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An Assessment of Juvenile Justice System Reform In Washington State

VOLUME II

A JUSTICE PHILOSOPHY FOR THE JUVENILE COURT

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Volume II from the Assessment of Washington's Juvenile Justice Code

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PREFACE

The Washington juvenile justice code is the most unusual and innovative change that has occurred in the juvenile system of any state since the historic court decisions of the late 1960's. Based on the philosophical principles of justice, proportionality, and equality the legislation seeks to establish a system that is capable of holding juveniles accountable for their crimes and a system that, in turn, can be held accountable for what it does to juvenile offenders. The legislation is an articulate and faithful representation of the principles of "justice" and "just deserts."

Consistent with those philosophical principles, the reform of Washington's juvenile system involves proportionate decision-making standards for intake and sentencing; the provision of full due-process rights; and the elimination of all court jurisdiction over non-criminal misbehavior (status offenses).

An assessment of the implementation and consequences of the implementation and consequences of the reform in Washington's juvenile justice system was funded by the National Institute of Juvenile Justice and Delinquency Prevention. This report is one of several which contains information about the impact of the legislation. Reports produced by the study are:

"Executive Summary: The Assessment of Washington's Juvenile Justice Reform" (Schneider and Schram, Vol. I).

"A Justice Philosophy for the Juvenile Court" (Schneider and Schram, (Volume II)

"A Comparison of Intake and Sentencing Decision-Making Making Under Rehabilitation and Justice Models of the Juvenile System (Schneider and Schram, Vol. III)

"Sentencing Guidelines and Recidivism Rates of Juvenile Offenders" (Schneider, Vol. IV)

"Divestiture of Court Jurisdiction over Status Offenses" (Schneider, McKelvey and Schram, Vol. V)

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CHAPTER 1. INTRODUCTION

Juvenile courts were established in the late 1800s and early 1900s as a means of diverting young offenders from the rather harsh and inhumane processes believed to be inherent in the adult criminal justice systems of that era. Few, if any, notable forces for change appeared for more than 60 years and it was not until the 1967 Supreme Court ruling in the Gault case and the issuance--in that same year--of the Presidential commission's report on juvenile justice and delinquency prevention that serious thought was given to major reforms in the the juvenile justice system.[1] Since that time, at least eight different commissions have issued national standards or model legislation for the juvenile justice system; the 1974 Congressional act and its 1977 amendments were passed which, among other things, require that status offenders not be held in secure confinement; and there have been numerous Supreme Court rulings regarding procedures to be followed in juvenile courts.[2]

In response to these national pressures for change--and local ones as well--virtually every state and locale in the nation is in the process of changing its juvenile justice system. The alternatives being considered range from relatively minor changes, such as diversion of status offenders from secure confinement and codifiction of already-existing procedural changes required by the Gault and Winship cases, to complete reform of the philosophy and practices of the entire juvenile justice system.[3]

In 1977, the Washington state legislature culminated almost ten years of discussion and debate by adopting a new juvenile justice code that calls for changes more fundamental than those undertaken in any other state.[4] The changes in Washington's law reflect the principles held by modern-day advocates of a "justice" model for the legal system and reflect the standards developed by the Institute of Judicial Administration and the American Bar

Association.[5] These principles emphasize uniformity, equity, fairness and accountability rather than rehabilitation or deterrence. The Washington law, according to its statement of legislative intent, seeks to establish a juvenile justice system that can be held accountable for what is does to juveniles and one which is capable of holding juveniles accountable for their offenses. The statement of legislative intent is shown in its entirety in Figure 1. The purposes listed in the upper portion are the prelude to the offender sections of the law and the statement in the lower part pertains to the status offender and dependency portions.

In an era when the debate among juvenile justice professionals usually revolves around issues of deterrence vs. rehabilitation as the orienting philosophy for the system, the justice philosophy--as expressed in the IJA/ABA standards and implemented in the new Washington code--offers an alternative that is worthy of careful examination.

Several parts of the Washington law are especially significant:

1. Sentences are presumptive and determinate (within very narrow ranges established by sentencing guidelines), and are proportionate to the seriousness of the immediate offense, the age of the youth, and the prior criminal history. Youths designated as serious offenders by the state law are to be committed to a state institution for 30 days or more (depending on the sentencing guidelines) unless the judge declares that a manifest injustice would occur. Alternatively, youths designated as "minor or first" offenders by the law cannot be committed nor detained in local facilities unless the judge declares that a manifest injustice would occur.

2. Responsibility for intake to the juvenile system now resides in the prosecutor's office for all felony cases and for misdemeanor incidents (unless the prosecutor waives intake for these offenses to probation). Explicit

FIGURE 1. STATEMENTS OF LEGISLATIVE INTENT

OFFENDERS (RCW 13.40.010)

"It is the intent of the legislature that a system capable of having primary responsibility for, being accountable for, and responding to the needs of youthful offenders, as defined by this chapter, be established. It is the further intent of the legislature that youth, in turn, be held accountable for their offenses and that both communities and the juvenile courts carry out their functions consistent with this intent. To effectuate these policies, it shall be the purpose of this chapter to:

(a) Protect the citizenry from criminal behavior;
(b) Provide for determining whether accused juveniles have committed offenses . . .;
(c) Make the juvenile offender accountable for his or her criminal behavior;
(d) Provide for punishment commensurate with the age, crime, and criminal history of the juvenile offender;
(e) Provide due process for juveniles alleged to have committed an offense;
(f) Provide necessary treatment, supervision, and custody for juvenile offenders;
(g) Provide for the handling of juvenile offenders by communities whenever consistent with public safety;
(h) Provide for restitution to victims of crime;
(i) Develop effective standards and goals for the operation, funding, and evaluation of all components of the juvenile justice system and related services at the state and local levels; and
(j) Provide for a clear policy to determine what types of offenders shall receive punishment, treatment, or both, and to determine the jurisdictional limitation of the courts, institutions, and community services."

* * * * * * *

STATUS OFFENDERS (RCW 13.34.020)

"The legislature declares that the family unit is a fundamental resource of American life which should be nurtured. Toward the continuance of this principle, the legislature declares that the family unit should remain intact in the absence of compelling evidence to the contrary."

criteria, based on the seriousness of the offense, age, and prior criminal history of the youth, govern the decision to file or to divert the youth. The use of "informal adjustments" is no longer permitted. Law enforcement agenices, however, still exercise their traditional discretion on whether to refer or adjust incidents involving juveniles.

3. The law establishes community-based diversion programs for juvenile offenders in lieu of formal processing. All non-felony first offenders and many minor (but chronic) offenders must be offered diversion as an alternative to the formal court process. Washington's approach, however, is quite unusual in that the responsibility of the diversion program is to hold the youths accountable for their offenses by requiring restitution to the victim or community service work rather than to provide the youths with social services, counseling, recreational programs, educational assistance, and the like.

4. Juveniles can no longer be brought under the jurisdiction of the court for the commission of status offenses. Although many states have amended their codes to deinstitutionalize status offenders and/or to divert some of them from the juvenile system, only two states--Washington and Maine--have developed legislation which divests the court of all jurisdiction over noncriminal misbehaviors generally designated as status offenses. Services for these youths and their families are to be provided by a state executive agency, the Department of Social and Health Services.

The status offender provisions in Washington's initial legislation (House Bill 371, passed in 1977) were, in most respects, identical to the IJA/ABA standards. In fact, the exact language of the standards was used in major sections of the law. Washington's approach to the offender provisions, however, was not taken directly from the IJA/ABA standards but the philosophical premises in the legislation are the same as those which provide

the orienting rationale for the standards. Indeed, the Washington law reflects the tenets of the justice model more carefully and consistently than do the IJA/ABA standards.

A JUSTICE MODEL

The Washington legislation is not a perfect embodiment of any set of philosophical principles, but it reflects many of the tenets of a justice model particularly as conceptualized by Andrew Von Hirsch. The justice philosophy was the predominate philosophical orientation of the persons who were instrumental in shaping the offender portions of the law and the status offender provisions were patterned after the IJA/ABA Joint Commission recommendations which, in turn, were based on a justice approach to the juvenile system. Several central concepts of a justice model are especially pertinent to an understanding of the Washington law.

1. Limitation on the Right to Punish. Proponents of the justice approach argue that the state has no authority to intervene in the life of an individual for the purpose of punishing unless the person has violated the criminal law. Punishment generally is taken to mean deprivation of liberty or the infliction of other unpleasant consequences including coerced treatment and coerced rehabilitation programs even if these are undertaken with the individual's best interests in mind. Thus, intervention by the state is viewed as unjust when directed against, for example, youths whose misbehaviors are not violations of the criminal code, such as status offenders.

2. The Amount of Punishment. The amount of punishment that a person ought to receive, according to those who advocate the justice model, depends on the amount the individual deserves to receive and that, in turn, depends on the harm done by the crime committed and the extent of the person's

culpability for the offense. Proponents of the justice paradigm argue that an individual should never be punished more than he or she deserves, as that would be unjust, even if more punishment might be useful to achieve certain other goals, such as rehabilitation or deterrence.

3. Uniformity in Punishment. Because punishment should be proportionate to the seriousness of the offense and the individual's responsibility for the crime, it follows that punishment also should be uniform and standardized. Any two offenders who have committed similar acts under similar circumstances should receive similar sentences.

4. The Justification of Punishment. The justice approach differs most markedly from other theories of sentencing (rehabilitation, deterrence, and incapacitation) in that the purpose of sentencing is to give the individual who has broken the law a punishment that is deserved rather than a punishment that is "needed" to rehabilitate the individual, deter the individual, reduce crime, or provide for a general deterrent effect. This emphasis on the past rather than on the future is quite essential to understanding the justice philosophy. A person should be punished for what he or she already has done, according to the proponents of this approach, not for what he or she might do. The justice model is based on the idea of limiting punishment strictly to that which is deserved. It is the act, not the individual, that guides dispositional decisions.

5. The Abuses of Rehabilitation. Many advocates of the justice model have lost faith in the rehabilitation philosophy on the ground that it has failed in its central goal (to rehabilitate the individual and prevent future criminal behavior) and because, in the name of rehabilitation, punishments of undue harshness have become commonplace. Gaylin and Rothman, in their introduction to Doing Justice, argue for less severe sentences: "To

abandon the rehabilitative model without a simultaneous gradation downward in prison sentences would be an unthinkable cruelty and a dangerous act," they say.[6]

6. Other Goals of Sentencing. According to the justice model, punishment must be limited to that which is deserved, but within that limit, other goals can be pursued. For example, the goals of rehabilitation or deterrence or both can be pursued without contradiction to the justice philosophy, so long as the amount of punishment is not contingent upon the achievement of other goals.[7]

To say that principles from the justice philosophy provided the guiding rationale for many of those who formulated and supported the Washington law does not mean that the legislation constitutes a perfect practical application of these principles. The new law was supported by a diverse coalition both within and outside the legislative body and, as is true for most legislation, it reflects diversity in its principles and purposes. Nevertheless, the Washington juvenile justice code is one of the truest applications of a justice philosophy that exists in the United States.

PURPOSES OF THE ASSESSMENT

The intent of the assessment effort is straightforward: to describe the history, philosophy, and rationale of the legislation; to examine the responses by juvenile justice agencies to the key provisions in the law; and to study the impact of the legislation on juvenile offenders and status offenders.

The approach to the research began with the assumption that the legislation represents a series of major innovations in the juvenile justice system which have, first, an impact on agency activities and second, an impact on agency clients (i.e., juveniles). From an historical perspective, it seems

that the success of major social innovations depends on three primary factors.

First, the legislation needs to be based on a coherent and relevant theory or philosophy. Numerous examples can be documented in which the failure to accomplish intended goals was apparently due to an inadequate or inappropriate theory. A second factor that is important in understanding the effectiveness of legislation is that the policies and programs need to be implemented in a manner consistent with the intent of the legislation. To implement the legislation in the manner intended, the legislation itself and the administrative procedures developed in relation to it must represent practical and workable approaches that can be integrated into the organizations which comprise the local juvenile justice and service systems. Third, reforms and innovations require adequate resources for their implementation and operation.

This framework served as the basis for the design of the assessment. Namely, one purpose is to determine the intent of the law and to document the theory, philosophy, logic, assumptions and goals for the legislation. A second aspect is the study of the implementation of the legislation with particular attention to whether the provisions represent viable approaches which are adaptable to local systems and whether the operating procedures are consistent with the theory and philsophy of the law. Included is an analysis of changes in organizational responsibilities, case flow, and resource needs. The consequences of the legislation for juveniles extends to an examination of changes in the severity of sanctions at each key point in the dispositional process (referral to court, intake, sentencing) and changes in the uniformity of decisions. The determinants of decisions also are explored in both the pre and post systems. The impact of the legislation on crime and recidivism rates

constitutes still another important topic for the assessment. Finally, a study of this type would not be complete without consideration of the reactions of professionals within the system to the provisions of the law. We have examined the levels of support and opposition to the law among key juvenile justice professionals and also ascertained their perceptions of the consequences (both positive and negative) of the legislation. The major purposes of the law and the more specific topics included in the study are summarized in Figure 2.

The remainder of this volume is devoted to (1) a description of the legislative process which produced the law (2) an examination of the philosophical rationale (as viewed by those who formulated it), and (3) a description of the rationale, debate, and compromises which surrounded the most important aspects of the law.

METHODS AND APPROACH

Information about the legislative history, philosophy, and rationale of the law was obtained from interviews with 45 of the 50 persons identified as the most active proponents and opponents of the legislation and, in addition, from numerous documents made available by individuals who were actively involved in the legislative process. The legislative study was based on the assumption that policy begins with an identification of problems which need to be solved and with the specification of operational or philosophical models which key persons believe would be appropriate. The operational models and philosophical principles are subject to discussion and conflict which, presumably, produces compromises which increase the level of support. A cycle consisting of concepts, conflict, and compromise begins at a pre-legislative phase (by staff, agency personnel, interested persons in local government, public interest groups) and may be repeated at each major point within the

FIGURE 2. SUMMARY OF ASSESSMENT PURPOSES AND TOPICS

PURPOSES	TOPICS
I. To ascertain the intent, rationale, and philosophy of the legislation.	1. The legislative history 2. The philosophy and rationale of the law
II. To assess agency response to the offender provisions of the law.	3. Change in organizational responsibilities and procedures 4. Development of an accountability-based diversion program 5. Case processing in a legal process model 6. Implementation and compliance with the sentencing guidelines
III. To examine the impact of the offender provisions on juvenile offenders	6. Severity of sanctions in the rehabilitative system (pre) and the justice system (post) 7. Determinants of dispositions and uniformity in decision making (pre and post) 8. Effect on crime and recidivism 9. Holding juveniles accountable 10. Reactions of professionals: support, opposition, and perceptions of consequences
IV. To assess agency response to the status offender provisions	11. Change in level of coercive control 12. Net-widening and relabeling 13. The DSHS service delivery system
V. To examine the consequences of the status offender provisions on status offenders	14. Recidivism and progression to delinquency 15. Professional reactions: perceptions of consequences, level of support

legislative process itself. The implications of this framework were that the legislative study proceeded through four steps (1) identifying the reformers' perceptions of problems in the juvenile justice system, (2) understanding the concepts and models which guided the initial (pre-legislative) proposals for the code, (3) determining the nature of the issues and conflicts that arose, and (4) identifying the changes that were made in the inital concepts and models.

The sample for the legislative history interviews included all active proponents and opponents of the legislation, chairpersons of all relevent committees and sub-committees in the house and senate, and key DSHS officials. Interviews were conducted using an open-ended interviewing schedule and were done in person by members of the research staff.

CHAPTER 2. LEGISLATIVE HISTORY

THE 1913 LAW

Washington's first comprehensive juvenile justice code adopted in 1913, was firmly grounded in the principles of *parens patriae*. Its stated purpose was to "provide for the care, custody, and discipline of delinquent and dependent children that would approximate that which should be given by their parents."[9] Inherent in the doctrine of *parens patriae* is the notion that children who commit crimes or who engage in various other kinds of misbehavior are the product of inept parents or a deprived social environment. The juvenile court, therefore, has the right and duty to intervene in the life of such a child and his or her family in order to rehabilitate the youth through the provision of services or, if needed, by removing the child from his or her home.[10]

Early advocates of *parens patriae*, such as Judge Julian W. Mack, did not overlook the potential dangers and the possibility that the "rule of law not of men" would be forsaken by the juvenile court under this doctrine. Still, Judge Mack in 1909 argued emphatically and persuasively against the old system:[11]

> The result of it all was that instead of the state's training its bad boys so as to make of them decent citizens, it permitted them to become the outlaws and outcasts of society; it criminalized them by the very methods that it used in dealing with them. . . It put but one question, 'Has he committed this crime?' It did not inquire, 'What is the best thing to do for this lad?'

Judge Mack continues with the following:

> Why is it not just and proper to treat these juvenile offenders, as we deal with the neglected children, as a wise and merciful father handles his own child whose errors are not discovered by the authorities?

Consistent with this philosophy, the Washington juvenile court was granted

jurisdiction over all criminal behavior of persons under the age of 18 as well as several kinds of noncriminal misbehavior by children who were "dependent." (A complete listing of the situations and behaviors included in the dependency category is shown in Figure 3.)[12] The definition of dependency was extremely broad; and, if this definition was not sufficient, law enforcement officers were permitted to take into custody "any child . . . whose surroundings are such as to endanger his health, morals, or welfare. . . ."

Informal procedures, without the need for hearings, lawyers, and judges, were encouraged by the law:[13]

> Whenever any child is brought to their attention the probation officers in each county may with the consent of the parent . . . make whatever informal adjustment or disposition of the case as is practical without the filing of a petition . . .

These procedures were subject to judicial review, but such reviews seldom occurred. Decisions of the court regarding the disposition of juvenile delinquents and dependents were to be governed by the best interests of the youth:[14]

> When any child shall be found to be delinquent or dependent, the court shall make such order for the care, custody, or commitment of the child as the child's welfare in the interest of the state require.

Jurisdiction over the child, including confinement by the department of institutions, could continue for an indeterminate length of time (although not beyond the age of 21) as the legislation permitted a child to be held in custody until "his or her reformation shall be deemed complete."[15]

Thus, the Washington juvenile justice system exemplified the traditional rehabilitation approach: The philosophy of *parens patriae* permitted the court to bring children under its authority for both criminal and noncriminal behavior; informal processes, undertaken in the "best interests" of the youth,

FIGURE 3. DEFINITION OF DEPENDENCY IN PRE-1977 WASHINGTON LAW*

For the purpose of this chapter the words "dependent child" shall mean any child under the age of eighteen years:

(1) Who has no home or any settled place of abode, or any proper guardianship, or any visible means of subsistence; or

(2) Who has no parent, guardian or other responsible person; or who has no parent or guardian willing to exercise, or capable of exercising, proper parental control; or

(3) Whose home by reason of neglect, cruelty or depravity is an unfit place for such child; or

(4) Who frequents the company of reputed criminals, vagrants or prostitutes; or

(5) Who is found living or being in any house of prostitution or assignation; or

(6) Who habitually visits any saloon, or place where spirituous, vinous, or malt liquors are consumed or sold, bartered, or given away; or

(7) Who is incorrigible; that is, who is beyond the control and power of his parents, guardian, or custodian by reason of the conduct or nature of said child; or

(8) Who is in danger of being brought up to lead an idle, dissolute or immoral life; or

(9) Who is an habitual truant, as defined in the school laws of the state of Washington; or

(10) Who uses intoxicating liquor as a beverage, or who uses opium, cocaine, morphine, heroin, or marijuana, or other similar drug, without the direction of a competent physician; or

(11) Who wanders about in the nightime without being on any lawful business or occupation; or

(12) Who is grossly and wilfully neglected as to medical care necessary for his well-being.

*RCW 13.34.010 1977 Edition

dominated the procedures; and the type as well as the amount of treatment depended on what was needed to rehabilitate the juvenile.

CHANGES IN THE LAW

The first changes in the traditional approach within the state of Washington were made by the 1967 legislature when it prohibited the court from institutionalizing children who had been abused, neglected, or abandoned by their parents.[16] A probation subsidy program was adopted in 1969 primarily to reduce the number of youths committed to the state institutions and the cost of maintaining them there. The statement of legislative intent for the 1969 probation subsidy section, however, it especially interesting because, even though still entrenched in the rehabilitation philosophy, forerunners of the themes of public safety and uniform justice first appeared at that time:[17]

> It is the intention of the legislature . . . to increase the protection afforded the citizens of the state, to permit a more even administration of justice in the juvenile court, to rehabilitate juvenile offenders, and to reduce the necessity for commitment of juveniles to state juvenile correctional institutions . . .

The issue of whether status offenders should remain under court jurisdiction emerged in the early 1970s and in 1973 the Senate Judiciary Committee considered two proposals for comprehensive reform of the system. One of these, backed by Governor Dan Evans, removed status offenders from the jurisdiction of the court and the other, supported by the Superior Court judges, maintained court jurisdiction over "unmanageable" youths and permitted their confinement in state institutions. Neither was passed. Between 1973 and 1976 the Washington legislature considered 11 different comprehensive reform proposals, several of which called for divestiture of court jurisdiction over status offenders. In 1974, a bill establishing a "Children in Need of Supervision" (CHINS) category of youths who could not be

institutionlized was passed by the Senate but not by the House. The House and Senate considered a total of five different bills in 1975, three of which were combined and passed by the House but not by the Senate. In 1976, the Senate Judiciary Committee attempted a change of less magnitude than total reform; a change that would prohibit the institutionalization of youths designated as "incorrigible." Even this effort was not completely successful. In order to obtain the votes needed for passage of Senate Bill 3116, a "significant compromise" had to be made, according to Senator Pete Francis, chair of the Senate Judiciary Committee, which permitted incorrigible youths to be committed for 30 days of diagnosis and treatment at the state juvenile institution.[18]

Adoption of House Bill 371

Concern about the way status offenders were handled within the juvenile justice system did not end with the passage of Senate Bill 3116. Several representatives from the state of Washington--including Senator Frank Woody--attended a conference in Albuquerque, New Mexico sponsored by Legis 50: The Center for Legislative Improvement. This conference led directly to the idea of holding a similar conference in the state of Washington to discuss the status offender issues. Subsequently held at Providence Heights, Issaquah, in December of 1976, the conference served as a forum of discussion for the basic principles that later were incroporated in the status offender sections of HB 371.

Interest in reform of the offender sections of the code continued in the House Institutions Committee, chaired by Representative Ron Hanna, a Democrat from Pierce County who had worked for several years as a probation officer in the state of Washington. This committee began a study of the state juvenile system and visited several state correctional institutions for

juveniles. As a result of work undertaken during 1976, the House Institutions Committee reached a general consensus on the direction that should be taken for reform of the system and succeeded in gaining approval for a concurrent resolution that, among other things, criticized the treatment orientation of the court on the grounds of ineffectiveness, proposed greater emphasis on work rather than treatment, and stated that "maintaining the family unit should be the first consideration in all cases of state intervention into children's lives."[19] It also proposed a pilot project within a juvenile court based on determinate and proportional sentencing standards. The consensus within the committee, according to Representative Mary Kay Becker, who was to become the primary sponsor of the bill in the House, was remarkably broad given the diverse ideological make-up of the committee itself.

Three highly significant documents were prepared in 1976. One of these is the final report from the Providence Heights conference that discusses the nature of the problems in the state's approach to status offenders and outlines alternatives for resolving those problems.[20]

The second report was prepared by Bob Naon, staff to the House Institutions Committee, at the request of Representative Hanna.[21] Naon's report is a concise and meticulously documented review of more than 100 articles, books, or documents culminating in a proposal for reform of the state juvenile justice system. One dominant theme in Naon's paper is accountability: "The system is not accountable to the citizens," he says, "it does not hold youthful offenders accountable," and "the system is unable to help offenders."[22] Naon advocated the development of community-based alternatives to both the formal court process and to the institutionalization of juvenile offenders. He also recommended the use of accountability-oriented diversion prgrams and removal of court jurisdiction over status offenders.

Court jurisdiction, he said, should be strictly limited to only the most serious juvenile offenders. This report is documented with facts, figures, research findings, and statements that later were used in letters and position papers from representatives and senators who supported the law.[23]

The third paper, prepared by Chris Bayley and members of his staff in the King County prosecutor's office, is a scholarly presentation of the tenets of a justice model and specific proposals for implementing the basic principles of a justice approach.[24] The proposals include presumptive and determinate sentencing (within narrowly prescribed ranges); control of discretion through presumptive standards for all actors in the system; requirement of written reasons for all departures from the presumptive dispositions; the inherent unfairness and inequity produced by rehabilitation philosophies based on indeterminate sentencing; and many other receommendations or philosophical positions that later were incorporated into House Bill 371. Two of the persons who participated in preparing this paper--Marilyn Showalter and Jay Reich--were among the most active members of the coalition that formulated the offender sections of the law.

As the 1977 legislative session began, the House Institutions Committee, its staff, and a large coalition of active, interested persons intensified their efforts to reform the juvenile justice system. The coalition that eventually came together to support the bill represented virtually all relevant groups and agencies except juvenile court administrators, juvenile court judges, and juvenile court probation counselors. The supporting coalition came from all sides of the ideological spectrum as it included representatives from the American Civil Liberties Union, law enforcement, prosecution, public defense, youth groups, and victim groups.[25]

The work in the House focused mainly on the offender parts of the code whereas in the Senate, a subcommittee of the Senate Judiciary Committee chaired by Senator Frank Woody and staffed by Jenny Van Ravenhorst, worked on the status offender and dependency sections. Due to Senator Woody's illness (he died of cancer before Governor Ray signed the bill), the work in his subcommittee was delayed until the deadline for reporting bills to the floor had passed without action on the reform. To the surprise of many observers, however, the House passed its bill and sent it to the Senate. The Senate attached the status offender and dependency provisions as amendments to House Bill 371.

An intense debate ensued on the Senate floor (after Senator Francis had extracted the bill from an almost certain death in the Senate Rules Committee) with most of the attention on the offender sections of the law. (The status offender portions, although patterned after the IJA/ABA standards, still contained remnants of the "significant compromise" of 1976 in which some nonoffenders could be committed for up to 30 days of "treatment and diagnosis.")

Issues debated by the Senate went to the very heart of the law. The more than 200 amendments introduced in the Senate included some that would have eliminated presumptive sentencing; others called for eliminating prosecutorial screening at intake; and others would have retained the traditional counseling and social service approach to juvenile diversion programs. One amendment would have replaced the sentencing standards and the ability of judges to declare manifest injustice with required mandatory commitment for certain offenses.[26]

Opposition to the legislation came primarily from juvenile court administrators, judges, and Pierce County local government officials. The

opposition was late in becoming involved because, according to several persons interviewed for this report, the House bill was considered to be too controversial to pass and they thought the Senate bill had died in committee. Also contributing to the apparent disorganization among the opponents of the bill was the fact that they had not achieved consensus on what should be done. Thus, the opposition--although intense, according to Representative Becker--was left in the position of having to attack the legislation in a piecemeal fashion without any common philosophical orientation.

Due to the efforts of Senator Francis, other members of his committee, and the consistent day-after-day work by members of the broad coalition supporting the law, the Senate passed it (27 to 13, 8 absentees) without crippling amendments and returned it to the House. Although there was much concern over some of the status offender and dependency provisions and some of the Senate amendments, the House committee decided to accept the status offender provisions and the other amendments rather than risk emasculation or failure in the Conference Committee if the law were once more amended. A one-year lag time before start-up was designated with the idea that the 1978 legislature could clarify some of the confusion and contradictions introduced by Senate amendments and could push for necessary appropriations to implement the status offender parts of the law.[28] This plan was thwarted, however, when--for the first time in recent memory--the Governor did not call a special session and the legislature did not meet at all in 1978. Thus, the bill was left to be implemented without new state appropriations for the status offender sections and with a few internal contradictions produced through the earlier amending processes.

A federal grant of $3.1 million was received about two months after the bill went into effect and was used to develop service delivery programs and

residential facilities for runaways and children in conflict with their families.

The 1979 Amendments

After less than one year of experience with the law, hundreds of amendments were proposed for consideration by the 1979 legislature. Most of these were weeded out by a task force comprised of representatives from the coalition that had initially supported the bill.[29] A package of generally noncontroversial amendments of a "housekeeping" nature was prepared and eventually passed as Senate Bill 2768. For the most part, these did not alter the fundamental philosophy underlying the law and, in several instances, substantially increased the cohesiveness of the philosophical principles.

A primary purpose of the amendments was to correct some parts of the status offender provisions that had generated controversy within the state. In response to demands from parents and local officials, changes were made with the intent of insuring that the juvenile justice agencies would be responsive to the needs of status offenders and their families. Court jurisdiction over status offense behavior, however, was not reestablished. The amended law removed the last vestiges of potential jurisdictional authority when the provisions referred to as the "significant compromise" were repealed. With that change, neither punishement nor unwanted treatment can be given to a youth solely on the grounds of status offense misbehaviors. The amended law sought to increase law enforcement responsiveness to runaway youth by reducing their responsibilities for the placement of runaways after they are taken into custody and by increasing the availability of temporary placement facilities. Also, the amended law required, rather than permitted, law enforcement to take reported runaways into limited custody for the purpose of returning the youth home or to a residential center.

Although there have been other amendments since 1979, none has altered the fundamental principles of the legislation and the basic premises of the justice philosophy are apparent throughout the law.

CHAPTER 3. PHILOSOPHY AND RATIONALE OF THE LAW

The philosophical principles and practical concerns of persons who formulated the Washington legislation were reflected through their perceptions of what was wrong with the juvenile system and through their understanding of how the proposed legislation would correct the problems. Several themes dominated the legislative deliberations:

1. Intake and sentencing decisions should be more uniform and should be proportional to the offense and the criminal history of the youth;
2. Juveniles should be held accountable for their offenses;
3. The system should be held accountable for its actions;
4. The law should promote public safety, deterrence, and reduce crime;
5. The authority of the juvenile court should be limited;
6. The family should be maintained (i.e., children should not be taken from their families for status or delinquent behavior).

For the purpose of illustrating how these themes and issues were reflected in the legislative deliberations, we have departed from the usual style of presention in this chapter and opted for heavy reliance on direct quotations from persons actively involved in passage of the legislation and from position papers used by supporters of the law.30

Uniform and Proportionate Dispositions

Lack of uniformity in intake and sentencing decisions was considered by many to be one of the most--perhaps the most--fundamental flaw in the traditional system. (See Figure 4). Legislative leaders in Washington clearly recognized that the problem existed not just at sentencing but at the critical intake point: "a probation counselor can decide to keep any case out of court even if it involves a serious offense..." the chair of the Senate subcommittee said. Decision making was viewed as unfair and based on "extra-legal factors and idiosyncratic choice" according to Rep. Hanna.

The reformers of the old system typically discussed the lack of proportionality both in terms of sanctions that were too lenient for the serious offenders and sanctions that were too harsh for the minor offenders. Hagens, for example, noted that they had found instances "where courts informally adjusted serious felony cases...and instances where juveniles convicted of relatively minor offenses were institutionalized for long periods of time."

Presumptive dispositions, proportionate to the offense, age, and prior criminal record of the offender, were viewed as mechanisms to achieve greater uniformity among youths who had committed similar types of offenses as well as greater uniformity from one area of the state to another. It was generally believed that youths from rural areas of the state were being institutionalized for offenses that would not even be filed in King county. Those who framed the law wanted the disposition to be based on the act that was committed rather than on the "needs of the child" (Senator Francis), or the "past social history" (Van Ravenhorst), or the child's "best interests" (Representative Becker), as these, presumably benevolent criteria, were believed to have produced inequity and unfairness.

FIGURE 4
SELECTED QUOTATIONS: UNIFORM AND PROPORTIONATE DISPOSITIONS*

There is, within the existing juvenile justice system, a selective reduction of youth who penetrate upward to the next highest and more serious stage of formal contact with juvenile authorities. Such selective reduction is based on extra-legal factors and idiosyncratic choice . . .
Throughout the state, some violent felony cases are disposed of administratively while non-violent felonies and misdemeanors are officially adjudicated. Such decisions, based not so much on what child has done but upon who he or she is, are not only unfair, but are made at the expense of public protection.
—Rep. Ron Hanna, Chair, House Institutions Committee
(1977 Notes)

The absence of statewide standards results in disproportionate and disparate sentencing practices and a general lack of public accountability. By establishing standard ranges of punishment based on age, offense, and prior history, this bill will provide more even-handed and predictable consequences for delinquent acts.
—Sen. Frank Woody, Chair, Senate Judiciary Subcommittee
(1977 Letter)

Prior to the enactment of House Bill 371, we found many examples where courts informally adjusted serious felony cases without bringing them before a judge and instances where juveniles convicted of relatively minor offenses were institutionalized for long periods of time.
—William Hagens, Staff, House Institutions Committee
(1979 Memorandum)

Currently, [i.e., pre-371] a probation counselor can decide to keep any case out of court even if it involves a serious offense or a juvenile who has a long record of past offenses. The intent . . . is to ensure that cases involving juveniles who have committed a serious crime or who have a history of offenses will be heard by a juvenile court judge.
—Sen. Frank Woody
(1977 Letter)

[Under the new law] . . . sentences . . . are not based on his or her need for rehabilitation, treatment, or services, but rather based upon the offense he or she has committed . . . The emphasis is on the act not on the total needs of the child.
—Sen. Pete Francis, Chair, Senate Judiciary Committee
(1978 Congressional Testimony)

. . . the primary consideration in punishing a juvenile should be what he or she did and not who he or she is.
—Position Paper from HB 371 Supporters
(1978)

Dispositions meted out by some juvenile court personnel, attempting to serve an offender's 'best interests' were completely disproportionate to the crimes committed . . .
—Rep. Mary Kay Becker, House Institutions Committee
(In Washington Bar Association Report, 1978)

In passing House Bill 371, the legislature took two very clear stands. The first . . . was that children who have not committed crimes should not be handled in criminal . . . ways, and the second was that 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.
—Jenny Van Ravenhorst, Staff, Senate Judiciary Committee
(In Washington Bar Association Report, 1978)

*See footnote 32 for citations.

Holding Juveniles Accountable

Another problem identified by many of the persons active in supporting Washington's legislation was that juvenile offenders were not "held accountable" for their offenses (see Figure 5 for quotations on this topic). As with the lack of uniformity and lack of proportionality in dispositions, the problem of nonaccountability was attributed to the misuse of discretion by probation officers, especially; and to some extent, misuse of discretion by judges. Many of those who stressed accountability did so in opposition to the "medical model" and "social worker" approach to juvenile offenders. It would be a mistake, however, to interpret this as evidence that those who supported the concept of increased juvenile accountability were uniformly (or even predominately) insistent upon more severe punishment for the juveniles. Rather, the main focus seemed to be that juveniles should be "held accountable" rather than coerced into "treatment" or "rehabilitation" or informal supervision programs. One of the persons interviewed, when asked what was meant by "accountability," said that it meant the youth "would have to do something because of the offense." The heavy emphasis within the law on restitution and community service underscores the meaning and importance of the accountability concept.

It is also quite apparent from the quotations by Showalter, Senator Woody, and Representative Hanna that they wanted the juvenile system to send a different message to juvenile offenders—a message which emphasized that crime is serious business, that the youth (not the parents) is responsible for the crime, and that the system will do something about it.

FIGURE 5.

SELECTED QUOTATIONS: ON HOLDING JUVENILES ACCOUNTABLE*

> We wanted to limit coerced treatment; and we wanted to stop giving the message to the juveniles that 'your crime is not your fault.' We wanted to say, 'your crime is your problem.'
>
> —Marilyn Showalter, King County Prosecutor's Office
> (Interview, 1980)

> This bill tells young people two things: First, that they must make restitution for any crime they commit; and second, that serious or continued criminal behavior will result in punishment in addition to any requirement of restitution. I believe that is a very reasonable thing to be saying to kids.
>
> —Sen. Frank Woody, Chair, Senate Subcommittee
> (1977 Letter)

> The . . . bill reflects the view that, whatever else, a juvenile offender should have the gravity of his or her offense impressed upon him or her . . .
>
> —Rep. Ron Hanna, Chair, House Institutions Committee
> (1977 Letter)

> The presumptive sentencing scheme is intended to make youngsters more accountable by dealing with them according to the nature and frquency of their criminal acts rather than on the basis of their social background and "need for treatment."
>
> —Rep. Mary Kay Becker, House Institutions Committee
> (In Washington Bar Association Report, 1978)

> The existing juvenile justice system is inadequate because many youths referred to it for delinquent offenses are not being held accountable for their behavior . . . Of 45,862 cases referred to juvenile courts in 1974, petitions for formal court action were filed in only 9,578 cases. [Data from the Washington Juvenile Justice Plan.]
>
> —Bob Naon, House Institutions Committee Staff
> (1976 Position Paper)

*See Footnote 32 for citations to these and other quotations.

Holding the system Accountable

The theme of system accountability was stressed in the background paper prepared by Bob Naon and in the position paper from the King County prosecutor's office. As translated into the legislation itself, system accountability generally refers to controlling and limiting discretion. (See Figure 6 for selected quotations.) The method of control commonly used follows the recommendations in Bayley's paper: The establishment of presumptive standards for the critical decisions; the specification of criteria for deviations from the standard; and the requirement of written reasons whenever exceptions are made to the usual procedures. This paper, prepared by the King County prosector and his staff, placed particular importance on requiring written reasons for all deviations from the prescribed practices rather than seeking to completely eliminate discretion. The reason for concern about system accountability was closely related to the problems of lack of proportionality and lack of uniformity in sentencing discussed previously. Sentencing decisions were viewed as unfair by many of the persons who supported the law. In her paper regarding the development of the law, Representative Becker described several "baffling" cases that were presented to the legislature. On of these involved a youth returned to court seven times, all for felonies, including one robbery, on whom no action was taken by the caseworker. These kinds of instances, according to Representative Becker, were espeically confusing as the legislators were quite aware of youths institutionalized for misdemeanors even without extensive criminal histories.

FIGURE 6.

SELECTED QUOTATIONS: ON HOLDING THE SYSTEM ACCOUNTABLE*

The Senate Judiciary Committee strongly supported the position that the juvenile court system should be held accountable to the public. Allowing victims and other interested citizens to observe the court process will make the court more responsive to the public's concern for juvenile crime.
--Position Paper for HB 371 Supporters
(1978)

. . . the bill sets up a general rule which allows for exceptions if there is written justification and a right of review . . . The real question posed by this bill is: Will the legislature hold juveniles accountable for their crimes and will it hold the juvenile system accountable to the public? Standards will accomplish this aim.
--Position Paper for HB 371 Supporters
(1978)

The House proposal does not in any way eliminate the discretion of any actor in the criminal justice system but would structure the exercise of such discretion such that when an actor performs his or her duty in an exceptional manner, such as where a court places a convicted rapist on probation, that actor must supply compelling reasons for such an action.
--Rep. Ron Hanna
(May, 1977 Letter)

House Bill 371 is aimed at four main objectives: 1) to remove dependent children and status offenders . . . from the criminal justice system; 2) to hold juvenile offenders . . . accountable for their behavior; 3) to decrease discretion within the criminal justice system by an emphasiss on standardization of justice (i.e., by basing sentencing upon charges and focusing on the act, not the actor; and, 4) to stress due process guarantees. (Emphasis added.)
--Rep. Ron Hanna
(May, 1977 Memorandum)

The intent that the courts as well as youngsters be made accountable to the community is embodied in the requirement that a specific written finding of 'manifest injustice' be made whenever a serious offender is sentenced outside the range.
--Mary Kay Becker
(In Washington Bar Association Report, 1978)

The main point is that if uncontrolled discretion is the problem, the solution is not to abandon discretion, but to bring it under control; to regularize, channel and structure it.
--Chris Bayley
(King County Prosecutor Position Paper, 1976)

*See Footnote 32 for citations to these and other quotations.

Public Safety, Crime, Deterrence

Concerns about the juvenile crime rate and hope that the legislation might serve as both a specific and general deterrent were expressed by several of the persons actively involved in the legislative process. (See Figure 7 for selected quotations; also see Figure 5 for references to specific deterrence.) The cover letter sent by Senator Francis and Representative Becker to Governor Dixy Lee Ray urging her support of the law included "reducing crimes committed by juveniles" as a goal. The increase in juvenile crime was mentioned by Senator Woody, Representative Becker, and Representative Hanna. The statement by Representative Becker that some serious offenders would be "incarcerated as a matter of public safety" might reflect an incapacitation perspective (i.e., incaraceration in order to remove the opportunity for the individual to reoffend) for the most dangerous juvenile offenders. Several of the individuals interviewed remarked that they believed the bill had been perceived by at least some legislators as a "get tough" policy when, in fact, they believed it was not a "get tough" law at all. Others said that the bill was not "sold" on the basis of crime reduction; rather, that the emphasis was on equity and fairness.

It is difficult to determine the relative importance of juvenile crime as a factor in the formulation of the law or in its support. Although references to juvenile crime were made in letters seeking support for the law, it also should be noted that the position paper used by supporters of HB 371 to argue against the amendments debated in the Senate did not mention crime reduction as a goal nor did it mention the juvenile crime rate as a justification for changing the existing system.

Maintaining the Family Unit

It is obvious from an examination of documents and statements of legislative intent that a major purpose of the law was to prevent the juvenile court from arbitrarily (and unnecessarily) removing children from their homes and placing them into group or foster care. Removing status offenders from court jurisdiction was intended to avoid unwarranted deprivation of liberty (such as detention and incarceration) and also was meant to prevent the court from placing status offenders in foster homes against the wishes of the family. Unnecessary court interference in family life was mentioned by both Hanna and Hagens (see Figure 9). Some of Representative Hanna's statements reflected another purpose of the law that was mentioned by several persons during the interviews; namely, to prevent courts from placing children into group or foster homes because of delinquent acts by the child. Bob Naon, of the legislative staff, said in his interview for this report, "We did not want to let the judges say that an offense is the parents' fault and, for that reason, send the kid to a group home. When the judge puts a delinquent in a group home," Naon continued, "the state is assuming the parenting function."

Discussion

Other problems with the system occasionally were mentioned in some of the documents or were raised by persons included in the interviews. Overall, however, perceptions of problems in the traditional juvenile court system indicated an overriding concern with "justice" expressed in concepts such as uniformity, proportionality, equity, fairness, control of discretion, accountability by juvenile offenders, and so forth. With the problems defined in these terms, it left the opposition in an awkward position.

FIGURE 9.

SELECTED QUOTATIONS: ON MAINTAINING THE FAMILY UNIT*

Courts and all levels of govenment, in the recent past, have interfered to an ever increasing extent with parent child relations. The new juvenile law is intended to reverse this trend.
--Rep. Ron Hanna
(1977 Memorandum)

In Washington, prior to the implementation of the new code last July, any child . . . whose home for any reason is an unfit place . . . could come under the jurisdiction of the juvenile court and could be removed from his or her family. The very existence of such judicial authority was relied upon by child welfare workers in making some parents comply with child raising 'suggestions' . . .
--Rep. Ron Hanna
(1977 Memorandum)

Under the old law a juvenile delinquent was viewed as someone not responsible for his or her actions in a criminal sense. It was the belief of many that the committing of a criminal act by a juvenile signified that the child lacked adequate parental guidance and control. The finding by a court of delinquency often precipitated removal of a child from his or her home into foster care. The revised law says that juvenile crime will be punished, and not considered an excuse to interfere with the child-raising patterns of parents.
--Rep. Ron Hanna
(1977 Memorandum)

[Under the old law] the broad definition of dependency led to unnecessary intrusions into families when, on the basis of subjective impressions of judges and court staff, children were placed out of home.
--William Hagens, Staff, House Institutions Committee
(1979 Memorandum)

House Bill 371 declared the family to be 'a fundamental resource of American life' and that a family should remain 'intact in the absence of compelling evidence to the contrary.' A great deal of the law underscored this intent: . . . [it] limits unnecessary intrusion into family life by restricting the definition of dependency . . . [it] states that absent the commission of a very serious crime or several crimes a child will not be removed from his or her parents for an extended period of time . . .
--William Hagens
(1979 Memorandum)

*See Footnote 32 for citations to these and other quotations.

OPPOSITION TO THE LEGISTLATION

The positions taken by opponents to the bill did not reflect any single philosophical or ideological framework and, in fact, many of those who opposed the bill tended to focus on relatively narrow, legalistic problems with the law, or on its presumed fiscal impact, rather than on its philosophical bases.[33] Don Herron, the Pierce County Prosecutor, prepared the most extensive and potentially influential written statement in opposition to the law. His fundamental argument was stated this way:[34]

> We can accomplish the same result as that desired by the proponents of this act, as far as processing felony juvenile offenders is concerned, by merely redefining juvenile to mean any individual who is under the chronological age of 16 years.

Changing the age limit for adult court, according the Herron, would be far less expensive than the proposed legislation. His other main points dealt with legalistic issues, or with the wording of specific provisions, rather than with the broad philosophical positions that served as the underpinning for HB 371. Although Herron specifically objected to certain portions of the law on the grounds that is unnecessarily restricted prosecutorial or probationary discretion or that it "emasculates the rehabilitative purpose of the juvenile court," he did not provide any philosophical justification for discretionary decision-making or for the rehabilitative goals of the court. Rather, the fiscal impact was his primary objection.

A few of the amendments introduced in the Senate might have indicated an orientation toward preservation of the rehabilitative purposes of the court in that they called for a return to discretionary sentencing and provided for direct sentencing to noninstitutional settings. The latter amendment (which was defeated) read as follows:

> . . . the juvenile court may designate the facility in which a youth is to serve a sentence of confinement . . . when such facility is not an institution. The court may consider the medical,

> educational, employment, personal, social, psychological, and family needs of the child in determining a youth's placement. . .

On the other hand, amendments of this type could simply be a reflection of the desire to maintain the status quo. Another amendment would have shifted the legislation explicitly toward a more severe or more harsh position in that it called for mandatory (rather than presumptive) commitment to the state institution.

The responses to these amendments and to Herron's objections about specific provisions will be examined in more detail later in this report when the relevant provisions are being discussed. In general, however, the supporters of the law argued that (1) the legislation does not abandon the rehabilitative focus of the court but is intended to rehabilitate youths by holding them accountable for their offenses in the least stigmatizing manner consistent with public safety; (2) the shift to presumptive (rather than discretionary) decision making is to hold the system accountable for what it does to juveniles; (3) the coercion of children into treatment programs should be rejected, not treatment, per se; and (4) presumptive sentencing is preferred to mandatory sentencing because, when penalties are completely inflexible, persons at other stages in the process simply circumvent the law if needed to prevent an injustice from occurring.[35]

The subject will be discussed again later in this report, but it is important to note that--in general--the debate regarding Washington's legislation did not revolve around issues of rehabilitation vs. punishment and the law was not formulated out of a deterrence or incapacitation doctrine.

CHAPTER 4. APPLICATION OF "JUSTICE" PRINCIPLES

THE DIVERSION PROVISIONS

The diversion system established by the law is designed to replace the informal adjustment and informal supervision programs that had characterized the traditional juvenile courts in the state. Patterned after the Seattle Community Accountability Boards (CAB) the purposes of the program are to hold juveniles accountable for their offenses through a community-based, nonstigmatizing process which requires the youth to pay restitution (when appropriate) and to do community service work in his or her neighborhood as a way of compensating for the offense.[36]

Cases are referred to the diversion unit after they have been screened for legal sufficiency by the prosecutor (or, by probation, if this function has been waived to probation). No direct referrals from law enforcement are made to the diversion program although law enforcement officers are not restricted in their ability to informally divert or adjust cases if they choose to do so. Discretion of prosecutors regarding which cases are to be diverted and which are to be filed is extremely restricted as the law mandates diversion for some offenses (all misdemeanors unless the youth has a substantial prior record); mandates filing for other offenses (all serious felonies and some Class C felonies); and permits prosecutorial discretion on the few remaining categories.

Consistent with the overall philosophy of the Washington approach to juvenile offenders, the diversion programs are to hold youths accountable for their offenses. Up to 150 hours of community service can be required as can monetary restitution. The latter cannot exceed the victim loss and is limited to an amount the youth reasonably can be expected to pay in six months (for misdemeanors) or one year (for felonies). However, the limits can be extended

for six months to finish the restitution payments. The diversion units are permitted to release, without sanction, first offenders whose acts inflicted no physical harm and produced losses of $50 or less for which there is no outstanding loss or damage. Juveniles can be required to attend one "informational, counseling, or educational" interview intended to acquaint the youth with the availability of social and psychological services. Youths who fail to complete the community service or restitution requirements of the diversion plan can be terminated from the program upon the finding (at a court hearing) that the juvenile had "substantially violated" the terms of the agreement. Upon termination from the program, a petition can be filed on the original offense.

The diversion process under the Washington law is "voluntary" in that the youths are permitted at any time to request the formal court process rather than diversion. The right to an attorney ensues "prior to the initial interview for purposes of advising the juvenile as to whether he or she desires to participate in the diversion process or to appear in the juvenile court."[37] Several signed acknowledgements are required to insure that juveniles have been properly advised of their rights throughout the diversion process.[38] The importance of protecting the rights of the juvenile is magnified by the fact that offenses for which the youth is diverted are included as part of the criminal history for any subsequent offenses. Written reasons must be given by the diversion unit if they refuse to accept an eligible case and a court hearing is required if the program wishes to terminate a youth for noncompliance.

Several different organizational models are permitted under the law, but the one that is most strongly encouraged is similar to the Seattle CAB program in which community volunteers actually meet with the youth, discuss the

offense, negotiate the amount and type of restitution and, in some instances, meet again with the youth when he or she has completed the restitution or community service. Because the Seattle CABs were entirely separate from the court (physically, financially, and administratively), this approach was believed to minimize stigma. Many youths referred to CAB had no contact or only minimal contact with probation officers or officials of the court.[39]

Discussion

There are two particulary remarkable aspects about the Washington approach to diversion. The first is that the Washington law requires an offer of diversion to a significant portion of the juvenile offenders, including some youths who might have as many as three (albeit relatively minor) offenses; and, the second is that the entire diversion model is based on principles of accountability rather than treatment or services. According to Carol Araway, Director of the Seattle Community Accountability Board program and an active participant in urging the adoption of this model within the legislation, the purposes of diversion are, first, to keep juveniles out of institutions and, second, to handle the youngsters at the community level, rather than through the courts. "The community accountability approach," she said, "is an accountability model of diversion, not a social service model."

More than any other part of the legislation, the diversion provisions reflect the ideas that many juvenile offenders do not belong in juvenile court and that many dispositions were--in the past--disproportionate to the offense. The concept of community, rather than court or institutional responsibility for delinquency prevention was one of the cornerstones of Bob Naon's initial background paper, but this focus of the law seems to have been overshadowed by the more dramatic and unusual departures from the parens patriae doctrine, such as presumptive sentencing and removal of court jurisdiction over status offenders.

The actual offenses for which juveniles can be diverted correspond closely to the recommendations of the LJA/ABA Joint Commission.[40] The initial legislation was left rather muddled in terms of exactly which offenses were to be diverted and which were to be filed due to confusions introduced by the Senate amendments in 1977. The 1979 amendments, however, expanded the categories of required diversion and shifted some of the offenses that were in the required filing category into an optional category. The optional category was created out of practical rather than philosophical considerations. Persons interviewed about the legislative process said that it was easy to reach agreement on which offenses were serious enough to merit filing and on those which clearly were so trivial that diversion would be best. However, this left some middle categories for which no agreement could be achieved and these were left to the discretion of the prosecutor.

Other problems that had to be solved in developing the diversion program were the dispostions that would be permitted for the diversion units and whether the offense would count as a prior offense in the criminal history if the youth reoffended. These issues are interrelated in the sense that decisions about them serve to define the overall purposes and goals of the diversion program.

The first version of HB 371 indicated that accountability probably was the sole initial purpose of the diversion program: No dispositions other than restitutuion or community service could be issued and the offense did not count in any subsequent criminal history. (A violation of the diversion agreement, however, would count in subsequent criminal history.) The change which permits the offense to be counted in any subsequent criminal history was strongly resisted by some supporters of the diversion concept. If reflects the interests of others in specific deterrence and in the idea of dealing

progressively with juvenile offenders through the gradual imposition of more severe sanctions as the number of offenses increases.

The Senate succeeded in amending the House version of the law so that "an informational, counseling, or education" interview could be required as part of the disposition for diverted offenders. This amendment was opposed by the coalition supporting the law but it was interpreted to mean that only one interview of this type could be required.[41] Thus, the amendment did not open the door to unlimited, coerced treatment as was initially feared by the framers of the law.

The apparent anti-treatment orientation of the diversion program supporters was a direct outgrowth of the philosophy underlying the Seattle Community Accountability Board program and generally reflects the philosophical premise that coerced treatment is, in fact, punishment as well as the notion that required or coerced treatment is ineffective or even deleterious in terms of future recidivism of the youth.

Although the diversion concept, as operationalized in the law, has a solid philosophical justification consistent with that which underlies the other parts of the legislation, the arguments for diversion were not limited solely to philosophical issues. Considerable evidence was available and used throughout the process to show that the Seattle program--which began with LEAA funding and was named an exemplary LEAA project--was more effective than other approaches in terms of recidivism rates and that it was less expensive than the formal court process.[42]

Was the diversion program meant to be "rehabilitative" or was it intended as "punishment"? One of the main opponents of the law, Don Herron, criticized the diversion approach--as compared with the old system of informal

supervision--because it was inconsistent with the rehabilitative principles of the juvenile court. In his letter opposing the bill, he said:[43]

> Section 58 (2) limits diversion to restitution and community service. The plain language of this section emasculates the rehabilitation model of the juvenile court. Currently, the juvenile court handles many individuals on unofficial probation (analogous to diversion) by imposing other conditions on the juvenile such as curfew, nonassociation with certain individuals, regular school attendance, and the like. This section would defeat the rehabilitative purpose of the juvenile court with respect to juveniles diverted from the court. It should be expanded or eliminated.

Senator Frank Woody's response to Herron shows the remarkable differences in perspective regarding what is meant by the word "rehabilitation":[44]

> Restitution and community service were selected as possible terms of a diversion agreement because they are much more directly related to the offense a juvenile has committed and because each requires the juvenile to do something as a result of the crime he or she has committed. It is my personal view that requiring a child who has broken a picture window to replace that picture window is a much better response to that behavior than setting and "in-hour" or requiring the juvenile to refrain from associating with certain individuals, or requiring him or her to attend school regularly. <u>It is not the purpose of this section to eliminate the rehabilitative purposes of the juvenile court but to enhance the rehabilitative abilities of the juvenile court</u>. [Emphasis in the original.]

The fundamental fallacy in the age-old debate regarding "rehabilitation" vs. "punishment" could not be highlighted any better: What is "rehabilitation" to one person is "punishment" to another.

Although several changes were made in the initial "pure" diversion model envisioned by some members of the coalition, the model that emerged in the legislation generally reflects the princples inherent throughout the law: Uniform, proportional, and presumptive decisions or sanctions; accountability of juveniles and of the system; limitation on court jurisdiction; and protection of the rights of juveniles throughout the process.

THE FORMAL COURT PROCESS

The legislation calls for a formalized court process similar to that found in the adult system. The major changes can be grouped into three categories: (1) formalization of the decision making procedures, including a shift of responsibility from probation to prosecutors, (2) provision of due process rights and other procedural guarantees to juveniles, and (3) mechanisms for insuring accountability and uniformity in decision making.

Under the new law, referrals from law enforcement officers are made directly to the prosecutor who screens cases for legal sufficiency. This function can be waived by the prosecutor to probation for misdemeanors, gross misdemeanors, and some Class C felonies.[45] When this is done, however, probation is required to screen cases exclusively on the basis of legal sufficiency rather than on criteria reflecting the interests or needs of the youth as was permitted under the old law. Prosecutors are required to file certain cases, required to divert others, and are permitted discretion in decisions regarding a relatively small group of cases. Prosecutors are permitted by the law to neither file nor divert cases, but if this is done, the prosecutor is required to explain the reasons for not filing or diverting and must keep a record of the case for a year. Other changes also reflect the increased formalization of procedures. For example, the court now must provide a mechanism for youth to formally plead to the charges, and for the prosecutor to represent the state in all contested felony cases.

Juveniles were provided with procedural rights required by <u>Kent</u>, <u>Gault</u>, <u>Winship</u>, and other cases through Superior Court rules, but House Bill 371 codified these rights and added some others that make the protection of juveniles virtually identical to that provided adults.

Rights guaranteed to diverted youths also are far more substantial than in the past. Youths who are diverted have a right to counsel prior to the initial decision regarding whether to choose diversion or to choose the formal process. In addition, diverted youth have a right to counsel at all significant points in the diversion process including counsel at any proceedings called for the possible purpose of terminating the youth from the diversion program.

Detention procedures are more closely circumscribed under the new legislation and the criteria reflect the premise that the least restrictive means should be employed to ensure appearance at court proceedings. Juveniles are explicitly granted the right to bail under the Washington legislation— a right granted in only 19 other states.[46]

The third area in which the new legislation dramatically changed procedures in juvenile court is in the requirements for greater accountability by all actors in the system. Prosecutors, for example, are required to give written reasons for decisions not to file nor divert legally sufficient cases; diversion units must give written reasons (and a hearing must be held) in order to terminate a youth; written reasons must be given for all sentences that are outside the standard range; and decisions stemming from decline hearings must be justified in writing. Furthermore, the court is required to take a verbatim transcript of all hearings.

Discussion

Although some of these provisions are codifications of prior court practices, others were not required under the former court rules and, instead, demonstrate the overall thrust of the Washington legislation in terms of its focus on accountability of the system, protection of individual rights, and an emphasis on legalistic rather than social criteria in all decisions pertinent

to the disposition of juvenile offenses. "The legislative purpose," according to Jay Reich, one of the individuals from the King County prosecutor's office who was extremely active in the development and passage of the law "is presumably to assure more visible, consistent dispositions of cases on a state wide basis."[46] The expanded role of the prosecutor, according to Reich, is intended to change the criteria in decision making:[48]

> Under the old law . . the threshold questions involved the desirability of court intervention given the child's social needs. Under the new code, this screening function will be based on legal sufficiency and prosecutorial merit.

Another purpose of the expanded prosecutorial function, as explained by Senator Frank Woody, is a direct outgrowth of the requirement that the youth be provided with legal counsel:[49]

> It is essential that the state be represented by legal counsel if the child is to be represented by legal counsel. Many cases throughout the state have been lost for lack of adequate legal representation by the state.

The development of the provision calling for open hearings is especially interesting. The original 1913 law provided that the court had the power to exclude the general public and the youth had the right to request a private delinquency hearing. It was not until 1961 that the law was amended to state that the hearings shall be closed to the general public, admitting only persons with a direct interest in the case or in the work of the court.[50] The initial drafts of HB 371 did not call for open hearings. This provision was added by the Senate Judiciary Committee on the grounds that it was more consistent with the philosophy underlying the entire legislation than were closed hearings. The coalition supporting HB 371 generally agreed with this position and subsequently defended open hearings against amendments that would have reverted to closed, private proceedings for juveniles. The open hearings provision was supported on the grounds that it would make the court more

responsive and accountable to the public and would make the juvenile more accountable to the victim and the community. The position paper used by HB 371 supporters during the Senate debate contained the following language:[51]

> . . . the juvenile court system should be held accountable to the public. Allowing victims and other interested citizens to observe the court process will make the court more responsive to the public's concern for juvenile crime. It will also hold the juvenile more accountable to the victim and the community. This position is consistent with the philosophy that while petty offenders who are diverted should be protected from publicity and public exposure, the public has a greater interest in knowing about more serious offenders and the punishment they receive.

Opposition to the formalization of the juvenile court was based mainly on concern about the financial impact on local government budgets. The increase in the responsibilities of the prosecutor and possibly of the public defender were expected to increase those budgets substantially in some areas and it was anticipated that the formalization of procedures would increase the number of hearings. There was some opposition to other provisions—such as open hearings and the limitations on prosecutorial discretion in filing and diverting decisions--but in general these parts of the law were not as controversial as were those governing sentencing and dispositions.

Jenny Van Rovernhorst described the development of the rights sections and the issues that arose in the following way:[52]

> Pressure against giving juveniles those rights [those granted to adults] and others has been exerted on the grounds that the purpose of a juvenile court is the exact opposite of the purpose of a prosecution in an adult criminal court. The change in emphasis of the juvenile court that is made by House Bill 371 virtually nixes this argument . . . For that reason, and also in response from those who believed that 'the Bill of Rights is not for adults along' most of the rights afforded adults accused of crimes have been granted juveniles.

SENTENCING AND DISPOSITIONS

Perhaps the most unique and intriguing change made in the Washington law is the shift from indeterminate sentencing based on the needs of the youth to a presumptive sentencing scheme in which punishment given to juvenile offenders is to be proportionate to the seriousness of the offense, prior criminal history, and the age of the youth. Presumptive sentencing means that there is an "expected" or "normal" sentence--usually with a small amount of deviation permitted--or a range of sanctions, such as is found in the Washington law. Exceptions, however, can be made in unusual circumstances. In contrast, mandatory sentencing refers to a sentence required by the law for which there are no exceptions.

The presumptive sentencing scheme actually is based on two somewhat parallel systems--one contained within the law itself and the other a point system developed by the Division of Juvenile Rehabilitation (DJR) which is a division of the state Department of Social and Health Services. The law designates two categories of adjudicated offenders. The serious offender category includes youths 15 years of age or older who have committed a Class A felony or who have committed a Class B+ felony that inflicted grievous bodily harm or in which a weapon was used. The other category explicitly created within the law is called "minor or first offender" and consists of (1) youths 16 years of age or younger who have committed three or fewer total offenses (current and priors) with no felonies, (2) youths who have committed a Class C felony and have no more than one prior non-felonious offense, and (3) juveniles who have committed a Class B offense and have no priors. The legislation provides that serious offenders must be committed to the state Department of Social and Health Services whereas minor/first offenders cannot be committed nor can they be confined in local detention centers or placed in

group homes. A third group of offenders is created by default. These youngsters, called "middle offenders," may either be committed or sentenced to a period of community supervision (i.e., probation). However, commitment requires that the youth have accumulated 110 or more points, otherwise, the presumptive sentence is community supervision.

All of the sentencing requirements are presumptive rather than mandatory because the judge has the right to sentence outside of the standard range (either higher or lower) if the presumptive sentence itself would constitute a "manifest injustice" either to the youth or to the public. Written reasons must be specified when manifest injustice is declared and these sentences can be appealed through a separate, expedited appeals process.[53]

The legislation provides that DSHS is to develop sentencing standards for all offenses but the law itself closely circumscribes the sentences that can be imposed. Furthermore, the standards are to be presented to the legislature for review in each odd-numbered year.[54] Among the more important restrictions in the law are the following:

1. Serious offenders are to be committed to DSHS for at least 30 days;

2. Middle offenders can be confined in a local facility for up to 30 days;

3. Minor/first offenders cannot be confined locally nor can they be committed;

4. The duration of community supervision (probation) cannot exceed one year, fines cannot be greater than $100, and the number of hours of community service that can be ordered is limited to 150;

5. The conditions of community supervision cannot include confinement of any type, including placement in a group home;

6. The range of confinement in the sentencing standards is constrained as follows:

   (a) Where the maximum is 90 days or less, the minimum may be not less than 50 percent of the maximum;

   (b) Where the maximum is 91 to 365 days, the minimum may be not less than 75 percent of the maximum;

   (c) Where the maximum is more than one year, the minimum may be no less than 80 percent of the maximum;

7. No sentence can be greater than that given to an adult for the same offense.

The sentencing standards are based on a point system. The sentence depends on the number of points the youth has accumulated, as illustrated in Table 1 which shows the disposition standards that went into effect April 29, 1979. The points serve several different purposes. First, they designate the duration and the range of punishment for youths who are committed to DSHS. Second, they indicate the number of points needed to commit a youth (110 points). Because most serious offenders have more than 110 points, this applies--in practice--only to the middle offenders as some of them will have more than 110 points and some will have fewer. Third, the standards show the recommended amount of punishment for youths who are not committed but instead are placed on community supervision.

The points are dependent upon the severity of the immediate offense, priors, and age of the youth.[55] The immediate offense is the most important criterion and the standards give each offense a specific number of points. The points for the immediate offense then are increased by some proportion of their value in accordance with the "increase factor." The size of the increase factor depends on the number of prior offenses and the recency of the priors. For example, an offense might carry a point value of 50 for a youth of a particular age and the increase factor, for all prior adjudicated

TABLE 1. POINTS AND SENTENCES UNDER THE WASHINGTON GUIDELINES

MD INST. 565.4A
Rev. July 1, 1981

JUVENILE COURT SENTENCING REPORT
SCHEDULE D-1
CURRENT OFFENSE POINTS SENTENCING SCHEDULE

If the CURRENT OFFENSE(S) occurred prior to July 1, 1981, use the schedule below.

Points	Community Service Hours Supervision and Fine	Detention Days	Institution Time
1-9	5-25 & max. 3 mo. & max. $25		
10-19	20-35 & max. 3 mo. & max. $25		
20-29	30-45 & max. 6 mo. & max. $50		
30-39	40-65 & max. 6 mo. & max. $50	and 1-2	
40-49	50-75 & max. 6 mo. & max. $75	and 3-6	
50-59	60-90 & max. 9 mo. & max. $75	and 5-10	
60-69	70-100 & max. 9 mo. & max. $75	and 8-15	
70-79	80-110 & max. 1 yr. & max. $100	and 10-20	
80-89	90-130 & max. 1 yr. & max. $100	and 15-25	
90-109	100-150 & max. 1 yr. & max. $100	and 20-30	
110-129			8-12 weeks
130-149			13-16 weeks
150-199			21-28 weeks
200-299			52-65 weeks
300 or over			103-129 weeks

offenses of that youth, migh be .7. The resulting number of points would be 50 increased by 70 percent or: 50 x .70 = 35 + 50 = 85.

Sentencing under the law and the standards is either to the standard range (for youths who are committed) or it is determinate (i.e., fixed) for youths who are not committed. When the sentence is one of commitment for a particular range (such as 52-65 weeks), DSHS has the responsibility of setting the actual discharge date for the youth (which, of course, must be within the range). The date must be set, according to the law, by the time the youth has served 60 percent of the term and the actual release must be within four days of the date set.

Parole of up to 18 months can be required by DSHS after the person serves the designated term. The requirements of parole can include counseling, educational programs and the like as can the requirements of community supervision. Violations of parole or probation, however, are handled quite differntly than in the past. A juvenile offender now is granted all the due process rights that an adult has when charged with violating probation or parole, including a hearing. Violations of parole or probation can result in more intensive supervision or upt to 30 days of continuous or intermittent confinement. Offenses committed while on probation or parole are not handled as violations under the legislation but are treated as new offenses.

Discussion

This part of the legislation was strongly influenced by the philosophical positions that had developed among persons in the King County prosecutor's office--positions that were articulated in the background paper prepared by Chris Bayley and other members of his staff. Although in many ways, the approach is similar to that found in the IJA/ABA standards, this similarity is attributable to the fact that both represent an application of the principles

of the justice philosophy to the juvenile system. (Persons involved in developing the offender sections of the Washington law were not aware of the relevant volumes prepared by the LJA/ABA Joint Commission until after the law was passed.)

The legislation reflects the basic premises of the justice model in several ways. Most importantly, perhaps, the amount of punishment given by the court is to be proportionate to the harm inflicted by the crime and to the individual's degree of culpability for the offense. No other factors are to be considered in establishing the severity of the sentence. The Washington law lists a number of mitigating and aggravating circumstances which must be used to sentence outside the range (under the manifest injustice provision) but all of these factors are related either to the amount of harm inflicted or the degree of responsibility of the individual for it. As is true for most applications of the justice model, the immediate offense carries more weight in determining the sentence than do the other factors. Prior offenses are included under the rationale that persons who have been repeatedly warned and punished for past offenses are more culpable for a subsequent offense than are persons who have never before been adequately warned or punished. Consistent with this principle, the proposed DSHS rules state that only the offenses for which the adjudication date is prior to the commission date of the immediate offense are to be counted in developing the criminal history. The age of the youth also is included on the grounds that older juveniles are more responsible and, therefore, more culpable than are younger ones.

The sentencing scheme is quasi-determinate in that judges sentence to the standard range if they are committing the youth to DSHS but sentence to a specific amount of community supervision or local confinement. The sentencing approach also is generally consistent with that advocated by proponents of the

justice model. The indeterminate sentence is based on the rationale that the treatment (or punishment) should continue until the individual has been rehabilitated (or deterred). Thus, at the time of sentencing, there is no way to know how long the sentence should continue as that decision requires continually updated information regarding whether the person has been rehabilitated (or deterred). In contrast, the basic premise of the justice model is that the punishment must not exceed that which is deserved regardless of how much might be needed to rehabilitate the individual. Therefore, all of the information necessary for determining the sentence is known at the time of sentencing.

Another important aspect of the Washington law is that it calls for presumptive sentencing (within narrow ranges) rather than mandatory sentencing or discretionary (judicial) sentencing.

During the Senate debate over the Washington law, one of the amendments introduced would have changed the proposed law to require mandatory commitment for serious offenders. In opposing this change, the supporters of the bill argued as follows:[56]

> This amendment precludes <u>any</u> exception to the rule that serious offenders will be committed. Experience has shown (e.g., New York drug laws) that where penalties are completely inflexible and unavoidable, participants at other stages of the criminal process (e.g., police, prosecutors) are forced to circumvent the law when they believe an injustice would occur. The exceptions to policy should be made in court before the public and subject to review. The bill provides a "safety valve" and not a "loophole."

Other goals of the legislation also are reflected in the sentencing and disposition provisions of the law. For example, the emphasis on holding juveniles accountable is accentuated by the fact that judges are instructed to include restitution as part of the dispositional order, up to the amount of victim loss, unless the youth could not reasonably be expected to pay. This also underscores the increased interest in making the system more responsive

to victims. The concern with victims is reflected as well in the list of aggravating circumstances which include "the victim or victims were particularly vulnerable"; and "the offense was committed in an especially heinous, cruel, or depraved manner."[57] Mitigating factors also show more attention to the victim. One mitigating factor is that "prior to his or her detection, the respondent compensated or made a good faith attempt to compensate the victim for the injury or loss sustained."

Interest in holding the system accountable is evident throughout these provisions not only because of the limits on discretion, but also because of the requirements for written reasons whenever sentences are outside the range and because of the expedited appeals process. Furthermore, judges are required to issue written reasons for detaining middle offenders in local secure facilities for 30 days or less even if the recommended guidelines permit this amount of detention.

Although the sentencing provisions generally follow the overall goals and purposes of the law, there were several notable compromises made to insure sufficient votes for passage in the Senate and to defuse potential opposition from DSHS that might have produced a veto by the Governor. Parole, for example, generally is incompatible with a justice philosophy since it is "tacked onto" the sentence that is "deserved" by the offender. The provisions permitting parole and permitting treatment-oriented requirements during parole were part of an effort made to help insure the lack of active opposition from DSHS.[58] Efforts were made by the formulators of the legislation to limit the severity of the penalties for violating parole and probation. They also sought to limit the types of violations that could be penalized to failure to pay restitution and/or failure to perform community service. These efforts were not entirely successful, but the requirements for substantiating that a

probation or parole violation has occurred are more stringent than in the past and the penalties are lower. Another significant issue involved the degree of latitude that would be given to the agency developing the sentencing standards. One of the individuals who was involved throughout the development of the legislation and the standards themselves, explained that it was absolutely necessary to indicate, within the law itself, where the line would be drawn requiring commitment (i.e., serious offenders) and where the line would be drawn prohibiting commitment or confinement (i.e., minor/first offenders) because neither the "crime-fighters" on the right nor the liberals would have supported the law without knowing where those lines were to be drawn. The middle offender category was created out of an inability to reach agreement on whether these youths should or should not be committed.

As with other parts of the legislation, there were changes made in the initial philosophical model and compromises were made to insure passage of the legislation. Still, it is obvious that the intent of these sections of the law is to bring about a more uniform system of justice, one based on principles of equity, proportionality, and accountability.

STATUS OFFENDERS

The basic thrust of the status offender provisions in the Washington law is to divest the juvenile court of all jurisdiction over misbahavior that is not a violation of the state criminal code. The formal court process, with its petitions, hearings, adjudication, probation, placement in group homes, and so forth no longer is to be used on juveniles who are in conflict with their families, have run away from home, are "incorrigible," or who fit into any of the other categories of noncriminal misbehavior previously designated as within the jurisdiction of the court. The initial legislation, House Bill

371, did not totally remove court jurisdiction, however, as it contained a clause of "last resort" which permitted court jurisdiction and commitment of up to 30 days for treatment purposes for any child:[59]

> . . . who is in conflict with his or her parents, or guardian;
> . . . who refuses to remain in any nonsecure residential placement ordered by the court;
> . . . whose conduct evidences a substantial likelihood of degenerating into serious delinquent behavior if not corrected; and
> . . . who is in need of custodial treatment in a diagnostic and treatment facility.

The common interpretation of these provisions was that all four conditions had to be met before the youth could be subjected to court jurisdiction or committed. This clause seldom was used--perhaps never--and it was repealed by the 1979 legislature which also amended and rewrote many of the status offender provisions of the law. The amendments, collectively called Senate Bill 2768, substantially changed the wording and some of the procedures but, in general, resulted in a law which is more consistent with the principles of a justice philosophy.

The legislation provides that services are to be made available by the state Department of Social and Health Services to youths who are in conflict with their families and to those who have run away from home. Crisis intervention services are to be provided for the purpose of keeping the family unit intact and avoiding unnecessary out of home placements. In addition to crisis intervention services, the law directs DSHS to contract for eight regional residential facilities, called crisis residential centers, and 32 local crisis residential centers (or "specialized" foster homes). These are to be semi-secure, according to Senate Bill 2768, but must meet the federal definition for non-secure facilities.[60] Semi-secure refers to "staff secure" which, in turn, means that three or four adults are required for every eight

children in the regional centers. The local centers are to be specialized foster homes with special resources and/or special training for handling the difficult cases. Runaways are not supposed to stay in the residential facilities for more than 72 hours.

The role of law enforcement in dealing with runaways and children in conflict with their families is particularly intriguing. House Bill 371 contained provisions that were virtually identical to the IJA/ABA standards regarding law enforcement custody and disposition procedures. First, law enforcement officers--according to House Bill 371--were permitted to take juveniles into custody if the youth was a reported runaway or if the officer reasonably believed that the youth was in circumstances which constituted a substantial and immediate danger to the juvenile's physical safety. Custody, in this context, was a type of "limited" custody in that it was not an arrest and could last no more than 12 hours. The officer was expected to make every reasonable effort to resolve the situation without recourse to the DSHS services but, if all else failed, the officer could take the youth to a crisis residential facility. The officer could not take the youth to a detention facility.

These provisions were substantially reworded in Senate Bill 2768 in an effort to overcome apparent misinterpretations of the law by law enforcement officers. It was widely believed that some law enforcement agencies had interpreted the law to mean that they no longer had any authority to deal with runaways or with children in conflict with their families.[61] Changes in the law were made so that, if a youth is a reported runaway or is in "serious danger," the law enforcement officer is required to take custody of the youth and either resolve the issue or take the youth to a crisis residential facility provided by DSHS. The length of time the youth can be held in

custody is six hours rather than 12, and the current law places less emphasis on the "social work" aspects of the law enforcement role.

Secure detention is still permitted under the Washington law, but the conditions are highly restrictive. A youth who is not charged with a criminal offense can be detained for a maximum of 24 hours if:[62]

> . . . the person in charge of the crisis residential center finds that the child is severely, emotionally, or behaviorally disturbed to the point that the child is suicidal, seriously assaultive, or seriously destructive toward others and the center is unable to provide appropriate supervision and structure. . .
>
> . . . Any child who takes unauthorized leave from the center, if the person in charge of the center cannot provide supervision and structure adequate to ensure that the child will not again take unauthorized leave, may be taken to a secure detention facility.

These provisions clearly imply that law enforcement officers cannot place youths in detention; rather, the authority for determining whether the child meets the conditions specified above belongs to the crisis residential center staff. After a child has been placed in detention for 24 hours, he or she must be released, returned home, or taken to a crisis residential center.

The legislation creates a new jurisdictional authority for the court which permits a type of "no fault" procedure to be used in settling conflicts between a child and his or her parents regarding where the child will live. The alternative residential placement (ARP) procedure can be initiated by either the child or the parent filing a petition with the court requesting approval of a particular nonsecure residential placement for the youth. Alternatively, the procedure can be initiated by the Department of Social and Health Services if there is no agreement as to where the child shall live, there is no suitable place for the youth to live, 72 hours have elapsed and neither the child nor parent has filed such a petition, and DSHS finds itself unable to resolve the conflict. Youths must be placed in nonsecure foster homes, and there is no penalty if the youth runs away from the foster home.

Discussion

It was mentioned previously that since 1967 there have been eight major task force reports on standards for juvenile justice and/or model legislation. Five of these--including the IJA/ABA standards--have advocated removal of court jurisdiction over status offenders; one was silent on the issue; and only two have proposed to retain the traditional system.[63] The fact that only two states--Washington and Maine--have removed status offenders from court jurisdiction attests to the complexity, controversy, and difficulty of the change. This certainly was true in the state of Washington. As explained previously in this report, efforts to deinstitutionalize and divert status offenders from the court had repeatedly been thwarted by person favoring the retention of full court authority and services for these youths. The change in 1976 that was to remove all status offenders from state institutions was only partially successful as a "last resort" clause (not unlike that found in House Bill 371) was included as a compromise with persons who believed that treatment should be required for some of these youths.

In the state of Washington, there was substantial consensus among the juvenile justice and care providers that something needed to be changed but there clearly was no consensus on what, exactly, should be done. The final report from the Providence Heights conference on status offenders held in December, 1976, shows that most persons seemed to want to narrow the court jurisdiction, remove vague and ill-defined terms, provide for better protection of individual rights, but also to permit "mandatory" services in those instances when it was in the best interests of the youth and family to require such services.[64] On the other hand, the proponents of divestiture were present at that conference and clearly presented their position. The ACLU, for example, supported the position that:[65]

> The state should not intervene in a person's life, whether on behalf of another person or of society of large, unless (1) such intervention will not infringe on that person's individual rights, and (2) it can be proved that such intervention will accomplish some good. [Emphasis in the original.]

In spite of the lack of consensus among the juvenile justice and care agencies, there was enough support in the legislature to pass the law and, in the amending process, to repeal the last vestiges of parens patriae as that doctrine was exemplified in relation to noncriminal behaviors.

As was true for the offender provisions in the Washington law, the status offender sections also reflect the basic premises of a justice philosophy. Three of these principles are especially relevant to an understanding of the Washington law. First, detention and/or incarceration of youths whose acts are not violations of the criminal code is said to be an unwarranted deprivation of liberty by those who advocate the justice philosophy. This principle, however, generally is shared by persons who stop short of advocating removal of court jurisdiction and, instead, propose only to deinstitutionalize and/or divert status offenders from the juvenile court. For example, the 1974 Juvenile Justice Act does not require divestiture of jurisdiction, although the motivation for the law has been described as the "moral repugnance of the incarcertaion of young persons who have not committed crimes."[66]

Those who support divestiture of court jurisdiction also generally contend that the court has no right to intervene in the life of an individual solely on the grounds that the person--according to the court--will benefit from the intervention. The emphasis of the court--according to the proponents of the justice model--should be on the act rather than on the total needs of the child. Inherent in this position is a complete rejection of the parens patriae philosophy which implies that the court's interest is in the total

needs of the child rather than in the particulars of the act.

A third theme sometimes found in the philosophical justification for divestiture and one of the most compelling ones in the state of Washington focuses on the court's authority to remove children from their homes because of chronic status offender behavior or delinquent behavior. The traditional rationale for such removal is that these behaviors are evidence of a bad home or family environment and, therefore, the court is obligated to place the child in a more suitable home. The logic of the justice model, as applied to divestiture, incorporates the notion that coercive removal of a child from his or her home should be done only on the basis of acts by the parents--physical abuse, neglect, abandonment, for example--and not on the basis of misbehavior by the youth.

The rationale underlying the Washington legislation on status offenders clearly reflects these three philosophical principles: Avoidance of unwarranted deprivation of liberty; avoidance of coerced participation in "helpful" or "rehabilitative" programs; and avoidance of court actions that place misbehaving children in foster, group, or insitutional care. [The reader might wish to review relevant quotations shown previously in this report. See Figures 7 and 8 especially.]

But to understand Washington's law only in the context of philosophical principles of justice and individual rights is to greatly underestimate the centrality of the service provisions components of the law. The law is extremely explicit: It directs the Department of Social and Health Services to provide appropriate services to children in conflict with their families and to runaways. The legislation goes into extraordinary detail regarding the kinds of services to be made available. It is interesting to note that the IJA/ABA standards contained a ringing dissenting statement from Justine Wise

Polier on the grounds that they underestimated the importance of social services. The statement said, in part:[67]

> Unfortunately, the proposed standards, like other statements supporting diversion from the courts, place primary emphasis on 'dejudicalization' of status offenders. This purpose is not matched by positive plans or requirements for creating alternative, accessible, and appropriate services . . . While I concur in the support for increased alternative services that can be used voluntarily, the premature ending of juvenile court jurisdiction before there is a growth of such services will only lead to losing sight of children and families most in need of services.

The emphasis in the Washington law on development of alternative social services makes one wonder if the framers of the legislation read Polier's statement and were determined to prove her wrong.

Removing status offenders from the jurisdiction of the court and providing them with appropriate services were not viewed solely as ends to be achieved in their own right but as means for reaching one of the stated goals of the law which was to maintain and nurture the family unit. By removing status offenders from the coercive power of the court, families would not be broken up against their wishes solely on the basis of noncriminal misbehavior under the rationale that the court could find a "better" home for the youth. The provision of appropriate services--on a voluntary basis--was expected to reduce the frequency with which the families requested out of home placement.

Thus, the status offender provisions reflect two dominant themes: noncoercion and service provision. The role of law enforcement agencies is best understood within the context of these themes. The approach taken in the IJA/ABA standards and in the original law--HB 371--seemed to assume that the role of law enforcement mainly needed to be limited so that youths whose behaviors were not violations of the criminal law would not be taken into custody, detained, and so on. One of the possible results of this was an "overapplication" of the basic principles so that law enforcement officers

were not taking custody of youths even in the limited conditions when it was permitted.[68] Thus, the amendments changed these requirements so that it now is mandatory for law enforcement to take custody of youths in certain highly prescribed situations--namely, reported runaways or youths who are in serious danger.

The rationale for this role for law enforcement comes not from the justice model, nor from any other philosophical approach, but rather from the practical problems involved in attempting to reconcile the two fundamental goals--removing status offenders from court jurisdiction and providing them with services. In the absence of court jurisdiction, law enforcement becomes the central linkage mechanism between status offenders and social service agencies.

Although there are many similarities between the Washington legislation and the LJA/ABA standards, there also are some marked differences. For example, the statement of purpose in the LJA/ABA volume clearly reflected a basic tenet of the justice approach:[69]

> A juvenile's acts of misbehavior, ungovernability, or unruliness which do not violate the criminal law should not constitute a ground for asserting juvenile court jurisdiction over the juvenile committing them.

In contrast, the statement of purpose in the Washington law refers to maintaining the family unit intact. Jenny Van Ravenhorst, staff to the Senate Judiciary Committee, explained that this statement of purpose was added as the last amendment offered by the Senate to House Bill 371 and was not, from her perspective at least, the major intent of the law. The intent, she said, was to remove status offenders from the jurisdiction of the court and to cease handling them as criminals.[70] Another marked difference between the standards and the law is that the former provides for emancipation of children under the

age of 18 whereas the Washington law does not. The emancipation parts of HB 371 were defeated in the Senate during the 1977 session. The third major difference between the standards and the legislation is in the priority to be given to juvenile preferences when petitions for alternative residential placements are before the court. The standards include instructions to the court such that the placement desired by the youth is to be approved unless the court finds that the placement would "imperil the youth" by failing to provide physical protection, shelter or nutrition or by exposing the youth to "unconscionable exploitation" and other similar criteria. House Bill 371 did not go to this length to insure that the youth's preference would be followed and the amendments make it even more clear that adults have the right to establish reasonable rules for their children and that this intent of the legislation is to be considered when the judge weighs the merits of the alternative residential placement that is being requested.

To conclude this section, it seems reasonable to say that the status offender provisions clearly reflect the principles of a justice model on the one hand, but combine this with marked emphasis on the notion that social services, of a voluntary nature, should be highly visible and highly accessible to families that cannot solve their own problems.

CONCLUSION

The Washington juvenile justice code may be one of the most significant events in the comparatively short history of juvenile courts. In contrast with changes that are being made in most other states, the legislation does not simply tinker with the procedures that can be used; it does not merely codify existing practices or case law; it does not seek to satisfy the forces demanding a harsher approach any more than it seeks to satisfy those who wish for more leniency in the juvenile court. Instead, the legislation represents a different approach—an approach based on a new (or revived) philosophy of justice in which the chief aims are to hold offenders accountable for their crimes, to hold the system accountable for what it does to juveniles, and to bring about a more uniform and equitable system of justice.

In pursuit of these goals, the legislation provides for sentencing that is determinate, presumptive, and proportionate to the seriousness of the offense, age of the offender, and prior criminal history. Decisions on whether cases should be filed or diverted also are based on the principles of proportionality in that the law requires the more serious cases be filed and the others diverted. Discretion at many of the critical points in the system is severely restricted by the establishment of specific criteria for decisions, the specification of the expected or presumptive decision, and requirements that deviations from the presumptive decision have to be justified in writing.

The fundamental principle underlying the dispositions for juvenile offenders is that they should be punished for what they have done, not for what they might do nor for who they happen to be. The punishment must be limited to that which is deserved, given the seriousness of the offense and the culpability of the individual for it. Persons who have committed no

offenses (such as status offenders) are not to be punished by the court. A basic assumption of the approach is that it is not a simple matter to distinguish between treatment and punishment and that certain actions such as deprivation of liberty--or required programs--are punishment even if done in the name of rehabilitation, treatment, and the best interests of the youth.

The justice philosophy, as applied in the Washington code, is easily misrepresented and distorted since it does not fit neatly into the traditional dimensions used to describe juvenile justice systems. Where, for example, does the Washington law fit on a continum which places rehabilitation on one end and punishment on the other? If one attempts to place the law somewhere on that continuum, the legislation appears to be a hodge-podge of conflicting provisions some of which are near the rehabilitation end of the continuum and others near the punishment end. The legislation also appears to be confusing if one attempts to analyze it in terms of leniency vs. harshness or left vs. right ideological orientation. The justice philosophy does not lie on these continua; it is not congruent with these dimensions; and it should not be interpreted in these terms.

Does the legislation reject the rehabilitation role of the juvenile court? Whereas the law clearly rejects rehabilitation in relation to the role it has traditionally played in determining the sentence given to the offender, the law does not completely reject rehabilitation as a behavioral objective for the juvenile justice system. Under the Washington law, offenders are to be held accountable for their behavior rather than "treated" for it and the sanction to be imposed upon them is to be that which is deserved given the seriousness of the offense, not the sanction needed to achieve rehabilitation. Many of those who formulated the legislation and/or supported it believe that

an accountability model emphasizing restitution, community service, and personal responsibility is more likely to rehabilitate juvenile offenders than is an approach based on required social or psychological programs. Rehabilitation, however, is <u>not</u> the goal of the system. Rather, it is a potentially positive effect of the accountability model.

Was the law intended to make the system more punitive? There is no evidence that it was meant to make the system, as a whole, more punitive or more lenient. The intent was to make the sanctions more punitive for some offenders, less punitive for other offenders, and more fair and equitable for everyone. In a similar vein, the law was not developed with deterrence as its major goal, but with the idea that a deterrent effect might be a positive by-product of the new legislation.

From a practical and empirical perspective, the process of change in the state of Washington was a long, hard-fought, arduous one. After many years of debate, discussion, and defeat of one legislative proposal after another, the 1977 legislature made the decisive breakthrough and the 1979 legislature refined and solidified the change. From a philosophical perspective, the law represents a return to a more classical system of justice in which the primary goals are uniformity, accountability, and equity. <u>Parens patriae</u> no longer is the guiding doctrine of the court. The very language of the law signifies the end of the era: The word "offender" replaces the word "delinquent"; "juvenile" replaces "child"; and the word "punishment" is found throughout.

FOOTNOTES

1. Before 1967 three states, Illinois, California, and New York, had undertaken changes in their juvenile codes but most states did not begin to revise or amend the codes until after 1967. The 1967 report was prepared by the President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Juvenile Delinquency and Youth Crime, 1967.

2. The standards, in addition to the 1967 Presidential report are: The Model Act for Family Courts; the International Association of Chiefs of Police Juvenile Justice Administration; the NCCD Board of Directors Policy Statement; the National Advisory Commission on Corrections; the National Advisory Commission on Courts; the Uniform Juvenile Court Act; the Institute of Judicial Administration and American Bar Association Joint Commission Standards for Noncriminal Misbehavior; and the National Task Force to Develop Standards and Goals for Juvenile Justice: Jurisdiction--Status Offenses. A comparison of all of these is contained in the last one which was issued by NIJJDP, U.S. Department of Justice, in 1977. Those that advocate retention of jurisdiction are the National Task Force report and the Uniform Juvenile Court Act.

The Supreme Court rulings of particular importance are Gault, 387 U.S. 1 (1967); Winship, 297 U.S. 358 (1970); McKeiver vs. Pennsylvania, 402 U.S. 528 (1971).

3. Shifts toward harsher sentences seem to have occurred in New York, Washington, D.C., Colorado and perhaps in other states as well. See Ted Rubin, "Retain the Juvenile Court?" in Crime and Delinquency, July, 1979. For current reviews of state statutes, see Jane L. King, "A Comparative Analysis of Juvenile Codes," Community Research Form, University of Illinois at Urbana-Champaign, July, 1980 (available from GPO); John L. Hutzler, "Juvenile

Court Jurisdiction over Children's Conduct; 1980 Statutes Analysis," National Center for Juvenile Justice, Pittsburgh, Pa.; John L. Hutzler and Thomas S. Vereb, "State Legislative Compliance with the JJDP Act: 1980 Statutes Analysis," National Center for Juvenile Justice, Pittsburgh, Pa.; Warren N. Paul and Helga S. Watt, "Deinstitutionalization of Status Offenders: A Compilation and Analysis of State Statutes," October, 1980; Legislative Technical Assistance in Juvenile Justice Project, Denver, Colorado; National Institute of Juvenile Justice and Delinquency Prevention, "A Comparative Analysis of Standards and State Practices, 1979-1980." (This is a ten volume set available from GPO.)

4. Title 13, Revised Code of Washington, 1977 edition. HB 371 and SB 2768 are codified in Title 13, RCW, 1978 and 1979 editions, respectively.

5. Proponents of the justice doctrine and their writings include: American Friends Service Committee, Struggle for Justice, New York: Hill and Wang, 1971; David Fogel, We Are the Living Proof: The Justice Model for Corrections, Second Edition, Cincinnati: Anderson Publishing Company, 1979; Norval Morris, The Future of Imprisonment, Chicago: University of Chicago Press, 1974; Twentieth Centruy Fund, Fair and Certain Punishment, New York: McGraw-Hill, 1976; Andrew Von Hirsch, Doing Justice: The Choice of Punishments, New York: Hill and Wang, 1976.

6. Their statement is in the introduction to Von Hirsch's Doing Justice. Although the length of punishment is to be commensurate with that which is deserved, the justice model, per se, has no dictums regarding the correct amount of punishment for a particular offense.

7. Von Hirsch points out that the sole reason for punishing anyone at all (and thereby adding to the sum total of human misery) has to be justified on the grounds that it is a reaffirmation of the moral order which is

necessary in order to achieve a general deterrence effect. His position, however, is that general deterrence (as he uses the word) is an appropriate justification only for the right to punish, not for the amount of punishment.

9. Quoted in many documents, this purpose apparently was repealed before any of the Title 13 versions currently available. See, for example, Representative May Kay Becker, "House Bill 371: An Introduction," in the Washington Bar Association report entitled, The New Juvenile Code, 1978.

10. Among the reviews of the history of juvenile courts and the parens patriae doctrine that are especially enlightening, see Sanford Fox, "Juvenile Justice Reform: An Historical Perspective," Stanford Law Review, June, 1970; Anthony Platt, The Childsavers: The Invention of Delinquency, University of Chicago Press, 1969; Lamar Empey, American Delinquency: Its Meaning and Construction, Dorsey Press, 1978.

11. Judge Mack's article orginally appeared in the Harvard Law Review in 1909. It is reprinted in Frederic L. Faust and Paul J. Brantingham, [Ed.] Juvenile Justice Philosophy, West Publishing Co., 1979. This reader contains a number of other excellent reprints including Platt's 1969 peice on the Child-Saving Movement, many of the key Supreme Court Decisions, Ted Rubin's article, "The Juvenile Court's Search for Identity and Responsibility," which originally appeared in Crime and Delinquency in 1977.

12. RCW 13.34.010, 1977 Ed.

13. RCW 13.04.056, 1977 Ed.

14. RCW 13.04.095, 1977 Ed.

15. RCW 13.04.095, 1977 Ed.

16. Reviews of changes in the Washington law can be found in Representative Becker's paper in the Washington Bar Association (WBA) report cited in note 9; in a memo prepared by the Department of Social and Health

Services called "An Overview of HB 371"; in Senator Pete Francis' congressional testimony which was printed in "Implementation of the Juvenile Justice and Delinquency Prevention Act of 1974," Hearings before the Subcommittee to Investigate Juvenile Delinquency of the Committee on the Judiciary, United States Senate, Ninety-Fifth Congress, September 27, 28, and October 25, 1977, U.S. Government Printing Office, 1978. In addition to these sources, the interview with William Hagens was especially helpful to us in tracing the history of the law.

17. RCW 13.06.010, 1977 Ed.

18. The "significant compromise" is described in Senator Francis' testimony.

19. Representative Becker's paper (see note 9) contains considerable detail about the legislative process as do several papers prepared by the Center for Law and Justice at the University of Washington. See, especially, Laura Kennedy "Legislative Intent," 1979.

20. The final report from the Providence Heights conference is a summary of points of view presented from the various workshops. The report itself is entitled, "Status Offenders and the Juvenile Justice System in Washington State," Denis J. Prager and Carol G. Watts, Batelle Memorial Institute, Seattle, Washington, 1977.

21. Bob Naon, "Responding to the Youthful Offender: An Overview and Critique of the Juvenile Justice and Correction System," Office of Program Research, House of Representatives, June 11, 1976.

22. Ibid.

23. Naon's indictments of the old system were used more extensively than was his rationale for the new approach.

24. This background paper was written by Chris Bayley, King County prosecutor, and other persons in his office including Marilyn Showalter and

Jay Reich--two persons who were instrumental in developing the sentencing parts of the juvenile code--Ron Clark, Janet Bridgeman (who may be the one who actually drafted the paper), Dave Boerner and perhaps others. The paper actually was written as a proposal for reform of the adult system based upon a theory of retribution on the one hand and general deterrence on the other.

25. The coalition included the following groups who actually had endorsed the bill: Washington Association of Sheriffs and Police Chiefs; Association of Juvenile Court Officers; Parent Teachers Students Association; State Law and Justice Planning Office; Washington's Juvenile Justice Advisory Committee; the Law and Justice Committee; Council of Planning Affiliates (COPA). In addition, individuals representing a number of groups were actively involved in supporting the law. These groups included the American Civil Liberties Union, the Citizen's Council Against Crime, the Association of Washington Community Youth Services, the National Council of Jewish Women Task Force on Juvenile Justice, the Seattle Atlantic Street Center, and Friends and Family of Victims of Crime. The list of coalition supporters also included several police chiefs, prosecutors, public defenders, directors of youth service bureaus, juvenile justice planners in city and county government, two mayors, and one former judge.

26. The amendments and responses from HB 371 supporters are contained in a mimeographed position paper prepared by supporters for use by Senators during the Senate debate. This position paper contains many brief but highly articulate statements regarding the basic purposes and philosophy of the law.

28. One of the reasons the bill was not sent to the Ways and Means Committee, apparently, was that DSHS estimates of the cost were in the $4 to $16 million range and were viewed by some persons as DSHS's method for attempting to kill the legislation.

29. The task force considering amendments was coordinated by Kathryn Fewell, staff to the Senate Judiciary Committee. They adopted an "absolute veto" policy in which any amendment opposed by any member of the group was placed in the "controversial" group with the idea that these would not be considered by the legislature.

30. A list of persons who were actively "working" the bill was prepared using a snowballing technique in which knowledgeable persons named other persons, and so on. In addition, the names of all legislators on the relevant committees and their staff were obtained as were the names of knowledgeable persons within each of the major state organizations or agencies that were affected by the law. Each person on this list was then screened by individuals serving on the assessment's liaison committee to identify those who were active in writing the law, supporting/opposing it from within the legislature, or supporting/opposing it from outside the legislature. Completed interviews were obtained with 45 of the 50 persons on the list.

31. This statement from Representative Hanna is a close paraphrase from Bob Naon's position paper.

32. The quotations in Figures 3 through 8 are from the following sources:

(a) Rep. Ron Hanna - (1) Notes and draft of newspaper articles on the legislative intent;
(2) Letters to the Pierce County Commissioners and others in May, 1977, responding to Don Herron's letter opposing the law;
(3) Memo to the HB 371 Assessment, December 29, 1979;
(4) Letter to Sen. Marcus Gaspard, responding to Herrons' objections, May 17, 1977;

(b) Bob Naon - (1) "Responding to the Youthful Offender," background paper,

(c) Rep. Mary Kay Becker - (1) HB 371: An Overview," in the WBA report;
(2) Letter to H. B. Hanna, Counsel for the Governor, June 9, 1977;

(d) Sen. Pete Francis - (1) Congressional Testimony,
(2) Letter (with Rep. Becker) to H. B. Hanna, Counsel for the Governor, June 9, 1977;

(e) Sen. Frank Woody - (1) Letter to Sen. Marc Gaspard in response to Don Herron's opposition, May 17, 1977;
(2) Letter to Sen. Dan March, responding to opposition from juvenile court directors, May 18, 1977;
(3) Letter to Sen. Don Talley, responding to opposition from a juvenile court director, May 18, 1977;

(f) Jenny Van Ravenhorst - (1) "Overview of House Bill 371," in the WBA report;

(g) William Hagens - (1) "Analysis of ESSB 2768 . . ." Memorandum, March 13, 1979;

(h) HB 371 Position Paper - (1) Memorandum prepared by HB 371 supporters for use during the Senate debate;

(i) King County Prosecutor's Office Position Paper - (1) A background paper prepared by Chris Bayley and others containing their proposal for reform of the adult system.

33. Information about the opposition was provided by Becker's paper (see note 9); in Laura Kennedy's report (note 19); and many of the persons interviewed for this report--both supporters and opponents.

34. Don Herron was the prosecuting attorney in Pierce County--Representative Hanna's district. His letter is an eight page, single spaced, very concise objection to the law. It was sent to five senators, two representatives, and two judges on May 13, 1977.

35. These arguments are contained in the position paper for HB 371 supporters referred to in note

36. The Seattle Community Accountability Board (CAB) program was established in 1974 with an LEAA grant and eventually was named an exemplary project. It was one of the first "accountability" oriented programs for juveniles in the United States but, apparently, was patterned somewhat after a restitution/work program in Palo Alto, California. The CAB philosophy was distinctly anti-treatment as reflected in a series of policy papers issued in 1974 and 1975 but its philosophy was not punitive. The fundamental premise--and one that was carried through to the legislation itself--is that juveniles should be held accountable rather than "treated" or "punished."

37. RCW 13.40.080, 1979 Ed.

38. The signed acknowledgements are described in the Superior Court rules and include two which must be signed before anyone discusses the substance of the diversion agreement. One of these, called "advice about diversion" explains that there will be a contract, that the youth does not have to go to court, that the offense will be part of the future criminal record, that the youth has a right to a lawyer in deciding whether to select diversion or not and that the lawyer is free if the youth cannot pay for one. The other pre-diversion agreement pertains to waiver of lawyer. The third agreement explains the effect of choosing diversion and reiterates the youth's understanding that the offense will be part of the criminal record. It reads, in part, as follows: "(1) I understand that the crime I am charged with will be part of my criminal record. . . (3) I understand that I might not be able to make a diversion agreement for another crime because I have signed this diversion agreement . . . (4) I understand that I may be given a longer sentence for another crime because I have signed this diversion agreement . . (6) I understand that if I do not follow the diversion agreement the prosecutor can bring me to trial for the crime I am charged with; (9) I

understand that I do not have to sign this agreement. If I do not sign, I understand that my case will go to court if charges are filed by the prosecutor."

The final diversion agreement is only for youths whose cases are dismissed by the diversion unit without a sanction due to the relatively trivial nature of the offense. This agreement explains to the youth that the offense will be counted as part of any future criminal history and other stipulations similar to those for youths who enter into a diversion contract. In general, the signed agreements are rather blunt statements regarding potentially negative effects of choosing diversion rather than the formal process.

39. State funds were available for diversion units that were separate from the court but smaller counties could petition the state for diversion funds even if the unit was not separate from the court.

40. The LJA/ABA standards call for automatic diversion of all youths with four or fewer non-felonious offenses and they recommend diversion at all points of the system. A comparison of the Washington law and the LJA/ABA standards has been prepared by the Assessment and is available from the authors.

41. It is possible that some Senators thought the amendment would permit several required counseling sessions rather than just one.

42. The Community Accountability Board program had been evaluated regularly by Ken Matthews and Arlene Geist of the Seattle Law and Justice office in Seattle. The studies demonstrated that recidivism rates in the areas with CAB programs (three parts of the city) were below the rates in other areas of the city even when other potentially confounding factors were held constant. These findings were reviewed in Naon's position paper.

43. This quote is from Don Herron's letter of May, 1977 (see note 34).

44. Senator Frank Woody's response to Herron's letter, see note 32.

45. The Washington criminal code, RCW 9A.20.020, defines five major classifications of offenses: Class A felonies (punishable by 20 or more years); Class B felonies (punishable by 10 or less years); Class C felonies (punishable by five or less years); Gross Misdemeanors (90 days to one year); Misdemeanors (up to 90 days). For the juvenile court sentencing standards, two additional distinctions were made. First, attempts generally were designated as less serious than completed crimes and, second, a plus (+) was given to some offenses in certain classes to distinguish it from others. Class A and A+ offenses are the first degree version of arson, aggravated assault, murder, kidnapping, rape, and robbery. In addition, possession of an incendiary device is a Class A offense. Class B+ offenses are attempted Class A or A+ offenses and assault 2, manslaughter 1, negligent homocide by motor vehicle, kidnapping 2, intimidating a witness, rape 2, statutory rape 1, indecent liberties, robbery 2, extortion 1. A complete list of offenses and their letter designations is contained in the LJA/ABA comparison report available from the authors. Decline hearings are automatic for Class A+, Class A, and assault 2, kidnapping 2, rape 2, and robbery 2.

46. For a review of bail statues, see "Bail for Juveniles in the 50 States," Legislative Technical Assistance in Juvenile Justice, Report No. 1, March, 1980, the State Legislative leaders Foundation, Denver, Colorado.

47. Jay Reich, "Screening and Sentencing," in the WBA report, The New Juvenile Code, 1978,

48. Ibid., page 62.

49. Frank Woody, letter to Senator Marsh, May, 1977 (see note 32).

50. Judge Richard G. Patrick, "Changes in Rights and Procedures in Juvenile Offense Proceedings," in the WBA report,

51. Position paper for supporters of HB 371 (see note 32).

52. Van Ravenhorst, page 50 (see note 32).

53. Appeals must be heard within 30 days and decisions must be issued within 15 days from the argument. No written briefs are to be required. During the appeal, the respondent may not be committed or detained in excess of the standard range if the order is above the standard range. If it is below the standard range, the respondent will be sentenced to the standard range during the time the appeal is being heard. (RCW 13.40.230, 1979 Ed.)

54. The legislature can either approve the standards or return them to DSHS for modification. If they do neither of these by February 15, the standards automatically go into effect. If they return them to DSHS, then the legislature--upon resubmission from DSHS--either must approve them, or pass modifications, or the standards will automatically go into effect.

55. For more information on the severity of points, see the LJA/ABA comparison paper prepared as part of the Assessment.

56. Position paper, HB 371 supporters (see note 32).

57. Aggravating and mitigating circumstances are listed in RCW 13.40.150.

58. DSHS apparently did not actively support or oppose the bill. Persons interviewed for this report indicated that certain aspects of the original law were believed or known to be unacceptable to DSHS and changes were made to decrease the expected opposition from them.

59. This clause is contained in Section 31 (2) (d) of Third Substitute House Bill 371.

60. These facilities were called nonsecure in House Bill 371. The reason for the change, according to persons interviewed for this report, is that the formulators of the legislation wanted DSHS to develop new, special, facilities capable of handling runaways. Under HB 371, DSHS had interpreted the nonsecure facilities to not require anything more than a normal foster home such as that used for dependent children. SB 2768 originally retained the language "nonsecure," according to our information, but when the DSHS cost statement indicated that no new facilities were going to be needed for the crisis residential centers, it was belived that they still did not intend to establish the kind of facilities envisioned by those working on the legislation. Thus, the phrase "semisecure" was used in an effort to require DSHS to develop new and more specialized facilities.

61. See, "Critical Issues in the Washington Juvenile Justice Code," a background paper for the Assessment. This paper is available from the Institute of Policy Analysis.

62. The detention criteria for status offenders is in RCW 74.13.034.

63. See note 2 for a list of these reports.

64. "Status Offenders in the State of Washington," (see note 21).

65. Ibid.

66. Quoted in the Evaluation Report from the Deinstitutionalization of Status Offenders Program prepared by Solomon Kobrin and Malcolm Klein, University of Southern California, 1980.

67. IJA/ABA Joint Commission, Standards on Noncriminal Misbehavior, Ballinger, 1977, page 61.

68. This was generally believed to be true and the amendments were a response to this belief.

69. IJA/ABA, Standards on Noncriminal Misbehavior, page 23.

70. It should be recalled, however, that maintaining the family unit was one of the stated goals of the 1976 house concurrent resolution which was a forerunner to the philosophical principles in House Bill 371.