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THE STRUCTURE OF JUVENILE COURTS:
WEAKNESSES AND STRENGTHS
OF
SELECTED ALTERNATIVES

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TABLE OF CONTENTS

The Structure of Juvenile Courts: Weaknesses and Strengths of Selected Alternatives

Chapter I. INTRODUCTION

Although efforts to restructure Arkansas' juvenile courts through the adoption of a new constitution or by amending the 1874 constitution have not yet succeeded, the movement to achieve this goal is still alive. In November, 1982 the electorate will vote on a constitutional amendment to permit the General Assembly to make changes in the juvenile courts.

At the present time juvenile issues in Arkansas are heard in the county courts. These courts are at the lowest rung of the state's judicial ladder--courts of limited jurisdiction. The county court is not the only court with this status. Through its judicial power, however, it is the only one of the courts of limited jurisdiction whose decisions impact so critically on the destiny of the persons who come before it, namely children and youth.

The judge of the county court is not required to be a lawyer. Presiding over juvenile cases is only one of a county judge's many responsibilities. The judge is the county's chief administrator and has executive duties as well as judicial duties. Instead of serving as juvenile judge, the county judge may appoint a juvenile referee. The referee must be a lawyer unless he or she was appointed before 1975. For most juvenile referees, serving as juvenile judge is only a part-time occupation. Some referees serve without pay. Each county court is financed by the county in which it is located. This financial dependence, combined with county differences

in the quality and number of court personnel for comparable caseloads and in policies and procedures, results in inequalities and unevenness among the counties in their handling of juvenile issues.

In the expectation that the state will vote to improve the juvenile justice system for its children and youth, this paper was prepared to assist policy makers and other interested parties in identifying some of the factors that should be weighed in the remodeling of a juvenile justice system in Arkansas, or elsewhere for that matter. The paper does not present a model juvenile court but, rather, examines the strengths and weaknesses of different court structures for handling juvenile matters.

The paper defines court structure broadly. The position of the juvenile court in the state's judicial system is explored, as is the family court as a substitute for the juvenile court. Types of cases over which the court may have jurisdiction are discussed. The transfer of cases to other courts, the qualifications and tenure of judges, and court-administered services versus services administered by the executive branch of the government also are examined.

The advantages and disadvantages of the various alternatives presented are a composite of the ideas, opinions, and critiques on juvenile justice found in books, articles in law journals and law reviews, and juvenile justice standards proposed by various study groups and task forces such as the American Bar Association and the National Advisory Commission on Criminal Justice Standards and Goals.

Not all subjects appropriate for consideration are covered and the list of strengths and weaknesses of the alternatives that are presented is not definitive. Neither are all advantages and disadvantages of equal significance.

The importance of one advantage can offset several of the listed disadvantages, or vice versa. Also, some items listed as an advantage or disadvantage are merely a fact or consequence of a particular action without being either a strength or weakness.

The major advantages or disadvantages for some of the key areas that were researched are summarized here.

A specialized juvenile court emphasizes juvenile matters and is likely to have a judge who is genuinely interested in juvenile justice. Most sources hold, however, that the juvenile court should be a court of general jurisdiction and be part of the judicial mainstream if it is to attain the prestige and the quality of judge that adult courts have. (Courts of general jurisdiction in Arkansas are circuit, chancery and probate courts). Sometimes a separate division of the designated court of general jurisdiction is established in the more populated areas of a state; elsewhere, the court of general jurisdiction handles juvenile matters but on a separate calendar or docket. A separate juvenile court with the status of a court of general jurisdiction apparently is another alternative.

Another option discussed is the proposal to abolish the juvenile court and to distribute its functions among the adult courts, with special handling for the juveniles, and among social and community agencies. This proposal is based on the view that it is more efficient to preserve the distinction between juveniles and adults by statute than by maintaining a separate judicial system.

All sources recommend that the juvenile judge be an attorney. There is, however, disagreement as to when the juvenile judge should have a referee assistant.

Among juvenile justice scholars, there is controversy as to whether juveniles whose behavior would not be a court matter were they adults, i.e. status offenders, should be removed from the jurisdiction of the courts entirely. Proponents for removal question the constitutionality of the court's jurisdiction over status offenders and believe that the problems should be handled by the schools and other community and social agencies in conjunction with the home. Proponents for the courts' retaining jurisdiction over status offenders maintain that courts are the only agency with adequate enforcement powers.

Supporters of a family court contend that juvenile problems are family problems and that a better job of deciding on appropriate rehabilitative action can be done if all family-related issues are heard in one court. Opponents, on the other hand, maintain that the family court has not yet proved itself and that the types of cases traditionally heard in juvenile courts would not receive adequate attention because of the other more numerous and time-consuming family issues, such as divorce.

Regarding court-administered services such as intake, probation, and detention, the constitutionality of a court's both "judging" and "serving" the juvenile as well as the employer-employee relationship between the judge and the court staff are questioned. The defenders of court-administered services, on the other hand, claim that a court must have control over the staff that serves it to assure that the court's policies and procedures are followed and that only the court can conduct an impartial investigation of abuse and neglect cases brought to court by the state social service agency.

Chapter II. THE JUVENILE COURT IN ARKANSAS

The Arkansas Juvenile Code of 1975 is the primary source on the structure and jurisdiction of the Arkansas juvenile court system. The rules of procedure that were to accompany the Code were not adopted, leaving the Code, in many instances, vague and with apparent gaps. The legislature in 1981 adopted several juvenile justice acts that compensate somewhat for the absence of rules of procedure.

The 1975 Code places jurisdiction over juvenile matters in the county courts, as did its predecessor--the Juvenile Courts Act of 1911. The Arkansas constitution does not specifically provide for a juvenile court. The basis for the county court serving as the juvenile court is a residual power. Article 7, Sec. 28 of the state constitution gives the county court exclusive original jurisdiction over "every other case that may be necessary to the internal improvements and local concerns of the respective counties". In 1919, the Arkansas Supreme Court upheld the interpretation of this clause.[1/] In addition, the "apprenticeship of minors" which the constitution places in the jurisdiction of the county courts has been interpreted legislatively (Section 17-3903, 1977) as placing juvenile matters in county courts.

Each of the 75 counties has a county court. They are courts of limited jurisdiction, the lowest level of trial court in the state's judicial system. As a judicial body, the county court hears primarily juvenile and bastardy cases. Its other responsibilities are more administrative or executive in nature. Appeals from the juvenile court are to the circuit court. The circuit court hears these appeals de novo, i.e., a completely

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[1/] One dissent to the majority opinion in the case contended that the circuit court should be the court to hear juvenile matters because the constitution gives it original jurisdiction over all matters not within the exclusive jurisdiction of another court.

new trial is held. Thus, a transcript of the events and procedures surrounding the case in the juvenile court is not required for the appeal, making it difficult to detect any errors in the lower court's handling of the case.

In Arkansas juveniles are defined as persons, whether married or single, who have not reached their 18th birthday. The juvenile court system is concerned with three types of juveniles:

1. Delinquent juvenile -- a juvenile who has committed an act, other than a traffic offense, which if committed by an adult would be a felony, misdemeanor, or other violation of a criminal law.

2. Juvenile is need of supervision (JINS, also called status offender) -- a juvenile whose act or condition would not be an offense were he or she an adult. Examples are truancy from school, runaways, and juveniles whose behavior is beyond the control of their parents or guardian.

3. Dependent-neglected juvenile -- a juvenile who is psychologically or physically abused or neglected by his or her parents or guardian.

Although the constitution gives county courts jurisdiction over juvenile matters, legislation permits a juvenile who is 15, 16 or 17 and allegedly committed a delinquent act, or a 14 year-old juvenile who allegedly committed a class A felony to be charged either in an adult court or in a juvenile court. Either type of court may waive jurisdiction and transfer the proceedings to the other system. (A JINS case can not be transferred to an adult court because it does not violate a criminal law).

The county judge is the juvenile judge. Legal training is not a requirement for being elected a county judge. In addition to his judicial function, the county judge performs administrative, legislative and executive

functions. He is the chief executive officer of the county, authorizes the disbursement of funds, operates the system of county roads, presides over the quorum court, administers the ordinances enacted by that court, and hires county employees.

County judges may delegate their juvenile judicial responsibilities to a referee. Since 1975 newly appointed referees must be lawyers licensed to practice in Arkansas. The county judge may not reverse the referee's decision. According to the Judicial Department, 55 counties have used juvenile referees. Virtually all referees serve only on a part-time basis.

The juvenile judge appoints the intake and probation officers and may request a prosecuting attorney to present the case against the juvenile. In delinquency and in juvenile in need of supervision cases, the juvenile judge must appoint a lawyer for the juvenile if the juvenile does not have one and has not waived his or her right to counsel. Under certain circumstances the right to counsel can not be waived. Until it was amended in 1981, the Juvenile Code stated that appointed counsel could serve "at no expense to the county". The amendment makes no specific provision for payment of the appointed counsel but, rather, is silent on the point.

The counties pay the salaries and expenses of the juvenile judges and of the court's support staff without any funding from the state.[1/]

[1/] The state pays the salaries, travel expenses, and most other expenses for the judges of the circuit, chancery, and probate courts. The counties provide the courthouse facilities and pay the salaries and expenses of the court personnel who serve these courts.

County budgets for these purposes were supplemented by funds from the Law Enforcement Assistance Administration and from the Office of Juvenile Justice and Delinquency Prevention but these sources are shrinking and soon may be entirely discontinued. Some of the juvenile referees serve without pay.

In summary, juvenile justice in Arkansas rests in the county courts, which are mainly administrative entities. Thus, juvenile justice is handled by 75 locally funded and decentralized entities, with wide variations among the counties. Salaries and qualifications of the judges and of the support staff differ from county to county. The number of support personnel for courts with similar caseloads is unequal. The lack of uniform rules of procedures also is responsible for the growth of inconsistencies among the counties, particularly in the area of procedures, dispositions, and record keeping. Persons with the awesome task of judging the juvenile and recommending treatment and disposition are not necessarily required to possess any legal training nor any skills to make social assessments. Very few persons devote full-time to being a juvenile judge. Not only may caseloads in a county be too small to justify a full-time judge, but county judges have many other obligations, and juvenile referees often must engage in private practice while serving as juvenile judge.

Chapter III. THE COURT'S POSITION IN A STATE'S JUDICIAL STRUCTURE

Whether the restructured court is to be a juvenile court or a family court, the question to be answered early in the restructing process is the organization or location of the court in the state's judicial system. Its position in the state's overall court structure can determine the allocation of resources to the court and its administrative structure.

The accompanying chart shows the organization of courts concerned with juvenile justice in the 50 states and the District of Columbia.[1/] It divides the courts into two broad categories -- specialized courts and trial courts.

Specialized courts, as defined in this paper, are juvenile or family courts that are not trial courts (neither courts of general jurisdiction nor of limited jurisdiction). They are separate and independent of the other courts of the state except, of course, for appeal purposes. They may or may not be the only type of court in the state hearing juvenile matters. When they have exclusive juvenile jurisdiction, they usually are state funded and administered.

Trial courts are: A) Courts of general jurisdiction (higher level trial courts) that are statewide courts with broad powers to hear civil and criminal cases. Appeals are to either an intermediate appellate court or to the supreme court of the state. In Arkansas, circuit, chancery

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[1/] The chart was adapted from one prepared by the Institute for Children's Resources that appeared in their publication, *Tennessee Juvenile Court Crisis: A Mandate for Change*, March, 1981.

and probate courts are courts of general jurisdiction. B) Courts of limited jurisdiction (inferior courts or lower level trial courts) are below the courts of general jurisdiction and have power to hear only certain types of cases. Their criminal jurisdiction may be restricted to misdemeanors and their civil jurisdiction may be restricted to a maximum disputed amount. The courts of limited jurisdiction in Arkansas are the municipal, county (which have juvenile jurisdiction), common pleas, city, police and justice of the peace courts. Appeals from these courts are to the circuit courts.

The location or organization of juvenile courts differs not only among the states but often within a given state. The first juvenile court was established in 1899 in Illinois as a specialized institution to remove children from the adult criminal court system: however, only 8 states (16 percent of the states) have specialized statewide courts that are the exclusive forum for hearing juvenile cases. One of the eight is a juvenile court; seven are family courts. Separate courts do exist elsewhere but they are local rather than statewide.

In approximately half of the states, courts of general jurisdiction have exclusive jurisdiction over juvenile cases. In the courts of general jurisdiction, juvenile matters may be heard in a separate division, especially in the more heavily populated areas of a state; elsewhere in the state they may be handled on a separate calendar or docket of the same court that has jurisdiction over other matters. Another alternative is for juvenile matters to be heard in a separate court which has the status of a court of general jurisdiction (as opposed to a separate division of a court of general jurisdiction).

Organization of Courts Hearing Juvenile Issues, by State

State	Specialized Courts		Trial Courts		
	Juvenile	Family	General Jurisdiction	Limited Jurisdiction	Mixed[1]
Alabama					X
Alaska			X		
Arizona			X		
Arkansas				X	
California			X[2]		
Colorado					X
Connecticut			X		
Delaware		X			
District of Col.			X		
Florida			X		
Georgia					X
Hawaii		X			
Idaho			X		
Illinois			X		
Indiana			X		
Iowa			X		
Kansas			X		
Kentucky				X	
Louisiana					X
Maine				X	
Maryland			X[2]		
Massachusetts					X
Michigan				X	

[1] Courts of general jurisdiction share juvenile issues with courts of limited jurisdiction; or courts of either type share jurisdiction with specialized juvenile or family courts.

[2] Separate juvenile court judges hear juvenile cases in these courts and probably in others as well but specific documentation was not available.

Organization of Courts Hearing Juvenile Issues, by State

State	Specialized Courts		Trial Courts		
	Juvenile	Family	General Jurisdiction	Limited Jurisdiction	Mixed[1/]
Minnesota					X
Mississippi				X	
Missouri			X		
Montana			X		
Nebraska					X
Nevada			X		
New Hampshire				X	
New Jersey		X[3/]			
New Mexico			X		
New York		X			
North Carolina				X	
North Dakota			X		
Ohio			X		
Oklahoma			X		
Oregon			X		
Pennyslvania			X		
Rhode Island		X			
South Carolina		X			
South Dakota			X		
Tennessee					X
Texas					X

[3/] New Jersey and Virginia apparently do not have family courts as they are generally defined. Their courts are called Juvenile and Domestic Relations Courts.

Organization of Courts Hearing Juvenile Issues, by State

State	Specialized Courts		Trial Courts		
	Juvenile	Family	General Jurisdiction	Limited Jurisdiction	Mixed[1]
Utah	X				
Vermont				X	
Virginia		X[3]			
Washington			X		
West Virginia			X		
Wisconsin			X[2]		
Wyoming			X		

Source: Institute for Children's Resources. *Tennessee Juvenile Court Crisis: A Mandate for Change*. March, 1981.

Note: The data probably are 1979/1980.

Approximately 16 percent of the states, including Arkansas, hear juvenile cases in courts of limited jurisdiction. In approximately another 18 percent of the states, jurisdiction in juvenile matters is shared by a court of general jurisdiction and a court of limited jurisdiction or by one of these courts and a specialized juvenile or family court.

On the following pages are some of the advantage and disadvantages of placing juvenile justice in the various types of courts: specialized juvenile courts; a court of general jurisdiction (either circuit, chancery, or probate in Arkansas); or a court of limited jurisdiction (which is the present situation in Arkansas).

The advantages and disadvantages listed are not exhaustive but do point up issues to be considered in restructuring the juvenile courts. To avoid repetition, advantages and disadvantages appear under the court structure of which they are most typically a part rather than under all of the structures in which the particular characteristic could be incorporated. For example, the assurance that judges be attorneys is specified as an advantages only for courts of general jurisdiction when in fact such an assurance can be legislated for any type of court.

SPECIALIZED JUVENILE COURT

Advantages

°Specialized juvenile courts emphasize juvenile matters and support the separate handling of children, the premise on which the juvenile court is based.

°They attract judges who are genuinely interested in the juvenile court.

°Judges can serve sufficiently long to develop expertise.

°Court districts can be determined by the needs of the juvenile court rather than by non-juvenile considerations, as can be the case when juvenile matters are in a court where they are not its sole or dominant concern.

°Specialized courts can more readily develop multi-county community resources for juveniles referred to the court, a feature of particular importance to rural areas.

Disadvantages

°A series of separate courts can not operate as smoothly or uniformly as can a trial court.

°Specialized courts, even if operating under statewide rules and administration, find it difficult to achieve equal status with the other courts of the state.

°It is more economical for juvenile jurisdiction to be in existing courts; it is cheaper to operate one or two courts in a prescribed area than to operate multiple one-judge courts in that area; services are not duplicated and the number of support personnel required is lower.

COURTS OF GENERAL JURISDICTION

Advantages

°There is widespread agreement among scholars of juvenile courts that only as a court of general jurisdiction can the court handling juvenile matters command the prestige, the salaries and the quality of judges required to assure that justice for juveniles is equal to that for adults.[1/]

°Placing juvenile justice in a court of general jurisdiction would not require creating a new court so costs would be minimized.

°Placing juvenile justice in a court of general justidiction would assure juveniles a system in which all judges are attorneys.

°If a family court is adopted, judges in courts of general jurisdiction are familiar with family issues as a result of their adult jurisdiction.

°Appeals would be on record, not *de novo*.

Disadvantages

°The dockets of the courts of general jurisdiction already are overcrowded.

°Because speedy trials are particularly important for juveniles, steps would be needed to avoid delays between the filing of petitions and the hearings.

°Supervision of the staff needed for the "social work" aspect of juvenile justice would need to be transferred to the court of general jurisdiction.

°More judges probably would be needed for the courts of general jurisdiction. (However, the number undoubtedly would be less than the current combined total of judges in juvenile courts and in courts of general jurisdiction).

°Persons would be needed in each county to handle emergencies.

°Judges in the courts of general jurisdiction may not approve of acquiring juvenile jurisdiction.

[1/] The following groups recommend that the juvenile court be a division of the court of general jurisdiction: National Council on Crime and Delinquency (NCCD) 1959; Uniform Juvenile Court Act (1968); National Advisory Commission on Criminal Justice Standards and Goals (NAC) 1973; HEW Model Act (1974); Institute of Judicial Administration, American Bar Association (IJA/ABA) 1980.

COUNTY COURT
(COURT OF LIMITED JURISDICTION)

Advantages

°Citizens of the state are accustomed to county courts having jurisdiction over juvenile justice.

°Problems of inconvenient access to juvenile courts are minimized.

°A juvenile court in each county permits local control and is close to the people.

Disadvantages

°Courts of limited jurisdiction are held in low esteem by lawyers, judges, and the general public.

°The existence of 75 separate courts dependent upon local governments and the local electorate for funds and resources creates inequalities in the qualifications and reimbursements of judges and staff, in caseloads, and in resources.

°The high level of decentralization makes for lack of uniformity among counties in organization, procedures and dispositions.

°Judges of county courts are basically administrators, not jurists. Unless they appoint a juvenile referee, juvenile cases are heard by persons without legal training.[1/]

°Because of the combination of uneven caseloads among counties and the other responsibilities of county judges, the juvenile judgeship is seldom more than a part-time responsibility. Some juvenile referees serve without pay.

[1/] According to the Tennessee Supreme Court's decision in the Anglin case and the clarification of the decision, Tennessee's constitution does not permit a non-attorney judge to commit a delinquent to the Department of Corrections.

The literature presents two other organizational ways for handling juvenile justice matters. These are (1) the abolition of juvenile courts and the transfer of their functions to adult courts and other agencies, and (2) a unification of all the courts in a state.

Abolition of Juvenile Court

Proposals to abolish juvenile courts differ in detail but, in broad terms, they recommend moving juvenile misdemeanor and felony cases into the courts that handle adult misdemeanor and felony cases and transferring other types of cases to schools, social and community agencies, and to informal arbitration services. Along with these recommendations, they propose the adoption of a sepcial body of statutory laws to cover juveniles in criminal courts in order to retain certain aspects of present juvenile processing. The laws would provide juveniles with a separate sentencing code, separate detention facilities, confidentiality, and, perhaps, specialized rules of procedure. Underlying the recommendations is the belief that it is more efficient to preserve the distinction between adults and juveniles in statutes than to maintain a separate judicial system.

Unified Court System

The purpose of a unified court system is to centralize administrative responsibility and authority and to eliminate overlapping and conflicting jurisdictions.

In a pure form, a given geographic district would have one court that would absorb all existing lower and upper trial courts and all separate courts. Centralized authority would rest in the chief justice aided by a judicial council or a state court administrator. The state would finance the system. There would be central budgeting, central purchasing, one judicial personnel system, and one judicial rule-making authority. All judges would be at the same level. They would be centrally assigned, probably on a rotation basis, to the various judicial areas.

ABOLITION OF JUVENILE COURTS

Advantages

°Criminal courts better protect the constitutional rights of juveniles than do juvenile courts.

°The vast majority of juvenile offenders are guilty of petty offenses only and might be dealt with less harshly in adult misdemeanor courts than in juvenile courts.1/

°The distinction between juvenile and adult courts is narrowing -- adult criminal justice is adopting juvenile court practices of intake, diversion and diversified sentencing alternatives while proposals are made for juvenile courts to shift from treatment to punishment, with punishment related to present offense and prior record.

Disadvantages

°The immense problems the adult criminal justice system faces -- overloaded dockets, disparate sentencing, widespread plea bargaining -- and the substandard quality of much of the system are viewed as being more critical to the welfare of a juvenile than to an adult and as making the expansion of the jurisdiction of adult courts to juveniles unwise under present circumstances.

°Judges might be selected according to their handling of adult cases and not according to their level of juvenile expertise.

1/ The landmark Gault decision of the U.S. Supreme Court that provides procedural safeguards for juveniles charged with delinquency involved a case in which a juvenile court had sentenced a youth to six years for making an obscene phone call; had he been an adult his maximum sentence would have been several months and a fine of $50.00. Also, a comparative study of juvenile courts found that the court that consistently dismissed first offenders was also the most punitive in relation to status offenders. (McDonough, 1975 referred to in Rosemary Sarri and Yeheskel Hasenfeld, *Brought to Justice?*, University of Michigan, August, 1976).

Chapter IV. SCOPE OF COURT'S JURISDICTION

There are several basic positions regarding the types of cases over which the court that handles juvenile matters should have jurisdiction. One position holds that the court should not deal with non-criminal behavior of status offenders but, instead, should concentrate on the more threatening criminal behavior of juveniles. Another view is that the court should have jurisdiction over all matters that relate directly to juveniles. A third position focuses on the total family rather than on just the child and would have the court deal with the full range of family-related legal matters.

Status Offenders (Juveniles in Need of Supervision--JINS)

In the early 1960's the term "status offender" was introduced to describe juveniles who are brought to juvenile court for non-criminal behavior that would not be subject to court action were they adults. Until then, juveniles who were truants, runaways, or "ungovernable" were called delinquents, a reflection of the controversial point of view that such behavior leads to delinquency. The change in terminology, however, has not stemmed the debate in the complex area of whether or not juvenile courts should have jurisdiction over status offenders. Persons on both sides of the issue may agree that the juveniles and their families need help. The question is the proper channel for dispensing the help -- courts or social service type agencies. Arguments for juvenile courts to have jurisdiction over status offenders, to a large extent, rest upon the concept of <u>parens patriae</u> -- the state as the parent -- and the belief that an adolescent's noncriminal status offenses will lead to criminal behavior as an adult. Thus, if the child is to become

a law-abiding adult, the state must protect the child if the parents fail to do so. On the other hand, supporters for the removal of status offenders from the courts believe non-criminal conduct should be referred to social agencies, not to courts.

Compromise Approaches for Handling Status Offenders: Various modifications and compromises have been proposed regarding the handling of status offenders. One suggestion is for the courts to relinquish general jurisdiction over status offenses and limit their authority to emergency situations, such as attempted suicides. Another recommends that status offenders come to court as dependent-neglect cases, but only after non-court means have failed to resolve the problems.

Still another approach that also requires non-court solutions to be tried first would replace the category "Juveniles in Need of Supervision" with "Families in Need of Services or Supervision". Regardless of who filed the request, all family members would be under the jurisdiction of the court as would the social service agencies with legal or discretionary authority to help. There would be no designation of fault; the child's behavior would not be emphasized; and the truth of the allegation would have to be established.

The "Family in Need of Supervision" proposal has its critics. They claim it contains contradictions and many of the problems found in the current JINS status. It would be difficult not to emphasize the child's behavior since it is the behavior that brings the case to court and the behavior must be verified. The critics also question what the court's intervention could accomplish if all non-court resources were exhausted prior to the case's coming to court. (Perhaps the court's better powers of enforcement would be the advantage in these instances). Further, the designation "Families in Need of Services" may stigmatize all members of the family.

STATUS OFFENDERS

Arguments for Removal from Court

°Judicial jurisdiction over non-criminal behavior possibly is unconstitutional. At issue are (1) the court's right to take action against a juvenile for behavior not subject to court action if performed by an adult and (2) the vagueness of the terms "ungovernable" and "incorrigible" which gives courts much room for discretionary action.

°Status offenders account for a large share of the court's caseload (18% in Arkansas in 1981); their removal would permit the courts to devote more of their resources to treating delinquents.

°Status offenses often reflect home situations where parents also are at fault; however, it is the juvenile who bears the brunt of the court proceedings. (Because of this situation, some states process status offense cases as dependent-neglect cases).

°Courts are assuming responsibilities that properly belong to the family and the school, which find it easier to transfer difficult problems to the courts rather than seek non-judicial remedies.

°Some status offenders receive disproportionately harsh dispositions and sanctions compared to those imposed on delinquents.

°Court standards for female status offenders often are more strict than for male offenders, reflecting societal mores.

°Efforts to detain status offenders separately from criminal offenders have not been overwhelmingly successful.

°Contact with the court imposes a stigma on the youth, even if the juvenile is classified as a status offender rather than a delinquent.

Arguments Against Removal from Court

°Only courts can intervene and force a child to undergo treatment and rehabilitation when a child needs help but is not willing to accept it.

°Delinquency charges would increase. When a juvenile's behavior permits a charge of either status offender or delinquent, the juvenile will be brought into court on the more serious charge of delinquency rather than be directed to social service agencies.

°Voluntary social service agencies do not have the enforcement power of the courts to back up their decisions; therefore, in cases involving home problems that do not qualify as dependent-neglect cases, juveniles would lose the limited aid the courts now provide them.

°A juvenile court record is less stigmatizing than an adult criminal record from which the juvenile court is attempting to save the juvenile.

Family Courts

The family court, in essence, brings together into one court the types of cases commonly associated with juvenile courts and the types of cases over which domestic relations courts have jurisdiction. Some family courts, however, whether already in existence or as proposed, go beyond the normal jurisdiction of juvenile and domestic relations courts and cover a variety of civil and criminal matters involving family life, including intra-family criminal offenses. They may even cover matters such as child-labor law violations. In addition to coordinating all judicial activities that affect families, family courts bring to these activities the social orientation developed by juvenile courts.

Some advocates of a family court view it simply as a juvenile court expanded to apply social service resources to other family members and matters. Others envision a so-called "integrated family court" with jurisdiction over all litigation involving members of a family. There would be a centralized system made up of units for the various types of cases under its jurisdiction, with good record-keeping and prompt and systematic information exchange among the units.

As in the case of juvenile courts, family courts may be separate courts or a division in another level of a state's court system. Proponents of family courts generally recommend that the court be a division of the court of general jurisdiction rather than a separate and independent court.

Existing Family Courts: As shown on the chart, seven states and the District of Columbia have statewide family courts. (In New Jersey and Virginia, they are termed Juvenile and Domestic Relations Courts

and perhaps differ somewhat from the family courts in the other states). The court is a separate entity in Rhode Island, Delaware, South Carolina and New York. In Hawaii and the District of Columbia, the family court is part of a general trial court. (called Superior Court in the District of Columbia).

The family court in New York does not include divorce in its jurisdiction and shares adoption with another court. The District of Columbia court, on the other hand, has a broad range of subjects in its jurisdiction. Among the subjects included are: divorce and divorce-related matters such as custody, visitation rights, property settlement, alimony, child support; intra-family misdemeanor offenses such as husband or wife injuring each other or another family member; paternity, child support (where there is no divorce); relinquishment and adoption; delinquency, in-need-of-supervision and neglect.

Family courts exist locally in some states. For example, within Philadelphia's Court of Common Pleas there is a juvenile division and a domestic relations division. The two are distinct and separate divisions, each with its own judge and probation staff. The two divisions, however, combine their efforts in cases of domestic difficulty in which children are concerned. Information is disseminated through a central registration bureau.

St. Louis is another city in which two divisions cooperate closely when domestic relations matters involve children. In this case, both divisions are divisions of the circuit court.

Some domestic relations courts are, in effect, family courts. They probably, however, are less socially oriented. In four counties in Ohio, one of the 9 judges of the Court of Common Pleas serves as judge of the Division of Domestic Relations and hears all cases of divorce, alimony,

illegitimacy, neglect and abuse of children, non-support, and all matters arising under the juvenile court act. Although called domestic relations courts, they deal with every phase of family life except adoption and guardianship.

Compromise Approach: A compromise position would be a "family-type" court that would have jurisdiction beyond delinquency, status offenses, and dependent-neglect cases but, at the same time, would not be overburdened with family-related issues, especially when issues are in families without juveniles.

The Children's Bureau of the former Department of Health, Education, and Welfare set forth two interesting sets of criteria for determining cases to be heard by family-type courts. (1) The courts should hear cases concerning children's legal status or rights that require social study for proper determination. These include adoption, termination of parental rights, appointment of a guardian for a minor, and disputed or undetermined custody of a child referred from a court having divorce and domestic relations jurisdiction. (2) The courts should hear cases in which adults are charged with offenses against a child only if there is a continuing relationship between the charged adult and the child. Otherwise, the case should be heard by another court with the child appearing as a witness and with unauthorized persons excluded from the courtroom. The purpose of the second criterion is to exclude from the family court those cases in which the punishment of the offending adult is the prime concern, with little or no benefit to the child.

FAMILY COURT

Arguments for a Family Court

°Family-related problems have a common root and can best be solved when they are heard in one court, where they can be considered as a whole.

°Family courts economize by consolidating resources. They eliminate contradictory orders and rulings and avoid the duplication of effort and of records that results when family issues are distributed among different courts and different judges.

°Family courts have a broader jurisdiction over parents than do juvenile courts and, thus, have a better chance to influence the total family environment when that environment contributes to the anti-social behavior of the juvenile.

°Principles and methods of the juvenile court -- social investigations, probationary services and clinical studies -- already are being applied to some adult cases, especially when the cases involve the protection of children, such as non-support and desertion.

°Replacing juvenile courts with family courts would help solve the problem of providing full-time judges in localities where the workload of the juvenile court does not justify a full-time juvenile judge.

°A family court permits a good information and record-keeping system, thus making readily available the judicial family history of the person or persons before the court.

Arguments Against a Family Court

°Family courts have not yet proved themselves. Except for the consolidation of family-oriented jurisdictions into one court, the goals of the courts are not clear. (Some opponents accuse proponents of wanting family courts to further social objectives, with little concern regarding legal standards).

°The types of cases heard in juvenile courts will be submerged and overwhelmed in family courts by the volume of other types of family-related cases, such as divorce.

°Judicial familiarity with a family, especially in small communities, leads to excessive knowledge about total family problems and can result in prejudice and prejudgment of issues.

°The family court is not a prerequisite for a good record keeping system. In this computerized age, an information system could be devised into which all types of courts could tap, and obtain judicial family histories to avoid duplicating or contradicting actions of other courts.

°The expanded jurisdiction would require additional specialized services that might create new problems and accentuate existing ones in integrating legal processes with social services.

°Family courts reduce the jurisdiction of the state's other courts and may arouse the opposition of those courts.

Chapter V. PRESIDING OFFICER

Judges

Like judges in any court, the judge of a juvenile or family court is the guardian of the constitutional rights of the court's clients. He must be a lawyer. Preferably, the judge handling juvenile cases should have experience in other types of courts, be conversant in juvenile justice, and be sympathetic to the unique problems of the juvenile court. To attract persons with these qualities, the juvenile judge must have the stature and salary of other judges. If at all possible the judge should serve full-time. In areas with a samll juvenile caseload, full-time judgeships can become feasible by expanding the geographic or subject jurisdiction of the court. In situations in which a juvenile or family court judge covers several counties, the literature recommends that the judge visit each county on a regular schedule and that the judge appoint an authority to take care of emergency situations in his or her absence. The appointed authority may be another circuit or district judge who is readily available even though the substitute judge is not assigned at the time to juvenile or family court matters; or a lawyer/ referee may be appointed in each county.

Selection: Juvenile judges may be (a) appointed, (b) assigned, or (c) elected by popular vote. In general, when juvenile courts are separately created by law, the judges either are appointed by the executive or governing body of the state or locality or are elected by popular vote. Popular elections may be the least satisfactory method for obtaining persons with the special qualifications required by juvenile courts.

When the juvenile court is part of another court system, the judges may be elected by popular vote but, more frequently the methods of selecting them are (a) in a rural area, the judge of the court of which the

juvenile court is a part also serves as the juvenile judge: (b) when a judge devotes full-time to juvenile work (generally, in large cities), he or she either is assigned by the associate judges, appointed by another judge (usually the judge of the superior court), or is elected by the vote of all the courts of record in the locality.

Tenure: The tenure of juvenile judges tends to vary with the method of selection and whether or not the juvenile court is separate or part of another court system. Assignment, with tenure of one or two years, is common when the juvenile court is a division of another system. Juvenile judges who are elected by popular election or who are appointed by an executive or legislative body usually serve longer periods of time, an average of 4 to 6 years.

Persons interested in improving the juvenile justice system disagree regarding tenure. The tenure controversy generally is in terms of indefinite tenure versus rotation and short rotations versus longer rotations.

Compromise position: To avoid the potential dangers of both indefinite tenure and rapid rotation, some authorities recommend a minimum tenure of 1 year and a maximum tenure of 3 years; others recommend that following a maximum assignment of 3 years, an interval of at least a year must elapse before a judge can sit in the same court.

Referees

In most juvenile courts that utilize referees, the referees are lawyers who assist the judge by hearing some or many of the cases that come into the court. These courts may require the referees to inform the juvenile of

TENURE OF JUDGES

Indefinite Tenure

Advantages

°Indefinite tenure permits judges to serve sufficiently long so that they can acquire expertise and the "feel" of the unique characteristics of the juvenile court.

Disadvantages

°Courts may become isolated and the preserve of the individual judge, increasing the risk of paternalism overriding legal safeguards.

Rotation

°Rotation assures that judges are familiar with the entire range of judicial functions and responsibilities.

°Judges with a real interest in juvenile justice must leave at the end of their tenure while their replacement may have little interest in the area.

°If rotation is rapid, (a) the non-rotating court staff may exercise the dominant influence on court decisions and policy; (b) judge-shopping occurs, i.e., litigants delay a case until the judicial assignment is rotated; (c) different judges may preside on the same case, resulting in discontinuity and inconsistency.

his or her option to be heard by the judge (a requirement that apparently is not always carried out) and may require that the judge review the referees' decision. Thus, the referees' role in most instances differs from the referees' role in Arkansas. In Arkansas the referee is not an assistant to a presiding judge. Rather, the referee, in effect, replaces the county judge who appoints him or her. In Arkansas the county judge does not review decisions of the referee. Moreover, because legal training is not a qualification for a county judgeship in Arkansas, the referee often is better qualified to hear cases than is the county judge.

Because of the role of the juvenile referee in Arkansas, not all of the following arguments regarding juvenile referees are pertinent to Arkansas.

JUVENILE REFEREES 1/

Advantages

°A referee system serves as a training ground for future judges.

°Referees relieve judges of routine and simple matters.

°A proposal for referees to preside at detention and plea hearings and judges at adjudication hearings has a due process advantage -- the judge at the adjudicatory proceedings would not know the offense history or social information of the defendant.

Disadvantages

°Referees are less accountable than judges who are accountable to either the electorate, the appointive authority or the official judicial disciplinary body.

°Judicial review of the findings of referees places a great burden on the judge (and apparently is not effectively done).

°The status of the juvenile court suffers from the use of referees.

°In Arkansas, referees who were appointed prior to 1975 are not required to be lawyers.

1/ Virtually all the sources assume that referees serve under legally trained judges. This is in contrast to the situation in Arkansas where the judge is not a lawyer and the referee essentially replaces rather than assists the judge.

Chapter VI. COURT-ADMINISTERED SERVICES

Because of their traditional social service role, juvenile courts instead of the executive branch of the state government administer court-related services in many states. Intake and probation, followed by detention services, are the most common court-administered services. A controversy regarding the constittuional basis for the court-administered services surfaced when due process concerns spread to juvenile courts. It centers on whether the courts are capable of enforcing due process for the youth whom they both judge and serve. This paper addresses the constitutionality of court-administered services only when it is cogent to the arguments presented for or against court-administered services.

COURT-ADMINISTERED SERVICES

Advantages

°Unless the court can hire, fire and assign duties to the staff that serves it, it cannot exert the necessary control to assure that the staff carries out the court's policies and procedures.

°Persons or agencies not under the court's administrative control may have other priorities that conflict or compete with the needs of the court.

°Splitting the responsibility for the orders and the responsibility for their implementation between the judiciary and the executive invites delays, red-tape, and "passing the buck".

°Legal and due process considerations are more likely to be honored by a staff employed by a judge and serving as officers of the court; an executive agency, by its nature, is less concerned with judicial due process requirements.

°Proponents of court-administered services acknowledge that alliances between judges and probation officers exist but maintain their incidence is declining due to the greater use of defense attorneys and prosecutors in juvenile cases.

°When the state social service agency petitions the court in an abuse and neglect case, that agency can not be expected to provide the court with an impartial home assessment prior to disposition by the court.

Disadvantages

°The court's administration of services violates the constitutional mandate that the judiciary be a neutral fact finder -- its control over investigative services threatens the right to an impartial tribunal and risks prejudgment prior to adjudication.

°Probation officers, social investigators and others in an employer-employee relationship with judges are less likely to take positions that conflict with those of the judge.

°Conversely, the employer-employee relationship may result in the judge's leaving decision-making to the probation officer, with the judge rubber stamping the probation officer's decisions.

°When services are under a court's administration, the probation officer may serve many roles for the same child: not only prosecutor, advocate, impartial investigator, counselor, and authority figure, but also issuer of summonses and subpoenas -- functions unrelated to probation.

°A court is less likely to challenge and is more likely to defend the operation and conditions of court-administered detention and residential facilities because of the temptation to protect its staff from external pressure and the desire not to be in an adversarial relationship with itself or its own staff.

COURT-ADMINISTERED SERVICES (continued)

Advantages	Disadvantages
	°Judicial independence is increased when the reports and recommendations are from the executive branch rather than from the court's own employees.
	°A court-administered home assessment in abuse and neglect cases brought to court by the state social service agency would not be necessary if a guardian ad litum were appointed as the Child Abuse and Neglect Act requires in Arkansas.

Chapter VII. TRANSFERS

Although the view is not unanimously held, it is often acknowledged that there are instances when a juvenile should be tried in an adult court. (Only one or two states do not provide for transfers from the juvenile court to an adult court.) Disagreement arises, however, on how to identify these instances and on the procedures for the referral.

The authority to try juveniles as adults may be legislative, prosecutorial, or judicial. The legislature may mandate automatic transfers to the adult court for the prosecution of certain types of offenses committed by juveniles of a given age. Prosecutorial discretion permits the prosecutor to determine whether the juvenile should be heard in the juvenile or the adult court. This practice, it is believed, developed in jurisdictions in which the judge was not a lawyer and, therefore, not qualified to determine if the juvenile should be tried as an adult. A transfer hearing is another method of achieving the referral of youths from juvenile to adult courts.

In Arkansas transfers of juveniles between juvenile and adult courts are limited to juveniles who are age 15, 16 or 17 when the alleged delinquent act is committed and to juveniles age 14 who allegedly commit a Class A felony. When a juvenile is arrested by a warrant, the juvenile is taken to the court that issued the warrant. That court may transfer the case to another court that has juriscition, i.e., either juvenile to adult or adult to juvenile, as the case may be. A hearing must be held before a case is transferred. When a juvenile is arrested without a warrant, the juvenile, except in traffic cases, is taken to the juvenile court and the prosecuting attorney determines the court that should hear the case.

TRANSFERS

Arguments for

°Transfer, especially if preceded by a hearing with adequate safeguards, is preferable to the alternatives to transfer--lowering the maximum age of juvenile court's jurisdiction over delinquency; mandating adult court jurisdiction for specified categories of offenses and offenders; or increasing the punishment power of the juvenile courts.

Arguments Against

°Automatic transfer is inflexible and gives the prosecutor a chance to charge the juvenile with an offense that automatically requires transfer to the adult court.

°When a prosecutor determines transfer, he or she acts without due process and makes the decision before examining the evidence of both the defense and the state.

Chapter VIII. COMMENTS AND CONCLUSIONS

To a lesser or greater degree -- depending on their nature -- changes in the juvenile court system will have an impact on the other courts in the state. The extent to which Arkansas is interested in revising its judicial system, therefore, is important in determining the direction and comprehensiveness of the juvenile court reform. Moreover, within the framework of the juvenile court system itself, the options are many and the adoption or rejection of a specific option determines subsequent recommendations.

From the readings of the various sources, however, several recommendations stand out as imperative, regardless of whether the court is a juvenile court or a family court. One imperative is that the judge have a law degree and be a member of the Bar. None of the sources defends the use of non-attorney judges. Arkansas, however, although legislatively recognizing the right of contestants in delinquency and JINS cases to be represented by lawyers, does not require the judge who evaluates the legal arguments presented to be legally trained.

A second mandate is that the court handling the destiny of children should be a "superior" court so that it can attract high quality judges and command the respect of the legal profession and of the public that it requires to perform its vital function. For Arkansas, this translates into the need to raise the status of juvenile courts from a court of limited jurisdiction to a court of general jurisdiction.

Another underlying theme that emerges from research is that policies and rules of procedures should be so formulated as to ensure the necessary balance between treatment and rehabilitation of juveniles, on the one hand, and protection of due process rights for juveniles and their parents on the other hand. Even proposals to move juvenile justice into adult courts

require special handling for juveniles.

Family courts, a fairly new addition to the judicial family, have elicited much interest and discussion. The number of existing family courts is relatively small so that the discussions, whether pro or con, rest, in large part, on the potential of such courts. The authorities generally agree that the family court is not an automatic panacea for the correct handling of juvenile issues.1/

On the positive side, family courts in Arkansas would make full-time judges feasible in localities where juvenile caseloads are now too small to allow this. Moreover, not only would one court hear all family-related legal isssues, but a family court would end the fragmentation by which several courts now can become involved in the handling of one juvenile case, with each court hearing the case de novo. For example, a juvenile judge may recommend the termination of parental rights, but the legalization of this recommendation rests in the probate court. If an appeal intervenes between these two hearings, the circuit court also has heard the case.

On the negative side, Arkansas is vulnerable to two important disadvantageous aspects of family courts. Because Arkansas has one of the highest divorce rates in the country, it is not unlikely that

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1/ Prescott, Peter S. *The Child Savers*. New York: Alfred A. Knopf, 1981. This book presents a dim picture of the handling of juveniles in New York's family court. It is not an indictment of family courts because the same problems probably would exist in a juvenile court. The book, however, does demonstrate that family courts are not an automatic "cure-all".

divorce and other types of family issues would monopolize much of the courts' time and resources to the detriment of the traditional type of juvenile issues. Also, because small communities are typical of the state, judges might become so familiar with the situation of a particular family that they find it difficult not to judge one family member on the basis of other family members who have come before the court.

From the point of view of children and youth, a modified family court, or "child's" court would be preferable to a full-scale family court. The types of subjects in the court's jurisdciton would be restricted to cases that have a direct bearing on the child's interest. Divorce would be limited to cases where minor children are involved or would be handled by custody mediation, whereby divorcing parents are helped to settle child custody outside of the judicial system. If mediation is successful, the judge legalizes the agreement; if mediation fails, the judge hears the case.

Another option is to give the juvenile court a broader family prospective. This option would be less expensive and cause less disruption to the state's judiciary system than would the creation of a family court. Arkansas's legislature already has taken a step toward increased family responsibility. Act 395 of 1981 provides that a juvenile court may order evaluation, counseling or treatment for members of a juvenile's family if such measures are necessary for the treatment or rehabilitation of delinquents or status offenders and, in the case of abused or neglected juveniles, if counseling or treatment of family members is necessary for the family's proper care of the child.

Another possibility is for the juvenile court, with or without increased control over families, to cooperate with the chancery court in divorce cases that involve children. This suggestion is patterned after the system

in Philadelphia and St. Louis, where there are separate juvenile and separate domestic relations divisions but the two cooperate in cases of domestic difficulties where children are involved.

The following is a recapitulation of the options, starting with the narrowest subject-matter jurisdiction:

1. Raise the status of juvenile courts to courts of general jurisdiction with mandatory attorney-judges and with subject jurisdiction traditional to juvenile courts.

2. The same as point 1 but with greater control over family situations.

3. The same as points 1 or 2 but cooperating with chancery court in domestic relations involving minor children.

4. Expand juvenile court jurisdiction custody into a modified family or "child's" court that emphasizes issues that involve children, including those that are now in chancery and probate courts such as adoption and custody.

5. Create a full-scale family court.

Points 3, 4, or 5 could adopt custody mediation.

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