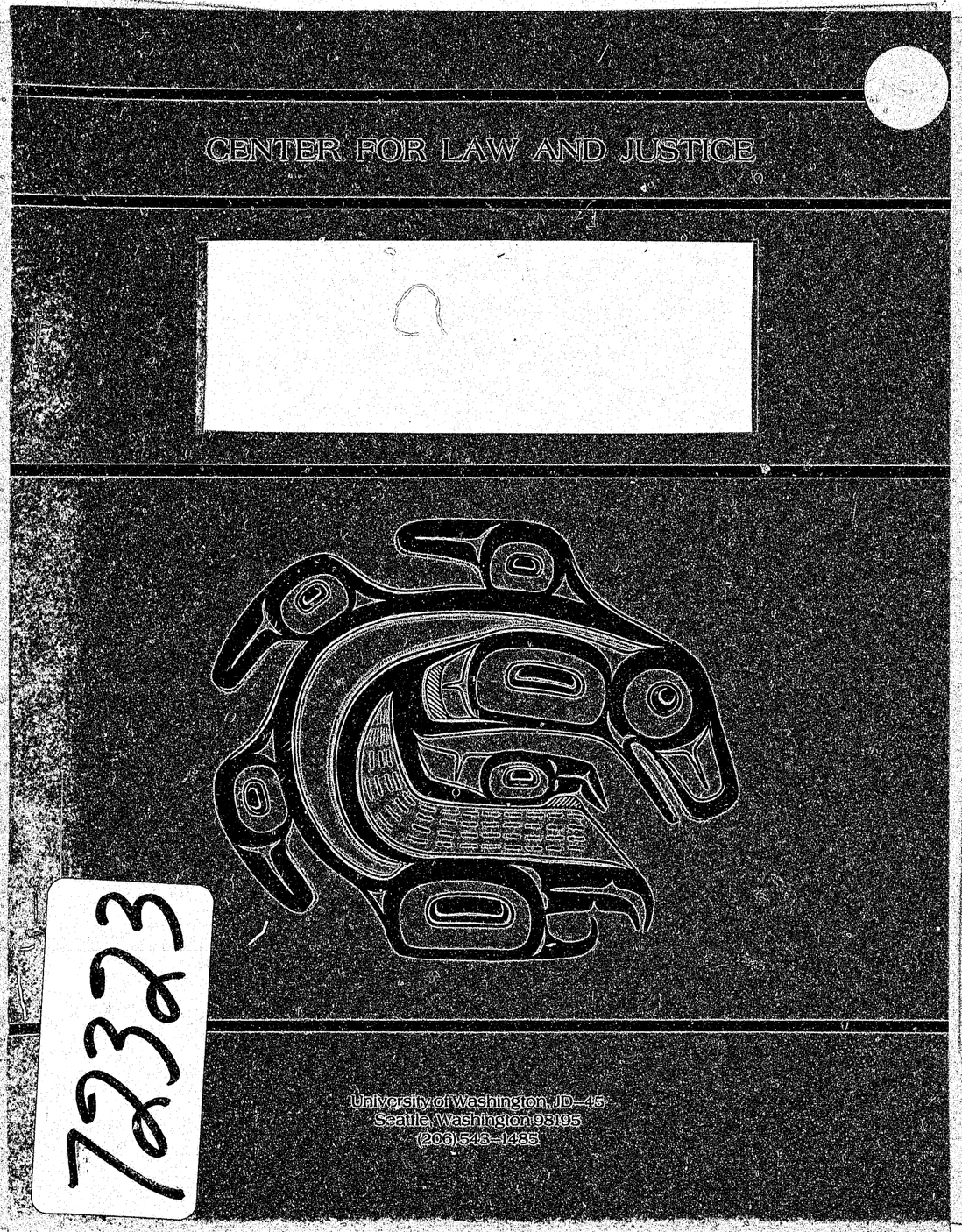

WASHINGTON STATE'S NEW JUVENILE CODE, V:

LEGISLATIVE INTENT--

A SUMMARY OF THE INTERVIEW DATA

Submitted to:

National Institute for Juvenile Justice and Delinquency Prevention
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Introduction

Professor Richard F. Elmore's "Implementation Assessment Design: SHB 371" establishes the framework for this paper. As he points out, the research group decided that the assessment design should be based on first-hand data from participants. A limited number of interviews were conducted before the project was abandoned.

This paper summarizes information obtained in the interviews. It is not intended to provide a detailed or verified account of HB 371's legislative history. Rather, I have drawn on this limited number of interviews to suggest aspects of the legislative process which have implications for an analysis of HB 371. However, because of the small number of interviews, I would warn the reader not to rely on this discussion as a fully verified source of information, but to validate the information on his/her own.

Task 1: Legislative History

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Task 1. Legislative History

A. Coalition Politics--Which actors were most influential in shaping the legislation? What form did their influence take (e.g., mobilizing constituency support/opposition, drafting legislative language, providing information, lobbying, etc.)? How do the major actors describe their interest in the legislation and their motive for influencing it?

1. Legislators and Staff

Among the members of the House of Representatives, the most influential actors were Ron Hanna and Mary Kay Becker. Ron Hanna (D., Tacoma) was elected to the House in 1974 and served as chairman of the Subcommittee on Corrections of the Social and Health Services Committee during his first term of office. This subcommittee visited state correctional institutions and developed a policy statement subsequently passed by the full House during the 1976 session as House Concurrent Resolution (HCR) 46. Bob Naon, staff counsel for the House Judiciary Committee, used papers and ideas given him by Ron Hanna to write his concept paper, which provided the philosophical support for HB 371. From this paper, the draft of HB 371 emerged in July, 1976. (See pp. 67-8 of Memorandum 2.) At the beginning of the 1977 session, following his support of John Bagnariol (D., Renton) for Speaker of the House, Hanna became chairman of a separate committee, the House Institutions Committee. This was the committee of origin for HB 371. (Following passage of the bill, the House Institutions Committee has been charged with the responsibility of monitoring implementation of SHB 371.)

Mary Kay Becker (D., Bellingham) was also elected to the House in 1974. She played a leading role on the Corrections Subcommittee in 1975-76 and was prime sponsor of HB 371. In the 1977 session, after her support of John Bagnariol for Speaker, she won the post of Majority Whip.

Note: Ron Hanna was defeated in his bid for a third term in the House in November, 1978. Mary Kay Becker was re-elected. Election results gave Republicans enough House seats to tie Deomcrats 49-49. A recent agreement between Democratic leader John Bagnariol and Republican leader Duane Berentsen gives Gene Struthers (R., Walla Walla) the chairmanship of the House Institutions Committee with Mary Kay Becker the Democratic co-chairman. Committee membership will be equally divided between the two parties.

In the Senate, the most influential members were Pete Francis and Frank Woody. Francis, a Seattle attorney, was serving his fifth term in the House at the time of his resignation in the fall of 1977. He had been involved in attempts to reform the juvenile code dating back at least to 1973. As chairman of the Senate Judiciary Committee, it was Francis who made the decision to give HB 371 top priority in his committee in May, 1977, after time had run out for the Senate to consider its own bill. (See Memorandum 2, pp. 69-70).

In 1977, Frank Woody, a Woodenville attorney whose legislative district bridged King and Snohomish County lines, was serving his third session in the Senate. Earlier, he had become interested in the problems of status offenders. He

attended the Albuquerque Conference in June, 1976 and was a speaker at the Providence Heights Conference in December, 1976 (see Memorandum 2, p. 14). Francis allowed a subcommittee headed by Woody to draft a bill on status offenders and dependents. Jenny Van Ravenhorst of the Senate Judiciary staff was primarily responsible for the drafting. (She is currently employed by the Benton-Franklin Juvenile Court.) During the 1977 session, Woody was seriously ill. He died shortly after the close of the session.

Mary Kay Becker's view of the impetus for reform has already been discussed. (See pp. 66-7 of Memorandum 2.) Becker was also concerned about the negative impact of labeling on juveniles. In June, 1978, at a meeting of the House Institutions Committee, she criticized new DSHS regulations classifying juveniles for placement in group homes, saying the regulations were in direct conflict with the intent of HB 371 regarding labeling juveniles. At a hearing before the Senate Education Committee in August, 1978, she characterized the pre-371 system as labeling kids according to where they were placed in the Department of Social and Health Services: Bureau of Juvenile Rehabilitation (BJR), "bad"; Bureau of Mental Health (BMR), "sick"; Bureau of Developmental Disabilities (BDD), "dumb." She said that under HB 371, the state was avoiding the "bad" label for status offenders, so kids could get help. She added that 371 was not a mental health bill but that a comprehensive mental health system was needed in the state. She is drafting a bill for the

next legislative session.

Becker has also publicly expressed her concern for the lack of emphasis on work experience in juvenile institutions although this issue is not addressed in HB 371. She felt incarcerated juveniles had too much time on their hands for playing cards and other unstructured activity. She has also objected to an overemphasis on the medical model of diagnosis and treatment for juvenile offenders.

In an interview, another key legislator said that legislative intent in SHB 371 supported the view that juvenile criminals are criminals and should be locked up. In passing HB 371, according to this source, the Legislature also expressed: agreement with the Gault decision of the U.S. Supreme Court (see Memorandum 2, p. 22); belief in separating children who need help from those who commit crimes; and belief in treating juvenile criminals more harshly, including publishing their names in the paper. Legislators shared a basic concern for the protection of the public. One event during the 1977 session illustrates this. A senator from Eastern Washington brought around to visit other legislators the parents of a Federal Way girl, age 16, who had been beaten and raped by a boy of the same age. The boy was out on the street before the girl was out of the hospital. The parents were outraged. Knowledge of this case probably influenced legislators to support HB 371.

2. Lobbyists

a. King County Prosecutor's Office. The King County Prosecutor, Chris Bayley, had "literally killed" the Senate

bill to reform the juvenile code two years earlier, sources indicate. His Senior Deputy Prosecutor in charge of the Juvenile Division, Ron Clark, had drafted a competing bill (see pp. 29-30 of Memorandum 2) which allowed institutionalization of incorrigibles. Passage of SB 3116 took away this "bone of contention" between the Prosecutor's Office and groups such as the ACLU and Legal Services, who wanted incorrigibles out of detention. During the 1977 session, Ron Clark first angered the bill's supporters, then worked for passage of the bill. The Prosecutor's Office favored diversion and determinate sentencing.

Ron Clark sent "two capable attorneys," Jay Reich and Marilyn Showalter, to lobby for HB 371 in Olympia. They helped Bob Naon with the drafting and re-drafting. (Following passage of the bill, Marilyn Showalter was instrumental in drafting the sentencing standards.) The Prosecutor's Office favored diversion for minor offenders and put groups such as the Seattle Community Accountability Program (CAP) in touch with the lobbying effort. A major contribution of the Prosecutor's Office was enlistment of law enforcement support for the bill, including the State Association of Sheriffs and Police Chiefs.

An interesting note: the bill provides that the State Attorney-General's Office will prosecute dependency cases in the four largest counties (Class A and AA counties), King, Pierce, Spokane, and Snohomish. The increased load of dependency cases due to the six month review requirement is causing a big problems for prosecutors in smaller counties.

According to a reliable source with the Association of Washington Counties, the smaller counties are quite annoyed at the King County Prosecutor's Office for lobbying the bill through.

b. City of Seattle Community Accountability Program (CAP). CAP presently includes three youth service bureaus (the professional component) with their accompanying community accountability boards (citizen volunteers). The first bureau was begun as a pilot project with a grant from the Law Enforcement Administration (LEAA) in June, 1974. Two additional bureaus were added in the fall of 1974 in Ballard-Fremont and Southeast Seattle. The three youth service bureaus and community accountability boards became part of a three-year experiment funded by LEAA, but with funding scheduled to expire in August, 1977.

Knowing that continuation of funding would have to come from state and local sources, some youth service bureau staff formed AWCYS, the Association of Washington Community Youth Services (AWCYS, pronounced AW-KEYS), in early 1976. AWCYS lobbied for a line item appropriation in the state budget of $983,600 to pay first year diversion costs under HB 371. They also successfully lobbied for a special grant from the state to local governments for existing CAP programs.

David Moseley, Director of CAP, has been on leave this year to work on King County Councilman Mike Lowry's successful campaign for Congress. Carol Araway, formerly

director of Ballard-Fremont Youth Service Bureau, is now acting director of CAP. Both were founding members of AWCYS. Araway was chairman of AWCYS's legislative task force at the time HB 371 was before the legislature. Araway and Moseley were active lobbyists for HB 371, particularly the diversion section.

c. American Civil Liberties Union (ACLU) and Evergreen Legal Services. Mickey Pailthorpe, legislative director of the ACLU, and Rick Blomberg and Phil Bertonthal of Legal Services were actively involved in lobbying for HB 271. Their concerns were: 1) due process and 2) getting incorrigibles out of the system. They worked on the bill in both the House and the Senate and also lobbied during the budget process.

Concerns relating to due process were: 1) there should be a reasonable age of declination--i.e., age when the juvenile court can decline authority and send case to adult court; 2) there should be a limit on the amount of time a juvenile can be held without initiating legal proceedings (they agreed on 72 hours in the bill); and 3) the right of both juvenile and parents to counsel should be recognized.

The ACLU also wanted minor offenders diverted from the juvenile justice system, but didn't want the system expanded. "Chippy" charges should be settled informally. An example of a "chippy" charge is one brought to the ACLU's attention shortly after the bill went into effect. A woman called the ACLU office furious that both she and her daughter had been called before a Juvenile Court Conference Committee. The reason: her daughter had been charged with walking her dog

without a leash. An ACLU representative said this handling of a "chippy" charge violated legislative intent of diverting minor offenders from the juvenile justice system.

The ACLU believed the bill should provide for a jury trial. However, they knew they could challenge this provision in court. Compromises were made over confidentiality of records and open trials. Other issues were bail, proceedings for termination of parental rights, and diversion procedures.

According to one lobbyist for the ACLU, there was little controversy over the delinquent provisions of HB 371. The most controversial section was Section 46, regarding termination of parental rights. The bill says it is a state obligation to provide a plan and resources for putting the family back together. One Superior Court Judge who opposed Section 46 argued that the state would not provide adequate resources.

d. Seattle Public Defender's Office. According to one legislator, the Seattle Public Defender's Office supported HB 371 because of the due process guarantees and the provisions for record expungement. However, a lobbyist for the ACLU said that the Public Defender's Office opposed determinate sentencing, believing juveniles should have the same standards for release as adults, and remained basically opposed to the bill.

The office was in touch with Bob Naon and Bill Hagens of the House Institutions Committee staff because of its concern regarding too many categories of offenders in early drafts of the bill (see Memorandum 2, p. 69).

e. Bureau of Juvenile Rehabilitation (BJR) of Department of Social and Health Services. Before the 1977 legislative session BJR, under the leadership of Doug Vinzant, had been responsible for implementing SB 3116, which removed status offenders from state institutions. BJR had diverse goals: keeping minor offenders out of the system, removing status offenders from juvenile court, and protecting the civil rights of juveniles.

According to one source, BJR's greatest involvement with HB 371 came before the session. Ron Clark of the King County Prosecutor's Office had drafted the sentencing section of the bill. BJR staff was concerned that sentencing provisions were too restrictive. They were also concerned about a provision for "total confinement," which said confined juveniles were not eligible for leave away from the detention center. BJR staff thought this was inhumane and would also have an adverse fiscal impact on the state. They convinced Ron Hanna to remove the "total confinement" provision.

While BJR was involved with the House Bill even before the session, DSHS reportedly took no formal stand on the bill. According to a former BJR staff member, activities of BJR before the session had to be sub rosa. Two staff members drafted four pages of amendments to HB 371 over a weekend, on their own time, and not using DSHS letterhead. Most of these amendments were adopted.

While BJR was involved with the House Bill even before the 1977 legislative session, the Bureau of Social Services (BSS) was not as involved with the Senate Bill which dealt

with dependent children and status offenders. According to the BJR staff member, BJR people would come back from the legislature and "scream at them" (BSS) for not being involved. Two people from BSS, Jim Anderson and Don Rolstad, covered the legislature but they would "perhaps go to the next meeting or so and then let it go again."

How was BJR's influence exercised? Directly to Hanna, according to one source. Before passage of HB 371, BJR already had a classification system similar to determinate sentencing but more flexible. Ron Hanna told BJR staff that HB 371was needed to protect the philosophy of determinate sentencing when the present "good" people in BJR were gone (Doug Vinzant left BJR in June, 1977 to become superintendent of the state prison at Walla Walla and in September became head of Adult Corrections for DSHS. He resigned, according to his own account, or was fired, according to DSHS sources, in August, 1978, and left the state.)

Why didn't DSHS take a stand on the bill? There is some disagreement about whether or not DSHS did take a stand opposing the bill. One lobbyist for the bill said that DSHS didn't like the bill and was terrified of the responsibility it (DSHS) was given. Therefore, in planning, DSHS defined the status offender population down to manageable size (to those juveniles formerly served by juvenile court). Another key legislator pointed out that SHB 371 was an administrative nightmare. DSHS had responsibility but no

authority. Authority to carry out the bill's provisions was shared by many actors.

Milton Burdman was acting director of DSHS until January, 1977, when he was replaced by Dr. Harlan McNutt, a good friend of Governor Ray. However, Burdman stayed on at DSHS to help during the transition. (He was ultimately fired by Governor Ray in August, 1977.) One key House member thinks Burdman made the decision to oppose 371. Mary Kay Becker says that DSHS showed signs of recommending a veto of HB 371 but withdrew its opposition under legislative pressure. (See Memorandum 2, p. 72.) Burdman and Vinzant were the DSHS representatives most involved with the legislation.

Early fiscal estimates from DSHS for HB 371 ranged from $16 million down to $4 million. According to proponents of 371, this was DSHS's way of trying to kill the bill. Proponents believe that if the bill had gone to Senate Ways and Means, a legislative hurdle which was by-passed, the bill would have been killed. The bill finally included only the appropriation of $983,600 for first year diversion costs. DSHS was expected to return in the 1978 session with more accurate cost estimates. However, the 1978 legislative session was never called by Governor Ray.

3. Credits. Are there more specific provisions of the legislation that can be credited to particular people?
   a. Seattle Public Defender's Office: expanded range of middle offenders, where judge has more flexibility.

b. Doug Vinzant, BJR Director: killed first ten sections of draft bill providing for decentralized system of planning (he opposed decentralization, wanted strong control from state level); and supported loosening of disposition standards.

c. Senator Ted Bottinger (D., Tacoma): "Last resort" clause was price of his vote (but it put the state out of compliance with federal standards, according to one lobbyist).

d. Superintendant of Public Instruction (SPI) Office; added amendment on truants.

e. Representative Otto Amen (R., Ritzville): amendment introduced on second reading in House which removed a clause inhibiting crime victim from divulging information about a juvenile offender.

f. Senate Judiciary Committee: agreed with Amen's concern, adding provisions for open hearings, records available to the public, etc.

4. The "Reform Coalition" and the Opposition. How was the "reform coalition" constructed? Who was active in mediating differences, building support, defusing opposition, etc.?

According to one lobbyist, there were no clear-cut goals at first. The reformers wanted to: 1) deinstitutionalize status offenders for both philosophical reasons and to get in compliance with federal standards, and 2) divert juveniles from the courts into the community.

While opposition came generally from juvenile court directors, judges, and probation officers, opposition was not well-organized. This seems to have been due to a belief that 371 wasn't going

anywhere. A representative of Allied Daily Newspapers, which sends news releases to most community papers in the state, thought the House bill didn't have a chance. Because of delays in Woody's subcommittee, it appeared that the Senate bill would die in committee.

According to several proponents of the bill, the main opposition came from Pierce County: Don Herron, the county prosecutor; Hal Mulholland, a probation officer; and Terry McCarthy, former deputy prosecutor who was serving as minority counsel for the Senate Judiciary Committee. They didn't like mandatory diversion and didn't want to take status offenders out of court.

Tactics of the reform coalition included trying to defuse opposition in Pierce County. According to one lobbyist, the supporters of HB 371 "did a heavy hustle for PR," meeting with editors of the Tacoma News Tribune and getting an editorial in the TNT favorable to the bill. They also were successful in getting a lead editorial on KING-TV in Seattle supportive of Seattle's CAP program, the model for diversion in the bill.

Specific "enemies" in the Senate, according to a proponent of 371, were: Jeanette Hayner (R., Walla Walla), who had a close relationship with Stephen Carmichael, then president of the Juvenile Court Adminstrators; and Dan Marsh (D., Vancouver), viewed as a friend of the judges. Both were members of the Judiciary Committee; Marsh became chairman following Francis's resignation. One of the reasons the House "swiftly concurred" in the Senate amendments to 371 was the fear of losing the essence of the bill in conference committee. The bill's supporters feared Marsh would be one of the Senators appointed

to serve on a conference committee. The most active supporters of the bill in the Senate, according to a House member, were Senators Barney Goltz (D., Bellingham), and Ruthe Ridder, Jim McDermott and Pete Francis, all Democrats from Seattle.

5. Alliance Between Certainty-of-Punishment and Diversion-Treatment Forces. How is the alliance between certainty-of-punishment forces and diversion-treatment forces likely to affect implementation? First, diversion in HB 371 should not be equated with treatment. A BJR administrator pointed out that one of the background factors in the passage of 371 was the disenchantment with the heavy emphasis on "treatment," e.g., counseling, the "social work approach." The City of Seattle's Department of Human Resources, according to another source, is pretty much on record as saying counseling doesn't work. The CAP program makes a strict separation of restitution/community services from counseling and other social services. Three options are open to a diversion agency: 1) counsel and close; 2) restitution/community service; and 3) one counseling or information session. The job of a diversionary agency is primarily that of monitoring restitution and community service.

Mary Kay Becker, prime sponsor of HB 371, says in referring to the marriage of the House and Senate bills, "the underlying philosophy of both pieces of work was consistent" (Legislative History, p. 22). However, others disagree. One Seattle Youth Service Bureau (YSB) staff member said that some YSB people swallowed the mandatory sentencing provision of the bill as the

price of taking status offenders out of the juvenile justice system. Another informed observor characterized HB 371 as a "camel-like bill," inconsistent and poorly written. This observor said that police and sheriffs supported the bill because of its "get tough" approach toward juvenile crime; organizations such as the Council of Jewish Women and the League of Women Voters supported the status offender provisions; no single group understood what was in the bill.

B. Sources of Information

Did supporters have in mind specific operating programs as models for activities mandated by HB 371? The program model for diversion was the Seattle Community Accountability Program, and, to a lesser degree, the King County Conference Committees. Stephen Carmichael, director of Benton-Franklin Juvenile Court, speaking at the Providence Heights Conference, mentioned three programs in the state with a 90% or better success rate in dealing with status offenders. They were: the Spokane Youth Alternative Project, the Clark County Discretionary Project, and the Pierce County Home Builders Project (see Memorandum 2, p. 55).

Were there theoretical arguments or empirical studies that influenced decisions? Bob Naon's paper supported the concept of community-based corrections and removal of status offenders from the juvenile justice system (see Memorandum 2, pp. 10-14). Marvin Wolfgang's study of a birth cohort in Philadelphia seems to have been the most influential empirical study, mentioned by a key House member and a House staff member as a model for HB 371.

C. Legislative Intent/Expected Outcomes

What, in the respondent's words, would constitute adequate evidence that the legislation was having its intended effect on families and children? What would the respondent look at first to find out whether the legislation was working for its target group? What, in the respondent's words, would constitute adequate evidence that administrative agencies and service providers were acting consistently with legislative intent? What things would the respondent look at first to determine if the law was being administered properly?

1. What was wrong with the pre-371 system?

First, it would be useful to review some opinions about what was wrong with the pre-371 system. A number of problems were identified in the Background Paper for the Providence Heights Conference (see Memorandum 2, p. 38). Points brought out in interviews included:

a. Foster home placement. Before HB 371 "kids got lost in the system." Now DSHS must have a plan and a court hearing must be held every six months to view the out-of-home placement. (Mary Kay Becker referred to the problem of "foster care drift" in her paper "House Bill 371: An Introduction," p. 29.)

b. Lack of procedural safeguards for juveniles. According to one respondent, Tacoma's Raymond Hall, a juvenile detention center, was notorious for clandestine procedures. The comment was: "They lose kids at Raymond Hall."

c. Parents, on their own word, could have kids committed to juvenile court as incorrigibles. Status offenders were still being detained in county detention centers, and could be detained in state institutions for 30 days for diagnostic purposes under SB 3116.

d. Juvenile Probation Subsidy. (See Memorandum 2, p. 35). This program, initiated by the legislature in 1969, was intended to end the fiscal incentive which counties had to place juveniles in state institutions. However, one legislator pointed out that the state was paying for kids that were not being dealt with by the counties. The state subsidy was used to hire probation officers, but according to this respondent, kids were in one door and out the other; no reliable figures were available from the counties on: when the kid came into the system, what happened to him/her, when the kid left the system.

e. Lack of consistency between judges and between different parts of the state in the treatment of juvenile offenders. Courts were accused of dealing with juveniles on the basis of their demeanor (e.g., a cocky kid is sent up to detention, but a remorseful one is allowed out on probation) rather than on the seriousness of the offense.

f. Lack of concern about public safety. For example, the case of the Federal Way girl cited earlier (p. 4).

2. Legislative Intent

The official statement of legislative intent which appears in "Overview of House Bill 371" prepared by the Division of Community Services, DSHS (written by Jenny Van Ravenhorst) says: "The legislature took two very clear stands: 1. Children who have not committed crimes should not be handled in criminal justice ways; and 2. Children who have committed criminal acts should receive dispositions based on the seriousness of their immediate offense, their age, and their past criminal record, rather than the nature of their past social history." This statement is also repeated in the proposal to the Office of Juvenile Justice and Delinquency Prevention, LEAA, for funding of an assessment of HB 371 implementation.

Legislative intent was interpreted by different persons interviewed, with each respondent likely to give a different answer to the question "What do you see as legislative intent in HB 371?" A sampling of answers follows:

Lobbyist for community-based corrections:

1. Assess punishment for crime.
2. If there is need for social services, they should be on a voluntary basis.

Senator:

1. Treat juvenile criminals like criminals.
2. Provide crisis intervention services for status offenders.

3. Avoid labeling for status offenders.
4. Allow for more community participation.

House staff member:

1. Put form in the law. Terms such as "delinquent" and "dependent" were vague and ill-defined before HB 371. The most important thing had been case law.
2. Attempt to achieve parity between different types of kids, different parts of the state.

Lobbyist for civil liberties organization:

1. No incarceration for incorrigibles.
2. Due process rights for juveniles.
3. Intent of the law is punitive; therefore, juveniles should have right to jury trial.

House of Representatives, member:

1. Equitable treatment of kids around the state.
2. Certainty of punishment (which was expected to act as a deterrent).

DSHS Administrator, Olympia (BSS):

The bill is open-ended and contains ambiguities due to legislative compromises. There are omissions, such as the fact that the bill has no mechanism for placing a child in foster care. "We need a provision for a judge to write an order." The only alternative is a "consent to place" agreement which is difficult to get from parents.

DSHS Administrator, Olympia (BJR):

The background of HB 371 included:

1. There was a feeling that kids were not being held accountable for their actions.
2. There was a feeling that there was too much discretion, too much flexibility in sentencing in different parts of the state, by different judges.
3. There was a feeling of disenchantment with the heavy emphasis on "treatment," e.g., counseling, the "social work approach."

The decision was made in HB 371 to remove minor offenders completely from the juvenile justice system and to provide more accountability to the community, not to social workers.

Staff member, Regional Office, DSHS:

1. Kids who do not commit crimes should not be handled in criminal justice ways; if handled at all, it should be in social service ways.
2. Government should have the least role possible. Police should try to get the runaway back home. DSHS is the last choice.

Staff member, Department of Youth Services, King County:

The bill is a broad-brush approach with specifics to be worked out by implementing agencies. For example, who is responsible for physical movements of kids from Juvenile Court to DSHS office? The bill doesn't say.

The bill states clearly that juvenile offenders will be handled by juvenile court, dependency cases by DSHS. Status offenders are a gray area. We see the intent of the legislature as "let them run."

Administrator, non-profit agency:

HB 371 is a "camel-like" bill, inconsistent and poorly written. No single group understood what was in the bill.

3. Expected Outcomes

Future effects of HB 371 on status offenders and juvenile criminal offenders are summarized in the proposal to the office of Juvenile Justice and Delinquency Prevention for funding of an assessment of the bill's implementation. For status offenders, DSHS does not view the transfer of certain responsibilities for runaways and/or a child in conflict with his/her parents as an expansion of that group. The Department will be providing services to status offenders who previously would have received such services from juvenile courts.

In the case of juvenile criminal offenders, the proposal states that the restitution system established by HB 371 will not "widen the net" of the juvenile justice system. Instead, according to the authors of the proposal, there are "strong and compelling reasons to believe that the restitution system will actually result in a "shrinking of the net." Two reasons are given: 1) every case referred to juvenile court must be screened for legal

sufficiency by the prosecutor's office. Under the old system the decision was made by a court caseworker based on "needs of the youth," rather than legal validity; 2) police and sheriff departments will not be referring directly to community-based youth-service agencies. Under the old system, in 1976, 42% of referrals to King County Conference Committees came from police or sheriff departments.

Several respondents expressed skepticism about the "shrinking of the net" theory. First, police may still refer juveniles directly to community-based agencies. The King County application for state funding of diversion programs, dated May 10, 1978, in attempting to assess the number of potential divertees, states: "we do not know how many referrals to conference committees will continue to be referred directly by the police officer. We have an indication that some, but certainly not all of the police departments are currently changing their procedures...." One administrator at the King County Department of Youth Services said that some police departments have indicated they will continue to divert juveniles directly to conference committees. This source said further that some police have indicated they will send their good cases to juvenile court and the bad cases to conference committees.

Another objection to the "shrinking of the net" theory came from persons who believed the formal legal requirements for diversion, including "Waiver of Lawyer" forms

and other forms indicating juveniles understand their rights in the diversion process, are so cumbersome that the process actually results in "widening the net."

The proposal to OJJDP also includes request for funding of services for status offenders and expanded diversion programs. Specific objectives stated for status offenders are:

1. To eliminate the detention of status offenders in juvenile detention and correctional facilities by providing community-oriented alternatives.
2. To provide a statewide network of services, which will reduce from the current level:
   a. By 30 percent, reported runaways.
   b. By 33 percent, out-of-home placements.
   c. By 20 percent, the daily population of out-of-home placements.
   d. By 20 percent, the average length of stay in out-of-home placements.
   e. By 10 percent, termination of parental rights.
   f. By 50 percent, reported incidents of truancy.

Specific objectives stated in the proposal for restitution are:

a. To achieve a 10 percent reduction in the annual number of juvenile arrests when compared with pre-project juvenile arrest records for divertable offenses.
b. To achieve a reduction in annual recidivism rates for juvenile offenders participating in community

diversion restitution programs such that the recidivism rates do not exceed 20 percent.

c. Given the implementation of community diversion restitution programs in selected sites in the State of Washington, there will be the elimination of divertable youth incarcerated in juvenile institutions.

d. To determine what specific elements of a juvenile participation in a community diversion restitution program deters juvenile offenders from recidivism.

e. To achieve a 10 percent increase in the annual percentage of victims of juvenile crime who are compensated for damage and losses when compared with pre-project data.

In the words of respondents, what would constitute adequate evidence that the legislation is having its intended effect? A key legislator specified:

1. Workload of juvenile courts should be down. At a hearing before the House Institutions Committee in July, Mary Kay Becker expressed the viewpoint that money in county budgets formerly allocated to the juvenile court should now go to the prosecutor's office.

2. Population of institutions will go down. However, an administrator in the Department of Youth Services, King County, pointed out that the number of juveniles in detention at the Youth Center in June was about 55, down from 90-100 a year earlier. No one seems to know what has caused this drop. The referral rate has changed. One

theory is that the police were placing more juveniles on personal recognizance (one respondent referred to this as "p.r.'ing" kids).

3. Increase in county budgets. Costs will rise because of increased due process requirements--more attorneys, judges, courtrooms. However, according to a source with the Association of Washington Counties, as of early October when county budgets were being submitted, this effect had not occurred. This source indicated that some county commissioners were saying to departments "Keep on spending until you run out of money." By January, departments would have data on six months fiscal impact of HB 371. Some county commissioners feel that prosecutors inflated their budget requests last year in anticipation of HB 371 impacts. As to the theory that surplus funds could be transferred within the county budget from juvenile court to prosecutor's office, the source said that was a simplistic approach, based on the assumption juvenile courts were already funded at an adequate level. Some probation officers have a sixty-kid caseload now.

Note: in the King County budget process, the Council cut more than $400,000 from the County Executive's request for the public defender's office (Seattle Times article by Alex MacLeod, November 22, 1978). Later, the Council's Budget and Finance Committee voted to add $345,000 to the office's budget to enable the public defender to pay its bill for the remainder of this year (Times, December 6, 1978).

What was going on? First, the Council cut the budget for the Public Defender's Office in an attempt to limit county payments for public defense costs to no more than double the $1.5 million earmarked for criminal prosecution in the prosecuting attorney's budget. Paul Barden, council member, argued that the county is already spending too much on legal aid to "criminals." He said:

> The public has the right to know why the criminal justice system is so screwed up, why criminals are being turned loose right and left on technicalities ...why they are out committing more crimes. The reason is that the government is spending more than twice as much to keep criminals out of jail as it is spending to prosecute them (Seattle Times, November 22, 1978).

At a later meeting, P. Bruce Wilson, who heads the Public Defender's Office, told the council's Budget and Finance Committee that his agency had overspent its 1978 budget by $150,000, mainly because of responsibilities imposed by the state's new Juvenile Justice Code and defense costs connected with aggravated homicide charges which carry the possibility of the death penalty. Wilson said court filings for juvenile offenses have increased 25 percent since HB 371 went into effect July 1st. No provisions for the increased juvenile defense costs were in the agency's 1978 budget because no one knew what the impact of the new law would be (Seattle Times, December 6, 1978).

What weaknesses in the legislation have been identified since its passage? How have they affected implementation? And how have they constrained implementors? What specific proposed amendments have been developed to deal with these

weaknesses?

Mary Kay Becker's paper, "House Bill 371: An Introduction," concludes with a discussion of future legislative considerations. At first, she says, opposition centered on the sentencing guidelines, with excessive due process requirements a close second. There was an outcry that the bill should have appropriated more money, an outcry which intensified when Governor Ray declined to call the State Legislature into session in 1978. However, the assurance of federal money from a LEAA grant, although not actually awarded until September, tempered the criticism. At the time of her writing, a year after passage of HB 371, Becker says the most publicized controversies were DSHS policies on contracting out and termination of parental rights. A legal challenge has arisen over the right of juvenile offenders to a jury trial (see Memorandum 2, p. 24). Due process parameters of diversion are also likely to be tested in court.

Becker states that there will be a need for a number of technical amendments. One is to revise the "traffic amendment" which mistakenly routed traffic violations back into juvenile court. Supreme Court rules have temporarily worked a way around this problem. The Legislature, she says, will keep a close watch on the impact of sentencing guidelines to see whether they are putting too much pressure on state institutions. There will be a need for long-range planning about state facilities for juveniles, expecially if Cascadia Diagnostic Facility reverts back to the federal government.

(This summer the Senate Ways and Means Committee refused to approve the transfer of Cascadia.)

At the present time, there is a long list of complaints about the bill. Over 200 amendments have been proposed. Kathy Fewell, of Senate Judiciary Committee staff, is attempting to compile a package of "non-controversial" amendments, which would be introduced as a separate bill in the legislature. In King County the most publicized complaints now center on the lack of restraints for runaways and the point system for juvenile offenders. A feud rooted in different philosophies of diversion, between Juvenile Court Conference Committees and Seattle's Community Accountability Program arose during the Seattle City Council budget hearings in October-November 1978. An Assistant Attorney General assigned to DSHS in the four largest counties reported to a Senate Education Committee meeting in August that the procedure for Alternative Residential Placement (ARP) have failed. (Under Part B of the new Juvenile Code, if an agreement concerning the living arrangements for the child cannot be reached within 48 hours after initial detention of the child, a petition must be filed in the juvenile court and must be heard within 72 hours of the initial detention of the child. But the child has no desire to initiate the proceedings since he/she is on the run.) He also reported there are gaps in the law where abuse and neglect begin. Youth advocates believe the bill missed the boat by not including a provision for emancipation.

Recently, Judge David Soukup, King County Superior Court, was quoted as saying: "The 10 per cent of the code that is good is easily identifiable and can be saved. All the amendments in the world won't make the rest of it work because it's basically an unworkable philosophy" (Seattle Times, December 31, 1978). Captain E.E. ("Lace") Knechtel, head of the Juvenile Division, Seattle Police Department, believes the provisions on runaways of the bill are weak. He said: "I don't think there is any question it will be amended in some way. But I think the chances are very slight that the bill would be repealed in its entirety" (Seattle Post-Intelligencer, December 31, 1979). A new Parents Rights Council has been formed with the purpose of revising the Juvenile Code. These parents argue that the code "gives runaways the license to commit crimes" because they commit crimes in order to live on the run. They also are requesting a revision of the point system, saying that this makes it possible for children to commit many delinquent acts before they face loss of freedom (Seattle Times, December 31, 1978).

D. Administrative capacity

1. DSHS

What interaction did the legislature have with the sub-units of DSHS (BJR and BSS) during the legislative process on the additional administrative load that HB 371 would impose? What evidence was asked for and offered on administrative capacity?

BJR's role in the legislative process has been described earlier (see pages 9-11).

A key House member when asked in interview "Why was DSHS the key implementing agency?" said they wouldn't have written it that way. They knew the Senate wanted incorrigibles out of the juvenile justice system but they didn't look at the Senate bill carefully. It was merely: "You take our side and we'll take yours."

Another House member said that when the bill was up for final passage in the House, with the Senate portion added on, he/she checked with Mary Kay Becker to see if the provisions for equity and certainty of punishment from the original House Bill 371 were still intact. When assured that they were, he/she voted for the bill.

The head of a non-profit agency said that DSHS was the "only place to turn" if you took status offenders out of the juvenile court. DSHS efficiency wasn't the issue.

2. Private Providers

Did the legislature assemble evidence on the capacity of private providers to respond to HB 371? What information was asked for and offered? From whom did it come?

We do not have evidence from our limited number of interviews that the legislators looked at the capacity of private providers. However, the Legislative Budget Committee Audit (May-June 1978) did make cost comparisons between DSHS and private agencies in providing crisis intervention services. (See Anne Carlson's paper on contracting out.)

END