequate staff and resources to handle the initial phases of processing indictable offenses.

Recognition of inadequacies of minor courts led

* Except for Surrogate's Courts.

References for this chapter appear on page 126.

to the right to appeal through trials de novo* in higher courts of original jurisdiction.[3] Appeals from Municipal Courts in New Jersey result in either a trial de novo or a trial de novo with the record of the municipal proceeding in County Courts. During the 1973-1974 court year, the County Courts disposed of 3,331 appeals from Municipal Courts involving criminal and quasi-criminal cases.[4]

Trials de novo have three major negative impacts on the court system: two trials for the same offense wastes court resources; the increased County Court caseload adds to backlog and delay in processing cases; and improvement in the quality of justice in Municipal Court is prevented. The NAC states that the trial de novo system

> . . . precludes effective review and monitoring of the work and decisions of the lower courts by appellate tribunals, and enables judges of the lower courts, unlike their general jurisdiction judicial counterparts, to operate with improper procedures and under erroneous assumptions of the substantive law. A recent comprehensive study of the lower courts in the Boston area pinpointed the trial de novo as possibly the most damaging influence on justice in the courts of limited criminal jurisdiction.[5]

A further waste of resources occurs when trial de novo decisions are appealed from County Court to the Superior Court Appellate Division.

The jurisdiction of the courts over family matters is fragmented between the Juvenile and Domestic Relations Courts, the Matrimonial part of the Superior Court Chancery Division, County Courts and Municipal Courts. Fragmentation results when each court decides only a limited part of a legal issue which affects a family without recognizing the interdependence of matters such as support, custody, divorce, visitation and welfare of children with disposition of juveniles adjudicated delinquent or in need of supervision.

A waste of resources, confusion and lack of coordination are some of the major effects of this duplication. Each court maintains its own records, files, staffs and actions. Records in one court relating to one aspect of a family which may have a bearing on an action in another court may not be transferred, thus limiting effective decision-making.[6]

Resources are also wasted by trial de novo appeals from Juvenile and Domestic Relations Courts to the Superior Court Chancery Division. As in trial de novo appeals from Municipal Courts, effective review and monitoring of decisions and procedures in Juvenile and Domestic Relations Courts is prevented. A Judge of the Superior Court of New Jersey recently stated that:

> The court system encourages an unusual type of forum shopping. It is possible now, under our present system, for a litigant to first make a trial run for support, custody or visitation in the Domestic Relations Court and if dissatisfied, start a Superior Court action and in many cases if not most, get a completely independent, de novo hearing on the theory that the domestic relations order is not binding nor res adjudicata nor even evidential in the Superior Court action.
>
> There is little uniformity on this question in this State. Some matrimonial judges reportedly consider it inappropriate to review domestic relations support orders, at least on a pendente lite basis. Many others will provide a de novo hearing regardless of a prior domestic relations order. Very often there may be a domestic relations proceeding in one county and a matrimonial proceeding in another, both of which persist independently of each other. It should come as no surprise that on too many occasions there are two support orders in effect at the same time.[7]

As a result of the fragmentation of jurisdiction over family problems, no one court considers and resolves family problems as a whole. The court system, therefore, may ignore the interrelationship of juvenile delinquency, child abuse, the broken home, the troubled family, financial problems of the family, need for supervision of the juvenile, more than one child exhibiting antisocial behavior in a family and other factors.[8] In its 1972 report the New Jersey Family Court Study Commission found the following argument by a New York University professor of law most persuasive:

> During the last thirty years there has been increasing recognition that courts have the opportunity, if not the duty, to render affirmative and constructive assistance to families in difficulty. Recent advances in the behavioral and social sciences have made it obvious that law will be inefficacious, or even destructive, if the courts ignore the consequences of their decisions and neglect the social, economic and human aspects of complex problems. Moreover, concern has been increasing about the social and economic cost of family breakdown and its traumatic impact upon members of the family and the community. Broken homes spawn juvenile delinquency. They also affect mental and physical health producing tensions and neuroses that are reflected in school, industry and business.
>
> ...The ideal family court, which has not as yet been established in this country, would have comprehensive and integrated jurisdiction over all or most family problems, employ a professional staff of psychiatrists, psychologists, case workers, marriage counselors and probation officers, and be committed to the philosophy that its function was to act in the best interests of the family and society. Delinquency, marital difficulties, support problems, and the like, are interrelated and may be facets of a larger family problem. The family court, therefore, should be sociologically oriented, where possible nonpunitive, and should attempt to focus on the overall family problem. Unfortunately, the establishment of an ideal family court, or sometimes any form of a family

* Trial de novo is translated as "appeal by new trial."

court, has been stymied by the conservatism of the bar or by courts that refuse to relinquish certain areas of their jurisdiction to a family court.[9]

Case scheduling conflicts is another problem which has resulted from the overlapping jurisdictions of the Superior, County, Juvenile and Domestic Relations, County District and Municipal Courts. The existence of separate and uncoordinated filing, docketing and scheduling systems in these courts frequently results in an attorney being scheduled to appear in two different courts at the same time. Unless the attorney is required to notify the courts of the conflict significantly in advance of the appearance, a last minute continuance of the case to a future date will be requested. Numerous reappearances precipitated by continuances result in a

Table 1

Summary of Expenditures for the New Jersey Courts
State, County and Municipal
1973*

EXPENDITURES BY THE STATE	SALARIES	OTHER EXPENSES	TOTAL
Court Operations			
Supreme Court	$ 742,256	$ 161,256	$ 903,512
Superior Court	6,839,306	476,930	7,316,236
TOTAL	$ 7,581,562	$ 638,186	$ 8,219,748
Court Support Services	2,969,036	944,619	3,913,655
Court Administration	772,569	145,495	918,064
TOTAL	$11,323,167	$1,728,300	$13,051,467
State Aid to Counties			
County Court Judges Salaries (40%)	$ 1,309,372	$ —	$ 1,309,372
Per Diem: Assignment of Judges to Superior Court Outside their Counties	13,669	—	13,669
Expenses in Connection with the Disposition of Cases Transferred from Other Counties (50%)		10,050	10,050
TOTAL	$12,646,208	$1,738,350	$14,384,558
EXPENDITURES BY THE COUNTIES			
County Courts and Law Division Superior Court	$18,619,963	$1,742,003	$20,361,966
District Courts	4,608,674	241,504	4,850,178
Juvenile and Dom. Rel. Courts	2,079,998	304,705	2,384,703
Other Related Units:			
Jury Commissioners	560,375	2,719,480	3,279,855
Surrogate	2,160,463	208,603	2,369,066
Probation Departments	13,892,794	1,180,652	15,073,446
Law Library	108,558	204,712	313,270
TOTAL	$42,030,825	$6,601,659	$48,632,484
Less:			
State Aid to the Counties	1,323,041	10,050	1,333,091
NET	$40,707,784	$6,591,609	$47,299,393
EXPENDITURES BY THE MUNICIPALITIES	9,265,386	1,453,207	10,718,593
GRAND TOTAL	$62,619,378	$9,783,166	$72,402,544
GRAND TOTAL IN PRIOR YEAR	$53,598,787	$8,559,994	$62,158,781

Sources: Fiscal Tables B, D, E, F, and G; and Administrative Office of the Courts, *Annual Report of the Administrative Director of the Courts, 1973-1974*, p. 225.

* State Data is for the Fiscal Year Ended June 30, 1974. County and Municipal Data is for the Calendar Year 1973.

waste of witness, litigant, court, prosecution and defense attorney time and resources.

Another problem which results from the present structure of the courts is the lack of specialization of judges. Currently judges in many courts are not able to concentrate their work in areas of law where they are best suited by interest and experience. Several sources indicate that the court system should be structured in a manner that would increase specialization in order to provide greater efficiency and quality of justice.[11] Specialization should be tempered with periodic rotation to other areas to avoid "judcial tunnel vision."

Fragmentation in the New Jersey court system is not only characterized by overlapping jurisdictions but also the methods of financing the courts. Courts have several sources of revenue including the State, counties and municipalities, commissions, fines and fees. The multiple sources of revenue present tremendous problems for each court in the areas of long and short term planning, relations with State and local governments and community-court relations.

The cost of operating the courts during 1973 was approximately $72,158,781—an increase of more than ten million dollars from the preceeding year. Most of the cost of the judicial system is paid by local government. The courts therefore, must compete for the revenues of an already overburdened property tax system. See Table 1 for a breakdown of expenditures of the courts.

As can be seen in the following table, the cost of operating the various courts is distributed among the State, county and municipal governments in a complicated manner.

The proponents of total State funding of courts cite the following problems as reasons for eliminating this fragmentation of funding.

Table 2

State, County and Municipal Expenditures for Courts

State	County	Municipal
1. Salary and fringe benefits for justices of the Supreme Court, the judges of the Superior Court and 40% of the salaries for the County Court judges.	1. Sixty percent of the salary for County Court judges as well as the salary and fringe benefits for judges of the Juvenile and Domestic Relations Courts.	1. Salaries and fringe benefits for Municipal Court judges.
2. Salary and fringe benefits for secretaries and law secretaries of the Supreme Court and judges of the Appellate Division and Chancery Division of the Superior Court.	2. Salary and fringe benefits for the secretaries and law secretaries of the Law Division of the Superior Court, County Court, County District Court and Juvenile and Domestic Relations Court.	2. Salaries for secretaries of Municipal Courts.
3. Salary and fringe benefits for employees of the Administrative Office of the Courts and Trial Court Administrators for the County Courts.	3. Salary and fringe benefits of Assistant Trial Court administrators for the County Courts and all other employees of the county judiciary, as well as employees of the agencies doing court related business, such as Surrogate, the County Clerk, the Probation Dept., the Jury Commission and law libraries.	3. Salary and fringe benefits of non-judicial support personnel in the Municipal Courts.
4. Provides and maintains the equipment and facilities for the Administrative Office of the Courts, the Supreme Court and the Appellate Division and Chancery Division of the Superior Court.	4. Provides and maintains the facilities and equipment for the Law Division of the Superior Court and other county level courts. 5. Counties are reimbursed partially when a judge is transferred from one county to another.	4. Provides and maintains the facilities and equipment for the Municipal Courts.

1. Incomplete budgeting of the courts makes it impossible to budget and plan on a system-wide basis, hinders allocation of resources on the basis of need and obstructs establishment of uniform statewide standards for judicial services and record keeping.
2. Fragmented financing results in fragmented personnel systems which make it impossible to establish statewide uniform standards for personnel and shift nonjudicial personnel and Municipal Court judges on a temporary basis when workloads requires.
3. Incomplete financing impedes economies of scale such as central purchasing of supplies and equipment and record keeping.[12]

The Administrative Office of the Courts supports these points when it states that:

> Financing by local government leads to fragmented and disparate levels of financial support, particularly for auxiliary court services; to direct involvement of the Judiciary in local politics; to rigidity and very often parsimony in provision of needed resources; and to divided and ineffective efforts to make use of the increasing level of financial grants to state government that are being provided by the federal government. Dispersion of financial responsibility and financial management tends also to disperse responsibility for administration and policy, so that the court system cannot be operated according to uniform procedures and standards even when this is attempted through administrative policy and supervision.[13]

An assessment of court expenditures by municipalities and counties on support personnel and facilities compared with workloads reveals a broad disparity in productivity, facilities and quality of personnel. Such disparities have a direct impact on the quality of justice and efficiency of the court.

In a recent study of four representative New Jersey judicial vicinages (Middlesex, Morris, Passaic and Union) substantial variations were found in productivity (cases disposed of per court employee), especially during periods of rapidly increasing caseloads. Table 3 shows a comparison between the number of personnel and productivity in Superior, County, District and Juvenile and Domestic Relations Courts in these counties. It was concluded that the disparities in court productivity resulted directly from disparities in personnel "job structure, position definitions, salaries and other aspects of personnel organization and administration."[15] Salaries for positions in one county doubled that of corresponding positions in another county.

In some counties the court has more direct control over nonjudicial personnel than in other counties. Positions are likewise more clearly defined in some counties than in others with some court personnel performing noncourt related duties such as naturalization, issuing pistol permits, supervision of elections and processing passports.[16]

The level of financial support and thus the quality of personnel and facilities in each county is related to

Table 3

Ratio of Cases Disposed of to Number of Employees in the Courts of Four New Jersey Counties

	Middlesex		Passaic		Union		Morris	
	Ratio	Weighted Ratio*	Ratio	Weighted Ratio*	Ratio	Weighted Ratio*	Ratio	Weighted Ratio*
1. Superior and County Court (Civil, Criminal, Equity, Matrimonial) (Cases per Person)	51.50	99.28	47.20	96.16	41.58	77.16	47.77	86.09
2. District Court (Cases per Person)	422.50	38.02	552.26	49.70	288.06	25.92	478.05	43.02
3. Juvenile and Domestic Relations Court (Cases per Person)	245.57	76.12	209.37	64.90	88.21	27.34	81.14	25.15
4. All Courts and Personnel (Cases per Person, including Trial Court Administrator's Office)	119.09	74.36	151.46	72.45	99.63	50.15	103.90	61.83

Source: Administrative Office of the Courts, "Development and System Design for Unified and State Financed Judicial System," State Law Enforcement Planning Agency Grant application.

* The weight is computed for each type of case by dividing the number of hours on bench and in settlement conferences by the total number of cases disposed of. The result is the average number of hours for the disposition of each type of case. Weights were computed on the basis of hours and dispositions during the court year ending August 31, 1973 and are as follows: Comb. Civil 1.91, Criminal 2.93, District 0.09, Juvenile & Domestic Relations 0.31, General Equity 3.12, Matrimonial 0.93.

the priorities of the governing bodies of each county and their interest in effective and efficient courts. An administration source recently stated that freeholders in some counties just do not want to hear about new courtrooms or new facilities.[17] Others state that some counties are refraining from court house construction anticipating that if the court system is fully unified the State will assume the cost.

Disparities in personnel and facilities also exist between the 524 Municipal Courts of New Jersey. Disparities, however, are of a greater significance in Municipal Courts than in the county level courts because the Supreme Court has less supervisory control over Municipal Courts in enforcing uniform standards.

Municipal judge salaries range from $500 to $25,000 per year. Table 4 shows significant salary disparities between municipalities.

Table 4

Number of Municipalities Providing Certain Ranges of Municipal Judge Salaries

Municipal Judge Salary	Number of Municipalities
$2,000 and less	82
$2,001 to $4,000	137
$4,001 to $6,000	108
$6,001 to $8,000	60
$8,001 to $10,000	40
$10,001 to $25,000	50

Source: *New Jersey Municipal Salary Report,* New Jersey State League of Municipalities, Trenton, New Jersey, October, 1975, pp. 4-37.

The part-time nature of many Municipal Courts may cause potential conflicts of interest either when judges hear cases concerning one of their clients or when the heavy demands from private practice divert their full attention from the demands of the court.[18]

Salaries of court clerks show similar disparities and hours worked ranged from three to 72 hours per week. Low pay scales result in high staff turnover which interrupts continuity of court activities. The lack of training and experience of short-term personnel is a related and persistent problem.[19]

> Example of administrative confusion in the Municipal Courts are apparent practically everywhere. They often stem from inadequate staffing or poor training; in some instances, the results of neglect of courts has startling effects.[20]

While court employees in over 250 municipalities are selected under a merit system administered by the Department of Civil Service, most municipalities are not under the Civil Service jurisdiction.[21] Favoritism, political patronage and the ability to get along with people have been mentioned as key criteria for selecting and promoting court employees. Efforts to improve personnel standards and administration of the Municipal Courts have been resisted by many local governments. The conclusion of one report on Muncipal Courts was that:

> Notwithstanding their desire to retain local control, many municipal governing bodies appear, on the basis of our observations, to be unwilling to provide the necessary support contemplated by statute.[22]

The report went on to state that an often heard complaint of Municipal Court judges and clerical personnel was that "we provide so much revenue for the city yet we never have enough staff. . .or equipment. . .or supplies."[23]

The facilities used by Municipal Courts range from modern to antiquated. Some records are well organized while others are so disorganized that often they are lost. Some courts have adequate space for parties in a case and court personnel and others do not.[24] In a recent survey of Municipl Court judges, 27% (55) of the 201 judges responding indicated that the facilities, equipment and personnel of the court were inadequate or in need of improvement.[25]

The appearance of prosecutors and defense attorneys in Municipal Courts also varies from court to court. Only a small percentage of courts have the services of a prosecutor appointed by the municipality. In over 200 courts no municipal prosecutor is present or a routine basis.[26]

Large disparities in time required to process cases in Municipal Courts throughout the State were found to be directly related to the absence of a prosecutor. Those courts which devoted more time to processing certain cases did so not out of

> scrupulous attention to the rights of the individual nor a concern that all relevant facts be cited...but...by inefficient procedures and postponements or an apparent unfamiliarity with trial techniques. The most common contribution to wasted court time was the absence of a prosecutor who would have sharpened the testimony offered.[27]

Even when prosecutors are assigned to Municipal Courts their services are generally part-time and unsupervised. As stated in another report on Municipal Courts:

> Apart from certain ethical conflict of interest problems, there is no direct control by the courts. . .attorney general...nor the county prosecutors over municipal prosecutors.[28]

The percentage of defendants represented by counsel in Municipal Courts in 1971 varied from two percent in some municipalities to 40% in others.[29] The quality of defense for each defendant varies depending on the resources that counsel can bring to bear on the case and the experience of counsel. The minor nature of many cases brought before the Municipal Court and the lack of significant financial rewards for participation in these cases does not make it economically feasible for defense attorneys to allocate significant resources to such cases.

Many of the problems with disparities of produc-

tivity, personnel and financial support of the courts are directly related to the concept of economies of scale. Often larger courts show economies of scale; as a court grows in size, adds personnel with specialized skills, and is able to utilize sophisticated technologies it is able to handle workload increases proportionally greater than the increased cost of running the larger court. Thus either the per unit cost of processing cases drops or increased efficiencies realized through economies of scale can be applied to provide a higher quality of justice.

When the concept of economies of scale is applied to courts in New Jersey the waste of resources and inefficiency is immediately apparent. This waste is most noticeable in the 524 Municipal Courts. Each court has its own record keeping system, equipment, facilities, judges, clerks and deputy clerks. Much of the equipment, facilities and personnel are not used full-time. One of the strongest criticisms of Municipal Courts is found in a 1974 Presentment of the Morris County Grand Jury:

> At the outset of this Presentment we made mention of the municipal court system in New Jersey, and especially the fact that practically every town, no matter how small, has its own court and its own judge, who, except in our larger cities, is part-time and also attends to his private law practice. Whatever reason there may have been to establish such a system has long passed. In our mobile society and with the sanctity of municipal lines fading, we believe that the time is appropriate for our legislature to alter the system and consolidate the courts by creating district courts of criminal jurisdiction. We believe that it defies reason and economy for a county such as ours, which is largely suburban or rural, to have forty separate courts and forty separate judges. Furthermore, by consolidating these courts the undesirable intimacy of police, governing bodies and judges will be avoided...

A recent survey of Municipal Court judges revealed that 63% (117) of the 185 judges responding to a questionnaire indicated that Municipal Courts should be consolidated in certain communities so as to save time and money.[30] As of August, 1974, there were 18 joint Municipal Courts serving two or more municipalities.[31] Feasibiltiy studies for several municipalities performed by the New Jersey Department of Community Affairs projected that money can be saved, salaries of employees increased and levels of service delivery increased if municipalities consolidated courts by forming joint Municipal Courts.[32]

As pointed out previously, economies are difficult to achieve in the upper courts because of duplication of legal jurisdiction and nonuniform functional capacities. The Acting Administrative Director of the Courts recently stated that consolidation of the courts would end massive duplication of court records and allow one computer system to be used for the entire court system.

> We can affect economy by interfacing - making sure that the information is not done three times.[33] Under the present system with the counties participating in major upkeep of some of the courts, the State maintains one system of records and some of the counties are on completely different record keeping systems. This makes uniform computerization for efficiency and economy just about impossible.[34]

Solutions to the aforementioned problems have been proposed since the last reorganization of the New Jersey court system in 1947. Often however, they are discussed in segments without looking at the system as a whole. Proposed solutions for problems in the Municipal Courts have included:

1. Encouraging two or more municipalites to enter inter-municipal agreements and form joint courts under *N.J.S.A.* 2A:8-3.
2. Creating centralized county courts in which there would be only one recording keeping, accounting and scheduling system and law library for municipal judges in a county but all judges would ride a circuit along with a clerk to record transactions.
3. Combining the activities of the County District Court and Municipal Courts in each county.
4. Eliminating from Municipal Court jurisdiction all criminal and quasi-criminal matters and leaving Municipal Courts with jurisdiction over adjudicating traffic violations and local ordinances.

All of these recommendations are accompanied by supportive reforms such as making all judges full-time; providing state financing of the courts; making prosecutors and defense attorneys available on a full-time basis, and consolidating record keeping, purchasing and personnel matters.

The proposed solution for problems in and between Matrimonial, County, and Juvenile and Domestic Relations Courts involves consolidation of all family and juvenile matters into a Family Court at the Superior Court level. Proponents of this measure indicate that the financial savings in eliminating duplication in the present structure would, to some degree, off-set the cost of providing counseling and other supportive services to the Family Court.

A proposed solution to the problems between the County Court and Superior Court Law Division is to eliminate all County Courts and elevate all County Court judges to the Superior Court level. Contemporary wisdom suggests that it is time to stop trying to patch up the court systems piece by piece and start looking at overall unification.

The New Jersey Bar Association's Committee on Court Modernization recommends that:

> There should be a single trial level court throughout the State. The trial court should have as many parts or divisions as may be necessary for efficient performance and they may be increased or diminished by the Supreme Court as experience may suggest. These parts or divisions include the criminal, civil, chancery, probate, small claims, family, a tax part and a petty offenses part (the present Municipal Court).[35]

The aforementioned problems of the New Jersey courts, however, cannot be solved alone by unifying the courts into a single trial court. Unification must be supplemented by a system of centralized State funding and a mechanism for creating uniform personnel standards for all court employees. There is an interdependent relationship between unification, State financing and uniform personnel standards. Recognizing this interrelationship the Administrative Office of the Courts has received a grant from the State Law Enforcement Planning Agency for funds to develop a plan for the unification and State financing of the New Jersey court system. Goals of the proposed planning project include:[36]

1. Development of a plan for establishment of a single trial court including State financing of all judges.
2. Development of a plan for centralized State financing and supervision of all non-judge court and court-related personnel.
3. Development of a plan for State assumption of court support costs including facilities, equipment, office support and related costs.

New Jersey's Status in Comparison with the National Standards

New Jersey is considered as having a partially unified and partially State financed court system. The State has established a statewide managerial court organization through the Administrative Office of the Courts (AOC). AOC funtions as staff to the Chief Justice in the exercise of his authority to supervise the courts. To facilitate this, the Supreme Court has authority to make rules governing the administration of all courts in the State. In light of New Jersey's present advances in court organization, the following will mainly discuss those areas of court organization where New Jersey's court system falls short of the national standards.

NAC Courts Standard 8.1 and ABA Court Organization Standards 1.10, 1.11 and 1.12 recommend that the courts in each state be organized into a unified judicial system financed by the state and administered through a statewide court administrator under the supervision of the chief justice or the State Supreme Court. The standards also suggest that all trial courts be organized into a single trial court. As part of the single trial court, NAC recommends in Courts Standard 14.1 that jurisdiction over juveniles of the sort presently vested in juvenile courts should be placed in a family court. The standard further states that the family court should have jurisdiction over all legal matters relating to family life including delinquency, neglect, support adoption, child custody, paternity actions, divorce and annulment and assault offenses in which both the victim and the alleged offender(s) are members of the same family.

Substantial unification in New Jersey took place after the 1947 revision of the State Constitution in which several courts were abolished and their jurisdiction placed in other courts. Presently trial jurisdiction is shared by Superior, County, County District, Juvenile and Domestic Relations and Municipal Courts. Jurisdiction over family matters is divided between the Matrimony part of the Superior Court's Chancery Division, Juvenile and Domestic Relations Courts, County Courts and Municipal Courts. Creation of a single trial court with criminal, civil, chancery, family and appellate divisions has been recommended by judicial authorities. This would necessitate abolishment of County, County District and Juvenile and Domestic Relations Courts. Jurisdiction of Municipal Courts would be confined to adjudicating traffic and local ordinance violations.

Financing of courts is shared by the State, counties and municipalities. For a description of this breakdown see "Problem Assessment". The proposal to allow for total State funding would remove the burden of financing the courts from local government which is heavily dependent on the overburdened property tax system.

State financing would facilitate establishment of uniform statewide personnel standards and thus eliminate many of the disparities in productivity and quality of justice in the courts. This would be consistent with ABA Court Organization Standard 1.42 which recommends that each court system establish a uniform system of position classification and levels of compensation for nonjudicial support personnel. It further recommends that a system of open and competitive application, examination and appointment of new employees be instituted that reflects the special requirements of each type of position in regard to education, professional certification, experience, and proficiency and performance of confidential functions. Presently the Department of Civil Service administers tests for applicants to county level positions in approximately 250 municipalities. Tests for court applicants however, have not been validated as job-related and consistent with Federal Equal Employment Opportunity guidelines as recommended by ABA Court Organization Standard 1.42. Most Municipal Courts are not under Civil Service jurisdiction in personnel matters. Other recommendations in Standard 1.42 which are not met in New Jersey include: uniform statewide procedures for promotion, discipline, discharge and transfer of nonjudicial employees.

ABA Court Organization Standard 1.51 recommends that the Administrative Office of the Courts prepare the budget for the court system as a whole and that the presentation of the budget to the legisla-

ture be made by the chief justice, assisted by judges on the budget committee and staff of the Administrative Office of the Courts. In New Jersey, the Administrative Office of the Courts prepares a budget for the limited area of the court system under central control including the Supreme Court, parts of the Superior Court, the Administrative Office of the Courts and 40% of the salaries of County Court judges. Most support functions including salaries, facilities and equipment in New Jersey are provided to the courts either by the counties and municipalities or by departments or the executive branch of the State.

Commentary

In the development of standards for the organization of courts the Advisory Committee has considered and supported the recommendations of the NAC and ABA which call for total court unification. It was recognized that partial unification of the courts after the 1947 revision of the State Constitution was a compromise between those who were not certain that full unification was in the best interest of the citizens and those pushing for a totally unified system. Since then, the improved administration of courts led the subcommittee to conclude that further unification would result in greater efficiency and effectiveness of the courts.

The major objectives of further unification are to eliminate overlapping jurisdictions of the courts which result in confusion and delay; to eliminate the fragmentation of court financing to create uniform resource allocation for all courts; reduce disparities in personnel, facilities and productivity between courts; and reduce waste in the expenditure of court resources.

It is recommended that all trial courts be organized into one trial court with civil, criminal, chancery, municipal and family divisions and subdivisions as justice so requires. Under this concept, divisions and subdivisions can be created by the Chief Justice to meet immediate caseload needs and eliminated when not justified. This will provide greater flexibility than statutorily created courts, which inevitably are not disbanned after their need no longer exists. The resulting unified court would have three tiers: a Supreme Court, a Superior Appellate Court and a Superior Trial Court.

A unified court system cannot function properly, it was concluded, without total State funding of all courts. Only through central resource allocation can the disparities between personnel practices, facilities and case processing be equalized. State funding should also make unification more feasible by relieving a significant financial burden from local and county governments.

It is recommended that aspects of the present court system be maintained. Administrative authority should remain with the Chief Justice, rule making should remain with the Supreme Court and the Appellate process should continue as it exists.

Direct appeals from the municipal division to the Superior Appellate Court were considered in order to eliminate trials de novo in the Superior Trial Court and/or an additional appeal on the record for minor matters. Direct appeal to the Superior Appellate Court would also free trial judges from hearing appeals and thus increase their time for hearing more weighty matters. The Advisory Committee decided, however, that municipal appeals should be made to an appropriate division of the Superior Trial Court. The rationale for this decision is that the trial courts have many more judges and can absorb this burden better than the Appellate Court. It was also concluded that if the Municipal Courts are improved there will be less appeals.

It is recommended that the Superior Trial Court be the only court of original proceeding having jurisdiction over all adjudication cases except appeals and matters in which original jurisdiction is vested in an administrative board or agency, Surrogate Courts and Appellate Courts. Original jurisdiction, which is presently shared by the Superior, County, County District, Juvenile and Domestic Relations and Municipal Courts, would be placed in the appropriate divisions of the Superior Trial Court. The rationale for this decision is discussed at length in the problem assessment. Transfer of Surrogate Court jurisdiction was discussed at great length but it was decided that this jurisdiction should remain as it exists.

The placing of all juvenile delinquency and family matters within a family division is recommended because of their interdependence. For example, research reveals a high correlation between juvenile delinquency and broken homes and between delinquency and neglect. Since there is a strong correlation between social and economic deprivation and juvenile delinquency it was also recognized that the family division needs to be supported strongly by social services. These factors led the Advisory Committee to recommend that greater care be taken in selecting concerned judges for the family division. Effective court intervention, especially in cases of first offenders and some family matters, can prevent future criminality by youths.

Extensive discussion revolved around the future of the Municipal Courts. Factors such as home rule, personalization and convenience were emphasized in favor of maintaining local control over Municipal Courts. Regardless of whether there is State or local control of Municipal Courts, most agree that the Supreme Court should establish uniform statewide standards for judicial and nonjudicial personnel and facilities and closer supervision by the Chief Justice.

Some of the alternatives to the present Municipal Court structure which were considered include joint courts between two or more municipalities, combined Municipal and County District Court jurisdictions, State Circuit Courts and incorporation of the Municipal Courts into a Superior Trial Court structure with local courtroom facilities where appropriate. The latter alternative was selected because it would lead to better administrative control by the Chief Justice, more effective management and resource allocation and higher quality judges.

A major point of discussion involved the question of whether the judiciary, as a separate branch of government, should have its own civil service system. The Doctrine of Separation of Powers as interpreted implies that for each branch of government to be truly separate and exercise proper checks and balances, they should have total control over personnel policies and administration. The Committee decided that the Judicial Branch can maintain total control over personnel through its rule making and supervisory authority. From a cost standpoint, it would be less expensive for the Supreme Court to establish personnel standards which are administered through the Department of Civil Service and supervised by the Chief Justice rather than creating a judicial civil service system. The Department already has an established bureaucracy with experience in personnel administration and the development of job-related selection tests.

In order to give the courts greater control over nonjudicial personnel working for the courts, the Advisory Committee recommended that court attendants and court clerks be administratively under the courts. The present system, in which executive departments of each county select, promote and pay personnel who work for the courts, has resulted in vast disparities between the quality and quantity of court personnel from county to county.

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JUDICIAL SELECTION, EDUCATION AND TRAINING

Introduction

The quality of judges in large part determines the quality of justice. The judicial selection process is the key to maintaining that quality.

The importance of selecting well qualified judges is bolstered by the realization that the judicial role is more than determining the guilt, innocence or liability of individuals before the court. Judges interpret and enforce laws, affect rules and procedures of police and correctional agencies, sentence offenders, influence the allocation of public and private resources and make decisions which affect the social and economic well-being of individuals and groups. In many of these areas they have broad discretion which is not precisely drawn by statutes, established policies or rules.

The selection process is concerned with two main objectives: identifying individuals who are qualified in terms of past experience and performance and screening out those who are unsuited for the judiciary. Several national studies recommend that judicial candidates be selected on the basis of merit after an assessment of factors such as temperament, character, motivation, humanism, emotional stability, work performance and knowledge. Training and education can provide knowledge and skills necessary for a judge to perform well but cannot teach the other factors.

Education cannot be a substitute for an effective selection process just as the selection process cannot be a substitute for a thorough education and training program. Upon assuming the bench, judges must be prepared to hear a variety of cases ranging from minor ordinance violations to complex criminal cases.

To perform effectively a judge must be flexible and possess a broad knowledge of court procedures, law and other fields directly impinging on the judicial function such as criminology, penology, sociology, psychology and administration. Knowledge in each of these fields is expanding so fast that few individuals can keep pace on their own. Judges come from a variety of legal specialties and educational backgrounds. Therefore, judicial education and training must be designed to keep judges current and to address the specific needs of each judge or groups of judges.

The manner in which judges perform influences the effectiveness of the justice system and the public's image of the judicial system and government. The success of the judiciary in fulfilling its roles is a direct result of the quality of judges selected, their education and training.

Problem Assessment

Judicial Selection

The judicial selection process in New Jersey is considered more advanced than most states based on the fact that County, Superior and Supreme Court judges are appointed by the Governor rather than chosen through the election process. Municipal Court judges are appointed by the mayors.[1] The process for screening judicial candidates involves two State Bar Association Committees. Evaluation of a candidate's professional qualifications is performed by the State Bar Association's Judicial Selection Committee and Judicial Appointments Committee. The Judicial Selection Committee is responsible for finding individuals with the highest qualifications for judicial appointment and for furnishing their names to the Governor along with a detailed background questionnaire completed by the potential nominee. The questionnaire seeks detailed responses to questions concerning the candidate's educational background, nature and extent of legal experience, state of health, involvement in any disciplinary proceedings, political and business associations and civic backgrounds and activities.

If the Governor wishes to pursue further evaluation before appointment answers to the questionnaire are forwarded to the Judicial Appointments Committee. The member of the Committee representing the county from which the proposed nominee comes is responsible for contacting judges, attorneys and others who have had direct contact with the prospective nominee's practice of law. This member is responsible for investigating responses to the questionnaire and reporting to the Committee on

> the individual's conduct in such areas as: relations to the judiciary, avoidance of impropriety, administrative ability, courtesy and civility, knowledge and experience, independence, idiosyncrasies and inconsistencies, business and investment relations, and partisan political ties. A response to a similar ques-

References for this chapter appear on page 136.

tionnaire is filed with the State Committee by the appropriate county bar committee.

The Committee secures from the Office of the Administrative Director of the Courts the full record of any complaints ever made against the candidate for a violation of ethics in the practice of law.

The individual is then invited to appear in person before the full Judicial and County Prosecutor Appointments Committee for a face-to-face interview. Before that interview, the Committee receives the personal data supplied by the prospective nominee, the report of the member of the State Committee specifically charged with the investigation, the views and bases therefore of other members of the Committee, the report of the county-level committee, the ethics complaint record, and all other information concerning the individual which has come to the Committee's attention. The interview covers especially questions that have arisen as a result of the written and verbal material submitted to the Committee. Questions are usually asked by several members of the Committee.

The nominee's qualifications are evaluated and the nominee is then ranked as exceptionally well qualified, qualified or not qualified. The evaluation is then forwarded to the Governor.[2]

Governor Byrne and former Governors Hughes and Cahill usually have followed the recommendations of the Judicial Appointments Committee. Although the judicial selection process is considered more advanced than selection processes in most other states, there are a number of concerns with the present judicial selection process identified by the public, media, judiciary and State Bar Association.

New Jersey has a "voluntary merit selection process"[3] for selecting County, Superior and Supreme Court judges in which the Governor is not bound to abide by the decision of the State Bar Association screening committees. The effectiveness of a voluntary merit selection process, according to the Chairman of the State Bar Association Committee on State Legislation, depends on the interest of the Governor in judicial excellence.[4] The following editorial suggests recent New Jersey Governors have been interested in judicial excellence, but cautions that such concern may not always exist:

> New Jersey's judicial system has been fortunate that its last five Governors have been lawyers. Two of them had been judges. This has provided a basic safeguard in the judicial appointment process since these men had an appreciation of the needs of the judicial office. But as one speaker at the General Council put it, the state needs "insurance" against a Governor who will not have this background and who may be annoyed by some of the rebuffs his actions and programs may receive in the Courts. Such a Governor, during a single tenure in office, could do great and lasting damage to the judicial system. Since the appointments a Governor makes are only one of many factors involved in his election, poor judicial appointments may not serve to defeat him at the next election.[5]

In the case of Municipal Court magistrate appointments there is little formal screening[6] similar to the process described for County, Superior and Supreme Court judges. Although many municipal magistrates perform their duties with a high level of efficiency and effectiveness, the present selection process may overlook some of the most qualified candidates and fail to identify potentially unqualified candidates.

The importance of Municipal Courts cannot be overstated since they have the greatest caseloads and administer to the needs of more New Jersey residents than any other court in the judicial system.[7] For many people their image of the judicial system and government is formed during these contacts.

The dissipated interest and enthusiasm of the judicial selection committees in some counties hinders the effective screening of candidates. Consequently, some committees do not maintain a list of potential candidates for judicial office to be forwarded to the State Judicial Selection Committee and then to the Governor. The reason for the dissipation is unclear and varies depending on who is discussing it. On the one hand, some past and present members of the county selection committees suggest that their recommended list of potential judicial candidates have been overlooked by the State Judicial Selection Committee or the Governor and individuals not on the lists nominated. On the other hand, others suggest that one or more of the county judicial selection committees have recommended candidates who, subsequent to intensive investigation, have not been found to be of sufficient caliber by the Judicial Appointments Committee or Governor and consequently have lost their credibility as an advisory body. It is difficult to test the validity of both arguments because the Judicial Selection Committee and Judicial Appointments Committee are sworn to secrecy and are not permitted to discuss the qualifications of prospective candidates or those candidates who are being or have been considered.

A further problem area is the considerable time and resources required for thorough evaluation of a judicial candidate's character and professional qualifications. While the State Bar Association evaluates each candidate's professional qualifications, the State Police performs an extensive character investigation of judicial candidates, their families and associates which requires on the average of 35-40 man-hours to complete.

The State Bar Association's Judicial Selection and Judicial Appointments Committees however, do not have comparable resources to investigate a nominee's professional capabilities. Membership on these committees is voluntary, therefore the quality of the investigation of a candidate's professional qualification often depends on the amount of time the committee members can afford to spend. It also depends on how well the candidate's credentials are known to that committee's members. In the

counties with smaller populations there appears to be greater likelihood that the candidate is known by the local bar and personally acquainted with the investigator which may also bring to question problems of conflict of interest.

Several survey respondents, mainly those from counties with larger populations, have suggested that there is a need to have at least part-time paid staff to assist the committees in investigating a candidate's professional qualifications and to take care of record keeping. One county selection committee utilizes the services of a paid county bar secretary for these functions. Presently the State Bar Association staff performs record keeping for the State Judicial Appointments Committee.

Another concern which has been raised is the lack of direct representation of the judiciary and laypublic on the Judicial Selection Committee and Judicial Appointments Committee. The argument against lay representation is that they would not be qualified to determine the qualifications and performance of an attorney for judicial appointment.

Some attorneys surveyed disagree with the statement that only attorneys can determine the qualifications of an attorney for the judiciary. The State Bar Committee on Court Modernization recently stated:

> From the perspective of the organized bar, the present process is very unattractive. Carrying the entire burden of review of nominees puts the bar in a "no-win" posture in relation to the public. The absence of publicized standards and the absence of citizens in the review process creates the impression that unworthy considerations may play a vital role in the decision-making. The public sees the present process as "clubby" and political.[8]

The American Bar Association (ABA) states that selection committees need lay members not only to assure that public expectations concerning the judiciary are influential but also that nonprofessional attributes of a good judge are recognized.[9] Another reason for including laypeople in the decision-making process is to counteract professional solidarity which may result in fellow bar members overlooking negative characteristics of a candidate.

Direct input by committee members representing the judiciary should also be considered because:

> Lawyers should not be the dominant influence in selection. Moreover, the question must be raised as to whether judges may be better qualified and more likely than lawyers to be disinterested in assessing professional qualifications. It is judges who understand from personal experience that unique set of qualities for the job.[10]

On the other hand, some survey respondents suggested that judges should not be given a dominant role in judicial selection screening in order to avoid judicial inbreeding since judges may tend to recommend individuals who only reflect their points of view. The solution to this problem they suggest, is to balance the interests of the laypeople, attorneys and judges on selection committees.

Even though judicial elections are nonexistent in New Jersey, politics have not been completely eliminated from the selection of judges. It is argued by many however, that politics should never be completely removed from judicial selection under our democratic form of government. Although politics has many positive influences it can operate as a detriment to effective and efficient justice. Many individuals who are well qualified for judicial office but not involved in politics or not favored by decision makers may be overlooked or blocked from attaining a judgeship.

Nominations by the Governor for judgeships must be approved by the Senate. The process by which one senator can block the nomination of a candidate from moving to the floor of the Senate for a vote (senatorial courtesy) is viewed by some people as a necessary extension of the Senate's authority to advise and consent. Others view this as an abuse of that power.

Senatorial courtesy and the role of "advice and consent" is far more complicated than can be explained in a few paragraphs. The fundamental problems of these functions revolve around three interdependent factors: politics, visibility of decision making and vested interests.

The key issue in the debate over senatorial courtesy is the legitimate definition of the Senate's constitutional role of "advice and consent" of gubernatorial appointments. "Advice," according to some Senators, should be limited to advising the Governor on who should be appointed on the basis of qualifications and merit. Some Senators indicate that "consent" should be limited to providing a check on the Governor's extensive powers of appointment by ensuring that only qualified individuals are appointed.

Many Senators, however, submit that the best way to represent their constituencies is to utilize whatever tools are available. Senatorial courtesy provides them with a tool by which leverage can be applied to the Governor and thus benefits for constituents can be obtained. Yet others view the use of senatorial courtesy as a method to foster personal or political interests.

The lack of time limits in which judicial vacancies or newly created positions must be filled has contributed to the backlog of court cases in New Jersey. (See "Trial Preparation" chapter for data on backlog). According to Administrative Office of the Courts data, New Jersey recently had 31 judicial vacancies representing approximately 10% of the authorized upper level trial court positions. Although the increasing backlog of criminal and civil cases pending in the courts may result in part from the number of judicial vacancies, it is only one of many factors affecting backlog.

The New Jersey State Bar Committee on Court Modernization apparently recognizing these and other problems made recommendations incorporating elements of the Missouri Plan for selecting judges:

> Judges should be selected through a procedure in which for each judicial vacancy as it occurs (including the creation of a new judicial officer) a judicial nominating commission nominates at least three qualified candidates, of whom the chief executive appoints one to office.
>
> The judicial nominating commission should be constituted of eight members as follows: The chief justice of the highest court, or a justice of that court nominated by him, should be a member ex officio, and should be the commission's presiding officer, and should have a vote. Four public members, who are neither judges nor lawyers, should be appointed to the commission by the chief executive, for staggered terms of at least three years by the New Jersey State Bar Association.
>
> The commission should be provided with staff assistance. It should maintain an inventory of qualified nominees by actively and continually soliciting names of persons suggested as potential nominees or persons who have expressed their interest in being nominated. The appointment procedure should be as follows: within 30 days after the occurrence of a vacancy in a judicial office with respect to which it has nominating authority, the commission should submit to the chief executive, and simultaneously make public, the names of at least three persons qualified for appointment to the office. Fewer than three names may be submitted if the commission certifies that there are not three persons with the requisite qualifications. The chief executive should appoint one of those nominated; if he fails to do so within 30 days after the list of nominations has been submitted to him, the chief justice should select an appointee from the list of nominees.[11]

The State Bar Committee further stated that the American Bar Association and all other national standard-setting efforts in recent years, have urged New Jersey to adopt a merit selection process similar to what is commonly referred to as the Missouri Plan and further indicated that the New Jersey methods have none of the essential elements found in that plan.[12]

Judicial Education and Training

Judges come from a variety of backgrounds having different educational and work experiences and often must perform a variety of duties which may not pertain to their most recent professional or educational experiences. Although studies analyzing the background of judges are few, those that do exist reflect this variety of backgrounds. Judicial appointees tend to have pre-judicial work experience specialized in one area such as corporate law, government service, administration, finance, civil law or criminal law, with little or no exposure to other areas. The results of a 1963 survey of State and Federal judges showed that 25% of the judges responding reported that their "private practice had included no criminal cases, nor did any judge say that he had specialized in criminal practice."[13]

Similar results were found in a more recent study of judicial appointees.[14] Interviews with participants in the New Jersey selection process and confirmed by some personnel of the Administration Office of the Courts, indicate that most newly appointed judges have considerable trial experience but that experience is primarily in the civil law areas. Data to support this opinion, however, has not been gathered in New Jersey.

The National Advisory Commission (NAC) on Criminal Justice Standards and Goals states that:

> It is more than just a step in a legal career when a lawyer becomes a judge. It is a major career change to a position involving significantly different functions and requiring different skills and knowledge than were required of the person in his prior professional position.

The NAC also suggests that subjects appropriate for judicial education for judges sitting on criminal cases include:

> psychiatry, social work, and the law; theory of government and separation of powers; computers in courts; poverty law; criminal law—substantive and procedural; criminal law—sentencing; court administration, including special seminars for chief judges of metropolitan courts with emphasis on techniques to assure a speedy trial; the relationship between corrections and courts; the relationship between law enforcement and courts; the relationship between courts and the executive and legislative branches of government; the relationship between courts and the news media; family law; juvenile law; criminal penalties for infractions of environment law; and opinion writing.[15]

Systems and Training Analysis Requirements for Criminal Justice Participants (Project STAR), a four-state research and training development program which included New Jersey, surveyed over 600 New Jersey criminal justice participants including 48 judges, 18 prosecutors, 464 police officers, 152 corrections officers and five defense attorneys to determine roles, tasks and performance objectives for each position. The survey concluded that judges should receive education and training in areas such as: organization theory, management and administration to increase efficiency of judicial operations; education concerning the relative nature of deviant behavior, the changing character of contemporary morality and the increasing discrepancy between existing laws and behavior that the public regards as acceptable to increase the judge's effective use of discretion; education in the methods of empirical science and the results of the most recent scientific studies in the field of corrections; and be educated

or trained to deal with large caseloads without sacrificing individualized due process of law.[16]

Currently there is a one-week orientation program for newly appointed County, Superior, Juvenile and Domestic Relations and County District Court judges and a two-day orientation for Municipal Court judges. Some of the aforementioned subjects are discussed during these orientation programs. There are several problems with the orientation programs which have been identified by individuals involved with judicial selection and training personnel.

Judicial orientation is provided only when there are at least 10 to 15 new appointments. As a result newly appointed judges often start performing judicial duties with limited training. This problem is highlighted when newly appointed judges must make decisions

> . . . without time to obtain help, and in such circumstances his inexperience is a factor which increases the probability of error. Although this problem might be mitigated in a multi-judge court where a new judge can be assigned to less complex cases, this breaking-in process is frequently accomplished at the expense of lawyers and litigants.[17]

The time allotted for the judicial orientation program is too short and judges need continuing education. Judges perform one of the most difficult roles in our society and therefore must possess knowledge from a broad range of fields including law, penology, sociology, criminology, psychology and administration. The fields of law and social science are expanding so rapidly that few professionals can remain "up to date" in their field.[18]

> Today change is so swift and relentless in the techno-societies that yesterday's truths suddenly become today's fictions, and the most highly skilled and intelligent members of society admit difficulty in keeping up with the deluge of new knowledge—even in extremely narrow fields.[19]

Judicial seminars (usually one per year for upper court and one per year for lower court judges lasting two to three days) are utilized to supplement orientation training and provide continuing education. Both orientation and seminar education programs are law-, procedure-and sentencing-oriented with little exposure to the organizational, administrative and social science areas which are considered important for effective and efficient adjudication. Administrative Office of the Courts personnel indicate that present resource restrictions do not allow the education programs to adequately cover the latter areas. They suggest that education programs should at least be doubled in length. Department of Corrections staff indicate that it is difficult for many judges to get an accurate view of the correctional system through one- or two-day visits to correctional institutions.

Part of the problem of expanding time for judicial education focuses on the difficulty in freeing a significant number of judges from the bench for longer durations of training. A counter argument to the problem of taking judges off the bench for training suggested by some of those interviewed, is that the long-term potential gain in efficiency and more sound judgments will override the initial short run costs of expanding training.

There are no legislative or court rules requiring that judges participate in any orientation or regular education programs. Although the Office of Judicial Education indicates that participation in orientation and seminar programs is high, this is not a guarantee that it will remain high. Those who do not attend will still hear cases affecting the lives and futures of New Jersey residents.

Sending judges to regional and national education programs is worthwhile, but costly. Only a limited number of New Jersey judges can participate each year. This problem could be solved by establishing a judicial education program in New Jersey which utilizes national legal expertise. Presently the cost of travel and room and board exceeds the cost of tuition and conference fees for out-of-state education programs. The Administration Office of the Courts recently received a grant from the State Law Enforcement Planning Agency for the period of June 1, 1976 to March 31, 1977 to send 26 judges to national education programs in Colorado and Nevada which vary from one week to four weeks in duration. Costs of the program, which total $38,901 are as follows:

Transportation	$10,280.00
Room and board	11,221.00
Tuition and conference fee	16,230.00
Transportation to and from airport	1,170.00
Total	$38,901.00

The cost of these out-of-state judicial education programs averages approximately $1,496.19 per judge. The transportation and room and board expenses totaling $22,671 averages $871.96 per judge.

Another concern is that judicial orientation programs do not significantly utilize the experience and knowledge of nonjudicial or non-attorney experts in the criminal justice system as instructors. A recent orientation seminar for upper court judges allocated no time for lay lecturers. Criminal justice personnel interviewed suggested that inter-system criminal justice education programs utilizing police, correction and court personnel, social scientists, criminologists and administrative specialists will increase inter-system understanding, cooperation and efficiency. In addition, they indicated that inter-system education can reduce the tendency toward intellectual and professional inbreeding.

A related problem is that judicial appointees need more in-depth education and training in areas where they have little or no pre-judicial experience. Some judges for example, need intensive training in

criminal law and little training in civil law and vice versa. Other judges need intensive training in juvenile adjudication or administration. Present education programs provide judges with the same learning experiences irrespective of their backgrounds. One solution to this problem is to apply modern educational technology to judicial education, such as programmed learning and audio cassettes which allows each participant to progress independently at his own pace. Other training methods which can prepare an appointee to assume the bench include role playing, situation simulation and research projects. The NAC and ABA also recommend a program of sabbatical leave for experienced judges to enable them to do research and pursue studies relevant to their judicial duties.

The focal problem of judicial education is the need for the improvement in the evaluation, planning and development of training programs. Presently, judicial training programs are developed based on two sources of information by a 16 judge/faculty committee. These sources include information from judicial educators throughout the country and survey questionnaires filled out by judges attending the training seminars. Little planning information can be obtained from answers to the questionnaires.

The National Advisory Commission standards for the Criminal Justice System suggests that training for all criminal justice personnel should be based on studies which indicate specific and detailed roles, tasks and performance objectives for criminal justice positions identified by criminal justice personnel and the public.[20] These perceptions should be compared with actual practice and training developed from the results of the comparison. Such a study has been undertaken in New Jersey by Project STAR in which 48 judges and several hundred other criminal justice personnel were surveyed to determine roles and tasks. Personnel from the Administrative Office of the Courts indicated that the findings and training modules developed by Project STAR are not being used in present judicial training and that there are no plans to do so because the training modules are "too basic, elementary and too much role playing is stressed." A former New Jersey coordinator for Project STAR agrees in part with this statement. He indicates however, that some of the conclusions, findings, data and training techniques can be synthesized from the Project STAR reports and utilized for training newly appointed municipal judges. Whether or not Project STAR is utilized, there does appear to be a need to expand training programs for judges based on a more scientific planning approach than is presently used.

In conclusion, the report of the State Bar Committee on Court Modernization supports some of the findings herein when it recommends:

> No person should begin the awesome judicial responsibilities without intensive pre-service training. Regular continuing education should also be mandatory for all judges and course offerings should not only deal with the evolving law and judicial administration but with self-perception and with the behavioral sciences. The state should support a College of Judicial Education to meet these needs and the needs of court-related personnel. The Committee also urges upon the Supreme Court the institutionalization of the judicial conference to make possible a full-time staff looking to a minimum of two, three-day meetings per year with an agenda set up on the most important issues involving courts, courts and legislature and courts and the citizen. Great effort should be made to obtain meaningful citizen participation and also legislative and executive participation. (See ABA Court Organization Standard #1.25, NAC Courts Standard #7.5).
>
> On an experimental basis, the Supreme Court should develop a sabbatical program for judges who have served seven years on the bench. The appellate division might supply initial judges for sabbaticals and they like tenured law school faculty members, would utilize the opportunity for research, special study or, because of the needs, as faculty in the expanded judge training programs. A sabbatical policy will increase the appeal of the bench and rejuvenate those who otherwise stagnate in the impersonal, detached world of opinion writing. (See NAC Courts Standard #7.5).[21]

New Jersey's Status in Comparison with the National Standards

Judicial Selection

The NAC and ABA[22] standards recommend that each state develop a merit selection process for appointing judges. This merit selection process involves a judicial nominating commission which, when a judicial vacancy occurs or a new judicial office is created, forwards the names of three qualified candidates to the Governor who appoints one to office.

The ABA recommends that the judicial nominating commission be composed of eight members: the chief justice of the highest court or a justice appointed by him as a nonvoting presiding officer; four public members, who are neither judges nor attorneys, to be appointed for staggered terms of at least three years; and three members of the legal profession, selected by the state bar association, to be appointed for staggered terms of at least three years.

The NAC recommends generally the same type of commission, with minor differences. The NAC proposes the commission be composed of seven members, three of whom are neither attorneys nor

judges and not more than two of the same political party. The presiding officer should be a senior judge of the highest court but is not restricted from voting.

The ABA recommends that in states with a large or geographically separated population, separate nominating commissions be established on a statewide basis for appellate judges and on a regional basis for judges of the courts of original proceedings. The judicial member of the regional nominating commission should be a supreme court justice or intermediate appellate court judge designated by the chief justice and chosen on the basis of his special familiarity with the bench and bar of the district involved.

The ABA and NAC advocate the same operating procedures for the nominating commission. The commission(s) should be provided with staff assistance which is responsible for maintaining an updated list of qualified potential nominees from which the commission should draw three names to submit to the Governor. The list should be sent to the Governor within 30 days of a judicial vacancy and if the Governor does not appoint a candidate within another 30 days, the power of appointment should shift to the chief justice or the commission itself.

The NAC suggests, in its commentary on judicial selection, that the investigation of potential nominees, reports, preliminary evaluations and administrative tasks be carried out by a permanent staff. The staff's preliminary screening of candidates should consist of two stages. First, the staff should ask candidates to answer a questionnaire to determine whether they are interested in and qualify for a judicial position. Second, the staff, in cooperation with the Federal Bureau of Investigation, State Police and disciplinary section of the Administrative Office of the Courts, should conduct a security and ethics investigation.

The ABA recommends that the nominating commission determine whether the candidates are of good moral character, emotionally stable and mature, in good physical health, patient, courteous and capable of deliberation and decisiveness. Candidates should have been admitted to the bar and have substantial experience in the practice, administration or teaching of law. Those to be considered for trial court positions should have substantial experience in the preparation, presentation or decision of legal argument and matters of proof according to rules of procedure and evidence. Appellate judge nominees should have experience as a trial judge and experience in expressing legal ideas.

NAC Court Standard 7.2 advises that initial appointment should be for a term of four years for trial court judges and six years for appellate court judges. At the end of each term, the judge should be required to run in an uncontested election at which time the electorate is given the option of voting for or against his retention. The ABA recommends that a judge hold office either during good behavior until reaching the age of compulsory retirement or for a preliminary term of two years and until the next general election at which time the judge's name should be submitted in an uncontested election.

New Jersey does not have a judicial nominating commission or similarly functioning body in most municipalities for the selection of municipal court magistrates. Presently over 400 municipal magistrates fall into this category.

There are two committees representing State and county bar associations designed to perform the functions of a judicial nominating commission for the selection of County, Superior and Supreme Court judges. The Bar Association's Judicial Selection Committee, with components at the State and county levels, is responsible for providing the Governor with a list of qualified judicial candidates. The committees request candidates to complete a questionnaire relating to their background. The Bar Association's Judicial Appointments Committee is responsible for investigating and evaluating each prospective candidate's background when requested by the Governor.

To facilitate the evaluation the Appointments Committee uses a 30-item survey based on the Canons of Judicial Ethics to determine such factors as the candidate's relations with the judiciary, personal and professional conduct, work habits, demeanor, professional competence, ability to avoid the appearance of impropriety and business interests.

The present judicial selection process in New Jersey falls short of the ABA and NAC standards because of the following elements:

1. There are no time limits by which recommendations to the Governor, the Governor's nomination and approval of a judicial candidate must be made once a vacancy occurs or a new position is created.
2. The State and county Bar Associations' Judicial Selection Committees and Judicial Appointments Committees do not include members representing the public and the judicial system. The members are all appointed by the State Bar and county bar presidents.
3. The Selection and Appointments Committees do not have permanent staff to assist in record keeping and investigation of judicial candidates.
4. The Governor is not required by statute or the constitution to follow the recommendations of the Bar Association's Judicial Selection and Appointments Committees.
5. The public cannot confirm or reject judicial appointments through the electoral process once they are in office.

Judicial Education and Training

NAC Courts Standard 7.5 and ABA Court Organization Standard 1.25 recommend that every court system maintain a comprehensive program of continuing judicial education. The NAC suggests that all new trial judges, within three years of assuming office, attend both local and national orientation programs as well as one of the other national judicial education programs. The local orientation program should be attended immediately before or after the judge first takes office.

New Jersey meets or exceeds many of the NAC standards for judicial education and training. The New Jersey court system provides intrastate judicial orientation programs for judges. Upper and lower court judges, however, may perform judicial duties for a considerable period of time before having the opportunity to attend formal orientation training. The annual participation of New Jersey judges in national education programs is low, in part due to a lack of financial resources.

The NAC advises that each state develop its own state judicial college, which should be responsible for the orientation programs for new judges and providing graduate and refresher programs similar to those of the national judicial education organizations. New Jersey offered its first courses in a State Judicial College in September, 1976.

The NAC recommends that each state plan specialized subject matter programs as well as two- or three-day annual state seminars for trial and appellate judges. New Jersey has a seminar which is presented annually to trial and appellate judges.

The NAC further recommends that the failure of any judge to pursue orientation and regular continuing educational programs should be considered by the judicial conduct commission as grounds for discipline or removal if good cause is not shown. While New Jersey has no court rules, statutes or constitutional mandates that require judges to attend juicial orientation or regular continuing education programs, the Chief Justice does require attendance and participation.

The NAC also suggests that each state prepare a bench manual on procedural laws with forms, samples, rule requirements, sentencing alternatives and information concerning correctional programs. New Jersey appears to be consistent with this recommendation through the court rules, the orientation manual and other manuals, forms, guidelines and materials provided to all judges in the State.

The NAC advises that each state periodically publish a newsletter with information from the chief justice, the court administrator, correctional authorities and others. The periodical should include citations of important appellate and trial court decisions and references to new literature in the judicial and correctional fields. New Jersey, through the Administrative Office of the Courts sends separate monthly bulletins containing this information to Municipal Court judges and upper court judges. In addition all judges receive slip sheets immediately on all published, approved opinions.

The ABA and NAC advocate that provisions be made to give judges the opportunity to pursue advanced legal education and research. The NAC suggests a sabbatical leave program to fulfill this need. New Jersey does not provide funds for sabbatical leave programs.

NAC Criminal Justice System Standard 12.1 recommends that educational programs for criminal justice personnel be developed based on a process by which specific roles, tasks and performance objectives are identified. These perceptions should be compared with actual practices and, where appropriate, included in education programs.

As mentioned before, Project STAR surveyed 48 judges to determine roles and tasks for that position. The survey concluded that judges should receive education and training in a number of areas which included management and administration to increase efficiency of judicial operations, education concerning the changing character of contemporary morality, education in the methods of empirical science and education or training to deal with large caseloads without sacrificing individual due process of law. The Administrative Office of the Courts, Office of Judicial Education, has no plans to utilize Project STAR's research findings or training module because they are too basic, elementary and general to be of value.

NAC Criminal Justice System Standard 12.1 further advises that plans be developed and implemented for evaluating the effectiveness of education programs as they relate to on-the-job performance. New Jersey's Office of Judicial Education is not yet performing on-the-job evaluations of the effectiveness of educational programs.

The NAC also recommends that the findings on role, tasks, and performance objectives be incorporated in criteria for recruitment and selection of criminal justice personnel. New Jersey has not incorporated the findings of Project STAR into its judicial selection process.

The NAC advocates the development of techniques for a continuous assessment of education needs as they relate to changes in social trends and public needs on a national and local basis. Presently participants in New Jersey judicial training programs are asked to fill out a questionnaire concerning the effectiveness of the programs. A 16-judge committee is responsible for planning future judicial training programs.

Commentary

The Committee, after carefully considering the ABA, NAC and New Jersey State Bar Association recommendations for the creation of a Judicial Nominating Commission to assist the Governor in selecting judges, rejects the concept in favor of the present system with some modifications. Although the Judicial Nominating Commission is considered a model by many experts, it is still open to damaging political influence and provides no greater protection against abuse than the New Jersey system of selecting judges. The Committee, therefore, recommends a series of proposals for correcting the shortcomings of the present system rather than creating a potentially expensive new State bureaucracy.

A major aim of judicial selection standards is to change the present voluntary merit selection system into a true merit system. To achieve this, one of the Committee's recommendations is that the Governor's authority to appoint judges be limited to only those individuals who are recommended and approved by the Judicial Selection and Appointments Committee of the State and county bar associations.

The Committee further recommends that the bar associations continue to improve the criteria for selecting potential judicial nominees and evaluating their qualifications. Present criteria, which are based on the Canons of Judicial Ethics, are considered too narrow to be used to assess whether a candidate has appropriate knowledge to fulfill judicial functions. It is also recommended that the State Bar Association sponsor a research effort to identify the knowledge and skills necessary for an individual to perform the judicial functions.

The Committee has decided that judicial candidates should be psychologically sound but no recommendation has been proposed for a mechanism to measure psychological fitness. The members concluded that if the system for judicial removal functions adequately, psychologically unfit judges would be removed from office.

Standards recommend that the bar associations include representatives of the lay public on the Selection and Appointments Committees. Lay public, it is concluded, has as much an interest in an effective judiciary as the legal profession. While the legal skills of a candidate can probably be determined readily by attorneys, other qualifications such as concern for people, justice and humanism can be determined as well by laypeople who are potential litigants or consumers of the justice system. Lay representatives can also counter undue deference to certain candidates resulting from friendship or professional association.

Judicial representatives on the Selection and Appointments Committees appointed by the Chief Justice are recommended because the judiciary has an interest in ensuring that its future colleagues are highly qualified. Although the present Committees include participation of judges, unless appointed to the Committees by the judiciary, they may not be considered as representatives of the judiciary.

To facilitate the work of the Selection and Appointments Committees the Advisory Committee recommends that the bar associations either obtain staff assistance or be provided with staff assistance on at least a part-time basis. No recommendations have been made to improve the role of the State Police in investigating the backgrounds of nominees because the present procedures appear to be adequate.

In order to prevent appointment of judges to positions where there are neither enough cases, support personnel nor facilities to enable them to operate on a full-time basis, the Committee recommends that the managerial feasibility of appointments be determined prior to new appointments. This assessment should be based on a previously determined proper ratio of support personnel to each judge which will enable the courts to process cases efficiently and effectively.

The limits of the Senate's role of advice and consent over judicial appointments are defined by the Committee. It has determined that the tactic of blocking the nomination of a judicial candidate from moving to the floor of the Senate through senatorial courtesy is an abuse of the Senate's authority of advice and consent. Failure to move a nomination to the floor of the Senate is in effect a failure to execute that constitutional mandate. Senatorial courtesy is not grounded in the State Constitution or in the internal rules of the Senate. To the extent that senatorial courtesy is in conflict with the stated goal of judicial appointment by merit its practice should be abolished. To ensure the integrity of the decision-making process the standards are aimed at raising its visibility.

In the area of judicial training the Committee concluded that New Jersey is in accord with and surpasses some elements of the ABA and NAC standards. In other areas the Committee has expanded significantly upon the national standards.

Although the Administrative Office of the Courts recently created a State Judicial College which is in accord with the national standards, some elements of the College proposed by the Advisory Committee have yet to be implemented. These elements include establishment of a year-round comprehensive program of education offered at regional facilities and instructed by an interdisciplinary faculty.

The Committee recommends significant expansion of the judicial orientation training programs for new judges and the overall judicial education curriculum in order to transmit knowledge from the social science and administrative fields that is critically important for effective and efficient adjudication.

Recognition that the transition from attorney to

judge represents a significant change in role led to the recommendation that judicial orientation and continuing education should be mandatory. Although participation in some of the current training programs may be high it is recognized that the popularity of the programs may be a key factor and the programs of the future, which may be less popular and yet of critical importance, may be avoided.

Current attendance of judges at national level education programs is expensive. To date approximately 20% of New Jersey's upper court judges have attended the programs. A much lower percentage of Municipal Court judges have attended national judicial education programs. For these reasons the Committee recommends that national level education programs be developed in New Jersey to expose large numbers of local judges to the experiences, outlooks and methods of judges throughout the country.

The Committee recognizes that educational needs vary among judges depending upon their individual educational and work experience backgrounds. Therefore, it recommends development of individualized training methodologies and research to identify specific training needs. The methodologies which would allow individual judges or groups of judges to progress at their own pace in specific areas of educational need include: an automated legal research system, video and audio tapes, manual or computer assisted programmed instruction and sabbatical leave. Automated legal research is being tested now in eight states. Test sites for New Jersey are in Trenton, Hackensack, Newark and Morristown, and the project includes training for prosecution and defense attorneys as well as judicial law clerks and judges. If the results are satisfactory and there is a sufficiently high cost/benefit ratio, the program will be expanded statewide.

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[2]State Bar Association. "Judicial Appointments Committee Procedures," 98 *N.J.L.J.*, November 13, 1975, pp. 1, 10 (Index, pp. 953, 962).

[3]Margaret Gordon Seiler, "Judicial Selection in New Jersey," *Seton Hall L. Rev.*, Vol. 5, Summer, 1974, p. 752.

[4]"State Bar Holds Discussion on the Selection of Judges," 97 *N.J.L.J.*, March 21, 1974, p. 2 (Index p. 189).

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[6]Only one out of the 10 county bar associations' presidents surveyed indicated a Municipal Court magistrate merit screening process by the county bar association.

[7]Administrative Office of the Courts, *Annual Report of the Administrative Director of the Courts, 1973-1974*, Trenton, New Jersey, 1974.

[8]"Report of the State Bar Committee on Court Modernization," 98 *N.J.L.J.*, March 20, 1975, p. 12 (Index p. 233).

[9]American Bar Association Commission on Standards of Judicial Administration, *Standards Relating to Court Organization*, Chicago, Illinois, 1974, p. 40.

[10]Seiler, "Judicial Selection in New Jersey," p. 746.

[11]"Report of the State Bar Committee on Court Modernization," 98 *N.J.L.J.*, p. 12 (Index p. 233).

[12]Ibid.

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[14]Stuart Nagel, "Comparing Elected and Appointed Judicial Systems," *American Politics Series*, California, Sage Publications, 1973.

[15]National Advisory Commission on Criminal Justice Standards and Goals, *Report on Courts*, Washington, D.C., U.S. Gov't. Printing Office, 1973, p. 158.

[16]Perry E. Rosove, *The Impact of Social Trends on Crime and Criminal Justice*, for Systems and Training Analysis of Requirements for Criminal Justice Participants (Project STAR), sponsored by the California Department of Justice Commission on Peace Officer Standards and Training, March 23, 1973.

[17]The President's Commission on Law Enforcement and Administration of Justice, *Task Force Report: The Courts*, p. 68.

[18]American Bar Association, *Standards Relating to Court Organization*, pp. 65, 66.

[19]Alvin Toffler, *Future Shock*, New York, New York, Bantam Books, Random House, 1970, p. 157.

[20]National Advisory Commission on Criminal Justice Standards and Goals, *Report on Criminal Justice System*, Washington, D.C., U.S. Gov't. Printing Office, 1973, pp. 165-169.

[21]"Report of the State Bar Committee on Court Organization," 98 *N.J.L.J.*, p. 12 (Index p. 233).

[22]National Advisory Commission, *Report on Courts*, Standard 7.1, pp. 147-149; American Bar Association, *Standards Relating to Court Organization*. Standards 1.20 and 1.21, pp. 39-44.

THE PRETRIAL PROCESS

Introduction

As the incidence of crime spirals upwards, the criminal justice system is required to handle ever increasing numbers of persons. As more people are funneled through the system jails, courts and correctional institutions are being filled beyond capacity, creating an atmosphere detrimental to effective law enforcement and socially detrimental to those within the institutions.

A natural result of longer delays between arrest and trial is longer periods of pretrial incarceration at a time when a defendant is presumed to be innocent. This interrupts the normal life of an accused as well as his ability to earn a livelihood. The economic and emotional trauma of lengthy pretrial incarceration can be avoided by streamlining the pretrial process and thereby effectuating release as early as possible.

In formulating standards and goals in the area of pretrial processing, the main objective is release whenever possible. Only in those instances where an accused's subsequent appearance is not assured should he be detained. The pretrial release decision should be person-oriented rather than based totally upon the nature of the alleged offense.

In addition to the area of release pending trial, other alternatives to formal prosecution have been addressed such as prosecutorial screening and pretrial intervention. Through the use of these procedures, appropriate cases can be diverted from the formal criminal justice system and can be disposed of through a diversion program or by administrative dismissal.

These standards and goals are geared toward fairness to accused individuals while also having the effect of reducing jail population and backlog of cases. It is hoped that implementation of these standards will result in greater efficiency and in minimal detention of minor offenders.

It was recognized that many of the standards have already been implemented in this State by statute or court rule. They have, nevertheless, been included as standards and goals for the purpose of continuity and to show agreement with the present status of some areas of the law.

Problem Assessment

Attempts at reforming the pretrial process, slow in coming, have begun to take hold. The direction and emphasis that should govern changes are by no means uncontroversial. While there is consensus as to the existence and urgency of the problems that surface during the pretrial phase, there is little agreement on their solution. If the influx of defendants is increasing more rapidly than society can build institutions to house them or man the courts to try them, some compromise must be made. Such is clearly the case in our criminal justice system. There is a limit to the resources at hand for the meting out of justice. Some have claimed that the penalties of the criminal justice system, namely jails and prisons, should be retained only for individuals who are convicted of serious crimes.[1] The limits of manpower, hardware and space likewise make it necessary to weed out those defendants for whom a formal trial would be inappropriate, unnecessary or inefficient.

The drama of full-fledged litigation that the layman perceives as the normal course of events following apprehension of a suspect in fact occurs in only a small fraction of cases. Actually, the criminal justice system can be more accurately seen as a funneling mechanism where discretionary decisions at the pretrial level frequently are made regarding the disposition of the accused.

To understand more completely the relationship of discretion to the pretrial phase, a discussion of the justice process is necessary. Criminal proceedings may originate in three ways: 1) By a law enforcement officer who either witnessed the offense or has probable cause to believe that an individual has committed the offense and arrests the individual; 2) By the filing of a complaint by a public officer or private citizen or 3) By a grand jury indictment. An arrest or summons follows either the filing of a complaint or indictment. As soon as is practicable the accused is brought before a judicial officer. In all cases, the defendant is advised of his rights, conditions of release are established if the defendant is in custody and, if the offense is indictable, a date is set for a probable cause hearing. Release pending trial may be effectuated at this point.

In the overwhelming majority of cases, system processing initiates with an arrest. The issuance of an arrest warrant or the arrest of an individual in turn commences the process whereby the individual is taken to the police station, routed through the usual booking and identification procedures and detained until such time as release can be effectuated. Discretion should be utilized in considering the necessity for issuing an arrest warrant or for arresting an individual. NAC and ABA agree that a summons or a

References for this chapter appear on page 144.

citation usually should be served in lieu of an arrest warrant or in lieu of continued detention after arrest. Just as it became impracticable to detain people for automobile violations as the population grew and automobile owners proliferated, so it has now become unworkable to detain every suspect in the criminal justice process.

For certain offenses, mandatory use of a citation or summons in lieu of a warrant or in lieu of continued detention following arrest could help to alleviate undue detention and congestion in the criminal justice system. It would also obviate unnecessary suffering on the part of the accused. Certainly a goal should be to refrain from inflicting any unnecessary inconvenience upon a person who is still, in the eyes of the law, innocent.

The effects of an arrest upon an individual are not only of an immediate nature but can have long-term repercussions, especially if the individual is unnecessarily detained pending further processing. In many cases, the formal steps taken after an individual has been arrested can be eliminated, which would result in savings both of time and manpower. However, if a decision is made to detain a person following arrest, the individual should be brought before a judicial officer as soon as possible so that he may be informed of his rights and the charges against him and that release may be effectuated if deemed appropriate. Prompt presentation, however, is not always possible, usually due to the unavailability of key manpower and other processing delays. The practice currently exists whereby an individual may be arrested on a Friday evening and detained awaiting an appearance before a judicial officer until Monday morning. Such practices cannot be reconciled with the notion of presumptive innocence. Time limitations are needed to minimize any incovenience for the accused and lessen the potential for abuse.

Traditionally, the defendant awaited trial in custody unless qualified for and able to bear the cost of a bail release. The setting of bail is based on the theory that the risk of financial loss will prevent defendants from absconding prior to trial. Problems and inequities within the bail system are well documented. It is replete with inconsistencies and blatant discrimination against the poor. In practice, bail often is not set according to the defendant's individual circumstances but is determined largely by the offense charged. The bail system is also frequently distorted by the deliberate practice of setting bail out of reach of a defendant where the public demands it or where preventive detention of the defendant is desired.[2]

Aside from financial hardships, bail practices have other serious consequences for defendants. Studies have indicated that a defendant's failure to secure pretrial release may have an adverse relationship on trial outcome.[3] Detained defendants are more likely to receive an unfavorable disposition and custodial sentence.[4] In addition, studies have shown that conviction rates are higher for detained defendants.[5] The public also suffers when defendants are detained. Costs of detaining defendants who cannot afford bail and, frequently, the resulting support of their families must be borne by the public.

Recently, experimental bail projects such as the Manhattan Bail Project have demonstrated that rational bail decisions are possible if a "quick but careful inquiry" is made relating to the defendant's community ties.[6] Such projects have also demonstrated that most defendants released, either on low bail or on their own recognizance appear in court when required. Thus, pretrial detention can and should be greatly minimized.

New Jersey has initiated the practice of brief investigations into defendants' backgrounds in an effort to make bail and other release decisions more related to the risk of nonappearance. A greater, more equitable use of other release alternatives as well as continued improvements in the application of bail are needed to minimize pretrial detention to the fullest extent possible.

Concurrent with the normal pretrial steps of arrest, arraignment and release or detention pending further court action, is the practice of screening. Screening, which is the removal of a case from justice system processing, can occur anywhere from prior to the preparation of a complaint until indictment.

According to the National Advisory Commission on Criminal Justice Standards and Goals, less than half of all adults apprehended are formally charged; thus indicating that screening is a common practice.[7] It is, however, an informal practice not subject to review or governed by explicit criteria and/or guidelines. As in any pretrial decision, screening relies upon the discretion of individuals in a position of authority; in this case the prosecuting attorney. Normally the likelihood of acquittal or insufficient evidence are factors most likely to persuade the prosecutor to remove an individual from the system. While there is nothing intrinsically undesirable about prosecutorial screening, a potential for abuse, poor judgment or unequal application exists; therefore guidelines are necessary.

Aside from considerations of justice in terms of fair and equal treatment of offenders, screening can engender serious internal problems. The police, whose job it is to apprehend the suspect, may, understandably, feel frustrated when their efforts seem to be undercut. When screening occurs, the public may feel that the complex legal procedures encourage criminals to outwit the system. Such frustration is exacerbated when the decision appears to be a misguided one. Hence the fashioning of and compliance with explicit guidelines which spell out the rationale and place some constraints in terms of accountability for the practice is desirable to mitigate the resentment that occurs both inside the system and in the community.

In addition to being screened out of the system, defendants may be diverted to appropriate programs in lieu of criminal prosecution. Diverson, in this sense is defined as the removal of a defendant from the ordinary course of prosecution to participate in a prescribed program, the successful completion of which results in the dismissal of charges. Diversion can be beneficial to the defendant, criminal justice system and community. For the defendant, diversion to a suitable program does not have the stigma associated with conviction and is less damaging to the individual's self-esteem. Diverson also reduces caseloads at the beginning of the system funnel and throughout the justice process, thus allowing public funds and system resources to be expended on the more serious or chronic offender with a greater potential for benefit. Furthermore, diversion programs enable the community to benefit from the productivity of persons who might otherwise be a drain on public funds.

Pretrial intervention (PTI), a formalized mechanism for the removal of defendants from the ordinary course of criminal prosecution to supervised participation in a work or treatment program, is presently the only court-approved diversion program for adults. Only in the last decade has PTI been considered as an accepted option to prosecution. Since 1970, when the New Jersey Supreme Court promulgated Court Rule 3:28, PTI programs have been implemented in Atlantic, Bergen, Burlington, Camden, Essex, Gloucester, Hudson, Mercer, Middlesex, Monmouth, Morris, Passaic, and Union Counties. Current programs may be grouped into two categories: those which provide general counseling and referral services and those which are designed to treat a specific problem such as alcoholism. The majority of programs which are designated PTI programs provide general counseling services and, where community agencies are available, make referrals to other agencies which may more appropriately handle certain problems such as unemployment or drug dependency.

Court Rule 3:28 was amended in September, 1973 to include the operation of certain drug and alcohol treatment programs under the designation of PTI programs. To date, such programs have operated in the larger, more urban portions of the State as in the Essex and Camden County Treatment Alternatives to Street Crime (TASC) drug programs and the Union and Hudson County alcohol treatment programs. However, the remaining counties also utilize available agencies within their own boundaries to treat clients with alcohol and drug problems.

for certain first offenders charged with use or possession as outlined in the statute. Since the statute neither prescribes a program nor defines "supervisory treatment," many judges may prefer to utilize Rule 3:28 rather than *N.J.S.A.* 24:21-27 as a mechanism for diversion of selected drug offenders.

The problems that accrue to PTI practices are more or less the same that beset other discretionary pretrial proceedings and call for the same types of reform; namely structured, formal guidelines based on explicit criteria. Although it may not be possible to foresee and therefore include in guidelines all the relevant considerations that bear on individual cases, uniformity of procedure that allows for the offense as well as the individual needs of the defendant is essential and should be the aim of any pretrial improvement.

The Supreme Court, in *State v. Leonardis,* 71 N.J. 85 (1976), dealt conclusively with eligibility standards for pretrial intervention program participation, concluding first that the nature of the crime should not be dispositive and, more significantly, that the county programs be administered pursuant to statewide court-promulgated guidelines.

In addition to Rule 3:28, diversion of some persons with drug problems may be made under the authority of *N.J.S.A.* 24:21-27. This statute permits diversion prior to trial as well as "conditional discharge" (suspension of sentencing for "supervisory treatment" after a plea or adjudication of guilt) and is available

New Jersey's Status in Comparison with the National Standards

New Jersey Court Rule 3:3-1 allows the issuance of a summons in lieu of an arrest warrant if the person issuing the warrant has reason to believe that the defendant will appear in response thereto. A summons may also be issued after arrest if the person taking the complaint has reason to believe that the defendant will appear in response to a summons. Such procedures are consistent with the NAC and ABA standards (NAC Courts 4.2, Corrections 4.3, Police 4.4; ABA Pretrial Release 2.1, 2.2, 2.3, 3.1, 3.2). However, detailed procedures or guidelines structuring the use of such summonses, as presented in NAC Courts 4.2, are not provided in the court rules. In addition, the use of a summons is not mandatory as suggested in NAC Corrections 4.3 and ABA Pretrial Release 3.2 and thus is infrequently used. The Supreme Court's Committee on Criminal Practice has recently undertaken a comprehensive study of the issuance of a summons. In its 1976 report, the Committee on Criminal Practice recommended adoption of a court rule which would require issuance of a summons instead of a warrant by a police officer at the street level or thereafter, at the police station, except in certain situations. In its 1977 report, the Committee recommends adoption and promulgation of a Form Summons to replace the present CDR Form

1 developed jointly in 1968 by AOC and the New Jersey State Police. The recommended form is similar in size and shape to the summons used in motor vehicle cases, and can be served upon a defendant at the time of arrest. Thus a police officer may serve a summons "on the street" in authorized instances.

In acknowledgment of prosecutorial discretion to screen cases at the pretrial level, the national standards recommend criteria and procedures to be utilized in prosecutorial screening and charging. (NAC Courts 2.1, 2.2; ABA Prosecution Function 3.4, 3.9). The decision to prosecute in New Jersey is within the discretion of the prosecutor, as decided in *State v. Winne*, 12 N.J. 152 (1953). *N.J.S.A.* 2A:158-4 also states that, except for the Attorney General, the county prosecutor has exclusive authority to prosecute. Disciplinary Rule 7-103(a) is also in accord with the recommended standards in prohibiting charges where the prosecutor believes that the charges are not supported by probable cause. A recent Attorney General opinion (Formal Opinion No. 11, 1976) states that prosecutors must exercise discretion in a "reasoned manner" and "in good faith." The opinion concludes that prosecutors have the authority to administratively terminate complaints both prior to and following probable cause hearings.

The national standards also recommend the development of written guidelines structuring the use of prosecutorial discretion as well as other administrative procedures (NAC Courts 1.2, ABA Prosecution Function 2.5). New Jersey does not have a statute or rule requiring a formalized statement of policy or the development of a handbook although several prosecutors' offices have developed such office manuals.

The national studies also recommend that a defendant be presented before a judicial officer as soon as possible. (NAC Courts 4.5, ABA Pretrial Release 4.1). NAC further stipulates a time limit of six hours. At this appearance, it is recommended that the defendant be advised orally and in writing of the charges, constitutional rights and the date of trial or next appearance. ABA Pretrial Release Standard 4.2 also recommends counsel be appointed no later than the time of first appearance.

In comparison, Court Rule 3:4-1 requires that an arrested person be taken before the nearest available committing judge (warrantless arrests) or the court named in the warrant without "unnecessary delay." No time limit is expressed. Rule 3:4-2 requires the judge to inform the defendant of all matters as recommended by the national standards as well as refer the defendant to the Office of the Public Defender.

Also at the first appearance, the NAC and ABA recommend that the defendant's release be determined quickly and emphasize immediate inquiry into factors relevant to release (NAC Courts 4.5, ABA Pretrial Release 4.3). ABA Pretrial Release Standard 4.4 recommends a defendant charged with an offense subject to no more than one year's imprisonment should be released on his own recognizance without any inquiry. If the maximum penalty exceeds one year, an inquiry into the facts relevant to release should be conducted prior to or in conjunction with the first appearance (Pretrial Release Standard 4.5). New Jersey court rules do not require an investigation of the defendant's background prior to the first appearance.

Court Rule 3:26-1 states that defendants may be released on bail on such terms that will assure their presence in court when required and that take into account personal characteristics of each defendant. The rule also gives the court discretion to release a defendant on his own recognizance or with the imposition of terms or conditions appropriate to such release. The general policy is against unnecessary sureties and detention.

In reality, not all individuals are taken before a judge or magistrate in order that they be admitted to bail. Bail schedules which list suggested bail ranges for specific crimes are utilized by several police departments and clerks of court in some counties for the purpose of setting bail, in direct contradiction to ABA Pretrial Release Standard 5.3. In some instances bail schedules are recommended by the prosecutor and approved by a judge while in other instances, primarily at the municipal level, the schedules are issued directly by the judge. Thus, the bail attached to a specific crime varies with the discretion of the individual creating the bail schedule and is subject to personal biases.

Many recommendations for pretrial release other than bail are proposed by the national studies. Both studies recommend defendants be released on their own recognizance whenever possible and that an adequate investigation of each defendant's characteristics be undertaken to determine an appropriate release procedure (NAC Courts 4.6, Corrections 4.4; ABA Pretrial Release 5.1). If a defendant cannot be released on recognizance, he should be released on the least onerous condition(s) reasonably likely to assure his appearance where required (NAC Corrections 4.4, ABA Pretrial Release 5.2).

In New Jersey, there is no presumption that the defendant should be released on recognizance although he may be so released at the discretion of the judge according to Court Rule 3:26. Data collected by the Administrative Office of the Courts indicate that the utilization of ROR programs in 1974 ranged from 25.0% of the cases in Cape May County to 78.0% of the cases in Sussex County.[8] Factors upon which pretrial release decisions are based are set forth in Rule 3:26 and *State v. Johnson*, 61 N.J. 351 364 (1972) and are comparable to those listed in NAC Corrections Standard 4.5 and ABA Pretrial Release Standard 5.1. Many Municipal Courts and all County Courts in New Jersey utilize a modification of the Vera Institute point scale for release

decisions. The Vera system assigns points to factors related to likelihood of appearance, requiring defendants to meet a minimum number of points to be eligible for release. Those courts which do not utilize any form of the scale upon which to make their decision often subjectively make decisions to release on bail.

Despite the use of point systems, courts in few municipalities and relatively few counties attempt to verify information received through defendant interviews, which is recommended by NAC Corrections Standard 4.6. The NAC further states that the staff which handles bail/ROR programs should verify information received in relation to bail and should be under the direction of the same agency that develops presentence reports. Although New Jersey statutes and rules do not specify who should gather and verify such pretrial release data, it is usually conducted by probation staff. The definition and type of investigation varies among the courts as well as the number of staff assigned in each county to perform this function.

New Jersey is, for the most part, consistent with national recommendations calling for increased use of conditional release and other bail variations (NAC Corrections 4.4, ABA Pretrial Release 5.2, 5.3). Research indicates that all of the recommended release alternatives except "detention during specified hours" (NAC Correction 4.4) exist in New Jersey. Court Rule 3:26-4(a) allows for the institution of a 10% cash bail program in any court with the approval of the Assignment Judge. The NAC also recommends the elimination of participation by private bail bond agencies, which is currently allowed in New Jersey although many feel bail bonds should be considered appropriate only for those defendants who cannot secure release by any other means.

The national standards also suggest that substantive law and procedures be created to deal with nonappearance after pretrial release (NAC Corrections 4.7, ABA Pretrial Release 5.6-5.8). According to *N.J.S.A.* 2A: 104-13, it is a crime to fail to appear when released on bail or personal recognizance and Court Rule 3:3-1(b) further states that failure to appear in response to a summons will result in the issuance of an arrest warrant. Provision is also made in *R.* 3:26-6(a) for forfeiture where there is a breach of a condition. These procedures are normally followed in New Jersey courts.

National recommendations are also proposed for procedures relating to review of release decisions (NAC Corrections 4.5, ABA Pretrial Release 5.9). New Jersey rules do not provide for automatic reexamination of release decisions although an appeal is available on all levels. ABA Standard 5.9 also requires periodic reports to be made to the court for each defendant who has failed to secure release within two weeks of arrest. Although New Jersey rules do not require such reports, they are routinely filed with the Administrative Office of the Courts.

The ABA and NAC also suggest every convicted defendant be granted credit for pretrial detention (ABA Pretrial Release 5.12, NAC Correction 5.8). Court Rules 3:21-8 and 7:4-6(f) provide credit on the term of a custodial sentence for any time served in custody between arrest and imposition of sentence.

The NAC and ABA recommend the diversion of selected defendants where appropriate (NAC Courts 2.1, 2.2; ABA Prosecution Function 3.8; Defense Function 6.1). The National Advisory Commission further suggests factors to be considered in making diversion decisions and also recommends operational procedures. Court Rule 3:28(b) allows diversion of any offender into an approved pretrial intervention program (PTI) upon the recommendation of the trial court administrator, chief probation officer or other program director approved by the Supreme Court. The prosecuting attorney and defendant must consent to such diversion. In counties where a pretrial intervention program is approved by the Supreme Court, Court Rule 3:4-2 requires the judge, at the first appearance, to inform the defendant of the existence of such program, the name of the program director and the location where applications may be made for enrollment. Information relating to areas such as personal background, previous criminal record and present and pending charges is then gathered at an initial interview by PTI staff prior to the determination of the applicant's eligibility.

NAC Courts Standard 2.2 further suggests that the decision by the prosecutor not to divert a defendant should not be subject to judicial review. Prosecutors have exercised "veto power" over the enrollment of defendants into pretrial intervention programs in the past, however, the New Jersey Supreme Court ruled in *State v. Leonardis*, 71 N.J. 85 (1976) that all persons are eligible to apply for admission to PTI programs.

Guidelines issued by the Supreme Court state that persons accused of deliberately committing violent crimes, participating in an organized criminal activity or taking part in a continuing criminal business or enterprise should generally be rejected. In addition, persons should normally be declared ineligible if accused of violating the public trust and when admission to a pretrial program would deprecate the seriousness of the crime. The decision has been criticized by many prosecutors, who felt they were being deprived of discretion to decide who should be admitted to such programs.

The National Advisory Commission, in Corrections Standard 4.1, recommends the provision of comprehensive pretrial process planning which is nonexistent in New Jersey. The standard also suggests information which should be available for bail and pretrial release planning and collected in a central

location. Collection of reliable data would enable evaluation and planning to be conducted both within the counties and on a statewide basis. Currently, evaluation of release programs in some cases is hampered because of the lack of available information.

Commentary

Although the national studies in their recommendations for pretrial processing did not contemplate disorderly persons offenses, the standards proposed by the Advisory Committee are applicable both to disorderly persons and indictable offenses. In addition, the Advisory Committee recommends these standards with the assumption that local, State and federal governments will take active steps to ensure compliance and provide funds where necessary.

In some cases, new legislation will be required in order to implement these proposals; in other cases, new administrative rules and in still others, only encouragement. It has been discovered, in the course of the many intensive discussions necessary to formulate these standards, that they often call for procedures that are already permitted or recommended but are not generally observed. Thus, while it is to be hoped that the present standards will influence future legislation and administrative regulation, much of their usefulness will be lost if they are not widely promulgated, discussed and campaigned for among those who do the day to day work of the system.

The intent of Standard 8.1 is to make the issuance of a summons mandatory in certain situations. Presently provision is made for the use of a summons in lieu of an arrest warrant (Court Rule 3:3-1 and 3:4-1) although it is infrequently used. The Advisory Committee recommends that the use of a summons in lieu of continued detention following arrest or in lieu of a warrant should be mandatory for offenses other than the common law felonies of arson, burglary, kidnapping, murder, rape, robbery or attempts to commit such crimes. These common law felonies were deemed exceptions since they are considered more heinous, are usually punishable by longer sentences and are similar to the offenses which require bail to be set by a superior or county court judge as enumerated in Court Rule 3:26-2. Attempts to commit these crimes were also exempted.

Specific criteria are offered to structure the use of summonses by both police officers and judicial officers. In comparison, the National Advisory Commission and American Bar Association recommend the use of a summons or citation in lieu of an arrest. The Advisory Committee Standard varies somewhat in that it calls for the use of a summons in lieu of continued detention following arrest (and also in lieu of a warrant). This change was made to retain a law enforcement officer's right to search during an on-scene arrest and to allow for the photographing and fingerprinting of a suspect, which is required for all arrests in New Jersey. The NAC and ABA made no such provision. It is recognized that statutory changes may be needed to deal with present identification procedures required after arrest.

The Advisory Committee recommendation also deviates from NAC proposals in that it requires the defendant to sign a receipt of the summons rather than the summons itself.

The recommended standards for prosecutorial screening are designed to serve as guidelines for prosecuting attorneys and to promote uniformity in screening while allowing for individual discretion. The Advisory Committee proposes that the prosecuting attorney should have the discretion to terminate prosecution prior to indictment whenever it is counterproductive to prosecute and the standards provide guidelines at each instance where such prosecutorial screening may occur. The Advisory Committee further recommends that no complaint should be filed without the active review and approval of the prosecutor, thus suggesting that police officers review matters with the prosecutor prior to preparing a complaint. Ideally, such a procedure should be standardized statewide; however the Advisory Committee acknowledges the fact that statewide compliance may not be practical or possible at present.

For many years, the issue of whether a prosecutor has the authority to administratively dismiss a complaint prior to grand jury presentment remained controversial and unsettled. As a result, practices differed throughout the State. A recent Attorney General opinion concludes that a criminal complaint may be disposed of by a prosecutor without presenting the matter to grand jury.[9] The proposed guidelines are consistent with this interpretation and offer criteria to be considered for administrative disposition.

The standards for prosecutorial screening utilize the most relevant portions of the ABA and NAC recommendations and are therefore quite similar. However, factors detailed by the national studies which should not be considered in screening decisions were excluded.

The standard governing the first appearance of the defendant before a judicial officer is primarily concerned with safeguarding the rights of the individual defendant. Following a series of Supreme Court rulings (most notably *Mapp v. Ohio, Escobedo v. Illinois, Gideon v. Wainright, Mallory v. U.S.* and *Miranda v. Arizona*) the arrest, detention and information gathering procedures have been constrained by a rather specific format. A crucial prob-

lem concerns the time allowed to detain a suspect before being brought before a judicial officer. The NAC specifies six hours whereas the ABA advocates the scheduling of a first appearance without unnecessary delay. To rectify New Jersey's situation, the Advisory Committee follows the ABA lead in recommending initial appearances on all charges be held without unnecessary delay. In interpreting whether delay is unnecessary, a distinction is drawn between defendants who are issued a summons or released following arrest and those who are arrested and detained. For persons arrested, the first appearance should be held in no instance later than 48 hours after arrest. For defendants issued a summons, the standard of unnecessary delay is sufficient since there is no detention and hence no urgency.

At the first appearance, the Advisory Committee recommends the defendant be advised in clear and easily understandable language of the charges, the date of next appearance and of constitutional rights, including but not limited to the right to release and representation by counsel if entitled. The Committee intends that to be so entitled, the defendant must meet criteria as expressed in *Rodriguez v. Rosenblatt,* 58 N.J. 281 (1971) and *Argersinger v. Hamlin,* 407 U.S. 25, 92 S. Ct. 2006, 32 L. Ed. 2d 530 (1972) with respect to nonindictable offenses. Indigent defendants charged with indictable offenses are entitled to the assignment of counsel at public expense.

The Advisory Committee as well as the national studies recommend defendants be released whenever possible at the first appearance. If the defendant is detained, however, a detention or probable cause hearing should be scheduled within ten days of the arrest. If held within this time period, the probable cause hearing may obviate the need for a separate detention hearing as required in *Gerstein v. Pugh,* 95 S. Ct. 854 (1975). The Committee recognizes the desirability of combining the detention hearing with the first appearance or probable cause hearing.

Pretrial release standards proposed by the Advisory Committee call for release determinations based on each defendant's individual characteristics and a greater use of release options other than bail. These recommendations closely parallel the suggestions of the NAC and ABA with only minor differences.

The Advisory Committee recommends an investigation commence as soon as possible to gather information relevant to release determinations. The nature of the investigation should be limited to the defendant's likelihood of appearance without any consideration of preventive detention. The Committee also recommends elimination of schedules for setting bail which do not take into account the personal characteristics of the defendant but rather consider the offense charged.

In Standard 8.6, the Advisory Committee calls for the adoption of a court rule to develop, authorize and encourage the use of a variety of alternatives to detention. Many of the suggested alternatives are presently available although only bail and release on personal recognizance (ROR) are used with any regularity. The listing of alternatives provided in Standard 8.6 ranges from release on recognizance to detention and it is suggested that the least restrictive appropriate alternative be selected for each defendant. A revision in Court Rule 3:26-4(a) is necessary to allow 10% cash bail in every county. Presently this option is in operation on a limited basis and requires the approval of the assignment judge.

Although the NAC and ABA recommend the abolition of private bail bondsmen in the release process, the Advisory Committee elects not to concur since there may be circumstances where the defendant has no other way of securing bail. The Committee therefore recommends that participation by private bail bond agencies be minimized to the fullest extent possible.

The Advisory Committee also recommends procedures for a hearing if release conditions are violated by the defendant. It is important to note that a technical violation or even the possibility of the commission of a new crime does not necessarily mandate a hearing and possible revision of release conditions unless it bears directly upon the possibility of nonappearance. The Committee deviates somewhat from NAC recommendations regarding release condition violations since the national study makes reference to the revocation of release. In New Jersey, release can only be denied where there are no conditions that will assure appearance at trial, *State v. Johnson,* 61 N.J. 351, 364 (1972).

The Advisory Committee also felt the judge need only state his reasons on the record for imposing detention, release conditions and revisions rather than provide the defendant with a written statement, as suggested by NAC. The Committee as well as the national studies recommend all release decisions be reviewable.

For purposes of this document, diversion is defined as the halting or suspending of formal justice system proceedings in favor of informal processing or disposition. Presently, diversion programs such as pretrial intervention are in operation in ten counties although uniform procedures are not utilized statewide. The Advisory Committee recommends the expansion of pretrial intervention programs until there is one available to defendants in every county and also recommends guidelines for statewide operation. Recommendations proposed by the Committee for diversion apply especially to the operation of pretrial intervention programs; however, standards are intended to be applicable to any future approved diversion program as well.

In recommending factors to be considered in de-

termining a defendant's suitability for diversion, the Committee combined NAC recommendations with its own suggestions as well as those offered by the Atlantic County Prosecutor's Office.

The Advisory Committee emphasizes that diversion, a process separate from screening, should not be utilized as a substitute for prosecution where the facts of the case are not sufficient to obtain a conviction or where screening is more appropriate. The Committee did not concur with NAC's recommendation that the decision by the prosecutor not to divert a particular defendant should not be subject to judicial review in view of the fact that the New Jersey Supreme Court has ruled otherwise (*State v. Leonardis,* 71 N.J. 85 (1976)).

The creation of an agency within the Administrative Office of the Courts is recommended to coordinate and direct all pretrial services to include information gathering, pretrial intervention and supervision of released defendants. This agency, to be designated as the Pretrial Services Agency, would also be responsible for planning and evaluation of pretrial processes. The pretrial area, including the release determinations and supervision of defendants awaiting trial is a responsibility of the courts; therefore, the Committee deems it proper to place authority for pretrial services under the Administrative Office of the Courts rather than a correctional agency. In addition, much of the services necessary during the pretrial phase as well as statistical capabilities are currently provided through probation departments, which are supervised by the Administrative Office of the Courts.

References

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[3]Ibid.

[4]Rankin, "The Effect of Pretrial Detention," 39 *N.Y.U.L. Rev.,* 1964, p. 641.

[5]Ares, Rankin and Storz, "Manhattan Bail Project," 38 *N.Y.U.L. Rev.*, 1963, p. 84. See also Foote, "The Coming Constitutional Crisis in Bail," 11, 113, *U. Pa. L. Rev.,* 1965, pp. 1125, 1137-1151.

[6]American Bar Association, *Standards Relating to the Administration of Justice,* p. 216.

[7]National Advisory Commission on Criminal Justice Standards and Goals, *Report on Courts,* Washington, D.C., U.S. Gov't. Printing Office, 1973, p. 17.

[8]Administrative Office of the Courts, "Municipal Court Monthly Reports on the Bail or Jail Status of Defendants at Commencement of Trial," January-December, 1974.

[9]Attorney General Formal Opinion No. 11, March 31, 1976.

TRIAL PREPARATION

Introduction

The expeditious processing of criminal cases must always be tempered by constant concern for the rights of the accused and the needs of society. This balancing of goals is a recurrent theme in the administration of criminal justice. Prompt and efficient processing of cases requires an effective screening mechanism to determine whether trial is warranted as well as procedures for the review and disposition of cases through pleas of guilty.

Although the constitutional guarantee of the right to a speedy trial is fundamental to our system of justice, the majority of criminal cases are disposed of without trial. It is commonly asserted that the public also has a right to a speedy determination of the issues. Thus, the definition of "speedy" must be suitable to both the defendant and the public.

The existence of two duplicative processes for determining reasonable cause, grand jury and probable cause hearings, contributes to the delay in bringing cases to trial. This duplication has been the source of much concern and criticism. Many believe the grand jury indictment process has outlived its usefulness, is cumbersome and subject to undue prosecutorial influence and control, whereas others contend the probable cause hearing as it presently operates is not truly an effective screening mechanism. Some hold that the grand jury-probable cause hearing process as it now operates provides the necessary safeguards and should not be changed.

Another mechanism to balance the conservation of resources with the defendant's and society's best interests is plea negotiation. Its advantages and prevalence notwithstanding, plea negotiation remains a controversial practice. On the one hand, plea negotiations can obviate the need for a public trial in those cases when a trial is undesirable, unnecessary or the facts are not in dispute. On the other hand, critics of plea negotiations argue that the process yields disproportionately differential treatment of defendants, primarily because constitutional safeguards to guarantee equal treatment under law are superseded.

Problem Assessment

The Grand Jury

Predecessors to the present grand jury system date back as far as eighth century England.[1] Closer origins are associated with the promulgation of the Assize of Clarendon in 1166 which permitted a body of 12 men from each hundred to present under oath the names of those believed guilty of criminal offenses.[2] At that time, the accusers were also permitted to judge, however within 100 years the grand and petit jury functions were separated.[3] Accusations originated with members although accusations from outsiders gradually came to be considered.[4] As improvements were realized in English criminal procedure during the fourteenth and fifteenth centuries, grand juries were also modernized. Informations (formal statements filed by the prosecutor which include all of the essential elements of an indictment) were allowed as an alternative to grand jury indictment. Reform continued and in 1695, William and Mary granted subjects for the first time the right to review their indictments prior to trial.[5]

Criticism of the English grand jury began to mount during the nineteenth century resulting in the enactment of statutes to limit grand jury powers. In 1933, English grand juries were abolished when it became apparent that they had "outlived their usefulness."[6]

References for this chapter appear on pages 157 & 158.

The development of American grand juries generally follows the establishment of the colonies. Methods for selecting jurors as well as juror qualifications varied. History indicates that colonial grand juries were "ineffectual, ignored or shared complicity in many prosecutions of, from a modern viewpoint, doubtful justice."[7] During the Revolutionary War, for example, many grand juries served the American cause for freedom by indicting British authorities, Tories and other anti-revolutionaries for political reasons.[8]

New Jersey's first grand jury was impaneled in 1676. Prosecution by information, although greatly abused, was common during the eighteenth century. Criminal informations were abolished in 1795 and in 1844 the State Constitution authorized indictment as the only method of initiating prosecution. The investigative and presentment functions of New Jersey's grand jury system have remained essentially unchanged since 1676.[9]

Traditionally, the grand jury has acquired two distinct functions—to initiate investigations of suspected criminal activity and to act as a buffer between the State and the citizenry by weighing evidence to determine if a trial is warranted. This buffer function is implicit in the Fifth Amendment which provides that "no person shall be held to answer

for a capital or otherwise infamous crime unless on presentment or indictment of a grand jury." This requirement has never been held by the U.S. Supreme Court to be binding on the states as decided in *Hurtado v. California*, 100 U.S. 516 (1884). Less than half of the states currently require prosecution to be initiated by indictment in all cases. Most states allow the initiation of prosecution through the use of informations.

The grand jury indictment process has been the source of much contention among criminal justice system practitioners and the public. Many commentators have concluded that the indicting grand jury process no longer serves a useful purpose in today's system of criminal justice.[10] It has been characterized as inefficient and cumbersome. The great mass of cases prepared and presented to a grand jury, especially in states such as New Jersey which do not authorize the use of informations, often precludes careful review and consideration of each case by both the prosecutor's staff and the grand jury.[11] The Advisory Commission on Intergovernmental Relations proposed in 1971 that the indictment by grand jury requirement be eliminated while the investigatory function be retained.[12]

Criticism of the grand jury indictment process centers around the claim that it is ineffective as a buffer between the prosecution and one accused of a crime. Concern has been expressed regarding possible prosecutorial domination of the grand jury proceedings.[13] Many believe the process serves only as a rubber stamp approval of the prosecutor's request for indictment. In addition, several characteristics of the indictment process, such as the absence of rights for defendant and attorney appearances and cross-examination of witnesses, may create a potential for abuse.[14] A court management study of the Baltimore courts concluded that the grand jury has a negligible effect, other than delay, on the criminal process. The National Advisory Commission on Criminal Justice Standards and Goals found that in most cities across the nation where the grand jury is utilized for indictment purposes, it eliminates less than 20% of the cases presented.[15] Although similar statistics on a State level are not available for New Jersey, the Subcommittee to Study the Grand Jury of the Supreme Courts Committee of Criminal Practice found that in Essex County, where each case is presented to the grand jury, approximately 40% are "no billed." In Atlantic and Mercer counties, where prosecutorial administrative dismissal is utilized, approximately 20% and ten percent respectively are "no billed."[16]

Another criticism of the use of indicting grand juries is that impaneling and servicing a grand jury is becoming more costly in terms of time, personnel and finances. Many have argued that the indictment process is unnecessary and duplicative of the preliminary or probable cause hearing since both determine the existence of probable or sufficient cause. The Special Committee on Crime Prevention and Control concluded the preliminary hearing is a more effective screening device than the grand jury process.[17] The National Advisory Commission has concluded that "any benefits to be derived from a requirement that all offenses be charged by grand jury indictment are outweighed by the probability that the indictment process will be ineffective as a screening device, by the cost of the proceeding and by the procedural intricacies involved."[18] The Commission therefore recommends grand jury indictment not be required for initiation of any criminal proceeding and that, if it is utilized for a particular case, a preliminary hearing should not be available (NAC Courts Standard 4.4).

Notwithstanding arguments to remove the indictment requirement and rely on probable cause hearings as the sole determiner of cause for most cases, there is wide support for the reverse position. Past experience of prosecution and defense parties indicates the probable cause hearing serves principally as a means of discovery rather than a determination of sufficient cause. Recent statistics are unavailable, although statistics compiled by the Public Defender in certain northern counties show that from July 1, 1967 to December 31, 1970 a total of 39,137 cases were handled, 1064 or 2.7% of which resulted in findings of no probable cause by the Municipal Court.[19] The Supreme Court Special Committee on Calendar Control-Criminal, which in 1971 recommended the elimination of probable cause hearings, considered such a small percentage as hardly warranting "perpetuation of a practice which in essence duplicates the function of the Grand Jury."[20]

It is frequently argued that the probable cause hearing, as structured, invites procedural jockeying. Responding to the Supreme Court Special Committee recommendations, a *New Jersey Law Journal* editorial, which acknowledged certain deficiencies of a probable cause hearing yet considered it worthy of retention, stated the following:

> Prosecutors often bypass [the probable cause] hearing, complaining of its inutility and its misuse by defendants; defense counsel often use the hearing for purposes other than to determine probable cause, and allege deprivation of the defendant's rights if the hearing is bypassed. Acrimony appears with frequency, and what usefulness there is in the hearing evaporates. . . . Rule 3:4-3 provides that the court 'shall' conduct a hearing as to probable cause 'within a reasonable time' unless the defendant waives the hearing or an indictment is returned prior to the hearing; yet a defendant who demands a hearing can be frustrated by a simple adjournment of the hearing until the Grand Jury indicts. If a defendant obtains a hearing, the prosecutor can render it meaningless by simply electing not to present any evidence at the hearing, and thereafter seeking an indictment

at his convenience. And even if at the hearing the defendant is successful in having the complaint dismissed, he remains subject to indictment on the charge.[21]

These deficiencies not withstanding, it has been posited that the hearing has certain potential which should be tapped rather than abandoned. First, the probable cause hearing can give a defendant in custody an early opportunity to challenge that custody. Second, it gives the defendant, whether detained or released, the opportunity to confront and dispel a criminal charge which has been made against him or her and on which no prompt action has been taken by the State. Third, it provides an early adversary meeting at which, in the interests of both parties, review and disposition of charges can be effected before unnecessary expenditure of time and funds is made by either side. With proper revisions in procedure, the probable cause hearing could function effectively and efficiently as a screening mechanism to remove unwarranted cases from prosecution.

There is still another stream of thought which contends neither the probable cause hearing nor the indictment process should be eliminated but should perhaps be refined. This position is taken on the grounds that each proceeding is yet another step which serves to protect the rights of the defendant and acts as a check on the system. Thus, both should be retained and utilized to their fullest potential.

Regardless of whether indictment is required for criminal prosecution, many believe the grand jury can play a valuable role in the criminal justice system and should not be entirely eliminated. Most practitioners recognize the necessity to retain the grand jury's investigative function. It is especially desirable in cases involving official corruption and organized crime. Such allegations should be investigated by an independent authority to preserve impartiality and avoid any charges of "cover-up" or "whitewash" where charges are not substantiated.[22] In addition, it is generally accepted that the grand jury indictment process should be retained for exceptional cases such as those which are politically sensitive, involve numerous defendants or where the need for secrecy exists.[23]

The grand jury system in New Jersey has recently been the subject of extensive scrutiny by two respected groups. In April, 1975, the President of the New Jersey Bar Association formed a special committee to review New Jersey's grand jury process. The Special Committee on Grand Jury Review undertook a comprehensive study of the grand jury process and published its findings in May, 1977. The Supreme Court's Committee on Criminal Practice has also formed a Subcommittee to Study the Grand Jury. The Subcommittee submitted an inclusive report in March, 1976, which has since been revised and adopted by the Committee on Criminal Practice and has been made part of its 1977 report. These reports reviewed in depth the historical background of the grand jury, present practices in New Jersey and other states and the range of alternatives to the indictment process. To avoid duplication of effort, this Standards and Goals report leans heavily on the research undertaken by these efforts.

Speedy Trial

Court congestion and delays in processing cases continue to plague the administration of criminal justice. For the 1974-1975 Court Year, 27,567 criminal cases were filed in court and 23,260 were disposed of, leaving 26,555 cases pending which include backlog.[24] These figures represent, in comparison with 1973-1974 figures, a 14.1% increase in cases filed, a 4.8% decrease in cases disposed and a 19.4% increase in cases pending at the end of the court year. These figures are illustrative of the increasing case backlog which has generally occurred since 1948 and which hinders New Jersey's system of criminal justice.

Continuing and increasing pressures upon available resources have made it difficult to dispose of criminal cases promptly, thus resulting in lengthy delays prior to trial. The March, 1974 Criminal Time Interval Study,[25] undertaken by the Administrative Office of the Courts, indicated that the total time period from indictment or accusation to commencement of trial for those trials commencing in March, 1974, ranged from 23 days in Camden County to 71 months, one day in Passaic County. The average time period for the State was five months, five days. For incarcerated defendants, time limits ranged from 24 days in Bergen County to 35 months, 17 days in Passaic County. The statewide average time limit for incarcerated defendants was three months, 17 days.

Delay in processing criminal cases has raised serious questions regarding a defendant's constitutional right to a speedy trial. Lengthy pretrial delay can be prejudicial to a defendant especially if he is confined and cannot, or finds it difficult to, preserve a defense. On the other hand, delay is not an uncommon defense tactic which, among other things, enables a defendant to manipulate the system through pretrial maneuvers such as plea negotiation and judge shopping. It has been argued that society also has a right to a speedy disposition of criminal cases and thus has a legitimate interest in seeking prompt resolution. If there is delay between the commission of a crime and punishment, the possibilities of deterrence and rehabilitation may diminish. Such delay may be considered detrimental to society's interest.

The Sixth Amendment to the U.S. Constitution guarantees that defendants have a right to a speedy trial although precise limits which define that right are not clear. If speedy trial goals were defined in terms of a specific time interval, it would be im-

portant to identify the point at which counting time for trial begins or what periods, if any, should be excluded. It is generally accepted that allowing time extensions solely in response to trial docket pressures is undesirable and should not be practiced. Continuances should be restricted.

Many states, including New Jersey, have formerly required a defendant to demand his right to a speedy trial to commence the running of time. The American Bar Association (ABA) has rejected the requirement of demand for a variety of reasons, one being that it is inconsistent with the public interest in prompt dispositions.[26] There may also be situations where it is unfair to require a demand. According to the ABA, delay prior to trial should not be tolerated merely because a defendant does not consider it in his best interest to seek a speedy trial.

The controversial issue of appropriate consequences for the denial of speedy trial remains largely unsettled. Most states which designate acceptable time periods for bringing a case to trial provide for the release of detained defendants upon expiration of such time limit. The American Bar Association takes the position that "the only effective remedy for denial of speedy trial is absolute and complete discharge."[27] The ABA explains that the right to speedy trial would be meaningless if the prosecution were free to commence prosecution again for the same offense.

The necessity for specified time limits and the demand requirement in defining one's right to a speedy trial have become questionable in light of recent court rulings. The U.S. Supreme Court, in *Barker v. Wingo,* 407 U.S. 514 (1972) rejected inflexible approaches such as fixed time periods in defining one's right to a speedy trial. It also rejected the necessity for a defendant to demand a speedy trial. The court concluded in its decision:

> A defendant's constitutional right to a speedy trial cannot be established by any inflexible rule but can be determined only on an ad hoc balancing basis, in which the conduct of the prosecution and that of the defendant are weighed.

The U.S. Supreme Court, in *Barker,* listed four factors which should be considered in determining if the right to a speedy trial has been denied: length of delay, reason for delay, defendant's assertion of his right and prejudice to the defendant. Thus, the Court placed the primary burden, to assure that cases are promptly brought to trial, upon courts and prosecutors. It prescribed a balancing test in which the conduct of both the prosecution and the defendant are weighed.

The New Jersey Superior Court has held in *State v. Cappadona,* 127 N.J. Super. 555, 558 (App. Div. 1974) and *State v. Smith,* 131 N.J. Super. 354 (App. Div. 1974) that the denial of speedy trial cannot be answered by the sole reference to lapse of a specific amount of time between indictment and trial or lack of trial. Factors identical to those outlined in the *Barker* decision were offered as determinants of speedy trial denial. In *State v. Smith,* the Superior Court stated that prejudice for the defendant is not confined to the inability or lessened ability to defend on the merits but it can also be found from "employment interruptions, public obloquy, anxieties concerning court and unresolved prosecution, a drain of finances" and the like. In *State v. Szima,* 70 N.J. 196, 133 N.J. Super. 469 (App. Div. 1975), the New Jersey Supreme Court held that an unexplained lapse of 22 months between the time of defendant's arrest and his subsequent indictment did not constitute a denial of his right to a speedy trial in absence of any showing of prejudice to the defendant.

Aside from the issue of defining the right to speedy trial, many authorities agree criminal defendants should be given speedy trials, not only as a matter of constitutional right, but as a means of assuring effective law enforcement. The issue of speedy trial, which has been a subject of concern in New Jersey and other states for many years has acquired renewed interest since Governor Brendan Byrne delivered his State of the State Address in January, 1976. Governor Byrne recommended dealing with the alarming rise in violent crime by providing certainty and swiftness of punishment. In his message, the Governor called for action which would bring the accused violent criminal to trial within 90 days of indictment.

Many believe the court system could be equipped to provide prompt trials but, with present manpower and financial limitations and ever increasing backlogs, it is not possible. At the end of the 1974-1975 court year, over 4,000 cases were pending ranging in age from six months to one year; over 1200 were 12 to 18 months old; 493 were 18 to 24 months old and 576 had been pending for two years or longer.[28] Solutions for the court's criminal case backlog problems are by no means simple. For example, many fear increased attention to the criminal calendar without any additional judgeships may cause a backlog in the civil calender.

Part of the solution to reduce court backlog and, in turn, assure speedy trials lies in reducing the number of cases requiring trial through methods such as screening, diversion, negotiated guilty pleas or decriminalization of certain victimless crimes. Removing cases by these means could allow more time to be devoted to dealing with defendants charged with violent crimes.

Any method or program which can improve efficiency and maximize available resources would benefit prompt case processing; however, it is argued that the objective of speedy trial cannot be reached without new appropriations for all components of the system. An effective program of bringing defendants, especially those charged with violent crimes, to trial within 90 days of indictment would require the addition of more judges, courtrooms, prosecutors, public defenders, probation officers and other supporting

staff. Even if present vacancies were filled, many doubt that the backlog can be overcome and speedy trials provided, given the high number of cases added to the calendar each day.

Despite difficulties in establishing a speedy trial requirement, prompt disposition of criminal matters remains a worthwhile goal. The setting of a time limit, such as 90 days from indictment to trial as recommended by the Governor, or 90 days from charge to trial as recommended by the Administrative Office of the Courts and this Committee, would enable the system to measure its success in providing prompt trials although time limits are recognized as unnecessary in defining a defendant's constitutional right to speedy trial. An interim measure aimed at satisfying the public's interest is the scheduling of cases involving violent crimes on a priority basis in addition to jail cases. Regardless of what immediate steps are taken, policy decisions and standards are needed to provide a framework for speedy trial considerations.

Plea Negotiations

The court is generally thought to be the single most important and critical institution in the entire system of criminal justice. It is this hub which determines priorities and practices for the rest of the system. Arrest procedures, police conduct, legal strategy and correctional practices, for example, are all shaped by court decisions and regulations.[29]

The court's putative function is to ascertain the guilt or innocence of the accused. Our judicial system, with its stress on adversary procedures and complex rules of evidence, operates on the assumption that courts resolve questions of culpability. However, in the preponderance of cases, especially in the busier courts, the major decision pertains, not to whether the defendant has committed a crime, but rather to what crime he has committed or how many. A small fraction of cases are adjudicated in a full scale trial. From 87% to 94% of criminal convictions are obtained by the defendant's own guilty plea.[30] In many cases, a guilty plea is brought about through a negotiating process[31] between prosecutor, defendant and lawyer. When the bargaining takes place the defendant is offered an inducement to plead, in the form of a reduced charge or recommendation for a reduced sentence.

The common types of agreements may be divided into the following categories:

1. Recommendations that separate indictments or courts of the same indictment be dismissed in return for specified guilty pleas.
2. Recommendations for specified maximum exposure less than the statutory maximum.
3. Recommendations that the crimes charged be downgraded to lesser included offenses, either indictable or disorderly.[32]

Until recently, English and American courts actively discouraged the guilty plea. For centuries, litigation was thought to be the "safest test of justice."[3] A plea of guilty which issued from negotiations between prosecutor and defense and was part of a bargain between them was, in most American jurisdictions, an illegal plea. Everyone involved might know that the plea had been made in return for a dismissal or reduction of certain charges, or some other leniency, but this knowledge could not be openly avowed.

Over the last decade, the U.S. Supreme Court rendered this unnecessary, giving its approval to plea negotiations provided that the defendant has "full understanding of what the plea connotes and of its consequences" and that the judge assembles an "affirmative record" of the proceedings, so that the agreement is officially recorded.[34] The U.S. Supreme Court also decided:

> . . .the disposition of criminal charges by agreement between the prosecutor and the accused. . . is an essential component of the administration of justice. Properly administered, it is to be encouraged. If every criminal charge were subjected to a full scale trial, the States and the Federal Government would need to multiply by many times the number of judges and court facilities.[35]

The Supreme Court of New Jersey gave recognition to plea negotiations by stating:

> . . . there is nothing unholy in honest pleabargaining between the prosecutor and defendant and his attorney in criminal cases. At times, it is decidedly in the public interest, for otherwise, on occasion the guilty would probably go free . . . [36]

Notwithstanding the prevalence of negotiations, judicial endorsements and the weighty considerations in its favor, there are formidable objections to plea negotiations. It remains one of the most controversial and suspect practices in the criminal justice system.[37]

The practice of plea negotiating is generally explained, and often justified, in terms of the overburdened court system and prosecutorial offices. An article in *Newsweek* stated that if all the defendants in any one city ceased to offer pleas and instead insisted on their right to trial by jury, "the entire criminal justice system would stand still for a moment and then collapse."[38] In Manhattan one prosecutor was quoted as saying "our office keeps eight courtrooms extremely busy trying 5% of the cases. If even 10% of the cases ended in trial, the system would break down. . . ."[39]

A major justification offered by prosecutors in support of plea negotiations is that it enables them to maximize the number of convictions but this expectation may be unfounded. The weakness of their cases was noted as an important reason for negotiating by 85% of the prosecutors surveyed by the University of Pennsylvania Law Review.[40] Prosecutors have also argued that by bargaining they can better adapt the charge and ultimately the sentence to the peculiar circumstances of the case: the social status

of the defendant, a previous record and perhaps activities which are not a record, apparent state of mind when committing the crime and after arrest and so on. On the other hand, prosecutors may feel they understand the community's values better than the legislator; they may "grant concessions because the law is 'too harsh', not only for this defendant but for all defendants."[41]

The prime objection to plea negotiation is a constitutional one. As it is generally practiced, negotiation places enormous pressure on defendants, whether guilty or not, to forgo their constitutional rights.

The pressures can be extreme. Since trial dockets are congested, the defendant who insists upon trial can expect a long period of uncertainty, often under circumstances which might make it impossible to keep a job or get another one. If the defendant does not qualify for bail or is not able to raise it, the situation is even worse. The bargain offered often involves substituting a misdemeanor charge for a high misdemeanor and/or dropping several charges. If the bargain is at all tempting then, it will be because the possible penalties, if trial is insisted upon, are substantially more severe than they would be for the offense to which a defendant agrees to plead; and the differential is often further increased by the fact that, even for the same offense, a guilty plea may be rewarded with a lighter sentence.

Defenders of plea negotiation should not take refuge in the claim that an innocent person rarely pleads guilty. Accurate statistics are not available, since it is seldom possible for a researcher to find out whether the defendant is, in fact, guilty. Paradoxically, the innocent defendant is often under greater pressure to plead guilty than is the guilty one.[42] It is reportedly so because the prosecutor may offer a better bargain if the case is weak. The better the bargain, the more the defendant risks by insisting on trial.[43] A case is reported by Benjamin M. Davis, San Francisco attorney, in which a man was charged with kidnapping and forcible rape. Davis investigated the case and stated that his client was innocent. Davis was confident of acquittal. The prosecutor, no doubt feeling that his case was weak, offered to accept a plea of simple battery. This would have meant at most of 30-day sentence, and probably only probation. When Davis reported the offer to him, emphasizing that he would probably be acquitted if they went to trial, the defendant said "I can't take that chance."[44] Assuming the truth of the anecdote, this case illustrates that an individual may be forced to plead guilty to a minor offense, even though innocent, in order to avoid severe penalties if found guilty.

It is true that a very different result also occurs, in that people whom the police know to be guilty of serious crimes (which they may be unable to prove) frequently can bargain their way to inordinately weak charges and sentences; but this does not invalidate the previous point. Indeed, it reinforces it in that both guilty pleas by the innocent and convictions on minor charges of serious offenders tend to undermine confidence in the administration of justice.

Aside from the pressures defendants face, their rights may also be jeopardized. The rights in question are those of the Fifth Amendment, against self-incrimination and of the Sixth, to confront one's accusers, to compel the appearance of favorable witnesses and to stand trial by jury.[45] It should not need to be argued that the protection of such rights is important; but they take on a special poignance in the context of plea negotiations, given that it is often, as one public defender put it, "trial by trick and deceit."[46] It depends heavily on the bluffing abilities of opposing counsel. One must suppose that many defendants plead guilty who, if they had insisted on the exercise of the rights mentioned above, would have been acquitted or seen their cases dismissed.

Another problem with plea negotiations as it is now practiced is that it strains that fundamental concept of "equal treatment under the law." The rich and sophisticated have high priced lawyers whom they can immediately call. Hardened criminals know how to manipulate the system. It is the poor, the ignorant and the inexperienced who are the most vulnerable to the inducements of a plea negotiation.[47] Furthermore, the prosecutor's decision to bargain one case rather than another is often shaped by factors which have no connection at all with the demands of justice, the probable welfare of the community or the correctional needs of the defendant. The chief factors are the current state of the prosecutor's caseload and the length of time which a trial is likely to take.[48] Radical disparities of treatment may be contingent on administrative convenience. Prosecutors must work in a context of limited resources and indeed, have to worry about how best to allocate their resources. A practice which encourages such inequities and infringements of constitutional protections should not be accepted without stringent monitoring.

The heart of the constitutional question would seem to be whether it is lawful, on grounds primarily of administrative convenience, to apply extreme pressure on defendants not to exercise several related constitutional rights. It has been argued that the U.S. Supreme Court has implicitly answered this question in the negative.

> In recent cases where the government sought to elicit information from its employee or licensee in order to determine his qualifications, the Supreme Court refused to allow any burden on the right. *Garrity v. New Jersey* held that incriminating evidence secured under the threat of discharge was not admissible in a later trial. A companion case, *Spevack v. Klein*, held that an attorney could not be disbarred for failure to produce records and testify in a judicial inquiry if he had not been offered immunity from later criminal prosecution.[49]

The Harvard Law Review points out that the burden involved in plea bargaining, which is often a threat of confinement for an extra period of years, is at least as heavy as the price in *Garrity*; the loss of a job.

> Thus, even under a narrow reading of the *Garrity* principle, plea bargaining should be held unconstitutional because it places the accused in the dilemma of having to forfeit either his privilege against self-incrimination (by acknowledging his guilt through a plea of guilty) or his chance for a shorter sentence or reduced charge. . . . Since the very purpose of plea bargaining is to prosecute and convict the defendant by pressuring him to plea guilty, the practice will always violate the Fifth Amendment.[50]

There is, moreover, room for scepticism concerning the primary rationale for the practice. Alschuler reports that an expedited trial system in Pennsylvania'a largest cities has greatly reduced the pressure for negotiated pleas. "In Philadelphia, only about one-fourth of the defendants convicted of crime plead guilty and in Pittsburgh, only about one-third of all convictions are by pleas."[51] He remarks also on the fact that, the best way for the defense to obtain a good bargain is to take (or threaten to take) the prosecution's time by going to trial. Far from freeing the court, therefore, the possibility of bargaining has a marked tendency to clog the court machinery. "Attorneys commonly go to the point of impaneling a jury in an effort to make their threat to the court's time credible. A string of pretrial continuances may also be useful, partly because each continuance consumes the court's time"[52] and erodes the prosecution's case. He adds that pretrial motions are also great assets to the defense especially in jurisdictions where it is the practice of prosecutors to prepare written briefs in response to procedural and constitutional claims. If trial actually begins, defense counsel has the same sort of motive for producing as many witnesses as possible and otherwise maximizing delay. If defense counsel's threat of a long trial does not succeed, if a suitable negotiation does not take place, he or she will tend to make good the threat, if only for the sake of preserving credibility for the next fight.[53] In these several ways then, negotiation tends to exacerbate the problem of overloading rather than relieve it.

Despite these objections, plea negotiating seems to be here to stay. Although, as we have noted, there are ways in which it gums the machinery, its net effect probably is to grease it; and in an austere era, economically such a benefit looms large. Moreover, negotiating is not simply an administrative expedient. "It provides a means by which a defendant may acknowledge his guilt and manifest a willingness to assume responsibility for his conduct."[54] It seems appropriate to have some mechanism whereby a defendant can enter a plea of guilty or non vult when the facts are not in dispute. It has been suggested, moreover, that this device may tend to make more significant the adjudication procedures that are relied upon when facts are disputed and restore to its proper hallowed place in our value system the notion of the presumption of innocence.

Once this is accepted, the problems which beset the institution of plea negotiation are seen to be the same ones that plague all other discretionary procedures. They are problems which strict monitoring alone can help check. This is only possible where the process is visible, public and subject to rigid guidelines.

New Jersey's Status in Comparison with the National Standards

Grand Jury

As previously stated, the National Advisory Commission recommends that grand jury indictment should not be required in any criminal prosecution, and if utilized, a probable cause hearing should not be made available (NAC Courts Standard 4.4). The American Bar Association does not touch upon this particular issue although standards are recommended for the quality and scope of evidence for informations*, grand jury presentment and for prosecutorial relations with the grand jury (ABA Prosecution Function Standards 3.5, 3.6, 3.7). As part of its research, the Criminal Practice Committee Subcommittee to Study the Grand Jury undertook an extensive national survey of state laws concerning the modes of initiating criminal prosecutions and the role of the grand jury in investigating official misconduct. The Subcommittee found that only 21 states, including New Jersey, require indictments for all offenses. Most states utilize both indictments and informations; 29 states permit the use of informations only for non-capital felonies with 24 states permitting all offenses to be prosecuted by information.

The New Jersey grand jury system serves two distinct functions—to initiate investigations of suspected criminal activity or official misconduct and to present indictments where appropriate. The indictment process usually is initiated with the filing of a complaint although an indictment can be filed without a complaint. If a complaint charges the defendant with an indictable offense, the defendant is informed, usually at the first appearance, of the right to a hearing as to probable cause and of the right to indictment by the

* Formal statements filed by the prosecutor which include all of the essential elements of an indictment. Informations are currently not permitted in New Jersey.

grand jury and trial by jury. If the offense charged may be tried by the court upon waiver of indictment and trial by jury, the defendant is so informed (*R.* 3:4-2).

Court rules provide that if indictment and jury trial are not waived but a probable cause hearing is waived, or if indictment and trial by jury are waived but the judge is not an attorney, the defendant is bound over to await final determination of the cause. If the defendant does not waive a probable cause hearing and an indictment has not yet been returned, a probable cause hearing is held. At this hearing, the defendant may cross-examine adversarial witnesses. If probable cause is substantiated, the court will bind the defendant over to await final determination of the cause. If probable cause is not substantiated, the defendant is discharged and the prosecuting attorney so notified (*R.* 3:4-3).

If the right to indictment by grand jury is not waived by the defendant, or if the defendant has not been charged and is under investigation, preparations begin for grand jury presentment. The prosecuting attorney presents the evidence for the grand jury to consider during its inquiry and deliberations. The grand jury must consider the elements of the offense charged, the evidence presented and determine whether the facts are sufficient to support a conviction. The grand jury is not limited to receiving only evidence which is admissible at trial.[55] In addition, it is debatable whether the prosecuting attorney is currently required to present all exculpatory evidence to the grand jury. Witnesses may be subpoenaed by the grand jury to appear and give testimony. Such witnesses do not have the right to be accompanied by counsel.[56] The defendant does not have the right to testify before the grand jury and is not present unless subpoenaed or invited to appear by the grand jury. Grand jury proceedings operate under the "veil" of secrecy and all persons other than witnesses who are participants in the grand jury process are required to take an oath to that effect (*R.* 3:6-7).

An indictment may be found only upon the concurrence of 12 or more jurors and it is returned in open court to the assignment judge or, in his absence, to the appropriate Superior Court judge (*R.* 3:6-8). If no indictment has been found, the matter is deemed a "no bill" (*R.* 3:6-8b). The return of a "no bill," however, does not preclude the prosecuting attorney from presenting the case to another grand jury.[57]

One of the principal purposes of an indictment is to inform the defendant of the nature of the charges so that an adequate defense may be prepared. An indictment consists of a written statement of the facts constituting the offense(s) charged and includes the statute(s) violated. It must conclude that the offense was committed "against the peace of this State, the government and dignity of the same" (*R.* 3:7-3). If the indictment is not sufficiently specific to enable the defendant to prepare his defense, a bill of particulars is ordered upon application (*R.* 3:7-4).

In fulfillment of its investigative function, New Jersey grand juries act as watchdogs on public officials. After investigation and presentation of evidence and upon the concurrence of at least 12 jurors, a presentment may be returned by a grand jury in open court to the assignment judge for examination. Although public officials may be presented for mismanagement, no further action may proceed from the presentment.[58] However, if it appears that a crime has been committed for which an indictment may result, the assignment judge may refer the presentment back to the grand jury for consideration (*R.* 3:6-9). The official may be suspended and eventually convicted and removed from office. A public official may also be censured if the proof is conclusive that the matter is "inextricably related to noncriminal failure to discharge his public duty" (*R.* 3:6-9(c)).

Grand juries in New Jersey were selected, prior to 1969, through the "key man" system. Under this system, grand jury commissioners utilized discretion in devising methods to select the grand jury venire and usually solicited names of prospective jurors from civic organizations, churches, labor unions and the like.[59] After much criticism, the New Jersey Supreme Court in 1969 directed the random selection of grand jurors. Voter registration lists are utilized as decided in *State v. Rochester,* 54 N.J. 85 (1969).

Traditionally, grand juries consist of 23 members. New Jersey court rules and statutes do not require a grand jury to consist of 23 individuals but only require that they do not exceed 23 jurors *N.J.S.A.* 2A:73-1, *R.* 3:6-1). The grand jury serves until discharged by the assignment judge, but no longer than 20 weeks unless so ordered. Grand jurors, as well as petit jurors, receive a per diem allowance of $5.00 and travel expenses at the rate of two cents per mile [*N.J.S.A.* 22A:1-1.).

Speedy Trial

The National Advisory Commission (NAC) in Courts Standard 4.1 recommends that the period from arrest to trial in felony or high misdemeanor prosecutions should not exceed 60 days. For misdemeanor offenses, it generally should not exceed 30 days. The NAC did not purport to define the defendant's right to a speedy trial but took the position that the objective of court processing reform should be the implementation of procedures which would make it possible to process cases within the suggested time limits.[60] The American Bar Association (ABA) takes a stronger position by recommending a defendant's right to speedy trial to be expressed by rule or statute in terms of a time limit (Speedy Trial Standard 2.1, Trial Courts Standard 2.51) and recommends criminal trials be held within 90 days of arrest or summons and 60 days from arraignment on the charge (Trial

Courts Standard 2.52). No such time limits are expressed or implied in New Jersey rules and statutes. New Jersey Court Rules do provide, however, for the implementation of the right to speedy trial consistent with the U.S. Constitution in two situations: delay between indictment and trial and delay between the initial complaint and the return of an indictment by the grand jury (*R.* 3:25-3). Rule 3:25-2 provides that at any time following the return of an indictment or accusation, the assignment judge may, on his or the defendant's motion, direct that the trial be moved upon a specified day. Rule 3:25-3 permits dismissal for unreasonable delay in submitting the case to a grand jury, in filing an accusation, or in the disposition of an indictment or accusation, either on the defendant's or the judge's motion.

In its standards relating to speedy trial, the ABA recommends priorities for scheduling criminal cases. Specifically, it recommends that the trial of criminal cases be given preference over civil cases and that trials involving incarcerated defendants or those released and believed to present unusual risks should be given preference over other criminal cases. In New Jersey, Rule 1:2-5(1) provides that preference be given to criminal and certain other matters in the scheduling of cases for trial, hearing or argument. Most courts in New Jersey generally give priority scheduling to those cases involving incarcerated defendants.

The ABA also recommends that control over the trial calendar be vested in the court (Speedy Trial Standard 1.2). This standard also requires the prosecuting attorney to file, as a public record, reasons for delay in requesting trial for cases. The prosecuting attorney should also advise the court of facts relevant in determining the order of cases on the calendar. It is further recommended in ABA Trial Courts Standard 2.50 that the court supervise and control the movement of all cases on its docket from the time of filing through final disposition. One of the duties of New Jersey's assignment judges, as outlined in Rule 1:33-3 is the supervision and expeditious movement of criminal trial calendars of the Superior and County Courts. Rule 1:33-4 provides that each judge, or the presiding judge if one has been appointed, is responsible for the orderly administration of the court which includes the supervision of the court calendars. Prosecutorial reports as recommended by the ABA are not required.

Both the NAC and ABA suggest continuances be granted only upon a showing of good cause and only for so long as is necessary (NAC Courts Standard 4.12, ABA Speedy Trial Standard 1.3, ABA Trial Courts Standard 2.56). The ABA further states that the granting of continuances should take into account not only the request or consent of the prosecution or defense, but also the public interest in prompt disposition of the case. In New Jersey, judges are required to dispose of the business of the court with promptness (*Code of Judicial Conduct* 3A(5)). Case law has held that the granting of continuances are within the discretion of the trial court. *State v. Telenko,* 133 N.J. 385, 391 (E. and A. 1945). The trial court's exercise of discretion should not be upset "unless it appears from the record that the defendant suffered manifest wrong or injury" (*State v. Lamb,* 125 N.J. Super. 209, 213 (App. Div. 1973)).

In Speedy Trial Standard 2.2, the ABA recommends time for trial should commence to run generally from the date the charge is filed or the defendant is held to answer, thus eliminating the necessity for demand. The NAC prefers to set time limits from arrest, receipt of summons, or filing of indictment, information or complaint, whichever comes first[61] (NAC Corrections Standard 4.10). New Jersey court rules provide that at any time following the return of an indictment or the filing of an accusation the assignment judge may direct that a trial be moved upon a specified day. (*R.* 3:25-2). If there is unreasonable delay in presenting a charge to grand jury or filing an accusation, or if there is unreasonable delay in the disposition of an indictment or information, the assignment judge may dismiss the matter on his or the defendant's motion (*R.* 3:25-3). Failure of a defendant to demand trial is one of four factors to be evaluated in determining whether his right has been violated.

The national standards, in recommending time periods, also suggest certain time periods be excluded in computing the time for trial (NAC Corrections Standard 4.10, ABA Speedy Trial Standard 2.3). The ABA standard is more explicit and specifies excluded periods which involve such considerations as continuances and absence or unavailability of the defendant. New Jersey law specifies neither particular time periods nor factors to be excluded in computing time.

In developing standards relating to speedy trial, the ABA also outlined special procedures for defendants who are serving a term of imprisionment. Speedy Trial Standard 3.1 recommends a rule, statute or interstate compact be enacted to provide that if the prosecuting attorney knows a defendant is serving a term of imprisonment he must promptly undertake to obtain the defendant/prisoner's appearance or cause a detainer to be filed to advise the defendant that his appearance is sought and that he has a right to demand trial. The prosecuting attorney, as recommended, must promptly seek to obtain the presence of the defendant for trial.

New Jersey has enacted the Interstate Agreement on Detainers (*N.J.S.A.* 2A:159A-1 et seq.); although the agreement does not pertain to defendants who are wanted for trial and are incarcerated in New Jersey. For such defendants, general rules designed to prevent delay and the due process requirements of the Fourteenth Amendment are relied upon. New Jersey has no special rule or statute requiring the prosecutor to take prompt action to obtain a prisoner

for trial although the Sixth Amendment seems to require it on the part of the prosecuting attorney.

N.J.S.A. 2A:159A-3 requires that the official having custody of a prisoner promptly inform the prisoner of the source and content of the detainer and of the right to request a final disposition. The person having custody is required to notify all appropriate prosecuting attorneys and courts to which the request for final disposition is being sent. The statute also provides that an out of state prisoner who has caused a request for final disposition to be served is entitled to a trial within 180 days. If the request by the appropriate prosecuting attorney is pursuant to *N.J.S.A.* 2A:159-4, there is a 30-day period after the request to permit the Governor of the sending state to refuse to deliver the prisoner. The prisoner is entitled to contest the legality of his delivery except that he cannot contest it upon the ground that the executive authority of the sending state has not consented to or ordered such delivery. If the prisoner has requested a final disposition, that request is considered a waiver of the right to contest extradition.

The ABA also recommends that the time for trial of a prisoner whose presence for trial has been obtained while he is serving a term of imprisonment should commence running from the time his presence for trial has been obtained, subject to the same excluded periods as other defendants. The Interstate Agreement on Detainers, as enacted by New Jersey, (*N.J.S.A.* 2A:159-3) provides that a prisoner who has caused a request for final disposition to be served is entitled to trial within 180 days. *N.J.S.A.* 2A:159-4 provides that when the appropriate prosecuting authority requests temporary custody, the prisoner is entitled to trial within 120 days of his arrival within the receiving state. *State v. Chirra,* 79 N.J. Super. 270 (Law Div. 1963) held that where a prosecuting attorney has unreasonably delayed, after a request for temporary custody has been made, the indictment must be dismissed.

The ABA recommends that the only acceptable consequence of denial of speedy trial should be absolute discharge. Failure of the defendant to move for discharge prior to trial or entry of a plea of guilty should constitute waiver of the right to speedy trial (ABA Speedy Trial Standard 4.1). New Jersey, as well as the U.S. Supreme Court, has concluded that absolute discharge is the only effective remedy when there is a Constitutional violation of right to speedy trial.

If a shorter time limitation is applicable to defendants held in custody, the ABA recommends that the completion of this time result in the release of the defendant on his own recognizance (ABA Speedy Trial Standard 4.2). New Jersey has no rule providing shorter time limits for defendants in custody. Rule 3:26 does provide that if a person detained for a crime "punishable by death" is not indicted within three months he may, for good cause shown, be admitted to bail. A defendant may also be released upon his own recognizance, for good cause shown, if an indictment or accusation is not moved within six months after arraignment. The Supreme Courts Committee on Criminal Practice is currently considering the development of a court rule to provide that whenever a defendant has been detained 90 days and trial has not commenced, upon the defendant's motion, he should be released upon conditions he is able to meet. This time period is to commence running from the date of the defendant's initial incarceration upon the charge.

Plea Negotiations

The National Advisory Commission concluded that the practice of plea negotiating should be abolished. In recognition of a likely delay in that coming about, they proffered some standards for use in the interim.

The ABA standards on Pleas of Guilty and the NAC Courts standards on the negotiated plea require the concurrence of the prosecutor for plea negotiations to proceed but the process is not based upon his application. In New Jersey the prosecutor initiates the plea negotiation (*R.* 3:25A-1). Both NAC Courts Standard 3.7 and ABA Pleas of Guilty Standard 1.5 regard a plea as unacceptable unless it has been established that the plea is voluntary, knowledgeable and accurate. New Jersey Court Rule 3:9-2 concurs and requires that the court address the defendant personally for the purpose of inquiry. The court then can determine, on the basis of the personal interview, whether or not the defendant understands the consequences of the plea, entered it voluntarily and if the facts of the case are in accord with the plea. NAC seems to require more than existence of a factual basis. Rule 3:9-2 also states that the defendant be informed of the consequences of his plea which is in accord with ABA Pleas of Guilty Standard 1.4(b) and NAC Courts Standard 3.7.

The defendant may withdraw the plea if the terms are not approved by the court at the time of sentence according to *R.* 3:9-3. Rule 3:21-1 permits the withdrawal of a plea before sentencing. It is also permitted after sentencing when withdrawal of plea is necessary to correct a "manifest injustice." The defendant will not be permitted to withdraw the plea on a "belated assertion of innocence" or because of "a whimsical change of mind by defendant." (*State v. Huntley,* 129 N.J. Super. 13, 18 (App. Div. 1974), certif. denied 66 N.J. 312 (1974); *State v. Johnson,* 131 N.J. Super. 252, 256 (App. Div. 1974); *State v. Phillips,* 133 N.J. Super. 515 (App. Div. 1975)).

Rules 3:4-1 and 3:4-2 require that a person be informed of the right to counsel and the right to have counsel provided if indigent. *N.J.S.A.* 2A: 158A-5 provides that any indigent defendant "formally charged" with the commission of an indictable offense be appointed counsel. The New Jersey rule is

in accord with ABA Pleas of Guilty Standard 3.1 in accepting as a justification for plea negotiations, considerations of administrative effectiveness. The NAC does not agree on this point. New Jersey and the ABA have considered pleas of guilty "probative of factors relevant to sentence" (*State v. Poteet*, 61 N.J. 493 (1972)).

Commentary

One of the chief goals of the Advisory Committee in recommending standards governing trial preparation is the reduction of pretrial delay. Proposed standards are designed to improve efficiency and eliminate duplication and waste of resources. The Committee envisions a system of justice where no complaint would be filed without the prosecuting attorney's review and approval. Once a complaint is filed it would be referred to a centralized court for a probable cause determination. If probable cause is found, arraignment is held at which time motions are made and a trial date is scheduled. This procedure would result in minimal delay from the time a defendant is held to answer for the charge to the holding of a trial.

To eliminate the present duplicative grand jury-probable cause hearing process, the Advisory Committee recommends that indictment should not be required to institute criminal proceedings and a State constitutional amendment should be adopted to that effect. The Committee discussed maintaining the present indictment requirement and eliminating the probable cause hearing. This solution would perhaps be easier but it was not considered the more effective remedy since the grand jury system itself is in need of reform. The determination of probable cause for most criminal cases can be handled adequately through the hearing mechanism. In cases involving multiple defendants or where the need for secrecy concerning the identity of witnesses or suspects is present, the determination of probable cause through the grand jury process would be necessary. For this reason, the Committee recommends the indictment process not be eliminated entirely but be used only in exceptional circumstances. The function of the grand jury should be limited primarily to investigative purposes. Where cases are best handled through indictment, no probable cause hearing should be held.

It is recommended that hearings as to probable cause be held within two weeks following the commencement of proceedings through either arrest or the issuance of a complaint or summons. Whenever possible, this hearing should be combined with the detention hearing required in those cases where the accused is detained.

Limiting the grand jury function and placing a greater emphasis on the probable cause hearing cannot be recommended without also recommending a change in court orgainzation. Currently, probable cause hearings are held in Municipal Courts which, for the most part, are part-time tribunals held one or two nights each week. If probable cause hearings were relied upon as the sole determiner of sufficient cause for most criminal proceedings, the part-time structure of Municipal Courts could not accommodate the demand for such hearings. Municipal Court re-organization and consolidation is advantageous; however, it is recognized that, at the present time, such a proposal may be politcally unfeasible.

It is hoped that the enactment of the Committee recommendations regarding the use of the grand jury and probable cause hearing would result in a reduction of pretrial delay and thus help ensure a defendant's right to a speedy trial and the public's right to a speedy disposition. It is envisioned that an adversarial probable cause hearing would result in a greater number of cases being resolved prior to trial either through administrative disposition or negotiation and guilty pleas.

Any recommendations regarding the right to a speedy trial would not be complete without the designation of a time limit. The Committee concurs with the ABA suggestion of 90 days from arrest to trial which is different from Governor Byrne's request for a speedy trial program to bring defendants charged with violent crimes to trial within 90 days of indictment and all other criminal defendants within six months. Ideally, resources should be provided to enable all criminal cases to be disposed of as quickly as possible. Given these resources it is recommended that all criminal cases involving detained defendants proceed to trial within 90 days of arrest and all others within six months of filing of the first charging document. When these time limits are exceeded, the Committee does not advocate any violations of these limits be coupled with automatic dismissal unless it has been determined that there was unnecessary delay in reaching a disposition. Instead, the Committee concurs with the Supreme Court's Committee on Criminal Practice recommended court rule that where a defendant has been detained 90 days and a trial has not commenced, the defendant should be released on conditions he or she is able to meet.

As to the standards relating to plea negotiation and pleas of guilty, the Advisory Committee accepts the conclusions of the American Bar Association about the efficacy of disposition by means of plea agreements. The Committee subscribes to the prevailing opinion that the criminal justice system would be intolerably burdened without the alternative to trial of disposition through pleas of guilty arrived at through the negotiating process. It concurs, moreover, with the ABA that values other than expediency are served by the disposition of many criminal cases without

trial. Among the commonly held values are the acknowledgement of guilt and acceptance of responsibility which can be brought about through plea negotiation and pleas of guilty. Such an approach seems especially appropriate and logical when the facts of the cases are not in dispute.

The distinction was made between negotiated pleas and guilty pleas where no negotiation takes place. Though it is an important distinction to make, the Committee assumed that guilty pleas not involving negotiations should be subject to the same safeguards and regulations. This would especially be true with respect to entry and preservation of the plea on record.

There was also consensus on the salient issues of plea negotiations. The Advisory Committee recommends that for a plea to be accepted it should meet the criteria of voluntariness, knowledgeability and accuracy. These qualifications serve to reinforce Rule 3:9-2 which provides that a court may refuse to accept any plea of guilty and must not accept a plea of guilty unless it first addresses the defendant personally and determines by inquiry of the defendant and others, in the court's discretion that (1) there is a factual basis for the plea; (2) that the plea is made voluntarily and is not the result of any threats or promises or inducements which are not disclosed on the record; and (3) that the plea is made with an understanding of the nature of the charge and the consequences of the plea. This rule also provides for the court to require a defendant to complete, insofar as is applicable, and sign the appropriate form prescribed by the Administrative Director of the Courts.

Regarding the last two criteria, knowledgeability and accuracy, the Committee recognized certain difficulties. Knowledgeability, for instance, is a conceptually complex notion. Opinions differ as to whether the term should be broadly or narrowly defined. As noted in the juvenile section on "Judicial Process," several court decisions have dealt with this issue. It was held almost four decades ago in *Johnson v. Zerbst,* 304 U.S. 458, 464, 58 S. Ct. 1019, 83 L. Ed. 1416 (1938) that a defendant who enters a plea waives certain constitutional rights and for this waiver to be valid, it must be an intentional relinquishment or abandonment of a known right or privileges. That decison notwithstanding it cannot illuminate the concept of knowledgeability to say that the defendant must intentionally waive "known rights or privileges" if the whole issue of knowledgeability rests on the question of what it is to "know" rights and precisley what rights it is crucial to know. Some say that for a plea to be knowlegeable the defendant must completely understand all possible ramifications of the plea, including how a plea may affect the parole hearings and how soon he or she could be considered for parole if conviction is brought about by trial. Given the complexities, knowledgeability is difficult to ensure and it might be problematic trying to prove a plea was or was not knowledgeable. It seems reasonable to suppose that even with the best intentions on the part of all concerned some misunderstandings could go undetected by the court that rules on the plea.

The assistance of counsel is crucial to a reasoned plea. However, on the issue of knowlegeability the Committee did not make explicit stipulations concerning the conduct of the defense attorney with his client. It was agreed that spelling out this relationship might create more problems than it solves.

Furthermore, there was opposition to a standard which would require the judge to inform the defendant of the implications of his plea such as maximum sentence for a guilty plea or the realities of parole violation and multiple offender status. The attempt on the part of the judge to spell out all the conceivable consequences of a guilty plea was thought to create more problems than would be alleviated. Though Rule 3:9-2 provides for the question, with others, "do you understand that for all offenses above the court could impose a sentence totalling not more than 'X' years or fines totaling not more than '$Y' or both?" Nevertheless, the failure of a judge to disclose the maximum sentence does not invalidate a guilty plea according to *State v. Smith,* 109 N.J. Super 9 (App. Div.), Certif. Den. 56 N.J. 473 (1970). The members of the Committee felt it was better not to draw the strings too tight in this area. Nor did the Committee feel that the judge should be required to set forth the information which contributed to his decision to refuse a guilty plea.

There is also a problem in determining the accuracy of the plea. Since the court is not an investigative agency it is not equipped to carry out a thorough enough investigation to determine whether the facts of the case are consonant with those presented to the court. In cases where the degree of difference is considerable and obvious, of course the court should not accept the plea.

In the case of plea withdrawal, the Advisory Committee agreed that a plea can be withdrawn only prior to sentencing except to correct a manifest injustice. A withdrawn plea may not be used as evidence against the defendant nor should his retraction be reflected in a harsher sentence. Any plea change after sentencing should be covered under post-conviction relief.

As noted, the Advisory Committee held generally to the American Bar Association recommendations but tended to deal with the relevant matter in a more general manner, recognizing that the realities of the New Jersey criminal justice system make closing off options both unfeasible and unwise. The discussion consistently reflected the conviction that in the area of plea negotiations there must be discretion and adequate latitude to allow individual treatment in each case.

It was the consensus of the committee during deliberations on the subjects of joinder and severance and discovery that New Jersey Court Rules are in compliance with and in some instances exceed national recommendations. The Committee therefore, deemed it unnecessary to develop standards in these areas. For more information on these topics refer to Court Rules 3:15, "Joinder and Severance" and 3:13 "Pretrial; Dispositions; Discovery."

References

[1]Holdsworth, *A History of English Law,* 1922, p. 312, as cited in *The Grand Jury: A Blueprint for Reform,* Report of the Subcommittee to Study the Grand Jury of the New Jersey Supreme Court's Committee on Criminal Practice, 1976, p. 1.

The Subcommittee to Study the Grand Jury report entitled, "The Grand Jury: A Blueprint for Reform" has since been revised and approved by the Supreme Court's Committee on Criminal Practice and has been submitted as Part III of its 1977 report. See 100 *N.J.L.J.*, May 19, 1977, p. 1 (Index p. 441).

[2]National Advisory Commission on Criminal Justice Standards and Goals, *Report on Courts,* Washington, D.C., U.S. Gov't Printing Office, 1973, p. 74.

[3]Subcommittee to Study the Grand Jury, *The Grand Jury: A Blueprint for Reform,* p. 10.

[4]National Advisory Commission, *Report on Courts,* p. 74.

[5]Subcommittee to Study the Grand Jury, *The Grand Jury: A Blueprint for Reform,* p. 10.

[6]National Advisory Commission, *Report on Courts,* p. 75.

[7]Subcommittee to Study the Grand Jury, *The Grand Jury: A Blueprint for Reform,* p. 18.

[8]Ibid., p. 19.

[9]Ibid., pp. 21, 22, 23.

[10]National Advisory Commission, *Report on Courts,* p. 75.

[11]Subcommittee to Study the Grand Jury, *The Grand Jury: A Blueprint for Reform,* p. 128.

[12]National Advisory Commission, *Report on Courts,* p. 75.

[13]Subcommittee to Study the Grand Jury, *The Grand Jury: A Blueprint for Reform,* p. 162.

[14]Ibid., p. 113.

[15]National Advisory Commission, *Report on Courts,* p. 75.

[16]Subcommittee to Study the Grand Jury, *The Grand Jury: A Blueprint for Reform,* p. 3.

[17]National Advisory Commission, *Report on Courts,* p. 75.

[18]Ibid.

[19]"Report of the Supreme Court Special Committee on Calendar Control-Criminal," 94 *N.J.L.J.*, March 18, 1971, p. 14 (Index p. 198).

[20]Ibid.

[21]Ibid., p. 212.

[22]National Advisory Commission, *Report on Courts,* p. 76.

[23]Subcommittee to Study the Grand Jury, *The Grand Jury: A Blueprint for Reform,* p. 129.

[24]Administrative Office of the Courts, *Preliminary Report of the Administrative Director of the Courts for the Court Year 1974-1975,* Trenton, New Jersey, p. 4.

[25]Administrative Office of the Courts, *Annual Report of the Administrative Director of the Courts, 1973-1974,* Trenton, New Jersey, 1974, pp. 114-126.

[26]American Bar Association Project on Standards for Criminal Justice, *Standards Relating to Speedy Trial,* New York, New York, May, 1967, p. 17.

[27]Ibid., p. 40

[28]Administrative Office of the Courts, "Report of the Status of the Calendars for the Month of October, 1975," Trenton, New Jersey, p. 8.

[29]President's Commission on Law Enforcement and Administration of Justice, *The Challenge of Crime in a Free Society,* Washington, D.C., U.S. Gov't. Printing Office, 1967, p. 125; for examples see: *Mapp v. Ohio,* 367 U.S. 643 (1961); *Gideon v. Wainwright,* 372 U.S. 335 (1963); *Miranda v. Arizona,* 384 U.S. 436 (1966); *Mallory v. U.S.,* 354 U.S. 449 (1957); *Terry v. Ohio,* 392 U.S. 1 (1968); *McNabb v. U.S.,* 318 U.S. 332 (1943).

[30]Administrative Office of the Courts, *Annual Report of the Administrative Director of the Courts, 1973-1974,* p. 156; James Q. Wilson, *Thinking About Crime,* New York, Basic Books, Inc., 1975, p. 163; Ramsey Clark, *Crime in America,* New York, Simon and Schuster, Inc., 1971, p. 186; National Advisory Commission, *Report on Courts,* p. 42; President's Commission on Law Enforcement and Administration of Justice, *The Challenge of Crime in a Free Society,* p. 4.

[31]Often called "plea bargaining." Many prosecutors consider this word emotionally charged and prefer to refer to the procedure as negotiating and to the result as the plea agreement. We shall generally follow their practice.

[32]Paper presented at the 1976 New Jersey Prosecutor's Convention in Atlantic City, entitled *Serious Crime: A Criminal Justice Strategy,* p. 26.

[33]Albert W. Alschuler, "The Prosecutor's Role in Plea Bargaining," *The U. Chi. L. Rev.,* Volume 36, 1968, pp. 50, 51.

[34]Jessica Mitford, *Kind and Usual Punishment: The Prison Business,* New York, Vintage Books, 1972, p. 85.

[35]*Santabello v. New York,* 404 U.S. 257 (1971).

[36]*State v. Taylor,* 49 N.J. 440 (1967).

[37]President's Commission on Law Enforcement and Administration of Justice, *Task Force Report: The Courts,* Washington, D.C., U.S. Gov't. Printing Office, 1967, p. 9.

[38]"Justice on Trial," *Newsweek,* March 8, 1971, p. 22.

[39]Alschuler, "The Prosecutor's Role in Plea Bargaining," p. 55.

[40]Ibid., p. 53.

[41]Ibid.

[42]Ibid., p. 60.

[43]"The overwhelming majority of prosecutors view the strength or weakness of the state's case as the most important factor in the task of bargaining.... If tactical considerations are not the most important factor in bargaining, at least they are the factor that prosecutors are most ready to avow." Ibid., pp. 58, 59.

[44]Ibid., p. 61; Stanley Poler, "Revolving Door for Criminals," letter to the editor, *New York Times,* February 9, 1971, p. 38.

[45]"The Unconstitutionality of Plea Bargaining," *Harvard L. Rev.,* Volume 83, 1970, p. 1395.

[46]Mitford, *Kind and Unusual Punishment: The Prison Business,* p. 85.

[47]Clark, *Crime in America,* pp. 186, 187. This injustice may be compounded because these are also the ones unlikely to be able to raise bail—and so are under added pressure not to wait until they can be heard by a jury.

[48]Lewis Katz, Lawrence Litwin and Richard Bamberger, *Justice is the Crime: Pretrial Delay in Felony Cases,* Cleveland, Case Western Reserve University Press, 1972, p. 197.

[49]*Garrity v. New Jersey,* 385 U.S. 493 (1967); *Spevack v. Klein,* 385 U.S. 511 (1967); "The Unconstitutionality of Plea Bargaining," *Harvard L. Rev., p. 1398.*

[50]"The Unconstitutionality of Plea Bargaining," *Harvard L. Rev.*, p. 1400.

[51]Alschuler, "The Prosecutor's Role in Plea Bargaining," p. 61.

[52]Ibid., p. 56.

[53]Ibid., pp. 56-58.

[54]Paper presented at the 1976 New Jersey Prosecutor's Convention in Atlantic City, entitled *Serious Crime: A Criminal Justice Strategy*, p. 22.

[55]Subcommittee to Study the Grand Jury, *The Grand Jury: A Blueprint for Reform*, pp. 144-145.

[56]Ibid., pp. 153, 157.

[57]Ibid., p. 163.

[58]Ibid., p. 4.

[59]Ibid., p. 135.

[60]National Advisory Commission, *Report on Courts*, 1973, p. 68.

[61]See complete standard for a description of commencing time for trial for varying circumstances. National Advisory Commission on Criminal Justice Standards and Goals, *Report on Corrections*, Washington, D.C., U.S. Gov't. Printing Office, 1973, p. 138.

SENTENCING, PROBATION AND PAROLE

Introduction

In the last two centuries incarceration has become a major means of dealing with errant citizens. Though voices have been raised in favor of reducing the use of prisons it is likely to remain a dominant method of punishment. The compelling questions for the guilty defendants then are: will I have to do time? and if so how much? These questions are answered by the legislature, which sets the broad outer limits of the criminal sentence; the judge, who imposes the sentence; and the parole board, which decides when the prisoner will in fact be released. Probation departments are responsible for compiling pre-sentence reports to be taken into account by judges in making sentencing decisions and supervising probation in the community.

A pervasive problem of the administration of justice has been disparity of sentences. While there is not complete agreement as to what constitutes tolerable differences in sentences, it is agreed that erratic differences in sentences which do not rationally comport with differences in crimes and circumstances are unjust and unconscionable. Most serious thinkers are no longer talking in terms of removing judicial discretion in sentencing but rather of structuring it. The process of parole further compounds disparities in sentencing because of similar unstructured discretion of the Parole Board.

The following material is intended to convey the need for structuring discretion in sentencing and parole. The examination of sentencing, parole and probation policies and practices are directed at facilitating the administration of justice in terms of making it more fair, effective and efficient.

Problem Assessment

Sentencing

Sentencing is generally recognized as "the most critical point in the administration of criminal justice."[1] Yet no element of the system is more vulnerable to criticism than the sentencing decision. Despite enormous expenditures of money and the continuing attention and energy of its able and committed practitioners and critics, the criminal justice system remains a failure in terms of fairness and effectiveness.

Since upwards of 90% of all criminal defendants plead guilty,[2] most pretrial proceedings, trial and appellate process have little impact on most defendants. James Q. Wilson states that in an "ideal world" the "court system would be organized around the primary task of sentencing, not around the largely mythic task of determining guilt."[3] The formal decision as to whether and for how long to incarcerate is the crucial one, with the widest ramifications.

> The kingpin of the entire structure is the sanctioning process. It is also conceptually the most difficult. We understand how to go about defining crime, establishing police forces, and devising due process trial methods. What we do not seem to understand is the purpose (or purposes) of sanctions. Moreover, we do not seem to know why or when or how to sentence; we do not know who should not be imprisoned and who should and for how long.[4]

Criminal sentencing has been called capricious, arbitrary and lawless; the word most commonly associated with it is "disparity."

> All too often two convicted defendants with similar background, convicted of the same crime, receive widely differing sentences. One defendant may receive a term of probation while the other is sentenced to a long term of imprisonment.[5]

Disparities come about because of the different propensities between judges—or of the same judge, even on the same day. They are compounded by different release practices of parole boards or by fluctuations under one board. Some authors distinguish between a justified variation in sentences and the unjustified variation which is usually what is meant by "disparity." Not all variations in sentencing are unwarranted since they may reflect objective differences in situations.[6] Judges are given discretion—the formidable responsibility of "judging" what are to qualify as mitigating or aggravating conditions. The matter of what constitutes relevant differences lies at the core of the debates about sentencing. What is insupportable are those erratic differences in sentences which do not rationally comport with differences in crimes and circumstances.

> Such disparity cannot be justified in reason or logic. The facts underlying the commission of the crime are identical; the defendants have similar criminal histories and community ties; the presence or absence of aggravating or mitigating factors apply to both defendants. Yet one offender goes free while the other confronts years of confinement . . . Such disparity is unacceptable in a nation that prides itself on the principle of equal justice under law.[7]

References for this chapter appear on pages 179 & 180.

Numerous proposals have been issued from a vast and diverse coalition of judges, lawyers, and policy makers drawn in equal strength from liberals and conservatives pushing for a return to uniformity in sentencing.

Whereas there is no clear, agreed upon solution, there is consonance on one recurrent theme. This nation was founded on the rock-solid principle that it would be governed by laws, not men, but today's sanctioning process represents a falling away from that basic principle. Judge Marvin E. Frankel has declared that sentencing is literally "lawless" in that in nearly all jurisdictions, the court is without standards by which to decide an appropriate sentence in a given case; and the other side of that coin is that the defendant has no way of ascertaining whether the court has dealt fairly with him.

In a much publicized study, 50 federal judges were given 20 identical files which had been compiled from actual cases and asked how they would sentence each defendant. The disparities were significant. In one case involving the possession of barbiturates with intent to sell, one judge gave the defendant five years in prison, while another judge put him on probation. Another case involving a middle-age union official convicted of extortion, one judge imposed a sentence of 20 years in prison plus a $65,000 fine while another judge imposed a three-year sentence and no fine.[8] Ordinarily one might be hesitant to conclude much from a sample of this size but this study, one of many, seems to capture the essence of what is so troublesome in sentencing.

> Our practice in this country, of which I have complained at length, is to leave that ultimate question to the wide, largely unguided, unstandardized, usually unreviewable judgement of a single official, the trial judge. This means, naturally, that intermediate questions as to factors tending to mitigate or to aggravate are also for that individual's exclusive judgment. We allow him not merely to 'weight' the various elements that go into a sentence. Prior to that we leave to his unfettered (and usually unspoken) preferences the determination as to what factors ought to be considered at all, and in what direction. . . .
> As I have urged already, there is no valid reason for leaving to the individual judges their varying rules on what factors ought to be material and to what effect. To say something is 'material' means it is legally significant. We know what is legally significant by consulting the law. We do not allow each judge to make up the law for himself on other questions. We should not allow it with respect to sentencing.[9]

A recent article makes the same complaint:

> Our system of laws attaches elaborate, rigorous and inviolate procedural safeguards all the way through the criminal justice process to the point of conviction. When the question of sanctions is reached, however, such considerations are abandoned almost entirely.[10]

One might hope that sentencing would respond to two constraints: considerations of fairness to the criminal and the goals or purposes for which it is intended. Thus the attempt to identify the goals and/or purposes for sentencing is not simply a philosophical exercise; it is an essential step toward reducing inequities in sentencing. There is a discouraging discord as to the rationale of punishment—with predictable disparities in sentencing.

The major divide among theories of punishment separates utilitarian theories from nonutilitarian ones. Putting aside distinctions which have been made as between kinds of utilitarianism, a utilitarian theory of punishment is justified and can only be justified by its beneficial consequences. (Reduction or prevention of deleterious consequences is regarded as a special case of production of good consequences.)

Accordingly the minimization of the frequency and seriousness of crime is one generally accepted goal of punishment. Discussions of the rationale of punishment have focused on deterrence (specific and general), incapacitation, rehabilitation and retribution. That is to say punishment has been prominently assigned the following functions: 1) psychologically deterring either the convicted criminal or others who might be similarly tempted from committing crimes; 2) rendering potential transgressors physically incapable of committing crimes against the general public, typically by incarcerating them; 3) reforming the offender; and 4) inflicting pain and/or loss on the guilty because they deserve to suffer. It should be stressed that deterrence, incapacitation and rehabilitation are utilitarian justifications for punishing the criminal. To shift the focus from what is useful for society to what is deserved is to shift from strategies of utility to constraints of justice. According to the desert theory:

> . . . the requirements of justice ought to constrain the pursuit of crime prevention. That assumption represents a departure from tradition. It was commonly supposed that justice had largely been satisfied once an offender was tried and convicted with due process . . . .Seldom was the word "justice" even mentioned in the literature of sentencing and corrections . . . While people will disagree about what justice requires, our assumption of the primacy of justice is vital because it alters the terms of the debate. One cannot on this assumption, defend any scheme for dealing with convicted criminals solely by pointing to its usefulness in controlling crime: one is compelled to inquire whether that scheme is a just one and why.[11]

There has been a tendency to recoil from the admission that retribution justifies punishment. This is partly because it is confused with the emotionally laden term vengeance and thus thought not to be an appropriate consideration in a civilized society.[12] There is emerging in this country, however, a swing back to the position that retribution should be the rationale of sanctions. This trend is frequently welcomed as "the return to common sense thinking

about crime." Though the popularity of this view is a recent phenomenon, its roots are, if not ancient, certainly old-fashioned. C.S. Lewis, writing in 1948 of the wayward ways of American justice insisted:

> . . . the concept of desert is the only connecting link between punishment and justice. It is only as deserved or undeserved that a sentence can be just or unjust . . . There is no sense in talking about a 'just deterrent' or a 'just cure'. We demand of a cure not whether it is just but whether it succeeds. Thus when we cease to consider what the criminal deserves and consider only what will cure him or deter others, we have tacitly removed him from the sphere of justice altogether; instead of a person, a subject of rights, we now have a mere object, a patient, a 'case.'[13]

Utilitarian sentencing goals, however, have figured prominently in shaping both the theory and practice of sentencing. The Model Penal Code instructs the sentencing judge to take into account the risk to society and the rehabilitative needs of the offender and to express reprobation for the crime:

> The court shall deal with a person who has been convicted of a crime without imposing sentence of imprisonment unless, having regard to the nature and circumstances of the crime and the history, character and condition of the defendant, it is of the opinion that his imprisonment is necessary for protection of the public because; (a) there is undue risk that during the period of a suspended sentence or probation the defendant will commit another crime; or (b) the defendant is in need of correctional treatment that can be provided most effectively by his commitment to an institution; or (c) a lesser sentence will depreciate the seriousness of the defendant's crime.[14]

The rehabilitative needs of the defendant are primary quency's Model sentencing Act, The American Bar Association Standards and the 1973 National Advisory Commission on Criminal Justice Standards and Goals sentencing provisions.[15]

The New Jersey Legislature has not put forth a statement as to the aims to be achieved by punishment. A general commentary on the purpose of punishment can be found in *State v. Ivan,* 33 N.J. 197 (1960) which stresses deterrence, rehabilitation and public welfare. The "prevailing theme is that punishment should fit the offender as well as the offense but the sentence imposed should protect the public interest."[16] Which specific elements of a case ought to bear on protecting the public interest are not spelled out. Ivan goes on to say:

> There can be no precise formula. The matter is deeply embedded in individual discretion . . . . The sentencing judge must deal with the complex of purposes, determining in each situation how the public interest will best be served.
>
> His answer will be a composite judgment, a total evaluation of all the facets, giving to each the weight, if any, it merits in the context before him.[17]

But without any criteria on which to determine the "weight" of each purported goal, erratic sentencing is inevitable. Each judge will weigh the factors according to his own personal propensities: One might sentence in order to deter, another might sentence for rehabilitation, and still another for the purpose of isolating the dangerous offender from society. Judges are being asked to decide anew with each disposition the aim or aims of punishment, facts which are aggravating or mitigating and ultimately pronounce sentence, from a broad range of all possibilities and combinations of possibilities before him.

New Jersey has already begun to question the wisdom of imposing such legislative responsibilities on the judges. There must be some middle ground between a totally inflexible and mechanistic system and the present chaos. If the legislature shuns the task of drawing up a formula "until much more is know about human behavior,"[18] then judges and parole authorities are left on their own to intuit the legislative mandate. This is not exactly a sure route to "equal justice under law."

It would be useful here to look at deterrence, furtherance of the public welfare and rehabilitation which are mentioned in *Ivan* since they are most commonly assumed in discussions of sentencing.

Deterrence

Studies on the deterrent effects of punishment often report that the evidence is "mixed." It seems clear that the threat of punishment deters some criminals and not others. Crimes of passion, however, are almost by definition not likely to be deterred by the fear of reprisal. Evidence on deterrence strongly supports the common sense claim that certainty and swiftness of punishment are the critical variables. That is to say that anytime we are in a position to weigh the possible consequences of our actions, the risk of incurring a penalty may inhibit our actions if the penalty is certain and imminent. Remote consequences, though dreaded, may not enter into the decision at all or if they do the immediate gain may simply override the dread of some future penalty.[19]

One question deterrence poses for sentencing is "how much punishment is required to deter? If a lesser punishment fails to deter would a more severe one do the trick?" Severity would seem to be counter productive to deterrence in a couple of ways. The harsher the law, the more loath we are to enforce it and so the more procedural safeguards come between the crime and the penalty. Once that connection becomes attenuated, criminal activity becomes a game of chance. Moreover, the more severe the penalty the more unlikely that it will be imposed given that attempts will be made to circumvent a protracted and expensive process by plea negotiations whereby the original charge will be reduced to a lesser offense. Also:

except in unusual cases, severity is probably subject to rapidly diminishing returns. The difference between a one-year and a five-year sentence is likely to appear very great to a convict, but the difference between a twenty-year and a twenty-five-year sentence or even a thirty-year sentence is likely to appear rather small.[20]

The fundamental objection to deterrence as a justification for punishment for some theorists rests not on whether deterrence works, but on moral grounds. It is morally fitting for the legislature to consider the deterrent value of criminal sanctions when enacting the statutes. The welfare of society is, of course, the only appropriate justification for a legal system. It cannot, however, be moral to justify punishing an individual on the grounds that so doing serves to warn others. To do so is to disregard the dignity of the individual and to treat the person only as a means to an end. The moral justification for punishing an individual can only be that it is deserved, which means the punishment must be commensurate with the seriousness of the offense.

Public Welfare

There are also practical and moral objections to incapacitating an offender on the grounds that he is likely to offend again. This traditional justification for punishment is usually referred to as "incapacitation" though it might more accurately be called "predictive restraint"[21] since it refers to punishment based on the "claim [that the] defendant will commit another crime."[22]

On the one level, it is argued that science simply does not have the tools necessary for predicting what a person is going to do. We may know enough about the correlation between certain personality traits and characteristics and violent aggressive behavior. In some cases we might confidently include in the behavioral forecast that a given person "is suffering from a severe personality disorder indicating a propensity toward criminal activity,"[23] or that "the defendant is a dangerous, mentally abnormal person whose commitment for an extended term is necessary for protection of the public."[24] If predictive methods reliably identify appropriate candidates for incarceration, they do so at the risk of a high yield of false positives.[25] Some of those who are predicted to be dangerous do not turn out to be dangerous at all. The term "dangerousness" has been used freely in legal discussions as though it were self explanatory. It is not. It is crucial, therefore, in order for behavior to be relevant to legal intervention, there must be coherent legal criteria of "dangerousness."

> Determination of the seriousness and likelihood of the predicted misconduct required to justify confinement—is a value judgment the law should make; it is not a factual judgment within the professional competence of psychiatrists or other expert witnesses.[26]

However:

> Even if crime-forecasting techniques could be improved, an offender doesn't deserve to have his punishment increased (or decreased) on the basis of what he is predicted to do rather than on the basis of the seriousness of what he has done.
>
> The likelihood of the offender's returning to crime in the future should be irrelevant to the choice of whether and how long to imprison him.[27]

This because the more critical objection to using incapacitation as a justification is a moral one. A fundamental rule of fairness is violated when a person is sentenced for something that he has yet to do.

> Practices, as well as laws that provide for extended terms or otherwise harsher treatment for convicted persons believed to be 'dangerous,' 'habitual offenders,' or 'defective delinquents' depart from dealing with the individual for past proven acts and move to the realm of punishing for behaviors that are not only unproven, but are not even alleged to have taken place. While the practice of preventive confinement has a long history, it must be re-examined and, unless some clear connection to justice can be found, abandoned as a basis for extending the length of confinement or otherwise increasing the severity of a criminal sanction.[2]

Rehabilitation

Today there is widespread disenchantment with rehabilitation as a goal of punishment which gained impetus during the wave of civil disobedience during the 1960's. This new breed of law breakers not only elicited popular support but stimulated disturbing questions about the treatment of persons against their will. It became unfashionable in the climate of the 60's to speak of criminals as disturbed persons needing to be diagnosed and cured. Forced participation in treatment programs seemed in that context not merely futile, but immoral and a dangerous infringement on individual rights.

> When we begin treating persons for actions that have been chosen, we do not lift from them something from which they have been suffering, but we change them to function in a way regarded as normal by the current therapeutic community. In doing this, we display a lack of respect for the moral status of individuals—a lack of respect for the reasoning and choices of individuals. It is one thing to exact a penalty for what a person did, and quite another to do so for what he or she is. In the first instance there is a finite price to be paid. In the second case, we say that he or she is a deficient person and must become a better one before being accepted by us.[29]

Further disenchantment concerning the rehabilitative model was increased when frightening abuses of treatment were brought to the attention of the public particularly by Jessica Mitford.[30] Ms. Mitford documented the proliferation of "adjustment centers" or "special treatment units" and described in detail the various programs where treatment had clearly de-

generated into blatant torture. Such abuses shocked the public into alertness about the dangers of treating people in captivity. It became clear that:

> The impossibility of differentiating some therapies from some punishments indicates not too close a similarity, but an identity. Punishment has long been acknowledged an important tool or psychiatric therapy and it remains well-recognized, though controversial today. Therapy and its synonyms, "corrections," "rehabilitation," and "treatment," are prime motives of those who design and operate the punitive institutions of society.
>
> Over the years, Americans have become very considerably less willing to permit torture and other extremely severe punishments in their penal institutions. The first, fourth, fifth, eighth, and ninth amendments to the Constitution place some limits on legal punishments, and feeble as these limitations are in practice, they do exist and they are slowly acquiring real force and effect. Penal administrators turn, therefore, to therapy as punishment to carry out acts which, if named punishment, would be clearly illegal and immoral.
>
> The courts have been exceedingly slow to see through this subterfuge. Only those practices most shocking to the conscience have been prohibited and these often only on appeal. Other practices which would be shocking indeed if they were called punishment remain legal.[31]

C.S. Lewis wrote *The Humanitarian Theory of Punishment* in 1948. Nevertheless, the following quote captures the emergent attitude of two decades later:

> On [the] remedial view of punishment the offender should of course, be detained until he was cured. And of course the official straighteners are the only people who can say when that is. The first result of the Humanitarian theory is, therefore, to substitute for a definite sentence (reflecting to some extent the community's moral judgment on the degree of ill-desert involved) an indefinite sentence terminable only by the word of those experts—and they are not experts in moral theology nor even in the law of Nature—who inflict it. Which of us, if he stood in the dock, would not prefer to be tried by the old system?
>
> It may be said that by the continued use of the word punishment and the use of the verb "inflict" I am misrepresenting Humanitarians. They are not punishing, not inflicting, only healing. But do not let us be deceived by a name. To be taken without consent from my home and friends; to lose my liberty; to undergo all those assaults on my personality which modern psychotherapy knows how to deliver; to be remade after some pattern of "normality" hatched in a Viennese laboratory to which I never professed allegiance; to know that this process will never end until either my captors have succeded or I have grown wise enough to cheat them with apparent success—who cares whether this is called punishment or not?[32]

The third blow to rehabilitation came when it began to appear doubtful that rehabilitation programs came near accomplishing the task of changing people for the better. Studies which began to accumulate struck at the optimism which had sustained the rehabilitative ideal. The work of Robert Martinson was the most influential of these studies. He reached the conclusion that there was "no clear pattern to indicate the efficacy of any particular method of treatment,"[33] and that with few and isolated exceptions, the rehabilitative efforts that have been reported so far have no appreciable effect on recidivism."[34]

> Given the moral and political questioning of the rehabilitative theory that was already taking place, the effect of the Martinson study was devastating. The tide of opinion turned decisively against rehabilitation as a justification for the imprisonment of criminals.[35]

The net effect of this evolution has been to shift the position of rehabilitation within sentencing theory and practice. It is important to stress that one can logically reject rehabilitation as a justification for punishment but continue to wholeheartedly support a policy of providing voluntary programs and services for offenders. Senator Kennedy has expressly omitted rehabilitation as a justification in his current bill but said:

> I am not, of course, advocating the abolition of prison rehabilitation programs. Indeed, I believe they should be encouraged and expanded. What I am advocating is an end to the comforting but totally unrealistic notion that rehabilitation of the convicted criminal can serve as a justification for imposing a prison sentence. Not only is such a sentence unfair to the individual, it doesn't seem to do much good in 'curing' the offender.[36]

The rehabilitative ideal spawned the indeterminate sentence which was central to the therapeutic model of corrections. This model states that criminal behavior results from some social or psychological disorder which is amenable to therapeutic intervention. Since the length of treatment should be tailored according to the individual prognosis of individual cases, judges are given wide discretionary latitude in sentencing. One difficulty in this model is that one could not know in advance whether the criminal would respond to treatment. Those people who are considered to have the best vantage point for making the release decisions are the prison and parole authorities along with their staff of diagnosticians and other specialists. In other words:

> Indeterminate sentencing simply means that the amount of time a convicted criminal will actually serve is decided not by the legislature when it enacts the criminal statute, nor even by the sentencing judge when he formally imposes sentence, but rather by some administrative agency generally called the "parole board" or the "adult authority"—during the time the prisoner is serving his sentence. Both the legislature and the sentencing judge still have important roles to play in indeterminate sentencing. They generally set the outer limits of confinement, but these limits are generally set very widely, and it thus

> becomes the responsibility of the parole agency to make the decision that really counts. When will the defendant get back on the streets?[37]

The indeterminate sentence promised all things to all people. To the prisoner it meant some prospect of trimming the sentence, to prison personnel it was a device which put teeth in disciplinary and management rules. Since they held the key to the inmates' release, they had immense power over the fate of the prisoner. To the proponents of law and order it was a way to prolong the incarceration of "the dangerous" criminal and liberal critics of the system saw it as a breakthrough in the intelligent sanctioning of criminals.

> As recently as 1970, Ramsey Clark — widely regarded as perhaps the most liberal person ever to occupy the Attorney Generalship — predicted that "the day of increased reliance on the indeterminate sentence is coming," since it gives "the best of both worlds — long protection for the public yet a full flexible opportunity for the convict's rehabilitation.[38]

Today, however, indeterminate sentencing is denounced by most theorists. Moreover, inmates say the indeterminate sentence places inordinate power in the hands of those people already in control. It only adds "justification for secret procedures, unreviewable decisions and unquestioned discretionary power over those in custody."[39] Law enforcement officials complain bitterly that their efforts are frustrated by early releases. Tensions within prisons are heightened because of the uncertainty, exacerbating problems for corrections officers.

More than any other single feature of the system, the indeterminate sentence has brought about the disparity of sentences. Since the legislature on this scheme sets the broad outer limits it must consider all possible extremes — that is, the distribution of choices from which the judge must choose must include an appropriate sentence for the most heinous variant of each crime as well as the most innocent. This provides a grossly extended range of possible penalties, without stipulation as to what factors are to narrow the sentence decision. For example New Jersey statutes provide for the imposition of fines for offenses of nonacquisitive nature (even in high misdemeanor cases) and for probation for "any crime or offense" except repeated narcotics offenses. Rape could be punished by a fine, incarceration of up to thirty years, or probation.[40]

Because there is a great deal of confusion concerning various alternative approaches, a brief description of the other most commonly used terms is here offered.* A *determinate sentence* is simply a sentence for a specified length of years. It does not necessarily indicate that the offender will serve all those years . . . it sets in effect a maximum period beyond which confinement may not reach. *Flat sentences* are determinate sentences in which there is no possibility of reduction or increase during the time the offender is incarcerated. No variations from the sentence imposed by the judge are possible. A flat sentence, then is necessarily determinate but a determinate sentence is not necessarily flat. Neither a determinate nor a flat sentencing scheme is necessarily incompatible with judicial discretion. *Mandatory sentences* limit discretion by requiring the judge to impose certain terms. In the case of a mandatory minimum, the judge must sentence a defendant to the specified minimum term and likewise with the mandatory maximums. Mandatory maximums set the outer limits of the sentence.

America has the highest and the lowest sentences for serious crimes of any civilized country in the world. More of the serious offenders are released on probation or on suspended sentence and more of those who are imprisoned receive excessively long sentences.[41]

The extraordinarily long sentences place the parole board in an uneasy position. While the original sentence is extremely long, in practice most inmates spend only a small fraction of that sentence in prison. In New Jersey, for example, sentences of 15 to 20 years usually mean that the inmate can be released after one third of the sentence has been served.[42]

In a 1972 concurring opinion, Justice Jacobs declared that "the time is well ripe" for the development of adequate sentencing guidelines. He further stated:

> As early as 1935 the Judicial Council of New Jersey recommended the establishment of a special 'Court of Sentence Adjustment' and, during the past decades, committees of this Court have repeatedly recommended that a special sentencing review part of the Appellate Division be created with a view towards the establishment of proper sentencing guidelines, the elimination of irrational sentencing disparities, and the imposition of more justly enlightened individual sentences. Varying recommendations with the same high goals have been made elsewhere and a studied choice of most any one of them would probably represent an advance over our present system.[43]

The opinion went on to say that satisfactory steps have not been taken toward the more comprehensive goals envisioned by the various "recommendations for specialized sentencing bodies or controls."

Studies of sentencing disparities and proposed solutions are in abundance and are almost as varied as the sources from which they come. There is, however, an unmistakable trend toward placing the offense rather than the offender in the place of preeminent consideration in the sentencing decision.

The initial wave of public response was predictably

* These definitions were taken from an essay by Richard Singer, Professor of Law, Rutgers-Newark. *In Favor of "Presumptive Sentences" set by A Sentencing Commission.*

reactionary. Disparity, it was said, would disappear when judges are stripped of their discretionary power and parole boards abolished. It has been argued:

> . . . with faith in the rehabilitative power of prisons now largely abandoned, the reason for endowing judges with broad discretion has disappeared.[44]

"Flat-time" or fixed sentencing was proposed where the legislature would set the prison term for specific crimes. Maine, Indiana, and California have moved in the general trend of variations of "flat-time" sentencing. President Carter has gone on record supporting flat prison terms on the federal level. While none disagree that the sentencing practices must be more rational and consistent, certainly not everyone feels that the removal of discretion from the judiciary will ensure a more sound process. In fact many now argue that the inflexibility inherent in a fixed sentencing model would lead to injustices even more egregious than the present system. For one thing, most flat-time schemes permit the judge to select either probation or incarceration so that there would remain the possibility of discrepant sentences for like crimes, namely, prison as opposed to release. Also, when judges impose radically different sentences for similar crimes today, at least the parole board has the discretion to compensate to some degree. More to the point, the judge is in a position to confront the defendant and the legislature is not: if the concept of "aggravating and mitigating circumstances" has any meaning at all it should come into play when a judge exercises discretion. It seems unlikely that the legislature could catalog and particularize the multifarious aggravating and mitigating factors (and combinations of factors) except in a way as to merely replace the present loose statutes with intolerably rigid ones. Furthermore, experience might warrant periodic reconsideration with subsequent modification of sentencing policies and legislative mandates would be resistent to such change. One study conducted under a grant from the National Institute of Law Enforcement and Criminal Justice of the Assistance Administration concluded that:

> judges have within their capabilities today the means by which they may sharply curtail, if not virtually eradicate, sentencing disparities in most American jurisdictions.[45]

The two year study culminated in a system of operational sentencing guidelines which seeks to retain:

> . . . sufficient judicial discretion to ensure that justice can be individualized and humane as well as even-handed in application.[46]

Sentencing disparities come about "not out of malice, but out of sheer ignorance," and "inability to see the full picture."[47] Since judges have shown a willingness, indeed, eagerness to repair their own faulty machinery it is fitting that the attempts at reform should begin with them. So:

> The guideline system, in brief, takes advantage of, and incorporates, the collective wisdom of experienced and capable sentencing judges by developing representations of underlying court policies. The system simultaneously articulates and structures legal judicial decisionmaking processes so as to provide clearer policy formulation, more cogent review and enhanced equity to criminal defendants everywhere.[48]

While the intent would be to supply the judge with more of the information necessary to his decision and to structure and somewhat limit the discretion, the sentencing guidelines would not be binding.

Gottfredson, Kress and Wilkins studied actual sentencing decisions from two primary judicial jurisdictions in Colorado and Vermont and worked with judges from "observer courts" in Essex County, New Jersey and Polk County, Iowa. The study did not purport to be prescriptive but was designed to see "what underlying factors influence actual sentencing decisions and what value judges gave each of these factors."[49] Two factors which most influence decisions were found to be the seriousness of the crime and the record of past offense.

Values were imputed to characteristics of both the offense and the offender, then computed and located on a sentencing matrix. The guideline sentence is located where the offense score and the offender score intersect on the grid. "This guideline model is intended as a mathematical aid"[50] whereby a judge can see at a glance what other judges are doing. The median sentence is in no way binding but a sentence which falls outside the guidelines is expected to be imposed only in unusual cases (85% of court's sentencing is expected to fall within guideline range)[51] and is to be supported with articulated reasons.

> . . . the system we envision would use those departures as a data base to construct better guidelines in a continuous self-improvement process.[52]

One of the means for accomplishing this is by a regular review "perhaps twice a year" by a collective body of judges in the jurisdiction who would:

> . . . review the effectiveness of the guidelines in accurately reflecting the policy of the courts. They would review those decisions which have fallen outside the guidelines to see if such departures represent desirable policy revisions which should be reflected in a reconstructed guideline model, or whether they simply represent the presence of extremely unusual circumstances which justified a guideline override.[53]
>
> The final stage would be the normal appellate review process, which we favor for sentencing, and which would ensure that the now explicit underlying sentencing policy of the particular court system is fair and proper as well as consistent and equitable.[54]

In the summer of 1976 Essex County, New Jersey became one of four participating jurisdictions to begin to implement the guidelines from this project.

The Administrative Office of the Courts (AOC) has begun work on a similar research project under a

grant from the State Law Enforcement Planning Agency. Recognizing that sentencing reform cannot take place in a vacuum, the project has begun an extensive "profile of the practices and procedures in each jurisdiction and a study of all factors influencing a judge's decision." The study will look at the plea bargaining practice as well as:

1) Local jail capacity, and state prison bed space availability from time to time;
2) Judge's use of minimum sentences;
3) Local policy for use of habitual offender statute;
4) Policies with respect to ordering diagnostic reports (nonsex offender cases);
5) Policies with respect to use of tailored or standard conditions of probation;
6) Caseloads and time-spaces for processing cases (effect of delay tactics (etc.,) on sentence);
7) Indictment Practice—does indictment fit the criminal event, are counts added for bargain strength;
8) Nature of sentencing proceeding;
9) Quality of pre-sentence reports.[55]

The plan also includes collection of data on assorted other obvious and nonobvious factors which may influence a judge's decision. As it is now, New Jersey appellate courts affirm about 96% of all sentences appealed. However, in order to determine whether or not a sentence is out of line there must be some standard by which to determine what counts as "out of line." Presumably one could ascertain the average sentence for a given crime but there are variants within specific crimes which influence the sentence. AOC plans to have initial frequency information on the variables by Fall, 1977 which should be an important first step in the attempt to establish some baseline upon which an explicit statewide policy can be developed.

There are several other New Jersey study groups which have come up with recommendations. Two major innovations are to be found in the recommendations of the Correctional Master Plan and the "comprehensive New Jersey Penal Code."[56] The code recommends a policy of stressing the seriousness of the crime rather than the character of the offender. The code also considerably narrows the range of choices for sentences of incarceration leaning to more determinancy in sentences. The court on this plan has discretionary authority to choose between a statutorily authorized term of imprisonment suspended imposition or probation. The court does not have the authority to set a minimum which means the defendant could be eligible for parole immediately. On this plan both parole and probation are part of the original sentence. If the court chooses suspended imposition and places the convicted defendant on probation, the important effect would be seen in the probation revocation process. The court could consider the total circumstances of the case and the facts leading to failure on probation before making a decision upon resentencing rather than being limited to the automatic execution of an imposed but suspended sentence. This model allows for several options if a new sentence is to be imposed:

1) fine or restitution;
2) placement on probation with or without a short period of imprisonment;
3) imprisonment for a term authorized by the code;
4) fine, restitution and probation, or fine, restitution and imprisonment.[57]

The parole term on this plan is part of any prison sentence. This differs from the present parole system in New Jersey wherein parole is superimposed on the sentencing structure and applicable only if a prisoner is released before the maximum term of the sentence.

> The code provides for a separate parole term of five years, except for young adult offenders, who would be supervised for two years, and persons convicted of fourth degree crimes, who would be supervised for one year. Thus, every sentence would have two separate parts: 1) the court-imposed maximum period for which a prisoner could be held before his or her first release on parole, and 2) the term of parole supervision which would start when the prisoner was released. If parole were revoked and no new offense had been committed, the total length of recommitment and re-parole would not exceed the aggregate of the unserved portion of the original sentence and the unserved balance of the parole term. Only when the parole term had expired or when a parolee was discharged from parole would an offender be deemed to have served his or her sentence.[58]

Recognizing that the "particular mode of sentencing and release" is at the heart of any correctional philosophy, the Correctional Master Plan Study Council developed some general sentencing recommendations. The Council adopted what they call a "modified just deserts" model of sentencing and parole. The qualification is meant to express a reluctance to abandon attempts at rehabilitation. The seriousness of the crime is stressed but "the offender is emphasized in the choice of particular sentencing alternatives."[59] It is not altogether clear how the distinction would be made in practice. The intent is, like that in the Kennedy Bill, to leave the door open to possibilities of rehabilitation programs within the system.

The Council sought redress of the disparity problem from several angles. First, the determinate fixed maximum sentence coupled with the reduction of existing maximum terms is recommended. Secondly, both Court and Parole Board discretion should be markedly restricted. The council proposed a sentencing matrix similar to the one developed in the LEAA study mentioned earlier. The matrix would

place limits on the variance of individual sentences for the same crime but allow for some individualization. The language of the report conveys a stronger expectation than the LEAA model in that the judges would confine themselves to the options within the matrix, but it has a provision for a sentencing commission to review all sentences which do not fall within the matrix.

As to parole discretion the Council suggests either that it be markedly reduced or eliminated entirely. One way to restrict discretion is with a presumptive release date. Denial of release would be the exception and would be based on a violation of some institutional rule. Parole would not be contingent upon an individual's participation in an institutional program. The responsibility to revoke parole would remain with the board but would be considered a last resort.

The Council also put forth "as the second of two options" a recommendation for the elimination of parole discretion. This recommendation has two important features:

1) Either a fixed parole term should be a part of every sentence to incarceration or parole services should be offered on a voluntary basis to all releases.
2) Parole revocation and discharge proceedings would become the responsibility of the sentencing court.[60]

Probation would stand independently as a sentence in itself. The council anticipates this leading to uniformly administered terms and the elimination of duplication of probation services and functions at the local levels.[61]

Two federal sentencing bills are especially worthy of note here insofar as they could either serve as a model for state sentencing reform or illustrate some of the problems of reform. The Kennedy Bill and the Hart-Javits Bill are both addressed to the sentencing issues discussed in this assessment. Senator Kennedy presented his bill as part "of a concerted legislative effort to deal with sentencing disparity." One way he says it does that is to establish "for the first time certain uniform criteria which Federal Courts must consider in formulating a sentence." As mentioned earlier, his bill expressly excludes rehabilitation but refers the court to take into account four criteria:

> (1) the nature and circumstances of the offense and the history and characteristics of the defendant;
> (2) the need for the sentence imposed (a) to reflect the seriousness of the offense and promote respect for law by providing just punishment for the offense, (b) to afford adequate deterrence to criminal conduct, and (c) to protect the public from further crimes of the defendant;
> (3) whether other less restrictive sanctions have been applied to the defendant frequently or recently; and
> (4) any sentencing guidelines established by the United States Commission on Sentencing.[62]

The guidelines suggested by the LEAA study promise to be a step in the direction toward consistency in sentencing. Another innovative feature of this list is the explicit acceptance of punishment as a legitimate 'reason' for a sentence and the conspicuous absence of rehabilitative goals from the list. Curiously, the other considerations are not new at all, but on the contrary have long been held to be germane to the sentencing decision.[63] What is wanted is perhaps not "general" criteria but at the very least a weighting or ordering of criteria. The problem of disparity is not the want of purpose—but the singling out of several considerations, one—or possibly two—upon which all sentences will rest. Something approximating uniformity or in any case fair treatment can only come about if judges have in mind what exactly it is they are supposed to be accomplishing by their imposition of sentence.

A further problem with the Kennedy bill relates to the judges in giving reasons for all sentences.

> In every case in which the court imposes a term of imprisonment within the guidelines for sentencing promulgated by the Commission the court shall make as part of the record and disclose in open court to the defendant at the time of sentencing, a brief statement of the reason or reasons for the sentence imposed.[64]

The point was made in the LEAA study that when judges are required to give reasons for every sentence, the procedure tends to become trivialized by habit. They suggest reasons only when the sentence falls outside the guidelines.

> It is imperative that the reasons not simply be an expression of something already contained in the guidelines, or some phrase made meaningless through rote repetition (which we believe would occur frequently were written reasons required for all sentences), but that they instead be a thoughtful and 'reasoned' justification for why the guidelines are inappropriate for the case at hand.[65]

The sentencing bill presented by Senators Gary Hart and Jacob Javits is currently receiving a good deal of attention. The bill is based on a model developed by Professors Richard Singer and Andrew von Hirsh along with the recommendations put forth in *Doing Justice* and the Twentieth Century Fund Task Force Report on Criminal Sentencing entitled *Fair and Certain Punishment*. The bill (S204) which could be used as a model for state sentencing reform asserts that, as a matter of justice, a sentence should be based on what the offender did. It proposes a return to the common sense notion that criminal punishment is precisely that: punishment. Punishment entails unpleasantness and the stigma of blame. It follows, therefore, that the severity of the sentence, must be commensurate with the seriousness of the

crime. The Hart-Javits Sentencing Standards Act of 1977 has five significant elements:

> 1) It specifies a 'just deserts' rationale for sentencing. The severity of a sentence must be commensurate with the seriousness of the offender's crime.
> 2) Imprisonment as a severe penalty, would be restricted to serious crimes and would be required for all such offenses. Penalties other than imprisonment would be prescribed for lesser offenses.
> 3) It limits sentence disparity through the 'presumptive sentence.' For each gradation in seriousness of criminal behavior, a definite penalty—the presumptive sentence—would be set. [A presumptive sentence would be imposed] unless there were special, carefully defined circumstances of aggravation or mitigation. A previous conviction of a serious offense would automatically be deemed an aggravating circumstance.
> 4) The presumptive sentences and the permitted aggravating and mitigating circumstances would be prescribed by a new standard-setting agency, the Federal Sentencing Commission.
> 5) And finally, indeterminacy of sentence would be phased out, and the prisoner would promptly be informed of the actual length of his stay in prison. On a 'just desserts' theory, the length of imprisonment depends on the character of the offense, and the latter is knowable at the time of conviction. Prisoners could no longer be kept in suspense for years waiting for a parole board to make up its mind.[66]

The bill also stipulates that everyone convicted of a serious crime would be incarcerated. Today the difference in lengths of prison sentences is a serious enough inequality. Even more worrisome is the fact that of two convicted of the same crime today, one may not be incarcerated at all while the other goes to prison.

Paradoxically, by paring down the exalted claims of criminal punishment to the humble requirement that it be fair makes it far more likely that other desired consequences would accrue. For example the resentment over disparate sentences has been said to preclude or at best is inimical to rehabilitation. In a program—independent of the imposed penalty—a convicted offender is much more likely to cooperate, absent the present added frustration of having been dealt with unfairly. Moreover, since desert is addressed to the deed rather than to future conduct, attitude and a diagnostic assessment is irrelevant. Keeping the sentencing decision free of personality assessments means that the punishment is the same for everyone who has committed the same offense. The punishment is, then, predictable, impersonal and prejudices and other arbitrary differences are thereby minimized. The predictability of the sanction given what is known about deterrence is likely to enhance the prospects of punishment while also serving the cause of deterrence:

> Indeed, if the punishment, or its size, depends on what the judge, or parole board thinks about the chances that the offender will be law-abiding in the future, the threat may become too uncertain to deter others readily. Deterrent effects largely depend on punishment being meted out according to the crime, so that a prospective offender can know the likely cost of the offense and be deterred by it.[67]

The requirement in the bill that every serious offender be sentenced to prison for some period of time makes the prospect of punishment certain (if convicted) drawing tight the now attenuated connection between crime and the punishment of that crime; again making for a more likely deterrent benefit.

The bill does not, of course, make a claim to or rest on these side effects. It bids only for a

> . . . fairer system. Offenders' punishment will more closely approximate what they deserve, and equally blameworthy individuals will receive more nearly similar sentences. In a system now characterized by normlessness and disparity, this greater evenhandedness would be no mean achievement.[68]

As a practical matter, a major obstacle to the notion of deserts as the principle purpose of a given sanction is that it leaves us in the dark as to what precise penalty is deserved for a specific offense. That is, the deserts model may be useful in arraying penalties on a scale with respect to one another: if atrocious assault deserves four years then possession of a small quantity of marijuana cannot deserve ten years . . . and so on, but not in arriving at a standard penalty. Scaling penalties with respect to each other would be no small undertaking in itself. Does the theft of some priceless object d'art from a museum or say, one of the Canterbury Windows from the display at Steuben's, deserve more or less than the theft of small social security monies from a few elderly persons? If not the same penalty, how does one arrive at more or less? Overcoming conflicting intuitions about what is deserved for harm done presents serious enough difficulties in trying to arrive at a baseline figure (does kidnapping deserve one year or life?) but the further (and necessary) task of measuring subtle differences between crimes presents an awesome task. The just deserts model is logically committed to detailing such distinctions and the corresponding penalties. If subtle distinctions are not made—that is if sizable numbers of offenses are lumped together—then the chief virtue of a just deserts system would be lost.[69] The desert theory is not in doubt about one thing; the median on this scale of penalties should be less. The report of the Committee for the Study of Incarceration repeatedly asserts (as does the Hart-Javits Bill) that penalties should be drastically scaled down from present practice. Incarceration is reserved for serious crimes (defined by harm done or risked and the culpability of the offender) and those serious crimes (excepting murder) are not thought to deserve more than five years. Such unwonted reductions are controversial and indeed raise hard questions: Is justice served when a convicted mugger who has permanently crippled his victim is sentenced to three

years?[70] One possible way out of this difficulty is to combine the deserts rationale with the LEAA Sentencing Guidelines proposal in such a way as to begin (as the LEAA study does) with a description of present practice—then agree upon some reasonable reduction in present sentences. On that basis a ranking of commensurate deserts could meet the practical demands that many practitioners now claim it has failed to do.

Parole

Judges, as was pointed out earlier only partially determine the length of a prison sentence. The sentence imposed by the judge merely sets an outside limit beyond which the offender cannot be confined. The paroling authority of a minimum/maximum plan can release any time after a minimum sentence (or 1/3 the maximum) has been served. The paroling authority also has the power to revoke parole to reconfine the parolee.

Since the enormous power vested in the paroling authority issued from the indeterminate sentence, it is to be expected that virtually all of the criticism leveled at the present judicial sentencing policies apply with equal force to parole. The claim is that the release decision is one of unbridled discretion unguided by clear criteria or rules with the inevitable result of disparate treatment of inmates. Furthermore, the capriciousness and uncertainty fosters suspicion, disrespect from the public and incites frustration and anger among the prisoners. A more basic question is whether or not parole is an appropriate or effective practice at all.

"Parole was the number one grievance"[71] put forth by inmates who participated in the bloody prison riot at Rahway State Prison in 1972. "And parole is the number one topic being discussed by inmates and prison administrators in the New Jersey prison system today."[72] As with sentencing the initial reaction to problems of parole was extreme: abolish it. "Junk it" said a lawyer affiliated with the New York Civil Liberties Union at a Bar Association Forum in 1976.[73]

The most common criticism directed at the parole process is concerned with the mechanism of the release decision. The procedures vary among jurisdictions. An interview or a hearing by the hearing examiners and the parole board precede the decision in New Jersey. The most serious flaw in the process is that it is not regulated by due process safeguards. For example, inmates do not have an opportunity to present their own witnesses, nor are they generally represented by counsel. Since 1971, following the *Monks v. N.J. State Parole Board,* 58 N.J. 238 (1971) decision, the parole board in New Jersey has been required to state the reasons for denial of release. In *Monks* the court ruled that individuals should be given a statement of the reasons for parole denial. The issue of articulating the reasons for denial of release was not put to rest in *Monks.* Legislation has continued on the issue of what constitutes an adequate statement of reasons.[74] There is sparce statutory criteria to guide the board in its decision. Eligibility is fixed by statute.[75] The actual release is entirely left to the discretion of the board.

What guidance is provided is characterized by the same vagueness as statutes on sentencing. The mandate of *N.J.S.A.* 30:4-123.14 and *N.J.S.A.* 30:4-123.19 is that a parole should not be granted unless the board is reasonably convinced that the inmate will live in the community as a law-abiding citizen, that the release does not threaten the welfare of society and that the parolee will be gainfully employed. Other considerations deemed relevant to the release decision have to do with his overall attitude in prison and prior history, including the circumstances of the offense.[76] The board is expected to tally these considerations and come up with an answer. Critics say that the decision is based on the unspoken and even unrecognized bias of board members.[77]

The crux of the problem lies in the demands made on the parole board. There is serious doubt as to the wisdom of trying to predict the inmate's behavior. Should they be asked to predict future behavior of inmates, and if so, on what grounds? The public outrage is directed at the board when an inmate on release commits a crime. The outrage is just as intense when the board tightens the restrictions and grants fewer releases.[78]

Since the role of the board is loosely defined they sometimes find themselves in a "no-win" situation. When the prisoner goes before them to be heard they may find compelling reasons to put off a genuine consideration of release until a later date. In that case a perfunctory ritual takes place during which the parole board puts forth certain requisite conditions to be fulfilled before the defendant can be further considered for parole. If the parole is denied, either prior to the ritual or after it the board will have invoked the wrath of the prisoners for subjecting them to standards they cannot meet. If the prisoner is released prior to having served his sentence and gets into trouble, the board is held responsible by the public.

The present parole chairman has been attempting to incorporate a measure of certainty into parole policy.

> Once he's behind bars the prisoner must know every step of the way exactly what he must do to win early parole. If he commits a serious mistake the first day in prison that would affect his chances of parole a year or two later he should be told immediately and informed what he must do to make up for it and not find out at his parole hearing.[79]

A presumptive release policy would be conducive to that goal. As it is today, there is an eligibility date but the inmate has no way of knowing when, after that

first eligibility they might be deemed fit for release. The presumptive release date would be set and the inmate informed of the date. Release would be assumed to take place on that day barring some serious violation of institutional rules. In the case of such a violation it is expected that the inmate would be appropriately informed of forfeiture of release—rather than kept in the dark as happens today.

Most of the studies on sentencing problems extend the proposals for either structuring or eliminating discretion to the parole process. One exception is the New Jersey Criminal Law Revision Commission. That group states emphatically: "The discretion of the Parole Board should, in our view be as absolutely unfettered as possible in favor of granting parole." While the Commission put forth some criteria for sentencing, it does not make similar suggestions to guide the parole decision. That recommendation notwithstanding, the idea of "presumptive parole release" is viewed by most critics as a promising reform. Guidelines much like those proposed for the sentencing decision have also generally been supported.

One prickly problem has continued in the area of release supervision and of course that has ramifications for parole revocation. There are those who argue persuasively that once convicts have obtained release they should enjoy the same freedom from supervision that other citizens have. It is claimed that supervision often feels like harassment to the parolee. Since many argue that only a new crime is grounds for revocation anyway, the parolee should not be compelled to check in and comply with other extra legal requirements. It is assumed that even if the supervision were not mandatory there would be services available to the parolee on a voluntary basis.

Two other major issues which pertain specifically to parole is that of where in government to house the Board of Parole and should the releasing authority be separate from the supervisory agency. The Correctional Master Plan Policy Council recommends that the Bureau of Parole and the Bureau of Community Services be consolidated into a Division of Community Services. The present Parole Board feels that the conflicting interests between parole and corrections makes it undesirable for parole to be under those auspices. Those concerns are part of a continuing debate.

Probation

Several years ago the (then) Governor of New Jersey referred to the Probation Department as the "stepchild of the criminal justice system." Current research indicates that there has continued to be a feeling that it is overlooked in the scheme of things by the State. Probation administrators complain that they have "low visibility" and that their work in the shadows needs to come to light. They say the role that probation plays in the entire network of criminal justice is rarely understood or appreciated.

The role of the probation department is twofold: it is investigative and it is supervisory. The supervisory and surveillance policy stems from a simple principle of parsimony. The principle is that the least intrusive sanction which is compatible with the needs of the defendant and the welfare of society should be imposed. Aside from humanistic concerns, this has become a principle of the utmost practicality with the population growth at the prisons having long since exceeded their overflow capacity. Since more and more people are advocating that incarceration be reserved for serious crime only, that means that among other alternatives to incarceration, probation assumes a role of increasing preeminence.

Probation should be a means of integrating the convicted person back into the mainstream of society through support programs and support staff. It is generally conceded that in practice this ideal is rarely met. Probation administrators and the courts are in agreement that probation needs reforming but the character of that reform is not so readily agreed upon.

Problems of probation are inextricable from the problems of financing. Probation departments are inadequately funded and a recent report of the Administrative Office of the Courts asserts that they are inappropriately funded.

Probation is organizationally and administratively fragmented in this State. Fragmentation is so severe that from the point of view of control and direction of the system, the provision of a high quality service throughout the State is almost impossible. It is claimed that this fragmentation precludes the achievement of equality of justice under law. There must be equality of service if people are to be treated equally.

Administratively, probation departments are unnecessarily complex. Under present statutes the County Court judge appoints probation officers, fixes their salaries and are responsible for the day to day oversight of the administration of probation. This service, which is now primarily business oriented, imposes an unfair burden on those judges. When it comes to nonprobation personnel, the Chief Probation Officer is responsible statutorily for the appointment of those people in the 21 departments. Though the chief probation officers do the appointing of the nonprobation personnel they do not fix the salaries and neither do the county judges. Salaries for these people are fixed by the board of freeholders according to whatever money they deem necessary. There is rarely agreement with the judiciary in terms of what sums of money are necessary to provide the support services and investigative activities of the probation office. There exists then a constant conflict relationship between counties and judiciary. In addition to that, because of labor relations laws in

this State, negotiations over conditions are ineffective. Since the County Court judges are presumed to be the employers, they negotiate with the separate county units but most negotiations take place with the freeholders. What follows is an extreme variation of working conditions, fringe benefits and inequities in relation to salaries for probation people throughout the State.

As it is, the State does little or nothing toward support of this vital link in the system. The State puts little or no money into the system except for matching State Law Enforcement Planning Agency funds and financing the salaries of staff in the Administrative Office of the Courts.

Three concerns need redress. There is a duplication of effort and expenditure because of overlapping of service delivery units in 21 separate probation departments. The second major concern is that as long as there are 21 separate departments reporting to 21 county courts or to 12 assignment judges there will be a lack of uniformity and adherence to Supreme Court rules, policies and directives with respect to probation. The third topic for concern turns back on the other two: , claimed that the centralization of probation in the State is the only way to alleviate these problems. The position of the Administrative Office of the Courts is that State control is the only means to eliminate the problems of fragmentation. There are simply too many employers and that leads to attenuated accountability. There is conflict between court policy and even between County Court judges.

State unification is the key to bringing about the level of quality wanted in probation. It is projected that such State controlled centralization would mean that probation would have full-time professional management of the service delivery system so that the basic administrative decisions which have to be made quickly will be made and not shunted aside because the several judges cannot be reached.

There is a serious need for a tighter adherence to the mandates and policy directives of the Supreme Court. Certainly it is agreed that there is a need for more uniformity. The reorganization into a state centralized system, funded by the State is meant to bring this about.

New Jersey's Status in Comparison with the National Standards

Sentencing

The criminal justice system in New Jersey is in the process of extensive re-examination of sentencing policies and practices. Current research and recommendations are aimed at facilitating the sentencing process in terms of making it more fair, effective and efficient. The pervasive research into problems of sentencing will undoubtedly culminate in modification of the present procedures. It is fitting therefore to consider this comparison with national standards in light of substantial regenerative activity and pending change.

ABA Sentencing Alternatives and Procedures Standard 1.1, NAC Courts Standard 5.1 and Corrections Standard 5.1 recommend that the trial judge be vested with the authority and responsibility of imposing the sentence. Jury sentencing should in all instances be abolished. The trial judge in New Jersey is authorized to impose the sentence within the broad limits set by the Legislature. In the event that the trial judge is disqualified or for any other reason cannot perform that duty, the Chief Justice of the Supreme Court or the assignment judge of the county designates another judge to impose the sentence.

ABA Sentencing Alternatives and Procedures Standard 2.1 (a)[80] requires that all crimes be classified into a limited number of categories which reflect substantial differences in crimes. According to *N.J.S.A.* 2A:85-6, 7, New Jersey now has two basic categories of crime, misdemeanor and high misdemeanor. Sentencing statutes do not delineate differentials of punishment because of the wide use of different sentence maximums. Individual and general statutes specify maximum punishments for each offense. NAC Criminal Justice System Standard 13.3 states that a revised substantive code should simplify the penalty structure. The proposed New Jersey Penal Code (October, 1971) recommended a reduction of distinctions to a relatively few important categories. All crimes, under this proposal, are divided into four categories of seriousness—first, second, third and fourth degree with penalties assigned accordingly (Section 2C:43-1).

Both the Commentary to ABA Sentencing Standard 2.1 (d) and NAC Corrections Standard 5.2 recognize that the sentences imposed in the United States are indefensibly high for the majority of cases. The NAC adds that sentences imposed by the United States are the highest in the western world. ABA recommends that the maximum authorized term ought not to exceed ten years except in unusual cases and other sentences should be five years or less.

New Jersey has several offenses punishable by more than 25 years' imprisonment including murder in the first or second degree, kidnapping for ransom and rape. Other crimes punishable by more than 10 years' imprisonment include assault with intent to kill; threatening to kidnap, kill or injure for purpose of extortion; and advocating or threatening to take life. A large number of crimes are punishable by sentences up to seven years.[81] Some sentences, therefore, exceed those recommended by the national standards.

ABA Sentencing Standard 2.1 states that the sentencing court should be provided with a wide range

of sentencing alternatives reflecting degrees of custody, support and supervision. New Jersey parallels the sentencing alternatives as recommended in NAC Corrections Standard 16.8. These alternatives include unconditional release, probation, fines and incarceration.[82] New Jersey statutes also contain special provisions for sentencing sex offenders, female offenders and youthful offenders.[83] New Jersey Court Rule 3:28 permits diversion of cases in regard to all crimes. There exists the possibility of a variety of supervisory and supportive arrangements among the conditions of probation.

ABA Sentencing Standard 2.2 states that the legislature should not specify a mandatory sentence for any sentencing category or for any particular offense. NAC Corrections Standard 5.2 states that no minimum should be imposed by the legislature. New Jersey has mandatory sentences following a jury conviction for murder in the first degree and a second conviction for driving while intoxicated.[84]

NAC Corrections Standard 5.2 provides for the disposition of the nondangerous offender. NAC Corrections Standard 16.1 recommends imposition of the least drastic measure consistent with rehabilitative needs of the offender, public safety and gravity of the offense. Any offender who is not found specifically to "represent a substantial danger to others" should be sentenced to a term of five years or less. The specific criteria to be taken into account when considering a sentence of nonconfinement are:

1. The offender's criminal conduct neither caused nor actually threatened serious harm.
2. The offender did not contemplate or intend that his criminal conduct would cause or threaten serious harm.
3. The offender acted under strong provocation.
4. There were substantial grounds tending to excuse or justify the offender's criminal conduct, though failing to establish defense.
5. The offender had led a law-abiding life for a substantial period of time before commission of the present crime.
6. The offender is likely to respond affirmatively to probationary or other community supervision.
7. The victim of the crime induced or facilitated its commission.
8. The offender has made or will make restitution or reparation to the victim of his crime for the damage or injury which was sustained.
9. The offender's conduct was the result of circumstances unlikely to recur.
10. The character, history and attitudes of the offender indicate that he is unlikely to commit another crime.
11. Imprisonment of the offender would entail undue hardship to dependents.
12. The offender is elderly or in poor health.
13. The correctional programs within the institutions to which the offender would be sent are inappropriate to his particular needs or would not likely be of benefit to him.[85]

New Jersey does not have a statute or rule expressly addressed to the handling of the nondangerous offender or to a presumption of nonincarceration. A general statement on the goals of punishment can be found in *State v. Ivan,* 33 N.J. 197 (1960) which stresses deterrence, rehabilitation and public welfare.

ABA Sentencing Standard 3.3 provides for extended terms for habitual offenders and recommends increased sentences warranted on grounds that such a term is necessary to protect the public and:

> (i) The offender has previously been convicted of two felonies committed on different occasions, and the present offense is a third felony committed on an occasion different from the first two. A prior offense committed within another jurisdiction may be counted if it was punishable by confinement in excess of one year. A prior offense should not be counted if the offender has been pardoned on the ground of innocence, or if the conviction has been set aside in any post-conviction proceeding; and
>
> (ii) Less than five years has elapsed between the commission of the present offense and either the commission of the last prior felony or the offender's release, on parole or otherwise, from a prison sentence or other commitment imposed as a result of a prior felony conviction; and
>
> (iii) The offender was more than 21 years old at the time of the commission of the new offense.[86]

The National Advisory Commission Corrections Standard 5.3 provides for extended terms of imprisonment for those defendants who have records of "aggressive, repetitive, violent or predatory behavior" and who pose a serious threat to the community. The NAC suggests that the terms "persistent offender" should replace "habitual offender." Extended terms are in order when a defendant is a persistent felony offender, a professional criminal or a dangerous offender.

New Jersey statutes provide that if a defendant is convicted of a misdemeanor or a high misdemeanor and has been previously convicted of a high misdemeanor, the sentence may be increased. For the second offense the defendant may be sentenced "for not more than double the maximum period for which he might have been sentenced for a first offense," for a third offense the limit is raised to three times the maximum and for a fourth the maximum is raised to any term of years or life imprisonment (*N.J.S.A.* 2A:85-8-12).[87]

It should be noted that the conviction to which the increased maximum may be applied may be for either a misdemeanor or a high misdemeanor, while the previous conviction must be for a high misdemeanor or its equivalent if obtained in another jurisdiction. Also, if two or more convictions obtained in one trial either because the crimes were charged in separate counts or because separate indictments were joined for trial, they are not separate convictions for this

purpose (*N.J.S.A.* 2A: 85-8, -9, -12). It has also been held that a person must be convicted of the crime prior to the date of his next offense, or the first conviction does not constitute a prior conviction under the act. For example, if the defendant had committed high misdemeanors on three successive days and was convicted later in three separate trials, they constitute only one prior conviction for the purposes of this act. See *State v. McCall,* 14 N.J. 538 (1954); *State v. Harris,* 97 Super. 510 (App. Div. 1967).[88]

The proposed 1975 New Jersey Code of Criminal Justice (A3282) adopts the terminology recommended by NAC. It recommends extended terms of imprisonment if it finds one or more of the following:

> a. The defendant is a persistent offender. A persistent offender is a person who is 21 years of age or over, who has been convicted of a crime involving the infliction, or attempted or threatened infliction of serious bodily injury and who has at least twice previously been sentenced as an adult for such a crime to a custodial term and where one of those prior offenses was committed within the five years preceding the commission of the offense for which the offender is now being sentenced.
>
> b. The defendant is a professional criminal. A professional criminal is a person who committed an offense as part of a continuing criminal activity in concert with five or more persons, and was in a management or supervisory position or gave legal, accounting or other managerial counsel.
>
> c. The defendant committed the offense as consideration for the receipt, or in expectation of the receipt, of anything of pecuniary value the amount of which was unrelated to the proceeds of the crime or he procured the commission of the offense by payment or promise of payment of anything of pecuniary value.

ABA Sentencing Standard 2.7 states that the legislature should determine offenses or categories of offenses for which a fine would be an appropriate penalty. However, it is left to the discretion of the judge in any given case whether to impose a fine, the amount (within legislative boundaries) and the terms of payment.

NAC Corrections Standard 5.5 incorporates a similar provision. Neither the NAC or New Jersey statutes limit fines to those crimes where defendant has gained money or property. *N.J.S.A.* 2A:85-6, 7, provides fines as an alternative or additional punishment for all crimes coming within their provisions. Arson, for example, in *N.J.S.A.* 2A:89-1, falls within the high misdemeanor category and, therefore, could be punished by a fine of no more than $2,000 or no more than seven years' imprisonment, or both. New Jersey's categories for offenses are different from the standards, but many serious crimes of a nonacquisitive nature, such as atrocious assault and battery and rape, may be punished by fines *N.J.S.A.* 2A:90-1; *N.J.S.A.* 2A:38-1). New Jersey statutes do state the maximum fines allowable, but fines are provided for on a broader basis than the NAC standard envisions. New Jersey is consistent with national recommendations in prohibiting the substitution of a fine for incarceration, for example, "30 dollars or 30 days." The New Jersey fines are for penal purposes and not for revenue production (*State v. DeBonis,* 58 N.J. 182 (1971)).

Both ABA Sentencing Standard 2.7 and NAC Corrections Standard 5.5 recommend a schedule of fines for offenses. New Jersey has no such schedule relating the fine to a gain at this time but one is proposed in A 3282. 2C:43-3 (e).

NAC Corrections Standard 5.19 and ABA Sentencing Standard 2.3 require that the imposition of a sentence be supported with the reasons for that particular sentence choice. New Jersey *R.* 3:21-4 (f) is in accord with that requirement.

NAC Courts Standards 6.1 and 5.9 and ABA Appellate Review of Sentences Standard 1.1 advocate the practice of review of sentences and the right to appeal on the part of the defendant. Rule 3:21-4 (f) requires the judge, after imposing sentence, advise the defendant of the right to appeal and to have counsel appointed if indigent. If the defendant has been sentenced for an indictable offense, the public defender's office which represented him at trial if he was indigent, represents him upon appeal.[89] If sentenced for a nonindictable offense, the assigned counsel must advise the defendant on appeal and prepare the papers for such an appeal.[90] Counsel will be assigned to handle the appeal.

The defendant has the right to appeal to the Appellate Division in all cases. However, under certain circumstances the defendant may appeal to the Supreme Court. In other cases review is discretionary in the Supreme Court.[91]

Parole

New Jersey is consistent with many of the NAC Corrections Standards for parole decision making. NAC Corrections Standard 12.1 recommends that each state establish parole boards for adult offenders that are independent of correctional institutions and parole field services. Parole boards should be responsible for articulating and fixing policy for parole decisions and for issuing and signing warrants to arrest and hold parole violators. In addition the standard recommends that parole boards should have a staff of full-time hearing examiners to hear and make initial parole grant decisions and hear revocation cases under specific policies of the parole board. Decisions of parole examiners should be final unless appealed within five days upon which the parole board makes a final determination.

The paroling authority for adult offenders in New Jersey is separate from correctional institutions and parole field services. The New Jersey Parole Board has the authority to establish policies (which are

printed in a report entitled New Jersey Parole Board Procedural Guidelines) and issue warrants for suspected parole violators under *N.J.S.A.* 30:4-123. Responsibility for issuing warrants has been delegated by the Board to District Parole Supervisors under the procedure guidelines. Although the Parole Board uses hearing officers to conduct parole revocation probable cause hearings, all initial parole grant decisions for adult offenders are made by the Board. Parole revocation decisions by hearing officers are not binding and may be overruled by a majority vote of the Parole Board after appeal within ten days. New Jersey officials have indicated that the use of hearing officers for parole grant hearings is appropriate for the federal system, given the amount of traveling that otherwise would be required for Parole Board members from prison to prison. The small geographic size of New Jersey does not warrant their use and would cause needless expense.

NAC Corrections Standard 12.2 states that parole boards for adults should consist of full-time members who possess academic training in fields such as criminology, education, psychology, sociology, law or social work and have the ability to comprehend legal issues, statistical data and promulgate policy. Parole boards should consist of three members who represent all ethnic and socio-economic groups and be appointed by the Governor for six-year terms. Parole board members should be compensated at a rate equal to a judge of a court of general jurisdiction.

Under *N.J.S.A.* 30:4-123, New Jersey is consistent with NAC Corrections Standard 12.2 except in the area of salaries. The chairman of the Parole Board receives $27,000 per year and associate members receive $25,000 per year while County and Superior Court judges receive $40,000 per year.

New Jersey is consistent with some aspects of NAC Corrections Standard 12.3 on the parole grant hearing. The NAC recommends that a parole hearing be scheduled for each inmate within one year after they are received in an institution, but in New Jersey that hearing is scheduled only within 30 days of initial parole eligibility. According to Standard 12.3 each state should have a statutory requirement under which offenders must be released on parole when first eligible unless certain specific conditions exist. This is provided under *N.J.S.A.* 30:4-123 but specific conditions have not been outlined in the Parole Board Procedural Guidelines and a parolee may not know of the conditions before parole eligibility.[92] Although this standard recommends that one Parole Board member conduct hearings and make parole determinations which unless appealed are final, *N.J.S.A.* 30:4-123.19 states that ". . .no release on parole shall be effected except by unanimous vote of the entire board. . . ." *N.J.S.A.* 30:4-123.19 is consistent with NAC Stsndard 12.3 in that inmates are notified promptly after a hearing as to the board's decision. The New Jersey State Parole Board Procedural Guidelines states that the reasons for the denial of parole or parole revocation be placed in writing as recommended by NAC standards. Under *N.J.S.A.* 30:4-123.26, offenders are entitled to be represented by legal counsel as recommended in Corrections Standard 12.3.

The Parole Board Procedural Guidelines concerning parole revocation, *N.J.S.A.* 30:4-123, *N.J.S.A.* 2A:158A-5 as well as numerous New Jersey court decisions are consistent with NAC Corrections Standard 12.4. Under this standard, warrants to arrest for alleged parole violations are issued under parole board procedural guidelines; probable cause hearings for parole revocation are held within ten days; alleged parole violators are eligible for bail under proper circumstances pending the hearing; alleged parole violators are given notice of the alleged violations and have the right to present evidence; and the parolee must be given written reasons for revocation and have the right of appeal to the Parole Board.

Probation

NAC Corrections Standard 5.4 and ABA Probation Standards 1.1 through 5.4 discuss the length, conditions and revocation of probation. The NAC recommends that the term of probation not exceed the maximum sentence permitted by law except for misdemeanors in which cases it should not exceed one year. The ABA, however, recommends that probation not exceed two years for misdemeanants and five years for a felony. Under *N.J.S.A.* 2A:168-1 the statutory time limit for probation is "not less than one year nor more than five years" with no distinction based on severity of crime.

The NAC and ABA recommend the imposition of probation conditions as are necessary to provide a benefit to the offender and society. The court should be authorized to modify or enlarge conditions of probation at any time prior to termination of sentence and use of uniform conditions for all defendants should be avoided. The defendant should be provided with a clear written statement and explanation of probation conditions. Under *N.J.S.A.* 2A:168-2 and 168-11 conditions of probation can be varied to meet the needs of the offender and society. Rule 3:21-7 requires that defendants be presented a copy of the conditions and sign a statement that they have been explained. *Lathrop v. Lathrop,* 50 N.J. Super. 525 (App. Div. 1958) held that conditions of probation should be clearly set out and not left to implication.

The ABA suggests that conditions deal with matters such as: cooperating with program supervision, meeting family responsibilities, maintaining steady employment and/or refraining from engaging in specific employment, pursuing education or training, undergoing medical or psychiatric treatment, maintaining residence in a prescribed area or facility, refraining from consorting with certain types of peo-

ple, making restitution or reparation, fines and family support. These conditions are listed in *N.J.S.A.* 2A:168-2 except for participation in education or training.

Violation of conditions of probation is sufficient grounds for revoking probation according to NAC and ABA standards. They recommend that confinement should result after violation if necessary to protect society and if correctional treatment can most effectively be provided while confined. Guidelines should be developed for processing probation violations to include a formal or informal conference with the probationer to reemphasize the necessity of compliance with conditions and a warning that further violation could result in revocation. Enlargement of conditions should also be considered a possibility. Upon a finding of violation and necessity for resentencing, it is recommended that criteria and procedures governing initial sentencing decisions should govern resentencing decisions.

Violation of a probation condition in New Jersey is grounds for revocation under *N.J.S.A.* 2A:168-4 and *State v. Moretti,* 50 N.J. Super. 233 (App. Div. 1958). There are no statutory provisions in New Jersey law for informal conferences with probationers to discuss violations of conditions of probation.

There is, however, case law relevant to communication between probation officer and probationer. See, for example, *State v. Zachowski,* 53 N.J. Super. 431 (App. Div. 1959); *Gagnon v. Scarpelli,* 411 U.S. 778 (1973); and *State v. Haber,* 132 N.J.L. 507 (Sup. Ct. 1945). These have to do primarily with fair notice to probationer when conditions of probation are not being met.

According to the NAC, probation should not be revoked for the commission of a new crime until the offender has been tried and convicted of a new crime. The ABA, however, states that if probable cause that the probationer committed a new crime is found, the probation court should have authority to detain the probationer without bail pending determination of the new criminal charge. In addition, ABA standards recommend that probation officers not be authorized to arrest probationers and that arrests of probationers for violation of conditions other than the commission of a crime should be preceded by a finding of probable cause that a violation has occurred. New Jersey permits probation officers upon the request of the chief probation officer to arrest probationers for violation of probation conditions without a warrant under *N.J.S.A.* 2A:168-4. Although New Jersey law makes no reference to this matter regarding probation, in *White v. New Jersey State Parole Board,* 136 N.J. Super. 360 (App. Div. 1975), it was held that reasonable grounds to believe a parolee had committed a new crime is not grounds for revocation. That can only occur after a final revocation hearing.

The ABA and NAC recommend that for a probation revocation hearing the defendant should have prior written notice of alleged violation, access to the official record regarding the case, representation by retained or appointed counsel and the right to subpoena and cross-examine witnesses. Where a violation is contested the government should be required to establish the violation by a preponderance of the evidence. In addition the proceeding should be recorded in a manner that can be transcribed for use upon appeal of a probation revocation decision.

State v. Haber, 132 N.J.L. 507 (Sup. Ct. 1945) requires that a probationer be given sufficient advance notice of the violation charged. *State v. Seymour,* 98 N.J. Super. 526 (App. Div. 1968) states that the probationer is entitled to counsel at a revocation hearing. *Gagnon v. Scarpelli,* 411 U.S. 788 (1974) held that the probationer has the right to written notice, disclosure of evidence, the right to present evidence and cross-examine witnesses and a written statement by the factfinders as to the evidence. Revocation hearings are to be recorded and revocation decisions are appealable pursuant to *R.* 2:2-2, 2-3 and *State v. Moretti,* 50 N.J. Super. 223 (App. Div. 1958).

NAC Corrections Standards 10.1 and 16.4 recommend that probation be organizationally placed in the executive branch of government within a unified correctional agency. The correctional agency in reference to probation, accordingly, should be responsible for establishing goals and objectives; program planning and evaluation; staff development and training; establishment of standards for personnel; services to the court, services to probationers and administration. In New Jersey, probation departments are under the supervision of the County Courts (*N.J.S.A.* 2A:168-5; 168-8; *R.* 1:34-4) and the Administrative Office of the Courts provides technical assistance and coordinates programs and policy information for probation departments on behalf of the Supreme Court. The presiding County Court judge appoints probation officers and fixes their salaries which are paid out of the county budget (*N.J.S.A.* 2A:168). The Administrative Office of the Courts conducts training for probation officers and performs studies and evaluations of probation activities. Generally probation officers are selected according to procedures set by the New Jersey Department of Civil Service. The Supreme Court has the authority to establish standards for probation (*R.* 1:34-1).

Commentary

The Committee began deliberations on sentencing by focusing immediately on the problem of disparity in sentencing. A clear understanding of what is meant by disparity is critical to this discussion. "Dis-

parity" was defined as unwarranted variation in sentences. Opinions about variation range from "each case is unique - so exactly equal dispositions are impossible" to the view that large categories of crimes ought to receive the same penalty. If one claims that no variation is warranted between cases with similar circumstances it is a position tantamount to advocating the removal of discretion from the judge whose position it has been to "judge" which factors warrant one sentence over another. California, Maine and Illinois have moved in the direction of legislatively fixed sentences which attempts to remove the discretion from the judiciary.

Discretion however, members insisted, is an indestructable entity. It is misleading to talk of eliminating discretion in sentencing since the attempt to do so merely shifts discretion to another decision maker in the system. However, just where the power should reside to set boundaries on discretion occupied a great deal of discussion time. Whatever standards were adopted could be implemented by judges through the Supreme Court or a commission, or they could be imposed by the Legislature. The Legislature generally seemed the least desirable alternative of the three because it is more remote in time and place, and legislatively imposed standards would not be as amenable to change as would judicially imposed guidelines. Legislative change is also more cumbersome than some of the alternatives. So the problem of discretion is one of how much discretion, the structure of discretion and where ought to be the locus of control.

The indeterminate sentence has been the focal point of much concern and dissatisfaction. The attempt to individualize sentences (which grew out of the assumption that the proper role of the sanctioning process was to rehabilitate the criminal) and the sundry purposes put forth for sanctions combine to produce disparity. Indeterminate sentencing refers to the policy whereby the Legislature sets the very broad outer limits to the sentence and the judge imposes a sentence within that broad outline. The practice has been for the judge to weigh a composite mixture of considerations into the sentencing decision such as dangerousness of the offender, seriousness of the crime, deterrence and rehabilitation. When these considerations are added up, the tendency is to come up with a system which fluctuates wildly when aims conflict. Moreover the weighting of the aims against each other tends to be very subjective. So it is advisable to opt for one or more of these factors - for example, seriousness of the crime and risk of recidivism. Though it is tempting to consider all factors, the Committee noted that this has been tried and it has not produced satisfactory results.

Flat sentences seem also to be unsatisfactory. The rigidity inherent in a statutorily fixed sentence may lead to results which are as unfair as the disparities.

A presumptive sentence seemed the best solution to the Committee. This approach operates according to narrowly set guidelines of permissible sentences which are established for each crime. Judges using this scheme are urged to sentence within the range provided by the guidelines. Judges, however, are not bound by the guidelines which means they retain full discretion in the sentencing process. If the judge deems it fitting to sentence outside the range it is expected that a written reason for that departure be given. This approach (or same variant of it) has been adopted in California, Indiana and Oregon, and is being proposed in Alaska, Illinois, Washington, Maine and several other systems. Bills have been introduced in the United States Senate which adopt the presumptive sentence approach with some differences among them.

The sentencing standards in this report adopted that approach, with some qualification. First, like the bills mentioned, but somewhat unlike the already enacted legislation, the standards call for the establishment of an agency, rather than Legislature, to promulgate sentencing guidelines. Standard 10.3 suggested that in the State, the agency should be in, or under the guidance of, the State Supreme Court, although clearly the particular placement of the agency is not as critical as the acceptance of the idea that some governmentally-authorized body should perform this task. The standard leaves unspecified the number or composition of the members of the agency, but quite clearly the standard does not require, although it would permit, the Supreme Court to establish the guidelines. If the Court did not perform this task, but founded an advisory group, as well as staff, to assist in this endeavor, it is at least debatable that a diversity of opinion, including opinion from the citizenry, would be permitted. It was noted that a current draft of a Uniform Corrections Act, which will be presented to the National Conference of Commissioners on Uniform State Laws in August, 1977, calls for the establishment of a permanent agency, entitled the sentencing commission, which will promulgate such regulations and guidelines only after public hearings and commentary, and, in addition, includes several community members. Although the standard passed by this Committee does not require such participation, neither does it preclude it, leaving that issue to be determined by the Supreme Court or the agency it establishes. Since, under Standard 10.3, the Court or agency is expected to collect all necessary data and to constantly update its own assessment of the guidelines, it is at least possible that a permanent agency of some sort should be considered.

Very little is said of the content of the guidelines themselves. In part, this is because the Committee found itself seriously divided over the issue of to what degree certain factors should be considered in promulgating the guidelines, or what degree of ranges should be promulgated. Some members of the Com-

mittee felt strongly that the presumptive sentence should be strongly supported, and that exceptional factors should count as either mitigating or aggravating, permitting the sentencing judge to sentence in variance from the guidelines. Other members of the Committee felt just as strongly that the sentencing judges should be allowed substantial discretion, as they now possess, and that a lengthy list of aggravating and mitigating circumstances, which would justify deviation from the presumptive sentence, should be devised. Rather than resolving that issue at this level, the Committee has simply agreed that there should be guidelines, and that the agency which sets the guidelines, whether the Supreme Court or a subsidiary agency, should determine those questions in the first instance.

Clearly, the sentencing agency, whether the Supreme Court or other, will need the most vigorous and careful debate before deciding these issues. In so doing, it should be greatly aided by the similar discussions which are occurring throughout the country in relation to all of the materials cited earlier, and the pending legislation in many jurisdictions.

In the same vein, and with a realization of the grave difficulties involved, the Committee has endorsed appellate review of sentences, vis-a-vis the guidelines which have already been implemented in this State, but without suggesting the particular forms that appellate review should take. This in part reflects an acknowledgment that the current rules may simply continue to be implemented, but also that, in the light of the guidelines and the basic philosophy which may be the impetus to them, the procedures and content may necessarily be changed.

In its debates on this topic, which occupied more time and energy than virtually any other it considered, the Committee became increasingly aware of the intricacies and delicate balances which presently exist, and which should be reassessed in any implementation of sentencing standards. Rather than seek to resolve those issues now, the Committee has sought to establish a procedural structure—the "sentencing Agency"—which should resolve those disputes.

The Committee found parole problems to parallel those of sentencing. Procedures have a texture of looseness and there are conflicting goals. The major areas which the Committee addressed were unification of parole, review of parole denial, specific and written criteria for parole release, coordination of community resources for parolees and presumptive parole which is monitored.

The Parole Board is faced with the problem of trying to enforce conditions of parole in areas where they have no control. There is an urgent need to establish an alliance with the Department of Health and the Department of Labor and Industry. While some contend the ultimate re-entry plan has to be the primary responsibility of the Parole Board the standards, however, reflect the need for a coordinated effort between the Department of Corrections and Parole Board.

The Committee discussed the very grave handicap of having a fragmented parole "system" in New Jersey. There are presently four paroling authorities, none of which have any contact with each other so that each fails to benefit in the sharing of information. The Committee agreed there was a need to synthesize scattered authorities.

Members readily agreed that there is great merit in the parole board, the judge, the public and inmates all knowing exactly what the sentence really means. To this end the presumptive release date was recommended. As it is now, when judges impose a 10 to 12 years sentence for the first offense the offender may only serve three years. The Parole Board can either go through the motions of finding reasons to deny parole or they can be forthright and tell the parole applicant that he is not going to be considered for release until some specific date. Some parole boards do operate in this manner.

So as to assure consistency with the concept of presumptive parole eligibility, unless otherwise set forth in the sentencing order, the punitive aspect of the custodial sentence should be satisfied upon eligibility for parole.

The principle objective of the presumptive release date is to bring about a greater degree of certainty with regard to the actual sentence to be served. A presumptive date would be set and the inmate's release would be assumed unless some major institutional infraction takes place before then. If by violating some major rule the inmate forfeits parole, he would be so notified as to the next presumptive release date.

It seems reasonable to suppose that an inmate from maximum security would not be a successful parolee but there is no evidence to support that supposition. Nevertheless, members agreed that the reintegration process would more likely succeed if done in stages which range in degrees of freedom from most restricted to least restricted. The presumptive release date is in the inmate's favor with the burden of proof on the Board when the inmate is denied parole at that date. It was recognized, however, that there are certain cases where both corrections and parole have clear indications that an individual should not be set free. Members therefore suggested that if an individual inmate is unable to qualify for minimum security within six months of his presumed eligibility, then a hearing should be held to determine whether or not he should be considered for parole on the date of eligibility.

Also to the end of bringing about a greater degree of certainty and uniformity, it was deemed crucial to have the paroling authority establish specific guidelines to regulate any modification of that presumptive release date.

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Along these lines, some felt that it would make a difference in terms of motivating the inmate if work time and other good time allowed the inmate to reduce his sentence and others felt that it was better from a management standpoint if days could be added for disciplinary infractions. It was felt that it should be made clear that minor infractions would be handled administratively within the prison (by withholding privileges, etc.) but that only a major infraction would warrant alteration of the presumed release date.

However, by definition parole in New Jersey is "release under supervision." Some members felt strongly that once an inmate had met the criteria for parole and was released he should have freedom equal to that of other citizens. That is to say he should not be faced with mandatory supervision or compelled to comply with regulatory structures different from the nonparolee. If the parolee commits a new crime he should be prosecuted and given a new sentence. Short of that, he is entitled to the same liberty to make mistakes expected by the rest of society. Irrespective of whether or not there could be agreement about compulsory supervision, the Committee was in accord on the need for services to be made available to help the parolee reestablish himself when released from the institution. From this discussion issued a compromise standard which called for guidelines delineating the type and extent of parole supervision that would ordinarily apply to different types of offenders.

A standard recommending a single unified paroling authority was adopted in the Sentencing, Probation, Parole standards. This standard is in conflict with Juvenile Judicial Process Standard 5.41. The conflict was not resolved because the subcommittee on juvenile justice felt it to be critically important to have a separate paroling authority for juveniles.

The single paroling authority was seen by subcommittee IV members as a necessary step in bringing about uniformity to procedures and record keeping. For this reason the committee was not disposed to change the standard.

The Committee discussed the legal problems involved with going ahead and prosecuting people on violation for a new crime before new charges are disposed of. For example, fifth amendment problems are raised, since a person is in the position where he cannot defend himself without creating possibility of information being used against him at trial. There are problems for the prosecution in that they must disclose their case to the defendant before trial. A standard which stated that revocation on the basis of criminal conduct should not occur until such time as the criminal charges are disposed of is an important standard to stress that the filing of a complaint is not sufficient for the purpose of revocation. When the only basis for revocation is a new crime, the criminal charges must be disposed of before revocation.

The standards adopted in the area of probation are designed to create a workable, upgraded probation system. Several of the standards were developed to parallel those in parole and in the sentencing standards. Standards 10.10, 10.11 and 10.14 governing staffing responsibilities, guidelines for supervision and training of personnel did not elicit objections or debate

Both the judiciary and the probation adminstrators recognize that there are serious problems with the delivery of probation services. The programs are said to be riddled by civil service and funding problems. Probation is organizationally and administratively fragmented in the State. That fragmentation is so severe that from the point of view of control and direction of the system and the organization of the system, the provision of uniformally high quality service is almost impossible.

The first four standards are directed toward a plan which calls for a State takeover of probation services. The plan is based on the conviction that there is unnecessary duplication of effort and expenditure in the 21 separate probation departments. As long as there are 21 separate departments reporting to 21 County Courts or to 12 assignment judges there will be a lack of uniformity and adherence to Supreme Court rules, policies and directives with respect to probation. Centralization of probation is crucial and it is crucial that the State take over the management of probation and finance its activities. Several of the Committee members felt that as long as probation remains with the county government there is going to be difficulty in communication and enforcement of Supreme Court rules and regulations.

Moreover, the need for full-time professional management of the service delivery system was said to be best met by a State controlled probation department. The basic administrative decisions have to be made quickly and on a day to day basis. It hinders operations unnecessarily when decisions have to be put aside until an administrator can contact one of the several county judges.

Members insisted that some decisions cannot wait. It is necessary to make someone accountable and be given the authority to make the urgent ones. This authority would be subject to those broad policies which are laid down by the judiciary for the execution of such services and for the direction and control of probation.

Committee members reported that the current state of probation can be improved. Under current statutes County Court judges appoint probation officers and fix their salaries and are responsible for the exigencies of the office. County Court judges are not expected to oversee the administration of social services which in large measure is business oriented. This unduly burdens county judges. When it comes to nonprobation employees, the chief probation officer is responsible statutorily for the appointment of

those people. However, though the chief probation officer appoints them their salaries are fixed by the board of freeholders. There is often disagreement over what services and what moneys are adequate. Moreover, the sprawling loosely connected probation services today are often in competition for the scarce tax dollar.

In brief, the standards which were adopted have assumed that the key to an efficient and economical service delivery system which provides for uniform high quality service and programs is a State controlled, State funded, centralized probation department.

References

[1]Marvin Frankel, *Criminal Sentencing: Law Without Order,* New York, Hill and Wang, 1972, p. vii.

[2]See "Plea Negotiations" chapter for further explanation.

[3]James Q. Wilson, *Thinking About Crime,* New York, Basic Books, Inc., 1975, p. 179.

[4]Robert McKay, "It's Time to Rehabilitate the Sentencing Process," *Judicature,* Vol. 60, No. 5, December, 1976, p. 224.

[5]"Kennedy Sentencing Bill, S. 181," *Congressional Record, Senate,* January 11, 1977.

[6]Don M. Gottfredson, Leslie T. Wilkins, Jack M. Kress, Joseph C. Calpin, Arthur M. Gelman, *Sentencing Guidelines: Structuring Judicial Discretion,* LEAA Grant, October, 1976, pp. 1, 2.

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[8]A. Partridge and W. Eldridge, eds., *The Second Circuit Sentencing Study: A Report to the Judges of the Second Circuit,* Washington, D.C., The Federal Judicial Center, 1974.

[9]Frankel, *Criminal Sentencing: Law Without Order,* p. 112.

[10]M. Kay Harris, "Disquisition on the Need for a New Model for Criminal Sanctioning Systems," *W. Vir. L. Rev.,* Vol. 77, 1975, p. 271.

[11]Andrew von Hirsch, *Doing Justice—The Choice of Punishments,* Report of the Committee for the Study of Incarceration, New York, Hill and Wang, 1976, p. 5.

[12]Vengeance connotes a bitter personal requital for injury and is usually wrathful, furious and vindictive. Retribution connotes deserved and just punishment often without personal motive.

[13]C.S. Lewis, *The Humanitarian Theory of Punishment,* in *2 Crime and Justice,* L. Radzinowicz and Marvin Wolfgang, eds., New York, Basic Books, Inc., 1971, pp. 43-44.

[14]American Law Institute, *Model Penal Code, Proposed Official Draft,* Philadelphia, American Law Institute, 1962, Section 7.01.

[15]See Advisory Council of Judges, National Council on Crime and Delinquency, *Model Sentencing Act,* 1963; American Bar Association Project on Minimum Standards for Criminal Justice, *Standards Relating to Sentencing Alternatives and Procedures,* Chicago, ABA, 1970; National Advisory Commission on Criminal Justice Standards and Goals, *Report on Corrections,* Washington, D.C., U.S. Gov't. Printing Office, 1973.

[16]*State v. Ivan,* 33 N.J., 197 (1960) at 200.

[17]Ibid., at 201.

[18]Ibid.

[19]See Gordon Tullock, "Does Punishment Deter Crime?," *The Public Interest,* Summer, 1974, pp. 103-111; George Antunes and E. Lee Hunt, "The Impact of Certainty and Severity of Punishment on Levels of Crime in American States: An Extended Analysis," Evanston, Illinois Center for Urban Affairs, Northwestern University, September, 1972, p. 64; Barry F. Singer, "Psychological Studies of Punishment," 58 *Cal. L. Rev.,* 1970, p. 405; Franklin E. Zimring and Gordon J. Hawkins, *Deterrence,* Chicago, University of Chicago Press, 1973.

[20]Wilson, *Thinking About Crime,* p. 179.

[21]von Hirsch, *Doing Justice—The Choice of Punishment,* p. 19.

[22]American Law Institute, *Model Penal Code, Proposed Official Draft,* Section 7.01 (1) (a).

[23]Advisory Council of Judges, Model Sentencing Act, p. 5. See also National Council on Crime and Delinquency (NCCD), *Guides to Sentencing the Dangerous Offender,* New York, New York, NCCD, 1969.

[24]American Law Institute, *Model Penal Code, Proposed Official Draft,* Section 7.03.

[25]Andrew von Hirsch, "Prediction of Criminal Conduct and Preventive Confinement of Convicted Persons," *Buffalo L. Rev.,* Vol. 21, No. 3, 1972, p. 730.

[26]Ibid., p. 725ff.

[27]Andrew von Hirsch, "The Aims of Imprisonment," *Current History,* Vol. 71, No. 418, July/August, 1976, p. 4.

[28]Harris, "Disquisition on the Need for a New Model for Criminal Sanctioning Systems," *W. Vir. L. Rev.,* p. 278.

[29]Ibid., p. 283.

[30]Jessica Mitford, *Kind and Unusual Punishment: The Prison Business,* New York, Vintage Books, 1972.

[31]L. Opton, "Psychiatric Violence Against Prisoners: When Therapy is Punishment," 45 *Miss. L. J.,* 1974, p. 637 as cited in Harris, "Disquisition on the Need for a New Model for Criminal Sanctioning Systems," *W. Vir. L. Rev., p. 282.*

[32]Lewis, *The Humanitarian Theory of Punishment,* in *2 Crime and Justice,* Radzinowicz and Wolfgang, eds., pp. 43-44.

[33]Robert Martinson, "What Works? Questions and Answers About Prison Reform," *The Public Interest,* No. 22, Spring, 1974, p. 16.

[34]Robert Martinson, "The Paradox of Prison Reform-II: Can Corrections Correct?," *The New Republic,* April 8, 1972, p. 14.

[35]Marc F. Plattner, "The Rehabilitation of Punishment," *The Public Interest,* no. 44, Summer, 1976, p. 109.

[36]Edward M. Kennedy, "Criminal Sentencing," *Judicature,* Vol. 60, December, 1976, p. 212.

[37]Alan Dershowitz, "Let the Punishment Fit the Crime," *New York Times Magazine,* December 28, 1975, p. 7.

[38]Ibid., p. 32.

[39]Jessica Mitford, "Prisons: The Menace of Liberal Reform," a review of *Struggle for Justice: A Report on Crime and Punishment in America and Maximum Security: Letters from California's Prisons,* in *The New York Review of Books,* March 9, 1972.

[40]See *N.J.S.A.* 2A:113-8 and *N.J.S.A.* 2A:90-1.

[41]Ibid.

[42]Thomas Goldstein, "Inequities Common in Jail Sentences," *New York Times,* December 19, 1976 p. 27.

[43]*State v. Poteet,* 61 N.J. 493 (1972).

[44]Thomas Goldstein, "Why the Disparity in Sentences by Judges?" *New York Times,* January 25, 1977, p. 69.

[45]Gottfredson, et al., *Sentencing Guidelines: Structuring Judicial Discretion,* p. xi.

[46]Ibid.

[47]Don M. Gottfredson, Jack M. Kress and Leslie T. Wilkins, *"Is the End of Judicial Sentencing in Sight?" Judicature,* Vol. 60, No. 5, December, 1976, p. 219.

[48]Gottfredson, et al., *Sentencing Guidelines: Structuring Judicial Discretion,* p. xi.

[49]Gottfredson, et al., "Is the End of Judicial Sentencing in Sight?," *Judicature,* p. 220.

[50]Ibid., p. 221.

[51]Gottfredson, et al., *Sentencing Guidelines: Structuring Judicial Discretion,* p. 103.

[52]Gottfredson, et al., "Is the End of Judicial Sentencing in Sight?" *Judicature,* p. 222.

[53]Gottfredson, et al., *Sentencing Guidelines: Structuring Judicial Discretion,* p. 99.

[54]Gottfredson, et al., "Is the End of Judicial Sentencing in Sight?" *Judicature,* p. 222.

[55]Administrative Office of the Courts, "Sentencing Disparity," grant application #A-246-75 to the State Law Enforcement Planning Agency, June 11, 1976.

[56]New Jersey Criminal Law Revision Commission, *The New Jersey Penal Code, Vol. II: Commentary,* Newark, New Jersey, October, 1971, p. 311.

[57]Ibid., p. 313.

[58]State of New Jersey, Dept. of Corrections, *New Jersey Correctional Master Plan,* Trenton, New Jersey, March, 1977, p. 14.

[59]Ibid., p. iv.

[60]Ibid., p. 23.

[61]Ibid., p. 26.

[62]"Kennedy Sentencing Bill, S. 181," *Congressional Record, Senate.*

[63]See *Williams v. New York,* 337 U.S. 241, 248 (1949); also the *Final Report of the National Commission on Reform of Federal Criminal Laws* Pt. A, Ch. 1, p. 102, 1971, (The Brown Commission); S-1 93rd Congress 1st Session 1-1A (1973) Brown Commission; S. 1400, 93rd Congress, 1st Session 102 (1973).

[64]Ibid.

[65]Gottfredson, et al., *Sentencing Guidelines: Structuring Judicial Discretion,* p. 97.

[66]See the Federal Sentencing Standards Act of 1977, S. 204 presented by Senators Gary Hart and Jacob Javits.

[67]Ernest van den Hagg, *Punishing Criminals,* New York, Basic Books, Inc., 1975, p. 61.

[68]Hart-Javits Sentencing Bill, S 204.

[69]See: von Hirsch, *Doing Justice-The Choice of Punishment,* Chapters 9 and 15.

[70]Plattner, "The Rehabilitation of Punishment," *The Public Interest,* p. 112.

[71]"Parole's the Problem in Prisons," *The Trentonian,* March 1, 1977, p.2.

[72]Ibid.

[73]Goldstein, "Inequities Common in Jail Sentences," *New York Times,* p. 27.

[74]*Beckworth, et al. v. N.J. State Parole Board,* 62 N.J. 348 (1973).

[75]*N.J.S.A.* 30:4-123.10-13.

[76]*N.J.S.A.* 30:4-123.18.

[77]Ad Hoc Parole Committee, *Public Information, Report #1: The Parole Process in New Jersey,* February, 1975.

[78]"Parole's the Problem in Prisons," *The Trentonian,* 1977, p.3.

[79]Thomas Goldstein, "Dietz Calls for Changes in the State Parole System," *New York Times,* September 1, 1975.

[80]All ABA standards included in this status are from ABA Standards on Sentencing Alternatives and Procedures, herein cited ABA Standards on Sentencing.

[81]See the following statutes: *N.J.S.A.* 2A:113-4; *N.J.S.A.* 2A:118-1; *N.J.S.A.* 2A:138-1; *N.J.S.A.* 2A:90-2; *N.J.S.A.* 2A:105-4; *N.J.S.A.* 2A:113-8; *N.J.S.A.* 2A:185-6.

[82]See the following statutes for these sentences: *N.J.S.A.* 2A:168-1; *N.J.S.A.* 2A:85-6,7; *N.J.S.A.* 2A:164-17.

[83]See the following statutes for these sentences: *N.J.S.A.* 2A:164-6; *N.J.S.A.* 2A:164-15; *N.J.S.A.* 30:4-154; *N.J.S.A.* 30:4-147. See also *State v. Costello,* 59 N.J. 334 (1971); *State v. Chambers,* 63 N.J. 287 (1973); Administrative Office of the Courts, *Sentencing Manual for Judges.*

[84]See the following statutes for these sentences: *N.J.S.A.* 2A:113-4; *N.J.S.A.* 2A:118-1; *N.J.S.A.* 39:4-30; *N.J.S.A.* 2A:113-3, 4.

[85]National Advisory Commission, *Report on Corrections,* Corrections Standard 5.2, pp. 150, 151.

[86]American Bar Association, *Standards Relating to the Administration of Criminal Justice,* p. 360.

[87]Administrative Office of the Courts, *Sentencing Manual for Judges,* October, 1975, p. 19.

[88]Ibid., p. 20.

[89]*R.* 2:7-2 (a); *R.* 3:27-1.

[90]*R.* 2:7-2 (b); *R.* 3:27-2; *N.J.S.A.* 2A:158A-5.2.

[91]*R.* 2:2-3 (a); *R.* 2:2-1 (a); *R.* 2:2-1 (b).

[92]The Parole Board is currently developing a handbook for inmates listing parole procedures and conditions.

ADMINISTRATION OF CORRECTIONS

Introduction

The ultimate goal of corrections is to make the community safe by reducing the incidence of crime. A correction system can contribute toward crime reduction through rehabilitative treatment, incapacitation and punishment.

When confronted with offenders for whom there is little probability of rehabilitation, the correctional system must have the capacity to protect society by retaining them for as long as sentences permit. Currently the correctional system, which is already severely overcrowded, does not have the capacity to retain all serious or repeat offenders for maximum sentences. Overcrowding has put pressure on parole boards to release inmates sooner than desirable. As a result, the length of stay of offenders has decreased greatly even though the seriousness of crime and prior criminal history of offenders being admitted to prison is increasing. Although serious crime has more than doubled during the last eight years no new State Correctional Institutions have been built.

Correctional expenditures are heavily weighted toward incarceration and surveillence-oriented custody with insufficient resources directed at rehabilitation. Many offenders leaving prison are not equipped for successful re-entry into the community. By not so equipping the offender, the correctional system serves to strengthen criminal tendencies and foster a crime-incarceration-crime cycle.

Rehabilitative treatment includes education, training, medical and psychological treatment programs aimed at providing offenders with the ability to function in the community as law-abiding citizens. Corrections must apply relevant methods to prevent offenders, especially those brought into the correctional system for the first time, from becoming trapped in careers of crime. Unfortunately there is little information from research and evaluation to indicate the extent to which various methods of handling offenders are successful.

The task of providing offenders with alternatives to crime is difficult because they bring to prison problems which in some cases have taken years to develop and yet correctional staff have little time to deal with them. Some of these problems include alcoholism, emotional instability, drug dependence, limited education or job skills, learning handicaps and a lack of motivation.

The correctional system is finding that institutional programs for offenders are not enough. Methods must be provided to assist the offender in reintegration into the community after release from prison. Reintegration involves several factors including: assisting the inmate in maintaining contact with family; assuring the subjects and skills taught and work within the prison are related to jobs in the community; providing treatment and social services for emotional and medical problems both within prison and after release; increasing offenders contact with the community as they near release and securing jobs or education for ex-offenders.

Correctional responsibility for these factors has been fragmented among numerous public and private agencies involved in correctional functions. Fragmentation would not be a problem, however; if there was a high degree of coordination between correctional efforts. Coordination is needed to provide a continuity of services from the instant offenders enter the correctional system until they are beyond the system's responsibility.

Community support is essential for the success of all correctional activities. Correctional efforts must receive a higher priority from funding sources. Public and private groups must participate in programs to reintegrate offenders into the community by hiring them for jobs and providing whatever other assistance is necessary.

Problem Assessment

The task of improving corrections involves many factors within the correctional system and the community. Many of these factors can be grouped into six issues: (1) effects of overcrowding in State correctional institutions; (2) social, economic and physical needs of prison inmates; (3) emphasis on rehabilitation programs and their effects on offenders; (4) reintegration programs as methods to assist offenders in transition from institutional to community life; (5) coordination of correctional efforts within government and between governments and the community; and (6) community participation in correctional efforts.

As of July 1, 1976 State correctional institutions were housing more offenders than existing standards allow (at 151% capacity) with a need for 1500 additional beds. Overcrowding is a major problem which affects the lengths of stay of offenders, tensions within the institutions and sentencing and parole decisions. Recent violence and work stoppage in

References for this chapter appear on page 194.

State prisons have been attributed in part to overcrowded conditions. Judges admit that because of natives to incarceration or grant shorter sentences instead of what they deem appropriate. Currently there are over 200 offenders sentenced to State institutions awaiting transfer from county facilities.[1] Often the final result of overcrowding is that some prisoners are released from prison prematurely, even for the serious crimes. Individuals involved in correctional programming report that offenders are often released before treatment, rehabilitation and/or education programs have been completed. If offenders are unable to then obtain complementary services after release, their successful reintegration can be hampered and prior rehabilitation efforts may be wasted.

Recent figures show that as the number of offenders going through correctional institutions increases, the less time each offender spends in prison. This has occurred despite the fact that the overall seriousness of crime and prior criminal history of offenders being admitted to prison is increasing. Table 1 shows the decrease in average months of stay for offenders in State correctional institutions between 1970 and 1975 for two categories of offenders.

It has been suggested that county correctional facilities can be used to alleviate some of the overcrowding. County jails and correctional facilities are currently operating at approximately 80% capacity. Table 2 indicates the average daily population of county facilities used primarily for housing sentenced offenders during 1976 and 1977.

Four of the institutions (in Bergen, Essex, Mercer and Middlesex Counties) listed in Table 2 did not come close to full capacity during 1976 and 1977. Seven of the 21 county jails used for housing both pretrial detainees and sentenced offenders were also substantially underutilized during the same period as shown in Table 3.

Even with the use of county facilities there are not enough beds to relieve the overcrowding in State correctional facilities. According to the Correctional Master Plan there is a need to create additional correctional bedspace for serious or multiple offenders and provide more alternatives to incarceration for less serious offenders.

Table 1

Average Months of Stay of Offenders in Correctional Institutions by Type of Offense

Offenses Against Persons	1970-1973	1974-1975
Training Schools	9.0	9.1
Youth Institutions	9.2	9.7
Womens' Correctional	18.8	14.5
Prisons	35.7	30.2
Property and Other Offenses		
Training Schools	8.0	7.6
Youth Institutions	7.1	5.8
Womens' Correctional	11.8	7.1
Prisons	20.0	18.3

Source: State of New Jersey, Dept. of Corrections, *New Jersey Correctional Master Plan,* Trenton, New Jersey, March, 1977, pp. 76-78.

Table 2

Capacity of County Correctional Institutions

County Institution	Capacity	Average Daily Population	Percent Utilization
Bergen County Jail Annex	192	140	73
Camden Annex *	71	70	99
Essex County Correctional Center	711	503	71
Hudson County Penitentiary	140	120	86
Mercer County Correctional Center	220	149	68
Middlesex County Workhouse	184	130	71

Source: Data obtained from "Jail Inspection Reports from January, 1976 through March, 1977," Bureau of Operations, New Jersey Department of Corrections, Trenton, New Jersey.

*1975 Data

Table 3

Capacity of County Jails

County Jail	Capacity	Average Daily Population	Percent Utilization
Bergen County	138	95	69
Essex County	626	515	82
Hunterdon County	55	25	45
Monmouth County	315	240	76
Salem County	108	70	165
Somerset County	79	40	51
Warren County	64	36	56

Source: Data obtained from "Jail Inspection Reports from January, 1976 through March, 1977," by the Bureau of Operations, New Jersey Department of Corrections, Trenton, New Jersey.

Sentenced offenders have a number of problems which either correlate with or cause criminal behavior. Among the most common problems are unemployment or low income; limited education and/or job skills; alcohol and/or drug abuse; and emotional instability. A 1974 nationwide survey of persons held in custody (approximately 191,400) under the jurisdiction of State correctional authorities revealed the prevalence of these problems. Table 4 highlights these findings.

Another nationwide study of correctional institutions found that 53% of the inmates have emotional problems, 59% have learning handicaps, 31% have low intelligence and 65% have a lack of motivation.[2]

Various New Jersey agencies reveal related data. Of the offenders residing in State correctional institutions during April, 1975, 1,195 (or 20%) had moderate or major alcohol problems, 2,191 (or 37%) had a herion use history and 2,267 (or 38%) were considered below average in intelligence.[3] Table 5 represents the average reading levels, by grade, of inmates at each State correctional institution as measured by standardized achievement tests.

In reading this data it should be recognized that the conditions which produce these problems in offenders predate their contact with the correctional system. The social, physical and economic problems of offenders, however, cannot be used as an excuse for their commitment of crime, because many people with similar characteristics lead law-abiding lives. Therefore every offender, no matter how serious the problem, is considered to possess some degree of "free will" or choice concerning whether or not to commit crime, except in the case of "legal" insanity.

In recognition of these factors the correctional system for many years has attempted to deal with problems of offenders through rehabilitation programs. The 1977-1978 Fiscal Year budget for New Jersey listed the following objectives of correctional institution services:

1. To receive, diagnose and classify offenders legally committed to the prisons, correctional institutions and the Adult Diagnostic and Treatment Center, with emphasis on satisfying the individual rehabilitation program needs of the offender.
2. To effect a reorientation of attitude and habits, upgrade educational attainment and develop work skills which assist offenders to conform to acceptable community living standards upon release from institutions.
3. To develop and enhance public interest and encourage community participation in the correctional process.[4]

Despite these objectives, most correctional resources are expended on nonrehabilitation and nontreatment areas. Table 6, which lists the expenditures for State correctional institutions during the year ending June 30, 1976, shows that only 13% of the institutional resources goes to treatment, rehabilitation and/or education programs.

It should be noted that federal agencies provide an additional $1,040,341 for educational programs and $186,163 for treatment programs in correctional institutions.[5] Although it is difficult to differentiate the percentage of resources expended by the Bureau of Parole for rehabilitation and treatment programs for parolees[6] reportedly the vast majority of resources also goes to supervision and administration.

Insufficient resources for rehabilitation, treatment and service programs for inmates and parolees is not a new problem. The Commission to Study the Cause and Prevention of Crime in New Jersey stated in 1968 that:

> Although New Jersey State-level correctional agencies are making positive strides toward effective rehabilitation programs and some State correctional programs have received complimentary attention from such distinguished bodies as the President's Commission on Law Enforcement and Administration of Justice, testimony heard in private hearings has indicated that progress in this regard continues to be hampered by insufficient legislative appropriation of funds which would support such activities as commu-

Table 4 Identified Problems of Offenders in Prison

Problem Type	No. of Inmates*	% of Inmates
Unemployed or employed only part-time (month prior to arrest)	72,800	38
Education level (highest achieved		
8th grade or less)	49,000	26
1-3 years high school	65,000	35
4 years of high school	52,200	28
Drinking at time of offense	81,700	43
Used drugs	116,000	61
Used heroin, methedone or cocaine	57,500	30
Used amphetamines or barbiturates	36,200	19

Source: National Prisoner Statistics, U.S. Dept. of Justice, Survey of Inmates of State Correctional Facilities, 1974, Advance Report: NPA Special Report No. SD-NPS-SR-2, Washington, D.C., U.S. Gov't Printing Office, 1976.

* Inmates may fall into one or more categories and therefore these figures are not additive.

Table 5 Educational Attainment of Correctional Inmates

Institution	Reading Level (Interpreted as grade year and month)	Age Range of Group
Training School for Boys (Skillman)	3.5	9-13
Training School (Jamesburg)	4.2	12-18
Annandale Reformatory	4.4	18-30
Yardville	4.0	18-30
Clinton	5.0	16 +
Bordentown	4.3	18-30
Rahway	4.4	18 +
Leesburg	4.3	18 +

Source: Garden State School District, *Garden State School District, 1977 SLEPA Plan Input and All Active SLEPA Programs*, Trenton, New Jersey, 1976, p. 10.

Table 6 Corrections Institutions Expenditures for Year Ending June 30, 1976

Expenditure Category	Amount Expended	Percent of Expenditure*
Institution control and supervision	$23,235,442	48
Institutional care program	15,661,819	32
Institutional treatment program	3,784,974	8
Outpatient diagnostic and treatment services	140,000	<1**
Education program (Garden State School District)	2,564,482	5
Institutional administration	2,955,746	6
Total expenditures	$48,342,463	

Source: *State of New Jersey Budget, Fiscal Year 1977 and 1978,* New Jersey Dept. of the Treasury, Div. of Budget and Accounting, p. 272.

* Rounded off to nearest whole percent. ** Less than 1%.

nity residence programs, pre-parole vocational training and work release programs and post-release specialized clinical treatment for persons with emotional disorders. For the same reason, there is little provision made for financial maintenance of discharged persons prior to finding employment.[7]

Rehabilitation and treatment oriented programs in county correctional institutions is even less extensive than in State institutions. Table 7 shows how many of the 27 county jails, workhouses, correctional centers and penitentiaries have correctional programs.

Table 7

County Level Correctional Programs

Correctional Program	No. of County Institutions With These Programs
Work Release	20
Education	13
Furlough	2
Counseling	13
Community Participation*	8

Source: Data obtained from "Jail Inspection Reports from January, 1976 to March, 1977," Bureau of Operations, Dept. of Corrections

* Community participation as used herein means inmate contact with correctional volunteers and involvement in tours to community functions.

It should be noted that although 20 facilities have work release programs, only three to six percent of the inmates participate. In facilities with rehabilitation or treatment programs that operate satisfactorily, there is a lack of coordination between in-house programs and follow-up supervision or aftercare. In addition, even though the number of female inmates is rising, most services are designed primarily to fit the needs of male inmates.[8]

There is a growing concern that even if more resources are expended on rehabilitation and treatment programs, the effect on recidivism will be minimal. Some parole officers, for example, state that most parolees have little motivation to participate in correctional programs and their major reason for participating is to improve chances for parole. The Commissioner of the Department of Corrections reflected this opinion recently when he stated: "It is difficult to determine an inmate's motives for entering a program or whether he is taking it to heart. . . . Some inmates enter rehabilitation programs simply to increase their chances for an early parole rather than self improvement."[9]

Whatever the offender's reason for participating in rehabilitation programs, evidence indicates that a large percentage of released offenders are being rearrested and convicted of subsequent crimes. The correctional history of offenders sentenced to New Jersey correctional institutions between 1970 and 1975 shows that:

1. 91% had arrests prior to the arrest leading to their present confinement including 49% with six or more recorded previous arrests.
2. 51% had previous county jail sentences including 33% with two or more such sentences.
3. 47% had previously been committed to State correctional institutions including 12% with three or more previous commitments.[10]

The recidivism of some of these offenders cannot be blamed on the failure of correctional programs since not all inmates chose to participate.

It is impossible to determine the effect of rehabilitation programs in New Jersey since recidivism data does not separate offenders who have participated in treatment or rehabilitation programs from those who have not. There is data from other states showing impressive records of successful rehabilitation and reintegration of ex-offenders.[11]

Even without data it is apparent to both institutional correctional personnel and parole officers that rehabilitation programs and treatment are not always successful. Some of the reasons identified for this lack of success are that the technology of rehabilitation needs further development and its implementation is sometimes faulty. A recent Garden State School District statement regarding the problems of correctional education emphasized this point:

> The client population is generally unmotivated toward school and sees little value in educational or skill achievement. Programs must be designed so that they are pragmatic and relevant to each inmate, if they are to be successful.
>
> In addition, self-images of the clients are extremely low. They envision themselves as failures and see no means by which that failure syndrome can be reversed.
>
> Job experiences have been limited and sporadic. Most inmates have performed only unskilled work and have held jobs for less than six-month periods. Attitudes toward work are poor and relationships to authority figures, whether at work or in the community, have been unpleasant.
>
> Because of these characteristics, inmates are extremely difficult to educate whether in academic or vocational areas. Programs must not be limited to traditional methods, materials, and developmental processes. Rather, programs must be related to the inmates' needs, and taught in a highly specialized and pragmatic fashion.[12]

A former doctor at Leesburg State Prison recently commented about poor implementation of correction programs when he stated that:

> . . . prison administration sometimes undermines and sabotages rehabilitation programs. . . .Rehabilitation can be made to work very effectively only if it is directed by experts in that field and not by former prison guards and untrained prison administrators who are for the most part committed to a philosphy of punishment and incarceration.[13]

The Commissioner of the Department of Corrections

considered this contention r ntly when he said that

> There have been some successful rehabilitation programs, but in many instances money has been spent foolishly with programs never really given a chance to succeed. . . .We must take a good look at the basis of the entire system to establish a realistic and acceptable corrections philosophy. . .[14]

In another statement the Commissioner said that

> Rehabilitation in its traditional sense does not work . . . .What the public has to realize and better understand is that we can put criminals away in prisons and jails. But some day they will be back on the streets again. By today's standards, we have a crime factory in every prison. . . .The redefinition of rehabilitation means that we have to give the inmate the tools for when he comes out. We have to better prepare him for reintegration to the community. That's where we have failed, and the high rate of recidivism tells us that. . . .[15]

A contemporary philosophy of corrections suggests that offenders released from correctional institutions often need help in adjusting to freedom and securing support services. The first weeks of reintegration into community life are crucial in determing whether offenders revert to former modes of criminal behavior.[16]

A recent survey of parolee profiles showed that approximately 69% of parolees required one of four major kinds of services including alcohol-drug services (17%), psychological services (13%), employment (23%) and educational services (16%). Of those parolees who were employed the average yearly income during 1973 was $3,040.[17] In Burlington, Camden, Essex, Glouster, Hunterdon, Mercer and Salem Counties the combined unemployment rate of parolees ranges from 43% to 54%. Newly released offenders also need assistance in obtaining housing, clothing, food, financial aid, family counseling or planning, medical and dental treatment.[18]

One of the roles of the parole officer is to assist parolees in obtaining these services. Parole is an essential part of a system of graduated released and reintegration of the offender from prison into the community. Parole officers, however, are often stymied in their attempts to provide both effective assistance and supervision. The daily demands of case supervision and crisis management do not leave parole officers with enough time to develop community resources for parolees. This problem, in part, is the result of the amount of paperwork expected of parole officers which averages about 1.6 reports per working day.[19]

To compensate for the parole officer's shortage of time for developing community resources for parolees, the Bureau of Parole is experimenting with community resource specialists in each parole district. There is a need for more of this type of program and, as a result, three parole jurisdictions have developed manpower vocational service centers.

One rationale for developing specialists in service delivery is that parole officers often have role conflicts because they are supervisors, counselors, advisors, law enforcers and service brokers. "The parole officer is expected to counsel a parolee with respect to a social or physical problem, yet to acknowledge the existence of that problem is sufficient cause for revocation of parole."[20]

Part of the problem of role conflict is the substance of parole conditions. Parole conditions place unrealistic and unnecessary expectations or restrictions on parolees in their "efforts to develop a viable life style in reintegrating into the community."[21] For example, conditions of parole prohibit certain behavior and activities, some of which, although illegal, are not enforced against the general population. In fact so many restrictions are placed on parolees that it is impossible for many to avoid violating some conditions of parole. The National Advisory Commission on Criminal Justice Standards and Goals found that this caused enforcement problems.

> Problems of differential enforcement were bound to occur, and did. A great deal of ambiguity developed for both parolees and parole officers as to which rules really were to be enforced and which ignored. Studies have demonstrated that officers tend to develop their own norms of behavior that should result in return to prison. These norms among parole officers became very powerful forces in shaping revocation policies. . . .[22]

The Commission therefore concluded that:

> The fewer the limits required by the parole system, the greater the opportunity of locating alternative behavior styles that are satisfying and meet the tests of legality. This is not to say the rules should not be enforced, but that there should be as much honesty in the enforcement process as possible.[23]

Parole officers are also hindered in their efforts to help reintegrate the offender by a lack of pre-service orientation and training programs. In a survey, only 22% of New Jersey parole officers responding to a questionnaire indicated that they had received related training prior to taking the job. Parole officers also indicated that training in the following areas is helpful in performance of their duties: interviewing and counseling techniques, community service referral, agency policy and legal procedures.[24]

Certain programs already in existence, although on a limited scale, represent other prime mechanisms for reintegrating offenders. These programs include job placement; work, education and training release; furloughs; and pre-release residential facilities (halfway houses). A recent New Jersey Law Journal article listed the following benefits of a successful Middlesex County release program:

1. Full-time normal employment and/or vocational training in the community.
2. The development and/or strengthening of sound work habits and skills which facilitate

the job finding process following incarceration.
3. The opportunity to continue or strengthen constructive ties with family, friends and the community from which he or she came.
4. Pre-release preparation and an opportunity to test readiness for release to the community.
5. Development of a community awareness through counseling with attention to community agencies that are responsible to the individual's needs.
6. A deduction from the inmate's earnings to help defray the cost of incarceration, to support dependents, and to reduce debts and pay court fines.
7. The accumulation of savings to help meet financial needs or prepare for housing, or sustenance after release.
8. The opportunity to meet immediate family needs, particularly by female offenders who must care for dependent children in the home.[25]

Under a poorly managed program, however, these benefits may be cancelled out by added prosecution costs and additional prison costs due to rearrests and convictions of offenders who have committed crimes while on release. Release and furlough programs have been sharply curtailed[26] after investigations by the State Commission of Investigation revealed that crimes were being perpetrated by inmates on release and that inmate clerks were selling release passes. Reportedly, there needs to be more stringent guidelines for determining who should be placed on release or furlough and greater administrative control of the program. A columnist stated that:

> The purpose of furloughs, work release, community release and educational release programs has been to reintegrate the inmate into society. No matter how much some members of society object to the basic concepts of these programs, the fact remains that some day an inmate will serve his sentence and be returned to society and the purpose of the programs is to prepare for that eventuality.[27]

Pre-release residential facilities also are an important link in the reintegration process. Besides affording offenders the opportunity to search for employment, attend education or training programs and find other services, the halfway house provides offenders with a place to stay and food to eat. There are not enough pre-release residential facilities to provide assistance to offenders either on release or on parole.

Pre-release residential facilities can also be used to increase the capacity of the correctional system at a lower cost then building new prisons. A recent analysis of the cost of housing sentenced offenders estimated that pre-release residential facilities in 1974 cost $6,649 per year for each offender and the cost estimate of a State prison was $9,439 per offender year.[28] As these figures show, the operation of pre-release residential facilities requires substantial expense. On an experimental basis, therefore, the Department of Corrections has received a grant to purchase residential services from municipal, county and other State-operated institutions.[29]

Coordination of correctional efforts both within State and local government and between government and the community is a serious problem. According to the Correctional Master Plan Policy Council, corrections in New Jersey is characterized by fragmentation, duplication of function and a lack of long-range planning.[30] The Correctional Master Plan established a long-term plan for corrections in New Jersey. Further development of the correctional information system will provide the information necessary for correctional evaluation and planning.

Duplication and fragmentation of functions exist in many phases of the correctional process. This has caused serious problems in coordination and integration of correctional programming. The various agencies, bureaus and departments operating similar programs must compete with each other for funds and often for clients to justify the need for funds. Duplication of functions also means that correctional personnel from several agencies may be trying to provide services for the same offenders. Instead of one correctional worker contacting a specific employer to find jobs for parolees, for example, correctional workers from several agencies may contact the same employer. This problem was recently stated in the following terms:

> In the field of adult noninstitutional rehabilitation, the most effective avenue to reducing recidivism has been offering comprehensive vocational services, accompanied by necessary counseling, treatment, and other supportive social services, both to post-adjudicatory and post-institutional offenders. In the past, however, these efforts on the local community level have been fragmented, not coordinated with the few community resources available, and poorly funded in both the private and public sectors. For example, job development attempts have often been repetitive or competitive, rather than coordinated throughout the entire system.[31]

In the area of community-based correctional facilities (or pre-release residential facilities) within the Department of Corrections the following units have facilities: the Bureau of Community Services, the Bureau of Parole and a coordinator who reports directly to the Commissioner of the Department of Corrections. The Division of Youth and Family Services operates residential facilities for youths and several counties also operate residential facilities which service offenders and others in need of housing.

Fragmentation also occurs in the area of job placement of ex-offenders. Currently this function is performed by the Garden State School District, the Department of Labor, Department of Corrections

(Bureau of Parole), and the New Jersey Association of Ex-Offender Placement which includes interested State, county, municipal, civic and volunteer ex-offenders placement groups. Supervision and acquisition of services for offenders in the community is divided among the Bureau of Parole, 21 county probation departments and the Division of Youth and Family Services.

Recently some fragmentation could have been obviated by placing the Garden State School District's responsibility for education and training of inmates within the Department of Corrections instead of the Department of Education. A high degree of coordination between education, vocational placement, prison industries and job placement is necessary or the success of each one of these efforts will be diminished.

The need for a coordinated correctional effort is clearly apparent when the correctional system attempts to reintegrate an offender with limited educational background, no job skills, a sporadic employment history and little motivation. The task of successfully placing such an offender in gainful employment takes cooperative effort of the Garden State School District, a modern prison industry, the Bureau of Parole, and in some cases, other service agents.

According to the Correctional Master Plan Policy Council the prison industries administered by the Bureau of State-Use Industry has operated semi-autonomously from the Department of Corrections which has resulted in curtailed lines of communication between those responsible for planning and others responsible for implementation. The Correctional Master Plan further states that:

> Coordination of State-Use Industry needs with other program priorities has proven difficult. . . .Although much pressure has been placed on the Bureau of State-Use Industry to provide a constructive and profitable training experience, they are handicapped in this endeavor by statutory restrictions which limit contracting with private industry, the goods which can be produced, and the incentives which can be offered to the inmate employees. The industrial skills required by the inmate may or may not be transferable to the free community since the pace, quality controls and performance demands of prison industries are not comparable to those of private industry. These skills may or may not be useful because the industries have not been selected with future employment opportunities in mind. Additionally, the resources from which pay incentives are drawn are limited by the requirement that all profits above a minimal level revert to the State Treasury.[32]

In a preliminary proposal by the Superintendent of the Garden State School District it was suggested that the role of the State-Use Industries be significantly expanded into service areas. Certain services can be done by inmates who have received six to 12 months vocational training instead of the State contracting them out at substantial costs. The Central Motor Pool, for example, which is reportedly operating at 50% efficiency spends $4,000,000 a year on car maintenance and repairs. Some services the Garden State School District proposes that the Use-Industry can do for State and county agencies include automotive, construction, maintenance, drafting, electrical, air conditioning, graphic arts, metal working, wood working, food quality and business machine maintenance.[33] Since vocational training is provided for inmates in these areas this would provide a good mechanism for on-the-job training thus coordinating two somewhat independent correctional programs.

In a 1972 position paper the Coalition on Penal Reform in New Jersey recommended that private industry be allowed into the prison to operate for profit. Many items needed by public institutions such as hospitals and schools could be manufactured by prisoners working at standard wage. If inmates are paid at standard wage, money could be sent to families instead of their relying on welfare. Inmates could also accumulate money that will support them after release and prior to securing jobs.[34]

In addition to the previously mentioned problems a recent study in several states found the following problems with prison industry management and operations which also appear to be present in New Jersey:

1. Low wages and productivity.
2. Short work days.
3. Overstaffing of shops
4. High overhead.
5. Poor financial records and controls.
6. Lack of skills learned which are transferable to jobs in the community.
7. Limited preparation for community.
8. Limited marketing efforts.
9. Lack of accountability on the part of prison industry for providing inmates with skills and/or assisting inmates in finding jobs after release and of public or private employers for hiring ex-offenders or parolees.[35]

No matter how sophisticated, coordinated and efficient the correctional system is, without community participation correctional efforts will fail. Successful reintegration of the offender is as much a responsibility of the community as it is of the Department of Corrections. Community participation and acceptance of correctional programs is absolutely necessary to prevent parolees and ex-offenders from returning to crime.

The Commissioner of the Department of Corrections recently stated that "too often society is lulled into a superficial security from what it believes are the powers of prison walls, failing to accept the fact that some day the inmate's debt to society will be paid . . . "[36] and he or she will be on the street again.

No one wants to be a victim of crime but "nobody wants these inmates."[37] Few people want halfway houses or a prison in their neighborhood as has been found by the Department of Corrections in its attempt to locate a prison in Essex County. Often people forget that they benefit as much by an offender rehabilitation program when it results in their not becoming a victim of crime, as may the offender. Consequently, many rehabilitation efforts do not receive enough funding and/or community support. Resistance of the community to assist in programs to rehabilitate or reintegrate the offender comes in many other forms, such as employers who refuse to hire ex-offenders, unions and labor associations that prevent the hiring of ex-offenders, the low priority of corrections by funding bodies, and schools that fail to provide special assistance to troubled or delinquent youths.

New Jersey's Status in Comparison with the National Standards

There are two major sets of standards in New Jersey relating to the correctional system. The *Administrative Plan Manual* contains four volumes of standards for State correctional institutions. Standards for county jail and correctional facilities are listed in a report entitled *Minimum Standards and Operating Procedures for County Correctional Facilities.* New Jersey standards are consistent or partially consistent with approximately 71 of the 129 NAC Correctional Standards. Those areas in which New Jersey is most consistent include rights of offenders, services and programs in State correctional institutions, parole and correctional information systems.

NAC Correction Standards 2.1 through 2.18 recommend that correctional institutions establish standards for the rights of offenders. The Department of Corrections' *Administrative Plan Manual,* Court Rules, statutes and case law list standards in the following areas which are consistent with NAC: access to courts, legal services and legal materials; protection against personal abuse and nondiscriminatory treatment; healthful surroundings and medical care; rules of conduct and disciplinary procedures; procedures for nondisciplinary changes of status; grievance procedures; exercise of religious beliefs and practices and access to the public. Areas in which New Jersey do not have standards which are as extensive as those recommended by NAC include: searches, rehabilitation, retention and restoration of rights and remedies for violation of an offender's rights. Department of Corrections officials have indicated, however, that the NAC standards on prisoner searches are not reasonable given needs for security in both minimum and maximum institutions. It should also be recognized that the Office of Inmate Advocacy, Department of Public Advocate, is responsible for securing remedies for violation of an offender's rights.

Extensive *Administrative Plan Manual* standards cover NAC Corrections Standards 11.3, 11.4, 11.7, 11.10 which include social environment; education and vocational training; religious, recreation and counseling programs; and prison industries in major (state) correctional institutions. In the area of correctional information systems the Department of Corrections is consistent with most of the recommendations of NAC Corrections Standards 15.1 through 15.4 and is in the process of implementing the others. New Jersey statutes and State Parole Board Procedural Guidelines are consistent or partially consistent with Standards 12.1 through 12.4 covering the following parole areas: organization of paroling authorities, parole authority personnel, grant hearings and revocation hearings. *Administrative Plan Manual* standards are consistent with Standards 12.5 and 12.7 on the organization of parole field services and measures of control. There are programs funded by the State Law Enforcement Planning Agency aimed at providing parolees with the types of services recommended in NAC Corrections Standard 12.6. The Bureau of Parole appears to comply with the recommendations of NAC Corrections Standard 12.8 concerning manpower for parole.

Central to many correctional problems is the need for statewide correctional planning as outlined in NAC Corrections Standards 7.1, 9.1, 9.10, 11.1, 11.2 and 13.2. These standards recommend that state and local correctional systems undertake planning based on a total system concept that encompasses State and local institutional needs, community-based correctional needs and offender needs. These should be determined by an assessment of offender profiles, judicial practices, population trends and demography, service area resources and geographic and physical characteristics.

The New Jersey Correctional Master Plan Policy Council was established in 1974 to develop a correctional plan based on the total system concept. The Council was composed of a wide range of correctional professionals, Criminal Justice personnel and concerned citizens throughout New Jersey. Their total system approach defined and analyzed problems of specific service areas and a plan was established to solve some of those problems. The Department of Corrections and its State institutions were analyzed in terms of functions, programs, capacities and trends in length of stay of offenders. Probation and parole systems were evaluated in terms of organization, staffing, policies, procedures, programs and workload. County jails and correctional institutions were analyzed in terms of facilities, programs, staff and inmate population.

Recommendations of the study were developed from these analyses and in some cases plans were developed with two or more alternative recommendations. One of the key recommendations which has just been implemented was the creation of a Department of Corrections separate from the Department of Institutions and Agencies. Other recommendations which will require further planning and implementation include reform of the sentencing process, construction and better use of existing institutional bed space and development of a locally oriented correctional plan to shift more responsibility for housing sentenced offenders to local correctional facilities.

According to NAC Corrections Standards 6.1 and 6.2 each correctional agency, whether community-based or institutional, should have a comprehensive classification system. The purpose of classification should be to screen inmates for safe and appropriate placement. This should involve determining the appropriate level of custodial security and program and treatment needs which will facilitate reintegration of the offender upon release. All classification and reclassification should be based on written agency policies.

The Department of Corrections, in its *Administrative Plan Manual* Standards 850 "The Classification Process," 853 "Criterion for Minimum Custody Eligibility" and 860-863 "Transfer of Inmates," are consistent with parts of the NAC standards on classification. All adult and juvenile State correctional institutions in New Jersey have classification programs.

Although NAC Corrections Standard 6.2 recommends that reception-diagnostic centers be discontinued, all offenders sentenced to a New Jersey State institution must pass through the Reception and Corrections Center at Yardville for initial classification. In addition, there are no community classification teams made up of correctional, police, court and public representatives as outlined in NAC Corrections Standard 6.3. New Jersey correctional officials indicate that it is not in the best interests of the correctional system or the State to do away with reception-diagnostic centers and create community classification teams.

Classification programs are less developed at the county level in jails and correctional centers than at the State level. Funds have been provided by the State Law Enforcement Planning Agency to 12 counties with a stipulation that inmate classification systems be developed.

Effective reintegration of the offender, according to NAC Corrections Standards 7.2-7.4, is in part dependent upon support by agencies and individuals in the community. Standard 7.2 recommends each correctional agency, whether State or community-based, marshal and coordinate effective working relationships with major social institutions, organizations and agencies to provide offenders and ex-offenders with employment, education, and social welfare services. Other community organizations, ethnic and cultural groups, recreational and social organizations and religious and self-help groups should be encouraged to assist in these efforts.

Responsibility for marshalling and coordinating community resources in New Jersey is dispersed among many State and local agencies which has resulted in a duplication of effort. These agencies include probation departments administered independently in each of the 21 counties, the Department of Human Services, the Department of Corrections, the Garden State School District, the Department of Labor and Industry and the New Jersey Association of Ex-Offender Placement Services which includes interested State, county, municipal, civil and volunteer groups.

In Corrections Standard 9.2 the National Advisory Committee recommends that all local detention and correctional functions, both pre- and post-conviction, should be incorporated within the state system. Pending implementation of Standard 9.2 it is recommended in Standard 9.3 that state legislatures authorize formulation of state standards for correctional facilities and operational procedures. The state, accordingly, should inspect for compliance with standards and take corrective action when necessary. Standards 9.3 and 9.7 recommend that all locally based correctional institutions adopt internal policies for classification, rules and regulations for rights of offenders, visitation, medical and health care, food service, sanitation, safety, management and administration.

Presently there are 19 county jails, two county penitentiaries, two county work houses, two county jail annexes, one county prison and one city-county jail independently administered by the respective counties. The Department of Corrections has established standards for internal policies and procedures covering these areas in the document entitled *Minimum Standards and Operating Procedures for County Correctional Facilities*. These standards were developed in cooperation with county correctional administrators and based upon several sets of standards including those of the American Correctional Association, the National Sheriffs Association, the National Jail Association, the United States Bureau of Prisons and the National Council on Crime and Delinquency.

According to the Minimum Standards and Operating Procedures, classification should separate alcoholics, addicts, mentally ill, serious and multiple offenders, juveniles and prisoners who suffer from various disabilites. Inmates are entitled to visitations, medical examinations within 24 hours of admission, sick calls, dentist services, adequate quality food and sanitation. Standards have also been established for administration, management, custody and conditions in local correctional institutions.

Implementation or compliance with the Minimum Standards, however, is not uniform throughout the State. The Department of Corrections has authority to inspect for compliance but does not have authority to enforce them. The jail inspection team, during the period of January, 1976 through February, 1977 found many jails were not in compliance with Minimum Standards relating to conditions, programs, treatment, policies, procedures and security.

While inspecting for compliance with standards on jail conditions the inspection team found 12 facilities needing repairs to showers, toilets or sinks; 11 facilities not providing enough space per inmate; 10 in need of a regular sanitation program and five with inmates sleeping on floors. In the area of medical treatment nine facilities were not providing medical examination to new inmates within 24 hours of admission, drugs were not dispensed by medical personnel in six facilities and daily sick calls did not exist in five facilities.

Major discrepancies in the compliance of jails and county correctional facilities with program standards occurred in the area of recreation, work and education. Indoor and/or outdoor recreation facilities do not exist in 16 facilities. Meaningful work, education and vocational training programs were not in operation in six facilities.

Compliance with standards for the establishment of adequate plans for emergencies, disciplinary procedures and handbooks on jail rules and regulations were also found to be lacking. Fourteen facilities need written emergency plans for fires, escapes and riots. Establishment of a disciplinary committee of three, including one civilian, was needed in 11 facilities. Seven facilities did not have handbooks on rules, regulations and procedures for both staff and inmates.

Security standards were not being met in several jails and county correctional facilities. Nine facilities needed better security for kitchen utensils such as knives and four needed better weapons security. Locks, windows and security screens were found to be in need of repair in seven facilities.

The jail inspection reports also indicate that at least four counties need new facilities to house inmates. Other areas in need of compliance with standards mentioned in the reports include the following: exterminator, floor repairs, proper key control, better food storage, two sets of clothing for each inmate, more room in visitation areas, window repair, mattress or bunk repairs, better classification and more mattresses, bunks, toilets and/or showers.

Some of the staffing patterns of county jail and correctional institutions are consistent with NAC Corrections Standard 9.6 which recommends hiring on a merit basis and salary equivalencies. Hiring is based on a merit system administered by the Department of Civil Service. The most frequently occurring salary range is from $10,000 to $15,000 per year with $8,900 as the lowest salary. The average salary is $11,250.[38] These salaries appear to be equivalent to police and fire salaries.[39] Every county jail and correctional facility has a staff to inmate ratio greater than one to six. Those elements of Standard 9.6 which New Jersey is not consistent with include: qualifications for correctional staff are not established at the State level, there is little pre-service training for correctional personnel and law enforcement personnel are used in county correctional institutions.

NAC Corrections Standard 9.8 recommends that local correctional institutions, in cooperation with local schools, provide educational and vocational programs and establish job placement, counseling and physical exercise programs. Less than half of the New Jersey county jails and local correctional institutions provide all programs suggested in the standard. There are educational programs, although some are very limited, in 13 jails and local correctional institutions in New Jersey. Four counties offer vocational training programs with the Essex County Correctional Center as the most comprehensive, offering eight types of training. Vocational release programs are available in nine counties with some of these providing job placement and work release programs. Counseling is provided in 13 counties. Outdoor physical exercise areas are provided in 11 jails and eight provide indoor exercise areas. Sixteen jails have a library and seven provide closed circuit television.

NAC Corrections Standards 16.13 and 11.10 recommend that the state not have statutes which prohibit specific types of prison use-industry activities, the sale of prison products on the open market and payment of full market wages to offenders working in State-operated prison industries. These recommendations are prohibited under *N.J.S.A.* 30:4-92 through 30:4-100.

Without cooperation by public and private employers in the hiring of offenders and ex-offenders into higher paying jobs, society provides little opportunity for them to lead productive, law-abiding lives (NAC Community Crime Prevention Recommendations 5.4-5.9). In New Jersey some work is presently being done by federal and State agencies to hire ex-offenders and to promote their hiring in the private sector. According to a recent report by the Garden State School District, 1375 inmates requested post-release jobs and 74% were placed.[40] Many of these jobs, however, are low paying with little opportunity for advancement.

Commentary

The correctional standards revolve around the themes of State responsibility of all offenders sentenced to over six months; uniform correctional decision making and programming; coordination and continuity of correctional efforts; emphasis on programs to reintegrate the offender into the community; community support and participation in corrections; and effective evaluation and planning in development of effective correctional programs.

Two key decisions of the Advisory Committee are aimed at enabling the State to assume the responsibility of all offenders sentenced to over six months. It should be noted that these standards would eliminate "split" sentences, i.e., sentences served partially in custody and partially on probation, where the custodial term is in excess of six months. The sentencing judge is presently authorized to suspend part of a sentence to a county institution (*N.J.S.A.* 2A:164-16). Under these standards, it is clear that this authority would continue for split sentences to county institutions if the custodial term is six months or less. These decisions include the State acquisition of county correctional facilities and the building of new correctional institutions in order to provide more space for housing sentenced offenders. Where appropriate, it is recommended that they be designated as regional correctional institutions. Institutions so designated should, where possible, house less than 300 inmates and be located in urban commercial-residential areas.

These smaller regional facilities were preferred for a number of reasons. Smaller facilities are easier to manage and closer contact between institution staff and inmates can be maintained. They would provide the Department of Corrections with greater flexibility in assigning offenders to institutions. Offenders with short sentences or who are nearing parole eligibility can be placed closer to their homes and/or programs to facilitate their reintegration into the community. Furlough programs designed to maintain family ties and enable offenders to find employment or housing prior to release are easier to implement from regional facilities. Work and education release, which can be continued while offenders are on parole or after completing their sentencing, are also easier to administer from regional facilities. Regional facilities located in urban centers are able to draw upon the community's treatment and social service programs rather than duplicating them within prison. Public transportation is more available in urban areas and thus facilitates visitation and release programs.

State take-over as recommended in these standards would involve seven facilities while the counties would maintain ownership of their 21 respective jails for housing pretrial detainees and offenders sentenced to six months and less. Accordingly, the counties should be responsible for complying with minimum jail standards for custody and care of inmates as established by the Department of Corrections.

In order to implement State take-over of some facilities and mandate compliance with standards in other facilities, the Advisory Committee recognizes that a specific step-by-step plan for State take-over will have to be developed. Legislation will be needed to facilitate this plan and assurances given that staff of county facilities will not lose their jobs or be put at promotional disadvantages.

Central to the establishment of a network of regional correctional facilities is the classification process. Under the proposed classification standard, initial classification should determine which central or regional institution an inmate should be assigned based on the inmate's need for security, maintaining family ties and access to release or other programs.

It is recognized that the classification process in the State prison system as it exists is performing some of the functions stated in the standard. Needs are identified, however, for classification policies and procedures to be in written form and published for public comment. The Committee feels that publication would provide the opportunity for public input into policy development and thus reduce resistance to some correctional programs. Another method recommended for reducing resistance to correctional programs, for example on the part of police and courts, is to increase the use of police and court reports in making classification decisions. Developing an administrative mechanism for appealing classification decisions has been considered important in increasing inmate motivation and meaningful participation in correctional programs.

The Committee has determined that initial classification at Yardville and at each correctional institution is not sufficient. After an inmate is placed in an institution a process of continuous assessment of inmate progress must begin. Continuous assessment should include assessment of inmate needs and problems; establishment of treatment, education and behavior objectives; and regular monitoring of inmate progress in achieving these objectives.

The aim of the program standards is to ensure that every offender has the opportunity to participate in treatment, rehabilitation, work, release and education programs. In the area of education more remedial education programs, programs for inmates with learning disabilities and survival skills training is recommended. The Advisory Committee also recommends more emphasis on alcohol and drug treatment programs; counseling inmates on institutional problems and emotional problems of a long-term nature;

and release programs. As the standards suggest, many of these programs can be coordinated through pre-release residential facilities.

The standard covering prison industries demonstrates the need for coordination of correctional efforts, and is one of the key standards. Inherent in the effectiveness of this standard is that the prison schedules and programs (including treatment and counseling) should revolve around the prison industry rather than prison industries revolving around such activities. Instead of shutting down a prison industry so that inmates can participate in a counseling program, for example, the counseling program should be scheduled after working hours or on weekends.

It is recommended that prison industries provide the inmate with the opportunity to apply education and vocational training in a work situation that resembles the normal work environment as closely as possible. Included are concepts of full work days, inmate wages based on productivity, modern machinery and equipment and hiring and firing procedures.

Another objective of prison industries is to enable the State to produce revenue which can be used to offset the cost of treatment and rehabilitation programs. A side benefit from a profit-making prison industry that pays minimum wage is that costs of family welfare, victim compensation and taxes can be deducted, thus saving the community considerable expense.

A major problem of the correctional system discussed by the Advisory Committee is the need for transitional facilities and programs for bridging the gap between institutionalization and release into the community. Several standards are aimed at bridging this gap: the creation of a network of pre-release residential facilities throughout the State and/or purchase of space in local halfway houses; an increase of furloughs, work, education and training release programs; and increasing the service assistance aspects of the parole officer's functions. It was recognized that Department of Corrections programs in these areas are limited and on an experimental basis.

Furlough programs and pre-release residential facilities are especially critical for offenders who have spent considerable time in prison. Such offenders often need housing, food and guidance until they are able to secure jobs and housing. Furloughs can be especially beneficial when offenders are allowed to leave the institution during the work week to find jobs, housing and other services and return at night. Through such programs the Committee recognized an excellent opporuntity for correctional officials to closely monitor the progress of the offender during reintegration phases and, where necessary, apply additional assistance.

The creation of parole plans which contain reasonable and fair conditions of parole was considered extremely important in facilitating reintegration. Parole conditions, which place unnecessary restrictions on the movement and activities of parolees, are vague and general and can be counterproductive. Such parole conditions result in parole officers having to establish their own norms of acceptable behavior causing uneven enforcement policies. Some of the conditions or phrases considered inappropriate by the Committee include: "associating with undesireables, good moral conduct and placing yourself in situations conducive to becoming a criminal."

The Committee has found that the emphasis of parole is changing from supervision to service assistance and that this trend should continue. To facilitate this change more training and less paper work for parole officers was recommended. The primary function of the parole officer, with the assistance of community resource specialists and manpower service centers, should be to assist parolees in obtaining alcohol or drug treatment, vocational training, education, employment, housing, counseling, clothing, food, financial assistance and other services. Supervision, it was concluded, can be done as effectively by law enforcement agencies.

Several standards are aimed at developing community participation in and support for correctional programs. Without community support, the Committee concluded, the long-term success of the correctional system is not only diminished but could be reversed. It is of little value, for example, to train an offender in skills when employers will not hire them in well-paying jobs matching such skills. Similarly, when offenders are not able to complete all the necessary training or therapy while in prison and complementary programs are not available in the community, previous efforts will have been wasted.

The determination of whether the correctional system as a whole or specific correctional programs are effective is considered critical. Without such evaluations adjustments in programs cannot be made and ineffective programs will not be eliminated.

The Advisory Committee cautions that evaluators and correctional officials should not be quick to eliminate programs that do not appear to be successful. Corrections, like other aspects of the social sciences, is not an exact science and thus requires constant experimentation before successful programs can evolve. It was recognized by the Committee that although correctional programs may not produce immediate substantial results, over time given a number of adjustments, they will work if based on sound logic and theory. It was concluded, therefore, that programs should be thoroughly evaluated, tested and adjustments made rather than tried once and discontinued when minimal results surface.

[1]Information received from Correctional Information Systems, Department of Corrections, March 8, 1977.

[2]James Peterson, et al., *Correctional Education: A Forgotten Human Service,* Correctional Education Advisory Committee, Education Commission of the United States, Report #76, January, 1976, p. 14.

[3]State of New Jersey, Dept. of Corrections, "Profile of State Institution Offenders, Fiscal 1970-1975," *New Jersey Correctional Master Plan: Data,* Trenton, New Jersey, June, 1976, pp. 42-43.

[4]New Jersey Department of the Treasury, Div. of Budget and Accounting, *State of New Jersey Budget, Fiscal Year 1977 and 1978,* Trenton, New Jersey, 1977, p. 247.

[5]Ibid., pp. 248-266.

[6]It is difficult because a number of different agencies provide services to parolees and the 1977-1978 budget does not separate expenditures for treatment, rehabilitation and services from supervision and administration.

[7]The Commission to Study the Causes and Prevention of Crime in New Jersey, *A Survey of Crime Control in New Jersey: Findings and Recommendations,* Trenton, New Jersey, March, 1968, p. 17.

[8]State Law Enforcement Planning Agency, *Criminal Justice Plan for New Jersey-1976,* Trenton, New Jersey, 1975, pp. 127-130.

[9]Charles Q. Finley, "Prison Chief Calls Planning Key to Prison Reform," *Sunday Star-Ledger,* November 14, 1976, p. 48.

[10]State of New Jersey, Dept. of Corrections, *New Jersey Correctional Master Plan,* p. 75.

[11]For details of these programs see ECON Incorporated, *Literature Review: Study of the Economic and Rehabilitative Aspects of Prison Industry,* Vol. II, Princeton, New Jersey, 1976, p. 133.

[12]Garden State School District, *Garden State School District, 1977 SLEPA Plan Input and Evaluation of All Active SLEPA Programs,* p. 10.

[13]Michael M. Miller, "Fault Found With Prisons," letter to the editor, *The Star-Ledger,* October 30, 1976, p. 4.

[14]Finley, "Prison Chief Calls Planning Key To Reform," *Sunday Star-Ledger,* p. 48.

[15]Herb Jaffe, "Prison Reform Includes More Than New Cells," *The Star-Ledger,* January 18, 1977, p. 19.

[16]State Law Enforcement Planning Agency, *Criminal Justice Plan for New Jersey-1976,* p. 96.

[17]State of New Jersey, Dept. of Corrections, *New Jersey Correctional Master Plan,* p. 104.

[18]New Jersey Department of Corrections, Bureau of Parole, "Parole Manpower Vocational Services Center," grant application to the State Law Enforcement Planning Agency, grant awarded November 23, 1976, pp. 1-9.

[19]State of New Jersey, Dept. of Corrections, *New Jersey Correctional Master Plan,* p. 110.

[20]New Jersey Office of Fiscal Affairs, "Program Analysis of Parole in New Jersey," August, 1975, p. 63, as cited in State of New Jersey, Dept. of Corrections, *New Jersey Correctional Master Plan,* p. 203.

[21]State of New Jersey, Dept. of Corrections, *New Jersey Correctional Master Plan,* p. 98.

[22]National Advisory Commission on Criminal Justice Standards and Goals, *Report on Corrections,* Washington, D.C., U.S. Gov't. Printing Office, 1973, p. 412.

[23]Ibid., p. 413.

[24]State of New Jersey, Dept. of Corrections, *New Jersey Correctional Master Plan,* pp. 105, 107.

[25]Arthur Richardson, "Summary of the Work Release Program in Middlesex County," 98 *N.J.L.J.,* October 2, 1975, p. 14, (Index p. 846).

[26]Release figures are presently at 100 inmates per month, down from 300 per month during 1975, according to information received from Correctional Informations System, Department of Corrections, March 8, 1977.

[27]Herb Jaffe, "Prison System Works To Assure Inmate Repeaters," editorial, *The Star-Ledger,* June 8, 1976.

[28]Neil M. Singer and Virginia B. Wright, *Cost Analysis of Correctional Standards: Institutional Based Programs and Parole,* Vol. I, National Institute of Law Enforcement and Criminal Justice, Law Enforcement Assistance Administration, U.S. Dept. of Justice, 1976, p. 21.

[29]New Jersey Department of Corrections, Bureau of Community Services, "Coordination Purchase of Services," grant application to the State Law Enforcement Planning Agency, grant awarded January 3, 1977.

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[31]State Law Enforcement Planning Agency, *Criminal Justice Plan for New Jersey-1976,* p. 96.

[32]State of New Jersey, Dept. of Corrections, *New Jersey Correctional Master Plan,* pp. 165, 170, 171.

[33]Daniel J. Sullivan, "A Preliminary Proposal for the Change In Emphasis in State-Use Industries With Major Vocational Education Implications," Garden State School District, Trenton, New Jersey, 1976, pp. 1-3.

[34]James Harney Jr., "Prison Reformers Attack Systems Failings," *The Star-Ledger,* July 13, 1976, p. 14.

[35]ECON Incorporated, *Analysis of Prison Industries and Recommendations for change: Study of the Economic and Rehabilitative Aspects of Prison Industry,* Volume VI, Princeton, New Jersey, 1976, p. 20.

[36]Jaffe, "Prison Reform Includes More Than New Cells," *The Star-Ledger,* p. 19.

[37]Ibid.

[38]State of New Jersey, Dept. of Corrections, *New Jersey Correctional Master Plan,* p. 345.

[39]See "Police Personnel" chapter for further information.

[40]Garden State School District, *Garden State School District 1977 SLEPA Plan Input and All Active SLEPA Programs,* p. 11.

VICTIM ASSISTANCE SERVICES

Introduction

Governments have an obligation to protect the rights, property and physical welfare of its citizens. Privately seeking vengeance or reparation by a victim or a victim's loved ones is neither legally nor socially acceptable.

A "contract" has been established between government and the citizen. The citizen agrees to obey the law in exchange for protection and enforcement of the law by government. When a citizen violates the contract by breaking the law or seeking private vengeance, the government is obligated to enforce the law against that person. Consequently, when government fails to protect a citizen, it could be argued that society has a "contractual" obligation to punish the wrong-doer and indemnify the loss and repair the damage to the victim.

This governmental obligation of providing compensation and assistance to victims of crime is not a new concept. The Babylonian Code of Hammurabi written approximately 4,000 years ago read: "If the brigand be not captured the man who has been robbed shall in the presence of God make an itemized statement of his loss and the city and the Governor in whose province and jurisdiction the robbery was committed shall compensate him for whatever was lost."

The law of Moses allowed the victim four-fold reparation for stolen sheep and five-fold for oxen. Early English Common Law also provided compensation to the victim or his family. The major focus of American governmental bodies has been apprehending, adjudicating, punishing or rehabilitating the offender with little concern for victims.

The standards are drafted to provide victims with a broad range of emergency services through existing public and private organizations; to foster and coordinate social service organization activities to meet the needs of and responsibilities to the victim; to provide information to the public and victim concerning services available to the victim; and to expand the staff and financial benefits of the Violent Crimes Compensation Board.

Problem Assessment

There are several problems to be addressed concerning the needs of victims of crime. The criminal justice system is almost totally offender oriented. Police officers, prosecutors, judges, correctional workers and people in general are frequently aware of the problems and needs of victims but are not oriented toward solving them. Victims are often unwilling to report crimes and become involved in the justice system as a victim witness. There are few public or private agencies in New Jersey specifically aimed at coordinating and obtaining emergency services such as food, clothing, housing and transportation for victims of violent crimes. The Violent Crimes Compensation Board (VCCB) does not have enough claims money and manpower to process claims for more than half of the violent crime victims who have applied and who qualify for compensation. Presently, the average payment is $3,200 and time for processing claims is nine months.[1]

During 1973, there were 28,746 violent crimes and in 1974, 29,561 were reported to New Jersey law enforcement agencies. They include:

	1973	1974
Murder	544	481
Forcible Rape	1,384	1,438
Robbery	15,113	15,879
Atrocious Assault	11,705	11,763[2]

References for this chapter appear on pages 199 & 200.

There are very few programs that provide emergency services to victims of violent crime in New Jersey. The State Law Enforcement Planning Agency (SLEPA) has funded seven rape analysis units which are located in Atlantic, Camden, Hudson, Mercer, Morris, Passaic and Union Counties. Rape units also exist in Newark and Middlesex County. These units are geared to facilitating not only the acquisition of medical, psychological and other services, but also preparation of the victim for the adjudicatory process.

There are seven Women Against Rape programs that have been developed by various women's groups throughout New Jersey, some of which receive support from the National Organization of Women and other private funds. Most of these programs provide 24-hour hot-line, counseling and referral services through volunteers. Volunteers will go with victims to hospitals, police agencies, prosecutor offices and courts to ensure emotionally supportive treatment.

Programs for victims or families of victims of violent crimes (victim assistance centers) other than rape have been funded by SLEPA in Newark, Union City and Burlington County to provide similar services. Many of the needed services exist but in order for the victim to obtain such services, delays must be eliminated and prompt, immediate action instigated. These needed but often unattainable services

include the following:

—emergency clothing, food, rent, housing, trauma counseling, medical or mental health care;

—child, homemaker or convalescent services;

—assistance in obtaining and filling out forms for medicaid, medicare, workman's compensation, VCCB and other types of insurance;

—assistance in reducing delay in the replacement of food stamps or welfare checks.

There is also a need to facilitate appropriate service delivery by public and private agencies. For example:

—transportation for victims of a crime since many jurisdictions forbid law enforcement officers to transport victims;[3]

—safeguarding of unattended property;

—some hospitals and private doctors do not provide emotionally supportive services such as follow-up examination for V.D. or pregnancy or collect internal evidence in rape cases unless requested by police.[4]

The justice system is almost totally offender oriented. Most law enforcement agencies have seen their role as apprehending criminals and investigating crimes, although much of their time is spent in providing nonlaw enforcement services.[5] Suspects must be informed of their rights at every step of the justice process. There are, however, few legislative or court mandates that provide for the rights of the victim.

The State of New Jersey expended $646,367,000 in Fiscal Year 1975 for the operation of the criminal justice system including $127,865,000 to operate its correctional programs and $10,930,000 for criminal defense of indigents.[6] In contrast, only $1,051,780 was spent to provide direct financial assistance by the Violent Crimes Compensation Board (VCCB) to the victim, approximately $308,000 for the rape analysis units and $110,000 for victim assistance centers during that period.[7] If victims want to receive compensation other than that provided through the VCCB, for example—insurance or civil reparation—they may have to pay for their own attorney.[8]

The LEAA Citizen Initiative Program Guide entitled "Justice for Witnesses, Victims and Jurors," stresses the importance of active assistance by victims and witnesses in prosecuting offenders. Nevertheless, it states that victims are:

> ". . . continually treated in a shoddy manner . . . . Too often the system's only concern with the victim is that he or she be present during certain stages of the criminal proceeding . . . . Seldom does the police department, the district attorney's office or the court make any serious effort to explain to the victim of a crime why his appearance will be required at various times. Nor is he informed of the progress of the proceedings. Usually he doesn't even know if the accused is being held in jail pending the trial or if he is out on bond. He may be summoned to appear numerous times only to find that the case has been postponed. As a result, the victim often gives up and refuses to cooperate in the prosecution."[9]

The Garden State School District developed a county-by-county community service directory for released offenders and parole officers. Unfortunately, few public or private agencies have developed a similar useful tool for the victims of crime. Many groups stress that society should be more sensitive to the needs of offenders but similar sensitivity must be expressed for the victims.

The treatment of some victims by the criminal justice system and people in general has led some individuals to conclude that victims are victimized twice —once by the criminal and once by the system's lack of responsiveness to their needs and problems.[10]

An Associate Professor of Psychiatry at New York University School of Medicine and a former police officer of seven years studied hundreds of victims of violent crime. It was found that they are plagued by long-term reactions of guilt and anxiety, produced by people's negative attitude toward victims. In essence: "There appears to be a marked reluctance to accept the innocent or accidental nature of victim behavior."[11]

When a person has been mugged or raped an all too often response of friends, family and the police is to interrogate the victim as follows: "Why were you walking in the neighborhood alone? Why didn't you scream? Why were you carrying so much money? Couldn't you tell somebody was following you?"[12] Thus, instead of giving the victim comfort and support people are more likely to make the victim feel ashamed, isolated, somehow contaminated and at fault for becoming a victim.[13]

The National Victimization Survey of eight impact cities, which included Newark, revealed that the incidence of unreported crimes may be twice as high as reported crime.[14] This survey indicated that the following percentage of people did not report person-to-person crimes because: nothing could be done; lack of proof—36%; did not think it was important enough—29%; police would not want to be bothered —six percent.[15]

Previous victimization surveys reflect the same type of results. The results of a national victimization survey conducted on a sample of 10,000 households from July 1965 through June 1966 revealed that: "One of the main reasons for failure to report offenses . . . is that many people believe the authorities are unwilling or unable to do much about crimes that have occurred. Such attitudes are especially prevalent in disadvantaged areas where crime rates are highest."[16] One purpose of the victim assistance centers is to encourage the reporting of crime.

It should be noted that New Jersey is one of 17 states providing compensation to victims of violent crime through a Violent Crimes Compensation Board (VCCB). This is a very positive step toward recogniz-

ing the responsibility to the victims of crimes.

VCCB data shows that 549 victims applied for compensation in 1973, 756 in 1974 and 1,377 in 1975, which represents about five percent of the reported violent crimes. During the earlier years only 33% to 40% of the claims were awarded. A paucity of advertising to inform the public of the existence and regulations of the VCCB was the reason given for the small number of claims. An attempt was made to remedy this problem in the fall of 1974 when VCCB sought and received extensive coverage by television, radio and the newspapers of New Jersey.

The claim rate more than doubled in 1975. As a result, the average claim processing time increased from between 60 and 90 days to nine months with some claims taking up to two years for disposition. The claim award rate increased to 60% but the number awarded each month steadily decreased due to the excessive workload for the VCCB caused by the increased monthly claim rates and not enough money to pay all the claims.[17] Claims are expected to increase to a much higher rate as a result of a resolution adopted by the New Jersey State Association of Chiefs of Police. This resolution encourages every police department in the State to set up a program for notifying victims of violent crimes of their rights under New Jersey law. All chiefs are requested to print notification cards listing the address and telephone numbers of VCCB.[18] According to a VCCB official, this will cause a substantial increase in claims filed.

The Board presently does not have enough money to pay all the pending claims or the personnel to process them. Two reasons, other than the shortage of manpower, were given for the slowness in processing claims: (a) all other public and private insurance and compensation claims, in or out of court, must be settled before VCCB can pay the difference in financial loss; (b) there is often a difficulty in verifying losses and doctor and hospital costs.

Some financial losses far exceed the statutory maximum of $10,000; some victims have up to $30,000 in hospital costs alone. In many cases convalescent care and lost wages add to this cost. The death of a family head can result not only in a significant loss of income but psychological and emotional trauma.

For the reasons stated above, it is recommended that staff and benefits of the VCCB be increased to meet present responsibilities of the VCCB. Additional manpower will be necessary so that the VCCB can provide the educational, informational and technical assistance for victim assistance centers as outlined in Standard 12.4.

In conclusion, by encouraging the establishment of victim assistance centers, the government is attempting to meet its obligations to the victim of crime. These centers will have the ancillary benefits of increasing the reporting of crime and aiding the victim in feeling that the system is more responsive to his or her needs.

New Jersey's Status in Comparison with the National Standards

There are no NAC or ABA Standards relating to providing victim assistance other than coordinating victim-witness appearances in courts.

Supporting Methodology for Standards

Victim assistance centers should provide services to victims of violent crime who are in need of emergency services and have reported the crime to a law enforcement agency. A victim should be defined as someone who has suffered an emotional, physical or property loss as a result of a violent crime. Victims of nonviolent crime should not be precluded from receiving emergency assistance, but any assistance beyond that should be discouraged for the purpose of narrowing the scope of clientele and conserving resources for violent crime victims.

Violent crime, as referred to in the aforementioned standards, should include for purposes of defining and establishing a jurisdiction of the centers, the commission or attempt to commit any of the following offenses:

1. Atrocious assault;
2. Mayhem;
3. Threats to do bodily harm;
4. Lewd, indecent or obscene acts;
5. Indecent act with children;
6. Kidnapping;
7. Murder;
8. Manslaughter;
9. Rape;
10. Robbery;
11. Arson;
12. Any other offense involving violence.

The geographic area to be serviced by the victim assistance centers should not overlap (to avoid duplication of services and competition for funding) and should be large enough to have within each one all the resources necessary to provide the range of functions identified in Standards 12.1, 12.2 and 12.3. For example, municipalities with a population over 100,000 and all counties should consider the development of victim assistance centers since they are likely to be large enough to contain the necessary

resources and located where services can be readily available to victims.

Each jurisdiction that is able to maintain a victim assistance center should have a central office with the following functions:

1. Utilize and foster victim services to the fullest extent possible in existing volunteer community organizations including but not limited to:
   a. Churches;
   b. American Red Cross;
   c. Salvation Army;
   d. United Way;
   e. Business, civic and professional groups; and
   f. Labor unions.

The centers should not develop in-house resource capabilities that can be found and fostered in the community.

2. Establish an effective and ongoing liaison with law enforcement agencies, hospitals, prosecutors, courts and social service agencies to:
   a. Educate their personnel to the needs of the victim and their responsibility to the victim;
   b. Receive names of violent crime victims; and
   c. Work with agency administrators in the development of guidelines for the physical and personal* treatment of the victim and elimination of bureaucratic delay. Guidelines for medical treatment should include: emotional support for patients, news release policy, examination and treatment, follow-up care, evidentiary material. Guidelines for criminal justice agencies should include: time and place for interview, procedures for questioning victims, emotional support for victims, news release policy and scheduling court appearances with consideration for the convenience of victim/witnesses.

3. Obtain or develop and regularly update a community service directory of public and private agencies and organizations that can fulfill various victim needs including food, clothing, housing, foster homes, convalescent care, trauma counseling, medical health care, child care, transportation, physical rehabilitation, family or marital counseling, financial assistance, health services, burial and legal aid.

4. Utilize or maintain a 24-hour, seven day a week hot-line telephone service.

5. Provide emergency services utilizing two manpower alternatives:
   a. Staff who have the mobility to meet the victim at the scene of the crime, victim's home, police station or hospital.
   b. Trained police or hospital personnel.

The functions of the victim assistance emergency staff should include:

1. Assessing the needs of the victim.
2. Contacting the appropriate service organization to notify it that services are needed by a victim and arranging for an immediate meeting at the victim's convenience.
3. Actively intervening on behalf of a victim in all instances where delivery of services appears to be impeded by bureaucratic procedure.
4. Performing follow-up surveys with service delivery organizations and victims to determine which ones are effective so that appropriate action can be taken.

All criminal justice and social service personnel who frequently come into contact with victims of crime should receive special training:

1. In methods for calming victims.
2. In what services exist for victims.
3. In needs of victims and their responsibility toward victims.

Bilingual information should be developed for victims and distributed to the public including:

1. A card to be available for the public which introduces the victim assistance centers and lists the services provided by the centers.
2. A pamphlet developed in cooperation with police, prosecution, defense and court personnel which addresses the following questions:
   a. What are the rights of a victim?
   b. How do I, as a victim, find out what has happened to the offender?
   c. What rights does the offender have?
   d. What services can a victim receive?
   e. Where is the Prosecutor's office and what is the telephone number?
   f. Where is the courthouse?
   g. What should a witness/victim wear to court?
   h. What should the witness/victim do when arriving at court?
   i. What happens when the witness/victim is called to testify?
   j. What is plea bargaining, a grand jury, a preliminary hearing, a subpoena, and a continuance?
   k. What should witnesses/victims do if they cannot appear in court?
   l. What information should a witness/victim bring to court?
   m. How can the victim replace a driver's license, social security card and food stamps?
   n. What can a victim do about missing or stolen checks or credit cards?
   o. What does a victim do in case of threats?
   p. If a victim has difficulty speaking and understanding English what should be done?
   q. Should a victim/witness obtain counsel?*

*The Dayton (Ohio) Area Hospital Council has developed a set of guidelines for treatment of Sexual Assault Victims.

* This list of questions was taken from two brochures received from the Victim Advocate program of Sacramento, California.

Commentary

The Victim Assistance Standards and Methodology are aimed at developing a comprehensive program to meet the needs of victims of violent crime. When government fails to protect a citizen from crime it has an obligation to ensure that justice be done and the victim receive assistance in overcoming hardships resulting from the crime.

One of the primary aims of the victim assistance standards is to avoid some of the problems that have developed in other social service programs. Standards 12.2 and 12.3 recommend that victim assistance centers emphasize need assessment and referrals of victims to existing community organizations for services as opposed to developing in-house service delivery capabilities. Where services do not exist, center staff should instigate their development in other community organizations. This approach is necessary to deter centers from duplicating existing community services and wasting resources.

Certain criteria and alternatives for implementing the standards are considered important for the development of victim assistance centers, but not appropriate for inclusion in the standards. A methodology section was therefore developed.

The methodology section recommends a regional approach to administering victim assistance centers as opposed to central responsibility by one State agency. The creation of a single State structure would cause delay in a program aimed at providing emergency services. Local programs also provide greater accessibility to victims needing service. The cost of hiring State level personnel could drain valuable resources needed at the local level to provide benefits to victims and would be too far removed from the thousands of organizations with the potential to provide services to the victims.

There is a need however, for technical assistance in the development and coordination of victim assistance centers. To this end, Standard 12.4 recommends that the Violent Crimes Compensation Board provide educational and technical assistance services to the centers.

The methodology also recommends that the geographic jurisdictions of victim assistance centers not overlap. Programs with overlapping geographic jurisdictions often work at cross-purposes with each other and the duplication of functions wastes resources. Such duplication results in competition for the same limited financial resources and clientele.

The elimination of overlapping jurisdictions is not intended to preclude a victim from using the services of more than one center. For example, victims would be able to use a center in the jurisdiction where the crime was committed and then upon returning to their residence, use the services of a center covering that jurisdiction if the areas are different.

The third aim of the methodology is to ensure that each victim assistance center has within its geographic jurisdiction all the resources necessary to provide the range of services identified in Standards 12.1, 12.2 and 12.3. Ensuring that victim assistance centers have adequate resources should create greater uniformity of service delivery between centers and ensure a full range of needed services for the victim.

At the suggestion of Attorney General William F. Hyland the following resolution was adopted and forwarded to the Congress of the United States.

> WHEREAS, the Governor of the State of New Jersey has duly appointed an Adult and Juvenile Justice Advisory Committee to recommend to the State standards and goals to improve the quality of justice for the citizens of New Jersey; and
>
> WHEREAS, in a general meeting on March 5, 1976, this said Governor's Advisory Committee expressed its concern for victims of crime by developing standards to aid victims of crime in New Jersey and is cognizant of efforts under consideration by the Congress of the United States of America to address the needs of victims of crime.
>
> THEREFORE, BE IT RESOLVED that this Advisory Committee by unanimous vote on this 5th day of March, 1976, expresses its support of H.R. 9074, "Victims of Crime Act of 1975," a bill by Congressman Peter Rodino to aid victims of crime through federal legislation in conjunction and support of efforts currently underway in New Jersey.
>
> Attest:
>
> Governor's Adult and Juvenile Justice Advisory Committee
>
> Joseph P. Lordi, Prosecutor, Essex County
> Chairman, Governor's Adult and Juvenile Justice Advisory Committee

References

[1]Mr. Carl Jahnke, Chairman of the Violent Crimes Compensation Board, interviewed by Standards and Goals Staff, SLEPA, September 3, 1975. See also Mike Ascolese, "Crime-Victim Payments Curbed," *The Star-Ledger*, October 6, 1975, pp. 1, 12.

[2]State of New Jersey, Division of State Police Uniform Crime Reporting Unit, *Crime in New Jersey-1974: Uniform Crime Reports*, Table 24, "Violent and Nonviolent Crime Region and County 1973-1974," West Trenton, New Jersey, 1974, p. 80.

[3]Ten of the largest New Jersey Police Departments were surveyed. Half (5) have strong policies against transporting civilians other than arrested suspects and only those victims needing emergency medical help. Departmental policies forbid transporting victims who do not have medical emergencies or who have been taken to a police station for questioning. A few respondents said that insurance regulations forbade transporting and only in extreme cases is it allowed. Reasons given include: no insurance coverage for civilians, department regulations and to guard against charges of misconduct.

[4]Personnel involved with Women Against Rape interviewed by Standards and Goals Staff, SLEPA, September 8, 1975.

[5]Peter Freivalds, Curtis Woods, Gloria Richards, *Police Community Relations, 1975, Final Report,* LEAA Grant #73A-99-0013, 1975.

[6]U.S. Law Enforcement Assistance Administration and U.S. Bureau of the Census, *Expenditure and Employment Data for the Criminal Justice System: 1975,* Washington, D.C., U.S. Gov't. Printing Office, 1975, pp. 30 and 31.

[7]State Law Enforcement Planning Agency, *Program Area Breakdown, 1975,* Program 7-6, "Justice for Victims, Witnesses and Jurors;" State Law Enforcement Planning Agency, *Program Area Breakdown,* 1976, Program B-6, "Crime Specific—Rape."

[8]Alan Drake, Public Information Officer, Department of the Public Advocate, interviewed by Standards and Goals Staff, SLEPA, September 2, 1975, and Chris Callahan, Field Representative, Department of the Public Advocate interviewed by Standards and Goals Staff, SLEPA, September 9, 1975.

[9]"Justice for Witnesses, Victims and Jurors," *Guide for LEAA Citizen Initiative Program,* n.p., n.d.

[10]"Victims of Violent Crime," *Eye On,* WCBS T.V., New York, Monday, August 25, 1975.

[11]"The Guilty Victim," *Newsweek,* June 17, 1974, p. 66.

[12]Ibid.

[13]Ibid.

[14]The exact level is not known due to differences in *Uniform Crime Reports* reporting and survey methodology.

[15]Charles Kinderman, National Criminal Justice Information and Statistics Service, interviewed by Standards and Goals Staff, SLEPA, September 8, 1975. (A nationwide sample reflected the same data.)

[16]Philip H. Ennis, *Criminal Victimization in the United States,* Washington, D.C., U.S. Gov't. Printing Office, 1967.

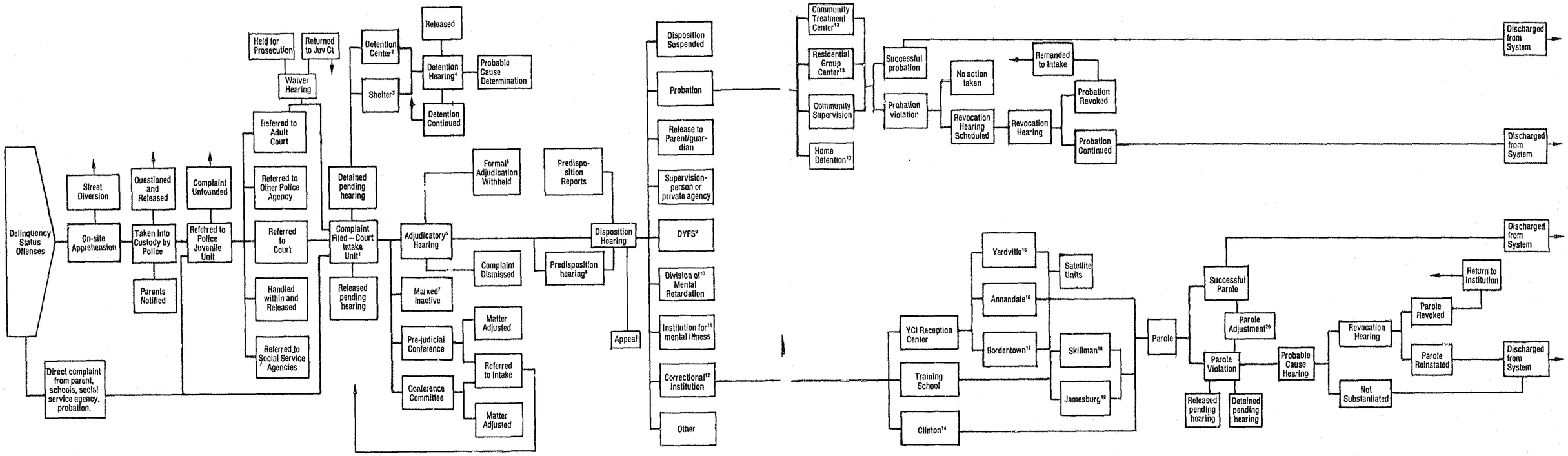
[17]Carl Jahnke, Interview, and Mike Ascolese.

[18]Letter from President, New Jersey State Association of Chiefs of Police, to Standards and Goals Staff, SLEPA, March 11, 1975.

SECTION II

JUVENILE JUSTICE SYSTEM

Flow Chart of The Juvenile Justice System



1. Not all juvenile courts have intake units. At this stage, complaints may be diverted to nonjudicial forms of disposition, scheduled for a court hearing, marked inactive, transferred to another court or referred to the prosecutor for possible waiver hearing. Assignments of counsel if indigent are made at this time and where appropriate, prosecutor and probation department are notified of complaint.
2. Juveniles charged with delinquency offenses only.
3. Primarily juveniles charged with JINS offense. Juveniles are placed in shelter regardless of offense if the only reason for detaining is unavailability of suitable adult custodian. Juveniles may be released in custody of a custodian prior to detention hearing.
4. First hearing is held within 24 hours of being detained. If counsel is not present, another hearing is scheduled within two court days. Continued detention review required every 14 days. For juveniles in detention, a probable cause determination is required.
5. Complaints placed on either counsel mandatory or no counsel mandatory calendar. Counsel mandatory—for all juvenile matters which in the opinion of the judge may result in institutional confinement of the juvenile.
6. Withheld for up to 12 months pending satisfactory adjustment, after which complaint dismissed.
7. Disposition suspended for narcotics offenses or downgraded.

8. Pre-disposition in-patient order for diagnostic or evaluative purposes made only if juvenile represented by counsel at this hearing.
9. Placements include suitable foster home, group home or residential treatment center.
10. No. Jersey Training School at Totowa, E.R. Johnstone Training and Research Center, and State Schools at Vineland, Woodbine, Woodbridge, New Lisbon and Hunterdon.
11. Arthur Brisbane Child Center and Greystone Park, Trenton, Marlboro and Ancora Psychiatric Hospitals.
12. Available only for those juveniles charged with delinquency and represented by counsel at adjudication.
13. Community Treatment Center, Residential Group Center and Home Detention programs are administered by the Department of Corrections although clients retain probation status. Clients must be between the ages of 16-18 and have no previous commitment to a State correctional institution. Community Treatment Centers include Highfields, Warren and Ocean for males and Turrell for females.
14. Females age 16 up.
15. Males age 16-30.
16. Males, ages 15-23, no previous commitment.
17. Males, ages 18-30.
18. Males, ages 8-12.
19. Males, ages 13-16 and females, ages 8-17.
20. Voluntary or involuntary return to institution for up to 90 days. Infrequently used.

STANDARDS FOR PRE-ADJUDICATION ALTERNATIVES

Police Diversion

Standard 1.1 Police Discretionary Authority in Handling Juveniles

Police discretionary authority in handling juveniles should be acknowledged by the development and promulgation of statewide guidelines structuring the use of this authority. These guidelines should be distributed to all law enforcement agencies in an effort to make police-juvenile procedures uniform throughout the State. All related juvenile statutes and interpretations should be included as well as suggested discretionary alternatives, referral criteria and complaint screening procedures.

1. An appropriate State agency should be responsible for developing statewide guidelines.
   a. In addition, each law enforcement agency should develop an agency manual incorporating the statewide guidelines and including any local department requirements and a comprehensive listing of available youth-serving resources. Departmental juvenile manuals should be distributed to all sworn officers and any civilian juvenile bureau staff.
   b. Departmental manuals as well as statewide guidelines should be periodically updated to reflect any changes in statutes, policies and procedures in handling juveniles or available community resources.

Standard 1.2 Police Pre-Adjudication Alternatives

The halting of further penetration into the juvenile justice system in favor of counseling or referral to youth-serving agencies should be recognized by law enforcement agencies as an acceptable, and in many cases preferred, alternative to adjudication for many juveniles.

1. This recognition should be demonstrated by the development and dissemination of written procedures outlining the pre-complaint screening and referral mechanism and specifying criteria for referral, developed in compliance with statewide guidelines.
2. Every police agency should establish in cooperation with the court and in accordance with court rules written policies and procedures governing agency action in juvenile matters. These policies and procedures should stipulate at least:
   a. The specific form of agency cooperation with other governmental agencies concerned with delinquent behavior, abandonment, neglect and juvenile crimes;
   b. The specific form of agency cooperation with nongovernmental agencies and organizations where assistance in juvenile matters may be obtained;
   c. The procedures for release of juveniles into parental custody; and
   d. The procedures for the detention of juveniles.
3. Prior to initiation of a complaint, all avenues of possible alternative action should be explored with the juvenile and the complainant.
4. All referral decisions should be recorded and filed along with facts surrounding the offense or charge, disposition and follow-up results. Every attempt should be made to ascertain the outcome of any referral so that resource effectiveness and referral methods can be evaluated; however, upon referral, the case is to be closed. This information should be treated as confidential and utilized only for internal purposes.

Standard 1.3 Juvenile Officer Responsibility

The responsibility for juvenile matters should be assumed on a 24-hour basis in all law enforcement agencies, either through the assignment of one or more officers per shift or through utilization of an on-call system.

1. Police departments must designate at least one officer as a juvenile officer.
2. All duties and responsibilities of said officer(s) should be clarified in writing.

Standard 1.4 Juvenile Bureaus

Where conditions and availability of personnel warrant, law enforcement agencies should establish separate juvenile bureaus or divisions to be responsible for all delinquency matters. The juvenile bureau should be an operational unit on a line level with other divisions or bureaus.

1. An appropriate juvenile bureau size for each law enforcement agency should depend upon case volume and intensity of juvenile problems in each agency's jurisdiction.
2. The duties and responsibilities of the juvenile bureau or division should be clearly designated to avoid extraneous assignments.
3. Manpower and resources allocated to a juvenile bureau should be sufficient to allow for the performance of all assigned responsibilities.
4. Primary emphasis of a juvenile bureau should be devoted to the prevention of delinquent behavior, diversion of juveniles from further system processing and the referral of juveniles needing assistance to appropriate resources.
5. The effectiveness of a juvenile bureau should be ascertained by youths successfully deterred from delinquent behavior and/or further system involvement and not on the number of "arrests" obtained by the bureau.
6. Where financial resources permit, professional civilian counseling or social work staff should be added to the juvenile bureau to increase capabilities of immediate intervention counseling and referral services.

Standard 1.5 Juvenile Officer Selection and Training

Juvenile specialists should be assigned by the chief executive officer of the police agency in accordance with Police Personnel Standards as recommended by this Advisory Committee. Law enforcement agencies should establish specific criteria for the selection and assignment of juvenile officers. Desirable personal qualifications for juvenile officers should include the following:

1. Proven aptitude.
2. Genuine interest in performing delinquency prevention and diversion work.
3. Personal philosophy of rehabilitation.
4. Ability to communicate with others, especially youth.
5. Appearance, bearing and manner of approach favorable to working with juveniles.
6. Experience in police work and youth work.

The present minimum basic training curriculum should be revised and expanded to place a greater emphasis on juvenile law, the juvenile justice system, youth behavior, delinquency prevention, community diversion resources and crisis intervention. The present six hours of basic training in youth relations should be expanded to an amount more reflective of increasing police-juvenile contact and juvenile crime.

Minimum in-service training in juvenile-related subjects should be required for all police officers. At least 40 hours of in-service training in youth-related and juvenile justice system-related topics should be required for juvenile officers. Officers should be required to complete satisfactorily mandatory in-service training prior to or as soon as possible after the assumption of field duties as a juvenile officer.

Periodic specialized in-service training should be provided for juvenile officers by each police agency. Specialized training curriculum should include the following:

1. Statewide and departmental guidelines structuring the use of discretion.
2. Juvenile statutes, court rules and case decisions.
3. Use of diversionary alternatives, criteria for court referral, complaint screening procedures.
4. Regulations governing release procedures.
5. Related constitutional rights applicable to juveniles.
6. Court intake procedures and relationship with law enforcement agencies.
7. Juvenile information system, record keeping and confidentiality safeguards.

Police chief executives should 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. Law enforcement agencies should provide salary increments to police-juvenile officers commensurate with the duties and responsibilities of the job performed.

Standard 1.6 Police Juvenile Record Keeping

A separate system should be utilized for the recordation, reporting and maintenance of juvenile information. Law enforcement juvenile records and files should be maintained in such a manner and under such safeguards as will protect against disclosure to any unauthorized person.

1. Juvenile records should be maintained physically separate and apart from adult files.
2. Specialized forms differing from those required in adult or criminal proceedings should be utilized to record all information and action involving juveniles.
3. All identifying information should be deleted from juvenile records released for statistical purposes.

4. Reporting procedures should be standardized statewide.

Court Intake and Diversion

Standard 1.7 Diversion at the Court Level

Diversion at the court level should be formally recognized by the establishment of court intake service units in every Juvenile and Domestic Relations Court, mandated by the passage of legislation or through Supreme Court ruling.

1. Guidelines for the operation of court intake service units should be incorporated into any enabling legislation or court rule and should structure the decision-making processes, determine criteria for diversion and provide sufficient authority for operations.

2. Court intake services should also be recognized as a prerequisite to the establishment of a Family Court operation. Procedures and guidelines for intake units should be developed with this ultimate purpose in mind to minimize confusion when the conversion to Family Court status is eventually realized.

Standard 1.8 Court Intake Services

Court intake units should be under the supervision of the presiding judge of the Family Court. Services offered and procedures utilized by intake units should be developed and coordinated on a statewide basis to provide uniformity and preclude any discrimination or violation of constitutional rights which may result from varying county practices. Although all intake units should be similar in operation, enough flexibility should exist to allow for differences inherent in each county that may necessitate adjustments in structure and procedure. Intake units should provide the following services which should be structrued by uniform guidelines:

1. Detention and shelter admission screening and authorization on a 24-hour basis.

2. Reviewing of all juvenile complaints to be referred to court for accuracy and sufficiency.

3. Complaint screening and assessment to determine eligibility for referral or necessity for court action.

4. For complaints requiring court attention, referral to clerk of court for calendaring.

5. Provision of pre-judicial conferences when considered appropriate with the juvenile, parents, family, complainant and any other involved parties to determine problems and necessary courses of action to include referral to available community services.

6. Screening of all complaints considered eligible and appropriate for juvenile conference committee review prior to such referral.

7. Supervision and coordination of all juvenile conference committees in each county.

8. Maintaining a comprehensive index file of all available community referral services and resources, to be updated periodically.

9. Assistance to local law enforcement agencies in developing guidelines structuring the discretionary handling of juvenile matters and in cultivating referral resources.

10. Pretrial intervention is designed to deal only with adult defendants and no juvenile may be enrolled pursuant to Court Rule 3:28. The services of PTI programs however should, in appropriate instances and at the request of juvenile authorities and programs, be made available to juvenile defendants when the need for inter-program cooperative work is indicated.

Standard 1.9 Intake Unit Operations

The operations of all intake units should be structured by uniform guidelines applied statewide.

1. When the decision to divert a case from judicial attention is likely, the juvenile and his parents should be apprised of their rights and of all options available to them, including court adjudication. Diversion decisions should be made as quickly after receipt of complaint as possible.

2. Liaison should be established between prosecution and defense functions to ensure the interests of the State and the juvenile are properly protected.

3. If pre-judicial conferences are considered appropriate, they should be scheduled within ten days of receipt of complaint. Juvenile conference committee hearings should also be scheduled within a limited time period, ideally within one month.

4. Intake units should be directly under the authority of the presiding judge and be located as close to the court facility as possible.

5. Intake staff should be encouraged to deal with the entire family when it appears that family problems are a causal factor of the juvenile's behavior.

6. Family crisis counseling should be explored and encouraged in every intake unit.

Standard 1.10 Intake Unit Personnel

Court intake services units should be adequately staffed to perform the services enumerated in Standard 1.8. The size of each intake unit staff should be based upon the amount of complaints or juvenile activity generated.

1. Personnel should be experienced, specialized professionals or semi-professionals who have the capacity to work with youth and families.

2. Job specifications should clearly outline the

functions, duties and responsibilities for each position.

Volunteers should be utilized to support and expand intake service capabilities where possible; however, decision-making responsibilities should remain the duty of professional staff.

Standard 1.11 Intake Staff Training

Regularly scheduled programs for intake staff orientation and training should be instituted to maintain a high level of professionalism and keep intake personnel apprised of statutory developments as well as procedural changes and newly-developed methods of dealing with youth problems. To promote uniformity, standardized training in basic procedures should be offered at the State level.

In addition, advanced or specialized training should be offered either at the State or local level. Specialized training topics could include family crisis counseling, individualized counseling and decision-making. Training programs should also be available to volunteer staff.

Standard 1.12 Detention and Shelter Admissions Screening

The authority to make detention or shelter admission decisions rests with the court. During regular court hours, juveniles to be detained or placed in shelter care should be brought before a Juvenile and Domestic Relations Court or Family Court judge. Where decisions cannot be provided directly by the judge, court intake personnel operating under the authority of the judge should provide this function on a 24-hour, seven days a week basis. Procedures to ensure the availability of intake staff to make detention decisions on a 24-hour basis should be established in every county.

Standard 1.13 Juvenile Conference Committees

The establishment of juvenile conference committees should be actively encouraged in every municipality where there is sufficient caseload. In smaller jurisdictions, regionalized conference committees may be appropriate.

Juvenile conference committees, as a process, should be evaluated to assess effectiveness and to develop uniform and appropriate criteria for operation. The present manual for juvenile conference committees should be revised in response to this evaluation and should more clearly define desired characteristics of a conference committee.

1. Candidates for conference committee membership should be carefully screened prior to appointment by the presiding juvenile or family court judge. Desirable qualifications for conference committee membership should be delineated and utilized as screening criteria. No one should be allowed to sit on a conference committee whose presence would have an adverse effect on the proceedings or the child.
2. Specialized training programs should be developed and made available to conference committee members in order to upgrade problem assessment and counseling capabilities.
3. All cases to be referred to conference committees should be screened by intake staff prior to referral. The types of cases appropriate for conference committee referral may depend upon the expertise and experience of each individual committee. In any event, the voluntariness of all referrals should be stressed.
4. Conferences should be conducted in a professional and supportive atmosphere.
5. All conference committees in each county should be supervised and coordinated by intake staff.
6. The use of referees to make dispositions involving juveniles should be phased out as intake services are established throughout the State since informal, nonjudicial methods of settlement are available through intake referral.

STANDARDS FOR COMMUNITY INVOLVEMENT

Youth Service Bureaus

Standard 2.1 Purpose, Goals, and Objectives of Youth Service Bureaus

Youth service bureaus should be established to focus on the special problems of youth in the community. The goals should include prevention of delinquency, diversion of juveniles from the justice system; provision of a wide range of services to youth through advocacy and brokerage, offering crisis intervention as needed; modification of the system through program coordination, development and advocacy; youth development; and community involvement to include training of community residents in the recognition and handling of youth problems.

1. Priorities among goals should be locally set.
2. Priorities among goals (as well as selection of functions) should be based on a careful analysis of the community, including an inventory of existing services and a systematic study of youth problems in the individual community.
3. Objectives should be measurable, and progress toward them should be scrutinized by evaluative research.

Standard 2.2 Decision Structure of Youth Service Bureaus

Youth service bureaus should be organized as independent, locally operated agencies that involve the widest number of people in the community, particularly youth, in the solution of youth problems. An advisory board, including young people, indigenous adults and representatives of agencies and organizations operating in the community, should comprise the decision-making structure. Agency representatives should include juvenile justice policymakers, but in no instance should the bureau be under the administrative control of the juvenile justice system or any of its components.

A bureau should be operated with the advice and consent of the community it serves, particularly the recipients of its services. This should include the development of youth responsibility for community delinquency prevention.

Standard 2.3 Target Groups for Youth Service Bureaus

Youth service bureaus should make needed services available to all youth in the community, however, particular effort should be made to attract diversionary referrals from the juvenile justice system. Referrals from schools and community social service agencies should also be strongly encouraged to prevent delinquent behavior.

1. Law enforcement and court intake personnel should be strongly encouraged, through policy changes and ultimately through legal proscription, to make full use of the youth service bureau in lieu of court processing for every juvenile who is not an immediate threat to public safety and who voluntarily accepts referral to the youth service bureau.
2. Specific criteria for diversionary referrals should be jointly developed and specified in writing by law enforcement, court and youth service bureau personnel. Referral policies and procedures should be mutually acceptable.
3. Diversionary and preventive referrals should be encouraged by continual communication among law enforcement, court, school, social service and youth service bureau personnel.
4. Referrals to the youth service bureau should be completed only if voluntarily accepted by the youth. The youth should not be forced to choose between bureau referral and further justice system processing.
5. Referring agencies should be entitled to and should expect systematic follow-up on initial services provided to a referred youth by the bureau. The youth service bureau should not provide justice system agencies with confidential information.
6. Because of the voluntary nature of bureau services and the initial reluctance of young people to seek intervention, the youth service bureau should elicit youth participation in existing programs and in the identification and development of necessary community services. To achieve maximum effectiveness, a youth service bureau should be responsive to and part of the community it serves.

Standard 2.4 Youth Service Bureau Functions

The functions of youth service bureaus are to serve as a referral resource for justice system, school and social service agencies; coordinate and integrate a comprehensive system of service delivery; provide individual advocacy, crisis intervention and other needed services; and act as a catalyst for system and social change. Youth service bureaus should provide technical assistance to community groups and agencies, program development in the areas of prevention and diversion programs, and coordination of existing programs in order to create effective service delivery. Youth service bureaus should also strive to bring about more extensive involvement of and understanding by existing youth-serving and law enforcement agencies, the general citizenry and youth in prevention and diversion programming and in cooperative planning for an overall community youth services system.

Youth service bureaus should, whenever possible, utilize existing services for youth through referral, systematic follow-up and individual advocacy. Bureaus should develop and provide services on an ongoing basis only where these services are unavailable to the youth in the community or are inappropriately delivered. Services should be confidential and should be available immediately to respond skillfully to each youth in crisis.

1. Services to be provided by a particular bureau should be tailored to the needs of the community and clients it serves. The spectrum of services should be limited only by the imagination of bureau personnel and the willingness of other public and private community youth-serving projects to commit themselves to a coordinated, cooperative effort. Basic service capabilities for all youth service bureaus should include the following:

   a. Adequate professional staff with the capability to determine the problems and needs of each youth referred to the bureau in order to develop with the youth and his or her parents a treatment plan for meeting the needs identified;
   b. A system for referring youth who cannot be served by the bureau to other community youth treatment programs in addition to the development of a resource directory as a prerequisite to coordination and integration of services;
   c. Possess adequate professional staff capability to be able to provide basic counseling services to both youth and parents;
   d. An emergency crisis intervention capability;
   e. Vocational counseling and job placement assistance, either through in-house staff efforts or referral arrangements with other agencies;
   f. The ability to work with other community youth-serving programs for the purpose of identifying service gaps and coordinating activities;
   g. Provide alcohol and substance abuse prevention or treatment referrals to other agencies capable of providing such services;
   h. An information or tracking system to enable bureau staff to follow the treatment progress of each client.

Other services which may be considered basic in many communities include remedial education and tutoring, recreation and leisure time programs, health services and legal services.

2. Services should be appealing and accessible by location, hours of service availability and style of delivery. The youth service bureau should provide services to young people at their request, without the requirements of parental permission. Intake requirements and form filling should be kept at a minimum.

3. Case records should be minimal and maintained on a confidential basis. Records should be revealed to agencies of the justice system and other community agencies only with the youth's and parent's or guardian's permission.

4. Referrals to other community services should be made only if voluntarily accepted by the youth.

5. In referring to other community agencies for service, the youth service bureau should expedite access to service through such techniques as arranging appointments, orienting the youth to the service, and providing transportation if needed.

6. The youth service bureau should rapidly and systematically follow up each referral to ensure that the needed service was provided.

7. The youth service bureau should have funds to use for purchase of services that are not otherwise available.

8. The youth service bureau should be active in the research, planning and development of innovative services to prevent and reduce delinquency.

9. The youth service bureau should be actively involved with existing social agencies, law enforcement, the general citizenry and youth in developing cooperative planning and programming for youth services.

10. The youth service bureau should seek to coordinate existing service delivery sub-systems and to reduce inter-agency problems as needed and appropriate.

Standard 2.5 Youth Service Bureau Staffing

Adequate full-time experienced professional staff should be employed by the youth service bureau to ensure the capacity to respond to the complex personal crises of youth, to interact with agencies and organizations of the community and to provide leadership to ensure the smooth operation of the

project. Sufficient additional experienced staff should be employed to ensure the capability to provide basic services as outlined in Standard 1.4.

1. All staff, both professional and paraprofessional should be sensitive to the needs of young people and the feelings and pressures in the community. They should be as sophisticated as possible about the workings of agencies, community groups and government. Staff should be capable of maintaining numerous and varied personal relationships.
2. In-service training, special institutes and opportunities for formal education should be available to bureau staff and volunteers to increase their skills in working with youth.
3. Indigenous workers, both paid and volunteer, adult and youth, should be an integral part of the youth service bureau's staff and should be utilized to the fullest extent.
4. Young people, particularly program participants, should be used as staff (paid or volunteer) whenever possible.
5. Volunteers should be actively encouraged to become involved in the bureau. Those working in one-to-one relationships should be screened and required to complete formalized training before working directly with youth. The extent of training should be determined by the anticipated depth of the volunteer-youth relationship.
6. Whenever possible, the youth service bureau should have available (perhaps on a volunteer basis) the specialized professional skills of doctors, psychiatrists, attorneys and others to meet the needs of its clients.

Standard 2.6 Evaluation of Effectiveness of Youth Service Bureaus

Each youth service bureau should be objectively evaluated in terms of its effectiveness. Personnel, clients, program content and program results should be documented from the inception of the bureau.

1. Evaluation objectives and methods should be developed concurrently with the development of the proposed youth service bureau and should be directly related to the bureau's highest priority objectives.
2. Wherever possible, an evaluation to compare the effectiveness of several youth service bureaus should be implemented in order to increase knowledge on the impact of the bureaus.
3. Ongoing evaluation should be required for each youth service bureau to measure the effectiveness of service in reaching its goals and objectives.
4. Each youth service bureau should establish an information or tracking system containing basic information on the youth served and the service provided, as well as changes in the manner in which the justice system responds to his or her behavior.

Standard 2.7 Youth Service Bureau Funding

The need for youth service bureaus statewide should be recognized by the adoption of legislation to encourage local establishment of youth service bureaus and to fund their establishment through a matching grant program. Adequate funding should be provided for staffing, training, evaluation, purchase of services and to ensure the capacity to provide basic services as identified in Standard 2.4.

Education

Standard 2.8 The Responsibility to Provide Every Student With Appropriate Educational Experiences

Schools should recognize that they have a responsibility to provide for all children, regardless of socio-economic status, cultural background or geographic location, the educational opportunity which will prepare them to function politically, economically and socially in society. Local school districts should accept the responsibility for ensuring that all pupils are provided with effective educational experiences. In particular, schools have a responsibility to develop educational experiences and supportive services for the pre-delinquent, disruptive and/or truant student.

1. School systems should acknowledge that a considerable number of students do not learn in ways or through experiences that are suitable for the majority of individuals. Alternative educational experiences should be provided within the school system and should be available for those students who desire or need learning alternatives.
2. At all grade levels, alternative learning methods and programs should be designed to be compatible with the individual learning objectives of each student identified as a potential client for these services.
3. Students for whom all or parts of the traditional school program are inappropriate should be identified as early as possible.
4. As an education system responsibility, students considered errant, disruptive, difficult to control or unresponsive to teaching efforts should be retained within the existing school system rather than referred to the juvenile justice system for processing.
5. Special services should be provided for students who come from environments in which English is not the dominant language. Services to be provided should include but not be limited to:
   a. Bilingual instruction, with gradual increases in the percentage of instruction in English;
   b. Active recognition of and instruction in the customs, traditions and history of students' native cultures;

c. School staffs representative of varying racial, ethnic and cultural backgrounds; and
d. Special programs involving parents of students with bilingual backgrounds.

6. Schools should institute programs guaranteeing that every student who does not have a severe mental handicap will have acquired functional literacy before leaving elementary school.

7. Schools should provide more effective supportive services to facilitate the positive growth and development of each individual student.

Standard 2.9 The Retention of Students in School

Schools have the responsibility to develop mechanisms to provide education for all types of students and should actively encourage the retention of all pupils, especially those who desire to withdraw from the school system.

1. Alternatives other than juvenile justice system referral, suspension or expulsion should be developed to deal with disruptive or truant students.

2. Particular effort should be devoted to those students who desire to drop out of school. Students should not be allowed to terminate school attendance prior to undergoing vocational or career aptitude testing and counseling. Dropout prevention programs should be initiated or expanded in all high schools to discourage students who desire to withdraw from school.

3. The State Department of Education should require that all school districts provide special programs for students who are suspended from school. No student should be excluded from attending classes without his or her attendance being required elsewhere. Alternatives or special programs may include but should not be limited to in-school prevention programs or required attendance at various community programs, agencies or centers.

Standard 2.10 Vocational Education and Preparation

Vocational education as an alternative to college preparatory education should be available at appropriate grade levels for all students desiring such an alternative. Career development programs involving a combination of regular classroom instruction and on-the-job training or a work internship should be encouraged in every school district. Vocational counseling and placement services should be available for all students whose formal education will culminate in a high school diploma.

Standard 2.11 Use of School Facilities

School facilities should be made available to the community as resources for delinquency prevention programs. Facilities such as libraries, auditoriums, art and industrial shops and recreation equipment should be available during after-school hours and on weekends so that youth may participate in constructive activities such as recreation, tutoring and additional education experiences.

Standard 2.12 Justice and Democracy in the School

School authorities should adopt policies and practices to ensure that schools and classrooms reflect the best examples of justice and democracy in their organization and operation and in the rules and regulations governing student conduct.

1. Students should have exposure in democratic processes by participating in such practices. Programs may include but not be limited to:
   a. Regularly scheduled student-run assemblies;
   b. The establishment of representative student advisory committees;
   c. Student participation in setting behavior standards and other student regulations; and
   d. the establishment of a student grievance committee.

2. Special programs and courses in law-focused education should be developed and instituted in local school districts for the benefit of all students.

Standard 2.13 School and Juvenile Justice System Cooperation

Positive cooperation and coordination should be developed between school systems and juvenile justice system agencies, particularly local law enforcement agencies and the court. Mutually agreed upon policies should be maintained to deal with individuals who commit offenses on school property and referrals for needed services. Schools and justice system agencies should cooperate in the development of varied community youth programs.

Recreation

Standard 2.14 Use of Recreation to Prevent Delinquency

Recreation should be recognized as an integral part of an intervention strategy aimed at preventing delinquency. These programs should be created or expanded in communities to serve all youth.

1. Community youth should be involved in the decision-making, planning and organizing for recreation services. Recreational programs should allow

participants to decide what type of recreation they desire.

2. Counseling services should be made available, either as part of the recreation program or on a referral basis to allied agencies in the community, for youth who require additional attention.

3. Parents should be encouraged to participate in community recreational activities with their children.

4. Maximum use should be made of existing recreational facilities in the afternoons, evenings, on weekends and throughout the summer.

Youth Employment

Standard 2.15 Expansion of Job Opportunities for Youth

Employers and unions should institute or accelerate efforts to expand job and membership opportunities to economically and educationally disadvantaged youth. These efforts should include the elimination of arbitrary personnel selection criteria and exclusionary policies. Employers should institute or expand training programs to sensitize management and supervisors to the special problems young people may bring to their jobs.

Standard 2.16 After-School and Summer Employment

Each community should broaden its after-school and summer employment programs for youth, including the 14- and 15-year-olds who may have been excluded from such programs in the past. These programs may be sponsored by governmental or private groups, but should include such elements as recruitment from a variety of community resources, selection on the basis of economic need and a sufficient reservoir of job possibilities. The youth involved should have the benefit of an adequate orientation period and an equitable wage.

STANDARDS FOR THE DETENTION AND SHELTER CARE OF JUVENILES

Standard 3.1 Police Procedures Relating to the Detention or Release of Juveniles

Each police department should include as part of its juvenile manual written regulations governing release procedures to be utilized where a juvenile has been taken into custody and a complaint has been or will be filed. Wherever possible, juveniles should be released with a summons when the juvenile officer considers the issuance of a summons sufficient to ensure the juvenile's presence in court. Where such release is not possible, juveniles should be released in the custody of a parent, guardian or other adult custodian upon his or her assurance to assume responsibility for the juvenile's presence in court.

1. The juvenile officer shall have the following duties in regard to the interim status of an accused juvenile:
   a. The officer shall advise the juvenile of his or her constitutional rights. Where English is not the juvenile's principal language, the officer shall, prior to any questioning, provide the necessary information in the juvenile's native language, or provide an interpreter to inform the juvenile of his or her rights.
   b. The juvenile officer shall make all reasonable efforts to contact immediately the juvenile's parent, guardian or other adult custodian during the period between the taking into custody and the presentation of the juvenile in court or at any detention or shelter facility. The officer shall inform the parent, guardian or custodian of the juvenile's rights.
   c. Except in unusual circumstances, a juvenile's right to counsel should not be considered waiverable without advice of counsel.

2. A juvenile shall not be held in any prison, jail or lockup. Where necessary to allow release to a parent, guardian or custodian or detention/shelter facility, a juvenile may be held for a brief period in a police station in a place other than one designated for the detention of prisoners and apart from any adult charged with or convicted of crime.

3. A juvenile's release or transfer to the appropriate juvenile facility should be made within a reasonable time period. Under no circumstances should a juvenile be held in a police facility overnight pending release or transfer.

Standard 3.2 Criteria for the Interim Detention or Shelter Care of Juveniles

Where a juvenile officer determines immediate unconditional release is not appropriate or where efforts to locate a juvenile's parent, guardian or an adult custodian fail, the officer should contact the court or intake unit so that a detention or shelter admission or conditional release decision can be made in accordance with Pre-Adjudication Alternatives Standard 1.12.

Where unconditional release is deemed inappropriate, the judge or an intake official operating under the authority of the judge should first consider and determine whether any other form of control or conditional release is appropriate to secure the presence of the juvenile in court or reduce any serious threat to the physical safety of the community. Alternatives enumerated in Detention and Shelter Care Standard 3.3 should be considered. If no conditional release alternative is appropriate, the judge or intake official should state in writing the reasons for rejecting the use of any release alternative.

It should be the policy of the court that all juveniles charged with delinquency are to be released pending adjudication and dispositional hearing to a parent, guardian or other appropriate adult custodian upon written assurance that such person will accept responsibility to ensure the juvenile's presence when required.

Juveniles should not be detained or placed in shelter care unless statutory criteria are met. No juvenile should be admitted to a detention or shelter care facility without the prior approval of the judge or an intake official. Once a juvenile has been brought to a juvenile shelter or detention facility, the responsibility for maintaining or changing interim detention or shelter status rests entirely with the court. If the only reason for the holding of a juvenile is the unavailability of a parent, guardian or adult custodian, the juvenile should be placed temporarily in shelter care and the shelter facility should make every attempt to locate an appropriate custodian.

A written record should be retained by the intake unit of the incidence, duration and reasons for the detention and shelter care of juveniles. Such records should be made available to the prosecutor, the court and defense counsel. Records should be continuously monitored to ascertain the emergence of patterns that may reflect misuse of release/detention standards and guidelines, the inadequacy of release alternatives, or the need to revise standards.

Standard 3.3 Alternatives to Detention and Shelter Care

The unconditional release of juveniles pending a court hearing and/or disposition should be the preferred course of action for most juveniles. Whenever an accused juvenile cannot be unconditionally released, conditional or supervised release which results in the least necessary interference with the liberty of the juvenile should be favored over more intrusive alternatives. In determining the appropriateness of release, factors as outlined in Detention and Shelter Care Standard 3.6(4) should be considered. Release alternatives to be considered include the following:

1. Release on own promise to appear at next hearing.
2. Release to parents, guardian or custodian upon written assurance to secure the juvenile's presence at the next hearing.
3. Release into the care of a custodian or organization reasonably capable of assisting the juvenile to appear at the next hearing.
4. Release with imposition of restrictions on activities, associations, movements and residence reasonably related to securing the appearance of the juvenile.
5. Imposition of any other restrictions other than detention or shelter care reasonably related to securing the appearance of the juvenile.
6. Release with required participation in a home detention program.
7. Partial detention, with release during certain hours for specified purposes.

Where approved by the court, juveniles in detention and shelter care should be allowed to participate where appropriate in the following programs:

1. Release during certain hours for employment, school, recreation and other community activities.
2. Release for purposes of day, weekend and/or holiday visits to the home of their parents, foster family, adult relatives, legal guardian or other approved individual.

Each juvenile released from the facility for purposes of participating in such release programs should be escorted to and from the facility by either the person he or she is visiting, a facility staff member or a volunteer specifically appointed for this purpose.

Standard 3.4 Use of a Summons in Lieu of an Arrest Warrant or in Lieu of Continued Detention Following Custody

A judge may issue a summons rather than an arrest warrant in every case in which a delinquency complaint has been filed against a juvenile not already in custody and where it appears from the complaint that there is probable cause to believe that a delinquency offense has been committed and that

the juvenile has committed the offense.

A summons should take the form as specified by the Rules of Court and should be served in the same manner as a civil summons except that a summons should not be served on an accused juvenile while in school or at a place of employment.

Upon taking a juvenile into custody, a police officer should release the juvenile with a summons if the officer considers the issuance of a summons to the juvenile sufficient to ensure his or her appearance in court.

Standard 3.5 Detention and Shelter Admission Process

Juveniles should not be admitted to a detention or shelter care facility without court authorization. After obtaining authorization the police officer accompanying the juvenile should, upon arrival at the facility, complete a detention report pursuant to the Rules of Court to include the reasons for detention or shelter care, nature of conduct charged and efforts made by the officer to notify a parent, guardian or adult custodian.

The admission process should be governed by the following:

1. Emphasis should be given to prompt processing which allows the juvenile to be aware of his or her circumstances and avoid undue anxiety. Detention and shelter admission staff should be sufficient to allow for the initiation of admission processing immediately upon arrival.

2. The admission process and orientation should be conducted in a private area designated for this purpose. The atmosphere should be nonthreatening and conducive to reducing fear or apprehension.

3. Intake processing should include a hot water shower with soap, the option of issuing fresh clothing similar to outside wear and proper checking and storage of personal effects.

4. All personal property and effects taken from the juvenile upon admission should be recorded and stored and a receipt issued to the juvenile. The detaining facility is responsible for these items until they are returned to the juvenile.

5. The admission process should include an interview which allows for the sharing of information between the juvenile and the admission staff. Interviews should be conducted by a counselor, social worker or other program staff member immediately after reception. The interviewing area should be private and furnished with reasonable comfort. Emphasis should be directed toward individualizing the interview process.

   a. Data to be obtained during the intake interview and recorded in the juvenile's file should include the following: name and vital statistics; a brief personal, social and occupational history; and visible physical condition.
   b. Each facility should develop and publish a manual to include all facility rules and regulations, fire exits and procedures, the facility programs, the juvenile's rights and responsibilities and grievance and disciplinary procedures. A copy of this manual should be furnished to each juvenile upon admission and should be fully discussed and explained during the intake interview. Copies of the manual should be provided and the manual should be explained in the juvenile's native language. Manuals should be updated periodically and any revised material should be furnished to each juvenile.
   c. Information obtained during the initial intake interview and recorded on file should not be released without a court order.

6. A routine medical examination of each juvenile should be conducted by a physician within 24 hours of admission. Action constituting a routine medical examination should be clearly defined by the court and any additional medical testing should not be undertaken without judicial approval. Medical examinations are conducted only for the welfare of the juvenile and protection of the facility, especially where the possibility of contagion or necessity for medical attention exists.

   a. Immediate medical and psychiatric attention should be available in emergency situations. Working agreements must be established with local hospitals to permit the use of hospital emergency rooms where necessary.
   b. All medical information should be included in the juvenile's file and any release of such information shall be governed by confidentiality safeguards.

7. Immediately upon arrival, a juvenile should be allowed to telephone his or her parents or relative, guardian, custodian, probation officer, caseworker or other similar person involved with the juvenile and to telephone his or her attorney. Upon arrival, the juvenile may be visited by such persons. Subsequent visits and telephone contacts should conform to facility visiting and telephone regulations.

Standard 3.6 The Detention Hearing and Continued Review of Detention Decisions

When a determination is made to detain a juvenile in a detention or shelter care facility pending an adjudicatory hearing, a detention/shelter care hearing shall be scheduled and held within 24 hours of detention. Notice of the hearing should be given to the accused juvenile, his or her parent, guardian or custodian and their attorney(s) upon the determination that the juvenile will be detained.

1. If the notification fails to produce the juvenile's parent, guardian or custodian, the hearing should take place in the absence of such a person.

2. If counsel is not present at the initial detention/shelter care hearing, a second hearing should be held with counsel within two court days.

3. No waiver of any constitutional or statutory right of the juvenile should be considered valid unless made in writing by the juvenile and his or her counsel.

4. At the detention/shelter care hearing, all relevant and material evidence helpful in determining the need for detention or shelter care may be admitted by the court. The judge, in determining the appropriateness of release should consider the following factors:

a. The nature and circumstances of the offense charged;
b. The weight of evidence against the juvenile;
c. The juvenile's ties to the community;
d. The juvenile's record of adjudications, if any;
e. The juvenile's record of appearance at previous court proceedings or of flight to avoid court action.

5. The juvenile and his or her attorney and parent, guardian or custodian should have full access to all information and records upon which the judge relies in refusing to release the juvenile from detention or shelter care, or in imposing release conditions or supervision.

In matters involving delinquency complaints, the burden shall be on the State to demonstrate that there is probable cause to believe that an act of delinquency has been committed and that the juvenile has committed the act. Release by the court shall be mandatory where the State fails to establish probable cause.

1. Where a juvenile has been detained, a hearing as to probable cause should be held within two court days.

2. Upon request of a juvenile who has not been detained, a hearing as to probable cause should be held within a reasonable time period.

3. Whenever possible, the judge who presides at the detention or probable cause hearing should not preside at the adjudicatory hearing.

If a juvenile remains in detention or shelter care after an initial detention/shelter care hearing, an intake officer should explore the appropriateness of alternatives to continued detention. A report on these investigations as well as any information which the juvenile's attorney may wish to add should be presented to the court at a detention/shelter care review hearing to be held within 14 days of the initial hearing. Continued detention or shelter care review hearings should be automatically scheduled at intervals not to exceed 14 days.

Adjudicatory hearings should be scheduled and held within 30 days if a juvenile is detained or placed in shelter care. A detained juvenile who, through no fault of his or her own or counsel, has not had a hearing within this time period should be released on conditions he or she is able to meet pending court action.

Standard 3.7 Post-Dispositional Detention/Shelter Care

Wherever possible, juveniles who have been adjudicated should be released in the custody of a parent, guardian or custodian pending disposition. Immediately upon disposition the State should be responsible for providing post-dispositional care for those juveniles necessitating residential placement. Legislative funding should be provided to enable the State to assume this responsibility.

1. Juveniles receiving dispositions involving residential placements should be immediately placed.

2. Where placement cannot be effected immediately, juveniles should, whenever possible, be held in the custody of a parent, guardian or adult custodian.

3. Where immediate placement or release to a parent, guardian or custodian is not possible, the State shall be responsible for developing alternative interim arrangements.

4. Juveniles who receive dispositions involving noncorrectional placement should not be held in detention pending such placement.

5. Diagnostic and treatment resources should be available to juveniles upon disposition.

6. Where a juvenile has been adjudicated and a noncorrectional residential placement is contemplated, the Division of Youth and Family Services or other appropriate authority should be notified of the matter upon adjudication so that a recommendation for disposition can be made.

7. Court liaison positions should be established between the Division of Youth and Family Services or other appropriate authority and each Juvenile and Domestic Relations or Family Court.

Standard 3.8 Rights of Detained Juveniles

Each Juvenile and Domestic Relations or Family Court jurisdiction and all facilities for the detention or shelter care of juveniles should immediately adopt policies and procedures to ensure that the rights of juveniles detained while awaiting a court hearing or awaiting disposition are observed. Juveniles so detained should be entitled to the same rights as those juveniles released pending a hearing or disposition except where the nature of confinement requires modification. These rights include but are not limited to the following:

1. The right to have access to the court to present any issue cognizable therein, including challenging the legality of their confinement and seeking redress for illegal conditions or manner of treatment while detained.

2. The right to have access to legal materials and assistance, through counsel with problems or proceedings relating to their custody, control, management or legal affairs while detained.

3. The right to be free from personal abuse by facility staff or other juveniles.

4. The right to a healthful place in which to live.

5. The right to adequate medical care to include emergency medical treatment on a 24-hour basis.

6. The right to an adequate education.

7. The right to be free from illegal searches and seizures.

8. The right not to be subjected to discriminatory treatment based on age, race, religion, nationality, sex or other such factors.

Each detention and shelter care facility immediately should adopt policies and procedures to ensure proper redress where a juvenile's rights as enumerated above are abridged. Administrative remedies, not requiring the intervention of court, should include but not be limited to the following:

1. Procedures allowing a juvenile to seek redress where he or she believes rights have been or are about to be violated. Such procedures should be consistent with Standard 3.13, "Grievance Procedure for Juveniles in Detention or Shelter Care."

2. Policies of inspection and supervision to assure periodic evaluation of institutional conditions and staff practices that may affect the juvenile's rights.

3. Policies which provide for the following:

a. Assure wide distribution and understanding of the rights of juveniles among both juveniles and facility staff.

b. Provide that the intentional or persistent violation of a juvenile's rights is justification for removal from office or employment, of any staff member.

Standard 3.9 Responsibilities of Detained Juveniles

Each Juvenile and Domestic Relations or Family Court jurisdiction and all facilities for the detention or shelter care of juveniles should immediately adopt policies and procedures to encourage juveniles to accept certain responsibilities while awaiting court hearing or disposition. Juveniles detained should have the same responsibilities as those juveniles released pending a hearing or disposition except where the nature of confinement requires modification.

Each detention or shelter care facility shall develop a statement of juveniles' responsibilities to be included as part of its orientation manual provided to juveniles at admission and to staff upon hiring. This statement shall be subject to judicial approval and review prior to utilization.

The responsibilities of detained juveniles should include:

1. To recognize and respect the rights of others.

2. To know and abide by the rules and regulations of the institution.

3. To maintain neat and clean living quarters.

4. To conduct oneself in a proper manner.

5. To participate actively in the positive growth of the institution.

6. To accept a degree of responsibility for planning one's life outside the institution and for the future.

Standard 3.10 Access to the Public

Each detention and shelter facility should develop and implement policies and procedures to fulfill the right of juveniles to communicate with the public through correspondence, visits and telephone calls. Policies and procedures should incorporate the following guidelines:

1. Juveniles should have the right to communicate or correspond with persons or organizations and to send and receive letters, packages, books, periodicals and any other material that can be lawfully mailed.

a. Detention and shelter authorities should not limit the volume of mail to or from a juvenile under their jurisdiction.

b. Detention and shelter authorities should have the right to inspect incoming mail in the presence of the juvenile solely for the purpose of examining for contraband and enclosures of funds. Funds may be removed from incoming mail and credited to the juvenile in accordance with facility regulations. If contraband is discovered, it shall be removed.

c. Incoming and outgoing mail should not be read by detention and shelter authorities.

d. Outgoing mail should not be opened by authorities. If there are compelling reasons to believe that mail may contain contraband, it should be examined only in the presence of the juvenile.

e. Juveniles should receive a reasonable and equitable postage allowance to maintain community ties.

2. Juveniles should have the right to make and receive a reasonable and equitable number of telephone calls in order to encourage and maintain family and other relationships.

a. Telephone calls may be limited in duration but not in content or the parties contacted, except as specifically designated by the court.

b. Schedules should be devised that assign specific times for the use of telephones.

c. Under no circumstances should phone calls be monitored.
d. All outgoing telephone calls made by juveniles should be collect calls. Costs for incoming calls to juveniles should be borne by the person placing the call.

3. Juveniles should have the right to communicate in person with individuals of their own choosing.
a. The number of visitors a juvenile may receive at any one time should not be limited except in accordance with physical restrictions.
b. The number of visits a juvenile may have during any visiting period or the length of any visit during regular visiting periods should not be limited.
c. Only those individuals restricted by the court from visiting with the juvenile should not be allowed to visit.
d. Visiting schedules should not be limited to Saturdays, Sundays and holidays. Schedules should provide for evening visitation periods.
e. All regulations concerning visitors and visiting hours should be subject to judicial review.
f. The detention or shelter agency may supervise the visiting area in an unobtrusive manner but should not eavesdrop on conversation or otherwise interfere with the participants' privacy.
g. Detention and shelter authorities should facilitate and promote visitation of juveniles by the following acts:
(1) Providing transportation for visitors from terminal points of public transportation. In some instances, the agency may wish to pay the entire transportation costs of family members where the juvenile and the family are indigent.
(2) Providing appropriate rooms for contact visits that allow ease and informality of communication in a natural environment as free from institutional or custodial attributes as possible.
(3) Making provisions for family visits in private surroundings conducive to maintaining and strengthening family ties.

4. Juveniles should be allowed to have contact with the communications media.
a. Juveniles have the right to send uncensored letters and other communications to the media.
b. Juveniles should be allowed to publish articles or books on any subject and display and sell original creative works.
c. Juveniles should be entitled to receive any lawful publication and, during appropriate hours, any radio or television broadcast.

Standard 3.11 Searches of Juveniles

Each detention and shelter facility should immediately develop and implement policies and procedures governing searches and seizures to ensure that the rights of juveniles under its authority are observed and that the security of the facility is maintained through methods other than routine searches wherever possible.

1. Each detention and shelter facility should develop and present to the presiding Juvenile and Domestic Relations or Family Court judge for approval a plan for searches of the facility and juveniles confined in the facility. This plan should provide for the following:
a. The chief executive officer of the facility shall have the sole responsibility for authorizing searches. In the absence of the chief executive officer, emergency searches should be carried out only by his or her specified designee.
b. Avoidance of undue or unnecessary force, embarrassment or indignity for the juvenile.
c. Use of nonintensive sensors and other technological advances instead of body searches whenever feasible.
d. Conducting searches no more frequently than reasonably necessary to control contraband in the facility or to recover missing or stolen property.
e. Respect for a juvenile's rights in property either owned or under his or her control.

2. Upon judicial approval, the plan for searches should be published and incorporated into the facility manual.

Standard 3.12 Rules of Conduct and Disciplinary Procedures for Juveniles in Detention or Shelter Care

Each detention and shelter facility should promulgate rules of conduct and regulations for juveniles under its jurisdiction. These rules and regulations should be published in English and appropriate foreign languages as part of the facility manual and made available to all juveniles and staff. Upon arrival at the facility, each juvenile should be provided with a copy of all rules and regulations and such material should be fully explained to the juvenile in easily understandable language or in his or her native language during the admission interview. Such rules and regulations should:

1. Be designed to effectuate or protect an important interest of the facility or program for which they are promulgated.
2. Be the least drastic means of achieving that interest.
3. Be specific enough to give juveniles adequate notice of what is expected of them.
4. Be accompanied by a statement of the range of sanctions that can be imposed for violations. Such sanctions should be proportionate to the gravity of the rule and the severity of the violation.

5. Be promulgated after appropriate consultation with juveniles, staff and other interested parties.

6. Be periodically reviewed and updated where necessary. Copies of all revised rules and regulations should be distributed to all juveniles and staff and included in the facility manual.

Detention and shelter agencies in promulgating rules of conduct should not attempt generally to duplicate criminal law. Where an act is covered by administrative rules and statutory law the following should govern:

1. Acts of violence or other serious misconduct should be referred to court and not be the subject of administrative sanction.

2. Where a complaint has been filed as a result of such action, disciplinary action should be deferred.

3. Where a complaint is dismissed, the detention or shelter authority should not take further punitive action.

Each detention and shelter facility immediately should adopt disciplinary procedures consistent with constitutional requirements for due process for juveniles residing therein. Minor violations of rules of conduct are those punishable by no more than a reprimand, or loss of commissary, entertainment or recreation privileges for not more than 24 hours. Rules governing minor violations should provide the following:

1. Prescribed sanctions cannot be imposed by staff without the prior approval of the supervisor and without informing the juvenile of the nature of his or her misconduct and giving him or her a chance to explain or deny it.

2. If a report of the violation is placed in the juvenile's file, a copy should be furnished to the juvenile.

3. The juvenile should be provided with the opportunity to appeal the appropriateness of staff action to an impartial discipline or hearing board.

4. Where the appeal decision finds that the juvenile did not commit the violation, all references to the incident should be removed from the juvenile's records.

Rules governing major violations should provide for the following:

1. An investigation of the charges should be conducted by staff at the supervisory level prior to the scheduling of a hearing.

2. A disciplinary hearing should be held no later than 48 hours after the charges are made.

3. The hearing should be held before an impartial board composed of at least three staff members, one drawn from the custodial staff and two or a majority from the medical, administrative, social work, educational or treatment staff.

4. Advance written notice of the charges should be given to the juvenile no less than 24 hours prior to the hearing.

5. The juvenile should be allowed to designate a representative of his or her own choosing to provide assistance at the hearing. The representative should be given time to speak with the juvenile and prepare an adequate defense.

6. The juvenile should be allowed to present evidence and witnesses on his or her own behalf and to confront and cross-examine witnesses against him or her.

7. The hearing board should be required to find substantial evidence of guilt before imposing a sanction.

8. The hearing board should be required to render its decision in writing setting forth its findings as to controverted facts, its conclusion and the sanction imposed. A copy of the decision is to be given to the juvenile.

9. If the hearing board finds that the juvenile did not commit the violation, all references to the charge are to be removed from the juvenile's records.

Rules governing major violations should provide for the automatic internal review of the hearing board's decision by the chief executive officer. The reviewing authority should be authorized to accept the decision, order further proceedings or reduce the sanction imposed but may not increase the sanction. The juvenile should be allowed to appeal the decision to the Department of Corrections (detention centers) or Department of Human Services (shelters).

1. The following sanctions should be expressly prohibited:
   a. Corporal punishment.
   b. The use of physical force by facility staff except as necessary for self-defense, protection of another person from imminent physical attack, or prevention of riot or escape.
   c. Any deprivation of clothing, bed and bedding, light, ventilation, heat, exercise, balanced diet, or hygienic necessities.
   d. Any act or lack of care, whether by willful act or neglect, that injures or significantly impairs the health of any juvenile.
   e. Infliction of mental distress, degradation, or humiliation.

2. The temporary restriction or isolation of a juvenile should not be used as a punitive measure but may as a last resort be used as a process for the removal of an individual from a group for the purpose of restoring and maintaining safety and the protection of all persons within the facility.
   a. Temporary restriction should be instituted according to explicit regulations and should not extend beyond two hours duration.
   b. Juveniles temporarily restricted should be under constant supervision for the duration of that restriction.
   c. Juveniles temporarily restricted should be visited immediately after such restriction by a counselor or other professional staff member.

d. Whenever a juvenile is so restricted, the facts of the incident should be recorded and filed.

Standard 3.13 Grievance Procedure for Juveniles in Detention or Shelter Care

Each detention and shelter agency should develop and implement a grievance procedure consistent with constitutional requirements for due process. Written grievance procedures should be furnished to all juveniles and staff as part of the rules and regulations manual of the facility. Grievance procedures should have the following elements:

1. Each juvenile under the authority of the facility should be entitled to report any grievance and should not be subject to any adverse action as a result of filing the report.
2. Grievances should be transmitted without alteration, interference or delay to the board or committee designated as responsible for receiving and investigating grievances and recommending action.
3. The grievance board or committee should be composed of at least three staff members, one drawn from the custodial staff and two or a majority drawn from the medical, administrative, social work, educational or treatment staff.
4. Promptly after receipt, each grievance should be investigated by the grievance authority. Investigations are to include an interview of the juvenile. Upon the completion of investigation, the grievance authority should submit to the chief executive officer of the facility a report which sets forth the findings of the investigation and a recommendation. A copy of the report is to be furnished to the juvenile reporting the grievance. The chief executive officer should respond to each such report, indicating what disposition will be made in the matter. A written response should be provided to the juvenile reporting the grievance. If the juvenile is not satisfied with the reply, he or she may request an internal hearing and/or may file an appeal to the Department of Corrections (detention centers) or Department of Human Services (shelters).

Standard 3.14 Detention and Shelter Care Education Programs

Juveniles held in detention or shelter care should be afforded access to the educational institution they normally attend or, where this is not possible, to an equivalent educational program either in the community or within the facility.

The board of chosen freeholders of any county in which there is located a detention or shelter facility should establish and implement an educational program to provide each juvenile placed in such a facility with educational opportunities to include tutorial, remedial, vocational and counseling services, in accordance with guidelines to be promulgated by the Department of Education.

1. Educational programs should provide the following:
   a. Educational opportunities and services to meet the needs of each juvenile based on his or her age, level of ability, previous educational experience, length of placement in such facility and reason for placement in such facility.
   b. Afford appropriate credit and certification for the successful completion of particular courses or activities. Credits earned during a juvenile's stay in detention or shelter care should be transferred to his or her regular school.
   c. Utilize the services of educators and the facilities of public and nonsectarian private schools in the local community, where appropriate.
   d. Provide for the maintenance of records concerning each juvenile's educational program.
   e. Juvenile involvement in in-house school programs other than home instruction for at least the minimum time prescribed by law.
   f. Compliance with all county and State academic requirements pertaining to juveniles.
   g. Aid and assist in the re-entry of juveniles in the school they normally attended upon release from detention or shelter care without any loss in academic standing.
   h. Maintenance of a facility library adequately stocked with appropriate reference materials and books, magazines and recordings of interest to juveniles.
2. The boards of chosen freeholders should be authorized to assess the board of education of the school district of any juvenile placed in a detention or shelter facility for the cost of such educational services.

The State Department of Education should be responsible for promulgating program guidelines for implementation by the boards of chosen freeholders of educational programs within detention and shelter facilities. Such guidelines should include but not be limited to curriculum offerings, time devoted to instruction, qualifications of teachers, teacher-pupil ratios and requirements for facilities, equipment, materials and supplies.

Standard 3.15 Visits to Detention and Shelter Facilities

In acknowledgement of the joint responsibility of juvenile justice system components to alleviate the volume, duration and negative conditions of juvenile detention, the following visits are recommended:

1. Each juvenile or family court judge should visit

each detention and shelter facility under his or her jurisdiction within 60 days of appointment and twice every year thereafter.

2. The prosecutor and every assistant prosecutor assigned to juvenile matters should visit each detention and shelter facility in his or her jurisdiction within 60 days of appointment or assignment to the juvenile section and twice every year thereafter.

3. Defense counsel should visit each juvenile client once every 14 days to review the well-being of the juvenile and conditions of the facility. Reports of visits should be retained in case files.

Standard 3.16 Juvenile Detention and Shelter Personnel Planning

Each jurisdiction should re-examine its personnel policies and procedures for detention and shelter personnel and make such adjustments as may be indicated to ensure that they are compatible with and contribute toward the goal of reintegrating juveniles into the community without any unnecessary involvement with the juvenile justice system.

Personnel policies and procedures should reflect the following considerations:

1. There should be no discriminatory employment practice on the basis of age, race, religion, sex or national origin.

2. All personnel should be removed from political influence and promoted on the basis of merit.

3. Specific job descriptions and specifications should be prepared for all personnel. Said job descriptions and specifications should be as detailed and as specific as possible, and should require experienced, specialized professionals. Relevant testing guidelines with respect to filling said positions should be established. The Department of Civil Service should be required to solicit and give consideration to job descriptions, duties and qualifications of personnel and testing recommendations from practitioner organizations directly connected with detention and shelter operation and/or supervision.

4. All personnel should receive salaries commensurate with their education, training and experience and comparable to the salaries of administrative and governmental positions requiring similar qualifications.

5. Job functions and spheres of competency and authority should be clearly outlined.

6. Staffing patterns should provide for the use of professional personnel, administrative staff, indigenous community workers and counselors.

7. Particular care should be taken in the selection of line personnel whose primary function is the delivery of programs and services. Personnel should be selected on the basis of their capacity to relate to youth and to other agencies and their willingness to cooperate with them.

8. The employment of rehabilitated ex-offenders, paraprofessionals and volunteers should be actively pursued.

9. All new employees should be provided with an extensive orientation program to include familiarization of the facility's purpose and objectives, programs, procedures, grievance and disciplinary procedures, plan for searches and the rights and responsibilities of juveniles including procedures for safeguarding juveniles' rights. New staff members should receive a copy of the facility manual upon assuming employment.

10. In-service staff development and training programs should be provided on a periodic basis. In addition to youth behavior, counseling and crisis intervention, regularly scheduled training programs should cover constitutional rights, protections and other legal issues to keep policies and procedures current with new developments and legal requirements.

Standard 3.17 State Inspection of Juvenile Detention/Shelter Facilities

The State Department of Human Services should periodically and at least every six months conduct announced and unannounced inspection visits of each juvenile shelter locality. Similar visits of detention centers should be conducted by the State Department of Corrections. Written reports should be filed within 30 days of each inspection. All such reports should be compiled on a periodic basis and submitted to the appropriate governing authority and made available to the public.

1. Inspection of facilities should ensure compliance with promulgated standards and requirements. At minimum, the following should be subject to inspection:

a. Administrative area, including record keeping procedures;
b. Health and medical services;
c. Juveniles' leisure activities;
d. Juveniles' employment, if any;
e. Juveniles' education, work, recreation and other such programs;
f. Juveniles' housing;
g. Food service;
h. Observation of rights of juveniles.

2. All books, records, accounts and reports of each facility should be available for review. Inspectors shall also observe and interview juveniles.

3. Should any facility fail to comply with any rules, regulations or standards, notification should be given citing violations. Such violations should be corrected and approved within 60 days.

4. If violations are not corrected as required or if severe violations are found to exist, specification

should be withdrawn and no new commitments should be made.

5. Once specification is withdrawn, presently detained juveniles should be relocated to facilities that meet established standards, rules and regulations until a new or renovated facility is available or until conditions are corrected and specification is restored.

Standard 3.18 Juvenile Detention and Shelter Facility Planning and Evaluation

Each jurisdiction should take the following principles into consideration in evaluating present detention and shelter facilities and in planning renovations or new construction.

1. Detention and shelter facilities should be located in the community, and should be easily accessible to court and community resources. Facility planning and locations should:

a. Develop, maintain and strengthen juveniles' ties with the community. Convenient access to work, school, family, recreation, professional services and community activities should be maximized.
b. Increase the likelihood of community acceptance, the availability of contracted programs and purchased professional services and attractiveness of volunteers, paraprofessionals and professional staff.
c. Afford easy access to the courts and legal services to facilitate intake screening, predisposition investigations, post-dispositional programming and pre-hearing detention and shelter care.

2. Under no circumstances should a shelter facility be part of any detention center, adult jail or lockup or other restrictive, secure facility. Detention centers shall not be part of or connected to any adult jail lockup or other restrictive, secure facility.

3. A spatial "activity design" should be developed.

a. Planning of sleeping, dining, counseling, visiting, movement, programs and other functions should be directed at optimizing the conditions of each.
b. Unnecessary distance between staff and resident territories should be eliminated.
c. Transitional spaces should be provided that can be used by "outside" and resident participants and give a feeling of openness.

4. Security should not be viewed as an indispensable quality of the physical environment but should be based on a combination of staffing patterns, technological devices and physical design.

5. Facility programming should be based on investigation of community resources with the contemplation of full use of these resources, prior to determination of the facility's in-house program requirements.

6. Detention and shelter facilities should have access to a full range of supportive programs, including education, library, recreation, arts and crafts, music, drama, writing and entertainment. Outdoor recreational areas are essential.

7. Citizen advisory boards should be established to pursue development of in-house and community-based programs and alternatives to detention.

8. No new facility for detaining juveniles awaiting court action should be constructed and no new funds should be appropriated or made available for such construction until an inventory of existing facilities has been completed and assessed.

9. A quota of available beds should be determined for each facility and should serve as a mandatory ceiling on the number of juveniles who can be held in detention or shelter care at any one time.

10. An inventory of juvenile detention and shelter facilities in each county should be conducted and published annually to assist in detention and shelter planning and evaluation. Such inventory should include the following elements:

a. Places of secure and nonsecure detention and capacities;
b. Average daily population and turnover;
c. Annual number of admissions;
d. Range of duration in detention and shelter care;
e. Annual number of juvenile days in detention and shelter;
f. Costs of detention and shelter care;
g. Trial status of those in detention and shelter care;
h. Reasons for termination of detention and shelter care;
i. Disposition of detention and shelter care cases;
j. Correlation of detention and shelter care to post-adjudication dispositions.

STANDARDS FOR THE JUVENILE JUDICIAL PROCESS

Pre-Adjudicatory Procedures

Standard 4.1 Redefining the Jurisdiction of the Juvenile Court

Juvenile court jurisdiction should be redefined, and applicable statutes and court rules amended as follows:

1. Court jurisdiction over status offenses should be eliminated. Municipal, county and State agencies should be required to provide services for juveniles and the families of juveniles who are in need of services to prevent delinquent behavior.*

2. It should be the policy of the court that, at the dispositional stage of a delinquency matter, the family should be involved in the rehabilitative process. Juvenile court judges should consider the whole family in formulating an appropriate disposition and should encourage and recommend parental participation on a voluntary basis.

Standard 4.2 Notification of Rights

Court procedures prior to adjudication in delinquency cases should conform to due process requirements. Except for the right to bail, indictment and trial by jury, juveniles should have all the procedural rights given to adult criminal defendants including the right to ask for a public hearing.

Written notification of a juvenile's rights should be given to the juvenile and his or her parent, guardian or custodian present at all proceedings. Rights should be explained in easily understood language and, where necessary, in the recipient's dominant language. Such rights should be explained by the judge when given in his or her presence.

In addition to the right to counsel, juveniles should have the following rights:

1. Timely written notice of the proceeding and of his or her legal rights.
2. The presence of his or her parent, guardian or custodian or a nonlegal advocate.
3. The assistance of an interpreter when necessary.
4. The privilege against self-incrimination.
5. A probable cause hearing if detained.
6. Confrontation and cross-examination of witnesses.

* See accompanying commentary for full discussion of alternative handling of status offenders.

Standard 4.3 The Juvenile's Right to Counsel

A juvenile shall have the effective assistance of counsel in all court proceedings. The counsel mandatory-no counsel mandatory calendaring system should be eliminated and all adjudicatory hearings should be held with counsel. Generally, cases which previously would have been scheduled on the no counsel mandatory calendar should be considered for diversion at the intake level.

1. Juveniles shall have the right to be represented by independent counsel. If counsel is not otherwise provided for the juvenile, the court should ensure that counsel is assigned or public representation provided if the juvenile and his or her parents, guardian or custodian are indigent.

2. If a juvenile who has not consulted an attorney indicates his or her intention to waive the assistance of counsel, an attorney should be provided to consult with the juvenile and his or her parents, guardian or custodian. The court should not accept a waiver of counsel unless it determines after thorough inquiry that the juvenile has conferred at least once with an attorney and is waiving the right competently, voluntarily and with a full understanding of the circumstances.

3. Juveniles shall have the same right to counsel at all pre-court hearings as are afforded adults. When any statement is taken from a juvenile while in custody and the juvenile has waived his or her right to counsel, the judge in determining the voluntariness of waiver shall consider the juvenile's age and all circumstances surrounding the interrogation to determine if the utmost fairness was employed by the interrogating authorities. The judge shall also consider if the interrogating authorities employed all reasonable means to contact a parent, guardian or custodian prior to questioning. These inquiries shall be in addition to those inquiries to determine voluntariness of waiver as are used in adult cases.

Standard 4.4 Notification of Complaint and Need for Counsel

Promptly after a delinquency complaint is filed in court, the juvenile and his or her parents, guardian or custodian should be notified of the contents of the complaint, the charges made, the juvenile's rights as enumerated in Standard 4.2 and the possible consequences of the delinquency complaint.

1. Juveniles in custody should be informed of the above at the start of the initial detention hearing.

2. For juveniles who are not detained, written notification of the above should be sent to the juvenile and his or her parents, guardian or custodian as soon as possible.

3. Promptly after a determination is made to schedule a complaint for an adjudicatory hearing, the juvenile and his or her parents, guardian or custodian should be notified that counsel should be retained and if counsel cannot be afforded or is not otherwise provided, arrangements should be made to provide public counsel or to have counsel appointed.

Standard 4.5 Juvenile Court Calendaring

Juvenile court cases should be processed without delay. For delinquency matters, the following time table should govern the court calendar:

1. Detention hearings within 24 hours of a juvenile's detention.

2. Where counsel was not present at the initial detention hearing and the juvenile has not been released, a second detention hearing scheduled with counsel within two court days.

3. Continued detention review hearings every 14 days.

4. Adjudicatory hearings scheduled within 15 days from the filing of complaint for juveniles who are detained and 30 days from the filing of a complaint if not detained.

5. Disposition hearings within 14 days of adjudicatory hearings if detained and within 21 days in all other cases.

The court calendar should, where possible, be structured so as to avoid having a judge with prejudicial contacts with a case preside at the adjudicatory hearing.

Calendaring should follow a policy favoring hearing priorities for:

1. Young, immature and emotionally troubled juveniles;

2. Juveniles detained or removed from their usual home environment; and

3. Where an immediate adjudicatory hearing would best serve the interests of the juvenile and the community.

Standard 4.6 Discovery and Disclosure

Discovery in delinquency matters should be as full and free as possible. Discovery inspection and deposition practices should be identical to criminal court practices as mandated by the Court Rules Governing Criminal Practice (*R.* 3:13-1, 2, 3).

Standard 4.7 Motion Practice

Court rules should be developed similar to *R.* 3:10 for the regulation of motion practice in juvenile or family court, requiring motions normally to be made in writing and when appropriate to be supported by affidavit. The rules should specify time limits for the filing of motions and for serving on opposing parties and should prescribe procedures for securing motion hearings.

The rules governing motions should provide for extra-judicial conferences between the parties before motions are argued, whenever discovery motions are filed and in other appropriate circumstances.

Requests for continuances should be made in the usual course of motion practice. Untimely motions for continuances should be granted only for exigent reasons.

Standard 4.8 Referral to Criminal Court

Any juvenile, 16 years of age or older, who is charged with delinquency may, only after advice of counsel, elect to have the case transferred to the appropriate court and prosecuting attorney having jurisdiction. The juvenile court judge shall include in his or her opening statement notification of the right of the juvenile to request that the matter be referred to another court. If the juvenile makes such a request, the judge shall forthwith refer the complaint to the appropriate prosecuting attorney.

The court may, without the consent of the juvenile and after a waiver hearing, waive jurisdiction over a case and refer that case to the appropriate court and prosecuting attorney having jurisdiction if it finds:

1. The juvenile was 16 years of age or older at the time of the charged delinquent act; and

2. There is probable cause to believe that the juvenile committed an act which would constitute homicide or treason if committed by an adult; or committed an offense against a person in an aggressive, violent and willful manner; or committed a delinquent act which would have been a violation of section 19 of the Controlled Dangerous Substances Act excluding marijuana offenses if committed by an adult and the juvenile, at the time the act was committed, was not dependent upon any controlled dangerous substance as defined by the Controlled Dangerous Substances Act; and

3. The court is satisfied that the adequate protection of the public requires waiver and is satisfied there are no reasonable prospects for rehabilitation of the juvenile prior to his or her attaining the age of majority by use of the proceedings, services and facilities available to the court pursuant to law.

Waiver hearings before the court shall be construed as preliminary in nature, and the court shall provide where appropriate for the representation of the juvenile and his or her parent, guardian or custodian. No testimony of a juvenile at such a hearing shall be admissible for any purpose in any hearing to determine delinquency or guilt of any offense.

The court or the prosecuting attorney may institute waiver proceedings. A motion for a hearing should be filed within seven days of notification of filing a complaint and a hearing on the motion should be held within 10 days of the motion.

Adjudication

Standard 4.9 Requisites for Adjudication Proceedings

A written complaint giving the juvenile notice of the charges is a prerequisite for beginning adjudication proceedings. Adjudicatory hearings should not begin without the presence of the juvenile, the complainant and attorneys for the juvenile and the State. The juvenile's parents, guardian or custodian should be present throughout the proceeding. A guardian *ad litem* should be appointed for the juvenile whose parents, guardian or custodian are hostile or non-supportive or who fail to appear.

Complaints should be allowed to be amended with the court's permission prior to an admission to the charges or at or before the close of the State's case.

Standard 4.10 Acceptance of an Admission to a Delinquency Complaint

Prior to accepting an admission to a delinquency complaint, the judge should inquire thoroughly into the circumstances of that admission. The judge should, in the first instance, determine that the juvenile has the capacity to understand the nature and consequences of the proceeding and his or her legal rights and should determine whether the admission is knowingly and voluntarily offered.

1. In making such an inquiry, the court should address the youth personally, in simple language, and determine that he or she understands the nature of the allegations.
2. The court should satisfy itself that the juvenile understands the nature of those rights which are waived by an entry of an admission and the consequences of waiving them.
3. The court should inform the juvenile of the most restrictive disposition which could be imposed.
4. Notwithstanding the acceptance of a plea of admit, the court should not enter a judgment upon such plea without making such inquiry as may satisfy it that there is a factual basis for the plea.
5. Except where the parent or guardian is the complainant, the court should consider the parent's or guardian's responses in determining whether to accept or reject a tendered plea of admit.

The judge should not participate in plea discussions or negotiations. If a tentative plea agreement has been reached between the prosecuting attorney and the juvenile through defense counsel which contemplates entry of an admission in the expectation that other charges before the court will be dismissed or that disposition consessions will be granted, upon request of the parties the judge may permit the disclosure to the court of the tentative agreement and the reasons therefore in advance of the time for tender of the admission. The judge may then indicate to the prosecuting attorney and defense counsel whether he or she will concur in the proposed disposition if supported by information in the subsequent social investigation or pre-disposition report.

1. When an admission is tendered or received as a result of a prior plea agreement, the judge should give the agreement due consideration, but notwithstanding its existence, should reach an independent decision on whether to grant charge or disposition concessions.
2. Pleas of admission should not be accepted by the court without determining that the plea is voluntary and informing the juvenile that any concessions recommended by the prosecuting attorney are not binding on the court.
3. Means of coercion as outlined in Trial Preparation Standard 9.5 should render any admission unacceptable.
4. The court should not impose upon a juvenile any disposition in excess of that which should be justified because the juvenile has chosen to require the prosecuting attorney to prove his or her guilt beyond a reasonable doubt at a hearing rather than to enter a plea of admission.

Standard 4.11 Plea Withdrawal

If the judge concurs with the plea agreement but later finds that the social investigation information does not support the recommended disposition, the juvenile should be asked to reaffirm or withdraw the plea.

1. Prior to disposition, the court should allow a juvenile to withdraw an admission for any fair and just reason.
2. After final disposition, the court should allow a juvenile to withdraw a plea of admission whenever the juvenile proves that withdrawal is necessary to correct a manifest injustice.
3. A plea of admission which is withdrawn or refused should not be admissible as evidence in any subsequent proceeding against the juvenile.

4. Where an admission is withdrawn, a different judge should usually preside at the subsequent adjudicatory hearing.

Standard 4.12 The Adjudicatory Hearing

Adjudications of delinquency should conform to due process requirements. The hearing to determine whether the juvenile is delinquent should be distinct and separate from the proceedings at which, assuming an adjudication of delinquency, a decision is made as to what disposition should be imposed concerning the juvenile. At the adjudicatory hearing, the State should be required to prove beyond a reasonable doubt that the juvenile committed the act(s) as charged in the complaint.

1. At the adjudicatory hearing, the juvenile alleged to be delinquent should have all of the rights given a criminal defendant except for the right to trial by jury. In addition to the right to counsel and the rights specified in Standard 4.1 Notification of Rights, these include:
   a. To confront and cross-examine witnesses.
   b. To compel the attendance of witnesses in his or her favor.
   c. To have applied the rules of evidence which apply in criminal cases.
   d. Protection against double jeopardy.
2. The judge should not receive or review social history information regarding a juvenile who has not been adjudicated, except in pre-adjudication hearings in which such information is relevant, necessary and admissible.
3. Parents and other interested persons may participate in contested adjudication proceedings at the discretion of the judge. In exercising this discretion, the judge should consider:
   a. The contribution that could be made to a full understanding of the case by the representations of such persons.
   b. The extent to which denial to participate would be perceived as being unfair.
   c. The extent to which such participation would unduly delay or complicate the proceedings; and
   d. The prejudice to the juvenile that might result from such participation.

Prosecution

Standard 4.13 The Juvenile Prosecutor

In each county prosecutor's office there should be at least one attorney designated to represent the State in juvenile matters. An attorney for the State, hereinafter referred to as the juvenile prosecutor, should participate in every proceeding at every stage of every case subject to the jurisdiction of the family court in which the State has an interest. The juvenile prosecutor shall represent the interests of the State, without losing sight of the purpose of the juvenile or family court.

1. The juvenile prosecutor should be selected on the basis of education, experience and competence. The juvenile prosecutor should have prior criminal prosecution or other trial experience.
2. The juvenile prosecutor should devote his or her duties to family court matters on a full-time basis.
3. The salary of the juvenile prosecutor and any assistant juvenile prosecutors should be commensurate with other assistant prosecuting attorneys.
4. There should be an orientation and training program for the juvenile prosecutor and for any assistant prosecutor assigned to juvenile matters prior to assuming duties.

Standard 4.14 The Juvenile Prosecution Unit

The juvenile prosecutor should have available sufficient staff to handle all juvenile matters in the jurisdiction. Where resources permit, a separate unit should be established to include assistant juvenile prosecutors, clerical workers, para-legal workers, law student interns, investigators and police liaison officers.

1. Where possible, prosecutors assigned to juvenile matters and supporting staff should be employed on a full-time basis.
2. The staff of the juvenile prosecutor's unit should be selected on the basis of education, experience and competence.
3. Compensation for staff should be commensurate with the high responsibilities of the unit and comparable to the compensation of other prosecution staff.
4. The staff should represent, as much as possible, a cross-section of the community including resident minority groups.
5. The juvenile prosecutor and professional staff should be required to participate in ongoing, in-service interdisciplinary training regarding the philosophy, intent and special features of the juvenile or family court; the problems of youth and families; conflicts in the community; the court process; the juvenile justice system and community resources available to assist families and youth.

Standard 4.15 Duties and Responsibilities of Juvenile Prosecutors

The primary duty of the juvenile prosecutor is to

seek justice; to fully and faithfully represent the interests of the State without losing sight of the philosophy and purpose of the juvenile or family court. At the adjudication phase, the juvenile prosecutor should assume the traditional adversary role.

It is the duty of the juvenile prosecutor to know and be guided by the standards of professional conduct as defined in the codes and canons of the legal profession and in the prosecution standards recommended by this Advisory Committee (See Prosecution and Defense Standards in this report). In particular, the juvenile prosecutor's relationships with other participants in the juvenile justice system should conform to the following:

1. The juvenile prosecutor should take an active role in preventing delinquency and protecting the rights of youth and the public.
2. The juvenile prosecutor should be available to advise the juvenile or family court intake unit regarding the legal sufficiency of complaints.
3. The juvenile prosecutor should take an active role in disposition hearings and should present an independent recommendation for disposition.
4. The juvenile prosecutor should evaluate dispositional programs and inform the court of those programs which fail to provide the treatment contemplated by the court.
5. Where possible, the juvenile prosecutor or a prosecuting attorney with experience in handling juvenile matters should represent the State's interest in all appeals, probation and parole revocations, petitions for modifications of disposition and all collateral proceedings attacking orders of the juvenile or family court.

Defense

Standard 4.16 Counsel for Juveniles and Families in Court Proceedings

The potential for conflict of interest between an accused juvenile and his or her parents, guardian or custodian shall be clearly recognized and acknowledged. In every case, doubt as to a conflict shall be resolved by the appointment of separate counsel for each. All parties shall be informed by the initial attorney that he or she is counsel for the juvenile, and that in the event of disagreement between parent, guardian or custodian and the juvenile, the attorney is required to serve exclusively the interests of the accused juvenile who is his or her client.

1. Every juvenile defendant should be represented by counsel. Where legal representation is not otherwise provided, the court should appoint counsel, without cost if necessary, for any juvenile whose liberty, custody or status may be affected by delinquency, neglect or abuse complaints; child custody; termination of parental rights or civil commitment proceedings.
2. Counsel for the juvenile should be independent of counsel for any other litigant.
3. Legal representation should be made available at the earliest feasible stage of delinquency and other juvenile or family court proceedings. Cooperative arrangements between court intake units and independent counsel for the juvenile should be initiated so that counsel can be made available where necessary on an as needed basis.
4. Separate counsel should be available to the respondent parents, including the father of an illegitimate child, or other guardian or custodian in a neglect, abuse or dependency proceeding.

Standard 4.17 General Duties and Responsibilities of Counsel for Juveniles in Court Matters

The principal duty of counsel for juveniles in court matters is to represent zealously a juvenile's interests under the law. In doing so, it is appropriate and desirable for counsel to advise the juvenile as to the legal and social consequences of any decision he or she might make, as well as to advise the juvenile to seek the counsel of parents or others in making that decision. The determination of the juvenile's interests in any proceeding is ultimately the responsibility of the juvenile after full consultation with his or her attorney.

An attorney representing a juvenile subject to court proceedings should inquire thoroughly into all circumstances that a careful and competent person in the juvenile's position would consider in determining his or her interests in the proceeding. When the juvenile is the respondent, the attorney should require proof of the facts necessary to sustain jurisdiction and, if jurisdiction is sustained, take the position requiring least instrusive intervention justified by the juvenile's circumstances. In representing a juvenile in abuse, neglect, custody or adoption proceedings, the attorney may limit his or her activity to presentation and examination of material evidence or may adopt the position requiring the least intrusive intervention justified by the juvenile's circumstances.

It is the duty of defense counsel for juveniles in court matters to know and be guided by the standards of professional conduct as defined in the codes and canons of the legal profession and in the defense standards as recommended by this Advisory Committee (see Prosecution and Defense Standards in this report).

Standard 4.18 Duties and Responsibilities of Counsel for Juveniles During the Initial, Pre-Adjudication and Adjudication Stages

Legal representation during the initial, pre-adjudication and adjudication stages should be guided by the following principles.

1. Immediately upon initial contact, defense counsel should inform a juvenile of his or her rights and pursue any investigatory or procedural steps necessary to protect the juvenile's interests. Counsel should confer with the juvenile without delay and as often as necessary to ascertain all relevant information known to the juvenile.

2. It is the duty of the defense counsel to conduct a prompt investigation of the circumstances of the case. Where circumstances appear to warrant it, the counsel should also investigate resources and services available in the community and recommend those that are appropriate to the juvenile and his or her family.

3. It shall be the duty of counsel for an accused juvenile to explore promptly the alternatives to detention, the least restrictive form of release and the opportunities for detention review at every stage of the proceedings where such an inquiry would be relevant. Counsel should consider all steps that may be taken to secure the juvenile's release.

4. Defense counsel should explore the possibility of early diversion from the justice system process. Counsel should explain to the juvenile and his or her parent, guardian or custodian the nature of the intake process, the dispositions available and the juvenile's rights during such proceedings.

5. Defense counsel should, with complete candor, advise a juvenile concerning all aspects of the case, including a frank estimate of the probable outcome.

6. The juvenile, after full consultation with counsel is ordinarily responsible for determining: the plea to be entered; whether to cooperate in consent judgments, early disposition or diversion plans; whether to be tried as an adult or juvenile if over the age of 16.

7. At the adjudicatory hearing, counsel for the juvenile should function as advocate as is required by defense counsel in any adult criminal proceeding. Defense counsel's performance should be unaffected by any belief he or she might have that a finding of delinquency might be in the best interest of the juvenile. As advocate for the juvenile, defense counsel's action should not be affected by the wishes of the juvenile's parent, guardian or custodian if different from the wishes of the juvenile.

Standard 4.19 Duties and Responsibilities of Counsel for Juveniles During the Disposition Stage

In many cases, defense counsel's most valuable service to the juvenile will be rendered at the dispositional stage. Counsel should be familiar with the dispositional alternatives available to the court and with community services useful in the formation of a dispositional plan appropriate to the juvenile's situation.

During the disposition stage counsel should be guided by the following principles:

1. Counsel should pursue independent investigation of the juvenile's circumstances which would be relevant to disposition, regardless of whether social investigations or other reports are available. Counsel should recommend an independent dispositional plan for each juvenile and should seek the assistance of expert personnel needed for the formulation of such a plan.

2. Counsel should explain to the juvenile the nature of the dispositional hearing, issues involved, alternatives open to the court and any preliminary testing or diagnosis that may be required or advisable.

3. It is counsel's duty to explain to the juvenile and family the nature, obligations and consequences of a disposition that has been imposed.

Standard 4.20 Legal Representation of Juveniles After Disposition

Defense counsel's responsibility to a juvenile does not necessarily end with dismissal of the charges or entry of a final order. Legal representation should continue throughout the juvenile or family court proceedings and, if necessary, through post-dispositional matters that may change the level of deprivation of liberty or the kind or amount of treatment received by the juvenile, such as proceedings to determine or change the place or course of treatment or to revoke probation or parole.

1. If a juvenile has been adjudicated delinquent, counsel should ensure that his or her rights are protected and should advise the juvenile and parents, guardian or custodian concerning the dispositional plan invoked by the court.

2. Counsel should render assistance in arranging for the provision of needed services to a juvenile or family, regardless of the outcome of the case.

3. Counsel should ensure that the juvenile is advised by the court of his or her right to appeal.

4. The juvenile, after full consultation with his or her counsel, should decide whether to seek post-dispositional relief, including appeal, habeas corpus

or an action protecting the juvenile's right to treatment.

5. Counsel should be prepared to conduct appeals or other post-dispositional proceedings.

6. Counsel engaged in post-dispositional representation should conduct such proceedings according to the principles governing representation in adjudicatory matters.

7. An attorney representing a juvenile previously represented by other counsel has a good faith duty to examine the effectiveness of prior counsel's actions and strategies and pursue appropriate relief for a juvenile whose prior counsel did not provide effective assistance.

Standard 4.21 Providing Defense Services for Juveniles

The provision of satisfactory legal representation is the proper concern of all segments of the legal community. Members of the legal community, including courts, legal aid and public defender agencies, educational institutions and private practitioners share the responsibility for assuring that attorneys are competent to provide legal assistance in this forum and that competent attorneys are made available to persons subject to juvenile court proceedings.

Attorneys appointed by the court to represent a juvenile in court matters are entitled to reasonable compensation for time and services performed according to prevailing professional standards.

The services of the New Jersey Public Defender's Office should be available to provide attorney services where needed for juveniles involved in court proceedings.

1. At least one attorney in each public defender's office should be assigned to juvenile matters on a full-time basis. Attorneys assigned to juvenile matters should be selected on the basis of education, experience and competence.

2. Public defenders assigned to handle juvenile matters should have available sufficient staff to handle all such matters in the jurisdiction and should have access to all reasonably necessary expert, investigatory and other nonlegal support services.

3. Where resources permit, a separate juvenile public defender office should be maintained.

4. Compensation for staff should be commensurate with the high responsibilities of the office and comparable to the compensation of other public defender staff.

5. Public defenders assigned to juvenile matters should be available to advise the court intake unit regarding the initial screening of complaints. A public defender should be available on a 24-hour basis to provide legal assistance when necessary.

6. Each public defender's office should evaluate dispositional programs and inform the court of those programs which fail to provide the treatment contemplated by the court.

7. Each public defender's office should take an active role in preventing delinquency and protecting the rights of youth.

8. Public defenders assigned to juvenile matters should be required to attend and complete an orientation and training program prior to assuming duties, and to attend and complete ongoing specialized training as required.

Standard 4.22 Specialized Training for Public Defenders Assigned to Handle Juvenile Matters and Support Staff

In addition to training programs provided for defense attorneys in general, specialized training programs should be developed at the State level for those attorneys responsible for representing juvenile clients in court matters. An intensive entry-level training program should be established by the State to ensure that attorneys assigned to juvenile matters have the basic defense skills necessary to provide effective representation. Public defenders assigned to juvenile matters should be required to attend and complete satisfactorily such training prior to assuming duties.

1. Public defenders and professional support staff assigned to handle juvenile matters should be required to participate in ongoing, in-service interdisciplinary training regarding the philosophy, intent and special features of the family court; the problems of youth and families; conflicts in the community; the court process; the juvenile justice system and community resources available to assist families and youth.

2. In-service training and continuing legal education programs relating to delinquency and juvenile law should be established on a systematic basis on the State and local level for public defenders and staff assigned to juvenile matters, assigned counsel, prosecuting attorneys and other interested attorneys.

STANDARDS FOR JUVENILE DISPOSITIONS AND CORRECTIONS

Delinquency Dispositions

Standard 5.1 Purpose of Delinquency Dispositions

The purpose of a juvenile delinquency disposition should be to promote rehabilitation through reformation, reintegration and education in an effort to restore delinquent youth to a position of responsible citizenship. This purpose should be pursued through means that are fair and just, that recognize the unique physical, psychological and social characteristics and needs of juveniles, and that give juveniles access to opportunities for normal growth and development, while ensuring that such dispositions will:

1. Protect the public interest.
2. Preserve the unity of the family whenever possible.
3. Maintain the integrity of the substantive law prescribing certain behavior; and
4. Contribute to the proper socialization of the juvenile.

Standard 5.2 Diagnostic Evaluations

Before disposition, the court may refer the juvenile on an out-patient basis to a suitable public or private institution for examination, study and classification. Before disposition of any matter where the court commits a juvenile to a suitable public or private institution for examination, study and classification, the court must provide for the representation by counsel of the juvenile and his or her parents, guardian or custodian. Confinement or institutionalization for the purposes of obtaining diagnostic information should be used only as a last resort.

Standard 5.3 Pre-Disposition Conferences

Courts should be encouraged to experiment with various forms of pre-disposition conferences. Such conferences may be used to identify potential controversies regarding dispositional facts and to discuss and arrive at an agreed upon disposition. Preferably, disposition agreements should be in writing and reviewed by the court.

Standard 5.4 Dispositional Hearing

A full dispositional hearing should be held within 14 days of adjudication if detained and within 21 days in all other cases. The court should provide written notice to the proper parties as to the date, time and place of such hearing and do so sufficiently in advance of the hearing to allow adequate time for preparation.

1. Parties should be entitled to compulsory process for the appearance of any persons, including character witnesses and persons who have prepared any report to be utilized by the judge, to testify at the hearing.
2. Copies of the pre-disposition report, to be prepared and disseminated as described in Standard 5.13, should be made available to all parties in sufficient time prior to the dispositional hearing.
3. The court should be advised of any agreements reached or of any stipulations or disagreements concerning dispositional facts.
4. Attorneys for the State and the juvenile should be allowed to present evidence, argue for the appropriate disposition, cross-examine witnesses, question documents, and examine any person who prepared any report concerning the juvenile.
5. The juvenile and his or her parent or guardian should be afforded an opportunity to address the court.
6. The juvenile, his or her counsel and parent, guardian or custodian and the prosecuting attorney should be present at the dispositional proceedings. Other parties may be present at the discretion of the court. If reasonable efforts to locate and produce parents who fail or refuse to appear are unsuccessful, the court should determine whether the juvenile's interests require appointment of a guardian *ad litem.*

Standard 5.5 Dispositions Available to the Court for Juveniles Adjudicated Delinquent

There should be three types of dispositions that a juvenile court may impose upon a juvenile adjudicated delinquent. Ranked from least to most severe, they are: 1) nominal—where the juvenile is reprimanded, warned or otherwise reproved and unconditionally released; 2) conditional—where the juvenile is required to comply with one or more condi-

tions, none of which involves removal from the juvenile's home; and 3) custodial—where the juvenile is removed from his or her home.

1. Nominal Dispositions

In a nominal disposition, the court should specifically set forth in writing its warning or reprimand to the juvenile and its unconditional release of the case.

2. Conditional Dispositions

In a conditional disposition, the court should specifically set forth in writing the condition or conditions of its order and assign responsibility to a person or agency for carrying out the disposition. Conditions should not involve removal from the juvenile's home, nor interfere with the juvenile's schooling, regular employment or other activities necessary for normal growth and development. Conditional dispositions should fall within the following general categories.

a. Restitution.

1.) Restitution should be directly related to the delinquent act, the actual harm caused and the juvenile's ability to pay.

2.) The means to carry out a restitution order should be available.

3.) Either full or partial restitution may be ordered. Repayment may be requested in a lump sum or in installments.

4.) Consultation with victims may be encouraged but not required. Payments may be made directly to victims or indirectly through the court.

5.) The juvenile's duty for repayment should be limited in duration. In no event should the time necessary for repayment exceed the maximum duration permissible for the delinquent act.

b. Community Service.

1.) If the court orders a juvenile to perform community service, the judge should specify the nature of the work and the number of hours required.

2.) The amount of work required should be related to the seriousness of the juvenile's delinquent act.

3.) The juvenile's duty to perform community service should be limited in duration. In no event should the duty to work exceed the maximum duration permissible for the delinquent act.

c. Community Supervision.

1.) The court may order the juvenile to a program of community supervision, such as probation, requiring him or her to report at specific intervals to a community supervision officer or other designated individual and to comply with any reasonable conditions that are designed to facilitate supervision.

2.) The court may order the juvenile to a program of day custody, requiring him or her to be present at a specified place for all or part of every day or of certain days.

3.) The court may order the juvenile to a community program of academic or vocational education or counseling, requiring him or her to attend sessions designed to afford access to opportunities for normal growth and development.

4.) The duration of community supervision should not exceed the maximum permissible for the delinquent act.

5.) This standard does not permit the coercive imposition of any program that may have harmful effects.

d. Suspended Disposition.

1.) The court may suspend imposition or execution of a more severe, statutorily permissible disposition with the provision that the juvenile meet certain conditions agreed to and specified in the dispositional order.

2.) Such conditions should not exceed, in severity or duration, the maximum sanction permissible for the delinquent act.

e. Withhold Adjudication.

1.) The court may withhold making a formal entry of adjudication of delinquency and continue the hearing for a period not exceeding 12 months for the purpose of determining whether the juvenile makes a satisfactory adjustment and if such adjustment has been made, after further hearing dismiss the complaint.

3. Custodial Dispositions

Custodial dispositions include residential and foster care placement and correctional commitment. In a custodial disposition, the court should specifically set forth in writing the condition or conditions under which a juvenile will be removed from his or her home and assign responsibility to a person or agency for carrying out the disposition.

a. There should be a presumption against coercive removal of a juvenile from the home and this category of sanction should be reserved for the more serious or repeated delinquent acts. It should not be used as a substitute for a judicial finding of neglect or abuse.

b. Custodial confinement may be imposed on a continuous or an intermittent basis, not to exceed the maximum period permissible for the delinquent act. Intermittent confinement includes night custody, weekend custody or custody during school vacation periods.

Standard 5.6 Imposition of Disposition

The judge should determine the most appropriate disposition as expeditiously as possible after the dispositional hearing. In choosing among statutorily permissible dispositions, the judge should employ the least restrictive category and duration of disposition that is appropriate to the needs, interests and motivations of the juvenile and to the seriousness of

the delinquent act, as modified by the degree of culpability indicated by the circumstances of the particular case, and the age and prior record of the juvenile. The imposition of a particular disposition should be accompanied by a statement of the facts relied on in support of the disposition and the reasons for selecting the disposition and rejecting less restrictive alternatives.

When disposition is imposed, the judge should:

1. Make specific findings on all controverted issues of fact and note the weight attached to all significant facts in arriving at the disposition.

2. State for the record, in the presence of the juvenile, the reasons for selecting the particular disposition and the objective or objectives to be achieved thereby.

3. Where the disposition is other than a reprimand and release, state for the record those alternative dispositions, including particular places and programs, which were explored and the reasons for their rejection.

4. State with particularity, both orally and in the written order of disposition, the precise terms of the disposition which is imposed, including credit for time spent in custody, the nature and duration of the disposition and the person or agency in which custody is vested and which is responsible for carrying out the disposition.

5. Advise the juvenile and counsel of the right to appeal.

Standard 5.7 Out of Home Placement Procedures

It should be the policy of the Division of Youth and Family Services (DYFS), of the Department of Human Services to provide supportive services to families in need to enable them to remain intact. When requested, DYFS should assist a parent to place a child out of home on a voluntary basis in a foster home, group home, or residential center if day care, homemaker, supportive counseling and other home services fail or are inappropriate to the situation, and:

1. The parent has been evicted from his or her dwelling and needs temporary care for a child;

2. The parent, as a result of physical, mental or emotional illness, is unable to care for the child;

3. Acute stress, whether intra- or extra-familial, prevents the parent from caring for the child at or above the minimal level;

4. Other temporary extreme hardship situations occur where the parent can no longer provide adequate care.

A plan for such voluntary placement should be submitted to the court for judicial determination prior to any removal of the child. The child should be included in the decision making process whenever possible.

1. Upon court approval of the case plan, an agreement should be drawn up immediately which states explicitly:
   a. The reason for the placement;
   b. The nature of the placement;
   c. The conditions which must be relieved, and the efforts to be made by DYFS and the parents to achieve the relief as detailed in the case plan.
   d. The expected length of placement;
   e. Any other information which the parent and caseworker determine to be pertinent.

2. Full disclosure of the case plan to the parent and child by the caseworker is required.

3. At the end of three months, the contract ceases to be binding; one extension of the placement may be granted but a new case plan showing good cause for continuance is to be completed before the old contract expires.

4. At the end of six months, all voluntary placements should require an immediate judicial hearing if continuance is sought by either the parent, child, or DYFS.

Where the child is voluntarily placed, the parent always retains the right to request the immediate return of the child. Such a request can be made verbally at the district office, where it will be documented in the parent's presence, or the parent may forward a written statement through the mail to the appropriate district office. When return of the child is requested, the child should be returned immediately unless intervention is made under existing statutes.

Standard 5.8 Procedures for Disposition of Mentally Ill or Mentally Retarded Juveniles

If at any time after the filing of a delinquency complaint it is brought to the attention of the court, juvenile's counsel, the juvenile court prosecutor, the parents, guardian or custodian of the juvenile or any agency involved in the proceedings that there is evidence that the juvenile may be mentally ill or mentally retarded, upon motion by the juvenile's counsel or the juvenile court prosecutor, the court should hold a full formal hearing with counsel to determine the validity of such allegations.

If at such hearing there is evidence indicating that the juvenile may be suffering from mental illness or mental retardation, the court should direct an appropriate individual, agency or institution to study the juvenile's condition and submit, within a certain time, a comprehensive report as to such condition and an opinion as to whether the juvenile appears to be in need of a commitment to a facility for treatment of mental illness or retardation.

If upon receipt of such report it appears probable that the juvenile is so mentally retarded or mentally

ill as to be committable under the laws of New Jersey, the court should order the initiation of proceedings under the laws relating to the commitment of mentally retarded or mentally ill juveniles.

Standard 5.9 Procedures for Disposition of Abused, Neglected or Abandoned Juveniles

If at any time after the filing of a delinquency complaint it is brought to the attention of the court, juvenile's counsel, the juvenile court prosecutor, the parents, guardian or custodian of the juvenile or any agency involved in the proceedings that there is evidence that the juvenile may be abused, neglected or abandoned, upon motion of the juvenile's counsel or the juvenile court prosecutor, the court should hold a full formal hearing with counsel to determine the validity of such allegations.

The Division of Youth and Family Services and the courts should have the authority to take the appropriate action deemed necessary when a juvenile is believed to be abused, neglected or abandoned.

1. In the case of children so severely abused as to immediately threaten their life or health, the Division of Youth and Family Services must have the authority to remove the child, without the consent of the parent if necessary.
   a. When the child is so removed, the parent should be advised in writing as soon as possible from the time of removal of:
      1.) The reason for the removal.
      2.) Where the child is being taken.
      3.) The date of hearing before the court.
      4.) The right to legal representation.
   b. The matter should be brought to court for review and hearing on the day following the removal.

2. In all other cases of involuntary removal, where the child requires protection but is not in immediate danger to his or her life or health, an order of the court must be sought prior to the removal. This order must be granted upon sufficient showing by the agency that the child requires protection and such protection cannot be afforded within the current family situation.

3. The following should apply in any court action involving involuntary removal of children:
   a. Legal representation for both child and parent.
   b. A six-month limit on an order for temporary custody.
   c. A bifurcated hearing process, the first hearing to be a finding of fact on the abuse, neglect or abandonment of the child, and the second, a disposition hearing, which would allow the court to consider and choose from a broad range of alternatives based on the situation and the family's needs. This should include authority to monitor the provision of services and the progress in the case.

4. The initial goal in all cases of involuntary removal should be the reunification of the family. Therefore, the Division must be provided with sufficient resources to offer a broad range of in-home services such as day care, homemaker services, counseling and crisis intervention capabilities and emergency cash payments in situations where welfare cannot assist and where the child's return to the home is dependent upon some specific need; i.e. rent security, utility payment, etc.

Standard 5.10 Termination of Parental Rights

The Division of Youth and Family Services should formulate guidelines for caseworkers and clients which state explicitly the level of care a family is expected to maintain for its children. The standards should cover but not be limited to the areas of:

1. Freedom of child from physical abuse.
2. Safety of physical environment of home.
3. Freedom of child from emotional abuse.
4. Adequate supervision.
5. Adequate nutrition.
6. Adequate clothing.

The Division of Youth and Family Services should inform parents of the minimal levels of care. When parents fail consistently to maintain these minimal levels, then the agency should intervene to raise the standards of the home through providing such services as homemaker, day care, training in parenting skills and counseling.

1. If the home life continues to be below minimal levels, the Division shall move, pursuant to statute, for court intervention which may include court-ordered supervision or removal of the child.

2. Because children need a stable and consistent psychological and emotional environment:
   a. If after the child has been removed from the home for one year the parents have demonstrated an unwillingness to make the required changes, or progress to date shows an inability to make the changes, then the Division should move, pursuant to statute, to terminate parental rights.
   b. For those children still under court jurisdiction, it is the duty of the court to demand that the agency, after a child has been placed out of home for one year, show good cause for not beginning termination proceedings or ensuring the return of the children to their natural home.

3. In order to maintain continuity within the children's lives:
   a. Preference for adoption should be shown to relatives, parties acting in loco parentis or

foster parents of the child where adoption is deemed appropriate.

b. In those situations where the child must remain in foster placement for an extended period of time but where termination of parental rights is inappropriate, a long-term fostercare contract should be entered into by the foster parents.

Standard 5.11 Development of a Statewide System of Community Residential and Day Treatment Programs for Delinquent Juveniles

The State should establish a statewide network of community residential and day treatment programs for the care and treatment of adjudicated delinquents committed to its custody. There should be a wide variety of residential alternatives to incarceration, including camps, ranches, residential schools, community treatment centers, group homes, halfway houses and foster placements. Programs may be operated by the State or by local public or private organizations.

As part of its network of residential and day treatment programs, the State should maintain a variety of programs and facilities for the aggressive, acting out and/or hard to place juvenile not needing correctional commitment but unable to remain at home.

Probation

Standard 5.12 Organization and Nature of Probation Services for Juveniles

There should be established in each probation department a separate section or unit responsible for providing probation services for juveniles. Responsibilities should include providing intake services, diagnostic and pre-dispositional reports, and implementation of the family court's dispositional orders. Family court dispositional orders may require supervision of the juvenile, the enforcement of specific conditions, the provision of certain direct services or the purchase of needed services.

The juvenile probation section has the responsibility to develop a network of community supervisory programs and services which will provide implementation of the family court's duties for all juveniles referred. These services should be made available by juvenile probation staff located as close to the community and the family court as feasible.

Standard 5.13 Pre-Dispositional Reports

Juvenile probation officers should be responsible for providing the juvenile court with a pre-dispositional report or investigation when the court believes such a report to be in the best interests of the juvenile. In any case, a report must be provided the court prior to a custodial disposition. Information which is relevant and material to disposition should be gathered and prepared in report form only after an adjudication has been made.

Copies of the pre-dispositional report should be supplied to all parties in sufficient time prior to the dispositional hearing to permit careful review and verification. Information contained in the report should be broadly shared among the parties to the proceeding and any individual or agency designated as appropriate for custody or care of the juvenile; however, the report should not be considered a public record.

1. Information essential to disposition should consist of the following:

   a. Complete description of the nature and circumstances of the offense, including the juvenile's version of and explanation for the act.
   b. The juvenile's identity and age.
   c. Any prior juvenile court history.
   d. Information concerning the social situation or personal characteristics of the juvenile to include family and home situation, school records, prior contact with social agencies and the results of psychological testing, psychiatric evaluations and intelligence testing.
   e. Residence history of the juvenile.
   f. Information about any resources available to assist the juvenile, such as treatment centers, residential facilities, vocational training services, special education facilities, rehabilitative programs of various institutions and similar programs.
   g. A recommendation as to disposition.

2. Social history reports should indicate clearly the sources of information, the number of contacts with such sources and when made, and the total time expended on investigation and preparation.

3. All information in the pre-disposition report should be factual and verified to the extent possible by the preparer of the report. On examination at the dispositional hearing, the preparer of the report, if challenged on the issue of verification, should bear the burden of explaining why it was impossible to verify the challenged information. Failure to do so should result in the refusal of the court to consider the information.

4. The juvenile may be interviewed by probation staff concerning dispositional information but the

juvenile should first be informed of the purpose of the interview, the intended uses of the information, and the possible dispositional consequences which may ensue.

Standard 5.14 Court Intake Service

For standards relating to the juvenile court intake service see Chapter on Pre-Adjudication Alternatives, Standards 1.7 through 1.13.

Standard 5.15 Formulation of a Probation Plan

A probation plan, mutually agreed upon and signed by the juvenile and his or her parents, guardian or custodian and the probation officer, should be developed for each juvenile ordered to community supervision by the family court. The probation plan should be prepared after a review of all available information, including diagnostic and pre-dispositional reports, and after consultation with the juvenile, his or her parents, guardian or custodian and community agencies involved with the juvenile.

When placing a juvenile on probation, the family court should use an order of conditions of probation to include standard conditions which outline basic rules of conduct and special conditions to meet the individual needs of the juvenile. The family court's order of conditions of probation should be included in the probation plan for each juvenile.

1. In implementing the conditional disposition of the family court, probation plans should not interfere with the juvenile's schooling, regular employment or other activities necessary for normal growth and development.
2. Part of the probation treatment specified in the plan may involve community service or work projects.

Standard 5.16 Level of Probation Services

All juveniles adjudicated delinquent and placed on probation should receive the level of supervision and services identified in the probation plan. Where specific services ordered by the family court are not available, either in the community or through purchase of services, it should be the responsibility of the juvenile probation staff to return the case to the family court for further dispositional consideration.

Standard 5.17 Juvenile Probation Caseload Management

Juveniles on probation should be classified and placed by the probation officer in a category of supervision according to the juvenile's needs. Supervision categories should include but not be limited to intensive, maximum, medium and minimum levels.

Each case should be reviewed by the juvenile probation officer and his or her supervisor on a monthly basis. Classification modifications should be made when deemed appropriate. A caseload classification review form should be submitted each month for statistical and monitoring purposes.

A maximum caseload ratio for juvenile probation staff should be established by the probation department. One probation supervisor should be assigned for every six officers. Clerical staff should be employed on a 1:3 ratio to professional staff.

Standard 5.18 Authority of Juvenile Probation Officers

The authority of juvenile probation officers to enforce conditions, provide services, purchase services or recommend modification of the dispositional order is derived from the family court. Neither the officer nor the probation department should modify, substitute or escalate any condition of the dispositional order without the specific authorization of the family court.

In the capacity as an officer of the court, the juvenile probation officer should have peace officer powers, including the powers of taking a juvenile into custody and search and seizure of contraband items. These peace officer powers should not, however, extend to the carrying of firearms.

Standard 5.19 Noncompliance with Court Orders

Juvenile probation officers should notify the family court in cases involving alleged noncompliance with the conditions of the court's dispositional order. A juvenile who is alleged to have violated his or her conditions of probation is entitled to due process of law and shall be given the opportunity by the court to be fully heard in person or through counsel.

The juvenile probation officer should refer cases involving the commission of a new law violation by the juvenile to the local police department for full investigation. Upon completion of their investigation, the police should file a complaint if the facts warrant this course. Probation should not be revoked on the basis of delinquent conduct until such time as the juvenile is, according to due process, found guilty of that delinquent conduct.

Standard 5.20 Juvenile Probation Officer Selection

Juvenile probation staff should possess the nec-

essary educational background to enable them to implement effectively the responsibilities of probation services. Juvenile probation officers should possess, at minimum, a Bachelor's degree, preferably in a related field such as psychology or social work. In addition to basic education in the social sciences, a knowledge of public administration, personnel practices, implementation and evaluation is desirable.

Juvenile probation officers should posses knowledge of available resources and should be capable of providing assistance in obtaining these resources and conducting follow-up of case referrals. The ability to deal with juveniles and diverse personalities and problems, the ability to motivate and the qualities of sensitivity and awareness of situation should be considered essential qualifications.

Standard 5.21 Dual Jurisdiction and the Interstate Compact

Whenever an adjudicated delinquent is found to be under the jurisdiction of more than one court, the matter should be returned to the family court of original jurisdiction with a recommendation as to whether the jurisdiction of one or more of the courts should be terminated. However, nothing in this standard should be construed to interfere in any way with the provisions of the Interstate Compact or with the provision of services to a minor in one state by the juvenile probation staff of another state.

Juvenile Corrections

Standard 5.22 Purposes of Juvenile Corrections

The purposes of juvenile corrections are to (1) protect society, (2) carry out the dispositional orders of the juvenile court, (3) plan, develop and operationalize the necessary correctional programs and services, and (4) to redirect the behavior of juveniles committed to its care and prepare them for return to the community with a greater potential for constructive living.

These purposes should be carried out through means that are fair and just, that recognize the unique physical, psychological and social characteristics and needs of juveniles and that give juveniles access to opportunities for normal growth and development.

Standard 5.23 Separation of Juvenile Offenders

Juveniles shall not be detained or confined in any institution in which they have regular contact with adult persons incarcerated because they have been convicted of a crime or are awaiting trial on criminal charges. New Jersey should take immediate action to provide for the separation of juvenile offenders from the adult offender population and to develop programs and services for juvenile offenders which promote their rehabilitation and recognize their special needs.

Standard 5.24 Creation of a Separate Division of Juvenile Services

There should be established under the New Jersey Department of Corrections a separate Division of Juvenile Services to ensure the separation of juvenile offenders from the adult offender population and to develop programs and services for juvenile offenders which recognize their special needs. The Division of Juvenile Services should have responsibility for the administration of all juvenile correctional institutions and programs, including parole, and for the care and custody of juveniles committed by the court to correctional placement.

Standard 5.25 Duties and Responsibilities of the Division of Juvenile Services

It is the responsibility of the Division of Juvenile Services to ensure that its services, programs and resources facilitate to the fullest extent possible the purposes of a delinquency disposition and the purposes of juvenile corrections. It is responsible for providing the services and programs necessary for successful rehabilitation and reintegration of juveniles committed to the Division, either directly or through purchase of services.

Specific duties and responsibilities of the Division of Juvenile Services should include the following:

1. To accept legal custody of all adjudicated delinquents committed to the Division, exercise supervision and provide necessary services for adjudicated delinquents as ordered by the court.
2. To ensure juveniles are placed in or transferred to only facilities designated for juveniles.
3. To ensure that those juveniles committed to its custody who have special needs, such as the mentally retarded and emotionally disturbed, have services available to address their needs.
4. To ensure any placement or transfer to a public or private institution or facility outside of the State is made only upon specific court approval.
5. To operate fairly and equitably, without discrimination.
6. To provide or assure the provision of all services required to carry out the post-dispositional orders of the juvenile court.

7. Where services are provided through purchase of services or contract with the private sector, the Division should retain responsibility for monitoring and enforcing program standards in the same manner prescribed for State-operated programs.

8. Overall planning, policy development, fiscal management, monitoring and evaluation of service programs.

9. To inform the court within three weeks if it determines, as a result of its assessment that it cannot provide access to all services required by the juvenile.

10. To ensure ongoing review by qualified staff of the progress of each juvenile committed to the Division's custody in relation to his or her individual treatment plan.

11. Whenever the Division learns that any juvenile under its authority does not have a parent or legal guardian capable of exercising effective guardianship of the juvenile, to petition the court for the appointment of a guardian.

12. Whenever the Division has reasonable grounds to believe that a juvenile under its authority or supervision is mentally ill or mentally retarded, to petition the court for a review and revision of the order vesting legal custody or supervision in the Division and for the initiation of proceedings for the civil commitment of each juvenile as mentally ill or mentally retarded.

13. To use nonconfinement programs or procedures wherever possible for dealing with juveniles evidencing behavioral or management problems.

14. To maintain complete written records of all studies and examinations of juvenile commitments and the resulting conclusions and recommendations and of all major decisions and orders affecting juvenile commitments. Such records should be maintained in a manner which will facilitate administrative decisions, planning and evaluation.

15. To develop and maintain correctional liaison services with each juvenile court as described in Standard 5.28.

16. To develop and maintain an operational, integrated process of long, intermediate and short-range planning for administration and operation.

The Division of Juvenile Services should exercise leadership in working with other public and private agencies and citizen organizations to develop and implement comprehensive programs to provide needed services for juveniles who have been adjudicated delinquent. In addition, the Division should:

1. Collect, evaluate and disseminate statistics and information regarding the nature, extent and causes of juvenile delinquency and conduct research and evaluation, including studies and demonstration projects on all aspects of juvenile delinquency.

2. Encourage and assist in the development of innovative programs for the diversion of juveniles from the juvenile justice system, taking into consideration the safety of the community and the best interests of the juveniles involved.

3. Develop written standard-setting materials with respect to the Division's programs and consult with other public and private agencies regarding its programs.

4. Enter into contracts and agreements with agencies whose mandate is to provide financial assistance or support for programs designed to provide services for juveniles adjudicated delinquent.

5. Provide or assure the provision of comprehensive training programs for employees of the Division and the employees of other public and private agencies engaged in activities related to its programs.

Standard 5.26 Responsibility for Juvenile Corrections

The Division of Juvenile Services has the responsibility to involve the community in the correctional process and program development and implementation. A community orientation in philosophy, programs, services and procedures should be maintained and correctional facilities and programs should operate as a community resource. The Division of Juvenile Services and the community should accept a joint responsibility to provide adequate services for delinquent juveniles and assist in their reintegration into the community.

In addition, the Division should:

1. Ensure correctional institutions and programs are open to public view.

2. Develop a strong community volunteer program as described in Standard 5.29.

3. Establish a citizen's advisory committee to assist the Division in assessing the effectiveness of juvenile correctional programs.

Standard 5.27 Rights of Incarcerated Juveniles

The Division of Juvenile Services should immediately adopt policies and procedures to guarantee that juveniles committed to its care and custody are afforded due process protections guaranteed by the Constitution and that the rights of such juveniles are observed. These rights include but are not limited to the following:

1. The right to have access to the court to present any issue cognizable therein, including challenging the legality of confinement and seeking redress for illegal conditions or manner of treatment while detained.

2. The right to have access to legal materials and assistance, through counsel with problems or proceedings relating to their custody, control, management or legal affairs while detained.

3. The right to be free from personal abuse by cor-

rectional staff or other juveniles.

4. The right to a healthful place in which to live.

5. The right to adequate medical care to include emergency medical treatment on a 24-hour basis.

6. The right to an adequate education.

7. The right to be free from illegal searches and seizures.

8. The right not to be subjected to discriminatory treatment based on age, race, religion, nationality, sex or other such factors.

The Division of Juvenile Services immediately should adopt policies and procedures to ensure proper redress where a juvenile's rights as enumerated above are abridged. Administrative remedies, not requiring the intervention of court, should include but not be limited to the following:

1. Procedures allowing a juvenile to seek redress where he or she believes rights have been or are about to be violated. Such procedures should be consistent with Detention and Shelter Care Standard 3.13, "Grievance Procedure."

2. Policies of inspection and supervision to assure periodic evaluation of institutional conditions and staff practices that may affect the juvenile's rights.

3. Policies which provide for the following:

a. Assure wide distribution and understanding of the rights of juveniles among both juveniles and correctional staff.

b. Provide that the intentional or persistent violation of a juvenile's rights is justification for removal from the office or employment, of any staff member.

Standard 5.28 Development of Correctional Liaison Services

Correctional liaison services should be developed and maintained between the Division of Juvenile Services and each family court. Correctional liaison services should be responsible for:

1. Providing up-to-date descriptions of programs and services available for juveniles within the Division of Juvenile Services.

2. Providing advice and counsel to court personnel regarding correctional dispositions.

Correctional liaison activities and information should be coordinated with the pre-disposition report prepared for juveniles. Special services and diagnostic testing should be available when necessary to facilitate determination of a disposition recommendation or an assessment for correctional placement.

Standard 5.29 Development of Post-Dispositional Correctional Intake Services

Post-dispositional correctional intake services should be established by the Division of Juvenile Services to provide evaluation, assessment and assignment of juveniles committed to the care and custody of the Division to an appropriate program or facility within the Division.

1. Correctional intake services should be provided in lieu of the present reception and classification process.

2. Assessment and assignment should be completed as soon as possible after disposition and in any event within three working days.

Standard 5.20 Volunteer Program for Juvenile Corrections

The Division of Juvenile Services should develop a citizen involvement and volunteer services program to operate throughout its facilities and correctional programs to enrich and supplement all services to juveniles. Citizen volunteers should be used in a variety of ways to include advisory roles in the formulation of policies and the provision of direct services to juvenile offenders.

1. A volunteer services unit should be assigned management and coordination of all volunteer personnel and programs.

2. A training program should be instituted for volunteers to give them an understanding of the needs of juvenile offenders and to acquaint them with the objectives and problems of corrections.

Standard 5.31 Standards for Public and Private Agencies Providing Services to Juveniles Adjudicated Delinquent

The Division of Juvenile Services should develop and disseminate standards for the operation of public and private agencies providing services for juveniles adjudicated delinquent and committed to the care and custody of the Division. The Division should assist such agencies in obtaining a level of operation that is acceptable in accordance with promulgated standards and should be responsible for auditing such agencies to ensure compliance with standards.

Standard 5.32 Juvenile Correctional Institutions

Juvenile correctional institutions are facilities in which access and egress are controlled by the staff and which are used exclusively for the placement of juveniles adjudicated delinquent. Juvenile correctional institutions are characterized by procedures which are intended to prevent the juveniles placed therein from departing at will and by the provision of

a range of academic, vocational and treatment services.

1. To the greatest extent possible, new correctional facilities should be located in or near the communities from which they draw their population.

2. Correctional institutions should house no more than 100 juveniles. The Division should develop a plan with specific time limits to reorganize existing facilities so that resident interaction is limited to a population of no more than 100 juveniles. No new facilities should be constructed unless it can be demonstrated that there is a need for these facilities and that this need cannot be met by any other means.

3. Each living unit within the correctional institution should not exceed a bed capacity of 20 and should provide for a mixture of private and semi-private rooms assigned on the basis of the needs and preferences of each juvenile. The design of the living unit should make provision for game rooms, study areas and staff offices. In addition, the institution should provide for indoor and outdoor physical activities.

4. The juvenile correctional institution complex should provide for co-educational and single-sex living environments. Co-educational institutions should be designed to accommodate a similar number of male and female residents.

5. Correctional facilities should be staffed with a sufficient number of trained professionals from the various disciplines necessary to provide specialized programs and services as well as meet the juveniles' basic needs. Professional treatment staff should be organized into treatment teams and staffing ratios should be developed on the basis of the 20-bed living unit.

Standard 5.33 Emphasis on Female and Male Juvenile Offenders

Division of Juvenile Services should re-examine immediately its policies, procedures and programs for female and male juvenile offenders, and make such adjustments as may be indicated to make these policies, procedures and programs more relevant to the problems and needs of both sexes.

1. All community-based and oriented programs and services within the juvenile correctional system should be made available to both male and female juvenile offenders on an equal basis.

2. Separation of the sexes should not result in an adverse or discretionary effect in program availability or institutional conditions.

3. Where the number of female juvenile offenders is so small as to make adequate facilities and programming uneconomical, the Division should make every effort to use alternatives to institutionalization.

Standard 5.34 Institutional Environment

Juvenile correctional institutions should adopt policies and practices that will preserve the individual identity of the juvenile, and be conducive to the rehabilitative and reintegrative process. Institutional programs and procedures should be structured so as to normalize settings in the institution as closely as possible to the existing community. Aspects of a law enforcement atmosphere should be avoided.

1. Juveniles should be provided with civilian dress, with reasonable opportunity for individual choice of style and preference.

2. The use of uniforms, badges and military titles and terms for correctional personnel should be discontinued.

Standard 5.35 Individual Treatment Plans

The assessment report completed by the correctional liaison services staff should contain an evaluation of the juvenile's specific problems, deficiencies and resources and provide an individual treatment plan. This treatment plan should become part of the juvenile's institutional file and a copy should be forwarded to the placing juvenile court.

Each juvenile's progress and needs in relation to his or her individual treatment plan should be reassessed a minimum of once every two months. Individual treatment plans should be reviewed by members of an ongoing assessment team and other treatment staff knowledgeable of the juvenile's progress. Any modifications in the plan should be noted in the juvenile's file and the placing juvenile court should be notified of any transfer to another facility.

Standard 5.36 Development of Unit Management System of Providing Professional Services

Each juvenile correctional institution's professional staff and services should be organized in terms of a unit management system so that each juvenile is under the supervision of a team of professional staff members. Professional treatment team members should be available to juveniles during after school and evening hours and other times when juveniles are free during the day.

Standard 5.37 Education Programs in Juvenile Correctional Institutions

Education programs in juvenile correctional institutions should provide for the diverse educational

needs of the juveniles placed therein, be individualized and geared directly to the reintegration of the juvenile into the community. The Division of Juvenile Services' education programs and facilities should be considered as any other school district. Standards and regulations regarding curriculum, financing and staffing applicable to a local school district should be held applicable to the Division of Juvenile Services.

The Department of Education should cooperate with the Division of Juvenile Services in developing standards for education programs in correctional institutions. Education programs should be evaluated by the Department of Education.

Standard 5.38 Vocational Programs in Juvenile Correctional Institutions

Each juvenile correctional institution should provide pre-vocational and vocational training programs to enhance marketable skills of juveniles committed to its custody. Vocational programs should be geared specifically to meet the needs of young people. Vocational training should be part of a reintegrative continuum to include determination of needs, establishment of program objectives, vocational training and, for older juveniles, assimilation into the labor market. Activities should include but not be limited to: pre-vocational orientation, world of work education, vocational instruction and counseling, related remedial instruction, career education and counseling, employability plans and work experience.

Standard 5.39 Rehabilitative Services in Juvenile Correctional Institutions

Each juvenile correctional institution should provide an array of rehabilitative services available on a voluntary basis to meet the needs of juveniles committed to its custody. Rehabilitative services should be consciously geared toward reintegration in the community and to the post-institutional future that awaits each juvenile.

Juveniles adjudicated delinquent and committed to correctional institutions should have access to all services to which nonadjudicated juveniles have access and to those services needed for individual growth and development. At a minimum, juveniles placed in correctional facilities should have access to the services described in these standards to include but not be limited to casework, counseling, group interaction, recreation, student government, drug abuse programs, cultural and religious activities and family and community services.

1. Correctional institutions should provide a broad range of individual and group counseling and treatment techniques so that the assessment team has multiple options in fitting a juvenile's needs to available program offerings. Treatment approaches should include individual, small group and community group counseling.

2. Where administratively feasible, each living unit within a correctional institution should emphasize a particular treatment approach and the staff within each living unit should receive in-service training to enhance their skills within the area of emphasis. The types and quality of services within the various units should be periodically reviewed and these reviews should be made available to members of the assessment teams.

3. Rehabilitative staff and resources should be sufficient to meet the needs of juveniles, the institution and the community.

4. Particular rehabilitative programs such as counseling should be administered and supervised by qualified and trained professionals.

5. Community involvement should be a vital aspect of rehabilitative services provided by each institution. Community activities should be included as part of an integrated program of treatment and rehabilitation.

a. Institutions should make use of community resources and facilities to foster each juvenile's personal development and minimize the effects of institutionalization.

b. Community activities should serve as an effective method to measure and assess a juvenile's readiness for community living.

c. To the greatest extent possible, rehabilitative services should be provided in the community.

d. Institutions should make full use of paraprofessionals and community volunteers in its rehabilitative attempts.

6. Institutions should provide programs designed to encourage juveniles to practice their religious beliefs, to participate in religious activities in the institution or the community, to receive religious counseling and guidance or to maintain and strengthen their membership in a chosen religious group upon return to the community.

7. Institutional programs should maintain frequent contact with juveniles' families and other persons who may have a constructive influence on them. Home and family ties should be strengthened through furloughs and weekend visits. The family and other influential persons should be involved in the juvenile's preparation for release or parole.

8. Institutions should provide opportunities for exercise, recreation and constructive, entertaining leisure time activity in addition to school physical education requirements. Indoor and outdoor individual and team activities should be provided. Recreational activities should be sufficiently broad to meet a wide range of interests and talents.

Standard 5.40 Health Services in Juvenile Correctional Institutions

Juvenile correctional institution health services should be designed to protect and promote the physical and mental well-being of juveniles placed therein, to discover those in need of short-term and long-term medical and dental treatment, to contribute to their rehabilitation by appropriate diagnosis and treatment, and to facilitate continuity of care following release. Institutional health services should be comparable in quality to that available in the community. Every juvenile committed to the custody of an institution should have available comprehensive medical, dental and mental health services. All health services available to juveniles in the community should be available to juveniles in correctional institutions.

Medical care should not include subjecting the juvenile to any medical experimentation or the administration of drugs, chemical restraints or other forms of medical treatment for other than medical purposes and unless prescribed by a qualified physician.

Parole/Aftercare

Standard 5.41 Paroling Authority for Juveniles*

There should be established a juvenile parole/aftercare authority separate and distinct from the paroling authority for adults. The juvenile parole/aftercare authority should consist of full-time professional members appointed by the Governor with the advice and consent of the Senate having experience in the field of penology, law, sociology, psychology or related fields; lay members and a former participant in the juvenile parole/aftercare system.

1. The juvenile parole/aftercare authority should have jurisdiction over the release on parole/aftercare of persons committed to the Division of Juvenile Services after being adjudicated delinquent or after revocation of parole/aftercare previously granted by the juvenile parole/aftercare authority.

2. The juvenile parole/aftercare authority should prescribe rules, conditions and procedures for the granting of parole/aftercare,

Standard 5.42 Guidelines for Release

Guidelines should be established for determining release dates of residents of juvenile correctional institutions and providing for their participation in the decision-making process. Consistent with the nature of indeterminate sentences, persons confined in a juvenile correctional institution are eligible for release consideration immediately upon confinement.

Standard 5.43 Parole/Aftercare Services

A bureau or unit of juvenile parole/aftercare should be created within the Division of Juvenile Services to carry out the function of parole/aftercare services. This bureau or unit should be responsible for the supervision of adjudicated delinquents released on parole/aftercare status, aftercare release planning, and the administration and operation of aftercare programs.

A statewide network of community-oriented aftercare programs and services should be developed, either directly or through purchase of services, to include supervision, counseling, service referral and residential services for juveniles released on parole/aftercare. Halfway houses and community-oriented residential programs should be developed for those juveniles who need a more gradual reintegration process or are in need of temporary living arrangements. Parole/aftercare services should be made available on a decentralized basis by aftercare staff located in or close to the communities in which released juveniles reside.

Standard 5.44 Aftercare Release Planning

The objectives of aftercare release planning should be to ensure the release of each juvenile from a correctional institution at the most favorable time, consistent with the purposes of corrections, and to ensure each juvenile released on aftercare is provided with an individually tailored reintegration program. Aftercare release planning should begin as soon as the juvenile is admitted to a correctional institution, should continue through the juvenile's stay and facilitate the juvenile s transition from the institution to the community.

An aftercare worker of the bureau or unit of juvenile parole/aftercare should be assigned to each juvenile and should be responsible for aftercare release planning while the juvenile is incarcerated. Aftercare release planning should involve:

1. Working with the family in preparing for release.
2. Monitoring the juvenile's progress in the institution.
3. Providing coordination and supportive counseling.
4. Developing an individually tailored aftercare plan in conjunction with the juvenile as described in Standard 5.45.
5. Preparing reports for use by the paroling authority in considering release.

* Note that this standard is in conflict with Sentencing, Parole and Probation Standard 10.15.

6. Preparing the juvenile for possible reactions and obstacles to readjustment that may be encountered in the community.

7. Initiating community planning and maintaining contact with the aftercare worker to which the juvenile will be assigned in order to anticipate and discuss post-release problems.

8. Ensuring school grades and credits earned in the institution are properly transferred to the juvenile's school upon release.

Standard 5.45 The Aftercare Plan

An aftercare plan, developed and mutually agreed upon by the aftercare planner and the juvenile and approved by the juvenile parole/aftercare authority, should be prepared for each juvenile. The aftercare plan should be formulated at the commencement of each juvenile's stay and modified whenever necessary during the juvenile's period of confinement.

1. The aftercare plan should contain the juvenile's expected release date, background data, a specific program of rehabilitation and reintegration into the community upon release and, when release is granted, the specified conditions of parole/aftercare release determined by the juvenile parole/aftercare authority.

2. Objectives should be clearly stated and in keeping with the needs outlined in the dispositional order. Performance goals to be achieved by the juvenile should be clearly indicated.

3. Conditions of release should be specific, in writing and mutually agreed upon by the aftercare planner and the juvenile.

4. The aftercare plan should promote the juvenile's schooling, employment or other activities necessary for normal growth and development.

5. The aftercare plan should provide for alternative living arrangements where necessary.

Standard 5.46 Juvenile Parole/Aftercare Worker Duties and Responsibilities

A juvenile parole/aftercare worker should be assigned to each juvenile upon release from a correctional institution. It is the juvenile aftercare worker's responsibility to assist in the juvenile's reintegration into the community and to ensure that he or she is referred to the appropriate community resources and services necessary for successful readjustment. All juveniles released on parole/aftercare should receive the level of supervision and services identified in the aftercare plan. Where specific services are not available, the aftercare worker should have access to funds for the purchase of services.

Aftercare workers should maintain personal contact with client juveniles to ensure that they are adequately supervised. Personal contact should be most intense during the first six months of release, after which decreasing levels of supervision and assistance may be instituted. Aftercare workers should be available to client juveniles for counseling and assistance whenever needed.

Where the juvenile has made a satisfactory adjustment prior to the expiration of aftercare supervision, the aftercare worker should recommend to the releasing authority that the juvenile be discharged from aftercare.

Standard 5.47 Violation of Parole/Aftercare Conditions

The juvenile parole/aftercare authority should establish policies and procedures governing violation of parole/aftercare conditions and violation hearings which afford due process.

PRE-ADJUDICATION ALTERNATIVES

Introduction

Juvenile crime is one of the most serious issues facing New Jersey. From 1971-1975, the number of juveniles taken into custody by police increased 33% whereas adult arrests rose 22%. Juvenile violent crime is also increasing at a rate faster than that for adults, up 52% as compared to 21% for the same period. Although persons under the age of 18 account for 33% of the State's population, they account for 40% of all robbery arrests, 60% of breaking and entering arrests, 70% of motor vehicle arrests and half of the arrests for larceny. In total, juveniles account for 37% of all arrests.[1]

Dealing with youth, especially the violent offender, so as to protect society requires an effective and efficient juvenile justice system. However, as the number of juveniles entering the system continues to increase, each stage or component becomes overloaded, causing serious delays. Limited resources are thinly spread, so that the system of justice is incapable of dealing effectively with the diverse youth being processed through it. Thus it is necessary to ensure that the number of juveniles being processed through the system is limited to only those who require its intervention. Those who can be successuly handled at the community level should be diverted from the juvenile justice process to community services more in keeping with their needs.

There is a growing concern that juvenile justice system intervention may not be the most effective method of dealing with certain youth exhibiting delinquency or who appear in need of supervision. Nonsystem response or the halting of further justice system penetration in favor of referral to community agencies may be the preferred course of action, especially for those on the verge of delinquent behavior. Moreover, the stigma of being officially labeled "delinquent" or "in need of supervision" may be detrimental to satisfactory social adjustment and push a juvenile toward more serious offenses. For others, contact and association with older, more sophisticated delinquents in the system may encourage increased deviance.

Pre-adjudicatory alternatives to continued system penetration are essential to provide additional methods of dealing with problem youth. Before juveniles can be diverted from the system in any consistent and structured manner, formalized diversion mechanisms must be developed. There is a need to develop an improved capacity on the part of police and courts to make appropriate dispositions and referrals to alternative agencies and services. Diversion should be made a conscious and clearly defined policy. Diversionary processes require procedural regularity and decisions based on explicit and predetermined criteria.

Problem Assessment

Diversion in practice, if not by label, is part of our justice tradition. Increased recognition of juvenile justice system deficiencies and a rediscovery of the truth that the community itself can have significant impact on youth behavior has helped to generate current efforts to incorporate diversion as a preliminary step in the juvenile justice process. Although diversion may occur at any stage, the focus in this report is at the pre-adjudicatory level. Generally, diversion at this level can occur at two entry points: police contact and upon referral to court.

Diversion after police contact but prior to official police processing will halt system induction. Decisions at this level are discretionary and the responsibility of the police. Once an official action has been initiated, such as the signing of a complaint, diversion from further system processing becomes the responsibility of the court. At these decision points, diversion mechanisms as well as alternative resources and services are needed.

Several diversionary programs which provide alternatives to system processing have been developed in many jurisdictions. However, diversion as a process has not been formally recognized as a preferred alternative to court action for many juveniles. In addition, uniform methods, theories and procedures to describe specifically when diversion should occur, who should be diverted, under what conditions, to what alternatives and for what purpose have not been agreed upon. Procedural standards in these areas are prerequisites to the creation of formalized diversion mechanisms.

References for this chapter appear on page 251.

Police Diversion

A juvenile's initial contact with police is crucial because, to a large degree, an officer's attitude and demeanor will frame a child's conception of the juvenile justice system. The majority of police-juvenile contacts pertain to minor legal matters. The actual number of youth who come in contact with police officers and are simply reprimanded or warned cannot be ascertained as most of these encounters are brief and result in no further action. Uniform Crime Report statistics, though, do reveal that a total of 126,517 juveniles in 1975 were brought into custody or referred to police juvenile bureaus by police officers.[2]

Police diversion can occur any time between contact with a juvenile and court referral. Diversionary alternatives other than routine "street diversion" include warning and release, referral to a police-operated diversion program or referral to community service agencies. Once a juvenile is brought to the police station for questioning or other purpose and turned over to the juvenile bureau, the juvenile officer must utilize discretion in deciding the appropriate course of action. It is at this point where the decision to divert or initiate a complaint must be made.

Although approximately 40 police departments have special juvenile units or bureaus, it is usually up to the regular patrol officers to bring youth in contact with the juvenile bureau as few are in operation 24 hours a day, seven days a week. It is necessary, therefore, that all patrol officers as well as specifically designated juvenile officers make effective use of their discretionary authority in dealing with juveniles and in identifying youth who need services, court referral or simply a warning.

New Jersey police officers make wide use of discretionary authority in dealing with juveniles, as evidenced by the fact that only 46.6% of the juveniles brought into police custody in 1975 were referred to court. Although the majority of juvenile matters are disposed of informally, the discretionary authority of police to divert has never been formally recognized by statute. Few would argue, though, that the enforcement of law does not require broad discretionary authority. How to regulate, control and implement this authority continues to be a subject of study.

The decision to divert is related to a variety of factors. Several studies have concluded that the seriousness of the offense is the primary determinant of police disposition of juveniles. Some have found that the attitude of the victim is the best indicator of police action whereas others conclude that race is a significant factor. Sanction probabilities have also been found to be harder for unusually respectful and disrespectful juveniles.[3]

As illustrated in Tables 1-4, wide differences in referral practices exist between New Jersey police departments. Even departments serving similar-type cities exhibit varying methods of handling juveniles. It has been suggested that varied rates of diversion are indicative of a lack of agreement on what is considered appropriate criteria for diversion. The exercise of police discretion to divert has not been guided or structured by formalized procedures to promote uniform treatment and handling of juveniles. Written policies and procedures, developed in conjunction with court personnel and community agencies and applied on a statewide basis are needed.

The role of police in preventing delinquency is crucial. Police are in a unique position "as the eyes and ears of a community," to discover causes, conditions and unmet needs responsible for juvenile delinquency.[4] Problems which are not the responsibility of the police should be brought to the attention of other community agencies. If needed services are lacking, police are in a position to expose gaps in existing services.

A broader perspective, stressing the police as a part of a larger processing mechanism which starts in the community, would lead to greater prevention and diversion rates. If police are to be effective in preventing delinquency and diverting youth, they must develop close working relationships and liaisons with community agencies. The suitability, availability and accountability of community services are crucial considerations for police referral.

> Diverting youngsters back to the community is obviously highly dependent upon the community's willingness to report them to the police in the first place and to absorb them following diversion . . . If police are to divert, they can best do so on the assumption that there is someone or something there that will help prevent that youngster's reappearance.[5]

Prior to the signing of a complaint, every avenue of informal or nonjudicial settlement appropriate for the juvenile and acceptable to the complainant should be explored. Frequently, citizens who wish to sign a complaint against a juvenile desire only recompense, and this could be accomplished informally, thus obviating the need for court attention. Parents who want to sign a complaint against their child more than likely are seeking help in dealing with a troublesome youngster or a difficult family situation. Referral to community services should be considered in these instances before relying on the court for assistance. Unfortunately, the provision of pre-complaint screening and referral services at the police contact level has not been developed to its fullest potential since few police departments have structured juvenile aid bureaus complete with civilian counseling staff that can provide services and referral to other agencies.

Regardless of the referral decision, police departments customarily retain internal records on juveniles who come in contact with police. Internal reporting and recording procedures vary among police departments although it is commonly recognized that many juvenile officers or bureaus maintain index

Table 1

Police Disposition of Juveniles Taken Into Custody — 1976

Department	Handled Within and Released		Referred to Court		Other Disposition*		Total	
	No.	%	No.	%	No.	%	No.	%
Asbury Park	305	44.8	367	53.9	9	1.4	681	100%
Atlantic City	573	40.9	829	59.1			1402	
Burlington	70	31.7	151	68.3			221	
Bridgeton			534	100.0			534	
Bloomfield	527	63.6	287	34.6	15	1.8	829	
Bernards	51	25.4	148	73.6	2	1.0	201	
Deptford	39	8.3	431	91.7			470	
Dover Twp.	478	59.1	331	40.9			809	
Lower Twp.	92	42.2	126	57.8			218	
Lawrence	172	58.7	114	38.9	7	2.4	293	
Long Branch			436	100.0			436	
Maplewood	589	86.5	86	12.6	6	.9	681	
Middletown	211	25.8	555	67.9	51	6.2	817	
Morristown	262	21.2	893	72.4	79	6.3	1234	
Orange	196	41.6	275	58.4			471	
Pennsville			141	100.0			141	
Pleasantville	240	40.3	333	56.0	22	3.7	595	
Pt. Pleasant Boro.	166	57.4	123	42.6			289	
Raritan			385	99.7	1	.3	386	
Sparta	124	72.9	43	25.3	3	1.8	170	
Teaneck			502	100.0			502	
Vineland			770	100.0			770	

Source: Statistics reported by each police department to the Uniform Crime Reporting Unit of the New Jersey State Police, West Trenton, New Jersey

* Includes referral to a welfare agency, other police agency, or to criminal/adult court

Table 2

Police Disposition of Juveniles Taken Into Custody — 1976 for Departments Sampled With Juvenile Aid Bureaus

Department	Handled Within and Released		Referred to Court		Other Disposition*		Total	
	No.	%	No.	%	No.	%	No.	%
Camden	453	27.8	1175	72.2			1628	100.
Cherry Hill**	609	49.0	619	49.8			1228	
Clifton	679	50.8	698	48.5	10	.7	1387	
Englewood	209	46.1	238	52.4	7	1.5	454	
Edison	321	63.6	184	36.4			505	
Elizabeth	1418	70.9	568	28.4	13	.7	1999	
Franklin	208	40.6	286	55.9	18	3.5	512	
Hamilton Twp.**	498	39.4	739	58.5	26	2.1	1263	
Jersey City	539	20.0	2156	80.0			2695	
Kearny	683	64.9	367	34.8	3	.3	1050	
Keansburg	143	28.4	356	70.8	4	.8	503	
Lyndhurst	318	76.3	97	23.3	2	.4	417	
Metuchen	202	41.1	190	38.7	99	20.2	491	
Newark	191	3.9	4717	96.1			4908	
Parsippany-T.H.	311	53.4	270	46.3	2	.3	583	
Paterson	2542	61.7	1489	36.1	90	2.2	4121	
Plainfield	690	59.7	432	37.4	33	2.9	1155	
Pennsauken**	252	38.8	396	60.9	2	.3	650	
Phillipsburg	169	38.3	242	59.9	30	6.8	441	
Roselle	376	67.4	182	32.6			558	
Sayreville	166	39.5	251	59.8	3	.7	420	
South River	65	36.9	103	58.5	8	4.6	176	
Trenton	1227	41.3	1297	43.7	447	15.1	2971	
Union Twp.	176	25.8	507	74.2			683	
Union City			385	99.7	1	.3	386	
Wayne	668	51.6	590	45.6	37	2.9	1295	
Willingboro	575	87.9	69	10.5	10	1.6	654	
Woodbridge	985	58.5	682	40.5	18	1.1	1685	

Source: Statistics reported by each police department to the Uniform Crime Reporting Unit of the New Jersey State Police, West Trenton, New Jersey.

* Includes referral to a welfare agency, other police agency or to adult/criminal court.

** These departments' juvenile aid bureaus have been recently funded

Table 3

Police Disposition of Juveniles Taken Into Custody — 1975

Department	Handled Within and Released		Referred to Court		Other Disposition*		Total	
	No.	%	No.	%	No.	%	No.	%
Asbury Park	240	40.1	352	58.9	6	1.0	598	100.0
Atlantic City	662	41.9	913	57.7			1575	
Burlington	186	70.2	79	29.8			265	
Bridgeton			496	100.0			496	
Bloomfield	696	71.0	267	27.2	18	1.8	981	
Bernards	97	56.1	75	43.4	1	.6	173	
Deptford	31	11.6	236	88.4			267	
Dover	683	82.4	146	17.6			829	
Lower Twp.	119	50.2	118	49.8			237	
Lawrence	115	54.5	92	43.6	4	1.9	211	
Long Branch			503	100.0			503	
Maplewood	624	89.7	72	10.3			696	
Middletown	326	34.0	633	65.9	1	.1	960	
Morristown	150	16.8	703	78.8	39	4.4	892	
Orange	188	37.1	318	62.7	1	.2	507	
Pleasantville	214	33.5	394	61.8	30	4.7	638	
Pt. Pleasant	180	70.6	75	29.4			255	
Pennsville			104	100.0			104	
Raritan	51	60.0	31	36.5	3	3.6	85	
Sparta	127	77.9	30	18.4	6	3.7	163	
Teaneck			509	100.0			509	
Vineland			672	100.0			672	

Source: Statistics reported by each police department to the Uniform Crime Reporting Unit of the New Jersey State Police, West Trenton, New Jersey.

* Includes referral to a welfare agency, other police department or adult/criminal court.

Table 4

Police Disposition of Juveniles Taken Into Custody — 1975 for Departments Sampled With Juvenile Aid Bureaus

Department	Handled Within and Released		Referred to Court		Other Dispositions*		Total	
	No.	%	No.	%	No.	%	No.	%
Camden	511	26.3	1436	73.8			1947	
Cherry Hill*	481	44.0	609	55.7	4	.4	1094	
Clifton	525	54.6	424	44.1	13	1.4	962	
Englewood	203	51.7	184	46.8	6	1.5	393	
Edison	520	66.0	268	34.0			788	
Elizabeth	1453	69.7	603	28.9	30	1.5	2086	
Franklin	159	43.4	183	50.0	24	6.6	366	
Hamilton Twp.**	517	49.1	521	49.4	15	1.5	1054	
Jersey City	1415	45.7	1684	54.3			3099	
Kearny	847	71.4	340	28.7			1187	
Keansburg	222	36.8	379	62.8	2	.3	604	
Lyndhurst	240	73.9	80	24.6	5	1.5	325	
Metuchen	188	59.3	72	22.7	57	17.9	317	
Newark	159	3.3	3681	77.3	923	19.4	4763	
Parsippany-T.H.	272	53.8	231	45.7	3	.6	506	
Paterson***	2451	61.0	1433	35.6	137	3.5	4021	
Pennsauken**	434	46.5	500	28.1			934	
Phillipsburg	140	37.7	213	57.4	18	4.9	371	
Plainfield	662	55.8	524	44.2			667	
Roselle	487	71.9	190	28.1			677	
Sayreville	185	39.8	276	59.4	4	.9	465	
South River	71	32.7	137	63.1	9	.9	217	
Trenton	1289	41.3	1304	41.8	528	16.9	3121	
Union Twp.	187	26.9	505	72.6	4	.5	696	
Union City			277	100.0			277	
Wayne	806	55.9	585	40.6	52	3.6	1443	
Willingboro	511	26.3	1436	73.8			1947	
Woodbridge	1041	56.6	786	42.7	12	.7	1839	

Source: Statistics reported by each police department to the Uniform Crime Reporting Unit of the New Jersey State Police, West Trenton, New Jersey.

* Includes referral to a welfare center, other police department or to adult/criminal court.

** These departments' juvenile aid bureaus have been recently funded.

*** Does not include statistics for the month of February.

cards on known juveniles. Entries are made whenever an apprehension, contact or disposition is made. In addition, many police departments utilize the adult Uniform Crime Report (UCR) arrest form to record the taking of juveniles into custody. This form is utilized even though it is designed specifically for adult or criminal use. When such a form is used, four copies are required and the majority are disseminated to county or State level agencies.

An adequate, accurate system for recording contacts, complaints, investigations and dispositions should be maintained by all police departments. Good records can provide a sound basis for decision-making and are necessary for administrative control, policy-making and planning. In light of present concerns for the security and privacy of personal data maintained in informational systems, guidelines structuring the recording, maintenance and dissemination of juvenile information are urgently needed. A separate information and reporting system, complete with specialized forms, is desirable.

Since juveniles account for approximately half of the arrest activity of many police departments and constitute a large segment of reported crime, one would expect that the juvenile bureau of most police departments commands a correspondingly large proportion of manpower and resources. This is rarely the case, however. Only 40 of the 469 departments in New Jersey have specialized units or bureaus. Most departments, especially the smaller agencies, do not have a juvenile officer available on each shift. Moreover, many departments do not have designated juvenile officers. The importance of juvenile work and the need for specialization has drawn little attention from police chiefs and executives. Delinquency control is an integral part of police work and effective control requires departmental juvenile specialization.

The selection "process" for juvenile assignments in many police departments impedes efforts for specialization. Many departments rotate officers in and out of juvenile bureaus, without consideration of whether an officer has an aptitude for working with youth. In addition, promotional opportunities generally are not available in juvenile bureaus, thus officers who like working with youth must choose between remaining in juvenile bureaus or advancing their careers.

Specifically designated assignments require specialized training. Basic police training in juvenile relations and handling has been grossly overlooked. Of the 280 hours in basic training required to be completed by police recruits, only six hours is mandated for youth relations. A State Police survey of police academies in 1976 found that "almost without exception the only block of instruction dealing with youths or juveniles was the six hour block of instruction as set forth by the PTC."[6] An increase in required juvenile related training which corresponds to the magnitude of police-juvenile activity is urgently needed.

Juvenile training cannot stop at the entry level but must be periodically reinforced through in-service training. However, the need for continued training has not only been overlooked, it has been ignored. No New Jersey police academy, until recently, offered any post graduate courses or seminars on juvenile justice. To help fill this void, the New Jersey State Police recently initiated an in-service training program for juvenile officers, which consists of 20 one-week training cycles offering 40 hours of instruction. Additional juvenile training efforts for both juvenile officers and patrol officers are needed.

Court Intake and Diversion

Although more than half of the juveniles taken into custody by police never penetrate any further into the juvenile justice system, the number of complaints referred to court continues to rise. Many of the cases that are referred to the juvenile court, however, do not require formal court intervention. These cases are more appropriately disposed of through informal adjustments or other alternatives to system processing. To facilitate the diversion of cases from the court in a systematic fashion, an intake unit model was designed and implemented on an experimental basis in Morris County in 1972 to screen and divert as many cases as possible prior to court attention. Initiation of juvenile court intake services first in Morris County and later in other jurisdictions has allowed diversion from traditional court processing to occur through the provision of complaint screening and referral to either community agencies or nonjudicial settlement.

To understand more completely the relationship of court intake services to diversion, a discussion of the intake concept is necessary. The intake process is initiated with the receipt of a complaint, either from the police or originating directly from a parent, school or social service agency. At this first stage, a screening of the complaint and investigation of the details surrounding the incident is conducted to determine whether or not additional court action should be taken. If judicial attention is deemed necessary, a complaint is either filed with the court or forwarded to the court clerk for placement on the court calendar.[7] If the interests of the public and the juvenile do not warrant further court attention, intake staff must consider alternative methods of appropriately disposing of the matter. It is at this stage that the decision to divert, one of the most important goals of intake, is made.

Alternative methods of case disposition usually consist of pre-judicial conferences and juvenile conference committee referrals. Pre-judicial conferences are meetings held with the intake worker and juvenile, family, complainant or any other involved person during which a satisfactory adjustment of the matter is sought. Referrals to community ser-

vices are often included as part of the settlement.

Juvenile conference committees consist of between six and nine community members, representative of the various socioeconomic, social and ethnic characteristics of the community. Court Rule 5:10-2 authorizes the appointment by the court of one or more juvenile conference committees for a county. Minor juvenile complaints, usually for delinquency matters, are referred by intake staff to the committees for consideration. Conference committees exist both in counties with and without intake services and where there is no intake service, referrals are secured directly from the court. It is the function of the committees to express community disapproval and recommend behavior limits or requirements.

The juvenile participates in diversionary programs only on a voluntary basis. For both pre-judicial and conference committee dispositions, if a satisfactory adjustment is made within a certain time period, intake staff will recommend to the court that the matter be dismissed. If a satisfactory adjustment is not reached and other alternatives prove unsuccessful, referral to court for an adjudicatory hearing is necessary.

Juvenile court intake units have been established in Atlantic, Bergen, Camden, Cumberland, Essex, Hudson, Mercer, Middlesex, Morris, Passaic, and, in 1977, Burlington, Monmouth, Ocean and Union Counties. These units operate directly under the control of the presiding juvenile judge. In addition, intake screening services are provided in Somerset County by the probation department, which has been providing such services for over ten years. In these counties, most of the court processes and decisions surrounding such areas as detention or shelter admissions, calendaring, complaint screening and diversion can be centralized and coordinated. Fundamental differences in procedures and available services currently exist between courts with intake unit components and those jurisdictions lacking such services. These differences between counties have resulted in the existence of two diverse methods of processing juvenile complaints in New Jersey.

Courts with intake units are provided with comprehensive screening and review of all cases, and those juveniles who do not warrant additional court attention are systematically diverted. Complaint screening not only identifies juveniles who could best be helped by nonjudicial settlement, but also those that are chronic or serious offenders and need court intervention and possible segregation from society. Although courts without intake components have some type of complaint receiving mechanism, the capability and resources for consistent case screening and referral are limited. In jurisdictions lacking intake unit services, initial detention or shelter admissions may be made without direct court control and may not be authorized by the court until the detention hearing, usually the morning after admission.

Aside from basic variances between jurisdictions that have or do not have intake units, multiple differences also exist among those jurisdictions with intake services. Although most intake units have responsibility for detention and shelter admissions and complaint referral to pre-judicial conference, juvenile conference committee or on to court, standardized procedures and mechanisms for intake units have not yet been determined nor put into operation in all units. It is hoped that this matter will be rectified with the dissemination of a juvenile court intake manual which is awaiting Supreme Court approval.

One such procedural difference which impinges upon the ability to utilize court complaint statistics for analytical or comparison purposes is the various methods of docketing court complaints. In some jurisdictions, such as Morris County, all complaints referred to the court are first received in the intake unit. After review, only those cases necessitating court action are forwarded to the court clerk for docketing and thus considered as complaints referred to court. In other jurisdictions, all complaints are first forwarded to the court clerk for docketing and then received by intake staff. Data for complaints referred to court thus take on different meanings depending upon the docketing procedure utilized.

Aside from intake unit procedural variances, juvenile conference committes also exhibit diversity in regard to composition, referral rate, types of referrals and dispositions. Conference committees may hold cases in abeyance for as long as six months pending satisfactory conclusion. During such time, case settlement may not be reported to the court, causing confusion regarding referral outcome.

The effectiveness of conference committees hinges upon how well referral applications for conference committee consideration are screened and also upon how well the whole process is supervised. In jurisdictions with intake units, the capacity exists for referral screening and for the supervision and coordination of conference committees.

Juvenile and Domestic Relations Courts that have an intake service component also have a greater chance to standardize and unify procedures within their jurisdiction. Intake services are also a prerequisite to a family court operation that treats the family as a whole under one court jurisdiction. Once intake services are provided for Juvenile and Domestic Relations Courts, the mechanism can be expanded to provide family intake, screening and referral to appropriate social service agencies. What is needed is the establishment of court intake services in all court jurisdictions to provide immediate benefit for Juvenile and Domestic Relations Courts and to initiate development of a Family Court when such a jurisdiction is created. Services and procedures should be coordinated on a statewide basis for maximum benefit.

New Jersey's Status in Comparison With the National Standards

The National Advisory Commission and American Bar Association, in comprehensive studies of the criminal justice system proposed numerous standards dealing with police and courts and their role in diversion. Only the National Advisory Commission touched upon several aspects of the juvenile justice system although no systematic view of delinquency prevention or juvenile justice was attempted.

A second National Advisory Committee, chaired by Governor Brendan Byrne, has since been created and a Task Force on Juvenile Justice and Delinquency Prevention appointed. Standards are also being formulated for the juvenile justice system by the Institute of Judicial Administration/American Bar Association Joint Study Commission (IJA/ABA). However, Task Force and IJA/ABA standards were not available for the Committee's use in formulating standards for New Jersey. Hence, the following comparisons are made primarily with those original NAC standards that dealt specifically with juveniles.

Police Diversion

The National Advisory Commission (NAC) on criminal Justice Standards and Goals recommends in Police Standard 1.3 that every police agency acknowledge the existence of police discretion in the form of policy guidelines that establish the limits of discretion to eliminate discriminatory enforcement of the law and guide the use of arrest alternatives. NAC Police Standard 4.3 also recommends that every police agency divert from system processing any individual for whom the purpose of the criminal or juvenile process would be inappropriate or in whose case other resources would be more effective. Written procedures for diversion developed and prepared in cooperation with other system components to ensure coordination are also recommended. In its more recent effort, NAC recommends further, in Police Standard 4.5 that there be some procedural differences in police operations when dealing with juveniles. For example, police should be able to refer, and they should be required to notify parents. NAC also suggests that police policy should be an expression of community standards and that police chiefs include juvenile justice system personnel, community youth-serving groups and educators in formulating police-juvenile policy. Police Standard 4.4 suggests the legislature and courts encourage or require police administrative rule-making and that written administrative procedures be established to structure the use of discretion.

In Police Standards 5.10 and 5.11, NAC recommends that police divert those juveniles for whom formal proceedings would be inappropriate or other resources would be more effective. Referrals to court intake should be restricted to those involving serious delinquent conduct or repeated law violations of more than a trivial nature.

During 1975, New Jersey police departments brought into custody a total of 126,517 youths of whom 58,978 or 46.6% were referred to court.[8] The remaining 53.4% were excluded from system processing and were either handled within police departments or referred to other agencies. Since less than half of the juveniles taken into custody are referred to court, it is obvious that police are widely utilizing their discretionary authority and are diverting most of the juveniles with whom they come in contact. However, an analysis of staff-conducted questionnaire responses of police departments with more than 100 sworn officers reveals that only half have developed written standard operating procedures or departmental guidelines for dealing with juveniles.

The National Advisory Commission further recommends in Police Standard 9.5 that police departments with more than 15 employees establish juvenile investigation capabilities by creating juvenile specialist positions. Departments with more than 75 employees or where conditions warrant should establish separate juvenile units responsible fo. investigating juvenile matters, providing assistance and maintaining liaison with other agencies concerned with juveniles. The 31 New Jersey departments that have over 100 officers have established juvenile units and initial data suggest the majority of departments with more than 50 sworn officers also have such capabilities.[9]

Police Standard 9.5 requires that all police officers receive special training in juvenile delinquency prevention and juvenile problems. The New Jersey mandated basic police training curriculum currently requires six hours of training in youth relations. Of the nine academies commencing basic training sessions this fall, four offer the mandated six hours of instruction in youth relations, four offer seven hours and one offers seven and a half training hours. However, no in-service training is required for juvenile officers/specialists. Questionnaire data reveal that of the departments with over 100 sworn officers only 25% provide any formalized special training for juvenile officers/specialists. Data from these and other departments suggest the most frequently used mode of training for juvenile officers in New Jersey is on-the-job experience. To help meet the critical need for training, the New Jersey State Police recently initiated a 40 hour in-service training program for juvenile officers. Approximately 170 officers have completed the course thus far.

NAC Police Standard 9.5 also states that juvenile specialists should provide support and coordination of all community efforts for the benefit of juveniles and actively employ all available resources to deter

delinquency. The newly-created NAC also advises police undertake an active prevention program. In Police Standards 6.1-6.5, it is recommended police encourage interdisciplinary juvenile justice coordinating councils, cooperate with other agencies to employ all available resources to detect and prevent delinquency, make full use of youth service bureaus, develop delinquency prevention programs in the schools, appoint school liaison officers and undertake leadership in recreational programs for juveniles.

A total of 30 police departments in New Jersey have developed juvenile aid bureaus funded by the State Law Enforcement Planning Agency which provide juvenile units with civilian counseling components. Juvenile aid bureaus attempt to maximize the benefits of diversion at the police level by providing counseling services and referral to other community services based upon the needs of youth who come in contact with police.

Among juvenile aid bureaus, three slightly different referral methods are used. Police alone may make the decision to refer a youth to counseling; the decision may be made jointly by the police officer and the counselor; or police may make most decisions, consulting counselors regarding the more complex cases. Most bureaus operate under the latter method.

Juvenile aid bureaus may be located either within the police department, as in Trenton, Camden or Metuchen, or separate from the department, as in Elizabeth, Sayreville and Edison. In some, only the civilian counseling staff are located separate from police headquarters. The services offered by juvenile aid bureaus also vary although most offer individual counseling, some family and group counseling, referrals and diagnostic assessment by consultants. Statistics for departments with juvenile aid bureaus show marked differences in rates of diversion and court referrals. Anywhere from 0% to 88% of the juveniles taken into custody by these departments are handled within and released. Thus, a range of policy and procedural differences and court referral disparities, even among departments with organized youth aid services, is clearly indicated.[10] (See Tables 1-4 pg. 245.)

Court Intake and Diversion

In Corrections Standard 8.2, the National Advisory Commission recommends that each juvenile court jurisdiction establish within the court organized intake services to operate as part of or in conjunction with detention centers. Intake services should divert as many youngsters as possible from the juvenile justice system through screening and referral and also reduce the detention of youth to an absolute minimum. The more recent NAC also endorses the intake concept, with one significant change. In Intake, Investigation and Correction (IIC) Standard 21.1, it recommends intake should be the responsibility of a state executive branch agency which should serve three functions: to act for the court in screening applications for petitions; to act for the court by developing the necessary dispositional information and to serve as the intake apparatus for correctional dispositions. This standard is consistent with NAC's overall scheme to combine court intake, probation, corrections and parole functions under one executive branch agency.

Such is not the case in New Jersey, where intake and probation are the responsibility of the judicial branch of government. There has been no movement to combine these functions as suggested by NAC into a single agency. Currently, court intake units are operating in 14 counties and plans are under development to include remaining jurisdictions in the near future. These intake units receive all complaints referred to the court and initiate screening on the basis of the nature of the charge, facts surrounding the incident and any prior record or treatment history of the juvenile. Complaints are either held for prejudicial conferences, referred to juvenile conference committees or appropriate social services or placed on the court calendar. Over 24% of the juvenile complaints recorded as received by the court in 1975 were referred or diverted from court attention.[11] Of those complaints referred, 11,098 were sent to juvenile conference committees.[12] The present manual for juvenile conference committees restricts conference committee jurisdiction to only minor delinquency offenses; however, some JINS complaints are still referred to the committees. A new manual under preparation by the Administrative Office of the Courts (AOC) will further clarify conference committee jurisdiction. Currently, little is documented regarding the activities of the committees, the operational procedures utilized or the effect of any recommendations upon the juveniles. Continuing research by AOC will explore these areas in an effort to assess the effectiveness of the conference committee concept.

In addition to diverting cases from the court, intake units in New Jersey are also responsible for authorizing admittance of juveniles into detention or shelter facilities in accordance with *N.J.S.A.* 2A:4-42. Although this procedure in jurisdictions with intake services is in compliance with NAC recommendations in Corrections Standard 8.1 and 8.2, police officers in conjunction with detention and shelter personnel must make the determination to detain in those counties lacking intake units.

One important difference in ideologies exists between the NAC recommendations and New Jersey juvenile court practices. The first NAC believed that only delinquent offenses as opposed to JINS offenses should be subject to official court sanction and all other offenses or complaints should be diverted to

more appropriate programs. This approach was modified somewhat by the second NAC, which recommends the establishment of a Family With Service Needs jurisdiction of the family court to have jurisdiction over certain specific status offenses, namely: truancy, repeated disregard for parental authority, repeated running away, repeated use of intoxicating beverages and delinquent acts committed by a juvenile under the age of 10 (See Judicial Process chapter for a more complete discussion of this issue).

New Jersey retains jurisdiction over status offenses and defines a juvenile who is alleged to be in need of supervision as one who is:

1. habitually disobedient to his parent of guardian
2. ungovernable or incorrigible
3. habitually and voluntarily truant from school
4. or has committed an offense or violation of a statute or ordinance applicable only to juveniles (*N.J.S.A.* 2A:4-45).

During 1975, a total of 82,583 complaints were filed in juvenile court, 74,480 or 90.2% alleging delinquency and 8,103 or 9.8% alleging in need of supervision (JINS).[13] Adjudicatory court hearings were held for 6,090 or 75.2% of these JINS complaints whereas only 68.8% of the delinquency complaints were scheduled for hearings. Both JINS and juvenile delinquents are subject to official court intervention although all juveniles in need of supervision and delinquents not represented by counsel at the adjudicatory hearing cannot be committed to correctional institutions.

The National Advisory Commission further recommends in Corrections Standard 8.1 through 8.4, specific procedures and operational standards regarding juvenile detention and shelter facilities, a family court jurisdiction and how these areas interrelate with juvenile intake services. Assessment of these areas and a review of New Jersey's status in comparison with these NAC standards is discussed in other chapters.

Commentary

To promote system improvement, the Advisory Committee has undertaken a comprehensive investigation of the juvenile justice system and has recommended appropriate standards and guidelines where necessary. The Committee has initiated its study at system entry points, concentrating on the diversion of youth from justice system processing.

The Committee acknowledges that diversion is an acceptable and in many cases preferred method of handling juveniles who commit minor offenses or who are in need of supervision. It is not appropriate for chronic or serious offenders. Since most juveniles initiate system involvement through contact with law enforcement agencies, standards to structure the use of police discretionary authority in handling juvenile procedures comprise initial recommendations.

The lack of uniform procedures has long been a problem of the juvenile justice system. To rectify this situation, the Committee in Standard 1.1 calls for the development and dissemination of a State level manual for law enforcement agencies to serve as a guide in the handling of juveniles. The Department of Law and Public Safety in cooperation with appropriate State and local agencies would be a logical depositary. As such, the Attorney General would have ultimate responsibility.

In addition to a statewide manual, the Advisory Committee recommends in Standard 1.2 that each police department develop its own juvenile manual to incorporate the recommended guidelines as well as available local resources and required practices. Although the development of a State level manual may necessitate the appropriation of funds, local police departments should take the initiative in developing departmental manuals and in adopting the proposed standards.

A concern has been raised by the judiciary regarding the referral of juveniles to diversionary alternatives in lieu of court referral. To alleviate any possibility for abuse, the Advisory Committee recommends police referral criteria be developed in conjunction with the courts. Once a complaint is signed, the matter becomes the responsibility of the court. Police should not attempt to divert juveniles whose actions have resulted in signed complaints. Discretionary authority should be utilized to screen cases prior to the signing of a complaint.

The Advisory Committee further recommends in Standard 1.3 that each police department designate at least one officer as a juvenile officer to be responsible for all juvenile matters. Where conditions and available personnel warrant, separate juvenile bureaus should be established. The Committee also recognizes the importance of relevant selection criteria and the necessity for specialized police training in juvenile matters. Specific criteria are recommended in Standard 1.5 for the selection of juvenile officers as well as a minimum of 40 hours of in-service training. It is also suggested that promotional capabilities be built into the juvenile bureau so that juvenile officers need not be forced to choose between working with juveniles and a career advancement.

In recognition of the need to protect the security and privacy of information, the Committee in Standard 1.6 urges the development of a separate juvenile information system and the concurrent development of reporting forms and techniques specifically

tailored to the informational needs of the juvenile justice system. Guidelines for the internal record keeping of police information relating to juveniles are proposed. In the interim, police departments immediately should delete all identifying information from reports released for statistical purposes. It is anticipated that these recommendations as well as any future proposals relevant to informational systems will be coordinated with the ongoing development of the Systems Master Plan.

The Advisory Committee advocates the establishment of court intake units in every Juvenile and Domestic Relations Court. Until this is accomplished, two different methods of processing juvenile complaints will co-exist in New Jersey. Although many counties have instituted court intake units, procedures are not uniform throughout the State. The Advisory Committee therefore recommends general guidelines which should be incorporated into a statewide manual for the operation of intake services. Such a manual has been proposed by the Supreme Court's Task Force On Juvenile Justice and is awaiting Supreme Court approval. It is anticipated that the intake manual will assimilate the proposed standards and that it will address itself to any additional Supreme Court rules necessary to ensure the juvenile's due process.

In Standard 1.8 the Committee stresses the importance of having intake units under the direct authority of the presiding judge of the Juvenile and Domestic Relations or Family Court. While under the court's supervision, they may be administered by the probation department. The Advisory Committee also desired the services of pretrial intervention programs, which are designed for adult defendants, be made available to juvenile defendants where necessary and appropriate.

Recommendations are also offered in Standard 1.13 to structure and guide the use of juvenile conference committees and follow-up practices. The present manual for juvenile conference committees is under revision as recommended by the Advisory Committee.

References

[1]State of New Jersey, Div. of State Police Uniform Crime Reporting Unit, *Crime in New Jersey-1975: Uniform Crime Reports,* West Trenton, New Jersey, pp. 52, 62.

[2]Ibid., p. 67.

[3] See, for example: Nathan Goldman, *The Differential Selection of Juvenile Offenders for Court Appearance,* National Council on Crime and Delinquency, 1963, p. 85ff; Dav id Matza, *Delinquency and Drift,* New York, John Wiley and Sons, Inc.; Dennis C. Sullivan and Larry J. Siegel, "How Police Use Information to Make Decisions," *Crime and Delinquency,* July, 1972, p. 27; Donald J. Black and Albert J. Reiss, Jr., "Police Control of Juveniles," *American Sociological Review,* Vol. 35, No. 1, February, 1970, pp. 63-77; William Hohenstein, "Factors Influencing the Police Disposition of Juvenile Offenders," *Delinquency-Selected Studies,* Thorsten Stellin and Marvin D. Wolfgang, eds., New York, John Wiley and Sons, Inc., 1969.

[4]Commonwealth of Pennsylvania, Dept. of Public Welfare, Office for Children and Youth, *Practice Guides No. 3—Police Work With Children,* Office for Children and Youth, August, 1963, p. 1.

[5]Malcolm W. Klein, "Issues in Police Diversion of Juvenile Offenders," in *Back on the Street,* by Robert M. Carter and Malcolm W. Klein, Englewood Cliffs, New Jersey, Prentice-Hall, Inc., 1976, pp. 92-93.

[6]New Jersey Department of Law and Public Safety, Div. of State Police, "Juvenile Justice Training—The Police Role", application for State Law Enforcement Planning Agency grant, 1976.

[7]In some counties, all complaints received by intake are considered as "complaints filed" whereas in other counties, only those cases placed on the court calendar are counted as "complaints filed."

[8]State of New Jersey, *Crime in New Jersey-1974: Uniform Crime Reports,* Table 21, "Police Disposition of Juveniles Taken Into Custody, 1975," p. 67.

[9]At the time of the survey, departments with over 100 sworn officers were as follows: Atlantic City, Bayonne, Bloomfield, Camden, Cherry Hill, Clifton, East Orange, Edison, Elizabeth, Hackensack, Hamilton Twp., Hoboken, Irvington, Jersey City, Kearny, Linden, Montclair, Newark, New Brunswick, North Bergen, Orange, Passaic, Paterson, Perth Amboy, Plainfield, Trenton, Union City, Union Twp., Wayne, West Orange and Woodbridge.

[10]Data obtained from New Jersey State Police, *Monthly Reports on Juvenile Dispositions,* submitted to the Uniform Crime Report Statistics Unit, West Trenton, New Jersey, for 1975, 1976.

[11]The percentage of complaints diverted from court is actually much larger because this figure does not include those complaints screened out of the system prior to docketing (as in Morris County).

[12]Statistics gathered from the *Monthly Report on Juvenile Delinquency Complaints* and *the Monthly Report on Juveniles in Need of Supervision Complaints,* sent from all juvenile courts to the Administrative Office of the Courts, Statistical Services Unit, compiled for the 1975 calendar year.

[13]Figures obtained from the monthly reports submitted to the Statistics Unit of the Administrative Office of the Courts, State House Annex, Trenton, New Jersey.

COMMUNITY INVOLVEMENT

Introduction

Causes of delinquency are deeply rooted in our society. The educational, social and economic dimensions of delinquency demand intensive research beyond the scope of this study. What can be discussed at this point, however, are selected methods to keep pre-delinquent behavior from graduating into delinquent or criminal actions necessitating justice system involvement.

Juvenile crime is rising at a rate faster than adult crime while at the same time the age of juveniles committing offenses is decreasing. In 1975, 14% of all persons arrested were under the age of 15, 1578 of whom were age 10 or younger.[1]

The potential for modifying pre-delinquent tendencies is greatest when addressed as early as possible and prior to any justice system involvement. We have only recently become aware that crime and delinquency are symptoms of failure and disorganization of communities as well as of individual offenders. The kinds of situations which are manifested in delinquency or negative acting out begin at the grassroots level—in homes, neighborhoods, schools and on the streets. Thus, many juvenile problems are community problems as well and is left unassisted or unrecognized, may develop into even more serious societal difficulties. As a result, communities must accept responsibility for their own problems and become involved in meeting the needs of their youth.

Problem Assessment

One of the earliest proponents of returning responsibility for juvenile problems back to the community was the President's Commission on Law Enforcement and the Administration of Justice. The Commission's proposed system of planned nonjudicial handling for reputed delinquents covered three areas: limiting referrals and the system's ability to accept referrals; creating and strengthening alternative agencies and organizations to deal with putative delinquents; and improving the capacity of the system to divert and refer juveniles to alternative agencies and organizations.[2] This chapter deals with the second proposed course of action.

Since deviant behavior is often the result of socioeconomic factors, community social environments can play an important part in motivating either delinquent or law-abiding behavior. The community has a critical role to play in the prevention of crime and delinquency. A major category of delinquency prevention activities includes those aimed "at what many consider to be the infrastructure of crime; e.g., insufficient education, inadequate job skills, and lack of recreational opportunities."[3] Citizen action in these areas can reduce significantly the need to utilize the sanctions of the juvenile justice system.

Youth Service Bureaus

One of the best ways for communities to provide an organized, integrated approach to its delinquency problem is through the creation of a youth service bureau. Community level services are frequently nonexistent or inaccessible to youth who need such services. Although some communities have youth-serving resources, the capacity to coordinate these resources into a comprehensive referral and service delivery network exists in only a few cities.

The concept of youth service bureaus was given official recognition by the President's Commission, which recommended that such bureaus be established in the community to provide and coordinate programs and services for juveniles. Since 1970, communities around the State have established local and county youth service bureaus which provide a variety of services to juveniles referred to them from the schools, courts and police. These agencies also attempt to coordinate activities for youth provided through other community agencies and to develop services which are needed but do not exist.

The benefits of establishing a youth service bureau are many. The National Advisory Commission points out that "an effective service delivery system in addition to up-grading the quality of life for its clients can reduce the feelings of alienation many citizens have, increase the confidence of these citizens in public and private institutions and foster citizen cooperation with these institutions."[4] While in many communities there are service gaps, there are at the same time duplicated services. Coordination of services to youth in a community, such as that possible through a youth service bureau, is needed to provide maximum benefit from limited resources and finances.

The availability of youth service will help minimize system penetration for some juveniles, thus avoiding stigmatization and labeling. The basic contention of labeling theory is that individuals stigmatzed as delinquent become what they are said to be.[5] Stigmatization has been described as "a process which assigns marks of moral inferiority to deviants; more simply it is a form of degradation which trans-

References for this chapter appear on pages 258 & 259.

forms identities and status for the worse."[6] Thus, the process of getting caught and labeled delinquent may become a major factor which separates official delinquents from the nondelinquent contemporaries. Contact with known delinquents may have a similar effect. It has been noted that "one of the great paradoxes of organized society is that agencies of social control may exacerbate or perpetuate the very problems they seek to ameliorate. In so doing they foster conditions of secondary deviance."[7]

Youth service bureaus are designed to serve both prevention and diversion functions. As centralized referral junctions in the juvenile justice network, youth service bureaus can only succeed with the active participation of the police, court intake and other community resources such as schools and social service agencies. However, these bureaus, where established, have generally been underused as a diversionary resource. To increase diversion capabilities, youth service bureaus should develop and maintain strong relationships with juvenile justice agencies, particularly the police and courts. Accessibility to law enforcement agencies in particular serves to encourage diversion.

The need for alternatives to court processing and the desirability of community and youth involvement in the prevention process are all concerns on which local planning for youth service bureaus should be based. In addition to providing referrals and coordinating service delivery, youth service bureaus should be designed to provide crisis intervention, brokerage and aevocacy. There has been some reluctance to the notion of noncoercive, voluntary services for troubled and troublesome youth. However, the voluntary nature of youth service bureaus and of diversionary referrals must be stressed.

Despite the enthusiasm of many communities for youth service bureaus, recent financial limitations have made it difficult for communities to either absorb the costs of their bureaus or develop new ones. Thus, the majority of troubled youth in New Jersey are denied such services. Legislation to aid the establishment of youth service bureaus would serve to increase public awareness of this concept and stimulate their creation and expansion around the State. Referral and operational guidelines to structure youth service bureaus would help promote their utility and effectiveness.

Education

School is a major part of a child's life and, for many, it is a frustrating experience. When the school environment is not supportive of or rewarding to the student, the experience may help to motivate delinquent behavior, especially if combined with a nonsupportive family environment. Most students desire some kind of recognition and approval, and if they cannot obtain it in the classroom (or at home for that matter), many look for it "on the streets" or from their peers. It is the conclusion of the National Advisory Commission that

> we are doing very little in the schools as a direct, intentional effort to discourage young people from criminal careers. Moreover, there is the strong suggestion that some of the basic conditions of schools which we take for granted actually create the animosities, frustrations and despair that lead people eventually to violence.[8]

Due to financial limitations and long-held customs, school systems tend to be geared toward students with average or above average learning abilities and socially accepted behavior patterns. Those students who do not fit this mold frequently are not provided with effective learning experiences and often they withdraw from the normal school environment.

Educational systems should prepare youth for adult roles in society. Although most students graduate prepared to assume such roles, many, especially those who could not achieve or succeed in the school environment, do not. Alternative ways of providing such students with successful learning experiences must be provided. School systems must learn to deal effectively with students exhibiting pre-delinquent or delinquent behavior if they are to have impact in reducing or preventing delinquency.

For those students failing in the school setting and/or who have become management problems due to a variety of possible reasons—truancy, disruptive behavior, inattentiveness, nonresponsiveness—few school systems provide any alternatives other than suspension and expulsion. These techniques serve primarily to remove problem children from the classroom so that they do not disrupt the learning process for the other students. It does little for the suspended or expelled student, other than compound the difficulties and increase feelings of rejection and failure. Strategies must be considered to serve those who are not succeeding in the present system.

In addition to those students who unofficially "drop out" of the education process, many make the formal move to drop out of the system. Statistics from the Department of Education reveal that from approximately two to eight percent of public school students in grades seven through 12 dropped out of school in the 1974-1975 school year. Cumberland County had the highest drop out rate at 7.9%. Lowest drop out rates were shown in Bergen, Morris and Somerset Counties, all at 1.6%. The statewide average was 3.2%.[9] Arrangements should be made for students identified as probable drop outs to continue their education in new ways that will provide them a chance to succeed in life.

For the 1974-1975 school year, 131,733 individual sessions of truancy or unexcused absences and 137,724 suspensions and expulsions were reported to the State Department of Education.[10] The city of Trenton, one of the larger urban centers of the State,

averages a school absentee rate of 17% and it is interesting to note that as students continue in school, absenteeism increases. Trenton reported overall attendance in elementary school at 92%, junior high at 79% and senior high at 81%. Statistics from juvenile detention centers and shelters also indicate that many of the juveniles detained in such facilities were absent from school for at least two weeks prior to their detention.[11]

It has become apparent that most school systems have no alternatives to deal with disruptive or truant students except the traditional complaint to police departments, suspension or expulsion and, as a result, have not been able to provide such students with effective learning experiences. Mechanisms within the school structure are needed to handle the growing problems of vandalism, disruptive behavior and truancy, and to provide all students with effective learning experiences. The 1977 Criminal Justice Plan for New Jersey prepared by the State Law Enforcement Planning Agency notes the need to develop projects sponsored and implemented by the boards of education to provide activities to handle juveniles who are chronically truant, suspended or expelled. Also recommended are courses in drug and alcohol abuse, sex education and parent effectiveness in elementary through high schools.

Recreation and Employment

The existence of constructive recreation programs and job opportunities can do much to prevent delinquency. In many communities, though, recreational outlets are limited and job markets indicate a critical shortage of employment opportunities for all age groups, especially youth.

Correlations between unemployment or individual failure in the work world and crime suggest there is a causal relationship between the two. The National Advisory Commission points out:

> The immediate institution of vigorous measures to eliminate unequal oppoutunity and to reduce economic deprivation is justified by considerations of elementary fairness alone. The prospect that such measures will also serve the self-interest of the community by reducing levels of crime adds a special urgency to the need for them, and for employing necessary resources in their design and implementation.[12]

Young people, especially if they are minorities or come from inner city areas, have higher unemployment rates and fewer opportunities for work or advancement. A greater emphasis on creating opportunities is needed. The employment sector should institute efforts to expand job oppoutunities to economically disadvantaged youth. Communities should undertake after school and summer employment programs to provide youth with work experience.

Recreation also has a role to play in the prevention or reduction of delinquency. The President's Commission on Law Enforcement and the Administration of Justice noted that "if recreation programs are to have relevance in today's world, they must merge with others to create a total environment serving a central goal of human development."[13] Recreation-oriented delinquency prevention programs must confront the major influences in the lives of youth and must be integrated into the total delinquency prevention effort. Special emphasis should be placed on programs that reach out to juveniles who traditionally reject or avoid established, structured programs. Recreation programs have the potential to provide meaningful relationships with adults. Older youth can be exposed to the responsibility of organizing, planning and conducting activities.

The need for communities to provide increased recreational activity and job opportunities, and to become involved in such programs, must be strongly encouraged. Community efforts to control and combat delinquency should operate on many levels. The President's Commission concluded:

> The first and most basic (level) involves provision of a real oppoutunity for everyone to participate in the legitimate activities that in our society lead to or constitute a good life: education, recreation, employment, family life. It is to ensure such opportunities that schools in the slums must be made as good as schools elsewhere; that discrimination and arbitrary or unnecessary restrictions must be eliminated from employment practices; that job training must be made available to everyone; that physical surroundings must be reclaimed from deterioration and barrenness; that the rights of a citizen must be exercisable without regard to creed or race.
>
> The pursuit of these goals is not inconsistent with the need to strengthen the system of juvenile justice.[14]

New Jersey's Status in Comparison with the National Standards

The National Advisory Commission's Report on Community Crime Prevention recommends many programs that stress community involvement in the prevention of delinquency. A similar study was not undertaken by the American Bar Association; hence, only comparisons with the recommendations and standards proposed by the National Advisory Commission follow. Where appropriate, information has been included regarding the current National Advisory Committee recommendations for delinquency prevention. However, this information was not available when the Governor's Advisory Committee under-

took its study in this area and thus was not considered for comparison purposes or in formulating standards.

Youth Service Bureaus

In Community Crime Prevention Chapter 3, the National Advisory Commission recommends several standards for the establishment and operation of central coordinating units for community services in the form of youth service bureaus. Community Crime Prevention Standard 3.1 suggests the goals and objectives of such bureaus include diversion, provision of services through advocacy and brokerage, system modification and youth development.

As of this writing, 22 officially designated youth service bureaus and mini youth service agencies are in existence in New Jersey. Fourteen serve individual municipalities, two are countywide and six bureaus serve multiple jurisdictions.[15] Goals for New Jersey youth service bureaus as expressed in funding applications include diversion, provision of services, youth development, delinquency prevention and, to a lesser degree, system modification. Many bureaus designate the prevention or reduction of delinquency as top priority and others include the reduction of recidivism, truancy and negative youth experiences as prime objectives. Crisis intervention, improving police skills and confidence and increasing community response are also important objectives. Priorities are determined by the needs of the cities and areas which are provided services by the bureaus.

The National Advisory Commission also recommends in Community Crime Prevention Standard 3.2 that youth service bureaus be organized as independent, locally operated agencies involving community representation. Youth service bureaus in New Jersey are local, independent agencies. Most have advisory boards, councils or committees which assess needs, recommend changes and provide input into policy and program considerations. These councils are composed primarily of community representatives although many include juvenile justice system representatives and youth as well.

It is also recommended that youth service bureaus direct primary attention toward serving justice system referrals under the premise that all referrals be voluntarily accepted (Community Crime Prevention 3.2). Referrals to youth service bureaus in New Jersey are made on a voluntary basis. The bureaus make particular effort to attract referrals from juvenile justice agencies although preliminary evaluation results of research conducted by the Evaluation Unit of the State Law Enforcement Planning Agency indicate that a larger portion of referrals than anticipated come from the schools, community agencies and the youth themselves. Some bureaus receive clients referred from the court as a condition of probation and others have established target age groups. Most youth service bureaus provide referring agencies, with monthly or quarterly progress reports on clients, which is in accord with Community Crime Prevention Standard 3.3. To elicit community youth contact and cooperation, many of the bureaus utilize outreach or street workers and hotlines. Most, if not all, can be contacted on a 24-hour basis.

In regard to functions, the National Advisory Commission suggests youth service bureaus utilize existing community services and provide direct services only if otherwise unavailable (Community Crime Prevention Standard 3.4) In New Jersey, existing services are relied upon where available although all youth service bureaus provide some kind of counseling component as well as referral services. Most also provide tutoring, crisis intervention, recreation, cultural activities and vocational assistance and placement. Additional services include big brother/big sister programs, parent effectiveness training, police training in handling youth problems and alternate school components.

Services and referrals are provided with a minimum of intake requirements as recommended in NAC Community Crime Prevention Standard 3.4. The intake process for the bureaus usually involves an initial staff-client interview to gather basic background information. An assessment period follows during which additional data is gathered and home visits are made. A treatment plan is developed and discussed by a disposition or intake team. After a treatment plan is approved, a youth advocate/counselor is assigned to the client for the duration of the treatment schedule. The youth counselor assists the client in obtaining needed services, checks progress and conducts follow-up.

New Jersey youth service bureaus also comply with Community Crime Prevention Standard 3.4 which recommends that services should be appealing and easily accessible. Most bureaus are in needed locations such as high crime/high population areas. Many remain open in the evenings and on weekends for counseling, recreation, tutoring, drop-in activities and special events. Also as recommended in Community Crime Prevention Standard 3.4, case records are treated as confidential and usually only include the referral package, completed intake form and related data, school and social agency contacts, progress reports and a case summary upon client termination.

The National Advisory Commission in Community Crime Prevention Standard 3.5 recommends that youth service bureaus employ experienced staff and indigenous community workers who can relate to youth. Volunteers and youth should also be encouraged to work with the bureaus. Full-time, experienced staff are employed in all youth service bureaus in New Jersey. Youth service bureaus require directors to possess a master's degree in a related area and from one to five years' experience.

Assistant directors or coordinators as well as counselors are also required to have master's degrees and varying levels of experience. Various other professional staff such as learning specialists, social workers, community resource directors and administrative assistants are employed in many youth service bureaus. All staff, whether professional, paraprofessional or volunteer, are required to possess the ability to relate to and work with youth, and some agencies also require certain staff to be bilingual in Spanish.

In addition to professional staff, numerous volunteer and paraprofessional workers are also utilized as community aides, parent aides, tutors and counselors. Many bureaus also make extensive use of graduate students who satisfy internship requirements by working in the bureaus. High school students are also used in some bureaus to work with younger referrals.

In addition to many recommendations for youth service bureau organization and operation as outlined herein, the National Advisory Commission in Community Crime Prevention Standard 3.6 calls for initial and continued youth service bureau evaluation to assess effectiveness. The Evaluation Unit of the State Law Enforcement Planning Agency is currently researching the effectiveness of youth service bureaus in New Jersey, and 14 of the bureaus are participating in the study. Conclusions will be integrated into the standards and goals process as they are substantiated, thus ensuring continuous refinement of operational standards.

The National Advisory Commission also suggests the appropriation of funds for continued support of youth service bureaus as well as the enactment of legislation to fund partially and to encourage local establishment of such bureaus (Community Crime Prevention Standards 3.7 and 3.8). All youth service bureaus have received or are receiving State Law Enforcement Planning Agency funds although the percentage of local public funds appropriated for the bureaus continues to rise.

The more recent National Advisory Committee further encourages communities to become involved in delinquency prevention. In Delinquency Prevention Standards 1.1 through 1.5, the Committee recommends comprehensive delinquency prevention plans be developed by governments, to include an analysis of the delinquency problem, inventory of available programs, statement of responsibilities and a strategy of prevention. Moreover, individual agency prevention programs should be integrated into community comprehensive plans (Delinquency Prevention Standard 1.6) and localities should be responsible for operating direct service programs for delinquency prevention (Delinquency Prevention Standard 2.1).

The National Advisory Committee also sees a role for State governments in delinquency prevention and recommends in Delinquency Prevention Standard 2.3 a single, state-level agency be created to coordinate such programs. Functions should include coordination on a statewide basis, encouragement of local services, financial support, subsidy funds for all youth-serving agencies, establishing standards for services, training programs, advocacy on behalf of youth and leadership in a statewide plan for delinquency prevention. It is further recommended in Delinquency Prevention Standards 3.1 through 3.8 that the following types of services be made available to youth and families:

1. Public health, to include prenatal and postpartum care.
2. Community mental health.
3. Parent training.
4. Family counseling.
5. Protective services, to include crisis centers and endangered child services.
6. Nutritional services.
7. Information to assist families in meeting basic needs.
8. Day care centers for all ages and for those with special needs.[16]

Education

In its study of community crime prevention, the National Advisory Commission made many suggestions for the education system, electing to entitle them "recommendations" rather than standards. As such, these suggestions or recommendations were intended to chart areas for improvement in the education system. Among the many suggestions is the improvement of the pre-school environment through the use of the home as a learning center, the training of parents as teachers in the home and active community involvement in school systems (Community Crime Prevention Recommendation 6.1). New Jersey education systems presently do not make provisions for teachers in the home except of handicapped children. However, the newly-enacted Public School Education Act, also known as the "thorough and efficient education" act (*N.J.S.A.* 18A:7A-1) encourages citizen involvement in both educational matters and in the setting of standards and goals for public school systems.

The National Advisory Commission also suggests school systems allow for increased student participation in democratic processes and in administrative decisions (Community Crime Prevention Recommendation 6.2). Perhaps the best example of justice in New Jersey's schools is the recently approved regulation that school districts cannot refer, test, relocate or change a student's program of instruction without guaranteeing due process rights. This change in the State Board of Education rules and regulations is in direct response to a U.S. Supreme Court decision requiring due process procedures for suspensions, expulsions or program changes. In addition, many

school districts utilize student courts in the upper-grade levels for minor disciplinary action which include mock trial proceedings and peer judgments.

One of the more structured proposals offered by the NAC for educational reform is the recommendation that schools guarantee students achieve functional literacy before leaving the sixth grade level (Community Crime Prevention Recommendation 6.3). No such literacy requirement is in existence in New Jersey although the area has commanded much research. A serious impediment to the establishment of such a requirement is the absence of any universal or agreed upon definition of functional literacy. Another problem with such a requirement is what to do with those students who fail to attain functional literacy. Opposition to such a requirement has been raised by educators who may fear that student attainment of literacy may become a measurement of teacher success or failure. In the absence of a literacy requirement, numerous programs are in existence throughout the State which are designed to help students with low literacy levels.

In Community Crime Prevention Recommendation 6.4, the NAC suggests that schools provide special services to students who come from environments in which English is not the dominant language and several programs to accomplish this end are recommended. *N.J.S.A.* 18A:35-15, which requires the provision of bilingual education programs in public schools, is in compliance with this recommendation. Under the statute, each school district must ascertain the number of students and children who are of limited English-speaking ability in each district. Whenever there are 20 or more pupils of limited English-speaking ability in any one language classification, the board of education must establish a program in bilingual education for all pupils therein. School districts may, however, combine to provide required programs. Every pupil participating in such a program is entitled to continue for a period of three years. In addition to required subjects and language, programs in bilingual education must also include instruction in the history and culture of the country, territory or geographic area which is the native land of the parents of children enrolled in the program.

The establishment of reality-based curricula to include career education is also recommended by the National Advisory Commission in Community Crime Prevention Recommendation 6.5. New Jersey has been and continues to be a front runner in career or vocational education. Vocational high schools exist in most counties although many students who desire vocational education may not meet entrance requirements. In addition, many high schools operate programs where students receive classroom training for certain careers and then spend part of the school day or week in an on-the-job training or internship program. Many schools participate in career development programs such as Community Involvement in Personal Educational Development (CIPED). New Jersey also has an Adult and Continuing Education Program which provides a graduate equivalency diploma program as well as other adult education and enrichment courses. Public school facilities are utilized for the approximately 300 such programs in existence. These programs are consistent with Community Crime Prevention Recommendation 6.5.

The National Advisory Commission also recommends the provision of alternative educational experiences, particularly for students who do not learn in ways or through experiences that are suitable for the majority (Community Crime Prevention Recommendation 6.7). It is in this area that New Jersey school systems are weakest. Several alternate high schools, which are recommended by NAC, are in existence in the State; however, it appears that most, if not all, alternate schools are considered as programs to provide short term assistance to enable students who have difficulty achieving in school to return to the traditional school environment.

Additionally, the NAC recommends in Community Crime Prevention Recommendation 6.6 that schools provide more effective supportive services to facilitate the positive growth and development of students. *N.J.S.A.* 18A:7A-1 requires that schools provide programs and supportive services for all pupils, with special emphasis on those who are educationally disadvantaged or who have special education needs. Although many support services are provided, there is a serious question whether services are reaching those youth who desperately need them or who are exhibiting delinquent tendencies.

Community Crime Prevention Recommendation 6.8 suggests school facilities be made available to the entire community as centers for human resource and adult education programs. As previously stated, the Adult and Continuing Education Program utilizes public school facilities in approximately 300 school districts. Aside from this function, schools in New Jersey are not generally considered as community resource centers.

Similar recommendations are proposed by the more recent NAC. In addition to the above recommendations, it is suggested in Delinquency Prevention Standard 3.9 that schools expand efforts to foster learning and education throughout the community. Schools should also be responsible for working with families to assist students in achieving objectives of academic proficiency at each stage of their academic career (Delinquency Prevention Standard 3.10).

Recreation and Employment

In addition to education system recommendations, the National Advisory Commission offers several suggestions for reducing delinquency through the use of recreation, after-school and summer employment

and expansion of job opportunities for youth (Community Crime Prevention Recommendations 7.1, 5.2 and 5.1 respectively). Recent NAC Delinquency Prevention Standards 3.22 through 3.28 recommend the following: all levels of government should expand job opportunities for youth; communities should have easily accessible job placement and information centers; high school counselors should be trained in employment counseling; high school work study programs should have easily accessible job placement and information centers; high school counselors should be trained in employment counseling; high school work study programs should be publicly financed; employment services and correctional officials should work together to expand job opportunities for youths with delinquency histories, and all legislation affecting youth employment should be re-examined. It is generally assumed that efforts to help prevent delinquency comparable to the NAC recommendations have been undertaken in communities throughout the State, however, it is suspected that such efforts have not been as intensive as recommended.

Commentary

Delinquency Prevention and the diversion of juveniles from system processing cannot be effective unless there are community services available for troubled youth. Ideally, these resources should be organized into a comprehensive network of services which can tailor community-level response to the specific treatment needs of juveniles referred from justice system agencies, schools, families or other social services. Community participation and involvement in programs designed to reduce or prevent delinquency are urgently needed. The Advisory Committee therefore recommends several target programs where community resources can be channeled in the most effective manner. Standards for school reform are also proposed.

In recognition of the effectiveness of present youth service bureaus, the Advisory Committee recommends their establishment throughout the State, primarily in high delinquency areas. Proposed standards are intended to serve as guidelines to assist youth service bureaus in accomplishing goals as previously described. The Committee strongly urges the appropriation of State funds on a matching grant basis for the support and development of youth service bureaus.

In reviewing the National Advisory Commission recommendations for education, the Advisory Committee questioned the appropriateness of proposing similar recommendations for New Jersey's educational system. The Committee favored many of the NAC concepts but did not feel it should encroach upon educational system mechanics. Thus, the proposed education standards are geared toward the acknowledgement of the responsibility of schools for juveniles who are or may potentially become known to the existing juvenile justice process. NAC recommendations were retained where appropriate. The Committee strongly supports the view that schools must be responsible for providing appropriate educational opportunities for all students and should, through alternative educational models, seek to retain as many students as possible within the school framework.

The Advisory Committee recommends communities develop recreation programs that stress youth and parental involvement as an integral part of an intervention strategy aimed at preventing delinquency. Communities are also advised to broaden after-school and summer youth employment programs.

In addition, the Committee encourages reform on the part of employers and unions to provide job opportunities for youth. Contrary to the NAC, the Committee does not recommend the revision of child labor laws. A comprehensive study of existing child labor laws should precede any standards advocating change. Such a study was not possible under the framework of this effort.

References

[1]State of New Jersey, Division of State Police, Uniform Crime Reporting Unit, *Crime in New Jersey-1975: Uniform Crime Reports*, West Trenton, New Jersey, 1975, p. 60.

[2]President's Commission on Law Enforcement and Administration of Justice, *The Challenge of Crime in a Free Society*, pp. 78-79, reprinted in Malcolm W. Carter and Robert M. Klein, *Back on the Street*, Englewood Cliffs, New Jersey, Prentice-Hall, Inc., 1926, p. 28.

[3]National Advisory Commission on Criminal Justice Standards and Goals, *Report on Community Crime Prevention*, Washington, D.C., U.S. Gov't. Printing Office, 1973, p. 11.

[4]Ibid., p. 51.

[5]See, for example, Donald R. Cressey and Robert A. McDermott, "Diversion: Background and Definition," in *Diversion From the Juvenile Justice System*, National Assessment of Juvenile Corrections, Ann Arbor, Mich., University of Michigan, June,

1973, pp. 1-8; John L. Hagan, "The Labeling Perspective, the Delinquent and the Police: A Review of the Literature," *Canadian Journal of Criminology and Corrections,* Vol. 14, No. 2, 1972, pp. 150-165.

[6] Carter and Klein, *Back on the Street,* p. 133.

[7] Ibid., p. 134.

[8] National Advisory Commission, *Report on Community Crime Prevention,* p. 140.

[9] State Law Enforcement Planning Agency, *Criminal Justice Plan for New Jersey-1977,* Draft, Vol. 1, p. C-60.

[10] Statistics compiled from State Department of Education files.

[11] Statistics reported in the Juvenile Justice and Delinquency Prevention Supplement to the 1976 Criminal Justice Plan for New Jersey, State Law Enforcement Planning Agency, p. 86.

[12] National Advisory Commission, *Report on Community Crime Prevention,* pp. 111, 112.

[13] President's Commission on Law Enforcement and Administration of Justice, *Task Force Report on Juvenile Delinquency and Youth Crime,* Washington, D.C., U.S. Gov't. Printing Office, 1967, p. 339.

[14] Carter and Klein, *Back on the Street,* pp. 22, 23.

[15] These bureaus include: Asbury Park, Atlantic County, North Camden, Camden, East Orange, Irvington, Lakewood Township, Jersey City, Livingston, Montclair, Verona, Glen Ridge, Long Branch, Maplewood, South Orange, Middletown, Port Monmouth, Belford, East Keansburg, Leonardo, New Brunswick, Newark, Horth Hudson-Union City, North Bergen, West New York, Weehawken, Hoboken, Kearny, Secaucus, Gutenberg, Orange, Passaic, Perth Amboy, Plainfield, Scotch Plains, Fanwood, Union County, West Caldwell, and West Orange.

[16] See the National Advisory Committee on Criminal Justice Standards and Goals, Task Force on Juvenile Justice and Delinquency Prevention Report, Chapter on Delinquency Prevention for a more complete description of what municipalities and states can do to prevent delinquency.

THE DETENTION AND SHELTER CARE OF JUVENILES

Introduction

The purposes for detaining juveniles prior to adjudication or disposition are threefold: to assure their appearance in court, to reduce any possible threat their release may have to community safety and, where necessary, to provide temporary shelter. It is expected that while a youth is detained, whether in a detention or shelter facility, staff should take advantage of the opportunity to provide or make available needed short-term social, medical and psychiatric services. In addition, detention centers and shelters have an obligation to continue the youth's education which is interrupted by removal from home.

There is concern that many youth are unnecessarily detained while others who should be detained are released. In addition, it is becoming more difficult for those youth who require detention or shelter care to benefit from the experience, due to several critical and long-term problems which have plagued the detention/shelter care system since its inception. The root of these problems can be traced to the absence of clearly defined detention criteria and guidelines and alternatives to detention or shelter care.

Clearly defined criteria are needed to assist in detention and release decisions while ensuring their appropriateness. Structured, workable guidelines are necessary to reduce inconsistency in the handling of juveniles, the nature of programs and available services. Alternatives to confinement would result in the elimination of unnecessary detention and overcrowding and, thus, allow improvements in existing detention/shelter care facilities. There is a need to organize and integrate a variety of detention/shelter care and alternative programs into a coherent, integrated whole if the goal of delinquency reduction is to be achieved.

Problem Assessment

Criteria for Detention

A juvenile's experiences in detention or shelter care will have long lasting influences on his or her attitudes toward society, self and the legal system. Detention can raise a juvenile's status in the eyes of peers and thus reinforce delinquent behavior. It may compound feelings of rejection and deteriorate already low self concepts. Moreover, the temporary nature of detention and shelter care discourages the development of needed services in such facilities. The lack of appropriate programming has resulted in enforced idleness and has reduced the possibility of any beneficial outcome of detention. As a result, the potential for harmful after effects to the juvenile and indirectly to the community is high.[1] Consequently, detention decisions and practices should be closely and carefully scrutinized to ensure no juvenile is inappropriately placed in detention or shelter care.

The use of detention or shelter care in New Jersey varies widely from county to county. During 1975, the statewide average for secure detention rates (number of juveniles admitted to detention centers divided by the number of delinquency complaints filed in court) was 16.3%. In Warren County in 1975, 226 juveniles were admitted to the detention home and 630 delinquency complaints were filed in court, reflecting a secure detention rate of 35.9%, the highest for any county. During the same time period, Essex and Camden Counties reflected secure detention rates of 14%; Bergen County, 7.7%; Union County, 12.6%; Hudson County, 20.1%; Mercer County, 28.0%; and Burlington County, 29.7%. Cape May County indicated the lowest secure detention rate of 6.1%.[2] In comparison, the National Council on Crime and Delinquency (NCCD) and the President's Commission on Law Enforcement and the Administration of Justice recommend detention rates not exceed 10%.

During 1975, combined secure and nonsecure shelter detention rates varied from a high of 50.6% in Burlington County to a low of 5.6% in Cape May County. The statewide average for 1975 was 19.8%. Of the major counties, Union, Camden, Essex and Bergen reflected rates lower than the statewide average, whereas Atlantic, Cumberland, Hudson, Mercer, Ocean, Passaic and Warren Counties reflected detention rates in excess of the statewide average.[3] There may be several reasons to account for these differences, one being different interpretations of what constitutes an admission. In any event the variance suggests the need to examine the criteria for and application of detention.

One reason for such variances may be attributed to the juvenile law itself. New Jersey statutes and

References for this chapter appear on pages 273 & 274.

court rules permit the detention (secure) or shelter care (nonsecure) holding of juveniles as indicated below.[4]

For detention of youth charged with delinquency offenses:

1. Detention is necessary to secure the presence of the juvenile at the next hearing.
2. The nature of the conduct charged is such that the physical safety of the community would be seriously threatened if the juvenile were not detained.

For shelter care:

1. There is no appropriate adult custodian who agrees to assume responsibility for the juvenile and the release on the basis of a summons is not appropriate.
2. Shelter care is necessary to protect the health or safety of the juvenile.
3. Shelter care is necessary to secure his or her presence at the next hearing.
4. The physical or mental condition of the juvenile makes immediate release impractical.

These criteria are designed to be flexible and thus leave room for discretionary interpretation. The desires of local communities, as reflected in police and judicial discretion, may influence the detention of juveniles, causing detention practices to become an outgrowth of local attitudes and tradition. [5] Disparity in detention rates may indicate that the chance of detention may be based more upon where the juvenile is taken into custody than the nature of the offense charged or any other factor. Inconsistencies may also suggest criteria are perhaps overly broad and vague.

Consistent with the recognized purposes of detention, one of the most frequent statutory provisions for the detention of youth as well as adults is that it is necessary to secure appearances in court. However, numerous studies of adult criminal defendants and actual bail/release projects have demonstrated that most defendants can be released pending trial solely on their own promise to appear. Bail reform projects have also proven that if properly administered, release alternatives other than bail are effective in ensuring the presence of adult defendants at trial. Unlike adults, juveniles generally are not independent beings who can be freely mobile. For the most part, they are dependent upon parents, family or other adults for life's necessities and it may be more difficult for a youth to abscond than it is for an adult defendant.

The development and use of alternatives to confinement for juveniles similar to adult release programs could provide additional means for assuring appearances in court. Aside from research on adult defendants, some studies have shown that most juveniles are not likely to flee. A 1973 Louisville court study indicated that only 2.7% of the juveniles released pending court action failed to appear when required.[6] A home detention demonstration project in St. Louis indicated no instances of a youth failing to appear.[7] In another study, those juveniles released from detention shortly after being admitted and those not admitted upon screening rarely failed to appear for a court hearing.[8]

Another criterion for detaining juvenile defendants is that it is necessary for the protection of the community. Detaining the accused on grounds that it will prevent additional criminal activity on their part while awaiting trial has traditionally been considered by many to be a legitimate function of pretrial confinement. Grounds for such preventive detention are usually based upon the seriousness of the offense and the accused's prior record of offenses. If there is a good chance the defendant will commit another crime or in some way harm witnesses while awaiting trial, it may be in the community's best interest to keep the defendant confined during that period. Notwithstanding this argument, courts have recently held that the detention of adults for preventive reasons violates constitutional principles. Thus, in New Jersey, the release of an adult defendant pending trial can only be denied if it can be demonstrated that there are no conditions which will adequately ensure his or her appearance when required.[9] For adult defendants, then, protection of the community is no longer a legitimate criterion for detention.

The courts have not carried this restriction against preventive detention to juvenile practices. The juvenile justice system, traditionally more liberal in its allowance of detention of juveniles prior to any finding of guilt, continues to detain juveniles where their release may be a danger to the community. The *parens patriae* doctrine of juvenile courts is the justification for preventive detention.

Several arguments have been advanced against preventive detention, a major argument being that it is inconsistent with the presumption of innocence. Premises underlying preventive detention are considered by many to be questionable since it is difficult to determine with any certainty the future conduct of an individual. The usual result in juvenile detention decisions is that the offense charged becomes the chief determining factor. Some hold that the seriousness of the offense charged, by itself, is not necessarily a sound basis for detention decisions since the screening process often goes no further once the charge is learned. Unnecessary detention may result and continue unchallenged.[10] Clearly defined criteria applied to detention screening and determinations as well as the availability of alternatives to detention or shelter care would assist in the elimination of arbitrary or unnecessary detention of youth. It is unfortunate, however, that the lack of alternatives to detention contributes to the persistent use of frequent and unnecessary detention.

Alternatives to Detention and Shelter Care

Few states have implemented detention alternatives for either juveniles or adults. Where the use of alternatives is allowed, they are used far less for juveniles than for adults.[11] It has been found that many metropolitan areas have lagged in the development of alternatives, possibly because of the availability and convenience of detention facilities. There is a direct correlation between detention populations and available detention facilities. It has been verified that where new detention space is constructed or otherwise made available, there is a tendency to detain more children and to keep them confined for a longer period of time.[12] A nationwide comparative analysis of detention home capacities and average daily populations indicated that larger homes tend to be overcrowded while smaller ones are not.[13] This supports the conclusion that where detention space is limited, courts have been forced to rely upon alternatives to detention and/or to set stricter criteria for the detention of youth.

For adults, release on bail is the most frequently used alternative, but it is rarely used for juveniles. States are presently divided on the issue of whether juveniles have a right to bail. In 1973, the National Advisory Commission (NAC) found that nine states expressly allowed bail for juveniles and three had provisions that imply bail is applicable to juveniles. Bail is expressly denied to youth in three states whereas eight states did so by implication. The remaining states were silent on this point. In New Jersey, juveniles do not have a right to bail. The court rules provide, however, that if the juvenile or the adult in whose custody he or she is released resides out of state, the court may require bond to be posted in an amount deemed reasonably necessary to ensure appearance when required (*R.* 5:8-6(e) (a)).

There has been no U.S. Supreme Court determination or delineation of a right to bail for juveniles although other courts have dealt with the issue. Several cases have been decided in support of a right to bail for juveniles. *State v. Franklin,* 12 So. 2d 211 (La. 1943) held that prior to a finding of delinquency a juvenile is entitled to bail. In another case involving a juvenile, in *Trimble v. Stone,* 187 F. Supp. 483 (D.D.C. 1960), the court held a right to bail before trial is guaranteed by the Eighth Amendment which is self-executing, and no statute is necessary for its implementation.

Many cases which have not supported a right to bail for juveniles have usually held that the nature of the proceeding is "determinative of the issue of a right to bail."[14] *Fulwood v. Stone,* 394 F. 2d 939 (D.C. Civ. Ct. 1967); *Baldwin v. Lewis,* 300 F. Supp. 1220 (E.D. Wis. 1969); and *In Re M,* 473 P. 2d 737 (Cal. 1970) have held it is unnecessary to decide the issue of a right to bail in juvenile cases since the juvenile system has an adequate substitute for bail; namely, release to the custody of a parent or guardian.

In addition to court litigation, much has been written regarding the benefits and drawbacks of bail for juveniles. The NAC, during both its original tenure and its present continued effort recommends the prohibition of bail or any other financial conditions on release for juveniles. This is based primarily on the demonstrated inadequacies of adult bail practices and the undesirability of replicating an unsuccessful and discriminatory adult practice in the juvenile justice system. The pursuit of other release alternatives is favored.

The issuance of a summons to the juvenile in lieu of continued detention following the taking into custody is another alternative which would help reduce unwarranted detention. New Jersey court rules presently provide this alternative indicating that a police officer may dispense with a release in custody if the issuance of a summons to the juvenile is considered sufficient to ensure the juvenile's appearance in court (*R.* 5:8-2). This alternative, however, is rarely used.

The Detention Hearing and the Issue of Probable Cause

There is almost universal support for a juvenile's right to a hearing to determine the appropriateness of detention. Such hearings held within a reasonable time period are considered necessary to protect against unwarranted or improper detention. There is some disagreement, however, as to what constitutes a reasonable time period. The NCCD and the U.S. Department of Health, Education and Welfare's *Model Acts for Family Courts and State—Local Children's Program* recommend detention hearings within 24 hours of admission. The NAC, President's Commission on Law Enforcement and the Administration of Justice and the Handbook for New Juvenile Court Judges recommend a hearing within 48 hours of placement. New Jersey court rules provide for a hearing within 24 hours of placement and if counsel is not present at this initial hearing, another hearing is scheduled within two court days (*R.* 5:8-6 (d)).

Disagreement and difficulty increase when an attempt is made to define what constitutes a detention hearing and what rights are applicable at this hearing. Legal opinion is of the view that the detention of youth must be based on the reasons which can be substantiated and that there can be no substantiated basis without a concurrent determination that there is probable cause to believe a crime has been committed and that the juvenile has committed it.[15]

Based upon the Fourth Amendment's prohibition against unreasonable seizures, many believe a detention hearing must include an inquiry into probable

cause. Constitutional rights which are applicable to a determination of probable cause in the juvenile process have received less attention from the courts and thus have not been defined.[16] Hence, what safeguards must govern the inquiry into probable cause remains a controversy. In any event, the determination of probable cause not only protects the juvenile but also helps to eliminate unnecessary or fruitless prosecutions and hearings, thus conserving resources already strained by high caseloads. The New Jersey court rules have been revised effective March 29, 1976 to require the making of a probable cause determination no later than two court days following the initial detention hearing. (5:8-6(d)).

Aside from the issue of probable cause, the purpose for a detention hearing remains the determination of whether detention is, in fact, necessary. Prior to any such decision, however, all possible alternatives to detention or shelter care should be carefully reviewed and considered in an effort to ensure only those juveniles who cannot be released remain in detention and shelter care. Again, difficulties with this procedure are directly related to one of the central problems of the juvenile detention system—the lack of alternatives to confinement.

Rights of Detained Juveniles

As reforms and due process requirements began to be held applicable to juvenile courts, the rights of juveniles involved in the juvenile justice system emerged as a priority consideration in defining processes and developing programs. In spite of this, the rights of detained juveniles have been essentially ignored. Much progress has been made, however, in defining the rights of adult prisoners during both pretrial and post-conviction stages. Only recently have the courts begun to shed light on the issue of the rights of confined juveniles, particularly those held in detention prior to any court action.

The purpose for detaining adult defendants prior to trial is, by law, limited to ensuring the accused's presence at trial. Consequently, any restrictions placed on an adult defendant should be reasonably related to accomplishing this limited purpose. Prior to conviction, the application of programs with objectives of deterrence, punishment, retribution or even rehabilitation is inconsistent with the presumption of innocence, thus any such program is not a legitimate function of pretrial detention. Hence, regulations which are not reasonably related to ensuring the accused's presence at trial are an infringement upon the detainee's constitutional rights. In reality, however, defendants in many jails awaiting trial suffer similar if not worse treatment as those confined serving sentences.

The court held in *Brenneman v. Madigan,* 343 F. Supp. 128 (N.D. Cal. 1972) that the proper focus in determining the appropriateness of restrictions placed on pretrial detainees is whether the conditions are necessary for prison security and are related to the reason the individual is being detained. It has also been held that where such conditions amounted to punishment, punishment being inconsistent with the purpose of detention, such punishment was without due process of law. Courts have also held that only those conditions necessary to the security aspect of short-term detention could be imposed on persons who could not afford bail (and hence were detained).[17]

It is generally accepted that adults and juveniles should not be subjected to worse conditions prior to adjudication than they might potentially receive after disposition. At the very minimum, pretrial detainees are entitled to the same rights than convicted offenders. To advance this notion, various courts throughout the nation have recognized that pretrial detainees, who under the law are presumed to be innocent, are entitled to more rights than convicted offenders.[18] If juveniles are to enjoy equal protection under the law then they, too, should be included in this fundamental axiom. Juveniles deprived of their liberty prior to any determination of guilt should be accorded the same rights as adult pretrial detainees and, at minimum, should enjoy the same rights as juveniles and adults adjudicated guilty and incarcerated in correctional institutions.

Post-Dispositional Detention and Shelter Care

One of the most difficult situations affecting the present practice of juvenile detention in New Jersey is the lack of noncorrectional dispositional placements which results in lengthy periods of post-dispositional stays. Although no juvenile should be held in detention or shelter care once the matter has been disposed of by the court, many juveniles remain in such facilities long after they have been adjudicated guilty and given dispositions involving noncorrectional placement. Ideally such juveniles should be immediately placed so that treatment and rehabilitation can be effected without delay. In practice, locating appropriate foster home or residential placements for many juveniles has proven difficult and time consuming. Often juveniles are forced to wait months in detaining facilities which are designed for short-term stays and consequently lack the necessary resources for long-term treatment. A potential risk which may develop from this situation is an increase in dispositions involving correctional commitments, not because the circumstances of the offense and juvenile warrant it, but because lengthy post-dispositional stays in detention without access to treatment is even more undesirable.

The problem of post-dispositional detention cannot be corrected without strengthening probation and other community treatment services, development

of community resources, the expansion of residential placements and day care services and streamlining of the present placement system.

An added difficulty in New Jersey is that it is unclear what level of government is responsible for providing and financing post-dispositional care. Detention and shelter facilities in New Jersey are the responsibility of the counties which must provide financial support for their operation. Many are of the opinion that once a juvenile is adjudicated and given a disposition involving correctional or residential placement, the responsibility for such a juvenile shifts to the State. A Supreme Court decision on pending litigation, *Board of Chosen Freeholders of the County of Union v. Anne Klein, Commissioner, Dept. of Institutions and Agencies* (docket number L-33110-74, filed April 30, 1975), may help resolve this issue. In the interim, many juveniles must remain in county detention and shelter facilities without timely access to needed post-dispositional services.

Detention and Shelter Care Programs, Staff and Facilities

Although specific detention criteria and the availability of alternatives to detention would eliminate unnecessary detention, there will remain juveniles who require detention or shelter care. Thus, it is important to ensure that these facilities are capable of maximizing potential benefit and providing positive experiences for such youth. Presently, however, many of the facilities and programs comprising the detention/shelter system are in need of modernization and improvement. Although much has been written to support the need for the provision of a wide range of services to juveniles held in detention or shelter care, the lack of sufficient programming in many facilities remains a serious problem. In addition, there is much disparity in New Jersey detention/shelter procedures and programming. Studies undertaken in 1974 by the State Law Enforcement Planning Agency and the Citizens Committee for Children in New Jersey revealed inconsistency among detention staff handling of juveniles and the nature of programming. Steps are being taken to eliminate this lack of uniformity as well as upgrade the level of services in such facilities.

As indicated earlier, detention and shelter programs should provide juveniles with positive experiences and services. Although the detention atmosphere generally is not conducive to treatment, courts have held that the purposes of the juvenile court provide a foundation for establishing the juvenile's legal right to treatment while detained in accordance with need.[19] Although it has been concluded that juveniles in detention and shelter facilities have a right to treatment, treatment itself has never been recognized as a legitimate goal or grounds for such placement.

Under the mandate of right to treatment, it is necessary to develop activities and services which satisfy the needs of youth who are detained. A special emphasis toward group activities may prove beneficial in salvaging bruised self concepts. It has been said that populations in detention facilities should be tailored to the program rather than the program tailored to a population of improper admissions.[20]

A program of particular importance for detained juveniles is education. When juveniles are detained, their schooling is necessarily interrupted. While some facilities in New Jersey have extensive educational programs and support services, many offer only minimal services. Traditional methods of teaching and schoolroom settings have seldom proven effective in detention facilities. Children bring to the detention or shelter classroom "years of bitter resistance to school, rooted in frustration and failure."[21] The National Council on Crime and Delinquency suggests the aims of detention education programs should be to provide daily structure, offer positive learning experiences in contrast to years of negative learning, replace failure patterns with achievement and interpret school problems and needs to the courts and the child's own school.[22] According to the State Law Enforcement Planning Agency, which has awarded substantial funds for the improvement of detention education, the past experience of such programs indicates that programs which transcend a traditional academic approach and which use a learning process based on individual experience appear to be an appropriate teaching method in short-term holding facilities.

In some shelter facilities in New Jersey, juveniles may continue attending their own regular school or may attend schools in the surrounding community. Most, if not all, detention and shelter facilities operate some type of an internal education program, with varying degrees of effectiveness. Many lack needed remedial instruction and related support services. In addition, coordination between the facility program and the juvenile's regular school program is not always possible. Uniform statewide guidelines for such programs would help identify inadequacies and improve present programs.

A serious impediment to the implementation of educational programs complete with the necessary remedial instruction, individualized attention and supportive services is the lack of finances and the absence of any clearly defined responsibility for ensuring the necessary funds are provided. Legislation was introduced in 1975 (Senate Bill 1306) and is still in committee which would, if passed, clarify responsibilities and ensure effective educational programs are provided in detention and shelter facilities. The bill assigns the State Department of Education the responsibility for developing guidelines for such education programs; the boards of chosen freeholders

the responsibility for developing and implementing such programs; and the local sending school districts responsibility for paying the costs for such education. At present, however, the issue remains unsettled and the problems still exist.

The physical conditions of many detention and shelter facilities in New Jersey are inadequate or in need of improvement. Many facilities are old buildings, some of which were originally designed for other, perhaps incongruous, purposes. When such buildings are transformed into detention centers and shelters, the resulting physical environment may inhibit necessary program elements such as visits and group interaction. Environmental settings are also important in dealing with juveniles. Many facilities are located in large cities. Since urban areas often increase security problems and risks, there is a tendency on the part of administrators to restrict movement to and from facilities in such locations. As a result, the potential for participation in community activities may be reduced even though programs may be nearby. Thus, facilities located in nonurban areas, which do not have the same security requirements, can be more flexible. On the other hand, a facility location that is too remote may help increase a detained juvenile's sense of alienation and separation from family.

There is also a tendency in detention center construction and planning to place a heavy emphasis on security and to depend upon hardware for its achievement.[23] Where security is derived through physical means, opportunities for individuality and flexibility decrease. The NAC advocates resolving security problems through open communications and a combination of adequate staffing patterns, technology and, lastly, physical means. In addition to these concerns, many facilities in New Jersey are plagued by overcrowding, thereby placing a greater restriction on operations and services.

Where detention and shelter facilities are beseiged with operational difficulties such as overcrowding, substandard conditions or limited funds, the possibility of high employee turnover may result. Of paramount importance in this situation is the negative influences on juveniles detained under such conditions.

Whether detention or shelter care experiences are ultimately positive or negative depends to a great extent upon the imagination, resourcefulness and professional soundness of detention and shelter staff. Frequently, personnel considerations receive a low priority in relation to the many issues surrounding juvenile detention. Training for detention and shelter personnel, like that of most juvenile justice system staff, is sporadic. There are no regular education or training programs. Occasional training sessions have only begun to meet the needs of system personnel. Presently, line officers in detention centers and shelter staff need only minimal educational qualifications. Responsibilities of the job are enormous although salaries are low. Staff training and orientation programs are essential for care programs. As training and responsibilities increase, salaries would also warrant upgrading. In addition, detention and shelter facilities should have the benefit of community workers, volunteers and professional counseling and testing personnel, even if only on a part-time basis. Continued education and training in the special needs of juveniles should also be made available to such personnel.

Recent Developments in Detention and Shelter Care

Several major advances in the detention process have occurred in recent years. A clear definition of "detention" embodying secure or physically restricting facilities, which is distinguished from "shelter care" or nonsecure, nonphysically restricting facilities, has been generally accepted around the country. A distinction has also been drawn between juveniles who are charged with delinquency offenses (acts which if committed by an adult would constitute a criminal offense) and those who are charged with status offenses (acts which are peculiar to juveniles and which would not be a crime if committed by an adult, e.g. truancy, running away, incorrigibility). Juveniles who are charged with status offenses are referred to as persons in need of supervision (PINS) or, as in New Jersey, juveniles in need of supervision (JINS).

In March, 1974, New Jersey became one of an increasing number of states to adopt legislation which differentiates between delinquents and status offenders and mandates certain procedures for their handling. Although many states have recognized the difference between delinquency and status offenses and offenders, this difference is not translated into differential handling. New Jersey's revised juvenile code prohibits the placement of a JINS in any secure detention facility, during either the pre-adjudication or post-dispositional stage. Thus, differential handling of JINS and most delinquents is required. In addition, the new code provides for the creation of a shelter care system to facilitate the placement of JINS in nonsecure facilities while awaiting court action.

Another important change is the prohibition of holding juveniles in a jail or lockup facility. Previous statutory law permitted the holding of youth age 16 and over in county jails. The revised juvenile code also provides that juveniles charged with status offenses (JINS) cannot be committed to an institution maintained for the rehabilitation of delinquents.

The revised juvenile code does not, however, mandate the complete separation of JINS and delinquents. Although JINS cannot be held in detention facilities, juveniles charged with delinquency of-

fenses may be held in shelter care if the only reason for their holding is the lack of a suitable adult custodian to ensure the juvenile's appearance when required. Although JINS cannot be committed to a correctional institution, they are not segregated or treated differently from delinquents who receive any of the other possible dispositions.

One of the most difficult problems in implementing the revised juvenile code was the establishment of the mandated juvenile shelters. Counties have utilized various arrangements to comply with the legislative requirement of shelter care. Litigation is pending involving counties which have not met the Department of Institutions and Agencies mandates regarding shelter care. The outcome of such litigation will undoubtedly influence New Jersey's system of detention and shelter care.

With the emergence of court intake units, the capability to screen detention decisions prior to placement has improved. Court intake staff, operating under judicial approval, are able to determine the appropriateness of detention and shelter care in individual cases on a 24-hour basis. When intake units become operational in all counties, the possibility for statewide uniformity in detention and shelter care decisions will be high.

New Jersey's Status in Comparison With the National Standards*

Several national efforts have been undertaken to develop standards for the detention of juveniles. The NCCD has promulgated detention standards and recommendations in *Standards and Guides for the Detention of Children and Youth,* 1958; *Standard Juvenile Court Act,* 1959; and *Standard Family Court Act,* 1959. The President's Commission on Law Enforcement and the Administration of Justice in *Task Force Report on Juveniles* and in *Challenge of Crime in a Free Society* as well as the National Advisory Commission's *Report on Courts* and *Report on Corrections* have articulated many standards relating to juvenile detention. The U.S. Department of Health, Education and Welfare in its *Model Acts for Family Courts and State—Local Children's Programs* has also touched upon the subject. A Juvenile Justice Standards Project which includes standards for the interim status (detention) of juveniles has recently been completed by the Institute of Judicial Administration and American Bar Association (IJA/ABA) Joint Commission on Juvenile Justice Standards. The newly invoked NAC has also formulated juvenile justice standards, to include detention and shelter standards.

Efforts have also been undertaken in New Jersey to develop standards and guidelines for detention and shelter facilities. The Task Force on the New Juvenile Code, Department of Institutions and Agencies, completed and promulgated a Manual for Shelters Accepting Juveniles Awaiting Court Action which was revised in January, 1975. A similar manual for detention centers is currently being drafted. Facilities will be required to comply with these manuals.

Criteria for Detention

The NAC in Courts Standard 14.2, as well as all other national efforts, support the concept that police should be insulated from the detention decision and that only the court, either through the judge or an intake official operating under the authority of the judge, can make a determination to detain a juvenile.[24] New Jersey court rules provide that where a juvenile is not released by a police officer, and every attempt has been made to notify an appropriate adult custodian, the officer shall take the juvenile to the appropriate facility and complete a detention report (*R.* 5:8-2(c)). There is no requirement that the police officer contact the court for authorization to admit a juvenile to a detention or shelter facility. In many jurisdictions, however, police are instructed to contact the intake unit for such clearance on a 24-hour basis. In those jurisdictions where there is no intake unit, this procedure is not possible.

All model standards and guides advocate the release of juveniles in the custody of their parents or guardian wherever possible. Where such release is not possible, only those juveniles who meet certain criteria for detention may be detained.[25] New Jersey criteria for detaining juveniles are similar to criteria recommended by the Department of HEW, NAC, NCCD and IJA/ABA. All include provisions for the preventive detention of juveniles (see *N.J.S.A.* 2A:4-56 and *R.* 5:8-6(e)). The IJA/ABA Joint Study Commission also recommends the mandatory release of juveniles arrested for a crime which in the case of an adult would be punishable by a sentence of less than one year.[26]

The NAC in Courts Standard 14.2, U.S. Children's Bureau and NCCD recommend that no juvenile be held in detention for more than 24 hours unless a petition or complaint is filed with the court.[27] New Jersey court rules provide that when a juvenile is taken into custody the officer or his or her superior must "forthwith" file a complaint with the court (*R.* 5:8-2(e)).

The NAC in Corrections Standard 16.9, NCCD, and IJA/ABA recommend detention only for delinquency offenses.[28] As stated previously, New Jersey statutes and court rules prohibit the placement of juveniles

* The Ohio State University, Program for the Study of Crime and Delinquency, *Standards and Goals Comparison Project,* Vol. II, Columbus, Ohio, 1974, was utilized extensively in the preparation of this section.

charged with status offenses in secure detention facilities (*N.J.S.A.* 2A:4-56 and *R.* 5:8-6(e)). Most national efforts and NAC Corrections Standards 16.9 and 8.2 recommend prohibiting the detention of juveniles in facilities used for adults.[29] New Jersey is consistent with these recommendations (*N.J.S.A.* 2A:4-57(c); *R.* 5:8-6).

Alternatives to Detention

All of the national efforts to upgrade juvenile detention practices promote the use of alternatives to detention and shelter care. The IJA/ABA Joint Study Commission suggests that the least necessary interference with the liberty of the juvenile should be favored over more intrusive alternatives. The Commission also recommends that the state bear the burden of proving restraints on liberty are necessary and that no less intrusive alternative is appropriate.[30] New Jersey provides that if the judge finds at the detention hearing that detention or shelter care is not necessary, the court shall order the juvenile's release and may place such conditions, if any, upon release as considered appropriate (*N.J.S.A.* 2A:4-58(d)). It would appear that New Jersey does not place as strong an emphasis upon the use of alternatives to detention and shelter care as recommended by many of the national standards.

The IJA/ABA Joint Study Commission also encourages the use of a summons as an alternative to detention.[31] As discussed earlier, New Jersey provides for the issuance of a summons to the juvenile by a police officer if the officer considers the issuance of a summons sufficient to ensure the juvenile's presence in court (*R.* 5:8-2). Both IJA/ABA and NAC recommend prohibiting the use of bail for juveniles.[32] New Jersey statutes and court rules do not enunciate a right to bail for juveniles although juveniles who reside out of state, or whose parent or guardian resides out of state, may be released upon the posting of a bond (*R.* 5:8-6(e)(a)).

The Detention Hearing and the Issue of Probable Cause

Most national standards and study efforts support the requirement for an automatic hearing to determine the propriety of detaining a juvenile.[33] The NAC in Courts Standard 14.2 and the President's Commission on Law Enforcement and the Administration of Justice recommend that such a detention hearing be held within 48 hours of admission. The National Council of Juvenile Court Judges recommends a detention hearing be held within 24 hours of placement but no later than 48 hours. The Department of Health, Education and Welfare recommends a hearing within 24 hours of the filing of a petition and IJA/ABA recommends a hearing within 24 hours after admission to a detention facility. Similarly, NCCD recommends that detention not be continued beyond 24 hours unless a court order has been signed for continued detention. A different opinion is expressed by the U.S. Children's Bureau which believes routinely scheduled detention hearings should be avoided as they might tend to encourage detention.[34] New Jersey provides for an initial detention hearing to be held within 24 hours of placement in a detention or shelter care facility. If counsel is not present at this hearing, another hearing is scheduled with counsel within two court days (*R.* 5:8-6(d)).

IJA/ABA recommends that, at the detention hearing, the state should be required to demonstrate that there is probable cause to believe a crime has been committed and that the juvenile has committed it. If the state fails to establish probable cause, IJA/ABA recommends the juvenile be released.[35] In response to a report by the New Jersey Supreme Court's Committee on Juvenile and Domestic Relations Courts, court rules were revised effective March 29, 1976 to provide that no juvenile may be held in a detention center for more than a reasonable period of time unless there is probable cause to believe that the juvenile has committed an act of delinquency (*R.* 5:8-6(f)). A determination of probable cause must be made at the second detention hearing where such a hearing is necessary or in all other cases within two court days for juveniles held in detention centers (*R.* 5:8-6(d)).

The revised court rule, however, does not define what constitutional safeguards are applicable to this determination of probable cause. A minority report of the Supreme Court's Committee on Juvenile and Domestic Relations Courts suggested that, to offset the lack of bail in the juvenile justice system, the imposition of adversary safeguards such as confrontation and cross examination at a probable cause determination is critical. In addition, adversarial safeguards would enhance the reliability of such a determination.[36]

Rights of Detained Juveniles

Most national standards and study efforts have not articulated rights of detained juveniles, although the rights of adult pretrial detainees have been delineated. In Corrections Standard 4.8, the NAC recommends that pretrial detainees be accorded the same rights as persons convicted of a crime. Numerous procedures are recommended which provide for the protection of rights of due process, freedom from cruel and unusual punishment, free communication and access to the courts, privacy and personal appearance, medical care, political rights and protection against religious and racial discrimination. Discipline and grievance procedures are also recommended. It is generally agreed that many, if not most, of the detention and shelter care facilities in

New Jersey do not provide protections for rights as envisioned by NAC.

Post-Dispositional Detention and Shelter Care

There are few national standards proposed for the post-dispositional detention of juveniles. Detention is primarily designed for the pre-adjudicatory holding of juveniles. Once a disposition is entered, it is assumed that such dispositions will be effected immediately. Thus, most national efforts which promote the ideal do not anticipate the occurrence of post-dispositional detention. To discourage the use of detention facilities during the post-dispositional stage, the IJA/ABA Joint Study Commission recommends restricting the time limit of post-dispositional detention to 15 days. This time limit may be extended to 30 days if certain conditions are present. If, upon the expiration of such time limits, the juvenile is still in detention, IJA/ABA recommends the charges against the juvenile be dismissed with prejudice.[37] In New Jersey, there is no limit as to how long a juvenile may remain in detention or shelter care awaiting disposition or placement. As previously mentioned, litigation is pending which, when decided, may define a time limit.

Detention and Shelter Care Programs and Facilities

In Corrections Standard 8.3 the NAC recommends that detention facilities be designed with maximum capacities of 30 juveniles. Most other national efforts recommend similarly sized facilities. The IJA/ABA recommends that facilities be designed for capacities of only 12.[38] In New Jersey, as of June, 1976, capacities for shelters ranged from four in Warren County to 25 in Camden and Hudson Counties and capacities for detention centers ranged from four in Somerset County to 150 in Essex County. Hudson County has the second largest detention facility with a capacity of 126. Most shelters are designed to accommodate 10 to 20 juveniles whereas most detention center capacities are around 20 to 25.

Many study efforts discourage the construction of new detention facilities. The IJA/ABA Joint Study Commission recommends a moratorium on the construction of new facilities.[39] The NCCD considers the construction of new detention facilities rarely justifiable and is against such construction prior to the development of detention alternatives. The Council also prefers regional centers to smaller local facilities.[40]

Also in Corrections Standard 8.3, the NAC recommends several principles which should be considered when planning renovations or new construction. The NAC suggests facilities should be located in residential areas and should provide for small living areas, individual occupancy and be coeducational. A full range of supportive programs should be provided including education, recreation, a library, entertainment, arts and crafts and cultural activities. LEAA recommendations parallel many facets of NAC's Standard.[41] LEAA likewise advocates locations in residential areas, stresses the importance of small individual groupings and suggests recreation is essential. NCCD also recommends the provision of a wide range of services.[42] In regard to education, IJA/ABA recommends juveniles should be afforded access to the school they normally attend or to equivalent tutorial programs.[43] As previously discussed, New Jersey facilities are deficient in many of these areas.

IJA/ABA also offers several recommendations governing the use of phones, mail and visits.[44] New Jersey's Manual of Standards for Shelters Accepting Juveniles Awaiting Court Action and the draft Manual of Standards for Detention Centers Accepting Juveniles Awaiting Court Action recommend procedures for access to the public which differ in several respects to the provisions recommended by IJA/ABA. Generally, the IJA/ABA standards are more liberal and afford easier access to the public.

In regard to personnel, the NCCD provides the most extensive treatment of the subject in its *Standards and Guides for the Detention of Children and Youth.*[45] To summarize, the NCCD suggests that staff be of sufficient size, removed from political influence, promoted on a merit basis and provided salaries higher than comparable positions in other children's institutions. Personnel should be carefully selected on the basis of their suitability for working with children. In addition, staff development and training programs should be regularly scheduled. NAC Corrections Standard 8.4 recommends similar provisions. LEAA suggests there be no separation of custodial and treatment roles.[46] Most staff in New Jersey detention and shelter care facilities are Civil Service employees and are hired and promoted on the basis of Civil Service Commission regulations. There has been criticism of New Jersey's Civil Service system and the issues are too involved to be discussed here. It can be said, however, that all of the problems with Civil Service procedures are common to many juvenile detention and shelter care facilities throughout the State.

Commentary

In its investigation of juvenile detention, the Advisory Committee considered the efforts of several national studies which have promulgated standards for the detention of youth or are in the process of doing so. The Committee acknowledges such efforts and shares many of the concepts and philosophies

expressed in these studies but did not elect to accept in its entirety the recommendations of any one report. The Committee also acknowledges the work of the Task Force on the Juvenile Code, Department of Human Services, which has promulgated a Manual of Standards for Shelters Accepting Juveniles Awaiting Court Action which outlines procedural requirements for such shelters. In order to be eligible to receive juveniles in residence, a shelter must demonstrate to the satisfaction of the Department of Human Services that it complies with the rules and regulations described in the manual. Specification* may be withdrawn at any time should the shelter fail to comply. A draft Manual of Standards for Detention Facilities Accepting Juveniles Awaiting Court Action is under development by the Department of Corrections. When this manual is approved and promulgated, compliance by detention facilities will be required.

While there are many similarities between the standards proposed by the Advisory Committee and the Task Force, the standards presented herein take a broader perspective and offer recommendations regarding detention not only for the facilities themselves but also for police, court, prosecution and defense components. Many legal issues were explored and incorporated into these recommendations, which represent a comprehensive collection of standards dealing with juvenile detention and shelter care.

One of the principal aims of the Advisory Committee in recommending these standards is to encourage uniformity in procedures relating to decision-making. Most decisions regarding the detention of youth fall appropriately under the aegis of the court, the most crucial decision being whether to detain or release. Although this is solely a court determination, it is recognized that, in virtually all cases, police officers must decide initially if such a decision is warranted and whether the court's decision must be sought. Law enforcement officers presently have the discretion to release a juvenile, either unconditionally or in the custody of an adult, or to request that the court determine the appropriateness of release. The Advisory Committee recommends promulgation of written departmental guidelines to structure this discretionary decision. Where detention is not warranted, officers should make every attempt to locate a parent, guardian or other adult custodian to assume custody for the child.

In addition to custodial release it is recommended that, wherever possible, police officers release juveniles with a summons when the issuance of a summons is considered sufficient to ensure a juvenile's presence in court. Presently, New Jersey police officers are authorized to issue summonses to juveniles but the practice is very rare. Adult criminal justice system practices are placing a greater reliance upon the use of summonses, and the Advisory Committee feels its use whenever possible should be encouraged in juvenile matters. Since the use of a summons is intended to reduce stigma associated with arrest and custody which may be detrimental to the individual, the Committee finds it necessary to prohibit the serving of a summons on a juvenile at school or a place of employment. To do otherwise may create a potential for accomplishing more harm than good.

In addition to guidelines outlining discretionary authority, several standards are recommended to structure police procedures relating to the holding of juveniles. It is proposed that, prior to questioning, police officers advise a juvenile of all applicable constitutional rights. Where the juvenile's knowledge of English is limited, these rights must be preserved through communication in his or her native language or through an interpreter. The Committee does not believe a juvenile can knowledgeably and intelligently waive the right to counsel and hence, supports the opinion that a juvenile's right to counsel should be nonwaiverable. Although juveniles may have knowledge of their rights, they may not be aware of all of the implications of waiver and thus require the effective assistance of counsel. A dilemma occurs where a juvenile desires to remain silent and the parent(s) demand submission to questioning. Should juveniles be coerced into waiving rights?

The Committee supports present statutes which prohibit the holding of a juvenile in any adult prison, jail or lockup and emphasizes this restriction in Standard 3.1, "Police Procedures Relating to the Detention and Shelter Care of Juveniles." The Committee desired to strike a balance between holding a juvenile in a police station for a lengthy period and immediately transporting a juvenile to a detention or shelter facility simply because the parents cannot be reached or will not return home for several hours. Here, discretion must again be relied upon; however, the holding of a juvenile in a police facility overnight is prohibited.

Guiding the Advisory Committee's development of detention and shelter care standards is the principle that the purpose for detaining juveniles must be rigidly defined and any procedures or policies which are not in accord with this purpose cannot be tolerated. In practice, the purpose for detention/shelter care can best be gleaned from criteria advocated by statute or court rule for the holding of juveniles. Currently such criteria allow for detention where the juvenile's appearance at the next hearing is doubtful or where the nature of the conduct charged is such that the physical safety of the community would be seriously threatened if the juvenile were not de-

* Before a facility is allowed to receive juveniles in residence, it must be inspected by the Department of Human Services (shelters) or Corrections (detention) which, according to the type of facility, specifies it as adequate to receive a certain number of residents.

tained. Shelter care is permissible for these same reasons and also where there is no appropriate adult custodian to assume responsibility, where it is necessary to protect the juvenile's health or safety and where his or her physical or mental condition makes immediate release impractical. Generally speaking the purpose for detention of juveniles in New Jersey can be defined as two-fold: to assure the juvenile's presence in court and to protect the community by precluding the possibility of any misconduct. The Committee struggled with the issue of recommending criteria, especially in regard to the elimination or retention of the present criterion of the need for preventive detention. Unanimous agreement could not be reached although most members support the continuation of present statutory criteria. The majority opinion is reflected in the standards, however, a dissenting view follows this report.

Although the Committee advocates the detention of youth where community interests warrant, it is aware of the difficulties in determining when a juvenile is or is not a threat to the community. Since there is no common definition of "threat to the community," detention on this basis may at times be purely subjective. The Committee cannot offer an exact definition, however it does propose in Standard 3.6, "The Detention Hearing and Continued Review of Detention Decisions," several factors to be considered in determining whether detention is warranted. The application of these factors will help identify youth who may be considered a threat to the community or who run the risk of nonappearance.

Release options which parallel those in the adult criminal process should also be made available for juveniles. The least intrusive alternative which will satisfy the court that detention is unnecessary should be favored over more intrusive alternatives. Recommended options range from release on own promise to appear or with a summons, to the imposition of a variety of restrictions and to participation in home detention or partial detention programs. In several counties, release programs are operating successfully in shelter and detention environments. The Committee advocates the development of such programs and recognizes that court approval and cooperation is a necessary ingredient for their achievement.

The Advisory Committee concurs with present court policy to release as many juveniles as possible into the custody of their parent, guardian or custodian pending adjudication or disposition. If the only reason for holding a juvenile is the unavailability of an adult to assume responsibility, it is recommended that the juvenile be temporarily held in shelter care, which is consistent with present statutes and court rules. The Committee does not consider the complete isolation prior to adjudication of juveniles charged with status offenses from those charged with delinquency offenses as necessarily advantageous or wise. Many states which have operated under such a system have developed facilities for status offenders which differ in name only from facilities for delinquents and thus have not accomplished any real benefit. Under the present New Jersey law, only juveniles charged with delinquency can be held in detention and juveniles charged with status offenses cannot. This does not preclude the holding of alleged delinquents and juveniles in need of supervision in shelter facilities, especially where the reason for holding relates to the unavailability of a custodian.

The Rules of Court have only recently mandated that "where a juvenile has been charged with delinquency and has been placed in detention, there must be a probable cause determination which shall be made at the second detention hearing where such a hearing is necessary, and which shall be made in all other cases within two court days" (*R.* 5:8-6(d)). In addition, the Rules provide that "no juvenile may be held in a detention center for more than a reasonable time period, unless, from the evidence, it appears that there is probable cause to believe that the juvenile has committed an act of delinquency" (*R.* 5:8-6(d)). Prior to this revised court rule, effective March 29, 1976, there had been no requirement that a probable cause determination be made.

The revised court rule leaves many issues unsettled and, thus, the Committee finds it necessary to recommend procedures which go beyond the scope of the revision. It is agreed that, where a juvenile is detained, a probable cause hearing should be held within two court days of detention. This determination may naturally be combined with the detention hearing. Where a combined procedure is followed, a determination of probable cause is advised prior to any examination of the need for detention; and if probable cause is not substantiated, the juvenile should be released. Where a juvenile has not been detained, the Committee suggests it remains necessary to determine the existence of probable cause; however, a standard of "reasonable time period" in such cases is sufficient.

The judge who presides at the detention or probable cause hearing will, necessarily, learn about the juvenile's background. Such knowledge may be prejudicial to the juvenile in a hearing on the matter and for this reason, it is recommended that the judge who presides at the detention or probable cause hearing not preside at the adjudicatory hearing. Of course, difficulties arise when there is only one or a few judges assigned to hear juvenile matters. Alternating assignments or a system of rotation may be necessary to implement this standard.

It is commonly accepted that the length of a juvenile's stay in detention or shelter care has serious implications upon their future. An important component of detention standards is the establishment of regulatory procedures which limit the amount of time a juvenile can remain in detention or shelter care. Court rules currently provide that, where a juvenile

is detained, an adjudicatory hearing is to be scheduled within 30 days. Although agreed that a time limit is necessary, the Committee could not reach a unanimous opinion regarding the length of such a time period. A dissenting view follows. Some considered 15 days a more appropriate and ideal time span, but, with practical realities, a perhaps doubtful possibility. A compromise was reached at 30 days, which is considered a reasonable time period to dispose of juvenile matters. Most jurisdictions presently comply with this standard except where difficult or complex cases such as homicide are involved. To assure total compliance, however, it is also recommended that juveniles who, through no fault of their own or counsel, have not had a hearing within this time period should be released pending a hearing on conditions they are able to meet. A dissent was registered to this "try or release" recommendation on grounds that such a requirement would infringe upon the court's discretion.

Whether the detention or shelter experience is ultimately beneficial or detrimental to a juvenile depends to a great extent upon the admission process and the method of treatment while confined or housed. It is essential that the rights of juveniles be closely guarded and protected during this period. The admission process should commence immediately upon arrival and be undertaken with all due respect for personal rights and privacy. It is proposed that detention and shelter facilities provide incoming juveniles with the option of wearing fresh clothing to be issued upon admission. The issuance of a uniform or any clothing that is identified as institutional wear or property, however, is not advocated. Since there is a need to retain individuality, especially in an institutional setting, clothing that does not distinguish the juvenile from other youth in the community yet allows for individual preference is advised.

The Committee also recommends an initial medical evaluation, to include both a recording of medical history and an examination, be integrated into the admission process. The urgency of medical screening is most important in local level facilities such as detention centers and shelters since admissions are received directly from the street. It is recommended that a routine medical examination be conducted by a licensed physician within 24 hours of admission. The purpose for such an admission procedure is twofold. First of all, it protects the facility from any liability in situations where medical attention and treatment are necessary or, in cases involving communicable diseases, where widespread contagion may result. Secondly, it is also a protection for the juvenile and may be one of the few opportunities for the juveniles to receive a complete medical evaluation. The types of tests considered appropriate for a routine medical examination provoked much debate. To ensure protection of the facility and individual rights of privacy, it is recommended that action constituting a routine medical examination be defined by the court and adhered to; and any additional or supplementary testing, especially if it invades the privacy of the juvenile, should not be undertaken without judicial approval. Where parental and child consent for medical testing or treatment are at odds, such determinations are best left to the judge. The Committee also recommends that any information gleaned from the medical examination or evaluation or during the course of medical treatment be protected by confidentiality safeguards.

In addition to initial medical screening and possible treatment, the availability of immediate medical and psychiatric attention in emergency situations is also a necessity. All too often, a juvenile in need of immediate attention has been deposited at a detention or shelter facility which cannot provide such care. Unfortunately, many hospitals and psychiatric facilities are unwilling to admit a juvenile, and have refused to do so, especially where a psychological or emotional problem is suspected. For this reason, the Advisory Committee urges the development of working agreements with local hospitals and other medical facilities to provide for emergency care on a 24-hour basis. The Committee also feels this situation deserves the attention of the medical profession which should cooperate in working out solutions to this problem.

The Advisory Committee proposes that adults and juveniles detained prior to determination of guilt are entitled to, at the very minimum, the same rights as those adjudicated and confined. Pretrial detainees, whether adult or juvenile, should not be subject to worse conditions than that which they might receive after disposition. In recommending rights of detained juveniles, the Advisory Committee followed case precedents involving pretrial detainee rights as well as rights of adult prisoners. The proposed standards embody many basic elements of such decisions. Of particular interest to the Committee was the definition of rights regarding access to public, searches and disciplinary and grievance procedures. It is recommended that codes of conduct accompanied by the range of possible sanctions be included in the facility manual which should be distributed to all staff and juveniles upon admission. Such material should be fully explained to the juvenile in easily understandable language or where necessary in the juvenile's native language. Vague codes of expected conduct not only contribute to problems of managing juveniles but also violate one of the basic concepts of due process; advance notice. The United States Supreme Court held in *Wolf v. McDonald,* 418 U.S. 539, 94 S. Ct. 2963, 41 L. Ed. 2d 935 (1974) that inmates charged with serious misconduct require certain due process protections whenever the penalties which could be imposed would tend to affect the inmate's release or parole date or have a major change in the conditions of confinement. New Jersey law and cor-

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rectional institutions procedures have been modified to comply with the Supreme Court decision. Recommended standards for New Jersey's detention and shelter care system are also reflective of this decision and are patterned in part after correctional system procedures which are mandatory for the Prison Complex, Youth Correctional Institution Complex, Correctional Institution for Women and the Training School for Boys, Jamesburg.

The New Jersey Supreme Court determined in *Avant v. Clifford*, 67 N.J. 496 (1975) that the "rightness and fairness" standards now firmly established in New Jersey law would be better satisfied if two (of the three) members of the correctional institution Adjustment Committee which decides disciplinary action for major violations were not selected from the correctional officer staff. To conform to *Avant*, the Advisory Committee recommends an impartial disciplinary hearing board be composed of at least three staff members, one drawn from the custodial staff and two or a majority from the medical, administrative, social work, education or treatment staff, An identical composition is recommended for the board or committee designated as responsible for receiving and investigating grievances and recommending action.

To protect the rights of juveniles and ensure the security of the facility is maintained, it is proposed that detention and shelter facilities immediately develop and implement court-approved search and seizure procedures. Of prime importance is the development of a plan for searches which must be approved by the court prior to implementation and included in the agency manual. This requirement should provide dual protection for the juvenile and for the institution. The Committee is cognizant that if searches are restricted, institutional authorities may become more security conscious and as a result more restrictive in their policies regarding release for purposes of participation in community activities. As outside contact increases, so do security risks. The successful operation of community release activities depends in part upon the institution of effective security techniques necessary to maintain court and community confidence in such programs. Without this confidence, release programs may not be allowed. Establishing this need, however, does not justify capricious searches of juveniles and their property. Since the risk is predictable and ongoing, facility authorities have ample opportunity to evaluate security requirements and implement counter measures.

One of the most perplexing issues facing New Jersey's present detention/shelter care system is post-dispositional detention. Immediately upon disposition, juveniles who have received correctional or residential placement dispositions should naturally be transferred to the institution, home or facility to which they have been ordered. Currently, the youth correctional system, which is operating at below capacity, can accommodate a juvenile upon disposition. However, most residential programs do not have openings for new juveniles and consequently, juveniles are forced to wait in detention and shelter care for want of other facilities until such time as they can be accommodated. As previously discussed, detention facilities are designed for short-term, pre-adjudicatory stays and lack the necessary resources required for the rehabilitation of juveniles. Thus, the intentions of judges who order residential treatment are at times thwarted. The Advisory Committee supports the position that upon the ordering of a residential disposition, the State assumes full responsibility for the juvenile. This particular standard will perhaps be one of the most costly for the State to implement.

Recognizing the necessity to provide an adequate educational program in the detention or shelter environment and the difficulties in doing so, the Advisory Committee advocates the recommendations proposed in Senate Bill 1320 to rectify this situation. The Committee believes it is a responsibility of the county, through the board of chosen freeholders, to guarantee educational programs are established in detention and shelter care facilities. Educational programs should be developed in accordance with guidelines promulgated by the Department of Education and local sending school districts should be responsible for educational expenses.

A contributing factor to unnecessary detention and shelter care is a lack of understanding regarding juvenile detention practices on the part of other justice system components. The Committee believes all branches of the juvenile justice system have a joint responsibility to alleviate the volume, duration and negative conditions of juvenile detention and shelter care. Since this can only come about through knowledge, the Committee recommends each Juvenile and Domestic Relations or Family Court judge, county prosecutor and every assistant prosecutor assigned to juvenile matters should visit detention and shelter facilities in his or her jurisdiction within 60 days of appointment or assignment to juvenile matters. Additional visits should be scheduled twice yearly thereafter. In addition, defense counsel, both public and private, should visit each juvenile client every two weeks. Visits should be designed to review the well-being of juveniles held in detention or shelter care and the conditions of the facilities.

The key to success or failure of detention programs will always, according to the National Advisory Commission and this Committee, remain with staff. To ensure success, personnel practices must concentrate on obtaining and retaining competent, qualified staff who enjoy and are capable of working with youth. Specialized training programs are also needed to maximize staff potential. Subjects relating to youth behavior, counseling and crisis intervention are ad-

vised, especially for those line personnel who have direct and continuous contact with resident juveniles. Professional staff members should be encouraged to attend special workshops or conferences to improve their skills. To complement in-service training, it may be desirable to develop college training programs for detention and shelter staff as well as other system personnel.

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THE JUVENILE JUDICIAL PROCESS

Introduction

The court is the pivot around which the juvenile justice system revolves. Its decisions and actions affect all aspects of the juvenile process. The court also reflects the tension existing between due process and *parens patriae* doctrines.

This tension has stirred controversy in formerly settled issues such as the appropriate jurisdiction of the juvenile court, requisite pre-adjudicatory procedures and the role of defense and prosecution. The absence of uniformity and structured guidelines has resulted in confusion, inconsistency and questionable practices in terms of due process.

Although distinctions have now been drawn between status offenders and delinquents, many still question the retention of court jurisdiction over those guilty of no crime. More are advocating that until it is possible to predict delinquency with accuracy, the assumption of jurisdiction over an imperfectly identified group, such as status offenders, is questionable as a tactic to prevent crime.

The state's ultimate response to delinquency allegations is affected by and often determined during the pre-adjudicatory phase of the judicial process. Discretionary decision-making is common during this phase and to ensure proper use, greater visibility is required. Regulations are needed not only to guarantee fair treatment but also to protect the juvenile's rights and the presumption of innocence. Maintaining presumptive innocence is especially difficult in the juvenile justice system since existing practices encourage rehabilitative attempts almost from the moment the juvenile has contact with the system.

The present juvenile adjudicatory hearing is in many ways a hybrid; it is not fully criminal nor civil. Special problems posed by the juvenile's immaturity and parental involvement in such proceedings mandate solutions for which there are no ready precedents in criminal or civil procedures. Many contend the implicit premise of U.S. Supreme Court decisions authorize criminal procedural safeguards unless the special protective and rehabilitative aims of the juvenile system require otherwise. Others argue that many criminal procedural devices are neither necessary nor well-suited to the pursuit of fairness in delinquency proceedings. *Gault* settled many due process issues, however, debate and confusion regarding remaining due process questions are common.

Although delinquency proceedings have progressively assumed an adversarial nature, the appropriate role and qualifications of the prosecuting attorney in juvenile matters is largely under debate. Often, prosecuting attorneys assigned to handle juvenile court matters are unfamiliar with the special characteristics and philosophy of the juvenile system and are required to vacillate between juvenile and adult tribunals which differ in purpose and philosophy. Many authorities support a gradation in the prosecutorial role, suggesting the attorney for the state consider both the interests of the state and the needs of the juvenile.

The effort to accommodate the requirement of counsel with traditional juvenile court theory has resulted in uncertainty surrounding the function of counsel in juvenile court. The appropriate role of defense counsel has been a source of continual debate. The right to counsel in particular situations such as police questioning, pre-adjudicatory proceedings and other court proceedings has not been clarified. The present New Jersey standard of threat of institutional confinement to determine a juvenile's right to counsel has resulted in varying interpretations. More than half of the adjudicatory hearings are held without counsel. To minimize confusion and assure due process, some contend all juveniles before the court should have the benefit of counsel whereas others advise counsel whenever an out of home placement is contemplated.

Problem Assessment

Pre-Adjudicatory Process

Landmark U.S. Supreme Court decisions opened new issues not previously considered in relation to juvenile matters. The Court's selective incorporation of certain due process requirements, however, does not allow ready interpretation of remaining unresolved issues, especially those surrounding pre-adjudicatory proceedings. As similarities between criminal and juvenile procedures increase, so do questions regarding what is the appropriate role and jurisdiction of the juvenile court.

To understand more completely the difficulty of blending traditional juvenile court philosophy with due process requirements, it is helpful to review historical influences leading to the emergence of this special tribunal and factors affecting its early development. The Supreme Court's injection of due process and procedural regularity was actually preceded by two major nineteenth century reforms: the establishment of the New York City House of Refuge in 1825 and the passage of the Illinois Juve-

References for this chapter appear on pages 300-302.

nile Court Act in 1899 (Act of April 21, 1899 [1899] Ill. Laws, p. 131).[1]

The New York House of Refuge was an attempt to rescue certain children from inevitable criminal careers and social misery. Legislation granted this institution's managers "power in their discretion to receive and take into the House of Refuge to be established by them, all such children as shall be taken up or committed as vagrants, or convicted of criminal offenses . . . that may be proper objects."[2] The targets of the House of Refuge reform were children who had not broken the criminal law. Major offenders were considered to be beyond reform and were left in the adult criminal system. In addition, distinctions between neglected children and delinquents and between actual child criminals and future child criminals, which are of considerable importance today, were not drawn.

The child-saving philosophy of the House of Refuge spread quickly as numerous cities sought to replicate the effort. The movement coincided with penal reform efforts which introduced the concept that prevention, not retribution, should be the goal of punishment. Prevention was thought best accomplished through deterrence and individual reformation. The House of Refuge trend was influenced by these prevailing attitudes and attempted to prevent crime by committing those children who were considered able to be reformed.

The conditions of social misery, minor illegal conduct, vice and ignorance were believed to be prodromal signs of criminality and were often referred to as competent predictors of crime. Thus, the reformers of the nineteenth century not only engaged in crime prevention but also legitimized the practice of crime prediction.[3] These same child-saving and preventive efforts became firmly ingrained in early juvenile court philosophy and remain today.

By the mid-nineteenth century, a fresh outlook on juvenile corrections emerged which concentrated on a family-like atmosphere as opposed to education or religion. The Illinois Juvenile Court Act of 1899, which embodied this family-like emphasis, officially established a separate court for dealing with juveniles. The stated goal of this Act, considered the second great reform, provided "the care, custody and discipline of a child shall approximate as nearly as may be that which should be given by its parents."

Juvenile court was designed to prevent errant juveniles from slipping further into crime by providing corrective treatment. It has traditionally had broad jurisdiction over many types of children. Under *parens patriae,* the court was impowered, if not duty-bound, to intervene in the lives of children who were heading toward criminality. This philosophy justified the inclusion under the court's jurisdiction of children who had committed no crime but were identified as status offenders (incorrigible, truant, runaway, wayward) on the grounds that subsequent delinquent behavior was imminent.

As a result, the juvenile court and the soon to follow juvenile correctional system treated status offenders and those charged with crime in identical fashion. In recognition of the elemental unfairness of labeling as delinquent children guilty of status offenses and treating them in correctional facilities for the delinquent, several states have sought to divorce status offenses from the definition of delinquency and create a distinct category for these children. New York, in 1962, was one of the first states to arrive at this solution and termed such juveniles as "persons in need of supervision" (PINS). New Jersey enacted a similar bifurcation in March, 1974, establishing the category of Juveniles in Need of Supervision (JINS) and requiring changes in their treatment. (See preceding chapter on Juvenile Detention and Shelter Care.) Although many states have chosen to distinguish between delinquency offenders and status offenders, it is argued the essential problem still survives: juveniles guilty of no crime remain under the jurisdiction of the court and are subject to official intervention.

The basic question in the status jurisdiction controversy is whether children should be liable for official court intervention and confinement for acts which, if committed by an adult, would not result in any action. Arguments along this line are similar to the issues involved in decriminalizing certain victimless crimes such as drug use, drunkenness, gambling and prostitution. Many courts and legislative bodies have reached the conclusion that the time has come for removing jurisdiction over morals offenses; that it is time to eliminate legal authority to intervene in situations where there is no victim, no injury or no offense against property.[4]

In dealing with children, however, it is commonly asserted that the court is responsible for ensuring children who are not receiving adequate care are provided with a safe and healthful environment through whatever means necessary: legal protection, social services or substitute living arrangements.[5] Many still consider status offenses to be precursors of delinquency and, therefore, such offenders need to be protected from themselves and their environment.

However, other authorities opine that confinement or placement, whether for rehabilitative or retributive purposes, constitutes deprivation of liberty and, hence, punishment. In addition, there is concern that the stigma associated with an adjudication of "delinquent" attaches as well to an adjudication of "in need of supervision." The general public equates "delinquent" with "criminal" and "JINS" with "delinquent." It is official intervention through court action, many suggest, which causes and encourages this labeling and stigmatization.[6]

There has been minimal research regarding the notion that official court intervention in the life of a

child who is considered incorrigible, beyond control, who runs away or is truant is ultimately beneficial.[7] Any positive effects frequently appear to be accompanied, if not eroded, by self-fulfilling effects of the labeling process. A report[8] completed by Vanderbilt University and issued by the U.S. Department of Health, Education and Welfare concluded that labels such as "delinquent" make it easier for teachers or social workers to excuse their inability to help a child.[9] There is also support for the conclusion that labeling helps to perpetuate and strengthen delinquent behavior. Juveniles so labeled often conceptualize themselves as "delinquent" and act accordingly; families and teachers react to such juveniles as "delinquent." The deleterious effect of labeling youth as "delinquent" or "in need of supervision" is an often asserted justification for limiting court jurisdiction to as few youths as possible.

The National Council of Crime and Delinquency (NCCD) advocates the removal of status offenses from juvenile court jurisdiction as well as the repeal of all laws that subject adults to criminal sanctions for behavior that does no harm to others.[10] NCCD agrees with those who say that subjecting a child to judicial sanction for a status offense helps neither child nor society—instead it often does harm. It is frequently maintained that the juvenile court can utilize coercive powers fairly and efficiently against criminal behavior but that it cannot deliver or regulate rehabilitative services. Noncoercive community services must bear the responsibility for dealing with socially unacceptable but noncriminal behavior of children.

On the other hand, many argue that if jurisdiction over status offenders were removed from the courts these juveniles would lose needed services. Some believe that court jurisdiction over status offenders enables them to receive intensive supervision and schooling, thus enhancing the possibility of a successful adjustment in the community.[11] By maintaining court jurisdiction over status offenses, families and juveniles who need services and cannot secure them from voluntary agencies can petition the court for help. Many system practitioners and commentators have been reluctant to put their faith in voluntary agencies, reasoning that most families and children before the court probably have previously sought help from these agencies and may have been rejected.[12] Voluntary community agencies frequently have preferential admission policies and may discriminate against those who need services most. Therefore, it is argued, status jurisdiction must be retained because if the courts do not act in such cases, no one else will.

Judge David Bazelon of the U.S. District Court of Appeals, District of Columbia, has concluded that precisely the opposite is the case: because the court acts, no one else does. "Schools and public agencies refer their problem cases to you [the judges] because you have jurisdiction, because you exercise it, and because you hold out promises that you can provide solutions."[13] Those who agree with Judge Bazelon argue that the inclusion of status offenses permits parents, schools and other community agencies to evade responsibility for handling youth problems. Supreme Court Justice William O. Douglas has commented, "The constitutional contours of the problem [of delinquency] are still being drawn. Important as that process may be, a court is not the medium where the problems of juvenile delinquency will ultimately be solved. The solution can emerge only from the community."[14]

Juvenile court jurisdiction is defined not only in terms of offenses or behavior but also by age. In designating age limits, most states have generally followed the common law principle that young children are incapable of harboring criminal thoughts or understanding the real significance of criminal actions.

The principle of mitigating the criminal responsibility of children has ancient origins. Under Roman law, puberty was the age of accountability. Common law followed Roman law and attempted to settle the puberty distinction by designating arbitrary ages. Justice Heher, in his concurring opinion in *State v. Monahan,* 15 N.J. 34, 104 A. 2d 21 (1954), summed up the common law principle:

> A child is not criminally responsible at common law for his acts or omissions if he is of such tender years as to be incapable of distinguishing between right and wrong, and of understanding the nature of the particular act. At common law (1) under the age of seven years the presumption of incapacity is conclusive; (2) between the ages of seven and 14 years there is a rebuttable presumption of incapacity; and (3) above the age of 14 years there is a rebuttable presumption of capacity (15 N.J. at 47).

New Jersey's designation of juvenile court jurisdictional age limits is rooted in common law. In 1903, county courts for juvenile offenders, consisting of the judges of the Courts of Common Pleas, were established (L. 1903, C. 219). In 1912, courts manned by special juvenile court judges were set up in first class counties. A comprehensive statutory revision was adopted in 1929, establishing Juvenile and Domestic Relations Courts and defining their jurisdiction over children under the age of 16 years (L. 1929, C. 157; R.S. 9:18-1 et seq.).

The question remained, however, whether Juvenile and Domestic Relations Courts had exclusive jurisdiction over all juveniles under the age of 16, regardless of the offense. Legislation passed in 1935 provided that any person under the age of 16 shall be deemed incapable of committing a crime, including felony, high misdemeanor, misdemeanor or other offense (L. 1935, C.C. 284, 285). Notwithstanding the express terms of statutory law, the court concluded in *In re Mei,* 122 N.J. Eq. 125 (E. & A. 1937)

that the Juvenile and Domestic Relations Court did not have jurisdiction over murder cases.[15]

The subsequent case of *State v. Monahan*, 15 N.J. 34, 104 A. 2d 21 (1954) effectively settled the issue by overturning *Mei* and holding that the juvenile court has exclusive jurisdiction over misconduct by children under 16, including misconduct which would constitute murder or other heinous crime if committed by an adult. In clarifying juvenile court jurisdiction over persons between the ages of 16 and 18, the Legislature in 1946 stated that the juvenile court may waive jurisdiction over a juvenile age 16 or older and refer the matter to the prosecutor for trial where the offense was of a heinous nature (L. 1946, C. 77; *N.J.S.A.* 2A:4-15).

New Jersey Juvenile and Domestic Relations Courts have exclusive jurisdiction "in all cases where it is charged that a juvenile has committed an act of delinquency or is in need of supervision" (*N.J.S.A.* 2A:4-46). If the juvenile is age 16 or older, however, the court may waive jurisdiction over a case and refer that case to the appropriate court and prosecuting authority if: 1) there is probable cause to believe the juvenile committed an act that if committed by an adult would constitute homicide or treason, committed an offense against the person in an aggressive, violent and willful manner, or committed certain Controlled Dangerous Substances Act violations; and 2) the court is satisfied that adequate protection of the public requires waiver and there are no reasoable prospects for rehabilitation prior to attaining the age of majority by use of the procedures, services and facilities available to the juvenile court (*N.J.S.A.* 2A:4-48). The law also provides that juveniles over the age of 16 charged with delinquency may elect to have their cases referred to adult court (*N.J.S.A.* 2A:4-49).

Inevitably there will be dissention on whether age boundaries are too inclusive or too restrictive with regard to persons who should be treated as juveniles or sent to adult court. Ideally, waiver should be limited to being a means for subjecting to criminal court jurisdiction those persons who are clearly not appropriate subjects of the juvenile justice system. The types of offenses that are designated as waiverable are those which are most likely to shock the public's conscience and motivate it to demand punishment. In recent years the waiver mechanism has been the subject of much debate particularly for this reason. Many believe the waiver process is of questionable validity, frequently discriminatory and not sufficiently regulated. The President's Commission on Law Enforcement and the Administration of Justice has concluded:

> The substance behind the waiver procedure . . . remains unrecognized for what it really is: Not a scientific evaluation of whether the youth will respond successfully to a juvenile court disposition but a front for society's insistence on retribution or social protection.[16]

Guidelines for waiver have characteristically been vague. Although New Jersey has required a waiver hearing since prior to the *Kent* decision, disagreement regarding the types of offenses which should be considered waiverable and other appropriate criteria for waiver continues to resurface. A recurring issue is whether the age limit and/or applicable criteria for waiver should be relaxed to give the court more discretion to permit prosecution as an adult. Some contend that present requirements for waiver are too restrictive. Few would argue that the juvenile system has been unable to deal effectively with juveniles who commit violent and aggressive acts or who are hardened repeat offenders. Many such juveniles, especially repeat offenders, are cognizant that, because of their age, they will be treated more leniently than if they were adults. Less restrictive criteria would facilitate the waiver to adult criminal court of violent and/or hardened repeat offenders who are considered inappropriate for juvenile justice processing.

On the other hand, many question the usefulness of waiver since juveniles tried as adults are sent to the same correctional institutions as are juveniles over age 16 who are adjudicated "delinquent." In addition, present court rules require only two day's notice of a waiver hearing for defense counsel and many agree this is not long enough to allow counsel to prepare an adequate representation.

Most juvenile court law and procedure is directed toward the adjudicatory hearing, with little attention paid to the pre-adjudicatory stage. Since the majority of cases never reach the hearing step, competent guidelines which structure the early stages of court involvement are equally necessary. Nevertheless, such guidelines are insufficient. Many of the activities carried on during this time period—discovery, motions, diversion decisions, negotiations, admissions of guilt—are vital, if not as important as the hearing itself. These events and procedures set the tone for the hearing and have a significant effect on its outcome.

Although many states, including New Jersey, function with court rules relating to the juvenile process, regulations governing pre-adjudicatory procedures tend to be vague. Civil and/or criminal court rules are frequently relied upon to fill gaps.[17] Confusion seems to exist in many jurisdictions regarding the proper approach to such pre-adjudicatory mechanisms, particularly since these procedures are associated with criminal trials and seem awkward in a juvenile setting.

Juvenile court discovery has been given little attention by existing statutes, court decisions and model court acts. Some court opinions have held that although delinquency cases can be considered civil in nature, broad civil discovery rules do not au-

tomatically apply, and the extent of discovery is within the discretion of the juvenile court.[18] It is argued, however, that both *Kent* and *Gault* require certain types of discovery on constitutional grounds.[19]

There are several benefits inherent in any prehearing fact gathering mechanism such as discovery. Cases where the evidence is too weak to support the charge would be identified and screened out. Any social or psychiatric facts relating to the juvenile which may indicate the complaint is ill-advised or inappropriate and should be dropped would also surface. Adequate discovery may permit parties to resolve issues early, without the need for a hearing. The mutual sharing of information would lay the groundwork for an efficient and fair hearing. Discovery practices, on the other hand, may infringe on a child's interests in maintaining privacy and render the preservation of confidentiality difficult. Notwithstanding this consideration, the values served by discovery appear to outweigh disadvantages.

A corollary of the application of due process since *Gault* has been the growth of pre-adjudicatory motion practice in juvenile and family courts throughout the nation.[20] Although pretrial motion practice has traditionally been an indispensable component of civil and criminal litigation, juvenile courts still lack such a regular mechanism. Consequently, procedures tend to be ambiguous and irregular. Motions are essential to raise issues and deal with matters which should be dealt with prior to a hearing. The availability of pretrial motions protects the rights of all parties and, like discovery, provides a vehicle for early negotiation and settlement.

In the juvenile process, as in the adult criminal process, the defendant usually does not contest the charges. Most adult defendants plead guilty and only a small percentage of cases are actually settled by jury trial. The American system of justice, as Skolnick has pointed out, is so predominately pretrial in character that full-scale trials reflect a breakdown of negotiation between defense and prosecution attorneys.[21] Observers have concluded the contested trial or hearing is even more rare in juvenile cases.[22]

It is commonly believed that most criminal cases involving pleas of guilty are concluded on the basis of a plea agreement or negotiation between the parties. It is rare, though, to speak of plea negotiation in juvenile cases. The legal system has only recently acknowledged the existence of plea negotiation and sought to institutionalize it by promulgating guidelines and restrictions for its use. Its existence in juvenile proceedings has yet to be officially recognized.

Plea negotiations in delinquency proceedings probably are not as extensive as in criminal cases, due primarily to the fact that juveniles receive indeterminate dispositions up to three years, whereas adults can receive fixed minimum and maximum sentences. Negotiations can, however, lessen the seriousness of the issue and thus the possible consequences. Generally three types of agreements can be sought: a guilty plea to a lesser offense in exchange for a lower possible length of disposition, a guilty plea in exchange for a recommendation of a noncustodial disposition and a guilty plea in exchange for dismissal of other charges. The latter is of little benefit to the juvenile at adjudication but it is important at the correctional institution regarding what is the determined "goal time" for release.

Regardless of whether the occurrence of plea negotiation is acknowledged, it remains a common fact that, in most cases, the juvenile admits the charges. A long-standing notion of dealing with errant juveniles is the belief in therapeutic confession, which is regarded as a necessary prerequisite for successful treatment. A child's admission to an offense "is an act of contrition that starts him on the road to rehabilitation."[23] However, upon entering an admission of guilt, a juvenile as well as an adult waives certain basic rights, the waiver of which can have a significant effect on the outcome. Thus, admissions of guilt and the waiver of guaranteed rights must be scrupulously guarded to ensure that they are voluntarily and knowingly made. The matter is even more delicate when dealing with juveniles, who are more vulnerable and whose reasoning power and comprehension are inferior to adults. Admissions of guilt should not be casually or informally accepted but should be entered under the closest scrutiny.

The leading case relating to the voluntariness and admissibility of a confession by a child suspect is *Haley v. State of Ohio,* 332 U.S. 596, 68 S. Ct. 302, 92 L. Ed. 224 (1948), where a 15-year-old boy was convicted of murder. The U.S. Supreme Court, in reversing the conviction on the ground that the confession was obtained in violation of due process, stated:

> The age of petitioner, the hours when he was grilled, the duration of his quizzing, the fact that he had no friend or counsel to advise him, the callous attitude of the police towards his rights combine to convince us that this was a confession wrung from a child by means which the law should not sanction. Neither man nor child can be allowed to stand condemned by methods which flout constitutional requirements of due process of law (322 U.S. at 601, 68 S. Ct. at 304).

In a similar case, the New Jersey Supreme Court ruled in *State in the Interest of Carlo and Stasilowicz,* 48 N.J. 224, 225 A. 2d 110 (1966), that the constitutional safeguard of voluntariness governing the use of confessions is applicable in proceedings before the juvenile court. In determining the confessions were involuntary, the Supreme Court weighed the likelihood of harmful effects upon the minds of a 13-year-old and 15-year-old placed and interrogated in isolated rooms of a police station. It was concluded the police station environment, particularly hostile,

frighte ` g and threatening to a younger child, affects the voluntariness of any confession which might be given by a child. The court ruled that the confessions were inadmissible as involuntary, stating the "use of an involuntary confession in a juvenile court proceeding offends fundamental fairness because of the likelihood of its untrustworthiness" (48 N.J. at 236).

Since certain constitutional guarantees and rights are relinquished upon the entry of an admission of guilt, juveniles should, as do adults, retain the ability to withdraw an admission for any just and fair reason prior to a final disposition or, after a disposition to correct a manifest injustice. In addition, the fact of an admission should not be permitted as evidence against the juvenile.

The Adjudicatory Hearing

In advance of the U.S. Supreme Court decisions in *Kent v. United States, In re Gault* and *In re Winship,** numerous court decisions at varied levels have been rendered which further define and accentuate the application of constitutional rights to juveniles during adjudication. In *McKeiver v. Pennsylvania,* 402 U.S. 529 (1971), the U.S. Supreme Court ruled juveniles involved in delinquency proceedings do not have the right to trial by jury. It was declared by the U.S. Supreme Court in *Breed v. Jones,* 421 U.S. 519 (1975), that the Fifth Amendment protection against double jeopardy applies to juvenile delinquency proceedings, with jeopardy attaching when the juvenile court begins to hear evidence. The Court stipulated also that the subject juvenile cannot be tried again for the same offense in adult court.

The Supreme Court has declined to say, however, that all rights constitutionally assured to an accused adult are assured as well to juveniles in delinquency proceedings. The Court has refrained from asserting anything more than the delinquency hearing must measure up to the essentials of due process and fair treatment. Just what additional due process elements and other essentials of criminal proceedings are applicable or appropriate for juvenile court proceedings remains unclear.

A long-standing controversy in juvenile law revolves around the proper rules of evidence in juvenile proceedings. The sufficiency and reliability of evidence in delinquency proceedings traditionally has not been considered a crucial issue. Many believe concern for the child's welfare has been allowed to interfere substantially with the goals of fairness and reliability of evidence in the adjudicatory process.[24] Few cases have been overturned on grounds of inadmissibility of evidence. When judges are the triers of fact, they are universally presumed by appellate courts to have disregarded any improper evidence admitted during the proceedings that should have been excluded.

Nonetheless, modern juvenile court legislation has sought to establish evidentiary standards beyond those of relevancy and materiality. It has been held in New Jersey, however, that a different standard as to the admissibility of evidence would apply to a juvenile court proceeding than that which would apply to an adult criminal trial (*State in Interest of L.B.,* 99 N.J. Super. 589, 240 A 2d 709 (1968)). This decision, though, did provide that New Jersey Juvenile and Domestic Relations Courts can entertain an application for suppression of evidence on the ground of an illegal search and seizure. New Jersey standards governing the validity of searches of adults are generally applicable to juveniles. The new juvenile act provides that the right to be secure from unreasonable searches and seizures shall be applicable in cases arising under the act as in cases of persons charged with crime (*N.J.S.A.* 2A:4-60).

The admissibility of confessions is a closely related issue which has been discussed in numerous cases. In general, the courts appear to agree that the requirements of *Miranda v. Arizona,* 384 U.S. 436 (1966), are applicable to juveniles. Many New Jersey court decisions have dealt with this issue; some holding confessions admissible and others, inadmissible for a variety of reasons. Generally, *Miranda* warnings are applicable to juveniles. It seems, however, that New Jersey takes the view that if the parents of the juvenile being questioned cannot or will not appear and the juvenile is not considered old enough to understand and waive the rights to counsel and remain silent, questioning may go forward, even without the *Miranda* warnings, provided it is conducted with the utmost fairness, without force or other improper influence, mental or physical, and in accordance with the highest standards of due process and fundamental fairness (*State v. R.W.,* 115 N.J. Super. 286, 279 A. 2d 709 (1971), affirmed 61 N.J. 118, 293 A. 2d 186). Difficulties with this discretionary application are inherent—at what age is a child to be considered "not old enough?" The new juvenile law, enacted in March, 1974, arguably overrules the 1971 decision in *State v. R.W.* Current statutes provide the right of due process of law shall be applicable in cases arising under the juvenile law as in cases of persons charged with crime (*N.J.S.A.* 2A:4-60).

In *McKeiver v. Pennsylvania,* 402 U.S. 529 (1971), the expansion of adult due process protections did not continue to the issue of trial by jury. The Court concluded that "if the formalities of the criminal adjudicative process are to be superimposed upon the juvenile court system, there is little need for its separate existence. Perhaps that ultimate disillusionment will come one day, but for the moment we are disinclined to give impetus to it" (91 S. Ct. at 1989). Justices Douglas, Black and Marshall registered dis-

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* *Kent v. United States,* 383 U.S. 541 (1966); *In re Gault,* 387 U.S. 1 (1967); *In re Winship,* 397 U.S. 358 (1970).

senting opinions in *McKeiver,* reasoning that when a state uses its juvenile court proceedings to prosecute a child for an adult criminal act and the penalty is confinement, the juvenile should be accorded the same procedural protection as an adult.

In refusing to require state juvenile courts to grant the right to jury trial guaranteed for adults, the Supreme Court reinforced its position that there are different due process requirements for juveniles than for adults. In its decisions, the Court accepted the proposition that the Due Process Clause of the Fourteenth Amendment has a role to play in juvenile delinquency proceedings, the applicable due process standard in such proceedings being fundamental fairness. It has refrained from holding flatly that all rights constitutionally assured for the adult accused are to be imposed upon juvenile proceedings. Instead, the Supreme Court has attempted to strike a judicious balance by injecting procedural orderliness into the juvenile court system and ascertaining the precise impact of due process requirements on a selective basis.

The *McKeiver* decision is surprising to some in view of earlier decisions relating to the right to trial by jury. In *Duncan v. Louisiana,* 391 U.S. 145 (1968) it was held that the right to a jury trial is required in criminal proceedings whenever the accused faces a loss of liberty of sufficient length to be called serious. *Bloom v. Illinois,* 391 U.S. 194 (1968) extended this right to criminal contempt proceedings which had traditionally been exempt from jury trial requirements. These decisions indicate that it is loss of liberty rather than the name of the proceeding which is the determining factor. Many commentators have argued that the *Duncan* proposition (a right to trial by jury is so fundamental that it must be provided in any criminal proceeding where a defendant faces a significant abridgment of freedom) should also extend to juvenile delinquency proceedings. [25] Perhaps a good explanation for the Court's determination in *McKeiver* and other major juvenile cases can be found in the theory that these decisions involved a conscious process of balancing the interests of society and the interests of the individual while still preserving a unique system of juvenile justice.

Another important issue closely associated with jury trials is whether juvenile adjudicatory hearings (and jury trials if provided) should be open to the public. The Supreme Court held in *In re Burrus,* 275 N.C. 517, 169 S.E. 2d 879 (1969), which was jointly decided with *McKeiver v. Pennsylvania,* 403 U.S. 529 (1971), that juveniles are not entitled to public trial. The confidentiality of juvenile proceedings has long been considered vital to protect the child's interests and facilitate rehabilitation. Justice Brennan, in his dissenting opinion in *Burrus,* however, speaks about the benefits of public trial which would accrue as well to public delinquency proceedings. Justice Brennan suggests that the "accused may in essence appeal to the community at large, by focusing public attention upon the facts of his trial, exposing improper judicial behavior to public view, and obtaining, if necessary, redress through the medium of public indignation" (91 S. Ct. at 1191).

Aside from the related constitutional issue, most of the argument surrounding the exclusion or presence of the public at juvenile court hearings centers on whether the public, through the media, should have access to the names of juveniles before the court and information on their alleged offenses. The difficulty occurs because of the tension between the values of publicity and public scrutiny on the one hand and privacy and confidentiality on the other. Some have sought to open juvenile court hearings to the public and to encourage newspapers to publish the names of juvenile defendants and details of their offenses, on the grounds that publicity constitutes an effective deterrence to juvenile delinquency.[26]

Literature on the subject of public disclosure not only criticizes disclosure as a betrayal of the juvenile system but notes that publication may help to increase delinquent behavior. Although publicity may at times be considered a form of punishment, many suggest it also provides an opportunity for juveniles to "flaunt unregeneracy."[27] Instead of serving any additional deterrent function, such a practice "feeds the drives that move these youths and may influence others toward emulation."[28] Publicity, then, may be counterproductive since it tends to make delinquents "heroes" in the eyes of peers and reinforce delinquent behavior.

Most model codes and standards such as NCCD's *Standard Juvenile Court Act* and U.S. Department of Health, Education and Welfare's *Model Acts for Family Courts and State-Local Children's Programs* call for maintaining the confidentiality of juvenile court proceedings. The majority of these model acts also suggest that the judge should have discretion to admit, aside from those who are directly involved, certain persons who have an interest in the case such as researchers, with the understanding that the names of the juveniles and families involved are not released.

However, there are public concerns with respect to the confidentiality of juvenile justice proceedings caused by a general unawareness and lack of understanding regarding cases processed through the juvenile courts and the disposition of those cases. In particular classes of cases, many feel there should be due consideration given to the right of the public to be informed and to facilitate this end, the reporting of juvenile proceedings by the press should be permitted and encouraged.

Although data is scarce, it seems likely that nonpublic hearings are essential to allow juvenile courts to deal with juvenile misconduct in as nonintrusive a manner as possible. Moreover, confidentiality may be as important to preserving the juvenile justice system

as it is to enhancing the rehabilitation of children in particular cases.[29]

Defense Counsel in Juvenile Court

The Supreme Court determined, in *In re Gault,* that a juvenile has a right to counsel in proceedings which "may result in commitment to an institution in which the juvenile's freedom is curtailed" (387 U.S. at 41). New Jersey's response to *Gault* is unique compared to other states. To comply with this mandate, New Jersey enacted a bifurcated calendaring system. Cases involving juveniles faced with the "threat of institutional confinement" are scheduled on the "counsel mandatory" calendar and all other cases are scheduled on the "no counsel mandatory" calendar. There is wide disparity in the interpretation and application of the "threat of institutional confinement" standard for counsel. As a result, some juveniles are denied the right to have counsel appointed who, had they been in other counties, would have been afforded this right. Many suggest a clarification of "threat of institutional confinement" to eliminate any disparities. Practitioners have begun to look to the possibility of any out of home placement as warranting the protection of counsel.

In *Gault,* the Supreme Court also asserted that "a juvenile needs the assistance of counsel to cope with problems of law, to make skilled inquiry into the facts, to insist upon regularity of the proceedings and to ascertain whether he has a defense and to prepare and submit it" (387 U.S. at 36). Although the presence of counsel is accepted, the role of defense counsel in delinquency proceedings is still largely under debate. It is understandable that the issues surrounding the role of counsel are as hotly debated as was the question of their presence prior to *Gault.* Difficulties in defining the proper role of counsel exemplify the tension existing between *parens patriae* and due process.

Problems affecting public representation for criminal defendants seem to be amplified in the case of juveniles, primarily because the provision of counsel for juveniles is a relatively new concept unstructured by tradition. The counsel-client relationship in juvenile court is somewhat awkward and foreign compared to the traditional relationship. One major difference is that lawyers for juvenile clients must also have relationships with their parents and guardians. Several difficulties can be described as follows:

> In the ideal lawyer-client relationship, the client brings a fee, trust, dependence and gratitude to the contract, whereas the lawyer is required to predict the probable outcome of a case, to perform esoteric services competently, to reinforce the bargaining strength of a defendant, and to accomplish results which would not otherwise be achieved without his presence. But there are a variety of novel occupational hazards in juvenile court: juvenile clients usually bring modest and undependable fees; informal bargaining and negotiated pleas have little significance; fringe benefits, such as accessibility to court personnel or priority over defendants without lawyers, are usually denied or erratically tolerated; a lawyer may often be faced with a conflict of interest between a client and his parents; trial is to be avoided because the chances of victory are slight; and the vagueness of delinquency laws, the unpredictability of juveniles as witnesses, and the difficulty of discrediting the testimony of adult officials makes an adversary posture inadvisable.[30]

The appropriate role of an attorney in juvenile court has been given considerable attention in literature. Some commentators have theorized that how defense lawyers perceive their roles and how their roles are perceived by other participants in the court process may have a significant impact on how cases are actually processed and disposed of.[31] Court rules and legislation have not been particularly helpful in defining this role, nor has the U.S. Supreme Court settled the issue.

It seems commentators and practitioners are hesitant to promote the role of juvenile defense counsel as strictly or ideally that of advocate. It is frequently suggested that advocate duties must be tempered with concern for the "best interests" of the child and of society. It has even been reported that most juvenile judges "see the lawyer's chief value as lying in the areas of interpretation of the court's approach and securing cooperation in the court's disposition rather than more traditional roles of fact elicitation and preservation of legal rights."[32] This position poses several interesting and complex philosophical questions.

Few would argue that when a juvenile strongly claims innocence, it is defense counsel's duty to defend zealously the client's interests. However, where there is reason to believe the child is guilty or where the child admits the offense, should there be a change in counsel's role? Should counsel move to suppress illegally obtained evidence if suppression would release a guilty youth? Should use of a confession be challenged if the confession is believed true? Should an attorney make full use of all available defenses if it will result in the release of a suspected guilty juvenile who will perhaps lose the opportunity to receive "treatment?" Should defense counsel be first an advocate and secondly a social worker or vice versa? When is counsel acting in the "best interests" of the client?

Answers to these questions would, of course, be obvious if the defendant or client were an adult. However, should there be any difference in defense counsel's role when representing a juvenile? When the client is a child, attorneys are unsure of the answers. It can be said that attorneys who modify their adversary role when the juvenile is guilty or suspected guilty adhere to the *parens patriae* function of the juvenile court.

One of the most persuasive arguments for insisting on an advocate role is the belief that facilities for treatment and correction are so inadequate that the consequences of an adjudication of delinquency are likely to cause more harm than good. Attorneys who do not believe in the promise of rehabilitation and treatment or who view the exchange principle[33] as an empty bargain are likely to assume the full advocate role, regardless of the client's alleged guilt or innocence.

Aside from the lack of consensus regarding an appropriate role conception, a major problem for attorneys representing juvenile clients is parental influence. If the parents are supportive of the juvenile, then the attorney is essentially representing the interests of the family as a whole. However, when the interests of juvenile and family differ, to whom is the attorney responsible? Attorney ethics and standards of conduct dictate that the attorney must remain responsible to the juvenile who is the client. Difficulties multiply when the attorney is retained by the parents—who, then, is the real client? The appointment of separate counsel when child and parental interests diverge is recognized as the only acceptable solution.

Most commentators and practitioners agree that defense counsel's obligations to his or her client do not end upon adjudication. Counsel has a duty to research the various dispositional alternatives and formulate a recommended plan for disposition that will accommodate the client's needs and interests. The areas of friction between attorney and probation officer or social worker, however, may become manifest during the dispositional phase. Some of the functions which many believe can appropriately be performed by counsel during the dispositional phase are as follows:

1. Ensure impartiality by acting as a counterbalance to unreasoned pressures exerted on the judge by the public and media.
2. Ensure basic elements of due process are present.
3. Ensure compliance with statutory requirements regarding incarceration and authorized limits of judicial intervention.
4. Ensure disposition is based on complete and accurate facts.
5. Test expert opinion to make certain predisposition and psychological reports are not inaccurate.
6. Give the child and family a voice in the proceeding.
7. Participate in the formulation of a proper dispositional plan.
8. Interpret the court to the family and encourage their acceptance of the disposition.[34]

The provision of effective representation and availability of lawyers experienced in juvenile law is another problem besetting the juvenile court. Only recently has attention been paid to juvenile law and the juvenile justice system in legal centers and law schools throughout the nation. Few specialized training courses for lawyers who operate in juvenile court have been developed and, consequently, few attorneys, whether private or public, have the benefit of full knowledge of substantive and procedural juvenile law and court practices.

Since juvenile or family court is predominantly a poor people's court, it would be expected that most juveniles needing counsel must be provided with public representation. New Jersey public defender offices, however, are frequently understaffed and lack adequate support services to meet the demands of juvenile caseloads. Many public defenders who are assigned juvenile caseloads are assigned other cases as well. Consequently the amount of time that can be devoted to juvenile cases is minimal. Only Essex County has a separate office devoted to juvenile cases. Under such an arrangement, attorneys are able to acquire expertise in juvenile matters.

Prosecution

At the heart of the early juvenile court movement was the vision of the court as a "benevolent parent dealing with an erring child."[35] Consequently the presence of counsel for either prosecution or defense purposes was considered foreign to juvenile court proceedings and thought to serve little purpose. The judge's role was determiner of the best interests for both the State and the child. Traditionally, a probation officer, social worker or even a police officer assisted in representing the interests of the State in delinquency proceedings. Until recently, appearances by prosecuting attorneys were rare. Only since the *Gault* decision determined the necessity of counsel for the juvenile has counsel for the State been considered appropriate, if not equally necessary.

To provide representation for the State in juvenile court proceedings, most prosecutor's offices in New Jersey and elsewhere assign responsibility for such cases to an assistant prosecutor. Usually this attorney divides his or her time between a juvenile caseload and other duties. The constant shuffling between two judicial tribunals of differing functions and philosophies can be confusing, especially in relation to the prosecutor's role in each forum.

The basic problems of role definition for defense counsel also affect the organization and role of counsel for the government; the prosecuting attorney. In view of the disparate philosophies of juvenile and criminal courts (rehabilitation v. punishment), the role of the prosecuting attorney in delinquency proceedings has not been clarified. The function of the prosecutor and the nature of the juvenile court have not evolved from the same origins. One places emphasis on proof of guilt for purposes of punishment whereas the other emphasizes concern, treatment

and rehabilitation. Consequently, interpretations of the prosecutor's role during the pre-adjudicatory stage, the hearing and the dispositional stage vary between jurisdictions and among individual offices.

The results of a 1973 survey of 68 major American cities conducted by the Center for Criminal Justice, Boston University School of Law, indicate the broad range of differences in the actual duties of juvenile prosecutors throughout the nation. Table 1 represents the percentage of public prosecutors who perform each of the identified tasks.[36]

In 1967, the President's Commission on Law Enforcement and the Administration of Justice discouraged the use of a public prosecutor in delinquency proceedings on the basis that "it would be too great a departure from the spirit of the court."[37] The Commission opted instead for governmental representation by an attorney with primarily civil responsibilities. It should be noted that this position was taken during the threshold of *Gault* and thus its relevance to the present is doubtful.

The need for a prosecuting attorney to be responsible for presenting evidence and therefore avoid the judge's conflict in roles was recognized in *Matter of Lang,* 44 Misc. 2d 900, 255 N.Y.S. 2d 987 (Fam. Ct. 1965) as a necessary response to the establishment of the law guardian in the New York Family Court Act (1963). A survey of juvenile court judges in the nation's 100 largest cities conducted by the Center for Criminal Justice indicates that most judges favor an active prosecuting attorney to maintain the adversary balance.[38]

The participation of a prosecuting attorney in delinquency proceedings has several advantages. The presence of an attorney to represent the interests of the State will remove any conflict of roles for the police officer, probation officer and the judge. The participation of a prosecutor would help expedite proceedings through careful investigation and marshalling of evidence. The presence of a skilled, experienced prosecutor should also increase the quality of representation by defense counsel. In general, representation for both parties should upgrade the proceeding as a whole. Both current opinion and practice support the active participation of prosecuting attorneys in delinquency matters as not only appropriate but also necessary. Many suggest the State's interests should be represented throughout the entire adjudicatory and dispositional process.

Table 1

Prosecutorial Duties in Juvenile Matters

Duties Performed by Prosecutors	Percentage Performing Each Duty
1. Represented the state at a detention hearing	38.2
2. Authorized to file a petition or complaint	11.8
3. Prepared the petition or complaint	22.1
4. Reviewed petition or complaint for legal sufficiency	36.8
5. Signed petition or complaint	8.8
6. Represented the state at pretrial motions	76.5
7. Represented the state at probable cause hearings	73.5
8. Conducted pretrial negotiations for the state	45.6
9. Could request a juvenile be bound over (waived)	47.1
10. Represented the state at bind-over (waiver hearings)	76.5
11. Could request a physical or mental examination of the juvenile	2.9
12. Authority to amend filed petition (complaint)	22.1
13. Could move for dismissal of filed petition (complaint)	44.1
14. Represented the petitioner (complainant) at adjudication hearings	72.1
15. Represented the petitioner (complainant) at disposition	48.5
16. Conducted the examination of witnesses	67.6
17. Recommended disposition	8.8
18. Represented the petitioner (complainant) on appeal	69.1
19. Represented the state in habeas corpus proceedings	72.1
20. Represented the case on an alleged probation violation	30.9

Source: Center for Criminal Justice, Boston University School of Law, "Prosecution in the Juvenile Courts: Guidelines for the Future," 1973.

New Jersey's Status in Comparison With the National Standards

Pre-Adjudicatory Process

Many national studies offer recommendations concerning the juvenile pre-adjudicatory process, most of which are designed to replicate, consistent with due process as defined by the U.S. Supreme Court, mechanisms and safeguards common in the adult process. The second NAC and the Institute of Judicial Administration/American Bar Association (IJA/ABA) Joint Study Commission have also ventured into several areas such as plea negotiation, discovery, calendaring and motion practice heretofore unconsidered by other standard-setting attempts.

The NAC in Judicial Process Standards 1.6 and 8.15 and IJA/ABA in Pre-Adjudicatory Process Standards 3.1-3.2 recommend the institution of discovery practice in juvenile matters.[39] Generally, practices which parallel criminal discovery regulations are recommended. IJA/ABA adds that at the discretion of defense counsel, discovery contents may be disclosed to the juvenile and, subject to his or her consent, to the parents, guardian or custodian. It is further recommended the court may permit a showing of cause for denial or regulation of disclosure, to be made *in camera*. A judicial officer who is exposed, in such an *ex parte* proceeding, to material prejudicial to the absent party should be excused from the case.

The issue of whether criminal or civil discovery practices should be applicable in delinquency proceedings has never been litigated in New Jersey. State civil court rules in general permit parties to obtain discovery regarding any matter not privileged which is relevant to the subject matter involved in the pending action (*R.* 4:10-1). Criminal discovery rules are more specific. Where the defendant in criminal matters makes a written request for discovery, the prosecuting attorney in New Jersey must permit the defendant to inspect and copy or photograph discoverable material as outlined in *R.* 3:13-3. A defendant who seeks discovery must in turn permit the State to inspect and copy or photograph relevant documents. Ordinarily, parties in delinquency matters follow criminal discovery practices although the process may not be as formal.

In Judicial Process Standard 5.19, the NAC recommends family court jurisdictions develop rules for the regulation of motion practice, suggesting motions normally be made in writing and where appropriate supported by affidavit.[40] As recommended, rules should specify time limits for the filing and serving of motions, as well as prescribe procedures for securing motion hearings. Extra-judicial conferences between the parties are also recommended. In New Jersey, there are no specific Juvenile and Domestic Relations Court rules governing motion practice although rules governing civil and criminal motion practice are substantial. Notwithstanding this fact, motions are an integral part of juvenile court practice and, generally, criminal motion practice serves as the model.

NAC recommends additionally that juvenile courts institute an arraignment process similar in most respects to the criminal arraignment procedure except for the entry of a plea to charges.[41] In Judicial Process Standard 5.13, it is recommended that juveniles in custody be arraigned at the start of the detention hearing. Juveniles who are not detained should be arraigned within 72 hours of the time a summons is served. At arraignment, the juvenile and parents or guardian should be required to appear and the court should orally inform the juvenile of his or her legal rights, the allegations and possible consequences of a finding of delinquency. In addition, counsel should be appointed and a date set for the hearing. Although the original NAC and others have proposed the abolition of arraignment as a separate stage of criminal procedure, the second NAC recommends its institution in juvenile court on the grounds that the effectiveness of written communications as a substitute for in-court, oral arraignment procedures has not been proven.

New Jersey law does not provide for a formal arraignment process in juvenile court. At least one county, though, has instituted an arraignment procedure in delinquency matters, requiring the juvenile, his or her parents and the victim to appear in court prior to the adjudicatory hearing for purposes of obtaining a plea. The present detention hearing, especially if combined with the probable cause determination, serves as a type of preliminary hearing and as such, could assume some of the arraignment functions. There are no preliminary type hearings for juveniles who are not detained although intake conferences, where available, may serve to inform the juvenile of the charges and possible consequences plus ascertain whether the juvenile contests the charges.

Numerous recommendations have been promulgated concerning waiver of juvenile court jurisdiction over certain juveniles age 16 years or older to be tried as adults.[42] Most studies recommend transfers be preceeded by a full and fair investigational hearing, which is mandated by the U.S. Supreme Court. The U.S. Children's Bureau recommends the juvenile must be charged with what would be a felony offense, a social study must be made and the court must find the juvenile to be "not treatable" by any State facility or that the interests of the community require the juvenile continue under restraint beyond minority. The Bureau would also permit waiver where a juvenile already committed to a State institution

is charged with certain types of misdemeanors and found to be generally disruptive of and noncooperative with the institution. The net effect of this position would be to allow a juvenile to be sentenced to an adult correctional institution for a misdemeanor. The Department of Health, Education and Welfare (HEW) recommends a similar process and would allow transfer where a person age 18 or older is alleged to have committed a delinquent act prior to reaching age 18.

Both NAC and IJA/ABA have undertaken a comprehensive study of the waiver process. IJA/ABA recommends that at a waiver hearing, the court must find: (1) probable cause to believe the juvenile committed a Class One Felony; (2) clear and convincing evidence the juvenile is not a proper person to be handled by the juvenile court, based on a determination of the seriousness of the alleged offense, prior record of the juvenile and inefficacy of dispositions available to the juvenile court as demonstrated by previous dispositions; and (3) the availability to the criminal court of more appropriate correctional facilities and programs. The Joint Study Commission adds that the prosecutor should file a waiver motion within seven days and that a hearing should commence within ten days of filing.

NAC, on the other hand, advises the family court has authority to waive when a juvenile age 16 or older is charged with a delinquent offense that is aggravated or heinous in nature or part of a pattern of repeated delinquent acts. Probable cause must be substantiated and the juvenile found to be not amenable to services available through the family court by virtue of maturity, criminal sophistication or past experience in the juvenile system.

New Jersey law more closely resembles the recommendations of IJA/ABA than any other group. Without the juvenile's consent, a Juvenile and Domestic Relations Court may waive jurisdiction if it finds after a hearing that there is probable cause to believe the juvenile committed an act which would constitute homicide or treason or committed an offense against a person in an aggressive, violent and willful manner; or committed a violation of certain drug distribution offenses. The court must also be satisfied that the protection of the public requires waiver and that there are no reasonable prospects for rehabilitation of the juvenile prior to his attaining the age of majority by use of the resources available to the Juvenile and Domestic Relations Court (*N.J.S.A.* 2A:4-48. 49, *R.* 5:9-5). The age of majority for waiver purposes was recently held to be 21.[43] New Jersey law also provides for the transfer of a case to adult criminal court at the election of a juvenile age 16 or over.

It is difficult to determine the number of juveniles who are actually tried as adults, due to the lack of readily available statistics, but it appears that very few juveniles are actually referred to criminal court for prosecution. Sources indicate that, in 1974, only 127 delinquency complaints (public representation and retained counsel) were referred to adult court, the majority from Essex, Sussex, Monmouth and Cumberland Counties.[44] Records of the Public Defender show only 27 juvenile cases represented by public defenders were referred to adult court in 1975 and only 48 such cases have been so referred in 1976.[45]

In contrast to the numerous recommendations proposed for waiver, few positions have been noted that deal with the acceptance of pleas of admission in delinquency proceedings. Only NAC and IJA/ABA offer any recommendations in this area.[46] IJA/ABA in Adjudication Standards 3.1-3.8 and NAC in Judicial Process Standard 6.2 recommend that, prior to accepting an admission of guilt, the court should inquire thoroughly into the circumstances of that admission and determine that the juvenile has the capacity to understand the nature and consequences of the proceeding. The judge should also determine the admission is made knowingly and voluntarily, be satisfied the juvenile understands the nature of those rights waived by an entry of admission and inform the juvenile of the possible penalties (IJA/ABA) or the most restrictive disposition possible (NAC). Additionally, IJA/ABA requires the court to determine the juvenile was effectively represented by counsel whereas NAC recommends the court determine the allegations in the petition are true by inquiry of the juvenile.

NAC and IJA/ABA hold opposite positions in relation to plea negotiation in juvenile court. In Judicial Process Standard 6.2, NAC flatly prohibits plea negotiations and recommends no admission which is the result of a plea agreement be accepted by the court. In addition, counsel should be required to state that no agreements have been made.

IJA/ABA allows for the practice of plea negotiations in delinquency matters and recommends guidelines similar to those proposed by other groups, particularly ABA, for criminal proceedings. In Adjudication Standards 3.1-3.8, the Joint Study Commission advises the judge not participate in plea negotiation except to be informed of an agreement and to state whether he or she will impose the proposed disposition if supported by subsequent social information. If the judge later finds the social information does not support the disposition, the juvenile should be asked to reaffirm or withdraw the plea. The juvenile should be advised that any agreement is not binding on the court.

It is also recommended by IJA/ABA that a juvenile be allowed to withdraw an admission to correct a manifest injustice. Prior to disposition, the court should allow withdrawal of a plea for any fair and just reason.

There is no Juvenile and Domestic Relations Court rule concerning plea negotiations as there is for cri-

minal courts in New Jersey. The practice of plea negotiation in delinquency matters is not officially recognized although discussions in the best interests of the juvenile are believed common between parties. Plea negotiation in juvenile court has not been prohibited although a Supreme Court memorandum issued in February, 1971 stated "the Court is of the view that the whole idea of plea bargaining with juveniles is inconsistent with the general philosophy of the juvenile court." A juvenile in New Jersey may, however, withdraw an admission prior to disposition for any fair and just reason. After disposition, an admission can be withdrawn to correct a manifest injustice, which is basically present criminal court practice.

National recommendations have also been proposed for the calendaring of juvenile matters.[47] In Pre-Adjudicatory Process Chapter 7, IJA/ABA recommends court calendaring follow a policy favoring hearing priorities for young, immature and emotionally troubled juveniles; juveniles removed from their usual home environment; and juveniles whose pretrial liberty appears to present unusual risks. New Jersey court rules indicate a preference for scheduling adjudicatory hearings involving incarcerated juveniles on a priority basis, in that a 30-day time limit for scheduling a hearing on the complaint is required in such cases (*R.* 5:8-6(d)). Court Rule 5:8-7 provides that if a juvenile is held in detention as a material witness, the trial for which he or she is held "shall be brought on with all possible dispatch."

IJA/ABA also recommends time periods for the processing of juvenile complaints. Where a juvenile is detained, it is recommended a hearing be held within 15 days and where released, within 30 days. Dispositional hearings are recommended within 15 days of the adjudicatory hearing except for extraordinary cases which require a more thorough evaluation. The standard in New Jersey for scheduling adjudicatory hearings for juveniles in custody is 30 days (*R.* 5:8-6(d)). No time limit is expressed for juveniles who are not detained, nor is there any requirement that a dispositional hearing must be held within a certain time limit.

Statistics indicate that during 1975, an average of 4,777 adjudicatory hearings were held monthly. At the end of each month, an average of 3,470 delinquency complaints one to three months old, 996 complaints three to six months old and 401 complaints over six months in age remained pending. The majority of complaints pending were scheduled on the counsel mandatory calendar.[48] Statistics maintained by the Administrative Office of the Courts do not indicate what percentage of pending cases involved juveniles in detention or shelter care.

The Model Acts for Family Courts, NAC and IJA/ABA recommend for delinquency cases that the juvenile and his or her parents, guardian or custodian be advised by the court that the juvenile shall be represented by counsel at all stages of the proceedings and, if not retained, counsel will be appointed.[49] In Judicial Process Standard 9.5, NAC recommends counsel be made available to any child involved in family court proceedings whose liberty, custody or status may be affected by such proceedings. NAC further advises legal representation be made available at the earliest feasible stage of the proceedings, at minimum at the intake stage where the juvenile is not detained or at the detention hearing stage where the child has been removed from the home (Judicial Process Standard 9.7). Legal representation should continue throughout family court proceedings and, if necessary, through post-dispositional matters that may change the level of deprivation of liberty or the kind or amount of treatment received by the juvenile.[50] In its Pre-Adjudicatory Procedures Standards (Chapter 5), IJA/ABA advises the right to counsel should attach as soon as the juvenile is taken into custody, a complaint is filed or when the juvenile appears at an intake conference, whichever occurs first.[51]

New Jersey statutes provide that a juvenile shall have the right to be represented by counsel at every critical stage in the proceeding as provided by the rules of court (*N.J.S.A.* 2A:4-59). During the prehearing stage, the possible need for counsel is first recognized when a juvenile is taken into custody and questioned. Although the *Miranda* requirements are generally applicable to juveniles, New Jersey courts have held that the right to counsel can be waived under certain circumstances (*State in the interest of A.B.M.*, 125 N.J. Super. 162 (App. Div. 1973); (*State in the Interest of R.W.*, 115 N.J. Super. 286 (App. Div. 1971); *affirmed*, 61 N.J. 118 (1972)).

The subsequent step where counsel is required in New Jersey is, for those juveniles who are not released after being taken into custody, at the detention hearing. Court rules provide for the scheduling and holding of an initial hearing by the following morning after being detained. If counsel is not present at this hearing, a second hearing is scheduled within two court days at which counsel must be present (*R.* 5:8-6(d)). Juveniles are also entitled to counsel at any hearing to determine whether juvenile court jurisdiction should be waived and the matter referred to the appropriate prosecuting attorney (*N.J.S.A.* 2A:4-48; *R.* 5:9-5).

In general the need for counsel during the preadjudicatory stage arises only in the aforementioned situations. Counsel usually does not participate in intake conferences and interviews, although the juvenile always has the right to have counsel present.

In New Jersey, the threat of institutional confinement is the standard for determining a juvenile's right to representation at the adjudicatory hearing. Court Rule 5:9-1(b) requires the provision of counsel when, in the opinion of the judge, the matter may result in the institutional commitment of the juvenile.

A strict interpretation of this standard would be the possible commitment to a State correctional institution. Some judges interpret it to mean any residential placement outside the home. Varying court figures for each county of complaints heard with and without counsel indicate that there is wide interpretation of "threat of institutional confinement."

Most juveniles who come before courts in New Jersey are not represented by counsel. During 1975, over 82,000 juvenile cases were referred by complaint to Juvenile and Domestic Relations Courts. A total of 57,323 adjudicatory hearings were held, 58.3% of which were heard on the no counsel mandatory calendar, presumably without counsel. (There may be instances where a complaint is heard on the no counsel mandatory calendar although the juvenile and his or her parents, who always have the right to retain counsel, are accompanied by an attorney.) Similarly, the majority of delinquency complaints (56.4%) were decided without counsel. Under a strict interpretation of institutional confinement, one would expect no JINS matter requires a hearing on the counsel mandatory calendar. However, during the same year, 25% of the JINS cases were so scheduled. The percentages of counsel and no counsel hearings in each county for 1975 appear in Table 2.

New Jersey law also requires representation of the juvenile in order for the court to order a pre-dispositional in-patient evaluation (*R.* 5:9-8). There is growing indication that the possibility of institutional confinement translates in practice to the possibility of transfer of custody to any institution, whether correctional, treatment or diagnostic. Support is also increasing for the position that counsel should be present whenever any residential or institutional placement is contemplated. The Juvenile Justice and Delinquency Prevention Plan, proposed by the State Law Enforcement Planning Agency, has identified as a current need the mandatory provision of counsel for every juvenile coming before a Juvenile and Domestic Relations Court judge for whom an out of home placement is a possibility.

In regard to the public provision of counsel, NAC recommends legal representation be made available to any child, without cost if necessary, whose liberty, custody or status may be affected by family court proceedings (Judicial Process Standard 9.5). IJA/ABA adds in its Pre-Adjudicatory Procedure Standards that juveniles have a right to appointed counsel to be reimbursed by the State regardless of the families' financial resources.[52] New Jersey Court Rule 5:3-3 provides that where the juvenile is constitutionally or otherwise entitled to counsel and counsel is not otherwise provided for the juvenile, the court shall refer the juvenile to the Office of the Public Defender, if the juvenile and his or her parents, guardian or custodian are indigent, or assign other counsel to represent the juvenile if other counsel is required. In those instances where the parent, guardian or custodian can afford counsel but chooses not to retain one, the court may assign counsel and order the parent, guardian or custodian to pay the fee of assigned counsel in an amount fixed by the court. Juveniles needing counsel are referred to the Public Defender in situations within the Public Defender's statutory jurisdiction. The assigned counsel system is retained for juveniles entitled to appointed counsel in situations beyond the Public Defender's statutory jurisdiction.

It is recommended in IJA/ABA Pre-Adjudicatory Procedure Standard 2.1 that written notification of the juvenile's rights should always be given to both the juvenile and parents, guardian or custodian present at all proceedings and should be explained by the judge when given in his or her presence. Notification should be written simply and should be in English and the recipient's dominant language where necessary.[53]

New Jersey Court Rule 5:3-3 provides that, in juvenile matters, the court shall advise the juvenile and his or her parents, guardian or custodian of their right to retain counsel and, if the juvenile is entitled, to have counsel appointed for the juvenile. For cases on the counsel mandatory calendar, this is usually accomplished by sending a letter to the family advising that counsel should be retained and, if unable to afford one, to come in and complete a form requesting public representation. This notification deals strictly with the right to counsel and, as such, is not consistent with recommendations calling for written notification of all applicable rights. It seems tenable, though, that the potential exists for providing written notification to the juvenile and his or her parent, guardian or custodian of all applicable rights.

IJA/ABA recommends, in Pre-Adjudicatory Process Standard 6.8, that parents, guardians and custodians have a right to be advised and represented by their own counsel who should be appointed by the court at state expense for a parent, guardian or custodian who does not waive the right but is unable to pay for the service. It is further advised that where parental and child interests are in conflict, counsel is to remain the attorney for the child and doubt of such conflicts are to be resolved by the appointment of separate counsel for each.[54] NAC suggests the parent, guardian or custodian of a child alleged to be endangered (abused or neglected) has a right to legal assistance, without cost if necessary, throughout such proceedings. The parent, guardian or custodian involved in families in need of services* pro-

* Families in Need of Services, or FINS, is a relatively new concept which is being proposed by the NAC and others to deal with individual family member problems as a whole family problem. This is predicated on the significance the family relationship plays in formulating behavior patterns. It is anticipated that family court jurisdiction will extend to families alleged to be in need of services and the court will proceed on a no-fault basis.

Table 2

Juvenile Complaints Disposed By Hearing
Calendar Year 1975

County	Juv. Delinquency Hearings		JINS Hearings		Total Hearings	
	% Counsel	% No Counsel	% Counsel	% No Counsel	% Counsel	% No Counsel
Atlantic	32.1	67.9	24.5	75.5	30.8	69.2
Bergen	24.8	75.2	30.3	69.7	25.4	74.6
Burlington	40.8	59.2	41.4	58.6	40.8	59.2
Camden	64.8	35.2	24.9	75.1	57.9	42.1
Cape May	37.5	62.5	11.0	89.0	34.4	65.6
Cumberland	46.6	53.4	1.8	98.2	41.5	58.5
Essex	79.6	20.4	39.7	60.3	76.9	23.1
Gloucester	44.3	55.7	33.3	66.7	43.3	56.7
Hudson	57.2	42.8	30.6	69.4	52.0	48.0
Hunterdon	84.7	15.3	66.7	33.3	84.2	15.8
Mercer	36.4	63.6	18.8	81.2	35.0	65.0
Middlesex	21.1	78.9	12.8	87.2	20.4	79.6
Monmouth	23.9	76.1	6.6	93.4	23.5	76.5
Morris	51.5	48.5	18.2	81.8	46.5	53.5
Ocean	28.9	71.1	7.9	92.1	26.7	73.3
Passaic	63.3	36.7	16.9	83.1	57.8	42.2
Salem	52.8	47.2	26.6	73.4	49.6	50.4
Somerset	50.4	49.6	60.9	39.1	51.9	48.1
Sussex	31.6	68.4	11.9	88.1	30.3	69.7
Union	52.3	47.7	38.1	61.9	50.6	49.4
Warren	14.5	87.3	0.0	100.0	12.7	87.7
Statewide Percentage	43.6	56.4	25.0	75.0	41.7	58.3

Source: Statistics computed from the "Report of the Status of the Calendars" for each month of 1975, Administrative Office of the Courts, Trenton, New Jersey

ceedings or whose child is alleged to be delinquent should have the right to counsel, without cost if necessary, at the dispositional stage of those proceedings when it appears that he or she will be required to participate affirmatively in the dispositional order or plan (Judicial Process 9.6).[55]

New Jersey law makes no provision for the appointment of separate counsel for the parent, guardian or custodian of a child involved in delinquency proceedings. Court Rule 5:3-3 does state that the juvenile and the parent, guardian or custodian have a right to retain counsel, but that counsel will only be appointed or assigned if the juvenile is entitled to counsel and it is not otherwise provided for the juvenile.

In regard to the issue of status offenses, both NAC and IJA/ABA advocate a significant constriction of the categories of juvenile offenses although each takes a different position. In Juvenile Delinquency Standard 2.2, IJA/ABA restricts juvenile court jurisdiction to only those offenses which if committed by an adult would be punishable by imprisonment or which are major traffic offenses. In addition, certain crimes such as possession of marijuana, possession of pornographic materials, alcohol use and gambling are eliminated from juvenile court jurisdiction. IJA/ABA reasons that the exclusion of minor infractions and violations which create no liability for imprisonment and of victimless crimes will reduce court congestion, avoid stigmatizing children for youthful mischief and permit the court to concentrate on more serious offenders. In its Non-Criminal Misbehavior Standards, IJA/ABA recommends elimination of all status offenses on grounds that such state intervention has been unsuccessful, has encouraged abdication of parental and school responsibility and has unjustly penalized juveniles. The standards retain grounds for state intervention where juveniles need protection from imminent danger, are abused or suffer serious psychological disabilities.

The new NAC suggests resolving the status offense controversy by creating a Families With Service Needs (FWSN) jurisdiction of the family court. NAC contends there are five offense behaviors that should be under this jurisdiction: truancy, repeated disregard for (or misuse of) lawful parental authority, repeated running away from home, repeated use of intoxicating beverages (juveniles only) and delinquent acts committed by juveniles under the age of 10. NAC suggests the crucial issue in FWSN pro-

ceedings is whether or not the child or family actually needs court intervention. Thus, the court must make two determinations: establish the truth of the allegations and determine that all available voluntary alternatives to assist the child and family have been exhausted. As for disposition, the court's jurisdiction would extend to the juvenile, the parents and any agency having a legal responsibility or discretionary authority and ability to provide services needed. Dispositions would include the ordered provision of services, cooperation with offered services, continuation or discontinuation of any behavior or placement of the child in alternative care. The court may also enter an order of responsible self-sufficiency in favor of any juvenile.

New Jersey is not consistent with either of these two approaches to the status offense issue, as jurisdiction over status offenses is retained by Juvenile and Domestic Relations Courts. However, the issue is by no means resolved as difficulties with the JINS concept have been noted ever since the juvenile law was revised in 1974.

The Adjudicatory Hearing

The President's Commission on Law Enforcement and the Administration of Justice, NAC and IJA/ABA recommend adjudicatory hearings be separate from any dispositional hearing.[56] This is advised to ensure the court does not consider any social history information or report at adjudication, which is recommended by most study groups.[57] The U.S. Children's Bureau and NCCD, on the other hand, consider separate adjudicatory and dispositional hearings necessary only in cases where the juvenile denies committing the alleged acts.[58] Where the juvenile admits the charges, the adjudicatory hearing can be made to serve a dual purpose. Advantages lie in financial savings for the family and the court, and greater efficiency in the processing of cases.

New Jersey is consistent with recommendations calling for separate hearings and those prohibiting the use of social history information at the adjudicatory hearing. Court rules preclude the examination of social history information at adjudication, requiring such reports to be initiated only upon an adjudication of delinquency or in need of supervision. Thus, Juvenile and Domestic Relations Court judges consider social information only to ascertain the most appropriate disposition. A problem may occur, however, if the same judge who presides at the detention or probable cause hearing also presides at adjudication in that he or she may be exposed to prejudicial social information or prior court history at such preliminary proceedings. Another problem may occur where a juvenile appearing before the court is already on probation or is a repeat offender and is known to the court.

National standards advise adjudications of delinquency conform to due process requirements. The President's Task Force and NAC recommend that at the adjudicatory hearing, juveniles should be afforded all the rights given a defendant in an adult criminal prosecution except trial by jury.[59] The Task Force states further that the goal of procedural justice should not eliminate the advantages of the juvenile court system. Furthermore, NAC recommends the rules of evidence for criminal cases apply to delinquency proceedings. In comparison, the U.S. Children's Bureau views delinquency proceedings as civil in nature and supports rules of evidence applicable in civil cases. The National Council on Crime and Delinquency (NCCD) recommends the rules of equity procedure and evidence be followed.[60]

New Jersey statutes and court rules extend to juveniles all constitutional protections defined by the U.S. Supreme Court. Juvenile law mandates that, for juveniles before the court, the right of due process of law shall be applicable as in cases of persons charged with crime (*N.J.S.A.* 2A:4-60). All defenses available to an adult charged with crime, offenses or a violation shall be available to juveniles charged with delinquency, including the insanity defense.* In addition, *R.* 5:8-9 provides that where a juvenile claims to be aggrieved by an unlawful search and seizure the juvenile, parents, guardian or custodian may make a written application to suppress the evidence to the Juvenile and Domestic Relations Court in which the complaint is pending, or if no complaint is pending, to any court which would have jurisdiction in the matter. Statutory law also provides that the right to be secure from unreasonable searches and seizures shall be applicable in cases arising under the juvenile code as in cases of persons charged with crime (*N.J.S.A.* 2A:4-60). Generally, then, standards governing defense and the validity of searches of adults are applicable to juveniles in New Jersey.

New Jersey law has also held that the State must prove all of the elements of the offense in the same manner as if the offense had been committed by an adult (*State in Interest of R.S.*, 132 N.J. Super. 200 (App. Div. 1975)). Furthermore, a confession if admitted must be corroborated (*State in Interest of*

* Recent litigation has clarified the applicability of the insanity defense for juveniles, *State in Interest of H.C.*, 106 N.J. Super. 583 (Cty. Ct. 1969) and *State In Interest of R.G.W.*, 135 N.J. Super. 125 (App. Div. 1975), aff'd. o.b. 70 N.J. 185 (1976). The effect of this defense is confined to the court's disposition, which must be in no way penal but may only be treatment-oriented. It is now the State's burden to prove, after the insanity finding and by a preponderance of the evidence, that institutionalization is required in accordance with the standard of dangerousness (*State v. Krol*, 68 N.J. 236 (1975)). If the court should determine that some restraint of the defendant is necessary by reason of his or her mental condition, it should order the least restrictive alternative appropriate to the protection of society (See *State v. Carter*, 64 N.J. 382 (1974)).

B.D., 110 N.J. Super. 585 (App. Div. 1969)). Most New Jersey standards governing the admissibility of evidence for criminal matters apply to juveniles.

National recommendations for and studies of the juvenile adjudicatory process invariably touch upon the issue of confidentiality and whether juveniles have a right to a public hearing. The position of most is similar to Department of HEW proposals.[61] The Department recommends the general public be excluded from hearings. Persons having an interest in the court may be admitted on the condition that they must refrain from divulging identifying information.

The present NAC and IJA/ABA are in favor of opening juvenile proceedings to the public.[62] IJA/ABA and NAC contend juveniles have a waivable right to a public hearing. Opening the proceedings to the public is calculated to ensure fair fact-finding. NAC agrees with the protective benefits of publicity as outlined in Justice Brennan's dissenting opinion in *McKeiver v. Pennsylvania,* 403 U.S. 528 (1971), although it recommends the court should exercise discretion to keep proceedings confidential where appropriate. When the juvenile has waived the right to a public trial, IJA/ABA recommends the judge have the discretion to permit persons with a legitimate interest or concern, including representatives from the news media, to view adjudicatory proceedings. The judge should also permit persons specified by the juvenile to view the proceedings even if the right to a public trial is waived. IJA/ABA adds that persons who observe proceedings may not disclose the identities of the juvenile, family, victim or any witness and should be so advised by the judge.

New Jersey court rules provide that juvenile hearings are to be confidential although the judge, in his or her discretion, may permit the attendance of persons who have an interest in the work of the court provided they agree not to record, disclose or publish the names, photographs or other identifying data with respect to any of the participants in the hearing except as expressly authorized by the judge. Upon objection by the juvenile, counsel or parent, guardian or custodian, any person seeking permission to attend may be excluded (*R.* 5:9-1). In addition, the judge may authorize or may make such disclosure or, in the name of the court, may issue statements to the communications media with respect to the disposition of any delinquency or in need of supervision case heard by the judge, if it is determined that such information will serve the interests of the juvenile and the State and be in accordance with the policy expressed in juvenile law (Title 2A, Chapter 4).

New Jersey policy regarding confidentiality varies from court to court and at times from judge to judge. On occasion, names are released and the public admitted. Complete privacy or complete publicity is possible, depending upon the discretion of the judge. Traditionally, juvenile hearings have been as confidential as possible. There is growing concern, however, regarding the real benefit of confidentiality. The Juvenile Justice and Delinquency Prevention Plan of the State Law Enforcement Planning Agency has identified the need to re-examine statutes and court rules relating to the confidentiality of the juvenile court proceeding. A priority responsibility of a Task Force on Juvenile Justice appointed by the Chief Justice in October, 1976 was to review rules and statutes concerning confidentiality and to make recommendations with respect to change. In an effort to encourage uniformity and increase public confidence in the juvenile justice system, the Task Force, in an interim report submitted in January, 1977, suggests a change in the existing court rule to make disclosure mandatory in certain serious cases. The Task Force's recommended addition to *R.* 5:9-1(a) is as follows:

> In a case in which a juvenile is adjudicated delinquent, the judge shall authorize disclosure of the offense involved, adjudication and disposition to the victim or a member of the victim's immediate family. The judge shall also, following disposition, make public the offense involved, adjudication and disposition of any juvenile delinquency case, including identification of the juvenile, where the offense for which the juvenile has been adjudicated would constitute, if committed by an adult, a high misdemeanor, homicide, manslaughter, serious offense involving destruction or damage to property of $500 or more, or the manufacture or distribution of narcotic drugs by a nonaddict, unless upon application at the time of disposition and for good cause shown, the court deems that continuation of confidentiality would serve the best interests of the juvenile and the public.

The Office of the Public Defender dissented from the recommendation requiring the mandatory disclosure of names of juveniles, for many of the reasons outlined in the preceeding problem assessment. The Office suggests instead that the best protection to the community is not identification of the juvenile so he or she can be shunned but the rehabilitation of the offender.

The IJA/ABA Joint Study Commission is the only national group which advocates jury trials for juveniles.[63] In Adjudication Standards 4.1-4.3, the Commission recommends juveniles have available the option of being tried by a jury. Juries in juvenile matters are to be composed of a minimum of six persons and verdicts must be unanimous. NAC admits struggling hard with this issue but it decided not to recommend jury trials be available for juveniles, concluding that the usefulness of a jury is outweighed by its disadvantages such as excessive formality and delay. The right to a public hearing, NAC contends, will compensate for the lack of jury participation.

New Jersey, as do most states, prohibits jury trials for juveniles (*N.J.S.A.* 2A:4-60). At the time *McKeiver* was decided, ten states provided jury trials for delinquency proceedings. As of this writing, two

states have added the provision of jury trials to juveniles: New Mexico by statute (N.M. Stat. Ann. 13-14-28(a) Repl. Vol., Supp. 1973); and Alaska by court decision (*R.L.R. v. State,* 487 P. 2d. 27 (Alaska, 1971)).

Defense Counsel in Juvenile Court

The effort to blend traditional juvenile court philosophy with the requirement of counsel has resulted in confusion regarding the appropriate role of defense counsel in juvenile matters. Some suggest that counsel for juveniles abandon the traditional and sharply defined role of advocate and adopt instead a "guardianship" function. NAC and IJA/ABA have rejected such attempts to reformulate the role of juvenile defense counsel and recommend that counsel's principal function lies in seeking the lawful objectives of the juvenile through all reasonably available means permitted by law.[64] Defense counsel's principal duty is to represent zealously a client's interests, regardless of the client's age (NAC Judicial Process Standard 9.2, IJA/ABA Counsel for Private Parties (CPP) Standard 3.1). In its original court standards NAC recommended that, if requested by the juvenile, defense counsel should use all of the methods permissible in a criminal prosecution to prevent a finding of delinquency. Defense counsel should function as advocate for the juvenile, and counsel's performance should be unaffected by any belief he or she might have that a finding of delinquency might be in the child's best interest (Courts Standard 14.4). The National Council of Juvenile Court Judges, U.S. Children's Bureau, President's Commission on Law Enforcement and the Administration of Justice and NCCD also support an advocate role.[65]

Sources from the Office of Public Defender advise that most assistant public defenders assigned to represent juveniles interpret their role as that of advocate in the traditional sense. Many actively seek the best interests of their clients at all stages of proceedings, including dispositional hearings.

IJA/ABA and NAC have adopted the view that delinquency proceedings are full-fledged adversary proceedings and that justice demands all affected interests, including the State, have the opportunity to be represented by counsel at all stages of the proceedings. Both contend juveniles before the court should have the benefit of counsel and that this right would be meaningless unless provisions are made to appoint counsel at public expense.

The Commissions extend the provision of counsel to any juvenile before the court, regardless of personal or family resources. NAC and IJA/ABA reason this is justified considering the potential antagonisms which may be created or exacerbated between a child and a parent forced to pay for the child's defense. The potential for exploitation of the state's finances, it is contended, will be more than offset by the removal of this divisive economic concern from families already experiencing severe internal tensions.

In New Jersey the financial resources of the juvenile's parents, guardian or custodian are considered in determining eligibility for representation by a public defender where a juvenile is entitled to counsel and one has not otherwise been appointed. The parents, guardian or custodian must be deemed indigent to qualify (*N.J.S.A.* 2A:158A-25; *State v. Morgenstein,* 141 N.J. Super. 518, 358 A. 2d 847 (Law Div. 1976)). It is estimated that, statewide, 90% of the juveniles appearing before the court at counsel-required adjudicatory hearings are currently represented by the Office of Public Defender.

Several IJA/ABA standards are offered to structure the duties and responsibilities of defense counsel for juveniles during all stages of proceedings. These proposals generally follow the ABA standards for the defense function. For the pre-adjudicatory phase, it is recommended that counsel duties include informing the juvenile of all applicable rights, pursuing all necessary steps to protect the juvenile's interests including discovery and motion practice and advising the juvenile of developments as well as the probable outcome (CPP Standards 3.3, 4.1-4.3, 5.2, 7.2, 7.3). It is also recommended counsel explore the possibility of early diversion and, where the juvenile admits the charges, cooperate in the development of a plan for informal or voluntary adjustment of the case (CPP Standards 6.1-6.3). Where a juvenile is held in detention or shelter care, IJA/ABA recommends counsel consider all steps that may be taken to secure the juvenile's release (CPP Standard 6.4).

There are no written New Jersey guidelines to define what is the proper role of defense counsel in juvenile matters or what are appropriate duties and responsibilities of this function. It is difficult to compare existing New Jersey practices with national recommendations due to the lack of available State guidelines, policy statements or manuals.

The Commissions are also of the view that the ultimate responsibility for making any decision that determines the client's interests within the bounds of law remains with the juvenile (IJA/ABA CPP Standard 5.2, NAC Judicial Process Standard 9.2). While recommending that the juvenile should ordinarily be in control of the direction of the case, special provisions are made by each set of standards for the cases of respondents incapable of considered judgment on their own behalf. For those clients considered to be not capable of full understanding and rational determination, NAC and IJA/ABA recommend a guardian *ad litem* be appointed (NAC Judicial Process 9.3, IJA/ABA CPP Standard 3.1). IJA/ABA divides juvenile respondents into "mature" and "immature" categories and defines a "mature" respondent as one capable of adequately comprehending and participating in the proceedings. It is recom-

mended the determination of maturity or immaturity be made by counsel for the juvenile with review by the court (Pre-Adjudicatory Process Standard 6.1). IJA/ABA advises a guardian *ad litem* be appointed: 1) for every juvenile considered immature; 2) where no parent, guardian or custodian appears to exist; or 3) if the juvenile's interests otherwise require it (Pre-Adjudicatory Process Standard 6.7). Moreover, IJA/ABA stipulates that an immature respondent cannot admit the allegations (Pre-Adjudicatory Process Standard 6.3). While IJA/ABA does not designate who should be appointed guardian *ad litem*, NAC implies that the attorney should be so appointed. Judicial Process Standard 9.4 is offered to structure the role of counsel-appointed-guardian-*ad litem*.

A guardian *ad litem* is on occasion appointed for juveniles in New Jersey, usually in probate and negligence actions. Court Rule 4:26-2 provides that an infant* or incompetent person shall be represented in an action by the guardian of either his person or property, appointed in this State, or if no such guardian has been appointed or a conflict of interest exists between guardian and ward or for other good cause, by a guardian *ad litem* appointed by the court. The rule provides for the automatic appointment of the infant's parent as a guardian *ad litem* in negligence actions. It also permits an infant 17 years of age or older to request by petition the appointment of his or her own designee. The appointment of a guardian *ad litem* in delinquency matters is very rare.

According to NAC, IJA/ABA and others, the attorney's ultimate responsibility remains with the juvenile at all court proceedings. However, national standards recognize that, at times, parental and child interests conflict, most strikingly in abuse and neglect cases. Thus it is recommended that doubt as to any conflict between the interests of the juvenile and parent, guardian or custodian be resolved by the appointment of separate counsel for each (IJA/ABA CPP Standard 2.3, NAC Judicial Process Standard 9.2). In addition, NAC contends the parent, guardian or custodian involved in a families in need of services proceeding or whose child is alleged to be delinquent has the right to legal counsel at the dispositional stage of those proceedings when it appears that he or she will be required to participate affirmatively in the dispositional order or plan (Judicial Process Standard 9.6). IJA/ABA Pre-Adjudicatory Process Standard 6.8 asserts that, in delinquency proceedings, parents have a right to be advised and represented by their own counsel, to be appointed at state expense for a parent, guardian or custodian who does not waive the right to counsel and is unable to pay for the services. For neglect and dependency proceedings IJA/ABA recommends counsel be available to the respondent parent, guardian or custodian (CPP Standard 2.3).

* One under the legal age of majority.

In delinquency and JINS matters, New Jersey law does not extend to the parent, guardian or custodian the right to separate counsel, to be appointed if indigent. In custody, neglect and abuse matters, a parent, guardian or custodian is generally the respondent, is accorded party status and is represented by counsel. However, in matters concerning the custody or placement of a child, the child is not a party to the proceedings. For matrimonial matters and matters pursuant to *N.J.S.A.* 30:4C-1, court rules mandate that no child shall be present at the hearing or trial unless his or her testimony is necessary for the determination of the matter. On the issue of custody the testimony of a child may be taken privately in the judge's chambers (*R.* 5:5-1(b), 5:7A-4).

New Jersey laws do provide for the representation of children involved in child abuse or neglect proceedings. Chapter 119 of the Public Laws of 1974, effective January 8, 1975 mandates free legal representation on behalf of abused children. Counsel for juveniles in such matters are termed "law guardians" and are attorneys employed by the Office of Public Defender. A parent, guardian or custodian involved in child abuse or neglect proceedings also has a right to counsel, to be appointed if indigent.

Guiding NAC and IJA/ABA standards is the fundamental principle that the participation of counsel is essential to the administration of justice and to the fair and accurate resolution of issues. To ensure competent attorneys are available to clients in family court matters, both Commissions suggest satisfactory legal representation is the concern of all segments of the legal community (NAC Judicial Process Standard 9.8, IJA/ABA CPP Standard 2.1). Retained attorneys and public defenders participating in family court matters should be compensated according to prevailing standards (IJA/ABA CPP Standard 2.1, NAC Judicial Process Standard 9.11). It is also recommended a coordinated plan for representation which combines public defender and assigned counsel be adopted where possible (IJA/ABA CPP Standard 2.2, NAC Judicial Process Standard 9.9).

New Jersey is consistent with recommendations for adequate compensation and a coordinated plan for representation. Salaries for assistant public defenders start at $15,223. As discussed previously, indigent juveniles are represented by the Office of Public Defender in situations within its statutory jurisdiction. An assigned counsel system is used in situations beyond the public defender's statutory jurisdiction. Where a conflict is present, pool counsel is assigned.

IJA/ABA recommends that, where circumstances permit, a separate juvenile public defender's office and staff should be maintained (CPP Standard 2.2). Only one county in New Jersey, Essex, maintains a separate public defender's office for juvenile matters. This office is staffed by eight attorneys, eight investigators and five clerical personnel and is

responsible for handling approximately 1800 cases yearly.

The overall problem of insufficient staff appears to be common to both prosecution and defense capabilities. Public defender offices throughout the State have designated at least one attorney to be responsible for juvenile matters. In most counties full-time attorneys are supplemented by rotating public defenders or by pool attorneys engaged in private practice.

NAC recommends educational institutions, bar associations and other legal groups provide suitable undergraduate and graduate curricula relating to representation in family court matters (Judicial Process Standard 9.8). Legal education in New Jersey is deficient in formalized training programs for the development of practitioners in the juvenile justice field. Seton Hall Law School offers one course in family law but it is not required. Out of 64 course offerings for the 1976-77 academic year, Rutgers School of Law, Newark, offers one course in family law. Out of 58 seminar offerings at Rutgers, there is one seminar on the juvenile justice system and another on the rights of minors. None of the 13 clinical programs at Rutgers are related to either family or juvenile law.

Seton Hall Law School has initiated a training program for students interested in pursuing prosecution or defense work in juvenile court. The Seton Hall Juvenile Justice Clinic operates in conjunction with the Essex County Public Defender's Office and has recently been awarded State Law Enforcement Planning Agency funds. The objective of the clinic is to provide students with as many opportunities as possible to represent juvenile defendants at "plea bargainings, hearings on the pleas and formal hearings for pleas of not guilty." Pursuant to *R.* 1:21-3(c) and under the authority of the New Jersey Supreme Court, students provide extensive representation for Essex County juveniles at detention hearings. Third year students are allowed to participate in full adjudicatory hearings when accompanied by a public defender.

The lack of sufficient training and education programs in juvenile law is characteristic of most states. As a result, attorneys, whether public or private, generally do not have adequate educational preparation relating to the juvenile justice system. Since most juveniles in New Jersey are provided with public representation, privately retained counsel have limited acquaintance with juvenile court proceedings. Training conferences on the practice of juvenile law have not been offered in this State. Moreover, the Office of Public Defender does not provide any formal, specialized orientation or training in the juvenile justice system for incoming attorneys. In-service training in this area is also not provided. It has been recommended by the Juvenile Justice and Delinquency Prevention Plan that thorough initial training programs on the concepts and practices of the Juvenile and Domestic Relations Courts be established for attorneys who practice in that system.

A lawyer's responsibility to a client does not necessarily end with dismissal of the charges or upon a finding of delinquency. NAC and IJA/ABA suggest that, in many cases, counsel's most valuable service to the client will be rendered at the disposition stage. For this reason, defense counsel should assume an active role at disposition. IJA/ABA recommends counsel be familiar with available disposition alternatives and pursue an independent investigation of circumstances relevant to disposition (CPP Standards 9.1, 9.2). Counsel should explain the dispositional hearing to the client and explain to both the client and family the nature and consequences of any disposition imposed (CPP Standards 9.3, 9.4, 9.5). It is also suggested that counsel may request the client be excused during the presentation of information when exposure would adversely affect the well-being of the client or family relationships.

NAC recommends legal representation be continued throughout the court proceedings and through post-dispositional matters including probation and parole revocation (Judicial Process Standard 9.7). IJA/ABA agrees counsel's responsibility to a client does not necessarily end with entry of a final disposition order but continues through appeal or other post-dispositional proceedings unless new counsel is substituted (CPP Standards 10.1, 10.2). As a related issue, IJA/ABA contends an attorney representing a juvenile client previously represented has a good faith duty to examine the effectiveness of prior counsel and pursue appropriate relief for a client whose former counsel did not provide effective assistance (CPP Standard 10.7).

According to the New Jersey Office of Public Defender, public defenders representing juveniles in New Jersey assume an active role at dispositional hearings and frequently make independent dispositional recommendations. It is not known whether privately retained counsel assume an equally active or more active role.

New Jersey is not consistent with recommendations calling for continuing legal responsibility in that a public defender assigned to represent a juvenile does not remain with that juvenile through all proceedings. The Office of Public Defender follows a stage representation method of assigning cases, i.e., attorneys are responsible for providing representation at certain stages of proceedings rather than for certain clients during all proceedings. The public defender representing a particular juvenile at adjudication usually is not the same one who represented the juvenile at the detention hearing. Appeals of all cases represented by the Office of Public Defender are referred to a special appellate section and are handled by attorneys assigned to this section. Other public defenders are responsible for representation at revocation proceedings. Thus, a juvenile is

assigned many different attorneys during the span of proceedings. A fragmented representation occurs. The negative effects of such a system are described in detail under the Fragmented Representation section of the Prosecution and Defense Chapter (see pp. 102-116).

Prosecution

In its *Reports on Courts,* the National Advisory Commission recommends that in all delinquency cases, a legal officer representing the state should present evidence to support an allegation of delinquency. In its current effort, NAC suggests an attorney for the state may participate in every proceeding of any stage of a case subject to family court jurisdiction in which the state has an interest.[66] The prosecuting attorney should determine which cases to participate in except he or she may be ordered to participate in such cases as determined advisable by the court. IJA/ABA carries this recommendation one step further by recommending a juvenile prosecutor participate in "every proceeding at every stage of every case" in which the State has an interest."[67]

New Jersey Court Rule 5:9-1(b) provides that a prosecutor may be requested to appear in any juvenile case. Rule 5:3-3(c) states that in any matter where the interest of justice so requires, the court may request the Attorney General, the county prosecutor, the municipal attorney or the school board attorney, as appropriate, appear and prosecute the complaint. This rule also provides that, wherever required by law, the county prosecutor shall appear in the Juvenile and Domestic Relations Court and prosecute the complaint on behalf of the State.

In most counties, an assistant prosecutor presents the State's case at all hearings on the counsel mandatory calendar. A prosecutor also appears for a probable cause hearing where there is one or the probable cause component of a detention hearing although a prosecutor generally does not appear at hearings only to decide the question of detention. Prosecuting attorneys usually are not present at dispositional hearings.

NAC recommends there should be a prosecutor or unit devoted to family matters in every prosecutor's office where there are at least six attorneys. Where possible, this unit should be separate and distinct from the prosecutor's office. Similarly, IJA/ABA recommends a separate juvenile prosecutor's office whenever size permits. Both Commissions recommend the juvenile prosecutor be hired on a full-time basis and should be selected on the basis of interest, education, experience and competence. NAC adds that the juvenile prosecutor should have prior criminal prosecution or other trial experience. In addition, the juvenile prosecuting unit should have available professional staff adequate to handle caseloads and which are representative of a cross-section of the community.

Most county prosecutors' offices in New Jersey assign an assistant prosecutor to handle juvenile matters. Few assign more than one. Only in the larger counties where caseloads are higher does the possibility of an assistant prosecutor being assigned to the juvenile court on a full-time basis exists. In many offices, they have other duties as well. The number of assistant prosecutors on staff and those assigned to juvenile matters compared with the number of adjudicatory hearings heard on the counsel mandatory calendar appears in Table 3. As of this writing, there are no juvenile prosecutors' offices that are separate and distinct from the county prosecutor's office.

Results of a staff survey of county prosecutors' offices undertaken in Summer, 1975 indicated that most assistant prosecutors handling juvenile matters are assigned on a rotation basis. Only one county disclosed that the juvenile prosecutor is assigned on the basis of background and training. In many offices, new lawyers are assigned to juvenile matters and then moved elsewhere as they gain experience.

The provision of ongoing, in-service, interdisciplinary training for all juvenile prosecutor staff is recommended by both Commissions (NAC Judicial Process Standard 8.6, IJA/ABA Prosecution Standards 2.1-2.5). NAC suggests an orientation and training program should be completed by each attorney prior to assuming duties. There is no mandatory training for prosecutors in New Jersey. Survey respondents indicated the usual form of training for prosecutors assigned to juvenile matters is "on-the-job training." Although some have attended specialized courses, there is no statewide training program for juvenile prosecutors. The Juvenile Justice and Delinquency Prevention Plan for New Jersey has identified the need for expansion of specialized juvenile court prosecution offices as well as the need for thorough initial training programs for prosecution and defense on the concepts and practices of the Juvenile and Domestic Relations Court.

NAC recommends the primary duty of the juvenile prosecutor is to seek justice. Both NAC and IJA/ABA recommend the juvenile prosecutor should assume the traditional adversary role although the prosecutor should represent the State's interests without losing sight of the purpose of the family court (NAC Judicial Process Standard 8.3, IJA/ABA Prosecution Standards 1.1, 6.2-6.3).

The prosecutor's primary function in New Jersey is not to convict but to see that justice is done. The prosecutor's duty is as much to refrain from improper methods as it is to use every legitimate means to bring about a just conviction, *State v. Orecchio,* 16 N.J. 125 (1954). There does not appear to be any distinction made between the role of a juvenile prosecutor and that of other assistant prosecutors.

In regard to relationships with other system participants, NAC and IJA/ABA advise the juvenile prose-

Table 3

County Prosecutor Staffing Compared with Number of Counsel Hearings

County	Asst. Prosecutors on Staff	Asst. Prosecutors Assigned to Juv. Ct.	Counsel Hearings on Delinquency Matters '75
Atlantic	9	1	725
Bergen	24	1	1306
Burlington	8	1	622
Camden	25	1	1827
Cape May	3	1	469
Cumberland	6	1	1198
Essex	73	5	4539
Gloucester	5	1	742
Hudson	33	1	1759
Hunterdon	3	1	188
Mercer	17	2	1094
Middlesex	30	3	1162
Monmouth	12	2	1045
Morris	5	1	385
Ocean	9	1	667
Passaic	23	2	1887
Salem	2	—	248
Somerset	5	1	408
Sussex	4	1	194
Union	37	4	1780
Warren	2	—	70
TOTAL	335	31	22,355

Source: Information on prosecutor staffing obtained from a summary of county prosecutor staffing as of June 30, 1975, from the Division of Criminal Justice, Prosecutors Supervisory Section, of the Department of Law and Public Safety, Trenton, New Jersey. Statistics for the number of delinquency complaints disposed of through counsel hearings compiled from the "Report of the Status of the Calendars" for each month of 1975, Administration Office of the Courts.

cutor maintain an atmosphere of detachment from defense counsel and court. In addition, an atmosphere of mutual respect and cooperation should be maintained between the juvenile prosecutor's office and police officers, probation officers and social workers. NAC recommends additional ethical standards, all of which parallel existing ethical standards for prosecuting attorneys developed by the American Bar Association (ABA). New Jersey is consistent with the ABA standards for prosecutors and has incorporated such recommendations into the Disciplinary Rules. It is assumed prosecutors assigned to juvenile matters perform duties according to the same standards.

NAC and IJA/ABA recommend the juvenile prosecutor be available to advise intake units of the legal sufficiency of a complaint (IJA/ABA Prosecution Standards 4.1-4.2, NAC Judicial Process Standard 8.13). In most intake offices, liaison is maintained with the county prosecutor's office. Copies of all complaints are forwarded to the prosecutor's office. The proper role of the prosecutor in the intake process is under study by a task force appointed by the Chief Justice.

IJA/ABA recommends the juvenile prosecutor investigate each complaint to determine the most appropriate method of handling. Intake offices assume this function in New Jersey. If the accused juvenile is in custody, IJA/ABA advises a decision to file a complaint be made by the prosecutor within five days of receipt of intake's recommendation. NAC recommends if, subsequent to filing a complaint, the prosecutor determines there is insufficient evidence, the complaint should be immediately withdrawn. As previously indicated, New Jersey prosecutors do not file complaints against juveniles. Decisions to file a complaint or to proceed with a complaint are made by the court intake unit, usually within 24 hours.

Several standards relating to the juvenile prosecutor's responsibilities and duties in plea negotiation are proposed by IJA/ABA. The Commissions would allow prosecutors to engage in plea discussions concerning the charges but not the disposition to be recommended. The prosecutor should not engage in any negotiations where the juvenile maintains innocence. An admission should not be agreed to by the prosecutor without presentation of evidence that the juvenile committed the alleged act. Since New Jersey does not officially recognize the existence of plea negotiations in juvenile matters, no standards have

been proposed to structure the prosecutor's role in this regard.

Several national standards are offered to guide the juvenile prosecutor's role during the dispositional stage. NAC and IJA/ABA recommend the prosecutor assume an active role at the dispositional stage, to include formulation of an independent disposition recommendation (IJA/ABA Prosecution Standard 7.1, NAC Judicial Process Standard 8.16). IJA/ABA states further that while the safety and welfare of the community is the prosecutor's paramount concern, disposition alternatives which satisfy the needs of the juvenile without jeopardizing that concern should be considered. It is also recommended the juvenile prosecutor evaluate dispositional programs and inform the court of programs which fail to provide the treatment expected by the court. IJA/ABA extends the juvenile prosecutor's role to represent the state's interest in all appeals, probation and parole revocation proceedings, petitions for modification of dispositions and all collateral proceedings attacking the orders of the family court.

New Jersey prosecutors usually do not participate during the dispositional stage of juvenile proceedings. Moreover, while a prosecuting attorney may be present during the other proceedings as enumerated by IJA/ABA, it is generally not the same assistant prosecutor assigned to juvenile matters.

Commentary

Removal of Status Offenses from Court Jurisdiction

The Advisory Committee concludes that continued state intervention into the lives of status offenders for the purpose of preventive good cannot be justified and it joins local and national commissions and authorities who call for the removal of court jurisdiction over status offenses. It is the Committee's opinion that the problems of status offenders cannot be resolved through legal intervention and coercion, for the causes of such behavior—truancy, incorrigibility, running away—stem from the family and the community. It is here where the problems originate and it is here where they must eventually be solved.

The Committee believes there are better ways to deal with the complicated interpersonal and intrafamilial difficulties reflected in status offenses than relying on court intervention. Most families find alternative ways since only a small proportion resort to the court for help. Our judicial system should not be used as a substitute for parental and community responsibility, and as long as it retains jurisdiction over status offenses, the Committee suggests it will continue to be misused in this fashion. Removing court jurisdiction would shift responsibility for dealing with these problems back to the families, schools, social welfare agencies and voluntary community programs.

One reason for the court's failure to accomplish change in dealing with status offenders is due to the fact that its attention is focused solely on the child. It is the child who is declared truant, a runaway, habitually disobedient; and it is the child who is subject to coercion. Yet the fault does not lie solely with the child but also with the family or school or community. To remedy this situation, several national authorities have called for the creation of a family jurisdiction—Families In Need of Services (FINS), or Families With Services Needs (FWSN)—which would broaden the court's focus to include the whole family. The Committee studied the National Advisory Committee's recommendation for establishment of a Family With Services Needs jurisdiction, and after much soul-searching, declines to endorse this proposal.

Where there is status offense behavior, the Committee agrees that the juvenile should not be isolated, labeled and treated as the causal factor. The focus properly belongs on the family. However, this focus may not become a reality under a Family With Services Needs jurisdiction. Although NAC's recommendation is an improvement over concentrating on the status offender, the Committee considers it an illusory improvement. Court jurisdiction still initiates with some specific conduct of the juvenile and available dispositions seem to concentrate on the juvenile, ranging from provision of services, prohibited/required behavior to removal of the child from the home. While a petition under NAC's proposal may be brought by the child, parent or any other individual or agency coming in contact with the family, the focus remains essentially on the child.

The FINS or FWSN idea advocated by NAC and others is congruent with the concept that juvenile problems are fundamentally family problems requiring a family orientation and focus. However, this jurisdiction relies on force to effect change and extends this force to all family members. The Advisory Committee cannot fully endorse this extension of coercion.

It is constitutionally questionable whether court intervention and coercion may extend to the family members, which the FWSN jurisdiction implies, when it is the behavior of the child that is legally prohibited. It is against the law for a juvenile to run away, to be truant or incorrigible, and for such transgressions juveniles may be compelled to accept treatment, placed on probation, committed to an institution for mental illness or mental retardation or removed from the home. On the other hand, "bad parenting" is not against the law, nor is it illegal for

school systems to fail to teach or instill the desire to learn. The Committee questions whether, in regular practice, parents, school systems and other community agencies will be legally forced into certain prescribed behavior or will courts, in recognizing the legal difficulties, return their attention and intervention toward only the child? Proposals for a family-focused jurisdiction do not deal with this issue.

The Committee endorses the concept that the family, especially the parents, should be involved with the child in rehabilitative efforts, but such involvement can only be voluntary. It believes that coercion, in dealing with people's needs, does not work. If treatment or change must be forced, then it is of doubtful benefit. Therefore, the Committee recommends that, at the dispositional end of a delinquency matter, the court should encourage the parents to participate in rehabilitative efforts on a voluntary basis.

It is for the above reasons that the Advisory Committee considers the family-focused jurisdiction as an incomplete solution. Although the concept is appealing, it does not resolve the basic problems associated with legal intervention and jurisdiction over juveniles evidencing status offenses. After much deliberation, the Committee finds the only real answer is to eliminate jurisdiction over status offenses and rely instead on voluntary community resources to meet the needs of juveniles evidencing such behavior and their families. It is the Committee's belief that the retention of jurisdiction has served to inhibit the development of voluntary community services for youth and families and its elimination would be an initial positive step to stimulate development of solutions in the community. The Committee concludes it is up to the communities and the State to acknowledge their responsibility to provide needed services and commit financial resources to support the development and expansion of such services. A greater priority on developing and expanding community services is required and existing informal systems should be encouraged and expanded. The Committee advises runaway shelters, alternative schools, counseling and crisis intervention services be developed and coordinated on a statewide basis along with referral services and volunteer training programs.

The track record of communities to assume responsibility for their children's problems has not been encouraging. The Committee is cognizant of the danger that the necessary social services to deal with these troubled youth may not materialize due to continued apathy of the community and budgetary limitations of the community and schools. In this area, the creation of a State cabinet post for children is worth exploring on a State level. This department could provide our youth with the necessary services and serve as a machanism to deal properly with all youth. In addition, this cabinet level post would deal strictly with youth and youth-related problems throughout the State of New Jersey on a collective level. Thus, all available resources and expertise could be channeled to troubled youth.

Removing status offense jurisdiction will not bring about a surge of new problems but will only limit the compulsory restrictions that can be imposed in dealing with old ones. Eliminating jurisdiction would not be costly to the juvenile justice system since it would free a substantial portion of existing resources to be applied more appropriately to delinquents and serious offenders who need the attention of the court and the facilities and programs available for its use.

The Advisory Committee does not mean to suggest that, in eliminating court jurisdiction over status offenses, there exist no legal means to intervene. Indeed, a variety of other legal avenues exist and should be used where appropriate. In situations where neglect, abuse or abandonment are suspected, courts would retain jurisdiction under *N.J.S.A.* 9:6-1. Where there is an assault between family members, jurisdiction and intervention is gained through *N.J.S.A.* 2A:170-26, 2A:90-1 and 2A:90-3. The Division of Youth and Family Services may file for an out of home placement. Requests for guardianship may be made. Many alternative means of intervention exist where intervention is justified.

In recommending elimination of jurisdiction over status offenses, the Advisory Committee is concerned that the practice of "upgrading" offenses may increase. Minor delinquency complaints, such as trespassing, no visible means of support, disorderly conduct, failure to give good account, or loitering law violations may be used as a vehicle for bringing juveniles formerly defined as status offenders into the juvenile justice system. Where this occurs, such complaints should be screened out of the system at the intake level and the juveniles and their families referred to social services when needed.

Two related issues came to the attention of the Advisory Committee during its study of the status offense controversy. When New Jersey's juvenile statutes were revised effective March, 1974, the definition of delinquency was changed and in the process, a lower age limit was eliminated. The Committee recommends this situation be rectified by restoring the lower age limit at seven years, to be consistent with the presumptions of incapacity inherited from common law. Juveniles below this age who are alleged to have committed delinquency offenses should not be involved in the legal process. In addition, the Advisory Committee recommends that *N.J.S.A.* 18A:38-27, which currently defines truancy as an act of delinquency, be revised to be consistent with *N.J.S.A.* 2A:4-45 which defines truancy as an act of being in need of supervision.

Other Judicial Process Issues

Guiding the Advisory Committee's work in the area of the juvenile judicial process are the principles of due process, fairness and equality. The Committee also paid particular attention to the removal of class distinctions. The rights and privileges available to adult offenders, where consistent with juvenile court philosophy, should be equally applicable to juveniles. (The Committee concludes that only the right to bail, indictment and trial by jury are inconsistent with juvenile court philosophy.)

The Committee incorporated many existing legal rights into the standards to emphasize their importance and defined or interpreted others more explicitly than existing practice. The Committee is of the opinion that the juvenile justice system should at the very least be just and should not allow the "promise" of rehabilitative treatment to be exchanged for less than complete due process protections and procedures, as has occurred in the past. For these reasons, the Committee recommends pre-adjudicatory procedures conform to due process requirements.

The right to counsel is considered an extremely important issue, complicated by the fact that its application to juveniles is unclear. The Committee concludes the right to counsel should be nonwaiverable for juveniles and at minimum, the protections of *Miranda* should be applicable at police questioning. It is acknowledged that the presence of counsel may have adverse effects upon pre-adjudicatory proceedings, and for this reason, the Committee debated the issue of right to counsel at great length. Several Committee members voiced concern that lawyer participation at early stages of involvement may dampen diversion attempts, as police officers and intake workers may be hesitant to divert if lawyers are involved.

The Advisory Committee does not support the National Advisory Committee's recommendation that an arraignment process identical to adult arraignment procedures be instituted in delinquency matters. Juvenile court arraignment was considered to be an added step of doubtful utility and it was decided that its purposes can be readily accomplished by mail. Thus the victim and witnesses need not be subjected to the burden of an additional court appearance. The Committee prefers instead that the juvenile, parents, victim and witnesses be informed in writing immediately if the matter is to be placed on the court calendar. Such notices can inform the parties of the date and time of the hearing as well as their applicable rights.

After much debate, the Committee reached the conclusion that the bifurcated counsel mandatory—no counsel mandatory calendaring system should be abolished. New Jersey's standard for a juvenile's right to counsel is not sufficiently clear, and this has resulted in unequal application, especially in situations where an out of home placement or a custody change may be contemplated. At the very minimum, the Committee advises counsel should be mandatory in such cases. Moreover, the presence of a prosecutor and a defense attorney at adjudication help to ensure that roles are clarified and that all interests are protected. Many judges prefer counsel hearings in that the presence of attorneys for both parties makes the adjudicatory hearing easier to preside over—judges do not have to function as prosecutor, defense counsel and judge combined.

In recommending the elimination of the no counsel mandatory calendar, the Committee does not intend that the number of counsel hearings heard annually should escalate. Rather, the number of minor offenses diverted from the court should increase. With an effective intake operation, matters scheduled for a court hearing will be only those that require a full, formal hearing and those that do not will be diverted. If a case is not appropriate for diversion, then it requires a judicial hearing with all concomitant legal protections.

To preserve the potential for rehabilitation and keep the negative effects of detention at a minimum, the Committee advises juvenile matters proceed without delay. It is recommended that adjudicatory hearings be scheduled and held within 15 days of the taking into custody if the juvenile is detained and within 30 days in all other cases. Dispositional hearings should be held within 14 days of adjudication if detained and within 21 days in all other cases.

The Committee is ambivalent toward the issues of bail and trial by jury, and the majority opinion is reflected in the standards. In regard to bail, most Committee members are concerned that if bail release were available to juveniles, other forms of release may be ignored, possibly resulting in a greater number of juveniles being detained. The institution of bail could also prove discriminatory, as juveniles from wealthy families would be released whereas those of urban poor families would be detained. The injustices of bail which plague the adult system would be unwisely transferred to the juvenile system.

The Committee also studied instituting jury trials in delinquency matters but, in the final analysis, decided against it. It is the consensus of the Committee that a juvenile should be allowed to request a public trial or hearing but it urges strongly that public trials in juvenile cases should seldom be requested. The Committee made a concerted decision not to become involved in the area of confidentiality or disclosure, and thus made no recommendations in that area, due to concurrent activity of a Supreme Court task force appointed to study the issue.

In regard to waiver, the Committee generally endorses the existing statute and court rule outlining this procedure and thus advises only a few changes. It is recommended that the juvenile's request for waiver should be made only with the advice of counsel.

The Committee recommends that distribution of marijuana be excluded from existing criteria for waiver and that language in the court rule be modified from "addicted" to "dependent." The term "addiction" is shrouded by medical complexities and thus the Committee feels drug dependency more closely meets the intent of the law. In addition, it is recommended that motions for waiver be filed by the prosecutor within ten days of notification of the filing of the complaint and that the waiver hearing be held within ten days of the prosecutor's filing.

The Committee acknowledges the existence of plea discussions in delinquency matters and recommends guidelines to structure such decisions, as has been accomplished in adult criminal matters. It suggests also that parents should be required to appear for their child's adjudicatory hearing. However, if parents are nonsupportive or hostile, their presence may be more detrimental to the juvenile than their absence. For this reason the Committee recommends the court appoint a guardian *ad litem* for the juvenile whose parents, guardian or custodian are hostile, nonsupportive or who fail to appear. The recommendation in Standard 4.9 that adjudicatory hearings are not to begin without the presence of the complainant is intended to apply to those instances where there will be a full hearing and not to those where a plea of guilty is expected or forthcoming at the beginning of the proceeding.

Standards 4.13 through 4.22 are recommended to guide prosecution and defense functions in juvenile matters. In regard to prosecution, it is recommended that at least one attorney in each prosecutor's office be assigned to represent the State's interests in juvenile matters. Ideally, a separate juvenile prosecution unit should be established. Specialized training for juvenile prosecutors is also advised. In addition, the Committee attempts to clarify the role and responsibilities of the juvenile prosecutor, advising that he or she assume an active role in the prevention of delinquency, offer independent dispositional recommendations for adjudicated juveniles, advise intake regarding the legal sufficiency of complaints and evaluate dispositional programs.

The potential for conflicting interest between an accused juvenile and his or her parents should be clearly recognized and acknowledged. For this reason, the Committee recommends that separate counsel for the juvenile and parents be appointed when necessary. Original counsel should function as an advocate for the juvenile in the traditional legal sense of the word. In addition, juvenile defense counsel should undertake an independent investigation and recommendation for disposition as well as interpret court actions to the juvenile and parents.

The Advisory Committee recommendations regarding the creation of a professional juvenile prosecutor capacity extend as well to public defender offices. Recommendations regarding selection, assignment, training and organization for juvenile prosecutors are also proposed for juvenile public defenders. The Committee considers it of prime importance to recommend that, where the juvenile court operates on a full-time basis, it should have available the services of full-time juvenile prosecutors, public defenders and related court personnel.

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[10]Board of Directors, National Council on Crime and Delinquency (NCCD), "Jurisdiction Over Status Offenses Should Be Removed from the Juvenile Court," *Crime and Delinquency,* Vol. 21, No. 2, 1975, p. 97.

[11]Ad Hoc Committee on the Court Related Child, "Report on PINS and Related Issues," p.3.

[12]Justice Wise Polier, "The Future of the Juvenile Court," *Juvenile Justice,* Vol. 26, No. 2, 1975, pp. 6-7.

[13]David Bazelon, "Beyond Control of the Juvenile Court," *Juvenile Court Journal,* Vol. 21, No. 2, 1970, p. 44.

[14]Monrad G. Paulsen, "Gateway of Last Resort," *Columbia U. Forum,* Vol. x, No. 2, 1967, p. 352.

[15]*In re Mei* rested on the unprecedented ground that the charge of murder is "so horrible in fact and in contemplation by society" that it must remain "a crime within the purview of the Constitution, whatever name and whatever treatment may be appended to it by the Legislature" (122 N.J. Eq. at 130).

[16]President's Commission on Law Enforcement and Administration of Justice, *Task Force Report: Juvenile Delinquency and Youth Crime, p. 9.*

[17] National Advisory Committee on Criminal Justice Standards and Goals, Task Force to Develop Standards and Goals for Juvenile Justice and Delinquency Prevention, unpublished report, May, 1976, p. 1.

[18]*Hanrahan v. Felt,* 9 Cr. L. Rptr. 2119 (Ill. Sup. Ct. 4/1/71); *Joe Z. v. Superior Court,* 8 Cr. L. Rptr. 2259 (Calif. Sup. Ct. 12/29/70).

[19]Sanford Fox, *Juvenile Courts in a Nutshell* (1971), p. 138 as cited in Institute of Judicial Administration, *Juvenile Justice Standards Project-Final Report, Planning Phase, 1971-1973,* New York City, New York University School of Law, February, 1973, p. 335.

[20]National Advisory Committee, Task Force to Develop Standards and Goals for Juvenile Justice and Delinquency Prevention, p. 38.

[21]Jerome Skolnick, "Social Control in the Adversary System," 11 *J. Conflict Resolution,* 1967, pp. 52-70.

[22]Institute of Judicial Administration, *Juvenile Justice Standards Project-Final Report, Planning Phase, 1971-1973,* p. 346.

[23]Ibid., p. 352, p. 993.

[24]President's Commission on Law Enforcement and Administration of Justice, *Task Force Report: Juvenile Delinquency and Youth Crime,* p. 35.

[25]Timothy E. Foley, "Juveniles and Their Right to a Jury Trial," *Villa. L. Rev.,* Vol. 15, 1970, pp. 1000-1001. See also Justices Brennan, (dissenting in No. 128, *In re Burrus*) and Douglas (Black and Marshall joining) dissenting opinions in *McKeiver v. Pennsylvania,* 402 U.S. 528 (1971).

[26]Institute of Judicial Administration, *Juvenile Justice Standards Project—Final Report, Planning Phase, 1971-1973,* p. 362. Judge Lester Loble of Montana, who published a book entitled *Delinquency Can Be Stopped* in 1967 is one of the more vocal proponents of this practice.

[27]"Symposium, The Public's Right to Know," 5 *N.P.P.A.J.,* 1959, pp. 431-432.

[28]President's Commission on Law Enforcement and Administration of Justice, *Task Force Report: Juvenile Delinquency and Youth Crime,* p. 38.

[29]Institute of Judicial Administration, *Juvenile Justice Standards Project-Final Report, Planning Phase, 1971-1973,* pp. 365-366.

[30]Elyce Z. Ferster, Thomas F. Courtless and Edith N. Snethen, "The Juvenile Justice System: In Search of the Role of Counsel," 39 *Fordham L. Rev.,* 1971, p. 375.

[31]Anthony Platt and Ruth Friedman, "The Limits of Advocacy: Occupational Hazards in Juvenile Court," 116 *U. Penn. L. Rev.,* 1968, p. 1156.

[32]Skoler and Tenney, "Attorney Representation in Juvenile Court," 4 *J. Fam. L.,* 1964, p. 97.

[33]The exchange doctrine, originally propounded by Ketcham in 1962 (*Justice For the Child,* M. Rosenheim, ed.) maintains that the existence of benefits originally intended to be accorded juveniles in the dispositional stage of the juvenile process is the essential basis for the denial of fundamental constitutional rights during the adjudicatory step.

[34]Jacob L. Isaacs, "The Lawyer in the Juvenile Court," *Criminal Law Q.,* Vol. 10, 1967-1968, p. 235.

[35]Ibid., p. 223.

[36]National Advisory Committee, Task Force to Develop Standards and Goals for Juvenile Justice and Delinquency Prevention, p. 84.

[37]President's Commission on Law Enforcement and Administration of Justice, *Task Force Report: Juvenile Delinquency and Youth Crime,* p. 34.

[38]Center for Criminal Justice, Boston University School of Law, as cited in National Advisory Committee, Task Force to Develop Standards and Goals for Juvenile Justice and Delinquency Prevention, p. 85.

[39]National Advisory Committee, Task Force to Develop Standards and Goals for Juvenile Justice and Delinquency Prevention, pp. 1, 119; Institute of Judicial Administration and American Bar Association, "Information Packet on Juvenile Justice Standards Project," Institute of Judicial Administration, December, 22, 1975, pp. 51, 52.

[40]National Advisory Committee, Task Force to Develop Standards and Goals for Juvenile Justice and Delinquency Prevention, p. 38.

[41]Ibid., pp. 15-17.

[42]National Advisory Commission on Criminal Justice Standards and Goals, *Report on Courts,* Washington, D.C., U.S. Gov't. Printing Office, 1973, p. 300; National Council on Crime and Delinquency (NCCD), *Standard Juvenile Court Act,* New York, New York, NCCD, 1959, p. 33; U.S. Children's Bureau, *Standards for Juvenile and Family Courts,* Washington, D.C., U.S. Gov't. Printing Office, 1966, pp. 34-35; William H. Sheridan and Herbert W. Beaser, *Model Acts for Family Courts and State-Local Children's Programs,* Washington, D.C., Department of Health, Education and Welfare, May 1974, p. 108; National Council of Juvenile Court Judges, *Statement,* quoted in National Council on Crime and Delinquency, *Standard Juvenile Court Act,* p. 34; Institute of Judicial Administration and American Bar Association, "Information Packet on Juvenile Justice Standards Project," pp. 59, 60.

The National Council of Juvenile Court Judges sets the floor at age 14 whereas NAC does not specify a minimum age but recommends states should designate a minimum age.

[43]This case is currently on appeal.

[44]Statistics compiled from monthly reports submitted by each county to the Statistics Section of the Administrative Office of the Courts, State House Annex, Trenton, New Jersey. Essex, 26; Sussex, 21; Monmouth, 19; Cumberland, 18.

[45]Statistics obtained from the New Jersey Office of the Public Defender, Department of the Public Advocate.

[46]National Advisory Committee, Task Force to Develop Standards and Goals for Juvenile Justice and Delinquency Prevention, p. 43; Institute of Judicial Administration and American Bar Association, "Information Packet on Juvenile Justice Standards Project," p. 38.

[47]Institute of Judicial Administration and American Bar Association, "Information Packet on Juvenile Justice Standards Project," p. 54.

[48]Statistics computed from the "Report of the Status of the Calendars" for each month of 1975, Administrative Office of the Courts, Trenton, New Jersey.

[49]Sheridan and Beaser, *Model Acts for Family Courts,* Section 25, p. 100; National Advisory Committee, Task Force to Develop Standards and Goals for Juvenile Justice and Delinquency Prevention, p. 126; Institute of Judicial Administration and American Bar Association, "Information Packet on Juvenile Justice Standards Project," p. 53.

[50]National Advisory Committee, Task Force to Develop Standards and Goals for Juvenile Justice and Delinquency Prevention, pp. 141-162.

[51]Institute of Judicial Administration and American Bar Association, "Information Packet on Juvenile Justice Standards Project," p. 53.

[52]Ibid., National Advisory Committee. Task Force to Develop Standards and Goals for Juvenile Justice and Delinquency Prevention, p. 141.

[53]Institute of Judicial Administration and American Bar Association, "Information Packet on Juvenile Justice Standards Project," p. 51.

[54]Ibid., p. 54.

[55]National Advisory Committee, Task Force to Develop Standards and Goals for Juvenile Justice and Delinquency Prevention, p. 150.

[56]President's Commission on Law Enforcement and Administration of Justice, *The Challenge of Crime in a Free Society,* Washington, D.C., U.S. Gov't. Printing Office, 1967, p. 87; National Advisory Committee, Task Force to Develop Standards and Goals for Juvenile Justice and Delinquency Prevention, p. 56; National Advisory Commission, *Report on Courts*, p. 302.

[57]U.S. Children's Bureau, *Standards for Juvenile and Family Courts,* p. 73; President's Commission on Law Enforcement and Administration of Justice, *The Challenge of Crime in a Free Society,* p. 87; Sheridan and Beaser, *Model Acts for Family Courts and State-Local Children's Programs,* Sec. 30, p. 106; Institute of Judicial Administration and American Bar Association, "Information Packet on Juvenile Justice Standards Project," p. 39.

[58]U.S. Children's Bureau, *Standards for Juvenile and Family Courts,* p. 69; National Council on Crime and Delinquency (NCCD), *Guides for Juvenile Court Judges,* New York, New York, NCCD, 1969, p. 57.

[59]President's Commission on Law Enforcement and Administration of Justice, *Task Force Report: Juvenile Delinquency and Youth Crime,* pp. 28-40; National Advisory Commission, *Report on Courts*, p. 302; National Advisory Committee, Task Force to Develop Standards and Goals for Juvenile Justice and Delinquency Prevention, p. 56.

[60]U.S. Children's Bureau, *Standards for Juvenile and Family Courts,* pp. 72-73; National Council on Crime and Delinquency, *Guides for Juvenile Court Judges,* pp. 60-61.

[61]Sheridan and Beaser, *Model Acts for Family Courts and State-Local Children's Programs,* Sec. 29, p. 104.

[62]National Advisory Committee, Task Force to Develop Standards and Goals for Juvenile Justice and Delinquency Prevention,

[63]Institute of Judicial Administration and American Bar Association, "Information Packet on Juvenile Justice Standards Project," p. 39.

[64]Institute of Judicial Administration and American Bar Association, "Information Packet on Juvenile Justice Standards Project," pp. 41-46; National Advisory Committee, Task Force to Develop Standards and Goals for Juvenile Justice and Delinquency Prevention, pp. 126-181.

[65]National Council of Juvenile Court Judges, "Handbook for New Juvenile Court Judges," *Juv. Ct. Judges J.,* Vol. 23, No. 1, Winter, 1972, p. 25; U.S. Children's Bureau, *Standards for Juvenile and Family Courts,* p. 113; President's Commission on Law Enforcement and Administration of Justice, *Challenge of Crime in a Free Society,* p. 86, National Council on Crime and Delinquency, *Model Rules for Juvenile Courts,* New York, New York, NCCD, 1969, p. 82.

[66]National Advisory Commission, *Report on Courts,* p. 302; National Advisory Committee, Task Force to Develop Standards and Goals for Juvenile Justice and Delinquency Prevention, p. 80.

[67]Institute of Judicial Administration and American Bar Association, "Information Packet on Juvenile Justice Standards Project," pp. 55-58; National Advisory Committee, Task Force to Develop Standards and Goals for Juvenile Justice and Delinquency Prevention, pp. 63-121.

JUVENILE DISPOSITIONS AND CORRECTIONS

Introduction

The promise of rehabilitation intrinsic to the juvenile court lies not in adjudication but in the post-adjudicative treatment provided juveniles. It is the dispositional/correctional segment of the juvenile justice system which must carry out the mandate of the juvenile court. Without essential dispositional programs, the juvenile court is hard pressed to achieve its purpose.

Most authorities concede that the juvenile justice system has indeed failed to accomplish its purpose; that juvenile courts and court imposed dispositional treatment of juveniles do not rehabilitate. One need only look at the recidivism rates and the fact that today's prisons are filled with yesterday's delinquents to come to the same conclusion.

The inability of the system to rehabilitate is not solely of its own making. The community—its government and citizens—is also responsible. Governmental and public commitment has not been in proportion to the severity of the juvenile problem. Insufficient funds and resources have precluded the fulfillment of the *parens patriae* doctrine and are underlying causes of the juvenile justice system's failure to rehabilitate.

There are other contributors to the ineffectiveness of rehabilitative attempts. A serious difficulty is the fragmented responsibility for juveniles which exists in each county and extends to the State level where at least seven different State departments have jurisdiction over some aspect of juvenile problems. Governmental fragmentation, lack of cooperation and coordination between juvenile service agencies and meager resources all combine to reduce the effectiveness of programs designed to treat or rehabilitate.

One of the most pressing situations facing the juvenile justice system is the unavailability of programs for juveniles needing residential treatment. The lack of residential placements cause many juveniles to remain in detention centers and other locations pending residential placement. Others are assigned to institutions where programs are not geared to their needs or transferred to out of state facilities at costs greatly exceeding in-state residential care.

The voluntary out of home placement of juveniles, whether or not they are adjudicated delinquent or in need of supervision, is an emerging problem. Although New Jersey law permits parents to surrender custody of their children to the State without court review, some authorities are concluding that the court, as the protector of children, should be involved in every matter involving an out of home placement or transfer of custody to ensure such action comports with the child's best interest.

In addition to residential programs, there is a need for more dispositional alternatives other than probation for those juveniles who require only minimal community supervision or assistance. Increasing probation caseloads have placed heavy demands upon the probation system and have decreased the effectiveness of its efforts.

As a dispositional alternative, correctional institutions also have a responsibility to reform and rehabilitate. It is in correctional institutions where rehabilitation is most needed yet most difficult to achieve due to the institutional environment and the type of offender which requires institutional handling. Through the years, there has existed an overemphasis on custody to the point where operational needs of the institutions often take precedence over the needs of offenders. The conflict of security versus treatment remains to be resolved.

For juveniles paroled from correctional institutions, the fragmentation and lack of coordination and resources permeating the juvenile justice system is keenly evident. Paroling authority is divested in two separate agencies and supervision is the responsibility of two different State departments. Community services for juvenile parolees are limited and halfway houses and other residential assistance programs are virtually nonexistent. Greater financial commitment and more and varied community services are needed if juveniles are to make the transition from institutional to community life.

Problem Assessment

Disposition

Today's juvenile court is concerned equally with a juvenile's rights as well as his or her needs. Rights are of primary importance during the fact-finding process and needs are considered only after an adjudication of delinquency or in need of supervision has been made. "Irrespective of the needs of the child and no matter how glaring those needs may be, before any dispositional plan can be implemented, the child must be legally adjudicated delinquent or unruly."[1] Only after an adjudication, based on proper application of due process, do judges have the opportunity to assess the juvenile's needs and act accordingly.[2]

References for this chapter appear on pages 325-327.

The dispositional process is perhaps the most important phase of the juvenile court stage yet there are few comprehensive guidelines for assisting judges in determining the best disposition. Vague statutory references provide little guidance for judicial discretion and may also lead to varying and inequitable treatment of similarly situated juveniles.[3] Guidelines are needed to assist judges in matching identified needs to available dispositional programs, consistent with due process and public protection.

Gaining in recognition and support is the notion that both prosecution and defense parties should assume an active role during the disposition process. Currently the roles of parties and other participants in the proceedings are not clearly defined, nor are guidelines available to structure these roles.

Methods of determining needs and the best possible ways to meet them should be based upon a proper application of due process. Dispositional hearings should be formal hearings which recognize and reflect the significance of the dispositional decision. NAC and other national and state authorities advise that juvenile dispositional hearings should not differ from adult criminal sentencing hearings. The right to counsel, to present evidence and argument favoring a less intrusive or more appropriate disposition and the right to access to information upon which the dispositional decision is made should not differ for juveniles. In addition, current authorities advise that the state should be required to demonstrate the need for a particular deprivation of liberty and that judges should be required to set forth in writing their reasons for selecting a particular disposition.

To select a dispositional plan in accordance with individual needs, judges must have available as much personal and social background information regarding the juvenile as possible. It is commonly recognized that to be most effective, pre-disposition reports should be "clear, concise, complete, objective and purposeful."[4] However, actual reports do not always measure up to ideal recommendations. Complaints have been lodged against the short form which is currently used in many counties for juvenile pre-disposition reports. Practitioners argue that the format is confusing, important facts are not readily discernable and use of the short form does not result in any time savings. Others comment that the shortened version does not present a balanced view of the offender but tends to bring out disproportionately more negative aspects. An improved pre-disposition report form may be warranted, as well as indepth instruction in preparation of such reports, to upgrade the quality of pre-disposition information. Guidelines are also necessary to govern the disclosure of this information to parties, the juvenile and his or her parents or guardian.

There is currently considerable agreement among authorities and practitioners that, in matching treatment to need, disposition decisions should be governed by the principle of the least restrictive alternative. This is based on the notion that the most laudable of motivations does not disguise the fact that doing something for a juvenile also entails doing something to him or her.[5] Although juvenile court dispositions are traditionally rehabilitative, there is included an element of coercion and control which has never been relinquished by society. Consequently, dispositions are not based purely upon the juvenile's need but upon individual need consistent with public interest and protection. This is most evident in the use of correctional institutions to rehabilitate juveniles who have committed serious crimes.

> When it is recognized that control is a major consideration in determining what is to be imposed on juvenile offenders, then principles of justice and fair play, and in particular the principle of proportion which decrees that minor offenses should not receive severe consequences, reassert themselves.[6]

As a result, protections against unjustified treatment of juveniles are viewed equally as important as ensuring juvenile's needs are met.

The purpose of dispositions are generally regarded as two-fold: to rehabilitate the juvenile and to protect the public, primarily by deterring future delinquent behavior or outright removal from the community. It is unclear which purpose reigns supreme. Many authorities argue that meeting the needs of juveniles and ensuring their rehabilitation is of primary importance whereas others comment that "above all, and the foundation upon which any disposition must rest, is the need to protect society."[7] Regardless of which purpose takes precedence, the availability and range of juvenile dispositional options have not satisfied either purpose. The proportion of convicted adults who were formerly delinquents point to this conclusion. More and varied dispositional alternatives and techniques must be developed if the purposes of dispositions and of the juvenile justice process in general are to be realized.

Too often a judge has the unpleasant choice of sending a juvenile to a correctional institution which will probably not correct or sending the juvenile back to the destructive environment which produced the deviant or criminal behavior in the first place. For those juveniles who should not be incarcerated or released home, a system of work camps and other residential programs with firm but flexible discipline and careful supervision could be of enormous assistance in both rehabilitating the juvenile and protecting the public.

The task of fulfilling these purposes is compounded by the fact that little is known regarding the effectiveness of certain dispositional techniques.

> What to do for criminals and delinquents is a perpetual problem, and the volume and vigor of opposing views for prevention and treatment indicates the absence of reliable knowledge.[8]

It is argued that the failure to identify causes and cures of delinquency does not compel abandonment of the ideal of rehabilitation but rather the development of new and better attempts at rehabilitation and deterrence. The greatest potential for meeting the purposes of disposition lies in the community rather than in institutions and it is here where dispositional programs should be expanded. The advantages of community-based and oriented treatment, whether residential or supervisory, are well known. Community programs allow for greater flexibility and can be adapted to the individual needs of juveniles. In addition, community programs provide an opportunity for treatment without removing juveniles from their social environment. There is growing acknowledgement that rehabilitative success increases in proportion to family support. Opportunities for such support are maximized in a community setting whereas institutions often preclude parental involvement Moreover, community programs are significantly less expensive to operate than institutions. Local programs also help to return responsibility for youth problems back to the community where such problems originate.

Probation

Probation is the most frequently used community alternative, indeed the most frequently used disposition, for juveniles in New Jersey. As shown in Table 1, New Jersey juvenile court judges in 1975 disposed of 16,900 cases by placing juveniles under the supervision of county probation departments. This great demand for probation services is made notwithstanding the fact that available probation resources cannot meet demand.

Although numerous national standards for effective probation supervision mandate small juvenile caseloads, and most New Jersey probation departments have sought to comply with this recommendation, caseloads in many counties have chronically been excessive, thus hampering supervision efforts and lessening the overall effectiveness of probation. The 1977 Criminal Justice Plan for New Jersey reveals that in the eight most populous counties, juvenile caseloads range an average of 31-84 per probation officer, well above the frequently recommended 25 cases per officer. Smaller juvenile caseloads are needed to increase the effectiveness of a probation disposition.

Table 1

Estimates of Juvenile Court Cases Disposed by Type of Disposition for Calendar Years 1974, 1975

Type of Disposition	Delinquency Complaints		In Need of Supervision Complaints		TOTAL	
	1974	1975	1974	1975	1974	1975
1. Dismissal of complaint	13,900	15,100	1,100	1,600	15,000	16,700
2. Continuation of hearing	13,000	12,000	800	1,300	13,800	13,300
3. Disposition Suspended	3,400	2,500	200	300	3,600	2,800
4. Released to custody of parent or guardian	800	400	200	100	1,000	500
5. Placed on probation	14,400	15,000	1,100	1,900	15,500	16,900
6. Placed under supervision of person or private agency	400	300	100	200	500	500
7. Placed under care of DYFS	500	600	400	500	900	1,100
8. Committed to care of Dept. of Human Services, Div. of Mental Retardation	400	300	10	30	410	330
9. Committed to institution for treatment of mental illness	100	60	10	10	110	70
10. Committed to correctional institution	1,000	1,300	0	0	1,000	1,300
11. Other suitable disposition	2,500	3,450	100	50	2,600	3,500
TOTAL	50,400	41,010	4,020	5,990	54,420	57,000

Source: Data obtained from monthly reporting forms submitted by each county to the Statistics Unit, Administrative Office of the Courts, Trenton, N.J. Figures considered estimates due to variations in reporting methods carried on at the county level. AOC is in the process of revising reporting forms and developing procedures to make reporting more consistent.

Research indicates, however, that reduction in caseload size without any other changes in supervision or service delivery has little effect on program effectiveness.[9] To provide administrative flexibility, allocation or assignment of cases should be made on the basis of the juvenile's needs and the juvenile probation officer's capabilities. Proper caseload management requires some types of classification and assignment system. Since certain types of juveniles need and can benefit from more attention than others, a classification system which recognizes varying needs should be developed and juveniles should be assigned to a level of supervision intensity commensurate with individual need.

Authorities advise that probation cannot achieve its potential until a mechanism is developed for determining which offender should be placed on probation along with a system to enable probationers to receive needed support services.[10] Fulfillment is hampered by the fact that truly effective selection criteria to determine who would be a successful candidate for probation supervision have yet to be found. As a result, some juveniles are placed inappropriately on probation supervision, thus further decreasing its effectiveness.

To be consistent with federal legislation requiring the separation of adult and juvenile offenders and to ensure the needs of juvenile probationers receive equal attention in the allocation of services, staff and funds, many recommend the establishment of a separate juvenile section or unit in each probation department. This section or unit should be responsible for providing all probation services for juveniles and for cultivating a network of community-oriented programs and services to facilitate implementation of the court's dispositional orders.

To maximize the effectiveness of probation supervision, a treatment plan should be developed jointly by the probation officer and the juvenile, based upon a realistic assessment of the potential for services to assist the juvenile as well as the juvenile's individual needs. Any conditions of probation as determined by the court should be included in the plan. Treatment plans should be reviewed periodically, to include an evaluation of the juvenile's progress and the possible need for modification of the plan or intensity of supervision. Juveniles placed on probation should receive the level of services identified in the treatment plan and when such services are not available, the court should be informed.

Leading authorities agree that juveniles on probation should have access to the same range of services available to others in the community. Such is not always the case, due in part to the inability of probation departments to provide the necessary variety of services and the reluctance of some public agencies to make services available to juveniles on probation. Since resource availability varies among communities in New Jersey, juvenile probation officers need flexibility to provide direct services or to purchase services from private agencies. The purchasing of services provides diversification, decreases duplication and frequently leads to an improved level of services. Services provided by private community agencies also promote community involvement in the needs and problems of youth.

The multiple role of the juvenile probation officer is another factor which adds to the complexity of providing probation treatment. Since probation officers are involved in juvenile court decisions and probation revocation proceedings, their authoritarian image is a complicating factor in the juvenile's response to treatment. In one sense, probation officers are officers of the court and are required to enforce court orders. (To do so, peace officer powers are sometimes necessary although these powers should never extend to the carrying of firearms.) On the other hand, probation officers are charged with the responsibility to assist juveniles through personal counseling, service referral and brokerage.

> Caught in the middle of this conflict between law and social work in the juvenile court is the probation officer, who alternately hears his role defined as law enforcement officer, social worker and prosecutor.[11]

Care must be exercised to avoid role conflict. Evaluation of the juvenile probation system to determine how a probation officer can better function in this role has been identified by the 1977 Criminal Justice Plan for New Jersey as a current need.

To enable juvenile probation officers to function at peak effectiveness, training is essential. However, specialized training and orientation for juvenile probation officers has been insufficient. Orientation and training should be provided in the areas of individual, group and family counseling and therapy techniques; vocational assistance; crisis intervention; human relations; juvenile law and the legal rights of juveniles. Training should be geared toward increasing the capability of juvenile probation officers to mobilize services, develop referral procedures and coordinate availability and use of community resources. In addition, ongoing in-service training is needed to enhance the professional development and capabilities of juvenile probation officers.

The rehabilitative efforts of juvenile probation officers should take many forms from direct casework counseling to the securing of special community services for the juvenile and his or her family. The development of innovative probation projects to provide more specialized involvement with juveniles and their families is currently needed. Research findings have encouraged exploration of more productive ways to deploy personnel and the probation team approach is considered by many to be an effective way of organizing probation services for juveniles. Probation teams are based on the concept that "different services required by different children should be

provided by different kinds of personnel."[12] Probation teams may use an experienced probation officer as a team leader, additional probation officers, counselors, paraprofessionals, probation aides, remedial education teachers, employment specialists and indigenous community worker is to provide coordinated, individualized services for juveniles.

Another possibility for improved service delivery is scattered site or decentralized probation offices which are designed to bring probation services directly into the community where they are most needed. Under this approach, it is easier to reach the whole family, services are more accessible, more home visits are possible and the atmosphere and operation appear less threatening. By becoming a community resource, probation officers are more likely to involve the family in rehabilitative attempts and be more keenly aware of the juvenile's social environment.

Residential and Foster Placements

Juvenile judges increasingly are seeking residential and community treatment alternatives to incarceration. A study undertaken by the Bureau of Research, Planning and Program Development of the Division of Youth and Family Services reveals that the number of juveniles placed in institutions and facilities for various purposes in New Jersey during the last ten years has remained relatively constant.[13] As shown in Table 2, the number and proportions of commitments made to Divison of Mental Retardation institutions and State and local mental hospitals has remained relatively stable; commitments to correctional institutions have decreased and the number and proportion placed in residential treatment has significantly increased. The decline in correctional commitments is most evident in 1974, when the new juvenile code prohibiting the confinement of status offenders in correctional institutions came into effect. This leads to the conclusion that residential treatment has assumed responsibility for a large proportion of those juveniles who, prior to 1974, would have been committed to a correctional institution. As the use of institutional dispositions declines in favor of residential treatment, a variety of residential programs (and nonresidential programs as well) is needed to ensure available dispositions match the needs of juveniles adjudicated delinquent.

A 1974 needs/resource analysis of New Jersey's method of providing residential treatment for delinquent and other children uncovered a critical need for more community residential facilities and structured day care programs.[14] The findings of the study continue to hold true today. The analysis also

Table 2

Institutionalized Youth Compared by Type of Institution for the Last Ten Fiscal Years

		Institutionalized Youth in New Jersey End of Fiscal Year									
		1975	**1974**	**1973**	**1972**	**1971**	**1970**	**1969**	**1968**	**1967**	**1966**
Correctional Institutions	Number	666	663	1067	1168	1141	1096	1159	1039	1334	1420
	Percent	13.4	14.1	21.1	22.4	21.8	22.7	25.6	22.9	26.8	28.7
DYFS—Residential Treatment	Number	2155	1760	1598	1500	1285	1048	817	(817)*	(817)*	(817)*
	Percent	43.6	37.4	31.5	28.7	24.5	21.7	17.9	18.0	16.4	16.5
State and County Mental Hospitals	Number	412	427	408	397	480	570	517	534	(534)*	(534)*
	Percent	8.3	9.1	8.0	7.6	9.2	11.8	11.4	11.8	10.7	10.8
Div. of Mental Retardation Institutions	Number	1705	1862	1996	2156	2330	2117	2059	2138	2291	2185
	Percent	34.5	39.5	39.4	41.3	44.5	43.8	45.2	47.2	46.0	44.1
Total Institutionalized Juvenile Population	Number	4938	4712	5069	5221	5236	4831	4552	4528	4976	4956
	Percent	100	100	100	100	100	100	100	100	100	100

Source: "Deinstitutionalization in New Jersey: A National Model?," prepared by Kenneth Stevenson, Bureau of Research, Planning and Program Development, Div. of Youth and Family Services, Dept. of Human Services, p. 13.

Numbers may not add due to rounding. * Estimated.

revealed that the Division of Youth and Family Services (DYFS), which arranges residential treatment primarily through purchase of service for a variety of children, experienced problems in placing 39% of its cases.[15] These cases were primarily those children who exhibit aggressive or acting out behavior or are considered difficult to place. Program shortages combined with placement difficulties has resulted in the frequent use of out of state facilities, inappropriate placements and lengthy delays in obtaining placements.

Placing a juvenile out of state hinders maintenance of family continuity and the juvenile's successful return to his or her natural social environment. In addition, there are no federal standards to regulate the activities of child care institutions. Many state requirements are lax, making it difficult for other states with high standards, such as New Jersey, to enforce their regulations on facilities located elsewhere.

The possibility for abuse of a juvenile's rights increase when they are sent out of state, due to the inability to maintain close supervision. It has been said that "the fault lies not with private owners [of residential programs] but rather with state legislatures that, failing to provide children of their state with good local programs, send them off to distant facilities and then are unable or unwilling to inspect these facilities adequately."[16] The consequences of out of state placement have yet to be fully realized.

Many around the country are beginning to advocate that out of state placements are detrimental, unnecessary and should be stopped. Several states such as Illinois and Massachusetts have sought to eliminate the practice. When forced, states have found alternative arrangements and placements for that population previously destined for out of state facilities. Similar proposals are gaining popularity in New Jersey along with recommendations to evaluate existing in-state facilities and expand their treatment components in order to accommodate all or most of those juveniles presently being sent out of state.

Occasionally children remaining in New Jersey are placed inappropriately in institutions and programs simply because the facilities have available bedspace. Such commitments are yet another indication of the need for an improved residential placement system for juveniles, especially those considered aggressive or hard to place. An overall coordinated plan for a statewide residential system as well as a complex of residential programs with gradations in services and structured living environments is needed.

Another major problem in the provision of residential placements is the accompanying delay. Contributing factors include the time required for testing the juvenile, finding a suitable placement and procuring the necessary funds. The number of residential programs available to the Division of Youth and Family Services for placing children referred through the courts or other means is limited. In choosing a placement, caseworkers may consider only those facilities which are approved by the Division and are within its funding range. The procurement of funds for placement purposes is itself a complex and controversial procedure, which limits program availability and delays the process. The longer a juvenile's placement is delayed, the less urgent his or her situation is likely to be viewed.

Another residential alternative is the placement of the juvenile in foster care. In the majority of cases, foster care placements are made on a voluntary basis; that is, parents agree voluntarily to place their children with a foster family. Voluntary placement procedures have been the subject of recent debate and the need for objective review of foster placements and for protection of the civil rights of parents, children and foster families has been voiced. Many believe New Jersey's present system does not provide sufficient accountability and that the potential for violating client rights is high.

Statistics prepared by the Bureau of Research, Planning and Program Development of the Division of Youth and Family Services indicate that a substantial number of children come in contact with the foster care system.[17] Annually, approximately 5,400 new cases needing out of home placement come to the attention of the Division. At any one time, there are approximately 12,000 children in out of home placement, 10,378 of whom stay for at least six months. At the end of 1976, approximately 9,364 of the children in placement had been in out of home placement for at least 12 months, 8,460 for at least 18 months and 7,558 for at least two years. Approximately 15,261 children had a change of placement during the same year. Seventy-five percent of all out of home placements are made without court review or contact.

Voluntary foster care arrangements, because of their temporary nature, can create undue emotional hardships for the parties involved. Although placements are voluntary, some parents may feel forced by caseworkers to place a child out of fear of having all children removed. Often it takes months for a parent to have his or her child returned home, even though the placement is temporary. In addition, parents may not know how to get their children back, for there exist no specific or written conditions to indicate what the parents must do to have their child returned home.

Removal from the home may also be traumatic for the child. Temporary placements may last for years, thus straining relations with natural parents yet discouraging the formation of strong emotional ties with the foster family. Foster parents also encounter emotional strain since arrangements are "temporary." Difficulties multiply when natural

parents are unwilling to terminate parental rights which would free the child for adoption by the foster parents yet also refuse to accept their children. Many authorities have come to the conclusion that lengthy, nonpermanent foster placements where neither the child nor the natural parents receive services leading to a reunion of the family should not be permitted. Moreover, as courts begin to recognize certain legal rights of foster parents and award them legal custody of their foster children, the legal implications for New Jersey's voluntary placement system are immense.

Corrections

One of the most serious and frequent complaints regarding New Jersey's method of handling juveniles is that the juvenile justice "system" is fragmented. The needs of juveniles and of the agencies, organizations and institutions which are responsible for them traditionally have been designated a lesser importance than those of adults.

To counteract these notions and to ensure that juveniles receive, at the very least, services and resources equal to those of adults, a move to separate juvenile components from their adult counterparts permeates juvenile justice system reform efforts. In the same spirit, State and national authorities advocate a separate identification and administration of juvenile correctional institutions, services and programs. Many suggest the recently created Department of Corrections establish a separate juvenile division to ensure the needs of juveniles committed to the care and custody of the Department are adequately met.

Juvenile correctional services in New Jersey currently consist of correctional institutions, community-based correctional programs and parole or aftercare. While sharing many interrelated problems, these three components of juvenile corrections are sufficiently distinct to warrant separate treatment.

A. Juvenile Correctional Institutions

Juvenile correctional institutions, despite improvements, remain the most visible and vulnerable of juvenile justice system components. They are frequently the focus of the system's inability to rehabilitate. While institutions offer temporary protection for the community by removing threatening juveniles they make the eventual reintegration of such juveniles that much harder. To compensate for these negative and at times defeating aspects, many including the NAC, suggest "there must be a continuing effort to minimize inherently negative aspects" of incarceration.[18]

Studies indicate that the younger offenders are upon entering an institution, the longer they are incarcerated, or the further they progress into the juvenile justice system, the greater the chance of failure.[19] A five-year nationwide study of juvenile corrections undertaken by the National Assessment of Juvenile Corrections project found a close relationship between length of stay and recidivism.[20] The study revealed that "the more 'hardened' the incoming youth, the longer they are likely to stay; the more long-timers in a program, the greater its proportion of increasingly hardened veterans." Data compiled by the project also strongly suggested that "it is youth's influence upon one another—rather than staff behavior or program facilities—that is mainly responsible for the vicious cycle."[21]

Although correctional institutions may offer temporary protection to society, it is generally agreed that the best and most permanent way to protect society and deter future criminality is to rehabilitate. Juveniles confined to correctional institutions are most in need of rehabilitation, yet their confinement is perhaps the greatest obstacle to rehabilitative efforts. Moreover, the possibility of attempting to rehabilitate anyone involuntarily incarcerated is questionable.

The problems of juvenile correctional institutions and the negative effects of incarceration lead many to conclude that only certain types of youth should be committed to correctional institutions. The National Assessment of Juvenile Corrections project joins others in recommending that incarceration be used only for those offenders whose offense patterns provide unequivocal grounds for believing that institutionalization is necessary to protect the community or for those repeaters for whom all other alternatives have been tried without success.[22] In a similar vein, it is frequently recommended that

> institutional confinement should be used only as a last resort and for as brief a time as possible; and, in disposing of borderline cases where neither probation nor confinement is clearly indicated, juvenile court judges should act on the assumption that the best chance for rehabilitation lies with probation.[23]

One of the most controversial problems facing New Jersey's juvenile correction component is the continued housing of adult and juvenile offenders in the same institutions. Currently approximately 400 juveniles are incarcerated in the Youth Correctional Institution Complex along with adult males up to age 30. Many State and national authorities including the New Jersey Legislature and United States Congress have called for the separation of adult and juvenile offenders. However, New Jersey statutes designating age limits for commitments to correctional facilities which allow juveniles and adults to reside in the same facility have not been amended and the practice still continues.

A juvenile's initial experiences in correctional institutions are usually confined to a reception unit or cottage. Here the juvenile is again subjected to diagnosis, testing and evaluation for the purpose of assignment to a particular correctional facility and/or

program. The reception process, usually lasting four to six weeks is commonly referred to as "dead time," for while juveniles are confined to reception, they are segregated from the rest of the institution population and from ongoing programs and special services as well. Even after a careful and thorough evaluation of the juvenile and determination of needs, assignments may be based not on need but on available bed space and program openings.

Frequent complaints of the reception process are that it is duplicative of other evaluative efforts and that it is too lengthy. If the types of services available in all of the correctional facilities and programs were known at the time of court disposition, juveniles committed to the care and custody of the Department of Corrections could be immediately transferred to the facility, level of custody or program best suited to their needs. Many correctional authorities are beginning to advocate just that. It is suggested that the centralized reception process be eliminated in favor of immediate and direct assignment of the juvenile to the most appropriate type of program.

A key component of any assessment and assignment mechanism is the development of individualized treatment plans. Such plans should be based on the particular needs of each juvenile and should serve to guide his or her correctional experience during the course of commitment. Treatment plans also facilitate the review, monitoring and evaluation of institutional programs.

> Endemic to all correctional programs for the child which extend over any significant period of time is the question of monitoring both the programs and the child's reaction to them. It is necessary to review what progress the child is making in order to determine whether the reasons for placing him in a particular program are being borne out by experience.[24]

Treatment plans can only be as good as the resources available in correctional facilities. The lack of varied and differentiated treatment services within correctional institutions is a continuing problem. This is most evident for female offenders and those offenders with particular individual needs. The 1977 Criminal Justice Plan for New Jersey points out that "on the whole, the juvenile with severe learning handicaps, the sex offender, the mentally retarded juvenile and the violent or psychotic youth receive primarily the same service intervention."[25] Moreover, female offenders not only do not have specialized services and programs, but also there are insufficient numbers of female staff to supervise them, resulting in the occasional assignment of male correctional staff for such purposes. Two years after the Training School for Girls, New Jersey's only institution strictly for female juveniles, was closed due to an insufficient population, the number of girls housed at the Jamesburg Training School cottage designated for females has since doubled, causing severe overcrowding. More staff and program resources are needed for the female juvenile offender. Since females are a minority in the juvenile offender population, the 1977 Criminal Justice Plan for New Jersey and other sources point out that there must be constant vigilance to ensure their needs are being met by the correctional system.

Committing a juvenile to the care and custody of the Department of Corrections imposes a duty upon the Department to provide needed services to facilitate the juvenile's reintegration into his or her home community. Whereas most incarcerated juveniles will be returning to their family and community, it is important that they retain ties. Ongoing contact with families and friends, however, is limited. Weekend furloughs to maintain family and community contact such as is used at the Skillman Training School for Boys, should be available for juveniles in other institutions as well.

In line with reintegration goals, juvenile correctional institutions should be built as close as possible to the community they serve. However, the geographic location of New Jersey's correctional institutions makes gradual reintegration difficult and may even be incompatible with a mission of services delivery. At the time of construction, isolationist philosophies dictated locating correctional installations far from major population areas. The result was the establishment of juvenile correctional "colonies" in rural areas of New Jersey, the location of which often inhibit continuity of relationships and community interaction. Most families must travel great distances to visit their children. Locating correctional institutions near the communities from which they draw their population would facilitate family visits and involvement, the use of community resources and volunteers and, eventually, the juvenile's reintegration.

Flexibility in correctional programs for juveniles is important to ensure the needs of juveniles are met. There is a tendency to consider the juvenile correctional population as homogeneous when it is actually diverse with regard to background and need. No single model of rehabilitation or treatment technique has proven singularly effective with all juveniles, and for this reason, a variety of approaches and services should be available. To achieve maximum flexibility, juveniles should, where appropriate, be transferred between juvenile correctional facilities and community programs in accordance with need. Where desired services are not available through existing correctional programs, the Department of Corrections should rely on the purchase of services from other sources.

Purchasing community services wherever possible should reduce institutional costs and help avoid duplication. NAC suggests further that states should be authorized to subsidize construction and operation of private community residential programs.[26] Others advise also that, for proper administration, states

should have the authority and resources to establish standards and to monitor and evaluate community programs providing services to correctional agencies.

Often institutional programs stress conformity and routine rather than preparation for release into the community. Daily activities of most incarcerated juveniles scarcely resemble behavior required for successful community living. Conformity and routinization increase in proportion to the size and population of juvenile institutions, and operational needs tend to become primary. Authorities have noted that institutional life can be dehumanizing and may submerge juvenile inmates in a variety of subcultures.[27]

To minimize the negative effects of large institutional populations, authorities agree that juveniles should be separated and oriented into as many small groups as possible, surrounded by a nucleus of well-trained, experienced staff. The use of small living units maximizes interaction between staff and youth, fosters development of interpersonal relationships and provides the opportunity for a diversity of treatment techniques.

Grouped living units elicit a team approach to staffing. Under a team concept, all staff share correctional and treatment responsibilities. A team of four to six staff members are responsible for providing decentralized programming, case evaluation and management for a small group of juveniles. As such, the living unit and treatment team combine to form a therapeutic community in which rehabilitative efforts are enhanced. The team treatment approach operates successfully at the Training School for Boys-Skillman and the technique should be replicated in other correctional institutions.

Group techniques for modifying anti-social behavior patterns have come into frequent use in recent years and have generally proven effective. Techniques such as guided group interaction are based on the assumption that peer relationships are a significant factor in forming delinquent behavior. Group counseling efforts generally locate the source of an individual's antisocial behavior and seek to bring about change. Many New Jersey correctional programs place therapeutic emphasis on group interaction and counseling efforts and many suggest this emphasis should be expanded. The American Correctional Association states:

> The most promising of programs seek to increase self-awareness through group experience in which the individual works with both staff and peers to increase understanding of meanings and determinants of his own behavior.[28]

The institutional environment hardly resembles that from which the juvenile comes or to which he or she will be returned. The dependency fostered by institutional life frequently inhibits behavior expected and needed for normal community living. Many now recognize that the inmate role should be kept at an absolute minimum in order that more normal roles can later become dominant. A frequent recommendation to facilitate normal development is the elimination of segregation by sex, as it is now considered archaic. A sexual identification can be a critical element in maintaining stable behavior patterns, especially for juveniles in the process of forming sexual identifications. This is difficult if not impossible without contact with the opposite sex. Similarly, the ability of juveniles to keep personal possessions and wear their own clothing "may be a major source for maintaining some continuity between the self he knew on the outside and his self-perception on the inside."[29]

One of the most important components of juvenile correctional institutions is the education program. Most juvenile offenders are chronic failures in many aspects of life—they have failed in school, in family relations, even in crime. Educational programs should seek to provide experiences with success and personal achievement, especially in areas where it has never been experienced.

The varying lengths of stays and wide range of needs for juveniles committed to correctional facilities dictate that individual education plans be developed for each juvenile. In addition, intensified instruction is essential to provide the individual attention and group emphasis required to meet the special educational and behavioral needs of juveniles in institutions. Any achievements acquired in the institutional classroom may be lost, however, if credits or levels obtained are not transferred to the public school system upon the juvenile's return to the community. Not all institutional schools or programs are fully accredited nor are earned credits necessarily transferred to the juvenile's school. These problems need the attention of correction and education agencies for resolution.

The content of institutional educational programs, due to the special needs of its students, should be enriched to help juveniles adjust to living outside the institution. The 1977 Criminal Justice Plan for New Jersey notes the need to include knowledge of consumer and legal rights and familiarization with relevant community resources.

Health care is another factor which should be considered an integral part of the juvenile's overall treatment or rehabilitative program. In line with increasing rights of those incarcerated, every juvenile committed to a correctional institution should have available comprehensive medical, dental and mental health care. To facilitate availability, several authorities have called for federal legislation to authorize medicaid payments for needed services received by juveniles in state institutions.

All of the various components of correctional institutions should be geared toward rehabilitation. As the American Correctional Association points out, the challenge facing corrections today "is to integrate

the various kinds of programs into a meaningful whole in which each is related to and reinforced by the other."[30] Such is not always the case, however, due to competing interests and objectives. Moreover, there is a considerable time lag in corrections between a change in philosophy and a change in actual practice. The following points out the direction needed in juvenile correctional institutions:

> The delinquent in a correctional institution must: understand what behavior is expected of him and of others in that situation; understand the consequences of both violating and accepting these expectations; understand what he loses and what he gains in either case; perceive a real difference in the two alternatives; understand his role in the consequences; and understand that, ultimately, no one controls his role but himself. Treatment means correction only if it goes beyond diagnosis and theoretical remedies to active, consistent, open-minded programs to awaken and encourage individual responsibility.[31]

B. Community-Based Correctional Programs

A considerable portion of juveniles committed to the care and custody of the Department of Corrections do not require a full security placement. Many are placed in smaller, more open facilities in the community, ranging from residential treatment centers to foster home placements. However, more juveniles could be placed in the community in programs which are better suited to their needs and which are less costly, both in terms of dollars and individual growth and development, if more programs were available. An expanded network of community correctional and treatment programs is urgently needed.

Community-based correctional programs generally consist of residential and nonresidential alternatives to institutions, programs to provide guidance and support as a reintegrative aid for juveniles released from institutions, and those which serve to enhance the efforts of other rehabilitative programs such as probation. Unfortunately, there have been few resources committed to strengthening existing programs or to developing new and more effective techniques. What programs do exist frequently impose restrictions which further decrease program opportunities. For example, certain State community correction programs impose selective admission criteria or limit their potential population to only juveniles from either the jurisdiction in which the facility is located or from specified catchment areas. Many group homes confine their population to juveniles who have not had previous commitment to a correctional institution or residential facility. Consequently, juveniles who no longer need the structure of more intensive community programs or who are paroled from institutions are ineligible.

Currently there are few day care and halfway houses which serve as alternatives to incarceration for those juveniles committed to the care and custody of the Department of Corrections or which can be used as reintegrative measures for juveniles released from correctional institutions. More locally-run facilities which are supported by State and local government finances are needed. The 1977 Criminal Justice Plan for New Jersey points out the need for development of a "continuum of residential facilities,"[32] to include short-term secure environments for juveniles who cannot be contained in an open residential facility and also group homes for those who are not yet ready to return home or for totally independent living.

Resistance to community correctional programs, especially from the public, has impeded the development of such programs and must be counteracted. The continued and extensive development of community alternatives, many suggest, requires that administrators and legislators be made aware of these problems and create conditions favorable for their expansion.[33] In addition, the replication of successful programs and demonstration projects would help build positive opinions regarding community treatment. Many advocate that new community programs must be integrated into the mainline of corrections if they are to succeed. Allied social service agencies and the public must be involved in the early stages of planning efforts to ensure citizen understanding and support and thus reduce opposition or resistance to community correctional efforts.

A community location, however, is not enough. Programs must be oriented toward the community so that they do not become small, isolated islands surrounded by, but not a part of, the community. Community programs should rely on local resources for all or a majority of their needs: supplemental staff and volunteers; social, cultural and recreational outlets; professional services; school and job counseling and placement opportunities. Correctional administrators have found that the less artificial the treatment environment, the more realistic the rehabilitative approach. The community's involvement with and concern for local correctional programs would enhance their potential for rehabilitation and subsequent benefit to the community.

> Such facilities, which offer intensive treatment but are limited to a few children, will become more common as communities assume more responsibility for all their residents—not only delinquents but the retarded, mentally ill and other 'problems' who have been sent miles from home and family to large and, too often, inadequate institutions.[34]

Several states have had positive results with a variety of new and different programs, many of which could prove equally successful here. The feasibility of replicating these programs should be seriously considered. These include the following:

In Colorado:

- Closed adolescent treatment centers—psychiatrically-oriented centers for severe behavior problem youth.
- Youth diagnostic and halfway houses—nonresidential day treatment.

In Oklahoma:

- Youth intern program for juveniles returning from correctional institutions.
- Youth employment subsidy programs—provides full-time employment of dropouts as institution alternative, with wages subsidized for first six months as incentive to employers.

In Massachusetts:

- Intensive care programs for serious, hard-core offenders in small individual settings in community. First three to nine months spent in secure setting followed by less structured environments, transitional foster homes and community supervision.
- Structured treatment centers offering secure residential treatment for small groups of repeat serious offenders.
- Specialized residential treatment programs for small groups of youth in need of psychiatric treatment due to aggressive and violent behavior.

In Pennsylvania:

- Group home prerelease centers to serve as transitions from institutional life to freedom in community.

In Michigan:

- Nonresidential attention centers to help integrate offenders into educational and employment structures of community.
- Permanent small group placement facilities as alternative living arrangements for juveniles who have demonstrated a repeated inability to function in family placement. Leads to independent living.
- Special treatment facilities offering short-term placements for retarded, mentally-ill, emotionally disturbed, drug users.

C. Parole or Aftercare

It has often been noted that "the need to implement extensive correctional resources at the crucial transition from institution to aftercare is clear but the task is not an easy one."[35] Too little attention has been devoted to the needs of juveniles during the difficult adjustment period following release from the institution. There exists a lack of preparation, appropriate resources and coordination of such resources as are available.

Parole is frequently "society's last chance to prevent delinquents from becoming adult criminals."[36] However, it is commonly considered as the correctional process' weakest link. The success or failure of institutional rehabilitative attempts depends to a great extent upon the quantity and quality of parole or aftercare services. Adequately organized and financed aftercare programs are essential to complete the treatment process begun in the institution. The American Correctional Association points out a common source of frustration: "Youth who are given help and treatment in a correctional facility subsequently are returned to the very environment in which their problems developed, and with little in the way of continuing support, control or practical assistance."[37]

The fragmentation associated with the juvenile justice process in general is especially evident during the parole or aftercare phase of corrections. Currently, responsibility for parole supervision is divided between two State departments—the Department of Human Services, Division of Youth and Family Services and the Department of Corrections, Bureau of Parole. The Division of Youth and Family Services assumes responsibility for paroled juveniles under the age of 14 and those 14-16 year olds who it is felt are appropriate for Division supervision. The Bureau of Parole is responsible for most 14-16 year olds and all those over age 16. The State Law Enforcement Planning Agency and others suggest there is need for consolidation of parole supervision for juveniles under one administrative body.

Currently, the transition from institutionalization to parole supervision is, for the most part, abrupt for juveniles. Parole planning and preparation for release should begin as soon as the juvenile is admitted to a correctional institution, rather than a few days prior to actual release. Preparation for release should be an ongoing process to ensure that juveniles are not confined any longer than absolutely necessary. Juveniles who may need residential placements or alternative living arrangements should be identified as soon as the need arises. As the Institute of Judicial Administration points out, "it sometimes happens that even when restraint is no longer required the child is kept in custody because of a corrections decision that his home is not 'ready' or 'right.' "[38]

As a form of community supervision, parole suffers many of the same problems associated with probation—high caseloads, inability to provide enough intensive supervision and lack of specialized support services. Since parole combines aspects of supervision and treatment, parole or aftercare staff also experience role conflict similar to that of probation officers. There is a difference between the juvenile on probation and one on parole. Upon release, the labeling and alienation resulting from institutional confinement can become significant barriers to rehabilitation and reintegration for the paroled juvenile. Thus, although probationers and parolees have similar needs, these needs are more intense for the juvenile paroled from a correctional institution.

New Jersey's Status in Comparison With the National Standards

Much is encompassed under the subject of juvenile dispositions and corrections and for this reason, comparisons are drawn with national recommendations relating only to those areas which served as the focus of the Advisory Committee's study and deliberation. Although there exist several older standard-setting efforts, New Jersey's juvenile disposition and corrections phase is compared primarily with the contemporary efforts of the National Advisory Committee Task Force on Juvenile Justice and Delinquency Prevention (NAC), and the Institute of Judicial Administration/American Bar Association Joint Study Commission (IJA/ABA).

Dispositions

Disposition standards proposed by IJA/ABA and generally endorsed by NAC are based on several underlying principles which represent radical departures from traditional juvenile justice philosophy. IJA/ABA and NAC reject the philosophy of indeterminate sentencing for juveniles and propose, in its stead, that juvenile offenses be classified into five categories, each with a different maximum permissible length of sanction. Within these maxima, "sanctions imposed by the courts should be 'appropriate to the seriousness of the offense, as modified by the degree of culpability indicated by the circumstances of the particular case, and the age and prior record of the juvenile.' "[39] IJA/ABA also rejects the rehabilitative ideal and its standards are based upon the notion that coercive sanctions are punishment and, as such, ought to be appropriate to the seriousness of the offense. Thus, only modest rehabilitative attempts are advocated in IJA/ABA's standards. NAC, on the other hand, is not quite as willing to renounce rehabilitative ideals and therefore offers extensive recommendations to enhance the rehabilitative potential of juvenile dispositional programs.

The philosophy of New Jersey's juvenile law and its juvenile justice system has long been rooted in the concepts of rehabilitation and best interests of the juvenile, and there has been little if any movement to abandon them. Punishment is not acknowledged as a purpose of dispositions although some feel it is frequently a consequence. New Jersey's juvenile code expresses the purposes of juvenile court dispositions as follows:

> a. To preserve the unity of the family whenever possible and to provide for the care, protection and wholesome mental and physical development of juveniles coming within the provisions of this act;
> b. Consistent with the protection of the public interest, to remove from children committing delinquent acts certain statutory consequences of criminal behavior, and to substitute therefore an adequate program of supervision, care and rehabilitation;
> c. To separate juveniles from the family environment only when necessary for their health, safety or welfare or in the interests of public safety (*N.J.S.A.* 2A: 4-42).

In New Jersey, juveniles are committed to correctional facilities for an indeterminate term not to exceed three years or the maximum provided by law if less than three years for such offense if committed by an adult (*N.J.S.A.* 2A:61(h)).[40] There is no minimum amount of time that a juvenile must be confined, which is the essence of indeterminate sentencing. Although IJA/ABA and NAC endorse specified maximum sentences for juveniles (IJA/ABA sets the uppermost maximum at two years), they make no mention of required minimum sentences. In this sense, New Jersey is consistent with national recommendations.

Despite contrary philosophies, there are several IJA/ABA and NAC standards which can be evaluated in the context of New Jersey's system. In regard to the dispositional hearing, both the original and current NAC and IJA/ABA recommend that it embrace all of the due process protections inherent in adult sentencing hearings. New Jersey law does not clearly specify what due process protections are to apply at the dispositional stage, except to say that the right of due process of law shall be applicable in cases arising under the juvenile code as in cases of persons charged with crime, (*N.J.S.A.* 2A:4-60) In practice, juveniles generally are afforded the same protections as adults which include the right to counsel; presentation of evidence, witnesses and argument supporting a particular disposition; cross-examination of witnesses; questioning of documents and examination of the preparer of any pre-disposition report.

In Disposition Standard 14.7, NAC recommends dispositional hearings be held within 30 days of adjudication. IJA/ABA is unclear since one standard suggests only that hearings be held as soon as practicable after adjuciation and any pre-dispositional conference which does not result in a dispositional agreement whereas another recommends disposition hearings within 15 days of adjudication. New Jersey law stipulates no time limit for the holding of a dispositional hearing.

In Disposition Standards 5.1 and 5.2, IJA/ABA encourages jurisdictions to experiment with various forms of pre-disposition conferences. Such conferences may be used to identify potential controversies regarding dispositional facts and facilitate a disposition mutually acceptable to all parties. Predisposition conferences in juvenile matters as recommended currently do not exist in New Jersey.

IJA/ABA and NAC recommend the juvenile, defense counsel, the parents, guardian or custodian

and the prosecuting attorney be present at all stages of the dispositional proceeding. Where parents fail to appear, a guardian *ad litem* should be appointed. Court Rule 5:8-8 states that parents, guardians or persons having custody, control and supervision over the juvenile shall be necessary parties to proceedings in all juvenile matters. There is no requirement to appoint a guardian *ad litem* if parents, guardians or custodians fail to appear. New Jersey law does not specify who is required to appear at dispositional hearings although all of the above mentioned parties with the exception of the prosecuting attorney are generally present.

Several standards dealing with pre-disposition reports are offered by NAC and IJA/ABA. In Disposition Procedures Standard 2.2, IJA/ABA recommends no pre-dispositional investigation be made until after adjudication unless the juvenile and defense counsel consent. NAC suggests such reports be prepared whenever convenient but under no circumstances should it be turned over to the court until adjudicatory proceedings are completed and a finding of delinquency made. New Jersey has no rule or statute requiring that the investigation not be initiated before a finding of guilt. In practice, however, investigations are not begun until there has been an adjudication. Court Rule 5:9-1(d) stipulates that after hearing of a complaint, if the court finds beyond a reasonable doubt that the evidence is sufficient to support an adjudication, it may order a pre-dispositional report to be prepared. IJA/ABA adds that only voluntary statements of the juvenile, made after advised of possible consequences and with right to consult with counsel or an adult upon whom he or she relies, should be used for dispositional purposes. New Jersey is generally consistent with remaining pre-disposition report recommendations covering the type of information to be included, broad sharing of such information between parties and exclusion of the report from public record.

It is recommended by both studies that no disposition be imposed unless the resources necessary to carry it out are shown to exist. New Jersey law does not consider like restrictions. In addition, NAC Disposition Standard 14.20 and IJA/ABA Dispositions Standard 4.1 recommend all publicly funded services to which nonadjudicated juveniles have access should be made available to adjudicated delinquents and that adjudicated delinquents should have access to all services needed for normal growth and development. Both NAC and IJA/ABA advocate the purchase of services to facilitate these recommendations. Existing access to service in New Jersey dispositional programs does not meet these ideals although many programs are beginning to make use of purchase of service arrangements to provide necessary services. Legislation has recently been enacted to permit the Department of Corrections to do likewise.

NAC, IJA/ABA and other national groups advocate use of the principle of the least restrictive alternative to guide dispositional decisions. Consistent with this principle, it is recommended that judges set forth on record the reasons for selecting a particular disposition and rejecting less coercive measures. New Jersey juvenile law does not implicitly embrace this principle, nor are judges bound by procedural requirements as recommended.

It is NAC's contention that juveniles whose underlying problem is mental retardation or illness do not belong under the court's delinquency jurisdiction. For this reason, separate procedures for handling juveniles believed to be mentally ill or retarded are recommended. Disposition Standard 14.18 advises that whenever a child is believed to be mentally ill or retarded, delinquency proceedings should be dispensed with and a determination should be made according to due process as to the juvenile's mental condition. New Jersey law does not require the initiation of mental illness or retardation commitment proceedings as recommended. For juveniles adjudicated delinquent or in need of supervision, available dispositions include: placement of the juvenile under the care and custody of the Department of Human Services for the purposes of receiving services of the Division of Mental Retardation; and commitment of the juvenile to a suitable institution for the treatment of mental illness (*R.* 5:9-9, *N.J.S.A.* 2A:4-61).

Probation

NAC advocates the designation of a single, separate administrative agency located in the executive branch of government to be responsible for the administration and operation of all juvenile intake and corrections. This state agency should be charged with providing or assuring the provision of all services necessary to carry out the pre- and post-dispositional orders of the court, to include court intake services, probation and parole. This approach is based on the belief that an independent agency best highlights the problems and needs of juveniles. Probation and parole are examined by NAC jointly under the rubric of community supervision and a number of standards are set forth for effective organization and delivery of probation/parole services.

In New Jersey, probation is a responsibility of the judicial branch of government, with a single probation department established in each county to provide probation services to all courts in that jurisdiction. In servicing juvenile courts, probation departments are responsible for providing court intake services, pre-disposition reports and supervision of juveniles placed on probation. Traditionally, probation is a county responsibility in terms of funding and administration. The Administrative Office of the Courts (AOC) provides technical advice, coordinates programs and policy implementation through-

out the 21 jurisdictions, arranges statewide training programs and stimulates new programs, projects and procedures. Parole, on the other hand, is a responsibility of the Department of Corrections, Bureau of Parole, and the Department of Human Services, Division of Youth and Family Services, both under the executive branch of government.

In Community Supervision Standard 23.1, NAC recommends the state agency responsible for intake and corrections should provide community supervision services on a decentralized basis, with workers located as close to the community and court as possible. Probation departments in New Jersey are located in or close to county courthouses. Community offices currently do not exist. Expressed in a recent program for improvement of probation services outlined by AOC is the need for satellite contact offices established in areas of high caseload density to facilitate contact with probationers and their families.

NAC suggests in Community Supervision Standard 23.2 the primary responsibility of the community supervision division should be to implement the conditional dispositions of the court. As previously mentioned, New Jersey probation responsibilities in relation to juveniles are three-fold: intake, pre-disposition reports and supervision. No one responsibility is declared paramount.

Procedures for formulating a services plan for each juvenile ordered to community supervision are outlined in NAC Community Supervision Standard 23.3. It is recommended that all available sources of information be used to develop the plan and that the juvenile have a voice in determining his or her own goals.

There are no required conditions of probation in New Jersey but *N.J.S.A.* 2A:168-2 states that conditions may be included and offers several suggested conditions. In practice, a standard set of conditions to which additional conditions may be added as determined by the court is routinely used to guide the juvenile's expected behavior while on probation. Standard conditions are permitted under *R.* 3:21-7. Treatment plans jointly developed by the probation officer and the juvenile as recommended are not in general use. Probationers receive a copy of the applicable conditions which is read and explained by the probation officer, whereupon both sign a statement that the probation officer has complied with this requirement (*R.* 3:21-7).

Where specific services ordered by the court are not obtainable, NAC recommends in Community Supervision Standard 23.4 that community supervision staff return the case to the court for further dispositional consideration. If the court determines that access to all required services is not being provided, it should either order the agency concerned to make the required services available, reduce the juvenile's disposition to a less severe one that will ensure access or discharge the juvenile (Disposition Standard 14.19). There is no similar requirement in New Jersey law. NAC also recommends states should establish a maximum caseload ratio for community supervision workers. None exists in New Jersey, and juvenile caseloads usually exceed the maximum limits of 25 or 35 recommended by probation authorities.[41]

The authority of community supervision officers, NAC contends, centers around the enforcement orders of the court. In Community Supervision Standard 23.6, it is recommended that, in their capacity as officers of the court, community supervision workers should have peace officer powers to include the powers of arrest and search and seizure of contraband items. Such powers should not extend to the carrying of firearms. New Jersey probation officers have the power of arrest, to include search and seizure incident to arrest. The carrying of firearms by probation or parole officers is frowned upon and they are not empowered to do so.

In regard to noncompliance with court orders, NAC recommends in Community Supervision Standard 23.7 that juveniles not be taken into custody prior to a hearing to determine if probation should be revoked unless: the juvenile poses a threat to another; is in danger of physical harm from another person and requests protection; or is in imminent danger of causing physical self harm. New Jersey is not in accord with this standard. *N.J.S.A.* 2A:168-4 provides that probation officers, upon the request of the chief probation officer, may arrest a probationer without a warrant, and a commitment by such probation officer setting forth that the probationer has, in his or her judgment, violated the conditions of probation shall be sufficient warrant for the detention of such probationer until brought before the court.

NAC Community Supervision Standard 23.9 recommends community supervision workers possess at minimum a bachelor degree in one of the helping sciences. In addition, they should receive 40 hours of initial and 80 hours of ongoing training each year. New Jersey has no rule or statute establishing a college degree requirement for the appointment of probation officers. However, appointments are made in accordance with standards fixed by the New Jersey Supreme Court (*R.* 1:34-4) which include the requirement of a bachelor degree.

Probation training courses are offered by AOC such as an orientation seminar for newly appointed probation officers and advanced courses in skills and methods, group counseling, guided group interaction, supervision, narrative report writing, labor relations and middle management. However, New Jersey does not meet the recommended required number of hours for pre-service and in-service training.

Residential and Foster Placements

In its chapter on intake, investigation and corrections, NAC devotes a section to standards for residential facilities for adjudicated delinquents committed to the care and custody of the state intake, investigation and corrections agency mentioned earlier. These standards are intended to cover all types of correctional facilities ranging from institutions to camps or ranches, and for this reason, they will be described for comparison purposes in the Community-Based Corrections section to follow.

NAC offers several standards regarding foster home placements; however, they are intended to be applied to court procedures for endangered children (abused, neglected or abandoned). There are no standards dealing with voluntary out of home placement.

One of the disposition options available to juvenile court judges is referral to the Division of Youth and Family Services (DYFS), usually for purposes of residential placement. Approximately 130 residential resources, 50 of which are out of state, are used for juveniles referred by the court. The 1977 Criminal Justice Plan for New Jersey reveals that, as of February, 1976, approximately 750 of the juveniles in residential placement were located out of State.[42]

DYFS-administered programs available to adjudicated juveniles include three residential treatment centers and four group care homes. The Division relies mostly on contract arrangements with private facilities to provide residential services. Since services to court-referred juveniles are not separate from the Division's general child welfare services, it is difficult to obtain information and statistics regarding the number of such juveniles in residential placement.

Corrections

NAC Standards for Intake, Investigation and Corrections are based on the premise that the goal of juvenile corrections is to protect the public through the reduction of delinquency by seeking to enable juveniles to substitute socially acceptable behavior for delinquent conduct. IJA/ABA maintains the purpose of the juvenile correctional system is to reduce juvenile crime by maintaining the integrity of the substantive law proscribing certain behavior and by developing individual responsibility for lawful behavior.

There is no one statement as to the purpose of juvenile corrections in New Jersey law although a policy of rehabilitation is evident. The 1977-1978 Fiscal Year budget for New Jersey lists three objectives of correctional institution services, two of which emphasize rehabilitation (see "Administration of Corrections" chapter for complete description). The juvenile code expressly embodies a rehabilitative purpose (see page 462). Numerous court decisions have upheld a rehabilitative purpose for the juvenile justice system and for the control and treatment of youthful offenders.[43]

In Corrections Standard 19.1 NAC proposes the correctional system should be charged with the responsibility for carrying out the dispositional orders of the court and for planning, developing and implementing correctional services and programs. Standards 19.3, 19.4, 19.5 and 19.8 provide a detailed explanation of duties and responsibilities for the state juvenile intake corrections agency recommended in Standard 19.2. These include: providing correctional services for juveniles as ordered by the court; conducting investigative studies of juveniles committed to its custody, periodic reviews of juvenile cases, maintaining complete written records, correctional planning and evaluation.

New Jersey juvenile correctional services are a responsibility of the Department of Corrections. Currently there does not exist a separate unit or division of the Department which has responsibility strictly for juvenile corrections although this type of departmental organization has been frequently recommended. The duties and responsibilities of the Department are comparable to NAC's recommendations.

NAC standards also propose limitations on the juvenile correction agency's authority to include: no placement of juveniles in institutions designated for incarceration of adults or in any mental hospital for extended care or treatment and no out of state placement without specific court approval. New Jersey does not meet this standard. *N.J.S.A.* 30:4-147 provides that "any male person between the ages of 15 and 30 years, who has been convicted of a crime punishable by imprisonment in the State Prison, who has not previously been sentenced to a State Prison in this State or any other state, may be committed to the reformatory." In addition, *N.J.S.A.* 30:4-143 permits males over age 16 who are convicted of murder to be sentenced or confined in the State Prison. Currently, about 400 males age 16 and 17 are housed in Yardville and Annandale Youth Correctional Institutions along with men up to 30. Although the practice is infrequent, statutes currently allow female delinquents age 16 and over to be committed to the Clinton Reformatory for Women, *N.J.S.A.* 30:4-154. Steps are being taken by the Department of Corrections to separate juvenile offenders from adult populations.

As discussed previously, many juveniles referred to DYFS are placed out of state. Such placements are made without specific court approval or review. Although DYFS and the Department of Corrections are not part of the same administrative juvenile agency as recommended by NAC, the fact remains that this practice is contrary to recommended restrictions.

In Disposition Standard 4.1 IJA/ABA suggests the correctional agency has the obligation to inform the court if all required services are not being provided to juveniles under its supervision. Unless the court can ensure that the required services are provided, it should reduce the nature of the disposition to a less severe one that will ensure access, or dismiss the juvenile. New Jersey law does not have a comparable requirement.

To facilitate access to services, both NAC and IJA/ABA recommend the juvenile correctional agency should be authorized to purchase services where necessary or desirable. NAC emphasizes in Corrections Standard 19.3 that services provided through contracts should be monitored by the correctional agency and agencies providing services should be required to comply with its standards. The New Jersey Department of Corrections has recently been authorized to purchase services.

IJA/ABA and NAC support the position that adjudicated delinquents have the right to refuse rehabilitative services and therefore recommend participation in such programs be only on a voluntary basis. New Jersey correctional programs offer numerous rehabilitative services and participation in these services is usually encouraged if not required.

Juvenile Correctional Institutions

Most recent standards for juvenile corrections focus on community-based programs rather than institutions, which is reflective of the current trend toward smaller, community-oriented correctional programs. IJA/ABA, NAC and most other national groups are against relying principally on training schools and institutions as a correctional resource. IJA/ABA adopts a strong presumption against commitment to secure facilities for the following reasons:

1. Confinement is no more effective in reducing recidivism than non-incarcerative sanctions;
2. Confinement is costlier than alternative sanctions;
3. Confinement and its collateral effects, including isolation, family breakdown, and destruction of self-image, is often too harsh a response to the misbehavior of juveniles;
4. Confinement often exacerbates the problems that lead to the youth's delinquency.[44]

Consequently IJA/ABA recommends confinement be a disposition of the last resort imposed only upon a finding that the juvenile is at least 12 years old and that such confinement is necessary to prevent the juvenile from causing injury to the personal or substantial property interests of another.

New Jersey is not consistent with this recommendation. *N.J.S.A.* 30:4-157.1 and *N.J.S.A.* 30:4-157-8 provide that no juvenile may be committed to a training school below the age of eight. Skillman Training School for Boys is responsible for the reception of male delinquents under age 13. Few juveniles under the age of 11, however, are incarcerated, as only seven to 10% of Skillman's population is below this age.

It is difficult to ascertain whether New Jersey juvenile judges restrict use of correctional institution commitment as a disposition alternative in accordance with recommended criteria proposed by IJA/ABA and NAC. A profile of state institution offenders undertaken by the Correctional Master Plan Project in 1976 for Fiscal Years 1970-1975 gives a good indication of the type of juvenile offender likely to be incarcerated. As shown in Table 3, an annual average of 2,931 persons were admitted to the youth correctional institution complex and an annual average of 422 juveniles to the training schools during Fiscal Years 1974 and 1975.[45] Of the 2,931 persons admitted to youth correctional institutions, 22% or 657 were juveniles. During the same time period, 229 persons were admitted to Clinton Reformatory for Women, 10% or 24 of whom were juveniles. Although juveniles constitute a small proportion of offenders incarcerated in youth correctional institutions and Clinton, statistics for such facilities are included for comparison purposes.

The Master Plan Project's profile of offenders reveals that most juveniles committed to training schools and persons committed to youth correctional institutions have crimes against property or public policy as their present most serious offense. Over half committed to training schools or correctional institutions come from five counties: Camden, Essex, Hudson, Passaic and Union. Over 60% are nonwhite. Most juveniles committed to training schools are age 15 or younger. In a profile of offenders conducted on April 15, 1975, the Correctional Master Plan Project found 63% of the training school residents had an I.Q. of less than 89, 35% had an I.Q. between 90-109, and three percent had an I.Q. of above average (110 +).[46] See Tables 3, 4 and 5 for further analysis.

The Correctional Master Plan Project's profile of state institution departures further illuminates the type of juvenile likely to be committed to correctional institutions. Most juveniles and youthful offenders released from incarceration had no previous history of commitment but had a history of being placed on probation. Over 65% of those released from training schools had between one and five previous arrests, whereas over 75% of those released from youth correctional institutions had between three and 19 previous arrests. See Table 7 for a more complete breakdown.

A study of juveniles in youth correctional institutions undertaken by the Department of Corrections in 1975 reports findings similar to that of the Correctional Master Plan study.[47] One hundred consecutive juvenile admissions to the Yardville Youth Reception and Correction Center were surveyed during the

Table 3

Average Annual Admissions and Number and Percent of Adult or Juvenile and White or Nonwhite Admissions to Correctional Institutions for Fiscal Years 1970-1975

		Average Annual Admissions*		Adult		Juvenile		White		Nonwhite	
	FY	'70-73	'74-75	'70-73	'74-75	'70-73	'74-75	'70-73	'74-75	'70-73	'74-75
Youth Correctional Institutions	No.	3150	2931	2240	2274	910	657	1199	1106	1931	1825
	%	100.	100.	71	78	29	22	38	38	62	62
Training Schools	No.	611	422			611	422	198	166	413	256
	%	100.	100.			100	100	32	39	68	61
Clinton Reformatory for Women	No.	235	229	192	205	43	24	68	53	167	176
	%	100.	100.	82	90	18	10	25	23	71	77
State Prisons	No.	1650	1855	1650	1855			670	656	980	1199
	%	100	100	100	100			41	35	59	65

* Admissions are defined on p. 326.

Data on average annual admissions is based on 80% of the actual total offenders.

Source: State of New Jersey, Dept. of Corrections, "Profile of State Institution Offenders, Fiscal 1970-1975," *New Jersey Correctional Master Plan: Data*, Trenton, New Jersey, June, 1976, pp. 22, 23, 25.

Table 4

Rate of Admissions to Correctional Institutions From Each County for Fiscal Years 1974-1975

	Youth Correctional Institutions		Training Schools	
County	**Number**	**Percent**	**Number**	**Percent**
Atlantic	111	3.8	34	7.9
Bergen	101	3.4	14	3.3
Burlington	94	3.2	17	4.1
Camden	241	8.2	60	14.1
Cape May	23	.8	1	.1
Cumberland	70	2.4	21	4.9
Essex	586	20.0	56	13.3
Gloucester	32	1.1	3	.8
Hudson	285	9.7	65	15.5
Hunterdon	5	.2	1	.1
Mercer	155	5.3	16	3.8
Middlesex	135	4.6	9	2.1
Monmouth	227	7.7	39	9.2
Morris	39	1.3	3	.7
Ocean	58	2.0	14	3.4
Passaic	279	9.5	47	11.2
Salem	22	.7	4	1.0
Somerset	38	1.3	3	.8
Sussex	14	.5	1	.3
Union	285	9.7	10	2.3
Warren	9	.3	3	.7
Out of State	122	4.2	1	.3
Average Annual Admissions:	2,931		422	

Source: State of New Jersey, Dept. of Corrections, "Profile of State Institution Offenders, Fiscal 1970-1975," *New Jersey Correctional Master Plan: Data*, Trenton, New Jersey, June, 1976, pp. 20, 21.

Table 5

Age at Admission for Offenders Admitted to Correctional Institutions During Fiscal Year 1974-1975c

Institution	Age 15 or Less		16-17 yrs.		18-20 yrs.		21-29 yrs.		Over 30	
	No.	%	No.	%	No.	%	No.	%	No.	%
Youth Correctional Institutions	22	1	362	12.3	810	27.6	1,633	56	67	2
Training Schools	325	78	80	18.9	14	3.3				
Women's Reformatory			16	6.8	30	13.0	132	58	50	22

Based on 81% of actual total offenders

Source: State of New Jersey, Dept. of Corrections, "Profile of State Institution Offenders, Fiscal 1970-1975," *New Jersey Correctional Master Plan: Data*, Trenton, New Jersey, June, 1976, p. 26.

Table 6

Months of Stay for Commitments from the Community to Youth Correctional Institutions and Training Schools for Fiscal Years 1970-1973 and 1974-1975

Length of Stay		Youth Correctional Institutions		Training Schools	
		1970-73	1974-75	1970-73	1974-75
1 day-6 mos.	No.	388	364	13	5
	%	24	25	5	3
7 mos.-1 yr.	No.	1,018	882	192	99
	%	63	61	66	59
13 mos.-18 mos.	No.	161	134	58	46
	%	9.9	9.3	20.1	27.6
19 mos.-2 yrs.	No.	31	35	16	10
	%	1.9	2.4	5.6	6.1
25 mos.-3 yrs.	No.	15	16	9	7
	%	.9	1.1	3.3	4.1
37 mos.-5 yrs.	No.	5	6	1	1
	%	.3	.4	.3	.3
61 mos-10 yrs.	No.	2	2		
	%	.1	.1		
15 yrs.			1		
Average Annual Departures		3,025	2,882	633	465

Source: State of New Jersey, Dept. of Corrections, "Profile of State Institution Offenders, Fiscal 1970-1975," *New Jersey Correctional Master Plan: Data*, Trenton, New Jersey, June, 1976, p. 71.

months of January and February, 1975. Of those admitted, 42 came from three counties: Essex, Camden and Hudson. Fifty-four percent were from the northeast region (Bergen, Morris, Passaic, Essex, Hudson, Union, Somerset and Middlesex Counties). Ages ranged from 15 years, four months to 20 years, seven months, the average being 17 years, eight months. Most had prior arrests: 23 between one and three; 30 between four and six; 21 between seven and nine; and 12 between 10 and 12. Most, 79, were previously placed on probation, of which 56 had been on probation two or more times. For 49 juveniles, admission to Yardville represented their first commitment, 20 were recommitments, 27 were committed for parole violations and four were transfers from other institutions. Crime against property was the most frequent serious offense.

IJA/ABA recommends that secure facilities be

Table 7

Profile of Departures from Youth Correctional Institutions and Training Schools for Fiscal Years 1974-1975

Background Categories:*	Youth Correctional Institutions		Training Schools	
No previous N.J. commitment**	1,523	53%	368	79%
Has previous N.J. commitment	1,359	47%	97	21%
No history of probation	574	20%	157	34%
Has history of probation	2,308	80%	308	66%
No previous arrests	90	3.1%	129	27.7%
1 previous arrest	214	7.4%	93	19.9%
2 previous arrests	282	9.8%	98	21.0%
3-5 previous arrests	915	36.8%	112	24.1%
6-9 previous arrests	714	24.8%	23	4.9%
10-19 previous arrests	539	18.7%	9	2.0%
20-39 previous arrests	122	4.2%		
40-59 previous arrests	4	.1%	1	.3%
60-98 previous arrests	1			
99+ previous arrests	1			

* Previous commitment data based on 75%; previous probation history data based on 76%, and previous arrest data based on 77% of actual total offenders.

** Commitments include correctional institution, training school, and residential group centers such as Highfields.

Source: State of New Jersey Dept. of Corrections, "Profile of State Institution Offenders, Fiscal 1970-1975," *New Jersey Correctional Master Plan: Data,* Trenton, New Jersey, June, 1976, pp. 65, 66, 67.

coeducational, located near population centers as close as possible to the juvenile's home, and limited in population to not more than 20 residents. NAC is also in favor of coeducational populations and institution locations near the communities from which they draw their population. However, it sets the maximum size for juvenile institutions at 100 and recommends residents be grouped into living units of approximately 20.

There are no coeducational juvenile institutions in the true sense of the word in New Jersey. Females adjudicated delinquent are currently housed at the Training School for Boys - Jamesburg, however, their interaction with male residents is at best minimal. As to location and size of institutions, New Jersey is not consistent with recommended standards. Juvenile institutions, as mentioned in the preceding problem assessment, are located in rural areas of Annandale, Yardville, Bordentown and Jamesburg, whereas most of the commitments come from the urban Northeast. The number of standard bed spaces in each facility ranges from a low of 192 at Training School for Boys-Skillman, to a high of 585 at Bordentown.[48] Moreover, the Correctional Master Plan Project reported that, as of June, 1976, needed bedspace at each institution was as follows:[49]

Yardville	586
Bordentown	681
Annandale	637
Jamesburg	386
Skillman	147

Although designed for a capacity of over 100, the Training School for Boys at Skillman groups residents into living units of less than 20 as recommended by NAC. These living units become the nucleus of each resident's experiences and, combined with a staff treatment team, form a therapeutic community which enhances rehabilitative efforts.

Community-Based Correctional Programs

In its chapter on intake, investigations and corrections, NAC prescribes general directions for the types of residential facilities that should be available in each state and outlines a variety of services and programs that should be provided. First of all, NAC recommends in Corrections Standard 24.1 that a statewide network of correctional facilities ranging from institutions to nonsecure camps, ranches, and schools should be established. Corrections Standard 24.4 underscores the importance of developing a variety of nonsecure facilities, and specific recom-

mendations for ranches, camps, community residential programs, group homes and foster homes are set forth.

Not all juveniles committed to the care and custody of the Department of Corrections are incarcerated in its correctional institutions. A proportion are assigned to the various community programs operated through the Department. The variety and availability of programs, however, is not as extensive as recommended by NAC.

The Department of Corrections also operates four residential group centers for juveniles: Highfields, Warren Center and Ocean Center for boys and the Turrell Center for girls. Residents of the centers retain legal status as probationers and are under the jurisdiction of the court. To be eligible for residential group center placement, juveniles must be between the ages 16 and 18, and have no previous history of commitment to a state correctional institution. In addition, they cannot be psychotic, mentally retarded or sexually deviate. The Department of Corrections is seeking to expand the range and mix of community programs for juveniles committed to its care and is actively developing supervised community residence as a major alternative to institutionalization.

Five NAC standards focus on educational and vocational training programs for community facilities, stressing that such programs be geared directly to reintegrating juveniles into the community. NAC also recommends in Corrections Standard 24.10 that juveniles in correctional programs have access to medical, dental and mental health services. In addition, recreation and leisure time activities, community interaction, meaningful work assignments and, where possible, employment in the community is recommended to enhance rehabilitative efforts. New Jersey is generally consistent with these recommendations.

Parole or Aftercare

As noted previously, NAC standards for community supervision are intended to be applied to both probation and parole. Most of these recommendations seem appropriate for probation rather than parole; however, there are several NAC recommendations applicable to juvenile parole which are as follows:

1. A statewide network of community supervision, which should be a responsibility of the state juvenile intake investigations and corrections agency (Standard 23.1).
2. Community supervision services should be made available on a decentralized basis by workers located as close to the community and family as possible (Standard 23.1).
3. Formulation of a services plan developed jointly by the community supervision worker and the juvenile (Standard 23.3).
4. Juveniles under community supervision should receive the level of services identified in the services plan (Standard 23.4).
5. A maximum caseload ratio should be established for community supervision workers. (Standard 23.5).
6. Community supervision workers should have peace officer powers but such powers should not extend to the carrying of firearms. (Standard 23.6).

New Jersey parole or aftercare services are currently the responsibility of two separate State Departments: the Department of Human Services, Division of Youth and Family Services and the Department of Corrections, Bureau of Parole. DYFS provides parole supervision for juveniles under the age of 14 who are released from correctional facilities. In addition, those juveniles between the ages of 14 and 16 who have been previously known to the Division or who, in the opinion of DYFS can benefit from its services, are placed under its supervision. During Fiscal Year 1975, DYFS had an average parole caseload of 365; 324 boys and 41 girls.[50] The remaining juveniles released from correctional institutions are supervised by the Department of Corrections. A profile of State institution departures undertaken by the Correctional Master Plan Project reveals that the average annual number of departures from youth correctional institutions for 1975 is 2,800 and from training schools, 460.[51]

Both DYFS and the Bureau of Parole are organized into district offices which cover specified regions of New Jersey. Parole services are not decentralized on a community level as recommended by NAC.

New Jersey is not consistent with recommendations 3, 4, and 5 but does meet 6, as stated in the previous section on probation. Juveniles released on parole or aftercare supervision are required to meet set conditions of parole, however, they are not jointly formulated nor do they encompass a services plan as recommended by NAC.

NAC did not propose standards governing procedures for the release of juveniles on parole, the paroling authority, or for parole revocation procedures. In New Jersey, jurisdiction over the parole of juveniles is given to the Board of Trustees of the respective juvenile correctional institutions in accordance with *N.J.S.A.* 30:4-106. There is one board responsible for all training schools and another for the youth correctional institution complex. The majority of the cases heard by the youth correctional institution board, however, are adults, as that board has paroling authority over all sentenced to indeterminate terms. Members are New Jersey residents who serve without compensation for staggered three-year terms, subject to removal by the Commissioner of the Department of Corrections.

Boards of Trustees are given authority to grant parole "when it appears 'that such action will further the rehabilitation of the offender and that his release under supervision will not be incompatible with the

welfare of society.' "[52] Since juveniles are confined for indeterminate periods, they are eligible for parole immediately upon confinement although this rarely occurs. The Correctional Master Plan Council states that a 1949 document amended in 1962 entitled "Rules and Regulations Governing the Administration of Parole in New Jersey: Indeterminate and Juvenile Cases" establishes general criteria for parole.[53] Residents at youth correctional institutions and training schools are given time goals for release based upon consideration of the offense, age of the juvenile, maximum length of confinement permissible and number of previous offenses.

It is not clear what are the actual procedures used to grant parole to juveniles confined in New Jersey's correctional institutions. The Correctional Master Plan Council points out that specific required procedures have not been documented and thus detailed information is not available.[54] Correctional authorities advise that the Boards of Trustees act on recommendations for release prepared by institutional staff and that juveniles being considered for parole do not appear before the Board. The Correctional Master Plan Council also states that detailed information on exact parole revocation procedures for juveniles is not documented, however, such procedures must meet minimum due process procedures as required by *Morrissey v. Brewer*, 405 U.S. 951 (1972).[55]

Commentary

During the course of its deliberations on juvenile dispositions and corrections and on preceeding subjects, the Advisory Committee has highlighted several issues considered vital to New Jersey's response to delinquency. Significant changes, new directions and a re-emphasis of certain traditional concepts are recommended, all for the purpose of making the juvenile justice system precisely that—a system of justice for juvenile offenders.

The juvenile process has always been regarded as less important than the adult criminal process and, consequently, has suffered from a lower priority in terms of attention, finances, staff and resources. It has long been used as a "training" or "proving" ground for practitioners who "graduate" and move "up" to the adult system. The Committee desires to abolish this practice and change such attitudes regarding the juvenile system.

The Committee suggests that, to be provided with the proper attention and resources, the juvenile justice system requires independent life, distinct from the adult criminal system. It needs parity with the adult process, which it cannot achieve unless it operates as a separate system. The Advisory Committee has made an attempt to give the juvenile system a life all its own. It has tried to breathe independence and vitality into all aspects of the system.

This desire is woven into many of the Committee's standards and is the rationale behind recommendations for a designated full-time juvenile prosecutor and juvenile public defender, a separate juvenile probation function, a separate Division of Juvenile Services of the Department of Corrections, a separate juvenile paroling authority. Previous chapters and the standards embodied therein also promote this desire. By recommending a separate system, the Advisory Committee attempts to make "juvenile" a specialty and to give it proper emphasis.

It has been said that delinquency is fast becoming the most crucial social problem facing New Jersey. The Committee suggests, however, that the problem is not only delinquents; it is also the public's response to delinquency. The public is alarmed by rising rates of delinquency yet it has been unwilling to devote the resources necessary to provide treatment and reintegration services.

Fragmentation of and inconsistencies in the juvenile justice system reflect the public's ambivalence toward youth and toward meeting their problems. The Committee believes this fragmentation is a major obstacle to effective juvenile justice reform. Seldom is the interdependency of the components of the juvenile process recognized, especially by the public. The juvenile system needs an integrated approach to be effective. It is recommended, therefore, that a statewide policy be promulgated—one single, integrated and coordinated mission for all juvenile justice agencies—to facilitate a unified response to delinquency in New Jersey.

To correspond with this recommendation and to promote uniformity, the Committee advises the purposes of dispositions be clearly acknowledged and that all dispositional alternatives be geared toward facilitating these purposes. Disposition techniques such as restitution, day custody and community service should be instituted to meet more closely the needs of certain juveniles, consistent with specified purposes of disposition.

An issue which commanded much attention by the Advisory Committee is out of home placements, especially aspects of voluntary and out of State placements. New Jersey law currently permits parents to surrender custody of their children to the State, with no court review. An average of 100 children per month are placed in foster homes or facilities through voluntary actions of the parents, without benefit of counsel and without court review to determine if such action is in the child's best interest. The practice frequently becomes a form of involuntary removal and commitment for the child,

resulting in juveniles floating from one foster home or group home to another. Many remain in limbo in regard to parental relationships and others become clients of the juvenile justice system. The Committee therefore recommends a court hearing to protect the child's interests whenever a child is removed from the home. In addition, since the courts do not ordinarily review the progress of juveniles placed voluntarily or out of State, the Committee recommends a review mechanism be instituted.

The Supreme Court's Committee on Juvenile and Domestic Relations Court, in its 1977 report, has taken a similar stand and recommends legislation be enacted to require judicial review of out of home placements. The Supreme Court's Committee believes judicial review cannot be implemented by court rule but requires legislation, and it has drafted a proposed statute for consideration (which is attached to this commentary). Under the proposed statute, a governmental agency that wishes to place a child would be required to file a complaint in the Juvenile and Domestic Relations Court. The court would then hold a hearing to determine whether the child's continuation in the parental home would be contrary to his or her welfare.

The Committee is of the opinion that out of State placements are unnecessary and the practice should be halted. Those who have been sent to other states should be recalled and either placed in New Jersey programs or returned to their homes. The Committee strongly believes that many juveniles tagged for residental placement do not require removal from home but are so removed for want of other, less drastic alternatives. Many juveniles need only structured day activities or supervised participation in community day programs. For a lot less money such programs could provide more juveniles with the attention they need consistent with the public's protection without resorting to removal from the family situation.

Viewing the needs of juveniles and of the agencies which provide them services as secondary has also resulted in inverted priorities in the correctional system. Only a portion of what is spent on adults is set aside for juveniles who, by the fact that they are younger, are potentially more malleable and salvageable. The Committee believes juveniles rather than adults are worth the bigger investment. If more resources were devoted to juvenile offenders, perhaps there would be less adults in the correctional system.

The Committee felt that, ideally, resources for juvenile corrections could best be marshalled through the creation of a Department of Juvenile Corrections. Although this would be more in keeping with the Committee's overall desire to provide the juvenile system with a separate identity, it was decided such a proposal, given present circumstances, is too far removed from reality and that a separate Division of Juvenile Services of the Department of Corrections would accomplish the same purpose.

The Advisory Committee does not join the IJA/ABA Joint Study Commission in its abandonment of rehabilitative ideals in favor of punishment as the way to deal with juvenile offenders. If there is any hope to change the motivations and behavior of individuals who commit crime, then it lies with the young.

Juvenile correctional institutions have been given the responsibility to reconstruct character, modify delinquent behavior and replace criminal values with socially acceptable ones. Although their responsibility is great, juvenile institutions have not been adequately supported and staffed to provide the necessary attention, education and treatment. The Committee contends that correctional institutions cannot be regarded as isolated segments of the juvenile justice system, for their success or failure is dependent upon the quality and quantity of other component services. Coordination and cooperation between all juvenile correctional programs and on a systemwide level is needed.

To facilitate interaction and provide the proper organizational structure, the Advisory Committee recommends all juvenile correctional functions, programs and resources be isolated from their adult counterparts and consolidated under one administrative unit. It recommends the creation of a Division of Juvenile Services in the Department of Corrections to be responsible for all juvenile correctional institutions, programs and services, including parole/aftercare. Recommending the separation of all juvenile correctional functions from the adult process is an attempt to have the greatest possible impact upon improving and expanding correctional services for juvenile offenders. The Committee suggests also that a separate administrative structure would help to complete quickly what has been a disappointingly slow process of segregating juveniles from adult offenders in correctional institutions.

In Standard 5.33, it is recommended that the Division of Juvenile Services' policies, procedures and programs make provision for the special needs of male and female offenders. There is particular need to highlight the situation of female offenders. Because their numbers are few, female offenders have not been provided the services and reassessment of needs they require. For this reason, there was some sentiment registered to eliminate the practice of committing female juveniles to correctional institutions and training schools altogether. However, it was decided to recommend that where the number of female offenders is so small as to make adequate facilities and programs difficult to provide, community-based alternatives to incarceration should be relied upon.

The Committee notes that there is a current hardening of public attitude toward juvenile offenders.

Noted authorities have recently advocated the "iron fist of the law" in dealing with violent juvenile offenders. The Committee shares concern for the violent or serious juvenile offender and its standards on juvenile correctional institutions were developed with this focus in mind. According to the Committee, correctional confinement represents the last chance to work with serious juvenile offenders. It is recommended that correctional confinement be reserved for only those who represent a clear danger to the public and for whom no other alternative is satisfactory. It must be pointed out, however, that only a small portion of the juveniles coming before the court require this type of attention. The Committee believes the expense of institutionalization can only be justified for compelling reasons of community protection. Reserving institutional space in the fashion recommended would ensure serious offenders are not improperly placed or released prematurely. It also ensures that those offenders who do not present a danger to society and those who can best be helped by placement in community programs will not be institutionalized.

The correctional services recommended in these standards are considered by the Committee as necessary for those who must be incarcerated. If there exists any possibility of working with violent types, then they must be provided with these services. Only then does confinement possess a potential to reduce recidivism. To confine for the reasons mentioned above is fair, but the Committee deems it unfair—to society and the juvenile—to confine and not provide the necessary services to accomplish the purpose of confinement. It is recommended that juveniles committed to correctional institutions have access to all services to which nonadjudicated juveniles have access and to those services needed for individual growth and development.

The Committee agrees that one of the most disheartening aspects of dealing with juveniles (and many adult offenders as well) is that, upon release, they return to the same environment which nurtured their delinquent behavior in the first place. Thus it is only natural for many upon release to revert to familiar behavior patterns and responses to the same stimuli. Whatever changes may be effected in the institution or in community facilities can quickly evaporate upon release unless support is provided. Gradual reintegrative aftercare services are recommended to prepare the juvenile for return from total institutional living to freedom in the community.

The thoroughness of aftercare release planning is considered by the Committee to be a critical factor in in the success of an aftercare program. It is recommended such planning begin as soon as the juvenile is committed and continue throughout the juvenile's stay. Continued aftercare planning and modifications will be necessary in many cases to correspond with changes in the juvenile's needs, availability of programs and services and changing family situations.

The Committee's proposals for parole/aftercare attempt to emphasize continuity and consolidation of responsibility and accountability. Thus, it is recommended that responsibility for aftercare services be delegated to a parole/aftercare bureau or unit of the proposed Division of Juvenile Services.

To maintain the different identity and philosophy of the juvenile system, a juvenile paroling authority separate and distinct from that for adults is recommended in Standard 5.41. This constitutes the Committee's main parole recommendation, as the remaining juvenile parole/aftercare standards address implementation of the decisions of this paroling authority. The distinction between the present adult parole board and the proposed juvenile paroling authority is emphasized by the Committee, so that there may be no confusion concerning the fact that the two authorities are to be mutually exclusive in jurisdiction and operation. Uniformity in the decision to parole is also desired and the existence of one paroling authority for juveniles should promote that kind of uniformity.

It must be pointed out that Standard 5.41 is in conflict with Sentencing, Parole and Probation Standard 10.15 which recommends a single unified paroling authority for adults and juveniles. Standard 10.15, which was proposed by Subcommittee IV, was seen by that subcommittee as a necessary step in bringing about uniformity to parole procedures and record keeping. Standard 5.41, adopted by Subcommittee II, was felt to be critically important for the reasons stated herein. Neither subcommittee was disposed to change its recommended standard.

In proposing standards for the dispositional and correctional phase of the system and for the system in general, the Advisory Committee has attempted to strike a balance between many contrasting points of view regarding the appropriate role and operation of the juvenile system. The positions that it supports are those accepted by a majority of Committee members. Where agreement could not be reached, differences of opinion are noted. Those who have disagreed on major points have prepared minority opinion statements which are attached to this report. Despite some differences of opinion, mostly about "how-to's," the committee is united in its concern for juveniles and its conviction to make the juvenile justice system a true system, fair and oriented toward the needs of the clients it serves.

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[16]Kenneth Wooden, *Weeping in the Playtime of Others,* New York, New York, McGraw Hill, 1976, p. 188.

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[22]Ibid., p. 204.

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[24]Institute of Judicial Administration, *Juvenile Justice Standards Project—Final Report, Planning Phase, 1971-1973,* p. 4.

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[31]Coffey, *Juvenile Justice As a System,* p. 132.

[32]State Law Enforcement Planning Agency, *Criminal Justice Plan for New Jersey—1977,* Draft, p. C-149.

[33]The President's Commission on Law Enforcement and Administration of Justice, Washington, D.C., U.S. Gov't Printing Office, 1967, pp. 38-44 as printed in *Correctional Institutions,* edited by Robert M. Carter, Daniel Glaser and Leslie D. Wilkins, Philadelphia, Pa., J.B. Lippincott Co., 1972, p. 415.

[34]Coffey, *Juvenile Justice As a System,* p. 131.

[35]Eldefonso, et al., *Control, Treatment and Rehabilitation of Juvenile Offenders,* p. 64.

[36]Coffey, *Juvenile Justice As a System,* p. 135.

[37]American Correctional Association, *A Manual of Correctional Standards,* p. 586.

[38]Institute of Judicial Administration, *Juvenile Justice Standards Project -- Final Report, Planning Phase, 1971-1973,* p. 13.

[39]Institute of Judicial Administration and American Bar Association, "Information Packet on Juvenile Justice Standards Project," Institute of Judicial Administration, December 22, 1975, p. 8.

[40]Homicide is an exception. "Where an adjudication of delinquency is predicated upon an offense which, if committed by a person of the age of 18 years or over, would constitute any form of homicide as defined in *N.J.S.A.* 2A:113-1, 2A:113-2, 2A:113-4 or 2A:113-5 then the period of confinement shall be indeterminate and shall continue until the appropriate paroling authority determines that such person should be paroled" (*N.J.S.A.* 2A:4-61(h)).

[41]NAC Task Force on Juvenile Justice and Delinquency Prevention recommends juvenile probation caseloads should average around 25 cases per officer. The President's Commission on Law Enforcement and the Administration of Justice takes a somewhat different approach by recommending average workload ratios of 35 probationers per officer. The President's Commission, National Advisory Commission on Criminal Justice Standards and Goals and others favor considering workloads not caseloads, to determine staff requirements. Under this arrangement, specific tasks are identified, measured for time required to accomplish the task and translated into number of staff needed.

[42]See State Law Enforcement Planning Agency, *Criminal Justice Plan for New Jersey—1977,* Draft, pp. A-299-302 for more details.

[43]See *Application of Johnson,* 178 F. Supp. 155 (D.N.J. 1957); *State v. Tuddles,* 38 N.J. 565, 186 A. 2d 284 (1963); *State v. Horton,* 45 N.J. Super. 44, 131 A. 2d 425 (App. Div. 1957); *In re Lewis,* 11 N.J. 217, 94 A. 2d 328 (1953).

[44]Institute of Judicial Administration and American Bar Association, "Information Packet on Juvenile Justice Standards Project," p. 9.

[45]The Correctional Master Plan Project defines "admissions" as follows:

1. Commitments from Court of offenders who may be on probation but who are not on parole or any other non-resident status of state correctional institutions.
2. Commitments from Parole of offenders for a new offense which occurred while the offender was under state institution parole supervision.
3. Returns for Technical Violation of Parole Rules following an administrative decision to revoke parole.
4. Transfer In from another state correctional institution complex.
5. Commitment after Court Recall or offenders returned to court by a court order vacating their sentence and sub-

sequently re-committed.

6. Returns From Escape: Offenders returned after more than one day on escape from a prison, youth correctional, or women's correctional institution.

[46]State of New Jersey, Dept. of Corrections, "Profile of State Institution Offenders, Fiscal 1970-1975," *New Jersey Correctional Master Plan: Data*, Trenton, New Jersey, June, 1976, p. 44.

[47]See State Law Enforcement Planning Agency, *Criminal Justice Plan for New Jersey—1977*, Draft, pp. A-328-336 for a complete description of this study.

[48]State of New Jersey, Dept. of Corrections, *New Jersey Correctional Master Plan*, Trenton, New Jersey, March 1977, p. 43.

[49]Ibid.

[50]State Law Enforcement Planning Agency, *Criminal Justice Plan for New Jersey—1977*, p. A-109.

[51]State of New Jersey, Dept. of Corrections, "Profile of State Institution Offenders Fiscal 1970-1975," *New Jersey Correctional Master Plan: Data*, p. 59.

Departures is defined by the Correctional Master Plan Project as follows: (1) Releases to parole supervision; (2) Discharge from custody without supervision at adjusted expiration of maximum sentence; (3) Transfers out to another state correctional institution category; (4) Discharges by court action in which the court recalls the inmate and vacates the sentence being served prior to the expiration of maximum on the sentence being served; (5) Escapes; (6) Deaths.

[52]State of New Jersey, Dept. of Corrections, *New Jersey Correctional Master Plan*, p. 20.

[53]Ibid.

[54]Ibid., p. 53.

[55]Ibid., p. 56.

APPENDIX A

DISSENTING OPINIONS

DISSENTING OPINION REGARDING SENTENCING STANDARDS AND GOALS

Submitted by
Judith Yaskin, *Assistant Commissioner*
Department of the Public Advocate

I respectfully dissent from the standards and goals on sentencing formulated by Subcommittee IV of the Governor's Adult and Juvenile Justice Advisory Committee. The brief set of standards adopted by the majority offers little or no guidance as to how future sentencing authorities can best deal with the punishment and treatment of criminal offenders. Indeed, these sentencing standards propose no affirmative action to eliminate the disparity in sentencing and the over-crowding of our institutions which exist under the present system.

The problems of disparity and over-crowding have been detailed in the *New Jersey Correctional Master Plan,* submitted by the New Jersey Correctional Master Plan Policy Council in November 1976, and need not be iterated here. However, a view of the more salient points made by the Council deserve mention:

1) Despite a general increase in the seriousness of crimes for which offenders are sent to state institutions, there still remains in the correctional population of New Jersey a significant number of non-dangerous offenders. For instance, 35% of the residents of the State Prison Complex in April of 1975, had been convicted of gambling and related offenses, offenses against property, narcotics offenses and less serious offenses against persons. Four percent of this number of less serious offenders had never been arrested previously; 41% had never been sentenced to jail previously; and 44% had never been sent to state prison previously. (*Correctional Master Plan,* pp. 143-148.)

2) Among offenders sentenced to prison during the past six years, less serious offenders served a higher percentage of higher maximum sentences. (*Correctional Master Plan,* p. 156.)

3) Perhaps the most telling statistics, and an area not addressed at all by the Majority report, concern the striking racial factor in corrections. Put simply, non-whites are confined in the State of New Jersey at a rate significantly higher than whites. 65% of the admissions into state prisons in 1974 and 1975 were blacks as opposed to 31% in 1911 through 1930. The alarming number of non-whites in our prisons cannot be dismissed merely as stemming from an equally large percentage of non-whites being arrested. The arrest rate for violent offenses among non-whites was eleven times the comparable rate among whites; the commitment rate for violent offenses among non-whites was twenty-two times the commitment rate among whites. (*Correctional Master Plan,* pp. 93-96.)

4) Our institutions are drastically over-crowded. State minimum/maximum facilities were functioning at 151% of standard capacity on July 1, 1976. (*Correctional Master Plan,* p. 166.)

Because I feel that the majority report will not lead to those significant changes in the sentencing system necessary to alleviate the problems described above, I dissent from the majority report and propose the adoption of the following standards.

Standard 10.1 General Principles

(a) A sentencing system should operate with fairness towards criminal defendants consistent with the protection of the public.
(b) In order to reduce disparity in sentencing defendants similarly situated, sentencing judges should impose sentences in accordance with uniform guidelines.
(c) The sentence imposed in each case shall call for the least drastic sentencing alternative that is consistent with the protection of the public, the gravity of the offense and the individual circumstances of the defendant.

Standard 10.2 Judicial Discretion

The decision of whether or not to impose a custodial sentence on a defendant is always that of the sentencing judge. Neither the Legislature nor the Sentencing Commission should specify a mandatory custodial sentence for any sentencing category or for any particular offense.

Standard 10.3 Sentencing Commission

A State Sentencing Commission should be created by the Legislature.

(a) Composition:

The Commission should be composed of judges, members of the public and private bar and members of the Legislature.

(b) Duties:

The Commission, after holding hearings which afford interested persons reasonable opportunity to present data and views or arguments concerning sentencing guidelines, shall promulgate sentencing guidelines. The Commission shall also issue concise statements of the principle reasons for adoption of the guidelines as well as its reasons for over-ruling considerations urged against adoption.

The Legislature shall provide that guidelines having been duly promulgated by the Commission, shall have the force of law.

The Commission shall collect detailed information relating to sentencing practices in each county and establish methods of record keeping and statistical analysis. In each of the five years following the promulgation of the guidelines, the Commission shall annually review this information and shall reassess its guidelines in the light of such information. If the Commission finds, on the basis of such review, that modification of its guidelines is desirable, it shall follow the procedures described above. At the end of this five-year period, the Commission shall conduct such a periodic review of its guidelines —at least once every three years. The Commission shall publish all such reviews.

Standard 10.4 Presumptive Sentences

(a) The Commission's schedule shall set forth gradations of gravity, assigning an appropriate gradation to each criminal offense. For each gradation of gravity it shall establish and promulgate a definite and specific penalty known as the presumptive sentence.

(b) The severity of each presumptive sentence shall be commensurate with the gravity of the offense or offenses to which such presumptive sentence is assigned.

(c) "Gravity" shall be determined by the degree of harm, or risk of harm, of criminal behavior, and by the degree of culpability of the offender in engaging in such behavior.

(d) In grading criminal offenses as provided in subsection (a), the Commission may establish subcategories of a statutory offense category and assign different gradations of gravity to such subcategories, if it finds that such subcategories have distinct degrees of gravity.

Standard 10.5 Aggravating and Mitigating Circumstances

(a) The Commission shall establish and promulgate a schedule setting out permitted variations from the presumptive sentence on account of special circumstances of mitigation or aggravation where the gravity of the offender's criminal conduct is greater or less than the norm established for that criminal offense under Standard 10.4. In the cases of sentences of imprisonment, no variation on account of aggravating circumstances may exceed the presumptive sentence by more than fifty percent. The Commission shall also establish and promulgate standards specifying which kinds of special circumstances shall qualify as circumstances of mitigation or aggravation that justify such a variation from the presumptive sentence.

(b) For purposes of subsection (a) of this section, the Commission:

(1) Shall not permit any of the following to be treated as mitigating or aggravating circumstances:

(a) the good or bad reputation of the offender;
(b) his attitude at the time of sentencing;
(c) whether he pleaded guilty to the offense charged;
(d) the anticipated effect on his or others' future behavior of a sentence more or less severe than the presumptive sentence.

(2) May permit (but without limitation) any of the following to be treated as mitigating circumstances:

(a) the offender acted under a substantial degree of provocation, duress or necessity (though insufficient to establish a defense) in the commission of the crime;
(b) the crime was induced or facilitated by the victim;
(c) the offender was only a peripheral participant in the crime;
(d) the crime neither caused nor actually threatened serious harm;
(e) defendant did not contemplate or intend that his criminal conduct would cause or threaten serious harm;

(f) there were substantial grounds tending to excuse or justify the offender's criminal conduct, though failing to establish a legal defense;
(g) the offender has led a law abiding life for a substantial period of time before commission of the present crime;
(h) the offender is likely to respond affirmatively to probationary or other community supervision;
(i) the offender has made or will make restitution or reparation to the victim of his crime for the damage or injury which was sustained;
(j) the offender's conduct was the result of circumstances unlikely to recur;
(k) imprisonment of the offender would entail undue hardship to dependents;
(l) the offender is elderly or in poor health;
(m) the correctional programs within the institutions to which the offender would be sent are inappropriate to his particular needs or would not likely be of benefit to him.

(3) May permit any of the following to be treated as aggravating circumstances:

(a) that the crime was committed in a particularly cruel or violent manner;
(b) that the defendant is a professional criminal in that he or she is a person who committed an offense as part of a continuing criminal activity in concert with five or more persons, and was in a management or supervisory position or gave legal, accounting or other managerial counsel;
(c) that the defendant is a persistent offender in that he or she is a person who is 21 years of age or who has been convicted of a crime involving the infliction, or attempted or threatened infliction of a serious bodily injury and who has at least twice previously been sentenced as an adult for such a crime to a custodial term and where one of those prior offenses was committed within the five years preceding the commission of the offense for which the offender is now being sentenced;
(d) that the crime involved a breach of the public trust by a public servant, officer or employee of the government and that a lesser sentence would serve to deprecate the seriousness of the nature of the crime.

Standard 10.6 Sentences of Imprisonment

(a) The Commission may prescribe imprisonment only for serious offenses which entail substantial harm or risk thereof, and a high degree of culpability on the part of the offender. In determining which criminal offenses are serious, the Commission shall consider whether the offense characteristically:

(1) involves the infliction of substantial physical injury, or the risk or threat of such injury;
(2) involves a substantial abuse of a public office, public or private trust, or a substantial infringement upon governmental processes;
(3) involves theft of large sums or fraud on a wide scale.

(b) With respect to such serious offenses, the Commission shall:

(1) make sparing use of presumptive sentences in excess of three years' actual confinement, and
(2) shall not set any presumptive sentence in excess of five years' actual confinement except for offenses involving death, maiming, actual grievous bodily injury, or the attempt or aiding and abetting thereof.

Standard 10.7 Sentences Other Than Imprisonment

(a) With respect to criminal offenses for which the Commission does not prescribe imprisonment, it shall establish and promulgate a schedule of penalties other than imprisonment. Such penalties shall be less severe than imprisonment, and their severity shall depend on the gravity of the offense as required by Standard 10.4 and 10.5.

(b) Such penalties may include:

(1) warning and unconditional release;
(2) fine;
(3) curfew or other restriction on the offender's movements or activities in the community;
(4) supervision of the offender in the community;
(5) community service in the public interest;
(6) performance of work for restitution to the victim;
(7) intermittent confinement for days, evenings, weekends, or portions thereof.

(c) In prescribing any of the foregoing penalties, the Commission shall establish and promulgate standards which specify (1) the terms and conditions applicable to such penalties (including

the amount or method of calculating any fine, the type and extent of any curfew, restitution, supervision or service in the community, and the duration, scheduling and place of any intermittent confinement) and (2) the sanctions that shall obtain against offenders violating such terms and conditions.

(d) The terms and conditions of such penalties shall permit the offender to reside principally at home. No sanction prescribed for violation of any such terms and conditions shall require the offender to be imprisoned more than [three] months.

(e) The Commission shall require the holding of a hearing before a sanction may be imposed on an offender allegedly violating such terms and conditions, and shall prescribe the procedures therefore.

(f) This schedule of penalties other than imprisonment may be applied by the sentencing judge in those cases wherein his or her discretion, pursuant to Standard 10.2, Judicial Discretion pursuant to Standard 60.5, Aggravating and Mitigating Circumstances, result in the imposition of a non-custodial sentence.

Standard 10.8 Special Sentences For First Offenders

The Commission may (1) establish and promulgate a separate schedule of reduced presumptive sentences for offenders who have not previously been convicted of a serious crime, or (2) may treat the fact that an offender has not previously been so convicted as a mitigating circumstance under Standard 10.5.

Standard 10.9 Abolition of Parole; Early Release For Good Behavior

(a) The Commission's guidelines regarding duration of imprisonment shall refer to time actually served in confinement. In prescribing the duration of sentences of imprisonment, the Commission shall take into account that such sentences will represent time actually served, without parole.

(b) When the Commission's sentencing guidelines become effective, the existing authority to release imprisoned offenders on parole prior to completion of their sentence shall cease, except that the guidelines of the New Jersey Parole Board will remain in force with respect to offenders sentenced before the Commission's standards become effective.

(c) Notwithstanding the foregoing provisions of this section, an imprisoned offender may, to the extent the Commission prescribes, be released after completion of not less than [eighty-five] percent of his sentence of imprisonment if it has been found that he has refrained from serious disciplinary infractions while imprisoned. If the Commission authorizes such early release, these findings regarding institutional behavior shall be made by an agency designated by the Commission.

Standard 10.10 Duties of Sentencing Courts

(a) A sentencing judge always has the discretion not to impose a custodial sentence. However, when the sentencing judge chooses to impose on a convicted offender a custodial sentence, he or she shall impose the presumptive sentence assigned to the offense of which the offender was convicted, except where there are special circumstances of mitigation or aggravation as provided in Standard 10.5 or 10.8, and as limited by those Standards.

(b) Whenever a sentencing court imposes a sentence that varies from the presumptive sentence pursuant to Standard 10.5, it shall disclose in open court and make part of the record a statement of specific reasons, citing the aggravating or mitigating circumstances involved, justifying such variations under the Commission's standards and specifying all information, evidence and other factors it considered. The court shall also give such a statement of specific reasons whenever either party requests such a variation from the presumptive sentence but the court denies the request.

Standard 10.11 Appellate Review

(a) A defendant may appeal from the sentence imposed, in the same manner as other appeals are taken.

(b) An appeal from a sentence imposed shall be sustained only on one of the following grounds:

(1) That the trial court failed to abide by the Commission's standards or by the procedures required for imposition of sentence or that it imposed an excessive sentence in a mistaken exercise of discretion.

(2) That the Commission's guidelines, though followed by the trial court, are invalid, either because (a) the procedures required by legislation creating the Commission were not fol-

lowed prior to their promulgation or, (b) the presumptive sentence, mitigating or aggravating factors, or other parts of the sentencing standards constitute a gross abuse of the discretion granted to the Commission.

(c) If the appellate court finds that the sentence imposed by the trial court is invalid for any of the reasons in subsection (b) of this section, it may remand the case to the trial court for reimposition of sentence, or else may impose the sentence it deems proper under the Commission's guidelines and explain its reasons for the sentence so imposed. In no case may the appellate court, or the trial court on remand, impose a sentence more severe than that initially imposed.

DISSENTING OPINION

Submitted by
Dorothy Powers, *League of Women Voters of New Jersey*

I respectfully submit the following dissent from the sentencing standards as voted by a majority of the Committee. As a representative of the League of Women Voters of New Jersey, I withhold my endorsement because the standards do not reflect in total the positions of the League.

The members of the League after careful study of the issues, discussion of problems relating to present sentencing practices and possible alternatives, agreed that the goals in sentencing should be sureness and equity of punishment. The League therefore rejects indeterminate sentencing for adults which the standards could allow (defined as those for which no fixed time is established) and calls for a system of determinate sentencing with terms fixed by the Legislature. The League favors short terms with additional penalties for repeat offenders and automatic sentence review that would help correct disparity in sentencing.

We agree with the Committee analysis of the problems of disparity in sentencing as outlined in the Commentary and its endorsement of presumptive sentencing, that is, set guidelines of permissible sentences established for each crime. We believe however that discretion by sentencing judges should be exercised within legislatively set parameters. Guidelines should be established by statute and have the force of law and be promulgated with citizen input. This can most effectively be accomplished through legislative oversight. Therefore, I must respectfully disagree with the Committee standard which calls for establishment of an agency to promulgate and oversee sentencing guidelines entirely outside the legislative process.

DISSENTING OPINION REGARDING STANDARD 3.2 OF THE RECOMMENDED STANDARDS FOR THE DETENTION AND SHELTER CARE OF JUVENILES

Submitted by
Willis O. Thomas, *National Council on Crime and Delinquency*

Detention and Shelter Care Standard 3.2 sets forth the "Criteria for the Interim Detention or Shelter Care of Juveniles." Very appropriately, this standard stresses the desirability of various alternatives to the physical detention or shelter of juveniles. The main focus of this dissent is on the two criteria set forth governing release or detention/shelter. These criteria are: (1) to secure the presence of the juvenile in court and (2) to reduce any serious threat to the physical safety of the community. I am against the enforced custody of children motivated through fear of potential threat to the community.

Strictly on the basis of equal rights and safeguards for juveniles, there should be no provision for detaining a child accused of an offense except for the purpose of assuring his presence in court. This is the only valid reason established for the pretrial detention of adults accused of crime, and even then, adults have the right to bail—juveniles do not.

To lock up people because they "might" commit a crime is a fundamental departure from American legal tradition—the presumption of innocence until

proven guilty. Worse yet, there is no scientific evidence that accurate predictions can be made of future behavior. The federal Justice Department was asked a few years back to cooperate in an experiment under which a small number of defendants judicially predicted to engage in nonviolent crimes would be released on a random basis and followed up to determine the accuracy of the predictions. The Department turned down the proposal on the basis that it did not want to experiment with the safety of its citizens. Do we in New Jersey want to experiment with the liberty of accused juveniles on the basis of untested predictions as to their danger to society? It is bad enough to restrict the liberty of children on untested theories "after" they have been adjudicated by the courts, but it is reprehensible to do so before guilt has been established.

One of the basic thrusts of these standards is to reduce inappropriate or unnecessary detention and shelter placements. To ensure that, these standards being established for New Jersey should be as free of vagueness as possible. Yet nowhere in this document is it recommended how judgments should be made concerning the "physical safety of the community." In fact, everything else in these standards is geared to the need to secure the presence of the juvenile in court. If, in spite of the arguments presented in this dissent, it is felt that detention/shelter of juveniles should be based on a "serious threat to the physical safety of the community," then some specific standards should be set forth for establishing that such a threat exists. If threat to public safety cannot be measured, then it should not be advocated as a legitimate criterion for detention or shelter care.

DISSENTING OPINION REGARDING STANDARD 3.6 OF THE RECOMMENDED STANDARDS FOR THE DETENTION AND SHELTER CARE OF JUVENILES

Submitted by

Willis O. Thomas, *National Council on Crime and Delinquency*

In allowing a child to be detained up to 30 days prior to the adjudicatory hearing, Detention and Shelter Care Standard 3.6 provides for too much leeway for the court and prosecution. In its failure to provide any limits on the time a child may be detained between the adjudication hearing and the final court disposition, this standard is remiss and leaves the door open for extended detention stays.

Thirty days is much too long a period to allow a child to be detained awaiting adjudication. In fact, 30 days is much too long a time to allow as a standard for the completion of the court process through to final disposition.

I recommend these standards establish, in cases where children are in custody, a time limit of 21 days from date of admission to detention to final court disposition. The present two-day time limit from admission to detention to the detention hearing, although not ideal, is not opposed.

There are at least two important reasons why detention stays prior to completion of the court process should be kept to a minimum. The first has to do with the fairness of the process and the welfare of the children detained; the second with economics.

On the issue of fairness and welfare of children, we need to consider the precept that no one is guilty until guilt is proven. Thus, it is not rational to allow children to be deprived of their freedom by being kept in detention for unlimited or excessive periods of time. This is especially unfair when it is a matter of not providing adequate numbers of staff to process cases more quickly. Further, when a person, juvenile or adult, is in an accused status, they are experiencing a tension-filled period of anxiety pending a finding as to the allegations and a possible sentence to confinement if found guilty. This period should be as short as possible, commensurate with the protection of the rights of the accused to (1) a speedy trial and (2) a proper defense. If matters are delayed by the defense, there should be no question of a mandatory release from custody, but if defense is able to proceed with trial, it stands to reason that the prosecution should be even more ready, having had, as it were, a head start through the investigation leading to the charging and detaining of the individual.

From the standpoint of economics, secure detention of juveniles is a very costly proposition. Not only is it costly to build detention facilities, but the daily cost per child of operating a detention home is higher than most any other type of residential facility.

Most recent construction cost estimates for secure detention in the East run from a minimum of $40,000 per bed to somewhere around $80,000. Operational costs, even for poor detention homes, run around $25.00 to $30.00 per day per child.

For whatever reason, a "maximum" placed on allowable detention stays tend to be the usual rather than the exception. If this were to prove true in New

Jersey, the difference between a "usual" stay of 21 days and a "usual" stay of 30 days per child admitted to detention would amount to a significant cost factor. For example, assume that 1,200 children would be admitted to detention on a yearly basis. At a stay of 21 days each, a total of 25,200 child care days would be given, but at 30 days each the number of child care days jumps to 36,000. At a minimum of $25.00 per child care day the 30 day stays would cost $270,000 a year more than the 21 day stays. Approximately 37 more detention beds would be needed to accommodate the 30 day stays, and if these beds had to be obtained through new construction at $40,000 per bed, the total additional cost for bed space would be $1,480,000.

DISSENTING OPINION OF BURRELL IVES HUMPHREYS, PASSAIC COUNTY PROSECUTOR, REGARDING THE WAIVER PROCESS IN JUVENILE MATTERS

I respectfully dissent from the Advisory Committee's recommended standard on the waiver of juveniles to criminal court. With reference to Juvenile Judicial Process Standard 4.8, I recommend the waiver to adult court should be lowered to age 15 and the court should be given more discretion to permit adult crime prosecution in appropriate cases. Under the present law juveniles who should be receiving adult treatment are in my opinion not receiving it because the language of the waiver statute and rule puts too great a burden on the State and unduly restricts the court's discretion. I have submitted a revised form of the waiver statute to the New Jersey Supreme Court Committee on Juvenile Practice. A copy of that recommended revised statute follows.

Proposed Revision of the Referral Statute Suggested By Burrell Ives Humphreys and Thomas L. Ferro, Prosecutor and Assistant Prosecutor of Passaic County

2A:4-48. Referral to Other Court Without Juvenile's Consent.

The Juvenile and Domestic Relations Court shall upon motion of the prosecutor and without the consent of the juvenile, waive jurisdiction over a case and refer that case to the appropriate court and prosecuting authority having jurisdiction if it finds, after hearing, that:

(a) the juvenile was 15 years of age or older at the time of the charged delinquent act;

(b) there is probable cause to believe that the juvenile committed a delinquent act which would constitute, if committed by an adult,

(1) homicide;
(2) treason;
(3) robbery;
(4) rape;
(5) arson;
(6) any assault classified as a high misdemeanor;
(7) any offense against the person committed in an aggressive, violent and willful manner;
(8) possession of a silencer contrary to *N.J.S.A.* 2A:151-14;
(9) a violation of section 19 of the Controlled Dangerous Substances Act (P.L. 1970, c. 226; C. 24:21-19);
(10) any offense classified as a high misdemeanor where the juvenile has two or more prior convictions for offenses which if committed by an adult would have been high misdemeanors; or
(11) conspiracy to commit any of the offenses enumerated in (1) through (10) inclusive; and

(c) the court is satisfied from an examination of the nature of the offense charged or from the juvenile's prior record of convictions, if any, or both, that adequate protection of the public requires waiver.

APPENDIX B

SEPARATE STATEMENTS

STATEMENT ON THE ADMINISTRATION OF CORRECTIONS

Christopher Dietz
Chairman, New Jersey State Parole Board

Historically, from the original Quaker penal institutions to the present, the theoretical *raison d'etre* of any corrections and parole system has been to remove dangerous offenders from society and to attempt to "rehabilitate" them as law-abiding, respected citizens. This is the justification society has used to construct prison facilities and to provide offenders with rehabilitative services: work opportunities, counseling services, educational programs, etc.

Currently, there is a remarkable consensus that correctional institutions have failed to fulfill the promises and reach the objectives set in the past. There is, however, no consensus as to the reasons for this failure; whether due to lack of funding, the impossibility of rehabilitation on a large scale, or the inability to definitively predict human behavior. Nevertheless, civic, academic, and government leaders increasingly are emphasizing reintegration of offenders rather than rehabilitation.

The rehabilitative model rested upon middle-class perceptions of society and of how citizens should function within society. Reintegration, on the other hand, emphasizes a less restrictive view of society, and its objective is simply to achieve a situation where offenders are able to function within society without serious violations of accepted norms.

Outside of the basic flaws within the rehabilitative model the pragmatic reality of corrections in 1977 dictates that the public and the legislature are never going to allocate to the corrections and parole systems the necessary resources to properly implement the rehabilitative model. A review of the Department of Corrections and the Parole Board's budget would confirm this. As a result, it is essential to take a hard look at what we are likely to achieve under a suboptimal rehabilitative model. The question, in effect, is: does half of an optimal system really represent a better system than an alternative system, or in fact, no system at all?

My experience says no. There is a basic conflict between the objectives of the rehabilitative model: rehabilitative treatment and incapacitative custody or punishment. Whenever there is a contest between these two objectives, whether over funding or other priorities, custody is the victor. This has always been the situation in the past and there is no reason to believe this will change in the future.

What is necessary is a further development and implementation of a reintegrative model. The reintegrative model implies a close structuring of an offenders' relationship with the community, and therfore, a close tie between the community and the offender is mandated. Needless to say, custody cannot forever be the overriding concern in a reintegrative model.

How, then, can the very real responsibility for protection of society be met? I would suggest the separation of the punitive/incapacitative aspects and the reintegrative aspects of a sentence, as well as the separation of the systems implementing the sentences. Judges would sentence an individual to a specific and, more importantly, a certain incapacitative term; upon the completion of this phase of a sentence, the offender would enter a reintegrative term. Only in the event of serious and persistent misconduct, and then only after a full hearing with appropriate due process protections, would an offender be transferred to or retained in the incapacitative system.

What the reintegrative system would offer would be a community-based service system which would range from secure re-entry facilities to parole supervision services. Inmates in the incapacitative system would not be eligible for furloughs, work and education release, etc., but would have institutional programs available on a voluntary basis. Conversely, community release programs, including the potential use of restitution, would be the core of the reintegrative system, and institutional programs would be minimized. We must realize that one reason rehabilitation has not proved successful is that it takes place in an environment far removed from what exists as reality for most offenders. Reintegration would take place "on the street." Whether the reintegrative system is called parole or some other term is less-than-important. It is an essential function which cannot be neglected in the criminal justice process of the future.

Unfortunately, I find that the standards and goals for correctional administration fail to reject the rehabilitative model and propose the bold solutions necessary. The standards have instead proposed a better functioning, better funded, better administrated rehabilitative model. I would suggest that the rehabilitative model and the corrections system needs more than improvement; its basic premises

must be rethought and redefined. These standards should establish goals for a much-needed thorough reevaluation of corrections. The result would be a more realistically based system which would reduce the discretion of parole and corrections authorities and increase the certainty of inmates and the public as to the implications and operations of the system.

I respectfully submit this statement of philosophy to the Governor's Advisory Committee on Criminal Justice Standards and Goals.

Chirstopher Dietz

SEPARATE STATEMENT OF BURRELL IVES HUMPHREYS, PASSAIC COUNTY PROSECUTOR

Prosecution and Defense Standards

I suggest that a standard should be inserted to reflect the so-called *Bigley* statutes: *N.J.S.A.* 2A:158-5 and 7. Under those statutes as construed in *In Re Application of Bigley,* 55 N.J. 53 (1969) and other cases, the Assignment Judge for each county possesses the final and conclusive authority to approve expenditures for the prosecutor's office beyond the appropriations authorized by the Freeholders. This is extremely important to the proper functioning of a prosecutor's office since the independence or effectiveness of the prosecutor could be compromised if local government had absolute control over the purse strings of his office. See *Bigley,* p. 56.

The prosecutor must have the remedy provided by the *Bigley* statutes if he is to remain "equipped for the performance of his indispensable task, if law and order are to be maintained in the county and all our rights both of person and of property are to be adequately safeguarded." *State v. Winne,* 12 N.J. 152, 169 (1953).

Statement in Support of a Rule Change Permitting the State to Appeal or Move for Leave to Appeal from a Sentence Which is Manifestly Too Lenient.

The defendant's right to appeal from an allegedly excessive sentence affords an excellent example of how the rights of criminal defendants have been expanded over the years.

At common law the defendant did not have the right to appeal his sentence. *State v. Gray,* 37 N.J.L. 368 (Supreme Court 1875). The *Gray* case was followed until changed by legislation in 1898. See *State v. Johnson,* 67 N.J. Super 414 (App. Div. 1961). However, the legislation permitted appeal only when the sentence was "manifestly illegal."

In 1942, the old Supreme Court held in *State v. Newman,* 120 N.J.L. 82, 88 that an appellate court may not revise an excessive sentence.

In 1954 in *State v. Bennes,* 16 N.J. 389, 396 (1954) Justice Brennan (now on the United States Supreme Court) opened the door a trifle by saying that a sentence is not "ordinarily" reviewable by an appellate court where the sentence is within authorized statutory limits.

Three years later, in 1957, the Judiciary took a step forward in *State v. Culver,* 23 N.J. 495. In that case, the Supreme Court sharply criticized *State v. Gray* and indicated that a right of appeal would lie for an illegal or *improper* sentence.

Finally, in *State v. Johnson* in 1961, the New Jersey courts completed the last lap of their journey from: (1) *No right to review a sentence,* to: (2) *May only appeal "illegal" sentences,* to: (3) *May not appeal an excessive sentence,* to: (4) *May ordinarily not appeal an excessive sentence,* to: (5) *May appeal an improper sentence,* to: (6) *A defendant may appeal a sentence on the grounds that it is manifestly excessive, State v. Johnson* supra. (In 1969 Judge Gaulkin's decision in the *Johnson* case was made a part of the Rules of Court.)

While the rules of the game were being changed to provide more rights for the criminal defendant, the prosecution was being beset with *Miranda, Wade, Mapp* and a whole litany of decisions not only expanding the rights of criminal defendants but constricting the authority and power of police and prosecution. Praiseworthy as these decisions may be in effectuating the goal of a just criminal system, the fact is that this expansion of defendants' rights and contraction of prosecutor's rights has coincided with an era marked by a many-fold increase in crime.

Perhaps there is a correlation; perhaps not. In any event few prosecutors would want to turn the clock radically back. A better approach than restricting

defendants' rights is to give the prosecution the tools needed to cope with those increased rights. In short to recognize that if the prosecution is to fulfill its role in the criminal justice system of representing the interests of the public, it must be given commensurate authority and responsibility.

Sentencing is one area in which our Criminal Justice System has met with much criticism. Many critics have contended that often sentences are too lenient, and therefore neither deter crime nor satisfy society's need for justice. Former Chief Justice Warren of the United States Supreme Court has said "we have all observed instances of excessive sentences but, *just as frequently*, we have noted instances of commitments far too short to enable institutional authorities to educate and train the individual to take his place in the community as a law-abiding, self-respecting citizen." (emphasis added). *Introduction to Glueck and Glueck, Predicting Delinquency* xix (1959).

Judges are human beings and suffer from the same imperfections as all of us. Some have attitudes and philosophies which may result in sentences which are manifestly excessive. Those sentences can be corrected on appeal. Others may have attitudes and philosophies which result in sentences which are manifestly too lenient. Under the present state of the law those sentences cannot be corrected.

If one believes that the criminal justice system exists solely or even primarily for the benefit of criminal defendants, then perhaps such a double standard of justice makes sense. However, if you believe, as I do, that the public and victims have rights which are in no way less important than those of the criminal defendant, then such a double standard of justice makes no sense. Why should a manifestly lenient sentence go uncorrected, when a manifestly excessive sentence can be corrected.

As Chief Justice Weintraub has pointed out, errors in the criminal justice system in favor of the criminal defendant will not be felt by some vague entity known as society. These errors will be felt—and often painfully felt—by the next victim of the murderer, robber, rapist or mugger who was dealt with too lightly.

If criminal defendants now possess, as they do, the right to appeal from a grossly excessive sentence, then in fairness the State as the representative of the public should have the right to appeal from an overly lenient sentence.[1]

Consideration should be given to the question of whether the constitutional principle against double jeopardy prohibits or impedes any appellate review of a sentence at the instance of the prosecution. See *Disparity in Sentence and Appellate Review of Sentence*, Daniel B. Coburn, Volume 25, Rutgers Law Review, pp. 207, 224 (1971). See also *Appellate Review of Primary Sentence Decisions: A Connecticut Case Study,* Volume 69, Yale Law Journal, 1453, 1462 et seq. (1960).

I believe that a careful study of the question will show that there is no constitutional bar to an appeal by the State and the consequent enlarging of the sentence on appeal. If there is such a constitutional problem, a number of solutions come to mind. One is based on the principle of reciprocity. The defendant only has a right to discovery in a criminal case if he is willing to waive to a certain extent his Fifth Amendment and other constitutional protections by giving reciprocal discovery. Not until 1961 did the defendant receive the "right" to appeal from a manifestly excessive sentence. As with the discovery rules, the court can condition the grant of the "right" of the defendant to appeal on the grant to the State of a similar right.

Another possibility would be to provide that the sentence imposed by the trial court remain interlocutory until review by the Appellate Court. Since the original sentence was tentative and not final, a defendant is not being twice placed into jeopardy.

We should always bear in mind that in this case we are not dealing with constitutional provisions designed to minimize the chances that an innocent defendant will be convicted. The defendant has already been convicted. The question is what fair disposition should be made of the criminal, bearing in mind his interests *and* the interests of the public and the victim. If the criminal wants the right to have an Appellate Court reduce his sentence because the trial judge has been manifestly unfair to him, what is unjust in having the same principle apply when the trial court has been manifestly unfair to the public and the victim?

Following is a resolution in support of a right to appeal or move to appeal from a sentence which is manifestly too lenient, adopted by the County Prosecutor's Association at a recent convention.

Resolution

WHEREAS, much criticism has been directed at the sentencing of criminal defendants; often on the ground that some sentences are too lenient;

WHEREAS, if a sentence is manifestly excessive, a criminal defendant under New Jersey law has the absolute right to appeal and obtain a reversal of that sentence;

WHEREAS, a sentence which is too lenient, even one which is manifestly too lenient, is not under present New Jersey law subject to appeal, and therefore such an unjust sentence cannot be corrected;

WHEREAS, it has been reported in the press that a proposed revision of the United States Criminal Code will authorize appeals from sentences by the prosecution in certain circumstances;

WHEREAS, the criminal justice system does not merely exist for criminal defendants. The public and victims of crime have rights also, and those rights are in no way subordinate to the rights of criminal defendants;

WHEREAS, a sentence which is manifestly too lenient clearly infringes on the rights of the public and

victims of crimes, and is inimical to the concept of equal justice for all;

NOW, THEREFORE, be it resolved by the County Prosecutors Association that in the interests of equal justice and fair play for all, the State to the extent constitutionally permissible, should have the right to appeal or at least move for leave to appeal from a sentence which is manifestly too lenient. The Supreme Court is respectfully requested to consider appropriate changes in the Rules of Court to that end.

Juvenile Judiciary Process

In my judgment, the commentary and standards do not go far enough in calling attention to the failures of the juvenile justice system and in proposing adequate remedies.

This country is facing an epidemic in juvenile crime. Juvenile arrests, for all crimes, increased 138% from 1960 to 1974 (U.S. Department of Justice figures in the 1976 Annual Report of the U.S. Senate Sub-Committee to investigate juvenile delinquency).

The number of children ages 10 to 17 increased 32% in the years 1960 to 1973. However, the number of juvenile delinquency cases more than doubled (1973 Annual Report, *supra*).

Over the period of 1960 to 1975, property crimes committed by youths under 18 increased 132% (Ibid). The peak age for arrests for violent crime is 18, followed by ages 16, 17 and 19 in that order (Ibid).

We have reached a point in which 26% of all persons arrested in 1975 were under the age of 18; 30% of all crimes solved in 1975 involved persons under the age of 18; and persons under 18 committed 43% of all serious crimes (Ibid). Recidivism among adults has been estimated at 40% to 70%. Recidivism among juveniles is estimated at 75% to 80% (Ibid).

An examination of the above figures can lead to no other conclusions but that (1) we have an epidemic of juvenile offenses, and (2) our juvenile justice system is a failure. With all due respect, I did not see either of those two conclusions clearly or prominently set forth in the commentary.

If anyone doubts the accuracy of either of these conclusions, I suggest that he speak to his friends and neighbors about juvenile crime, particularly if those friends or neighbors live in a large city or in a high crime rate county. In Passaic County we have nearly 5,000 juvenile complaints filed a year—roughly the same as adult complaints. Businessmen in a major city in this county have reported in response to a survey that crime, and in particular juvenile crime, is their *most pressing problem.*

Perhaps Simeon Golar put the problem best in a statement which he made recently in the course of resignation as a New York Family Court Judge. Mr. Golar has for many years been a distinguished civil rights activist and a leader in the black community. He resigned his position out of utter frustration. Why? He said:

> "It is utterly unthinkable that our society would permit people to commit serious crimes and do substantially nothing about it. . . . Yet, that is what happens in New York and elsewhere in the U.S., where, under the law, juveniles cannot be prosecuted for crimes—even murder. They are charged, instead, with delinquency and little or nothing happens as a result." (New York Sunday News, June 13, 1976, p. 69)

Our juvenile subcommittee worked very hard under very able leadership and my comments should not, in any way be interpreted as a criticism of the distinguished members of the subcommittee. However, in reading the commentary and standards, I find reflected attitudes and philosophies which in my judgment are not in accord with modern conditions and realities. The fundamental basis for any criminal justice system must be *protection of the public*—one of the building blocks of civilization; indeed, the basic primeval reason for the existence of civilization and government. Every step taken in proposing standards and goals for the criminal justice system must be consistent with that principle, *protection of the public.* Any standard not based on that foundation will rest on quicksand. It will not have nor deserve the support of the public.

In order to revise the juvenile justice system and lend greater emphasis on protecting the public, I have suggested the following:

(a) Provide for determinate, not indeterminate sentences;

(b) Treat juveniles, 15 to 17 years old, who commit violent crimes or who are chronic serious offenders as adult offenders unless a court orders to the contrary on a showing of no danger to the public;

(c) Such juveniles should be fingerprinted and photographed;

(d) The State should be permitted to move for leave to appeal juvenile sentences which are manifestly unjust;

(e) Authorize and encourage more innovative sentences; for example: the restitution of property, study or counseling programs, work on community projects, etc.;

(f) Establish work camps for juvenile offenders as an alternative to reformatory or a return to the streets;

(g) Authorize and encourage court intake and juvenile conference committees to impose innovative and flexible "sentencing";

(h) To the extent that it is constitutional, exercise jurisdiction over parents requiring them to pay for damaged property or loss and to participate in diag-

nostic counseling;

(i) Establish more custodial institutions equipped to handle juveniles in a humane and rehabilitative fashion;

(j) Remove some of the aspects of secrecy in juvenile proceedings.

Upon reading the commentary and standards, I find that some of the above recommendations are reflected and recommended, some only casually mentioned, and some completely ignored.

A juvenile who commits a delinquent act cannot be rehabilitated if he is not caught. The apprehension of juvenile offenders is impeded by existing statutory restrictions governing the fingerprinting and photographing of juvenile suspects.

Two major reasons have been advanced for not fingerprinting juveniles. These are, (1) to preserve the confidentiality of juvenile arrests and dispositions, and (2) requiring a juvenile to undergo fingerprinting may be detrimental to the juvenile. However, when a juvenile is arrested, his name and arrest record are kept at police headquarters. Additionally, local juvenile authorities and the policemen on the beat know those juveniles who have been arrested before. Fingerprint cards, like juvenile arrest and complaint sheets, would be kept at police headquarters and not made available to the general public. The fact that a juvenile is fingerprinted would not likely result in any more detrimental effect upon him than his initial arrest already has. Additionally, a juvenile who is fingerprinted may be impressed with the seriousness of his offense and be deterred from committing future offenses.

We often forget that laws and regulations which make it easier for police officers to detect and apprehend the guilty many times serve to protect the innocent. Such laws minimize the chances that innocent persons will be apprehended, investigated and even prosecuted. Increased use of fingerprinting and photographing would help to point a sure finger at the guilty and thereby more quickly remove clouds of suspicion from the innocent.

The existing statutes and law regarding fingerprinting and photographing of juveniles should be reviewed and revised to make it easier for law enforcement to make effective use of these valuable investigative and prosecutorial tools. Our standards should include recommendations for statutory change which would permit fingerprinting of juveniles age 15 or older who are arrested for acts that would constitute high misdemeanors if committed by an adult. The fingerprinting of juveniles would significantly help in crime detection and prevention. Many cases, especially breaking and enterings, are solved by fingerprint evidence alone. However, if a juvenile commits a criminal act and leaves latent prints, there may be no way of connecting the crime with the juvenile because often no juvenile prints are on record.

For example, breaking and enterings and auto theft are two crimes in which fingerprints are most likely to be left by the perpetrators. In New Jersey, juveniles account for approximately 43% of all arrests for break and entries and approximately 37% of all auto theft arrests. Yet police in 1974 were only able to solve 15% of all reported break and entries, and 10% of all reported auto thefts (See "Crime in New Jersey," *Uniform Crime Reports*, 1974 at 37, 45 and 49). These two categories of crimes have the lowest rate of clearance by arrest in the State. Clearly, the use of fingerprint evidence would be highly beneficial in helping to solve these crimes.

SEPARATE STATEMENT OF JOSEPH E. OCHS, *ASSOCIATE DIRECTOR,* COMMUNITY DRUG AND ALCOHOL PROGRAM OF HUDSON COUNTY

The following standards and goals on drug abuse are submitted in response to subcommittee suggestions. Since they were submitted after subcommittee deliberations and thus were not voted on by the Committee, they are included here as recommendations.

SUBSTANCE (DRUG AND ALCOHOL) ABUSE TREATMENT STANDARDS AND GOALS

Treatment

1 It has been demonstrated during the past 10 years that methadone maintenance treatment for hard-core heroin addiction, when supported with practical supportive services, provides a good chance of re-adjustment into a productive and employable lifestyle for the hard-core heroin addict.

The State of New Jersey should provide funding to ensure that there are enough methadone maintenance treatment slots for those addicted to heroin. It costs approximately $2,000 per client per year for methadone maintenance outpatient treatment. That same person if incarcerated for a drug use offense only would cost the taxpayer approximately $10,500 per year

and take up a place in our already overcrowded correctional system where he will not receive treatment for his drug abuse problem.

II The State of New Jersey should coordinate effective umbrella treatment services throughout the State. Such programs should receive priority for funding rather than isolated individualized treatment approaches. The multi-modality approach to treatment is preferable in that it provides a number of treatment alternatives: methadone maintenance, drug-free residences, drug-free out-patient centers and alcohol treatment centers under one administration. This would avoid costly duplication of administration costs needed to effectively run many different programs.

III New Jersey court districts (municipal, county, etc.) should be encouraged to develop relationships with existing programs to ensure that drug users coming into the court system are diverted into treatment programs if circumstances warrant. The diversion should take place at the beginning of the judicial process. Large urban court systems should have a person thoroughly versed in drug abuse treatment and the dynamics of addiction hired by the court and assigned to interview persons incarcerated for drug usage and make referrals to treatment. The result of the interview would be a presentation to the judge as to the feasibility of treatment for the drug problem as an alternative to incarceration.

IV Each New Jersey prison should have a prison release program whereby persons incarcerated for a drug abuse offense after screening would be released to a treatment program for rehabilitation if the circumstances of the offense warrant such action. Such treatment could begin while the person is still in prison so that, upon referral to a program, the treatment would be in progress.

V The Department of Health (Division of Narcotics and Drug Abuse Control and the Division of Alcoholism) should coordinate all drug abuse treatment efforts with existing State agencies or departments (Human Services, Education, Labor and Industry, SLEPA, Department of Corrections).

VI A study should be funded which is specifically geared to a consideration of the hard-core drug abuse phenomenon, the overcrowding of jails and the effectiveness of various treatment modalities in order to examine the viability of providing funds for drug and alcohol treatment in the future. SLEPA's computer data bank could be utilized as a basis for the study which would explore the overcrowding of prisons in relationship to drug offenses.

VII The State of New Jersey should implement an excise tax on the sale of alcoholic beverages as a means of funding alcohol treatment programs.

VIII The State of New Jersey should examine carefully the long range cost effectiveness of having State-funded hospitals provide a fixed number of beds for the detoxification of the alcoholic and for the drug abuser.

IX There should be a concerted effort to mobilize New Jersey business and industry resources to provide employment opportunities for the substance abuser who has responded satisfactorily to treatment efforts. Such efforts should be coordinated with the Department of Labor. The State should look into the feasibility of providing funding for supported work as a viable intermediate step toward the substance abuser's employment in the private sector. Such supported work programs (transitional employment) have been tried and their effectiveness documented.

Education

I The Department of Health and Department of Education should coordinate a viable substance abuse prevention program for New Jersey school districts. The program should be developed by the State and should involve well-trained, treatment-knowledgeable substance abuse prevention coordinators in school districts who would function out of the school, have an ongoing relationship with local treatment programs and provide educational programs in the home, school and community.

II A substance abuse curriculum for grades K-12 should be developed for New Jersey school districts and should be based on a mental hygiene approach to substance abuse and have back-up treatment services.

Law Enforcement

I New Jersey efforts in law enforcement should be strengthened in order to increase arrests of "dealers." New Jersey should therefore have an all-out attack on hard-core illegal substance abuse. A special task force within the State Police who are well trained in every aspect of narcotic enforcement and current treatment possibilities should assist the local law enforcement resources for undercover and training for regional law enforcement people to cover larger regions.

II A stipulation of "gainful employment" (job, education or household provider) should be attached to probation and parole. The gainful employment should take place within six months of release or conclusion of treatment. Failure to secure employment should be an abuse of

parole and the alternative should be re-incarceration.

III Training programs in the dynamics of addiction and treatment resources should be created and continued on a regularly scheduled basis for judges and police. There should be a concerted effort to inform courts of treatment alternatives to incarceration as appropriate under the law.

SEPARATE STATEMENT OF EDWIN H. STERN
DIRECTOR OF CRIMINAL PRACTICE
ADMINISTRATIVE OFFICE OF THE COURTS

Introduction

Because so many persons have labored so long and so hard on this Standards and Goals project, I feel it appropriate to add some individual thoughts.[1] I do so despite my objection to the length of the Report itself which, in my view, unnecessarily includes some standards which embody traditional and generally accepted practice as well as some duplicative and repetitious narrative. Given the length of the Report, I presume that my additional thoughts will pose no burden upon the interested reader who has already waded through approximately 350 pages of print.[2]

My basic concern about our Report deals with the methodology by which this project was undertaken. The Committee was appointed in October of 1975, and each Committee member was assigned to one of four sub-committees. Each sub-committee was assigned certain tasks in terms of evaluating the criminal justice system and drafting standards with regard thereto. The sub-committees labored hard, and their efforts were presented to the Committee, as a whole, at three plenary sessions. At the plenary sessions, sub-committee members made presentations to the Committee as a whole; there was some discussion concerning the presentations, and the sub-committee reports were adopted. The standards as adopted, however, were subject to later amendment by the sub-committee (which had proposed same) after consideration by the sub-committee itself of any comments which were made from the floor at the plenary session.[3]

As a matter of fairness, I should point out that the methodology must be attributed to restraints inherent in the very funding application which permitted the Standards and Goals group to be formed and which was approved long before the Committee membership was ever selected. Given the subject matters that were assigned for study, the time restraints in the grant life would not permit each matter to be adequately studied or thoroughly considered by the Committee as a whole.[4] I am disappointed that the Committee, as a whole, could not seek an extension of time with which to "polish" its work product, and did not seek to reduce the volume of material covered within the time limits assigned, so that we could have presented (in even more precise fashion) our views concerning some of the recommendations and subjects which needed the attention of representatives from the various related aspects of the criminal justice community.[5] I would not advocate an extension of the project, or indeed write herein at such length, but for my sincere belief that the project is so valuable. The need for standards and a viable explanation thereof is evident. I feel that a little more attention to draftsmanship would permit this successful endeavor to be even more persuasive. In a period of two to three months, I believe that those drafting the final product would better achieve an integration of the standards developed by the four separate sub-committees and a more logical presentation of the Report as a whole. Various standards which would promote valuable contributions to our system are related to other aspects of the system but the interrelationship is not fully developed. In essence, given the sub-committee approach and lack of work by the Committee as a whole, we have thus far failed, in some areas, to produce a well integrated document.

Judicial Civil Service

For the first time in New Jersey, important, compatible and related standards with regard to pretrial procedures, diversion and case processing is developed with an emphasis that courts, prosecutors and defense counsel should concentrate on matters requiring quality attention in the adversarial context, without expending substantially more resources than presently available, and with the expectation that

References for this chapter appear on pages 357 and 358.

screening and diversion of first offenders and other offenders charged with relevantly minor offenses can benefit the defendant and, in turn, the State.[6] In addition to recommending the development of resources for rehabilitative programs, both in the traditional correctional area and new diversion programs, structured procedures are recommended, and meaningful pretrial release procedures are developed so as to keep out of jail and detention facilities those adults and juveniles who should not be exposed to same. Police diversion programs are discussed, and with notable importance the concept of court diversion through intake procedures are recommended for increased utilization in juvenile cases. In the adult area, we recommend presumptive release in lieu of detention or continued detention in certain cases, recognize the need for more court investigative personnel to assure the establishment of proper conditions for pretrial release when a summons is inappropriate, and promote the concept of the development of pretrial services and pretrial intervention programs and the necessary resources therefor.

Pre-Adjudication Alternatives Standard 1.7, p. 208 places the intake services under the supervision of the Juvenile and Domestic Relations Court (to become the Family Division of Unified Superior Court, Court Organization Standard 6:3 and 6.4), and recognizes the concept of a central court service delivery system by promoting the use of probation officers as staff. (Sentencing, Parole and Probation Standard 10.10, page 46.) In the adult area, the concept of a centralized development of pretrial release and diversion programs is deemed necessary (see Pretrial Process Standards 8.5-8.11, pages 39-42) with probation officers serving as staff (Sentencing, Parole and Probation Standard 10.10, page 46). We promote unification of the court system, including the municipal courts (Court Organization Standards 6.1, 6.3, 6.6, pages 30-31) and independently thereof, seek consolidation of municipal courts so that there can be expeditious processing of criminal cases (Trial Preparation Standard 9.2, page 43). We also indicate that, constitutionally and otherwise, probation must be retained in the Judicial Branch of Government and that, for the purposes of improvement, the fragmented system must be consolidated (Sentencing, Parole and Probation Standard 10.6 page 46). Thus, the Standards and Goals Committee recognizes the need for a unified court system and a unified probation service to avoid duplication of effort and expense, to prevent unwarranted inconsistencies of approach among the 21 counties, and to promote adherence to Supreme Court policies and procedures. As a result, in the pretrial, trial and post-adjudicatory areas, substantial and meaningful reforms are suggested, and hopefully the resources will be available.

There is only one difficulty with the "goals" adopted. We sometimes forget that people are needed in the system and that the system can only be as good as the people involved. The adult pretrial and diversion procedures and the standards relating to probation were developed by one sub-committee, and the juvenile standards were written by another. The standards with regard to court organization and unification were developed by a third sub-committee, and in my respectful view, by a sub-committee which (at the time it was developing its work product) could not understand, given the methodology described above, the ultimate recommendations of the other sub-committees.

I dissent from so much of Court Organization Standard 6.8 (pages 32-33) as requires the unified Judiciary to be subject to the requirements of Civil Service. While recognizing that this standard would be a substantial improvement over the present system, because it recognizes the Supreme Court authority to supervise the Judicial personnel system, establish standards and approve selection procedures and tests, I do not believe that the standard goes far enough because it entrusts to the Executive Branch and the Civil Service Commission power to "implement these standards and administer the personnel system."

In my view, the Civil Service bureaucracy does not adequately appreciate or understand the needs and nuances of the court and criminal justice system. I recognize and am in total agreement with the "merit and fitness" requirements of our Constitution (Art. VII, §1, p. 2). Nevertheless, the constitutional provision permits legislative action with respect to same and with respect to the "preference" system.[7] Our deliberations, in my view, did not sufficiently consider standards with respect to Civil Service and with respect to needed input by affected agencies concerning job specifications and testing. While the subject transcends the Judiciary and while the Legislature could legislate various changes in Civil Service law consistent with Art. VII, §1, p. 2 thereby improving the entire criminal justice system, I address myself at this point exclusively to the Judicial Branch of Government because Standard 3.8, *supra*, is so limited.

Art. VI, §2, p. 3 provides that "the Supreme Court shall make rules governing the administration of all courts in the state . . . ." Thus, the position of the Judiciary stands on a different footing than Executive Branch agencies involved in the criminal justice system, and recognizing its constitutional powers, the Judiciary has used its rule-making powers (*R.* 1:33-3) to develop intake, pretrial diversion and other meaningful programs in some counties where, for various reasons, including some which involve Civil Service related problems, such programs could not be developed within probation.

The recent decision in *Passaic County Probation Officers' Association v. County of Passaic,* N.J. (1977) points out the Supreme Court's adminis-

trative powers, its authority with respect to administration of the court system and its responsibilities "to see that the public interest is fully served by the proper functioning of this vital branch of our government." (Slip opinion, p. 4.) In the course of its opinion, the Court stated

> "The conclusion is quite inescapable that the constitutional mandate given this Court to "Make rules governing the administration of all courts in the State" transcends the power of the Legislature to enact statutes governing those public employees properly considered an integral part of the court system. It has, however, since 1948, been the practice of this Court, with only occasional deviation, to accept and adopt legislative arrangements that have not in any way interfered with this Court's constitutional obligation discussed above. We have every intention of continuing this practice; to do otherwise would be pointless and self-defeating. Only where we are satisfied that the proper exercise of our constitutional responsibility to superintend the administration of the judicial system requires such action would we feel compelled to exert this power in the adoption of a rule at odds with a legislative enactment."

We have a valuable opportunity to propose meaningful standards and goals. I am not suggesting any constitutional confrontation or deviation from the practice described above.[8] As a matter of comity, I merely advocate that a Judicial Civil Service be legislated consistent with Art. VII, §1, p. 2 and be made responsible to the Supreme Court and its Administrative Director of the Courts.

I understand from various discussions that Standard 3.8 is worded as is because of the feeling of sub-committee members that an independent Judicial Civil Service was not necessary given the present Civil Service bureaucracy and the relatively small size of the Judiciary. I certainly support the standards of judicial selection and court organization developed by the sub-committee which drafted this standard, but what that sub-committee may not have understood (because of the lack of integration of the work of the various sub-committees) is the significance of the work product of other sub-committees relating to standards concerning intake, adult pretrial release, diversion, pretrial services and the unification of probation services, including post-disposition probation.

As a result of the unification of probation and the development of meaningful pretrial services within the probation structure, and because of court unification itself, there is sufficient cause to develop an independent Judicial Civil Service without duplication and waste. Even if that were not true, fundamental justice requires judicial control over the qualifications and selection of the personnel who must comply with Supreme Court standards and procedures and who must process cases without regard to the concerns of any litigant, including the State.

Juvenile Status Offenders

I respectfully dissent from Juvenile Judicial Process Standard 4.1 (page 223) which provides that "court jurisdiction over status offenses should be eliminated." I find this to be inconsistent with other standards developed by the Committee and one which, although based on idealism, is lacking in practicality. The committee has recommended unification of the courts and development of a family court. Court Organization Standards 6.1-6.4, pages 30-31. The family court system would provide New Jersey with a great step forward and would permit judicial officers to review all matters involving the family. Juvenile Judicial Process Standard 4.1 itself recommends consideration of the "whole family in formulating an appropriate disposition" and suggests that juvenile (or family) court judges should " . . . encourage and recommend parental participation" on a voluntary basis in the rehabilitative process imposed as part of the disposition. (Page 223) Juvenile Dispositions and Corrections Standard 5.7, (page 232), adopted by the Committee, would also give the courts the obligation of reviewing all out-of-home placement (including voluntary foster care placement of children) and is admittedly a great step forward "for the best interest of the child." Yet, for some reason, the Committee has simultaneously recommended that the jurisdiction over status offenders be removed from the court system.

It seems to me that, because a good number of status offenders are, in essence, the products of divided homes or unsupervised lifestyles, that they should remain subject to the jurisdiction of the family court. I would perhaps feel differently about this matter if it were not for the important recommendations promoting the development of the family court (as a part of a unified court system) and the concept of intake.

I agree that the court system should be the "forum of last resort" with respect to the handling of status offenses. I believe that recent statistics indicate not only a decrease of the number of matters being handled in court but also an increase in the diversion of such matters from court to community resources and social agencies which are in a position to help the juvenile. (In the 1975 court term only 1906 "bench hours" were devoted to JINS cases whereas in the prior court year 2578 hours were so devoted.) However, these community-based resources and social agencies, even if recognized in legislation as an alternative to court, should not legally be permitted to coerce a juvenile by requiring adherence to their principles or procedures. Thus, the courts must

remain available, as a last resort, so as to permit the entry of appropriate orders, consistent with the due process clause, requiring or compelling adherence to our laws (including laws with respect to truancy and incorrigibility) when court action is required. As ideal as the majority recommendation might be, there is no other way to enforce legal responsibilities; there is no other way to insure appropriate treatment of juveniles when community services and resources are unavailable, and there is no other way to assure adherence to due process requirements in the absence of court jurisdiction.

I emphasize, however, as noted above, that the use of intake in such matters should be encouraged and that the "in court" appearance of a status or JINS offender should be indeed rare. However, the court should be available when and if needed. This is particularly true because of the relationship between the juvenile status offender and his parents who may have substantially contributed to his situation. The family court should be permitted to deal with both the parent and the child, and our Legislature (as opposed to municipal governing bodies) should enact parental responsibility statutes to the extent constitutionally permissible. See *Doe v. Trenton,* 143 *N.J. Super.* 128 (App. Div. 1976), certif. granted 72 *N.J.* 466 (1976). There are cases in which the family cannot or will not seek or obtain treatment or community resources voluntarily and in which the protection of the public and society requires court intervention.

I recognize full well that society can usually be protected by intervention of court processes because the public as an institution is normally injured only by the commitment of an offense which would otherwise give rise to a delinquency charge. But we should not wait until it is too late to provide community resources and court services when the status offender becomes a delinquent. The alternative of legislating coercive powers for voluntary or community-based agencies not subject to court supervision (nor assigned the matter, subject to conditions imposed by a court which can amend its order for non-compliance) is in my mind more threatening than the authority of the court and certainly less lacking in due process. In summary, I believe that, subject to the increased use of intake services recommended by the Committee, status offenders should remain within the jurisdiction of the family court concept and that this issue must be analyzed in connection with the development of the family court. I regret that the Committee adopted the recommendation to remove status offenders from the courts without any analysis of what is occurring in other jurisdictions on this subject and without any evaluation of the results of similar activities, if any, in other states. See *e.g.*, Gill, "The Status Offender," *Juvenile Justice* (August 1976) p. 3; Martin, "Status Offenders in the Juvenile Justice System: Where Do They Belong?" *Juvenile Justice* (February 1977) p. 7. I agree that "cases which previously would have been scheduled on the no counsel mandatory calendar should be considered for diversion at the intake level." Juvenile Judicial Process Standard 4.3, (page 223) However, there are some cases which would not necessarily require the appointment of counsel because of the absence of a likely institutional commitment (*N.J.S.A.* 2A:158A-24) where the juvenile should nevertheless appear before a judge because such an appearance would be beneficial to the juvenile or make him aware of the consequences of his failure to follow the conditions embodied in the disposition imposed.

In light of the above, I believe that a few additional comments are in order.

Juvenile Judicial Process Standard 4.2, (page 223) provides in part that "except for the right to bail, indictment and trial by jury, juveniles should have all the procedural rights given to adult criminal defendants including the right to ask for a public trial." See also the commentary on page 299. *N.J.S.A.* 2A:4-60 provides juveniles with certain Fifth and Sixth Amendment protections specified in the statute together with "the right of due process of law." There is no federal constitutional right to a public trial now extended to juveniles, either under the Sixth Amendment or the due process clause, *McKeiver v. Pennsylvania,* 403 *U.S.* 528, 545-551, 91 S. Ct. 1976, 29 L. Ed. 2d 647 (1971), and thus I do not believe that it can be argued under State law that a juvenile can now obtain a public trial at his request pursuant to *N.J.S.A.* 2A:4-60. Nevertheless, I support the proposed standard which would require an amendment to State law and which would permit such public trials, at the request of the juvenile, as a matter of State law. I believe that the juvenile should be permitted to ask for a public trial, as a matter of fairness, if the results of juvenile adjudications can be made public (as a matter of discretion or otherwise), and I generally favor discretionary *post adjudicatory* disclosure if the juvenile is found guilty of offenses which would be indictable if committed by an adult.[9] See Report of the Task Force on Juvenile Justice, 100 *N.J.L.J.* 441 (1977). But the waiver must be an educated one (because the confidentiality requirement is designed to protect him in the event of acquittal or subsequent rehabilitation). Thus, this subject relates to the right to counsel and I think that any standard on this subject should be accompanied by a commentary that public trials in juvenile cases should be requested very seldomly.

Related to the above is the growing recognition of the need for the assignment or appointment of a guardian or child advocate, not retained by the child's parents, to represent the child, particularly where there is the possibility of conflict or a background involving child neglect, desertion, abuse or abandonment of parental responsibilities, see *J. v. Supreme Court of Los Angeles,* 4 *Cal.* 3rd 836 (1971).

Juvenile Judicial Process Standard 4.3, paragraph 3 of Juvenile Judicial Process Standard 4.4, and paragraph 2 of Juvenile Judicial Process Standard 4.16 (page 232) should be clarified, however, to make clear that the counsel is not to be provided at the expense of the State unless both the parents and child are indigent. See *N.J.S.A. 2A:158A-25.*

Adult Criminal Standards Regarding Speedy Trial

Various suggestions have recently been made that the State of New Jersey adopt strict time limits for the processing of all criminal cases. There have been other suggestions that the State process defendants incarcerated pending trial within strict time limits. The Standards and Goals Committee has recommended such standards, but has significantly premised same upon the development of resources sufficient for implementation (Trial Preparation 9.3 page 176). Wisely, however, the Committee has made other suggestions which would expedite the criminal justice system without detriment to the defendant or the State. These interrelated standards should be viewed as an integrated whole.

A

Of course, the adoption of Pretrial Process Standard 8.1 (pages 37-38) concerning summons in lieu of continued detention following arrest will go a long way in solving the problems of disparity in treatment based on pretrial release of non-indigents and incarceration of indigents unable to make bail or other satisfactory conditions of pretrial release. This standard and Pretrial Process Standards 8.5-8.7 (pages 39-40) substantially contribute to detention of only those defendants who should be detained pending trial and towards permitting our courts to process those cases which, in the public interest, should be processed within the 90-day period established for "jail cases" in Standard 8.3.

It should be emphasized that Pretrial Process Standard 8.1 does not suggest the issuance of a summons in lieu of arrest in situations where the case would otherwise be commenced by arrest and the defendant is apprehended "on the street." A case can be commenced in three ways in New Jersey. The least frequent manner is by direct indictment of a grand jury. A frequent manner of commencing a criminal case is by complaint signed by a citizen or police officer (the latter usually following line-up or some other identification procedure) leading to the issuance of a summons or a warrant. In this instance, the use of a summons is now permitted and summonses should be more frequently used when there is assurance that the defendant will appear for all proceedings. See *R.* 3:3-1. The most frequent means of commencing a case is by arrest (on the street or by other pursuit, etc.), and after arrest a defendant must be booked and fingerprinted when charged with an indictable offense or any narcotics offense. See *N.J.S.A.* 53:1-15, -18.1. He must also be booked and fingerprinted when detained or confined, post-arrest or otherwise. See *N.J.S.A.* 53:1-12 *et seq.* Our present rules, *R.* 3:4-1, permit the issuance of a summons *after arrest,* in lieu of detention or continued detention, but there have been numerous examples of cases where defendants have been unnecessarily detained in custody awaiting the setting of bail or conditions of pretrial release because of the part-time municipal courts, the absence of available judicial personnel after court hours, or the lack of understanding that a summons can be used post-arrest. Our proposed Pretrial Process Standard 8.1 would go a long way in encouraging the use of a summons after arrest when the case is commenced by arrest as well as in situations where the case is commenced by complaint prior to the issuance of a warrant or summons. It spells out the presumptions in favor of the use of summons and against its use by both law enforcement officers and judges. I very much support its adoption because it details needed guidelines, but emphasize that by its strict reading, the standard would allow the fingerprinting and booking process to take place in cases where the defendant is arrested on the street or otherwise, *i.e.,* where the case is commenced by arrest, so that vital "tracking" and identification procedures can be employed.[10] In other words, while the police would be encouraged to issue summonses after arrest and would be encouraged to develop mechanisms to book and print on the street, where possible, or at the precinct level, they nevertheless would be able to verify identification of a defendant, and with the help of the developing OBTS-CCH systems, identify a defendant and ascertain if there are any other outstanding warrants.

As a result of adoption of this Standard, our jails would not be overcrowded, defendants needlessly detained would not be held in custody pending trial or the setting of pretrial release conditions, and (hopefully) only those defendants who cannot make bail (reasonably set) will remain in jail pending trial. In turn, the jails will house significant offenders and defendants charged with serious offenses, and by virtue of defendant's status, the case will receive the expeditious attention which is required.

The proposed Pretrial Process Standard 8.4 (page 38) would require that every arrested person be taken before a judge no later than 48 hours after arrest, and this outside limit would guarantee a determination with regard to the appropriate conditions of pretrial release. The conditions and form of pretrial release have been liberalized so that the judges

would be given flexibility of assuring the proper conditions of pretrial release in all cases. See Standards 8.4-8.7 (pages 39-40).

B

For some time in this State, there has been a question as to whether prosecutors have the power to administratively close files, or to administratively dismiss complaints. The problem was magnified by the inclusion of the word "complaint" in *R.* 3:25-1, amended on July 17, 1975, effective September 8, 1975, which prescribes the method of pretrial dismissal. The purpose of that amendment was (a) to make clear that complaints, including non-indictable complaints, could be dismissed as part of a negotiated plea. Although Superior and County Court judges were temporarily assigned to municipal courts and could dispose of complaints, as such, there formerly had been no authority for upper court judges to dismiss a complaint, indictable or non-indictable, except if there was undue delay in presenting an indictment to the grand jury, see the former *R.* 3:25-3[11]; (b) to provide a procedure whereby complaints of an indictable nature could be disposed of without presentation to the grand jury (this being extremely important in counties which did not honor the practice permitting administrative dispositions by the prosecutor); and (c) to provide a procedure whereby non-indictable offenses referred to the prosecutor with related indictables could be disposed of at the county level, after disposition of the indictable, without remand to the municipal court of origin, particularly if there were double jeopardy or collateral estoppel problems caused by the disposition of the indictable. Absent a rule dealing with dismissal of complaints at the county level, the practice of dismissal of either indictable or non-indictable complaints by a Superior or County Court Judge was not recognized. The amendment to Rule 3:25-1 was packaged with the adoption of *R.* 3:25A which permits the disposition of indictments, accusations or complaints pending in other counties at the time of the disposition of an indictment, accusation or complaint in the forum county. The word "complaint" had to be included in order to permit simultaneous disposition (in the manner provided by the rule) of all matters pending against a given defendant "in any county or municipality in the State." See 1975 Criminal Practice Committee Report, 98 *N.J.L.J.* 321 (1975).

Particularly following the amendment of *R.* 3:25-1 in 1975, some took the position that no complaint referred to the prosecutor's office after a determination of probable cause or waiver thereof should be disposed without (a) grand jury presentation, (b) downgrade and remand[12] or (c) court order.

Neither *State v. Winne,* 12 *N.J.* 152 (1953) nor *In the Matter of the Investigation Regarding the Ringwood Fact Finding Committee,* 65 *N.J.* 12 (1974) is dispositive of whether or not the prosecutor, in exercising his discretion, can administratively close a file after determination of probable cause or waiver thereof.

The matter appears now to be settled by virtue of the Attorney General's formal opinion dated March 31, 1976 and a recommendation of the Supreme Court's Special Committee, 99 *N.J.L.J.* 689 which would give prosecutors authority to close files administratively as well as to remand indictable cases administratively to the municipal courts for treatment as non-indictable offenses. The prosecutor's power in this regard will keep from the criminal justice system those cases which just do not belong there. While some argue that the prosecutorial power to dispose of the cases administratively would lead to some abuse, the practice should not remain untested, and the Constitution gives the prosecutor the charging responsibility. Perhaps some day arguments could develop relating to a prosecutor's refusal to dismiss a charge, *cf., State v. Leonardis,* 71 *N.J.* 85 (1976), but given a probable cause determination or grand jury indictment such an argument rarely, if ever, could be successful.

Our proposed Pretrial Process Standards 8.2 and 8.3 (pages 38-39) recommend guidelines and procedures for prosecutorial screening and leave recourse to the complaining witness to object to a dismissal (as opposed to a defendant's objection to non-dismissal). It seems to me that greater use of the screening device, subject to proper control in the standards we recommend, and diversion of relatively minor cases from the system permits speedier disposition of the cases which require court attention. I emphasize, however, that our proposed standards do not in any way permit prosecutors (as opposed to the courts) to make "diversion" decisions. (Prosecutors must "consent" to diversion. See *R.* 3:28; *State v. Leonardis, supra*) In other words, the prosecutor's decision to decline prosecution should not be based on the defendant's willingness or approval of suggestions that he do community service, make restitution or take any other action which could be deemed a restraint imposed by the prosecutor.[13]

Administrative disposition or "screening" must be distinguished from diversion. See *Report of the National Advisory Commission on Criminal Justice Standards and Goals, Task Force on Courts,* p. 17. As the National Advisory Commission Task Force on Courts reports:

> Screening has two objectives. One is to stop proceedings against persons when further action ultimately would be fruitless because there is insufficient evidence to obtain or sustain a conviction. Any resources that police, prosecutors, or courts expend in processing such individuals are wasted because the outcome will nullify their earlier efforts. Effective allocation of resources dictates that screening for evidence insufficiency be done as early and as accurately as possible. Fairness to the individual also requires that as soon as it can be ascertained that he could not

be convicted, he be freed from any nonvoluntary involvement with the criminal justice system. (*Report of the National Advisory Commission on Criminal Justice Standards and Goals, Task Force on Courts,* pp. 17-18.)

The Task Force on Courts concludes that "screening" is appropriate only when "neither diversion nor conviction is desirable" (p. 18) and asserts that development of criteria and procedures within prosecutors' offices is necessary "to provide sufficient assurance of fair and appropriate screening" (p. 19). See Standards 1.1 and 1.2 of the *Report of the National Advisory Commission on Criminal Justice Standards and Goals, Task Force on Courts,* and Standard 3.9 of the *ABA Standards Relating to the Prosecution Function and the Defense Function.*

Of course, the greater use of diversion (see Pretrial Process Standards 8.8, 8.9 and 8.10, pages 40-42) would be extremely helpful in promoting beneficial rehabilitative programs for defendants which, in turn, would hopefully benefit the State by reduced criminal activity. These programs would also have an impact on the speedy trial issue by freeing up our limited resources and permitting our courts to concentrate on cases which must be tried.[14]

The alternatives of decriminalization or multiplying expenditures (about six times the amounts we are now spending) are unthinkable. Approximately 27,000 indictments and accusations were filed in both the 1974 and 1975 court years. In the 1974 court term, 23,260 were disposed, and in the 1975 court year, 25,495 were disposed. In both terms just over 3500 indictment and accusations could be tried (partially or totally). The remainder of the dispositions were by dismissal (including diversion) or plea.

C

Probably the most important recommendation with regard to improving the criminal justice system is that which would call for a constitutional amendment permitting use of probable cause hearings instead of indictment, but retaining the grand jury for investigative purposes and indictments in exceptional circumstances. See Trial Preparation Standards 9.1-9.2, (page 42).

I strongly support the recommended change in the grand jury process and I concur in the recommendation that an information process be permitted and, in fact, substituted for the grand jury procedure in complaint cases. I do so because I strongly feel that the present probable cause and grand jury systems are duplicative and wasteful; and I prefer to rely upon the former because of the absence of a federal constitutional right, binding upon the States, requiring indictment by grand jury, see *e.g., Alexander v. Louisiana,* 405 *U.S.* 625, 633 (1972), and because of the mandated hearing required by the federal constitution in custody cases. See *Gerstein v. Pugh,* 420 *U.S.* 103 (1975). I would endeavor, where possible, to combine the *Gerstein* and probable cause hearings, and believe that our recommendations promote this concept.[15]

It should be noted that the recommendation would require the probable cause hearing to be conducted in a centralized, full-time court. I frankly do not believe that a change in the charging process, without unification and consolidation of the present municipal court jurisdiction (at least with respect to matters falling within the scope of our report) and without the conduct of expeditious probable cause (or preliminary) hearings in full-time courts, would constitute a step forward. The expanded probable cause hearings must be conducted before full-time judges in full-time courts.[16]

I question the wisdom of permitting the prosecutor to bypass probable cause hearings in complaint cases (absent extraordinary circumstances), and our proposal advocates this position. I also question the need for post-indictment probable cause hearings (following direct indictment or indictment when such hearings are avoided in complaint cases),[17] see *Gerstein v. Pugh, supra; Coleman v. Alabama,* 399 *U.S.* 1 (1970); *Johnson v. Superior Court,* 15 *Cal.* 3rd 248 (1975); *State v. Ordog,* 45 *N.J.* 347, 363 (1965) *cert.* denied 354 *U.S.* 1022 (1965); *State v. Smith,* 32 *N.J.* 501, 536 (1960) *cert.* denied 364 *U.S.* 936 (1961; *State v. Cox,* 114 *N.J. Super.* 556 (App. Div. 1971), certif. den. 58 *N.J.* 93 (1971). Unlike other recent proposals, our recommendation would not require a post-indictment probable cause hearing, and I therefore believe that the adoption of procedures, such as those we advocate, would avoid duplicative probable cause and grand jury proceedings and would promote speedier trials.

D

Finally, with respect to speedy trials, Trial Preparation Standard 9.3 (page 43) suggests the need for resources for the trial of incarcerated defendants within 90 days of arrest and all other cases within 6 months of commencement. This standard underscores the need for resources and premises the speedy trial standards on the availability of resources. In 1972 the United States Supreme Court decided *Barker v. Wingo,* 407 *U.S.* 514, 92 S. Ct. 2182, 33 L. Ed. 2d 101 (1972). In its decision the Court rejected both the "demand" rule and a rule requiring trial within a specified period of time. The Court, speaking through Mr. Justice Powell, said:

> We, therefore, reject both of the inflexible approaches—the fixed-time period because it goes further than the Constitution requires; the demand-waiver rule because it is insensitive to a right which we have deemed fundamental. The approach we accept is a balancing test, in which the conduct of both the prosecution and the defendant are weighed. 33 L. Ed. 2d at 116.

The Court adopted an *ad hoc* balancing test to de-

termine whether a particular defendant was deprived of his right to a speedy trial thereby requiring dismissal of the charges against him. Factors include "length of delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant." 33 L. Ed. 2d at 117. See also *Moore v. Arizona*, 414 *U.S.* 25, 94 S. Ct. 188, 38 L. Ed. 2d 183 (1973); *Strunk v. United States*, 412 *U.S.* 434, 92 S. Ct. 2260, 37 L. Ed. 2d 56 (1973); *Dillingham v. United States*, 46 L. Ed 2d 205 (1975).

In light of *Barker v. Wingo* and its progeny, there is a procedure to test speedy trial claims and allegations that defendants have been denied Sixth Amendment rights following commencement of proceedings by arrest, complaint, direct indictment or otherwise. See *State v. Szima*, 133 *N.J. Super.* 469 (App. Div. 1975); rev. 70 *N.J.* 196 (1976); *State v. Smith*, 131 *N.J. Super.* 354 (App. Div. 1974) aff'd o.b. 70 *N.J.* 213 (1976); *State v. Davis*, 113 *N.J. Super.* 484 (App. Div. 1974), *State v. Moore*, 147 *N.J. Super.* 490 (App. Div. 1977).

Our proposal is to allocate the necessary resources for providing trials within the time limits established by Trial Preparation Standard 9.3 (90 days in jail cases and 6 months from commencement of all other cases). However, it would not require the dismissal of a case (if those time limits were not met) in the absence of a denial of a constitutional right to a speedy trial. Accordingly, with that understanding, I very much support the standard. Moreover, as indicated, I believe that the other standards referred to above would expedite the proper handling of criminal matters and feel that the package should be considered as a whole in terms of necessary reforms toward achieving speedy trials.

Adult Criminal Standards Regarding Sentencing, Probation and Parole

In light of Judith Yaskin's dissent concerning the sentencing standards, and because of a possible dissent concerning the State's right to appeal from the sentence imposed, I add a number of personal observations concerning sentencing.

A

There can be no doubt that New Jersey, like all other States is confronted by the problem of "sentence disparity." The difficulty is compounded by the fact that we now have three separate sentencing alternatives: (a) the minimum-maximum sentence to State Prison, *N.J.S.A.* 2A:164-17; (b) the indeterminate sentence for offenders under the age of 30 who have not been sentenced at any prior time to State Prison in New Jersey or in any other State[18]; and (c) a sentence to a county institution for up to 18 months in counties having penitentiaries and workhouses and for up to 12 months in all other counties. *N.J.S.A.* 2A:164-15. Of course, despite our present statutory complex, women are entitled to be sentenced like men. However, they serve all sentences (except those to county institutions) at the Correctional Institution for Women. See *State v. Chambers*, 63 *N.J.* 287 (1973). In light of the sentencing alternatives, disparity has resulted because a sentencing judge, with the exception of certain crimes which carry mandatory sentences, see *e.g., State v. Robinson*, 139 *N.J. Super.* 58 (App. Div. 1976) (mandatory life sentence following conviction by jury of murder in the first degree), can impose sentences from one day to the statutory maximum for the same offense and because different sentences are frequently imposed in like cases. As a result, there has been a great movement in this State and throughout the country to develop "determinate" or "fixed" sentence practices, and there has been recent advocacy of a "just deserts" principle in sentencing. See, *e.g.*, the *Correctional Master Plan for New Jersey* (1977).

I believe that the "determinate" or "fixed" concept of sentencing which requires the imposition of a sentence based on the crime (as opposed to the offender and the crime) would be a step backward in our jurisprudence, see *State v. Ivan*, 33 *N.J.* 197 (1960), and I believe that we should be concerned with the offender as well as the offense.[19] *Id.* at 199-200.

The big debate in terms of the purposes of sentencing and corrections (rehabilitation, deterrence, retribution, reintegration, incapacitation, etc.) will continue for some time if not forever. While we consider this subject and new sentencing structures, we can simultaneously work towards eliminating disparity within the present system.

Disparity can best be eliminated by learning what it is we are presently doing and by analyzing all of the factors taken into account by sentencing judges, so that guidelines can be established to ascertain how defendants with similar backgrounds have been previously sentenced when charged with similar offenses. Computer methodology can now develop such guidelines, leaping to the judge, after consideration of all the factors involved in the case and all of the relevant information concerning the offender, to impose the right sentence in the case (subject to the statutory maximum). To my mind, the sentencing guidelines project recommended in the Standards and Goals (and implemented in the Administrative Office of the Courts), see Sentencing, Parole and Probation Standard 10.3, (pages 45-46), presents a major step forward with respect to sentencing. Our proposed standards will limit discretion both with respect to the sentencing authority and the paroling authority and would come closer to making sentences meaningful and honest in terms of under-

standability and relating the sentence imposed with the time to be served. See Sentencing, Parole and Probation Standards 10.1 *et seq.*; 10.15 *et seq.* (pages 45 and 47).

The proposed standards would eliminate disparity by analyzing current practice and by the development of guidelines and sentencing counsels, and I support them.

B

The question of guidelines, with the right of the judge to deviate therefrom for stated reasons, poses another problem and that deals with the right of the State to appeal from the sentence imposed. New Jersey at present does not permit appellate courts to increase sentences on appeal, either on appeal by the prosecutor[20] or in response to an appeal by the defendant. At common law, a sentence could be amended at any time during the term in which the judgment was rendered, ". . . but not to impose a new or different sentence increasing the punishment after the execution of the sentence had begun, even during the term." *State v. Laird,* 25 *N.J.* 298, 304-305 (1957). New Jersey was early to recognize that where a valid sentence had been even partially executed, it could not be increased, either during or after the term of court in which the sentence was pronounced. *Laird, supra,* at 306-307. Compare *State v. Sheppard,* 125 *N.J. Super.* 332 (App. Div. 1973), certif. den. 64 *N.J.* 318 (1973). In *State v. Matlack,* 49 *N.J.* 491 (1967), the Supreme Court was considering the forerunner of *R.* 3:21-10 (the rule relating to change or reduction of sentence) and concluded that its ". . . language does not authorize a trial judge to increase a sentence previously imposed by him." p. 501. The Court noted that the rule, which remains substantially intact today:

> ". . . modifies the common law by allowing a trial judge to reduce or change a sentence within time limitations, but does not empower him to increase sentences. *Cf. State v. Laird,* 25 *N.J.* 298, 307 (1957). A rule which purported to allow a trial judge to increase a sentence previously imposed would raise serious problems under the constitutional right to be free from double jeopardy." 49 *N.J.* at 501.

See also *State v. Pratts,* 145 *N.J. Super.* 79 (App. Div. 1975) aff'd 71 *N.J.* 399 (1976).

There is no precise authority extending the principle of *Matlack* to the appellate scene, and the New Jersey courts have never precisely held that the Supreme Court or Appellate Division cannot increase a sentence on appeal. However, research has revealed no evidence that such an increase ever occurred.

In 1969, the United States Supreme Court decided *North Carolina v. Pearce,* 395 *U.S.* 711, 89 S. Ct. 2072, 23 L. Ed. 2d 656 (1969). *Pearce* held that, at a second trial (conducted following appellate reversal), a defendant's sentence could not be increased (at least where the judge was imposing sentence) in the absence of "identifiable conduct on the part of a defendant occurring after the time of the original sentencing proceeding," 23 L. Ed. 2d at 670, and a failure on the part of the sentencing judge to state those reasons for the increase. In 1971, our Supreme Court decided *State v. DeBonis,* 58 *N.J.* 182 (1971) which questioned the applicability of *Pearce* to trials *de novo* following municipal convictions and concluded, "as a matter of policy and apart from constitutional compulsion" that ". . . a defendant who appeals from a municipal court should not risk a greater sentence." 58 *N.J.* at 188. See also *State v. Nash,* 64 *N.J.* 464 (1974) holding that *DeBonis* would be applied retroactively to cases pending on direct appeal on the date it was decided.[21] It would seem clear, in light of *DeBonis*, that if a municipal court sentence could not be increased by a judge on trial *de novo* in a county court, that it should not be increased thereafter on further review before the Appellate Division.

Recently, our Supreme Court held, in *State v. Spinks,* 66 *N.J.* 568 (1975), that a defendant sentenced within the confines of a plea bargain recommendation could appeal his sentence and that the State's contention that it should have the opportunity to withdraw from the terms of a plea bargain modified on appeal had no merit. With regard to the State's contention, the Court, speaking through Justice Sullivan, noted that ". . . vacation of pleas on the application of the State and the reinstatement of criminal charges after sentence has been imposed would present serious questions of double jeopardy." 66 *N.J.* at 574. See also *State v. Wolf,* 46 *N.J.* 301 (1966) holding that a defendant convicted for first degree murder and sentenced to life imprisonment could not, following reversal, be subject to the death penalty on retrial. These cases support the proposition that our appellate courts, as a matter of policy—if not constitutional law—cannot increase a sentence on appeal or remand for an increase of sentence.

The subject of increasing sentences on appeal is ripe for review in constitutional and policy terms because of the unsettled status of the law following *Pearce, supra,* and its progeny. This is particularly true in light of the ongoing debate caused by the divergent views on this subject in the A.B.A. Standards with regard to *Appellate Review of Sentences,* Sections 3.3 and the National Advisory Commission Standards, *Task Force on Courts,* Section 6.3, Subparagraph 6. The National Advisory Commission on Criminal Justice Standards and Goals in Standard 6.3(6) would permit a reviewing court, for stated reasons, to impose any sentence which could have been imposed at the trial level "if the defendant has asserted the excessiveness of his sentence as error." The commentary to sub-paragraph 6 provides:

"The standard provides in this subparagraph for authority in the reviewing court to increase as well as reduce the sentence, if the defendant asserts the severity of the sentence as a ground for review. This is a controversial matter. The Advisory Committee of the American Bar Association Project on Minimum Standards recommended that a court aurhorized to review sentences not be granted authority to increase the sentence. The Special Committee on Minimum Standards voted 8 to 4 to recommend such authority. By a vote of 95 to 75, the American Bar Association's House of Delegates voted to accept the Special Committee's position, and their standards provide for authority in the reviewing court to substitute for an appealed sentence any sentence the trial court could have imposed. (American Bar Association Project on Minimum Standards for Criminal Justice, *Standards Relating to Appellate Review of Sentences*, §3.3(ii) (Approved Draft, 1968).

The Commission recognizes the objections to such a position. Defendants given improperly harsh sentences may be deterred from offering this for review by the possibility that they will end up with a worse sentence. Defendants whose sentences are increased may be so embittered that the correctional task of dealing with them may be greatly complicated. There is arguably some unfairness in submitting only those defendants who offer the purported excessiveness of their sentence for review to the danger of an increase in sentence. These objections, however, appear to the Commission to be outweighed by the value to society in having some recourse against unjustified leniency or other inappropriateness in the sentencing process. While it is not convinced that the prosecution should be given the right to seek review of sentences in all cases, the Commission feels that to grant it this right when the defendant himself has raised the matter of appropriateness of sentence is a reasonable middle ground."

If, constitutionally, the State can be permitted to appeal from the sentence imposed, it should not depend upon an appeal by the defendant, particularly because this could have a "chilling effect" on defense appeals. *Cf. Pearce, supra.* Either the State should, or should not, as a matter of fairness, be permitted to make such an attack. After reflecting on this matter and debating it for some time, I would continue to prohibit all sentence appeals by the State. However, with sentencing panels and sentence counsels now being formed, consistent with the standards of the National Advisory Commission there is now good cause for the argument that a lenient sentence should not be immune from appellate review. I believe that Sentencing, Parole and Probation Standard 10.5 (page 46) leaves the matter where it should be. That Standard would allow the Court to develop under its constitutional authority, *N.J.S.A.* Art. VI, §2, p. 3, rules governing appellate procedures. The Court can examine developments in this area and can amend its rules as experience, policy and constitutional decisions unfold.

C

In connection with sentencing, I would be remiss not to point out, that in my view, the Standards and Goals Committee has made a major recommendation of great impact in the criminal justice area which should not go unnoticed. It concerns the unification of probation. It is not frequently realized that most dispositions involve probationary sentences, either by virtue of a fully suspended sentence to a State or county institution or a partially suspended sentence to a county institution. Over 20,000 adult defendants and 1,400 juveniles were placed on probation in the 1975 court term by criminal courts (12,786), municipal courts (8,164), and juvenile courts (1,402).

Unfortunately, due to our statutory complex, 21 separate probation departments exist in 21 counties. See *N.J.S.A.* 2A:168-1 *et seq.* Each has a separate administration and each, although technically responsible to the Assignment Judge and Supreme Court, see *R.* 1:34-4, has separate policies. While there are some very fine probation departments in the State, there are many suffering from resource deficiencies, caused by local financing, see *N.J.S.A.* 2A:168-5, -8, and some also suffer the product of individual collective bargaining agreements, local recruiting policies and the like. The unification of the probation service in the Administrative Office of the Courts, even without an independent Judicial Civil Service, and subject to the Standards and Goals adopted by this Committee, Sentencing, Parole and Probation Standard 10.6 *et seq.* (page 46) would permit even greater enforceability of Supreme Court policies and decisions with respect to probation. *Cf. Passaic County Probation Officers' Association v. Passaic County*, N.J. (1977).

Conclusion and the Need for Follow-up

I strongly support the Standards and Goals, and particularly those dealing with processing of adult criminal cases developed by Sub-committee IV. I want to add, however, an additional comment concerning a standard which has not been formally adopted, at least at the time of this writing. I recommend that a committee be appointed jointly by the Governor, the Chief Justice, the President of the Senate and the Speaker of the Assembly (preferably four each by the Governor and Chief Justice, and two each by the President of the Senate and Speaker of the Assembly) not only to monitor the status of the standards and goals and to report annually to the Governor, Chief Justice and Legislative leaders with respect to same, but also to coordinate policy priorities among the three branches of government in the

area of criminal justice and law enforcement. It seems to me, from three years of experience in State government, that there is a developing recognition of the need for communication and coordination between interrelated agencies in government, but the responsible agency heads are too busy with day-to-day decision-making and day-to-day priorities to themselves become concerned with planning and coordination. Thus planning, communication and coordination is frequently performed by persons without decision-making capability and, as a result, decision-making is sometimes performed in a vacuum. Moreover, each agency head is properly concerned with the priorities facing his agency and the daily problems with respect thereto. As a result, frequently, improvements and developments in the criminal justice and law enforcement communities are slow and delayed by virtue of a lack of agreement or understanding with respect to priorities. The committee suggested herein would not only monitor development of standards and goals and suggest new standards and goals as experience dictates, but would also be a top level agency charged with the responsibility of determining and reporting directly to the Governor, Chief Justice and Legislative leaders regarding the priorities to which these leaders should devote their attention in an effort to resolve the major issues and make the major improvements needed within the community.

It might be suggested that the State Law Enforcement Planning Agency (SLEPA) should be in the position to coordinate related policy development within all agencies of government and to serve as a focal point for communication, coordination and development of policies and priorities. Unfortunately, I believe that SLEPA (particularly with reduced federal funding) has had to concentrate upon the processing of grant applications and issues related to the awarding of same. To my knowledge, they have not had time to concentrate on actual development and coordination of programs and priorities, and this Standards and Goals project is a step in the right direction. SLEPA was created by an Executive Order of former Governor Richard J. Hughes in 1968 (as Executive Order No. 45, dated August 13, 1968). The time has come, particularly in light of the LEAA Reauthorization Act of 1976, for statutory recognition of the State Law Enforcement Planning Agency, but if the budgetary situation changes and the SLEPA Board members can concentrate on planning and coordination, as opposed to justifiable debate concerning allocation of the limited resources, SLEPA could better serve the public as suggested herein. However, in drafting the statute creating the State Law Enforcement Planning Agency, concern should be given to the fact that the three branches of government are equally concerned with law enforcement interests. While the Executive Branch must enforce the law and represents the largest segment of the Criminal Justice community, there should be recognition of the fact that the three equal branches of government are involved with equal interest in terms of planning and coordination; and while it would appear that the Executive Branch should receive the largest percentage of the resources because of its responsibilities, the courts should also receive their fair share and should be equally involved with the Legislature and Executive Branch in the planning of criminal justice incentives and the determination of resource allocations.

References

[1] Some of the following contains material previously developed for other purposes and subsequently incorporated herein.

[2] My references are to three "working" documents distributed to Committee members which embody numbered and, in some instances, unnumbered pages. During the course of this statement, I will refer to standards and pages as I find them in those working documents, Volumes I, II and III. It is difficult to write this statement by such reference, but the time constraints do not permit me to await a final draft of the Standards and Goals. As of the writing hereof, the final draft was being revised, and one of the principal points of this separate statement is that given another 2-3 months of work, the Committee could be furnished with a "polished" product which, among other things, could avoid portions of separate statements such as this (References have since been changed to correspond with final draft.)

[3] The narrative (which includes introductory, problem assessment, New Jersey status comparison with national standards, and commentary sections) was generally prepared by the staff and was designed to aid the Committee in understanding the deliberations and recommendations of the sub-committees. It was not formally adopted or approved by the Committee, although Committee members were given an opportunity to recommend changes with regard thereto.

[4] Were it not for the efforts and strength of our Chairman, Joseph P. Lordi, this venture would not have been as successful as it was. He, the other Committee members and the staff are to be congratulated for such a valuable work product given the time and financial restraints which SLEPA staff explained to be inherent in the grant. I do not intend any criticism of any individual by virtue of my comments concerning methodology. I write this separate statement only because I am so proud of the work product and the efforts of those involved with this Committee and its staff that I think it meaningful for future reference to point out the deficiencies. However, the reasons for the methodology employed do not excuse the necessity of pointing out the difficulties and inconsistencies which resulted.

[5] Particularly as a result of a two-day drafting conference convened by Prosecutor Lordi on May 2-3, 1977, we have come so far that (despite the fact deadlines are necessary in order to achieve necessary finality) at this time I am convinced that we could benefit from two to three more months work so that all Committee members would have an opportunity to adequately

read all the standards and the entire narrative and propose any necessary changes thereto. Given the busy schedules of the type of people necessary for the proper and successful undertaking of a Standards and Goals project, I do not believe that each member of the Committee has had adequate time to thoroughly react, at least to the Third Working Document. (The Third Working Document was only presented for consideration at the plenary meeting of April 15, 1977. It embodied approximately 600 pages of our Report, and was delivered, in part, immediately before the conference of April 15, 1977, in part on the day of the conference and in part subsequently thereto.) I believe that a little more time should have been devoted to review, integration and draftsmanship following the third plenary (adoption) conference. I state this while recognizing, full well, the requirement that the Report had to be finalized and printed for submission by the end of June, 1977.

[6] The alternatives to case screening, diversion, plea bargaining and the like would be substantially more expensive and would require more courts, prosecutors, public defenders and institutions; and there is no evidence that our post-dispositional correctional system is working for the benefit of the defendant or the State (except to the extent that some criminals are incarcerated "off the street").

[7] For example, the Legislature has placed some—and can place more—positions in the unclassified service.

[8] For example, I believe that, consistent with *N.J.S.A.* Art. VI, §2, p. 3 (and Art. VII, §1, p. 2), the Supreme Court could order all judicial employees placed in the unclassified service.

[9] It can be argued that the option for public trials should be limited to offenses where there could otherwise be post-adjudicatory disclosure (irrespective of the public trial). I do not believe that I would so limit the option. However, I would not authorize public trials in JINS cases because of the absence of post adjudicatory discovery or the need for same. The Committee does not consider this subject because it would remove status offenses from the courts altogether.

I do not favor public trials for juveniles except on the juvenile's request.

[10] As there is no statutory requirement for fingerprinting, absent confinement in (non-narcotic) non-indictable matters, there would be no printing if the summons issued without confinement after arrest in such a case. However, it does appear that a summons need not issue if fingerprinting were necessary, *inter alia*, to establish defendants identity, or for purposes of investigation, see Standard 8.1 (1) (B) (F), page 37.

[11] Related thereto was recognition, for the first time, that an accusation or indictment could be dismissed (as part of a negotiated plea or otherwise) upon sentencing following disposition of a complaint (embodying a non-indictable offense). Together with *R.* 3:25A, *R.* 3:25-1 promotes the concept of making possible the simultaneous disposition of all charges pending against a defendant.

[12] Particularly after the decision in *State v. Saulnier,* 63 *N.J.* 199 (1973), prosecutors began to administratively remand indictable cases to municipal courts in advance of grand jury presentation for disposition as appropriate disorderly persons offenses under the theory that the proper charge involved a non-indictable offense.

[13] I favor prosecutor and police discretion to decline prosecution both in the juvenile and adult areas. I do not favor prosecutor or police "diversion" programs because I believe that even "voluntary" agreements to perform an act as a condition of dismissal or nonprosecution may be inherently coercive given the alternative of traditional prosecution.

[14] There is presently an equal protection issue because of the present county funding of diversion programs and the absence of such programs in some counties. Other issues exist because of inadequate resources to make pretrial intervention programs work as well as they should. Standard 8.11 (page 42) is designed to solve these problems and, together with Standard 8.12 (pages 42-43) which calls for comprehensive pretrial process planning, should be considered in conjunction with the development of a unified and consolidated probation service. These standards, read as a whole, therefore would help improve the criminal justice system provided that it gets the resources necessary to that end.

[15] I also agree with the recommendations to retain the investigative grand jury and the power of direct indictment.

[16] This concept would also permit full-time prosecutors (and full-time public defenders where the defendant is indigent) to appear at probable cause hearings. In turn, counsel could better evaluate the case and commence trial preparation at an early date, and more meaningful "plea discussions" could result.

[17] I do not necessarily believe that our proposal (permitting charging by information *or* grand jury) makes the probable cause hearing a "critical stage." Post-indictment probable cause hearings would require duplicative proceedings which the major recommendation regarding the charging process seeks to avoid.

[18] An indeterminate sentence is for a maximum sentence of 5 years unless the statutory maximum for the crime is less than 5 years in which event the maximum indeterminate term is the statutory maximum for the crime, or unless the statutory maximum is above 5 years in which event the indeterminate term can be raised "for good cause shown" up the the statutory maximum. See *e.g., State v. Prewitt,* 127 *N.J. Super.* 560 (App. Div. 1974); *Bonilla v. Heil,* 126 *N.J. Super.* 538 (App. Div. 1974). "Not previously sentenced to State Prison" as used in *N.J.S.A.* 30:4-147 has been held to mean that the defendant has never actually been incarcerated in State Prison. *State v. Pallitto,* 107 *N.J. Super.* 96 (App. Div. 1969) certif. denied 55 *N.J.* 309 (1970).

[19] Fixed sentences within the minimum-maximum ranges, to my way of thinking, might increase disparity because of the disparity which could result with respect to whether or not to incarcerate at all.

To my way of thinking, fixed or determinate sentences also have impact on subjects such as prosecutorial discretion, plea negotiations and calendar congestion, and the impact of sentencing discretion on the remainder of the criminal justice process must be analyzed.

[20] *R.* 2:3-1 does not grant the State the right to appeal from a sentence imposed. *R.* 2:3-2 does give a defendant the right to challenge a conviction even if a suspended sentence is involved. See *State v. Spinks,* 66 *N.J.* 568, 573 (1975).

[21] As Justice Clifford pointed out in *Nash,* Chief Justice Weintraub's prophecy in *DeBonis* came true, and the United States Supreme Court subsequently held that *Pearce* did not extend to resentencing after a trial *de novo.* See *Colten v. Kentucky,* 407 *U.S.* 104, 92 S. Ct. 1953, 32 L. Ed. 2d 584 (1972). Nevertheless, the Supreme Court of New Jersey continued to honor the *DeBonis* rule as a matter of State policy. See also *Ludwig v. Massachusetts,* *U.S.* , 96 S. Ct. , 49 L. Ed. 2d 732 (1976).

ADDENDUM TO THE REPORT OF THE SUPREME COURT'S COMMITTEE ON JUVENILE AND DOMESTIC RELATIONS COURTS FOR THE 1976-1977 TERM

AN ACT PROVIDING FOR COURT REVIEW OF CHILDREN IN PLACEMENT

1. PURPOSE

It is the purpose of this Statute to provide for court review of all children in placement.

2. DEFINITIONS

"Children in Placement" are those children who have been removed by action of a governmental agency from their parental home and placed in foster care, group homes, residential treatment centers, private residences, training schools and any public or private institution, not including correctional facilities.

"Voluntary Placement" is the out-of-home placement of a minor by a governmental agency at the request of a parent, guardian or person standing in loco parentis.

"In Camera Hearing" is one held before the judge in the court room or his private chambers, out of the presence of the public and any person whose presence may be detrimental to the best interests of the child.

"Emergency Removal" is a placement whenever a governmental agency finds that a child's life or health is in imminent danger. As used in this statute "imminent danger to a child's life or health" does not include circumstances involving abuse or neglect as defined in *N.J.S.A.* 9:6-8.21c.

An "Appropriate Plan" is one which satisfies the following criteria:

(a) The plan is based on a finding that there are no reasonable means by which the child's physical or emotional health may be protected without separating the child from his parental home, and

(b) the plan provides services reasonably believed to facilitate return of the child to his parental home prior to the next scheduled court review, or

(c) where there is a substantial probability that return to the parental home would be contrary to the child's welfare, the plan recommends a placement reasonably believed to provide the child with a stable and permanent environment designed to protect the child's physical and psychological health.

3. COMPLAINT AND HEARING

Whenever the Division of Youth and Family Services or any other governmental agency wishes to place a child as hereinabove defined, a Complaint captioned "Voluntary Placement" shall be filed in the Juvenile and Domestic Relations Court, and a hearing shall be held prior to removal of the child from his home. The Court shall hold a hearing within ten court days to determine whether or not the child's continuation in the parental home would be contrary to his welfare, and to review the appropriateness of the agency plan for the child. The hearing may be held in camera and should be conducted pursuant to court rules.

4. EMERGENCY REMOVAL

Whenever a governmental agency finds that a child's life or health is in imminent danger, as hereinabove defined, it may remove the child from the physical custody of his parents or guardians prior to filing a Complaint in the Juvenile and Domestic Relations Court. A Complaint must be filed with the Court on the next court day, and a hearing held within three court days of the filing to review the need for the emergency removal. The Court may schedule further hearings to review the appropriateness of the placement plan proposed by the agency until a permanent placement has been effected.

5. CITIZEN REVIEW BOARDS

(a) The presiding judge of the Juvenile and Domestic Relations Court may appoint one or more Citizen Review Boards to hold hearings on such children in the placement matters as are specifically referred to it by the Court. The Citizen Review Boards shall consist of five persons knowledgeable in child placement issues, and representative of the various socioeconomic, racial and ethnic groups in that county.

(b) The Citizen Review Boards are empowered to determine:

(1) Whether the child's continuation in or return to the parental home would be contrary to his welfare;

(2) Whether or not the placement plan proposed by the agency is appropriate.

(c) If the placement plan is determined to be inappropriate or no longer necessary for the child's

welfare, the Citizen's Review Board may request that the agency utilize other available alternatives, including but not limited to, return of the child to the parental home.

(d) Any party to the proceedings before the Citizen Review Board may request a court hearing to review the Board's determination. Such hearing shall be held within ten court days of receipt of written request for such a hearing.

(e) Within 10 court days, the Citizen Review Board shall report its determination and the reasons therefor directly to the Court, which shall approve the determination or, on its own motion, hold further hearings.

6. NOTICE AND APPEARANCE OF INTERESTED PERSONS

Notice of all hearings shall be given, whenever practicable, to the child, both biological parents, every person standing in loco parentis, including foster parents, and DYFS or any other governmental agency involved. The Court may require the presence of the biological parents, the DYFS worker primarily responsible for the child, and any other interested person or representative of a governmental agency. The Court may also require the child's presence at the hearing after considering the child's age, emotional capacity, mental capacity, personal desires, and best interests.

Notice of any change in placement shall be given to the Court forthwith.

7. RIGHT OF COUNSEL OR LAW GUARDIAN

The Court shall notify the parents or those in loco parentis of their right to counsel. Whenever the best interests of the child require, the Court may, in its discretion, appoint a law guardian for the child.

8. STANDARDS FOR REMOVAL

No child shall be taken from the physical custody of his parents or guardians unless upon the hearing the Court finds clear and convincing evidence that there is a substantial danger to the physical health of the minor, or the minor is suffering severe emotional damage indicated by extreme anxiety, depression, or untoward aggressive behavior against others, and there are no reasonable means available to the minor's parents or guardian by which the minor's physical or emotional health may be protected without removing the minor from his parents' or guardians' physical custody.

9. RETURN TO PARENTAL HOME

The parent, guardian or person standing in loco parentis may move before the Court at any time for a return of the child from placement. The Court shall return such child as soon as possible, unless it appears from clear and convincing evidence that the return would be detrimental to the best interests of the child.

10. PERIODIC REVIEW

The Court shall continue its jurisdiction over all "Children in Placement" until a permanent placement has been effected. Hearings will be held at intervals not to exceed six months to review the appropriateness and necessity of continuing the placement. The Court may also, on its own motion, hold hearings at any time to review the status of individual children in placement. If the placement is determined to be inappropriate or no longer necessary for the child's welfare, the Court may require the governmental agency to utilize other available alternatives.

COMMENT

Although not specifically mentioned in this proposed legislation, it is expected that the Intake System, soon to be established on a state-wide basis, will aid the courts in reviewing the status of children in placement.

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