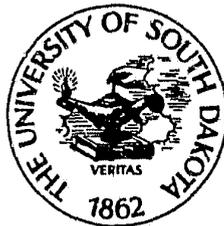
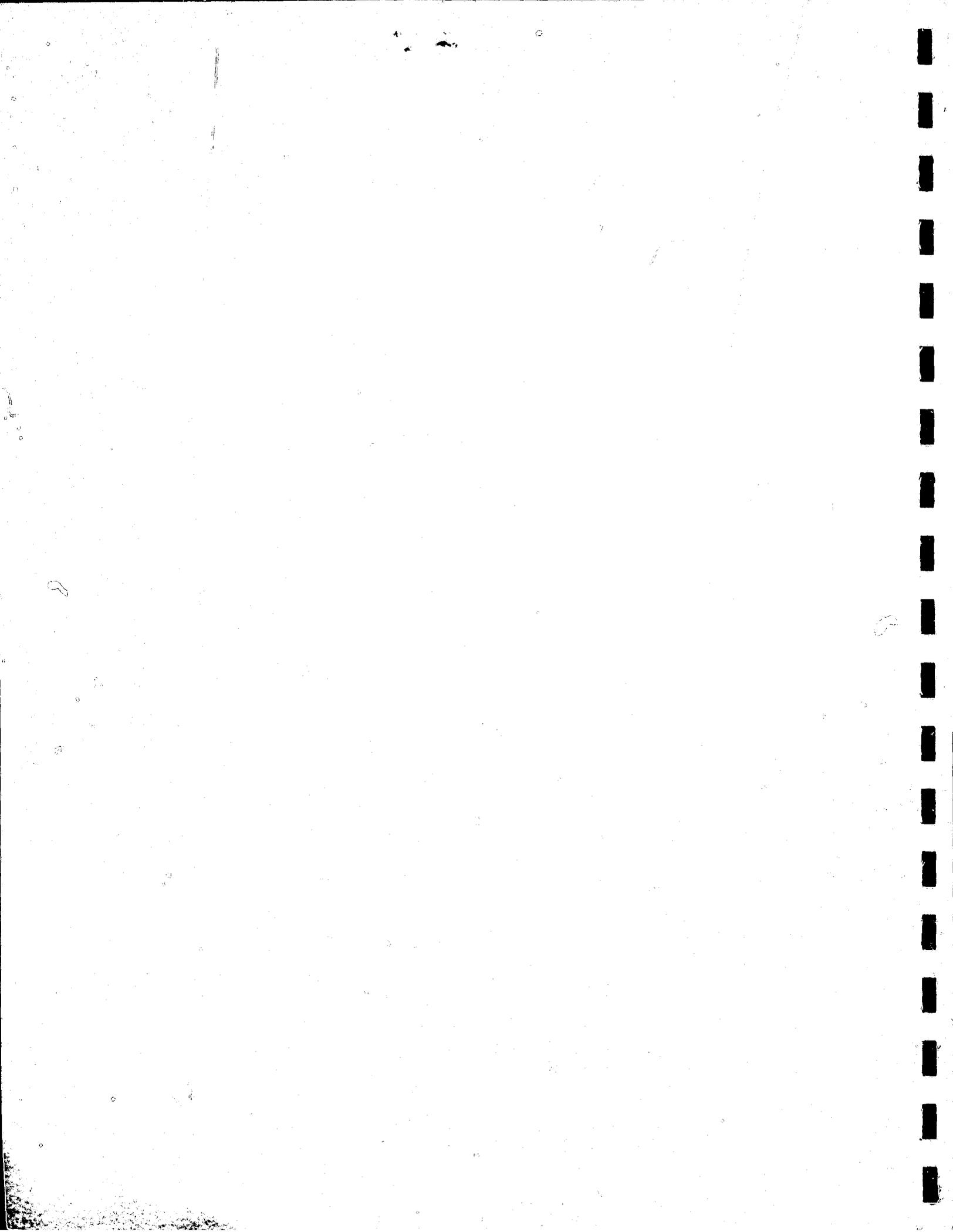


THE ROLE OF THE POLICE
IN THE DISPOSITION OF
JUVENILE CASES IN SOUTH DAKOTA



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SOUTH DAKOTA
STATISTICAL ANALYSIS CENTER



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To Obleo

The laws and institutions must go hand in hand with the progress of the human mind. As that becomes more developed, more enlightened, as new discoveries are made, new truths disclosed, and manners and opinions change with the change of circumstances, laws and institutions must advance also, and keep pace with the times.

Thomas Jefferson
From a letter to Samuel Kercheval
July 12, 1816

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INTRODUCTION

In September and October of 1975 the South Dakota Statistical Analysis Center, at the request of the Division of Law Enforcement Assistance, conducted a survey of law enforcement agencies in the state. In part, the survey's goals were to identify existing police procedures for handling juveniles, manpower allocations in the juvenile area, the level of training and perceived training needs of law enforcement personnel in juvenile matters, and to obtain data on agency disposition of juveniles. The results of that survey appeared in our December, 1976 publication The Juvenile Offender in South Dakota.

Subsequently, it became evident that in order for this skeleton of data to have the greatest impact, it would need to be clothed with the flesh and blood of analysis and recommendation. It is to this end that the present report is offered.

In the initial chapters of this monograph, we undertake to present once again the compiled data concerning the goals mentioned in the first paragraph. However, we have substantially edited and reworked the language of the original report in order to improve readability and we have added numerous footnotes for purposes of analysis and amplification.

In Chapter 3, we introduce a general analysis of the legal implications of the reported data. Such an effort involves examination of the data in light of relevant provisions in the South Dakota Code, model acts, significant case law, and the Constitution, as well as a

comparison of our findings with those of other studies.

Finally, on the basis of the analysis presented in the first three chapters, Chapter 4 advocates specific recommendations for change. These proposals focus on three particular areas: legislative change, administrative policymaking, and improved training.

It is important to recognize at the outset that this study addresses issues attendant to police handling of delinquent and status offenders; it does not discuss police dealings with dependency and neglect cases. Furthermore, analysis of and recommendations with regard to the practices employed by police in handling delinquency and status situations are logically limited by the extent of our data. There are additional matters of great concern which surround this area such as the practices and law relating to the search and seizure of juveniles, juvenile waiver of rights, and juvenile confessions. These subjects must await the scrutiny of subsequent studies.

I. JUVENILE OFFENSE DATA

A. METHODOLOGY

Separate samples of the agencies to be surveyed were chosen from the 136 police departments and 64 sheriff's departments in the state.¹ Table 1 displays the number of police departments in the state and in the sample, arranged according to the population of the jurisdiction and the planning district. The same information for sheriff's departments is provided in Table 2.

Table 1

City Population	Number Of Police Departments In South Dakota According To City Population and Planning District*						Totals for State	% Sample Agencies from each Population Category
	Planning Districts							
	I	II	III	IV	V	VI		
Over 25,000	0	1 (1)	0	1 (1)	0	1 (1)	3 (3)	100
15,000-25,000	0	0	0	0	0	0	0	
5,000-15,000	3 (2)	1 (1)	2 (1)	1	1 (1)	2 (1)	10 (6)	60
1,000-5,000	6 (2)	7 (2)	9 (2)	8 (2)	6 (2)	8 (2)	44 (12)	27.3
Under 1,000	16 (1)	9 (1)	17 (1)	16 (1)	16 (1)	5 (1)	79 (6)	7.6
TOTAL	25 (5)	18 (5)	28 (4)	26 (4)	23 (4)	16 (5)	136 (27)	19.9

* Numbers in parenthesis are number of departments in each category selected for the sample.

Table 2

County Population	Number of Sheriff Departments in South Dakota According To County Population and Planning Districts*						Totals for State	% Sample Agencies from each Population Category
	Planning Districts							
	I	II	III	IV	V	VI		
Over 25,000	0	1 (1)	0	1 (1)	0	1 (1)	3 (3)	100
15,000-25,000	2 (1)	0	2 (1)	1	0	2 (1)	7 (3)	42.9
5,000-15,000	7 (1)	5 (1)	5 (1)	6 (1)	5 (1)	3 (1)	31 (6)	19.4
1,000-5,000	1	0	5 (1)	2	12 (1)	3	23 (2)	8.7
Under 1,000	0	0	0	0	0	0	0	
TOTAL	10 (2)	6 (2)	12 (3)	10 (2)	17 (2)	9 (3)	64 (14)	21.8

* Numbers in parentheses are number of departments in each category selected for the sample.

¹All agencies in the state with jurisdiction over communities or counties with populations of over 25,000 were included in the samples. Agencies with populations of under 25,000 were selected randomly from the population categories and planning districts displayed in Table 1.

The agencies chosen for the survey samples are listed in Table 3 for police departments and in Table 4 for sheriff's departments. At least partial data was obtained from 26 of the 27 police departments² chosen for the survey, representing 19% of the state's police departments and from 14 sample county agencies, representing 22% of the sheriff's departments in the state.

Approximately two weeks before each agency was visited a letter was sent to the police chief or sheriff which explained the goals of the survey and included tables on which to compile the data on juvenile offender characteristics and agency disposition of juveniles, with instructions for completing the tables. The letter requested the tables be completed before the interviewer's visit. Five police departments [19% of those surveyed] and four sheriff's departments [29% of those surveyed] complied with this request with only three of the nine agencies satisfactorily completing all the tables.

The DeSmet, Winner and Belle Fourche Police Departments were unable to supply 1975 juvenile offense data³ due to personnel changes and the absence of 1975 records. One sheriff's department, Pennington County, was unable to comply because of inaccessibility of the 1975 juvenile records in their filing system. Thus, juvenile offense data for 1975 was collected from 24 police departments and 13 sheriff's departments. All succeeding references to juvenile offense data refer only to these 37 agencies unless otherwise indicated.

²No information was available from the DeSmet Police Department because of a recent turnover of department personnel.

³Due to inaccessibility of prior data, the data from the Watertown Police Department was collected for the one-year period from August 1, 1975 through July 31, 1976.

Table 3

Police Department Sample

<u>I. Cities over 25,000:</u>	<u>Population*</u>	<u>Planning District</u>
Sioux Falls	74,105	2
Aberdeen	25,966	4
Rapid City	47,210	6
<u>II. Cities 15-25,000:</u>		
None in state		
<u>III. Cities 5-15,000:</u>		
Brookings	14,284	1
Watertown	14,446	1
Vermillion	9,386	2
Yankton	12,095	3
Pierre	10,647	5
Lead	5,153	6
<u>IV. Cities 1-5,000:</u>		
DeSmet	1,336	1
Clark	1,447	1
Beresford	1,743	2
Dell Rapids	2,196	2
Parkston	1,545	3
Springfield	1,486	3
Miller	2,054	4
Redfield	2,840	4
Highmore	1,178	5
Winner	3,912	5
Belle Fourche	4,451	6
Spearfish	4,416	6
<u>V. Cities under 1,000:</u>		
Castlewood	509	1
Alcester	679	2
Armour	932	3
New Effington	265	4
Presho	902	5
Hill City	434	6

* Based on Current Population Reports, Bureau of Census, April 1975.

Table 4

Sheriff's Department Sample

<u>I. Counties over 25,000:</u>	<u>Population*</u>	<u>Planning District</u>
Minnehaha	100,074	2
Brown	37,804	4
Pennington	67,384	6
<u>II. Counties 15-25,000:</u>		
Brookings	22,558	1
Davison	17,785	3
Lawrence	16,737	6
<u>III. Counties 5-15,000:</u>		
Grant	9,709	1
Turner	9,367	2
Bon Homme	7,887	3
Edmunds	5,600	4
Walworth	7,846	5
Butte	8,382	6
<u>IV. Counties 1-5,000:</u>		
Sanborn	3,426	3
Stanley	2,537	5
<u>V. Counties under 1,000:</u>		
None in state		

* Based on Census Bureau estimates, 1976.

B. RECORDKEEPING SYSTEMS

1. Source and Accuracy of Juvenile Offense Data

To obtain complete data on juvenile offender characteristics and agency disposition, six types of information on each juvenile contacted were sought: the offense allegedly committed; the juvenile's sex, age, and race; the juvenile's repeater status; and the agency's disposition of the juvenile.

Juvenile contact, for the purposes of this report, is an encounter between a youth and an officer happening in one of three ways: [1] a juvenile commits an offense or is associated with unusual activity within an officer's presence; [2] officers recognize a youth "wanted" by the police; or [3] an officer is dispatched to the scene of an offense reported to police headquarters.⁴ It should be kept in mind that each "contact" has been associated with an offense as listed in Table 13, and that when the word "offense" is used in this report it is synonymous with "contact" as defined above.

The extent of records for each of the six types of information is broken down according to the type of agency and the population of the jurisdiction in Table 5. It also indicates by agency-population category, the number of juvenile contacts made in 1975 and the number of contacts for which all necessary data was available from the agencies' records.

The table demonstrates that police departments in cities over 5,000 maintained complete records on virtually all juvenile contacts in

⁴I. Piliavin and A. Briar, "Police Encounters with Juveniles," 70 Am.J.Soc. 206, 207 [1964] [hereinafter cited Piliavin and Briar].

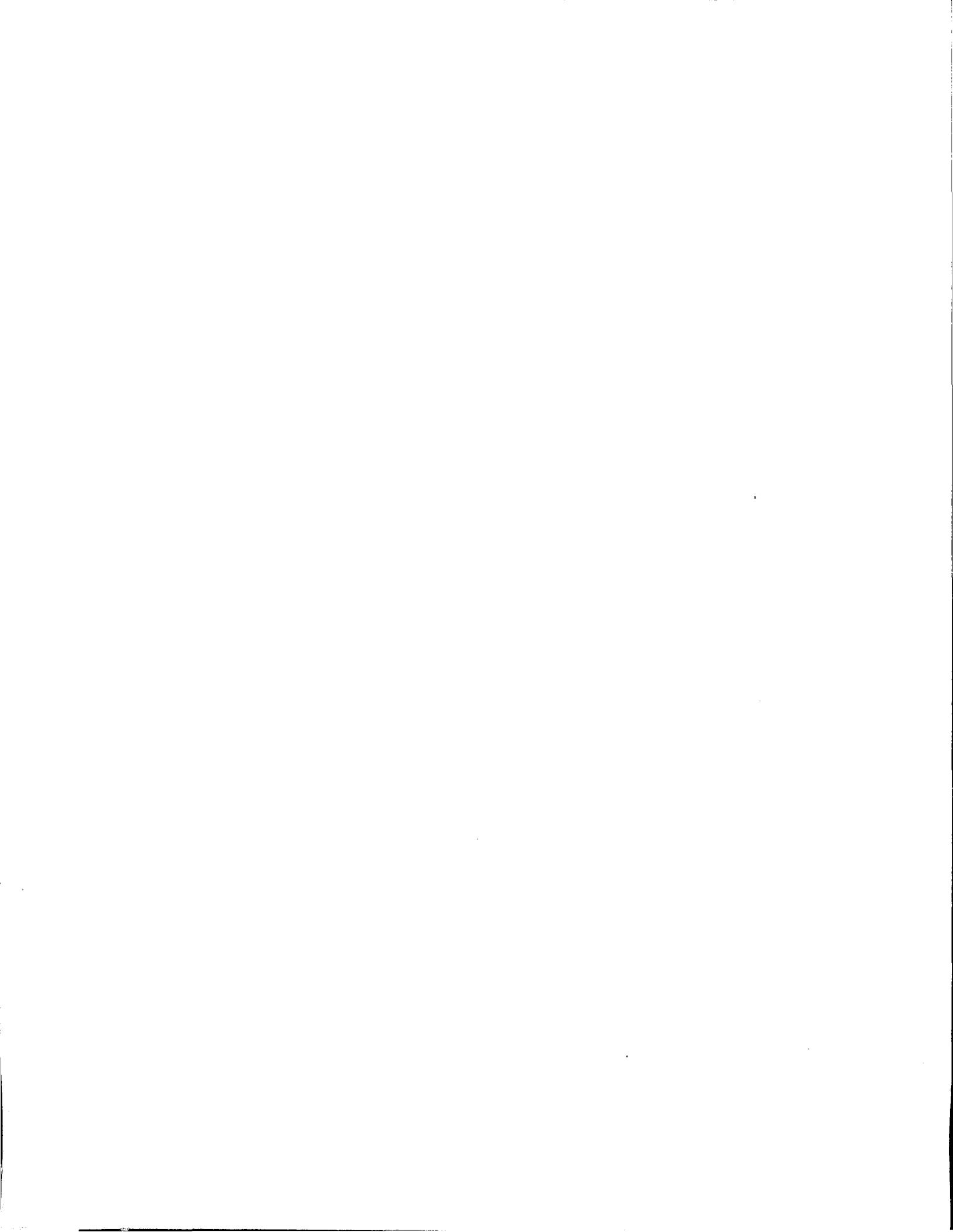
Table 5

Extent of Records on Juvenile Contacts in 1975 According to Type of Agency,
Population of Jurisdiction, and Type of Information

Type of Agency: Population of Jurisdiction	Number of Juvenile Contacts in 1975	All information from records*		Information Available from Records					
		N	(%)	Offense	Sex	Age	Race	Repeater	Disposition
Police:									
Over 25,000	2808	2795	(99.5)	2808	2808	2795	2795	2808	2808
5 - 15,000	1044	1006	(96.4)	1006	1006	1006	1006	1006	1006
1 - 5,000	289	16	(5.5)	42	29	29	29	16	29
Under 1,000	142	0	(0.0)	73	0	0	0	0	0
Police TOTAL (%)	4283	3817	(89.2)	3929 (91.7)	3843 (89.7)	3830 (89.4)	3830 (89.4)	3830 (89.4)	3843 (89.7)
Sheriffs:									
Over 25,000	105	105	(100.0)	105	105	105	105	105	105
15 - 25,000	229	78	(34.0)	103	103	81	81	95	97
5 - 15,000	562	62	(11.0)	165	165	165	99	62	165
1 - 5,000	143	68	(47.6)	79	68	68	68	68	68
Sheriff TOTAL (%)	1039	313	(30.1)	452 (43.5)	441 (42.4)	419 (40.3)	353 (34.0)	330 (31.8)	435 (41.9)
Combined TOTAL (%)	5322	4130	(77.6)	4381 (82.3)	4284 (80.5)	4249 (79.8)	4183 (78.6)	4160 (78.2)	4278 (80.4)

∞

*e.g., the sheriff's departments with jurisdictions between five and 15 thousand made 562 juvenile contacts in 1975; all the necessary information was available from department records for 62 (11%) of these contacts; offense, sex, age, and disposition was available from records for 165 of these contacts, race for 99 contacts, and repeater status for 62 contacts.



1975 with all necessary information available from records for 98.7% [3,801 of 3,852] of the contacts made of these agencies. In contrast, police departments in cities under 5,000 had complete written information for just 3.7% [16 of 431] of the contacts reported in 1975. 15 of these 16 contacts were reported by the only police department serving a city of under 5,000 which kept complete records.

Thus, for police departments in cities over 5,000, virtually all information was obtained from records while, for police departments in cities under 5,000, the major informational source was the police chief's memory, with the exception of Dell Rapids which kept fairly extensive records.

However, for sheriff's departments, the existence of juvenile records was not as directly related to population. Only the two departments in counties over 25,000 provided 100% of the information on their juvenile contacts from records.⁵ In the eleven sheriff's departments surveyed in counties under 25,000, there was no apparent relationship between county population and the existence of records. Reports on all or most juvenile contacts were filed by two of the three departments in counties 15,000-25,000, three of the six in counties 5,000-15,000, and one of the two in counties 1,000-5,000. Still, complete written information existed for only 22.3% [208 of 934] of the juvenile dealings by these eleven sheriff's departments. A vast majority of the data on the reported juvenile contacts came from the

⁵The third county over 25,000, Pennington County, had all the information on juvenile contacts in their files, but the data could not be extricated from the filing system.

sheriffs' memories and, for the three departments which referred most juveniles to juvenile court intake, from probation office records.

Overall, all the necessary information came from records for 3,817 [89.2%] of the 4,283 juvenile contacts made by police surveyed, while sheriff's departments in the survey provided all information from records in 313 [30.1%] of the 1,039 juvenile contacts they made. Thus, for the sample as a whole, the primary source of police data was records whereas the primary basis for information from sheriff's departments was memory. Still, for all agencies combined, the source of the needed information was agency records in 77.6 percent [4,130 of 5,322] of the juvenile contacts.

If it is assumed that data obtained from records is completely reliable and valid, and that memory is neither completely reliable nor completely valid, the extent of recordkeeping on juvenile contacts may be used as a rough index of the relative accuracy of data reported by the surveyed agencies. Using this index of accuracy, several tentative conclusions about the accuracy of the data may be made. First, the overall accuracy of the data is quite good; especially since those departments reporting from memory tended to be in smaller jurisdictions where law enforcement officers are likely to know most youths personally, making recall of juvenile offenses more reliable. Further, it may be concluded that data from police departments surveyed is more accurate than data from sheriff's departments. The index also indicates that data collected from cities over 5,000 is completely reliable and that data from police departments in smaller cities is considerably less accurate. Finally, data from sheriff's departments in counties over 25,000 approaches precision when compared to data from smaller

counties. Data from smaller counties of under 25,000 is generally more erroneous.

2. Comparative Analysis of Recordkeeping Systems

Two features distinguish juvenile recordkeeping of police departments in cities over 5,000 from that in cities under 5,000. First, complete documentation of all juvenile contacts was available in eight of the nine cities with populations over 5,000 (Table 6).⁶ In contrast, of the six departments in cities between 1,000 and 5,000 which kept any juvenile records, only one maintained records of all juvenile contacts. Four of the six kept records on only juveniles referred to court (this didn't include all juvenile contacts) and one recorded only offenses involving property loss, but even these were incomplete. Only one department in a city with a population under 1,000 kept juvenile records, but they included only very limited information (such as name and offense) on juveniles referred to court. Most significantly, 10 of the 17 police departments in cities under 5,000 had no records on juvenile contacts at all.

The second feature distinguishing juvenile files of larger cities (over 5,000) from those of smaller cities (under 5,000) is that eight of the nine departments in larger cities provided at least partial separation of juvenile records from the rest of their record system. Only one of the seven departments in smaller cities which kept juvenile records had some separation of juvenile files. Of the eight large departments

⁶The other department in this population category, Brookings, maintained records only on juveniles referred to court intake, but since it referred virtually all juvenile contacts, it too maintained records of all juvenile contacts.

with at least partial separation of juvenile records, six maintained independent, physically separate juvenile records while the other two kept combined files with a separate chronological log of juvenile contacts. The one small department with separation of juvenile records combined the offense report files, but kept a separate card file on juvenile offenses.

Table 6
Police Department Juvenile Recordkeeping
Policies According to City Population

CITY POPULATION	NO. OF DEPT'S IN SAMPLE*	RECORDKEEPING POLICY (NUMBER OF DEPTS)			
		ALL CONTACTS	COURT REFERRALS	SCATTERED ON FEW OFFENSES	NO RECORDS KEPT
Over 25,000	3	3			
5-15,000	6	5	1		
1-5,000	11	1	4	1	5
Under 1,000	6		1		5
TOTAL	26	9	6	1	10

*Includes all departments in police sample except DeSmet P.D.

Of the 14 sheriff's departments surveyed, five kept records on all juvenile contacts, one kept records on all juvenile contacts, except liquor law violators, four kept records only on juveniles referred to court intake, and one kept only minimal records (name and offense) on most juveniles referred to court intake. The remaining three sheriff's departments had no juvenile records. Table 7 illustrates that sheriff's departments recordkeeping policies were not related to population of jurisdiction, as they were for police departments.

Only two of the eleven sheriff's departments which kept any juvenile records allowed for a separation of juvenile records from the rest of their record system. One of these two departments, that of Bon Homme Co., combined case files but tracked juvenile case files in a separate Juvenile Record case file. The other department, Stanley Co., had an independent,

physically isolated record system. Generally, sheriff's departments which maintained records on juvenile offenders mixed their records with those of adults.

Table 7

Sheriff's Department Juvenile Recordkeeping
Policies According to County Population

COUNTY POPULATION	NO. OF DEPTS. IN SAMPLE *	RECORDKEEPING POLICY (NUMBER OF DEPTS.)				
		ALL CONTACTS	ALL EXCEPT LIQUOR VIOLATIONS	COURT REFERRALS ONLY	MINIMAL, SPORADIC	NO RECORDS KEPT
Over 25,000	3	2		1		
15-25,000	3			2		1
5-15,000	6	2	1	1		2
1-5,000	2	1			1	
TOTAL	14	5	1	4	1	3

*Includes all departments surveyed.

Obviously, information on juvenile crime was much more accessible from record systems which furnished separate facilities for juvenile recordkeeping. For the most part, police records on juvenile contacts were easily accessible since all the departments in large cities, with the exception of Aberdeen, kept separate juvenile records. Although smaller city departments generally combined records, their files were small enough and they proved familiar enough with each contact made, to make it practical to scan all the files, if necessary. However, accessibility was a problem with several sheriff's departments, because of lack of an independent juvenile records system. In fact, no juvenile offense data could be practically compiled from the Pennington County Sheriff's Department's files, simply because it would have been necessary to inspect every case folder in their files.

C. CHARACTERISTICS OF YOUTH

1. Youth in South Dakota

According to the 1970 census, a total of 240,920 youths under 18 years of age live in South Dakota. The sex and race of these youths is

analyzed in Table 8.⁷

In order for a youthful offender to fall under the juvenile court's delinquency jurisdiction, state law requires that the offender be at least 10 years of age and less than 18 years old at the time the offense is committed.⁸ The number of youths, broken down according to sex and race, who fall into this youth population group ages 10 through 17 is presented in Table 9.

Table 8
South Dakota Youth Population Under 18
According to Sex and Race

Sex	Race			Total
	White	Indian	Black	
Male	113,583	8,879	334	122,796
Female	109,015	8,808	301	118,124
Total	222,598	17,687	635	240,920

Source: 1970 Census

Table 9
South Dakota Youth Population Ages 10 through 17
According to Sex and Race

Sex	Race			Total
	White	Indian	Black	
Male	56,437	3,664	156	60,257
Female	53,968	3,689	113	57,770
Total	110,405	7,353	269	118,027

Source: 1970 Census

⁷Because of limitation of census data, the Indian population data in Table 8 is contaminated by other non-black minorities. However, since these other minorities account for a total of less than three percent of the Indian total, for all practical purposes, the Indian data can be considered to represent the American Indian youth population in the state. The same is true of all succeeding tables based on census data.

⁸S.D.C.L. §26-8-7 (1976) provides that a delinquent child is "any child 10 years old or older who regardless of where the violation occurred, has violated any federal, state, or local law or regulation for which there is a penalty of a criminal nature...." Of course, children under 10 can be judged "in need of supervision" as defined *infra*, n. 18.

A further breakdown of the state's youth population, according to county of residence and race is provided in Table 10. It should be noted that, with the exception of Lawrence and Meade counties, Native American youth account for an overwhelming majority of the non-white youth population in all counties in the state. Also, white youths account for over 95 percent of the total youth population in 45 (67%) of South Dakota's 67 counties. Figure 1 provides a geographic representation of the 22 counties in which less than 95 percent of the 10 to 17 age group is white.

2. Youth in the Survey Sample

From the 1970 census data it was possible to determine only the percent of the total population of each city under the age of 18. However, since the total white, Native American, and black populations were known for each city it was possible to estimate the racial distribution of youth under 18 for each city by assuming that the racial distribution of the total population was the same as that of the population under 18. Table 11, which includes only those cities from which 1975 juvenile offense data was obtained, provides this estimated racial breakdown according to city and city population category. Note that white youth accounted for over 94 percent of the total youth population in each of the four city population categories, and for 97.6 percent of the total youth population of the entire sample.

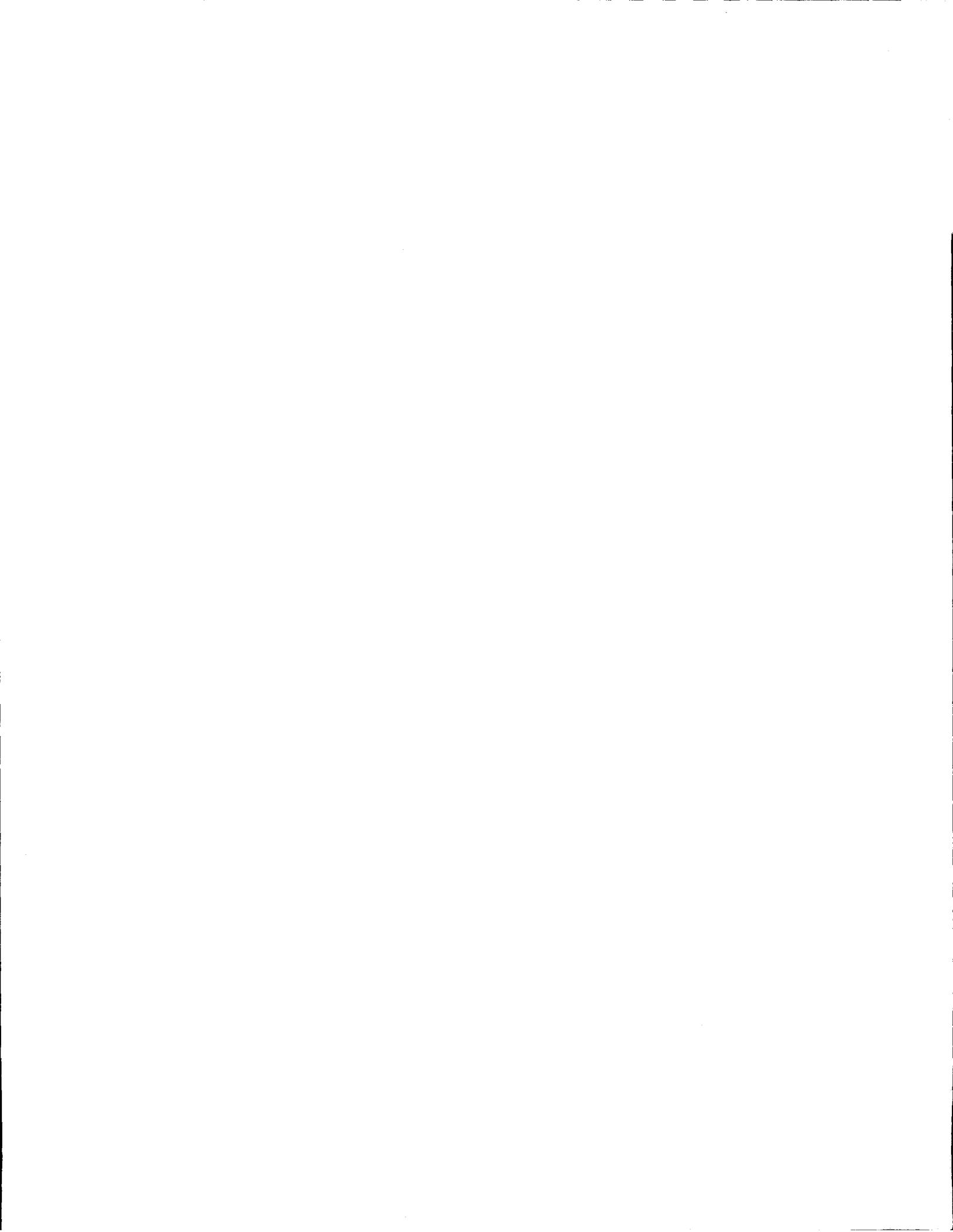
Table 12 provides a racial breakdown of youth under 18, according to county and county population category, for all sample counties. Again, white youth accounted for over 90 percent of the total youth population in each of the 13 counties, for over 96 percent of the total youth population in each of the four county population categories, and

Table 10

South Dakota Youth Population Ages 10 Through 17
According to County and Race.

COUNTY	TOTAL POPULATION 10 THRU 17	YOUTH 10 THRU 17 BY RACE			PERCENT WHITE
		WHITE	INDIAN	BLACK	
Aurora	892	838	54	0	93.9
Beadle	3719	3691	26	2	99.2
Bennett	605	404	201	0	66.8
Bon Homme	1313	1308	5	0	99.6
Brookings	3018	3002	16	0	99.5
Brown	6007	5968	39	0	99.4
Brule	1110	1093	17	0	98.5
Buffalo	336	110	226	0	32.7
Butte	1486	1467	17	2	98.7
Campbell	577	577	0	0	100.0
Charles Mix	1889	1685	204	0	89.2
Clark	964	961	3	0	99.7
Clay	1518	1499	18	1	98.7
Codington	3417	3406	11	0	99.7
Corson	1047	742	305	0	70.9
Custer	798	772	26	0	96.7
Davison	2916	2896	20	0	99.3
Day	1599	1523	76	0	95.2
Deuel	1033	1033	0	0	100.0
Dewey	1051	533	496	2	52.6
Douglas	845	844	1	0	99.9
Edmunds	1041	1041	0	0	100.0
Fall River	1122	1045	77	0	93.1
Faulk	765	761	4	0	99.5
Grant	1635	1630	5	0	99.7
Gregory	1161	1070	91	0	92.2
Haakon	596	590	6	0	99.0
Hamlin	913	907	6	0	99.3
Hand	1218	1218	0	0	100.0
Hanson	754	754	0	0	100.0
Harding	403	394	9	0	97.8
Hughes	2202	2042	156	4	92.7
Hutchinson	1804	1802	2	0	99.9
Hyde	504	496	8	0	98.4
Jackson	271	243	28	0	89.7
Jerauld	626	626	0	0	100.0
Jones	350	341	9	0	97.4
Kingsbury	1479	1479	0	0	100.0
Lake	1905	1901	4	0	99.8
Lawrence	3036	2957	40	39	97.4
Lincoln	2201	2190	11	0	99.5
Lyman	784	648	136	0	82.7
McCook	1354	1349	5	0	99.6
McPherson	1000	995	5	0	99.5
Marshall	1059	1058	1	0	99.9
Meade	3134	2979	30	125	95.1
Mellette	459	286	173	0	62.3
Miner	836	834	2	0	99.8
Minnehaha	16690	16512	150	28	98.9
Moody	1685	1332	353	0	79.1
Pennington	10214	9543	626	45	93.4
Perkins	897	892	5	0	99.4
Potter	878	871	7	0	99.2
Roberts	2121	1816	304	1	85.6
Sanborn	754	753	1	0	99.9
Shannon	1660	170	1488	2	10.2
Spink	1885	1866	19	0	99.0
Stanley	472	431	41	0	91.3
Sully	497	487	10	0	99.4
Todd	1420	354	1066	0	24.9
Tripp	1584	1499	85	0	94.6
Turner	1780	1770	10	0	99.4
Union	1665	1655	8	2	99.4
Walworth	1412	1319	93	0	93.4
Washabaugh	265	109	156	0	41.1
Yankton	2908	2810	89	9	96.6
Ziebach	468	208	260	0	44.4
TOTAL	118027	110405	7353	269	93.5

Source: 1970 Census



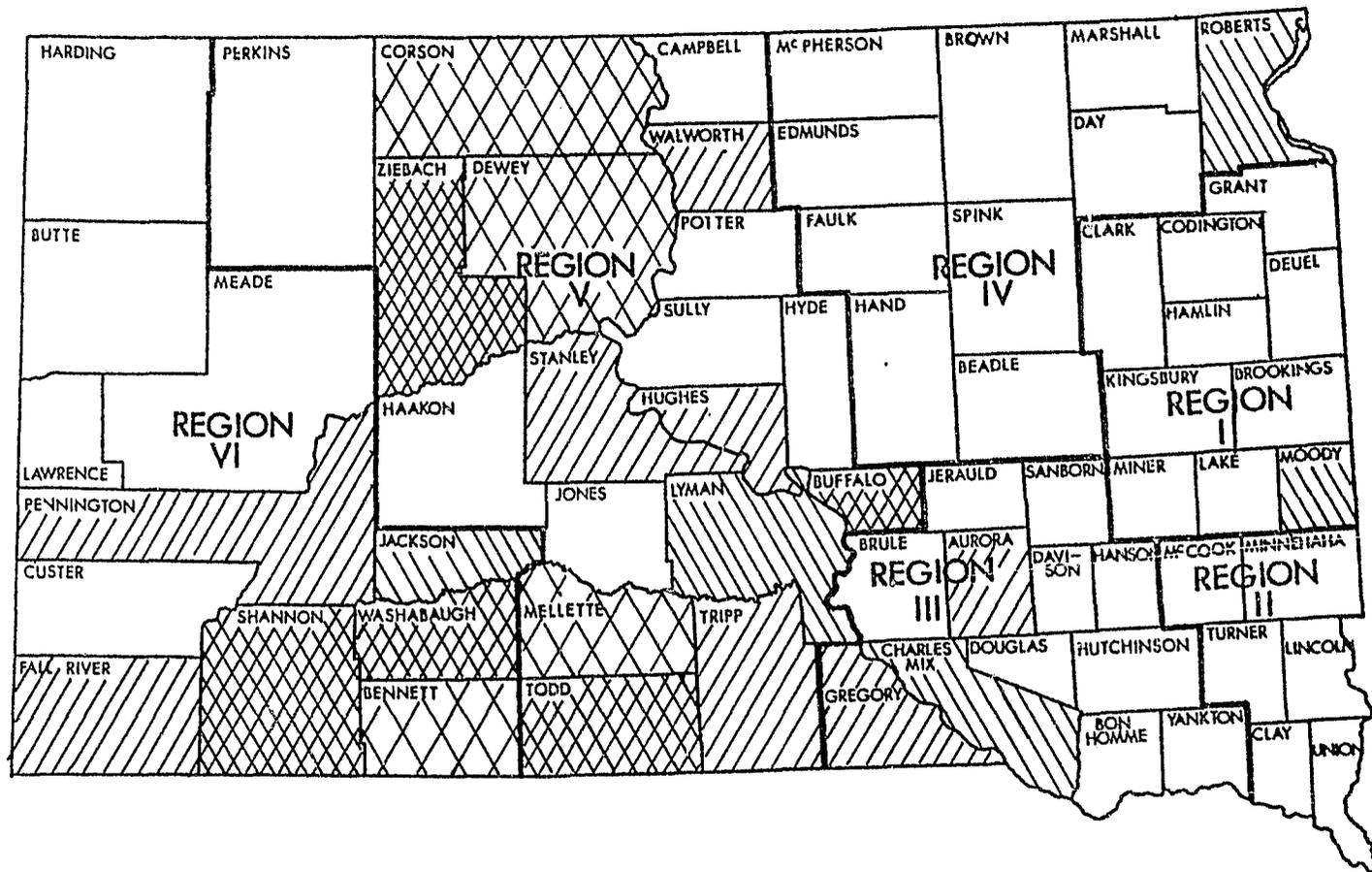


FIGURE 1

South Dakota Counties in Which Less Than 95 Percent of the Youth Population Ages 10 Through 17 is White

(Source: 1970 Census)

Table 11

Estimated Racial Characteristics of Youth Population
Under 18 in Cities in Police Department Sample

City Population	City	Total Population under 18	Estimated Youth Under 18 by Race*			Percent White
			White	Indian	Black	
Over 25000	Sioux Falls	25806	25537	214	55	99.0
	Aberdeen	8658	8543	113	2	98.7
	Rapid City	16088	15169	868	51	94.3
	Total	50552	49249	1195	108	97.4
5000-15000	Brookings	3182	3155	27	0	99.1
	Watertown	4726	4699	27	0	99.4
	Vermillion	2045	2016	25	4	98.6
	Yankton	3945	3781	145	19	95.8
	Pierre	3715	3526	184	5	94.9
	Lead	2114	2067	46	1	97.8
	Total	19727	19244	454	29	97.6
1000-5000	Clark	382	380	2	0	99.5
	Beresford	492	489	3	0	99.4
	Dell Rapids	723	720	3	0	99.6
	Parkston	458	458	0	0	100.0
	Springfield	307	302	5	0	98.4
	Highmore	371	368	3	0	99.2
	Miller	754	752	2	0	99.7
	Redfield	871	870	1	0	99.9
	Spearfish	1123	1105	16	2	98.4
	Total	5481	5444	35	2	99.3
Under 1000	Castlewood	182	182	0	0	100.0
	Alcester	152	152	0	0	100.0
	Armour	280	279	1	0	99.6
	New Effington	71	71	0	0	100.0
	Presho	328	318	10	0	97.0
	Hill City	126	126	0	0	100.0
	Total	1139	1128	11	0	99.0
Sample	Total	76899	75065	1690	144	97.6

Source: 1970 Census

*Assumes percent of population under 18 is the same for all races as the percentage breakdown at the total population.

Table 12

Racial Characteristics of Youth Population
Under 18 in Counties in Sheriff's Department Sample

County Population	County	Total Population Under 18	Youth Under 18 by Race			Percent White
			White	Indian	Black	
Over 25000	Minnehaha	35174	34779	340	55	98.9
	Brown	12757	12595	160	2	98.7
	Total	47931	47374	500	57	98.8
15000- 25000	Brookings	6247	6206	41	0	99.3
	Davison	5956	5891	63	2	98.9
	Lawrence	6064	5860	164	40	96.6
	Total	18267	17957	268	42	98.3
5000-15000	Grant	3323	3314	9	0	99.7
	Turner	3234	3206	28	0	99.1
	Bon Homme	2635	2628	7	0	99.7
	Edmunds	2120	2120	0	0	100.0
	Walworth	2973	2683	290	0	90.2
	Butte	2824	2781	41	2	98.5
	Total	17109	16732	375	2	97.8
1000- 5000	Sanborn	1353	1352	1	0	99.9
	Stanley	985	904	81	0	91.8
	Total	2338	2256	82	0	96.5
Sample Total		85645	84319	1225	101	98.5

Source: 1970 census

for 98.5 percent of the total youth population of the entire sample.

The 76,899 youths under 18 in the cities in the police department sample represent 31.9 percent of the total youth population under 18 in the state. The 85,645 youths under 18 in the counties in the sheriff's department sample represent 35.5 percent of the total youth population under 18 in the state. However, since several of the cities in the police department sample fall in these counties, the sheriff's departments sampled have jurisdiction over only 43,732 juveniles not already included in the police department sample.

D. CHARACTERISTICS OF JUVENILE OFFENDERS IN THE SURVEY SAMPLE

The 37 law enforcement agencies from which juvenile offense statistics were obtained reported a total of 5,322 juvenile contacts. Summarized in Table 13, these 5,322 juvenile contacts have been associated with an offense⁹ and categorized according to the sex, age, and race of juveniles contacted.

The most frequently reported contacts included larceny-theft¹⁰ (1,176), liquor law violation (1,111), vandalism (579), runaway (464), and burglary (420). These five offenses totaled 71 percent (3,756) of the 5,322 juvenile offenses reported.

⁹Categorization of charges was based upon the FBI Uniform Crime Reporting classifications.

¹⁰The footnote offense of larceny-theft is comprised of grand larceny, and shoplifting, of which the most frequently reported was shoplifting. Unfortunately, during the survey this distinction was not made. A similar problem occurred for liquor law violation. Some liquor law violations (e.g., open container) are delinquent offenses, while others (e.g., illegal possession or consumption) are status offenses. These distinctions were not made during the survey. This had some effect on the reporting of delinquent and status offenses later in the study.

Table 13

Age, Sex, and Race of Juveniles Apprehended by all
Law Enforcement Agencies Surveyed (1975): N=37

OFFENSE	SEX	AGE								RACE			OFFENSE TOTAL
		10 and under	11- 12	13- 14	15	16	17	Not Known	Total under 18	White	Amer. Indian	Other	
Murder or manslaughter	M				1	1			2	1	1		2
	F								0				
Forcible rape	M			1		1			2	1	1		2
	F								0				
Robbery	M		2	2	9	2	3		18	9	8	1	19
	F				1				1		1		
Aggravated assault	M	1		3	1	2	5		12	8	4		16
	F		1	1	1	1			4		4		
Burglary	M	22	45	85	76	103	69		400	334	64	2	426
	F	2	3	5	4	6	6		26	20	6		
Larceny-theft (except auto theft)	M	84	124	231	141	142	115		837	745	89	3	1176
	F	17	45	124	50	45	58		339	297	41	1	
Auto theft	M		7	56	45	31	21		160	125	35		179
	F		1	7	4	4	3		19	14	5		
Other assaults	M		3	12	10	12	11		48	41	7		69
	F		2	7	3	3	6		21	8	13		
Arson	M	3	1			1			5	4		1	5
	F								0				
Forgery	M			2	6	6	5		19	19			36
	F			1	9	5	2		17	15	2		
Fraud or embezzlement	M			6	4	5	8		23	23			24
	F					1			1	1			
Stolen property	M	2	1	13	6	4	5	3	34	25	9		36
	F			2					2	2			
Vandalism	M	73	85	117	65	62	120	12	534	506	23	5	579
	F		9	14	8	4	7	3	45	35	10		
Weapons	M	3	5	3	5		4		20	18	2		20
	F								0				
Sex offenses	M			3	1	1	10	2	17	13	4		17
	F								0				
Drug violations	M		2	19	27	55	84		187	184	3		236
	F		2	7	10	12	18		49	46	3		
DWI	M			3	7	9	27		46	40	6		54
	F					2	6		8	7	1		
Liquor laws	M		5	47	130	261	351	33	827	799	28		1111
	F		3	30	54	83	99	15	284	264	20		
Disorderly conduct	M		4	11	26	29	38	3	111	95	15	1	154
	F			6	5	13	17	2	43	31	12		
Curfew	M	4	23	52	31	26	18	13	167	150	17		257
	F		1	33	28	17	3	8	90	77	13		
Runaway	M	4	13	54	45	49	24	1	190	166	24		464
	F	3	16	39	83	47	32	4	274	207	62	5	
Truancy	M	2	6	3	4	1	2		18	17	1		23
	F	1	2	1	1				5	5			
All other non-traffic offenses	M	17	21	77	50	73	61		308	241	65	2	417
	F	4	10	33	28	22	12		109	91	18		
Total: all offenses	M	215	347	800	699	876	981	67	3985	3564	406	15	3985
	F	27	95	360	289	265	269	32	1337	1120	211	6	
TOTAL		242	442	1160	988	1141	1250	99	5322	4684	617	21	5322

Males proved the more frequent offenders, accounting for 75 percent (3985) of the reported contacts compared to females' 25 percent (1337). The most common male offenses were larceny-theft (837), liquor law violation (827), vandalism (534), and burglary (400). These four offenses accounted for 65 percent (2,598) of the 3,985 male offenses. Larceny-theft was also the top infraction committed by females, 339 of the 1,337 female offenses, followed by liquor law violation (284) and runaway (274). A more complete ranking of male and female offenses is reported in Table 14. Interestingly, while the 10 most frequently reported offenses are the same for both sexes, the ranking of these offenses and their relative frequencies differ. Of these 10 most frequently reported offenses, males claimed a particularly high percentage of reported vandalism (92%), burglary (94%) and auto theft (89%). In fact, the males outnumbered females for all offenses with the lone exception of the runaway category where 59% of the runaways apprehended were female. However, this is not to conclude that females are more frequent runaways than males as this offense is perhaps more often used by parents and law enforcement officials as a device for apprehending and controlling troublesome females.¹¹

Status offenses such as curfew, runaway and truancy account for 14 percent (744) of the 5,322 reported contacts. Runaway was the leading status offense reported with 464 cases. Females claimed 50 percent of all reported status offenses compared with only 21 percent of delin-

¹¹See, e.g., M. Chesney-Lind, "Judicial Paternalism and the Female Status Offender," 23 Crime and Delinquency 121, 124 (April 1977): "This harsh result is...the result of parental attitudes...Parents have different standards of behavior for their sons and daughters...."



Table 14

Comparative Ranking of Most Frequently Reported
Offenses for Male and Female Juveniles

Rank	Males				Rank	Females			
	Offense	Frequency	% of Total	Cum. %		Offense	Frequency	% of Total	Cum. %
1	Larceny-theft	837	21	21	1	Larceny-theft	339	25	25
2	Liquor Laws	827	21	42	2	Liquor Laws	284	21	47
3	Vandalism	534	13	55	3	Runaway	274	20	67
4	Burglary	400	10	65	4	Curfew	90	7	74
5	Runaway	190	5	75	5	Drug violations	49	4	77
6	Drug violations	187	5	75	6	Vandalism	45	3	81
7	Curfew	167	4	79	7	Disorderly Cond.	43	3	84
8	Auto theft	160	4	83	8	Burglary	26	2	86
9	Disorderly Cond.	111	3	86	9	Other assaults	21	2	88
10	Other assaults	48	1	87	10	Auto theft	19	1	89
	All Other Offenses	524	13	100		All Other Offenses	147	11	100
	TOTAL	3985	100	-		TOTAL	1337	100	-

quent offenses being committed by females. As mentioned earlier, runaway was the only offense where females outnumbered males.

Offense rates, however, cannot be considered indicative of juvenile "crime rates" and are probably more of an indicator of law enforcement policies and responsibilities. A prime example of how variations in agencies enforcement policies affect the number of juvenile offenses reported is the inconsistent enforcement of curfew laws by police departments. Curfew violation was the sixth most frequently reported offense by police departments accounting for 5% (235 of 4,283) of the contacts made. However, only 10 of the 24 police departments even enforced curfew laws. Table 15 breaks down curfew law enforcement policy according to city population.

Table 15

Police Departments Enforcing Curfew
Laws According to City Population

City Population	Number of Departments In Sample	Curfew Enforced	
		Yes	No
Over 25,000	3	3	0
5,000 - 15,000	6	4	2
1,000 - 5,000	9	2*	7
Under 1,000	6	1	5
Totals	24	10	14

*These two departments, Dell Rapids and Redfield, simply send curfew violators home. They each reported sending several home per week. These "contacts" were not considered offenses; thus, they are not included in the offense data reported earlier.

Enforcing curfew laws were seven of the nine police departments in cities over 5,000 compared with only one of the 15 departments in cities under the 5,000 mark. If a city does not enforce curfew laws and no violations are reported, naturally the total number of offenses reported declines as well. Furthermore, the degree to which curfew

laws were enforced varied significantly among the departments reporting that they administered the laws.

Policy differences in enforcement of liquor laws probably have an even greater effect on number of offenses reported and "offense rates" than do curfew law enforcement variations. Although all departments enforce liquor laws, some tend to ignore minor liquor violations unless another more serious offense is also involved; whereas, other departments enforce liquor laws much more stringently. Also, a major part of sheriff's departments enforcement of liquor laws consists of "breaking up beer parties." Some sheriff's departments reported that they attempt to apprehend juveniles at these beer parties while other departments simply disperse the parties without even checking identification.

Another major source of variation in "offense rates" for sheriff's departments is that their law enforcement responsibilities differ from county to county. In many of the more urban counties (e.g., Minnehaha, Brown, Brookings and Lawrence), the local police departments handle most juvenile criminal activity. Thus, the juvenile "offense rate" for the sheriff's departments is very low. In more rural counties (e.g., Turner, Bon Homme, Sanborn), the sheriff's department is responsible for all or most law enforcement activities as reflected by higher juvenile "offense rates." In other counties, such as Davison, the sheriff's department stations deputies in small communities to perform as local "police" officers for these communities. The type and number of offenses reported by these county sheriff's departments reflect this local police function (e.g., Davison county was only sheriff's

department to report curfew violations).

E. AGENCY DISPOSITION OF JUVENILE OFFENDERS

1. Definitions

Law enforcement agencies and personnel are constantly confronted with situations requiring a choice between a number of possible solutions. After the law enforcement officer has made contact with a youth and the youth has been taken to the station house, the law enforcement agency is confronted with a similar decision. A good framework for examining agency dispositions is provided by dividing the possible dispositions into two broad categories--the referral and the informal disposition.

A referral is the result of a law enforcement agency's decision to invoke the formal juvenile court system and to turn the problem of what to do with youth over to the juvenile court. The court referral consists of the law enforcement agency turning the juvenile, or the name of the youth if he has been released pending adjudication, over to court personnel along with a report detailing the facts of the case. The court then comes to a determination, at its discretion, of how to handle the child.

The law enforcement agency can also choose to divert the youth from the formal juvenile justice system by not referring the youth to court personnel. This second category of disposition is designated informal disposition and primarily includes the following options:

- (1) the juvenile is warned and released without notifying the parents or guardian;
- (2) the juvenile is warned and released to a parent or guardian;

- (3) the juvenile is released to a parent or guardian following monetary restitution to the victim of the offense;
- (4) the juvenile, although released to a parent, must complete a work restitution program; or
- (5) the juvenile is released to a parent on the condition that the youth receive counseling from an agency approved source.

Several law enforcement agencies informed the court of each juvenile case they handled informally, thus allowing the court an opportunity to overrule them if the court possessed information on the juvenile which was not available to the agency. These dispositions were classified informal unless the court overruled the agency's informal disposition.

2. Disposition Policies

20 of the 24 police departments that supplied 1975 juvenile data reported the use of a combination of factors in determining whether a contact should be referred to the court. The remaining four stated it was their policy to refer all youthful offenders to court intake personnel¹² with very limited exceptions.

A majority of sheriff's departments also claimed the use of several criteria in determining referral with eight of the 13 using mul-

¹²Aberdeen Police Department referred all juveniles apprehended to court except first offense curfew violators, runaways, and minor first offense vandalism cases, who were released to parents; Yankton Police Department referred all juvenile contacts except first offense curfew violators to court; Lead Police Department referred all juvenile cases to court except curfew violators when police were busy with more pressing matters; and Highmore Police Department referred all juveniles apprehended except minor liquor law violations.

multiple considerations and the remainder preferring automatic court referral except in a few situations.¹³

Table 16 lists the criterion given by the 20 police departments and eight sheriff's departments which stated they took several factors into account in referring cases to court.

Of the nine law enforcement agencies (four police departments and five sheriff's departments) automatically referring all or most juveniles to court, three (Lead Police Department, Lawrence County Sheriff's Department, and Butte County Sheriff's Department) stated that they had been directed by the court to refer all juvenile contacts to their respective court service workers. These three agencies are all in neighboring Lawrence and Butte counties in the eighth judicial circuit. The other six departments which automatically referred most juvenile contacts to court stated that they did so voluntarily.

Table 16
Criteria Used By Law Enforcement Agencies in
Determining Disposition in Juvenile Cases

Criterion	Police Departments (N=20)	Sheriff's Departments (N=8)	Total (N=28)
Past Offenses	19	8	27
Seriousness of offense	16	8	24
Age	10	3	13
Parents' cooperation	6	6	12
Attitude	1	2	3
Seriousness of past offense	2	1	3
Acquainted w/family	0	1	1
Degree of involvement	1	0	1
Time since previous offense	1	0	1

¹³Brown County, Butte County and Stanley County Sheriff's Departments stated they automatically referred all juveniles apprehended to court; Brookings County stated they automatically referred all except first offense runaways to court; and Lawrence County stated that all juvenile contacts except minor liquor law violations were automatically referred to court.

Whether the juvenile had committed past offenses and the seriousness of the present offense were by far the most frequently mentioned criteria. The age of the juvenile and the cooperativeness of the juvenile's parents were also frequently related.¹⁴ Although it is probably true that most of the departments used most of the criteria listed in Table 16 to some extent in making disposition decisions, the general policy followed was that if the offense was not serious, and if the juvenile had no record of past offenses, and if the parents cooperated, and especially if the juvenile was young, the case was handled informally; otherwise it was referred to court. However, almost every department varied to some extent from this general policy. Notable variations occurred in four instances.

The Vermillion Police Department's policy regarding liquor law violations, disorderly conduct, curfew violations, and a few instances of larceny-theft and vandalism usually mandated the referral of second-time offenders to counseling rather than court. Third-time offenders were automatically referred to court.

A second variation, that of the Pierre Police Department, took into account the length of time since a past offense, instead of simply the existence of a past offense. If the past offense occurred more than a few months prior to the present one, the youth was treated similar to

¹⁴A number of other studies have analyzed the factors that influence the police in their decision to handle youths formally or informally. For a good summary of these studies see J. Stratton, "Crisis Intervention Counseling and Police Diversion from the Juvenile Justice System: A Review of the Literature," 25 Juv. Just. 44,48 (May 1974) noting that "Police reactions depend upon the seriousness of the offense age, sex, prior record, appearance and demeanor, and family status. A serious offense is apt to cause an officer to take a youth into custody without weighing other factors, but lacking such a charge, discretion occurs with on-the-spot screening." See also section E of Chapter III, infra.

the first offender. Pierre Police Department also cited the seriousness of past offenses as an important consideration.

The Edmund County Sheriff's Department released a juvenile to parents or guardian if the sheriff knew the parent and believed the parent would handle the problem. If the sheriff believed that the parent would not deal with the problem or did not know the youth's family, the case was referred to court. The sheriff stated that if he did not know the parents he could not know whether they would handle the problem or not, thus forcing him to rely on the court.

Lastly, the Sioux Falls Police Department's Juvenile Bureau stated that it did not use a fixed set of criteria in all cases, but instead, "judged each case individually, depending on the case and the individual juvenile." To promote consistency all the cases go through the head of the juvenile bureau for approval.

Each of the departments surveyed were asked which offenses were serious enough that it would be agency policy to automatically refer a youth to court if apprehended for that offense. Table 17 lists the number of departments with a policy of automatic court referral for each offense. Only for five offenses--murder, manslaughter, forcible rape, robbery, aggravated assault, and DWI--did all 37 agencies have policies mandating court referral. Most agencies indicated they would bring juvenile offenders before the court automatically for burglary, auto theft, arson, forgery, fraud, embezzlement, sex offenses, and drug violations. However, only a minority of the agencies surveyed stated they would automatically refer juveniles to court for larceny-theft, vandalism,

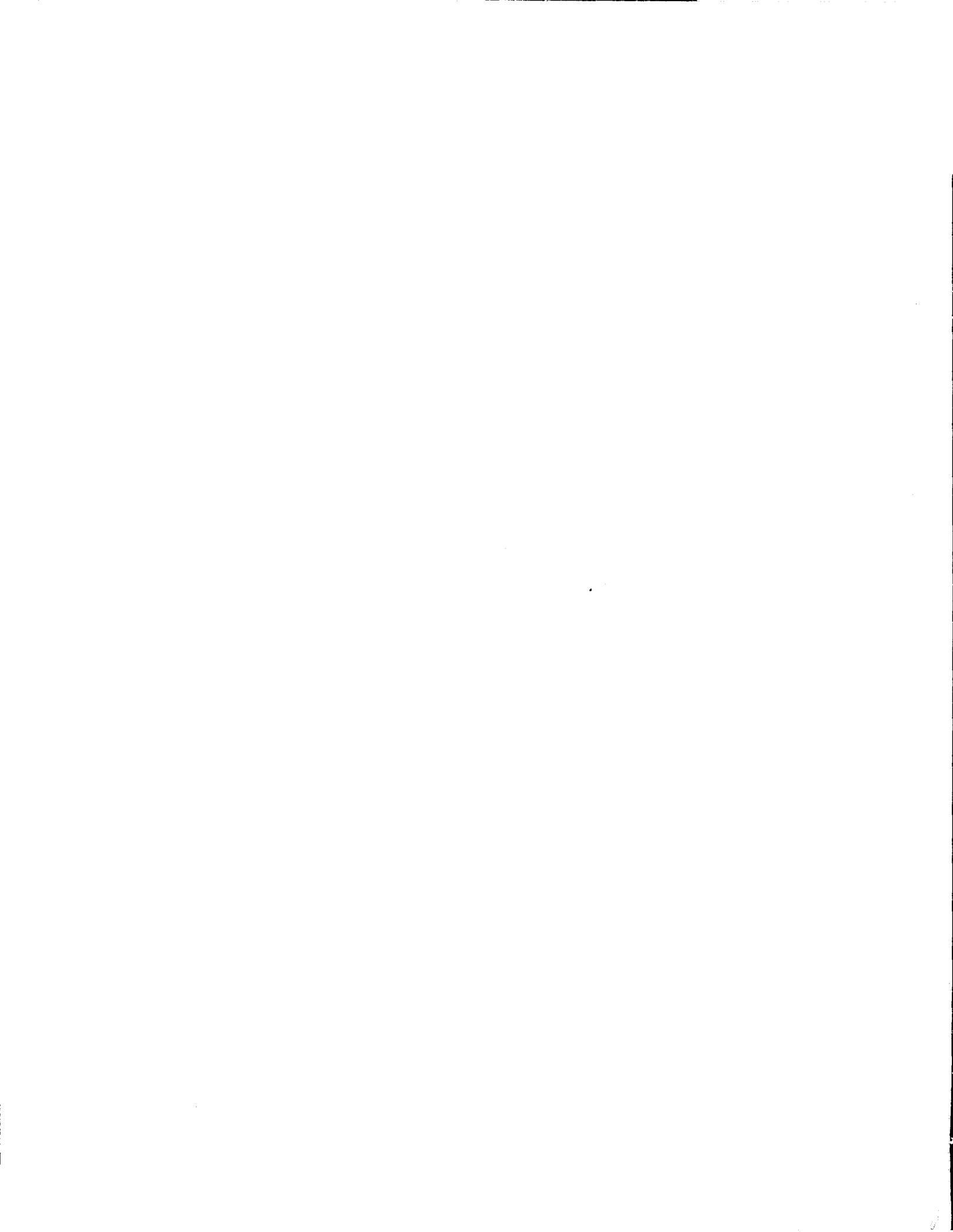


Table 17

Number of Agencies which Automatically Refer Juvenile Contacts to Court According to Type of Agency, Population of Jurisdiction, and Offense Committed

Agency Type and Population Category		NO. DEPTS. IN SAMPLE	OFFENSE																					
			Murder & Manslaughter	Forcible Rape	Robbery	Aggravated Assault	Burglary	Larceny-theft	Auto theft	Other Assaults	Arson	Forgery	Fraud or Embezzlement	Stolen Property	Vandalism	Weapons	Sex Offenses	Drug Violations	DWI	Liquor Laws	Disorderly Conduct	Curfew	Runaway	Truancy
Police Departments	Over 25,000	3	3	3	3	3	2	1	2	1	2	2	2	2	0	1	2	2	3	1	1	0	0	0
	5,000-15,000	6	6	6	6	6	3	6	5	6	6	5	5	2	6	6	6	6	2	2	0	3	3	
	1,000-5,000	9	9	9	9	9	8	3	9	7	8	9	9	6	3	7	9	9	9	1	2	0	2	2
	Under 1,000	6	6	6	6	6	5	0	5	4	4	4	4	4	0	4	4	4	6	0	0	0	0	0
	TOTAL	24	24	24	24	24	21	7	22	17	20	21	20	17	5	18	21	21	24	4	5	0	5	5
Sheriff's Departments	Over 25,000	2	2	2	2	2	1	1	2	2	2	2	2	1	2	2	2	2	2	1	1	1	1	2
	15,000-25,000	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	1	2	0	1	1
	5,000-15,000	6	6	6	6	6	6	2	5	5	6	6	6	3	1	4	6	3	6	1	1	1	2	2
	1,000-5,000	2	2	2	2	2	2	1	2	2	2	2	2	2	1	2	1	2	2	1	1	1	1	1
	TOTAL	13	13	13	13	13	12	7	12	12	13	13	13	9	7	11	12	10	13	4	5	3	5	6
SAMPLE TOTAL		37	37	37	37	37	33	14	34	29	33	34	33	26	12	29	33	31	37	8	10	3	10	11

liquor law violation, disorderly conduct, curfew, runaway, and truancy.¹⁵

3. Disposition Data Reported by Law Enforcement Agencies

Informal disposition was the preferred dispositional mechanism in 44 percent (2,357) of the 5,322 juvenile contacts while 56 percent of the youths who came into contact with law enforcement agencies were referred to court.¹⁶ The disposition of the 5,322 juveniles who encountered the law is displayed in Table 18 and categorized according to offense.

Five offenses resulted in 67 percent of the caseload referred to court by law enforcement agencies. Leading the list of referrals was larceny-theft (653), followed by liquor law violations (475), burglary (353), vandalism (255) and runaway (245). The percent of juvenile contacts referred to court varied widely from offense to offense with nine percent of the truancy contacts referred while referrals were made in all cases involving charges of murder-manslaughter, forcible rape, robbery and DWI. With the exception of truancy, however, at least 35 percent of all juvenile contacts were referred to court.

¹⁵Contrast this "policy" of automatic referral with the actual referral statistics for juvenile contacts set out in the next section. For example, the reported policy for aggravated assault was automatic referral for all 37 agencies, but received a 94 percent referral rate for actual juvenile contacts (p. 33 infra).

¹⁶This 44 percent of contacts handled informally is easily comparable to the national rate of 44.4 percent of all juvenile contacts handled informally reported in FBI, "Crime in the United States --1974" Uniform Crime Reports 177 (1975). However, other studies have demonstrated the wide disparity in diversion practices throughout the country. See, e.g., J. Stratton, "Crisis Intervention Counseling and Police Diversion from the Juvenile Justice System: A Review of the Literature," 25 Juv. Just. 44, 48 (May 1974).

Of the offenses all or most agencies stated were automatically referred to court (murder-manslaughter, 100% referred; forcible rape, 100%; robbery, 100%; aggravated assault, 94%; burglary, 83%; auto theft, 94%; arson, 40%; forgery, 78%; fraud-embezzlement, 75%; sex offenses, 71%; drug violations, 66%; and DWI, 100%), 82 percent of the combined 1016 juvenile contacts reported were referred to court. On the other hand, for the offenses relatively few agencies stated were automatically referred to court (larceny-theft 56% referred; vandalism, 44% liquor law violation, 43%; disorderly conduct, 67%; curfew, 36%; runaway, 53%; and truancy, 9%), only 48 percent of the 3,764 juvenile contacts reported were referred to court. These percentages are substantially above and substantially below the overall 56 percent referral rate, respectively, leading to the conclusion that the policies conformed well with actual dispositions reported.

A somewhat higher percentage of males, than of females, were referred to court. Of the 3,985 males contacted by law enforcement agencies, 57 percent (2,285) were referred to court; whereas, 51 percent (680) of the 1,337 female contacts were referred to court. However, since a greater percentage of males were repeat offenders (46% of males vs. 33% of females)¹⁷ and males committed a greater percentage of the serious offenses demanding virtually automatic court referral (88% of the serious offenses compared with 75% of total contacts were males), sex cannot be conclusively established as a factor in disposition. The somewhat higher percentage of males referred to court can easily be

¹⁷South Dakota Statistical Analysis Center, The Juvenile Offender in South Dakota, 53 (December 1976) [hereinafter cited SAC, Juvenile Offender].

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Table 18

Disposition of Juvenile Offenders According to
 Offense by All Agencies Surveyed

Offense	Offense Total		
	Informal	Referral	% Referred
Murder or manslaughter	0	2	100
Forcible rape	0	2	100
Robbery	0	19	100
Aggravated assault	1	15	94
Burglary	73	353	83
Larceny-theft	523	653	56
Auto theft	11	168	94
Other assaults	21	48	70
Arson	3	2	40
Forgery	8	28	78
Fraud or embezzlement	6	18	75
Stolen property	12	24	67
Vandalism	324	255	44
Weapons	13	7	35
Sex offense	5	12	71
Drug violation	80	156	66
DWI	0	54	100
Liquor laws	636	475	43
Disorderly conduct	51	103	67
Curfew	165	92	36
Runaway	219	245	53
Truancy	21	2	9
All other non-traffic offenses	185	232	56
Total	2357	2965	56

attributed to the higher percentage of male repeat offenders and the higher percentage of males involved in serious offenses.

The South Dakota Juvenile Code provides for juvenile court jurisdiction over juveniles for behavior and acts that would not be criminal if committed by adults.¹⁸ These juveniles are often called status offenders; such offenses include running away from home, truancy from school, curfew violations, and incorrigibility.¹⁹

As a rule, status offenders were less likely to be referred to court than delinquent offenders. Of the 744 reported status offenses, 46 percent (339) resulted in court referrals, well under the 57 percent rate (2,626) of 4,578 of court referrals for delinquent offenses.

Even within the status offense category, there was substantial disparity in the percentage of court referrals among the category's various offenses. Of the 23 cases of truancy reported, only two, or nine percent, were referred to court; and both cases referred to court were referred by a single department (Walworth Co. Sheriff's Department).

Curfew violation contacts were referred to court in 36 percent of the reported cases. This figure may be misleading since only 10 police departments and a single sheriff's department reported enforcing curfew laws. Also a substantial number of curfew violations

¹⁸S.D.C.L. §26-8-7.1 (1976) defines a "child in need of supervision" as "any child who is habitually truant from school; who has run away from home or is otherwise beyond the control of his parent, guardian, or other custodian; or whose behavior or condition is such as to endanger his own or other's welfare."

¹⁹p. Piersma et. al., Law and Tactics in Juvenile Cases, 22 (3rd Ed. 1977) [hereinafter cited Law and Tactics].

handled by the Redfield and Dell Rapids Police Departments were not reported as contacts because the juveniles were simply sent home.

The percent of runaways referred to court (53%) was much higher than for truancy and curfew, being nearly equal to the 57 percent court referral rate for delinquent offenses. As with curfew, (and liquor law violations), disposition policy was diverse among departments. Several departments almost automatically returned runaways to their parents (e.g., Aberdeen Police Department, Brookings County Sheriff's Office), while other departments (e.g., Vermillion Police Department) felt running away was indicative of other problems of interest to the court and automatically referred runaways to court.

The disposition of juveniles according to the offense associated with the contact is presented in Tables 19 and 20 for police and sheriff's departments, respectively; police departments, as a whole, were more likely to refer youths to the court than their counterparts at the county level. Police agencies referred 58 percent (2483) of the 4238 juvenile contacts to court as opposed to 46 percent (482) of the 1039 contacts by sheriff's departments which were court referrals.

Again, the bare statistics can be deceiving. Liquor law violations accounted for a large portion (45%) of the contacts reported by sheriff's departments, and only 18 percent of the violators were referred to court. On the other hand, 60 percent of liquor law violators were referred to the court by police departments. If liquor law contacts are excluded from the sample, sheriff's departments were much more likely to refer juvenile contacts to court than were police departments. With liquor law violators excluded, 69 percent of all sheriff's department contacts were referred to court, while police referred only 58 percent

Table 19

Disposition of Juvenile Offenders According to Offense by All Police Departments Surveyed.

Table 20

Disposition of Juvenile Offenders According to Offense by All Sheriff's Departments Surveyed.

Offense	Offense Total			Offense	Offense Total		
	Informal	Referral	% Referred		Informal	Referral	% Referred
Murder or manslaughter	0	2	100	Murder or manslaughter	0	0	-
Forcible Rape	0	1	100	Forcible Rape	0	1	100
Robbery	0	17	100	Robbery	0	2	100
Aggravated Assault	1	14	93	Aggravated Assault	0	1	100
Burglary	70	305	81	Burglary	3	48	94
Larceny-theft	491	603	55	Larceny-theft	32	50	61
Auto theft	11	130	92	Auto theft	0	38	100
Other Assaults	16	42	72	Other Assaults	5	6	55
Arson	3	2	40	Arson	0	0	-
Forgery	6	17	74	Forgery	2	11	85
Fraud or embezzlement	6	9	60	Fraud or embezzlement	0	9	100
Stolen property	10	20	67	Stolen property	2	4	67
Vandalism	272	200	42	Vandalism	52	55	51
Weapons	11	7	39	Weapons	2	0	0
Sex Offense	3	11	79	Sex offense	2	1	33
Drug violation	60	120	67	Drug violation	20	36	64
DWI	0	43	100	DWI	0	11	100
Liquor laws	257	391	60	Liquor laws	379	84	18
Disorderly conduct	32	92	74	Disorderly conduct	19	11	37
Curfew	144	91	39	Curfew	21	1	5
Runaway	207	174	46	Runaway	12	71	86
Truancy	21	0	0	Truancy	0	2	100
All other non-traffic offenses	179	192	52	All other non-traffic offenses	6	40	87
Total	1800	2483	58	Total	557	482	46

of their contacts.

Thus, generally, sheriff's departments were less apt to transfer juveniles to court than police were. However, this seemed to be a result of the large proportion of liquor law violations handled by most sheriff's departments and their tendency to handle them informally.

A slightly higher percentage of males than females was referred to the courts by both police and sheriff's departments. Police transferred 59 percent of male youths and 53 percent of female youths and sheriff's departments referred 48 percent of the male offenders compared to 41 percent of the females.

Tables 21-24 provide a breakdown of the police department disposition data according to city population category with the same information for counties by population supplied in Tables 25-28.

The tables illustrate that for both police and sheriff's departments, as the population of the jurisdiction decreases the tendency of the agencies to handle juveniles formally also declines.

Police departments in the two city population categories over 5,000 turned over about six of every 10 juveniles to court. Departments in cities over 25,000 referred 60 percent of the juvenile offenders and departments in cities between 5,000 and 15,000 had a court referral rate of 62 percent. Police departments in cities between 1,000 and 5,000 referred 40 percent of juvenile contacts to court while only 31 percent in police agencies in cities under 1,000 handled juveniles by court referral.

Similarly, for sheriff's departments, there is a trend of a decrease in court referrals as the population of the jurisdiction decreases. The percent of juveniles referred to court drops from 79 per-

cent for departments in counties over 25,000, to 53 percent for departments in counties between 15,000 and 25,000, and to 37 percent for agencies in the 5,000 to 15,000 population range. The percent of court referrals for sheriff's offices in the counties between 1,000 and 5,000 increases to 49 percent.²⁰

Since one major criteria reportedly used by officers in deciding whether a juvenile should be referred to court is his recidivism status, this could provide an explanation for the correlation mentioned above if it could be shown that officers in jurisdictions with larger populations handled more recidivists. However, this correlation between a reduction in the population of the jurisdiction and a reduction in court referrals, presented graphically in Figure 2, seems unrelated to recidivism rates. The differences in referral from one population category to another do not generally correspond in magnitude, and in some cases directions, to the differences in the percentage of repeat offenses.²¹

For example, although the percent of repeat offenses decreases from 51% to 29% in moving from police departments in cities over 25,000 to those in cities between 5,000 and 15,000, the percent referred to court increases from 60% to 62%; and while the percent of repeat offenses drops only five percent (32% to 27%) between sheriff's departments in

²⁰This apparent increase in referral rate from the 5,000-15,000 population category to the 1,000-5,000 category is the result of an almost 180 degree divergence in referral policy between Stanley and Sanborn Counties. While Stanley Co. Sheriff's Department referred 100 percent of their juvenile contacts, Sanborn Co. used court referral in only 3 percent of juvenile contacts (Table 29).

²¹SAC, Juvenile Offender, supra n. 17, at 51-68.

Table 21

Disposition of Juvenile Offenders According to
Offense by Police Departments in Cities over
Twenty-five Thousand

Table 22

Disposition of Juvenile Offenders According to
Offense by Police Departments in Cities
Between Five and Fifteen Thousand

Offense	Offense Total			Offense	Offense Total		
	Informal	Referral	% Referred		Informal	Referral	% Referred
Murder or manslaughter	0	1	100	Murder or manslaughter	0	1	100
Forcible rape	0	1	100	Forcible rape	0	0	-
Robbery	0	15	100	Robbery	0	2	100
Aggravated assault	1	13	93	Aggravated assault	0	1	100
Burglary	58	260	82	Burglary	0	40	100
Larceny-theft	376	386	51	Larceny-theft	87	193	69
Auto theft	11	102	90	Auto theft	0	18	100
Other assaults	15	37	71	Other assaults	1	5	83
Arson	3	1	25	Arson	0	1	100
Forgery	6	11	65	Forgery	0	6	100
Fraud or embezzlement	6	7	54	Fraud or embezzlement	0	2	100
Stolen property	8	19	70	Stolen property	0	0	-
Vandalism	179	125	41	Vandalism	31	48	61
Weapons	8	4	33	Weapons	2	3	60
Sex offense	3	11	79	Sex offense	0	0	-
Drug violation	57	104	65	Drug Violation	3	14	82
DWI	0	19	100	DWI	0	23	100
Liquor laws	97	170	64	Liquor laws	76	163	68
Disorderly conduct	21	44	68	Disorderly conduct	5	23	82
Curfew	32	33	51	Curfew	67	57	46
Runaway	143	152	52	Runaway	39	17	30
Truancy	0	0	-	Truancy	19	0	0
All other non-traffic offenses	104	165	61	All other non-traffic offenses	71	26	27
Total	1128	1680	60	Total	401	643	62

Table 23

Disposition of Juvenile Offenders According to Offense by Police Departments in Cities between One and Five Thousand

Table 24

Disposition of Juvenile Offenders According to Offense by Police Departments in Cities under One Thousand

Offense	Offense Total			Offense	Offense Total		
	Informal	Referral	% Referred		Informal	Referral	% Referred
Murder or manslaughter	0	0	-	Murder or manslaughter	0	0	-
Forcible rape	0	0	-	Forcible rape	0	0	-
Robbery	0	0	-	Robbery	0	0	-
Aggravated assault	0	0	-	Aggravated assault	0	0	-
Burglary	4	5	56	Burglary	2	0	0
Larceny-theft	13	15	58	Larceny-theft	15	6	29
Auto theft	0	6	100	Auto theft	0	4	100
Other assaults	0	0	-	Other assaults	0	0	-
Arson	0	0	-	Arson	0	0	-
Forgery	0	0	-	Forgery	0	0	-
Fraud or embezzlement	0	0	-	Fraud or embezzlement	0	0	-
Stolen property	0	0	-	Stolen property	2	1	33
Vandalism	46	13	22	Vandalism	16	14	47
Weapons	1	0	0	Weapons	0	0	-
Sex offense	0	0	-	Sex offense	0	0	-
Drug violation	0	2	100	Drug Violation	0	0	-
DWI	0	1	100	DWI	0	0	-
Liquor laws	76	46	38	Liquor laws	8	12	60
Disorderly conduct	6	20	77	Disorderly conduct	0	5	100
Curfew	0	0	-	Curfew	45	1	2
Runaway	24	5	17	Runaway	1	0	0
Truancy	2	0	0	Truancy	0	0	-
All other non-traffic offenses	1	0	0	All other non-traffic offenses	3	1	25
Total	173	116	40	Total	98	44	31

Table 25

Disposition of Juvenile Offenders According to Offense by Sheriff's Departments in Counties Over Twenty-five Thousand.

Offense	Offense Total		
	Informal	Referral	% Referred
Murder or manslaughter	0	0	-
Forcible rape	0	0	-
Robbery	0	2	100
Aggravated assault	0	0	-
Burglary	2	14	88
Larceny-theft	2	10	83
Auto theft	0	7	100
Other assaults	1	1	50
Arson	0	0	-
Forgery	0	0	-
Fraud or embezzlement	0	0	100
Stolen property	1	0	0
Vandalism	3	2	40
Weapons	0	0	-
Sex offense	0	0	-
Drug violation	0	4	100
DWI	0	0	-
Liquor laws	3	6	67
Disorderly conduct	1	0	0
Curfew	0	0	-
Runaway	3	14	82
Truancy	0	0	-
All other non-traffic offenses	6	21	78
Total	22	83	79

Table 26

Disposition of Juvenile Offenders According to Offense, Sex, and Race by Sheriff's Department, in Counties between Fifteen and Twenty-five Thousand

Offense	Offense Total		
	Informal	Referral	% Referred
Murder or manslaughter	0	0	-
Forcible rape	0	0	-
Robbery	0	0	-
Aggravated assault	0	-	100
Burglary	0	12	100
Larceny-theft	3	18	86
Auto theft	0	8	100
Other assaults	0	2	100
Arson	0	0	-
Forgery	0	8	100
Fraud or embezzlement	0	5	100
Stolen property	0	1	100
Vandalism	15	9	38
Weapons	0	0	-
Sex offense	2	1	33
Drug Violation	0	10	100
DWI	0	1	100
Liquor laws	58	0	0
Disorderly conduct	5	0	0
Curfew	21	0	0
Runaway	4	35	90
Truancy	0	0	-
All other non-traffic offenses	0	10	100
Total	108	121	53

Table 27
Disposition of Juvenile Offenders According to
Offense by Sheriff's Departments in Counties
Between Five and Fifteen Thousand

Offense	Offense Total		
	Informal	Referral	% Referred
Murder or manslaughter	0	0	-
Forcible rape	0	1	100
Robbery	0	0	-
Aggravated assault	0	0	-
Burglary	1	10	91
Larceny-theft	27	17	39
Auto theft	0	22	100
Other assaults	0	1	100
Arson	0	0	-
Forgery	2	3	60
Fraud or embezzlement	0	2	100
Stolen property	1	3	75
Vandalism	29	38	57
Weapons	2	0	0
Sex offense	0	0	-
Drug violation	20	13	39
DWI	0	9	100
Liquor laws	254	53	17
Disorderly conduct	13	2	13
Curfew	0	1	100
Runaway	5	22	84
Truancy	0	2	100
All other non-traffic offenses	0	9	100
Total	354	208	37

Table 28
Disposition of Juvenile Offenders According to
Offense by Sheriff's Departments in Counties
Between One and Five Thousand

Offense	Offense Total		
	Informal	Referral	% Referred
Murder or manslaughter	0	0	-
Forcible rape	0	0	-
Robbery	0	0	-
Aggravated assault	0	0	-
Burglary	0	12	100
Larceny-theft	0	5	100
Auto theft	0	1	100
Other assaults	4	2	33
Arson	0	0	-
Forgery	0	0	-
Fraud or embezzlement	0	0	-
Stolen property	0	0	-
Vandalism	5	6	55
Weapons	0	0	-
Sex offense	0	0	-
Drug Violation	0	9	100
DWI	0	1	100
Liquor laws	64	251	28
Disorderly conduct	0	9	100
Curfew	0	0	-
Runaway	0	0	-
Truancy	0	0	-
All other non-traffic offenses	0	0	-
Total	73	70	49

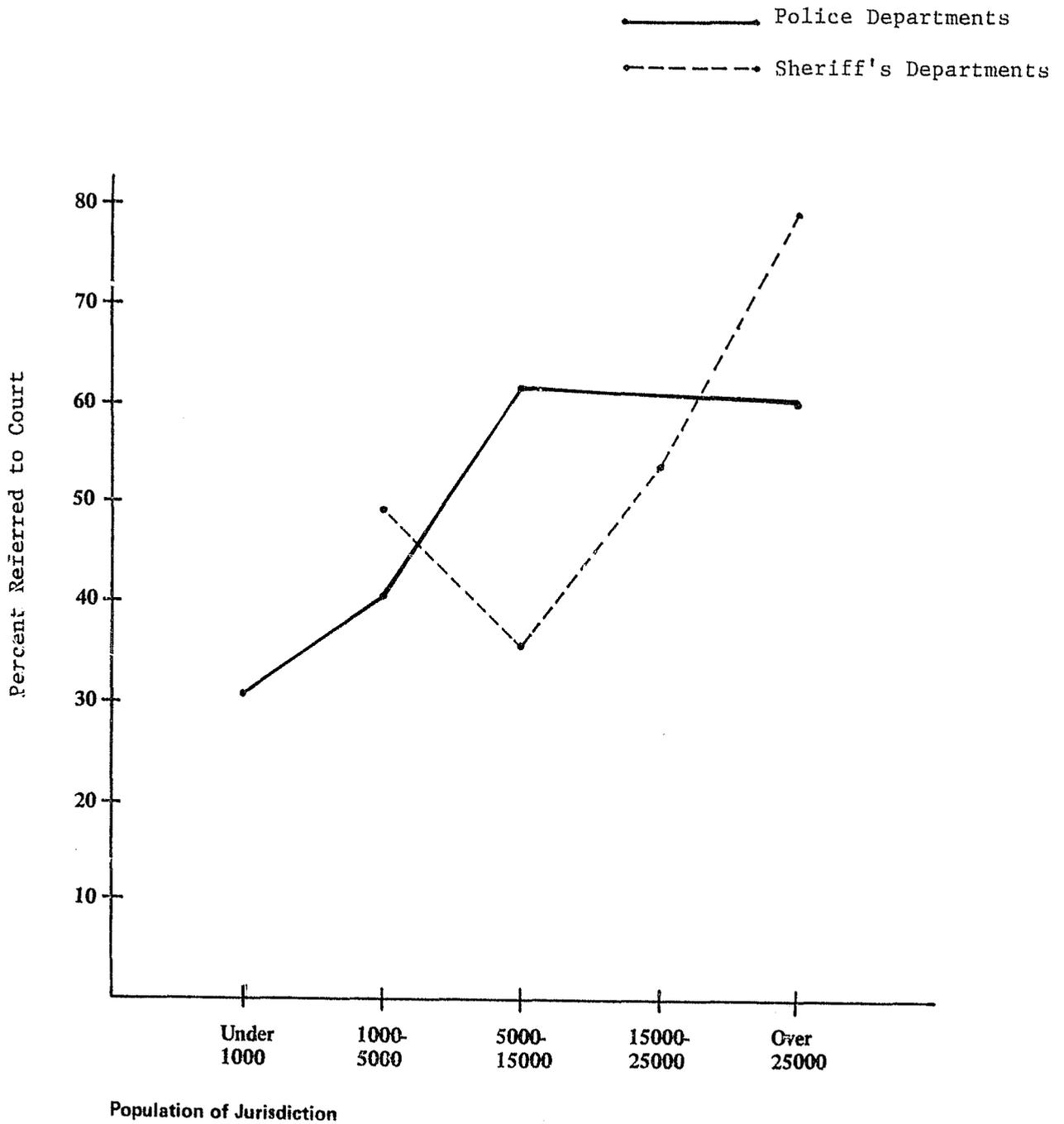


FIGURE 2

PERCENT OF JUVENILE OFFENDERS REFERRED TO COURT BY POLICE AND SHERIFF'S DEPARTMENTS ACCORDING TO POPULATION OF JURISDICTION

counties of 15,000 to 25,000 and those in counties 5,000 to 15,000, the percent of juveniles referred to court drops 15 percent (from 53% to 37%).²² Thus, some other explanation for these variations in referral rates across population categories must be found.

At least part of the reason for the general drop in the rate of court referrals with decreasing population is the accompanying decline in the rate of "serious offenses" including murder-manslaughter, forcible rape, robbery, aggravated assault, burglary, auto theft, arson, forgery, fraud-embezzlement, sex offenses, drug violations and DWI, all of which constitute offenses earning relatively automatic court referrals.

These offenses accounted for 25 percent, 11 percent, six percent, and eight percent of all offenses reported by police departments in cities over 25,000, cities between 5,000 and 15,000, cities between 1,000 and 5,000, and cities under 1,000, respectively. For sheriff's departments, as population category decreased, these offenses accounted for 30 percent, 21 percent, 15 percent, and 16 percent of all offenses, respectively.

At least two additional factors probably contribute to the decreasing rate of court referrals as population decreases, for both police and sheriff's departments. First, law enforcement personnel in less populous areas are more likely to know the families of juvenile offenders. Second, law enforcement personnel in the less populous areas expressed a generally more negative opinion about the ability of the court to deal effectively with juvenile offenders. This more neg-

²²Id. at 67.

ative opinion was especially true of departments which were isolated from the court service worker serving their area. It may be asserted, that, knowing the families tended to increase the law enforcement agency's perceptions of its ability to handle juvenile cases informally, and not knowing court personnel tended to decrease the law enforcement agency's perceptions of the court's ability to handle juvenile cases. The combined effect could be to decrease the tendency to refer juveniles to court for law enforcement agencies in less populous, more isolated areas of the state.²³

Although there was a general decrease in rate of court referrals with decreasing population for both police and sheriff's departments, individual agencies varied widely in rates of court referrals (Table 29). As mentioned earlier, some agencies (Aberdeen, Yankton, Lead, and Highmore police departments and Brown County, Brookings County, Lawrence County, Butte County, and Stanley County sheriff's departments automatically referred all or most juvenile contacts to court (i.e., to the court service worker), thus resulting in high referral rates for these agencies. On the other hand, other agencies (Dell Rapids, Miller, Redfield, Alcester, and Hill City police departments and Bon Homme County and Sanborn County sheriff's departments)

²³N. Goldman, "The Differential Selection of Juvenile Offenders for Court Appearance" in Crime and the Legal Process 264, 286 (W. Chambliss ed. 1969) [hereinafter cited Goldman], reports a similar correlation between population and court referral for four communities in Pennsylvania: Where there exists an objective, impersonal relation between the police and the public, court referral rates will be high," whereas "[w]here there exists a personal face-to-face relation between the police and the public, there will be more discrimination with respect to court referral [and] [m]ore cases will be carried on an unofficial level."

Table 29

Number and Percent Referrals Reported by Each
Law Enforcement Agency Surveyed According to Type
of Agency and Population of Jurisdiction

Population Category	Police Departments			Sheriff's Departments		
	City	Number Referred	Percent Referred	County	Number Referred	Percent Referred
over 25000	Sioux Falls	551	40	Minnehaha	70	76
	Aberdeen	344	78	Brown	13	100
	Rapid City	785	79			
	Total	1680	60	Total	83	79
15000- 25000				Brookings	57	92
				Davison	39	31
				Lawrence	25	63
			Total	121	53	
5000-15000	Brookings	72	44	Grant	48	75
	Watertown	144	58	Turner	61	41
	Vermillion	80	45	Bon Homme	24	10
	Yankton	124	81	Edmunds	14	41
	Pierre	136	64	Walworth	24	67
	Lead	87	99	Butte	37	100
	Total	643	62	Total	208	37
1000-5000	Clark	0	-	Sanborn	2	3
	Beresford	21	88	Stanley	68	100
	Dell Rapids	2	13			
	Parkston	18	82			
	Springfield	16	33			
	Miller	1	3			
	Redfield	5	6			
	Highmore	26	100			
	Spearfish	27	64			
Total	116	40	Total	70	49	
under 1000	Castlewood	0	-			
	Alcester	1	7			
	Armour	13	52			
	New Effington	2	50			
	Presho	28	38			
	Hill City	0	0			
Total	44	31				
Police Total		2483	58	Sheriff Total		482
						46

tried to handle all except very serious offenses out of court, thus very low referral rates were reported for these agencies. The other agencies surveyed had disposition policies balancing these extremes.

Note that both police and sheriff's departments have agencies with widely different disposition policies which are represented at all population levels (as well as in all geographic areas of the state). Thus, although it is possible to make general statements about juvenile referral rates on the basis of the type of agency and the population of the jurisdiction, it is impossible to predict referral rates in any specific law enforcement agency without additional information on disposition policies and specific offense rates.

F. SUMMARY

Juvenile offense data, including offender characteristics and agency disposition, for 1975 was collected from 24 police departments and 13 sheriff's departments in South Dakota. These departments were randomly selected to represent all geographic areas and population categories in the state. For police departments in cities with over 5,000 population virtually all data was obtained from department records, while for information from most police departments in smaller towns it was necessary to rely on the memories of department personnel because of the lack of juvenile recordkeeping. Juvenile data for sheriff's departments in the survey was secured from department records in six departments and primarily from memory or court records in the other seven departments; there was little relationship between county population and the existence of juvenile recordkeeping.

The 37 law enforcement agencies in the survey reported a total of 5,322 juvenile contacts in 1975. These contacts when associated with

offenses establish that about one-half of the total juvenile contacts involve larceny-theft or liquor law violations. Males made up 75 percent of the contacts, while 88 percent of total contacts were white. The most common offense reported by police departments was larceny-theft, accounting for more than one-fourth of the police contacts; nearly one-half of the sheriff's departments' contacts were for liquor law violations.

When asked about their disposition policies, four police departments and five sheriff's departments reported that they automatically referred juvenile contacts, with few exceptions, to court. The remaining agencies reported taking a combination of factors into account, primarily the seriousness of the offense and the offender's prior record, in deciding to refer a youth to the juvenile court.

For the 37 law enforcement agencies surveyed, 56 percent of the juvenile contacts were referred to court, with the other 44 percent handled informally by the law enforcement agencies. For all offenses except truancy, at least 35 percent of the contacts were referred to court; the percentage of juveniles referred for each offense varied between departments, but seemed closely related to the "seriousness" of the offense. For example, robbery, auto theft, and DWI, all considered serious offenses, produced referral rates of near 100 percent.

Sex was not a significant factor in the dispositional decision, according to the survey results. Although the percentage of males referred to juvenile court was greater than females, the difference can be easily attributed to males being involved in repeat and more serious offenses.

The survey disclosed that a larger percentage of the juvenile

contacts handled by police departments were referred to court than were referred by sheriff's departments. This conclusion can be considered misleading, however, since it was shown that if liquor law violations (which sheriff's departments dealt with leniently) were excluded, sheriffs' departments were more likely to refer juvenile contacts to court.

Examination of the relationship between jurisdiction population and court referral rates revealed, for both police and sheriff's departments, as the population category decreased so did the percentage of juvenile contacts referred to court. This correlation can be attributed to three factors. First, departments in less populous areas handled proportionally less serious offenses. Secondly, law enforcement personnel in smaller towns and counties were more likely to know the offender's family. Finally, department personnel in less populated regions generally did not have much faith in the juvenile court's effectiveness.

II. JUVENILE LAW ENFORCEMENT IN SOUTH DAKOTA

A. PRACTICES UTILIZED BY THE SAMPLE AGENCIES IN HANDLING JUVENILES

In interviewing the 40 agencies²⁴ in the survey sample, an attempt was made to obtain a general picture of the practices employed by law enforcement personnel in South Dakota in handling juveniles. A special emphasis was placed on the juvenile's initial contact with the law since it is this encounter between youth and police which determines if the juvenile is to be further entangled in the juvenile court system. The preceding section dealt only with one aspect of this contact, the decision to refer the juvenile to court. In this section we will deal with other procedural aspects of the juvenile contact with law officers in South Dakota. Beyond the dispositional issue, the sample agencies were questioned about the procedures that were followed in taking the youth into custody and holding him in detention. These procedures will be examined and compared between agencies and also against the State Juvenile Code.

The South Dakota Juvenile Code²⁵ would be the logical starting point in any discussion of the procedures governing the handling of juv-

²⁴This includes Winner and Belle Fourche Police Departments and Pennington County Sheriff's Department, which were not included in the sections on juvenile offense data.

²⁵S.D.C.L. §26-7 through 26-13.

eniles. However, the most notable feature of the State Code is the absence of any specific procedural guidelines to be followed by police in their on-the-street dealings with youths. For example, although South Dakota Codified Laws §26-8-19.1 provides that an officer "may" take a child into custody under certain specific circumstances,²⁶ thus at least tacitly recognizing the officer's discretionary power, there are no guidelines covering this discretionary decision.

In response to this inadequate legislative direction many law enforcement agencies have developed their own procedures to be followed in juvenile matters. Often times these procedures are inconsistent with those adopted by other agencies in the state. The ultimate result is considerable disparity in juvenile procedure across the state.

Very few of the agencies surveyed had written juvenile procedures of their own to supplement the state juvenile code. A full 90% of the agencies surveyed did not specify any juvenile procedures in the department procedures manual. Only four of the 40 agencies surveyed had written procedures for dealing with juvenile suspects in their department procedures manuals. Significantly, all four were in larger

²⁶S.D.C.L. §26-8-19.1 (1976) provides:

A child may be taken into temporary custody by a law enforcement officer without order of the court:

- (1) when he is subject to arrest under the provisions of §23-22-9;
- (2) when he is abandoned or seriously endangered in his surroundings or seriously endangers others, and immediate removal appears necessary for his protection or the protection of others; or
- (3) when there are reasonable grounds to believe that he has run away or escaped from his parents, guardian or custodian.

[hereinafter, sections of S.D.C.L. will be referred to in the text by S.D.C.L. §; e.g., S.D.C.L. §26-8-8.1].

cities (Rapid City, Aberdeen, Brookings and Yankton). None of the smaller police departments nor any of the sheriff's departments had their own written juvenile procedures. One sheriff's department (Waltham County) did have Juvenile Procedures Manual which it used as a guide, but it was compiled by the Fifth Judicial Circuit. The section of the Brookings Police Department Procedures Manual which deals specifically with juveniles is reproduced in Appendix A as a representative sample of written juvenile procedures.

While few agencies utilized written juvenile procedures, most claimed to follow relatively standard, unwritten procedures. Commonly, they said, this involved transporting the youth to the department after being apprehended for a law violation. Most departments claimed it was their practice to call parents immediately. Usually no attempt was made to question the youth without a parent's presence. The departments asserted that it was their habit to make the parents aware of all the facts of the case which were known by the agency.

Generally, with a minor offense which the officer felt could be best handled outside of court, the agency would handle the matter informally only if the parents agreed to an out-of-court settlement and cooperated with the informal disposition. Several agencies added a further condition in cases where the department believed they had conclusive proof of the juvenile's guilt--the juvenile had to admit his guilt before the case would be handled informally.²⁷

²⁷There is no real statutory authority for any type of informal handling of juveniles by police, with possible exception of the word "may" in S.D.C.L. §26-8-19.1, supra n. 26. Also, S.D.C.L. §26-8-1.1 (1977 Supp.) gives the state's attorney the power to "[m]ake

For more serious cases, the law enforcement agency had to decide whether to jail the youth pending a court hearing. Most agencies stated that they seldom found it necessary to detain the juvenile for a substantial length of time, and held them only if the parents, or some other responsible adult, could not be located to take custody of the youth. The juvenile might also be detained if the department believed the youth would leave the area, or injure himself or others if he was not held.²⁸

In cases where detention of the youth was deemed necessary, the agencies surveyed stated that before jailing the juvenile they obtained permission from the court (judge, court service worker, or state's attorney). If the jurisdiction did not have a separate juvenile facility, the juvenile was transported to the nearest jail (usually the county jail) with a separate juvenile lock-up.²⁹

whatever informal adjustment under the supervision of the court that is practicable," thus suggesting that the legislature intended that the state's attorney have exclusive authority in this area. Informal police diversion is also subject to the same criticisms levied by E. Lemert, "Instead of Court: Diversion in Juvenile Justice" in Back on the Street: The Diversion of Juvenile Offenders 123, 142 (R. Carter and M. Klein, eds. 1976) [hereinafter cited Back on the Street] and R. Kobetz, "Police Discretion: The Need for Guidelines" also in Back on the Street, 207, 209.

²⁸S.D.C.L. §26-8-19.3 (1976) provides that "a child shall not be detained by law enforcement officials any longer than is reasonably necessary to obtain his name, age, residence, and other necessary information and to contact his parents...and deliver him thereto, or to the place of detention." Of course "reasonably necessary" is subject to differing interpretation. S.D.C.L. §26-8-19.2 (1976) states a child should be released unless his or the community's welfare requires his detention.

²⁹S.D.C.L. §26-8-29 (1976) prohibits incarceration of a child under 15 in any common jail or lockup for any purposes including detention before trial. Such a child, if detained must be kept in a "suitable place" outside the jail or police station. No such prohibition applies to youths 15 or over unless the court so orders.

Some larger departments said they were given blanket approval by the court to exercise their own discretion in incarcerating juveniles. However, departments with such latitude stated that the court established specific guidelines which were used in deciding which juveniles to detain. These agencies said that they were required to notify the court as soon as possible of any decision to detain a juvenile. Most of the smaller agencies were directed to obtain case-by-case approval by the court before incarcerating a juvenile.³⁰

For each case referred to court, the department forwarded a complete report of the facts of the case to the court service worker and/or the state's attorney. Some departments kept a copy of this report on file, but others did not. This was the case with contacts not referred to the court as well.

In departments with a juvenile officer or division, the youth was transferred, after the initial contact, to the custody of a juvenile officer to be processed. Several departments without juvenile officers had one or two officers who handled all the juvenile cases, but most departments who did not have juvenile officers required that the officer making the initial contact process the juvenile.

While all the law enforcement agencies surveyed approximated the general practices outlined above, most of the agencies departed

³⁰In this instance, it seems the general practice goes beyond the procedure prescribed by S.D.C.L. §26-8-19.4 (1976) which does not require any court permission before detention, but only that the office notify the court that the child has been detained and state in writing why he or she was not released. It would be interesting to find out what the "specific guidelines" established by the court were to compare them with guidelines formulated in other studies.

from those procedures in some respect. For example, the general course of action was to bring the apprehended juvenile directly to the department for disposition. However, 54 percent (14) of the police departments and 29 percent (4) of the sheriff's departments reported that officers would sometimes release a juvenile immediately with only a warning. In such cases, the parents might or might not be informed of the officer's encounter with the youth. The immediate release was not standard procedure for informal dispositions and was reportedly used for only very minor offenses, such as, curfew violations, disorderly conduct, and minor liquor violations.

Although most departments reported following the policy of calling parents on all juvenile contacts, except on-the-spot releases, two police departments stated they generally informed parents only if they intended to refer the youth to court. They felt that, for informal dispositions, an approach of impressing upon the youth the seriousness of the offense and then doing the youth the "favor of not getting him in trouble" with his parents would result in the juvenile returning the favor by avoiding future entanglement with the law.³¹ Both departments reported following the general practice of informing parents for all juvenile contacts in the past, but found their "exchange of favors" approach more effective. Significantly, both departments were in small cities, one under 5,000 and the other under 1,000 where police were more likely to know the juvenile personally.

³¹This procedure is in variance with S.D.C.L. §26-8-19.2 (1976) which does not exempt non-court referrals from the requirement of notifying the parents, if the child is taken into temporary custody.

While most departments said that they called parents immediately and had them present for all questioning, several departments admitted that parents were not always present during questioning. One agency stated that it would sometimes intentionally delay calling parents if they felt more information could be obtained without the parents' presence.³² In contrast, the Yankton Police Department stated that in addition to having the parents present during all questioning and completely informing them of all the details of the case, they also asked the parents to sign a form stating that they had been completely apprised of all facts known to the police department.³³ The purpose of the signed statement was to protect the department against claims by parents that they had not been provided adequate notice of the case against their child.

Finally, several agencies can be distinguished by their unique methods of informal disposition. The general practice was to counsel the child about the serious consequences of the act, and then release the youth to his parents with the parents making monetary restitution

³²This practice clearly violates S.D.C.L. §26-8-19.2 (1976) since "the officer [must] notify the parents, guardian, or custodian without unnecessary delay" [*italics mine*] after he has taken the child into custody. Also any lengthy interrogation seems to violate S.D.C.L. §26-8-19.3 (1976) which prescribes the term of detention by law enforcement officials as no longer than necessary to obtain the youth's name, age, residence, and other necessary information.

³³Hopefully, this information would include proper constitutional warnings of the right to remain silent, that any statement made can be used against the child, and that the child has the right to the presence of an attorney. However, none of the departments interviewed volunteered any information concerning the giving of Miranda rights to juveniles or their parents. Since the repeal of S.D.C.L. §23-44-2 by SL 1973, CH 155 South Dakota has not statutorily mandated the giving of Miranda rights by police before questioning for adults or juveniles.

if any property damage was done. This method was reported by most of the police departments surveyed and by all the sheriff's departments that did not automatically refer all juvenile contacts to court.

However, several departments in the state had release programs which resemble more formalized "diversion" programs. "Diversion" as defined by the International Association of Chiefs of Police is "an exercise of discretionary authority to substitute an informal disposition prior to a formal hearing on an alleged violation", where the youth is released and/or referred to some non-judicial agency.³⁴

Five police departments reported that they would occasionally release the youth to his parent's custody on the condition that the youth receive counseling. Four of the five departments (Sioux Falls, Rapid City, Brookings and Pierre), stated that they required juveniles to obtain professional counseling as a condition of release in cases where they felt there were indications that the youth's misbehavior was symptomatic of psychological problems. Such an assessment, without specific guidelines or psychological training, seems to be beyond the capabilities of most agencies.³⁵ The remaining police department, Vermillion, regularly referred second offenders for certain offenses to counseling, but unless they believed the youth had obvious psychological problems, they allowed the juvenile to obtain counseling from a minister, teacher, school counselor, or someone in a similar capacity rather than a psychologist or psychiatrist.

³⁴R. Kobetz and B. Bosarge, Juvenile Justice Administration 70 (1973) [hereinafter cited Kobetz].

³⁵E. Ferster and T. Courtless, "Legislation: The Beginning of Juvenile Justice, Police Practices, and the Juvenile Offender,"

In another major variation in informal dispositions, three police departments (Watertown, Pierre and Hill City) reported they offered work restitution programs as an alternative to court referrals for some juvenile offenders. One other police department (Belle Fourche) although offering no formal work restitution program, said that they had used restitution as an informal disposition in several instances. In Pierre and Watertown, first offenders apprehended for minor shoplifting, vandalism, and occasionally other less serious offenses were commonly referred to a work restitution program. In both cities, the agencies said that the program was operated with the full approval of the court.³⁶

In Watertown, the juveniles worked in the city park for a specified period of time, usually a matter of days. The youths were required to sign a work agreement which they had to satisfactorily complete or be referred to court.³⁷ In Pierre, the juvenile's debt,

22 Vand. L. Rev. 567, 580 (1969). [hereinafter cited Ferster and Courtless].

³⁶The work restitution programs described, laudable as they might be, especially in light of the criticisms directed at the juvenile court system, and despite the court's approval, have no real statutory basis and are subject to the same objections raised in n. 27 supra. Also, some definite due process problems arise in the instituting of what could be considered a punishment without a hearing or adjudication of guilt.

³⁷The procedures spelled out for work restitution programs can also be seen as circumventing some of the procedural safeguards provided by S.D.C.L. §26-8-1.1 (Supp. 1977) which requires written consent of both the parents and child before informal adjustment can be made. Thus, the consent requirement can be avoided by the police, but not by the state's attorney in making informal dispositions. Also, the statute provides that the child and the parents must be advised of their constitutional and legal rights before informal ad-

measured according to the cost of the item shoplifted or the amount of damage done by vandalism, was worked off according to a set hourly rate. The work was performed either for the persons victimized by the youth or for public agencies. Hill City's police chief used work restitution for all youthful violators except serious or chronic offenders. Under his unique program, which he said the court knew of and condoned, the juvenile was required to work for the victim of his offense or for the city for a specified length of time, again under the threat of court referral should he fail to meet the terms of the restitution program. Although no data was available on the success of such work restitution programs, the departments which used it felt it was a very effective disposition option for handling juveniles. Some departments believed that the restitution program, in addition to atoning for damages, also served as a deterrent to future illegal acts by the youth.

A third variation in informal disposition occurred in Springfield where the police department, when dealing with a juvenile offender during the school year, would explain the situation the youth

justment by the state's attorney, the police program has no similar requirement. The threat of court referral points out the involuntary nature of restitution programs. Many studies have concluded that voluntary participation in a diversion program affords the maximum rehabilitative effect (see, e.g., Kobetz, *supra* n. 34, at 71) and that less coercive means of assuring compliance with the informal disposition than the threat of filing a petition should be developed. For example, posting a performance bond or informing the child that he will be ineligible for informal disposition in the future if he fails to complete his agreement. See, e.g., Comment, "Alternative Preadjudicatory Handling of Juveniles in South Dakota: Time for Reform," 19 *S.D.L. Rev.* 207, 222 (1974). Another problem with the restitution programs is that there is nothing to prevent law enforcement overreaching by filing a petition even though the youth has satisfactorily completed the program.

was in to both the parents and school guidance counselor, and turn responsibility for the youth over to the guidance counselor. This approach was used only in the case of minor violations.

This overview of juvenile law enforcement in South Dakota emphasizes the tremendous amount of discretion which police and sheriff's departments exercise in formulating individual juvenile procedures for handling juveniles. Not only does this result in inconsistent law enforcement practices between departments, but in many instances the "standard, unwritten procedures" developed and the deviations which were allowed from them are contrary to the admittedly brief and superficial state law which deals with the handling of juveniles.³⁸ Two factors contribute to the high degree of diversity in juvenile procedure and the lack of adherence to the juvenile code.

First, almost all agencies agreed that their primary goal was to deter juveniles from committing further crimes and not strict law enforcement.³⁹ Further, law enforcement agencies felt they were more effective in providing deterrence than the courts. In fact, many agencies specifically stated that they were extremely unhappy with the perfor-

³⁸See, e.g., n. 27, n. 31, and n. 32, supra.

³⁹This "primary goal of deterrence" as perceived by the law enforcement agencies interviewed seems to be at odds with the rehabilitative role often cited as the foundation of the juvenile justice system. V. Streib, "The Informal Juvenile Justice System", 10 J. Mar. J. Prac. & Proc. 41, 51 (1976) concludes, "As stated in Kent, 'the state is parens patriae rather than prosecuting attorney and judge.' Indeed, rehabilitation of the child is the predominant goal of the entire formal juvenile justice system." This perceived goal also seems contrary to the proper police role--both in a constitutional and realistic sense. Constitutionally, the police role as a member of the executive branch, is enforcement of the law. Meting out dispositions for deterrence purposes is clearly outside that enforcement role. Realistically, law enforcement personnel do not have the necessary training in juvenile treatment to effectuate their avowed purpose of deterrence.

mance of the juvenile court system.

Secondly, the general lack of training in juvenile law and procedure, as demonstrated in the Police Manpower Survey Section, may have contributed to the problem of disparity in the handling of juveniles. Both of these factors demonstrate the necessity for adequate statutory and administrative guidelines to assure some degree of conformity. The factors also point out the importance of specific training for officers in handling juveniles and the need for an educational background in the philosophy of the juvenile justice system. Such guidelines and training would provide direction and serve to clarify the police role in the juvenile justice system.

B. MANPOWER ALLOCATION TO JUVENILE OPERATIONS

Of the 26 police departments and 14 sheriff's departments surveyed, only four police departments and one sheriff's department specifically assigned officers to handle juvenile matters. The four police departments were: Sioux Falls with five juvenile officers, Rapid City with one juvenile officer and two school liaison officers, Watertown with one juvenile officer, and Pierre with one juvenile officer. Pennington County Sheriff's Department designated two officers as school liaison deputies.

Of the four police departments with juvenile officers, two felt a need for additional manpower in the juvenile area. Rapid City believed they needed an additional juvenile officer while Pierre stated they needed one school liaison officer in addition to their juvenile officer. Four police departments which did not have specifically assigned juvenile officers (Aberdeen, Yankton, Brookings, Vermillion) indicated a need for one. The Belle Fourche Police Depart-

ment did not feel a need for a juvenile officer, but was attempting to get funding for a county-wide school liaison officer. Thus, of the nine police departments in cities over 5,000 responding to the survey, all but one (Lead Police Department) either had or felt the need for at least one juvenile officer. None of the 17 police departments in cities under 5,000 said they needed a juvenile officer, although several stated that ideally they would like to have a juvenile officer, but it was not financially practical.

Among sheriff's departments, only Pennington and Minnehaha, the two largest counties in the state, felt a need to add a juvenile officer, each indicating that one officer would be valuable to their juvenile police work. None of the other sheriff's departments felt that they handled enough juvenile cases to justify the special deputies.

The procedure for processing juveniles in the 22 police and 13 sheriff's departments who did not employ a juvenile officer varied. Three police departments stated that all juveniles were processed by the police chief or assistant police chief, and two additional departments said that one or two officers were assigned to handle most juvenile matters. However, the most common procedure, that used by 17 police departments and 13 sheriff's departments, was to charge the arresting officer or deputy with the responsibility of processing the juvenile.⁴⁰

⁴⁰Various studies on the police role in juvenile justice have recommended that all police departments should establish a unit or officer specializing in work with juveniles, but recognize that the nature of the allocation will be different from department to department. For smaller departments it is recommended that at least one officer should be assigned the responsibility of handling juvenile offenders

C. REQUIRED TRAINING FOR JUVENILE OFFICERS

Of the four police departments and one sheriff's department which employed juvenile officers or school liaison officers, none demanded that they receive special training beyond that required of all officers. However, two police departments did require a certain amount of experience on the force to be eligible for the position of juvenile officer. The Sioux Falls Police Department required four years experience on the force although no exact length of time was specified.

Although none of the departments insisted on additional training as a prerequisite to juvenile work, most of the juvenile officers had some juvenile training. The level of training for juvenile officers in dealing with youths, will be discussed at greater length later in this report.

D. DEPARTMENT PERCEPTIONS OF TRAINING NEEDS

A majority of the departments surveyed felt there was no need for agency personnel to receive specific training in the handling of juvenile problems. Only eight (31%) of the 26 police departments and three (21%) of the 14 sheriff's departments expressed a desire for specific training in dealing with juvenile offenders and problems. Table 30 categorizes the number and percent of agencies stating a need

and other matters, along with his regular duties. See p. 130 *infra* and also Institute of Judicial Administration, American Bar Association, Standards Relating to Police Handling of Juvenile Problems §4.1A (Tentative Draft, 1977) [hereinafter cited IJA/ABA Standards], Kobetz, n. 34 *supra*, at 180, National Advisory Commission on Criminal Justice Standards and Goals, Report on Police, Standard 9.5, "Juvenile Operations" 221-224 (1973), [hereinafter cited NAC, Report on Police], and South Dakota Criminal Justice Commission, Criminal Justice Standards and Goals for South Dakota, Police Standard 8.2 (December 1976) [hereinafter cited S.D. Standards and Goals].

for juvenile training for personnel according to population and the type of agency.

Table 30

Number and Percent of Police and Sheriff's Departments
Stating a Need for Juvenile Training for Personnel
According to Population of Jurisdiction

Population of Jurisdiction	Police Departments		Sheriff's Departments	
	N	%	N	%
Over 25,000	0	0	1	33
15 - 25,000	-	-	1	33
5 - 15,000	4	67	1	17
1 - 5,000	4	36	0	0
Under 1,000	0	0	-	-
TOTAL	8	31	3	21

Police departments expressing juvenile training needs were all in cities between 1,000 and 15,000. The police departments in cities over 25,000 reported that their officers were all well trained and proficient in dealing with juveniles, mostly because of in-service training.⁴¹ In contrast, police departments in cities under 1,000 and those in cities between 1,000 and 5,000 that felt no training needs, did not think they had enough of a juvenile problem to justify the expenditures of time or money for juvenile training.⁴² Training in counseling and

⁴¹ Compare this perception by department representatives in cities over 25,000 with the training needs specified by juvenile officers work in cities of over 25,000, it is clear that they feel that further training would be helpful, while their superiors feel differently.

⁴² The explanation offered by departments in cities of under 1,000 for their lack of juvenile training needs is subject to some criticism. First, the offense rate per 1,000 of cities under 1,000 in the survey is more than twice that of other population categories--124.7 as compared to 55.6, 52.9, 52.7--SAC, Juvenile Offender, supra

communication with juvenile offenders was the most frequently cited instructional need by police departments. These skills were specified by five of the eight police departments while two stated a need for training in standard juvenile procedures and interpretation of the juvenile code. The remaining responses designated needs for training in crime prevention, recordkeeping, and vandalism investigation, each of which was specified by one department.⁴³

The desire to obtain juvenile training was apparently unrelated to county population for sheriff's departments since no more than one department in any population category stated any training needs. The training needs listed by the three sheriff's departments indicating specific shortcomings included training in the drug area, a need for education in juvenile paperwork (particularly that required by the courts), and a need for training in juvenile law, each with one response. The sheriff's department which stated a need for juvenile law training suggested that the best way for all segments of the juvenile justice system to understand their interrelated legal rights and responsibilities would be to conduct a policy meeting of law enforcement

n. 17, (Table 27) at 46. Second, while cities under 1,000 have only 1.4% of the juvenile population in the survey sample, they had 3.3% of the reported juvenile contacts (computed using Table 11 supra p. 18 and SAC Juvenile Offender, supra n. 17, (Table 27) at 46. Third, since generally juvenile crime makes up 50% of the total law enforcement workload, there is no reason why it would not be the same or greater in cities under 1,000 (SAC, Juvenile Offender, supra n. 17, at 157).

⁴³The total number of specified training needs (10) exceeds the number of departments (8) because two departments stated needs for two types of training.

personnel, judges, state's attorneys and court service workers within each court circuit.

Overall, only 28 percent (11) of the 40 law enforcement agencies surveyed stated a need for juvenile training for agency personnel. The most frequently mentioned training needs were for training in counseling and communicating with juvenile offenders which was indicated by five agencies, while three agencies cited a need for training in juvenile law and procedure. For the remaining 72 percent of the agencies, the reason most frequently given for not desiring additional training in dealing with juveniles was that the low volume of juveniles handled (other than for traffic violations) did not justify the investment of time and money for training.

E. POLICE MANPOWER SURVEY

1. General Purpose

In addition to questioning a single representative from each police department regarding training needs and general procedure, an attempt was made to gather similar information from individual officers. Juvenile and regular officers were sampled to determine their personal characteristics and levels of education and experience. Information was also sought concerning the allocation of time to certain juvenile duties and the importance the officer attached to these duties. This data was gathered by distributing a questionnaire to all juvenile officers of the sample police departments and to randomly selected regular officers of randomly designated police departments in the survey.

2. Personal Characteristics, Education and Experience

All ten juvenile officers returned completed questionnaires, while only 41 percent of the regular officers responded (18 of 44). Few

meaningful comparisons can be made between population categories because of the low number of questionnaires returned by officers in smaller cities. Therefore, comparisons are limited to those between juvenile and regular officers. Table 31 presents the number of questionnaires distributed and the number returned, according to city population category.

Of the 10 juvenile officers who returned questionnaires, nine were male and nine were white. There was one white female and one Indian male respondent. All 18 regular officers who responded were white males. Juvenile officers ranged in age from 27 to 46, with their median age being 39. The distribution in the ages of the regular officers surveyed was greater than juvenile officers, from 23 to 67. However, the median age of the regular officers responding to the questionnaire was younger at 33.5 years. Despite some differences, the typical officer, was a white male between 25 and 50 years old, with regular officers tending to be younger than juvenile officers.

Table 31
Police Manpower Questionnaire Return Rate
for Juvenile Officers and Other Officers According
to City Population Category

City Population	Dist.	Juvenile Officers		Dist.	Regular Officers	
		Returned	%Ret.		Returned	%Ret.
Over 25,000	8	8	100	5	5	100
5-15,000	2	2	100	19	10	53
1-5,000	-	-	-	15	0	0
under 1000	-	-	-	5	3	60
TOTAL	10	10	100	44	18	41

Juvenile officers were almost twice as likely as regular officers to have some college experience. Of the 10 juvenile officers, all had high school diplomas and seven had some college experience. Three (17%) of the regular officers did not graduate from high school, and only seven (39%) had ever attended college. College coursework

for both juvenile and regular officers tended to be related to their work as police officers (Table 32). Five of the seven juvenile officers and four of the seven regular officers with college experience listed their major coursework in police-related fields such as criminal justice, law enforcement, psychology or sociology. Only one juvenile officer (sociology) and two regular officers (sociology/political science; English) reported having bachelor's degree, and none held graduate degrees.

Table 32
Major Areas of College Coursework of
Police Officers Returning Completed Questionnaires

Major Area of Coursework	Juvenile Officers		Regular Officers	
	N	%	N	%
Criminal Justice	1	10	0	0
Law Enforcement	0	0	3	17
Psychology	2	20	0	0
Sociology	2	20	1	10
Unrelated Area	2	20	2	20
No Response	0	0	1	10
No College	3	30	11	61
TOTAL	10	-	18	-

Juvenile officers possessed more experience as law enforcement officers than their regular police counterparts. All 10 juvenile officers had served at least five years on the force, with the length of service ranging from five to sixteen years. On the other hand, 44 percent (8) of the regular officers reported less than five years experience and the length of service ranging from two to 23 years. The median length of service was 11.5 years for juvenile officers compared with only 5.0 years for regular officers.

Only one of the juvenile officers served less than two years on



CONTINUED

1 OF 2

the regular force prior to their work with youths. Length of experience before specializing in the juvenile area ranged from none to 16 years, with the median length of five years. The one juvenile officer with no prior law enforcement experience had two years experience as a housemother, a bachelor's degree in sociology with a minor in psychology, and had done graduate work in criminal justice. Juvenile officers had lengths of service from three months to 11 years with the median term as juvenile officer being slightly over three years.

However, very few officers had occupational experience working with juveniles prior to becoming police officers. Only one juvenile official (the housemother of the two years), representing 10% of the juvenile officers and two (11%) of the regular officers (a high school teacher of 9 years; and a coach for 2 summers) had previously worked with juveniles before becoming law enforcement officers. In general, all experience working with juveniles was as a police officer.

3. Comparative Analysis of Juvenile Duties

Naturally, juvenile officers responding to the questionnaire reported spending a significantly greater portion of their typical work day on juvenile matters than did regular officers (Table 33). All juvenile officers claimed to spend no less than one-fourth of a typical day working on juvenile concerns, and 80 percent estimated devoting about three-fourths of their time to juvenile matters. On the other hand, almost all regular officers (94%) reported spending less than one-half of their typical day attending to juvenile police work, and half the regular officers put in less than 10 percent of their time on juvenile matters.

Table 33

Percent of Typical Work-day Spent
on Juvenile Matters by Juvenile
Officers and Regular Officers

Percent of Time Juvenile Matters	Juvenile Officers		Regular Officers	
	N	%	N	%
Over 75%	8	80	0	0
50 - 75%	1	10	1	6
25% -50%	1	10	5	28
10 - 25%	0	0	3	17
Under 10%	0	0	9	50
TOTAL	10	-	18	-

Along with spending more time on juvenile concerns, juvenile officers also reported allocating this time differently than regular officers. When the officers in the sample were asked to indicate which juvenile activities consumed more of their on-duty time, juvenile officers generally responded that filling out forms and reports was their most time-consuming activity. Actual counseling of youth was the second activity mentioned and investigation third. Regular officers indicated their most frequent juvenile-related activity was investigation, followed in order by juvenile paperwork, patrol, and juvenile arrest procedures.

Consistent with their respective law enforcement roles, juvenile officers reported spending more of their juvenile-related time counseling juvenile offenders and on school-police liaison work. Regular officers accorded more time to juveniles during patrol and actual juvenile arrests.

Unfortunately, the actual allocation of time to juvenile-related activities did not correspond to what officers saw as their

most significant activities. While juvenile officers attached the most importance to counseling of juvenile offenders, in actuality, paperwork consumed more of their juvenile-related time; counseling was second in actual time spent. Developing informal contacts was rated second in importance to juvenile officers, but was not listed as an activity to which a great deal of time was allocated. Investigation and school-police liaison were the third and fourth ranked vital activities in the eyes of juvenile officers.

The activities which regular officers rated most highly also proved incongruous with the actual time spent on each activity. Although investigation and paperwork were the most time-consuming activities of regular officers, they were not included in the list of activities regular officers saw as important in handling juveniles. Instead, the officers indicated that making informal juvenile contacts should be their top priority. This perceived value of establishing informal contacts with youths again was not reflected in the regular officers' list of most frequent-related activities. Counseling of juvenile offenders was considered second in importance by regular officers but also was not designated a priority time concern. Patrol and school liaison were considered the third and fourth most important juvenile activities. In line with their respective roles, juvenile officers did stress the importance of juvenile counseling and investigation more than regular officers who emphasized patrol and juvenile arrest procedures to a greater degree.

Although all officers reported spending a great deal of time filling out forms and reports, they all saw this work as relatively unimportant. Contrarily, most officers emphasized the importance of in-

formal contacts, but few reported spending much time on this activity. Similarly, counseling juvenile offenders was rated as very important but, few officers (especially regular officers) stated it consumed a large amount of their on-duty time.

4. Level of Training and Officer Perception of Training Needs

Forty percent (4) of the 10 juvenile officers and 56 percent (10) of the 18 regular officers reported that they had attended the three-week Basic Training Session at the Criminal Justice Training Center in Pierre. This basic training includes a brief section on juvenile law and procedure.

Beyond this basic training, 70 percent (7) of the juvenile officers compared with 22 percent (4) of the regular officers reported attending additional juvenile training sessions. This disparity is even more obvious when the number of training sessions attended by juvenile officers is contrasted with the number attended by regular officers. Of the seven juvenile officers who had other training, one attended one session, one participated in four sessions, three attended five sessions, and two had additional training sessions. Three of the four regular officers with additional training reported attending only one session, while the remaining regular officer went to three sessions.

In Table 34 the additional training sessions are translated into eight hour days. Juvenile officers devoted a significantly greater number of days to juvenile training sessions than did the regular officers. Sixty percent of the juvenile officers reported attending 15 or more days of juvenile training; only 11 percent of the regular officers had more than three days of juvenile training.

Table 34

Total Number of Days of Juvenile Training
Attended by Juvenile Officers and Regular Officers

Days of Training*	Juvenile Officers		Regular Officers	
	N	%	N	%
25 - 35	3	30	0	0
15 - 24	3	30	0	0
10 - 14	0	0	2	11
three	1	10	1	6
one	0	0	1	6
none	3	30	14	77
TOTAL	10	-	18	-

* one day = eight hours.

The types and titles of juvenile training attended by these officers varied considerably, from permanent schools, to college courses, to local seminars. A listing of the titles and the lengths of the training sessions attended, along with the numbers of juvenile and regular officers attending each, is presented in Table 35. The most popularly attended sessions were the three-day Juvenile Officers' Institute Seminars.

Overall, as one might expect, juvenile officers had far more special training in juvenile matters than did regular officers. Significantly, the three officers that reported no special training were also the only three with less than a year's experience as juvenile officers. Thus, all juvenile officers with appreciable experience supplemented their limited training and job experience with juvenile training sessions.

Regular officers expressed a more general need for training in all juvenile job activities except patrol, juvenile paperwork, and police sponsored activities, and overwhelmingly indicated a need for

75
Table 35

Juvenile Training Sessions Attended by Juvenile
Officers and Regular Officers Who Completed
the Police Manpower Questionnaire

Juvenile Training *			Number Attending †	
Title	Location	Length	Juvenile Officers	Regular Officers
Juvenile Officers Inst. Seminar	Mpls., MN	3 days	9	0
Juvenile Officers Inst. Seminar	Rochester, MN	3 days	4	0
Juvenile Justice Seminar	Denver, CO	5 days	1	0
Juvenile Justice Seminar	Bloomington, IN	2 days	1	0
Child Abuse	Denver, CO	2 days	1	0
Police-School Liaison Clinic	Flint, MI	5 days	2	0
Making a Difference with Youth	Aberdeen, SD	5 days	2	0
Group Counseling Workshop	Rapid City, SD	5 days	2	0
Federal Drug School	Rapid City, SD	10 days	2	0
Facts and Insights	Rapid City, SD	3 days	1	0
Indian Workshop	Roswell, NM	5 days	1	0
FBI Inservice	Rapid City, SD	?	1	0
Juvenile Delinquency (3cred.)	USD/SDSU	3 semester hours	1	2
Corrections (3cred.)	USD	3 semester hours	1	0
Juvenile Court System	Pierre, SD	4 hours	1	1
Beer in Pierre Jr. High Conf.	Pierre, SD	6 hours	1	0
Police Academy (20 days)	Sioux City, IA	1 day juvenile	0	1
FBI Training School	Sioux Falls, SD	?	0	1

*Some of these training sessions did not deal wholly with juvenile matters. An attempt was made to list only the portion of the total time which was directly relevant to juveniles.

† Several of the training sessions were held periodically, and some officers attended more than once. For example, the Juvenile Officers Institute Seminar is a yearly occurrence, and one officer had attended five times. Naturally, the material covered would not be the same each time.

TABLE 36

Number and Percent of Juvenile Officers and
Regular Officers Stating a Need for Training
in Each of Ten Juvenile Job Activities

Activity	Juvenile Officers		Regular Officers	
	N	%	N	%
1. Patrol	2	20	2	11
2. Investigation	5	50	6	33
3. Juvenile arrest procedures	1	10	8	44
4. Filling out forms and reports	1	10	3	17
5. Juvenile court duty	1	10	6	33
6. Record maintenance and filing	1	10	6	33
7. School-police liaison	1	10	9	50
8. Police sponsored youth activities	0	0	5	28
9. Informal juvenile contacts	1	10	9	50
10. Counseling juvenile offenders	4	40	16	89

training in counseling juveniles (89%), (Table 36). Close to half of the regular officers felt they need training in the areas of juvenile arrest procedures (44%), school-police liaison (50%). Generally, juvenile officers felt relatively competent in the ten job activities. The only activities in which a significant number of juvenile officers expressed a need for further training were juvenile investigation (50%) and juvenile counseling (40%). Regular officers probably expressed a greater and more general need for further training because of their lack of juvenile training background.

5. Summary

The ten juvenile officers who completed the questionnaire accounted for almost all juvenile police officers in the state.⁴⁴ Therefore, the above information is nearly a complete picture of juvenile police officers in South Dakota. On the other hand, because of the small number and selective nature of questionnaires returned by regular officers, it is doubtful that those responding were a completely representative sample of regular police officers in South Dakota. Thus, it cannot be stated conclusively that juvenile officers in the state, on the average, are older, more educated, and have more law enforcement experience than regular officers.

However, since most regular officers who completed the questionnaire served on larger police departments which in general encourage more training for personnel than do small town departments,

⁴⁴As far as is known, there are only two other juvenile police officers in South Dakota; one in Mitchell and the other in Huron.

it is a reasonable conclusion that very few regular police officers in the state have had any formal training in dealing with juveniles. On the other hand, all juvenile officers (except those who very recently began to serve in this capacity) have participated in various training programs related to their juvenile duties.

With regard to future training needs, a good share of juvenile officers and regular officers stated interest in a variety of training areas. The most frequently stated training need, by both juvenile and regular officers was for training in counseling juvenile offenders (which was also the most frequently stated training need by police chiefs interviewed).

III. LEGAL IMPLICATIONS

A. INTRODUCTION

The preceding chapters have dealt with the data and materials obtained from interviews of sample law enforcement agencies in South Dakota. Although mention was made and examples were given in instances where the practices of South Dakota law personnel varied substantially from the state Juvenile Code, no general analysis was made of the legal implications of handling of juveniles by law enforcement agents. This chapter will explore the salient legal issues associated with police contact with youths and the rights of juveniles who encounter law officers. References will be made to the South Dakota Code, model acts, significant case law, and the Constitution. Portions of similar studies undertaken by other writers will also be included.

In section B, the statutory rules governing the taking of juveniles into custody are examined. The sweeping jurisdiction granted to the juvenile court and to law enforcement personnel is scrutinized and the problems inherent in the language of these statutes and the manner in which they are manipulated by the juvenile justice system are discussed.

One important legal issue arising out of police handling of youths concerns the applicability of adult laws of arrest to juvenile situations. This inquiry and the related question of whether the fourth amendment protection against unreasonable seizures and its exclusionary rule can be applied in juvenile cases is included in section C of this chapter.

When officers take a juvenile into custody, they are subject to a number of statutory and constitutional duties. Yet, despite these responsibilities, police are allowed great latitude in their decisions concerning what to do with a child once he is in custody. This problem is discussed in section D.

Section E focuses on law enforcement's role as the primary diverter in the juvenile justice system. The survey's data on the extent of informal handling of juveniles is compared with other studies, as are the criteria used by South Dakota departments in the dispositional decision.

It is important to recognize that this chapter does not pretend to address all the legal issues relevant to a discussion of police handling of juveniles. For example, we do not consider such important areas as search and custodial interrogation of juveniles, juvenile waiver of Miranda rights, or consent to search. Data was not collected on the actual practices related to such issues, thus legal analysis must wait for future reports.

B. STATUTORY AUTHORITY FOR TAKING THE CHILD INTO CUSTODY

Historically, the jurisdictional scope of the juvenile court has been very broad, including not only conduct that would be criminal if committed by an adult, but also more general youthful misbehavior such as truancy, runaway, or incorrigibility, as well as neglect and dependency cases.⁴⁵ It is clear that most state statutes and model acts condone this expanded power and coordinately grant police broad authority to place children in custody. Notice Section 13 of the

⁴⁵Although neglect and dependency are within the jurisdiction of the juvenile court, they fall outside the scope of this report.

Uniform Juvenile Court Act:⁴⁶

Section 13. Taking into Custody

- (a) A child may be taken into custody:
- (1) pursuant to an order of the court under this Act;
 - (2) pursuant to the laws of arrest;
 - (3) by a law enforcement officer (or duly authorized officer of the court) if there are reasonable grounds to believe that the child is suffering from illness or injury or is in immediate danger from his surroundings, and that his removal is necessary; or
 - (4) by a law enforcement officer (or duly authorized officer of the court) if there are reasonable grounds to believe that the child has run away from his parents, guardian, or other custodian.
- (b) The taking of a child into custody is not an arrest, except for the purpose of determining its validity under the constitution of this State or the United States.

South Dakota's comparable provisions are S.D.C.L. §§26-8-19.1 and 26-8-19.7 which provide:

26-8-19.1 Taking child into temporary custody without court order--Authority of law enforcement or juvenile probation officers.

--A child may be taken into temporary custody by a law enforcement officer without order of the court:

- (1) When he is subject to arrest under the provisions of §§23-22-7 to 23-22-9;
- (2) When he is abandoned or seriously endangered in his surroundings or seriously endangers others, and immediate removal appears to be necessary for his protection or the protection of others; or
- (3) When there are reasonable grounds to believe that he has run away or escaped from his parents, guardian or custodian.

A juvenile probation officer may take a child into temporary custody under any of the circumstances stated in the preceding paragraph, or if he has violated a condition of probation, provided the child is under the continuing jurisdiction of the circuit court.

⁴⁶National Conference of Commissioners on Uniform State Laws, "Uniform Juvenile Court Act" (1968) [hereinafter cited "Uniform Juvenile Court Act"]. See also United States Department of Health, Education and Welfare, "Model Acts for Family Courts and State-Local Children Programs" (1968) for a similar provision.

26-8-19.7 Taking temporary custody or detention of child not arrest.--The taking of a child into temporary custody or detention under §§26-8-19.1 to 26-8-19.6, inclusive, is not arrest, nor does it constitute a police record.

The obvious confusion which arises when dealing with nebulous provisions such as these concerns the applicability of the law of arrest to contacts between police and children. Ferster and Courtless note:

The confusion about whether the law of arrest applies to juveniles stems from the language used in many of the juvenile codes. The phrase "taking into custody," instead of "arrest," is used in thirty-six jurisdictions. Fifteen of these laws specifically say that the process does not constitute an arrest...This terminology is consistent with the allegedly non-punitive orientation of the juvenile system. Unfortunately, legislation concerning the rules which should govern taking juveniles into custody was almost non-existent until the mid-1960's.⁴⁷

The perplexity of the situation is compounded further in that,

...by allowing the police to take juveniles into custody under the same statute both when they have committed acts that justify their arrest and prosecution and when they have committed no such acts but require assistance or protection, the application of the fourth amendment standards to such a statute becomes blurred and confused.⁴⁸

Samuel Davis refers to the case of Daniel R.⁴⁹ as indicative of the type of abuse which is predictable under such ineffective

⁴⁷Ferster and Courtless, supra n. 35, at 583.

⁴⁸IJA/ABA Standards, supra n. 40, at 64.

⁴⁹In re Daniel R., 274 Cal. App. 749, 79 Cal. Rptr. 247 (1969).

statutory direction:

A California appellate court was called upon to review the decision of a juvenile court that a sixteen-year-old boy who admitted to selling marijuana was in danger of leading a "dissolute life." Although the decision was reversed for lack of sufficient evidence, the appellate court expressed no concern over the fact that the juvenile had been taken into custody with neither warrant nor probable cause...the juvenile was not adjudicated a ward of the court on an allegation that he violated a criminal law but rather on an allegation that he was in danger of leading an idle, dissolute, lewd, or immoral life...This suggests that the police, in the absence of probable cause to believe that the youth had committed a criminal offense, relied instead on the much broader "protective" jurisdiction that permits a youth to be taken into custody where he is "seriously endangered in his surroundings" or is "in danger of leading an idle, dissolute, lewd, or immoral life."⁵⁰

South Dakota, as well as a number of other states, has apparently followed the lead of the Uniform Juvenile Court Act, supra, by including a provision which allows an authorized officer to take custody of a youth pursuant to an order of the court.⁵¹ However, as has recently been observed, South Dakota's statute and other states with similar provisions, "are not clear on the procedures

⁵⁰S. Davis, Rights of Juveniles: The Juvenile Justice System 44 (1974) [hereinafter cited Davis].

⁵¹S.D.C.L. §26-8-19. Apprehension of child on warrant-Promise of parent or guardian to produce child at hearing.
In case a warrant is issued for the child any officer authorized by the laws of this state to make arrests, including a probation

to be followed or the criteria to be applied in the issuance of such order.⁵²

C. APPLICABILITY OF THE LAW OF ARREST

The primary constitutional regulation regarding arrests is contained in the Fourth Amendment:⁵³ "The right of the people to secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation and particularly describing the place to be searched, and the persons or things to be seized."⁵⁴

In the adult criminal process, the law authorizes and, in fact, expressly prefers arrests to be made pursuant to warrants issued

officer of the court, may take such child into custody and bring him before the court, but in any such case where a warrant is issued for the child the court or other officer may accept the verbal or written promise of the parent or guardian or other person notified under the provisions of §26-8-13 and 26-8-15, or other person having custody of the child at the hearing of such case, or at any other time to which the same may be adjourned or continued by the court.

⁵²Law and Tactics, supra n. 19, at 63.

⁵³U.S. Const. amend. IV.

⁵⁴The South Dakota Constitution Art. VI §11 similarly provides: "The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated, and no warrant shall issue but upon probable cause supported by affidavit particularly describing the place to be searched and the person or thing to be seized."

by neutral and detached magistrates.⁵⁵ These warrants must be based upon sufficient probable cause to conclude that a felony has been committed and that the person to be arrested committed it.⁵⁶ In spite of this preference for warrants, in the majority of adult criminal cases arrest warrants are not constitutionally required⁵⁷ and most arrests are warrantless.⁵⁸

A youth may be taken into custody on the same grounds as would justify an adult arrest. However, as noted in the previous section, the statutory authority of police to take custody of children is much broader than in an adult arrest circumstance and this has, in part, precipitated considerable confusion as to whether the adult law of arrest is applicable to juvenile situations. This uncertainty has been heightened by court decisions and statutes describing the juvenile process as protective rather than punitive and the proceedings as civil rather than criminal, thus encouraging the notion that a separate set of rules and principles governs police-juvenile encounters.⁵⁹

⁵⁵Giordenello v. U.S., 357 U.S. 480 (1958); State v. Kietzke 186 N.W.2d. 551 (S.D. 1971).

⁵⁶Spinelli v. U.S., 393 U.S. 410 (1969); State v. Hermandson, 169 N.W.2d. 255 (S.D. 1969); State v. Glick, 201 N.W.2d. 867 (S.D. 1972).

⁵⁷Ker v. California, 374 U.S. 23 (1963).

⁵⁸Davis, supra n. 50, at 46.

⁵⁹Id. at 39. S. Fox, The Law of Juvenile Courts in a Nutshell, 94 (1971) [hereinafter cited Fox]. This emphasis on the civil rather than criminal nature of juvenile proceedings appears in S.D.C.L. §26-8-30 (1976), which provides that adjudicatory hearings be conducted under "the applicable law and rules of civil procedure."

Additionally, the belief that the law of arrest does not apply to juveniles is encouraged by the existence of legislation such as S.D.C.L. §26-8-19.7 which provides that the taking of a child into temporary custody does not amount to an arrest.⁶⁰

The Supreme Court of the United States has done little to clarify this situation. As Professor Davis indicates: "It is no doubt in reliance on the failure of the courts, in particular the Supreme Court, to deal with the issue of arrest that has led officers to conclude that the constitutional safeguards attending an arrest do not necessarily apply with full force to taking a juvenile into custody."⁶¹ Since the Supreme Court has never specifically confronted the issue of the applicability of the Fourth Amendment to a juvenile court context, other potential sources of guidance must be examined.

Professor Sanford Fox notes that under the landmark decision of In re Gault.⁶² "Since juveniles are now entitled to the fairness guaranteed by Fourteenth Amendment Due Process, and due process has been held to incorporate Fourth Amendment protections, there seems little doubt that arrests. . .of juveniles must meet constitutional standards."⁶³ In fact, IJA/ABA Juvenile Justice Standards Project volume entitled Police Handling of Juveniles Problems states: "In any event, in spite of the absence of direction from the Supreme

⁶⁰S.D.C.L. §26-8-19.7 (1976).

⁶¹Davis, supra n. 50, at 40.

⁶²In re Gault, 387 U.S. 1 (1967).

⁶³Fox, supra n. 59, at 93.

Court, there is virtual unanimity nationally that the Fourth Amendment and its exclusionary rule applies to juvenile court cases."⁶⁴ The unanimity described refers to the decisions of lower courts and the language employed in *State v. Lowry* is exemplary:

Is it not more outrageous for the police to treat children more harshly than adult offenders, especially when such is violative of due process and fair treatment? Can a court countenance a system, where, as here, an adult may suppress evidence with the usual effect of having the charges dropped for lack of proof, and on the other hand a juvenile can be institutionalized---lose the most sacred possession a human being has, his freedom---for 'rehabilitative' purposes because the Fourth Amendment right is unavailable to him?⁶⁵

Other courts have not been so explicit but have assumed the applicability of the Fourth Amendment.⁶⁶ The South Dakota Supreme Court has not, as of yet, addressed the issue of the applicability of the Fourth Amendment to the juvenile justice system context.

Additional authority for extending juveniles can be extracted from U.S. Supreme Court reasoning. The authors of the comprehensive Law and Tactics in Juvenile Cases set forth the test employed by the Supreme Court in McKeiver v. Pennsylvania, 403 U.S. 528 (1971), to determine whether any constitutional right should be granted to

⁶⁴IJA/ABA Standards, supra n. 40, at 62. For comparable perspectives and an overview of the case law in this area, see Law and Tactics, supra n. 19, at 63-66, Fox, supra n. 59, at 92-99, and M. Paulsen and C. Whitebread, Juvenile Law and Procedure 77-82 (1974).

⁶⁵230 A. 2d 907, 911 (N.J. 1967). IJA/ABA Standards, supra n. 40, at 61.

⁶⁶See, e.g., In re Ronny, 242 N.Y.S. 2d 844 (Fam.Ct. 1963).

juveniles, as representative of such reasoning.⁶⁷ They identify the two prongs of this test: the first poses the question whether a fundamental principle of justice is violated by the action which has been put under constitutional scrutiny, and the second asks whether the right, if granted to juvenile offenders, would be destructive to the juvenile justice system by introducing the delay, formality, and adversary quality associated with the adult system.⁶⁸ The authors apply these general considerations to the specific issue of extending adult arrest rules to juveniles in the following manner:

Unquestionably the right of a person to free from an unreasonable seizure is a fundamental one designed to protect against the invasion of the "indefeasible right of personal security, personal liberty, and private property." Boyd v. United States, 116 U.S. 616, 630 (1886). In Wolf v. Colorado, 338 U.S. 25, 27 (1949), the Court stated that the "security of one's privacy against arbitrary intrusion by the police, which is at the core of the Fourth Amendment, is basic to a free society. It is therefore implicit in 'the concept of ordered liberty' and as such enforceable against the states through the Due Process Clause." The Court however, held that the exclusionary rule was not an essential ingredient of the right, a point later reversed in Mapp v. Ohio, 367 U.S. 643 (1961).

It is also clear that the extension of this right to juveniles would not prove inimical to the juvenile system itself. Application of the adult rules of arrest would allow a juvenile to challenge the admission of evidence obtained pursuant to an improper arrest, a procedure which normally occurs prior to the adjudicatory hearing. Although this might cause some delay in the hearing, the overall effects in tending to formalize the process would be much

⁶⁷Law and Tactics, supra n. 19, at 66.

⁶⁸Id.

less disruptive than those projected by the introduction of the jury trial, the specific issue raised in McKeiver v. Pennsylvania, supra, 403 U.S. at 528.⁶⁹

D. DUTIES OF A PERSON TAKING A CHILD INTO CUSTODY

Many state statutes and model acts set forth specific provisions governing police procedure if a juvenile is taken into custody. For instance, Sections 14 and 15 of the Uniform Juvenile Court Act provide:

Section 14 (Detention of Child) A child taken into custody shall not be detained or placed in shelter care prior to the hearing on the petition unless his detention or care is required to protect the person or property of others or of the child or because the child may abscond or be removed from the jurisdiction of the court or because he has no parent, guardian, or other person able to provide supervision and care for him and return him to the court when required or an order for his detention or shelter care has been made by the court pursuant to this Act.

Section 15. (Release or Delivery to Court)

(a) A person taking a child into custody, with all reasonable speed and without first taking the child elsewhere, shall:

(1) release the child to his parents, guardian, or other custodian upon their promise to bring the child before the court when requested by the court unless his detention or shelter care is warranted or required under section 14; or

(2) bring the child before the court or deliver him to a detention or shelter care facility designated by the court or to a medical facility if the child is believed to suffer from a serious physical condition or illness which requires prompt treatment. He shall promptly give written notice thereof, together with a statement of the reason for taking the child into custody, to a parent, guardian, or other custodian and to the court. Any temporary detention or questioning of the

⁶⁹Id.

child necessary to comply with this subsection shall conform to the procedures and conditions prescribed by this Act and rules of court.⁷⁰

South Dakota's similar provisions are S.D.C.L. §§26-8-19.2, 26-8-19.3, and 26-8-19.4:

26-8-19.2. Notice to parents, guardian or custodian of child taken into custody--Release of child to parents.--When a child is taken into temporary custody, the officer shall notify the parents, guardian, or custodian without unnecessary delay and inform them that if the child is placed in detention, he has the right to a prompt hearing to determine whether he is to be detained further. Such notification may be made by a juvenile police or law enforcement officer, if the child is so referred by the officer taking him into temporary custody.

The child shall then be released to the care of his parents or other responsible adult, unless his immediate welfare or the protection of the community requires that he be detained. The parent or other person to whom the child is released may be required to sign a written promise, on forms supplied by the court, to bring the child to the court at a time set or to be set by the court.

26-8-19.3. Term of detention of child taken into temporary custody.--A child shall not be detained by law enforcement officials any longer than is reasonably necessary to obtain his name, age, residence, and other necessary information and to contact his parents, guardian, or custodian, and to deliver him thereto, or to the place of detention.

26-8-19.4. Notice to court of child taken into temporary custody.--The officer or other person who takes a child into its custody must notify the court at the earliest opportunity that the child has been taken into custody and where he has been taken. He shall also file a brief written report promptly with the court, stating

⁷⁰"Uniform Juvenile Court Act", supra n. 46, §§14 and 15.

the facts which led to the child being taken into custody and the reason why the child was not released.⁷¹

The reproduced enactments and most other statutes express a preference for the release of a child to his parents. Yet, it should be understood that this is merely a preference, not an obligation, and the police officer's responsibility to release is shrouded with tremendous discretion. Law enforcement personnel use obscure language resembling that appearing in S.D.C.L. §26-8-19.2 which states that an officer shall release a juvenile "unless his immediate welfare or protection of the community requires that he be detained"⁷² to hold many youths that do not pose any real danger to anyone.⁷³ As noted in a national context:

Despite the statutory preference for release, police often detain rather than release a child. A 1964 study reported that although detention rates vary widely, it was not uncommon for over 50 percent of children referred to court to be detained. Recent studies show similar results. For example, one study of several counties revealed that 66 percent of those referred to court were detained, while a study of a community in another state showed a detention rate of 62 percent.⁷⁴

⁷¹S.D.C.L. §§26-8-19.2, 26-8-19.3, and 26-8-19.4 (1976).
See also S.D.C.L. 26-8-23.1 (1976).

⁷²S.D.C.L. §26-8-19.2 (1976).

⁷³E. Ferster, E. Snethen, and T. Courtless, "Juvenile Detention: Protection, Prevention, or Punishment?", 38 Ford. L. Rev. 161, 168 (1969) reported that "under any reasonable definition of 'dangerous' danger to the community is not the reason for holding the majority of detained children in any of the five jurisdictions [studied]."

⁷⁴Id. at 176.

The South Dakota statutes concerning the duties of a law enforcement officer taking a youth into custody are subject to the same criticism as has been directed at the Uniform Juvenile Court Act. Professor Fox concludes that the broad statutory grant of the authority to detain for the purpose of protecting the community, the child, and even the child's property is more akin to and is more extensive than "the highly controversial proposals that adults be held in pre-trial 'preventive detention' in order to protect the persons or property of others."⁷⁵ This preventive detention language found in the South Dakota Code and Uniform Act seems inconsistent with the proported preference for releasing a child to his parents discussed earlier and with the articulated goal found in the Comment to section 14 of the Uniform Act to detain youths only "when necessary to assure their appearance in court."⁷⁶

Fox also finds fault with a Colorado statute describing the term of detention of a child placed in custody which is significant

⁷⁵Fox, supra n. 59, at 106.

⁷⁶"Uniform Juvenile Court Act", supra n.46, Comment §14. An alternative to the provisions cited which proportedly emphasizes releasing children into parental custody, arise after the decision is made to detain the child for his own or the community's welfare. It is release on bail. Significantly, South Dakota through S.D.C.L. §26-8-21 is one of only seven states which have legislatively provided for the right to bail for juveniles. See Davis, supra n. 50, at 75. However, the utility of this provision seems questionable since the right to bail is rarely exercised and bond is infrequently set in juvenile cases. Perhaps the problem is that parents and child are not informed of the right to give security for court appearance. This could be remedied by including in S.D.C.L. §26-8-19.2 (1976) not only notice to parents of the right to a detention hearing, but also the right to bail.

because the statute is virtually identical to S.D.C.L. §26-8-19.3 reproduced on page 90. He disapproves of police routinely taking a child to the station house immediately after arrest and believes an explicit prohibition against station house detention is necessary to put an end to this practice.⁷⁷ His position is buttressed by the general procedure reported by the sample law enforcement agencies in South Dakota of bringing apprehended juvenile offenders to the department for disposition notwithstanding the statutory charge that a youth should not be held for longer than reasonably necessary to secure the essential facts about the child and the case.⁷⁸

E. POLICE DIVERSION OF JUVENILE CASES

The role of the police as the primary agents of referral or diversion in the juvenile justice system is now openly recognized.⁷⁹ The authors of the IJA/ABA Standards contend that the police have always performed such a function but without public recognition or scrutiny.⁸⁰ The problematical aspect of this practice is not that

⁷⁷Fox, supra, n. 59, at 109.

⁷⁸See p. 53, supra. In a recent case interpreting this statutory charge, In the Matter of V.R., 286 N.W. 2d 832 (S.D. 1978), the South Dakota Supreme Court adopted an extremely restrictive view of what constitutes temporary custody for juveniles under S.D.C.L. §26-8-19.1. This seems to open the door for more extensive detention by police officers than that suggested by the text, in cases where the situation is found to be noncustodial.

⁷⁹National Juvenile Law Center, Law and Tactics in Juvenile Cases 15 (2nd. Ed. 1974); President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Juvenile Delinquency and Youth Crime 9-12 (1967); IJA/ABA Standards, supra n.40, at 19; S. Wheeler, L. Cottrell, A. Romasco, Juvenile Delinquency: Its Prevention and Control 11 (1966); Kobetz, supra n.34, at 163; V. Streib, "The Informal Juvenile Justice System: A Need for Procedural Fairness and Reduced Discretion," 10 J.Mar.J.Prac. & Proc. 41,54-55 (1976); D. Besharov, Juvenile Justice Advocacy: Practice in a Unique Court 107 (October 1974).

⁸⁰IJA/ABA Standards, supra n. 40, at 32.

police dispose of most juvenile cases in one manner or another before they become court issues, "it is that most police actions are taken on an ad hoc basis by individual officers and are not guided either by departmental policies or joint policies with other juvenile justice agencies.⁸¹

The IJA/ABA Standards offer data from a recent FBI Uniform Crimes Report to reveal only a fraction of the total extent of police diversion of juveniles:

According to the over 8,500 reporting police agencies, 1,709,564 juveniles were taken into custody during 1974. This figure reflects not only Crime Index Offenses, but covers all offenses except traffic and neglect cases. Of this total police agencies report that 44.4 percent of the juveniles were handled within their respective police departments and were released; 47 percent were referred to juvenile court jurisdiction; 2.5 percent were referred to other police agencies; and 3.7 percent were referred to criminal courts....These figures reveal only the percentage of referrals made after a child is taken into custody. An even higher percentage of all problems with juveniles are dealt with on the street without any formal action being taken.⁸²

The extensiveness of on-the-street informal dispositions is reflected in a study conducted by Morris and Hawkins which found that, "of every hundred youth arrested, only forty reach the court intake process. Of these forty, only twenty actually reach the court."⁸³ In light of this hard data and the opinions of police officers questioned throughout the study, Morris and Hawkins approximate that every

⁸¹Id.

⁸²Id.

⁸³N. Morris and G. Hawkins, The Honest Politician's Guide to Crime Control 91 (1970).

hundred youth the police arrest represent five hundred "probable cause" arrest situations.⁸⁴

In South Dakota, our data reveals that forty-four percent (2357) of the 5322 juvenile contacts reported by the law enforcement agencies surveyed were handled informally.⁸⁵ Since the agencies reported it was general practice for an officer to bring a juvenile to the department for disposition and that only occasionally did an officer make an informal disposition in the field, it can be assumed that most contacts in South Dakota involved custody and therefore, our data clearly conforms to that reported by the FBI in a recent Uniform Crime Reports.⁸⁶

The preceding paragraph documents the extent of informal handling of juveniles but does little to reveal the effects of police diversion. A number of writers have commented on the consequences of the extensive authority of law enforcement officers. Sundeen summarizes their findings.⁸⁷

The significance of the police in this process has been suggested by Lemert when he writes that through arrests and court referrals the police have the "strategic power to determine what proportions and what kinds of youth problems become official and which ones are absorbed

⁸⁴Id.

⁸⁵See p. 31 supra.

⁸⁶Federal Bureau of Investigation, "Crime in the United States" --11 Uniform Crime Reports 177 (1975).

⁸⁷R. Sundeen, "Police Professionalization and Community Attachments and Diversion of Juveniles from the Justice System," in Back on the Street, supra n. 27, at 314.

back into the community." Beside this gate-keeping function for the justice system and its potential labeling effect on the juvenile, the police may also have their own labeling effect on the juvenile. For instance, Wattenberg and Bufe concluded from their study of initial police juvenile contacts that "the relatively brief contact between a boy or his family and a police officer may be highly influential on a future 'career' in delinquency." Also, Gold attributed apprehension by police as the factor which explained recidivism among a matched group of juveniles.

As we have previously observed, law enforcement authorities in South Dakota are not governed by sufficient statutory or administrative directives in the exercise of their tremendous discretion.⁸⁸ South Dakota, however, is certainly not alone in this regard. Nationally, according to Law and Tactics in Juvenile Cases, statutes rarely recognize the exercise of police discretion and police officers must necessarily resort to their own judgment to decide whether to make an arrest and whether detention is appropriate.⁸⁹ In terms of administrative guidelines, Kobetz and Bosarge point out that across the country, "Many larger police departments publish police-juvenile procedural manuals designed to assist the officer in making the correct disposition."⁹⁰ Kobetz and Bosarge include, as an example of departmental guideline development, the commendable effort of the Chicago Police Department.⁹¹ The relevant provisions of that manual are reproduced in Appendix B of this monograph for purposes of comparison.

⁸⁸Supra n. 38.

⁸⁹Law and Tactics, supra n. 19, at 67.

⁹⁰Kobetz, supra n. 34, at 143.

⁹¹Id. at 144.

The National Council on Crime and Delinquency suggests that police consider the following criteria in determining whether to refer a juvenile to court:

- (1) the seriousness of the offense;
- (2) the totality of the circumstances, even if the particular offense is minor;
- (3) repeated offenses;
- (4) lack of cooperation by the child or parents in seeking voluntary help;
- (5) failure of previous casework on a voluntary basis;
- (6) the services needed are best obtained through the court and court related agencies;
- (7) the child denies the charge and sufficient evidence apparently exists to prove his involvement; and
- (8) any case in which the child has been placed in detention or should be.⁹²

Very few agencies have adopted such stringent and explicit guidelines, or any guidelines whatsoever, and it is clear that in reality police behavior does not conform to such recommendations. As Besharov comments:

To understand the process of police diversion of juveniles, which takes place with little outside scrutiny and largely in the absence of formal criteria; it is essential to know how the police actually make their decisions.⁹³

Over the past decade and one-half, a variety of significant studies have been conducted which have attempted to isolate criteria employed by police in determining juvenile dispositions. Some interesting comparisons can be made between those previous efforts and the data produced in the present study.

⁹²National Council on Crime and Delinquency, Guides for Juvenile Court Judges 31 (1963).

⁹³D. Besharov, Juvenile Justice Advocacy: Practice in a Unique Court 109 (October 1974).

In one of the most influential excursions into this realm, Nathan Goldman concludes that the seriousness of the offense committed by the juvenile was the single most important factor influencing police dispositional decisions.⁹⁴ Police were much more inclined to refer serious cases than less serious cases to court.⁹⁵ A number of subsequent studies have confirmed this finding⁹⁶ and in our investigation the seriousness of the offense along with the juvenile's past offenses were the two most frequently mentioned criteria by the police and sheriff's departments which employed several criteria in juvenile disposition.⁹⁷ Other studies are also in agreement with the notion that the prior record of the offender is a significant determinant of juvenile dispositions.⁹⁸

Age also appeared from our data to be an important consideration in the dispositional decision⁹⁹ and accordingly Thomas and Fitch

⁹⁴Goldman, supra n. 23.

⁹⁵Id. at 278.

⁹⁶Piliavin and Briar, supra n. 4, at 209; R. Terry, "The Screening of Juvenile Offenders", 58 J. of Crim L., C. & P.S. 173, 178 (June 1967); A. McEachern and R. Bauzer, "Factors Relating to Disposition in Juvenile Police Contacts" in Juvenile Gangs in Context: Theory, Research, and Action, 148 (M. Klein and B. Myerhoff, eds. 1967) [hereinafter cited McEachern and Bauzer]; R. Ariessohn, "Offense v. Offender in Juvenile Court," 23 Juv. Just. 17, 19 (August 1972) [hereinafter cited Ariessohn].

⁹⁷See Table 16 supra.

⁹⁸See, e.g., W. Barton, "Discretionary Decision-Making in Juvenile Justice", 20 Crime & Delinquency 470, 474 (October 1974), Piliavin and Briar, supra n. 4, at 210, McEachern and Bauzer, supra n. 96, at 148.

⁹⁹See Table 16 supra.

report other studies which "show a rather consistent tendency for the police to avoid arresting younger adolescents unless the nature of their offense or the amount of harm and damage they have caused is relatively severe."¹⁰⁰ Goldman's observations in this regard offer further insight:

There appears to be an under-representation in courts of arrests below the age twelve, and an over-representation of arrests in the sixteen and seventeen-year groups. It is possible, if not probable, that the nature of the offenses of children under age twelve is much less serious than that of the older boys and girls. For a variety of other reasons, however, police are loathe to refer younger children to court. Some, referring back to their own early childhood escapades, find justification for the informal rather than the official treatment of such children. Other police, referring to court and other institution experiences as leading to habituation in the ways of delinquency, use court referral only as a last resort. Some, in terms of their self-conceptions as professional antagonists of the criminal, are embarrassed at having to assume a police role with respect to a young child. They prefer, then, to over-look juvenile offenses.¹⁰¹

Another criteria which has been allowed considerable attention by researchers is the demeanor of the juvenile who comes into contact with the police.¹⁰² Piliavin and Briar observe:

The cues used by police to assess demeanor were fairly simple. Juveniles who were contrite about their infractions, respectful to officers, and fearful of the sanctions that might be employed against them tended to be

¹⁰⁰C. Thomas and W. Fitch, "The Exercise of Discretionary Decision-Making by the Police," 54 N.D.L. Rev. 61, 75 (1977-78).

¹⁰¹Goldman, supra n. 23, at 274.

¹⁰²See Piliavin and Briar, supra n. 4, at 210; D. Black and A. Reiss, Jr., "Police Control of Juveniles," 35 Am. Soc. Rev. 63 (1970); Ariessohn, supra n. 96, at 20.

viewed by patrolmen as basically law-abiding or at least "salvageable." For these youths it was usually assumed that informal reprimand would suffice to guarantee their future conformity. In contrast, youthful offenders who were fractious, obdurate or who appeared nonchalant in the encounters with patrolmen were likely to be viewed as "would-be tough guys" or "punks" who fully deserve the most severe sanction: arrest.¹⁰³

Similarly, Ariessohn observes that in his study police ranked the juvenile's attitude as the second most significant dispositional criterion.¹⁰⁴ In contrast only three of the twenty-eight South Dakota law enforcement agencies identified attitude as a significant factor affecting dispositional decisions.¹⁰⁵ Perhaps this can be explained by the reticence of South Dakota authorities to openly recognize a determinant which has been identified as an entirely inappropriate foundation upon which to base dispositional decisions.¹⁰⁶

Other factors, such as race and sex, may also affect police decisions. A previous South Dakota Statistical Analysis Center report noted:

Non-white juveniles were far more likely to be referred to court than white juveniles (Sioux Falls data not available). Of the 575 non-white juvenile contacts, 77 percent (443) were referred to court, compared to only 58 percent (1971) of the 3370 white juvenile contacts. Again, however, much of this difference is probably due to the fact that 59 percent of non-whites were being charged more often [were recidivists]. Also, whereas non-white accounted for 12 percent

¹⁰³Piliavin and Briar, supra n. 4, at 210.

¹⁰⁴Ariessohn, supra n. 96, at 20.

¹⁰⁵Table 16, supra.

¹⁰⁶Thomas and Fitch, supra n. 100, at 79-81.

of all offenses, they accounted for 15 percent of those offenses resulting in a high rate of court referrals. Thus, all other things being equal, there is no indication that non-whites were more likely than whites to be referred to court.¹⁰⁷

Barton has analyzed the available literature relative to this issue and reports that even though some studies have concluded that blacks receive harsher police dispositions than whites, other research efforts have been equally insistent that race is not a factor at this stage in the process.¹⁰⁸

Clearly, consensus is lacking in this area. Thomas and Fitch evaluate the state of the literature in the following manner:

Consequently, despite the widely held belief that police openly discriminate against minority group members, particularly Blacks, our evaluation of these and other research reports leads us to infer that the nature of this linkage is far from simplistic. Instead, the association between ethnic origin and type of police reaction appears to diminish considerably when other relevant factors are taken into consideration, factors that tend to be correlated with both ethnicity and police decisions. Thus, it would appear that simply being Black does not appreciably influence police decisions to arrest. On the other hand, because being Black in this society implies one is more likely to fall into a variety of other categories

¹⁰⁷SAC, Juvenile Offender, supra n. 17, at 75.

¹⁰⁸W. Barton, "Discretionary Decision-Making in Juvenile Justice," 20 Crime & Delinquency 470, 474 (October 1974). For studies citing race as a factor in police dispositions see Goldman, supra n. 23, at 285; D. Katkin, D. Hymn, J. Kramer, Juvenile Delinquency and the Juvenile Justice System 219 (1976); Piliavin and Briar, supra n. 4, at 213; T. Ferdinand and E. Luchterhand, "Inner-city Youth, the Police, the Juvenile Court, and Justice," 17 Soc. Prob. 510, 511 (Spring 1970). For studies where race was not a factor see R. Terry, "The Screening of Juvenile Offenders," J of Crim L., C. & P.S. 173, 178 (June 1967); McEachern and Bauzer, supra n. 96, at 148.

that are associated with this ethnic membership, the odds that Blacks will be arrested are higher than for those who are not Black.¹⁰⁹

Generally, with regard to the variable of the sex of the juvenile, we noted earlier in this monograph that our data reveal virtually no evidence that the sex of the child is a factor in the disposition of juvenile cases in South Dakota.¹¹⁰ This finding corresponds with the analysis of Thomas and Fitch to the effect that: "the apparent relationship between sex and decisions to arrest may more appropriately be viewed as a function of other variables."¹¹¹ McEachern and Bauzer seem to have isolated one of these variables by noting a relationship between sex and offense type in police decision-making.¹¹² Their data revealed that petitions were more likely to be requested by police for boys than girls for the more serious adult offenses and less likely to be sought for boys in status offense situations.¹¹³ Our data does not indicate such a clean distinction between status and non-status offenses; only in the status offense category of runaway did the number of females contacted exceed the number of males.¹¹⁴

Before concluding this discussion of police diversion of juveniles, we would be remiss if we did not mention two factors which are not dispositional criteria but most certainly affect the employment of

¹⁰⁹Thomas and Fitch, supra n. 100, at 75.

¹¹⁰Supra p. 33.

¹¹¹Thomas and Fitch, supra n. 100, at 77.

¹¹²McEachern and Bauzer, supra n. 96, at 153.

¹¹³Id.

¹¹⁴Supra p. 22.

such criteria.¹¹⁵ One of these factors is the organizational structure of the department. Sundeen adroitly describes Wilson's landmark work in this area:

Wilson attributed the difference in diversion rates between a Western and an Eastern police department to whether or not the department had a "fraternal" or a "professional" ethos. The professional department officers had more formal education and police training, more complex attitude toward delinquency, tended to enforce the law more impartially and impersonally, were more likely to come in contact, to arrest or cite (as opposed to reprimand) than their counterparts in the fraternal department. On the other hand, the fraternal department officers were allowed a wide range of discretions in dealing with juveniles. With regard to community attachments, the fraternal force officers tended to be locals from lower-class backgrounds, while the officers from the professional force came from areas outside the city and had not been exposed as youth to lower-class culture.¹¹⁶

Since the instant study does not undertake a categorization of South Dakota law enforcement agencies into professional or fraternal and the individual characteristics of the agencies surveyed are not easily secured, any observations concerning organizational structure would be tentative.

¹¹⁵Ferster and Courtless, supra n. 35, at 580. It is important to recognize that these two factors are not all-inclusive and that other facts, not amounting to disposition criteria, influence the decision by law enforcement personnel to refer a youth to court. Some of these factors include: the characteristics of the victim, the police officer, and the situation, as well as departmental policy and community attitude. For a good summary of these factors see M. Klein, "Issues in Police Diversion of Juvenile Offenders," in Back on the Street, supra n. 27, at 73.

¹¹⁶R. Sundeen, Jr., "Police Professionalization and Community Attachments and Diversion of Juveniles from the Justice System," in Back on the Street, supra n. 27, at 315.

The second factor deserving specific mention is the impressions law enforcement personnel maintain regarding the juvenile court and the correctional agencies which will handle formally adjudicated children.¹¹⁷ Ferster and Courtless describe the potential impact of such perceptions as follows:

Where police view the efforts of such agencies as unsuccessful or inappropriate, they may be tempted to exercise dispositional alternatives within their departments....Thus, where there is no compelling reason, such as severity of the delinquent or criminal act, for referral to the court, the police frequently dispose of the case themselves rather than expose the child to what they consider to be ineffective agencies utilized by the juvenile court system.¹¹⁸

This type of reaction is confirmed by our data to the extent that law enforcement personnel in the less populous areas of South Dakota were found to possess relatively negative opinions regarding the ability of the juvenile court (and assumedly its related agencies) to deal effectively with juvenile offenders, and this disenchantment is apparently reflected in a decreased rate of court referrals as compared with the rates of larger jurisdictions.¹¹⁹

This comparative analysis of police decision-making emphasizes the extent and effects of informal handling of youths and the criteria used in varying degrees by law enforcement agencies throughout South Dakota and the rest of the country, but also demonstrates the astounding

¹¹⁷Ferster and Courtless, supra n. 35, at 580.

¹¹⁸Id.

¹¹⁹Supra p. 38.

amount of discretion resting in the hands of the police. This point is stressed and the attendant dangers recognized by the President's Commission on Law Enforcement and the Administration of Justice:

There are grave disadvantages and perils, however, in that vast continent of sublegal dispositions. It exists outside of and hence beyond the guidance and control of articulated policies and legal restraints. It is largely invisible-unknown in its detailed operations--and hence beyond sustained scrutiny and criticism. Discretion too often is exercised haphazardly and episodically, without a foundation in full and comprehensive information about the offender and about the availability and likelihood of alternative disposition. Opportunities occur for illegal and even discriminatory results, for abuse of authority by the ill-intentioned, the prejudiced, the overzealous. Irrelevant, improper considerations--race; nonconformity, punitiveness, sentimentality, understaffing, overburdening loads--may govern officials in their largely personal exercise of discretion. The consequence may be not only injustice to the juvenile but diversion out of formal channels of those whom the best interest of the community require to be dealt with through the formal adjudicatory and dispositional processes.¹²⁰

The real issue is not whether we are going to retain or eliminate this discretion, law enforcement personnel should and will continue to exercise discretion in their decision to refer youths to court. The issue and the struggle is how to structure the discretion in police operations to prevent the abuses documented above and preserve the benefits of informal handling of juveniles. It is toward this purpose that the next chapter is offered.

¹²⁰President's Commission on Law Enforcement and Administration of Justice, The Challenge of Crime in a Free Society 221-222 (1968).



IV. RECOMMENDATIONS FOR CHANGE

A. INTRODUCTION

Recognition of the serious problems which presently exist in police handling of juveniles by all concerned--legislators, judges, and law enforcement officials; individual police officers as well as the general citizenry--is a critical first step on the road to effective reform in this area. The preceding chapters should offer valuable information to aid in this recognition. The second step, since so far South Dakota lacks comprehensive standards and goals for juvenile justice, is identification and implementation of the changes needed to remedy the existing problems.

We have divided our recommendations for change into three sections. Section B confronts the problem of transforming the conundrum of South Dakota Code provisions dealing with police-juvenile contacts into a workable and equitable scheme. Proposals calling for legislative changes to structure and control police discretion in handling juveniles are presented and evaluated in this section. We realize that few recommendations for change enjoy unanimous support, therefore both proponent and opposing views regarding proposed changes are presented.

Various recommendations for the development of administrative policymaking have been advanced by a number of prominent organizations and commissions in the United States over the years. The necessity for, the content of, and the problems associated with administrative rule-making are scrutinized in section C. The survey results indicated the paucity of guidelines for law enforcement officers in South Dakota relating to situations involving juveniles. The serious deficiency in police rule-making in the juvenile area should be reversed to remedy the chaotic and haphazard treatment of juveniles by police.

In section D, the last component of the reform plan is presented--training recommendations. Law enforcement personnel must become better acquainted with the juvenile justice system, its foundations and the role law enforcement plays as an element of the system. Directly associated with the need for police training in juvenile matters is the necessity for hiring juvenile specialists or assigning officers to specialize in juvenile problems.

Throughout this chapter, frequent reference is made to Police Handling of Juvenile Problems promulgated by the IJA/ABA Juvenile Justice Standards Project. This is done not only because the IJA/ABA Standards are the most recent and comprehensive effort attempted, but also because we find ourselves essentially in accord with the prodigious work of this body and would hope other efforts to formulate standards would strive to emulate this project.

B. LEGISLATIVE REFORM

In the Legal Implications chapter, attention was focused on the broad statutory power traditionally granted to juvenile courts and police in dealing with juveniles in both criminal and non-criminal situations.¹²¹ The extensive, erratic, and often arbitrary nature of police diversion practices developed pursuant to this sweeping authority and the deleterious effects of such practices was revealed and documented.¹²² Under such conditions, legislative reform must necessarily center on a two-prong attack. Recognizing this, the IJA/ABA Standards relating to Police Handling of Juvenile Problems declare: "It is necessary, therefore, to limit both the jurisdiction of the juvenile courts and police authority to refer juveniles to them."¹²³

Proposals to restrict the jurisdiction of juvenile courts have emanated from numerous sources and suggested varying degrees of limitation. For example, the IJA/ABA Standards recommend as follows:

Standard 2.3 of Juvenile Delinquency and Sanctions, for example, limits juvenile delinquency liability to conduct which would be designated criminal if committed by an adult. Further, in Non-criminal Misbehavior, Standard 1.1 eliminates juvenile court jurisdiction of juvenile acts of misbehavior, ungovernability, or unruliness that do not violate the law.¹²⁴

Compare this to the suggestions of the Task Force Report on Juvenile Delinquency of the President's Commission on Law Enforcement and Administration of Justice:

¹²¹See Section B, chapter III.

¹²²See p. 95 supra.

¹²³IJA/ABA Standards, supra n. 40, at 46.

¹²⁴Id.

A major distinction should be made between these youngsters who have committed acts which would be crimes if they were committed by adults, and those youngsters whose alleged offenses would not be criminal if committed by adults. Even in the first category, every effort should be made to keep youngsters out of the judicial and correctional system if they have committed what might be termed minor offenses which do not result in serious danger to themselves or to the community.¹²⁵

The National Advisory Commission on Criminal Justice Standards and Goals adopts a more cautious stance:

It is the view of the Commission that the delinquent child--the child who commits an offense which would be criminal if committed by an adult--should be the primary focus of the court system. The Commission takes no position with respect to extension of jurisdiction to the "person in need of supervision" (PINS). The PINS category includes the runaway and truant.¹²⁶

And the Criminal Justice Standards and Goals for South Dakota employs yet another approach by simply not addressing the issue.

A variety of other commentators have confronted the morass of considerations which surrounds the restriction of juvenile court jurisdiction debate, and many have reached contradictory solutions to the problem.¹²⁷

¹²⁵The President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Juvenile Delinquency and Youth Crime 397 (1967).

¹²⁶National Advisory Commission on Criminal Justice Standards and Goals, A National Strategy to Reduce Crime 109 (1973).

¹²⁷For arguments against restriction of juvenile court jurisdiction see J. Polier, "Future of the Juvenile Court", 26 Juv. Just. 3, 6 (May 1975); A. Guarna, "Status Offenders Belong in Juvenile Court," 28 Juv. Just. 35 (November 1977); C. Martin, "Status Offenders and the Juvenile Justice System: Where Do They Belong" 28 Juv. Just. 7 (February 1977); T. Gill, "The Status Offender," 27 Juv. Just. 3 (August 1976); and R. Drake, "Elimination of Status Offenses: The Myth, Fallacies and

We recognize the genuine character of the debate, however, we concur with the authors of the IJA/ABA Standards relating to Police Handling of Juvenile Problems that the restriction of juvenile court jurisdiction is a necessary aspect of any attempt to alter the "ad hoc and often arbitrary" decision-making process which characterizes police dealings with juveniles.¹²⁸ This constriction of the power of juvenile courts will inevitably reduce police involvement with juveniles, not only because the range of conduct for which court intervention is authorized will be narrowed, but also because a theme will be established which mandates restrained intervention on the part of the police as well as the courts in handling youths who have not violated the criminal code.¹²⁹ This standard is vital because by telling us which youths will be handled by the juvenile court, it reveals those the police

More Juvenile Crime," 29 Juv. & Fam. Ct. J. 33 (May 1978). For writers favoring elimination of status offenses see National Assessment of Juvenile Corrections, Brought to Justice? Juveniles, the Courts, and the Law 215 (R. Sarri & Y. Hasenfeld, eds. 1976); S. Stiller and C. Elder, "PINS - A Concept in Need of Supervision," 12 Am. Crim. L. Rev. 33 (Summer 1974); F. Orlando and J. Black, "Classification in Juvenile Court: The Delinquent and the Child in Need of Supervision," 25 Juv. Just. 13, 22 (May 1974); A. Couch, "Diverting the Status Offender from the Juvenile Court," 25 Juv. Just. 18 (November 1974); A. Simpson, Comment, "Rehabilitation as the Justification of a Separate Juvenile Justice System," 64 Calif. L. Rev. 984, 1013 (1976); E. Lamert, "Instead of Court: Diversion in Juvenile Justice," in Back on the Street, n. 27 supra, at 137; A. Sussman, "Judicial Control over Noncriminal Misbehavior," 52 N.Y.L. Rev. 1051 (1977); and A. Katz and L. Teitelbaum, "PINS Jurisdiction, the Vagueness Doctrine and the Rule of Law," 53 Ind. L.J. 1 (Fall 1977).

¹²⁸IJA/ABA Standards, n. 40 supra, at 46.

¹²⁹See IJA/ABA Standards, n. 40, supra at 31-64; Ferster and Courtless, n. 35, supra, at 581-583; and A. Simpson, Comment, "Rehabilitation as the Justification of a Separate Juvenile Justice System," 64 Calif. L. Rev. 984, 1013-15 (1976).

should screen out of the process early. Therefore, we recommend the abolition of the status offense jurisdiction of the South Dakota juvenile courts.¹³⁰ Truancy, running away, and incorrigibility are matters more effectively handled by the family or community agencies, without the coercive and detrimental effects associated with the formal juvenile court process.¹³¹

¹³⁰The argument posed by E. Lemert, "Instead of Court: Diversion in Juvenile Justice," in Back on the Street n. 27 supra, at 137 must also be recognized:

"Yet there is a risk that passage of statutes to restrict the volume of cases reaching juvenile courts may miss their targets if they do no more than describe new substantive bases for jurisdiction, for the reason that...juvenile court personnel are likely to rationalize or define their problems in whatever term the new statutes state."

¹³¹We recognize the numerous other bases for such a recommendation which are beyond the scope of detailed discussion in a report dealing with police handling of juveniles. See n. 127. For instance, with regard to juvenile court efficiency, note Sarri and Hasenfeld's comments:

"Juvenile courts are hampered in attaining high levels of effectiveness because of the volume of 'juvenile nuisances' that they process, and because they spend a disproportionate amount of time on these cases. Those behaviors are overdramatized, as the case of runaways illustrates. Runaways are characterized as serious offenders in many courts, when, in fact, two-thirds are over the age of fifteen, remain away from home no more than two days, and spent that time with a relative or friend less than ten miles from their homes (Brennan et.al., 1975; Gold and Reimer, 1975). Certainly some runaways have serious personal and social problems, but coercive action by the court is not a reasonable solution for most. A recent report by Murphy (1974) of his experience in a legal assistance office for juveniles highlighted many of the problems of the justice system...from the perspective of youth and their families as they are cycled and recycled through the justice system. He concluded that the court could only fail when it attempted to become a rehabilitative agency, because the goals it could serve most effectively were to resolve disputes among claimants that could not be resolved outside the court.

However, as we have previously observed, the restriction of the jurisdiction of juvenile courts must be accomplished in conjunction with a limitation on police authority to handle juveniles.¹³² Again, we subscribe to the suggestions of the IJA/ABA Juvenile Justice Standards Project: "future legislative reform should separate police authority to initiate delinquency or criminal proceedings from other actions relating to the need for emergency housing, protection, or medical care."¹³³ Unless this separation takes place in South Dakota, the application of the adult laws of arrest to the juvenile context will continue to be unclear, with the effects discussed earlier in this text.¹³⁴ We endorse a distinct enactment, like that of New York, which limits the authority of the police to take custody of a delinquent child without a warrant to situations where an adult arrest would be justified.¹³⁵ This suggestion finds support in Police Handling of Juvenile Problems: "In criminal-type situations, requirements should undoubtedly reflect the same strict constitutional standards and common

Because the consequences are disproportionate to the offenses and are largely based on ascribed characteristics and chance elements, jurisdiction over status offenses should be removed from the juvenile court and assigned to the child welfare or youth services agencies in the various states

...
 (R. Sarri and Y. Hasenfeld, Brought to Justice? Juveniles, the Courts, and the Law 216 (1976)).

¹³²See p. 108, supra.

¹³³IJA/ABA Standards, n. 40 supra, at 47. See also Fox, n. 59 supra, at 98-99; Davis, n. 50 supra, at 42,47; and Law and Tactics, n. 19 supra, at 62-63.

¹³⁴See p. 88 supra for the argument in favor of extending adult arrest rules to juveniles and p. 95 supra for discussion of the deleterious effects of the unstructured discretion of police in handling juveniles.

¹³⁵N.Y. Fam. Ct. Act §721 (1975).

law distinctions that relate to arrest of adults.¹³⁶

The procedures governing the taking of a juvenile into custody with a warrant are also in need of substantial refinement. As mentioned in the preceding chapter, the criminal law prefers an arrest to be made pursuant to a warrant issued by an impartial magistrate.¹³⁷ No such preference is evident in the South Dakota Juvenile Code. It should be statutorily clear that whenever practicable, a warrant should be obtained before a child is taken into custody. Another apparent failing of the South Dakota Code is that although it provides for apprehension of a child pursuant to a court order, it does not specify the procedures or criteria to be used by the court in its decision to issue a warrant.¹³⁸ To reduce the adult-juvenile disparity in this area we suggest an enactment which requires that a complaint be presented to the court indicating the circumstances of the youth's alleged offense before such an order can be issued, and furthermore, no order should issue unless the court first finds that there are reasonable grounds to believe that the juvenile committed the offense.¹³⁹

¹³⁶IJA/ABA Standards, n. 40 supra at 64. In addition to enacting a distinct statute in which adult arrest laws are incorporated into the juvenile code, consideration should be given to eliminating the legal fiction found in S.D.C.L. §26-8-19.7 (1976) that temporary custody is not arrest, by repealing the statute or revising it as in the "Uniform Juvenile Court Act" supra n. 46, §13(b) to read "[t]he taking of a child into custody is not an arrest, except for the purpose of determining its validity under the constitution of this state or the United States."

¹³⁷See p. 84 supra.

¹³⁸See n. 52 supra.

¹³⁹Law and Tactics, n. 19 supra, at 63.

Even though we recommend police authority to take custody of children under criminal circumstances be governed by adult arrest laws, we realize that certain non-criminal predicaments also demand police intervention. For example, Paulsen and Whitebread cite the following case:

In State v. Hunt, 2 Ariz. App. 6, 406 P.2d.208 (1965) a babysitter found a five-year-old girl laying on her stomach in an unlighted furnace room with her head underneath the hot water heater and her hands tied behind her. She bore the marks of being beaten. The babysitter learned from the child that her mother had hit her with a belt, whereupon the sitter called the sheriff's office. In response to the call a deputy sheriff assigned to juvenile work proceeded to the Hunt residence. Although the deputy sheriff had no warrant for either search or arrest, he used his authority to gain access to the house and to find the five-year-old girl.¹⁴⁰

Undeniably, many such circumstances call for immediate action on the part of the police officer, however, as we have already suggested, the authority to intervene in such cases should not rely on the laws of arrest and must be explicitly distinguished from criminal-type situations.¹⁴¹ Notice the commentary to the IJA/ABA Standards:

In non-arrest situations, police authority to take juveniles into custody or otherwise intervene in their lives should be carefully circumscribed and limitations should be placed upon the use of non-arrest custody to obtain evidence or otherwise assist in the investigation of potential criminal or delinquency cases. The suggestion that the standards should openly acknowledge the need for police authority to intervene in certain situations without reliance upon the power to arrest and to clearly distinguish between police intervention in arrest and non-arrest situations and the implications of such intervention has support in

¹⁴⁰M. Paulsen and C. Whitebread, Juvenile Law and Procedure 78 (1974).

¹⁴¹See p. 82 supra and p. 112 supra.

The Urban Police Function. These standards recommend that police have authority to use methods other than arrest and prosecution in certain instances to deal with the variety of behavioral and social problems that they confront. The suggestion is that recognized and properly limited authority be considered in areas such as interference with the democratic process, self-destructive conduct, resolution of conflict, and prevention of disorder, but that this authority to intervene without having to invoke the arrest power is not to be used to circumvent Fourth Amendment requirements and is subject to checks and balances of its own.¹⁴²

We advocate an enactment which will coordinate the currently cluttered and nebulous South Dakota provision¹⁴³ with these recommendations. We further propose that in non-criminal cases the legislation specifically require the police officer to obtain a warrant or summons from an impartial judicial officer prior to taking custody of the child.¹⁴⁴ This requirement would be subject to certain narrowly defined exceptions which would dispense with the need for a warrant in emergency situations. The necessity for this standard is recognized by Professor Davis:

...should it be solely a police decision when the broad jurisdictional power invoked to take into custody a youth who is not charged with a criminal violation...? To be sure, juveniles "in trouble" should receive help, but someone

¹⁴²IJA/ABA Standards, n. 40 supra, at 64. See also Standard 3.3 at 78 which states that even if a juvenile is taken into custody under authority other than the arrest power, evidence should not be admissible in a subsequent criminal or delinquency proceeding unless it was obtained in accordance with Fourth, Fifth, Sixth, and Fourteenth Amendment requirements for criminal proceedings.

¹⁴³See S.D.C.L. §26-8-19.1 (1976).

¹⁴⁴See Davis, n. 50 supra, at 45-49 and N.Y. Fam. Ct. Act §721 (McKinney Supp. 1972).

other than the officer on the street ought to assume primary responsibility in the decision-making process...Whenever circumstances permit [the officer] ought to obtain a warrant or summons, and the impartial judicial officer ought to be the one who determines the course of action to be taken.¹⁴⁵

In criminal-type situations, the post-custody duties of law enforcement officers in South Dakota are also in need of legislative clarification. The IJA/ABA Standards suggest generally that in delinquency situations, "even if the decision is made to initiate court proceedings, preference should be given legislatively to releasing the juvenile to a parent when he or she has been charged with a minor offense."¹⁴⁶ The IJA/ABA authors also condemn the practice of placing juveniles, once

¹⁴⁵Davis, n. 50 supra, at 47-48.

¹⁴⁶IJA/ABA Standards, n. 40 supra, at 47. IJA/ABA Standards for Juvenile Justice, Interim Status, Standard 5.6 (Tentative Draft 1977) similarly provides:

"5.6 Guideline for status decision.

- A. Mandatory release whenever the juvenile has been arrested for a crime which in the case of an adult would be punishable by a sentence of less than one year, the arresting officer should, if charges are to be pressed, release the juvenile with a citation or to a parent, unless the juvenile is in need of emergency medical treatment, requests protective custody, or is known to be of fugitive status.
- B. Discretionary release. In all other situations, the arresting officer should release the juvenile unless clear and convincing evidence demonstrates that confined custody is necessary. The seriousness of the alleged offense should not, except in cases involving first or second degree murder, be sufficient ground for continued custody. Such evidence should only consist of one or more of the following factors as to which reliable information is available to the arresting officer:
 1. that the arrest was made while the juvenile was in a fugitive status;

taken into custody, in adult detention facilities.¹⁴⁷ And Professor Fox comments more specifically on the need for an explicit prohibition against detaining a juvenile at the police station while the release or detention issue is settled:

[This] policy is the one that should be adopted in order to spare children the experience of being held in what are probably the most depressing and intimidating of all custodial facilities. Police stations are not the place in which to introduce a child to a system of justice that purports to place his welfare in the paramount position. There is no reason why, if a child must be taken into custody, he cannot be immediately taken to a special juvenile facility, with no stopover--however brief--at the police station. It seems that strong statutory language is called for to accomplish such a result.¹⁴⁸

We concur with the assessment of Professor Fox that strong statutory language is necessary to accomplish change in this area. The weaknesses of the South Dakota Code provisions concerning the post-custody responsibilities of law enforcement officers have already been highlighted.¹⁴⁹ We now call for statutes which more precisely establish a preference for immediately releasing an arrested youth, either with a citation or to his parents, without a stop-over

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2. that the juvenile has a recent record of willful failures to appear at juvenile proceedings;
 3. that the juvenile is charged with a crime of violence which, in the case of an adult, would be punishable by a sentence of one year or more, and is already under the jurisdiction of a juvenile court by parole under a prior adjudication."

¹⁴⁷Id.

¹⁴⁸Fox, n. 59 supra, at 110.

¹⁴⁹See p. 91 supra. In the Matter of V.R., 286 N.W. 2d. 832 (S.D. 1978), further amplifies the South Dakota Code's current weaknesses in the

at the police station, and dictate that those few children requiring detention must not be placed in adult detention facilities.¹⁵⁰

Legislation which is reflective of the recommendations set forth in this section will do much to control and direct the discretionary activities of police officers. However, legislation is not enough. Legislators must recognize that even under explicit statutory guidelines, the police officer in the field exercises considerable discretion and that other controls are necessary. Accordingly, the legislature must statutorily delegate authority to law enforcement agencies to develop their own administrative guidelines.¹⁵¹ This delegation legitimizes the rule-making process, thus avoiding the charge that law enforcement agencies are usurping legislative authority and violating the separation of powers.¹⁵² Police rule-making will be discussed in greater detail in the next section.

C. ADMINISTRATIVE POLICYMAKING

For a variety of reasons, the legislative reform encouraged in the previous section should not be viewed as the ultimate cure-all

area of law enforcement detention of juveniles and the need for legislative clarification. See n. 78 supra.

¹⁵⁰A number of other writers have recommended the expanded use of citations in lieu of expensive, unnecessary, and harmful arrest and detention. See, e.g., President's Commission on Law Enforcement and Administration of Justice, Task Force Report: The Administration of Justice 40-41 (1967); and American Law Institute, "A Model Code of Pre-Arrest Procedure," 14 (1975).

¹⁵¹This recommendation is supported by similar standards developed by Kobetz n. 34 supra, at 128 and S.D. Standards and Goals, n. 40 supra, Standard 2.2 at 8.

¹⁵²For both sides to the separation of powers argument see R. Allen, "The Police and Substantive Rulemaking: Reconciling Principle and Expediency," 125 U. Pa. L. Rev. 62 (1976); and K. Davis, "Police Rulemaking on Selective Enforcement," 125 U. Pa. L. Rev. 1167 (1976).

in the quest for an effective control of police discretion in the juvenile justice system. Few would be so naive as to suggest that the desired quantum of control will be achieved by merely imposing statutory constraints on police authority to deal with juvenile problems. The IJA/ABA Standards note that:

...determining that certain problems should not be referred to juvenile court does not relieve the police concern over the matter. This will continue to be so even if juvenile court jurisdiction is substantially narrowed. Whether a matter is defined as criminal or delinquent or merely foolish behavior may be irrelevant to the public if it is troubled or angered by an event.¹⁵³

Furthermore, law enforcement officials must recognize that it is unlikely that legislative initiative or competence in his area will be equal to the task.¹⁵⁴ Thus, as Thomas and Fitch suggest: "This implies that police departments must move toward the development of internal controls on the exercise of discretion."¹⁵⁵

¹⁵³IJA/ABA Standards, n. 40 supra, at 34.

¹⁵⁴Thomas and Fitch, n. 100 supra, at 88-91.

¹⁵⁵Id. at 91. Thomas and Fitch elaborated further on this suggestion as follows:

"First the specification of rules which might govern the exercise of discretion must come from those intimately familiar with police work. The legislative branch is not in a position to develop such rules even if legislators were willing to attempt to do so (and they clearly are not). Judicial judgments presently flow primarily from the application of the exclusionary rule. The logical rule developer, therefore, would appear to be the police themselves, acting with the assistance of their own legal counsel or the staff of the prosecutor's office. Second, rules made within police department would as Judge McGowan notes, do much to increase the probability of compliance of those rules and to reduce

Unfortunately, few law enforcement agencies in South Dakota¹⁵⁶ or the remainder of the nation¹⁵⁷ have developed guidelines to assist officers in the handling of juvenile cases. Under these circumstances, police decision-making stands upon a purely personal basis, the damaging consequences of which we have presented in an earlier section.¹⁵⁸ However, some departments have prepared guidelines for their personnel¹⁵⁹ and for examination purposes we have included examples of such efforts in Appendix A and B.

Yet despite the contemporary paucity of written administrative criteria for handling juvenile problems, recommendations for such an approach can be located in an impressive array of sources. The International Association of Chiefs of Police suggest the following:

It is recommended that all police departments with the assistance of departmental legal counsel, develop guidelines and policy statements be published and distributed to all officers.¹⁶⁰

the feeling among members of the department that they were being forced to adopt one policy over another because of the unwanted and unnecessary intervention of individuals or agencies outside the department who lack any familiarity with the daily problems of police work."

¹⁵⁶See p. 52 supra.

¹⁵⁷Law and Tactics, n. 19 supra, at 66-67.

¹⁵⁸See p. 95 supra.

¹⁵⁹For a general overview of the various approaches law enforcement agencies have employed see Kobetz, n. 34 supra, at 140-153.

¹⁶⁰Id. at 153.

The Task Force Report on Juvenile Delinquency of the President's Commission on Law Enforcement and Administration of Justice concurs:

The police should have written standards for release, for referral to nonjudicial sources, and for referral to juvenile court. They should not be precluded from making nonjudicial referrals in juvenile cases involving minor criminal acts, noncriminal delinquent behavior, and violations of probation and parole...the standards for release and adjustment should be sent to all agencies of delinquency control and should be reviewed and appraised jointly at periodic intervals. These recommendations call for the use of discretion by the police, subject to administrative control and with some outside restriction on its exercise, in accordance with articulated standards, and emphasizing nonjudicial avenues of disposition.¹⁶¹

The Department of Health, Education, and Welfare publication Intake Screening Guides states:

Law enforcement agencies should prepare and disseminate written guidelines and procedural manuals for their personnel in the handling of juvenile cases. Variations among agencies in their practices concerning arrest, detention and referral to the juvenile courts are directly attributable to this lack of standardized procedure and obviously account for the high percentage of inappropriate cases sent to juvenile courts.¹⁶²

And the Criminal Justice Standards and Goals for South Dakota deals specifically with the need for policy in the juvenile area in Police Standard 8.2 - Juvenile Operations:

¹⁶¹ President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Juvenile Delinquency and Youth Crime 19 (1967).

¹⁶² U.S. Department of Health, Education, and Welfare, Intake Screening Guides: Improving Justice for Juveniles 5 (February 1975).

Every police executive should develop written policy governing their agency's involvement in the detection, deterrence, and prevention of delinquent behavior and juvenile crime...

3. Every police agency should establish in cooperation with courts 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 crime;
- b. The specific form of agency cooperation with non-governmental 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.¹⁶³

Finally, the IJA/ABA Standards recently recommended the following:

Police agencies should formulate administrative policies structuring the discretion of and providing guidance to individual officers in the handling of juvenile problems particularly those that do not involve serious criminal matters. Such policies should stress:

1. avoiding the formal juvenile justice process unless clearly indicated and unless alternatives do not exist;
2. using the least restrictive alternative in attempting to resolve juvenile problems; and
3. dealing with all cases and races of juveniles in an even-handed manner.¹⁶⁴

This is by no means an exhaustive presentation of authorities advocating the establishment of police guidelines to structure and

¹⁶³S.D. Standards and Goals, n. 40 supra, at 12. For a more general recommendation concerning the need for policy to control police discretion see Police Standard 1.3 and 2.2.

¹⁶⁴IJA/ABA Standards n. 40 supra, at 45.

control police discretion in handling juveniles,¹⁶⁵ it suffices however, to demonstrate a general consensus regarding the need for such guidelines.

Once the need for guidelines of this sort is recognized in South Dakota, the important task remains to identify the particular areas which must be addressed by these administrative policies. The Intake Screening Guides mentions arrest, detention and referral practices as appropriate areas of focus for administrative guidelines.¹⁶⁶ The IJA/ABA recommendations go slightly further:

Policies are needed, for example, to provide guidance on the handling of such problems as runaways, children in need of emergency services, and family crises of various sorts. In addition, policies are needed to structure discretion on the diversion of certain criminal or delinquency matters away from the juvenile court as well as the use of citations in lieu of arrest in some instances.¹⁶⁷

Policies should be promulgated in all of these areas in harmony with the underlying theme of restrained police intervention which we have previously

¹⁶⁵See also NAC, Report on Police, n. 40 supra, Standard 4.3, at 80-82; President's Commission on Law Enforcement and Administration of Justice, The Challenge of Crime in a Free Society 215 (1972); ABA Standards for Criminal Justice, The Urban Police Function 140 (1973); R. Kobetz, The Police Role and Juvenile Delinquency 111 (1971); and Wisconsin Council on Criminal Justice, Juvenile Justice Standards and Goals 31 (December 1975).

¹⁶⁶See text preceding n. 162 supra.

¹⁶⁷IJA/ABA Standards, n. 40 supra, at 110. More specifically, attention should be focused, in police rulemaking, on the identification and elimination of what could be considered irrelevant or inappropriate disposition criteria. A discussion of the various criteria used by police officers in the dispositional decision appears in the Police Diversion Section of this study, p. 97 supra. President's Commission on Law Enforcement and Administration of Justice, The Task Force Report: Juvenile Delinquency and Youth Crime, 17 (1967) offers further insight into this problem:

recommended¹⁶⁸ and which is evident in the cited portions of the Task Force Report on Juvenile Delinquency and the IJA/ABA Standards.¹⁶⁹

In order for these guidelines to have the desired impact, it is important to identify some of the characteristics of effective policymaking and implementation schemes. Initially, as observed at the close of the legislative reform section,¹⁷⁰ it is imperative that the South Dakota legislature explicitly delegate administrative rule-making authority to law enforcement agencies. This legislation would conform with Standard 4.4 of the ABA Standards for Criminal Justice, The Urban Police Function which reads as follows:

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

"One unstated factor in decisions to retain or release may be of residence (in a high-crime neighborhood, for instance) or family characteristics, which may bear an indirect association with the avowedly irrelevant factor of race....

Even more troubling is the question of the significance of a juvenile's demeanor. Is his attitude, remorseful or defiant, a sound measure of his suitability for pre-judicial handling?... Attaching weight to attitude also implies presupposing the child's involvement, a presupposition reflected in some referral policies that mandate court referral whenever the juvenile denies commission of an offense. If the act or conduct is minor and would be otherwise disposed of by referral, the more defensible policy would seem to be the use of pre-judicial disposition."

¹⁶⁸See p. 110 supra.

¹⁶⁹See p. 121 and p. 122 supra.

¹⁷⁰See p. 118 supra.

(a) Legislatures can meet this need by delegating administrative rule-making responsibility to the police by statute.¹⁷¹

In the juvenile area, these guidelines must not be formulated by the police in isolation, but only after consultation with a variety of agencies and individuals. The IJA/ABA Standards maintain that since the police make referrals to a whole host of agencies and programs, it is necessary that such agencies and programs be consulted prior to the formulation of any policies or guidelines by police agencies in order to ensure a consistent and coordinate effort.¹⁷² The Standards also recognize the importance of conferring with the citizenry through the policy drafting process: "Such participation is needed to learn about juvenile problems and needs in various neighborhoods and to test the feasibility of various approaches for handling such problems as runaways, minor offenses, and families in crises."¹⁷³ This type of citizen participation could be encouraged through the establishment of citizens' advisory committees, the publication of draft policies, and through holding public meetings on the issues.¹⁷⁴

Of course the success of administrative guidelines does not rely solely on the formulation process. Thomas and Fitch state that once the policies have been devised they "could and should be submitted to the courts for their review to insure that they are equitable, just

¹⁷¹ABA Standards for Criminal Justice, The Urban Police Function 14 (1973). See also Kobetz n. 34 supra, at 123-128.

¹⁷²IJA/ABA Standards, n. 40 supra, at 111. See also Thomas and Fitch, n. 100 supra, at 94-95.

¹⁷³Id.

¹⁷⁴Id.

and constitutionally sound."¹⁷⁵ And an even more continual evaluation must be conducted by police administrators. Police Handling of Juvenile Problems explains the need for this type of scrutiny in the following manner:

If certain policies for example, stress diversion of certain types of cases away from juvenile court, periodic monitoring should determine if the policies are effective in encouraging this result. Without such monitoring, the reasons why policies are or are not being implemented will never be uncovered. Monitoring might reveal, for example, that diversion policies are not understood or that referrals continue to be made to the juvenile court because other agencies are simply unwilling to accept referrals from the police.¹⁷⁶

Additionally, law enforcement personnel must be encouraged through a variety of positive devices to comply with espoused policies. The IJA/ABA Standards emphasize the need for incentives which are positive in nature in contrast to sanctions which punish for non-compliance.¹⁷⁷ The Standards offer the following examples of positive incentives: "Positive sanctions include basing status, pay, and promotional decisions, at least in part, on compliance with policies that implement these standards."¹⁷⁸

Clearly, another crucial aspect of effective policymaking involves continual efforts to keep the citizenry advised with regard to policy development, implementation, and success.¹⁷⁹ Furthermore,

¹⁷⁵Thomas and Fitch, n. 100 supra, at 92. See also ABA Standards for Criminal Justice, The Urban Police Function, Standard 4.4 (1973).

¹⁷⁶IJA/ABA Standards n. 40 supra at 111.

¹⁷⁷Id. at 110.

¹⁷⁸Id.

¹⁷⁹Id. at 111-112.

since the police are in an optimal position to notice shortcomings, they should also inform the public as to deficiencies in public and private resources which prevent the delivery of necessary services to juveniles and their families, and of the reluctance on the part of existing agencies to contribute to the needs of these juveniles and their families.¹⁸⁰ The importance of the police performing such a function is well-expressed by the IJA/ABA authors: "Otherwise, the public will often be unaware of the difficulties police officers face in attempting to find programs or agencies to which appropriate referrals can be made."¹⁸¹

Finally, it is essential that increased attention be given to police accountability.¹⁸² Even though the positive incentive approach we previously advocated should be used to encourage conformity with promulgated guidelines,¹⁸³ it is apparent that administrative and legal sanctions and remedies will be necessary to redress some of the abuses of police authority.¹⁸⁴ In fact, Thomas and Fitch are inclined to take this solution a step further¹⁸⁵ and include the following quotation from

¹⁸⁰Id. at 112.

¹⁸¹Id.

¹⁸²Police accountability through the use of sanctions and remedies necessarily involves legislative reform, however we have chosen to include it in the instant section because of its obvious connection to administrative rulemaking.

¹⁸³Text preceding n. 178, supra.

¹⁸⁴IJA/ABA Standards, n. 40 supra, at 112-114. Standard 5.3 provides: "High priority should be given to ensuring that police officers are made fully accountable to their police administrator and to the public for their handling of juvenile problems. This will require effective community involvement in police programs, administrative sanctions and procedures, and remedies for citizens whenever warranted.

¹⁸⁵Thomas and Fitch, n. 100 supra at 94.

Kenneth Culp Davis in support of departmental rather than individual liability:

Police rulemaking needs to be supported by methods for enforcing the rules, and one of the principal methods should be governmental liability for police torts. The change is needed to make governmental units rather than officers liable for damages to the injured person...A plaintiff should have a remedy even if the officer is judgment-proof. A city always pays a judgment. The statute should copy the Federal Tort Claims Act in providing for nonjury trials;...The statute should provide for reimbursement of successful plaintiffs' litigation expenses, including attorneys' fees... Abolishing sovereign immunity is essential, but it is not enough. The suit by the injured party against the officer should be cut-off. The injured party should collect from the governmental unit, which then if it chooses, should collect from the officer for a deliberate tort but not for negligence.¹⁸⁶

Inherent in any effective strategy which calls for legislative and administrative control of police discretion and a redefinition of the proper police role in handling juveniles is the importance of having well trained law enforcement officers to implement this legislation and policy. Earlier sections have emphasized the general lack of training in juvenile matters and the absence of an educational background in juvenile justice philosophy.¹⁸⁷ Officer specialization in juvenile matters was shown to be the exception rather than the rule. It is toward these inadequacies that the next section is offered. The overlap between this section and the next should be recognized since the filling of training needs will necessarily involve administrative guidelines directed toward that end.

¹⁸⁶K. Davis, "An Approach to Legal Control of the Police," in Id. See also IJA/ABA Standards, n. 40 supra, at 48 for a comment on the need for clarification in this area.

¹⁸⁷See p. 77 supra.

D. SPECIALIZATION AND TRAINING

Historically, the need for police officers specializing in juveniles matters in the criminal justice system was recognized early on. With the passage of the Illinois Juvenile Court Act of 1899 and the creation of the first juvenile court in the United States came the formation of the nation's first police-juvenile unit in Chicago.¹⁸⁸ In 1930, the New York Police Department seemed to acknowledge the unique character of police-juvenile operations and the need for specialization by staffing its juvenile bureau with social workers as well as police officers.¹⁸⁹

Nationwide, the current level of specialization in police work with juveniles is indicated by the following data taken from a survey conducted by the International Association of Chiefs of Police:

Of approximately 1,400 departments that responded to the survey, nearly 450 had juvenile units or officers in 1960. The number of such departments almost doubled by 1969. Four out of five departments in the Middle Atlantic, East North Central and Pacific states make special appointments, but the rate drops to one out of two in the East South Central States. All departments in the United States numbering three hundred or more officers have juvenile officers, while more than half of the departments staffed by fewer than three hundred but more than thirty officers provide for specialization...The overall rate of assignment is, of course, strikingly low (2.7 percent) considering the acknowledged significance of the problem of juvenile delinquency, not to mention other juvenile problems affecting the police.¹⁹⁰

In South Dakota, of the 28 police departments and 14 sheriff's departments surveyed, only four police departments and one sheriff's department specifically assigned officers to handle juvenile matters,

¹⁸⁸Kobetz, n. 34 supra, at 158.

¹⁸⁹IJA/ABA Standards, n. 40 supra, at 87.

¹⁹⁰Id. at 88.

with a majority of the departments that did not employ juvenile specialists expressing no need for such a position.¹⁹¹ Under these circumstances, the arresting officer was assigned the task of processing juvenile offenders in 75 percent of all agencies surveyed.¹⁹²

The distinct advantages of police specialization in the juvenile area, is best described by Kobetz as follows:

The well-trained juvenile specialist is a great asset to any police operation. He develops and pursues streamlined procedures with the juvenile court and the receiving or detention facilities. He becomes knowledgeable about the problems of children. He cultivates useful contacts which not only serve as sources of needed intelligence, but also act as resources for promoting rehabilitation. He can assist in training classes by informing other officers about the special procedures required by law when handling children. The juvenile specialist can handle many youth-related problems better and more expeditiously than the patrol officer and can eliminate many of the department's problems with juvenile offenders.¹⁹³

Recommendations calling for the establishment of police specialists in the juvenile area have been ubiquitous. In 1973, the National Advisory Commission report on police suggested that there should be a juvenile specialist in every department with 15 or more employees and that agencies having more than 75 employees should establish juvenile investigation units.¹⁹⁴ In 1976 the Criminal Justice Standards and Goals for South Dakota adopted the same position as the NAC.¹⁹⁵ The International Association of Chiefs of Police recommended the following in 1973:

¹⁹¹Supra p. 62 and p. 63.

¹⁹²Id.

¹⁹³Kobetz, n. 34 supra, at 15'. See also IJA/ABA Standards, n. 40 supra at 89-92.

¹⁹⁴NAC, Report on Police, supra n. 40, 9.5 at 221.

¹⁹⁵S.D. Standards and Goals, n. 40 supra, Police Standard 8.2 at 26.

It is recommended that all police departments in medium to larger cities establish specialized juvenile units; in small cities, it is recommended that at least one officer be assigned specifically to the police-juvenile function in addition to his regular patrol duties.¹⁹⁶

And most recently, the IJA/ABA Standards advocated the establishment of a juvenile officer in every department, whether on a full-or part-time basis.¹⁹⁷

We concur with the positions of the IACP Conference and the IJA/ABA Standards that all departments, no matter the size, should select at least one officer as its juvenile specialist. Of course, the juvenile officer in small departments would not be expected to handle all police contacts with juveniles, however, he or she should be advised of all police-juvenile encounters and take responsibility for all cases which are not disposed of on-the-scene.¹⁹⁸ The rationale for the designation of a juvenile officer in all South Dakota departments even in light of the rural nature of this state is expressed in the following statements taken from the IJA/ABA Standards:

Even though the need for a juvenile officer might not be overtly manifest in smaller communities, the rise of such a need can never be ruled out. In such circumstances, the relative rarity of untoward incidents competes with their seriousness. Typical incidents involving juveniles are, of course, serious in an altogether different sense than appalling crimes. Their importance is often not immediately seen, but is contained in the latent consequences of their resolution. There can be no doubt that the inept, unskilled and improvident treatment of a seemingly innocent case may set into motion a train of results that will place a very high

¹⁹⁶Kobetz, n. 34 supra, at 155.

¹⁹⁷IJA/ABA Standards, n. 40 supra, at 83-86.

¹⁹⁸Id. at 85.

price on the initial neglect and may create conditions that become progressively more difficult to handle. Simple prudence suggests that all police departments ought to be equipped for such evaluations; that they ought to be able to draw on the services of officers who are skilled and knowledgeable to meet them as they arise; and that none can afford to rely on catch-as-catch-can methods in these matters.¹⁹⁹

It is imperative that the individuals acquiring juvenile officer responsibilities receive specialized training in a well-conceived program prior to assuming their duties. In South Dakota, of the four police departments and one sheriff's department which employed juvenile officers or school liaison officers, none demanded that they receive specialized training beyond that required of all officers as a prerequisite to juvenile work.²⁰⁰

Kobetz has identified two important considerations with regard to such specialized training which correspond with our recommendations. His primary concern is that juvenile specialists receive training prior to the assumption of their field duties in the same manner as a new patrolman is given extensive training before being placed on the job.²⁰¹ Secondly, Kobetz views the content of the training programs for juvenile specialists as a crucial factor and specifies the following topics for inclusion in such programs: "philosophy of police work with children, review of juvenile laws, interdepartmental relations, interviewing techniques, dispositional alternatives, community resources, juvenile records, developing

¹⁹⁹Id.

²⁰⁰See p. 64 supra. The only specialized training in juvenile law enforcement is received in the 8 hours of juvenile training received in the 200 hour basic course.

²⁰¹Kobetz, n. 34 supra, at 158.

external departmental relations and delinquency prevention.²⁰²

Beyond the need for pre-service specialist training, it is essential that periodic in-service training programs be offered for juvenile officers. This need is also recognized by the International Association of Chiefs of Police as reflected in the following recommendation:

It is recommended that police-juvenile officers participate in periodic in-service training programs, either within the department or by attending regional, state and/or national training schools and workshops.²⁰³

In South Dakota, we reported that 70 percent of the juvenile officers surveyed had undergone some training in the juvenile area beyond that required of all officers in the basic training course.²⁰⁴ This is an encouraging statistic, particularly in light of the fact that the three juvenile officers that reported no special training were also the only three with less than a year's experience as juvenile officers.²⁰⁵ We commend these training efforts and suggest only that care be taken to select the most effective programs available for juvenile officers to attend.²⁰⁶

Finally, the need to train non-specialist law enforcement officers

²⁰²Id. For more specific curriculum descriptions see Wisconsin Council on Criminal Justice, Juvenile Justice Standards and Goals 36-37 (December 1975).

²⁰³Kobetz, n. 34 supra, at 161. See also Wisconsin Council on Criminal Justice, Juvenile Justice Standards and Goals subgoal 4.2, 36-38 (December 1975).

²⁰⁴See p. 73 supra.

²⁰⁵Id.

²⁰⁶For example, the juvenile officers institute offered through the University of Minnesota is an excellent 8-week course for law enforcement, probation and parole officers.

in juvenile procedures must be addressed. A very significant amount of law enforcement activity in South Dakota involves juveniles. A South Dakota Statistical Analysis Center study reported the following:

Projected figures indicate that South Dakota law enforcement agencies made 12,811 juvenile contacts in 1975. Forty-four percent of these contacts (5585) are estimated to be for repeat offenses. In comparison South Dakota law enforcement agencies submitted 9236 fingerprint cards to DCI during 1975. While the number of fingerprint cards is not an ideal unit for comparison it does clearly show that juvenile offenses constitute a large percentage, perhaps 50% of the overall law enforcement workload.²⁰⁷

Reflecting this heavy involvement of youthful offenders in police work, training programs must be established to adequately prepare the non-specialist for juvenile problems. Currently in South Dakota only 8 of the 200 hours of the Basic DCI Training Course is allocated to juvenile matters.²⁰⁸

The National Advisory Commission,²⁰⁹ the Criminal Justice Standards and Goals for South Dakota,²¹⁰ the Institute of Judicial Administration/American Bar Association Juvenile Justice Standards Project,²¹¹ and the International Association of Chiefs of Police²¹² each specifically recommend that all police officers receive training at the entry level in police-juvenile procedures. Kobetz elaborates upon the IACP recommendation.

²⁰⁷SAC, Juvenile Offender, n. 17 supra, at 157.

²⁰⁸At the time the SAC survey was conducted the Basic DCI Training Course was a 3-week 120-hour program with approximately only one hour devoted specifically to juvenile matters; the present course is 5 weeks long.

²⁰⁹NAC Standards, n. 40 supra, Police Standard 9.5 at 221-224.

²¹⁰S.D. Standards and Goals, n. 40 supra, Police Standard 8.2, at 26-27.

²¹¹IJA/ABA Standards, n. 40 supra, at 109-111.

²¹²Kobetz, n. 34 supra, at 162.

It is of primary importance that all officers in the department be trained in the proper methods of handling juvenile cases since all officers deal with juveniles. Every patrolman contacts juveniles during the performance of his general police duties; therefore, important principles and approved practices concerning the proper handling of juveniles must be taught to him. The follow-up work with juveniles and certain other specialized functions can be done more economically and more effectively by specialists but, the big problem, and one needing immediate and concentrated attention, is more adequate training of officers who are not specialists...²¹³

Kobetz also concluded that exposing all policemen to the complexities of the juvenile justice system will help them accept and appreciate the importance of specialized juvenile operations.²¹⁴

Furthermore, all regular police officers should receive periodic in-service training regarding juvenile matters in order that they be aware of significant recent court rulings and alterations in operational procedures.²¹⁵ Our data revealed that only 22 percent of the regular officers surveyed reported attending any juvenile related training sessions subsequent to assuming their duties on the force.²¹⁶

²¹³Id. at 161-162.

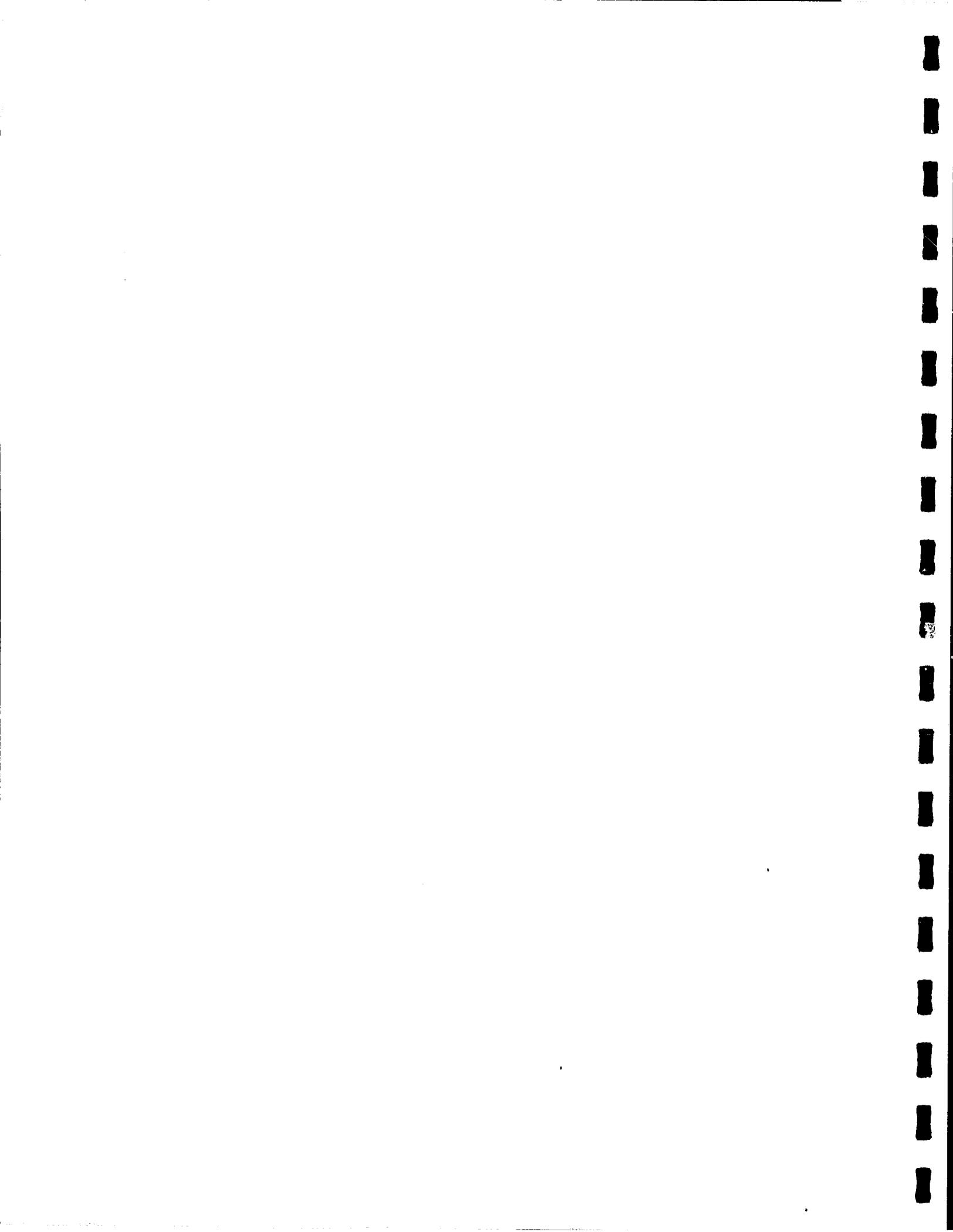
²¹⁴Id.

²¹⁵See Kobetz, n. 34 supra, at 161-162 for similar recommendations.

²¹⁶See p. 73 supra.

APPENDIX A
JUVENILE PROCEDURES: BROOKINGS
POLICE DEPARTMENT POLICY
ON JUVENILES

It shall be the policy of this department that when juveniles are handled that have violated the law the officer should contact the parents as soon as possible. The parents should be given as much information about the violation as the officer has. For juveniles that will have to make court appearances, a juvenile's report form should be filled out as completely as possible and a clear statement of the facts should be stated on the form. Of the complete forms, the original should remain in the juvenile book and the copies should be placed on the operations officer's desk. If a juvenile is talked to about a minor offense, the officer should make contact with the juvenile's parents explaining why the youth was talked to. Juveniles committing more serious crimes that result in being in jail are entitled to the same rights as an adult; however, the juvenile could be released in most cases to a reliable parent or other adult of the family. In the absence of all adults of the family, the juvenile can be released to the minister or a neighbor who is a good friend. There should be no bonds posted on juveniles unless required by the judge. The states attorney or judge should be contacted when a juvenile is to be held in jail for any length of time. The above policy will not cover all juvenile cases handled so the Chief will expect compliance with the laws and a common sense measure.



APPENDIX B
CHICAGO POLICE DEPARTMENT
MANUAL OF PROCEDURE
YOUTH DIVISION

GUIDELINES FOR DETERMINING THE DISPOSITION OF JUVENILE OFFENDERS

- A. An integral part of the processing of juveniles taken into custody for criminal acts is the consideration of certain factors which will aid the youth officer in arriving at the appropriate disposition. The youth officer and/or policewoman will follow the below listed guidelines in making the appropriate disposition.
- B. Cases to be brought to the attention of the Juvenile Court.
 1. All felonies will be brought to the attention (referred or detained) of the court with exception that a Community Adjustment may be made when the circumstances mitigate the offense and the approval of a Youth Division supervisor is obtained.
 2. All firearms offenses including unlawful possession and unlawful use of threatened use against another will be brought to the attention (referred or detained) of the court.
 3. All offenses involving the use or threatened use of a weapon other than a firearm against another will be brought to the attention (referred or detained) of the court.
 4. All serious gang related activity in which the offender is engaged in gang violence, recruiting, intimidation, etc., will be brought to the attention (referred or detained) of the court.
 5. All offenders committing assaults and batteries against victims whose occupations make the offense aggravated will be brought to the attention (referred or detained) of the court, except that Community Adjustment may be made when the circumstances so mitigate and the approval of a Youth Division supervisor is obtained.

6. All juveniles who are active with the court, i.e., on probation, supervision, or have a case pending will be brought to the attention (referred or detained) of the court if the offense for which they are arrested is within the scope of the provisions set forth in item I-B-1 through 5 of this procedure.
 7. For all juveniles who are active with the court but are arrested for offenses not listed in Item I-B-1 through 5 and are given a Community Adjustment, the referral agency will be Juvenile Court Probation Department, 1425 South Racine, Room 606.
 8. All offenders whose three most recent police actions (within the preceding twelve month period) were disposed of as Community Adjustments will be brought to the attention (referred or detained) of the court with the exception that a Community Adjustment for the fourth (4th) offense may be made when the circumstances so justify and the approval of a Youth Division supervisor is obtained.
 9. All other cases in which the youth officer feels that court action is the most feasible disposition will be brought to the attention (referred or detained) of the court.
- C. Youth Division personnel will continue to utilize the established guideline in determining whether or not a juvenile will be detained at the Audy Home, i.e., whether or not the juvenile is a danger or menace to himself and/or the community.
- D. For those items which call for the approval of a Youth Division supervisor before a case is disposed of as a Community Adjustment, Youth Division personnel may obtain the approval by telephone but the approving Youth Division supervisor will sign name and star number to the Community Adjustment Report at the end of the narrative section, before terminating his tour of duty.
- E. Only entries for acts of delinquency or need of supervision in the juvenile's past record will be considered in determining the disposition as outlined in Item I-B-8 of this procedure. Entries of abandonment, dependency, neglect, curfew or truancy will be considered only in assisting the youth officer in making the disposition as outlined in Item I-B-9 of this procedure.

- F. Factors to be considered in making the appropriate Community Referral. (Refer to Department Notice 67-28 and Community Resource Manual.)
1. The juvenile's attitude toward accepting and cooperating with efforts directed toward his rehabilitation.
 - a. Foremost in the juvenile's rehabilitative process is his sincere willingness to cooperate with the assistance being offered him.
 - b. Many times the offenses committed by juveniles are not accompanied by the requisite criminal intent but rather are manifestations of their inability to control themselves in accord with established norms of social maladjustment, etc. Juveniles with such personality problems are definitely in need of the professional services of the psychiatrist, psychologist, etc.
 2. The ability of the juvenile's parents to acknowledge an awareness of the seriousness of their child's involvement with police and to control and discipline their child.
 - a. Regardless of the parent's right and duty to be protective toward his child, he must display a mature awareness of the seriousness of the situation when confronted with evidence that his child is responsible for a criminal act. Such an awareness indicates a potential for remedial action at the domestic level.
 - b. Furthermore, the domestic environment must be examined to determine the degree of control and discipline which the parent has over the child. Absence of a parent or parental indifference may have brought about the demise of parental authority to such a degree that attempts at reinstitution of parental authority are futile.
 3. The rights of the complainant in that injustice is not done to the victim/complainant through over-emphasis on the juvenile offender, the social tranquility of the community is not sacrificed because of the failure to take positive measures in controlling delinquent behavior.

- a. Certain juveniles have established behavior patterns which indicate a poor rehabilitative prognosis. It must be remembered that though the juvenile's age may appear to be a mitigating factor, it is not to preclude the complainant from availing himself of the judicial remedies available if he so desires.
- b. If the juvenile's rehabilitation is to take place in the domestic and community settings, it is obvious that the juvenile's behavioral patterns cannot be in conflict with the codes of social conduct of these institutions. If his behavior is so conflicting, the only recourse is to utilize the judicial resources available to correct his conduct.

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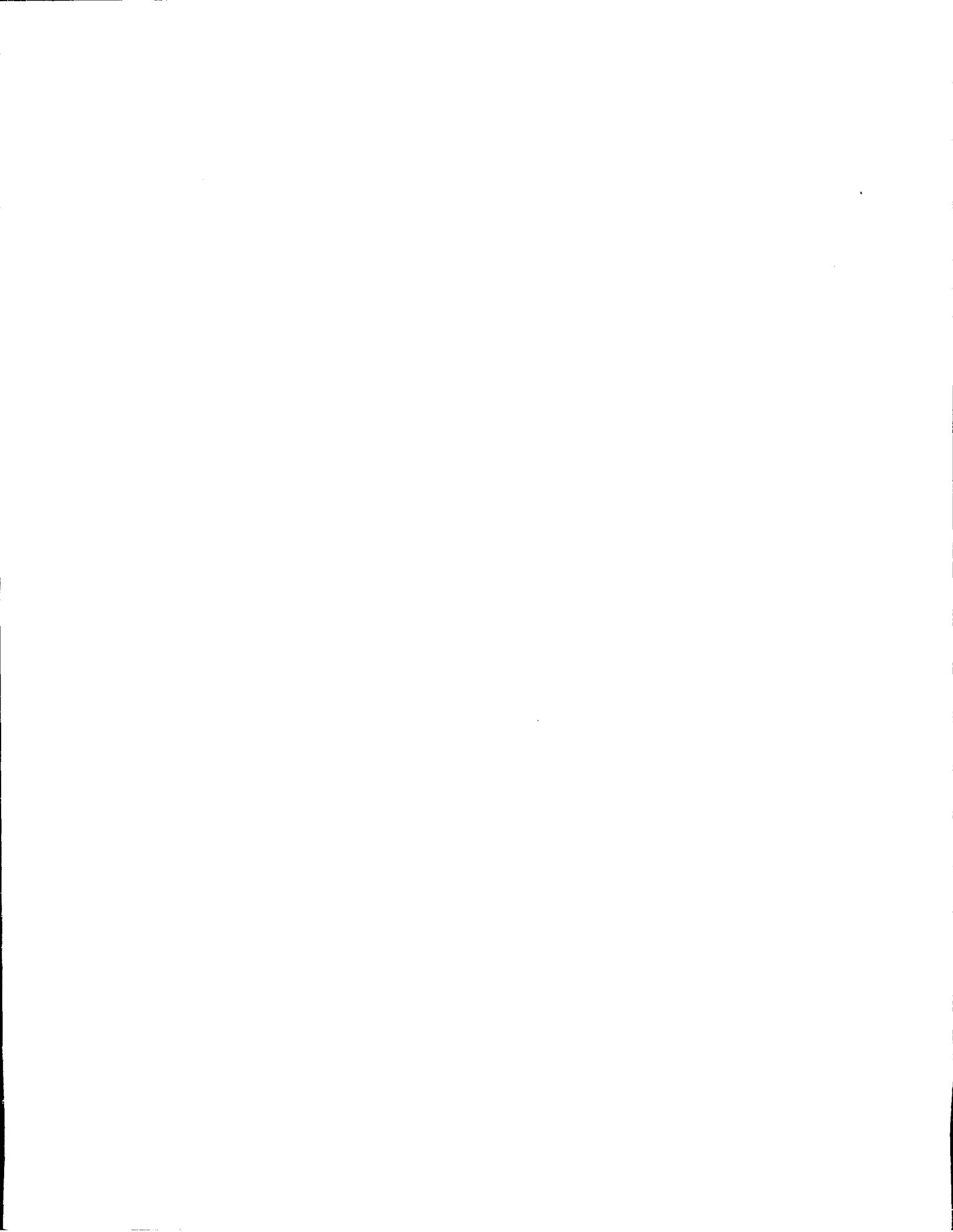
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