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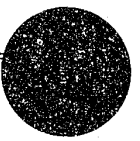
JUVENILE COURTS: ACCESS TO JUSTICE



HEARING

BEFORE THE

SUBCOMMITTEE ON JUVENILE JUSTICE

OF THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED SECOND CONGRESS

SECOND SESSION

ON

JUVENILE JUSTICE IN AMERICA, FOCUSING ON THE STATUS OF THE JUVENILE COURT SYSTEM

MARCH 4, 1992

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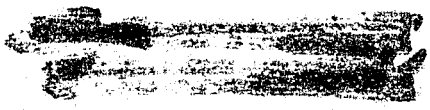

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JUVENILE COURTS: ACCESS TO JUSTICE

WEDNESDAY, MARCH 4, 1992

U.S. SENATE,
SUBCOMMITTEE ON JUVENILE JUSTICE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:35 a.m., in room SR-385, Russell Senate Office Building, Hon. Herbert Kohl (chairman of the subcommittee) presiding.

OPENING STATEMENT OF HON. HERBERT KOHL, A U.S. SENATOR FROM THE STATE OF WISCONSIN

Senator KOHL. This hearing will come to order.

Good morning, and welcome to the fourth in a series of juvenile justice oversight hearings. Today we will consider the status of juvenile courts, with an eye toward developing proposals to include in the reauthorization of the Juvenile Justice and Delinquency Prevention Act.

In theory, when a juvenile is arrested for a delinquency offense, they are quickly taken to juvenile court for an initial screening. Often, a court officer reviews the case and the background information. If the officer decides court action is needed, there is a hearing before a judge, who makes a subsequent ruling.

The judge has several options: dismiss the case, place the child in a residential facility, or on probation, refer the child to an outside agency, or require restitution or fines. There is one other option available: violent offenders can be tried in adult criminal court.

In theory, this all works well. Delinquent youths are caught, dealt with as individuals, rehabilitated from a life of delinquency, and grow to become contributing members of our society.

But, as we all know, the sad truth is that this simply does not happen.

Juvenile courts are terribly overworked and badly understaffed. Detention centers are ill-managed and overcrowded. Half of all kids in trouble waive their right to counsel, and quality representation is often nonexistent. In short, children today are not receiving needed attention. There are major problems with the juvenile court system.

This is common knowledge: Listen to how a recent Time Magazine article described the juvenile courts:

> This is where the battles are being fought against some of America's toughest problems: drugs, disintegrating families, household violence. As these problems have grown worse over the past two decades, the judicial system designed to deal with them has crumbled. These courts are an indicator of the country's compassion for

families and its commitment to justice, but increasingly they have neither the money nor the personnel to save most of the desperate young souls who pass through their doors. Almost no one seems to care.

Today we will examine the juvenile court system and the kids who are in it, our country's future, the most important resource we have, and a resource which is often shortchanged by the juvenile justice system responsible for rehabilitation and prevention.

We are fortunate to have a number of distinguished witnesses testifying today. Their testimony will provide insight into the day-to-day functioning of the juvenile court and its facilities, and assist us in preparing the reauthorization. We look forward to a discussion with each witness, and we thank them in anticipation of their testimony.

Our first panel includes several of our country's most distinguished juvenile court judges. We have with us today Judge Michael Malmstadt, Judge Frank Orlando, and Judge David Mitchell.

Frank Orlando has served for 20 years as a circuit judge in Florida, focusing on juvenile and family court cases. After retiring in 1988, he became director of the Center for the Study of Youth Policy at Nova University College of Law in Fort Lauderdale. He has also chaired Florida's Juvenile Justice Legislative Reform Task Force.

Mike Malmstadt is a presiding judge at the Children's Court Center in Milwaukee. He has been on the bench for 3½ years, and prior to that he served for 17 years in Milwaukee's District Attorney's Office, specializing in the prosecution of child abuse and sexual assault cases.

David Mitchell is a circuit court judge in Baltimore. Recently, a January Time Magazine cover story, featuring Judge Mitchell's court, gave millions of Americans their first look at the inside workings of a juvenile court and the juvenile justice system.

We are delighted to have such a distinguished panel with us today. If we really want to take some significant steps to improve the juvenile justice system in our country, we could have no better advisors than yourselves.

Gentlemen, to leave enough time for questions, we would appreciate it if you would keep your opening remarks to no more than 5 minutes, and your written testimony will be made part of the record in its entirety.

Judge Malmstadt, would you please start?

FIRST PANEL: JUDGES

PANEL CONSISTING OF HON. MICHAEL MALMSTADT, MILWAUKEE COUNTY CHILDREN'S COURT CENTER, MILWAUKEE, WI; HON. FRANK ORLANDO (RET.), NOVA UNIVERSITY, FORT LAUDERDALE, FL; AND HON. DAVID MITCHELL, CIRCUIT COURT FOR BALTIMORE CITY, BALTIMORE, MD

STATEMENT OF JUDGE MALMSTADT

Judge MALMSTADT. Thank you, Senator Kohl, and thank you for inviting me to be here.

I have been told that critics of our Nation's juvenile justice system refer to Wisconsin as an example of a system that works—

one that provides appropriate legal safeguards to those brought into the system. As I thought about that comment, I suppose that it is true, to a point.

Juveniles alleged to be delinquent are entitled to court appointed counsel; children alleged to be abused or neglected are represented by guardians ad litem if under the age of 12, and by court-appointed attorneys if over 12. Their parents are provided court-appointed counsel if indigent.

All parties are entitled to a trial by jury where standard rules of evidence apply, and the entire system is governed by a series of time limits, which provide for disposition within 60 days of the filing of the allegations.

In theory, then, all that should be necessary is to provide the system with enough lawyers and judicial officers, and everything should be fine. But it isn't. In Milwaukee County, our court calendars continue to be congested, the detention facility overcrowded, and, most importantly, the incidence of juvenile crime and the level of youthful violence continues to escalate.

What we have accomplished is the creation of a system that does a good job of labeling juveniles, but does very little to provide services to these juveniles. We seem to have forgotten that the goal of the juvenile justice system is to deter delinquent behavior, and provide services to the children brought before our courts, so that they will become productive members of society, rather than part of an ever-increasing prison population.

In Milwaukee County today, the average juvenile placed on supervision to the Department of Social Services will see his probation officer less than once a month. The only information the supervising agency will receive about the juvenile will come from the juvenile.

In reality, we have a system that monitors juvenile behavior by making sure we find out when they get arrested again; and as we continue to provide additional court and legal services, we will continue to provide fewer and fewer rehabilitative services.

As we are all well aware, we do not have unlimited resources to deal with the problems of our society. In attempting to allocate resources for the juvenile justice system, we are providing legal due process at the expense of social services.

This is true even though we are working in a system where a relatively small number of cases are ever factually contested. In the vast majority of cases that come before a juvenile judge in Milwaukee County, the juvenile had admitted the offense to the police, his parents, a Department of Social Service intake worker, and his lawyer.

Rather than focusing on what services are appropriate to ensure that the juvenile does not continue to engage in delinquent behavior, we begin a legal process which does nothing but provide a label to the child. As we continue to provide fewer services, the likelihood of repeated offenses increases, thereby increasing the potential of an ultimate out-of-home placement.

An overwhelming number of juveniles who appear before me come from families that can charitably be described as dysfunctional. To remove that child from the family, and provide that child with treatment, without addressing the needs of the family, is fool-

hardy; yet we repeatedly enter into this type of dispositional order, and we are surprised when a child, returned to his original environment, commits a new offense.

By operating in this fashion, we ultimately provide services to the entire family only when every child in the family has committed a delinquent act, and comes through the juvenile justice system, and even then necessary services for the parent or parents may still not be provided.

An alternative approach is available. We must focus on the needs of the child and the family when the child is first referred to the juvenile justice system, rather than focusing on guilt or innocence. The focus should be on the need for services, not legal advice.

Programs which provide community-based services to the family as a whole will, in the long run, be more likely to succeed in curtailing future delinquent behavior than any legal proceeding, the complexity of which only serves to confuse the child, rather than providing meaningful direction.

Thank you.

Senator KOHL. Thank you very much.

Judge Orlando?

STATEMENT OF JUDGE ORLANDO

Judge ORLANDO. Thank you, Senator. Thank you very much for having me here today.

As you are aware, our center at the University of Michigan recently completed a public opinion survey which demonstrated, among other things, a serious loss of public confidence in the juvenile court. Your letter inviting me here indicates a concern with the public's perception and concern on youth violence in the juvenile court.

The public, I believe, is badly misinformed about today's juvenile court, largely due to the secrecy and confidentiality that surrounds the court.

Let me make a brief parallel to amplify my opinion and conclusions. Imagine, if you will, the finest hospital in this city, or any hospital. This hospital's mission is to treat seriously ill and injured patients. Now imagine, if you will, that the clientele from other systems that are failing miserably arrive and line up at the hospital's admissions office.

Let us assume the homeless, school dropouts, abused and neglected children, and many persons inflicted with minor physical ailments are admitted in large numbers to the hospital. Little or no concern is given to the hospital's ability to provide appropriate or necessary care for such problems.

It would not take long before the hospital would begin to fail to meet its stated objectives, and the public would lose confidence. My question is whether the loss of the confidence is the fault of the hospital, or the fault of the other failing systems.

This, in my opinion, is precisely the situation in the juvenile court. The hospital example is easy to understand, and the court's is not. Simply put, the court "admissions office" is being overloaded with the many inappropriate clients whose needs would be more

appropriately met by these other social institutions. With these problems, the court is destined to fail.

The first issue I would like to address is juvenile violence. Dr. Delbert Elliott, a noted researcher at the University of Colorado, has demonstrated that the number of adolescent violent offenders who commit violent offenses is not growing; however, those few youth who do commit the most serious and violent offenses are becoming more violent.

The violence in which these offenders are born into and grow up in is the cause of their unacceptable and gross conduct. Can the court address these underlying causes of violence and seek solutions that work?

No, in my opinion. We have turned to tools of simplicity—jurisdictional age reductions, mandatory sentences to failing prison systems, and military boot camps are simple, cheap and largely ineffective. We expect the court to change violent behavior when, in most cases, it is too late in the adolescent's life.

The solution is prevention and early intervention in the home and community, access to quality health care, teen-pregnancy prevention, intensive in-home social and medical services, and, most of all, full funding of Head Start, would be a beginning.

Second, the juvenile justice system has become the dumping ground for the virtually nonexisting and failing child welfare system. Nonviolent and extremely needy children and families flow into an adversarial punishment-oriented system. Research has demonstrated that these children are ending up in adult prisons in the same numbers or percentages as true delinquents.

The present system takes the abused and neglected and turns them into the criminals of the future. The public sees the court and the social systems with which it interfaces as failures, and, as a result, public confidence in the court's ability to rehabilitate young offenders has eroded.

The court "admissions office" is also letting in many low-risk offenders which diversion systems are designed to deal with, and which were massively funded in the 1970's and 1980's. The back door of the court is also swinging open to release many serious offenders to the ineffective and overcrowded adult system.

My State leads the Nation in the unenlightened practice of sending children to the adult system—over 6,000 in 1991, with 1,200 going to the adult prison system. This is more than in all of our juvenile institutions together.

The research of Dr. Charles Frazier, which I gave to you this morning, shows this unenlightened practice has no effect on the prevention of crime.

In conclusion, let me refer the members to two successful initiatives that our center has undertaken that I feel should be the subject of national Federal replication. These initiatives could not have taken place without the courageous leadership of the Annie E. Casey Foundation. This foundation supported and financed the project, and continues to support and fund some of the most promising initiatives in the country dealing with children and youth.

The first is the Detention Initiatives Project. Over 400,000 children are admitted to detention in the United States each year. Less than half are serious offenders, and present little or no public

safety risk. If bail were available, most of these youths would be eligible for release.

In Broward County, we demonstrated that a detention system that detained the most serious offenders inside a detention center, and the rest outside in a series of levels of supervision, could be developed. The Annie Casey Foundation has recently announced a replication of that project, and will fund up to four sites nationally to replicate it.

I suggest that the Congress provide funds for a national policy that reforms the detention system in this country.

I gave you a book, "The Blueprint for Youth Corrections." * I would suggest that that blueprint also be the subject of national replication, to remodel juvenile justice in this country.

In conclusion, let me say that many enlightened people, led by my friend and colleague, Barry Feld, from the University of Minnesota, are calling for the abolition of the juvenile court. The ABA Juvenile Justice committee will examine this theory at their annual meeting in August.

Professor Feld makes a very convincing argument for the abolition theory. However, I believe that the true model for a due process, offender-based system can be achieved. The achievement would be costly, complex and long term, and must be rigorously evaluated, and subject to constant oversight.

Most of all, it will take enlightened political will and leadership. If the will and leadership does not exist, then abolition is the only solution.

I would be glad to respond to questions.

Thank you, Senator.

[Judge Orlando submitted the following material:]

* Retained in subcommittee files.

SENATE SUBCOMMITTEE ON JUVENILE JUSTICE

MARCH 4, 1992

TESTIMONY ON THE REAUTHORIZATION OF THE FEDERAL JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT AND THE CURRENT STATE OF JUVENILE JUSTICE POLICY

SUBMITTED BY

FRANK A. ORLANDO

Mr. Chairman and members of the subcommittee: My name is Frank A. Orlando. I am Director of the Center for the Study of Youth Policy at Nova University Shepard Broad Law Center in Ft. Lauderdale, Florida. From 1968 to 1988 I was a circuit judge in the state of Florida. During my tenure as judge, I spent the majority of my judicial time assigned to juvenile and family jurisdiction cases. In 1988, I retired from the court to accept my present position.

In 1989-90 I chaired the Florida Juvenile Justice Task Force created by our legislature. The task force developed recommendations which the Florida Legislature later enacted as the Juvenile Justice Reform Act of 1990. It is this legislation that we hope will eventually make Florida a national model for efficient juvenile justice policy. Unfortunately, due to the present economic situation in our state, the implementation of this Reform Act has been significantly delayed or placed on hold. Presently, I am a member of the Florida Juvenile Justice Commission and an active member of the American Bar Association Juvenile Justice Committee.

As you are aware, our Center at the University of Michigan recently completed a public opinion survey which demonstrates, among other things, a serious loss of public confidence in the juvenile court. Your letter inviting me here indicates a concern with the public's perception and concern of youth violence and the juvenile court. The public is badly misinformed about today's juvenile court, largely due to the secrecy and confidentiality that surrounds the court.

Let me make a brief parallel to amplify my opinion and conclusion. Imagine, if you will, the finest hospital in this city or any city. This hospital's mission is to treat seriously ill and injured patients. Now imagine, if you will, that the clientele from other systems that are failing miserably arrive and line up at the hospital's "admissions office." Let's assume the 'homeless,' school dropouts, abused and neglected children and many persons inflicted with minor physical ailments are admitted in large numbers to the hospital. Little or no concern is given for the hospital's ability to provide appropriate or necessary care for such problems.

It would not take long before the hospital would begin to fail to meet its stated objectives and the public would soon loose confidence. My question to you is whether this loss of confidence is the fault of the hospital or the fault of the other failing systems?

This, in my opinion, is precisely the situation in the juvenile court. The hospital example is easy to understand. The court is not. Simply put the court "admissions office" is being overloaded with the many inappropriate clients whose needs would be more appropriately met by these other social institutions. With these problems the court is destined to fail.

The first issue I would like to address is juvenile violence. Dr. Delbert Elliott, a noted researcher at the University of Colorado, has demonstrated that the number of adolescent offenders who commit violent offenses is not growing, however, those few youths who commit the most serious and violent offenses are becoming more violent. The violence in which these offenders are born into and grow up in is the cause of their unacceptable and gross conduct. Can the court address the underlying causes of violence and seek solutions that work - NO!! We have turned to tools of simplicity. Jurisdictional age reductions, mandatory sentences to failing prison systems, and military-like boot camps are simple, cheap, and largely ineffective. We expect the court to change violent behavior, when in most cases, it is too late in the adolescents life. The solution is prevention and early intervention in the home and community. Access to quality health care, teen pregnancy prevention, intensive in-home social and medical services and, most of all, full funding of head start would be a beginning.

Secondly, the juvenile justice system has become the dumping ground for the virtually nonexistent and failing child welfare system. Non-violent and extremely needy children and families flow into an adversarial punishment-oriented system. Research has demonstrated that these children are ending up in adult prisons in the same numbers or percentages as true delinquents. The present system takes the abused and neglected and turns them into the criminals of the future. The public sees the court and the social systems with which it interfaces as failures. As a result, public confidence in the court's ability to rehabilitate young offenders has eroded.

Third, the court is not the appropriate solution for the massive failures of school drop out prevention policies. Sending truants into the adversarial court system does not work. In fact, exposing these youngsters to the court system can easily result in increased levels of offending.

It is time for Congress to end the exception in the juvenile justice act that allows non-criminal court referrals to be institutionalized in the delinquency system. As in our example, the court "admissions office" must be closed to this clientele and educational institutions should

be required to deal with educational and motivational issues.

The court "admissions office" is also letting in many low risk offenders which diversion systems are designed to deal with and which were massively funded in the 70's and 80's. The back door of the court is also swinging open to release many serious offenders to the ineffective and overcrowded adult system.

The state of Florida leads the nation in the unenlightened practice of sending children to the adult system. Over 6,000 youngsters were transferred to the adult system in 1991. Many were transferred by prosecutors without regard to the true purposes of the juvenile court. Approximately 1000 were sentenced to prison. In Florida, there are more juveniles in adult institutions than in the juvenile justice institutions.

The research of Dr. Charles Frazier at the University of Florida demonstrates the failure of the policy of transferring youths to adult court to have any real effect on crime reduction. I have presented his most recent study to the subcommittee.

The juvenile court is designed to be offender-based, not offense-based. Legislative offense exclusion and prosecutorial transfer are offense-based policies, and in my opinion are threatening the existence of the juvenile court. It is time to close the back door of the juvenile court, except in those cases where there is a factual and valid judicial finding that the offender cannot be effectively managed in the juvenile delinquency system. We must also consider a mandated uniform age of juvenile court jurisdiction. There is considerable inconsistency as to age of juvenile court jurisdiction in the country. Many states have lowered the age of jurisdiction based on an unenlightened, get tough mentality, and an uninformed policy as to the effectiveness of adult correctional institutions. There is a precedent for this in the federal Highway Safety Act.

In conclusion, let me refer the members to two successful initiatives that our Center has undertaken that I feel should be the subject of national federal replication and policy. These initiatives could not have occurred without the enlightened, generous and courageous leadership of the Annie E. Casey Foundation. This foundation supported and financed the projects and continues to support and fund some of the most promising initiatives in the country dealing with children and families.

The first initiative deals with juvenile detention. Of the 400,000 plus admissions to juvenile

detention in the United States each year, less than half are serious offenders and present little or no public safety risk. If bail were available in the juvenile system, most of these youths would be eligible for release.

With funds from the Annie E. Casey Foundation, Broward County, Florida, participated in an initiative to reduce the securely detained population in response to a federal law suit. The end result of this initiative is a model detention system. The key word here is system because the definition of detention in Broward County now includes a variety of detention services, not just a physical detention center.

In 1987 the average daily population of the center was 180. The center is designed for a population of 109. The existing home detention system was utilized at only 25% of its capacity. The state was spending $24,000 a month on overtime, and there was an average of ten to twelve emergency room calls for broken bones (at $250 each) a week. The detention center was chaotic and dangerous to both youths and staff. It was apparent the law suit was going to be long term, expensive, and extremely unlikely the state could win. The initial response to the lawsuit by state policymakers was to build a new wing to the center at a cost of $1.2 million.

Today we have a system of alternatives outside the center, little or no overtime costs, and an average population in the center of 60 (on February 29, 1992 the population was at 47.) With the center itself serving only appropriate youths, (those who have allegedly committed serious offenses), the percentage of serious and habitual offenders is greater than in 1987 when the population was 180 to 200. The alternatives include a redesigned and fully utilized home detention program, an eight bed non-secure shelter and a day reporting center operated by the Boy's and Girl's Clubs. The federal law suit is over, federal jurisdiction has been vacated, and the proposed new construction will not occur. The "admissions office" has new policies which include objective admission criteria which assures appropriate placement of alleged offenders within the newly designed detention system. Low risk and non-criminal youths are not admitted to the detention system.

Due to the success of the project, the Annie E. Casey Foundation recently announced an initiative that will fund up to four sites nationally to replicate the Broward County project. The Congress should consider a national policy that requires juvenile detention admissions be limited to juvenile offenders who present a true risk to public safety as to re-offending and non-appearance in court.

The second initiative undertaken by the center is the Key Decision Maker project. This project has identified model state juvenile justice systems that use the least restrictive placements and provide a continuum of care and services. These systems base the need for security on objective criteria. This initiative has assisted a number of states develop community based alternatives, reserving locked facilities for the serious and habitual offenders who pose a security risk to the public and whose treatment needs require intensive services.

A blue print paper for a model system has been developed for policymakers and is included in your materials. I suggest that the congress consider providing funds for states to experiment with variations of this model.

One final note. Many enlightened people, led by my colleague Professor Barry Feld from the University of Minnesota, are calling for the abolition of the juvenile court. The ABA Juvenile Justice Committee will examine this theory at their annual meeting in August. Professor Feld makes a convincing argument for the abolition theory, however I am of the opinion that the true model for a due process, offender based system can be achieved. The achievement would be costly, complex and long term and must be rigorously evaluated and subject to constant oversight. Most of all it will take enlightened political will and leadership. If the will and leadership does not exist, then abolition is the only solution.

I will be glad to respond to questions.

Thank you.

DEEP END JUVENILE JUSTICE PLACEMENTS OR TRANSFER TO ADULT COURT BY DIRECT FILE?

A Report Prepared for the Florida Commission on Juvenile Justice

by

Charles E. Frazier

October 31, 1991

Executive Summary

This report examines state-wide data from three sources (the Department of Health and Rehabilitative Services, State Court Administrator's Office, and Department of Corrections) relating to juveniles transferred to adult court by means of direct file. The data cover the eight month period immediately following the Juvenile Justice Reform Act (October 1, 1990 through June 1, 1991). Focusing on the DHRS data (CIS and FACTS files), the most complete of these data sources, the demographic, offense, and offense history characteristics of juveniles placed in deep end juvenile justice system programs are compared with those identified as transfers to adult court. Specifically, the characteristics of juveniles placed in levels 6 and 8 DHRS programs are compared with juveniles transferred to adult court by direct file, waiver, or grand jury indictment. Following a discussion of the findings from this analysis, the question of direct file and public safety is considered.

Report Findings:

1. While three separate state agencies routinely collect some data related to direct file cases and other cases in which juveniles are transferred to adult court, none is completely adequate for purposes of evaluating direct file law and various policies and practices associated with it.

2. The data sets that are closest to complete and that are most useful in analyses such as the one presented here are managed by DHRS. They are the CIS and the FACTS files.

3. The other two data sets include interesting and important data on the frequency and distribution of juvenile transfers (in the case of the data collected by the Office of the State Court Administrator) and on the final sentence in terms of prison time or probation time for persons under 18 who are convicted in adult court (in the case of the DOC data).

4. There is no effective way, at present, to interface the various data sets from the three different state agencies so that both individuals and cases may be tracked through each stage of the justice system. This is a serious weakness in Florida's state-wide juvenile and criminal justice data systems.

5. Comparing demographic characteristics, the direct file group is distinguished from the DHRS level 6 and 8 groups primarily in terms of age. The average age of the group direct filed to adult court was 16.69 years as opposed to and average age of 15.58 and 15.81 years for the level 6 and 8 groups respectively. To be direct filed in Florida, juveniles must be 16 or 17 years old. Adjudicated juvenile offenders of any age may be placed in level 6 and 8 DHRS programs.

6. The gender composition of all groups is very similar. Eighty five to 96 percent of each group is male.

7. There is considerable variation in racial composition of the groups. Nonwhites are overrepresented in all groups. The percent nonwhite in the groups ranges from 52 percent 69 percent. It is significant to note, however, that the lowest level of overrepresentation of nonwhites is in the direct file group.

8. Comparisons of the groups one variable at a time and using several measures of the *severity of instant offenses, prior offenses, prior dispositions for delinquency, and total number of prior offenses charged,* are presented as descriptive statistics.

9. Professionals in the Juvenile Justice System generally consider several important legal variables in combination when making decisions relating to processing in the juvenile or the adult courts. While the seriousness of a presenting offense may be the primary consideration in one case, it may be regarded as less important than the prior record of offending in another case. Likewise, some case decisions may focus upon either the total number of prior referrals for delinquency in a juvenile's official record while others my look at the kinds of dispositions that have been tried previously. Despite particular focus, however, most professionals consider all of these factors to one degree or another in each case they decide. The present analyses show that the groups are not very different when these variables are considered in combination. That is, the indications of seriousness of offense and offender history do not show appreciable differences in the groups. This is true despite several different ways of measuring severity. In short, using DHRS data and several different measures of severity of offender characteristics, juveniles selected for direct file to adult court are not very different as a group from those disposed in the juvenile justice system and committed to deep end DHRS

programs. There is no demonstrable evidence in these data to support the contention that direct file selects the most serious and dangerous juvenile offenders for transfer to adult court.

10. If it is safe to assume that the juveniles who are either committed to deep end juvenile justice system programs or are transferred to adult court represent, at any point in time, Florida's worst juvenile offenders. To the extent this assumption is true, a consideration of how these cases are distributed in terms of estimated risk to the public is reasonable. Analyses done here which divide the total study sample into low, medium, and high risk cases based on the same measures that are used throughout the report indicate that direct file provisions are far from effective in sorting out "the most serious of the most serious" cases for adult court transfer. Rather, direct file seems to draw equally from the high, medium and low risk categories.

11. The findings of this report highlight the question of public safety. If, as these data and analyses indicate, direct file cases are not substantially more serious and dangerous than those cases committed and placed in deep end juvenile justice system programs, does it provide any greater protection to the public than would be the case if there were no direct file provision in Chapter 39?

12. In seven of Florida's twenty judicial circuits, 50 percent or more of what may be considered the most serious juvenile offenders known to DHRS are direct filed into adult court. The same is true in four of the eleven DHRS districts.

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Introduction

The general purpose of this project was to assist the Commission on Juvenile Justice evaluate the use of prosecutorial transfer (or "direct file") of juveniles into adult courts by collecting, analyzing and interpreting available data. Few juvenile justice issues in Florida have been as controversial as the direct file powers of prosecutors and none has had broader or more important implications. Indeed, the issue of prosecutorial transfer, when considered in its widest sense, forces the question of whether a separate system of justice for juveniles is desirable in Florida.

This study and the report presented here follow guidelines set down by the Commission on Juvenile Justice in an agreement between the Commission and the Consultant. Data presented here are intended to help inform the discussion of direct file in particular and the future of Florida Juvenile Justice in general. Specifically, the study is divided into three parts though each is integrally connected to the other two. The parts are distinguished as follows:

Part 1. *Data currently being collected on the disposition of direct files are identified and the accuracy of those data is evaluated.*

Part 2. *Using data extracted from the HRS Client Information System (CIS) and other sources, provide a quantitative description and comparison is provided of cases transferred to adult court (waived, indicted, direct filed) or committed to HRS level six and level eight programs in the six months following the effective date of the Juvenile Justice Reform Act (October 31, 1990). The description includes all usable records for the period studied and the focus is*

upon demographic information (age, race, gender) as well as information on the instant offense, prior offenses, and prior rehabilitative efforts. Comparisons, as appropriate, are presented in terms of statewide, HRS district level, and judicial circuit.

Part 3. *Drawing analyses and findings from the present study, a research project is proposed that would yield data sufficient to measure the extent to which direct file law, policy and practice in Florida provide greater protection to the public than would be the case if there were no direct file provision in the Juvenile Justice Act.*

Part 1. DATA AND DATA SOURCES

DHRS Data

There are no data collected in Florida that are specifically designed to track direct file cases. However some part of the data operations of three different state agencies (the Department of Health and Rehabilitative Services, The Office of the State Court Administrator, and the Department of Corrections) contain some useful information.

The best known and most widely used source of data on juveniles transferred to adult court is the DHRS Client Information System (CIS). This is essentially an event file which includes information on each charged offense separately. The data system contains information such as demographic characteristics, instant offenses, actions taken by state attorneys, prior offenses, and prior dispositions (i.e., rehabilitative efforts) relating to all instances in which

a juvenile is officially referred to the Florida juvenile justice system. A more recent addition to the DHRS data system is FACTS.

The data from DHRS-FACTS consist of three parts: FACTS-Classification, FACTS-Placement, and FACTS-Demographic files. FACTS-Classification includes information such as individual identification, sequence of classification, assessments of juveniles' attitudes and behaviors, offenses, and the restrictiveness level of a juvenile's commitment placement. The FACTS-Placement file adds information on the identification of the placement facility, the date of placement, and the date of release from the facility. FACTS-Demographic includes the full range of demographic information on each juvenile placed in an HRS facility. The CIS and FACTS files may be merged with a common ID.

A great deal of valuable information on juveniles and their cases are systematically recorded in these two major data systems. The question of the accuracy of these data is another matter, especially the accuracy of an item called "State Attorney's Action." This item is generally used as a measure of whether a juvenile has, in fact, been transferred (i.e., direct filed, waived, or indicted) to adult court. Most people who are familiar with how and when data are entered in the DHRS data systems and with how different state attorneys' offices around the state vary in terms of structure, policy, and practice agree that it is risky to accept these data as a way of indicating the exact number and distribution of transfer cases for a particular time period. The use of this item (State Attorney's Action) as an indicator of direct file cases is especially risky.

There are several reasons for this. For one, DHRS staff sometimes record a direct file if the juvenile prosecutor indicates an "intention" to direct file. If ultimately this does not occur, an incorrect indication remains in the DHRS data. DHRS staff must accept the information given to them. Many things may influence whether a prosecutor's intention is carried out. In some situations, an original plan to direct file by a juvenile prosecutor may be rejected by a supervisor. If DHRS does not have that information, the record is not corrected. Policies and practices of prosecutors do not generally require updating DHRS on the progress of cases after an initial consideration of the intake recommendation. It is this sort of independence of the two agencies that threatens the accuracy and utility of the DHRS data as a measure of direct files.

Prosecutors' practices may result in some cases of juvenile transfers being missed altogether by DHRS. In some circuits, for example, prosecutors may bypass DHRS and simply file an information against a 16 or 17 year old immediately following arrest. Juveniles in this situation are legal adults and may be detained in adult jails. No referral to DHRS is made, no intake process is initiated, and therefore no data on the case is recorded by DHRS.

Office of State Court Administrator Data

Data on transfers to adult court from the State Court Administrator's office are reported directly from clerks of court in each of the twenty judicial circuits. Unlike the information in the DHRS-CIS and FACTS records, these data include only the raw number of juvenile cases filed in adult courts by time period, county, and judicial circuit. This should be the best source of information available on the frequency and distribution of the transfer cases throughout the

state. Clerks of Court need only to count the cases involving persons under the age of 18 and then report them by time period. The biggest problem with these data is that they contain no individual or case level information. For that reason, there is also no way to determine if the cases enumerated in the data compiled by the Office of the State Court Administrator are the same as those identified by DHRS data. This is a major shortcoming that severely limits any effort to determine the exact number and distribution of direct files occurring in the state. It also precludes use of information on individuals contained in DHRS data as a cross check of the two sets of numbers. The problems with using either of these two data sets as accurate measures of the number and distribution of direct files is made clear in Table 1.

-- TABLE 1 about here --

Table 1 shows clearly that the number of cases for a three month period between January 1, 1990 and March 31, 1990 vary in most counties no matter how the data are broken down. The first column, for example, shows that the number of cases of transfers reported by clerks of court, by county, for the period is almost always markedly different than any measure used for transfers (direct files, waivers, indictments, or the sum of these groups) derived from DHRS. There is no way the data from DHRS can be added or combined to exactly correspond with the data from the State Court Administrator. Indeed, most of the time the numbers are substantially different no matter how they are compared.

At least three conclusions may be safely made from this table. First, one or both of the data sources are inaccurate to some degree. Second, because

Table 1. Comparison of Number of Juvenile Offenders Identified as Being Processed in Adult Courts by the State Court Administrator's Office and by DHRS/CIS Data.

County	Court Administ.	CIS System			
	1990	1.1/3.31	1.1/3.31		1.1/3.31
			Direct File	Adult Ct. Transfer Total	Direct File	Adult Ct. Transfer
	(cases)	(cases)	(cases)	(cases)	(persons)	(persons)
ALACHUA	89	2	15	18	8	9
BAKER	0	1	1	1	1	1
BAY	78	31	16	16	7	7
BRADFORD	22	3	0	0	0	0
BREVARD	96	56	10	12	8	9
BROWARD	182	47	3	19	3	18
CALHOUN	11	0	0	0	0	0
CHARLOTTE	0	1	0	1	0	1
CITRUS	18	6	0	0	0	0
CLAY	34	13	5	5	3	3
COLLIER	10	1	0	0	0	0
COLUMBIA	45	20	7	8	3	4
DADE	864	209	81	88	67	71
DESOTO	2	9	1	1	1	1
DIXIE	3	0	0	0	0	0
DUVAL	22	5	14	36	11	28
ESCAMBIA	333	72	33	38	22	26
FLAGLER	5	0	0	0	0	0
FRANKLIN	7	5	0	0	0	0
GADSDEN	47	13	1	1	1	1
GILCHRIST	1	1	0	0	0	0
GULF	2	0	0	0	0	0
HAMILTON	10	4	0	0	0	0
HARDEE	25	15	3	3	2	2
HENDRY	16	3	0	0	0	0
HERNANDO	41	3	4	4	3	3
HIGHLANDS	12	0	3	4	2	3
HILLSBOROUGH	1007	413	118	126	94	100
INDIAN RIVER	39	18	8	9	8	9
JACKSON	29	5	0	3	0	2
JEFFERSON	35	12	1	1	1	1
LAFAYETTE	10	0	1	1	1	1
LAKE	48	4	0	0	0	0
LEE	98	7	9	13	9	13
LEON	121	18	7	10	4	7
LEVY	12	8	1	1	1	1
LIBERTY	1	0	0	0	0	0
MADISON	29	9	3	5	2	3
MANATEE	55	18	16	23	13	20
MARION	38	11	[illegible]	10	1	6

County	Court Administ. 1990	Court Administ. 1.1/3.31	CIS System 1.1/3.31 Total		CIS System 1.1/3.31	
			Direct File	Adult Ct Transfer	Direct File	Adult Ct Transfer
	(cases)	(cases)	(cases)	(cases)	(persons)	(persons)
MARTIN	41	17	2	11	2	8
MONROE	23	6	0	0	0	0
NASSAU	11	0	0	1	0	1
OKALOOSA	56	5	5	5	5	5
OKEECHOBEE	12	3	1	2	1	2
ORANGE	360	62	19	19	18	18
OSCEOLA	30	12	2	2	1	1
PALM BEACH	147	18	24	27	20	23
PASCO	264	68	18	20	14	16
PINELLAS	482	150	95	119	87	102
POLK	149	31	8	14	5	9
PUTNAM	36	8	3	3	3	3
ST LUCIE	134	39	1	1	1	1
ST JOHNS	34	6	8	8	5	6
SANTA ROSA	20	4	3	5	2	2
SARASOTA	83	25	2	9	1	3
SEMINOLE	136	45	11	12	8	9
SUMTER	2	1	1	1	1	1
SUWANEE	27	3	1	1	1	1
TAYLOR	0	0	1	1	0	0
UNION	3	0	0	0	0	0
VOLUSIA	138	12	14	15	10	11
WAKULLA	12	0	0	0	0	0
WALTON	9	0	0	0	0	0
WASHINGTON	0	0	0	1	0	1
OUTSIDE STATE	0	0	3	4	3	4
STATE TOTAL	5706	1558	584	738	465	577

there are no individual level data reported by clerks of court in the data compiled by the Office of the State Court Administrator, there is no effective way to assess the degree of correspondence (i.e., the extent to which the same individuals and cases are identified) by the two data sources. Third, a better source of data to identify juvenile transfers to adult court is badly needed.

DOC Data

The third and final source of data that provides information on some juveniles transferred to adult court comes from the Department of Corrections (DOC). The data from DOC were provided by their research unit. Juveniles are picked up in this data system only if they are convicted as adults and sentenced to either probation or prison as adults. This means that some unknown proportion of all the juvenile cases prosecuted in adult court are not represented in these data. The charges will have been dropped in some cases for various reasons and some other juveniles will have been dismissed or acquitted at trial. The primary weakness of this data source, then, is that it is not a transaction file that tracks cases from the inception of the formal charges to final disposition. A second weakness is that there is no common identifier for either individuals or cases which might permit a tie-in with the information on offense and disposition history which is contained in the DHRS/CIS and DHRS/FACTS files.

These DOC data, however, have one major strength. There is no other statewide data system in which the specific dispositions (in terms of type and length of sentence) of juvenile transfer cases are systematically recorded. For the time period under study, October 1, 1990 through May 31, 1991, DOC data

show that 912 persons under 18 years of age were sentenced to prison (See Table 2). An additional 894 chronological juveniles were sentenced to terms of probation. These numbers, when totalled, should not be expected to match those found in either the DHRS data or those compiled by the State Court Administrator's Office. One reason for that is that each data source uses a different indicator of adult court transfer. In the case of DHRS, it is the intention or the action of the juvenile prosecutor that is recorded by DHRS in the very early stages of official processing. The State Court Administrator's data depend upon an actual formal charge in adult court. This may be the result of a waiver hearing, an indictment by the grand jury or a direct filing of an information by a prosecutor. The DOC data include only cases in which an adult court conviction has resulted in a sentence to DOC for a term of incarceration and/or probation. This, of course, is the last point in the formal criminal justice process. Even then, it is possible that some cases (ones in which transferred juveniles are convicted in adult court) are not captured by these data. For instance, some cases are disposed by commitment to mental health or other non-DOC facilities. Some may receive sentences of periods less than one year in a county jail and these cases may not be picked up in the DOC data.

-- Table 2 about here --

Another reason the numbers of cases identified by the three sources may not match is that different dates are used to trigger which cases are included. For DHRS all juveniles referred for delinquency during the study period were included if the date of the state attorney action was within those limits. The State Court Administrator's cases are identified by the date of the actual formal charge. This may differ considerably from the date recorded by DHRS. Finally,

Table 2. Comparison of Length of Sentence in Prison and Probation Cases.

Length of Sentence	Prison	Probation
Below 1 year	.	47 (5.3)
1 - 2 years	104 (11.4)	174 (19.4)
2 - 3 years	161 (17.6)	295 (33.0)
3 - 4 years	152 (16.7)	169 (18.9)
4 - 5 years	179 (19.7)	67 (7.5)
Over 5 years	309 (33.8)	142 (15.9)
Unknown	7 (0.8)	142 (15.9)
Total Cases	912 (100.0)	894 (100.0)

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the DOC cases are identified by the date of sentence. These three dates may be separated, in any given case, by many months.

Part 2. COMPARATIVE DESCRIPTION OF JUVENILES COMMITTED TO DEEP END JUVENILE JUSTICE PROGRAMS AND JUVENILES TRANSFERRED TO ADULT COURT.

Much of the controversy surrounding Florida's direct file law has centered on questions relating to whether or not such a law is needed. Advocates generally argue that the provisions in Florida law allowing for transfer of jurisdiction by waiver hearings and grand jury indictments fail to fully meet the needs of public protection. They suggest that the direct file law is needed because there must be some sure and effective way of moving the most serious and intractable juvenile offenders into the adult system. Those who oppose the direct file provisions in Chapter 39 generally argue that this law allows too much prosecutorial discretion and that, as applied, direct file does not provide greater protection to the public. They suggest that many of the juveniles transferred to adult court by means of direct file are not significantly different from those in deep end juvenile justice programs. The focus of this part of the report is on comparing the characteristics of juvenile cases using DHRS data.

As noted earlier, DHRS/CIS and DHRS/FACTS records contain the only statewide data that provide individual and case level information sufficient to make such comparisons. While there are clear and well known problems with these data, they are at present the best source of information available to make the comparisons that follow. Five categories of juvenile cases are identified and compared. The first two categories include juveniles who are found delinquent

and placed in either level 6 or level 8 DHRS programs. These two program levels represent the harshest sanctions available in the Juvenile Justice System. In both instances, juveniles are placed in residential programs. Level 8 placement is in a traditional training school. The last three categories include juveniles transferred to adult court for prosecution by waiver hearing, grand jury indictment, or direct file. Whether these juveniles are ultimately prosecuted and if so whether they are convicted and sentenced as adults is not discernable from DHRS data.

The following comparisons then are between two categories of juveniles adjudicated delinquent and placed in deep end juvenile justice programs and three categories of juveniles whose DHRS records indicate were transferred to adult court. Perhaps it is safest to think of these categories of adult court cases as "probable transfers." Again, as noted in the discussion in Part 1, there is good reason to believe (1) that not all cases identified by DHRS as transferred were actually prosecuted in adult court, and (2) that some juveniles who were prosecuted and convicted in adult court were not captured in the DHRS data system. These limitations notwithstanding, the DHRS data utilized here remain the single best source of information currently available on such cases in Florida.

Group Comparisons by Single Demographic Characteristic

The comparisons are presented in several stages. First, each of the five categories of cases is described in terms of several important demographic and legal variables. These variables and their coding and frequencies by group are presented in Table 3. Table 3 shows that a total of 3,150 juveniles were either

placed in a level 6 or 8 DHRS program or were transferred by waiver, indictment, or direct file to adult court between October 1, 1990 and May 31, 1991. During the study period, 1,112 juveniles were placed in level 6 programs and 342 were placed in level 8 programs. By contrast, the adult court transfers included 1,393 juveniles who were direct filed, 238 who were waived, and 65 juveniles were indicted. All cases identified by DHRS as falling into one of these groups during the study period were included in the analysis except those direct file cases whose age at time of referral was under 16 and those whose age was over 17. Persons 18 years of age or older are legally adults in Florida and those under 16 are not eligible for direct file under Florida law. Age was computed by subtracting date of birth from date of referral.

-- *Table 3 and 3 graphs about here* --

As Table 3 shows, however, each of the other groups contains fairly large numbers of individuals whose ages are 18 or 19. Whether these cases are the results of coding errors, incorrect information provided by juveniles, or unusual but legal circumstances is not known and cannot be determined from the available data. In sum, then, direct file cases were used in the analyses only if they were within the legal age range and all cases identified for each other group were used regardless of age.

Sex and race characteristics are not unusual. The vast majority of all groups is comprised of males. Nonwhites constitute larger proportions of all groups. Neither set of statistics is surprising though important questions are raised any time a gender or racial group is overrepresented in official data.

Cases Disposed by HRS Placement Levels and Method of Adult Court Transfer

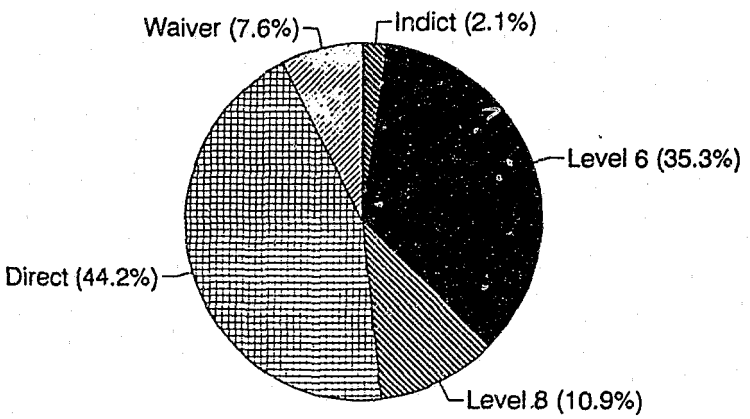

Table 3. Variables, Codings, and Frequencies by Group.

Variables	Level 6	Level 8	Direct File	Waiver	Indict	Total
Number of Individuals						
	1112	342	1393	238	65	3150
	35.30	10.86	44.22	7.56	2.06	100.00
Age						
Below 10	2	0	0	0	0	2
	0.18	0.00	0.00	0.00	0.00	
11	4	0	0	1	0	5
	0.37	0.00	0.00	0.42	0.00	
12	16	0	0	0	0	16
	1.49	0.00	0.00	0.00	0.00	
13	69	3	0	0	1	73
	6.41	0.88	0.00	0.00	1.54	
14	158	41	0	4	0	203
	14.67	11.99	0.00	1.68	0.00	
15	240	97	0	41	6	384
	22.28	28.36	0.00	17.23	9.23	
16	276	103	432	43	12	866
	25.63	30.12	31.01	18.07	18.46	
17	212	75	961	97	24	1369
	19.68	21.93	68.99	40.76	36.92	
18	98	22	0	51	22	193
	9.10	6.43	0.00	21.43	33.85	
19	2	1	0	1	0	4
	0.19	0.29	0.00	0.42	0.00	

Table 3. continued.

Variables	Level 6	Level 8	Direct File	Waiver	Indict	Total
Sex						
Female	163	32	103	10	4	312
(0)	15.13	9.36	7.39	4.20	6.25	
Male	914	310	1290	228	60	2802
(1)	84.87	90.64	92.61	95.80	93.75	
Race						
Nonwhite	634	227	727	145	45	1762
(0)	58.87	66.37	52.19	60.92	69.23	
White	443	115	666	93	20	1337
(1)	41.13	33.63	47.81	39.08	30.77	

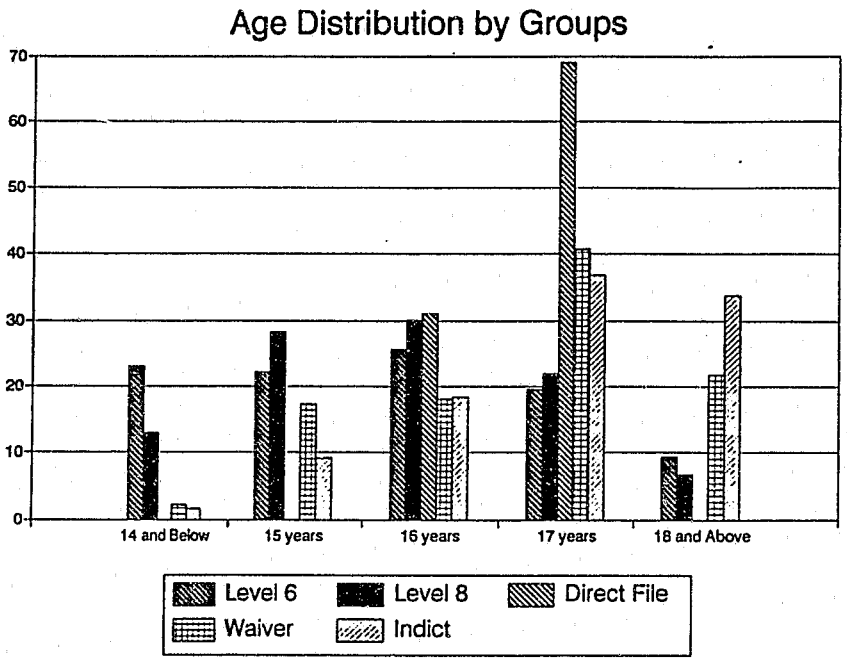
Age Distribution by Groups
70
60
50
40
30
20
10
0
14 and Below
15 years
16 years
17 years
18 and Above
Level 6
Level 8
Direct File
Waiver
Indict

Table 3. continued.

Variables	Level 6	Level 8	Direct File	Waiver	Indict	Total
Sex						
Female	163	32	103	10	4	312
(0)	15.13	9.36	7.39	4.20	6.25	
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Race						
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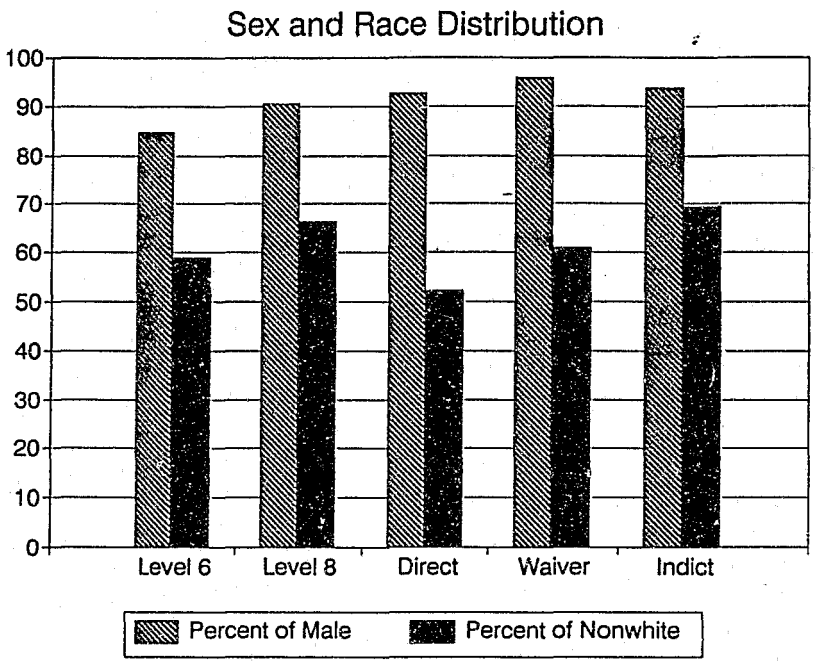
White	443	115	666	93	20	1337
(1)	41.13	33.63	47.81	39.08	30.77	


Sex and Race Distribution
100
90
80
70
60
50
40
30
20
10
0
Level 6
Level 8
Direct
Waiver
Indict
Percent of Male
Percent of Nonwhite

Discriptive Statistics on Variables by Group
(Level 6, Level 8, Direct File, Waiver, and Indict)

Groups/ Variables	Mean	S.D.	Min	Max
HRS Level 6 Placement				
Sex	0.85	0.36	0	1
Race	0.41	0.49	0	1
Age	15.58	1.50	7	19
Mean Severity of Instant Offenses (1)	3.53	1.66	1	6
Mean Severity of Instant Offenses (2)	3.56	1.71	1	7
Maximum Severity of Instant Offenses(1)	3.76	1.74	1	6
Maximum Severity of Instant Offenses(2)	3.81	1.81	1	8
Mean Severity of Prior Offenses (1)	3.29	0.87	1	6
Mean Severity of Prior Offenses (2)	3.31	0.89	1	7
Maximum Severity of Prior Offenses(1)	5.14	1.02	1	6
Maximum Severity of Prior Offenses(2)	5.27	1.18	1	8
Mean of Max Severity of Prior Offenses(1)	3.51	0.92	1	6
Mean of Max Severity of Prior Offenses(2)	3.54	0.95	1	7
Mean of Prior Dispositions	2.59	0.58	1	4
Maximum Prior Dispositions	3.46	0.66	1	4
Mean of Maximum Prior Dispositions	2.68	0.59	1	4
Number of Prior Referrals	7.51	5.33	0	38
HRS Level 8 Placement				
Sex	0.91	0.29	0	1
Race	0.34	0.47	0	1
Age	15.81	1.15	13	19
Mean Severity of Instant Offenses (1)	3.81	1.67	1	6
Mean Severity of Instant Offenses (2)	3.86	1.74	1	7
Maximum Severity of Instant Offenses(1)	4.16	1.77	1	6
Maximum Severity of Instant Offenses(2)	4.25	1.89	1	8
Mean Severity of Prior Offenses (1)	3.43	0.78	1	6
Mean Severity of Prior Offenses (2)	3.47	0.82	1	7
Maximum Severity of Prior Offenses(1)	5.55	0.71	2	6
Maximum Severity of Prior Offenses(2)	5.88	1.03	2	8
Mean of Max Severity of Prior Offenses(1)	3.70	0.82	1	6
Mean of Max Severity of Prior Offenses(2)	3.75	0.86	1	7
Mean of Prior Dispositions	2.66	0.59	1	4
Maximum Prior Dispositions	3.76	0.56	1	4
Mean of Maximum Prior Dispositions	2.79	0.57	1	4
Number of Prior Referrals	11.83	7.73	0	41

Groups/ Variables	Mean	S.D.	Min	Max
Direct File Group				
Sex	0.93	0.26	0	1
Race	0.48	0.50	0	1
Age	16.69	0.46	16	17
Mean Severity of Instant Offenses (1)	4.06	1.56	1	6
Mean Severity of Instant Offenses (2)	4.19	1.72	1	8
Maximum Severity of Instant Offenses(1)	4.33	1.61	1	6
Maximum Severity of Instant Offenses(2)	4.50	1.85	1	8
Mean Severity of Prior Offenses (1)	3.34	0.96	1	6
Mean Severity of Prior Offenses (2)	3.37	1.01	1	8
Maximum Severity of Prior Offenses(1)	5.01	1.23	1	6
Maximum Severity of Prior Offenses(2)	5.18	1.43	1	8
Mean of Max Severity of Prior Offenses(1)	3.56	1.02	1	6
Mean of Max Severity of Prior Offenses(2)	3.60	1.08	1	8
Mean of Prior Dispositions	2.60	0.63	1	4
Maximum Prior Dispositions	3.43	0.79	1	4
Mean of Maximum Prior Dispositions	2.68	0.63	1	4
Number of Prior Referrals	6.59	6.49	0	44
Waiver Group				
Sex	0.96	0.20	0	1
Race	0.39	0.49	0	1
Age	16.62	1.13	11	19
Mean Severity of Instant Offenses (1)	4.57	1.23	1	6
Mean Severity of Instant Offenses (2)	4.75	1.41	1	8
Maximum Severity of Instant Offenses(1)	4.86	1.22	1	6
Maximum Severity of Instant Offenses(2)	5.12	1.54	1	8
Mean Severity of Prior Offenses (1)	3.42	0.85	1	6
Mean Severity of Prior Offenses (2)	3.45	0.87	1	6
Maximum Severity of Prior Offenses(1)	5.26	0.99	1	6
Maximum Severity of Prior Offenses(2)	5.53	1.28	1	8
Mean of Max Severity of Prior Offenses(1)	3.65	0.90	1	6
Mean of Max Severity of Prior Offenses(2)	3.69	0.95	1	7
Mean of Prior Dispositions	2.58	0.58	1	4
Maximum Prior Dispositions	3.61	0.70	1	4
Mean of Maximum Prior Dispositions	2.71	0.59	1	4
Number of Prior Referrals	8.67	7.44	0	45

Groups/ Variables	Mean	S.D.	Min	Max
Indict Group				
Sex	0.94	0.24	0	1
Race	0.31	0.47	0	1
Age	16.91	1.07	13	18
Mean Severity of Instant Offenses (1)	4.56	1.46	1	6
Mean Severity of Instant Offenses (2)	5.09	2.01	1	8
Maximum Severity of Instant Offenses(1)	5.03	1.37	1	6
Maximum Severity of Instant Offenses(2)	5.68	1.97	1	8
Mean Severity of Prior Offenses (1)	3.46	0.94	2	6
Mean Severity of Prior Offenses (2)	3.52	1.00	2	7
Maximum Severity of Prior Offenses(1)	5.31	0.90	2	6
Maximum Severity of Prior Offenses(2)	5.64	1.28	2	8
Mean of Max Severity of Prior Offenses(1)	3.76	1.00	2	6
Mean of Max Severity of Prior Offenses(2)	3.83	1.04	2	7
Mean of Prior Dispositions	2.73	0.71	1	4
Maximum Prior Dispositions	3.53	0.78	1	4
Mean of Maximum Prior Dispositions	2.81	0.71	1	4
Number of Prior Referrals	7.08	5.65	0	22
Over all				
Sex	0.90	0.30	0	1
Race	0.43	0.50	0	1
Age	16.21	1.19	7	19
Mean Severity of Instant Offenses (1)	3.92	1.61	1	6
Mean Severity of Instant Offenses (2)	4.02	1.75	1	8
Maximum Severity of Instant Offenses(1)	4.19	1.67	1	6
Maximum Severity of Instant Offenses(2)	4.33	1.87	1	8
Mean Severity of Prior Offenses (1)	3.34	0.90	1	6
Mean Severity of Prior Offenses (2)	3.37	0.93	1	8
Maximum Severity of Prior Offenses(1)	5.15	1.10	1	6
Maximum Severity of Prior Offenses(2)	5.33	1.30	1	8
Mean of Max Severity of Prior Offenses(1)	3.57	0.95	1	6
Mean of Max Severity of Prior Offenses(2)	3.61	1.00	1	8
Mean of Prior Dispositions	2.60	0.60	1	4
Maximum Prior Dispositions	3.49	0.72	1	4
Mean of Maximum Prior Dispositions	2.70	0.61	1	4
Number of Prior Referrals	7.65	6.52	0	45

Measures of Legal Variables

Severity of instant offense is measured four different ways. The first measure is called "Mean Severity of Instant Offense (Classification 1)." This variable is constructed by first assigning all offenses used in the DHRS system to one of six categories as follows: 6=felony person offenses, 5=felony property, 4=felony public order, 3=misdemeanor person, 2=misdemeanor property, and 1=misdemeanor public order offenses (See Appendix __ for a list of offenses in each category). Since some juveniles are charged with more than one offense in a referral to DHRS and some are charged with only one, there is a need to standardize the severity measure. To that end, the mean severity of offense is calculated by assigning each offense charged in a referral episode a number score according to the six point scale above. The scores are added and divided by the total number of offenses to get the mean severity.

"Maximum severity of Instant Offense (Classification 1)" bases the severity score on the most serious of all charged offenses. That is, if a juvenile was charged with burglary and petty theft, the maximum instant offense severity score for that person would be 5 (a felony property offense) reflecting the most serious offense charged. If the mean severity of instant offense measure is used in the same case, the juvenile's score is calculated as 5 (for a felony property offense) plus 2 (for a misdemeanor property) =7. The sum (7) is divided by 2 (the number of separate offenses charged) = 3.5. As this illustration shows, the two measures produce substantially different indications of seriousness. When the maximum severity indicator is used, this juvenile is scored a 5 on a scale in which six is most severe. The mean severity measure, by contrast, places this same juvenile at 3.5, just above the middle of the scale.

Some will prefer the maximum severity measure because it casts the whole case in terms of the most serious behavior charged. Others will find this measure too simplistic and will prefer the mean severity measure because it takes into account all offenses charged and provides a measure of severity that is an average level of seriousness in an offense episode.

Mean and Maximum Severity of Instant Offense (Classification 2) are computed precisely the same way as Classification 1, except that an eight point offense severity scale is used. This eight point scale was developed to respond to questions about the 6 point scale raised by prosecutors and commissioners during a presentation of the preliminary report. Their concern was that the 6 point scale grouped too many variably serious offenses against persons into one category, namely category 6 (felony person). Classification 2 breaks the offenses grouped under 6 into three separate felony person categories as follows: 8=murder and attempted murder, 7=armed robbery, felony sexual battery, and other felony sex offenses, and 6=other robbery, arson, and aggravated assault/battery. The offenses included in categories 1-5 remain the same as they are in the six point offense severity scale.

The same procedures are used in constructing the Mean and Maximum Severity of Prior Offenses (Classification 1 and 2). Mean and Maximum have the same meaning throughout. Classification 1 always refers to the use of a 6 point offense scale and Classification 2 always refers to use of the 8 point scale described above. These indications distinguish tables and graphs and are included in all headings.

Mean and Maximum Prior Dispositions are calculated similarly. However, a four point scale is used to categorize the severity of various dispositions. Final dispositions involving other services are scored =1, those involving informal sanctions and services are scored =2, dispositions involving commitments to nonresidential placements are scored =3, and those involving commitment to a residential placement are scored =4.

Group Comparisons by Single Legal Variables

The following section examines the five different groups of juveniles in terms of important characteristics of offense and offense history. It is this set of variables that is most at issue in the debate over direct file provisions as a method of transferring juveniles to adult court for prosecution. If public safety is the primary concern of supporters of direct file and if practices by prosecutors reflect this concern, we should expect the juveniles transferred to adult court to differ from those retained in the juvenile justice system. More specifically, we should expect these indicators to show that the adult court cases to be more serious and dangerous than those not transferred. While our focus is on comparing the direct file group with the two DHRS (level 6 and level 8) groups, each graph shows the waiver and indicted group as well.

The first comparison is on the mean severity of instant offense. There are two graphs representing these comparisons. The first uses the 6 point offense seriousness scale and the second uses the 8 point offense seriousness scale. Looking first at the 6 point scale, the average offense severity of all groups tends to involve felonies, especially property felonies. DHRS groups have higher proportions with average offense severity at the misdemeanor level and

adult court groups have greater proportions at the felony level. When the comparison is between DHRS level 8 and direct file, however, the differences are very small. This general pattern of results remains the same when the 8 point offense seriousness scale is used. The major difference is that there are no DHRS cases at the Felony person 3 level. This is for a very good reason. Felony person 3 includes only murder and attempted murder and these cases are generally capital cases that are bound over to grand jury. Otherwise the differences in terms of average offense severity between the level 8 group and the direct file group are not great.

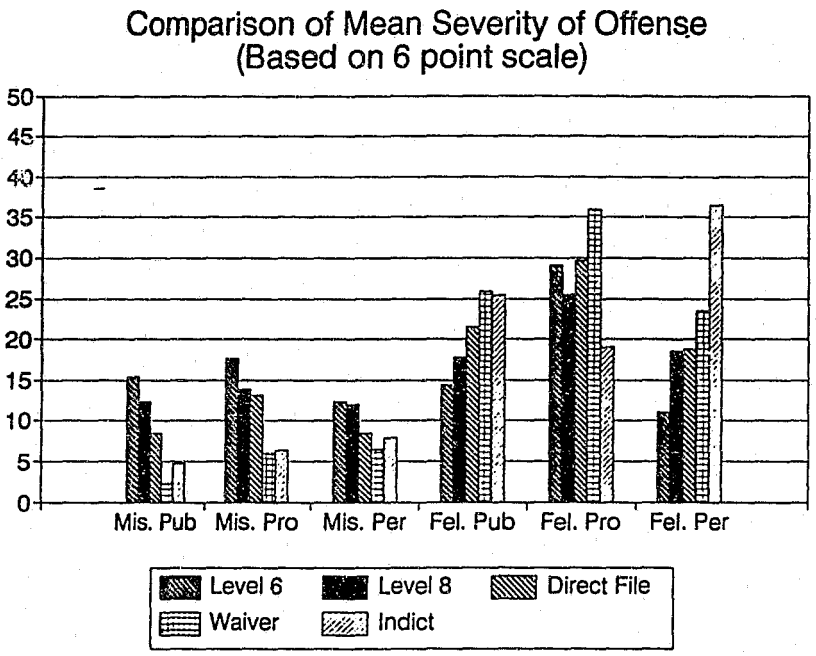
- - 2 tables and 2 graphs on mean severity of instant offense about here - -

Another way to think of offense severity is in terms of the most serious offense charged. Maximum severity is such a measure. The following two bar graphs show that the DHRS level 8 group and the direct file group are not too different in terms of the most serious offense charged. In fact, as the first graph shows, the proportions of each group that is charged with serious property of person felonies is essentially the same. The second graph which uses the 8 point offense severity scale provides more detail on those felony cases. Again, it is clear from this graph that the proportions of each group referred for felony property offenses is the same. "Felony person -1" offenses are more common among DHRS level 8 juveniles but "felony person -2 and -3" offenses are more common in the direct file group.

- - 2 tables and 2 graphs on maximum severity of instant offense about here - -

Variables	Level 6	Level 8	Direct File	Waiver	Indict	Total
Mean Severity of Instant Offenses (Classification 1)*						
Mis. Pub. Order (1)	134 15.37	34 12.36	113 8.43	5 2.30	3 4.76	289
Mis. Pro. (2)	154 17.66	38 13.82	176 13.13	13 5.99	4 6.35	385
Mis. Person (3)	108 12.39	33 12.00	114 8.51	14 6.45	5 7.94	274
Fel. Pub. Order (4)	126 14.45	49 17.82	288 21.49	56 25.81	16 25.40	535
Fel. Pro. (5)	254 29.13	70 25.45	397 29.63	78 35.94	12 19.05	811
Felony Person(6)	96 11.01	51 18.55	252 18.81	51 23.50	23 36.51	473

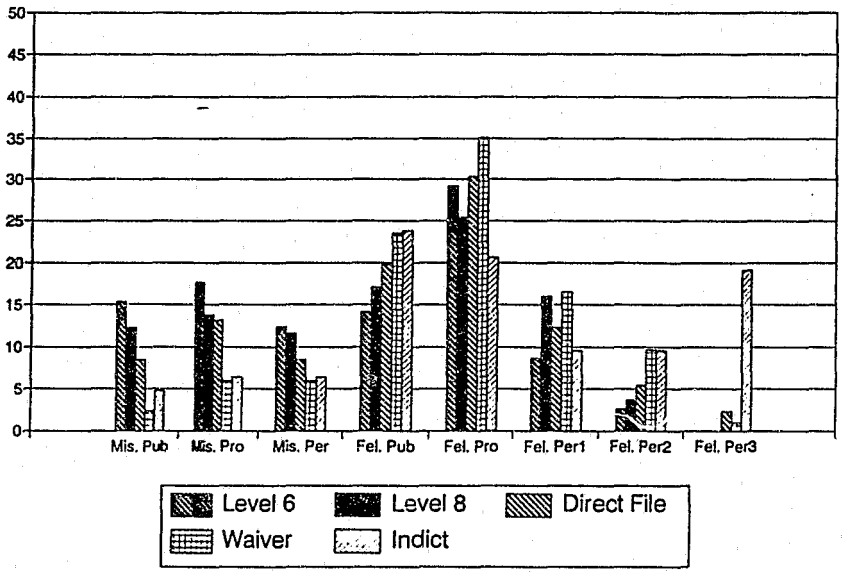
* Felony person (6) includes murder, attempted murder, sexual battery, other sex offenses, armed robbery, other robbery, arson, aggravated assault and/or battery.


Comparison of Mean Severity of Offense
(Based on 6 point scale)
50
45
40
35
30
25
20
15
10
5
0
Mis. Pub
Mis. Pro
Mis. Per
Fel. Pub
Fel. Pro
Fel. Per
Level 6
Level 8
Direct File
Waiver
Indict

Variables	Level 6	Level 8	Direct File	Waiver	Indict	Total
Mean Serverity of Instant Offenses (Classification 2)*						
Mis. Pub. Order (1)	134 15.37	34 12.36	113 8.43	5 2.30	3 4.76	289
Mis. Pro. (2)	154 17.66	38 13.82	176 13.13	13 5.99	4 6.35	385
Mis. Person (3)	108 12.39	32 11.64	113 8.43	13 5.99	4 6.35	270
Fel. Pub. Order (4)	124 14.22	47 17.09	264 19.70	51 23.50	15 23.81	501
Fel. Pro. (5)	254 29.13	70 25.45	407 30.37	76 35.02	13 20.63	820
Fel. Person (6)	76 8.72	44 16.00	165 12.31	36 16.59	6 9.52	327
Fel. Person (7)	22 2.52	10 3.64	72 5.37	21 9.68	6 9.52	131
Fel. Person (8)	0 0.00	0 0.00	30 2.24	2 0.92	12 19.05	44

* Felony Person Offense is further classified into
(6): other robbery, arson, and aggravated assault/battery
(7): sexual battery, other sex offense, and armed robbery
(8): Murder, and attempted murder.

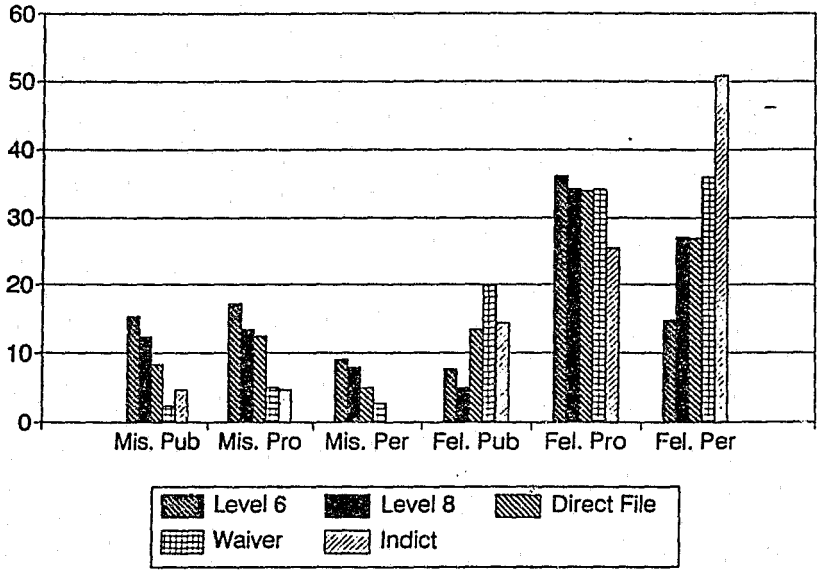
Comparison of Mean Severity of Offense (Based on 8 point scale)



Variables	Level 6	Level 8	Direct File	Waiver	Indict	Total
Maximum Severity of Instant Offenses (Classification 1)*						
Mis. Pub. Order (1)	133 15.25	34 12.36	112 8.36	5 2.30	3 4.76	287
Mis. Pro. (2)	149 17.09	37 13.45	166 12.39	11 5.07	3 4.76	366
Mis. Person (3)	79 9.06	22 8.00	67 5.00	6 2.76	0 0.00	174
Fel. Pub. Order (4)	68 7.80	14 5.09	180 13.43	43 19.82	9 14.29	314
Fel. Pro. (5)	315 36.12	94 34.18	456 34.03	74 34.10	16 25.40	955
Fel. Person (6)	128 14.68	74 26.91	359 26.79	78 35.94	32 50.79	671

* Felony person (6) includes murder, attempted murder, sexual battery, other sex offenses, armed robbery, other robbery, arson, aggravated assault and/or battery.

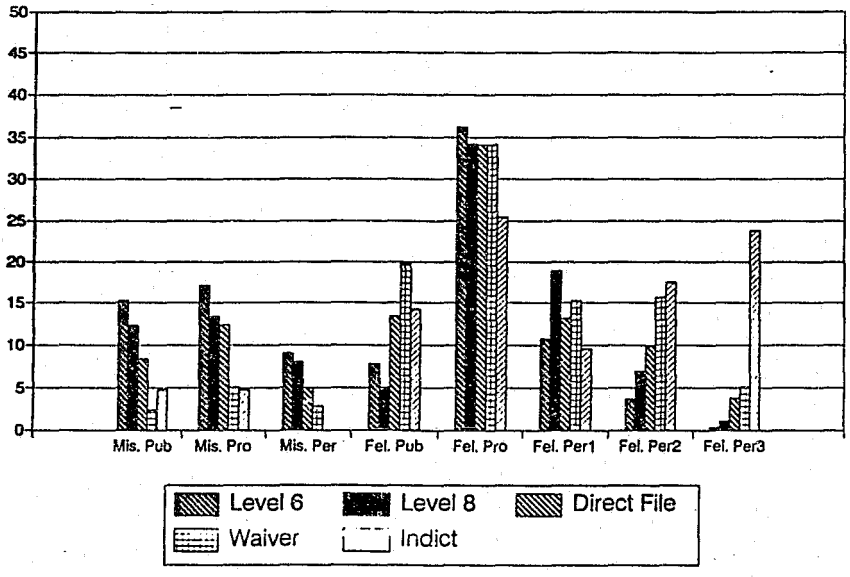
Comparison of Max Severity of Offense
(Based on 6 point scale)



Variables	Level 6	Level 8	Direct File	Waiver	Indict	Total
Maximum Severity of Instant Offenses (Classification 2)*						
Mis. Pub. Order (1)	133 15.25	34 12.36	112 8.36	5 2.30	3 4.76	287
Mis. Pro. (2)	149 17.09	37 13.45	166 12.39	11 5.07	3 4.76	366
Mis. Person (3)	79 9.06	22 8.00	67 5.00	6 2.76	0 0.00	174
Fel. Pub. Order (4)	68 7.80	14 5.09	180 13.43	43 19.82	9 14.29	314
Fel. Pro. (5)	315 36.12	94 34.18	456 34.03	74 34.10	16 25.40	955
Fel. Person (6)	94 10.78	52 18.91	176 13.13	33 15.21	6 9.52	361
Fel. Person (7)	32 3.67	19 6.91	133 9.93	34 15.67	11 17.46	229
Fel. Person (8)	2 0.23	3 1.09	50 3.73	11 5.07	15 23.81	81

* Felony Person Offense is further classified into
(6): other robbery, arson, and aggravated assault/battery
(7): sexual battery, other sex offense, and armed robbery
(8): Murder, and attempted murder.

Comparison of Max Severity of Offense (Based on 8 point scale)



The next set of six graphs focus on comparing the five groups in terms of the severity of prior offenses. As with the severity of instant offense, the measures of severity of prior offenses involve both a mean and maximum score and they make use of both the 6 point and an 8 point offense severity scales. The first two graphs show the two DHRS groups (level 6 and 8) and the direct file group are very similar in terms of prior offense histories. The pattern is the same with both the 6 point and the 8 point offense seriousness scale.

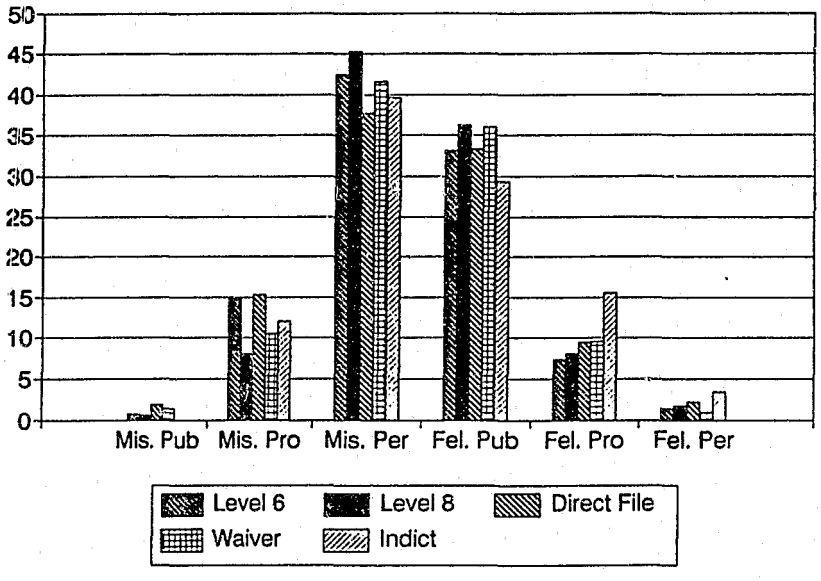
The next two graphs show a comparison of the five groups in terms of the single most serious prior offense. By this measure(called the maximum severity of priors), the DHRS groups and the direct file group are less similar. The difference is that the DHRS (level 6 and level 8) group tends to have larger proportions of juveniles with serious felony histories than does the direct file group. This pattern is the same regardless of whether the 6 or the 8 point offense seriousness scale is used. As a final check on the comparative seriousness of prior offenses in the groups, a third measure is introduced. The third set of graphs entitled "Comparison of Mean of Maximum Priors" take the most serious offense from each referral event as a measure of seriousness for that event. These offenses are assigned a value on the 6 or 8 point offense seriousness scale. Then these scores are summed and divided by the number of events to get an average of the most serious prior offenses committed by juveniles in each group. Again, the DHRS groups and the direct file group have very similar prior offense histories.

-- 6 tables and 6 graphs on severity of priors about here --

Variables	Level 6	Level 8	Direct File	Waiver	Indict	Total
Mean Severity of Prior Offenses (Classification 1)*						
Mis. Pub. Order (1)	7 0.68	2 0.60	22 1.85	3 1.37	0 0.00	34
Mis. Pro. (2)	155 14.95	27 8.04	182 15.31	23 10.50	7 12.07	394
Mis. Person (3)	440 42.43	152 45.24	449 37.76	91 41.55	23 39.66	1155
Fel. Pub. Order (4)	344 33.17	122 36.31	397 33.39	79 36.07	17 29.31	959
Fel. Pro. (5)	76 7.33	27 8.04	113 9.50	21 9.59	9 15.52	246
Fel. Person (6)	15 1.45	6 1.79	26 2.19	2 0.91	2 3.45	51

* Felony person (6) includes murder, attempted murder, sexual battery, other sex offenses, armed robbery, other robbery, arson, aggravated assault and/or battery.

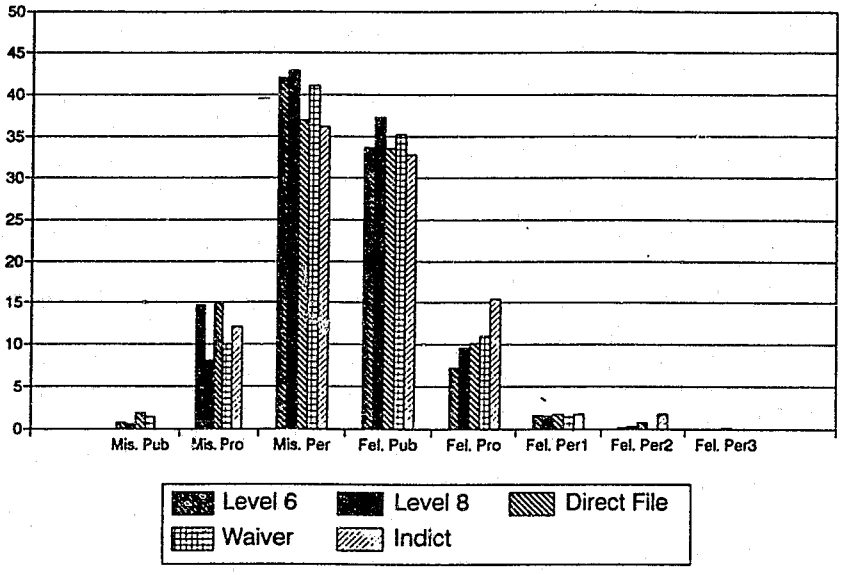
Comparison of Mean Severity of Priors
(Based on 6 point scale)



Variables	Level 6	Level 8	Direct File	Waiver	Indict	Total
Mean Severity of Prior Offenses (Classification 2)*						
Mis. Pub. Order (1)	7 0.68	2 0.60	22 1.85	3 1.37	0 0.00	34
Mis. Pro. (2)	153 14.75	27 8.04	179 15.05	22 10.05	7 12.07	388
Mis. Person (3)	435 41.95	144 42.86	439 36.92	90 41.10	21 36.21	1129
Fel. Pub. Order (4)	349 33.65	125 37.20	399 33.56	77 35.16	19 32.76	969
Fel. Pro. (5)	74 7.14	32 9.52	120 10.09	24 10.96	9 15.52	259
Fel. Person (6)	17 1.64	5 1.49	20 1.68	3 1.37	1 1.72	46
Fel. Person (7)	2 0.19	1 0.30	9 0.76	0 0.00	1 1.72	13
Fel. Person (8)	0 0.00	0 0.00	1 0.08	0 0.00	0 0.00	1

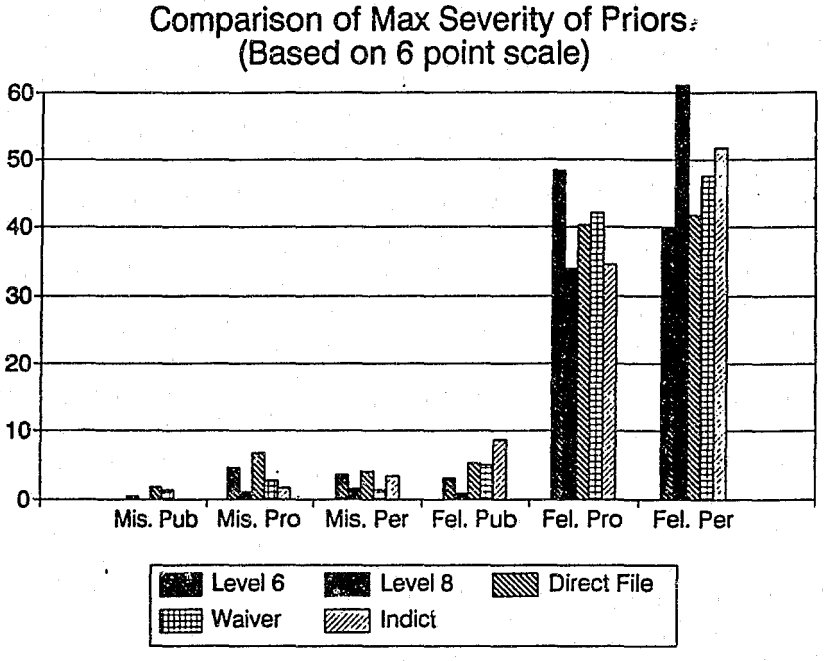
* Felony Person Offense is further classified into
(6): other robbery, arson, and aggravated assault/battery
(7): sexual battery, other sex offense, and armed robbery
(8): Murder, and attempted murder.

Comparison of Mean Severity of Priors (Based on 8 point scale)



Variables	Level 6	Level 8	Direct File	Waiver	Indict	Total
Maximum Severity of Prior Offenses (Classification 1)*						
Mis. Pub. Order (1)	5 0.48	0 0.00	21 1.77	3 1.37	0 0.00	29
Mis. Pro. (2)	48 4.63	4 1.19	80 6.73	6 2.74	1 1.72	139
Mis. Person (3)	37 3.57	5 1.49	49 4.12	3 1.37	2 3.45	96
Fel. Pub. Order (4)	33 3.18	3 0.89	63 5.30	11 5.02	5 8.62	115
Fel. Pro. (5)	502 48.41	114 33.93	479 40.29	92 42.01	20 34.48	1207
Fel. Person (6)	412 39.73	210 62.50	497 41.80	104 47.49	30 51.72	1253

* Felony person (6) includes murder, attempted murder, sexual battery, other sex offenses, armed robbery, other robbery, arson, aggravated assault and/or battery.


Comparison of Max Severity of Priors
(Based on 6 point scale)
60
50
40
30
20
10
0
Mis. Pub
Mis. Pro
Mis. Per
Fel. Pub
Fel. Pro
Fel. Per
Level 6
Level 8
Direct File
Waiver
Indict

Variables	Level 6	Level 8	Direct File	Waiver	Indict	Total
Maximum Severity of Prior Offenses (Classification 2)*						
Mis. Pub. Order (1)	5 0.48	0 0.00	21 1.77	3 1.37	0 0.00	29
Mis. Pro. (2)	48 4.63	4 1.19	80 6.73	6 2.74	1 1.72	139
Mis. Person (3)	37 3.57	5 1.49	49 4.12	3 1.37	2 3.45	96
Fel. Pub. Order (4)	33 3.18	3 0.89	63 5.30	11 5.02	5 8.62	115
Fel. Pro. (5)	502 48.41	114 33.93	479 40.29	92 42.01	20 34.48	1207
Fel. Person (6)	282 27.19	109 32.44	317 26.66	53 24.20	15 25.86	776
Fel. Person (7)	125 12.05	93 27.68	155 13.04	44 20.09	11 18.97	428
Fel. Person (8)	5 0.48	8 2.38	25 2.10	7 3.20	4 6.90	49

* Felony person (6) includes murder, attempted murder, sexual battery, other sex offenses, armed robbery, other robbery, arson, aggravated assault and/or battery.

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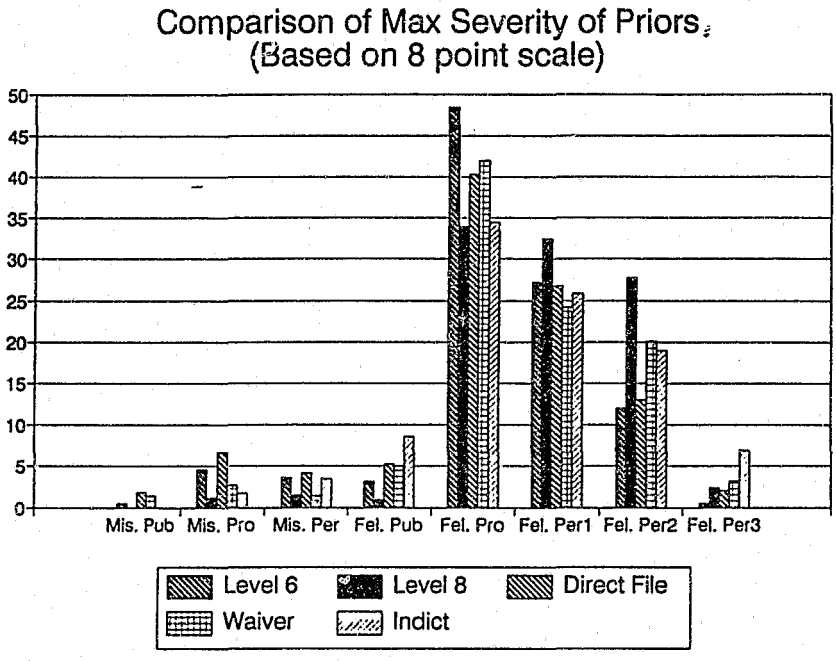
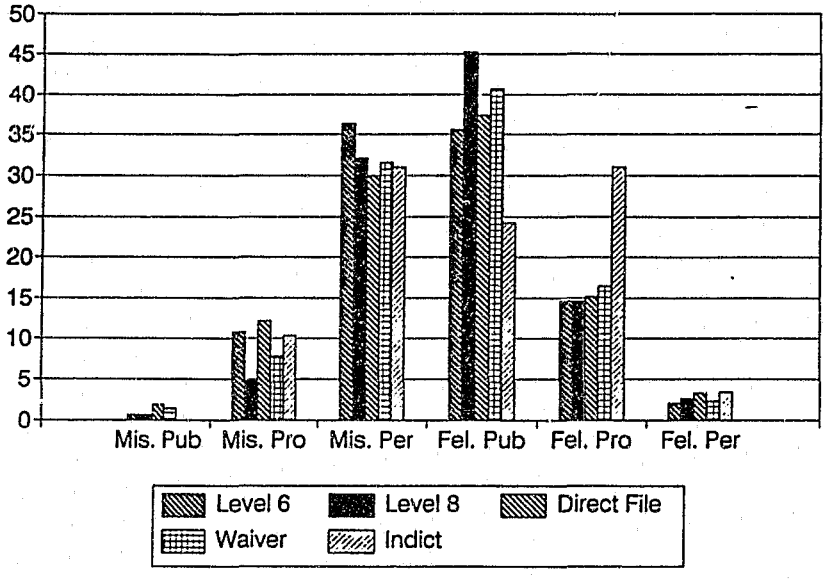

Comparison of Max Severity of Priors
(Based on 8 point scale)
50
45
40
35
30
25
20
15
10
5
0
Mis. Pub
Mis. Pro
Mis. Per
Fel. Pub
Fel. Pro
Fel. Per1
Fel. Per2
Fel. Per3
Level 6
Level 8
Direct File
Waiver
Indict

Variables	Level 6	Level 8	Direct File	Waiver	Indict	Total
Mean of Maximum Severity of Prior Offenses (Classification 1) *						
Mis. Pub. order (1)	6 0.58	2 0.60	22 1.85	3 1.37	0 0.00	33
Mis. Pro. (2)	112 10.80	16 4.76	144 12.11	17 7.76	6 10.34	295
Mis. Person (3)	377 36.35	108 32.14	357 30.03	69 31.51	18 31.03	929
Fel. Pub. Order (4)	369 35.58	152 45.24	445 37.43	89 40.64	14 24.14	1069
Fel. Pro. (5)	152 14.66	49 14.58	181 15.22	36 16.44	18 31.03	436
Fel. Person (6)	21 2.03	9 2.68	40 3.36	5 2.28	2 3.45	77

* Felony person (6) includes murder, attempted murder, sexual battery, other sex offenses, armed robbery, other robbery, arson, aggravated assault and/or battery.

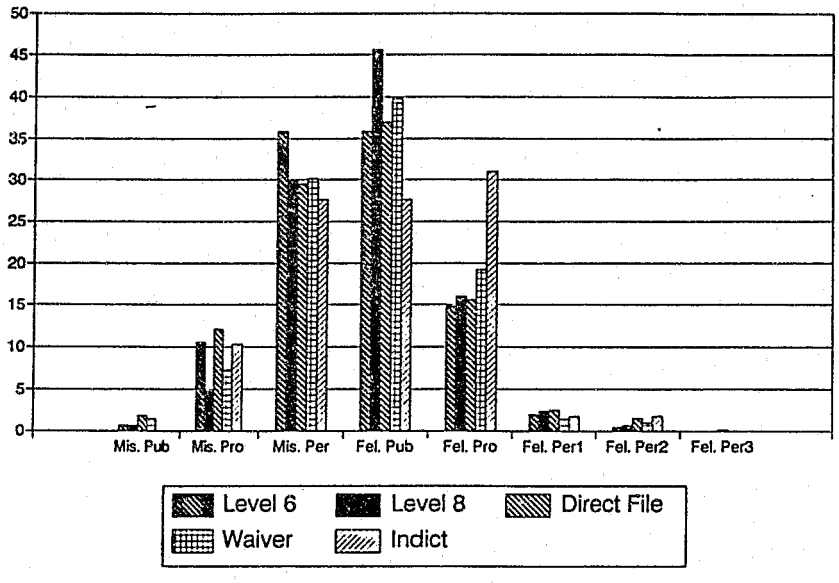
Comparison of Mean of Maximum Priors (Based on 6 point scale)



Variables	Level 6	Level 8	Direct File	Waiver	Indict	Total
Mean of Maximum Severity of Prior Offenses (Classification 2) *						
Mis. Pub. Order (1)	6 0.58	2 0.60	22 1.85	3 1.37	0 0.00	33
Mis. Pro. (2)	110 10.61	16 4.76	144 12.11	16 7.31	6 10.34	292
Mis. Person (3)	371 35.78	101 30.06	350 29.44	66 30.14	16 27.59	904
Fel. Pub. Order (4)	372 35.87	153 45.54	439 36.92	87 39.73	16 27.59	1067
Fel. Pro. (5)	154 14.85	54 16.07	186 15.64	42 19.18	18 31.03	454
Fel. Person (6)	20 1.93	8 2.38	29 2.44	3 1.37	1 1.72	61
Fel. Person (7)	4 0.39	2 0.60	18 1.51	2 0.91	1 1.72	27
Fel. Person (8)	0 0.00	0 0.00	1 0.08	0 0.00	0 0.00	1

* Felony person (6) includes murder, attempted murder, sexual battery, other sex offenses, armed robbery, other robbery, arson, aggravated assault and/or battery.

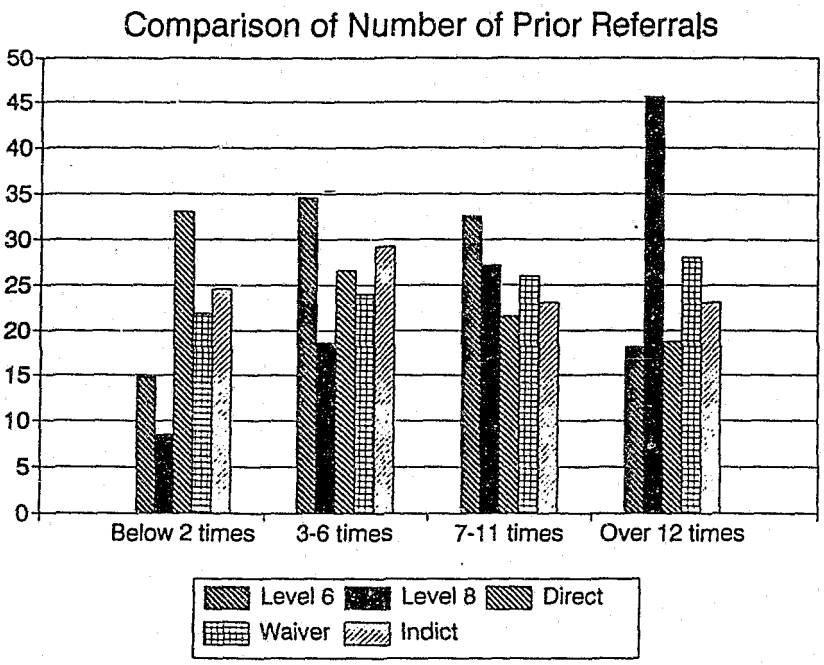
Comparison of Mean of Maximum Priors (Based on 8 point scale)



There is always some debate in juvenile justice circles about how to best characterize a juvenile's prior record. The "mean" and "maximum" measures and the two different categorizations of offense seriousness they use are designed to address the major concerns in this debate. Some juvenile justice officials, however, like to think of a juvenile's record in terms the number of times he or she has been referred to the system. The next graph entitled "Comparison of Number of Prior Referrals" shows these data divided into four categories for each group. Looking just at the DHRS level 8 and the direct file group comparison, it is clear that the direct file group is not comprised of juveniles with large numbers of prior referrals. By contrast, nearly three quarters of the level 8 DHRS group had 7 or more prior referrals. By this measure, the DHRS level 8 group would appear to be comprised of a more serious and dangerous group than the direct file group. This comparison considers numbers only, however, and the seriousness of charges involved in the referrals is not indicated here.

Another way to think of the groups in comparative terms is to consider what prior rehabilitative approaches have been tried. Final dispositions of cases in the Juvenile Justice System may be categorized into four broad groups ranging from "other services" at the low end to "commitment to a secure residential facility" at the high end of a severity scale. One traditional justification of transferring juveniles into adult court has been that it is sometimes necessary because all rehabilitative programs available in the juvenile justice system have been tried and have failed. This consideration is typical in waiver hearings in most states. When prosecutors in Florida choose to exercise the direct file option available to them, they sometimes suggest that they do so because the juveniles have not responded well to what the juvenile justice system has to

Variables	Level 6	Level 8	Direct File	Waiver	Indict	Total
Number of Prior Referrals						
Below 2	160	29	461	52	16	718
Times (1)	14.86	8.48	33.09	21.85	24.62	
3 - 6	372	64	370	57	19	882
Times (2)	34.54	18.71	26.56	23.95	29.23	
7 - 11	350	93	300	62	15	820
Times (3)	32.50	27.19	21.54	26.05	23.08	
Over 12	195	156	262	67	15	695
Times (4)	18.11	45.61	18.81	28.15	23.08	


Comparison of Number of Prior Referrals
50
45
40
35
30
25
20
15
10
5
0
Below 2 times
3-6 times
7-11 times
Over 12 times
Level 6
Level 8
Direct
Waiver
Indict

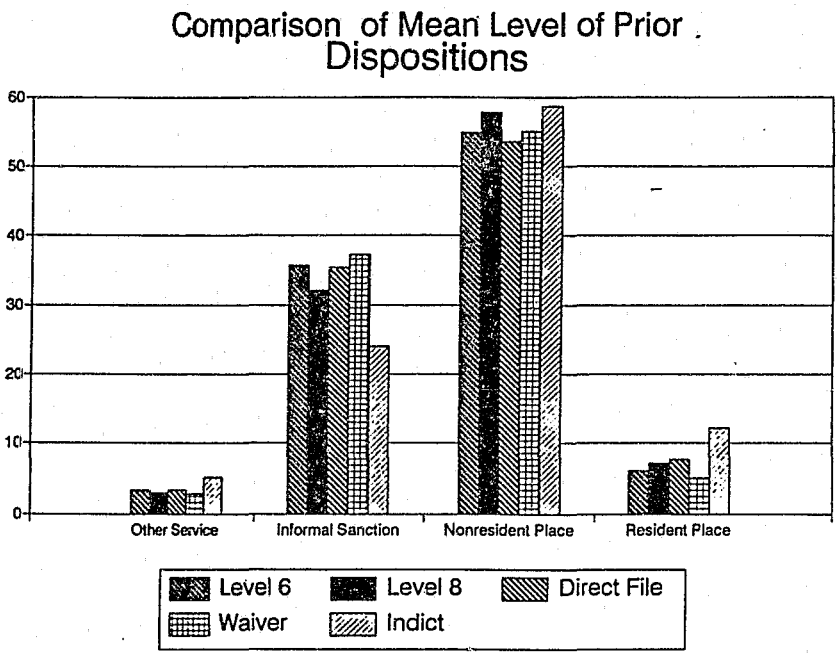
offer. If this view is typical as a guideline that is applied by prosecutors, we should find that the direct file group has a disposition history indicating that either all levels of treatment available or that at least the most restrictive treatment (e.g., commitment to a residential facility) has been tried.

-- 3 tables and 3 graphs on prior dispositions about here --

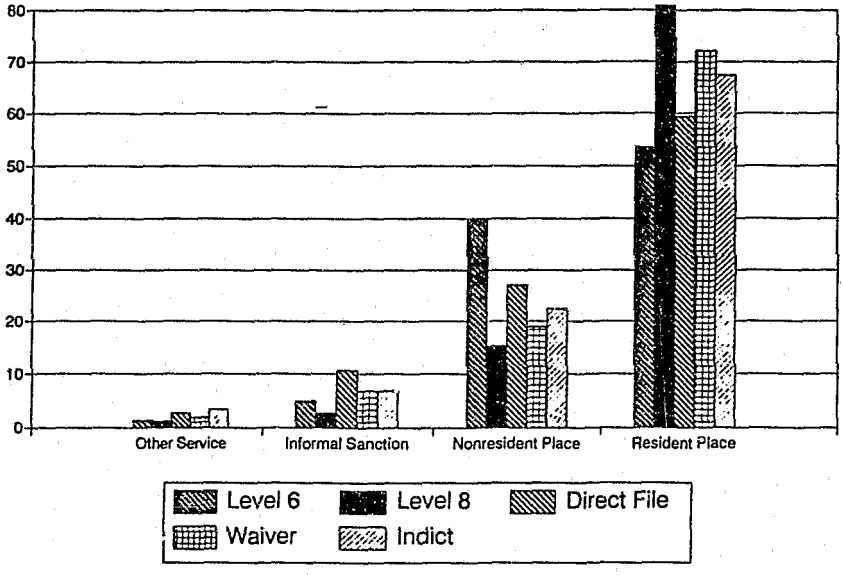
The next three graphs provide data on the prior disposition histories of the five groups. The first graph shows the percentage of each group having a mean prior disposition history at one of four broad disposition levels (i.e., other services, informal sanctions, nonresidential placement, residential placement). When prior dispositions of individuals are averaged, it is clear that more than 50 percent of each group had previously been exposed to nonresidential treatment and sanction programs. Some would argue that a juvenile should only get one chance at each treatment level or that once the most restrictive treatment (in this case, commitment to a residential facility) has been tried, juvenile offenders should be transferred to adult court.

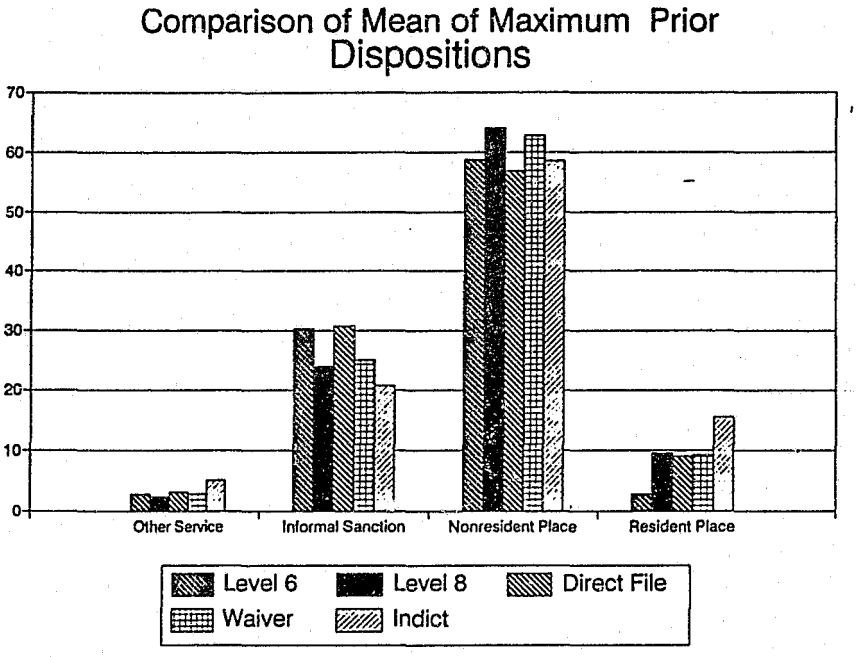
The next graph entitled "Comparison of Maximum Level of Prior Dispositions" shows that most of all five groups had at least one prior disposition that involved a residential placement. As the fourth column of bars shows, however, a larger percentage of the DHRS level 8 group had this prior treatment than did any other group. The direct file group and the DHRS level 6 group had the lowest proportions having had previous experiences with residential treatment programs. In the final graph, which shows the proportions of each group with a mean of maximum prior dispositions at each of the four levels of disposition, indicates the groups are not significantly different. This is

Variables	Level 6	Level 8	Direct File	Waiver	Indict	Total
Mean Level of Prior Dispositions						
Other Service (1)	34 3.30	10 3.00	40 3.40	6 2.80	3 5.20	93
Informal Sanction(2)	367 35.70	107 32.10	419 35.40	80 37.20	14 24.10	987
Nonresident Place (3)	563 54.80	192 57.70	633 53.50	118 54.90	34 58.60	1540
Residential Place (4)	63 6.10	24 7.20	91 7.70	11 5.10	7 12.10	196
Maximum Level of Prior Dispositions						
Other Service (1)	14 1.36	4 1.20	33 2.79	4 1.86	2 3.45	57
Informal Sanction(2)	52 5.06	9 2.70	128 10.82	15 6.98	4 6.90	208
Nonresident Place (3)	411 40.02	51 15.32	321 27.13	41 19.07	13 22.41	837
Residential Place (4)	550 53.55	269 80.78	701 59.26	155 72.09	39 67.24	1714
Mean of Maximum Prior Dispositions						
Other Service (1)	29 2.82	8 2.40	38 3.21	6 2.79	3 5.17	84
Informal Sanction(2)	311 30.28	80 24.02	364 30.77	54 25.12	12 20.69	821
Nonresident Place (3)	603 58.71	213 63.96	673 56.89	135 62.79	34 58.62	1658
Residential Place (4)	84 8.18	32 9.61	108 9.13	20 9.30	9 15.52	253


Comparison of Mean Level of Prior Dispositions
60
50
40
30
20
10
0
Other Service
Informal Sanction
Nonresident Place
Resident Place
Level 6
Level 8
Direct File
Waiver
Indict

Comparison of Maximum Level of Prior Dispositions




Comparison of Mean of Maximum Prior Dispositions
70
60
50
40
30
20
10
0
Other Service
Informal Sanction
Nonresident Place
Resident Place
Level 6
Level 8
Direct File
Waiver
Indict

especially true of the level 8 DHRS group and the direct file group. Because it is safest to assume that if juveniles were not direct filed, it would be desirable for them to be placed in a deep end (level 8) program, the focus on comparisons between these two particular groups is appropriate.

In the real world of juvenile justice practice, however, cases are seldom considered in terms of only one variable. Few officials would decide upon a case, for example, strictly on a basis of offense severity or prior history of offending or prior rehabilitative efforts. Generally juvenile justice officials take several variables into account simultaneously and make their decisions by considering them as part of a package. In this light then, the descriptions above for the various groups should be seen as simply that, descriptive statistics. In the following analysis, the five groups are compared in terms of four important legal variables combined.

Group Comparisons by Combinations of Important Legal Variables

For this part of the analysis, the groups are compared in terms of a "summary score." The summary score is derived by adding the scores of four variables (severity of instant offense, severity of prior offenses, level of prior dispositions, and the number of prior delinquency referrals) for each individual. Each juvenile might attain a summary score ranging from 4 to as high as 20 to 24 depending on whether 6 or 8 point scale is used to measure the seriousness of offenses. The summary mean score is the mean of individual summary scores in each group. Because we have used four different measures of three of these variables, four summary scores are provided for each group. They are

called Summary 1, 2, 3, or 4 and the method of computation is illustrated on the two pages entitled "Comparison of Groups by Summary Scores."

-- 2 summary score tables and 4 graphs about here --

Each group may be compared with each other group in terms of the same summary score. That is, if the juveniles comprising each group are thought of in terms of their average level of seriousness or dangerousness, the mean scores from each summary measure may be used as the basis for comparison across group. Focusing again on just the DHRS level 8 and the direct file group, it is clear that the two groups are not comprised of significantly different sorts of juveniles. While the differences are not substantial in any fundamental sense, the differences that are evidenced show the DHRS level 8 group includes slightly more serious offenders.

Any given juvenile might attain a severity score as high as 17 to 21 depending on which summary score is used. The four graphs entitled "Summary Scores by Groups" show clearly that all of the groups are similar in composition, although the indictment group, the waiver group, and the DHRS level 8 group show slightly higher average seriousness levels. That is to say, indications from this analysis are that the seriousness levels of juveniles committed to deep end juvenile DHRS programs are not greatly different from those of the direct file group. Even the waiver and indictment groups, when evaluated in terms of average scores of four variables, are not greatly different from those cases left in the juvenile justice system and committed to deep end DHRS programs.

Comparison of Groups by Summary Scores

Groups/ Variables	Mean	S.D.	Min.	Max.
HRS Level 6 Placement				
Summary 1	12.06	2.25	7	17
Summary 2	12.11	2.29	7	18
Summary 3	13.30	2.44	7	19
Summary 4	13.36	2.48	7	20
HRS Level 8 Placement				
Summary 1	13.16	2.00	7	17
Summary 2	13.26	2.07	7	17
Summary 3	14.80	2.20	7	19
Summary 4	14.94	2.29	7	21
HRS Group (Level 6+Level 8)				
Summary 1	12.33	2.25	7	17
Summary 2	12.39	2.29	7	18
Summary 3	13.67	2.47	7	19
Summary 4	13.75	2.53	7	21

** Summary 1 : Mean Severity of Instant Offenses (1) +
Mean Severity of Prior Offenses (1) +
Mean Level of Prior Dispositions +
Number of Prior Referrals

Summary 2 : Mean Severity of Instant Offenses (2) +
Mean Severity of Prior Offenses (2) +
Mean Level of Prior Dispositions +
Number of Prior Referral

Summary 3 : Maximum Severity of Instant Offenses (1) +
Maximum Severity of Prior Offenses (1) +
Maximum Level of Prior Dispositions +
Number of Prior Referrals

Summary 4 : Maximum Severity of Instant Offenses (2) +
Maximum Severity of Prior Offenses (2) +
Maximum Level of Prior Dispositions +
Number of Prior Referral

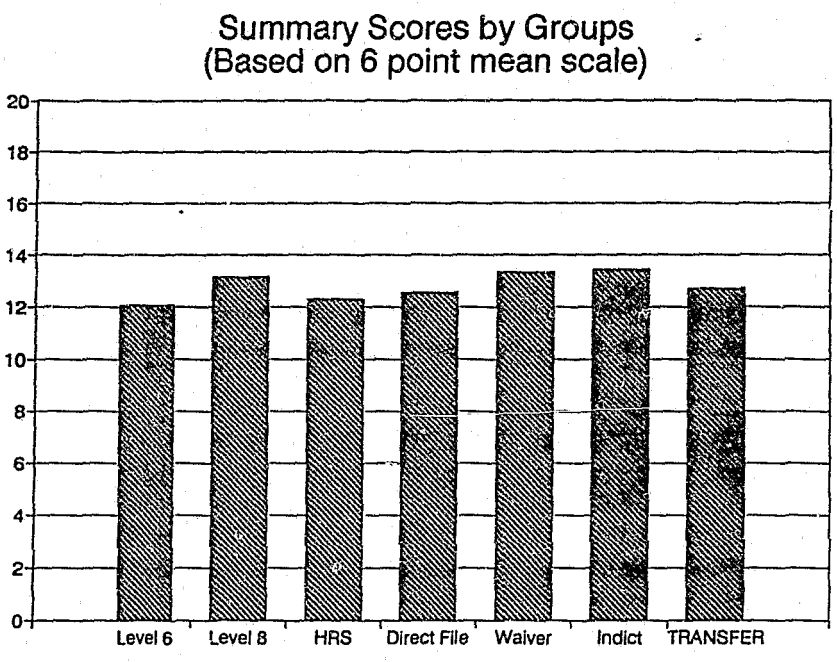
Groups/ Variables	Mean	S.D.	Min.	Max.
Direct File Group				
Summary 1	12.58	2.33	5	19
Summary 2	12.74	2.46	5	20
Summary 3	13.86	2.63	5	19
Summary 4	14.07	2.79	5	21
Waiver Group				
Summary 1	13.33	1.91	8	18
Summary 2	13.55	2.00	8	18
Summary 3	14.90	2.12	8	19
Summary 4	15.19	2.27	8	20
Indict Group				
Summary 1	13.46	1.81	9	19
Summary 2	14.02	2.05	10	21
Summary 3	14.96	2.17	10	19
Summary 4	15.59	2.39	10	21
Adult Court Group (Direct File + Waiver + Indict)				
Summary 1	12.72	2.28	5	19
Summary 2	12.91	2.41	5	21
Summary 3	14.05	2.58	5	19
Summary 4	14.29	2.75	5	21

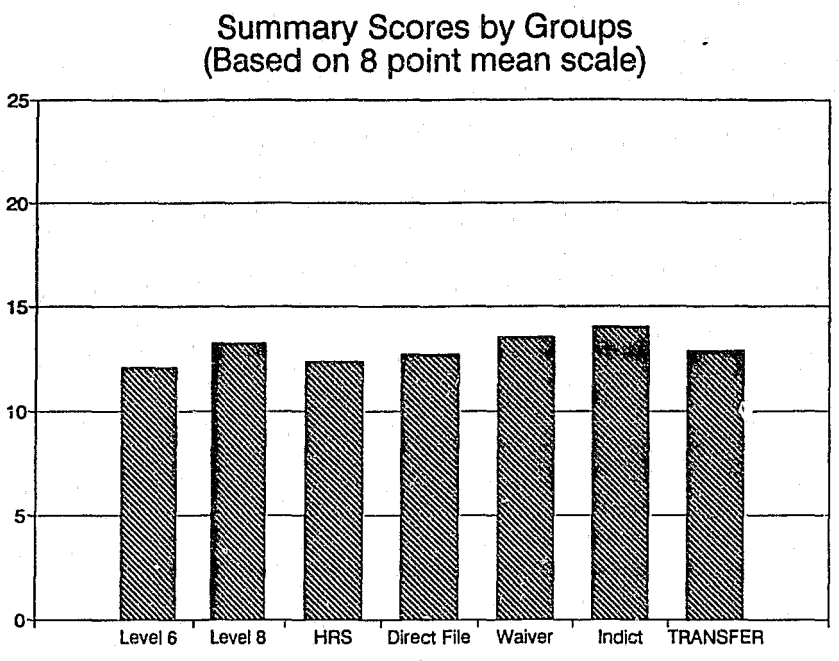
** Summary 1 : Mean Severity of Instant Offenses (1) +
Mean Severity of Prior Offenses (1) +
Mean Level of Prior Dispositions +
Number of Prior Referrals

Summary 2 : Mean Severity of Instant Offenses (2) +
Mean Severity of Prior Offenses (2) +
Mean Level of Prior Dispositions +
Number of Prior Referral

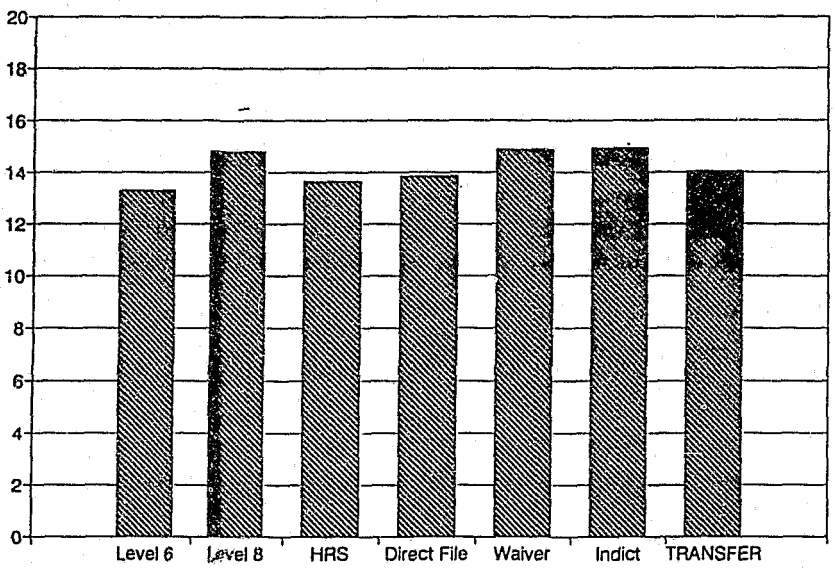
Summary 3 : Maximum Severity of Instant Offenses (1) +
Maximum Severity of Prior Offenses (1) +
Maximum Level of Prior Dispositions +
Number of Prior Referrals

Summary 4 : Maximum Severity of Instant Offenses (2) +
Maximum Severity of Prior Offenses (2) +
Maximum Level of Prior Dispositions +
Number of Prior Referral

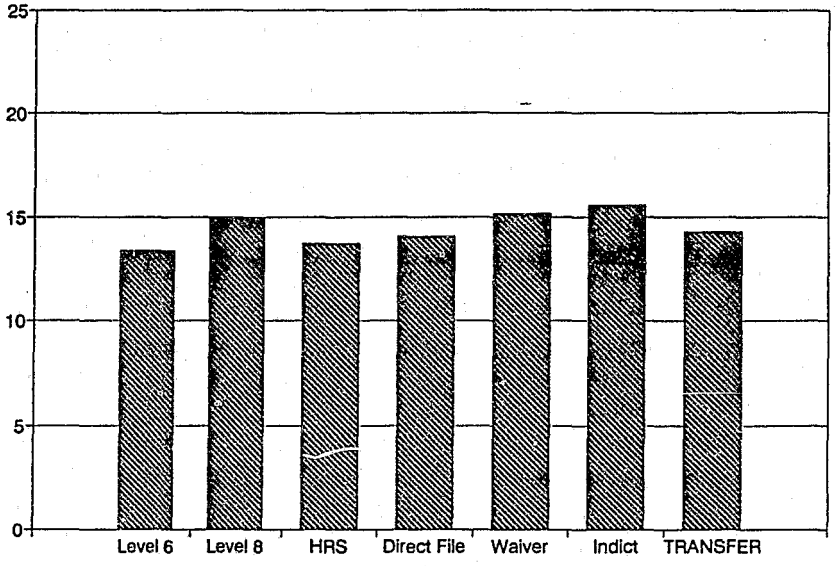

Summary Scores by Groups
(Based on 6 point mean scale)
20
18
16
14
12
10
8
6
4
2
0
Level 6
Level 8
HRS
Direct File
Waiver
Indict
TRANSFER


Summary Scores by Groups
(Based on 8 point mean scale)
25
20
15
10
5
0
Level 6
Level 8
HRS
Direct File
Waiver
Indict
TRANSFER

Summary Scores by Groups
(Based on 6 point maximum scale)



Summary Scores by Groups
(Based on 8 point maximum scale)



Dividing Serious Offenders by Levels of Risk

Another way to think about various juvenile and adult court options for serious juvenile offenders in Florida is to consider how those juveniles that might be judged high or low risk are treated. During the eight month study period, 3,150 juveniles were either committed to deep end DHRS programs or were transferred to adult court by means of direct file, waiver, or indictment. It is reasonable to assume that this group includes the most serious juvenile offenders in Florida during the study period. Yet, the data presented above shows that there is considerable variability in this group. Some juveniles appear to be very serious high risk cases while others are probably safely thought of as relatively low risk cases. The following analysis is designed to examine how the low and high risk cases from this group of generally serious offenders are divided into the DHRS and adult court groups.

Risk level is determined by considering the whole group of 3,150 serious juvenile offenders. It is assessed by recoding each legal variable into three categories based on its mean and standard deviation, and after the four variables are summated, the summated score is divided into three levels. The low risk group is comprised of any juvenile whose summated score is more than one standard deviation lower than the mean of the summated score. High risk groups are those whose summated scores are more than one standard deviation above the mean. The "medium" group is comprised of the juveniles who fall between the high and low risk cases. The first four tables combine the two DHRS groups into one group and the three adult court groups into one group for broad comparison.

-- 4 tables and 4 graphs on high risk group distribution about here --

The total number of cases included in these tables is 2,471. Cases that were missing information on one or more of the four variables used to categorize risk level were deleted from the analysis. The first two tables (labelled Classification 1 and Classification 2) show that nearly two thirds of the high risk cases are among those transferred to adult court. At the same time, however, more than half of the lowest and medium risk cases were transferred to adult court. These two tables use the mean measures described above. The pattern of results changes somewhat in the next two tables which use maximum in place of mean indicators of severity. Here, the proportion of the low risk group going to adult court is equal to the proportion of the high risk group that is transferred to adult court. This means, in effect, that selection of cases for adult court transfer does not discriminate very well between the most serious cases and the least serious cases as defined by these four variables.

The issue of how these high and low risk cases are distributed across the two DHRS groups and the three adult court transfer groups is addressed in the next four tables and graphs. The focus again is on the DHRS level 8 group and the direct file group. Using the mean and maximum measures of severity and looking at all four tables, some patterns appear. First, no matter what measures of severity is used, the largest proportion of the high risk group is direct filed into adult court. Second, and counterintuitive given the traditional views about how the direct file provisions are used, the largest portion of the low risk group is also direct filed into adult court. Third, the largest portion of the medium risk group is also direct filed into adult court. Fourth, by stark contrast to these patterns of results, a very small proportion of the low risk group and a

High Risk Group by HRS Placement and Transfer to Adult, Based on Mean Severity of Instant Offenses, Mean Severity of Prior Offenses, Mean Level of Prior Dispositions, and Prior Referrals. (Classification 1)

	HRS Place	Transfer Adult Court	
Low Risk	94	106	200
	47.0	53.0	
Medium	937	1158	2095
	44.7	55.3	
High Risk	62	114	176
	35.2	64.8	
TOTAL	1093	1378	2471

Chi-square : 6.6 (D.F.= 2)
P-value : 0.037

High Risk Group by HRS Placement and Transfer to Adult, Based on Mean Severity of Instant Offenses, Mean Severity of Prior Offenses, Mean Level of Prior Dispositions, and Prior Referrals (Classification 2)

	HRS Place	Transfer Adult Court	
Low Risk	92	106	198
	46.5	53.5	
Medium	931	1149	2080
	44.8	55.2	
High Risk	70	123	193
	36.3	63.7	
TOTAL	1093	1378	2471

Chi-square : 5.6 (D.F.= 2)
P-value : 0.061

High Risk Group by HRS Placement and Transfer to Adult, Based on Maximum Severity of Instant Offenses, Maximum Severity of Prior Offenses, Maximum Level of Prior Dispositions, and Prior Referrals
(Classification 1)

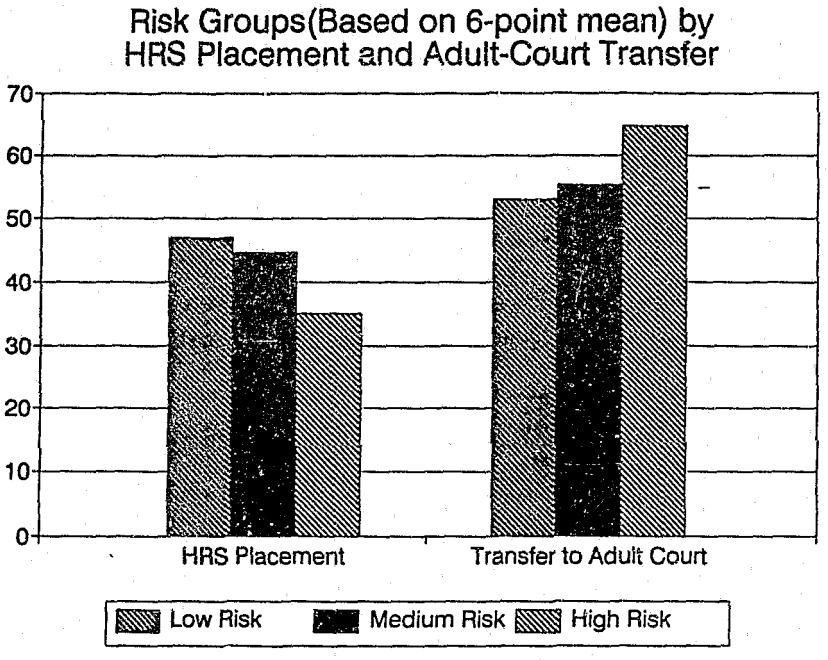
	HRS Place	Transfer Adult Court	
Low Risk	79	145	224
	35.3	64.7	
Medium	785	829	1614
	48.6	51.4	
High Risk	229	404	633
	36.2	63.8	
TOTAL	1093	1378	2471

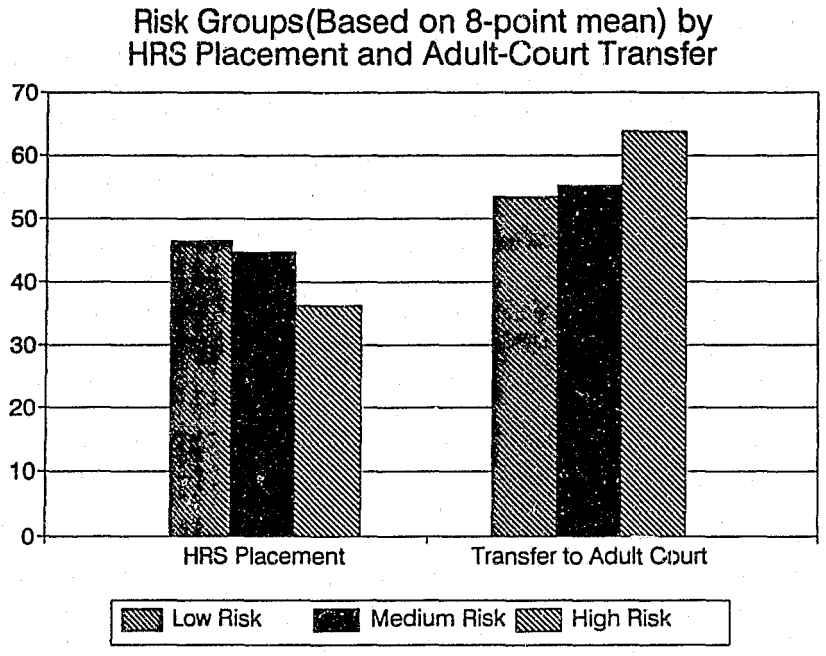
Chi-square : 36.64 (D.F.= 2)
P-value : 0.000

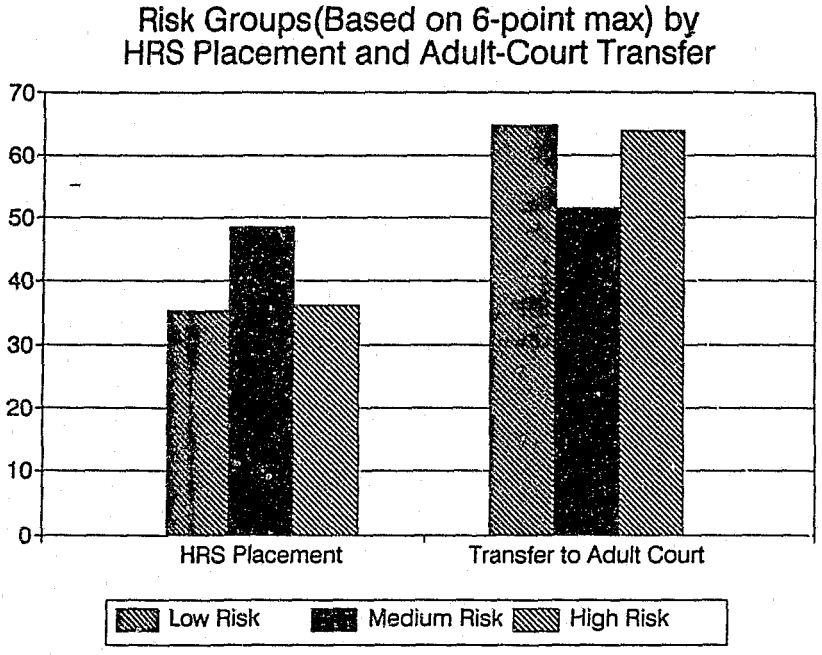
High Risk Group by HRS Placement and Transfer to Adult, Based on Maximum Severity of Instant Offenses, Maximum Severity of Prior Offenses, Maximum Level of Prior Dispositions, and Prior Referrals
(Classification 2)

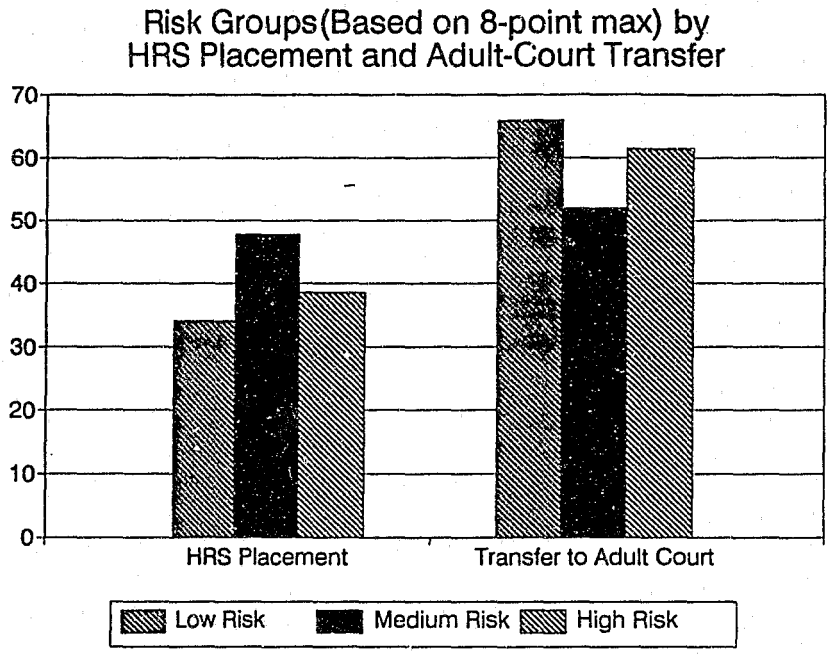
	HRS Place	Transfer Adult Court	
Low Risk	79	153	232
	34.1	65.9	
Medium	769	836	1605
	47.9	52.1	
High Risk	245	389	634
	38.6	61.4	
TOTAL	1023	1378	2471

Chi-square : 26.59 (D.F.= 2)
P-value : 0.000


Risk Groups(Based on 6-point mean) by
HRS Placement and Adult-Court Transfer
70
60
50
40
30
20
10
0
HRS Placement
Transfer to Adult Court
Low Risk
Medium Risk
High Risk


Risk Groups(Based on 8-point mean) by
HRS Placement and Adult-Court Transfer
70
60
50
40
30
20
10
0
HRS Placement
Transfer to Adult Court
Low Risk
Medium Risk
High Risk


Risk Groups(Based on 6-point max) by
HRS Placement and Adult-Court Transfer
70
60
50
40
30
20
10
0
HRS Placement
Transfer to Adult Court
Low Risk
Medium Risk
High Risk


Risk Groups(Based on 8-point max) by
HRS Placement and Adult-Court Transfer
70
60
50
40
30
20
10
0
HRS Placement
Transfer to Adult Court
Low Risk
Medium Risk
High Risk

comparatively small proportion of the medium risk group end up in level 8 programs. Fifth and finally, it is significant to note that despite the fact that the adult court options such as direct file and waiver could have been exercised in most of the cases identified in this data set, a sizable proportion of the highest risk cases remained in the juvenile justice system.

- - 4 tables and 4 graphs on high risk group distribution about here - -

If the success of Florida's transfer provisions are judged in terms of whether the most serious of the most serious cases (i.e., the worst of the deep end cases) are identified and sent to the adult court, these figures would not indicate great success. Instead, what they show is that more than a third of the high risk cases are left in the juvenile justice system. Further, those high risk juveniles left in the juvenile justice system are as likely to have been placed in level 6 programs as level 8 programs. More interesting still, is the fact that a substantially larger proportion of low risk juveniles were direct filed than were placed in the level 6 DHRS programs. If these various measures of relative risk are in any fundamental sense indicative of actual risk to the public, these tables and graphs raise a very important question. That is, do the direct file provisions in Florida law and the policies and practices of prosecutors with respect to this law provide any greater protection to the public than would have been the case otherwise?

Compelling as the question is, it cannot be answered within the confines of this study or with data that are currently available. This is a question that should be asked and it is one that should be answered despite the fact that it is

High Risk Group by Levels of HRS Placement and Methods of Transfer to Adult, Based on Mean Severity of Instant Offenses, Mean Severity of Prior Offenses, Mean Level of Prior Dispositions, and Prior Referrals
(Classification 1)

	Level 6 Place	Level 8 Place	Direct File	Waiver	Indict	
Low Risk	86	8	98	6	2	200
	43.0	4.0	49.0	3.0	1.0	
Medium	707	230	950	162	46	2095
	33.7	11.0	45.3	7.7	2.2	
High Risk	32	30	79	27	8	176
	18.2	17.0	44.9	15.3	4.5	
TOTAL	825	268	1127	195	56	2471

Chi-square : 57.28 (D.F.= 8)
P-value : 0.000

High Risk Group by Levels of HRS Placement and Methods of Transfer to Adult, Based on Mean Severity of Instant Offenses, Mean Severity of Prior Offenses, Mean Level of Prior Dispositions, and Prior Referrals
(Classification 2)

	Level 6 Place	Level 8 Place	Direct File	Waiver	Indict	
Low Risk	84	8	98	6	2	198
	42.4	4.0	49.5	3.0	1.0	
Medium	704	227	944	160	45	2080
	33.8	10.9	45.4	7.7	2.1	
High Risk	37	33	85	29	9	193
	19.2	17.1	44.0	15.0	4.7	
TOTAL	825	268	1127	195	56	2471

Chi-square : 57.71 (D.F.= 8)
P-value : 0.000

High Risk Group by Levels of HRS Placement and Methods of Transfer to Adult, Based on Maximum Severity of Instant Offenses, Maximum Severity Prior Offenses, Maximum Level of Prior Dispositions, and Prior Referrals (Classification 1)

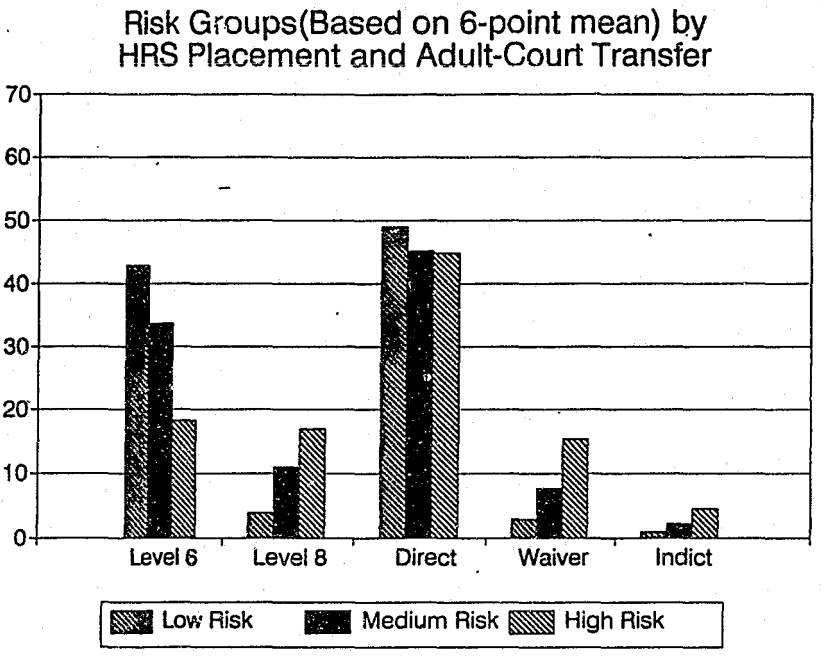
	Level 6 Place	Level 8 Place	Direct File	Waiver	Indict	
Low Risk	71	8	134	9	2	224
	31.7	3.6	59.8	4.0	0.9	
Medium	622	163	686	111	32	1614
	38.5	10.1	42.5	6.9	2.0	
High Risk	132	97	307	75	22	633
	20.9	15.3	48.5	11.8	3.5	
TOTAL	825	268	1127	195	56	2471

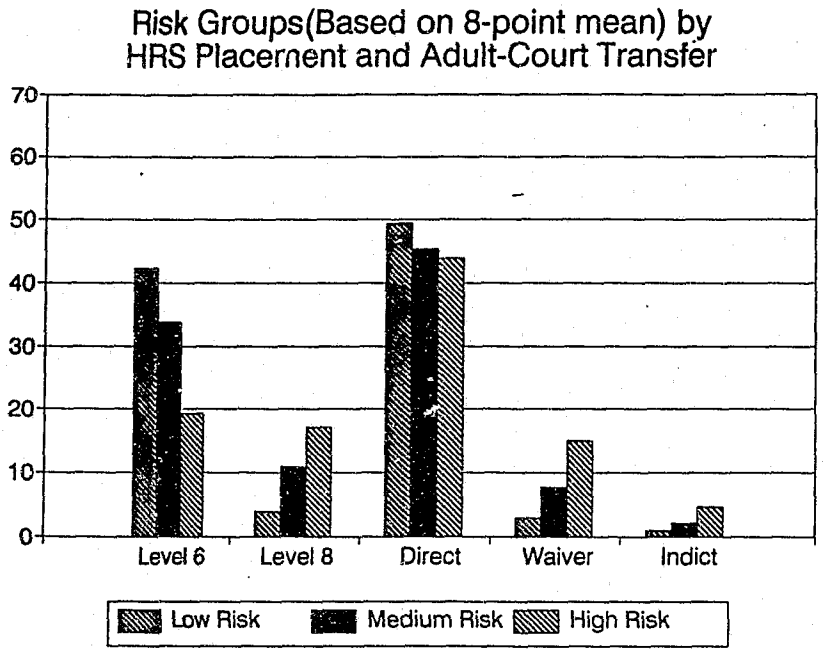
Chi-square : 106.20 (D.F.= 8)
P-value : 0.000

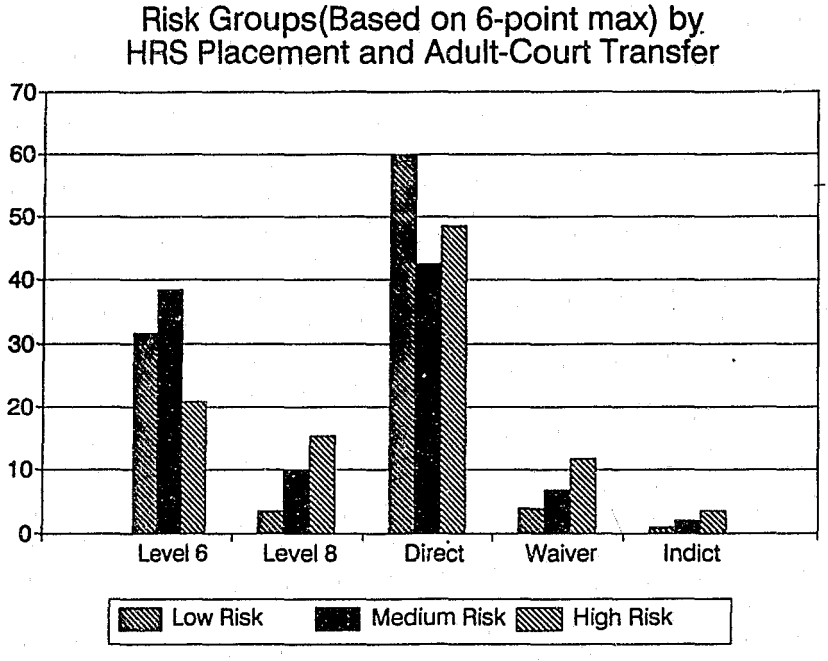
High Risk Group by Levels of HRS Placement and Methods of Transfer to Adult, Based on Maximum Severity of Instant Offenses, Maximum Severity Prior Offenses, Maximum Level of Prior Dispositions, and Prior Referrals (Classification 2)

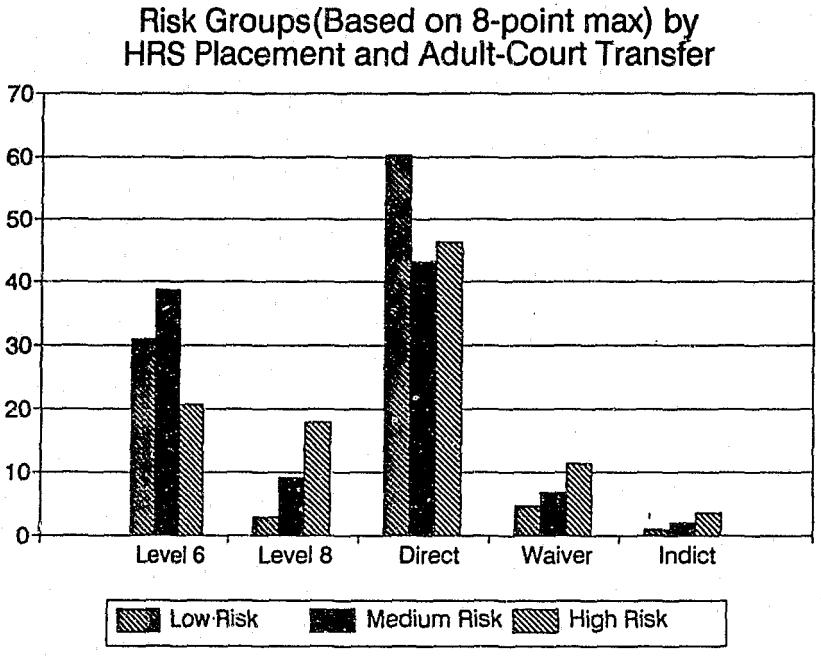
	Level 6 Place	Level 8 Place	Direct File	Waiver	Indict	
Low Risk	72	7	140	11	2	232
	31.0	3.0	60.3	4.7	0.9	
Medium	622	147	693	111	32	1605
	38.8	9.2	43.2	6.9	2.0	
High Risk	131	114	294	73	22	634
	20.7	18.0	46.4	11.5	3.5	
TOTAL	825	268	1127	195	56	2471

Chi-square : 127.26 (D.F.= 8)
P-value : 0.000


Risk Groups(Based on 6-point mean) by
HRS Placement and Adult-Court Transfer
70
60
50
40
30
20
10
0
Level 6
Level 8
Direct
Waiver
Indict
Low Risk
Medium Risk
High Risk


Risk Groups(Based on 8-point mean) by
HRS Placement and Adult-Court Transfer
70
60
50
40
30
20
10
0
Level 6
Level 8
Direct
Waiver
Indict
Low Risk
Medium Risk
High Risk


Risk Groups(Based on 6-point max) by
HRS Placement and Adult-Court Transfer
70
60
50
40
30
20
10
0
Level 6
Level 8
Direct
Waiver
Indict
Low Risk
Medium Risk
High Risk


Risk Groups(Based on 8-point max) by
HRS Placement and Adult-Court Transfer
70
60
50
40
30
20
10
0
Level 6
Level 8
Direct
Waiver
Indict
Low Risk
Medium Risk
High Risk

far more complex than it first appears. The final section of this report turns to a more detailed discussion of this issue.

Part 3. Direct File and Public Protection.

The present study confirms the appropriateness of asking whether the direct file law provides greater protection to the public than would be the case if such a law were not on the books. It was not the purpose of this study to address or attempt to answer that question. Rather this study was intended to determine whether there was a need to ask the question at all. That is to say, the general question that guided the present research was designed to determine whether the juveniles selected for transfer to adult court are demonstrably more serious offenders than those whose cases are disposed in deep end juvenile justice programs. Had the answer been that transfer cases in general and direct file cases in particular include juveniles who are clearly more serious offenders, there would have been no need (or, at least the need would have been less compelling) to ask whether direct file provides added protection to the public. That is not the answer that the above findings support, however, and that is the reason the question of public safety is an important one.

The findings from this study show that the offense and offense history characteristics of juveniles direct filed into adult court, whether taken one variable at a time or considered in combination, do not indicate that the more serious and more dangerous juveniles are selected for adult court . Rather, the general conclusion that can be drawn from the present study is that the juveniles disposed in the juvenile justice system and placed in deep end DHRS programs are very similar to juveniles direct filed into adult court. There is no support in the data analyzed here for concluding that the selection of cases for direct file has effectively sorted out either a more dangerous or a more intractable type of offender. Indeed, depending upon how one views the

importance of variables such as severity of offense, severity of prior record of offending, severity of past dispositions, and the number of prior delinquency referrals, it could as easily be argued that deep end juvenile justice cases are, on average, more serious offenders than are those in the direct file group.

This set of findings is similar to findings from a smaller sample and an earlier time period in Florida (Bishop, Frazier and Henretta, 1989). Some will still find this study one or more steps short of fully convincing. They will argue that the present data have shortcomings or that the Florida public is still better protected because of the direct file law even if the juveniles transferred by that means are not more serious offenders. To the first point, there is no challenge. The data that are currently available to fully and effectively study this issue are incomplete and difficult if not impossible to combine. A much larger project with much better data that track individuals and cases through every stage of justice processing and that permit effective follow-up are necessary to address this question in the detail it deserves. To the second point suggesting there is greater public protection because the dispositions meted out to direct file cases are more effective, there can be no defensible answer to that concern without further research. The remainder of this section focuses upon the questions that need to be asked and the kinds of data that need to be collected to address the issue of public safety.

Since the issue here is whether direct file affords greater protection to the public than would be the case if that means of transfer were unavailable, the question must be made clear. This may be done both by breaking it into a number of more specific questions and by defining terms more carefully. First, then, there must be some decision as to what aspect of direct file should be

evaluated. Should the focus be on the law, on policies generated by prosecutors on how the law should be applied, or on actual practices of prosecutors in applying the law? That is, does the very existence of the direct file provision help to protect the public by providing a symbolic threat to those juveniles who might otherwise commit crimes? Stated more simply, does the existence of the direct file law help prevent or deter crime among those age groups subject to direct file because they realize they may be prosecuted in adult court? If it is not this symbolic effect of the law that is the focus of interest, is there an interest in whether the policies of various prosecutors' offices have different effects in terms of selecting different numbers and types of cases for transfer to adult court? If so, would the interest then shift to whether the crime rate among juveniles is reduced as a result? Or, since actual practice does not always follow policy exactly, do some practices used by prosecutors have more beneficial effects on public protection than others?

Finally, what exactly is meant by public protection and how should it be measured? Is public protection indicated by crime rate, variations in the rate of serious crime, or are there other measures altogether involved? How should the effects of various adult justice system dispositions be compared to various juvenile justice system treatments? Is public protection achieved if a juvenile is incapacitated by incarceration in prison if the term of incarceration is no longer than would have been the case had the juvenile remained in the juvenile justice system? What are the comparative recidivism rates and records of deep end juvenile offenders and adult court transfers? Is the public more protected by direct file if the ultimate sentence is probation? Stated differently, is adult probation more effective as a deterrent of future crime than comparable juvenile

justice treatments? While there are many opinions about these issues, there are no empirically grounded answers.

The above breakdown of questions is far from an exhaustive list of the ways the issue or direct file and public safety may be conceptualized. The purpose of the discussion here is to indicate that any research that is designed to address the question of the comparative effects of direct file and the possible adult court sanctions with those dispositions and treatments available in the juvenile justice system must initially refine both the question and the presumed measures of variables. This is routine research work, so it is not in itself problematic. What is finally decided, however, sets the cast on the next important consideration. What data are necessary to answer the questions decided upon? As indicated and argued in Part 1 of this report, the state-wide data sources now available cannot in their present form be used to address this question.

If it is assumed, however, that at least several of the questions above are important in any research project that would bring closure to the debate about the value of the direct file provisions of Florida law, several data considerations are necessary. At a minimum, some transaction based data covering a sample of 16 and 17 year olds in both the juvenile and the adult criminal justice system would be required. That is, one would have to be able to track a sample of cases through each stage of the justice process from the point of entry to final disposition. Individual as well as case level data would be necessary and some method of identifying both across agencies (e.g., law enforcement, DHRS, prosecution, juvenile court, adult court, county jail, DOC, and other agencies charged with carrying out adult sanctions).

As important as the above data would be a data set that enabled researchers to identify direct file cases in all adult court disposition categories (e.g. house arrest, probation, jail sentence, prison incarceration and the level of custody while incarcerated). A sample of individuals would have to be drawn from each adult court disposition group. The sample would have to be of sufficient size to provide a reasonable basis for estimating outcome effects. The major outcome effect to be focused upon would be recidivism. But this issue would need to be further specified in terms of the rate of recidivism by group, the time between the end of treatment and first subsequent offense, and the seriousness of subsequent offenses compared to other groups as well as compared to previous offense histories. These same data would be required for juveniles adjudicated as delinquent and committed to deep end juvenile justice system programs. In both the case of the adult system disposition groups as well as the juvenile justice program groups, some new data would have to be collected if the cases are to be matched in terms of exact level of offense seriousness. This is because the offense codes used by DHRS are inexact and they constitute only a small proportion of those used in the adult system.

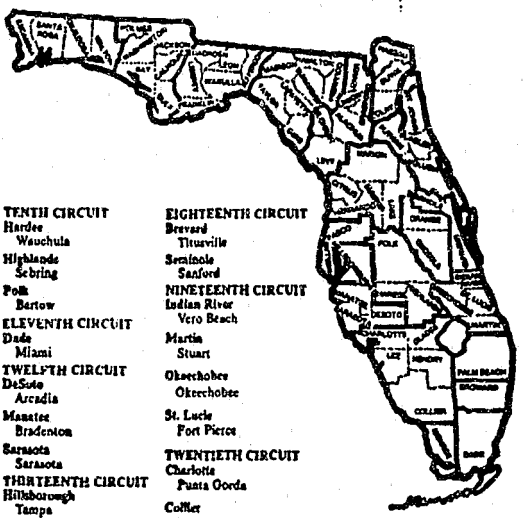
What we know from this study is that, given current available data, direct file cannot not easily be justified on the grounds that it selects the most serious offenders for adult court. Whether the existence of the law, the various policies designed to regulate its application, or the actual application of these statutory provisions produce greater levels of public protection is not known and cannot be determined with the data sources identified here. The question also cannot be satisfactorily answered by expert opinion.

Appendix A

Judicial Circuits by County

Judicial Circuits

Judicial Circuit	Counties
First Circuit	Escambia, Okaloosa, Santa Rosa, Walton
Second Circuit	Franklin, Gadsden, Jefferson, Leon, Liberty, Wakulla
Third Circuit	Columbia, Dixie, Hamilton, Lafayette, Madison, Suwannee, Taylor
Fourth Circuit	Duval, Clay, Nassau
Fifth Circuit	Citrus, Hernando, Lake, Marion, Sumter
Sixth Circuit	Pasco, Pinellas
Seventh Circuit	Flagler, Putnam, St.Johns, Volusia
Eighth Circuit	Alachua, Baker, Bradford, Gilchrist, Levy, Union
Ninth Circuit	Orange, Osceola
Tenth Circuit	Hardee, Highlands, Polk
Eleventh Circuit	Dade
Twelfth Circuit	DeSoto, Manatee, Sarasota
Thirteenth Circuit	Hillsborough
Fourteenth Circuit	Bay, Calhoun, Gulf, Holmes, Jackson, Washington
Fifteenth Circuit	Palm Beach
Sixteenth Circuit	Monroe
Seventeenth Circuit	Broward
Eighteenth Circuit	Brevard, Seminole
Nineteenth Circuit	Indian River, Martin, Okeechobee, St.Lucie
Twentieth Circuit	Charlotte, Collier, Glades, Hendry, Lee



JUDICIAL CIRCUITS

Counties/County Seats

FIRST CIRCUIT
Escambia
Pensacola
Okaloosa
Crestview
Santa Rosa
Milton
Walton
DeFuniak Springs

SECOND CIRCUIT
Franklin
Apalachicola
Gadsden
Quincy
Jefferson
Monticello
Leon
Tallahassee
Liberty
Bristol
Wakulla
Crawfordville

THIRD CIRCUIT
Columbia
Lake City
Dixie
Cross City
Hamilton
Jasper
Lafayette
Mayo
Madison
Madison
Suwannee
Live Oak
Taylor
Perry

FOURTH CIRCUIT
Duval
Jacksonville
Clay
Green Cove Springs
Nassau
Fernandina Beach

FIFTH CIRCUIT
Citrus
Inverness
Hernando
Brooksville
Lake
Tavares
Marion
Ocala
Sumter
Bushnell

SIXTH CIRCUIT
Pasco
Dade City
Pinellas
Clearwater

SEVENTH CIRCUIT
Flagler
Bunnell
Putnam
Palatka
St. Johns
St. Augustine
Volusia
DeLand

EIGHTH CIRCUIT
Alachua
Gainesville
Baker
Macclenny
Bradford
Starke
Gilchrist
Trenton
Levy
Bronson
Union
Lake Butler

NINTH CIRCUIT
Orange
Orlando
Osceola
Kissimmee

TENTH CIRCUIT
Hardee
Wauchula
Highlands
Sebring
Polk
Bartow

ELEVENTH CIRCUIT
Dade
Miami

TWELFTH CIRCUIT
DeSoto
Arcadia
Manatee
Bradenton
Sarasota
Sarasota

THIRTEENTH CIRCUIT
Hillsborough
Tampa

FOURTEENTH CIRCUIT
Bay
Panama City
Calhoun
Blountstown
Gulf
Port St. Joe
Holmes
Bonifay
Jackson
Marianna
Washington
Chipley

FIFTEENTH CIRCUIT
Palm Beach
West Palm Beach

SIXTEENTH CIRCUIT
Monroe
Key West

SEVENTEENTH CIRCUIT
Broward
Ft. Lauderdale

EIGHTEENTH CIRCUIT
Brevard
Titusville
Seminole
Sanford

NINETEENTH CIRCUIT
Indian River
Vero Beach
Martin
Stuart
Okeechobee
Okeechobee
St. Lucie
Fort Pierce

TWENTIETH CIRCUIT
Charlotte
Punta Gorda
Collier
Naples
Glades
Moore Haven
Hendry
LaBelle
Lee
Ft. Myers

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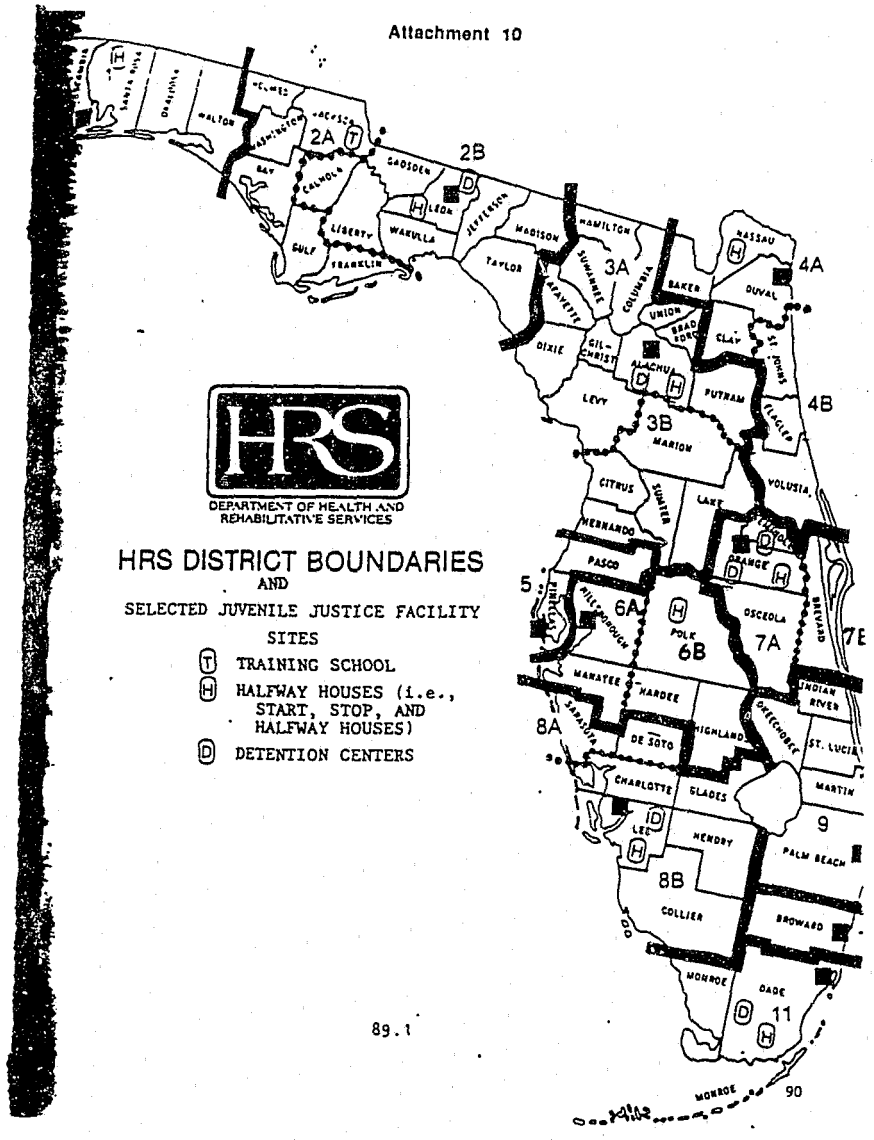
Appendix B

HRS Districts by County

HRS Districts

HRS District	Counties
District 1	Escambia, Okaloosa, Santa Rosa, Walton
District 2	Holmes, Jackson, Washington, Bay, Calhoun, Gulf, Franklin, Liberty, Wakulla, Leon, Madison, Taylor, Gadsden, Jefferson
District 3	Hamilton, Lafayette, Suwannee, Dixie Gilchrist, Columbia, Union, Bradford, Alachua, Levy, Citrus, Hernando, Sumter, Lake, Marion
District 4	Nassau, Baker, Duval, Clay, St.Jones, Flagler, Volusia
District 5	Pasco, Pinellas
District 6	Hillsborough, Polk, Manatee, Hardee, Highlands
District 7	Seminole, Brevard, Orange, Osceola
District 8	Sarasota, De Soto, Charlotte, Glades, Lee, Hendry, Collier
District 9	Indian River, Okeechobee, St.Lucie, Martin, Palm Beach
District 10	Broward
District 11	Dade, Monroe

Attachment 10



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Appendix C

Distribution of Referral Offenses

by

Levels of HRS Placement and Methods

of Adult Court Transfer

Distribution of Instant Offenses by Levels of HRS Placement and Methods of Adult Court Transfer

Offense	Level 6	Level 8	HRS Total	Direct File	Waiver	Indict	Transfer Total
Murder/ Manslaughter				17 0.66	7 1.35	10 6.67	34
Attempted Murder	2 0.06	7 0.32	9	40 1.55	5 0.97	5 3.33	50
Sexual Battery	10 0.28	5 0.23	15	17 0.66	20 3.86	2 1.33	39
Other Felony Sex Offenses	28 0.78	2 0.09	30	6 0.23	0 0.00	0 0.00	6
Armed Robbery	33 0.92	47 2.12	80	145 5.62	46 8.88	17 11.33	208
Other Robbery	42 1.17	56 2.52	98	68 2.64	15 2.90	0 0.00	83
Arson	4 0.11	0 0.00	4	9 0.35	3 0.58	1 0.67	13
Burglary	532 14.80	287 12.92	819	418 16.20	93 17.95	18 12.00	529
Auto Theft	345 9.60	182 8.19	527	209 8.10	25 4.83	12 8.00	246
Grand Larceny	210 5.84	78 3.51	288	210 8.14	35 6.76	12 8.00	257
Receiving Stolen Pro.	26 0.72	46 2.07	72	29 1.12	11 2.12	3 2.00	43
Concealed Firearm	26 0.72	8 0.36	34	60 2.33	13 2.51	1 0.67	74
Aggravated Assault/Bat.	176 4.90	200 9.00	376	171 6.63	34 6.56	9 6.00	214
Forgery and Uttering				9 0.35	1 0.19	1 0.67	11
Felony Vio. of Drug Laws	142 3.95	69 3.11	211	205 7.95	69 13.32	11 7.33	285

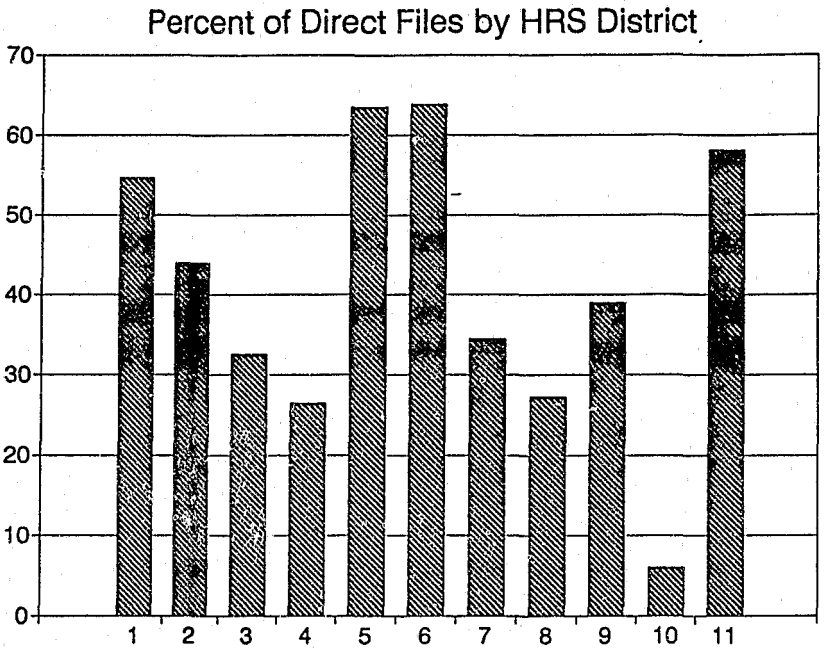
Offense	Level 6	Level 8	HRS Total	Direct File	Waiver	Indict	Transfer Total
Felony Marij. Offense	9 0.25	0 0.00	9	38 1.47	2 0.39	1 0.67	41
Escape	437 12.16	276 12.43	713	30 1.16	21 4.05	1 0.67	52
Resisting Arr. W Violence	18 0.50	5 0.23	23	25 0.97	3 0.58	3 2.00	31
Shooting a Missile	7 0.19	6 0.27	13	29 1.12	14 2.70	2 1.33	45
Other Felony	111 3.09	119 5.36	230	185 7.17	33 6.37	22 14.67	240
Assault/ Battery	207 5.76	123 5.54	330	86 3.33	11 2.12	0 0.00	97
Prostitution	2 0.06	10 0.45	12	1 0.04	0 0.00	0 0.00	1
Other Sex Offense	3 0.08	0 0.00	3				
Petit Larceny	172 4.78	71 3.20	243	80 3.10	9 1.74	3 2.00	92
Retail Theft	101 2.81	56 2.52	157	34 1.32	2 0.39	0 0.00	36
Receiving Stolen Pro.				2 0.08	0 0.00	0 0.00	2
Concealed Weapon	5 0.14	1 0.05	6	11 0.43	0 0.00	0 0.00	11
Disorderly Conduct	50 1.39	26 1.17	76	18 0.70	2 0.39	0 0.00	20
Criminal Mischief	138 3.84	84 3.78	222	84 3.26	8 1.54	3 2.00	95
Trespassing	80 2.23	48 2.16	128	43 1.67	1 0.19	1 0.67	45
Loitering and Prowling	49 1.36	29 1.31	78	26 1.01	2 0.39	0 0.00	28

Offense	Level 6	Level 8	HRS Total	Direct File	Waiver	Indict	Transfer Total
Misdemeanor Vio. of Drug	1 0.03	5 0.23	6	11 0.43	4 0.77	4 2.67	19
Misdemeanor Marijuana	25 0.70	11 0.50	36	28 1.09	4 0.77	0 0.00	32
Possession of Alcoholic Bev.	26 0.72	0 0.00	26	19 0.74	0 0.00	0 0.00	19
Other Alcohol Offense	12 0.33	0 0.00	12	2 0.08	0 0.00	0 0.00	2
Violation of Hunting				1 0.04	4 0.77	0 0.00	5
Resisint Arr. W/O Violence	152 4.23	64 2.88	216	92 3.57	8 1.54	2 1.33	102
Unauthorized Use of Vehic.	4 0.11	0 0.00	4	1 0.04	0 0.00	0 0.00	1
Other Misdemeanor	76 2.11	43 1.94	119	53 2.05	5 0.97	4 2.67	62
Contempt of Court	27 0.75	56 2.52	83	31 1.20	1 0.19	0 0.00	32
Violation of Ordinance	8 0.22	4 0.18	12	2 0.08	0 0.00	0 0.00	2
Felony Traff. Offense	1 0.03	5 0.23	6	1 0.04	2 0.39	0 0.00	3
Other Traffic Offenses	4 0.11	0 0.00	4	7 0.27	1 0.19	0 0.00	8
Non-Law Vio. of Comm. Con.	103 2.87	59 2.66	162	12 0.47	0 0.00	1 0.67	13
Reopened upon Apprehension	55 1.53	37 1.67	92	5 0.19	4 0.77	0 0.00	9
Case Reopened	12 0.33	0 0.00	12	9 0.35	0 0.00	0 0.00	9
Transferred From Others	98 2.73	89 4.01	187	1 0.04	0 0.00	1 0.67	2

Offense	Level 6	Level 8	HRS Total	Direct File	Waiver	Indict	Transfer Total
Local Runaway	11 0.31	0 0.00	11				
Runaway from Other County	0 0.00	4 0.18	4				
Truancy	7 0.19	1 0.05	8				
Beyond Control	3 0.08	2 0.09	5				
Interstate Compact	1 0.03	0 0.00	1				
Out-of-Town Inquiry	4 0.11	0 0.00	4				
TOTAL	3595	2221	5816	2580	518	150	3248

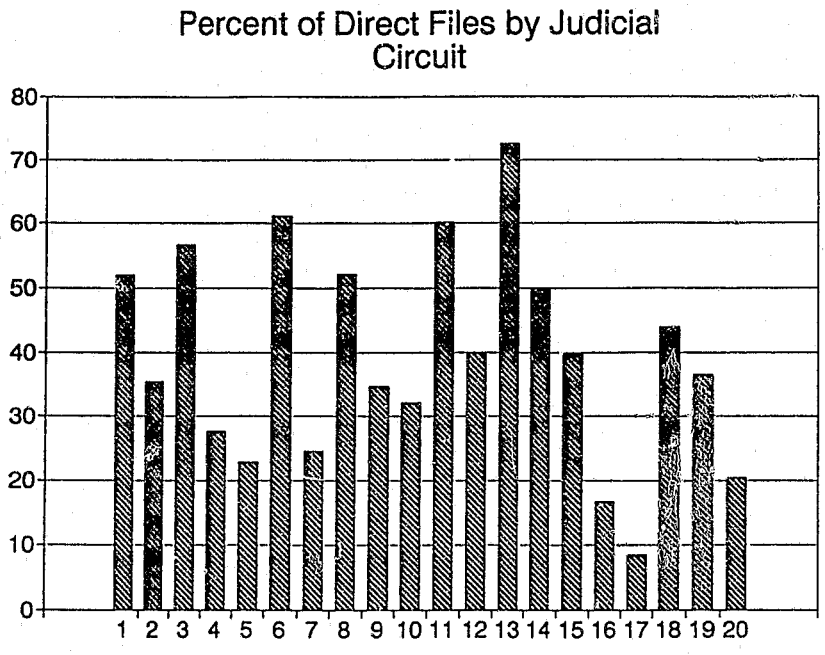
Appendix D

Percent of Direct Files by HRS District


Percent of Direct Files by HRS District
70
60
50
40
30
20
10
0
1
2
3
4
5
6
7
8
9
10
11

Appendix E

Percent of Direct Files by Judicial Circuit


Percent of Direct Files by Judicial Circuit
80
70
60
50
40
30
20
10
0
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20

Appendix F

Distribution of Juvenile Offenders

by

Levels of HRS Placement,

Methods of Transfer to Adult, and

Judicial Circuits

Distribution of Juvenile Offenders by Levels of HRS Placement, Methods of Transfer to Adult Court, and Judicial Circuits.

Circuit	Level 6	Level 8	Direct File	Waiver	Indict	Total
Circuit 1	65 6.05	8 2.35	94 6.85	9 3.81	5 7.81	181
Circuit 2	38 3.54	6 1.76	28 2.04	5 2.12	2 3.13	79
Circuit 3	20 1.86	4 1.18	34 2.48	2 0.85	0 0.00	60
Circuit 4	46 4.28	36 10.59	57 4.15	63 26.69	4 6.25	206
Circuit 5	51 4.75	17 5.00	24 1.75	5 2.12	8 12.50	105
Circuit 6	99 9.22	19 5.59	247 18.00	25 10.59	15 23.44	405
Circuit 7	102 9.50	7 2.06	38 2.77	6 2.54	2 3.13	155
Circuit 8	27 2.51	6 1.76	37 2.70	1 0.42	0 0.00	71
Circuit 9	83 7.73	17 5.00	57 4.15	4 1.69	3 4.69	164
Circuit 10	55 5.12	17 5.00	37 2.70	5 2.12	1 1.56	115
Circuit 11	44 4.10	63 18.53	190 13.85	19 8.05	0 0.00	316
Circuit 12	45 4.19	5 1.47	46 3.35	19 8.05	0 0.00	115
Circuit 13	77 7.17	10 2.94	253 18.44	9 3.81	0 0.00	349
Circuit 14	22 2.05	6 1.76	34 2.48	4 1.69	2 3.13	68
Circuit 15	49 4.51	32 9.41	56 4.08	3 1.27	1 1.56	141

Circuit	Level 6	Level 8	Direct File	Waiver	Indict	Total
Circuit 16	4 0.37	0 0.00	1 0.07	1 0.42	0 0.00	6
Circuit 17	117 10.89	24 7.06	17 1.24	31 13.14	12 18.75	201
Circuit 18	42 3.91	20 5.88	55 4.01	5 2.12	3 4.69	125
Circuit 19	42 3.91	22 6.47	48 3.50	17 7.20	2 3.13	131
Circuit 20	46 4.28	21 6.18	19 1.38	3 1.27	4 6.25	93

Appendix G

Distribution of Juvenile Offenders
by
Levels of HRS Placement, Methods
of Adult Court Transfer, and DHRS
District

Distribution of Juvenile Offenders by Levels of HRS Placement, Methods of Adult Court Transfer, and HRS Districts.

District	Level 6	Level 8	Direct File	Waiver	Indict	Total
District 1	62 5.76	8 2.34	99 7.11	7 2.94	5 7.69	181
District 2	70 6.50	12 3.51	84 6.03	21 8.82	4 6.15	191
District 3	131 12.16	35 10.23	88 6.32	6 2.52	10 15.38	270
District 4	136 12.63	36 10.53	89 6.39	70 29.41	5 7.69	336
District 5	83 7.71	21 6.14	248 17.80	24 10.08	15 23.08	391
District 6	140 13.00	24 7.02	333 23.91	24 10.08	1 1.54	522
District 7	142 13.18	42 12.28	104 7.47	8 3.36	6 9.23	302
District 8	62 5.76	20 5.85	35 2.51	7 2.94	4 6.15	128
District 9	84 7.80	60 17.54	107 7.68	22 9.24	2 3.08	275
District 10	109 10.12	19 5.56	11 0.79	31 13.03	13 20.00	183
District 11	58 5.39	65 19.01	195 14.00	18 7.56	0 0.00	336

Appendix H

Distribution of Juvenile Offenders

by

Levels of HRS Placement, Adult

Court Transfer Method, and

County

Distribution of Juvenile Offenders by Levels of HRS Placement, Adult Court Transfer Methods, and County.

County	Level 6	Level 8	Direct File	Waiver	Indict	Total
Alachua	22 2.04	3 0.88	31 2.23	1 0.42	0 0.00	57
Baker	0 0.00	1 0.29	2 0.14	0 0.00	0 0.00	3
Bay	14 1.30	4 1.17	32 2.30	0 0.00	2 3.08	52
Bradford	2 0.19	2 0.58	1 0.07	0 0.00	0 0.00	5
Brevard	35 3.25	17 4.97	27 1.94	3 1.26	2 3.08	84
Broward	117 10.86	24 7.02	17 1.22	31 13.03	12 18.46	201
Charlotte	4 0.37	1 0.29	1 0.07	0 0.00	0 0.00	6
Citrus	1 0.09	0 0.00	1 0.07	2 0.84	0 0.00	4
Clay	5 0.46	2 0.58	6 0.43	1 0.42	0 0.00	14
Collier	14 1.30	1 0.29	0 0.00	0 0.00	0 0.00	15
Columbia	12 1.11	3 0.88	11 0.79	1 0.42	0 0.00	27
Dade	44 4.09	63 18.42	190 13.64	19 7.98	0 0.00	316
Desoto	4 0.37	1 0.29	6 0.43	0 0.00	0 0.00	11
Dixie	0 0.00	1 0.29	1 0.07	0 0.00	0 0.00	2

County	Level 6	Level 8	Direct File	Waiver	Indict	Total
Duval	36 3.34	32 9.36	50 3.59	61 25.63	4 6.15	183
Escambia	33 3.06	5 1.46	72 5.17	5 2.10	5 7.69	120
Flagler	1 0.09	0 0.00	0 0.00	0 0.00	0 0.00	1
Franklin	1 0.09	0 0.00	0 0.00	1 0.42	0 0.00	2
Gadsden	11 1.02	2 0.58	6 0.43	0 0.00	0 0.00	19
Hamilton	0 0.00	0 0.00	3 0.22	0 0.00	0 0.00	3
Hardee	1 0.09	0 0.00	8 0.57	0 0.00	0 0.00	9
Hendry	2 0.19	1 0.29	1 0.07	0 0.00	0 0.00	4
Hernando	7 0.65	3 0.88	7 0.50	2 0.84	0 0.00	19
Highlands	3 0.28	3 0.88	8 0.57	1 0.42	0 0.00	15
Hillsborough	77 7.15	10 2.92	253 18.16	9 3.78	0 0.00	349
Holmes	9 0.84	4 1.17	14 1.01	1 0.42	1 1.54	29
Jackson	7 0.65	1 0.29	1 0.07	3 1.26	0 0.00	12
Jefferson	0 0.00	0 0.00	8 0.57	0 0.00	0 0.00	8
Lafayette	0 0.00	0 0.00	5 0.36	0 0.00	0 0.00	5

County	Level 6	Level 8	Direct File	Waiver	Indict	Total
Lake	12 1.11	8 2.34	3 0.22	0 0.00	0 0.00	23
Lee	26 2.41	18 5.26	17 1.22	3 1.26	4 6.15	68
Leon	25 2.32	4 1.17	14 1.01	3 1.26	2 3.08	48
Levy	3 0.28	0 0.00	2 0.14	0 0.00	0 0.00	5
Liberty	1 0.09	0 0.00	0 0.00	0 0.00	0 0.00	1
Madison	2 0.19	0 0.00	3 0.22	1 0.42	0 0.00	6
Manatee	18 1.67	2 0.58	35 2.51	13 5.46	0 0.00	68
Marion	26 2.41	6 1.75	10 0.72	0 0.00	8 12.31	50
Martin	14 1.30	2 0.58	5 0.36	15 6.30	0 0.00	36
Monroe	4 0.37	0 0.00	1 0.07	1 0.42	0 0.00	6
Nassau	5 0.46	2 0.58	1 0.07	1 0.42	0 0.00	9
Okaloosa	25 2.32	2 0.58	12 0.86	3 1.26	0 0.00	42
Okeechobee	4 0.37	10 2.92	7 0.50	1 0.42	1 1.54	23
Orange	73 6.78	15 4.39	50 3.59	4 1.68	3 4.62	145
Osceola	10 0.93	2 0.58	7 0.50	0 0.00	0 0.00	19

County	Level 6	Level 8	Direct File	Waiver	Indict	Total
Palm Beach	49 4.55	32 9.36	56 4.02	3 1.26	1 1.54	141
Pasco	13 1.21	3 0.88	48 3.45	3 1.26	0 0.00	67
Pinellas	86 7.99	16 4.68	199 14.29	22 9.24	15 23.08	338
Polk	51 4.74	14 4.09	21 1.51	4 1.68	1 1.54	91
Putnam	10 0.93	1 0.29	8 0.57	1 0.42	1 1.54	21
St. Johns	2 0.19	1 0.29	8 0.57	0 0.00	0 0.00	11
St. Lucie	15 1.39	6 1.75	22 1.58	0 0.00	0 0.00	43
Santa Rosa	5 0.46	1 0.29	10 0.72	1 0.42	0 0.00	17
Sarasota	23 2.14	2 0.58	5 0.36	6 2.52	0 0.00	36
Seminole	7 0.65	3 0.88	28 2.01	2 0.84	1 1.54	41
Sumter	5 0.46	0 0.00	3 0.22	1 0.42	0 0.00	9
Suwannee	1 0.09	0 0.00	7 0.50	0 0.00	0 0.00	8
Taylor	5 0.46	0 0.00	4 0.29	0 0.00	0 0.00	9
Union	0 0.00	0 0.00	1 0.07	0 0.00	0 0.00	1
Volusia	89 8.26	5 1.46	22 1.58	5 2.10	1 1.54	122

County	Level 6	Level 8	Direct File	Waiver	Indict	Total
Wakulla	0 0.00	0 0.00	0 0.00	1 0.42	0 0.00	1
Walton	2 0.19	0 0.00	0 0.00	0 0.00	0 0.00	2
Washington	1 0.09	1 0.29	1 0.07	1 0.42	0 0.00	4
Out of State	3 0.28	2 0.58	21 1.51	2 0.84	1 1.54	29

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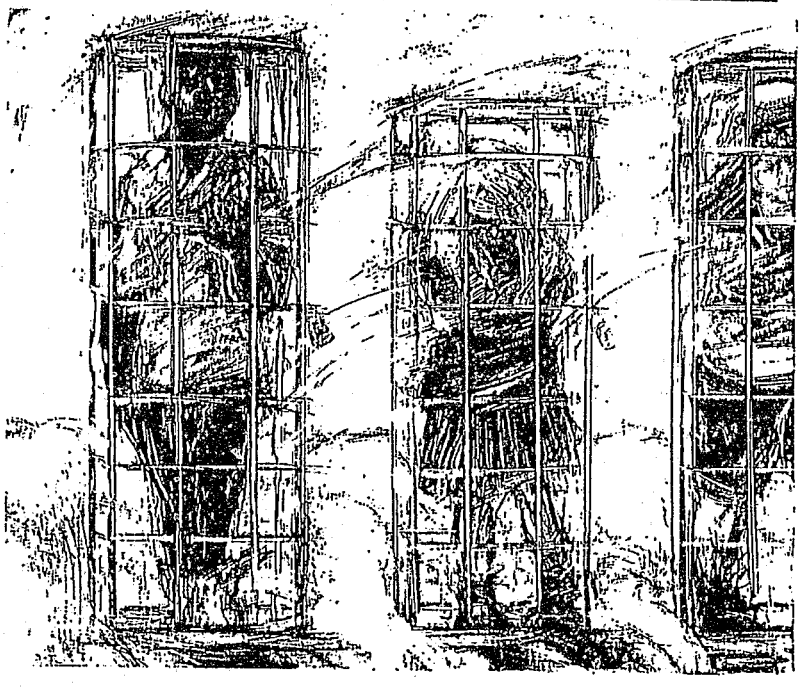
Keeping Kids Out of Secure Detention

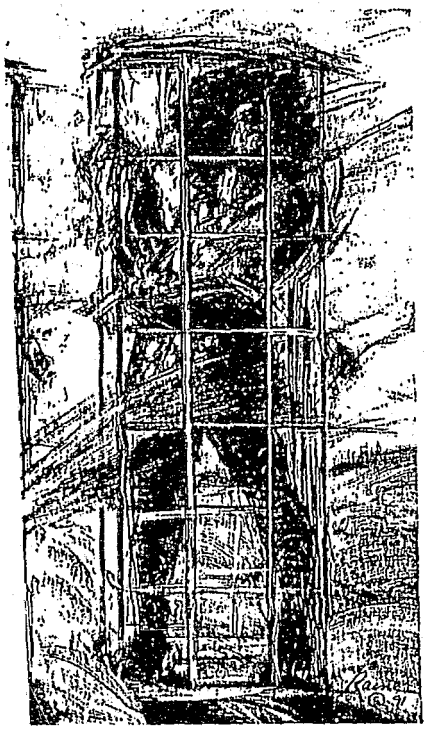
THE MISUSE OF JUVENILE DETENTION HAS A PROFOUND IMPACT ON CHILD WELFARE.

BY IRA M. SCHWARTZ, WILLIAM H. BARTON, AND FRANK ORLANDO



If you had visited the Broward County Juvenile Detention Center in Fort Lauderdale, Fla., in early 1988, you would have found a facility bursting at the seams. Youths were double-bunked or sleeping on foldaway cots rolled out at night to accommodate almost double the facility's capacity. Assaults among youths and on staff were not uncommon. Most of the youths being held were not charged with major crimes, but hardly anyone brought in by the police was turned away.

Secure detention was utilized in virtually all cases. Because of a shortage of foster homes, even youths involved in dependency and neglect cases were held in the detention center overnight. The Florida Department of Health and Rehabilitative Services, the agency responsible for operating the center, had just been served with a class action lawsuit alleging overcrowded and unsafe conditions.



On a return visit to the facility in late 1990, you would have found a very different situation; the detention center was operating well below capacity. An objective intake assessment tool had been developed and now is utilized by an intake unit. Alternatives to secure detention have been developed and are operating at capacity. Moreover, these alternatives have earned the trust of public officials.

In this article, we explain how this transformation in Broward County was accomplished because we believe the county's experience provides valuable lessons for other jurisdictions. There are critical policy and practice implications for juvenile justice and child welfare officials, child advocates, and virtually all other public and private agencies that provide services to youth.

While others have attempted to reform juvenile detention policies and practices, none have combined strategies both for immediate improvements at the local level and for long-term, sustained change at the state level. The Broward experience has important implications for juvenile detention and youth services. The initiative represented an uncommon collaboration among a large state agency, local public officials, private provider agencies, and a major foundation—a coalition that project staff found crucial to facilitating and institutionalizing change.

The Growing Crisis in Juvenile Detention

Instituted in 1899, the juvenile justice system represented a major step toward social justice for children. The new system was designed to protect and rehabilitate youths rather than punish them as adult criminals. Yet juvenile detention today—almost a century later—is far from that ideal of protection and rehabilitation. The confined placement in secure juvenile detention takes youths out of their homes and in many cases subjects them to conditions unsuitable for children. In addition, many juveniles who are ordered to secure detention might be more appropriately served through home detention or other alternatives.

Most states' statutes, including Florida's, limit detention to the secure confinement of youths who pose an unacceptably high risk of failing to appear in court or of committing offenses between arrest and trial. Detention is not intended as a postadjudicatory commitment; nor is it intended to be used for punishment, for administrative convenience, or because a jurisdiction lacks alternatives. Furthermore, statutes require that detained youths be given detention hearings, usually within one or two working days.

The purpose of juvenile detention clearly would limit its use to high-risk cases and is intended to protect both public safety and the youth's rights. But an examination of the difference between intention and practice throughout the country discloses glaring discrepancies. National statistics consistently reveal extensive overcrowding and misuse of secure detention as well as staggering geographical disparities in the use of detention.[1]

The 1986–1987 Children in Custody Census indicated,

for example, that 18 percent of the nation's detention facilities were overcrowded, with 39 percent of all detained juveniles housed in overcrowded facilities. The survey found that less than half (42 percent) of the youths in detention were charged with felonies, with only 12 percent charged with serious violent offenses. Furthermore, the use of detention differed dramatically across the country. Admissions ranged from fewer than 500 per 100,000 eligible youths in Massachusetts, New York, and West Virginia; while in Nevada, California, Washington State, and the District of Columbia, admissions soared to more than 3,000 per 100,000 eligible youths.

A substantial number of adolescents in foster care have been in detention previously.

While many youths could be served through home detention or other alternatives, secure detention seems to be a catchall for youth placements. And whether a juvenile is placed in detention or is referred for child welfare or mental health services often seems to be the luck of the draw. If placement workers do not understand the variety of youth service options, juveniles are likely to be referred to inappropriate services. Even if staff have a good grasp of youth services available in their jurisdiction, youths may not be placed in their best interest if effective intake procedures have not been established.

Table 1. Secure and Home Detention—Broward County Compared to Rest of Florida
Fiscal Years 1987–1988 and 1988–1989

		Fiscal Year 1987–88	Fiscal Year 1988–89	Percent Change
Secure detention				
	Broward	3,394	2,660	–22
Admissions	Rest of state	31,474	29,627	– 6
Average daily	Broward	160.9	132.0	–18
population	Rest of state	1,399.6	1,412.0	+ 1
Home detention				
Direct	Broward	38	744	+1,858
admissions	Rest of state	763	1,630	+ 114
	Broward	816	771	– 6
Transfers in	Rest of state	10,434	11,554	+11
Average daily	Broward	76.8	108.7	+42
population	Rest of state	693.3	773.2	+12
Delinquency cases				
	Broward	9,937	10,290	+ 4
Total	Rest of state	97,004	103,155	+ 6
	Broward	4,213	4,651	+10
Felonies	Rest of state	40,702	44,471	+ 9

The excessive and often inappropriate use of secure detention severely strains tight budgets. Per diem operating costs for secure detention range from $70 to $150 per bed. Construction costs for new detention facilities are estimated at between $75,000 and $100,000 per bed. Intended neither as punishment nor as treatment, detention diverts resources away from more helpful preventive and rehabilitative services.

Furthermore, secure detention can be costly in human terms. Several studies show that juveniles who have been securely detained are more likely to be placed subsequently out of their homes.[3] Moreover, a substantial number of adolescents in foster care have been in detention previously. For example, a study of foster children in California found that 16 percent of them had prior detention placements.[3] Clearly, juvenile detention policy and the misuse of secure detention have a profound impact on the entire child welfare system.

Some jurisdictions have developed alternatives to secure detention; notably, home detention. The first home detention program for juveniles was started in St. Louis in the early 1970s. Other significant programs have been developed in Jefferson County (Louisville), Kentucky, and Cuyahoga County (Cleveland), Ohio.[4] These programs share similar implementation models. In each program, workers are assigned small caseloads of 10 or fewer youths and are expected to have one or more daily contacts with each youth. Workers are on call 24 hours a day for crisis intervention and have frequent contacts with parents, schools, and other agencies. Success rates in these programs indicate that fewer than 10 percent of the youths fail to appear at hearings and only 10 to 20 percent of the youths acquire additional charges.

Detention in Florida

Florida faced a juvenile detention crisis in the late 1980s. More than 1,500 juveniles were confined in Florida's secure detention facilities on any given day. The state's rate of detention admissions (3,031 youths per 100,000) was twice the national average; and only 46 percent of the youths detained were charged with part I felonies—that is, murder, rape, armed robbery, aggravated assault, auto theft, larceny, or arson. Detention costs accounted for 40 percent of the state's juvenile delinquency budget.

The situation was especially critical in Broward County. Between 1982 and 1988, the average daily population of the county detention center rose 95 percent, with a 37 percent increase in detention admissions. In fiscal year 1987–1988, the 109-bed facility held an average of 161 youths daily.

The Broward County Juvenile Detention Project was established to change the county's detention practices and thereby solve the problem of overcrowding in the

detention center. Sponsored by the Annie E. Casey Foundation and the Florida Department of Health and Rehabilitative Services (HRS) and conducted by the Center for the Study of Youth Policy of the University of Michigan and Florida Atlantic University, the project developed a two-year work plan. The plan called for analysis of Broward's existing detention practices, development of detention alternatives, implementation of necessary policy changes, and development of mechanisms to sustain the changes. The Casey Foundation's commitment of funding provided considerable leverage in influencing program and policy decisions.

As in many jurisdictions, juvenile detention in Broward County was serving—inappropriately—as a child welfare resource.

To begin the study, the Center for the Study of Youth Policy identified potential intervention targets.[3] Preliminary analysis included interviews with several HRS staff, an analysis of the detention population, and visits to the detention facility. The results pointed to a striking fact: HRS exercised no effective control over intake decisions. Police, state's attorneys, and the judiciary controlled intake. Because these professionals were perhaps unaware of other youth-related services, and/or because some may have favored secure detention as a quick way to remove certain youths from the community and "teach them a lesson," they largely referred to the service that was within their professional sphere—the detention center.

The result of this intake practice was a facility detaining mainly low-risk youths. More than two-thirds of the detained youths were charged with nonviolent offenses. Moreover, the statutory guideline limiting length of stay to 15 to 21 days frequently was extended by the state's attorneys.

The analysis also found that 10 to 15 youths were placed in secure detention each month because they lacked a suitable home. Sometimes as many as 10 youths who spent the daytime in the lobby of child welfare offices were sent to the detention center at night because no foster homes were available. In addition, a small number of dependency and neglect cases were held in secure detention because of a lack of suitable resources and programs. At least 30 percent of the detention population came from families eligible for Title IV-E assistance, and as many as 40 percent were eligible for Medicaid.[4] As in many jurisdictions, juvenile detention in Broward County was serving—inappropriately—as a child welfare resource.

Project Strategies

In light of the preliminary analysis, the project staff adopted a number of strategies to ease the overcrowding in the detention center.

Mediation of the lawsuit. The first strategy was to recommend mediation as a means of settling the lawsuit. The project identified a mediator and paid a portion of the mediation expenses. Through that process, the parties reached a voluntary settlement calling for the gradual reduction of the detention center population to the capacity for which the facility was designed. The mediation agreement also required HRS to cooperate with the Center for the Study of Youth Policy in the development of alternatives to secure detention. Mediation allowed the parties to reach an agreement quickly and avoid a lengthy and costly court battle.

Restoring faith in home detention. Project staff immediately began investigating alternatives to secure detention. One alternative, a home detention program, already existed but was seriously underutilized. The program was a victim of semantics: officially called "nonsecure detention," it was viewed as just that—nonsecure, unreliable, and ineffectual. Judges and prosecutors expressed little faith in the program, despite impressive results. Home detention success rates in 1988 exceeded 90 percent; that is, less than 10 percent of the youths in the program committed new violations or failed to appear for court hearings. These facts had not been publicized and were not generally known and appreciated.

To help boost confidence in the home detention program, project staff arranged for the director of the highly

successful home detention program in Cuyahoga County, Ohio, to provide training to the staff of the Broward program. At the same time, the project developed and disseminated detailed information about the renamed "home detention" program to court officials and state's attorneys.

The project faced its toughest task as it set out to develop a system that would prevent placement of relatively low-risk youths in secure detention.

The effort paid off quickly, with many judges and prosecutors expressing confidence in home detention. One judge in particular began ordering many cases directly to home detention. In addition to easing overcrowding in the detention facility, home detention allowed many youths to remain in their own homes.

Daytime report center. A public-private partnership helped to ease the detention crisis. With financial support and encouragement from the project, the Boys Clubs of Broward agreed to accept some youths in home detention into a day program at one of its sites. The program, staffed by an interdisciplinary team that included three special education teachers provided by the local school district, had a capacity of 15 and provided meals and recreation, as well as education. The youths remained under the supervision of home detention caseworkers, and HRS supplied transportation. Boys Club staff members—who initially were reluctant about including youths from the juvenile justice system in the program—quickly learned that these youths differed little from their regular Boys Club participants.

A residential alternative. A public-private partnership also was key in developing a residential alternative for those youths whose cases were appropriate for home detention but who lacked a suitable home. HRS owned a recently remodeled property that could house six to eight youths, but no private providers were interested in operating the residence. Eventually, the Lutheran Ministries of Florida was recruited to operate a six-bed shelter at the HRS-owned house. The opening of the facility provided many low-risk youths, who did not have suitable homes, with a homelike alternative to secure detention.

Introducing an objective intake system. Detention intake remained a problem even after the statutory revisions and HRS policy changes in October 1988. In fact, court-ordered secure detention rose sharply, accounting for nearly half of all secure detention admissions by February 1989. State's attorneys continued to choose secure detention at every opportunity.

The project faced its toughest task as it set out to develop a system that would prevent placement of relatively low-risk youths in secure detention. From the beginning, project staff had identified the need for an objective screening instrument. Because of the statutory control exercised by the court and the prosecutor, however, such an instrument would require their approval and support; otherwise it would not be used.

Project staff developed a risk assessment instrument based on models provided by the National Council on Crime and Delinquency.[7] The instrument assigned points to each youth based on the current charge, prior offense history, legal status, and evidence of failure to appear in court. Scores could be modified slightly to recognize certain aggravating or mitigating circumstances.

Total scores were used to determine one of three categories—low risk (outright release), medium risk (home detention), and high risk (secure detention).[8] A test based on 74 case records demonstrated that use of the instrument would indeed make a difference, reducing the number of assignments to secure detention and introducing consistency into the decision-making process.

The project convened a special task force to review the instrument—members included representatives of the court, the state's attorney's office, the public defender's office, HRS, and various provider programs. The task force revised the instrument, which then was made a part of the HRS detention screening procedure. The state's attorney's office also agreed to employ the instrument whenever its attorneys were involved. Nevertheless, the court, despite its participation in the process and its endorsement of the instrument, refused to allow its use in the screening of court-ordered detention cases. Some think this action reflected the judges' desire to reserve secure detention as an option to "teach kids a lesson."

Project Results

To determine the project's effectiveness, staff asked this question: How did the project's efforts change detention practices? For answers we examined the patterns of usage of secure detention in fiscal year 1987–1988, the last year before the project began, and compared them with data for the next fiscal year, during which the project was introduced.

We found that direct admission to secure detention in Broward County declined sharply in the year the project started. (See Table 1 on page 22.) Not surprisingly, the average daily population in secure detention showed a similar decline. At the same time, direct admissions to home detention increased dramatically, with the average daily population in home detention rising to match the corresponding decline in secure detention.

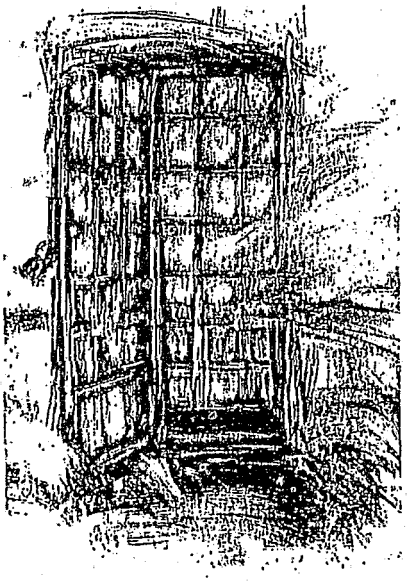
As we analyzed the data, we found that the changes in the usage of secure detention in Broward County were more extreme than in other parts of the state; and the changes did not appear to reflect any variation in the volume of delinquency cases in the county. Specifically, the number of direct admissions to secure detention dropped by 734 during fiscal year 1988–1989, a decline of 22 percent from the previous year. Conversely, direct

admissions to home detention increased by 706. This increase was particularly significant since only a handful of youths had ever been admitted to the program directly from intake in the past. The more traditional use of home detention, as a court-ordered transfer from secure status ("transfers in"), continued at nearly the same level. The new direct admissions produced a substantial overall increase in the home detention caseloads.

One of the most striking effects of the changes was that more than 700 youths were permitted to stay in their own homes for home detention.

The average daily population in secure detention dropped 18 percent, from 161 to 132. Although an average daily population of 132 reflected continued overcrowding in a facility that was designed for 109 beds, the reduction is impressive for having been achieved in just one year. In fact, the full impact of the changes effected by the project was not felt until after the project ended in the middle of 1990. By the end of 1990, the average daily population had dropped to below 80, well below the facility's capacity.

The decline in the use of secure detention cannot be explained by general statewide trends, nor by changes in Broward County's overall delinquency caseload. As Table 1 makes clear, the rest of Florida experienced little change in secure detention use. Moreover, neither the volume of overall delinquency cases received nor the subset of serious delinquency referrals (felonies) declined; they actually increased slightly.



The Effects of the Changes

One of the most striking effects of the changes was that more than 700 youths were permitted to stay in their own homes for home detention. Given the sometimes long-lasting, negative effects of out-of-home placement, the dramatic upturn in home detention produced a more humane alternative for many youths.

At the same time, the use of home detention did not jeopardize public safety. The increase in home detention cases that were returned to secure detention for new violations paralleled the increase in total home detention cases. Also, the percentage of all home detention admissions that were returned for new law violations was virtually constant: 4 percent in fiscal year 1987–1988, 4 percent in fiscal year 1988–1989, and 5 percent in fiscal year 1989–1990.

Financial savings resulting from the changes were significant. In a report discussing refinancing options for Broward's juvenile justice system, the Center for the Study of Social Policy showed that the additional costs of the alternatives and increased use of home detention were more than matched by savings from the reduced use of secure detention.[3] Furthermore, Broward was able to avoid the cost of building additional detention capacity.

Several months after the initiative ended, we found that community support for the changes was strong; and remaining problems were being addressed.

At the close of 1990, HRS continued to use risk assessment for intake and continued to promote the alternatives to secure detention that were implemented during the project. The average daily population in the detention center had dropped to 75 juveniles as of January 1991. Both the home detention program and the residential alternative were operating at capacity rates.

Current trends in Broward County indicate that juvenile detention practices will continue to improve. The Broward County Juvenile Detention Project has had significant influence as well on detention policy and practices in other jurisdictions in Florida. The Broward initiative has contributed to a heightened awareness of detention problems and solutions, the identification of viable detention alternatives, and development of improved policies for detention decision-making and practice.

The work of the project highlighted detention problems within the youth services and policymaking com-

munities. Many of the problems that currently plague juvenile detention are virtually invisible to the community; detained juveniles have few advocates, and the public generally knows little about detention. Articles in various publications, some good notice by the media, and speeches at professional meetings have brought attention to the project's work. This visibility has fostered increased interest in and understanding of juvenile detention.

> **The development of realistic alternatives to secure detention was a banner accomplishment of the project.**

The development of realistic alternatives to secure detention was a banner accomplishment of the project. These alternatives would have been impossible without the public-private partnerships developed with the Boys Clubs and Lutheran Ministries. Further, the cooperation of the school board in staffing the daytime report center was invaluable. As judges, attorneys, and legislators witnessed the efficacy of these resources, attitudes changed and resistance to the alternatives was mostly overcome. Further affirming the value of such alternatives to secure detention, the Florida legislature adopted these models in appropriating new funding for the state detention system as part of the 1990 Juvenile Justice Reform Act..

Most important for the long term, the Broward County Juvenile Detention Project led directly to improved policies within the county and ultimately throughout Florida. For example, the development and implementation of a risk assessment instrument was a principal part of the project's design for Broward County and later became a key part of the detention changes enacted by the Florida legislature. In fact, much of the 1990 Juvenile Justice Reform Act addresses detention; a major portion of the substantive policy that the legislature adopted was taken directly from the products and work of the project.

The Broward County Juvenile Detention Project contributed to a significant decline in both the number of admissions to and the average daily population of secure detention in the county. This success may be credited to the implementation of objective detention intake criteria and the development and expansion of community-based detention alternatives.

A number of lessons can be learned from the Broward experience that have implications for a wide variety of policymakers in the juvenile justice system and in the human services, in child welfare, in youth services, and in mental health. Child advocates also will want to take note. There have been relatively few constructive attempts to confront the shortcomings of the juvenile detention system. The National Council on Crime and Delinquency is working with some jurisdictions in California to implement objective intake criteria.[10]

Nonetheless, it is important to remember that the successes of some past efforts to reform juvenile detention practices have been brief.[11] The Broward initiative was not the first attempt to restrict the use of secure detention in Florida. A major statewide legislative reform effort in 1980 had effectively reduced secure detention usage by about one-fifth, but was overturned the following year as a result of pressure from police, prosecutors, and judges.[12] Similarly, the gains from the Broward project may be short-lived. It remains to be seen how faithfully the state will implement the new legislation and if that legislation can withstand the forces that led to the earlier reversal. Nevertheless, the results of the Broward initiative demonstrate that the use of secure juvenile detention can be reduced through a combination of alternative programs, more restrictive intake, and diligent monitoring of the system.

The juvenile detention issue cannot be left to the juvenile justice system to resolve alone. Juvenile detention policy carries implications for the entire child welfare system. We know that youths who are detained are more likely to eventually be placed in foster homes or other child caring institutions, contributing to the burgeoning number of children who are being placed out of their homes. Except in abusive or neglectful situations, children should be allowed to remain in their own homes; but juvenile detention practices have encouraged their removal.

Attempts to reform the juvenile detention system must incorporate the support of prosecutors, juvenile court judges, probation officers, and law enforcement officials, many of whom must fulfill statutory requirements that define their roles in juvenile detention. Changes in the system must recognize the responsibilities of all these participants in the system.

Any refinement in current juvenile detention policy and practice calls for extraordinary collaboration among lawmakers, human service providers, law enforcement officials, and representatives of the courts. In Broward County, we found that change is possible and that its effects can be far-reaching. Long-lasting improvement will be impossible, however, without significant interagency cooperation and the involvement of both the public and the private sectors. PW

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For "Notes and References," see page 46.

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SCHWARTZ
Keeping Kids Out of Secure Detention

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USHER
Making the Most of Employment and Training

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GIBSON
Broken Brothers and Breaking Stereotypes

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Senator KOHL. Thank you, Judge Orlando.
Judge Mitchell?

STATEMENT OF JUDGE MITCHELL

Judge MITCHELL. Senator, I appreciate the opportunity to join with you this morning in a discussion of the nature of the juvenile courts in America. I am a judge of a very busy trial court. In that capacity, for example, yesterday I sat on 40 proceedings. Those were adult proceedings, they were not juvenile.

For the 8 years that I have been a member of the bench of the City of Baltimore, my responsibility has been as an administrative judge to the juvenile court, though for the last 2½ years I have served in other capacities in that court's general jurisdictional responsibility.

In my capacity here today, and in my presentation here today, I am not going to present a written statement to you. I have already given you my written testimony. I believe the committee has, and the staff has, reports that have been prepared by various bar association committees as a review of the juvenile court in this operation.

We invited this gaze, because we knew there were some things that were wrong. Most of the things we knew were wrong were the public perception of what occurs in juvenile justice.

Let me take a moment, if I may, to explain how Time Magazine chose our court, and then what they did with regard to examination of the juvenile justice system as it exists in our community.

We were approached because they wanted to see what it was like as children were treated in courts—what happens to kids when they come to court. They spent a month or more researching, following, and going with kids, and families, lawyers, police officers, prosecutors, and case workers.

We allowed them extraordinary access because our premise was, no one understands the court, therefore, what they don't see and what they don't have access to, they suspect. We thought it might be appropriate to allow this extraordinary access, so that the community, both political, legal, general public, business and civic, would have an understanding of just what occurs—what wars are being waged as people who are committed and caring try to save children.

They spent so much time that they decided that it would be worth a cover treatment, but the story of what happens in our urban communities to children and families is too depressing—it is too depressing to present nationally.

I urge this committee to not necessarily throw money at the problem, but I urge this committee to send its staff to the courts, spend some time in the courts. The theoreticians will tell you what the courts don't do—see for yourself what occurs.

You would be welcome in my court, but my court has received too much attention and publicity. You would be welcome in the courts in Milwaukee, you will be welcome in the courts in Chicago, you will be welcome in the largest juvenile court system in the Nation, in Los Angeles, CA.

Spend some time walking and talking with people who practice and try to help kids and families. Spend some time with the police officers who arrest these children and try to work with them.

I hope my invitation is not extraordinary. I also hope my invitation is, at some point, accepted.

It does no good for a juvenile court to come in and try to help a child when the child is dying. We need to get to children earlier. One of the things I cited in my written testimony to you is the example of truancy. We all know the studies, we all know the reports. Children who don't go to school don't succeed in life, or their chances for success are greatly diminished.

But, because of budget considerations, the number of truant officers has been reduced to the point where we inquire now as to why Johnny or Sally is not in school by means of a telephone computer. We have, because of budget cuts, reduced the school system's ability to prosecute truants, so that now, after the child has missed two-thirds to three-quarters of the school year, the case is brought before the courts. What do you expect us to do?

Senator with all due respect, and with as much deference as I can muster to present to you, I disagree with one of your comments in your opening statement. Of the children who appear in my court—without regard to age, be they 2 days old or 19—99.9 percent have lawyers, and these lawyers are the best in America. They work hard, they struggle, and they do not let any right, whether it is due process or otherwise, go unchallenged.

Again, I believe that the courts are worth saving, if the community finds it appropriate to spend some time to understand it.

Thank you.

[Judge Mitchell submitted the following material:]

TESTIMONY OF
JUDGE DAVID B. MITCHELL
UNITED STATES SENATE
JUVENILE JUSTICE SUBCOMMITTEE

March 4, 1992

WASHINGTON, D.C.

I.

The invitation to appear before this committee was extended by Senator Kohl one week ago today. While I accepted the opportunity to discuss the operation of an urban juvenile court system, it unfortunately left me little time to set forth my views in a written fashion for the record of this proceeding. Perhaps during the questioning phase of the hearing there will be an opportunity to more fully develop the areas of interest to the subcommittee. I cite the subcommittee to documents that have been submitted earlier to its staff. Specifically, the report of H. Ted Rubin of the Institute for Court Management of the National Center for State Courts of November 12, 1991, the report prepared by me to the Special Committee of the Bar Association of Baltimore City ("Russell Committee") of January, 1992, the reports of the Russell Committee issued December, 1990 and January, 1992, and the article that appeared in the January 27, 1992 issue of TIME magazine are brought to your attention.

Let me say that I appear as a judge of the Circuit Court for Baltimore City. My position with that court is as the judge in charge of the operation of the Division for Juvenile Causes, a term which simply refers to the juvenile court of this jurisdiction. I do not appear here as the judge charged with the administrative responsibility for the Circuit Court for Baltimore City. My area of responsibility is considerably smaller. I also do not appear before this subcommittee as a spokesman or representative of the judiciary of the State of Maryland. I do, however, have the administrative duty to manage the largest and busiest juvenile court system in Maryland.

It has also been my privilege to serve as a member of the Board of Trustees of the National Council of Juvenile and Family

Court Judges. I feel compelled to make it abundantly clear in the record of these proceedings that my appearance here today is as a judge of an urban juvenile court system. I do not appear before this subcommittee in any representative capacity. Over the course of the past few years I have served on and chaired committees of the National Council. That has brought me into a position to discuss court futures issues with many of my colleagues from throughout the nation. While my views are in no way representative of anyone but me as an individual, I am confident that they are not atypical.

II.

Baltimore City is an urban community that is bounded on all sides by affluent suburbs. As with many such communities in the northern and eastern portions of the United States, it is beset with a disproportionate share of the poor and dispossessed in our society. What once had been a thriving diversified economy that had a strong manufacturing base within its City limits and the surrounding suburbs has become a service dominated economy. With it came the attendent loss of jobs for the upwardly mobile and in many cases the least educated among the citizenry.

The social structure of that community has deteriorated as well. All contribute to a quality of life in the "inner city" that affects the level of crime and delinquent behavior on the part of the juvenile population. School records of those who come to the attention of the juvenile court are uniformly dismal. Non-attendance and behavioral problems for those who do attend are the norms. It seems that the public education system for the adolescent fails to contribute to a productive lifestyle. The church is of little influence to this population. Those who are affected by the religious community attend church but not court. The litany continues whether the topic is the disappearance of affordable housing, the vanishing tax base, or the disappearance of meaningful work.

The scourge of illegal drugs is a significant contributing factor to the decline in the quality of life for all Americans. It has introduced fear and random violence into our communities. No one anywhere is free from its influence. That problem is magnificed in the cities of America. It is unfortunately the case in Baltimore City. The lure of drugs and now sadly drug trafficing is overwhelming the courts of my city. The initial purpose of the

special committee of the Bar Association of Baltimore City was to investigate the affect narcotics was having upon the courts of this community. Its reports have been startling to those unacquainted with the problems. The stark reality of the situation has spurred the political leaders of the state and city into action to start addressing the effects, and in some very limited, the causes. Violence attendants the presence of drugs. That violence is both targeted at others who traffic in these substances and now innocent bystanders. More and more citizens in the community are witnessing children, babies and toddlers, as the victims of this random violence. A story appearing on the Monday, March 2, 1992 edition of the NBC national evening news opined that fifty percent of the victims in the gang violence in Los Angeles, California were innocent children caught in the cross-fire. The instrument of that violence in the gun.

III.

The court system of my community is a mixture of State and City financing. Maryland has a four tier court system. At the lowest level is the statewide District Court which is fully funded by the state. That funding includes the judges and all support personnel. It is a court of limited jurisdiction. Each of the 24 political subdivisions has a common law court of general trial jurisdiction. That court is at the next level and is the circuit court system. The judges for this system are compensated by the state but sit in courthouses provided by the local subdivision. The staff of the judge is provided by that same subdivision. If a community has a need for an additional resident circuit court judge, the chief judge of the state judiciary must certify that need to the governor and legislature who in turn consider providing the judge. The next two levels of the Maryland court system are the appellate courts. There is an intermediate and then a court of last resort in the state.

The basic structure of the juvenile court in Baltimore City was determined in the era of World War II. There would be one member of the Ciruit Court[1] Bench designated to preside in juvenile

[1] Until January 1, 1983, the Circuit Court for Baltimore City had been known as the Supreme Bench of Baltimore City. The General Assembly in 1982 authorized the change in the name of the court to make it consistent with the other courts of the state. No change in the common law authority of the court was necessary.

matters. An official appointed by the Bench[2] was designated to assist the juvenile court judge in the fact finding aspects of the its duties and make recommendations as to appropriate dispositions of the cases so referred. Over time the complement of masters in Baltimore City grew from one to its present number of eight[3]. These individuals and their staffs are considered employees of the court. The City of Baltimore pays their salaries. I do not know whether it has simply proven easier over the years to obtain a new master when the demands of the docket dictated it or whether the addition of new masters was the response the court gave to a docket that was not high on its lists of priorities. Whatever the motivation behind the decision to expand the staff of the court at various times, the court has only been expanded in the direction of ministerial rather that judicial staff over the years[4].

The juvenile court has not been given either the attention or resources to remain current with the issues it was called upon to confront. As a consequence, it has not remained current with the problems of the moment. It literally functions in a pen and quill environment in the era of rapid telecommunications. This is due mainly to a lack of leadership in the judiciary to these problems going back decades and the indifference of the political community to the structural needs of the court.

To this must be added the demands placed on the criminal justice system. It has become "the horse that eats all the oats in the barn." The need for more and more prison space, and more and more police to enforce the laws, and more and more judges and prosecutors to protect the public from the acts of the adult populations has driven the system. The juvenile justice system has been left to fend for itself. The concentration of those who make

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[2] The specific title of the person is Master. In other states a similair position is called a Commissioner or Referee. In Maryland, this ministerial official is law trained and appointed by the circuit court of the local subdivision.

[3] This number has now been artifically reduced to seven by the retirement of one master effective February 1, 1992. The City finance department has now indicated that the authorization for that position is being withdrawn in the wake of its severe financial crisis. Where the Court thought it would be able to retain the position even if temporarily unfilled, now that position has been removed permanently.

[4] Despite criticism of this system by the United States Supreme Court in Swisher v. Brady, U.S. , 98 S. Ct. 2699 (1978) additional masters positions have been added by Maryland courts. The only significant attempt to address the disproportionate use of these officials instead of judges is presently underway.

the policy decisions and allocate the funds to wage wars on crime and drugs have neglected the juvenile justice system in the process. There is a substantial concentration on those who penetrate the deepest end of the system.

The net result is that the juvenile justice system has been left ill equipped to respond to the present challenges. That is one of the reasons I am puzzled by those who argue that the system should be scrapped. If not this, then they must be prepared to return " back to the future" of the pre-juvenile court era of a century ago. Then underage offenders were tried and incarcerated with the adult population without regard to their youth. If not that, then a new court system would have to be created. Scrapping the juvenile court is akin to throwing out the baby with the bath water. It needs the attention of the judiciary and political community to make it more effective than it has been. It requires this assistance to reach its potential. There are reforms that should be made as with any bureaucratic endeavor. That, however, in my view is not a justification to end the court.

Similarly, the support system of the juvenile court must have the consistent attention of the political community. The focus of that support system must be more toward prevention and early intervention and away from detention and incarceration. Numerous studies of the treatment alternatives for juveniles have demonstrated that effective community based treatment is less costly and more effective that massive training schools. In Maryland it cost the taxpayers an average of $55,000 a year to incarcerate a juvenile offender in its only training school. Contrast that with the $12,000 annualized cost of many community based non-residential treatment facilities. Not only does the cost ratio favor this form of treatment, but the recidivism rates do as well. This then should be emphasized in Maryland. Unfortunately, because my state is in the throes of a fiscal and economic crisis, all levels of government are downsizing. The first to go in the effort of the state Department of Juvenile Services were the community based treatment program funding. It has been removed. The Baltimore City court is left with the alternatives of an overworked probation staff and the training school. Both are already bursting at the seams.

The rights of those who appear before the court, whether it is the accused, the victim or the parent, are of paramount importance

to my court. I dare say every juvenile court judge or master with whom I have had contact over the past eight years of service as a judge has been concerned with the rights of those who appear before them. This must be particularly so in the juvenile court where children are at issue. To suggest otherwise concerns me. It also suggests to me that the reviewers have not attended a session of a court.

It has also ben my privilege to serve as faculty at training sessions for juvenile court judges and masters, attorneys and cases workers for the eight years of my judicial service. That has been both in Maryland and in other parts of America. I have lectured in Mississippi to juvenile judges and prosecutors and defenders on juvenile law and procedure. It has been my experience that these professionals are not prepared to permit any trammelling upon the rights of any participant without a vigorous challenge. The roads to the appellate courts are well known to juvenile court participants.

Juveniles charged with committing acts that if done by an adult would be crimes are represented by attorneys throughout their appearances before the court. This is the case from the moment that child first appears in court until the case is closed. No action of the court ever occurs when the child is represented without the presence and knowledge of that attorney. Less than one half of one per cent of children in delinquency cases is unrepresented by counsel. In Baltimore City, that counsel is provided by the state funded Office of the Public Defender. Its Juvenile Court Division is excellant. Perhaps I am prejudiced to some extend because I once served there myself. The due process and other rights of the accussed are safeguarded vigorously!

The public. and nee the political community, do not understand the juvenile court system of justice. I dare say most judges do know or understand it themselves. The proceedings are closed to the general public. There is the suspicion that what is done beyond a persons gaze is suspect. Quite naturally. those who do not know are suspicious. My own colleagues. most of who react with horror at the suggestion to serve in the juvenile court, did not comprehend the multitude of problems and challenges encountered in the juvenile court until they read my report to the Russell Committee. Now they are supportive of change. Before they did not know, were not informed or did not bother to be informed. The same

is with the political community. It was easier to rail against it than to learn it. One of the reasons I consented to writers and photographers from TIME magazine spending a month in the Baltimore City court and challenged the lawyers for the children to allow this intrusion was to have the public see and understand what happens to families and children in court. We wanted the public to know that there are dedicated and hard working people there attempting to do the public's business.

No juvenile court system is going to be effective unless and until a shift in focus occurs in the treatment of offenders. Earlier identification and concentration of resources is the key. Preventive measures must be brought to the fore. School truancy cannot go untreated like in my community. We do not get the cases until the child has missed something like 120 out of 180 days in the school year. The staff of the school system that is charged with preparing and presenting these cases was cut years ago as an effort to save money by our local school system. If a child misses two-thirds of a school year, it's too late to bring the matter to court. There is not much that we can do. That process is merely an example of how much that is brought to court is too late in a child's life. Earlier intervention is necessary.

If you want to help the system, provide the funds to make it work. If you want to help, spend some time (defined here as a month or more) of a concentrated nature in the juvenile courts of this nation's cities. I challenge you and your staffs to visit the successful community based treatment models run by the public and private communities throughout America. I challenge you and your staffs to not let the naysayers rule the day. The juvenile courts of America are indeed "waging a thankless struggle to save society" lost children."

Law

Corridors Of Agony

A rare look inside a juvenile court reveals a system waging a thankless struggle to save society's lost children

Clarence Mitchell Courthouse is home to Baltimore's chaotic juvenile court

By MICHAEL RILEY BALTIMORE

This is the story of a courthouse, a group of kids who passed through it one week and the people whose task it is to rescue them.

Clarence Mitchell Courthouse, a brooding Beaux Arts monolith in the heart of Baltimore, contains the Baltimore City Juvenile Court. Like the 2,500 similar juvenile courts across the nation, this is where the battles are being fought against some of America's toughest problems: drugs, disintegrating families, household violence. As these problems have grown worse over the past two decades, the judicial system designed to deal with them has crumbled. These courts are an indicator of the country's compassion for families and its commitment to justice, but increasingly they have neither the money nor the personnel to save most of the desperate young souls who pass through their doors. Almost no one seems to care.

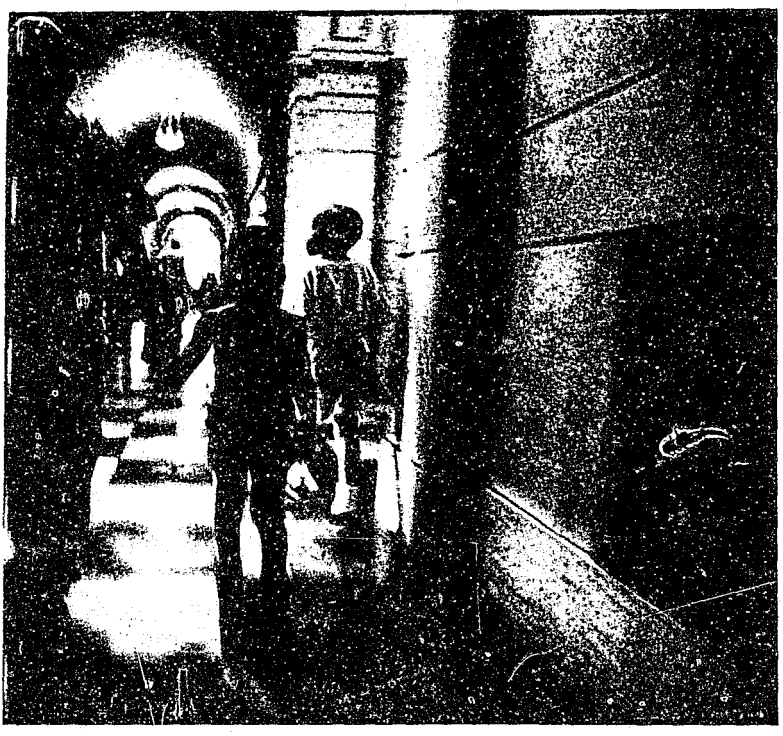
To protect the children from the stigma of being branded as criminals, the proceedings of juvenile courts are hidden behind a veil of confidentiality. In an effort to show the strains on the system, a group of TIME correspondents was given unprecedented access to the Baltimore court. The identities of the children and their parents have been changed, but the stories are true, and they are typical.

Antwan

Ringed by Baltimore narcotics cops and sniffling into a tissue, Antwan Davey looks like a kid caught in a bureaucratic land of giants. Just three hours earlier, the cops nailed the skinny 10-year-old boy in a playground drug bust. Now, in a cinder-block squad room in east Baltimore, he slouches in a green office chair, unlaced Etonic tennis shoes just touching the floor.

Two teenage drug dealers, sullen and silent, sit nearby. Moments before their arrest, they had forced Antwan to hide their wares in his socks. "That's usually what they do now—give the stuff to a little kid," says arresting officer Ed Bochniak, who watched the deal go down. "We were lucky to see it."

Crime and drugs are everywhere in America's inner cities. For Antwan, they were only a few yards away as the youngster floated high above his steamy ghetto playground on a turquoise-and-



Families find justice elusive as they wander the court's hallways

orange swing set. At the playground's edge two teenagers were selling vials of cocaine from a curbside stash. One dealer cut a score with a passing woman; looking over at Antwan, his partner spotted an opportunity.

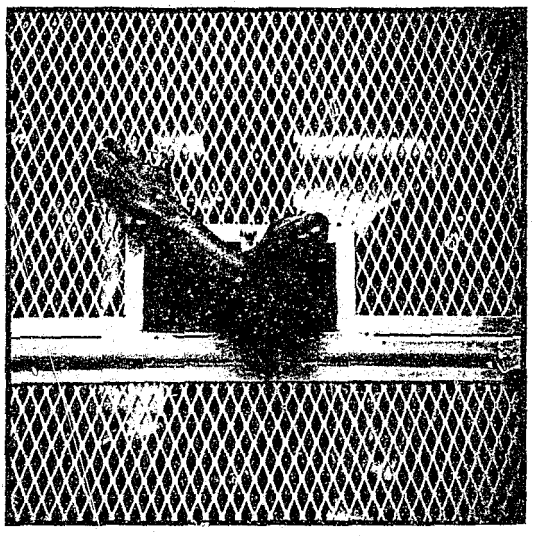
Sauntering up to the youngster, the pusher demanded that Antwan serve as a hiding place for the stash or else face a beating. At first the child refused, then gave in. Business continued—until the "Zone Rangers," an undercover Baltimore vice-and-narcotics squad that had the dealers under surveillance, suddenly sprinted into action. One team of Rangers nabbed the dealers; another pulled Antwan off the swing and confiscated the vials. By the time they reached the station house, the little boy had dissolved in tears.

Then Antwan got his first break. A juvenile-services worker sat down beside him. "Are you sorry for what you've done this evening?" he asked the boy. "Yes," mumbled Antwan. "Have you learned a lesson?" he asked. Another soft yes. Alongside the boy stood his mother Syrita, 30, an attractive woman whose soft face belies the rugged ghetto life she has led. The worker decided to let Antwan go home—he had no prior arrests—so long as she brought him to court the next day.

Syrita had tried repeatedly to warn Antwan of illicit goings-on at the playground. But such warnings carry little weight for a kid growing up on society's margin. Antwan lives in a storefront apartment just blocks from the drug-saturated playground. His mother and grandmother survive on public assistance, and his mother is battling depression with medication and counseling. His father is long gone.

The next day Antwan and his mom show up at juvenile court, which is crammed into the basement of Clarence Mitchell. The building's massive columns, vaulted ceilings and dimly lighted corridors conjure fleeting images of a dungeon. Children wander the hallways, a few in tears. The wa-

Photographs for TIME by David Burnett—Contact Press Images



Angry boys wait in a cramped detention cell for their hearings

Nationwide about 340,000 children have been placed in foster care; nearly 40% of them spend more than two years in temporary homes. Roughly 50% of the 340,000 are under the age of six. In Baltimore, the rate at which children are placed in foster care has doubled since 1989, to 180 cases a month. About 13 emergency-shelter cases enter the system daily.

ter fountains are too high for most to reach. Lawyers, their arms spilling over with folders, bustle about. Sheriff's deputies cast jaundiced eyes on it all.

Syrita Davey, dressed in a white blouse, purple skirt, hoop earrings, sits with her son in a noisy, claustrophobic interview room. Law student Harry Kassap, a volunteer in the public defender's office, listens to the boy's story. The defender's office, which represents indigent youthful offenders, usually has only a few minutes to learn about a case before the accused must appear before a master in chancery, one of the quasi-judicial hearing officers who presides in juvenile court. It does not take long for Kassap to become outraged. "The kid was a complete victim," he later observes, "yet the system treats him as an absolute cryminal."

Antwan gets his second break. The defender's office assigns his file to chief public defender David Fishkin, a gentle giant who looks like a bearded Ichabod Crane. More than anything else, Fishkin decides, efforts must be made to keep Antwan "out of the system" by placing him in a "diversion" program, which offers counseling and individual attention rather than harsh penalties like incarceration. Like everyone else in the courthouse, Fishkin knows that once a kid falls deeper into the justice system, he may never get out. But the lawyer is worried that the prosecutor on the case may have something different in mind. He makes a call and discovers, to his dismay, that assistant state's attorney Mary McNamara, 29, a well-known hard-liner on drug issues, will oppose him.

"Oh," says a slightly flustered Fishkin.

"You sound disappointed," replies McNamara.

"Well, you know, I'd like to keep this case out of the system."

"Dave, you know my policy on drug dealing," McNamara answers, then pauses. "But I'll read the report and keep an open mind."

A third break for Antwan: McNamara, who worked as a night bailiff to get through law school, is actually on Fishkin's side this time. She was born and raised in New Jersey in a blue-collar family; her hard-nosed reputation is a reflection of a strong sense of outrage at the inner-city disaster. "Sometimes," she says, "I get home at night and I think my name is 'Bitch.' They stop being kids to you after a while. Some of them are vicious and nasty. They'd shoot you in a heartbeat."

For Antwan, however, her anger momentarily softens. After making some phone calls, McNamara finds a spot for the youngster in Choice, an acclaimed program that enlists college graduates to keep track of wayward kids and ensure that help is available to them. Sometimes volunteers visit offenders a dozen times a day to keep them on the straight and narrow. McNamara passes the news on to Fishkin.

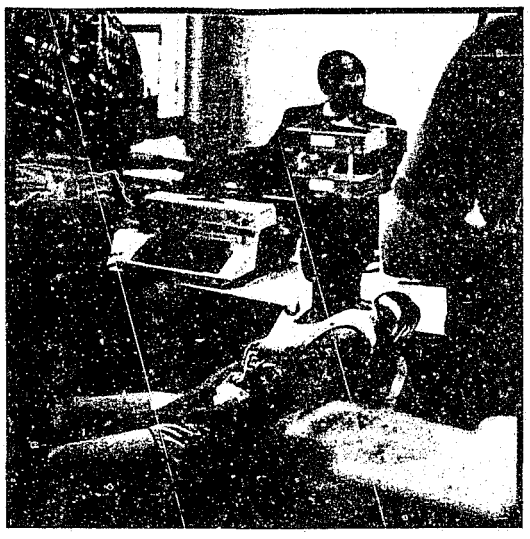
Antwan finds out his fate later that day. "You don't want to be arrested again, do you?" state's attorney McNamara asks the youngster at his court appearance. He shakes his head no. She tells him that a Choice worker will be his big brother. "What's your job going to be?" she inquires. Replies Antwan: "Obey my mom or my Choice worker."

By this time, everyone in the courtroom realizes that this may be the most elusive quarry, a kid who can be saved. The tone in the courtroom changes. Master Bradley Bailey, presiding over the case, asks Antwan if he likes to read. The boy says yes. So Bailey writes something on a slip of paper and hands it to him. "Can you read that?"

"D . . . aa . . . vid Fish . . . kin," Antwan responds. Directs Bailey: "You concentrate on doing that—reading—and leave all the other stuff out on the street." He remands Antwan to his mother's custody. In 60 days he must return to court to demonstrate how he's doing.

The outlook for the two teenage drug dealers who were arrested with Antwan—Daryl Williams and Donnell Curtis—is not as hopeful. Locked up overnight, they also appear in court before Master Bailey. Daryl's aunt sits in the courtroom, her eyes surrounded by dark circles and her face a tight constriction of lines. A drug addict on the nod, she slumps drowsily against the bench, a handkerchief over her mouth and nose. Donnell's mother sits alert and angry in the back row. Both youngsters wear a hard, empty-eyed look of fury.

McNamara argues for locking the boys up until their full-dress court hearing in thirty days. Assistant public defender Robin Ullman requests community detention, which would allow the accused to stay at home until then. Bailey decides to lock them up. "What's that mean?" asks Williams,



a tall, powerfully built kid. "It means you stay in Charles Hickey School until the trial," says Bailey.

"What?" shoots back Williams. "I didn't have nothin' to do with that little boy." Ullman, prim and bespectacled, jumps up and orders her client to be quiet. But he won't shut up. "F___ed up, man," he curses as a courthouse jailer leads him back toward a holding cell. His loud protests echo down the hall.

Williams has good reason to fear Hickey School, a grim correctional facility. The accused dealer told the arresting cops he was only 15, but at Hickey a counselor recognizes him as someone else entirely. "Tyrone, are you back? I thought you were too old for us now." Daryl is really Tyrone Roberts, age 19. He's headed for adult court.

Roberts too was once a lost youngster. He fell into the court system 11 years ago, accused of malicious destruction. He was already a neglected and abused child, a runaway and a truant. His mother wanted to kick him out of her home when he was 10 years old. At 15 he fractured a kid's skull with a brick for teasing him and was later arrested for arson. Psychologists claimed he suffered from neurological dysfunction, attention-deficit disorder and poor impulse control. For a time, Ritalin, an antihyperactivity drug, helped. But two years ago, he was arrested for assault, and in 1991 he was busted for possession of cocaine and joyriding.

As Donnell is handcuffed and led out the courtroom door, his mother is asked if she would like to talk to him. "I ain't got nothin' much to say," she mutters, turning away. Her son does not look at her as he walks out.

Antwan's case is one of 1,070 hearings that moved through the court in this single week. Last year juvenile court accounted for 61% of all Eighth Circuit Court hearings. Moving cases through the gridlocked court is often more important than dispensing justice. In 1991 about 14,000 new cases were filed, or 20% more than five years ago. Delinquency cases jumped 15%, while abuse and neglect cases soared 40%.

Emily

Nearly 80% of juvenile-court work involves youthful offenders like Antwan. The rest focuses on abused and neglected children. Perhaps the most tragic case to pass through Baltimore's juvenile court this week involved Emily Travis, 6. Several months earlier, Emily had told two department-of-social-services workers that her father sexually abused both her and her sister Tracy, 10, in the bedroom while their mother cooked dinner. Since then, Emily has been in a foster home. The court hopes to find a permanent place for her.

Clinging to a doll that plays *It's a Small World*, Emily walks into the court's waiting room, a windowless place, where children play with a well-worn set of plastic blocks. This is not her first visit. Three years ago, high levels of lead were found in Emily's blood; her parents resisted health-department efforts to rid their home of the toxic metal. Court papers described the home as filthy, unsanitary and insect infested.

Apparently little has changed since then. Lawyers in Master Bright Walker's courtroom pass around recent photographs of the same house. The photos display insects crawling in a bowl of soup; trash containers overflowing; food spoiling on a table; bare, broken mattresses; pornographic pictures strewn on the floor.

The Travis family could be torn straight from the pages of a William Faulkner novel: a clan to rival the Snopeses in its deviance. Emily's older brother maims rats in an alley for recreation. Her younger brother's medical reports indicate he may have suffered anal penetration. Emily claims her father has touched her breasts and genitalia.

To sort out the family's history of incestuous relationships, lawyers devise a complicated family tree. The man accused of molesting Emily is not only her father but also her step-grandfather. Emily and her three siblings are the result of an incestuous relationship their mother had with her stepfather. And Emily had been sleeping in a bed with her mother and her father.

Child-welfare worker Viola Mason, who removed Emily from her parents' house, is concerned that the family may again slip out of the control of social-service authorities. The department wants the court to place Emily in a foster home.

This court, as parens patriae (literally father of the country), spends a lot of time trying to salvage children's lives and build new homes for them. But a climate of increased litigiousness and confrontation, along with a lack of money, has made the task

A child's fate often depends on the compassion of a caseworker

Nearly 10,000 reports of child abuse or neglect are investigated each year in Baltimore. Nationwide reported cases have climbed 226% during the past decade, with 2.4 million in 1989. About 35% of these were substantiated; more than half of those involved physical abuse, and a quarter were sexual-abuse cases. More than half of all confirmed abuse reports and 75% of child deaths involve alcohol or drug abuse on the part of parents.

A violent culture has spawned a new breed of offenders

tougher. In addition, the overburdened Baltimore city social-services department has pathetically inadequate means to care for the children after they are removed from their homes, a situation that undermines the department's mission from the start.

Before Emily's hearing begins, her Legal Aid Bureau lawyer, Joan Sullivan, takes her by the hand and walks her upstairs to a quiet corner. She asks Emily how she feels in her foster home. "I'm still scared," says Emily. "At night I see shadows on the wall. Monsters." The social-services department wants to place Emily with a cousin, but the young girl wants to live with her grandmother. No matter how Sullivan feels about the matter, she is obligated to express to the court whatever Emily, her client, wants. And that may not always appear to be the best solution.

Sullivan asks if Emily knows why she had to leave home. Emily says she does not, and then she spontaneously recants her claims of abuse. "That wasn't for real," she says. "I lied." But her denial rings hollow.

"Do you like your dad?" Sullivan continues. Yes, says Emily. "He gives me money." She adds that her father promised to give her gifts and a party when she comes home.

As often happens in these circumstances, the lawyers cannot agree on a solution for Emily. Since the girl has recanted and no physical evidence of abuse exists, it appears she may go home with her parents. "It's an injustice," observes child-abuse expert Betsy Offerman, who has followed Emily's case. "It seems that no matter what we know, there is always a loophole that means the child will go back into the situation, and the cycle continues." Offerman explains that there is a tremendous incentive for children to deny sexual abuse. "The message kids get is, 'If I say something, I will go to court and get taken away from my family,' " Offerman says. "They start to think it is better for them if they keep their mouths shut." Offerman used to be a therapist in the social-service department's sexual-abuse-treatment unit, which was closed in 1990 because of budget constraints.

As the lawyers continue to argue in a corridor, Emily falls asleep on her cousin's shoulder in the courtroom. Then Master Walker arrives. At first things go badly for the social-services department. Emily's lawyer prompts a social-services worker to concede that the allegedly filthy house had been cleaned in time for a later scheduled visit. The attorney for the child's mother then gets the worker to admit that Emily's older sister Tracy has denied all charges of sexual abuse. Under questioning from the father's lawyer, the worker acknowledges that there is no physical evidence of sexual abuse.

Then Offerman testifies. Emily, she says, described her father's fondling as a game. "She talked about it as if she were going to a birthday party," says Offerman. "She had no sense of taboo around this." Offerman relates that when the father was told Emily was being removed from his home, he retorted, "You ask Tracy. She'll say nothing happened."

Finally Emily herself sits down on a wooden chair pulled up at the end of a long table to the side of the master's raised desk. "Do you remember talking to Miss Betsy?" asks Emily's lawyer, pointing to Offerman. The distraught child says nothing but fingers a piece of chalk she has carried from an interview room. "Was what you told her the truth?" the lawyer asks. Emily shakes her head no, then buries it in her elbow.

A few minutes later, social-services lawyer Donna Purnell tries to cut past Emily's reluctance to admit what she believes happened. "Are you scared that if you tell, you won't go home?" she asks? Emily nods yes. "If you said something to Betsy, would you be scared to say it now?" Emily nods her head yes again. "Does Daddy ever tickle you?" "On my feet. On my leg." Just 15 ft. away, her father leans forward, rests his elbows on the bench in front of him and stares right at Emily.

The final witness is Tracy, a chubby girl who smacks on chewing gum until Master Walker makes her remove it. In short order, the girl denies her father ever touched Emily and says Emily never told her of any abuse. She also claims she is not afraid of her father.

"Is there a reason why you wouldn't tell the truth if your father did touch you?" asks Purnell, trying to unmask the apparent cover-up. Tracy says no. Suddenly, Master Walker's loud voice booms across the courtroom. "She's giving more signals than a third-base coach for the Boston Red Sox," Walker says, gesturing toward the girl's mother. He has been watching her coach Tracy from the bench nearby.

Afternoon has slipped into evening. Emily's mother yawns. When closing arguments end, Walker, a kindly 20-year veteran of the bench who writes haiku and dabbles in abstract painting, rules that sexual abuse did, in fact, occur. After listening to two hours of testimony, Walker is convinced that Emily has been sexually abused by her father and wants to protect her from having it happen again. He orders Emily to remain in foster care and asks social services to evaluate the suitability of placing her in a relative's home.

Doll in hand, Emily leaves the courtroom. In the empty corridor, her siblings hug her and say goodbye. A few minutes later, Emily walks with her caseworker out of the building and back to her foster home, perhaps separated from her parents forever. The court has done what it can.

Timothy and Tommy

Julie Sweeney often wonders if her two cute grandsons traded one horrible situation for another when they were uprooted from their mother's home and placed in foster care. Today she has brought Timothy, 11, and Tommy, 9, to court to review their foster-care status. Their mother, Cassandra, Sweeney's 31-year-old daughter, is homeless; she chose cocaine over her two sons. There's a warrant out for her arrest on charges of prostitution, so she won't appear in court today. "Cocaine became her lover," Sweeney explains. "She told me the high was so good that she wanted it, even if it meant losing everything she had. She does love her children, but she loves Mr. C. more."

Sweeney, in her early 60s, is not well enough to take care of her grandsons. She waited for more than two years for the social-services department to rescue them from their mother's destructive grasp. "I was sending food to them by taxi at their mother's house," she tells Legal Aid Bureau lawyer Lisa Watts as they sit in the stuffy waiting room. "They were abused and hungry. They turned into children of the streets." Despite the grandmother's frequent requests, the children were not removed from the home. "[My daughter] was selling furniture out of the house and threatened to kill the younger boy. I called protective services again. They went in and said the house looked O.K. It's the laxest organization I've ever seen."

Finally Sweeney decided to become the children's forceful advocate. "Push, push, push," she says. "Nothing ever works according to the system. Someone in the family has to do it." Two years ago, when Cassandra's drug habit became uncontrollable, Sweeney says the social services informed her it had no home available in which to place her grandchildren. So the next day Sweeney went to collect the boys. Her daughter, high on drugs, slumped on the couch, while men walked in to buy drugs from someone upstairs. Cassandra was using cocaine, PCP and Ritalin. A social-services caseworker told Sweeney she could not take her grandchildren, but she did anyway. After she got them home, they all broke into tears.

Then Sweeney called the social-services department and explained that she was not well enough to care for her grandsons herself, but she wanted the brothers kept together. Instead the boys were placed in separate foster homes. Tommy, the younger, slept on a urine-stained mattress without a sheet. "He cried pitifully," Sweeney recalls. "He wouldn't eat or play. He sat with a shopping bag under his arm." The youngster was returned to his grandmother's house, but soon his mother, who temporarily cleaned herself up with the help of a detox program, regained custody of the boys.

Things only got worse. One night Timothy walked downstairs to find his mother injecting drugs into her arm. Within months, the children were back with social services.

This time, after reviewing the case, lawyer Watts has designed an agreement that allows the boys to remain under official jurisdiction and continue a program of therapy. Sweeney will retain visitation rights. The boys want to live with their aunt; the department will try to help the woman afford better housing so that she can take them in. Finally Tommy will be assigned a Court-Appointed Special Advocate volunteer, who will look out for his best interests.

Almost every child at Clarence Mitchell could use an advocate, but there aren't enough to go around. "It's overwhelming, and nobody really has the time to prepare them for what's happening," says Diane Baum, who heads Baltimore's more than 160 volunteer advocates. What is needed, says juvenile-court administrative Judge David Mitchell, is "a fundamental change in the way society views the family and children." Nothing less than that will make the system work.

Antwan's Hope

Sometimes, though, against all odds, it does work. Days after Antwan Davey left court with his mother, Choice counselor Bob Cherry, a graduate from the tough streets of Boston's Southie district, paid his second visit. Like a shy colt, Antwan leaned close to Cherry as the young man drove the boy around town in his white Chevy Monte Carlo, its throaty exhaust pipes growling.

Everyday Cherry and members of his Choice team keep tabs on Antwan; so far, the boy's mother has only good things to say about the program. "They say he's got to call everyday," she says. "He has to come home at certain times and not hang out in the wrong places. I don't let him hang out at the playground anymore." Even Antwan is impressed with Cherry. "He seems like I can trust him."

After the car ride, Antwan steps back inside his apartment to do his homework. His mother unscrews the light bulb from the kitchen socket and screws it into the living-room ceiling. Its harsh glow illuminates a poster on a far wall of a black boy crying. "He will wipe away all tears from their eyes," the poster reads, "and there shall be no more death, nor sorrow, nor crying, nor pain. All of that has gone forever. —*Revelation 21: 4*"

— With reporting by Melissa Ludtke and James Willwerth/Baltimore

Judge David Mitchell believes only fundamental change can save the system and its children

The Maryland department of juvenile services spends $60,000 a year to lock up an offender at Charles H. Hickey School, a grim correctional facility, but only $200 a year per delinquent for preventive services. The department of social services, which handles neglect and abuse cases, is cleaning up its act under a court-ordered consent decree. But further state budget cuts threaten to undo that remedial work.

Senator KOHL. Thank you very much, Judge Mitchell.

We are talking today about the juvenile court system, and the fact that it is in such bad shape, and what we are going to do about it.

As you know, many people suggest that the system be scrapped, and that all violent kids be sent to adult court.

Judge Malmstadt, how do you respond to that?

Judge MALMSTADT. I was a prosecutor in Milwaukee County for, as you said, 17 years. I prosecuted adults; I did not spend a great deal of time—maybe at most 30 days of that 17 years was spent in the Children's Court, and when I went to the Children's Court as a judge there, I thought I was going to run across a large number of hardened, violent offenders, who just happened to be under 18.

What I have found is very needy, very hurting children, who do awful things. To waive these children to the adult system, which, in Wisconsin, and I am sure every other State in this country, is already overcrowded, basically a revolving door system, with no educational programming, no treatment programming, is to abandon those children, in many cases children who have been abandoned a number of times before, and I think it is totally inappropriate.

Senator KOHL. Judge Orlando?

Judge ORLANDO. Senator, I believe that in many places the juvenile court has already been abandoned and abolished, because of the practices of State legislatures, either by legislative exclusion of offenses or turning over from the judge, in a judicial proceeding, the decision of who is sent to the adult system to prosecutors across this country. This practice must be reversed.

I believe that the court is being overloaded with the wrong type of children. The offenders that are being sent into the failing adult correctional systems across this country are the children that the court was originally designed to deal with. The numbers of minor and low-risk offenders that are coming in are the kinds of children that the diversion and prevention systems were designed to deal with.

The front-end services in this country that the original Juvenile Justice Act was designed to fund—prevention and early intervention—are now dealing with the wrong types of children, and the court is being overloaded with the child welfare system failures.

I think that unless the juvenile court is given back the responsibility to deal with children as it is designed to, and the back door of the court is closed, except for a judicial decision that makes a finding that a child is no longer amenable to treatment within the juvenile justice system, that we will eventually erode the juvenile court.

The public, as you know from our public opinion survey poll, has lost confidence in the juvenile court. I believe it is because the public is badly misinformed, as to what the juvenile court is doing, and I believe that the prevention program should be made to deal with the truly prevention cases, and the court should be dealing with the serious offender, and keeping those children within the juvenile justice system in the kinds of programs that we know work; we know the adult system fails with them.

And I believe also that the detention system in this country is overloaded. We had a Federal lawsuit that we were destined to lose on our detention center, and the project that we initiated with the Casey Foundation funding demonstrated that in 1987, when we had 200 children in a chaotic facility, designed for 109, and over 3 years we implemented real reform, with our prosecutor, judges and local advocacy groups, the average daily population is in the fifties. Last Friday there were 47 in that center.

Now we have more serious offenders inside the detention center than we had when there were 200 children in that detention center, because we learned how to classify offenders, we learned how to keep the right kids in security, and get the wrong kids out, and get them the kind of services they need before it is too late.

Thank you.

Senator KOHL. Judge Mitchell, should we scrap the juvenile court system?

Judge MITCHELL. We will go back to the future, Senator. A hundred years ago this system was created because of reform. It was created because too many children were in adult prisons, without regard to their age or their offense.

What is in its place if we scrap it? Back to the future. We go back to a century ago, when we had 9- and 10-year-old little drug dealers on the streets, in prison with 25- and 35-year-old murderers, robbers, rapists, sodomists, et cetera.

Do we scrap that system, or do we give it an opportunity to make it work? Do we give it the resources and tools?

Senator the horse that eats all the oats in the barn is the adult criminal system. We all want secure treatment, and we will spend a million dollars to try and attempt to execute a person, but we won't spend $1,500, $10,000, when that child was young and give him an opportunity to succeed.

The court is a court, it is not a social services agency, exclusively. It has a social responsibility; there needs to be a proper mix and balance of the two. I think that can be achieved without difficulty.

There needs to be proper funding of the court. Why, in my community, should I have to fight like the dickens with a legislature and an executive to make them understand that parents who are about to have their children removed from them are entitled to legal representation? A fundamental, basic precept: If you are going to lose your child into the social welfare system, you should be entitled to some representation, to understand what is happening with this situation.

No one wants to fund that. Well, they are not cute, they are not sexy, they are not nice people. Maybe they beat up their child, maybe they raped their child, or sodomized the child, but they still have rights, and those rights need to be protected. Everyone else has a lawyer, and we are able to provide for them, but not these people.

What I am saying to you, Senator, is no, we shouldn't scrap the system. We should give the system the resources and tools to make it work.

If I might, I also agree that we waive too many children. Most waivers—excuse me, all waivers are failures. Most are failures of

the system to respond, many are failures of the child and/or family to respond, but they are failures on someone's part.

Senator KOHL. All right, thank you.

Judge Orlando, you mentioned a few programs that are working, and you mentioned a Broward County detention initiative. Can you tell us a bit about the Casey Foundation's plans to replicate the Broward County model?

Judge ORLANDO. Senator, the Casey Foundation project in Fort Lauderdale, which is Broward County, was a 3-year project funded to reform our juvenile detention system, to try to make it a model.

We started with a building that was designed for 109 children and, as I said, some days it was going over 200. The State was spending $18,000 a month on overtime, we were averaging seven to eight emergency room runs a week, for broken bones of either staff or children, at $250 apiece, and we had no system whatsoever of telling who was in that center.

The State was sued, it was a loser from the beginning, we mediated a settlement of the lawsuit, and created a system outside the building of home detention, a report center with the Boys and Girls Clubs, and a shelter for the homeless kids who were being housed in the detention center because there was no other place for them.

That system had the support of our prosecutor, our court, our public defender and our community.

The results of the project were so impressive to the Foundation that the board of the Casey Foundation, which is United Parcel Service, recently decided to replicate the project over a 4-year period, and they will be shortly—selecting seven or eight sites across the country to give planning grants to, to plan a reform of their detention system.

They are going to try to balance the planning grants to State systems, county-operated systems and court-operated systems, to get a mix of programs. From the plans that will be submitted, they will choose approximately four to five sites across the country to fund over a 4-year period to replicate the reforms that were achieved in Fort Lauderdale.

Like many of their other projects, this is a foundation that, I believe, is courageous, because they are willing to take on risky initiatives. Working with juvenile delinquency is much more risky than working with the arts or some of the other things many foundations choose to be involved with.

The foundation has decided that the underbelly and the hidden closets of the juvenile delinquency system are the detention centers of this country, and they are willing to fund a type of reform initiative that may enlighten the country on detention practices, that end up with the serious offenders under secure care, and the nonserious offenders outside in a descending level of restrictiveness, to no restrictiveness whatsoever, with the objective of detention being purely to house and detain those children who present a real risk of reoffending or nonappearance in court, and to find other resources for all of the other types of children that are finding their way into those systems now.

Senator KOHL. Judge Malmstadt, what do you think about that?

Judge MALMSTADT. I think it is a program that is long overdue. I think most of the kids—a lot of kids who wind up in the detention

centers do so because they have frustrated a judge. The judge has continually put the kid in some kind of less secure setting, and the kid goes out and keeps doing petty offenses, minor offenses, or runs away.

Our detention center, when it reached its worst overcrowding periods this summer, was overcrowded simply because there were no other resources elsewhere to place kids. We had 40, 50, and 60 kids sitting in detention, waiting to get placed into other treatment programs, and no treatment programs were available.

I couldn't agree with Judge Mitchell more, that the adult system sucks up so many resources that we sit with kids who are in need of services today, and, unless we figure out a way to freeze-dry them until we can given them services, we had better be willing to give them services now, because those kids ultimately, if not given services, are going to become tomorrow's violent criminals.

Senator KOHL. Well, is it lack of knowledge, or really a disagreement of opinion, or is it, for the most part, lack of resources to help these kids?

Judge MALMSTADT. I certainly think lack of resources is at the head of the list in my State—in your State.

Senator KOHL. Lack of resources. No doubt, this is a major problem.

What do you think, Judge Mitchell?

Judge MITCHELL. Well, I agree. We are getting close to a situation in my community where one-in-one-out. We can't put one in until someone takes one out of a detention center, and talk about public safety. It is a major and significant issue in the community.

Resources—I can give you the example of the fact that we can't prosecute cases as quickly as they should be prosecuted because the Police Department doesn't have the staff to simply transmit reports to the Department of Juvenile Services for the intake investigation, and a determination of whether the case should be prosecuted.

Months go by—not weeks, or days—months. When you have a child who has been sexually abused, and as a victim, but they can't decide whether to prosecute that child—the offender—for weeks or months because they can't transmit a police report to the Department of Juvenile Services, before the court could even get involved in the case, we are talking resources.

We are not talking just resources to the court, we are talking to the system. It has got to be made important. The judges have to deal with it as important. When you speak to a judge and say, I am going to assign you to the juvenile court, it can't be the reaction of, well, what did you do to the administrative judge? Why did you make him angry, or her angry? Or, are you going to "kiddie court"? It is not appropriate.

We are dealing with children, and the only future you have, and the only future I have, is them.

Senator KOHL. There is no doubt.

Do I understand you all to say that the major problem in our juvenile court system is not lack of awareness or sophistication about what needs to be done with these young people who pass through the system? That for the most part we understand the things that need to be done in terms of handling them individually and suc-

cessfully, to the extent it is possible. But, what is missing are the resources to get that job done. Is that a fair statement?

Judge MALMSTADT. Yes.

Judge MITCHELL. Absolutely. Again, we almost replicate the adult criminal system in that regard. When the dollars get short, then the programming is reduced or eliminated. You are left with, lock them up, for public safety reasons, or put them on probation, where they won't see anyone.

Senator KOHL. Right.

Judge MITCHELL. Where there is no supervision.

Senator KOHL. Are you saying to the Federal Government, look, we appreciate all your insights and your comments, we appreciate your hearings, and the opportunity to come and talk about these things, but 70 or 80 or 90 percent of what you can do for us, if not 100, is just to give us more money? So that we can do what needs to be done. Is that an accurate assessment?

Judge ORLANDO. Senator.

Senator KOHL. Yes.

Judge ORLANDO. The Eisenhower Foundation, in its recent 10-year anniversary issue, highlights very clearly that the knowledge to deal with children in this United States exists. It is the political will to institute and implement what we know works that does not exist.

Money alone is not the answer. My State pours millions into the juvenile justice system, as we pour many more millions into our adult correction system. It is the political will to let the court work, and let the court implement—not the court, but the system, if it may, work.

Judge Mitchell and I share an interest in a program in this country called Associated Marine Institutes, that deal with juvenile delinquents in nine States. I would add to his invitation to you to visit the courts, to visit programs like the AMI programs, that have demonstrated over and over again that, give us serious offenders and we will show you how, in most instances, we can rehabilitate them.

It is not money alone, it is allowing the system to work, and not dumping thousands and thousands of kids into the adult criminal justice system in response to an uninformed, get-tough mentality.

Senator KOHL. OK.

Judge MITCHELL. In Maryland we know that 90 percent of those who are in adult prison have had juvenile contact.

Senator KOHL. Ninety percent of what?

Judge MITCHELL. Ninety percent of the inmates in adult prisons have had some juvenile contact, but we have never been given a chance to really work with most of those people.

Judge MALMSTADT. I think another thing we need besides resources is, we need information. We need to find out what is working elsewhere. I don't know about the other judges in the children's courts of this country, but I know I don't have a whole lot of time to travel around the country and examine what is going on in Baltimore, or what is going on in Florida.

My day in the court starts at about 8:15, and it ends at about 6:15. That is when I get on the bench, and I usually get off around 6:15. That is a typical day. We don't go to a lot of conventions, find-

ing out what programming works, and I think that kind of information is also important—information about what does work, and what doesn't.

Another thing that I think is important is that, how to treat juveniles is something that there are any number of organizations that feel they have expertise in. When those experts disagree, it seems that we reach a point of gridlock. There doesn't seem to be any willingness to talk about areas of agreement, as opposed to areas of disagreement, and we wind up doing nothing, instead of trying to do things that we agree on.

I have seen that in Wisconsin, I am sure that happens in other States, as well—that we start out with an idea, let us try something, and then, as you are working toward trying a new program, there gets to be some disagreement among the people who had decided to start this program, and it just stops, because they cannot reach agreement on what is a minor point, really.

But there is something about the juvenile system that seems to be endemic to that kind of behavior.

Judge ORLANDO. Senator, to amplify on something that Judge Mitchell said, in the State of Massachusetts, which is one of the States we have identified as a model for juvenile justice programming, only about 35 percent of the graduates—or, excuse me, 15 percent of the graduates of the juvenile justice agency in Massachusetts are ending up in the adult criminal justice system.

That is reported in an evaluation by the National Council on Crime and Delinquency for the Clark Foundation. There is a reason for that, and I suggest that you possibly talk with the director of that system, Ned Loughran, on what they do in Massachusetts.

Now, they have begun to implement some very unenlightened practices with the recent change in administration, and that may have a negative effect on their system, but up until this year they were the model for the United States, and only 15 percent of their graduates were going into the adult system within a 2-year period.

Senator KOHL. We want to thank you for coming this morning, gentlemen. You have been a great help by providing some useful insights, information and followup suggestions.

Judge MALMSTADT. Thank you for having us.

Senator KOHL. Thank you so much for coming.

Judge MITCHELL. Thank you.

Judge ORLANDO. Thank you.

Senator KOHL. Our second panel of witnesses includes both academics and advocates. We have with us Dr. Barry Feld, Dr. Gary Melton, and Robert Schwartz.

Dr. Feld is a renowned expert on juvenile courts and access to counsel. He has 20 years of practical experience in the field, working as a prosecutor in criminal and juvenile courts, helping to develop the American Bar Association's Juvenile Justice Standards, and most recently working as a visiting scholar at the Office of Juvenile Justice and Delinquency Prevention.

Dr. Feld is also centennial professor of law at the University of Minnesota Law School.

Dr. Melton directs the Center on Children, Families and the Law at the University of Nebraska. He helped found the Consortium on

Children, Families and the Law, which now advises Members of Congress and their staff on juvenile justice and other related issues.

A member of the U.S. Advisory Board on Child Abuse and Neglect, Dr. Melton is a frequent visitor to this subcommittee.

And Robert Schwartz comes to us from Philadelphia, where he is executive director of the Juvenile Law Center. Today he is also representing the American Bar Association, where he chaired a subcommittee to develop the association's position on reauthorization of the Juvenile Justice and Delinquency Prevention Act.

He has 17 years experience litigating cases on behalf of children and juvenile justice, mental health, foster care, and health and education systems.

As we move to reauthorize the Juvenile Justice Act, and improve the access kids have to justice, I know that we will be relying on suggestions from this panel.

Again, we would appreciate it if you would keep your opening remarks to no more than 5 minutes, so we will have enough time for discussion, and your written testimony will be made part of the record in its entirety.

Dr. Feld, would you begin?

SECOND PANEL: ADVOCATES AND ACADEMICS

PANEL CONSISTING OF BARRY FELD, PH.D., UNIVERSITY OF MINNESOTA LAW SCHOOL, MINNEAPOLIS, MN; GARY MELTON, PH.D., DIRECTOR, CENTER ON CHILDREN, FAMILIES AND THE LAW, UNIVERSITY OF NEBRASKA, LINCOLN, NE; AND ROBERT G. SCHWARTZ, ESQ., REPRESENTING THE AMERICAN BAR ASSOCIATION, EXECUTIVE DIRECTOR, JUVENILE LAW CENTER, PHILADELPHIA, PA

STATEMENT OF DR. FELD

Dr. FELD. Thank you very much, Senator Kohl. I am very grateful for the opportunity to visit with you this morning.

There are three points that I would like to make in my opening remarks. The first is that it is time to put the justice into juvenile justice. Although juvenile courts have converged, procedurally and substantively, with adult criminal courts, they use procedures under which no adult would consent to be tried.

If you are a young person, facing the prospect of a year or two in a prisonlike setting, you will be tried in a closed courtroom, denied the right to a jury trial, and, in too many instances, convicted and incarcerated without even the assistance of an attorney.

Twenty-five years after the Supreme Court in *Gault* mandated procedural safeguards and the right to counsel, *Gault*'s promise remains unkept for many juveniles in many States.

Second, the continuing procedural deficiencies of the juvenile court are untenable in an institution which is increasingly and explicitly punitive. There is a strong movement nationwide, both in theory and in practice, away from therapeutic, individualized dispositions toward punishment.

The emphasis on punishment repudiates the basic assumptions that juvenile courts operate in the child's best interests, that

youths should be treated differently than adults, and that juvenile courts require fewer procedural safeguards because their consequences are benign.

Third, as the rehabilitative ideal of the juvenile court has been transformed into a second-class, scaled-down criminal court, that provides neither therapy nor justice, it is time to consider abolishing juvenile courts, and trying all offenders in criminal courts.

Practical procedural justice hinges on access to lawyers. I will refer to some of the studies that I provided staff yesterday with regard to my research on the provision of legal services in juvenile courts. In my "In Re Gault Revisited" study, which reports the only statewide data available in the literature, in three of six States for which any data is available, half or less of juveniles had lawyers.

In my "Right to Counsel" study,* in Minnesota, only 45 percent of juveniles were represented. Nearly a third of the juveniles removed from their homes, and over a quarter of those incarcerated in institutions never saw a lawyer.

There is a relationship between the seriousness of offense and the rates of representation. Juveniles charged with felonies are more likely to be represented. But, the serious offenses are a minor part of most juvenile court dockets, and the adverse impacts of nonrepresentation fall most heavily on the majority of juveniles charged with minor offenses.

The relationship between the seriousness of offense and the presence of counsel also suggests that variations in rates of representation reflect deliberate judicial policies, rather than juveniles' competence to waive counsel.

There is a second phenomenon which is justice by geography. Within a State, rates of representation are highly variable. Urban juvenile courts are more formal, bureaucratized and lawyers may appear more regularly. In more traditional, rural settings, lawyers appear rarely.

In Minnesota, for example, while 45 percent of our youths in the State have lawyers, in the urban counties 63 percent do, whereas in rural counties only 25 percent do. The explanation for nonrepresentation is that juveniles have waived their right to counsel. In evaluating waivers of counsel, we determine whether it was "knowing, intelligent and voluntary" under the "totality of the circumstance."

Using this adult legal standard for assessing waivers of rights by juveniles raises the question of what do kids know, and when do they know it.

Dr. Melton has done some of the best empirical research which suggests that kids are simply not as competent as adults to waive their rights, knowingly, intelligently and voluntarily. The questionable validity of juveniles' waivers of rights to counsel raises a variety of collateral legal issues—incarceration without representation, and enhancement of sentences based on prior, uncounseled convictions.

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* Retained in subcommittee files.

For purposes of the JJDP reauthorization, we have to eliminate waivers of counsel. There are a variety of alternative strategies available to this committee—mandatory, automatic, nonwaivable appointment of counsel in every case. That is the position of the American Bar Association in the Juvenile Justice Standards, and it recognizes that juvenile courts are not social welfare agencies, but legal institutions, exercising coercive powers.

At the very least, we should prohibit waivers of counsel without prior consultation with counsel, and the concurrence of counsel on the record, as a mechanism for assuring the development of legal services delivery in juvenile courts.

At the very least, there should be an absolute prohibition on any out-of-home placement, or secure confinement disposition, of unrepresented youths. In Minnesota, in the rural counties, over half the juveniles removed from their homes, and over half the juveniles incarcerated in institutions, never saw a lawyer.

We also need to exclude prior uncounseled convictions when we sentence juveniles as adults under guidelines, when we waive juveniles to criminal courts, when we sentence juveniles as juveniles, and when we bootstrap status offenders into delinquency by relying on their prior uncounseled status adjudications.

And finally, we need to improve the data collection on the delivery of legal services, so that we are in a position to monitor the delivery of legal services in juvenile courts.

[Dr. Feld submitted the following material:]

TESTIMONY ON "JUVENILE COURTS: ACCESS TO JUSTICE"
SUBMITTED BY
BARRY C. FELD

Mr. Chairman and Members of the Subcommittee:

My Name is Barry C. Feld. I am Centennial Professor of Law at the University of Minnesota Law School. I am very grateful to you and the members of the Subcommittee for inviting me to testify this morning. For more than 20 years, I have devoted my professional life to issues of juvenile justice, beginning with my doctoral research on juvenile correctional institutions, as a prosecutor in criminal and juvenile courts, as a Reporter for the American Bar Association's Juvenile Justice Standards Project, and recently as an OJJDP Visiting Scholar studying the delivery of legal services in juvenile courts.

Juveniles' Access to Counsel in Delinquency Proceedings

For those of us who are concerned about access to justice in juvenile courts, these are very troubling times. Twenty five years ago in In re Gault (387 U.S. 1 [1967]), the United States Supreme Court held that juvenile offenders were constitutionally entitled to the assistance of counsel in juvenile delinquency proceedings. Gault also decided that juveniles were entitled to the privilege against self-incrimination and the right to confront and cross-examine their accusers at a hearing. Without the assistance of counsel, these other rights could be negated.

In the twenty five years since Gault, the promise of counsel remains unrealized. On the basis of the data available, it appears that in many states less than half of all juveniles adjudicated delinquent receive the assistance of counsel to which they are constitutionally entitled (Feld, 1984; 1988; 1989).

When Gault was decided, an attorney's appearance in delinquency proceedings was a rare event, occurring in perhaps 5% of cases. Despite the formal legal changes, however, the actual delivery of legal services to juveniles lagged behind. Recent evaluations of legal representation in North Carolina found that

the juvenile defender project represented only 22.3% of juveniles in Winston-Salem, N.C., and only 45.8% in Charlotte, N.C. (Clarke and Koch 1980:297). Aday (1986) found rates of representation of 26.2% and 38.7% in the southeastern jurisdictions he studied. Walter and Ostrander (1982) observed that only 32% of the juveniles in a large north central city were represented by counsel. Bortner's (1982:139) evaluation of a large, midwestern county's juvenile court reported that 58.2% of the juveniles were not represented by an attorney. Evaluations of rates of representation in Minnesota also indicate that a majority of youths are unrepresented (Feld, 1984; 1988; 1989). Feld (1989) reported enormous county-by-county variations in rates of representation within Minnesota, ranging from a high of 100% to a low of less than 5%. A substantial minority of youths removed from their homes (30.7%) and those confined in state juvenile correctional institutions (26.5%) lacked representation at the time of their adjudication and disposition (Feld, 1989:1236-38). The most comprehensive study to date reports that in half of the six states surveyed, only 37.5%, 47.7%, and 52.7% of juveniles charged with delinquency were represented (Feld, 1988:401). In short, it appears that Gault's promise of counsel remains unkept for most juveniles in most states.

One pattern that emerges is a direct relationship between the seriousness of the offense and rates of representation. Juveniles charged with felonies -- offenses against the person or property -- and offenses against the person -- felony or minor -- generally have higher rates of representation than the overall rate (Feld, 1988a:402; 1989:1237). In most jurisdiction, however, such offenses constitute only a small part of juvenile courts' dockets. Substantially higher proportions of juveniles charged with "kid stuff" -- minor property offenses, public disorder, and status offenses -- are unrepresented. These variations in rates of representation by offense reinforce the view that the decision to appoint counsel reflects deliberate

judicial policies rather than differences in minors' competence to waive the assistance of lawyers.

A second pattern that appears is that within the same state, rates of representation in juvenile courts are highly variable. Despite statutes and rules of statewide applicability, juvenile justice administrations varies considerably in urban, suburban, and rural contexts (Feld, 1991). In urban settings, juvenile justice intervention is more formal, bureaucratized, and due process-oriented and lawyers may appear regularly. By contrast, in more rural counties, juvenile courts are procedural less formal and lawyers appear much less frequently (Feld, 1991). In Minnesota, for example, while only 45% of youths in the state are represented, in urban counties, 63% have lawyers, whereas in rural counties, only 25% are represented (Feld, 1991:186). In the rural counties, even a majority of juveniles charged with felony offenses appear without counsel (Feld, 1991: 184-187).

There are a variety of possible explanations for why so many youths appear to be unrepresented: parental reluctance to retain an attorney; inadequate public-defender legal services in nonurban areas; a judicial encouragement of and readiness to find waivers of the right to counsel in order to ease administrative burdens on the courts; cursory and misleading judicial advisories of rights that inadequately convey the importance of the right to counsel and suggest that the waiver litany is simply a meaningless technicality; a continuing judicial hostility to an advocacy role in a traditional, treatment-oriented court; or a judicial predetermination of dispositions with nonappointment of counsel where probation is the anticipated outcome (Feld, 1984: 190; 1989: 216-17; Bortner, 1982:136-147; Lefstein et al., 1969; Stapleton and Teitelbaum, 1972). In many instances, juveniles may plead guilty at their arraignment and have their disposition imposed at the same hearing without benefit of counsel. Whatever the reason and despite Gault's promise of counsel, many juveniles facing potentially coercive state action never see a lawyer,

waive their right to counsel without consulting with an attorney or appreciating the legal consequences of relinquishing counsel, and face the prosecutorial power of the State alone and unaided.

Waiver of Counsel The most commonly offered explanation of nonrepresentation is that juveniles waive their right to counsel. In most jurisdictions, the validity of relinquishing a constitutional right is determined by assessing whether there was a "knowing, intelligent, and voluntary waiver" under the "totality of the circumstances." (Johnson v. Zerbst, 304 U.S. 458 [1938]; Fare v. Michael C., 442 U.S. 707 [1979]; Feld, 1984) The judicial position that a youngster can "knowingly and intelligently" waive constitutional rights unaided is consistent with most legislatures' judgment that a youth can make an informed waiver decision without parental concurrence or consultation with an attorney. While the Supreme Court has not ruled on the validity of a minor's waiver of counsel in delinquency proceedings, it has upheld a minor's waiver of the Miranda right to counsel at the pretrial investigative stage under the "totality of the circumstances" (Fare v. Michael C., 442 U.S. 707 [1979]).

The crucial issue for juveniles, as for adults, is whether such a waiver can occur "voluntarily and intelligently," particularly without prior consultation with counsel. The "totality" approach to waivers of rights by juveniles has been criticized extensively (Feld, 1984; Grisso, 1980; 1981; Melton, 1989). Empirical research suggests that juveniles simply are not as competent as adults to waive their constitutional rights in a "knowing and intelligent" manner (Grisso, 1980; 1981). Professor Grisso (1980:1160) reports that the problems of understanding and waiving rights were particularly acute for younger juveniles and that the level of comprehension exhibited by youths sixteen and older, although comparable to that of adults, was still inadequate (Grisso, 1980:1157).. While several jurisdictions recognize this "developmental fact" and prohibit uncounselled

waivers of the right to counsel or incarceration of unrepresented delinquents (Iowa Code Ann. §232.11 [West Supp. 1985]; Wisconsin Stat. Ann. §48.23 [1983]; A.B.A. Juvenile Justice Standards, 1980a; 1980b), the majority of states allow juveniles to waive their Miranda rights as well as their Gault right to counsel in delinquency proceedings without an attorney's assistance.

Uncounselled Convictions, Incarcertion Without Representation, and Enhanced Sentences

The questionable validity of many juveniles' waivers of the right to counsel raises collateral legal issues as well. In Scott v. Illinois (440 U.S. 367 [1979]), the Court held that even in misdemeanor proceedings, counsel must be appointed for the indigent if the trial judge actually orders a sentence of incarceration. Thus, unless validly waived, counsel must be appointed for any juvenile charged with conduct that would be a felony if committed by an adult (Gideon v. Waingwright, 372 U.S. 335 [1963]; In re Gault, 387 U.S. 1 [1967]), as well as for any juvenile who is removed from her home or confined (Scott v. Illinoi, 440 U.S. 367 [1979]).

One study in Minnesota reports that nearly one-third of all juveniles removed from their homes and more than one-quarter of those incarcerated in secure institutions were not represented (Feld, 1989:1254-56). In the sixty-eight of Minnesota's eighty-seven "low representation" counties, where only 19.3% of juveniles had lawyers, more than half of all the juveniles who were removed from their homes or who were incarcerated were not represented (Feld, 1989:1255). Another study reported that more than half of all juveniles tried in rural counties who were removed from their homes or who were incarcerated were not represented (Feld, 1991). Since larger proportions of juveniles charged with serious offenses are represented, the primary impact of incarceration without representation falls on the majority of juveniles who are charged with minor offenses.

While incarceration without representation is improper, it

is also improper to use prior uncounselled convictions to enhance subsequent sentences as well (Baldasar v. Illinois, 446 U.S. 222 [1980]; United States v. Tucker, 404 U.S. 443 [1972]; Burgett v. Texas, 389 U.S. 109 [1967]). The principle that uncounselled prior convictions should not be used to enhance subsequent sentences has been applied in several contexts in which uncounselled juvenile convictions were considered in sentencing.

While juvenile court judges in most states neither follow formal sentencing guidelines nor numerically weigh a youth's prior record, they use prior uncounselled adjudications when sentencing juveniles for subsequent convictions. Indeed, because of juvenile court judges' virtually unrestricted sentencing discretion, the Baldasar issues are especially acute when sentencing juveniles.

Another problem arises when status offenders are sentenced to secure detention facilities or institutions for violating conditions of their probation. Although the Juvenile Justice and Delinquency Prevention Act was intended to deinstitutionalize status offenders (Schwartz, 1989), 1980 amendments authorize the secure detention of status offenders found in contempt for violating a court order (Costello and Worthington, 1981). Several courts have approved the use of the criminal contempt power to "bootstrap" status offenders into delinquents who may then be incarcerated. In many jurisdictions Gault is deemed to apply only to deliquency matters; most status offenders are not provided with counsel at their initial adjudication (Feld, 1988). Although the initial status adjudication and not the later contempt proceeding is the "critical stage", courts have approved the initial denial of counsel as long as counsel is provided at the contempt proceeding that actually leads to confinement (In re Walker, 191 S.E.2d 702 [N.C. 1972]).

Both the Federal sentencing guidelines and many states include juvenile delinquency convictions in the criminal history score used to sentence adult offenders (Feld, 1989). As a

result, many unrepresented juveniles who are later tried as adults have their prior, uncounselled juvenile convictions included in their adult criminal history scores. Many judges who sentence on a discretionary basis in either juvenile or criminal courts also consider previous delinquency adjudictions and dispositions when imposing the present sentence.

The Performance of Counsel in Juvenile Court

Even when juveniles are represented, attorneys may not be capable of or committed to representing their juvenile clients in an effective adversarial manner. Organizational pressures to cooperate, judicial hostility toward adversarial litigants, role ambiguity created by the dual goals of rehabilitation and punishment, reluctance to help juveniles "beat a case", or an internalization of a court's treatment philosophy may compromise the role of counsel in juvenile court (Stapleton and Teitelbaum, 1972; Lefstein et al., 1969; Bortner, 1982; Clarke and Koch, 1980; Knitzer and Sobie, 1984). Institutional pressures to maintain stable, cooperative working relations with other personnel in the system may be inconsistent with effective adversarial advocacy (Lefstein et al., 1969; Stapleton and Teitelbaum, 1972; Bortner, 1982).

There are strong indications that juveniles who are represented by lawyers in more traditional "therapeutic" juvenile courts may actually be disadvantaged in adjudications or dispositions when compared with similarly situated unrepresented youths (Stapleton and Teitelbaum, 1972:63-96; Clarke and Koch, 1980:304-6; Bortner, 1982). Feld (1988; 1989) reports that juveniles with counsel are more likely to be incarcerated than juveniles without counsel. An evaluation of the impact of counsel in six states' delinquency proceedings reported that "it appears that in virtually every jurisdiction, representation by counsel is an aggravating factor in a juvenile's disposition....In short, while the legal variables [of seriousness of present offense, prior record, and pretrial

detention status] enhance the probabilities of representation, the fact of representation appears to exert an independent effect on the severity of dispositions (Feld 1988:393)." A second study by Feld (1989:1306) also concluded that, after controlling for the influence of the other variable, the presence of counsel is an aggravating factor in the sentencing of juvenile offenders.

One possible explanation for the consistent findings that representation by counsel redounds to the disadvantage of a juvenile is that the lawyers who appear in juvenile courts are incompetent and prejudice their clients' cases (Feld, 1989:1345; Knitzer and Sobie, 1984). While there are few systematic qualitative evaluations of the actual performance of counsel in juvenile courts, the available evidence suggests that even in jurisdictions where counsel are appointed routinely, there are grounds for concern about their effectiveness. Knitzer and Sobie (1984:8-9) reported that about half of their courtroom observations reflected either seriously inadequate or marginally adequate representation in which it appeared that the law guardian had done no or minimal preparation. Public defender offices in many jurisdictions often assign their least capable lawyers or newest staff attorneys to juvenile courts to get trial experience and these neophytes may receive less adequate supervision than their prosecutorial counterparts (Flicker, 1983:2). Similarly, court appointed counsel may be beholden to the judges who select them and more concerned with maintaining an ongoing relationship with the court than vigorously protecting the interests of their frequently changing young clients (Flicker, 1983:4). The conditions of employment in juvenile court are not conducive to quality representation and are unlikely to attract and retain the most competent attorneys. Long hours, low pay, inadequate resources, crushing caseloads, and difficult clients are likely to discourage all but the most dedicated lawyers from devoting their professional careers to advocacy on behalf of children.

Discussion and Policy Recommendations: Eliminating Waivers of Counsel in Juvenile Court

Twenty five years after Gault held that juveniles are constitutionally entitled to the assistance of counsel, half or more of all delinquent and status offenders in many states still do not have lawyers (Feld, 1988; 1989), including many who receive out of home placement and even secure confinement dispositions (Feld, 1988:403-07; 1989:1234-36). These very high rates of home removal and incarceration of unrepresented youths constitute an indictment all of the participants in the juvenile justice process -- the juvenile court bench, the prosecuting attorneys, the organized bar, the legislature, and especially the state supreme courts that have supervisory and administrative responsibility for states' juvenile courts.

Eliminating Waivers of Counsel

The United States Supreme Court has held that it is improper to enhance sentences based on prior convictions or to incarcerate an adult offender, even one charged with a minor offense, without either the appointment of counsel or a valid waiver of counsel. Moreover, both state and the United States Supreme Courts have described the type of penetrating inquiry that must precede a "knowing, intelligent, and voluntary" waiver of the right to counsel (Faretta v. California, 422 U.S. 806 [1975]; Fare v. Michael C., 442 U.S. 707 [1979]). Whether the typical Miranda advisory which is then followed by a waiver of rights under the "totality of the circumstances" is sufficient to assure a valid waiver of counsel by juveniles is highly questionable. Continued judicial and legislative reliance on the "totality of the circumstances" test clearly is unwarranted and inappropriate in light of the multitude of factors implicated by the "totality" approach, the lack of guidelines as to how the various factors should be weighed, and the myriad combinations of factual situations that make every case unique. These factors result in virtually unlimited and unreviewable judicial discretion to

deprive juveniles of their most fundamental procedural safeguard -- the right to counsel.

Parental Presence is An Inadequate Safeguard One alternative to using a "totality of the circumstances" test to evaluate the validity of a juvenile's waiver of Miranda rights or the Gault right to counsel is to require the presence and concurrence of a parent or other interested adult before any waiver can be valid (Feld, 1984:177-83). Proponents of a parental presence requirement believe that it can reduce the sense of isolation or coercion to waive that a juvenile may feel, and that they can provide legal advice that might not otherwise be available to the juvenile. However, parents' potential conflict of interest with the child, their emotional reactions to their child's involvement in the justice process, or their own intellectual or social disabilities may make them unable to play the envisioned supportive role for the child (Grisso, 1980:1142; Feld, 1984:181). Parental presence may constitute an additional coercive pressure for a child to waive her rights (Grisso, 1981:187-200); even well-intentioned parents lack the legal training necessary to assist their child with the problems faced.

Mandatory, Non-Waivable Representation Instead of relying on a discretionary review of the "totality of the circumstances" or on the advice of parents, legislation or judicial rules of procedure should mandate the automatic and non-waivable appointment of counsel at the earliest stage in a delinquency proceeding (Iowa Code Ann. §232.11 [West Supp. 1985]). As long as it is possible for a juvenile to waive the right to counsel, juvenile court judges will continue to find such waivers on a discretionary basis under the "totality of the circumstances." The very fact that it is legally possible for a juvenile to waive counsel itself may discourage some youths from exercising their right if asserting it may be construed as an affront to the presiding judge.

The A.B.A. - I.J.A. Juvenile Justice Standards recommend

that "[t]he right to counsel should attach as soon as the juvenile is taken into custody..., when a petition is filed..., or when the juvenile appears personally at an intake conference, whichever occurs first (A.B.A. Juvenile Justice Standards, 1980b:89)." In addition, "[the juvenile] should have 'the effective assistance of counsel at all stages of the proceeding'" and this right to counsel is mandatory and nonwaivable (A.B.A. Juvenile Justice Standards, 1980b:89). Indeed, because of the importance of counsel in implementing other procedural safeguards, "[p]roviding accused juveniles with a non-waivable right-to-counsel is probably the most fundamental of the hundreds of standards in juvenile justice...(Flicker, 1983:i)." Mandatory, nonwaivable representation by counsel not only protects the rights of the juvenile, but also helps the courts by assisting in the efficient handling of cases and assuring that any waiver that the juvenile is entitled to make are in fact made knowingly and intelligently.

A full representation model is quite compatible with contemporary juvenile justice administration as evidenced by the experiences in California, Pennsylvania, and New York, as well as in several counties in Minnesota (Feld, 1988a; 1989). The experiences there indicate that juvenile justice administration does not grind to a halt if juveniles are routinely represented. The systematic introduction of defense counsel would provide the mechanism for creating trial records which could be used on appeal and which could provide an additional safeguard to assure that juvenile court judges adhere more closely to the formal procedures that are now required. Moreover, eliminating waivers of counsel would lead to greater numbers of public defenders in juvenile justice cases. An increased cadre of juvenile defenders would get education, support and encouragement from statewide asociation with one another similar to the post-Gideon revolution in criminal justice that resulted from the creation of statewide defender systems.

More fundamentally, however, since the Gault decision, the juvenile court is first and foremost a legal entity engaged in social control and not simply a social welfare agency. As a legal institution exercising substantial coercive powers over young people and their families, safeguards against state intervention and mechanisms to implement those safeguards are necessary. The Gault Court was unwilling to rely solely upon the benevolence of juvenile court judges or social workers to safeguard the interests of young people. Instead, it imposed the familiar adversarial model of proof which recognizes the likely conflict of interests between the juvenile and the state.

A basic premise of procedural justice is that all citizens have a stake in the orderly administration of the justice process and that only lawyers possess the technical skills to assure that occurs. In an adversarial process, only lawyers can invoke effectively the procedural safeguards that are the right of every person, including children, as a condition precedent to unsolicited state intervention. The routine absence of counsel calls into question the very legitimacy of the juvenile court as a legal institution and fosters an appearance, if not a reality, of injustice. The presence of counsel functioning as an independent check on coercive state intervention could legitimate and assure the accuracy of delinquency adjudications.

A rule or law mandating nonwaivable assistance of counsel for juveniles appearing in juvenile court might impose substantial burdens on the delivery of legal services in rural areas (Juvenile Justice Standards, 1980c:93; Feld, 1989). However, despite any possible fiscal or administrative concerns, every juvenile is already entitled by Gault to the assistance of counsel at every critical stage in the process and only an attorney can redress the imbalance between a vulnerable youth and the state. The issue is not one of entitlement, since all are entitled to representation, but rather the ease or difficulty with which waivers of counsel are found, which in turn has

enormous implications for the entire administration of juvenile justice.

Prior Consultation With Counsel Short of mandatory and non-waivable counsel, a prohibition on waivers of counsel without prior consultation and the concurrence of counsel would provide greater assurance than the current practice that any eventual waiver was truly "knowing, intelligent, and voluntary." Since waivers of rights, including the right to counsel, involve legal and strategic considerations as well as knowledge and understanding of rights and an appreciation of consequences, it is difficult to see how any less stringent alternative could be as effective. A per se requirement of consultation with counsel prior to a waiver takes account of the immaturity of youths and their lack of experience in law enforcement situations. In addition, it recognizes that only attorneys possess the skills and training necessary to assist the child in the adversarial process. Moreover, a requirement of consultation with counsel prior to waiver would assure the development of legal services delivery systems that would then facilitate the routine representation of juveniles.

At the very least, court rules or legislation should prohibit the removal from home or incarceration of any juvenile who was neither represented by counsel nor provided with stand-by counsel. Such a limitation on disposition is already the law for adult criminal defendants (Gideon v. Wainwright, 372 U.S. 335 [1963]; Scott v. Illinois, 440 U.S. 367 [1979]), for juveniles in some jurisdictions (Feld, 1984:187), and the operational practice in jurisdictions such as New York and Pennsylvania, where virtually no unrepresented juveniles are removed or confined (Feld, 1988a).

Data Collection on Delivery of Legal Services The right to and role of counsel entails a two-step process. The first is simply assuring the presence of counsel at all. In many jurisdictions, simply getting an attorney into juvenile court

remains problematic. Although most states have the computer capability of monitoring rates of representation, in many jurisdictions the information simply is not collected routinely (Feld, 1988a). County and state court administrators should modify the juvenile court judicial information systems in order to collect information on a host of important legal and socio-demographic variables. Because this information is already included in most juveniles' social services records or court files, expanding the judicial information code forms to incorporate data summeraries would entail minor additional administrative burdens but would greatly increase the information available for policy analysis.

Excluding Prior Uncounselled Convictions Some states include juvenile delinquency convictions in the criminal history score of their adult sentencing guidelines (Feld, 1989). Many unrepresented juveniles who are later tried as adults have their prior, uncounselled juvenile convictions included in their adult criminal history scores. Many judges who sentence on a discretionary basis in either juvenile or criminal courts also consider previous delinquency adjudictions and dispositions when imposing the present sentence. The enhancement of sentences occurs both formally by statute or guideline, and informally as an exercise of judicial discretion. Not only are many unrepresented juveniles routinely adjudicated delinquent and removed from their homes or incarcerated, but their earlier dispositions substantially influence later ones (Feld, 1988; 1989). Finally, judges who sentence juveniles for violating a valid court order or condition of probation often base their finding on a prior, uncounselled adjudication as a status offender. Whenever judges sentence youths, either as juvenile or adult offenders, and whether on the basis of guidelines or discretion, and consider juveniles' prior adjudications of delinquency, important legal issue arise.

Having decided to consider juveniles' prior records for

sentencing both as juveniles and as adults, sentencing authorities must now confront the reality of the quality of procedural justice in juvenile courts. If juvenile adjudications are to be used to enhance sentences for juveniles or adults, then a mechanism must be developed to assure that only constitutionally obtained prior convictions are considered. Again, automatic and mandatory appointment of counsel in all cases is the obvious device to assure the validity of prior convictions. Anything less will subject a juvenile or young adult's sentence to direct or collateral attack, produce additional appeals, and impose a wasteful and time-consuming burden on the prosecution to establish the validity of prior convictions.

Until provisions for the mandatory appointment of counsel are implemented, jurisdictions where juveniles are not routinely represented should create a presumption that all prior juvenile convictions were obtained without the assistance of counsel with the burden on the prosecution to establish that such prior convictions were obtained validly. This takes cognizance of the fact that many juvenile convictions are obtained without counsel, increases the prosecutor's institutional interest in juvenile justice administration, and provides a non-judicial mechanism to assure that juveniles are represented and that any waivers of counsel are adequately documented on the record.

The Punitive Juvenile Court and the Quality of Procedural Justice

The quality of procedural justice is especially relevant to recent changes in juvenile courts' sentencing policies and practices. The post-Gault era has witnessed a fundamental change in the jurisprudence of sentencing as considerations of the offense, rather than the offender, dominate several types of juvenile court sentencing decisions. A shift in sentencing philosophy from rehabilitation to retribution is evident both in the response to serious juvenile offenders and in the routine sentencing of delinquent offenders.

Waiver of Juvenile Offenders to Criminal Court

Relinquishing juvenile court jurisdiction over a youth represents a choice between sentencing in nominally rehabilitative juvenile courts or in punitive adult criminal courts. The decision implicates both juvenile court sentencing practices and the relationship between juvenile and adult court sentencing practices. Two types of statutes -- judicial waiver and legislative offense exclusion -- highlight the differences between juvenile and criminal courts' sentencing philosophies (Feld, 1987). Since juvenile courts emphasize individualized treatment of offenders, with judicial waiver a judge may transfer jurisdiction on a discretionary basis after a hearing to determine whether a youth is amenable to treatment or a threat to public safety. With legislative offense exclusion, by statutory definition, youths charged with certain offenses simply are not within juvenile court jurisdiction.

Judicial waiver embodies the juvenile court's traditional approach to individualized sentencing. A judge must decide whether a youth is amenable to treatment or dangerous even though there is scant evidence of either effective rehabilitative programs (Melton, 1989), or valid and reliable clinical tools with which to diagnose or predict whether a particular individual will be a recidivist (Feld, 1987). Effectively, judicial waiver statutes give judges broad, standardless discretion. Like individualized sentencing, the subjectivity of waiver decisions produces inequities and disparities (Feld, 1987; 1990). Many juveniles judicially waived are charged with property crimes like burglary, and not with serious offenses against the person. When they appear in criminal courts as adult first-offenders, often they are not imprisoned. As a result, a "punishment gap" occurs when juveniles make the transition to criminal courts.

Within the past decade, characteristics of the offense rather than clinical assessments of the offender increasingly dominate this sentencing decision (Feld, 1987; 1990).

Legislatures use offense criteria either as dispositional guidelines in judicial waiver to limit discretion and improve the fit between waiver decisions and criminal court sentencing practices, or to automatically exclude certain youths (Feld, 1987). More than twenty states have amended their judicial waiver statutes to reduce their inconsistency and to reconcile the contradictions between juvenile and adult sentencing practices. Some states specify that only serious offenses such as murder, rape, or robbery may be waived. Restricting waiver to serious offenses limits judicial discretion and increase the likelihood that significant adult sanctions will be imposed if waiver is ordered.

More importantly, about half of the states have rejected the juvenile court's individualized sentencing philosophy, at least in part, emphasized policies of retribution or incapacitation, and excluded youths charged with serious offenses from juvenile court jurisdiction (Feld, 1987). While some states only exclude youths charged with capital crimes, murder, or offenses punishable by life imprisonment, others exclude longer lists of offenses, such as rape or armed robbery. Regardless of the details, these statutes remove judicial sentencing discretion entirely and base the decision to try a youth as an adult exclusively on the offense.

These statutes provide one indicator of the shift from an individualized treatment sentencing philosophy in juvenile court to a more retributive one and reflect legislative distrust of judges' exercises of discretion. Using offenses to structure or eliminate judicial discretion repudiates rehabilitation, narrows juvenile court jurisdiction, reduces its clientelle, and denies it the opportunity even to try to treat certain youths.

Punishment in Juvenile Courts: Offense-Based Sentencing Practices

States apply principles of just deserts to the routine sentencing of juveniles as well as to waiver (Feld, 1988b). The

McKeiver Court rejected procedural equality between juveniles and adults because juvenile courts purportedly treated rather than punished youths. To determine whether juvenile courts are punishing a youth for his past offense or treating him for his future welfare, we may examine: legislative purpose clauses; juvenile court sentencing statutes and actual sentencing practices; and conditions of institutional confinement (Feld, 1987; 1988b). All of these indicators consistently reveal that treating juveniles closely resembles punishing adult criminals. But, punishing juveniles has constitutional consequences, since the McKeiver Court posited a therapeutic juvenile court as the justification for its procedural differences.

The Purpose of the Juvenile Court Forty-two states' juvenile codes contain a statement of legislative purpose to aid courts in interpreting the legislation (Feld, 1988b). In the past decade, about one-quarter of the states have redefined their courts' purposes. These amendments de-emphasize rehabilitation and the child's "best interest", and emphasize the importance of protecting public safety, enforcing children's obligations to society, applying sanctions consistent with the seriousness of the offense, and rendering appropriate punishment to offenders. Courts recognize that these changes in purpose clauses signal a basic philosophical re-orientation, even as they approve punishment in juvenile courts (e.g., D.D.H. v. Dostert, 269 S.E. 2d 401 [1980]; In re D.F.B., 430 N.W. 2d 476 [1988]; In re Seven Minors, 99 Nev. 427, 664 P.2d 947, 950 [1983]).

Just Deserts Dispositions: Legislative and Administrative Changes in Juvenile Courts' Sentencing Framework

Sentencing statutes provide another indicator of whether a juvenile court is punishing or treating delinquents. Originally, juvenile court sentences were indeterminate and non-proportional to achieve the child's "best interests". While most juvenile sentencing statutes mirror their Progressive origins, even states that use indeterminate sentences emphasize the offense as a

dispositional constraint. Several states instruct judges to consider the seriousness of the offense, the child's culpability, age, and prior record when imposing a sentence.

Determinate Sentences in Juvenile Court Despite the court's history of indeterminate sentencing, about one-third of the states now use the present offense and prior record to regulate at least some sentencing decisions through determinate or mandatory minimum sentencing statutes or correctional administrative guidelines (Feld, 1988b). Washington state enacted just deserts legislation that based presumptive sentences on a youth's age, present offense, and prior record (Wash. Rev. Code Ann. § 13.40.010(2) [Supp. 1984]). In New Jersey, juvenile court judges consider offense, criminal history and statutory "aggravating and mitigating" factors when sentencing juveniles, and enhance sentences for serious or repeat offenders (N.J. Stat. Ann. §§ 2A:4A-43(a) [West Supp. 1987]). Texas uses determinate sentences for juveniles charged with serious offenses (Tex. Fam. Code §§ 53.045; 54.03(b) and (c); 54.04 [Vernon 1988]).

Mandatory Minimum Terms of Confinement Based on Offense Several states impose mandatory minimum sentences for certain "designated felonies" (Feld, 1988b). Some mandatory minimum statutes give judges discretion whether or not to institutionalize a juvenile, and prescribe the minimum term only if incarceration is ordered. Other mandatory minimum sentencing statutes are non-discretionary and the court must commit the youth for the minimum period. Non-discretionary mandatory minimum terms are imposed for serious, violent, or repeated offenses. These therapeutic sentencing laws are addressed to "violent and repeat offenders", "aggravated juvenile offenders", "serious juvenile offenders", or "designated felons". These statutes prescribe the level of security and the length of confinement which may range from twelve to eighteen months, to age twenty-one, or to the adult term for the same offense (Feld, 1988b). Basing mandatory minimum sentences on the offense

precludes any individualized consideration of the offender's "real needs."

Administrative Sentencing and Parole Release Guidelines Several states' department of corrections have adopted administrative guidelines that use offense categories offense to structure institutional confinement and release decisions and to specify proportional mandatory minimum terms (Feld, 1988b). Juveniles committed to the California Youth Authority are released by a Parole Board which uses offense guidelines to establish release eligibility.

Empirical evaluations of juvenile court sentencing practices Practical bureaucratic considerations, as well as statutory mandates, influence juvenile court judges' sentencing decisions. Two general findings emerge from evaluations of juvenile court sentencing practices. First, the present offense and prior record account for most of the variation in sentencing that can be explained (Feld, 1988b). Despite claims of individualization, juvenile and adult sentencing practices are more similar in their emphases on present offense and prior record than their statutory language suggests. Second, after controlling for offense variables, individualized sentencing discretion is often synonymous with racial disparities (Feld, 1988b).

While there is a relationship between offenses and dispositions, most of the variation in sentencing juveniles remains unexplained. The recent statutory changes emphasizing characteristics of the offense, rather than the offender, reflect legislative disquiet with the underlying premises of individualized justice, the idiosyncratic exercises of discretion, and the inequalities that result.

Conditions of Juvenile Confinement Another way to determine whether juvenile courts are punishing or treating young offenders is to examine the correctional facilities to which they are sent. It was the deplorable conditions of confinement that motivated the Court in Gault to insist upon minimal procedural safeguards

for juveniles. Contemporary evaluations of juvenile institutions reveal a continuing gap between rehabilitative rhetoric and punitive reality. Studies in many jurisdictions report staff and inmate violence, physical abuse, degrading make-work, and an absence of clinical programs (Feld, 1988b). The daily reality for juveniles confined in many so-called treatment facilities is one of violence, predatory behavior, and punitive incarceration.

Coinciding with these post-Gault evaluations, lawsuits challenged conditions of confinement, alleged that they violated inmates' "right to treatment" and inflicted "cruel and unusual punishment", and provided another outside view of juvenile corrections (Feld, 1984). Federal judges found that juveniles routinely were beaten with fraternity paddles, injected with psychotropic drugs for social control purposes, and deprived of minimally adequate care or individualized treatment (Nelson v. Heyne, 491 F.2d 352 [1974]). Other courts found numerous instances of physical abuse, staff-administered beating and tear-gassing, homosexual assaults, extended solitary confinement in dungeon-like cells, repetitive and degrading make-work, and minimal clinical services (Feld, 1988b). While juvenile institutions are not as uniformly bad as adult prisons, the prevalence of violence, aggression, and homosexual rape in juvenile facilities is hardly consoling. Evaluations of these rehabilitation programs provide scant support for their effectiveness.

Summary of Changes in Juvenile Court Sentencing Practices

There is a strong, nationwide movement, both in theory and in practice, away from therapeutic, individualized dispositions toward punitive sentences. These formal changes and actual practices eliminate most of the differences between juvenile and adult sentencing. Imposing mandatory or determinate sentences on the basis of offense and prior record contradicts any therapeutic purposes and precludes consideration of a youth's "real needs". Revised juvenile purpose clauses and court decisions eliminate

even rhetorical support for rehabilitation. All these changes repudiate the original assumptions that juvenile courts operate in a child's "best interest", that youths should be treated differently than adults, and that rehabilitation is an indeterminate process that cannot be limited by fixed-time punishment.

These changes contradict the McKeiver Court's premise that therapeutic juvenile dispositions require fewer procedural safeguards and raise questions about the quality of justice that the Court avoided. Since Gault, the formal procedures of juvenile and criminal courts have converged. There remains, however, a substantial gulf between theory and reality, between the law on the books and the law in action. Theoretically, delinquents are entitled to formal trials and the assistance of counsel. In actuality, the quality of procedural justice is far different. More than two decades ago, the Supreme Court decried that "the child receives the worst of both worlds: he gets neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children (Kent v. United States, 383 U.S. 541, 555 [1966]." Despite the criminalizing of juvenile courts, most states provide neither special procedures to protect juveniles from their own immaturity nor the full panoply of adult procedural safeguards. Instead, states treat juveniles just like adult criminal defendants when equality redounds to their disadvantage and use less adequate juvenile court safeguards when those deficient procedures provide an advantage to the state (Feld, 1984).

The Transformation of the Juvenile Court: Reformed but not Rehabilitated

The recent changes in jurisdiction, sentencing, and procedures reflect ambivalence about the role of juvenile courts and the control of children. As juvenile courts converge procedurally and substantively with criminal courts, is there any

reason to maintain a separate court whose only distinctions are procedures under which no adult would agree to be tried?

The juvenile court is at a philosophical crossroads which cannot be resolved by simplistic treatment versus punishment formulations. In reality, there are no practical or operational differences between the two. Acknowledging that juvenile courts punish imposes an obligation to provide all criminal procedural safeguards since. While procedural parity with adults may sound the death-knell of the juvenile court, to fail to do so perpetuates injustice. To treat similarly-situated juveniles dissimilarly, to punish them in the name of treatment, and to deny them basic safeguards fosters a sense of injustice that thwarts any efforts to rehabilitate (Melton, 1989:168).

Abolishing juvenile courts may be desirable both for youths and society. After more than two decades of constitutional and legislative reform, juvenile courts continue to deflect, co-opt, ignore, or absorb ameliorative tinkering with minimal institutional change. Despite its transformation from a welfare agency to a criminal court, the juvenile court remain essentially unreformed. The quality of justice youths receive would be intolerable if it were adults facing incarceration. Public and political concerns about drugs and youth crime foster a "get tough" mentality to repress rather than rehabilitate young offenders. With fiscal constraints, budget deficits, and competition from other interests groups, there is little likelihood that treatment services for delinquents will expand. Coupling the emergence of punitive policies with our societal unwillingness to provide for the welfare of children in general, much less to those who commit crimes, there is simply no reason to believe that the juvenile court can be rehabilitated.

Without a juvenile court, an adult criminal court that administered justice for young offenders could provide children with all the procedural guarantees already available to adult defendants and additional enhanced protections because of their

vulnerability and immaturity (Feld, 1984; Melton, 1989). The only virtue of the contemporary juvenile court is that juveniles convicted of serious crimes receive shorter sentences than do adults. Youthfulness long has been recognized as a mitigating, even if not an excusing, condition at sentencing (Melton, 1989; Thomson v. Oklahoma, 108 S. Ct. 2687 [1988]). If shorter sentences for diminished responsibility is the rationale for punitive juvenile courts, then providing an explicit "youth discount" to reduce adult sentences can assure an intermediate level of just punishment (Feld, 1988b). Reduced adult sentences do not require young people to be incarcerated with adults; existing juvenile prisons allow the segregation of offenders by age. Full procedural parity in criminal courts coupled with mechanisms to expunge records, restore civil rights, and the like can more adequately protect young people than does the current juvenile court.

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In re Gault Revisited: A Cross-State Comparison of the Right to Counsel in Juvenile Court

Barry C. Feld

This article uses data from six states to analyze the availability of and the effects of counsel on delinquency and status offenses cases in juvenile courts. In three of the states, nearly half or more of delinquent and status offenders did not have lawyers, including many youths who received out-of-home placement and secure confinement dispositions. In all the jurisdictions, each legal variable—seriousness of present offense, detention status, and prior referrals—that was associated with more severe dispositions was also associated with higher rates of representation. However, while legal variables enhance the probabilities of representation, the presence of an attorney appeared to exert an additional, independent effect on the severity of dispositions. The article then explores the policy implications of these findings.

More than twenty years ago in *In re Gault*, the U.S. Supreme Court held that juvenile offenders were constitutionally entitled to the assistance of counsel in juvenile delinquency proceedings. The *Gault* Court mandated the right to counsel because "a proceeding where the issue is whether the child will be found to be 'delinquent' and subjected to the loss of his liberty for years is comparable in seriousness to a felony prosecution" (*Gault*, 1967, p. 36). *Gault* also decided that juveniles were entitled to the privilege against self-incrimination and the right to confront and cross-examine their accusers at a hearing. Without the

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The data used in this article are housed in and made available by the National Juvenile Court Data Archive, which is maintained by the National Center for Juvenile Justice in Pittsburgh, Pennsylvania, and supported by the Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice. The California Bureau of Criminal Statistics and Special Services, the Minnesota Supreme Court Judicial Information System, the Nebraska Commission on Law Enforcement and Criminal Justice, the New York Office of Court Administration, the North Dakota Office of State Court Administrator, and the Pennsylvania Juvenile Court Judges' Commission collected the

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assistance of counsel, these other rights could be negated. "The juvenile needs the assistance of counsel to cope with problems of law, to make skilled inquiry into the facts, [and] to insist upon regularity of the proceedings.... The child 'requires the guiding hand of counsel at every step in the proceedings against him'" (*Gault*, 1967, p. 36). In subsequent opinions, the Supreme Court has reiterated the crucial role of counsel in the juvenile justice process. In *Fare v. Michael C.*, the Court noted that "the lawyer occupies a critical position in our legal system.... Whether it is a minor or an adult who stands accused, the lawyer is the one person to whom society as a whole looks as the protector of the legal rights of that person in his dealings with the police and the courts" (*Fare*, 1979, p. 719).

In the two decades since *Gault*, the promise of counsel remains unrealized. Although there is a scarcity of data, in many states less than 50% of juveniles adjudicated delinquent receive the assistance of counsel to which they are constitutionally entitled (Feld, 1984, pp. 187-190). Although national statistics are not available, surveys of representation by counsel in several jurisdictions suggest that "there is reason to think that lawyers still appear much less often than might have been expected" (Horowitz, 1977, p. 185).

In the immediate aftermath of *Gault*, Lefstein, Stapleton, and Teitelbaum (1969) examined institutional compliance with the decision and found that juveniles were neither adequately advised of their right to counsel nor had counsel appointed for them. In a more recent evaluation of legal representation in North Carolina, Clarke and Koch (1980, p. 297) found that the juvenile defender project represented only 22.3% of juveniles in Winston-Salem, NC, and only 45.8% in Charlotte, NC. Aday (1986) found rates of representation of 26.2% and 38.7% in the jurisdictions he studied. Bortner's (1982, p. 139) evaluation of a large, midwestern county's juvenile court showed that "over half (58.2%) [the juveniles] were not represented by an attorney." Evaluations of rates of representation in Minnesota also indicated that a majority of

original data. Neither the respective state agencies nor the National Center for Juvenile Justice bear any responsibility for the analyses or interpretations presented herein. I was fortunate to have the opportunity to use these data through the National Juvenile Court Data Archive's Visiting Scholar Program, which was supported by OJJDP. I received exceptional support and assistance in assembling, organizing, and interpreting the states' data from Dr. Howard Snyder, NCJJ Director of Systems Research, Ms. Ellen Nimick, NCJJ Research Associate, and Mr. Terry Finnegan, NCJJ Computer Programmer. Sheldon Krantz and Don Gibbons provided constructive critiques of an earlier draft of this article. This article was presented at the 1987 annual meeting of the American Society of Criminology, Montreal, Canada.

youths are unrepresented (Feld, 1984, p. 189; Fine, 1983, p. 48). Feld (1984, p. 190) reported enormous county-by-county variations within the state in the rates of representation, ranging from a high of over 90% to a low of less than 10%. A substantial minority of youths removed from their homes or confined in state juvenile correctional institutions lacked representation at the time of their adjudication and disposition (Feld, 1984, p. 189).

There are a variety of possible explanations for why so many youths appear to be unrepresented: parental reluctance to retain an attorney; inadequate public-defender legal services in nonurban areas; a judicial encouragement of and readiness to find waivers of the right to counsel in order to ease administrative burdens on the courts; a continuing judicial hostility to an advocacy role in a traditional, treatment-oriented court; or a judicial predetermination of dispositions with nonappointment of counsel where probation is the anticipated outcome (Feld, 1984, p. 190; Bortner, 1982, pp. 136-147; Lefstein, Stapleton, and Teitelbaum, 1969; Stapleton and Teitelbaum, 1972). Whatever the reason and despite *Gault's* promise of counsel, many juveniles facing potentially coercive state action never see a lawyer, waive their right to counsel without consulting with an attorney or appreciating the legal consequences of relinquishing counsel, and face the prosecutorial power of the state alone and unaided.

Even when juveniles are represented, attorneys may not be capable of or committed to representing their juvenile clients in an effective adversarial manner. Organizational pressures to cooperate, judicial hostility toward adversarial litigants, role ambiguity created by the dual goals of rehabilitation and punishment, reluctance to help juveniles "beat a case," or an internalization of a court's treatment philosophy may compromise the role of counsel in juvenile court (Stapleton and Teitelbaum, 1972; Lefstein, Stapleton, and Teitelbaum, 1969; Fox, 1970; Platt and Friedman, 1968; Ferster, Courtless, and Snethen, 1971; McMillian and McMurtry, 1970; Kay and Segal, 1973; Bortner, 1982; Clarke and Koch, 1980; Blumberg, 1967). Institutional pressures to maintain stable, cooperative working relations with other personnel in the system may be inconsistent with effective adversarial advocacy (Lefstein, Stapleton, and Teitelbaum, 1969; Stapleton and Teitelbaum, 1972; Bortner, 1982; Blumberg, 1967).

Several studies have questioned whether lawyers can actually perform as advocates in a system rooted in *parens patriae* and benevolent rehabilitation (Stapleton and Teitelbaum, 1972; Fox, 1970). Indeed,

there are some indications that lawyers representing juveniles in more traditional "therapeutic" juvenile courts may actually disadvantage their clients in adjudications or dispositions (Stapleton and Teitelbaum, 1972, pp. 63-96; Clarke and Koch, 1980, pp. 304-306; Bortner, 1982). Duffee and Siegel (1971, pp. 548-553), Clarke and Koch (1980, pp. 304-306), Stapleton and Teitelbaum (1972), Hayeslip (1979), and Bortner (1982) all reported that juveniles with counsel are more likely to be incarcerated than juveniles without counsel. Bortner (1982, pp. 139-140), for example, found that "when the possibility of receiving the most severe dispositions (placement outside the home in either group homes or institutions) is examined, those juveniles who were represented by attorneys were more likely to receive these dispositions than were juveniles not represented (35.8% compared to 9.6%). Further statistical analysis reveals that, *regardless of the types of offenses with which they were charged*, juveniles represented by attorneys receive more severe dispositions."

THE PRESENT STUDY

The present study provides the first opportunity to analyze systematically variations in rates of representation and the impact of counsel in more than one juvenile court or even one jurisdiction. It analyzes variations in the implementation of the right to counsel in six states—California, Minnesota, New York, Nebraska, North Dakota, and Pennsylvania, as well as Philadelphia. These statistical analyses provide the first comparative examination of the circumstances under which lawyers are appointed to represent juveniles, the case characteristics associated with rates of representation, and the effects of representation on case processing and dispositions.

This study uses data collected by the National Juvenile Court Data Archive (NJCDA) to analyze the availability of and effects of counsel in delinquency and status offense cases disposed of in 1984.[1] While 30 states now contribute their annual juvenile court data tapes to the NJCDA, the six states included in this study were selected solely because their data files included information on representation by counsel.

Because of the many hazards and pitfalls in using juvenile court data, an overview of the juvenile justice process and a description of the individual state's data precedes the cross-state comparisons. The

NJCDA's unit of count is "cases disposed" of by a juvenile court.[2] Typically, juvenile delinquency cases begin with a referral to a county's juvenile court or a juvenile probation or intake department. Many of these referrals are closed at intake with some type of *informal* disposition: dismissal, counseling, warning, referral to another agency, or probation. These referrals, whether disposed of informally or petitioned to the juvenile court, also generate county record-keeping activities that are reported to the state agency responsible for compiling juvenile justice data.

The sample in this study consists exclusively of *petitioned* delinquency and status offense cases. It excludes all juvenile court referrals for abuse, dependency, or neglect, as well as routine traffic violations. Only formally *petitioned* delinquency and status cases are analyzed because the right to counsel announced in *Gault* attaches only after the formal initiation of delinquency proceedings.[3]

The filing of a petition—the formal initiation of the juvenile process—is comparable legally to the filing of a complaint, information, or indictment in the adult criminal process (Feld, 1984, p. 217). Since different county intake or probation units within a state, as well as the various states, use different criteria to decide whether or not to file a formal delinquency petition, the cross-state comparisons reported here involve very different samples of delinquent populations. The common denominator of all these cases is that they were formally processed in their respective jurisdictions. As indicated in Table 1, the proportion of referred cases to petitioned cases differs markedly, from a high of 62.8% in Nebraska to a low of 10.7% in North Dakota.

In most jurisdictions, a juvenile offender will be arraigned on the petition. Since the constitutional right to counsel attaches in juvenile court only after the filing of the petition, it is typically at this stage, if at all, that counsel will be appointed to represent a juvenile (Feld, 1984). At the arraignment, the juvenile admits or denies the allegations in the petition. In many cases, juveniles may admit the allegations of the petition at their arraignment and have their case disposed of without the presence of an attorney.

The types of underlying offenses represented in the formally filed delinquency petitions differ substantially; the large urban jurisdictions confront very different and more serious delinquency than do the more rural, midwestern states (Nimick et al., 1985). In this study, the offenses reported by the states are regrouped into six analytical categories.[4] The "felony/minor" offense distinction provides both an indicator of seriousness and is legally relevant for the right to counsel *(Gideon v.*

Wainwright, 1963; *Scott v. Illinois*, 1979). Offenses are also classified as person, property, other delinquency, and status. Combining person and property with the felony and minor distinctions produces a six-item offense scale for cross-state comparisons.[5] When a petition alleges more than one offense, the youth is classified on the basis of the most serious charge. This study also uses two indicators of the severity of dispositions: out-of-home placement and secure confinement.[6] The data were originally collected by the California Bureau of Criminal Statistics and Special Services,[7] the Minnesota Supreme Court Judicial Information System,[8] the Nebraska Commission on Law Enforcement and Criminal Justice,[9] the New York Office of Court Administration,[10] the North Dakota Office of State Court Administrator,[11] and the Pennsylvania Juvenile Court Judges' Commission.[12]

DATA AND ANALYSIS

Part of these analyses treat the availability and role of counsel as a dependent variable using case characteristics and court processing factors as independent variables. Other parts treat counsel as an independent variable, assessing its relative impact on juvenile court case processing and dispositions. These analyses attempt to answer the interrelated questions regarding when lawyers are appointed to represent juveniles, why they are appointed, and what difference does it make whether or not a youth is represented?

Petitions and offenses. Initially, the appearance of counsel must be placed in the larger context of juvenile justice administration in the respective states. Table 1 introduces the six states' juvenile justice systems, reports the total number of referrals where available, the total number of petitions, the percentage of referrals to petitions, and the types of offenses for which petitions were filed.

The juvenile courts in the various states confront very different delinquent populations. In part, these differences reflect the nature of the prepetition screening. While California, Nebraska, and Pennsylvania courts formally petition approximately half of their juvenile court referrals, North Dakota juvenile courts only charge about 10.7% of their referrals. The numbers of petitions involved also differ substantially. The large, urban states handle far more cases than the rural midwestern states. Indeed, Philadelphia alone processes more delinquency petitions than Nebraska and North Dakota together.

TABLE 1: Petitions and Petitioned Offenses

	California	*Minnesota*	*Nebraska*	*New York*	*North Dakota*	*Pennsylvania*	*Philadelphia*
Number of Referrals	147422	—	6091	—	7741	18926	—
Number of Petitions	68227	15304	3830	21383	831	10168	6812
% Referrals/ Petitions	46.3%		62.8%		10.7%	53.7%	
Felony Offense Against Person %	8.7	2.2	1.0	8.2	.2	13.0	38.1
Felony Offense Against Person N	(5946)	(338)	(39)	(1764)	(2)	(1320)	(2592)
Felony Offense Against Property	27.2 (18571)	14.3 (2196)	11.1 (427)	14.9 (3192)	15.8 (131)	25.9 (2653)	19.7 (1339)
Minor Offense Against Person	6.1 (4166)	5.0 (766)	3.7 (143)	6.6 (1414)	2.8 (23)	12.5 (1275)	3.7 (255)
Minor Offense Against Property	17.1 (11700)	29.9 (4574)	43.9 (1680)	18.8 (4019)	29.8 (248)	24.9 (2532)	24.9 (1694)
Other Delinquency	38.7 (26376)	20.6 (3148)	9.5 (364)	7.6 (1631)	16.7 (139)	23.5 (2386)	13.7 (932)
Status Offense	2.2 (1468)	28.0 (4282)	30.7 (1177)	43.8 (9363)	34.7 (288)	N/A	N/A

The nature of the offenses petitioned also differs substantially among the states. Felony offenses against the person—homicide, rape, aggravated assault, and robbery—are much more prevalent in the large, urban states. In Philadelphia, for example, 38.1% of the juvenile court's caseload involves violent offenses against the person, primarily robbery. By contrast, a substantial portion of the midwestern states' caseloads consists of minor property offenses such as theft and shoplifting.

The states also differ markedly in their treatment of status offenders. Pennsylvania/Philadelphia juvenile courts do not have jurisdiction over status offenders. Similarly, status offenders in California appear to be referred to juvenile courts only as a last resort. By contrast, in the midwestern states, status offenses are the second most common type of delinquency cases handled. The maximum age of juvenile court jurisdiction in New York is 16 years of age, rather than 18 as in the other states. The New York juvenile justice system deals with a significantly younger population, which includes a substantially larger proportion of status offenders.

Rates of representation. Table 2 shows the overall rates of representation by counsel in the respective states, the percentages of private attorneys and public attorneys—court appointed or public defender—and the rates of representation by type of offense. Although *Gault* held that *every* juvenile was constitutionally entitled to "the guiding hand of counsel at every step of the process," *Gault's* promise remains unrealized in half of these jurisdictions.

The large, urban states are far more successful in assuring that juveniles receive the assistance of counsel than are the midwestern states. Overall, between 85%-95% of the juveniles in the large, urban states receive the assistance of counsel as contrasted with between 37.5% and 52.7% of the juveniles in the midwestern states. Indeed, these data may actually understate the urban state/rural state disparities. The California Bureau of Criminal Statistics and Special Services cautions that a coding error may be responsible for some of the juveniles who were reported to be unrepresented.[13]

The first rows of Table 2 report the percentages of private attorneys and public attorneys (court appointed or public defenders) reflected in the overall rates of representation. In every jurisdiction and regardless of the overall rate of representation, public attorneys handle the vast bulk of delinquency petitions by ratios of between 3:1 and 10:1.

Table 2 clearly shows that it is possible to provide very high levels of defense representation to juveniles adjudicated delinquent. More than 95% of the juveniles in Philadelphia and New York state, and 85% or

TABLE 2: Representation by Counsel (Private, Public Defender/Court Appointed)

	California	*Minnesota*	*Nebraska*	*New York*	*North Dakota*	*Pennsylvania*	*Philadelphia*
% Counsel	84.9[1]	47.7	52.7	95.9	37.5	86.4	95.2
Private	7.6	5.3	13.3	5.1	10.5	14.5	22.0
CA/PD[a]	77.3	42.3	39.4	90.8	27.1	71.9	73.2
Felony Offense Against Person	88.7	66.1	58.8	98.5	100.0	91.4	96.3
Private	11.2	9.9	14.7	4.3	—	22.0	29.9
CA/PD	77.5	56.3	44.1	94.2	100.0	69.4	66.4
Felony Offense Against Property	86.8	60.6	59.9	98.1	38.9	87.1	95.0
Private	9.0	6.2	14.4	8.3	12.2	15.1	20.5
CA/PD	77.8	54.4	45.5	89.7	26.7	72.0	74.5
Minor Offense Against Person	86.7	73.5	41.3	99.0	47.8	89.3	96.1
Private	8.6	7.3	14.9	9.5	17.4	16.4	22.4
CA/PD	78.1	66.1	26.4	89.5	30.4	72.9	73.7
Minor Offense Against Property	83.8	46.8	49.6	96.2	38.3	85.5	94.7
Private	6.1	5.3	14.1	6.5	12.5	11.9	16.1
CA/PD	77.7	41.4	35.5	89.7	25.8	73.6	78.7
Other Delinquency	83.4	55.5	48.9	96.8	33.1	82.1	93.2
Private	6.4	5.9	16.0	8.0	10.8	10.8	12.3
CA/PD	77.0	49.6	32.8	88.7	22.3	71.4	80.9
Status Offense	74.1	30.7	56.1	93.8	37.2	N/A	N/A
Private	3.3	3.9	10.3	2.3	7.3		
CA/PD	70.8	26.9	46.3	91.6	29.9		

a. Court Appointed, Public Defender.
1. The California Bureau of Criminal Statistics and Special Services cautions that this rate may understate the actual rate of representation, that is, that an even larger percentage of California's juveniles are represented. See note 13 for explanation.

more in Pennsylvania and California were represented. Since the large urban states process a greater volume of delinquency cases, their success in delivering legal services is all the more impressive. While it may be more difficult to deliver legal services easily in all parts of the rural midwestern states, county by county analysis in Minnesota shows substantial disparities within the state; even the largest county in the state with a well-developed public defender system provides representation to less than half the juveniles (Feld, 1984, pp. 189-190). These variations suggest that rates of representation reflect deliberate policy decisions.

Table 2 also shows the rates of representation by type of offense. One pattern that emerges in all of the states is a direct relationship between the seriousness of the offense and the rates of representation. Juveniles charged with felonies—offenses against person or property—and those with offenses against the person generally have higher rates of representation than the state's overall rate. These differences in representation by offense are typically greater in the states with lower rates of representation than in the those with higher rates because of the latters' smaller overall variation. In Minnesota, for example, while only 47.7% of all juveniles are represented, 66.1% of those charged with felony offenses against the person, 73.5% of those charged with minor offenses against the person, and 60.6% of those charged with felony offenses against property are represented.

A second and similar pattern is the appearance of larger proportions of private attorneys on behalf of juveniles charged with felony offenses—person and property—and offenses against the person than appear in the other offense categories. Perhaps the greater seriousness of those offenses and their potential consequences encourage juveniles or their families to seek the assistance of private counsel. Conversely, private attorneys are least likely to be retained by parents to represent the status offenders with whom the parents are often in conflict.

Offense and disposition. There is extensive research on the determinants of juvenile court dispositions (Fagan, Slaughter, and Hartsone, 1987; McCarthy and Smith, 1986; Dannefer and Schutt, 1982; Thomas and Cage, 1977). However, "even a superficial review of the relevant literature leaves one with the rather uncomfortable feeling that the only consistent finding of prior research is that there are no consistencies in the determinants of the decision-making process" (Thomas and Sieverdes, 1975, p. 416). In general, the seriousness of the present offense and the length of the prior record—the so-called "legal variables"—

explain most of the variance that can be accounted for in juvenile sentencing, with some additional influence of race (Fagan, Slaughter, and Hartsone, 1987; McCarthy and Smith, 1986). However, in most of these studies, the legal variables account for only about 25% to 30% of the variance in dispositions (Thomas and Cage, 1977; Clarke and Koch, 1980; McCarthy and Smith, 1986; Horwitz and Wasserman, 1980).

Although this cross-state comparison cannot identify fully the determinants of dispositions, the data lend themselves to an exploration of the relationships among offenses, dispositions, and representation by an attorney. Table 3 uses two measures of juvenile court dispositions: (1) out-of-home placements, and (2) secure confinement. These categories provide clear-cut delineations that lend themselves to cross-state comparisons. They also have legal significance for the appointment of counsel, since the Supreme Court has held, at least for adults, that all persons charged with felonies must be afforded the right to counsel (*Gideon v. Wainwright*, 1963), and that no person convicted of a misdemeanor may be incarcerated unless he or she was afforded the assistance of counsel (*Scott v. Illinois*, 1979).

Table 3 shows both the overall rates of out-of-home placements and secure confinement in the respective states as well as by categories of offenses. The states differ markedly in their overall use of out-of-home placements and secure confinement, ranging from a high of 30.8%/14.5% in California to a low of 10.3%/1.1% in Philadelphia. The ratio of out-of-home placement to secure confinement also varies from 17:1 in Pennsylvania to about 2:1 in California.

As expected, the seriousness of the present offense substantially alters a youth's risk of removal and confinement. In every state, felony offenses against the person garner both the highest rates of out-of-home placement and secure confinement, typically followed either by minor offenses against the person or felony offenses against property, for example, burglary. Conversely, minor property offenses—primarily petty theft, shoplifting—and status offenses have the lowest rates of removal or confinement.

Offense and disposition by counsel. Table 4 adds the counsel variable to the information contained in Table 3. Within each offense category of youths who receive out-of-home or secure dispositions, Table 4 shows the disposition rates for those youths who had counsel and those who did not. Thus Table 3 shows that when juveniles commit felonies against the person in California, 39.5%/20.4% receive out-of-home placement and secure confinement dispositions. The same cell in Table 4 shows that youths *with counsel* were somewhat more likely to receive severe

TABLE 3: Present Offense and Disposition: Out-of-Home Placement/Secure Confinement

	California	*Minnesota*	*Nebraska*	*New York*	*North Dakota*	*Pennsylvania*	*Philadelphia*
Overall:							
Home %	30.8	17.2	15.2	16.1	28.0	22.1	10.3
N =	(21048)	(2631)	(584)	(3255)	(233)	(2213)	(628)
Secure %	14.5	3.3	5.2	7.1	9.6	1.3	1.1
N =	(9902)	(504)	(199)	(1423)	(80)	(132)	(76)
Felony Offense Against Person:							
Home	39.5	30.2	28.2	22.3	50.0	28.7	12.6
Secure	20.4	9.5	15.4	19.2	50.0	2.5	1.7
Felony Offense Against Property:							
Home	31.2	27.4	18.5	18.6	35.1	21.3	11.3
Secure	15.7	9.2	12.2	12.0	17.6	.9	.8
Minor Offense Against Person:							
Home	25.8	21.5	21.7	12.7	39.1	13.5	5.7
Secure	11.5	3.3	9.1	9.6	13.0	.2	.4
Minor Offense Against Property:							
Home	24.3	14.6	8.5	14.1	28.6	18.8	5.9
Secure	11.5	3.5	9.1	9.6	8.1	.6	.6
Other Delinquency:							
Home	32.5	20.2	15.9	16.1	27.3	27.5	11.4
Secure	15.2	1.9	8.8	10.6	14.4	2.4	1.0
Status Offense:							
Home	27.9	10.7	22.3	15.6	23.6	N/A	N/A
Secure	1.0	0.5	1.8	1.3	4.5	—	—

dispositions than those *without counsel*—40.0% versus 35.5% out of home and 21.0% versus 15.4% secure confinement.

Except for North Dakota, with its very small numbers and low rates of representation, a comparison of the two columns in each state and at each offense level reveals that youths with lawyers receive more severe dispositions than do those without lawyers. With twelve possible comparisons in each state—six offense categories times two dispositions—represented youths received more severe dispositions than unrepresented youth in every category in Minnesota, New York, and Pennsylvania, in all but one in California and Philadelphia, and in all but two in Nebraska. Even in the highest representation jurisdictions—New York and Philadelphia—this pattern prevails; there was virtually no secure confinement of unrepresented juveniles in these locales.

While the relationship between representation and more severe disposition is consistent in the different jurisdictions, the explanation of this relationship is not readily apparent. It may be that presence of lawyers antagonizes traditional juvenile court judges and subtly influences the eventual disposition imposed (Clarke and Koch, 1980). However, the pattern also prevails in the jurisdictions with very high rates of representation where the presence of counsel is not unusual. Perhaps judges discern the eventual disposition early in the proceedings and appoint counsel more frequently when an out-of-home placement or secure confinement is anticipated. Conversely, judges may exhibit more leniency if a youth is not represented. Or, still another possibility is that other variables besides the present offense may influence both the appointment of counsel and the eventual disposition.

Detention by offense. Table 5 shows the overall percentage of juveniles against whom petitions were filed who were detained, as well as the rates of pretrial detention by offense category. *Detention*, as used here, refers to a juvenile's custody status following referral but prior to court action. It is important to note, however, that detention is coded differently in various jurisdictions. In California, for example, which appears to have a very high rate of pretrial detention, any juvenile brought to a detention facility is logged-in and counted as detained, even if he or she is held only for a short while until a parent arrives. By contrast, Minnesota, which appears to have a very low rate of pretrial detention, uses a very conservative definition of detention. Juveniles in Minnesota are coded as detained only if a detention hearing is held, which normally occurs 36 hours—about two court days—after apprehension (Feld, 1984). Thus the data in Table 5, while suggestive, are not

TABLE 4: Representation by Counsel and Disposition (Home/Secure)

	California		*Minnesota*		*Nebraska*		*New York*		*North Dakota*		*Pennsylvania*		*Philadelphia*	
Counsel ⇒	*Yes*	*No*	*Yes*	*No*	*Yes*	*No*	*Yes*	*No*	*Yes*	*No*	*Yes*	*No*	*Yes*	*No*
Felony Offense Against Person:														
Home	40.0	35.5	32.8	21.4	25.0	28.6	22.6	0.0	50.0	—	31.0	16.8	12.9	4.9
Secure	21.0	15.4	9.5	4.9	15.0	21.4	19.5	0.0	50.0		2.8	.9	1.7	2.1
Felony Offense Against Property:														
Home	32.0	26.1	31.6	19.1	24.9	11.1	19.0	0.0	47.1	27.5	24.9	8.2	11.7	4.8
Secure	16.5	10.6	10.4	5.0	16.2	7.8	12.2	0.0	11.8	21.3	1.1	0.0	0.9	0.0
Minor Offense Against Person:														
Home	26.8	19.2	22.3	14.9	20.0	28.2	12.7	7.1	45.5	33.3	22.0	7.8	5.5	10.0
Secure	12.3	6.1	3.5	1.1	12.0	9.9	9.7	0.0	9.1	16.7	0.4	0.0	0.4	0.0
Minor Offense Against Property:														
Home	25.5	17.9	18.8	9.6	12.5	5.7	14.6	0.0	38.9	22.2	24.9	4.8	5.9	6.3
Secure	10.8	6.4	4.2	2.0	7.3	2.4	9.1	0.0	8.4	7.8	0.8	0.0	0.7	0.0
Other Delinquency:														
Home	34.4	22.8	28.1	9.8	24.2	9.0	16.7	0.0	32.6	24.7	37.6	17.4	11.4	11.1
Secure	16.5	9.1	2.2	.8	13.3	2.2	11.0	0.0	13.0	15.1	3.5	0.9	0.6	6.3
Status Offense:														
Home	30.4	20.8	16.5	7.6	34.1	14.2	16.6	1.0	32.7	18.2	N/A		N/A	
Secure	6.3	7.1	.9	.4	2.1	1.4	1.4	0.0	1.9	6.7				

directly comparable. Unfortunately, Philadelphia does not provide information on a juvenile's pretrial detention status.

Regardless of the jurisdictional definition of detention, its use follows similar patterns. Juveniles committing felonies against the person are the most likely to be detained, followed either by those committing minor offenses against the person or felony offenses against property. Since the evidentiary distinctions between a felony and a minor offense against the person, for example, the degree of injury to the victim, may not be apparent at the time of detention, these patterns are not surprising.

Detention and counsel. Table 6 examines the relationship between a youth's detention status and representation by counsel. Detention, particularly if it continues for more than a day, is a legally significant juvenile court intervention that also requires the assistance of counsel (Feld, 1984, pp. 191-209; *Schall v. Martin*, 1984). Every jurisdiction provides for a prompt detention hearing to determine the existence of probable cause, the presence of grounds for detention, and the child's custody status pending trial (Feld, 1984, pp. 191-209).

Table 6 reports the rate of representation at each offense level for those youths who were detained and for those who were not detained. For example, in Minnesota, 66.1% of the juveniles charged with felony offenses against the person were represented (Table 2) and 24.6% of them were detained (Table 5). However, 75.0% of those who were detained were represented as contrasted with 63.8% of those who were not detained.

For each state, a comparison of the two columns reveals a consistent pattern—youths who were held in detention had higher rates of representation than did juveniles who were not. In four of the six states at every level of offense, detained youths were more likely to be represented. In Nebraska, in five of the six levels of offenses, detained youths were more likely to be represented. Again, only in North Dakota, with its small numbers and low rates of representation, does the pattern break down.

While the differences between detained and nondetained youths are smaller in the three jurisdictions with the highest rates of representation, in Minnesota and Nebraska they are substantial, especially as the seriousness of the offense decreases. Comparing the overall rate of representation at different offense levels (Table 2) with the rates of representation for detained youths (Table 6) shows that detention provides a significant additional impetus for the appointment of counsel, particularly for less serious offenders.

TABLE 5: Present Offense and Pretrial Detention Status

	California	*Minnesota*	*Nebraska*	*New York*	*North Dakota*	*Pennsylvania*
% Detained	54.0	9.4	12.6	18.0	14.7	29.0
Overall N =	(36100)	(1443)	(483)	(3841)	(122)	(2946)
Felony Offense Against Person	68.1	24.6	46.2	22.3	50.0	43.6
Felony Offense Against Property	56.6	15.0	20.1	17.5	15.3	30.6
Minor Offense Against Person	52.0	16.1	25.2	15.2	21.7	22.0
Minor Offense Against Property	45.5	7.1	9.8	16.1	11.3	27.4
Other Delinquency	54.7	10.6	13.7	20.2	20.1	24.7
Status Offense	24.1	5.8	10.9	18.1	13.9	N/A

Detention and dispositions. Several studies have examined the determinants of detention and the relationship between a child's pretrial detention status and subsequent disposition (Krisberg and Schwartz, 1983; Frazier and Bishop, 1985; Clarke and Koch, 1980; McCarthy, 1987). These studies report that while several of the same variables affect both rates of detention and subsequent disposition, after appropriate controls, detention per se exhibits an independent effect on dispositions.

While this study cannot control for all variables simultaneously, Table 7 shows the relationship among a youth's offense, detention status, and eventual disposition. Table 7 reports the percentages of youths within each offense category who were detained and who were not detained who received out-of-home placement and secure confinement. Again, the results are remarkably consistent; in five of the six jurisdictions and at every offense level, youths who were detained received more severe dispositions than those who were not. Even in North Dakota with its small numbers, the relationship between detention and secure confinement appears in most offense categories.

What Table 7 shows, then, is that the same factors that determine the initial detention decision appear to influence the ultimate disposition as well. However, when one compares the zero-order relationship between offense and disposition (Table 3) with the relationship between offense/detention and disposition (Table 7), it is apparent that detained youths are significantly more at risk for out-of-home placement and secure confinement than are nondetained youths. Generally, pretrial detention more than doubles a youth's probability of receiving a secure confinement disposition.

Counsel, detention, and disposition. Table 5 reported the percentages of youths who were detained at each offense level. Table 6 examined the relationship between detention status and representation and reported that detention increased the likelihood of representation. Table 7 examined the relationship between detention status and disposition and showed that detention also increased the likelihood of a youth receiving more severe dispositions.

Table 8 reports the relationship between detention and disposition when youth are represented by counsel to see whether the presence or absence of counsel affects their dispositions. Table 8 indicates that a detained youth who is represented by counsel is more likely to receive a severe disposition than a detained youth who is not represented. In New York, California, and Pennsylvania, which had very high rates of representation, the represented/detained youths consistently received more severe dispositions than the small group of unrepresented/de-

TABLE 6: Pretrial Detention and Representation by Counsel

	California		*Minnesota*		*Nebraska*		*New York*		*North Dakota*		*Pennsylvania*	
Detention ⇒	*Yes*	*No*	*Yes*	*No*	*Yes*	*No*	*Yes*	*No*	*Yes*	*No*	*Yes*	*No*
Felony Offense Against Person	90.8	84.9	75.0	63.8	46.7	68.4	99.7	98.1	100.0	100.0	96.4	87.4
Felony Offense Against Property	90.2	83.5	72.7	58.9	65.4	58.6	99.8	97.7	30.0	40.5	94.0	83.8
Minor Offense Against Person	89.9	84.2	82.4	72.2	47.2	38.8	99.5	98.9	80.0	38.9	95.0	86.4
Minor Offense Against Property	87.5	82.1	74.6	45.2	68.9	47.0	99.1	95.7	35.7	38.6	95.4	80.8
Other Delinquency	89.1	79.1	78.5	53.2	72.1	44.3	99.4	96.1	17.9	36.9	92.5	77.6
Status Offense	88.4	72.1	70.3	28.5	89.7	51.1	99.4	92.6	32.5	37.9	N/A	

tained juveniles, as was also the case in Nebraska. Only in Minnesota and North Dakota was the presence of counsel not an "aggravating" factor at the sentencing of detained youth. Again, this may simply be the result of dwindling numbers, or perhaps the factors that influenced the initial detention decision took precedence over the presence of counsel in those states.

The data in Table 8 in New York and Pennsylvania further reinforce the findings reported in Table 4; there was virtually no removal from the home or incarceration of unrepresented youths. By contrast, substantial numbers and proportions of youths in the midwestern states were being detained and/or removed from their homes and placed in secure confinement without the assistance of counsel.

Prior referrals. Another legal variable that affects a juvenile's eventual disposition is a prior history of delinquency referrals (Clarke and Koch, 1980; Henretta, Frazier, and Bishop, 1986). The next analyses assess the relationships among prior referrals and dispositions, prior referrals and representation by counsel, and prior referrals, representation by counsel, and dispositions.

Nebraska is the only state in this six state sample that routinely records information about a juvenile's prior referrals at the time of a current referral. However, the other states' data tapes include youth identification numbers. By combining several years of annual data tapes and matching the county/youth identification number across years, it is possible to reconstruct a youth's prior record of offenses and dispositions.

The Minnesota data reported in Tables 9-11 are from a different data set than reported heretofore. These data represent juveniles disposed of in 1986 with their prior records acquired in 1984, 1985, and 1986. In 1986, 45.3% of Minnesota's juveniles were represented, as compared with 47.7% in 1984 (Table 2), and the pattern of representation by offense was similar: felony offense against the person, 77.3%; felony offense against property, 63.0%; minor offenses against the person, 62.4%; minor offenses against property, 44.6%; other delinquency, 44.9%; and status offenses, 26.9%. The distribution of offenses in Minnesota in 1986 was also similar to that recorded in 1984 (Table 1): felony offenses against persons, 4.0%; felony offenses against property, 14.4%; minor offenses against person, 5.2%; minor offenses against property, 32.3%; other delinquency, 16.6%; and status, 27.0%. Using these Minnesota data permits a cross-state comparison of the relationship among prior referrals, dispositions, and the presence of counsel. In both Minnesota and Nebraska, the records of prior referrals were recoded as 0, 1 or 2, 3 or 4, and 5 or more.[14]

TABLE 7: Impact of Pretrial Detention on Disposition (Home/Secure)

	California		*Minnesota*		*Nebraska*		*New York*		*North Dakota*		*Pennsylvania*	
Detention ⇒	*Yes*	*No*	*Yes*	*No*	*Yes*	*No*	*Yes*	*No*	*Yes*	*No*	*Yes*	*No*
Felony Offense Against Person:												
Home	51.3	14.9	53.0	22.7	55.6	4.8	57.6	11.9	0.0	100.0	50.3	11.9
Secure	26.3	8.0	20.5	5.9	33.3	0.0	50.3	10.1	0.0	100.0	5.2	.4
Felony Offense Against Property:												
Home	42.2	17.1	46.5	24.0	51.2	10.3	49.6	11.7	30.0	36.0	47.0	10.0
Secure	19.6	11.0	22.5	6.9	36.0	6.2	32.0	7.5	30.0	15.3	2.2	0.3
Minor Offense Against Person:												
Home	38.9	11.6	46.3	16.8	41.7	15.0	45.4	6.8	60.0	33.3	40.4	5.9
Secure	16.6	6.3	6.5	2.6	22.2	4.7	39.0	4.3	60.0	5.6	0.7	0.1
Minor Offense Against Property:												
Home	37.1	13.7	40.2	12.7	35.8	5.5	45.4	7.9	28.6	28.6	48.5	7.5
Secure	12.8	8 2	15.3	2.6	22.4	2.5	31.5	4.3	7.1	8.2	2.0	0.1
Other Delinquency:												
Home	44.3	18.6	43.9	17.4	50.0	10.5	44.2	8.9	28.6	27.0	55.4	18.3
Secure	17.9	12.5	7.5	1.3	24.0	6.4	31.1	5.4	17.9	13.5	5.8	1.3
Status Offense:												
Home	31.5	25.4	37.2	9.1	59.4	17.7	40.2	10.2	17.5	24.6	N/A	
Secure	8.6	6.1	4.0	0.3	7.8	1.0	2.8	1.0	5.0	4.4		

Prior referrals and disposition. Table 9 reports the relationship between prior referrals and out-of-home placements and secure confinement dispositions. Within each offense level, there is a nearly perfect linear relationship between additional prior referrals and the likelihood of more severe dispositions. For example, in Minnesota, 35.7% of those juveniles with no prior record who commit a felony offense against the person receive an out-of-home placement, as compared with 51.9% of those with one or two priors, 84.8% of those with three or four priors, and 100.0% of those with five or more priors. The same pattern obtains for secure confinement dispositions. A similar direct relationship between prior referrals and dispositions is evident in Nebraska as well. Clearly, then, after controlling for the seriousness of the present offense, the addition of a prior record strongly influences the sentencing practices of juvenile courts.

Prior referrals and rates of representation. It will be recalled from Table 2 that overall, 52.7% of youths in Nebraska and 47.7% of youths in Minnesota (45.3% in 1986) were represented by counsel. Table 10 shows, within each offense level, the relationship between prior delinquency referrals and the likelihood of representation.

The aggregate rates of representation reported in Table 2 are the composite of juveniles with and without prior referrals. For example, in Minnesota, in 1986, 77.3% of all juveniles charged with felony offenses against the person were represented. However, this proportion of representation consisted of 73.6% with no priors, 81.5% with one or two, 89.3% with three or four, and 100.0% with five or more priors. A similar relationship between prior referrals and rates of representation prevails in Minnesota at all offense levels. Thus in Minnesota prior referrals increase both the likelihood of out-of-home placement and secure confinement (Table 9) as well as the appointment of counsel (Table 10). In Nebraska, by contrast, the relationship between prior referrals and rates of representation is not nearly as consistent. The major difference in rates of representation occurs between youths with no prior referrals and those with one or two priors. Perhaps this is because in Nebraska, prior referrals include informal as well as formal referrals, whereas in Minnesota, prior referrals consist exclusively of previously petitioned cases (see note 14).

Disposition by attorneys by priors. Tables 9 and 10 show that prior referrals are associated with receiving more severe dispositions as well as with the likelihood of having an attorney. Table 11 examines the relationship between prior referrals and receiving an out-of-home placement or secure confinement disposition when an attorney is

TABLE 8: Representation by Attorney for Detained Juveniles and Disposition (Home/Secure)

	California		*Minnesota*		*Nebraska*		*New York*		*North Dakota*		*Pennsylvania*	
Attorney ⇒	*Yes*	*No*	*Yes*	*No*	*Yes*	*No*	*Yes*	*No*	*Yes*	*No*	*Yes*	*No*
Felony Offense Against Person:												
Home	51.3	51.5	52.1	62.5	57.1	50.0	57.7	0.0	—	—	50.6	42.9
Secure	27.0	19.9	18.8	12.5	42.9	37.5	50.4	0.0			5.2	4.8
Felony Offense Against Property:												
Home	42.9	36.1	47.2	42.4	60.8	40.7	49.6	0.0	16.7	35.7	47.7	35.4
Secure	20.9	8.3	18.8	22.7	37.3	37.0	32.0	0.0	16.7	35.7	2.4	0.0
Minor Offense Against Person:												
Home	39.5	34.0	44.0	50.0	41.2	42.1	45.6	0.0	50.0	100.0	41.4	21.4
Secure	17.5	8.8	5.3	12.5	29.4	15.8	39.2	0.0	25.0	100.0	0.7	0.0
Minor Offense Against Property:												
Home	38.5	26.8	37.6	35.6	40.4	23.4	45.8	0.0	40.0	22.2	49.4	29.0
Secure	14.0	4.1	11.0	11.9	25.0	14.9	31.8	0.0	0.0	11.1	2.1	0.0
Other Delinquency:												
Home	45.4	35.3	44.3	37.9	58.1	33.3	44.5	0.0	60.0	21.7	57.9	25.0
Secure	19.2	7.0	3.8	8.6	29.0	8.3	31.3	0.0	40.0	13.0	6.0	2.3
Status Offense:												
Home	32.0	28.2	36.5	34.8	61.9	41.7	40.2	44.4	30.8	11.1	N/A	
Secure	9.4	2.6	3.2	6.1	3.8	33.3	2.9	0.0	0.0	7.4		

TABLE 9: Prior Referrals and Dispositions (Home/Secure)

	Minnesota				*Nebraska*			
Prior Referrals ⇒	0	1-2	3-4	5+	0	1-2	3-4	5+
Felony Offense Against Person:								
Home	35.7	51.9	84.8	100.0	18.8	20.0	50.0	66.7
Secure	22.9	33.3	60.6	100.0	6.3	13.3	–	50.0
Felony Offense Against Property:								
Home	21.7	46.4	76.5	72.0	7.7	25.2	40.0	48.3
Secure	16.0	31.9	67.0	54.0	2.1	19.1	30.0	44.8
Minor Offense Against Person:								
Home	14.2	38.5	62.2	73.3	9.8	26.0	23.8	70.0
Secure	8.0	22.6	40.5	66.7	3.3	12.0	9.5	30.0
Minor Offense Against Property:								
Home	10.4	27.3	49.0	65.2	4.7	12.8	19.0	25.3
Secure	6.6	18.8	39.5	52.2	1.5	7.5	14.3	16.9
Other Delinquency:								
Home	12.4	31.5	46.9	55.0	8.7	25.3	36.8	18.2
Secure	6.7	19.2	31.9	50.0	1.7	18.9	21.1	9.1
Status Offense:								
Home	8.7	19.3	38.9	48.8	19.8	27.7	31.8	47.6
Secure	1.6	5.8	23.5	30.2	0.9	3.6	6.8	9.5

present or absent. The percentages within offense categories, dispositions, and priors are those for youths receiving an out-of-home placement or secure confinement when an attorney is present and when one is not.

As can be seen by row comparisons at each offense level and type of disposition across priors, youths with attorneys are more likely to receive out-of-home placement and secure confinement than are those without counsel. In effect, controlling for present offense and prior record simultaneously, larger proportions of youths with lawyers receive out-of-home placements and secure confinement than do those without. In Minnesota, with 48 possible comparisons—6 offenses times

TABLE 10: Rates of Representation by Prior Referrals

	Minnesota				*Nebraska*			
Prior Referrals ⇒	0	1-2	3-4	5+	0	1-2	3-4	5+
Felony Offense Against Person	73.6	81.5	89.3	100.0	76.9	64.3	50.0	—
Felony Offense Against Property	57.1	71.2	78.2	84.1	59.6	67.9	65.4	26.1
Minor Offense Against Person	55.0	69.5	88.9	71.4	51.0	26.8	38.9	50.0
Minor Offense Against Property	39.5	58.8	75.1	82.6	46.8	57.6	53.0	35.9
Other Delinquency	38.9	59.2	75.0	89.7	46.3	53.4	60.0	28.6
Status Offense	23.3	40.3	62.9	66.7	57.7	58.5	34.4	43.8

2 dispositions times 4 priors—represented youths received more severe dispositions in 44 instances. In Nebraska, represented youths received more severe dispositions in 39 comparisons.

DISCUSSION AND CONCLUSION

Nearly twenty years after *Gault* held that juveniles are constitutionally entitled to the assistance of counsel, half of the jurisdictions in this study are still not in compliance. In Nebraska, Minnesota, and North Dakota, nearly half or more of delinquent and status offenders do not have lawyers (Table 2). Moreover, many juveniles who receive out-of-home placement and even secure confinement were adjudicated delinquent and sentenced without the assistance of counsel (Table 4). One may speculate whether the midwestern states are more representative of most juvenile courts in other parts of the country than are the large urban states. In light of the findings from other jurisdictions (Clarke and Koch, 1980; Bortner, 1982; Aday, 1986), it is apparent that many juveniles are unrepresented.

TABLE 11: Dispositions (Home/Secure) by Attorney by Priors

		Minnesota				*Nebraska*			
Prior Referrals ⇒		0	1-2	3-4	5+	0	1-2	3-4	5+
Attorney									
Felony Offense Against Person:									
Home	Yes	39.5	49.5	84.0	100.0	10.0	33.3	100.0	–
	No	23.1	54.5	66.7	–	–	–	–	80.0
Secure	Yes	24.3	32.0	56.0	100.0	10.0	22.2	–	–
	No	15.4	31.8	66.7	–	–	–	–	60.0
Felony Offense Against Property:									
Home	Yes	25.2	53.4	76.9	75.0	10.8	35.5	58.8	100.0
	No	15.2	27.7	68.2	42.9	2.3	8.3	22.2	47.1
Secure	Yes	18.9	37.2	66.7	55.6	3.1	26.3	41.2	100.0
	No	10.4	16.8	54.5	28.6	1.1	5.6	22.2	41.2
Minor Offense Against Person:									
Home	Yes	19.4	41.5	65.6	90.0	–	36.4	42.9	60.0
	No	7.5	31.7	50.0	50.0	20.0	30.0	18.2	80.0
Secure	Yes	11.1	22.2	40.6	80.0	–	18.2	28.6	40.0
	No	3.5	21.7	50.0	50.0	8.0	13.3	–	20.0
Minor Offense Against Property:									
Home	Yes	14.8	32.8	50.7	68.4	7.6	17.2	31.8	17.4
	No	7.5	20.1	37.8	50.0	2.2	5.8	10.3	36.6
Secure	Yes	9.1	23.8	39.1	57.9	3.0	9.7	29.5	17.4
	No	4.9	11.7	33.3	25.0	0.2	3.6	2.6	19.5
Other Delinquency:									
Home	Yes	20.2	39.3	59.0	55.9	16.0	38.5	44.4	–
	No	6.8	20.1	14.8	50.0	5.7	8.8	16.7	40.0
Secure	Yes	11.6	23.5	42.3	50.0	4.0	30.8	22.2	–
	No	3.1	11.5	7.4	50.0	–	2.9	–	20.0
Status Offense:									
Home	Yes	17.3	30.0	53.4	64.3	32.2	38.8	36.4	57.1
	No	6.5	13.8	19.2	14.3	11.1	16.4	23.8	44.4
Secure	Yes	3.2	10.6	30.7	42.9	1.2	1.9	18.2	28.6
	No	1.1	2.8	13.5	7.1	1.2	1.4	4.8	–

Clearly, it is possible to provide counsel for the vast majority of young offenders. California, Pennsylvania and Philadelphia, and New York do so routinely. What is especially impressive in those jurisdictions is the very low numbers of uncounseled juveniles who receive out-of-home placement or secure confinement dispositions (Tables 4 and 8). While this study shows substantial differences in rates of representation

among the different states, it cannot account for the greater availability of counsel in some of the jurisdictions than in others.

There are direct legislative policy implications of the findings reported here. In those states in which juveniles are routinely unrepresented, legislation mandating the automatic and nonwaivable appointment of counsel at the earliest stage in delinquency proceeding is necessary (Feld, 1984, pp. 184-190). As long as it is possible for a juvenile to waive the right to counsel, juvenile court judges will find such waivers. Short of mandatory and nonwaivable counsel, a prohibition on waivers of counsel without prior consultation with and the concurrence of counsel would assure that any eventual waiver was truly "knowing, intelligent, and voluntary" (Feld, 1984, pp. 186-187). Moreover, a requirement of consultation with counsel prior to waiver would assure the development of legal services delivery systems that would then facilitate the more routine representation of juveniles. At the very least, legislation should prohibit the removal from home or incarceration of any juvenile who was not provided with counsel. Such a limitation on dispositions is already the law for adult criminal defendants (*Gideon v. Wainwright*, 1963; *Scott v. Illinois*, 1979), for juveniles in some jurisdictions (Feld, 1984, p. 187) and apparently the informal practice in New York and Pennsylvania where virtually no unrepresented juveniles were removed or confined.[15]

Apart from simply documenting variations in rates of representation, this research also examined the determinants of representation. It examined the relationship between "legal variables"—seriousness of offense, detention status, prior referrals—and the appointment of counsel. In each analysis, it showed the zero-order relationship among the legal variables and dispositions, the legal variables and the appointment of counsel, and the effect of representation on dispositions.

There is obviously multicollinearity between the factors producing more severe dispositions and the factors influencing the appointment of counsel. Each legal variable that is associated with a more severe disposition is also associated with greater rates of representation. And yet, within the limitations of this research design, it appears that in virtually every jurisdiction, representation by counsel is an aggravating factor in a juvenile's disposition. When controlling for the seriousness of the present offense, unrepresented juveniles seem to fare better than those with lawyers (Tables 3 and 4). When controlling for offense and detention status, unrepresented juveniles again fare better than those with representation (Tables 7 and 8). When controlling for the seriousness of the present offense and prior referrals, the presence of

counsel produces more severe dispositions (Table 10 and 11). In short, while the legal variables enhance the probabilities of representation, the fact of representation appears to exert an independent effect on the severity of dispositions.

Although this phenomenon has been alluded to in other studies (Bortner, 1982; Clarke and Koch, 1980), this research provides the strongest evidence yet that representation by counsel redounds to the disadvantage of a juvenile. Why? One possible explanation is that attorneys in juvenile court are simply incompetent and prejudice their clients' cases (Stapleton and Teitelbaum, 1972; Lefstein, Stapleton, and Teitelbaum, 1969; Fox, 1970; Platt and Friedman, 1968; Ferste Courtless, and Snethen, 1971; McMillian and McMurtry, 1970; Kay and Segal, 1973; Bortner, 1982; Clarke and Koch, 1980). While systematic evaluations of the actual performance of counsel in juvenile court are lacking, the available evidence suggests that even in jurisdictions where counsel are routinely appointed, there are grounds for concern about their effectiveness. Public defender offices in many jurisdictions assign their least capable lawyers or newest staff attorneys to juvenile courts to get trial experience, and these neophytes may receive less adequate supervision than their prosecutorial counterparts. Similarly, court appointed counsel may be beholden to the judges who select them and more concerned with maintaining an ongoing relationship with the court than vigorously protecting the interests of their clients. Moreover, measuring defense attorney performance by dispositional outcomes raises questions about the meaning of effective assistance of counsel. What does it take to be an effective attorney in juvenile court? Why do fewer defense attorneys appear at dispositions than at adjudications? How might attorneys for juveniles become more familiar with dispositional alternatives?

Perhaps, however, the relationship between the presence of counsel and the increased severity of dispositions is spurious. Obviously, this study cannot control simultaneously for all of the variables that influence dispositional decision making. It may be that early in a proceeding, a juvenile court judge's greater familiarity with a case may alert him or her to the eventual disposition that will be imposed and counsel may be appointed in anticipation of more severe consequences (Aday, 1986). In many jurisdictions, the same judge who presides at a youth's arraignment and detention hearing will later decide the case on the merits and then impose a sentence. Perhaps, the initial decision to appoint counsel is based upon the same evidence developed at those earlier stages that also influences later dispositions.

Another possible explanation is that juvenile court judges may treat more formally and severely juveniles who appear with counsel than those without. Within statutory limits, judges may feel less constrained when sentencing a youth who is represented. Such may be the price of formal procedures. While not necessarily punishing juveniles who are represented, judges may incline toward leniency toward those youths who appear unaided and "throw themselves on the mercy of the court." At the very least, further research, including qualitative studies of the processes of initial appointment of counsel in several jurisdictions, will be required to untangle this complex web.

NOTES

1. Many state juvenile court systems maintain automated reporting or case management information systems. Beginning in 1978, the National Center for Juvenile Justice (NCJJ), the research division of the National Council of Juvenile and Family Court Judges, obtained support from the Office of Juvenile Justice and Delinquency Prevention to collect and store the computerized case records developed by the individual states. Each year, data contributed to the National Juvenile Court Data Archive (NJCDA) are merged to create a national data set containing detailed descriptions of cases handled in the states by the nation's juvenile courts. Although the individual states collect, code, and report different types of information about a case, the NCJDA has developed a standardized, national coding format that enables them to recode the raw data provided by the states into a more uniform format. Since the states collect different information, this study is constrained by the available data. Moreover, a cross-state comparative analysis necessarily imposes a least common denominator on the numbers and types of variables that can be examined.

2. The NJCDA unit of count is "case disposed." Each "case" represents a youth whose case is disposed of by the juvenile court for a new delinquency/status referral. A case is "disposed" when some definite action is taken, whether dismissal, warning, informal counseling or probation, referral to a treatment program, adjudication as a delinquent with some disposition, or transfer to an adult criminal court (Nimick et al., 1985, p. 3). As a result of multiple referrals, one child may be involved in several "cases" during a calendar year. Moreover, each referral may contain more than one offense or charge. The multiple referrals of an individual child may tend to overstate the numbers of youths handled annually. Multiple charges in one petition may appear to understate the volume of delinquency in a jurisdiction. Because the unit of count is case disposed, one cannot generalize from these data either the number of individual youths who are processed by the court or the number of separate offenses charged to juveniles.

3. In *Fare v. Michael C.* (1979), the U.S. Supreme Court held that a juvenile has a right to counsel even prior to the formal initiation of delinquency proceedings if he or she is subjected to custodial interrogation. The *Gault* decision involved a juvenile charged with conduct that would be criminal for an adult and that could result in institutional

confinement (Feld, 1984). The Supreme Court has never decided whether status offenders have a constitutional right to counsel.

4. The National Juvenile Court Data Archive has developed a 78-item coding protocol that recodes the raw offense data provided by the states into a uniform format. This permits delinquency offense data from several different original formats to be recoded for analysis using a single conversion program.

5. The "felony offenses against person" generally correspond to the FBI's Uniform Crime Report classification of Part I violent felonies against the person—homicide, rape, robbery, and aggravated assault. "Felony offenses against property" generally include Part I property offenses—burglary, felony theft, and auto theft. "Minor offenses against person" consist primarily of simple assaults, and "minor offenses against property" consist primarily of larceny, shoplifting, or vandalism. "Other delinquency" includes a mixed-bag of residual offenses—drug offenses, public order offenses, and the like. "Status" offenses are the juvenile offenses that are not criminal for adults—runaway, truancy, curfew, ungovernability, and the like.

6. The NJCDA has developed a 22-item conversion program that transforms the state-specific dispositions into a uniform national format. NJCDA staff talk directly with the state data collectors and reporters to determine how specific dispositions or programs should be classified—out of home and secure—within the national format.

7. California's Bureau of Criminal Statistics and Special Services (the Bureau) compiles and publishes California's juvenile court data (NJCDA, 1986a). The Bureau, through its Juvenile Court and Probation Statistical System (JCPSS), collects information as a juvenile progresses through the juvenile justice system from referral to probation intake to a final court disposition. Case processing begins with a referral to a county juvenile probation department. Many delinquency and status cases are handled informally at the intake level and proceed no further. These cases are reported to the Bureau as "referral" actions. All formally petitioned delinquency and status offense cases are reported only after the court's disposition is known. The data collected by the Bureau include the date of referral, the county and source of referral, the referral offense(s), the offense(s) for which the youth was ultimately adjudicated, the youth's detention status, whether the prosecutor filed a petition, the nature of the juvenile's defense representation, the eventual disposition, the juvenile's birth date, race, sex, prior delinquency status, and current status at the conclusion of the proceedings.

8. The Minnesota Supreme Court's Judicial Information System (SJIS) compiles statewide statistical data on juvenile delinquency and status petitions filed annually. The data are based on the petitions filed; there is no data base that includes the cases referred to intake, county probation, or juvenile courts that were handled informally. The data collected on a case-specific basis are similar to those collected in California and include offense behavior, representation by counsel, court processing information, entries each time a court activity occurs, any continuation or change in the status of a case, and types of dispositions. In most counties, this information is obtained from the juvenile courts' own automated computer system and is entered by court administrators in each county who are trained by the state court administrator. Since the juvenile courts themselves rely upon this computerized information for record keeping, scheduling hearings, maintaining court calendars, and monitoring cases, it is generally reliable.

9. The Nebraska Commission on Law Enforcement and Criminal Justice (the Commission), through its Juvenile Court Reporting System, collects data from the state's juvenile justice agencies (NJCDA, 1986b). The county courts that handle juvenile cases as well as the separate juvenile courts report to the Commission monthly by completing a

Juvenile Court Statistical (JCS) Form when a case is disposed. Except for Douglas and Sarpy Counties, which report only petitioned cases, the Nebraska data include both cases processed formally with a petition as well as those handled informally. In addition to the information that is collected in California and Minnesota, the Nebraska records also include a youth's school attainment, living arrangements at referral, number of prior referrals, and manner of handling (formal/informal). Where a referral involves more than one offense, the most serious offense is recorded. The Commission reviews the JCS forms forwarded from the counties for internal validity. When errors are discovered, the submitting court is contacted and the error corrected.

10. The New York Office of Court Administration (OCA) collects data from the sixty-two Family Courts statewide that handle petitioned delinquency and status (PINS) cases (NJCDA, 1986c). The courts report to the OCA after the disposition of a case by completing disposition reporting cards. The records include the same information collected in California and Minnesota. Upon receipt of the disposition reports, the OCA checks the data for internal validity and contacts the submitting court to correct any errors found. New York, like Minnesota, only records petitioned cases; there is no reporting of delinquency or status referrals that are handled informally by county probation departments.

11. The 53 counties in North Dakota report all delinquency and status referrals to the Office of State Court Administrator (OSCA) on a weekly or bimonthly basis. The county juvenile probation offices complete a juvenile court face sheet form, which includes the filing information, social history, and disposition of each case referred to the juvenile court as well as a separate change of status form. While the social history information is not entered in the OSCA's computers, the other information collected is similar to that obtained in California and Minnesota.

12. Juvenile court data in Pennsylvania are collected by the Juvenile Court Judges' Commission (JCJC). A statistical card is submitted when a referral is received by the county probation department, if a youth is detained, and when the case is finally disposed. Like the other jurisdictions, the unit of count is the case disposed, a referral disposed of informally by the probation department or formally by the court. In addition to the types of offender and offense information collected by California and Minnesota, the JCJC reporting forms also include substantial information on a juvenile's educational status, family status, living arrangements, family income, and additional indicators of offense seriousness such as injury to victim, use of weapons, or the total value of property stolen or damaged. Philadelphia uses a separate reporting system from the rest of Pennsylvania. It records information only on petitioned cases, and does not include the information collected by the other Pennsylvania counties on school attainment, family status or income, the additional offense seriousness indicators, or a youth's pretrial detention status.

13. According to the Bureau, the coding forms used in 1984 classified defense representation as (1) none, (2) private counsel, (3) court appointed counsel, and (4) public defender. In some instances, although a juvenile may have been represented, the court personnel who completed the forms reported "none" if they did not know which type of counsel appeared. The reporting form was revised in 1986 to include an additional category of "unknown."

14. In Minnesota, the prior record consists exclusively of previously petitioned cases. In Nebraska, the prior referrals include both formally petitioned cases and those referred to intake that were disposed of informally. As indicated in Table 1, 62.8% of referrals in Nebraska result in formal petitions.

15. The law in all six states formally requires the appointment of counsel in some or all circumstances. See, for example, Calif. Welf. & Inst. Code 317, 318; Minn. Stat. Ann. 260.155 Subd. 2; Nebraska Stat. 43-272; N.Y. Fam. Ct. 320.3; N. Dak. Cent. Code 27-20-26; 42 Pa. C.S.A. 6337.

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Senator KOHL. Thank you very much, Dr. Feld.
Dr. Melton?

STATEMENT OF DR. MELTON

Dr. MELTON. Thank you, Mr. Chairman.

My assessment of the facts is largely the same as that of Professor Feld, but I reach a few different conclusions about their policy implications. I do believe that a separate juvenile court is desirable, but it should be a new court that has more procedural protections than adult criminal court, not fewer as has been the tradition in the juvenile court since its inception a century ago.

I also believe that the juvenile court should be just one part of a comprehensive system for advocacy and protection of children's interests. Moreover, the Federal Government has an important role and responsibility to ensure that children's rights under the Constitution and Federal statutes are taken seriously by State and Federal authorities, and that effective means are available for monitoring and advocacy on behalf of children.

Psychological research shows that satisfaction with the legal process is affected by the degree of control that respondents have in the presentation of their cases, and the courtesy with which they are treated by legal authorities. Research shows further that juveniles rarely are skilled in exercising their rights, even when they have previous involvement in the legal system, that parents of juvenile respondents rarely are effective advocates for their children in the juvenile court, and that absent extraordinary efforts, juveniles often do not regard their rights as irrevocable entitlements, and, for that reason, make unwise decisions about them.

In short, due process is different for juveniles. Although protection of liberty and privacy is profound for juveniles as well as adults, procedures should be especially rigorous if juvenile respondents are to make good use of the legal system.

Special efforts also are necessary if juveniles are to believe that they are being treated fairly, and that they truly have a say—that, as the UN Convention on the Rights of the Child requires, procedures comport with the child's sense of dignity and worth.

Of course, the need for advocacy does not end with adjudication. Class action suits have provided vivid evidence of the overuse of institutional placement, the atrocious conditions of confinement in some facilities, and the lack of efficient, effective, individualized treatment alternatives in most jurisdictions.

Similarly, the need for advocacy is not limited to youth in the juvenile justice system. Adequate legal representation may be an even greater issue in other contexts in which children become involved with the legal system, such as divorce, and child abuse and neglect.

Moreover, as a matter of both ethics and socialization to democratic ideals—arguably the primary purpose of public education—children should be given the opportunity to express their opinions and describe their experiences relevant to issues affecting them in public policy and practice.

Family advocacy also should be given greater attention. Recent research evidence shows that, for perhaps the first time in Ameri-

can history, parents often do not believe that they can count on their neighbors to assist them with problems involving their own children. Therefore, the need is also clear for advocates to assist parents in maneuvering the complex service system on behalf of their families.

With these points in mind, I respectfully recommend five amendments to the Juvenile Justice Delinquency Prevention Act. First, Congress should establish a new Office on Child Advocacy in the Department of Justice to undertake research and demonstration projects and related training and dissemination activities designed to develop and improve advocacy for children, both within and outside the juvenile justice system.

Second, Congress should establish a program of incentive grants to States for development of offices of ombudsmen for children. Having carefully studied the Office of the Ombudsman for Children in Norway, and also being familiar with similar offices in other foreign jurisdictions with cultures that are similar to our own, such as Israel, New Zealand, and South Australia, I am amazed by the speed with such offices become identified and accepted by both children and adults as spokespersons for children's interests.

A network of independent, accessible State ombudsmen for children would go far toward ensuring a place for children in American law and politics, preventing their neglect by State and Federal authorities, and promoting children's appreciation of democratic values.

Third, Congress should transfer the law-related education program to the new office and direct an emphasis on democratic socialization. Delinquency prevention is an important goal, but law-related education is at best tangentially related to it. What law-related education programs can and should do, though, is to educate children in use of the legal system and protection of their rights, and in the values and skills of informed citizens involved in citizens' use of democratic processes to make or reform the law.

Fourth, Congress should commission the State advisory groups to conduct annual state-of-the-child studies of the juvenile justice system and the children in it.

And finally, I agree with Professor Feld and the ABA that Congress should condition receipt of Federal juvenile justice funds on States' guarantee of a right to counsel that is neither waivable by juveniles nor waivable on their behalf except under extraordinary circumstances, because such a right is so clearly fundamental in an adversary system.

As I mentioned, though, such a string is insufficient by itself to guarantee meaningful representation of children and to ensure that Federal rights are fulfilled. The Federal Government launch an initiative to develop a knowledge base that will enable attorneys and other advocates to represent children in a way that their voices will be heard and that they will feel that they have had a say in matters affecting them.

Ensuring that our children have a voice is morally imperative, because we respect our youngest citizens as persons, and therefore owe them due process of law. It is politically imperative, because we want to promote and sustain a legal system in which citizens, including our youngest citizens, are participants, not objects.

Thank you, Mr. Chairman.
[The prepared statement of Dr. Melton follows:]

STATEMENT OF
Gary B. Melton, Ph.D.
Director, Consortium on Children, Families and the Law

before the

UNITED STATES SENATE
Subcommittee on Juvenile Justice

March 4, 1992

on the subject of
Advocacy for Children in the Juvenile Justice System

Mr. Chairman and Members of the Subcommittee:

Professor Feld has painted a bleak picture of juvenile justice in the United States today. Unfortunately, it is an accurate assessment. Just 25 years ago the Supreme Court described juvenile courts as "kangaroo courts." That label is too harsh for the situation today. Nonetheless, it is fair to say that many juvenile courts still do not seriously apply the Supreme Court's proclamation in *In re Gault* that the Bill of Rights does not belong to adults alone. Nonexistent or inadequate legal representation for juvenile respondents is a gross example of many juvenile courts' failure to protect the rights of children before them. Moreover, the historic rationales for a separate juvenile court system have failed to withstand empirical scrutiny.

Although my assessment of the facts is largely the same as that of Professor Feld, I reach some different conclusions about their policy implications. I do believe that a separate juvenile court is desirable, but it should be a *new* court that has *more* procedural protections than adult criminal court - not fewer, as has been the tradition in the juvenile court since its inception a century ago. I also believe that the juvenile court should be just one part of a comprehensive *system* for advocacy and protection of children's interests. Moreover, the Federal Government has an important role and responsibility to ensure that children's rights under the Constitution and Federal statutes are taken seriously by State and Federal authorities and that effective means are available for monitoring and advocacy on behalf of children.

The UN Convention on the Rights of the Child provides a useful guide to the rudiments of due process for juveniles. Besides enumerating specific procedural rights that are guaranteed by the U.S. Constitution, such as the right to counsel and the privilege against self-incrimination, the Convention requires that juvenile respondents and adjudicated delinquents be treated "in a manner consistent with the child's sense of dignity and worth, which

reinforces the child's respect for the human rights and fundamental freedoms of others" (Article 40, § 1).

Shamefully, the United States stands virtually alone among developed nations in its failure to sign or ratify the UN Convention. Nonetheless, the Convention article on juvenile justice is fully consistent with the Supreme Court's analysis in *Gault*.

Psychological research shows satisfaction with the legal process is affected by the degree of control that respondents have in the presentation of their cases and the courtesy with which they are treated by legal authorities. Research shows further that juvenile s rarely are skilled in exercising their rights (even when they have previous involvement in the legal system), that parents of juvenile respondents rarely are effective advocates for their children in the juvenile court, and that, absent extraordinary efforts, juveniles often do not regard their rights as irrevocable entitlements.

In short, due process is different for juveniles. Although protection of liberty and privacy is profound for juveniles as well as adults, procedures should be especially rigorous if juvenile respondents are to make good use of the legal system. Special efforts also are necessary if juveniles are to believe that they are being treated fairly and that they truly have a say.

Of course, the need for advocacy does not end with adjudication. Class action suits have provided vivid evidence of the overuse of institutional placement, the atrocious conditions of confinement in some training schools, detention centers, and private treatment facilities, and the lack of sufficient effective, individualized treatment alternatives in most jurisdictions.

Similarly, the need for advocacy is not limited to youth in the juvenile justice system. Adequate legal representation may be an even greater issue in other contexts (e.g., child protection; divorce) in which children become involved with the legal system. Moreover, as a matter of both ethics and socialization into democratic ideals -- arguably the primary purpose of public education -- children should be given the opportunity to express their opinions and describe their experiences relevant to issues affecting them in public policy and practice.

Family advocacy also should be given greater attention. Recent research evidence shows that, for perhaps the first time in American history, parents often do not believe that they can count on their neighbors to assist them with problems involving the parents' children. Therefore, the need is also clear for advocates to assist parents in maneuvering the complex service system on behalf of their families.

With these points in mind, I respectfully recommend the following amendments to the Juvenile Justice and Delinquency Prenvention Act:

•Congress should establish a new Office on Child Advocacy in the Department of Justice and authorize $10 million for discretionary grants to be administered by it.

That Office should have responsibility for research and demonstration projects and related training and dissemination activities designed to develop and improve advocacy for children, both within and outside the juvenile justice system. For example, the Office should support research and training designed to assist lawyers and other advocates in their representation of children. It also should conduct research and training aimed at the development of legal structures and procedures that, consistent with the UN Convention on the Rights of the Child, promote children's sense of dignity and worth. The Office also should stimulate opportunities for self-advocacy by children and other activities that promote children's appreciation of democratic values.

•Congress should establish a program of incentive grants to States for development of offices of ombudsmen for children. Twenty-five million dollars should be authorized for the program.

Having carefully studied the office of the ombudsman for children in Norway and also being familiar with similar offices in other jurisdictions with cultures similar to our own (e.g., Israel; New Zealand; South Australia), I am amazed by the speed with which such offices become identified and accepted by both children and adults as spokespersons for children's interests. A network of independent, accessible State ombudsmen for children would go far toward ensuring a place for children in American law and politics, preventing their neglect by State and Federal authorities, and promoting children's appreciation of democratic values.

•Congress should transfer the law-related education program to the new Office and direct an emphasis on democratic socialization. In the event that Congress does not create the new Office that I have recommended , it should transfer the program to the Department of Education and direct the change of emphasis.

Although the Office of Juvenile Justice and Delinquency Prevention long has supported law-related education programs, neither OJJDP nor most of the programs in the field have given adequate attention to developmental literature, and the extant programs have not been rigorously evaluated. Delinquency prevention is an important goal, but law-related education is at best tangentially related to it. What law-related education programs can and should do, though, is to educate children (a) in

use of the legal system and protection of their rights and (b) in the values and skills involved in citizens' use of democrataic processes to make or reform the law.

•Congress should commission the State Advisory Groups to conduct annual state-of-the-child studies of the juvenile justice system and children in it.

The first step to class advocacy is monitoring, and State Advisory Groups could play an important role in fulfillment of this task for children in juvenile justice.

•Congress should condition States' receipt of formula grants for juvenile justice on their provision of counsel for all juveniles accused of delinquent or status offenses.

Nearly two decades ago, the Supreme Court acknowledged that "it is simply too late in the day to conclude...that a juvenile is not put in jeopardy at a proceeding whose object is to determine whether he has committed acts that violate a criminal law and whose potential consequences include both the stigma inherent in such a determination and the deprivation of liberty for many years."[1] That many juveniles still are subjected to such jeopardy without representation by counsel is a travesty of justice.

I agree with Professor Feld and the ABA that Congress should condition receipt of Federal funds on a State's guarantee of a right to counsel that is unwaivable by or on behalf of juveniles except under extraordinary circumstances, because such a right is so clearly fundamental in an adversary system. As I have noted, though, such a "string" is insufficient by itself to guarantee meaningful representation of children's interests. To ensure that Federal rights are fulfilled requires that the Federal Government launch an initiative to develop a knowledge base that will enable attorneys and other advocates to represent children in a way that their voices will be heard and that they will feel that they have a say in matters affecting them. Such an approach is morally imperative because we respect our youngest citizens as persons and therefore owe them due process of law. It is politically imperatiave because we want to promote and sustain a democratic legal system in which citizens are participants, not objects.

Thank you, Mr. Chairman, for this opportunity to express my views on the Federal role in child advocacy. I would be pleased to answer any questions that you may have.

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[1]Breed v. Jones, 421 U.S. 519, 529 (1975).

Senator KOHL. Thank you, Dr. Melton.
Mr. Schwartz?

STATEMENT OF ROBERT G. SCHWARTZ

Mr. SCHWARTZ. Thank you, Senator Kohl. I am pleased to appear before you today on behalf of the American Bar Association, whose 380,000 members have had a long-standing interest in improving juvenile justice policy in this country.

I will highlight my written testimony——

Senator KOHL. Thank you.

Mr. SCHWARTZ [continuing]. To cut through it a little bit.

First, it is important to note that there have been many successes associated with the Juvenile Justice and Delinquency Prevention Act. The act has provided States with formula grant money, seed money, that has promoted, in many instances, effective community-based programming alternatives to incarceration, some improvements in some States around advocacy and processing and access to justice.

Those successes shouldn't be minimized, including the successes of removing many status offenders from jails and detention centers, and getting many juveniles out of adult lockups. Those initial salutary purposes of the act need to be maintained.

The other solid purposes of the act also need to be reaffirmed and strengthened, because, in many respects, implementation of the act has been extremely uneven—geographically around the country, as well as within States, as Dr. Feld suggested.

My testimony has as an appendix the recent ABA resolution in support of reauthorization, that lists what the American Bar Association considers to be core values that underpin reauthorization. The report that goes with that resolution expands on the position that the ABA has taken.

This morning I just want to touch on issues of juvenile court administration, particularly right to counsel, some juvenile detention issues, and the larger issue of reauthorization.

I have often found it useful to think of this system as essentially a pipeline—something of a hydraulic system—through which juveniles flow, if the system is operating. There are valves at all points in the pipeline—these are the diversion points, where youths are diverted, at the beginning of the system, back home, into alternative placements—there are alternative treatment programs throughout.

It is the unique quality of this system that it provides for speed, it provides for diversion, and if it is working properly, it of course provides for justice and treatment along the flow, as well.

The swift flow is extremely important, as is avoidance of some of the deep-end, out-of-home placements that kids find themselves in around the country.

A lawyer, from the ABA's perspective, is the most valuable guide to speedy, fair movement through that system. The ABA standards, which the ABA promulgated in the late 1970's, and some relevant sections of which—not too many—I would like to submit to staff as an addition to the record, if that is all right—stress the right to counsel at every stage of the process.

In Re Gault spoke about the right to counsel at trial; we are speaking of right to counsel all along the pipeline. Lawyers reduce unnecessary delays, get judges necessary information related to both guilt or innocence, as well as where a child should reside, how long children stay in training schools, when they can be discharged. That is extremely important, and that right to counsel should not be waived, and the act's reauthorization should be conditioned on that.

The ABA has also long recognized the importance of limiting juveniles' entry into juvenile detention in this country. There are really only two ways to limit detention—limit entry into it, and get kids out of it. That is a matter of flow, and it is a matter of keeping a gatekeeper at the front door.

There are a number of ways of dealing with that. One way of looking at this, and it is a lesson I learned from years as a former basketball referee—which I thought I could take the liberty of introducing at this testimony this morning—which is the lesson that we learned about taking our eyes off the ball, because so much action takes place where people least expect it, away from where most eyes are focused, where a lot of harm, and a lot of contact takes place.

In the juvenile system, the trial is not the only place where harm takes place, or where good can happen. We have to look and reform the rest of the system, in order for detention to be reformed, because detention ends up atoning for the harms of the rest of the system. That requires gatekeeping at the front end, and it requires speedy trial.

You need twice as much detention space if it takes twice as long to get children to trial. The same way as we heard from the judges earlier, when training schools are backed up—that is, when kids stay longer in placements in State institutions—the pipeline backs up, so that detention centers are overcrowded.

The flow must be maintained, and this act can help with that, not only by providing alternatives to those institutions—intensive probation, aftercare, parole officers, out-of-home community-based substitutes to training schools—but lawyers as well help maintain that flow, and help make sure that the system is operating the way it should.

I make other references to issues of reauthorization—a system of incentives, and monitoring and ombudsmen, that might enhance implementation of the act, but I will reserve those for a little later on.

[Mr. Schwartz submitted the following material:]

TESTIMONY OF

ROBERT G. SCHWARTZ

on behalf of

THE AMERICAN BAR ASSOCIATION

Mr. Chairman and members of the Subcommittee:

I am pleased to appear before you today as you consider federal policies to improve services to children and families involved with the juvenile justice system. I testify on behalf of the over 380,000 lawyers who are members of the American Bar Association, which has a historic commitment to the implementation of fair and effective juvenile justice policy. These members are representatives of all parts of the legal community. They include prosecutors, defense lawyers, judges, public defenders, law teachers and members of the law enforcement community. My experience also includes membership on Pennsylvania's State Advisory Group, and almost 17 years as an attorney, including 10 years as the Executive Director of the Juvenile Law Center, which has represented children involved in Pennsylvania's juvenile justice, child welfare and mental health systems.

Since 1974, the Juvenile Justice and Delinquency Prevention Act has had a significant impact on this country's juvenile justice policy and programming. In particular, the Act has been an important catalyst for removing delinquents from adult facilities, and for removing status offenders from

jails and detention centers. The Act has provided states with seed money for creative, community-based programs that have proven to be effective. In many ways this Act is a success story. Its many accomplishments should not be overlooked. In this area, Congress has made a difference. In the view if the ABA, the framework of the law remains sound, and should be maintained.

It is also true, however, that administration of the Act has on occasion, since 1974, veered from the Act's core values, and that states' adherence to those values has not been uniform. If the federal presence in this area is to have a lasting, positive impact, it is important that this reauthorization process reaffirm the central virtues of the Act, and that Congress ensure, through a variety of oversight mechanisms, that progress in this area is straight and true to Congressional intent.

Core values that are important to the ABA are set out in the Association's reauthorization resolution, which is an appendix to my testimony. Also appended is the Association's report -- the ABA's version of legislative history -- that underpins the resolution.

I would like today to address several points related to 1) the issues of juvenile court administration and juvenile detention, and 2) the issue of reauthorization.

Juvenile Court Administration

It is useful to imagine the juvenile justice system as a

pipeline through which water flows. Along the pipeline are diversion valves -- these are the points of decision at which children are either diverted from the pipeline or continue through its various gates and locks. The latter are the points of arrest, detention, adjudication (or trial), disposition (sentencing), and disposition review. One of the signal characteristics of juvenile justice is its system of diversion options -- its use of valves to send some children home, or to other systems, or to non-institutional care.

Another characteristic that distinguishes the juvenile justice system from the adult system is the importance that the juvenile system places on a swift flow through the pipeline. Children's sense of time is different than that of adults, so that children need to have certainty and decision-making done more promptly. In addition, the consequences of moving deeper into the pipeline -- into the pool of training schools and other delinquency institutions -- are also greater for juveniles. Thus, for the system to operate efficiently and fairly, juveniles must move relatively swiftly through the juvenile justice pipeline.

A lawyer is the most valuable guide to speedy, fair movement through the system. Counsel is the key to every juvenile's access to justice, and the right to counsel is thus a linchpin of the ABA-IJA Juvenile Justice Standards. The greatest service you can do is to ensure that the right to counsel, now constitutionally guaranteed for 25 years, is implemented at every stage of the juvenile's flow through the system.

Prompt appointment of counsel will reduce unnecessary, harmful delays. Counsel at important points along the pipeline will ensure that the juvenile court has information necessary to make appropriate detention decisions, that trials happen promptly and fairly, that juvenile courts have adequate information at disposition, and that juveniles don't languish unnecessarily in training schools and other out-of-home care. Congress in 1988 recognized the importance of legal representation, but the Congressional mandate remains unfulfilled. Reauthorization should ensure that states guarantee a juvenile's right to counsel at every stage of the juvenile justice process. Juveniles should not be able to waive that right without first consulting counsel on the implications of waiver.

In sum, the Act should permit the flow of dollars only to those states that demonstrate adherence to the right-to-counsel mandate.

Juvenile Detention

The ABA supports reauthorization efforts that reduce unnecessary detention through the promotion of detention alternatives, that improve conditions of detention, and that prohibit secure detention of status offenders.

The ABA has long recognized the importance of limiting juveniles' entry into detention. The ABA Standards were designed to limit the discretion of those who decided whether juveniles should be detained. It was clear to the framers of the Standards that the best way to limit harm to

juveniles in detention is to keep juveniles out of detention in the first place.

The next best way to improve detention is by reducing juveniles' length of stay in detention facilities, i.e., speeding their transit to other destination points in the system. This will happen only if the rest of the system operates according to plan.

I have learned over many years that solutions to problems of detention often lie elsewhere in the pipeline; that as Patricia Wald (now a federal circuit judge) once said, "If the rest of the system behaves, [detention] should almost disappear... detention should not be, as it is now, the hidden closet for the skeletons of the rest of the system." I am reminded of my days as a basketball referee, when we were taught to take our eyes off the ball if we wanted to control the quality of the game, since it was away from the ball that real problems of game control occurred. In the juvenile justice system, it is important to look away from the detention portion of the pipeline to solve the problems of detention. Let me give a few examples.

Detention centers become overcrowded when detained juveniles are not brought to trial promptly. Trial delays delay the flow through the pipeline, and as more juveniles enter the system, and are detained, overcrowding occurs. There is an enormous difference between states that require a trial within ten days of detention and those that require trial within thirty days. The later requires a detention center three times as large as the former, for the same

number of youth. Thus, promoting speedy trials is one way to reduce detention center overcrowding.

Reducing lengths of stay in training schools is another way of reducing detention center overcrowding. Many states are experiencing overcrowded detention centers because the back end of the pipeline is also overcrowded. When youth are held longer in state training schools, those institutions have no room for incoming youth who have been tried and sentenced. The pipeline backs up. Detention centers experience a rise in the number of sentenced youth who are awaiting placement elsewhere. It is thus important to reduce institutional lengths of stay. This can be accomplished through greater emphasis on intensive parole, probation and aftercare services for youth coming out of training schools. It can also be accomplished with renewed emphasis on community-based programming -- alternatives to training schools -- that have long been at the heart of the formula grants to the states.

Similarly, as I mentioned earlier, guaranteeing a youth's right to counsel promotes the flow through the pipeline, and reduces burdens on detention centers.

Thus, the Act should provide incentives to states that develop a comprehensive, system-wide approach to reducing detention center overcrowding.

Reauthorization and Congressional Oversight

Historically, regardless of the political administration,

the implementation of the Act has been uneven at best. Congress itself has often been lax in holding the office accountable for waivers under the formula grant provisons of the Act, and for the ways in which the office has allocated and awarded its discretionary funds. I cannot overstate the importance of strict Congressional oversight of the Act and its implementation.

Congress, for example, could require the Administrator to approve outcome measures for each state, such as percentage reductions in youth held in training schools and detention centers, or percentage increases in youth representated by counsel at trial, or percentage reductions in length of time between arrest and trial. The Act might be structured to give states fiscal incentives when they reach those outcome measures. A system of incentives will make the Act's administration more business-like, and will encourage states to develop their plans more strategically.

In the end, it is important that Congress use some method of ensuring that the salutary purposes of the Act are undiluted during implementation. A faithfully implemented Act will further the important federal juvenile justice role. The ABA welcomes the opportunity to work with you in furthering these systemic goals.

The following "Recommendation" was approved by the American Bar Association House of Delegates at its February 1992 meeting as Association policy.

The accompanying "Report" is not Association policy, but serves to explain the policy expressed by the "Recommendation."

AMERICAN BAR ASSOCIATION

CRIMINAL JUSTICE SECTION

REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

BE IT RESOLVED, That the American Bar Association supports the reauthorization of the Juvenile Justice and Delinquency Prevention Act but urges that Congress conduct comprehensive public hearings to determine the effectiveness of the Act and to examine its future goals and objectives.

BE IT FURTHER RESOLVED, that in the event Congress decides to reauthorize the Act, any such reauthorization should include:

adherence to an unbiased, responsible agenda for research, development and demonstration programs; diversification of training; guarantees of juveniles' right to counsel; improvement of conditions of confinement; and a commitment to alternatives to confinement; a prohibition on secure confinement of status offenders; curtailing waivers for States and Territories which do not comply with the Act's objectives; and strict Congressional oversight of the Act and its implementation.

REPORT

This recommendation is based on the need for a meaningful federal role in improving the delivery of juvenile justice services in the United States. In particular, the recommendation seeks to ensure that the administration of federal juvenile justice policy protects the rights of juveniles, promotes family and community involvement in the rehabilitative process, and is subject to ongoing Congressional oversight to ensure that Congressional mandates are aggressively pursued.

In 1967 the United States Supreme Court recognized the rights of juveniles to fundamental fairness at trial. In re Gault, 387 U.S. 1 (1967). Subsequent cases expanded procedural protections for juveniles-- see, e.g., In re Winship, 397 U.S. 385 (1970)-- at the same time as the federal government turned its attention to reducing juvenile crime through intensive prevention and treatment programs. In 1974 Congress enacted the Juvenile Justice and Delinquency Prevention Act ("JJDPA" or "the Act"), 42 U.S.C. §§5601 et seq., which, inter alia, (a) established the Office of Juvenile Justice and Delinquency Prevention (OJJDP) in the Justice Department, (b) provided federal funds to states that provided procedural protections and ensured key substantive rights to juvenile offenders, and (c) authorized the Office of Juvenile Justice and Delinquency Prevention to make special emphasis treatment and prevention grants to further Congressional policy.

In passing JJDPA, Congress responded to "the bankruptcy of the juvenile justice system, which provides neither individualized justice nor effective help to juveniles or protection for communities." S. Rep. No. 95-165, 95th Cong., 1st Sess. (1977).

Association Policy

The American Bar Association has a historic commitment to the implementation of fair and effective juvenile justice systems. In 1979 the Association approved the twenty volume Juvenile Justice Standards of the Institute of Judicial Administration/American Bar Association (hereinafter "Standards"). In 1982 the Association's Criminal Justice Section established the Juvenile Justice Standards Implementation Project, now the Juvenile Justice Center, which continues to promote national adherence to the Standards.

The Standards stress the importance of the right to counsel and vigorous advocacy on behalf of juveniles; the imposition of the least restrictive alternative necessary to carry out the court's order of disposition (sentence); the importance of safe, caring environments in juvenile treatment facilities; and the focus of juvenile court jurisdiction on criminal misbehavior. The IJA/ABA Standards are consistent with other national standards, and with the policies that underpin JJDPA itself.

The Need for Increased Congressional Oversight

Prohibition on Secure Confinement of Status Offenders

JJDPA since 1974 has had an uneven history. The Act has led almost all states to remove "status offenders"-- juveniles who are involved in non-criminal misbehavior-- from secure institutions. More than half the states have complied with the Act by separating juveniles from adult offenders. About half the states have substantially complied with the Act's goal of removing juveniles from adult jails and lockups. These provisions are among the most important in the Act, and must be maintained.

Elimination of Waivers for Non-Compliance

At the same time, however, half the states have not substantially complied with the Act's goal of removing juveniles from jails, and many states have failed to separate juveniles and adult offenders. OJJDP's granting of waivers to states has delayed full compliance with the Act's 1974 goals. In the United States in 1988 almost 10,000 status offenders were held in secure facilities. Almost 20,000 juveniles were held in regular contact with incarcerated adults. Over 42,000 juveniles were held in adult jails and lockups. OJJDP: 1988 Summary of State Compliance with the Juvenile Justice and Delinquency Prevention Act. Even when states remove status offenders from secure facilities, many of these youngsters find themselves locked in psychiatric hospitals as the alternative. Weithorn, "Mental Hospitalization of Troublesome Youth: An Analysis of Skyrocketing Admission Rates," 40 Stanford L.Rev. 773 (1988).

Improving Conditions of Confinement and Developing Alternatives

In 1989 there were 1,100 public juvenile facilities in the United States. The average daily population in those facilities was over 54,000 juveniles. Sixty percent of juveniles held in public facilities belonged to racial or ethnic minorities. In addition, nearly all juveniles detained prior to trial for delinquent offenses were held in institutional settings, while three quarters of those committed for delinquent offenses after trial were placed in such settings. OJJDP: Public Juvenile Facilities, Children in Custody 1989.

Congress enacted JJDPA in part to improve conditions in institutional settings and to augment community-based alternatives to such settings. One of the long-standing findings of Congress is that "understaffed, overcrowded juvenile courts, probation services, and correctional facilities are not able to provide individualized justice or effective help" for juvenile offenders. Section 101(a)(2), 42 U.S.C. §5601(a)(2). Training schools across the country are overflowing, yet OJJDP has not fully pursued new technologies that would involve families more in treatment programs and reduce reliance on training schools. Programs such as Homebuilders, in New York City, are providing intensive supervision to juveniles, empowering parents to be active on their children's behalf, and reducing recidivism. These programs are generally operating without OJJDP support.

Responsible Research Agenda and Diversification of Training

Another important purpose of JJDPA is maintenance of a centralized research effort that results in the dissemination of research findings and juvenile justice data. Section 102(a)(4), 42 U.S.C. §5602(a)(4). However, OJJDP has been plagued by political considerations that have undermined implementation of the Act. In addition, OJJDP has not ensured that all components of the juvenile justice system -- e.g., prosecutors and defense attorneys -- have equal access to training provided pursuant to the Act.

Guaranteeing Juveniles' Right to Counsel

While OJJDP makes such discretionary grants, it ignores clear Congressional mandates. For example, the 1988 amendments to the Act included a mandate for "establishing or improving services to juveniles impacted by the juvenile justice system, including services which encourage the improvement of due process available to juveniles in the juvenile justice system, which improve the quality of legal representation of such juveniles, and which provide for the appointment of special advocates by courts for such juveniles." Section 261(a)(3), 42 U.S.C. §5665(a)(3). To date OJJDP has targeted resources solely towards volunteer lay advocate programs, but has ignored the importance of juveniles' rights to effective representation by counsel.

These omissions are occurring, 25 years after In re Gault, 387 U.S. 1 (1967) (guaranteeing juveniles' right to counsel at trial), when "in many states, less than half of all juveniles adjudicated delinquent receive the assistance of counsel to which they are constitutionally entitled..." Feld, "The Right to Counsel in Juvenile Court: Fulfilling Gault's Promise," p.3 (Center for the Study of Youth Policy, 1989). The failure to guarantee juveniles' right to counsel leaves unfilled the expectation of the Standards that all juveniles will have counsel, which "is essential to the administration of justice and to the fair and accurate resolution of issues at all stages..." Standards Relating to Counsel for Private Parties, 1.1.

Conclusion

An aggressive, well-targeted federal role can alleviate the problems with this nation's juvenile justice system. To date, that role has been diluted by inattention to the most serious problems in the system, and by political and ideological considerations. As a result, the salutary purposes of the Act-- which are consistent with the Juvenile Justice Standards and supported by the juvenile justice community-- are ignored.

JJDPA should be reauthorized only if Congress squarely addresses serious problems in the juvenile justice system, diligently oversees OJJDP operations, and ensures that OJJDP faithfully executes the letter and spirit of the law.

Respectfully submitted,

Andrew L. Sonner, Chairperson
Criminal Justice Section

February 1992

Senator KOHL. Thank you.

Both you, Mr. Schwartz, and you, Dr. Melton, make a very powerful case for improving our juvenile justice system. I think by inference you are saying it would be a terrible mistake just to throw the whole thing out, and proceed with these kids as if they were adults, and handle them in that fashion—that that would be going backwards.

We have heard that from several people today, in a very powerful fashion. Some of the arguments that we hear for the maintenance and improvement of the juvenile justice system are pretty convincing. Dr. Feld, how can you take the position that we ought to abolish the juvenile courts system?

Dr. FELD. I would like to suggest, Senator, that the problem of the juvenile court is not a problem of implementation, it is a problem in its conception; that what we have done in the juvenile court, and the judges who just preceded us described it—what we have done in the juvenile court is tried to combine social welfare and social control in one system. What happens when we try to combine social welfare and social control is that we inevitably subordinate considerations of welfare to considerations of control.

Providing for child welfare is not just a judicial responsibility, it is a societal responsibility. Senator Rockefeller last year was the chairman of the National Commission on Children, and they issued a wonderful report, "Beyond Rhetoric," which devoted many, many chapters to children's unmet health needs and children's nutrition needs, and family needs and tax policies.

They scarcely even adverted to juvenile courts in this whole volume, trying to take us beyond rhetoric in dealing with the issues of children, and the reality is that we need to do an enormous amount for children.

The problem of the juvenile court is that, rather than dealing with children who live in lousy neighborhoods, have inadequate families, go to lousy schools, have unmet health needs, the juvenile court has chosen to focus on the one aspect of children that is their fault, that they committed a crime.

As long as the system identifies children as the recipients for services on the basis of their least attractive characteristic, it inevitably reinforces the repressive, punitive policies that we see emerging very, very clearly—in changes in sentencing policy, in changes in waiver policy, and conditions of confinement institutions. It is built into the idea that the juvenile court is a welfare agency that can take care of kids, when it is a social responsibility.

Senator KOHL. Are you suggesting that the problem is at home, that parents have to do a better job?

Dr. FELD. Oh, parents have to do a better job, and communities——

Senator KOHL. But we know that.

Dr. FELD. Yes.

Senator KOHL. But we have these young people who get in trouble. Now, you are saying process them through adult court, is that correct?

Dr. FELD. Yes, I am saying that, and——

Senator KOHL. And handle them in essentially the same fashion.

Dr. FELD. No, I would add a couple of qualifications. I recognize that children are not as mature as adults. That means they are less criminally responsible, even when they engage in the same misconduct. What follows from that is that children, simply because they are less responsible, should get shorter sentences than adults who commit the same kind of offense.

I talk about this in other contexts—short sentences for short people.

Similarly, because children are less responsible, we should give them more procedural safeguards than we give adults, so that, as Mr. Schwartz was saying, the right to counsel attaches at the first contact, and stays with them throughout the process—that we provide more procedural safeguards.

It does not follow that, just because we do justice to kids, that we give them fair proceedings in open courtrooms with access to lawyers and juries and the like, that therefore we have to sentence them to the same institutions that we sentence all other offenders.

We happen to have right now age-segregated dispositional facilities. We call them training schools, we call them detention centers and the like.

All I am suggesting is, when we are dealing with people because they are offenders that we need to deal with them, out of respect for their personhood, as offenders, which means procedural safeguards, and then some, but what you do with them afterward—what you do with them afterward especially because they are young—imposes a greater responsibility on society, and does not mean just warehousing them in the way we do with our adult offenders.

Senator KOHL. So, you and the other two gentlemen fairly well agreed on the things that need to be done in dealing with young people, you are only suggesting that in order to accomplish those things, you don't have to start with the juvenile court, you can process it through an adult court, and get the same followup kinds of activity. Is that correct?

Dr. FELD. Yes, I am saying that.

Senator KOHL. And Mr. Schwartz, what is your response?

Mr. SCHWARTZ. Well, the ABA, as Judge Orlando mentioned, will be taking a look at that proposal later this year at our annual meeting. As a personal matter, I don't yet think that we need to scrap the design in order to add safeguards to it that Dr. Feld is talking about, although I agree with many of the underlying premises that lead to his conclusion.

There is an awful lot of harm done in the name of doing good in our business, and I think there are a number of checks and balances that need to be in place. Some of them were alluded to by Dr. Melton. For example, the ABA talks about the lawyering role as not only providing for procedural safeguards, but also providing an extra set of eyes on the system.

There is a monitoring function to what the lawyer does. There is a monitoring function to what ombudsmen do, and the ABA standards on monitoring provide for some opportunities there, as well.

There are program designs: many States have moved toward the program designs about which some of the judges referred earlier, and about which, I think, we have here some considerable agree-

ment—intensive home-based community programs, shorter term programs.

We brought a lawsuit in Philadelphia some years ago over high aftercare probation caseloads—those were the parole officers for kids—because the city had caseloads of up to 150 to 1. They were spending $40,000 to $50,000 a year for children in training schools, without planning for discharge, keeping them in longer, and then discharging them with no guidance whatsoever when they got out—an impossible system.

Our State advisory group in Pennsylvania has looked toward reinforcing, or changing, that system—improving the discharge planning and supervision. Lawyers, though, help make that happen. They bring to the attention of the court kids who are unnecessarily incarcerated, who are unnecessarily delayed in exiting the system, and provide information to decision makers when kids aren't getting what they need.

I like the idea of having specially trained judges to do that. I think that right now we have an excellent judiciary in Pennsylvania, by and large, but I also agree that the safeguards along the way need to be bolstered in a dramatic fashion.

Senator KOHL. Dr. Melton?

Dr. MELTON. Yes, I am not too far apart from Professor Feld, as you were suggesting, and my arguments for a juvenile court are, in effect, for a new juvenile court. We need to begin by determining the kinds of procedures that are functionally equivalent for juveniles to those of adults.

For example, what is the meaning of the right to trial by jury to juveniles as opposed to adults? What are the best ways of accommodating those interests, and of taking cognizance of the difficulties that youth have in knowing when and how to exercise rights, and building a court that protects children in the face of those difficulties?

I am not confident that the criminal court is in a position to make those kind of accommodations. I really think that we need a separate system, although I also agree with Professor Feld that the juvenile court has been remarkably resilient in the face of criticism over a period of decades. Much of what needs to be done to meet the demands of justice is to create a new court. To do so, we need to build a new knowledge base not only for court administrators and other policy makers, but also for lawyers, so that they are able better to represent youth.

In terms of the dispositional side of things, I would like to see courts get out of the business of being social welfare agencies, too. I work as a consultant in some communities where the juvenile court is the first line of service.

For example, in one community where I consult there are more than twice as many kids in the juvenile court system than there are in the outpatient services of all the mental health centers in that area combined, and that simply doesn't make sense. Courts are not well equipped to run social services; they are well equipped to administer justice.

The place where the two meet, it seems to me, is that courts are in a good position to take on a monitoring, advocacy, and oversight role, as Mr. Schwartz was implying. Such scrutiny is especially im-

portant for the youth and families who come before the court itself, given the severity of the problems that they often present.

Senator KOHL. Is it a fair statement that—you all agree that every young person coming through the system needs to have counsel?

[Nods of agreement.]

Senator KOHL. And if we could accomplish at least that much, or, at a minimum, that much in our reauthorization, that would be something of value?

Mr. SCHWARTZ. Yes.

Dr. MELTON. Mr. Chairman, I certainly agree with that. I also wouldn't stop there.

Senator KOHL. No, of course not.

Dr. MELTON. In the sense that, as I was suggesting, juvenile justice is not the only place in the legal system that we have a real dearth of representation.

Just to give an example, even though the Child Abuse Prevention and Treatment Act requires States to provide for guardians ad litem for youth in abuse and neglect proceedings, representation for parents then is a problem, as Judge Mitchell was indicating.

The few studies that there are on what guardians ad litem in fact do, suggest that many of them don't know what they ought to be doing, both in that context and in divorce.

Just to give an example, in some of the studies that have been done, over half of the guardians ad litem have never even talked to the children that they represent. I cannot see how an attorney can represent a child whom he or she has never met.

We really need to bolster the knowledge base and to develop the training and the models necessary for representation for children in a whole variety of contexts.

Mr. SCHWARTZ. I agree with that, Senator, but I would qualify it in this way, that for purposes of this act, and reauthorization, there ought to be a very clear focus on the juvenile justice system. That was an intent of Congress in 1988, in putting an emphasis on advocacy, and the right to counsel.

From the ABA's perspective, it has been unfortunate that there has been a great deal of discretionary money diverted from the juvenile system to some of the guardian ad litem programs that deal with abused and neglected children, all of which is extremely worthwhile, in its own right, but, out of a limited pool of dollars, is not particularly helpful to those charged with delinquent acts or crimes.

I have just one other little anecdote—I am thinking of an appearance I had in western Pennsylvania some years back, where there wasn't a lawyer for a child, and where the probation officer, who had been supervising a child, came in to talk to the judge beforehand in what I thought was an extremely inappropriate way. I was a visitor, so I didn't have much to say.

The probation officer came to say, "Johnny has really not been doing well, and his parents are alcoholics; he hasn't committed any new offenses, but I want to send him away, Judge, and I wanted you to know that he is not happy about that, but I think you ought to do it anyway." The judge said, "Okay, fine, I know what you want to do, now go out and bring them in."

The probation officer goes out, brings the family in and the boy in, and the probation officer does a much less direct statement of what he wants the judge to do—"I'm inclined to think that substitute care might be necessary in this case because of maladaptive behavior," and he goes through the rigmarole.

The judge is about to send Johnny away to a training school, when it suddenly occurs to him that maybe the process is unfair, so he says, "Johnny, I'm about to send you away, but I'm thinking maybe I ought to appoint a lawyer for you, because I wouldn't want you to think that I was railroading you."

And the boy said, "Judge, do you mean you could railroad me if I didn't have a lawyer?" The judge said, "Johnny, I can railroad you whether or not you have a lawyer."

I think where that judge was wrong is that the chances of it happening are less when there is competent counsel, who know what the situation is, who is in the room when all of those discussions are taking place, and who knows what alternative options are, and that is the importance of what we are bringing to you this morning.

Senator KOHL. Thank you.

Dr. FELD. If I could amplify, one of the crucial roles that counsel plays in juvenile court is simply the ability to make a record, so that those kinds of proceedings are laid bare for purposes of appellate court review.

One of the reasons that so many people are concerned about juvenile justice now is, by and large we don't know much—I mean, the public at large doesn't know much about what goes on in those closed proceedings, and they show up as appellate court cases very infrequently, because the lawyers aren't there in the first instance to make the records that appellate courts are then in a position to review.

One of the very, very important functions that mandatory representation would provide is to make the record that would provide a mechanism for appellate court supervision, so that over the course of time we could begin to develop a body of juvenile court law, that then would provide an additional framework to regularize judicial decisionmaking within the juvenile court context.

Because, even now we see appellate court judges saying in opinions, that juvenile court cases come to them much more ridden with procedural and substantive errors, because they are taking place in closed proceedings, to which there is very little oversight.

I would also want to emphasize, in talking about mandatory appointment of counsel, that one of the areas that I adverted to slightly is this issue of status offenders and representation for status offenders, because the Supreme Court in *Gault* focused primarily on juveniles charged with crimes, and many States have read *Gault* as not providing counsel for status offenders.

In fact, in the research that I did, it shows up that status offenders, by and large, have lower rates of representation, even than the many unrepresented delinquent offenders. Those unrepresented status adjudications come back to haunt juveniles when they run away, when they are in contempt of court, when they are in violation of a valid court order—the 1980 amendments to the JJDP Act.

And it is possible for those status offenders to be bootstrapped into delinquency as a result of this contempt/valid court order provision, without ever having had a lawyer at the original adjudication that gave the court jurisdiction over them at all. And this is another of those instances of enhancement of sentences, based on prior, uncounseled convictions.

Senator KOHL. Thank you, gentlemen. You have been very, very helpful, and we would like to have the opportunity to use your experience and your judgment as we move to reauthorization. We will be in touch, and we appreciate your coming. Thank you so much.

Dr. MELTON. Thank you.

Senator KOHL. We have one additional panel, which is our third panel. This panel includes juvenile justice practitioners and advisors.

I would like to ask David Reiser and Chris Baird to come to the witness table.

Mr. Reiser is special litigation counsel for the District of Columbia's Public Defender Service, one of the finest in the Nation. Mr. Reiser recently took a sabbatical to do more in-depth research on the juvenile justice system, and we look forward to his recommendations, which will combine both practice and theory.

Chris Baird is a fellow Wisconsonite. He is a resident of Madison; he is senior vice president for the National Council on Crime and Delinquency. Last year, Chris Baird joined me in visiting Milwaukee's Children's Court and Detention Center; he recently completed a report for Milwaukee County, detailing ways to cut down the overcrowding which we saw in its detention center.

We are very pleased to have you both here, gentlemen. And to leave time enough for questions and answers, we request that you hold your statement down to 5 minutes, and your written testimony will be included in the record in its entirety.

Mr. Reiser?

THIRD PANEL: PRACTITIONERS

PANEL CONSISTING OF DAVID REISER, ESQ., PUBLIC DEFENDER SERVICE, DISTRICT OF COLUMBIA; AND CHRISTOPHER BAIRD, SENIOR VICE PRESIDENT, NATIONAL COUNCIL ON CRIME AND DELINQUENCY, MADISON, WI

STATEMENT OF DAVID REISER

Mr. REISER. Thank you, Senator.

I am going to be very brief. I have three things to say. The first is to issue an invitation, and the invitation is to go down five or six blocks to 500 Indiana Avenue, to see how the juvenile court operates here in the District of Columbia.

I don't think we have a problem with the representation by counsel, although not every lawyer is as good as we would like, but I think it would be instructive to see how the court operates. But I think there are two more important places to visit, and I disagree with Judge Mitchell about this.

One of the places that you or your staff needs to see is the Children's Center in Laurel, MD, because that is where the pipeline of the District of Columbia system ends up.

The second place that needs to be visited are the homes that these children are coming from. It is impossible to understand the juvenile court or the Children's Center without understanding Valley Green and Trinidad and Park Morton, and hundreds of other places in the city that I could tell you about.

I wouldn't suggest going at night, and I wouldn't suggest going without some company, but I would be happy to take you there.

The second thing I would like to say is to issue a plea. I think Judge Orlando mentioned the idea that not everybody knows enough about what good ideas exist, across the country, for dealing with juveniles, although very well-informed judges know we have good ways of solving the problems.

My plea is to make the District of Columbia a model for the country, because anything that can work here, with one of the most deprived populations in the country, can be a model that will be instantly recognized and accepted around the country.

What we have here is a system which is physically and intellectually bankrupt, and we have initiatives which are moving in exactly the wrong direction. The legislation that has been proposed in the District of Columbia is about to do exactly what everybody who sat in this room today has told you not to do—to increase prosecution of juveniles, not just for serious violent offenses, but for any felony—to prosecute those young people as adults, while the record demonstrates conclusively that the District, over the last 10 years, and maybe even longer, has done nothing to try and address their needs.

I urge you, Senator—and I know that appropriations are beyond the jurisdiction of this subcommittee, but it is my only chance to talk to you—I urge the Senate to recognize that the problems that are reflected in the violence on Capitol Hill, which I know that the Members of Congress know acutely, is not going to be solved just by preventive detention or incarceration, or by the death penalty.

It is going to be solved by dealing with the 12- and 13- and 14-year-olds who are even now heading into the juvenile court for the first time.

The third thing I wanted to say is to tell you a story, and it is a story about a young woman who I represented about 3 years ago. She came in because she was arrested for armed robbery, and that sounds very, very serious. What it really boiled down to was that she had borrowed an imitation pistol that her mother kept around, she walked into a dry cleaners where she had gotten money before, and stuck the dry cleaner up for 89 cents, is what she asked for, to buy a jar of olives.

The dry cleaner had some karate experience, and knocked the gun out of her hand, and she was later arrested. That is a very serious crime, and this girl had terribly serious problems. She was involved in drug dealing—she had been a lookout for drug dealers since she was 10 or 11.

But you need to understand, Senator, how she got there. She got there because she had an alcoholic, physically abusive mother, she was sexually abused as a child. Her little brother, who was 6

months old, had been diagnosed as having fetal alcohol syndrome, but nothing was being done for that family.

And I want to echo something that a number of people said, which is that services have to be delivered on the basis of families, not just on the basis of juveniles.

I have 40 pages of testimony. I hope you will read it.

Thank you.

[The prepared statement of Mr. Reiser follows:]

Testimony of David A. Reiser
Special Litigation Counsel, Public Defender Service for the District of Columbia

Summary

1. The Current State of Juvenile Justice in the District.

· Mayor Kelly aptly used the term "warehouse" to describe the District's three secure juvenile facilities.[1] Although the District's system is premised upon providing parental "care and rehabilitation," it fails to educate, to protect, and to improve the young people in its custody.

· The District agreed in 1986 to a comprehensive plan to improve its juvenile justice system in a way that would be consistent with the requirements of the District of Columbia Code and the expectations of the federal Juvenile Justice and Delinquency Prevention Act. Neither the resources, nor the commitment to carry out this plan have been in evidence.

2. Proposals for Changes in the District's System.

· The Mayor has introduced a wide-ranging initiative, which contains many positive elements, but also many negative ones. The positive features include an increase in the use of diversion and early interventions with "at risk" youth. The negative features include the wholesale prosecution of juveniles as young as fourteen as adults, including youngsters charged with non-violent felonies (such as "joyriding," unauthorized use of a vehicle). Although billed as a $30 million dollar program, there is little evidence of new resources. Another proposal, the "Violent Youth Rehabilitation Act," would violate the JJDPA by incarcerating juveniles in adult prisons, and generally loosens standards for prosecuting kids as adults.

[1] The Mayor used this phrase in her televised speech on November 26, 1991 announcing her anti-crime initiative. "Address By Mayor Sharon Pratt Dixon: A New Start: A War of Values to Save Our Children," at 5.

3. What Should be Done.

· The problems of the District of Columbia are characteristic of our nation's inner cities. Chronic youth unemployment, social isolation, and pervasive hopelessness foster aggression and a sense of "nothing to lose." Too many children are growing up exposed to drugs and violence in the home. The children entering the juvenile courts are from the same neighborhoods, and share the same needs and vulnerabilities of "at risk" children generally.

· Earlier and more intensive interventions with "at risk" children are needed. These services must reach the entire family, and they must cut across traditional social service agency lines to meet the real needs of the children and the family. Services should be accessible and neighborhood based. There is overwhelming evidence that children respond to "labelling." Those who are proclaimed to be criminals early in life are much more likely to adopt criminal attitudes and to follow criminal careers. "The best predictor of intention to avoid crime [is] a self image as a good citizen."[2] Interventions must therefore bolster self images and avoid condemning young people.

· Special programs need to be created for violent juvenile offenders. These programs must be small, and tailored to the needs of the particular group. For example, sex offenders by and large have different treatment needs than chronically violent juveniles. Community protection through these programs is "a function of people, not locks; of programs, not hardware."[3]

· Non-violent offenders should be placed in less secure facilities and community

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[2] ANNE L. SCHNEIDER, DETERRENCE AND JUVENILE CRIME: RESULTS FROM A NATIONAL POLICY EXPERIMENT (1990) 61.

[3] R. Coates, "Appropriate Alternatives for the Violent Juvenile Offender," in ROBERT MATHIAS, PAUL DEMURO & RICHARD ALLINSON, EDS. VIOLENT JUVENILE OFFENDERS: AN ANTHOLOGY (1984) 182.

programs which are better able to reintegrate them into a law abiding life in the community.

· The District of Columbia's juvenile justice system can and should be a model for the rest of the country. It should receive special attention and support from the federal government. It does no good to commit federal resources to the drug war in the District of Columbia if we ignore the desperate needs of young people growing up in chronic poverty without adequate family support. Programs which succeed here will be highly visible, and therefore particularly likely to influence juvenile justice reforms elsewhere. Congress should appropriate funds to make improvements in the District's juvenile justice system possible.[4]

[4] I recognize that appropriations are beyond the jurisdiction of the Subcommittee, however they are needed to accomplish meaningful improvements in the District's system.

Mr. Chairman, members of the Subcommittee, I welcome this opportunity to discuss the important topic of juvenile detention and, in particular, the deplorable state of affairs here in the District of Columbia.[5] I think it is appropriate to focus on the nation's capital for three reasons. First, the conditions here in Washington are a portrait in miniature of problems which exist across the country. Improvements in the quality of juvenile justice here can serve as a beacon to local and state governments throughout the land. Second, Congress has a special role to play because of its plenary legislative authority over the District and its continuing review of locally initiated legislation. Third, the need for reform here in Washington is desperate. We have too long accepted a juvenile justice system here which does not improve the young people who fall under its jurisdiction, and which therefore does not protect the community. The District has the highest rates of incarceration for both juveniles and adults in the country, yet no one would claim its streets are safer.

I want to begin today by providing the Subcommittee with some information about what is happening in the secure juvenile institutions operated by the District. Then, I would like to discuss some of the proposals which have recently been introduced to change the system. Finally, I would like to offer some concrete suggestions for action Congress could take now to make our city safer and to make

[5] J.D., Yale Law School, 1981; B.A., Yale College, 1977. I currently hold the position of Special Litigation Counsel of the Public Defender Service for the District of Columbia, an agency established by Congress to provide legal assistance to indigent persons in the local and federal courts of the District. D.C. Code § 1-2701 et seq. Since 1988 I have participated in the representation of the plaintiff class in Jerry M. v. District of Columbia, Civ. No. 1519-85. The Jerry M. litigation is briefly described below. In addition, I have represented many juveniles in trial and appellate proceedings and I have supervised a number of colleagues in delinquency proceedings in the Family Division of the Superior Court. While my testimony reflects these experiences as a public defender, the opinions I have expressed are my own, rather than necessarily those of the agency.

Washington a "model[] for the rest of the country."[6]

I

The Current State of Juvenile Justice
in the District of Columbia

Congress erected the framework of the District of Columbia's juvenile justice system in 1970 as part of the Court Reform and Criminal Procedure Act, Pub. L. 91-358, 84 Stat. 473. See generally Lawton, "Juvenile Proceedings -- The New Look," 20 AM. U. L. REV. 342 (1971). The purpose of the juvenile court is to provide "supervision, care, and rehabilitation" for delinquent children. D.C. Code § 16-2320(c); In re McP., 514 A.2d 446 (D.C. 1986). The court's objective is to provide "care, custody and discipline" as near as possible to that which the child's "parents should have provided." Juvenile Rule 2.[7] But from the beginning, reality has collided with these parental aspirations.

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[6] A few years ago, I came across a diary entry written by then first lady Eleanor Roosevelt after a visit to a D.C. juvenile facility:

> I have often said that I thought the District of Columbia should not only stand out for the beauty of public buildings but that its public institutions should be models for the rest of the country. I would, however, be ashamed to have anyone visit the District of Columbia Training School for Delinquent Girls.
>
> Never have I seen an institution called a school which had so little claim to that name. Buildings are unfit for habitation -- badly heated, rat-infested with inadequate sanitary facilities. Children are walled in like prisoners, in spite of ample grounds and beautiful views.
>
> The girls are without an educational program or a teacher. There is no psychiatrist to examine and advise on the treatment of these unfortunate children, who at an early age have found the social conditions of the world too much to cope with. There is practically nothing but incarceration for the juvenile delinquent.

May 8, 1934 (emphasis added). Much the same could be said about the District's juvenile facilities nearly sixty years later.

[7] This mandate derives from the model juvenile court statute adopted in Illinois in 1899. ROBERT MENNEL, THORNS AND THISTLES: JUVENILE DELINQUENCY IN THE UNITED STATES 1825-1940 (1973) 127-132; Fox, "Juvenile Justice Reform: An Historical Perspective," 22 STAN. L. REV. 1187, 1210-1230 (1970); Schultz, "The Cycle of Juvenile Court History," in H. TED RUBIN, ED., JUVENILES IN JUSTICE: A BOOK OF READINGS (1980) 3-4.

Only a few months after passage of the Act, then Chief Judge Harold Greene of the District of Columbia Court of General Sessions issued an opinion in In re Savoy, Nos. 70-4808, 70-4714 (October 13, 1970), reprinted in 98 D.W.L.R. 1937, 1943 (1970), holding that the Receiving Home for Children located in Northeast Washington was not a suitable facility for detaining children and forbidding detention of any child at the Receiving Home after October 13, 1972. He quoted the D.C. Crime Commission's 1966 report calling the Receiving Home "poorly designed and functionally obsolete." Judge Greene also referred to a 1968 letter by then-Mayor Walter Washington calling for a new facility to replace the "wholly inadequate Receiving Home," and a 1970 report by the National Council on Crime and Delinquency describing the Receiving Home as "an excellent example of how not to design a detention facility." This facility, now two decades past obsolesence, is not only still in use, it is chronically and dangerously overcrowded. The Receiving Home is an enduring symbol of neglect and inertia.

It may be of particular concern to the Subcommittee, which has oversight responsibility over the Juvenile Justice and Delinquency Prevention Act,[8] that one of the reasons the Receiving Home is overcrowded[9] is that it has become the dumping ground for children who do not belong in a facility for delinquents, but for whom the

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[8] Pub. L. 93-415, 88 Stat. 1109 (1974), amended Pub. L. 96-509, 94 Stat. 2750 (1980). The Act declares the policy of Congress to be: "to provide the necessary resources, leadership and coordination (1) to develop and implement effective methods of preventing and reducing juvenile delinquency, including methods with a special focus on maintaining and strengthening the family unit so that juveniles may be retained in their homes; (2) to develop and conduct effective programs to prevent delinquency, to divert juveniles from the traditional juvenile justice system and to provide citically needed alternatives to institutionalization; (3) to improve the quality of juvenile justice in the United States; and (4) to increase the capacity of State and local governments and public and private agencies to conduct effective juvenile justice and delinquency prevention and rehabilitation programs and to provide research, evaluation, and training services in the field of juvenile delinquency prevention." 42 U.S.C. § 5602(b).

[9] Most of the more than $200,000 in fines paid by the District government because of institutional overcrowding is due to overcrowding at the Receiving Home. Nineteenth Report of the Monitor, Jerry M. v. D.C., Civ. No. 1519-85 (Dec. 20, 1991) at 4,6.

District of Columbia has provided no other housing.[10] The population at the Receiving Home on any given day is likely to include "PINS" children and children who are neglected, but who have absconded from non-secure facilities, in violation of the funding requirements of the JJDPA.[11] Because these children are housed at the Receiving Home, there is less space available for younger and more vulnerable delinquent children, who are consequently sent out to the "Children's Center" facilities in Laurel, Maryland.

In 1978, Judge Gladys Kessler of the Superior Court issued a "comprehensive order mandating sweeping changes in the internal operation of the Children's Center," In re: An Inquiry into Allegations of Misconduct Against Juveniles Detained at and Committed at Cedar Knoll, 430 A.2d 1087 (D.C. 1981). Judge Kessler's order was the product of an investigation she conducted into allegations of mistreatment of juveniles detained or committed to the Children's Center which came to her attention as the presiding judge in the "new referrals" courtroom. She initiated the investigation because, "[i]f there is validity to what, at this point, are still unsworn and unproven charges, then the horror of what is happening to children at Cedar Knoll is almost beyond belief." After a full hearing, Judge Kessler issued an order,

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[10] The District relied upon neccessity arguments to justify its incarceration of a "PINS" child at the Receiving Home. In re: H.L., No. 90-787, (D.C. Nov. 20, 1991), pet. for reh. pending.

[11] The JJDPA requires States receiving federal JJDPA funding to implement plans which "provide within three years after the submission of the initial plan that juveniles who are charged with or who have committed offenses that would not be criminal if committed by an adult or offenses which do not constitute violations of valid court orders, or such nonoffenders as dependent or neglected children, shall not be placed in secure detention facilities or secure correctional facilities." 42 U.S.C. § 5633(a)(12)(A). In its response to the petition for rehearing in H.L., the District did not dispute that housing neglected children and status offenders at the Receiving Home violates the JJDPA. See H.R. Rep. 96-946, reprinted in 1980 U.S. Code Cong. & Admin. News 6098, 6111; 45 Fed. Reg. 54194 (Aug. 14, 1980)(criteria for compliance with deinstitutionalization requirements of JJDPA); Department of Justice, Office of Juvenile Justice and Delinquency Prevention, Policy No. 89-1201 (April 1989); Policy No. 89-1204 (April 1989).

requiring, among other things, procedures for monitoring physical abuse of residents by staff, adequate staffing, adequate staff training, and the creation of a treatment plan for each detained or committed delinquent. The D.C. Court of Appeals reversed Judge Kessler's order in 1981 because, it concluded, she lacked the jurisdiction to issue such a broad remedial order on the basis of her jurisdiction over four individuals confined at the Children's Center but who were subsequently released, and because she had not even attempted to comply with the class certification requirements of Civil Rule 23.

Conditions at the Children's Center did not improve. In 1985 the Public Defender Service and the ACLU National Prison Project filed a class action lawsuit on behalf of children confined at Oak Hill, Cedar Knoll, and the Receiving Home, asserting violations of their constitutional and statutory rights to adequate and humane treatment. Jerry M. et al., v. District of Columbia, et al., Civ. No. 1519-85. The District settled this lawsuit on July 24, 1986 by entering into a consent decree. The Jerry M. consent decree establishes a blueprint for an effective juvenile justice system. It recognizes the community's interest in securely confining chronic and dangerous offenders, while at the same time establishing community-based placements for most delinquents. More than five years later, after countless court hearings, contempt citations, and nearly three quarters of a million dollars in fines, the juvenile justice system described in the Jerry M. decree still exists only on paper.

Time and space do not permit a full accounting of the deficencies of the District's juvenile justice system. The principal failings include:

· the failure to provide adequate community follow-up after release. Common sense and numerous studies have shown that continuing intervention, supervision and

support in the community after release is important.[12] The high recidivism rates for juvenile offenders in the District can be traced, in part, to the failure of the Youth Services Administration adequately to plan for release and to establish a support network for released youth. In part, this a reflection of the dearth of community-based programs operated by the District, but it is also a reflection of a lack of coordination between the institutions and the social workers responsible for "aftercare." Although this problem was to be remedied by a comprehensive case management system,[13] under which each child would be assigned a case manager who would be responsible for his or her treatment from institution to community placement, implementation of case management has been hampered by staff shortages and lack of direction.

· failure to provide family-based treatment. For similar reasons, the District has been slow to adopt the model of family based intervention which has been used successfully elsewhere. By way of illustration, the plan for community based treatment developed pursuant to the Jerry M. consent decree requires the District to

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[12] See e.g., Fagan, Rudman & Hartstone, "Intervening with Violent Juvenile Offenders: A Community Reintegration Model," in VJO 207-230; Goins, "Letter to a Director of Corrections: implementing a Program for Serious/Violent Offenders," id. 243-252; Lindgren, "Continuous Case-Management with Violent Juvenile Offenders," id. 255-271; Altschuler, "Community Reintegration in Juvenile Offender Programming," 365-375.

[13] The Consent Decree established a panel of three experts to design a comprehensive network of community based programs based upon an assessment of the District's juvenile delinquents and their needs. The Court initially approved the Panel's plan in October 1987, Memorandum Order "A", and reapproved the plan with slight modifications and extended deadlines for compliance in May 1988, Memorandum Order "B". Although successive administrators have reaffirmed their commitment to implementation of Order B, there is little evidence of progress. In 1990 the District of Columbia Court of Appeals upheld contempt findings against the District, and agreed "the record fully supports the trial judge's finding ... that the District had ample time and opportunity over a three year period to develop new detention and commitment alternatives." District of Columbia v. Jerry M., 571 A.2d 178, 188 (D.C. 1990). Notwithstanding this finding, and the affirmance of the trial court's remedial order, the trial judge rejected the District's claim that it had made "aggressive, conscientious and good faith efforts" to comply. "To the contrary, the adjectives which best describe the defendants' approach are derelict, unconscionable, and disobedient." Memorandum Order "J", # 110 at 50 (filed Aug. 21. 1991).

establish a community program for children from 75 substance abusing families. This program recognizes the devastating effect of parental alcohol or drug abuse on the entire family. It was intended to break the often-repeated cycle of dependency upon drugs or alcohol, and to alleviate the conditions which frequently drive youngsters out of the family home. The original implementation date for this program was April 1, 1989. Yet nearly three years later, the program is nowhere in sight. Many of the juvenile offenders in the District's institutions leave them only to re-enter the same debilitating family environments which contributed to their earlier delinquency. Without interventions which address problems shared by the entire family, successful rehabilitation of many of these youngsters is impossible. Ironically, the institutions further undermine family ties by forbidding all visits by siblings between thirteen and twenty one. Even a sister who has been a primary caretaker cannot visit her brother without a court order. This policy violates the consent decree, but it has not been changed.

· the failure to separate serious and violent offenders from detainees and less serious offenders. At all three secure institutions, detainees and committed youths are housed together. Current District of Columbia law forbids a child to be detained before trial "if it would result in his commingling with children who have been adjudicated delinquent and committed by order of the [Family] Division," unless authorized by the court. D.C. Code § 16-2313(b). Nevertheless, commingling is pervasive. In addition, the District has elected not to implement a proposal to establish smaller, decentralized secure facilities for violent and chronic offenders.[14]

[14] The Panel created by the Consent Decree proposed establishing small decentralized facilities for serious and violent offenders. The District appealed this portion of the plan as beyond the Panel's mandate to devise community-based alternatives to institutional confinement. The Court of Appeals agreed this was beyond the Panel's jurisdiction. District of Columbia v. Jerry M., 571 A.2d at 189.

Consequently, these juveniles are housed in the same facilities as thirteen year old first offenders arrested for joyriding or theft. This commingling interferes with rehabilitation in two ways. First, it makes it harder to develop and to implement programs tailored to the needs of serious offenders, such as youngsters with a history of sex offenses or violence.[15] Second, it allows older, more savvy, and hardened residents to serve as role models and leaders within the institution.[16] This undermines the social learning efforts of staff to promote respect for the law.

· the failure to educate. Many of the children who come before the Family Division of the Superior Court rarely attend school. Many of those who do, perform poorly and devote little attention to their studies. Yet, when presented with a captive audience, many of whom are eager to attend classes, if only as a break in routine, the District has failed to provide an adequate education. Over the years school time has been lost because of teacher absences, the lack of substitute teachers, and staff shortages which keep the residents confined in their cottages. Even when school is held, the educational program is defective. Ability grouping is rudimentary. There are no special programs for detainees, who should be evaluated and given special short-term school programs designed to get them back into school upon release. Screening and special education classes are inadequate. Despite repeated recommendations and evaluations, the District has not developed a comprehensive pre-vocational and vocational program for youngsters in its custody. More than three years ago, at the beginning of the 1988 school year, our office challenged the

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[15] Different types of offenders tend to have different treatment needs. See, e.g., Lane & Zamora, "A Method for Treating the Adolescent Sex Offender," VJO 347-364; Agee & McWilliams, "The Role of Group Therapy and the Therapeutic Community in Treating the Violent Juvenile Offender," id. 283-295; Hartstone & Coccozza, "Providing Services to the Mentally Ill, Violent Juvenile Offender," id. 157-173.

[16] See JEROME S. STUMPHAUZER, HELPING DELINQUENTS CHANGE: A TREATMENT MANUAL OF SOCIAL LEARNING APPROACHES (1986) 4-5, 72

District's violation of the educational provisions of the consent decree. Several plans and promises later, the school system remains in disarray. In August of last year, the judge in the Jerry M. case wrote, "nothing in the record of this case indicates that defendants have made the effort necessary to equip YSA residents with the educational or vocational skills they need so desperately." Memorandum Order "K" (filed August 21, 1991).

· the failure to provide adequate living conditions. Many of the young people in the District's secure facilities are products of its decaying public housing. The District houses them in three institutions, each of which suffers from major physical defects. The buildings at Cedar Knoll are outdated. They have leaks,[17] no

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[17] The Court-appointed Monitor wrote in his most recent report:

> Maintenance at the institutions continues to present serious problems at the three institutions, particularly Cedar Knoll. YSA administrators increasingly must resort to private contractors if tolerable living conditions for residents are to be maintained. At the beginning of the summer, almost without exception, air conditioners in the living units at Oak Hill were non- or barely-functional. Institutional administrators said that, beginning in early spring, they had pleaded for air conditioners to be repaired or replaced before summer, but that their pleas went unanswered. On July 16 counsel toured the facilities and confirmed the presence of non-working equipment. The temperature in the residents' rooms was well above the maximum of 80 degrees specified in the Consent Decree. Within a week, existing air conditioners had been repaired, broken or missing units had been replaced, and fans had been acquired for each of the units.
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> The problems of general maintenance are no nearer being solved than at the beginning of the monitorship. For example, the Monitor's ninth report, issued in March 1989, described three leaking rooms in Bunche Cottage at Cedar Knoll, which could not be used in snowy or rainy weather. Today the situation is unchanged except that, as is the case whenever leaks are not corrected, it has grown worse. Four rooms were described as "like living under a waterfall," and three more should not be used in cold weather.

Nineteenth Report at 17-18. The Newly appointed Administrator of YSA finally closed Bunche Cottage in February 1992.

ventilation, and inadequate heating and cooling. Some of the cottages at Cedar Knoll have been periodically infested with vermin, including snakes. Oak Hill is more modern, but the heating and cooling systems do not work, so that residents swelter or freeze with the season. These living conditions promote tension and violence in the institutions. Moreover, they undermine any hope that the residents will perceive their confinement as benign or paternal. Conditions are aggravated by frequent lockdowns, leaving youngsters confined in their rooms with nothing do because there aren't enough staff to provide security with residents out of their rooms.

· the failure to provide a safe environment. Two of the gravest risks for young people in confinement are physical abuse by staff and suicide. So far, the District has not appropriately dealt with either problem. A suicide in May of 1989 sparked an investigation which linked the suicide to inadequate staffing and a failure to identify the child as a suicide risk despite a history of depression and suicidal gestures. The District government recently settled a lawsuit with his estate.[18] Although the District has finally drawn up a suicide prevention plan after long delay, full implementation of that plan will not take place until more psychologists can be hired to screen and monitor youths at risk of suicide. Since the suicide in May of 1989, another youth killed himself and there have been several other attempts.[19]

Another investigation, this one of physical abuse by staff, led to a 100 page report and recommendation by the court-appointed Special Master. He found that children in YSA custody "are housed in institutions in which lawless behavior by those

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[18] Howard, "Settlement Set in Cedar Knoll Suicide: D.C. to Pay $150,000 to Woman Whose Son's Threat Went Unheeded," Washington Post, Nov. 19, 1991 A11.

[19] In August of last year the court issued an order requiring full implementation of the suicide prevention plan by October 15, 1991. Memorandum Order "M," (filed Aug. 22, 1991). The Monitor's most recent report expressed "some unresolved questions regarding whether the [District's] status report indicates compliance with the Court's orders on suicide prevention." Nineteenth Report at 11 n.6.

responsible for caring for, and protecting, them is tolerated." In re: Staff Physical Abuse, Jerry M. v. District of Columbia (proposed findings of fact, conclusions of law and remedial order filed July 24, 1991) at 2. The Special Master found that one staff member at the Receiving Home had never been disciplined for repeated assaults on residents, including a girl and a fourteen year old who weighed less than 100 pounds. Other staff members concealed evidence that he inflicted injuries which put another youth in D.C. General Hospital. The District still lacks a meaningful system for detecting abuse when it occurs, for disciplining staff who commit abuse, and for training staff to prevent abuse. Recently, three staff members were reassigned to positions which involve no contact with youngsters because of abuse charges. But this reassignment came only after judicial action loomed.

· the failure to place youngsters in programs and facilities tailored to their needs. One of the systemic problems in the District of Columbia is the absence of community-based alternatives to the secure institutions. A panel of experts, including one selected by the District, thinks that only 102 secure beds are needed. At present, there are about four hundred. The lack of options hampers judges, who cannot place kids in programs that do not exist. In addition, even when judges specifically designate community facilities, such as shelter houses or group homes, youngsters may wait weeks or months for bed space. The District has paid nearly a half million dollars in fines because of delays in shelter house and group home placements, yet they persist. For many children with serious learning disabilities or emotional problems, placement in special residential programs is the best answer. Yet, many of the youths ordered into residential programs by judges languish for months in a secure facility because of bureaucratic delays in placement. Since these youths are supposed to go elsewhere, treatment plans are not developed while they remain in the institutions. These especially needy youths are simply warehoused until

they are, in due course, placed.

II

Current Proposals for Change

As everyone who lives in the metropolitan D.C. area knows, we are in the midst of an upsurge in serious crimes of violence by young people. In my judgment, this increase flows from the confluence of four factors: (1) demographic trends which reflect an increase in the adolescent population;[20] (2) the recruitment of many youngsters as drug dealers and lookouts following the enactment of mandatory minimum penalties for adults in 1983; statistcally, the increase in juvenile drug arrests coincides with the enforcement of the mandatory minimums; (3) the easy availability of guns in the area despite strict local gun control; and (4) the collapse of the social structure of impoverished communities in the city;[21] there are hardly any refuges of strength and support for teenage mothers or role models for young men. The District has never responded effectively to level of despair in the most impoverished areas of the city. Housing continues to decay;[22] the Department of Public and Assisted Housing refuses the help of volunteers offering to do repair work. Neglected and abused children remain in foster care for years without efforts at family

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[20] Criminologist James Q. Wilson sees an "exponential" relationship between an increase in the number of young people and the incidence of crime. JAMES Q. WILSON, THINKING ABOUT CRIME (1975) 16-17.

[21] See generally, WILLIAM JULIUS WILSON, THE TRULY DISADVANTAGED (1987). The similarity in characteristics of "truly disadvantaged" communities across the country is reflected in journalistic accounts such as LEON DASH, WHEN CHILDREN WANT CHILDREN (1989)(Washington Highlands section of Washington, D.C.); ALEX KOTLOWITZ, THERE ARE NO CHILDREN HERE (1991)(Henry Horner Homes in Chicago); LEON BING, DO OR DIE (1991)(South Central Los Angeles).

[22] There have been numerous newspaper stories written about delays in repairing public housing. See, e.g. Sanchez, "D.C. Council Hears Dismal Tales of Public Housing Repair Delays," Washington Post, March 1, 1992 B8. Conditions have actually worsened since the Children's Defense Fund criticized delays in repairs and the high number of vacant apartments. Bright Futures or Broken Dreams: The Status of the Children of the District of Columbia and an Investment Agenda for the 1990s (1991) 85-86.

reunification or permanent placement.[23] The school system teaches a fraction of the students who enroll.[24] And the juvenile justice system is a warehouse or a prepartory school for adult offenders.[25]

There are many constructive things the District government could do to alleviate the conditions which breed alienated youths who do not value their own lives or those of other people. Instead, however, "reform" proposals have focused on symptoms rather than causes. Although the present juvenile system has not even attempt to rehabilitate, proponents of statutory changes in the juvenile law of the District of Columbia have prematurely declared rehabilitation a failure. It is too soon to say that nothing works, because nothing has been tried.

In deciding whether there is a need to "get tough," or whether the problem of juvenile crime is better addressed by more effective rehabilitation strategies, it is important to understand how the District's present juvenile court operates. Judges of the Superior Court rotate through the Family Division as well as the other divisions of the Court, so there is no permanent juvenile court bench.[26] Although judges newly assigned to the Family Division receive training, the judges assigned to the

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[23] The United States District Court recently found violations of federal law in the management of the District's foster care system for abused and neglected children and ordered improvements, including the hiring of more social workers. The District government has thus far not complied fully with the court's order. Lashawn A. et al. v. Sharon Pratt Dixon, 762 F.Supp. 959, 997 (D.D.C. 1991)("outrageous deficiencies.") See Plaintiffs' Memorandum in Opposition to Defendants' Motion to Enlarge Time (filed December 30, 1991)(describing noncompliance with remedial order).

[24] A recent "audit" of DCPS revealed what anyone in daily contact with youngsters already knows. [CITE]

[25] Even the most positive aspects of the Mayor's initiative to reduce juvenile crime appear to be coming at the expense of existing programs for youth. See Garreau, "Youths Join Protest of Planned Cuts in D.C. Community Programs," Washington Post, Feb. 23, 1992 B8 (describing cuts in crime prevention and recreation programs). The proposed expansion of the youth summer jobs program this summer merely restores cuts made the previous year.

[26] See DISTRICT OF COLUMBIA COURTS, ANNUAL REPORT (1990)73-82.

Juvenile Branch do not necessarily have any specialized training in, orientation toward, or belief in rehabilitation. These judges are not neccessarily expert in the myriad of psychological and sociological factors which contribute to delinquency, or with the wide variety of therapeutic approaches which have been adopted across the country to treat serious and chronic delinquency. Relatively few Superior Court judges come to the bench with any previous experience in delinquency cases; those who do are most often former prosecutors from the Office of Corporation Counsel.[27] More frequently, Superior Court judges have experience as prosecutors or defense counsel in adult criminal cases. Indeed, the Juvenile Branch is often the first assignment for newly appointed judges who prosecuted criminal cases in the Office of the United States Attorney because those judges would be disqualified from too many cases on a Criminal Division calendar. The organization of the Juvenile Branch tends to produce a "culture" which is not particularly oriented towards treatment and rehabilitation of juvenile offenders.

Within the Juvenile Branch, cases are handled in a manner which parallels the adult criminal justice system. Until 1989, the Juvenile Branch employed a "master calendar" system in which cases were assigned to judges for trial or guilty plea proceedings by a single calendar control judge. Motions were heard on a special motions calendar. Now, all cases are assigned at the child's initial hearing to one of two "individual calendars" and all further proceedings are assigned to a single judge. The individual calendars tend to produce greater incentives to "settle" cases through plea negotiations since the judge who will ultimately decide upon a child's placement now has an incentive to reward early guilty pleas which did not exist under the previous system. The adoption of individual calendars, whatever its management

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[27] See "The Judges of D.C. Superior Court: Profiles and Perspectives on the 62 Men and Women Who Oversee Justice in the District of Columbia," Legal Times, Oct. 24, 1988 17-30.

benefits, has tended to increase the similarities between adult criminal and juvenile proceedings.

In a nutshell, a juvenile case, like a criminal case, begins with an arrest. A juvenile may simply be admonished by a police officer, in which case a record is made of the "contact" for future reference. An arrest may be based upon the officer's observations and information from citizens, or it may be based upon a "custody order," the equivalent of a warrant. D.C. Code § 16-2309. If the child is arrested, the police Youth Division takes custody of the child who is either released immediately to his or her parents with a date to come to court (community cases) or is incarcerated at the Receiving Home for Children on Mt. Olivet Road in Northeast Washington. D.C. Code § 16-2311(a). This system is comparable to the system of citation release for adults charged with petty offenses. Community release is less frequent in the District than it is in many other jurisdictions, however. At times, because of overcrowding, arrested juveniles are held overnight at the Central Cellblock at 300 Indiana Avenue, N.W., or at the Children's Center in Laurel, Maryland.[28]

The next step is the review of the charges by the court Social Services Intake Branch, which weighs social factors including the child's prior history of "contacts" with the police, school attendance, and family ties to determine whether formal charges should be filed. D.C. Code § 16-2305(a)(Director of Social Services to determine whether the best interests of the child and the public warrant charging). The final decision whether to file charges is up to the Office of the Corporation Counsel, Law Enforcement Division, Juvenile Section. D.C. Code § 16-2305(a). The Corporation Counsel then files a "petition" alleging delinquent acts, which initiates formal judicial proceedings. D.C. Code § 16-2305(b). During the time this review is

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[28] Engel, "D.C. Juveniles Shunted Nightly to Cedar Knoll," Washington Post, Nov. 22, 1986 D3.

taking place, the child is held in the courthouse cellblock. Very young or very small children are held in a special "at risk" room, where they are supervised by special officers. D.C. Code § 16-2310.1.

The initial hearing in a juvenile case takes place before a judge assigned to the Family Division, usually in the late morning or afternoon of the day following the arrest, although the child may be incarcerated longer if arrested on a weekend. D.C. Code § 16-2308. District of Columbia law presumes that a child charged with a delinquent act shall be released before trial ("factfinding hearing") and sentencing ("dispositional hearing") unless detention is necessary to protect the "person or property of others or of the child," or "to secure the child's presence at the next court hearing." D.C. Code § 16-2310(a). A child charged with delinquency may also be placed in a shelter house if the family is unable to provide adequate supervision or care. D.C. Coded § 16-2310(b). Because of the chronic shortage of shelter house space, however, many children who belong in shelter houses are placed in secure detention at the Children's Center. Since 1989, the District has paid a total of $103,200 in fines at a rate of $100 per day for each child who is incarcerated in a detention facility awaiting space in a shelter house for more than ten days. The judge may also leave placement up to the expertise of the "Screening Team," which is operated by the Youth Services Administration (YSA) of the Department of Human Services (DHS). The Screening Team has the legal authority to place children in home detention, however it has been instructed not to do so by the Office of Corporation Counsel, which means that scarce shelter house beds must be allocated to children who could live at home if closely monitored by social workers under the home detention program. The Screening Team also appears to assign children who are appropriate for shelter house placement to secure facilities when no shelter house beds are available in order to avoid fines for children on the waiting list.

Before a child may be separated from his or her family, the Court must hold a hearing to determine whether the charges are supported by "probable cause." D.C. Code § 16-2312. This determination is based upon the hearsay testimony of a police officer, rather than that of a witness with personal knowledge. If the judge finds probable cause, and the child is eligible for detention pending trial, D.C. Code § 2310; Juvenile Rule 106, the judge may simply order detention or specify a facility. Smaller and younger children, as well as children with special emotional or medical problems are often sent to the Receiving Home. Because of overcrowding, however, many children who would ordinarily be confined at the Receiving Home are sent to the Children's Center.

While the child is detained, his or her lawyer goes through the routine of trial preparation in a manner which is largely indistinguishable from adult criminal cases. Discovery, motions, and investigation lead up to a status hearing before the individual calendar judge, who may accept a guilty plea or set the case for trial. In less serious cases, first offenders may be offered a consent decree, which results in dismissal of the petition after six months upon fulfillment of certain conditions. D.C. Code § 16-2314. A diversion program also exists for juveniles charged with less serious offenses, but diversion is open only to a percentage of those charged with eligible offenses who are selected at random.

Trials and guilty pleas are almost identical to their criminal counterparts, with one important exception. Although juveniles have many of the procedural rights of adults, see In re Gault, 387 U.S. 1 (1967); In re Winship, 397 U.S. 358 (1970); their guilt or innocence of the allegations in the petition is determined by a single judge rather than a jury. D.C. Code § 16-2316(a). See McKeiver v. Pennsylvania, 403 U.S. 528 (1971). McKeiver rests on the propositon that juvenile proceedings lead to treatment rather than punishment.

If a child is found guilty ("involved"), the judge proceeds to a dispositional hearing. The court must determine whether the child is in need of care and rehabilitation. No dispositional order may be entered unless the child needs care and rehabilitation, even if the child is found to have violated the law. In re M.C.F., 293 A.2d 874 (D.C. 1972). The court Social Services Division prepares a predisposition study, D.C. Code § 16-2319. After reviewing this report as well as submissions by counsel for both sides, the judge may (1) place the child on probation under the supervision of the Court Division of Social Services; or (2) commit the child to the custody of DHS or other agency. Probation may range from weekly or monthly reporting to extensive counseling, community service, and supervision under the auspices of the High Intensity Treatment and Services (HITS) program.

A probation order may last for a year, D.C. Code § 16-2322(a)(3). Probation may be revoked or extended if the child violated the terms of the probation order. D.C. Code § 16-2327. A commitment may last for two years, D.C. Code § 16-2322(a)(1), and may be extended for up to a year at a time until the child reaches age 21. D.C. Code § 16-2322(b),(e). This means that a child committed for a homicide at age 14 could remain in DHS custody for up to seven years. Judges consider public safety in determining the length of confinement. In re L.J., 546 A.2d 429 (D.C. 1988).

Commitment, generally to the Youth Services Administration of DHS, can take several forms. Many youngsters, including many of those found guilty of murder or other serious offenses, are placed in private residential facilities around the country which provide therapeutic services. Because DHS does not operate such facilities locally, it must contract with private providers at a much greater expense. A child may also be committed to Oak Hill, Cedar Knoll, the Receiving Home, or Harambee House (a small facility for girls). A less restrictive alternative is commitment to a

group home, but these spaces are in chronically short supply. The District has paid $ 316,000 in fines since 1989 because children wait weeks, even several months, for group home beds.

Not all of those arrested for offenses committed while under 18 go through the juvenile system described above. At present, there are two routes to prosecution in the adult Criminal Division of the Superior Court. The United States Attorney also has the power to prosecute juveniles as adults in the United States District Court. 18 U.S.C. § 5032. Since the latter authority is rarely exercised, the focus here will be on Superior Court waiver and transfer.

1. Waiver. The Family Division has jurisdiction over offenses by children. The statutory definition of "child" "does not include an individual who is sixteen years or older and -- (A) charged by the United States attorney with (i) murder, forcible rape, burglary in the first degree, robbery while armed, or assault with intent to commit any such offense, or (ii) an offense listed in clause (i) and any other offense properly joinable with such an offense." D.C. Code § 16-2301(3). The United States Attorney frequently prosecutes non-homicide shootings, such as the recent "drive by" shootings at Dunbar High School, as assaults with the intent to murder, allowing sixteen year olds to be prosecuted as adults and sentenced to mandatory minimum sentences of five to fifteen years and maximum sentences of fifteen years to life imprisonment. See Hobbs v. United States, No. 91-191 (D.C. June 24, 1991)(reading D.C. Code § 22-503 to establish offense of assault with intent to murder). Under this provision, the decision to prosecute a sixteen year old as an adult is entirely within the discretion of the United States Attorney, and is not contingent on any social factors or the youngster's amenability to rehabilitation.

2. Transfer. A child under age 18 may be transferred for prosecution as an adult if (1) the child is fifteen or more and is charged with any felony; or (2) the child

is sixteen or more, charged with any offense, and is already committed as a delinquent child and it is shown after a hearing there are not "reasonable prospects for rehabilitation" before he or she reaches 21. D.C. Code § 16-2307(a)(1),(2), and (d). A child over 18 may be prosecuted as an adult for an offense committed before age 18 if it is shown at a hearing that there are not reasonable prospects for rehabilitation before age 21, but this is a rarely invoked provision. The burden at the hearing is on the Corporation Counsel, D.C. Code § 16-2307(d). The judge is required to consider: the child's age; nature of the present offense; extent and nature of the child's prior record; the child's mental condition; the nature of past treatment efforts and the child's response to them; and the techniques and facilities available to the Family Division and to the Criminal Division to accomplish rehabilitation. D.C. Code § 16-2307(e). Transfer requests are rarely granted because there is often little evidence of serious efforts at rehabilitation in the past, and minimal evidence that there are resources to achieve rehabilitation in adult correctional facilities. A child who is transferred under this provision faces the same range of penalties as any adult charged with the same offense, and there is no guarantee that the child's sentence, if he or she is convicted, will promote his or her rehabilitation.[29]

Proposed Legislation

A. The "Violent Youth Rehabilitation Act (VYRA)."

Although called a "rehabilitation act," this legislation actually discards care and rehabilitation as operative principles in the District's juvenile justice system. In general, the legislation makes it much easier to try juveniles as adults, and to

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[29] Following the repeal of the federal Youth Corrections Act, the District of Columbia Council enacted the Youth Rehabilitation Act, D.C. Code § 24-801 et seq.. The YRA gives a sentencing judge the discretion to sentence a defendant to an indeterminate term at the Youth Center, with the possibility of earning an expungement of his or her conviction. YRA sentencing is an option for youths under 22 years of age, but there is no requirement that a child transferred for prosecution as an adult be sentenced under the YRA.

incarcerate juvenile offenders in adult facilities. It is plainly a "get tough" measure, but it is not limited to serious or violent offenders.

1. Easier Transfers.[10] Section 3(a) and (b) of the VYRA changes the existing transfer statute to shift the burden of proof to the child in all cases, and to create a presumption in favor of adult prosecution for any child charged with any felony with a previous adjudication for "an offense with a deadly weapon." While the title of the bill and the findings concentrate on children accused of serious crimes of violence, these changes are much more far reaching.

The current transfer statute, Section 16-2307, applies to any fifteen year old charged with a felony. Felonies include joyriding (unauthorized use of vehicle, D.C. Code § 22-3815), attempted purse-snatching (attempted robbery, D.C. Code § 22-2902), and theft of property worth over $250 (D.C. Code § 22-3811). Under the proposed legislation, a fifteen year old first offender caught joyriding would either have to persuade the court that he could be rehabilitated, or be prosecuted as an adult. The same would be true of a previously-committed sixteen year old charged in a new case with shoplifting. Shifting the burden of proof in this way is a shocking admission of our lack of faith in the capacity of our juvenile justice system to rehabilitate anyone.

The other change is equally sweeping. The bill proposes a presumption that a child with a previous adjudication for "an offense [committed] with a deadly weapon" is incapable of rehabilitation. While on first glance "deadly weapon" offenders may seem to be extremely violent youths with guns about whom the public is most concerned, in fact, this category includes all kinds of other youngsters to whom such a presumption could not rationally apply. See Leary v. United States, 395 U.S. 6

[10] A good general source on the prosecution of juveniles as adults is: DEAN J. CHAMPION & G. LARRY MAYS, TRANSFERRING JUVENILES TO CRIMINAL COURTS: TRENDS AND IMPLICATIONS FOR CRIMINAL JUSTICE (1991).

(1969) (striking down irrational presumption as a violation of due process clause). Deadly weapons are not limited, under District law, to objects like guns which are exclusively used to injure other people. Deadly weapons include any physical object which is likely to produce death or serious bodily harm by the use made of it. D.C. Code § 22-3204; Scott v. United States, 243 A.2d 54 (D.C. Mun. App. 1968); Reed v. United States, 575 A.2d 1191 (D.C. 1990). Juveniles involved in schoolyard fights are charged with assault with a deadly weapon (shod foot), which would qualify for the presumption. So would a child who grabbed a stick in self-defense and used too much force against his or her assailant. Indeed, the statute may even apply the presumption to a child who merely carries a deadly weapon, without using it at all. D.C. Code § 22-3204 (offense of carrying dangerous or deadly weapon). The bill does not even require the prior weapons offense adjudication to be recent. Nor does it require the new offense to be a serious one.

A presumption that a child cannot be rehabilitated is particularly difficult to justify when the deficiencies in the system we now have to rehabilitate are so glaring and long-standing. A prior commitment or probationary period under the system which now exists is hardly a fair test of a child's capacity for reform.

The shifts in the burden of proof and the adoption of the rebuttable presumptions even conflict with conservative national experts on juvenile justice issues. The American Bar Association sponsored a joint commission to study the juvenile justice system with the Institute for Judicial Administration as a result of concern about serious juvenile crime in the late 1970s. The Joint Commission developed proposed standards for juvenile cases, which the ABA House of Delegates adopted in 1979. The IJA-ABA Standards adopt a "rebuttable presumption" that children aged fifteen to seventeen should be tried as juvenile offenders, and an irrebuttable presumption for children fourteen and younger. Commentary at 18-19.

"The presumption in favor of juvenile court jurisdiction should be overcome only in extreme cases." Standard 2.2.A, Commentary at 37. The IJA-ABA Standard is even more demanding than current District law, because it requires "clear and convincing evidence" to justify transfer, a higher standard of proof. The Task Force on Juvenile Justice and Deliquency Prevention of the National Advisory Committee on Crimal Justice Standards and Goals recommends a minimum age for adult prosecution of sixteen, and would permit transfer only if the delinquent conduct aggravated or heinous, or is part of a pattern, and the juvenile is not amenable to treatment. Juvenile Justice and Delinquency Prevention (1976) Standard 9.5 at 303.[31]

2. Easier Detention. Section 3(c) of the VYRA proposes to amend D.C. Code § 16-2310(a) to read: "A child shall not be placed in detention prior to a factfinding hearing or a dispositional hearing unless he is alleged to be delinquent or in need of supervision or has been previously adjudicated for a weapons offense within 3 years of arrest and" the other statutory criteria are satisfied. It is unclear what the import of this change would be, since the detention power does not exist unless there is a new delinquency charge, and the current statute already permits detention of a child charged with any category of offense as long as the statutory detention criteria are satisfied. D.C. Code § 16-2310(c)(incorporating Juvenile Rule 106). A prior adjudication for a weapons offense is a factor the court may consider in deciding whether detention is required to protect the person or property of others. Rule 106(a)(1)(ii). If, however, the amendment was intended to permit a child to be detained because of previous adjudication without any finding that detention is needed to protect the child, or the community, or to assure the child's appearance, then the

[31] Section 204 of H.R. 4396, introduced by Congressman Bliley on March 5, 1992 would allow fourteen year olds to be prosecuted as adults in the unreviewable discretion of the United States Attorney without any hearing whatsoever.

statute is both senseless and unconstitutional. Detention before trial must be tailored to serve the important objective of protecting the community. A statute which would permit detention based solely on a prior record would not satisfy this constitutional requirement. Moreover, as discussed above, "weapons" and weapons offenses embrace a broad range of conduct including "kid stuff" which might not even be prosecuted in other jurisdictions.

3. Incarceration with Adults in Jails and Prisons. The proposed legislation would transform the "juvenile" justice system into a pipeline for Lorton. It would permit any juvenile adjudicated guilty of an "offense with a deadly weapon" to be incarcerated with adults, regardless of the child's age, size, and previous history. Children in adult facilities are often victimized by older prisoners. TRANSFERRING JUVENILES TO CRIMINAL COURTS at 94; Forst, Fagan & Vivona, "Youth in Prisons and Training Schools: Perceptions and Consequences of the Treatment Custody Dichotomy," 40 Juv. & Family Ct. J. 1-14 (1989). Such victimization would be especially hard to prevent in the District's badly overcrowded prisons and the inadequate contract facilities used to house prisoners out of the area. For those charged with homicide or attempted homicide, it would establish a two year mandatory minimum sentence, and a ten year maximum sentence. Both of these changes would render the "civil" characterization of a juvenile adjudication a matter of labelling rather than substance. A prison sentence, whether imposed by the Family Division or by the Criminal Divison, is punishment which may not be imposed without a jury trial and the full panoply of rights that go with it.

One of the principal objectives of juvenile justice reform in this country has been to separate juveniles from older prisoners. See THORNS AND THISTLES at 8, 49, 57, 76-77, 132-33 (1973)(surveying various waves of reform); Fox, "Juvenile Justice Reform: An Historical Perspective," 22 STAN. L.REV. 1187 (1970); I.

SCHWARTZ, (IN)JUSTICE FOR JUVENILES: RETHINKING THE BEST INTERESTS OF THE CHILD (1989). To the extent there has been controversy over measures designed to achieve this result, it has centered over the practicality, not the desirability, of this result. Current District law, consistent with this view, flatly prohibits incarceration of juveniles in penal institutions for adult offenders. D.C. Code § 16-2320(e).

This portion of the VYRA contravenes the federal Juvenile Justice and Delinquency Prevention Act (JJDPA). 18 U.S.C. § 5039 provides, "[n]o juvenile committed to the custody of the Attorney General may be placed or retained in an adult jail or correctional institution in which he has regular contact with adults incarcerated because they have been convicted of a crime or are awaiting trial on criminal charges." Since commitments to the D.C. Department of Corrections are made through the Attorney General, this portion of the JJDPA would preclude implementation of the proposed statute. Furthermore, enactment of this provision would make the District of Columbia ineligible to receive federal juvenile justice funds under another provision of the JJDPA, 42 U.S.C. § 5632. The Act requires States receiving such funds to establish juvenile justice plans which forbid the confinement of juveniles in adult facilities. 42 U.S.C. § 5633(13), (14).

4. Mandatory Minimum Sentences. Apart from changing the place of imprisonment, the proposed legislation would establish mandatory minimum terms for children adjudicated delinquent for homicide and weapons offenses. Mandatory minimum sentences cannot be premised upon a rehabilitative model of juvenile corrections. If rehabilitation is the goal, the child should be released when he or she is rehabilitated, neither before nor after. Since the minimum terms do not depend upon the individual child's rehabilitation, they are inconsistent with such an approach.

What justifications can be offered for this radical change? Incapacitation, while a legitimate objective, cannot justify mandatory minimum terms for juveniles because a juvenile who has been rehabilitated is not, by definition, a menace to the community and does not require incapacitive incarceration. "Just punishment," or retribution, is simply antithetical to a system which holds children to be less responsible, and therefore less culpable for their acts. A child incarcerated, whether in a juvenile or an adult facility, for reasons of retribution would rightly challenge this sentence as punishment imposed without due process of law. The legislation hints, in the findings, that the rationale is "that youth lack respect for the juvenile justice system and fail to view their incarceration as punishment or rehabilitation." But it is hard to see why juveniles incarcerated in the present system should view their incarceration as rehabilitation, and they should not view it as punishment. What the authors appear to be getting at is a deterrence rationale. If juveniles do not take the present system seriously, perhaps mandatory minimum sentences will do the trick. While there may be other rationales for mandatory minimum sentences for adults which justify these penalties, it is hard to find much evidence that they effectively deter. We have more and longer mandatory minimum penalties than ever before, yet violence is worse than ever. The enactment of mandatory minimum penalties for drug and weapons offenses in 1982 preceded the explosion of drug dealing and shooting in our city. And, if such penalties were effective deterrents, one would expect to see a sharp decline in the number of armed offenses committed by sixteen year olds (who can be prosecuted as adults) compared to fifteen year olds who are generally prosecuted as juveniles. There is no evidence of such a deterrent impact. In fact, two of the states which have the highest rates of juvenile incarceration, as juveniles and adults, New York and California, have the highest rates of juvenile violence as well. Since a "just punishment" rationale cannot be invoked, and there is no evidence that mandatory

minimum penalties effectively deter, the mandatory minimum sentences cannot be justified.

5. Ten Year Sentences. Section 3(d) of the VYRA authorizes "sentences" of up to ten years for juvenile offenders. Today, judges in the Family Division have the power to extend commitments year to year until the child reaches 21. This authority is more than sufficient to bring about the treatment of severely troubled juveniles, if we have a system which has the resources and the commitment to do so. The ten year sentences proposed in this section of the bill therefore do not enhance the rehabilitative efforts of the court. There is also a tremendous difference between a system which permits an extension of a commitment if there is evidence that more time is needed, and one which authorizes a ten year indefinite sentence to begin with.

In response to a perceived juvenile crime wave in the mid-70s which inspired a great deal of "get-tough" legislation nationally, the Twentieth Century Fund sponsored a study on sentencing policy towards young offenders. One of the firm conclusions of the study, Confronting Youth Crime, was that "[a] court that does not provide access to jury trial should not be able to impose five or ten year sentences." "Confronting Youth Crime," reprinted in JUVENILES IN JUSTICE: A BOOK OF READINGS 103, 108 (Rubin, ed. 1980). Even if a court were to hold such an extraordinary expansion of the sentencing authority of the juvenile court to be constitutional, it would certainly be unwise. Jury trials are a fundamental element of the legitimacy of our legal system. We accept certain harsh consequences because they flow from a collective decision by members of the community. Although judges certainly command and deserve respect, their individual judgments about witness credibility do not merit or receive the same acceptance as the collective judgment of a jury. When the consequences of a judge's decision are indistinguishable from those which flow from a criminal conviction, this fundamental and historical right to jury

trial must be available as well.

B. The Mayor's Initiative.

As part of a comprehensive initiative to reduce crime, the Mayor has also introduced legislation to transform the juvenile justice system. The Mayor's initiative includes a number of positive features, including: (1) doubling the size of the current diversion program; (2) a greater effort to design alternative rehabilitative programs including more community based facilities. These proposals are not included, however, in the "Criminal and Juvenile Justice Reform Act" now pending before the D.C. Council, which would further debilitate the juvenile court.[32]

1. Length of Commitments. In her televised speech on November 26, Mayor Dixon called for:

> * An increase in the period of commitment for certain violent offenses such as the killing of a police officer or correctional official.
>
> * A halt to the current revolving door practice of releasing violent juveniles back into the community after just two years.

Both proposals seem to reflect a misconception about current District of Columbia law. Under the existing law, the maximum initial commitment for any offense is two years, D.C. Code § 16-2322(a)(1). As noted before, judges may extend a child's commitment, however, for up to a year at a time, until the child reaches age 21. D.C. Code § 16-2322(b),(e). Thus, under existing law, a child committed at age fourteen could remain in custody for as long as seven years. The "revolving door practice" the Mayor criticized is not a result of inadequate judicial power, but the result of decisions by the District of Columbia Youth Services Administration not to request extensions of commitments.

The Washington Post endorsed this portion of the Mayor's initiative in an

[32] Bill No. 9-374, introduced November 27, 1991 by Council Chairman Wilson at the request of the Mayor.

editorial on November 29, 1991 which relied upon the same misconception. The Post said, "the two-year-and-out system is as unsuccessful as it is inflexible." But the present system is not at all inflexible; the law already gives the Youth Services Administration great flexibility in seeking to extend supervision or custody over youngsters who need it. The reason the current system is unsuccessful is not that it lacks flexibility, or even that commitments are too short, but that just imprisoning children does not help them to grow up into law abiding citizens. The Mayor herself used the term "warehousing" in describing the current system. The "revolving door" is largely of the District government's own making. YSA does not ask for extensions of commitments, perhaps because it has so little to offer committed youngsters. Youngsters who are released after two years of "warehousing" are no better able to control their impulses or to withstand peer pressure than they were when they entered YSA custody. The answer is to improve the system's ability to change youngsters when they are committed, rather than to make the door revolve more slowly.

Because District law already permits lengthy commitments, the real issue is not how long a child is committed, but who decides on the length of the commitment, and how and when the decision is made. The existing law is based upon the assumption that the people in the best position to determine whether a particular child needs a longer period of care, custody and rehabilitation are those who are responsible for the child's custody during the commitment. Officials of the Youth Services Administration are in daily contact with the youngster and can assess his or her progress towards reintegration into the community. Under the present system, YSA determines whether to request an extension of a commitment. This system is very flexible, attuned to the individual, and responsive to the judgments of specialists in close contact with the child.

The alternative system the Mayor appears to advocate would be to allow judges to impose an indeterminate commitment, presumably to age 21, at the beginning before anything is known about the child's progress and relatively little is known about the child's needs. This proposal transfers power away from the executive branch and persons with expertise in juvenile corrections, and places it instead in the judicial branch. The combination of shifting from extensions of commitments at the request of the executive to longer initial commitments and the power to forbid release has the potential to thwart the step by step progress of committed youth towards a return to the community which the Mayor appears to have intended.

2. Changes in the Transfer Standard.

> Title I of the Mayor's Bill would reform the juvenile justice system by:
>
> - lowering from 15 to 14 the age at which Corporation Counsel may seek to transfer for adult criminal prosecution a juvenile who has committed a felony;
>
> -changing the standard upon which a transfer decision is based -- from "reasonable prospects for rehabilitation of the juvenile["] to "interest of public welfare and protection of the public security.

This legislation would not be confined to a handful of chronic violent offenders. It would authorize Corporation Counsel to seek, and the court to authorize, adult prosecution of children as young as fourteen charged with any felony, even those not charged with a violent crime and even those arrested for the first time. Moreover, legislation implementing the Mayor's proposal includes a "presumption" in favor of adult prosecution of children aged 15 to 18 who are: (1) charged with an offense for which United States Attorney waiver is authorized; (2) charged with "any crime committed with a firearm;" and (3) charged with any felony if the child has three or more prior delinquency adjudications, regardless of the nature or seriousness of the prior offenses.

IJA-ABA Standard 2.2 requires the following "necessary findings" for the

transfer of a child for criminal prosecution:

> A. The juvenile court should waive its jurisdiction only upon finding:
>
> 1. that probable cause exists to believe that the juvenile has committed the class one or class two juvenile offense alleged in the petition;
>
> 2. that by clear and convincing evidence the juvenile is not a proper person to be handled by the juvenile court.
>
> B. A finding of probable cause to believe that a juvenile has committed a class one or class two juvenile offense should be based solely on evidence admissible in an adjudicatory hearing of the juvenile court.
>
> C. A finding that the juvenile is not a proper person to be handled by the juvenile court, must include determinations, by clear and convincing evidence, of:
>
> 1. the seriousness of the alleged class one or class two juvenile offense;
>
> 2. a prior record of adjudicated delinquency involving the infliction or threat of significant bodily injury, if the juvenile is alleged to have committed a class two juvenile offense;
>
> 3. the likely inefficacy of the dispositions available to the juvenile court as demonstrated by previous dispositions of the juvenile; and
>
> 4. the appropriateness of the services and dispositional alternatives available in the criminal justice system for dealing with the juvenile's problems and whether they are, in fact, available.
>
> Expert opinion should be considered in assessing the likely efficacy of the dispositions available to the juvenile court. A finding that a juvenile is not a proper person to be handled by the juvenile court should be based solely on evidence admissible in a disposition hearing and should be in writing, as provided in Standard 2.1.E.

The authors viewed this standard as equivalent to the more conventional "amenable to treatment" standard, but without the implicit assumption that rehabilitation works. Commentary at 40. The Joint Commission considered, criticized, and expressly rejected a transfer standard based upon "the public interest." Commentary at 40. "Waiver must be justified on the basis of the juvenile and his or her actions and personal history. A 'public interest' basis for waiver looks to something external to the juvenile." Id. The authors recognized that "[c]onsideration of specific deterrence and community security are implicit," in the transfer standard they

proposed. They rejected as probably unconstitutional a transfer standard based upon general deterrence. Commentary at 41. Likewise, a transfer standard based upon retribution would also raise constitutional questions. By definition, the Mayor's proposed change in the transfer standard would permit the transfer to criminal court of children who are amenable to rehabilitation and can therefore be safely returned to the community after treatment but whose prosecution as adults is sought for reasons of general deterrence or retribution.

Transfers based on "public welfare" are more likely to be inspired by the stature of the victim of a juvenile offender than the character of the child or the offense. The Mayor's legislation attempts to write the question of rehabilitation out of the statute entirely by deleting "the nature of past treatment efforts," and "the techniques, facilities, and personnel for rehabilitation available to the Division and to the court that would have jurisdiction after the transfer." D.C. Code § 16-2307(e)(4),(5). This change would require the court to ignore the deficiencies of the current juvenile system, which the Mayor herself criticized for "warehousing" the children in its custody.

The Mayor's proposal also deviates from the IJA-ABA Standards by requiring the court holding the transfer hearing to "assume that the child committed the delinquent act alleged." This assumption, in particular, is likely to result in many unfair transfer decisions because a judge making such an assumption is likely to conclude in most serious cases that "the public welfare" requires prosecution as an adult. Under current law, by contrast, "only the propriety of eventual [Family] Division disposition shall be considered." D.C. Code § 16-2307(e). The factual inquiry is whether the child belongs in juvenile court, not whether the offense is serious.

The IJA-ABA Standards also expressly endorse a standard of proof even higher

than the current District of Columbia standard. It follows the authors would reject even more vigorously proposals to shift the burden of proof, or to presume that a child should be prosecuted as an adult. While the judgment of the ABA is not binding, it does reflect the outcome of a considered process, inspired, like the current reassessment of juvenile justice standards, by concern over rising juvenile crime.

III

What Could Be Done

Although many areas of the city are mired in poverty, the District of Columbia is also rich in resources, both physical and intellectual, that could be harnessed to the task of reducing juvenile crime. This city is the home of many organizations with expertise in helping children and families, such as the Children's Defense Fund. CDF recently opened a local office, and has published a book of recommendations to improve the welfare of children in the District. BRIGHT FUTURES OR BROKEN DREAMS: THE STATUS OF CHILDREN AND AN INVESTMENT AGENDA FOR THE 1990s (1991). Because this is widely perceived to be a time of crisis for the District, there exists an opportunity to overcome inertia and resistance to make positive changes in the way the District treats its "at risk" young people. A year after the Persian Gulf war, perhaps it is time for a new call to action.

The starting point for constructive change is the recognition that we are talking about children. The violence in our streets is frightening, but it must not blind us to the lesson of the ages: children, especially adolescents, do things which are risky and harmful to themselves or others because that is part of growing up. Parenting involves successfully placing limits upon these risks. But there are teenage suicides and juvenile drug sellers and users in our suburbs. And even the best of parents cannot prevent teenagers from breaking the rules. I read in yesterday's newspaper a report that Chicago Mayor Daley's son had disobeyed his parents and held an

unsupervised party at their vacation home which ended in a fight and a serious injury. Mayor Daley's press secretary said that although the son was "pretty responsible," "he's 16 years old and 16 is a difficult age, as the parent of any teenager can tell you." Walsh, "Tearful Chicago Mayor Recounts Tragedy at Teen Son's Party," Washington Post, March 3, 1992 A3. I do not mean to equate holding an unauthorized party with holding a gun, but there is a common thread. Adolescents take risks; that is one of the reasons Congress passed legislation a few years ago increasing the drinking age.

Imagine, then, a teenager raised in an environment permeated by drugs and violence.[33] Imagine a teenager whose single parent had little preparation for child rearing, and was in her teens or early twenties when the child was born.[34] Imagine a teenager growing up in decaying housing, without much contact with adults who are steadily employed. These, studies have shown, are the teenagers at risk, not only in the District of Columbia, but across the country.[35] They are at risk of being abused and neglected, of teenage pregnancy, of dropping out of school, and yes, of committing crimes. It is important to realize that the teenagers in our juvenile detention facilities are not a discrete group, but part of a much larger class of children with acute needs.[36]

Statistics cannot convey what it like to grow up in Valley Green, or Park-

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[33] A study of 137 children in a low-income neighborhood in D.C. by NIMH found pervasive exposure to violence, nearly six times the national norm. Thompson, "D.C. Children Coming Home to Violence," Washington Post, Feb. 28, 1991.

[34] See DASH, WHEN CHILDREN WANT CHILDREN. "In 1988, 1,854 infants were born to District teens, including births to girls younger than 15. One in six District infants was born to a mother younger than 20 that year." CDF, BRIGHT FUTURES OR BROKEN DREAMS at 54-55. See also LISBETH SCHORR, WITHIN OUR REACH: BREAKING THE CYCLE OF DISADVANTAGE (1988) 152-54.

[35] SCHENIDER, DETERRENCE AND JUVENILE CRIME at 32-50 (describing study population); Hartstone & Hauser, "The Violent Juvenile Offender: An Empirical Portrait," VJO at 93-100.

[36] SCHORR, n.34 supra, at 27, 140. It is not unusual for a child entering the juvenile court system to have a long history in the neglect system as well.

Morton, or Stanton Dwellings. But the statistics do help point the way out. These communities are characterized by high unemployment, a high rate of teenage pregnancy and little prenatal care, and rampant substance abuse. The children growing up in this environment grow up with needs for nurturing and leadership which are not met in the schhols. Many of them enter the courts through the neglect system, which itself is so understaffed and underfunded that it often cannot accomplish its mission. The juvenile courts become the dumping ground for kids from dysfunctional families.

Academics have written of the "concentration effects" of isolated populations with high unemployment. "[T]he problem of joblessness for young black men has reached catastrophic proportions."[37] Chronic unemployment correlates with high crime. Duster, "Crime, Youth Unemployment and the Black Urban Underclass," 33 Crime & Delinquency 300-316 (1987). One study found that 30% of violent juvenile offenders were exposed to violence in the home, and thought the figure was underreported.[38] Only 32% of the violent offenders in the study reported that their fathers had been involved in child raising. Only 20% lived with both biological parents, as compared to 76% in the 1980 census. 22% reported their fathers had been imprisoned.[39] In another study involving delinquents from six cities, those in the

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[37] WILLIAM JULIUS WILSON, THE TRULY DISADVANTAGED at 43. The official "Youth Unemployment Rate" declined from 43.7% in 1983 to 19.3% in 1989, the last year for which statistics were available. This decrease probably reflects the withrdawl of youth from the labor force rather than an increase in job opportunities, however. INDICES (1990) 178. In 1978 the unemployment rate for Ward 8 (in Anacostia) was nearly four times the rate in Ward 3 (West of Rock Creek Park) (8.2% vs. 2.2%). INDICES at 187.

[38] See also Down These Mean Streets: Violence By and Against America's Children: Hearing before the Select Committtee on Children, Youth and Families, House of Representatives, 100th Cong., 1st Sess. (1989) at 6 (26-55% of institutionalized juvenile offenders have official histories of child abuse).

[39] Hartstone & Hauser, "The Violent Juvenile Offender: An Empirical Portrait," VJO at 93-96.

District had the lowest perecentage of delinquents living with both parents.[40] The District also had the lowest proportion of kids attending school.[41]

Recently, the federal government has made the District a target for increased drug law enforcement. We cannot solve the problem of violent juvenile crime by incarceration. There is no empirical support for the proposition that increasing the severity of punishment effectively deters juvenile crime.[42] Rather, we must uproot violence where it grows, in families. And, we must identify "at risk" children before they enter the juvenile court. Instead of viewing delinquency as an isolated problem, we must approach it as part of the fabric of life in severely disadvantaged communities. I say this, not to absolve children who commit serious crimes of responsibility for them, but to suggest the most effective way to reduce their criminal behavior. The same level of commitment should be made to address the problems of the District's at risk population. The JJDPA should be amended to give special priority to delinquency prevention measures here in the nation's capital. This mission should be accompanied by additional funding so that new programs are not offset by cutbacks in old ones which have proven of benefit. The objective of this federal intervention should be to:

· implement the Jerry M. decree. The District already has a blueprint for an effective juvenile justice system which comports with the goals of the JJDPA. The consent decree and implementing orders include provisions for specialized and decentralized secure facilities for violent and chronic offenders, neighborhood based community services for delinquents and their families, and improved educational, psychological, and medical services for juveniles in secure facilities. The increased

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[40] SCHNEIDER, DETERRENCE AND JUVENILE CRIME at 32-33.

[41] Id.

[42] Id. at 4,9, 15, 111.

use of community based alternatives will reduce the "hardening" effect of premature incarceration. Children who are locked up at an early age fear imprisonment less, and are less easily deterred. Separating violent offenders from others disrupts the institutional socialization process in which more serious offenders gain status and are reinforced in violent behavior patterns, while less serious offenders emulate the leaders. Treating juvenile delinquents humanely enhances their respect for the system, and makes them more receptive to positive reinforcement. It does no good to hold "self-esteem" building classes when outside of class the residents are roughed up or denied basic medical care. The hypocrisy of a system which claims parental responsibility but practices neglect breeds cynicism.

· prevent premature labelling. Kids who grow up expecting to spend their lives in prison are likely to do so. The more young people we treat as criminals at an early age, the more we condemn to Lorton. Diversion programs which reinforce community norms without telling youngsters they are beyond redemption are at least as effective as incarceration in reducing future crime.[43] Many of the children who wind up in the delinquency system could have been reached earlier, either through statutes protecting children against neglect and abuse, or through better monitoring of children at school.

· work with families and neighborhoods. Just as the causes of delinquency are not isolated, neither are the solutions. A child who grows up in a destructive home environment will not be immune to that environment after returning from a juvenile program. Services for juvenile delinquents must include services for their families. In addition, because part of the problem is the concentration of poverty and unemployment, effective delinquency prevention entails efforts to provide

[43] SCHENIDER, DETERRENCE AND JUVENILE CRIME; WILLIAM S. DAVIDSON, ROBIN REDNER, RICHARD L. AMDUR & CHRISTINA M. MITCHELL, ALTERNATIVE TREATMENTS FOR TROUBLED YOUTH: THE CASE FOR DIVERSION FROM THE JUSTICE SYSTEM (1990).

recreational and vocational resources to the community."

I recently read There are No Children Here, a book about two boys growing up in the Henry Horner projects in Chicago. The books describes the climate of violence, and their mother's difficulties in caring for them. It makes understandable, on a direct human level, what is most perplexing about the changes children go through from endearing vulnerability to hostility and hopelessness. Much that was written there could be said about growing up in the projects here in the District as well. The book is saddening, but its title is ironic. It is because Pharoah and Lafayette are children that they are so vulnerable to the temptations of delinquency. It is because they are children that adults bear some of the responsibility for their behavior. And, it is because they are children that we must not give up.

" SCHORR, WITHIN OUR REACH at 256-283 (importance of continuity).

Senator KOHL. Thank you, Mr. Reiser.
Mr. Baird?

STATEMENT OF CHRISTOPHER BAIRD

Mr. BAIRD. On behalf of the National Council on Crime and Delinquency, I want to thank you, Senator Kohl, for the invitation and the opportunity to present our views.

Over the last 5 years, NCCD has worked with several large agencies on court processing and detention issues. We have also convened a council of judges, chaired by Supreme Court Justice William Brennan, to address the specific issue of juvenile detention.

In the brief presentation period, I would like to revisit some major trends, present a few impressions from other studies of the major urban court systems that we have looked at recently, and to conclude with just a few recommendations, if I may.

First, as you know, and as many have testified to here today, the stress on the juvenile court and the detention system has increased enormously in recent years. From 1985 to 1989 alone, the use of detention, as measured in 1-day counts, rose 30 percent in the United States.

What a lot of people don't know is, there is also substantial variance in the use of detention throughout the country. Admission rates vary from over 6,000 per 100,000 youths in the State of Nevada, to only 224 per 100,000 youths in the State of New Hampshire, and these variances are not always in concert with rates of arrests. Obviously, different States deal quite differently with juvenile offenders.

What do these figures mean when you translate them into a single court system? I will use Milwaukee as an example. From 1987 to 1990 in Milwaukee, arrests for part I crimes, the most serious offenses, increased by 10 percent. At the same time, detention in Milwaukee increased 52 percent, and petitions in the court increased 33 percent. All of this occurred at a time when the juvenile population in Milwaukee was actually declining.

The future looks pretty bleak in that city. Between 1992 and the year 2002, Milwaukee is facing a 25-percent increase in persons aged 12 to 17. Coupled with the more single-parent families, an increase in the number of youth involved in gang-related and violent acts, the Milwaukee court system, which is already overburdened, faces potential gridlock, unless major changes are implemented.

Which brings me to the central issue. It is true that many youth are incarcerated without receiving benefit of counsel. In one western State that we are working with, for example, an official estimated that only 10 percent of the youth placed in their training schools had been represented by lawyers. It is also true that many juvenile court and detention systems are already stressed to the breaking point. Increasing the use of counsel will require resources and lengthen court processing time, that is obvious. In a system that is already enormously expensive, major change is required in order to take on this added burden.

We believe there is an urgent need to first add structure to the decisionmaking process, incorporating state-of-the-art classification

processes that were mentioned by Judge Orlando, including actuarial risk assessment.

Second, based on these processes, there is an extreme need to triage cases, limiting court involvement of low-risk youth. These systems—classification systems—identify youth appropriate for front-end diversion, identify youth for whom community-based programs are appropriate, and third, identify those in need of more secure care.

They also structure services to meet the needs of the child and the family. Judge Malmstadt's description of service provision in Milwaukee unfortunately is tragically typical of what we find throughout the country. Our experience is that use of such systems reduces the use of detention, and in the long run reduces placements in training schools without compromising public safety issues.

The NCCD Council of Judges made 10 major recommendations on juvenile detention. Six of those dealt directly with the need to implement objective systems for determining the need to contain youth.

From our perspective, this is the only way out of the current crisis. I think one of the things that I have made available to the subcommittee is those recommendations made by that Council of Judges, and I think their recommendations are very important to go over.

With that, based on the brief period allowed here, I will conclude my comments, and open it for questions.

[Mr. Baird submitted the following material:]

OPENING STATEMENT

On behalf of the National Council on Crime and Delinquency, I want to thank you, Senator Kohl, for the invitation and the opportunity to present our views.

Over the last five years, NCCD has worked with several large agencies on court processing and detention issues. We have also convened a Council of Judges chaired by Supreme Court Justice William Brennan, to address the specific issue of juvenile detention.

In the brief presentation period, I would like to discuss major trends in detention practices, present a few impressions of issues based on studies of major urban court systems that we have examined in recent years, and to conclude with a few recommendations, if I may.

First, as many have testified to here today, stress on the juvenile court and the detention system has increased enormously in recent years. From 1985 to 1989 alone, the use of detention, as measured in one-day counts, rose 30 percent in the United States.

However, there is also substantial variance in the use of detention from state to state, county to county. Detention admission rates vary from over 6,000 per 100,000 youths in the State of Nevada, to only 224 per 100,000 youths in New Hampshire. These variances are not always in concert with rates of arrests. Obviously, different locales deal quite differently with juvenile offenders.

Statistical trends become more meaningful when their impact on a single court system is examined. The largest city in my home state, Milwaukee, serves as a clear example of the situation faced by nearly every urban center. From 1987 to 1990 in Milwaukee, arrests for Part I crimes, the most serious offenses, increased by 10 percent. At the same time, detention in Milwaukee increased 52 percent, and petitions in the court increased 33 percent. All of this occurred at a time when the juvenile population in Milwaukee was actually declining. Obviously, decision makers were reacting to something other than a 10 percent rise in crime.

The future of the juvenile justice system in Milwaukee looks less than promising. Over the next decade, Milwaukee faces a 25 percent increase in persons aged 12 to 17. Coupled with more single parent families and a probable (given current trends) increase in the number of youths involved in gang-related and violent acts, the Milwaukee court system, already overburdened, faces potential gridlock, unless major changes are implemented.

Which brings me to the central issue discussed today. It is true that many youths are incarcerated without receiving benefit of counsel. In one western state that we are working with, for example, an official estimated that only 10 percent of the youths placed in their training schools had been represented by lawyers. It is also true that many juvenile court and detention systems are already stressed to the breaking point. Increasing the use of counsel will require more resources devoted to the process and, undoubtedly, lengthen court processing time. That much seems obvious. In a system that is already enormously expensive, major change will be required before the system can take on this added burden.

NCCD believes there is an urgent need to first add structure to the decision making process, incorporating state-of-the-art classification processes (mentioned in earlier testimony by Judge Orlando), including actuarial risk assessment.

These processes, if implemented wisely, will allow jurisdictions to triage cases, limiting court involvement with low-risk youth. The primary goal of classification systems is to: (1) identify youth appropriate for front-end diversion, (2) identify youth for whom community-based programs are appropriate, and (3) identify youth in need of more secure care.

These systems also structure services to meet the needs of the child and his/her family. Judge Malmstadt's earlier description of service provision in Milwaukee is tragically typical of what we find throughout the country. Before we can seriously expect an increase in resources, we must better relocate what we already have. NCCD's experience is that use of well-designed classification systems will reduce the use of short-term detention and, in the long run, reduce placements in training schools. It has been clearly demonstrated that such changes can be made without compromising public safety issues.

The NCCD Council of Judges made 10 major recommendations on juvenile detention. Six of those dealt directly with the need to implement objective systems for determining the need to contain youth. This certainly reflects the degree of emphasis such systems should be allotted.

From our perspective, improving decisions through the introduction of structure is the only way out of the current crisis. I have made the recommendations of the NCCD Council of Judges available to this subcommittee. I think the importance of their recommendations cannot be overstated.

This concludes my prepared comments; I will be happy to respond to any questions.

Response to Senator Kohl regarding giving 3 or 4 specific recommendations for Wisconsin.

Wisconsin really needs to add structure to the way the decisions are made about kids; that is, decisions about where they go in the system. Right now decisions are made on a highly individualized basis, dependent upon the interest level, the education, the experience of the individual staff member involved.

New staff are thrust into positions without much training, and required to make critical decisions about security needs. What ends up happening in Wisconsin is that very similar kids get treated very differently by the system, depending on community norms, the wishes of particular judges, and the level of involvement with the court.

Wisconsin, because it is a very manageable system, could solve its problems fairly easily. It is not a big system; outside of the City of Milwaukee, most of the courts are quite manageable. Wisconsin incarcerates youth at a very high level, much higher than they need to. Many youth in state facilities could be safely handled in community-based programs.

When NCCD used a standardized classification instrument, one comprised of criteria typically used by jurisdictions to indicate security requirements and the level of programs necessary to deal effectively with them, we found that nearly 75 percent of the kids in training schools in Wisconsin didn't need long-term secure care. About 25 to 30 percent didn't require secure care at all, while others could be short-tracked (60 - 90 days) through the system and returned to community-based programs.

That has enormous cost implications -- it would allow money to be reallocated into prevention programs, where the money could be used so much more productively than it is now.

Throughout the country, the cost of a secure bed per year ranges from $35,000 to $60,000. That is an enormous expenditure, and it is money that we are not spending very well.

Response to Senator Kohl regarding youth being placed in a Milwaukee facility for long periods of time.

Absolutely. It is a waste of human potential, it is a waste of money. There are so many other places where these kids could be -- even if they can't go home. There is a need to expand many alternative placements in the City of Milwaukee; programs that would deal with these kids much more effectively, and produce some long-term good.

Those kids have to come out of that situation frustrated, bored --

Response to Senator Kohl regarding why youths are not placed into more constructive surroundings.

I think Mr. Reiser hit it right on the head, it is political will. When I looked at -- for instance, when we went through the Los Angeles County court system, I came away with a clear idea that more money would not necessarily help that system. There were already an awful lot of resources available, but they were just misallocated.

In most cities around the country, the fear of c ıe is driving everything. Although many people in the City of Milwaukee and in Los Angeles , w that detention centers aren't doing much to make neighborhoods safe, the political courage to release kids back to the community simply isn't there. People are afraid of those decisions at this point in time.

CLOSING COMMENTS

I would like to make one last comment based on some of the earlier testimony. Some people talked of the conflict between the need of the court to provide services and the need to control youth.

This discussion has been going on for ages, throughout the correctional system, not only in juvenile justice, but in aduit corrections as well. My belief is that successful service programs, in themselves, are a form of control.

You don't necessarily get control by putting kids in a secure facility. The juvenile court has a responsibility to look at other types of control -- programs that reduce risk through treatment, education, skills training -- that is exactly what service programs aim to do. They are not an end in themselves, obviously, but they are there to rehabilitate the child, and if that occurs, that is every bit as effective as any other type of control that we exert upon a family or a child.

NCCD

NATIONAL COUNCIL ON CRIME & DELINQUENCY
COUNCIL OF JUDGES

RECOMMENDATIONS ON JUVENILE DETENTION

March 1, 1989

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NATIONAL COUNCIL ON CRIME AND DELINQUENCY

COUNCIL OF JUDGES

RECOMMENDATIONS ON JUVENILE DETENTION

March 1, 1989

1. States and jurisdictions lacking written guidelines for the secure detention of juveniles before trial should adopt specific, written and objective criteria for juvenile detention.

2. States and jurisdictions with broad, vague or impractical guidelines for juvenile detention should replace them with specific, written and objective criteria for juvenile detention.

3. States and jurisdictions formulating new juvenile detention criteria should look to models of objective criteria used successfully in other states and jurisdictions. Model criteria for juvenile detention are based on objective information, such as the crime charged, the past offense history of the youth, and the legal status of the youth. Objective detention criteria provide a uniform, rational basis for the detention decision, and they discourage subjectivity or bias in the decision-making process.

4. Minors who do not meet objective detention criteria should be released as soon as possible to the custody of parents or to some other responsible individual or agency. Minors who do meet the detention criteria may be securely detained or placed under other restrictions, at the discretion of the probation officer or the juvenile court.

5. Objective detention criteria should be implemented in a systematic and uniform manner, and should be monitored periodically to ensure continued control over juvenile detention levels as well as adequate and on-going protection of the public.

6. Minors detained before trial should be held in a facility that meets accepted standards for juvenile detention. This precludes secure, pre-trial detention in an adult jail or lockup. Minors in juvenile detention facilities are entitled to humane and safe care, including attention to special physical, medical and emotional needs of each young person who is detained. The staff of the juvenile facility should be adequately trained in the care of minors and should have special training in suicide prevention.

7. Many of the nation's juvenile detention centers are older facilities that need to be improved or remodeled to meet current code and safety standards. Local policy makers should distinguish between the need to upgrade deteriorating juvenile facilities and the need to add new detention center capacity. The demand for new space may be the result of inadequate detention screening procedures. Before building new detention centers, jurisdictions with crowded juvenile facilities should implement specific and objective juvenile detention criteria. In several documented cases, jurisdictions adopting specific, objective detention criteria have achieved substantial reductions in their detained juvenile populations, without compromising public safety. Juvenile justice planners should take steps to limit the use of secure, pre-trial detention, by adopting objective and specific detention criteria, before making financial commitments for the construction of new juvenile detention centers.

8. In most cases, juvenile detention centers should not be used for the commitment of minors after adjudication. Increasingly, the nation's detention centers have been used as places for

secure, post-trial commitments lasting as long as six or nine months. The rationale for such dispositions is that they may be in lieu of commitments to a more restrictive secure facility, such as the state training school. Nevertheless, the vast majority of juvenile detention centers were built for short-term, pre-trial custody. They are not designed or staffed to provide the level of schooling, counseling and personal care necessary for longer stays. Moreover, post-adjudicated youth are often co-mingled with pre-trial youth in these detention centers. Use of the detention center for commitment of youth cannot be justified where this use causes the detention center to become overcrowded, or where the commitment program is used solely for punishment or other avoidance of the goals of the juvenile court law. Jurisdictions needing short-term or medium-term alternatives to state training schools should focus resources on the development of alternatives outside the detention center, where the need to restrain the minor can be balanced by an ability to provide meaningful programs serving the rehabilitative goals of the juvenile court law.

9. Administrators and judges in states and jurisdictions not using advanced techniques for the control of juvenile detention should obtain training or technical assistance from reliable sources to facilitate the successful implementation of new detention guidelines and procedures.

10. The upgrading of state and local juvenile detention practice is an effort that should involve, not only the agencies of the juvenile justice system, but the participation of citizens and policy makers as well. This shared effort should include an element of public education, so that the public is informed about the issues and costs related to juvenile detention and has the opportunity to understand the need for reasonable limits on the use of juvenile, pre-trial detention.

* * *

NATIONAL COUNCIL ON CRIME AND DELINQUENCY

COUNCIL OF JUDGES

RECOMMENDATIONS ON JUVENILE DETENTION

Background Statement

The NCCD Council of Judges has issued a ten-point set of recommendations on juvenile detention. This statement presents the background and rationale for the recommendations. It also identifies some model jurisdictions which have modernized their juvenile detention practice.

Overcrowding and the decline in conditions in juvenile detention centers

Unlike adults, children may be incarcerated before trial because they lack the constitutional right to bail. The constitutional issue has been settled, for the time being, by the

United States Supreme Court decision in Schall v. Martin, 476 U.S. 253 (1984), holding that secure, pre-trial detention is justified as an exercise of the state's "parens patriae" authority over children and that such detention does not constitute punishment.

In the five years since the Schall case was decided, conditions have deteriorated in many of our juvenile detention centers across the nation. In fact, the majority's finding in Schall, that pre-trial juvenile detention is not punitive in nature, probably needs review in the light of recent overcrowding and the decline in conditions in many juvenile facilities.

An important source of information on national juvenile detention practice is the data collected by the United States Bureau of Census for the bi-annual "Children in Custody" report. The Children in Custody Report for 1987 was released by the Office of Juvenile Justice and Delinquency Prevention in October, 1988. Supplemental data, not published in the report for 1987, was later provided by the Center for the Study of Youth Policy at the University of Michigan, using the Census Bureau tapes.

The 1987 data show an alarming increase in national admissions to juvenile detention centers. In 1987 there were 467,668 admissions to juvenile detention centers, up from 389,060 admissions for 1985. This is a 20% nation-wide increase in admissions to juvenile detention over the two years measured. In the same two year period, total arrests of juveniles for crimes in the United States increased very slightly (less than 3%); this means that we cannot explain the increase in juvenile detention by a corresponding increase in the incidence of juvenile crime.

The survey also measured national, one-day counts of juveniles in detention facilities. On the counting day in 1987, there were 16,146 juveniles in secure custody in detention centers, versus 13,843 for 1985. This represents a 17% increase in the one-day counts over the two year span in which the surveys were conducted. This increase confirms the picture provided by the data on admissions to juvenile detention cited above.

California stands at the top of the list as the state which confines the most youth in pre-trial facilities. Based on one day counts for 1987, California had 35% of all U.S. youth detentions, though it has only about 10% of the national youth population.

The five jurisdictions with the highest rates of juvenile detention for 1987 were, in rank order, the District of Columbia, Nevada, California, Washington, and Florida. The detention rate is calculated as the number of admissions to detention per 100,000 youth under the original jurisdiction of the juvenile court. The D.C. juvenile detention rate is nearly two and a half times that of its nearest competitor, Nevada. Nevada comes in second largely because its detention rate is calculated on the basis of a low state juvenile population. California, Washington and Florida have high admissions to detention, high detention rates, and significant problems that need to be addressed.

One disturbing fact revealed by the 1987 Children in Custody data is that approximately 39% of all juveniles in detention centers were confined in overcrowded facilities-- i.e., in facilities containing more youth than they were designed to hold. Overcrowding inevitably means deterioration in conditions of confinement. Most of the youth exposed to these conditions have not yet been adjudicated-- i.e., their "guilt" or "innocence" has not been established. A prime example of overcrowding is the situation in Los Angeles County, California, where up to 2,000 minors have been confined in facilities built for 1,400; hundreds of these youth must sleep on the floors at night while they await their turn in court. To address this problem, the Los Angeles County Probation Department has worked with NCCD to adopt objective screening criteria, and the county is now beginning to experience some decline in detention levels.

Another troubling trend emerging from the 1987 data is the growing use of detention facilities as places of commitment for youth sentenced by juvenile courts. These youth may be incarcerated in detention centers for terms of six to nine months or more

after their juvenile court trial. In 1977, there were 4,804 juveniles committed to detention centers across the nation. By 1987, this number had grown to 24,883. This is a five fold increase in the use of pre-trial facilities as places of sentence. The growth in commitments to detention centers may be attributed in part to the filling of spaces in state training schools and other secure facilities. Detention center commitment programs are favored by some judges and probation personnel because they offer sentencing slots under immediate, local control.

Unfortunately, while detention facility commitment programs add sentencing slots, they also add problems. The vast majority of detention centers were designed for short term, pre-trial custody, not for medium or longer term commitments of youth. By and large, these facilities lack the capacity for educational, recreational and other programs serving the rehabilitative goals of the juvenile court law, and the staff of these detention centers may lack training in remedial care. In short, many of these detention center commitments are de facto terms of punishment for low risk minors housed in inadequate facilities.

Another very serious concern is the alarming number of suicides that have occurred among minors in the custodial facilities of the justice system. Suicide is now a leading cause of death among teenagers. According to a study conducted by the Criminal Justice Institute, in 1986 at least 74 juveniles died while in correctional custody, including 28 homicides, 21 suicides and 25 natural or accidental deaths. Reliable data has not yet been collected nationally on suicides by minors in juvenile detention centers. However, news reports tell us that suicides do occur in these facilities. The secure custody situation is a trigger point for some youth, especially in the first 24 hours of confinement. Where institutions are overcrowded with inmates and understaffed, the risks of youth suicide are magnified.

The situation is not likely to improve over the next several years. We are already experiencing the first wave of a predicted

increase in the national youth population, which is expected to climb steadily through the 1990s. Furthermore, there is evidence that the long, downward trend in juvenile arrests has leveled off; any increase in juvenile arrests would intensify pressures on juvenile detention facilities.

National standards for juvenile detention have not been widely adopted

More than a decade ago, respected juvenile justice professionals warned of serious problems related to juvenile detention and called for limits on its use. The Hon. Patricia M. Wald, now a judge of the U.S. Court of Appeals for the Washington, D.C. circuit, had this to say about the practice in 1975:

> Detention does not deserve to be a major part in the juvenile justice process. It should be brief, terribly selective and modest in its aims. If the rest of the system behaves, it should almost disappear...detention should not be, as it is now, the hidden closet for the skeletons of the rest of the system.

The Juvenile Justice and Delinquency Prevention Act of 1974 recognized the need to place reasonable limits on pre trial incarceration of youth. The Act called for an end of secure detention for status offenders, and it created fiscal incentives for non-secure alternatives for all juvenile offenders.

In the late 1970s, two national juvenile justice standards projects formulated standards for juvenile detention. Both recommended the adoption of specific, objective criteria for detention. The detention standard of the Institute of Judicial Administration and the American Bar Association (IJA/ABA) said that secure detention should be applied only where a minor was charged with a crime of violence for which an adult would face a sentence of one year or more, and where other objective risk factors were present (Standard 6.6). The National Advisory Committee on Juvenile Justice and Delinquency Prevention published a juvenile detention standard limiting secure, pre-trial detention to minors who were fugitives from other jurisdictions, were charged with murder, or were charged with another felony and had a history of demonstrable past misconduct (Standard 3.152).

A few jurisdictions adopted the national standards for juvenile detention and were subsequently studied to determine the effect of these standards on reducing detained juvenile populations and protecting the public. In 1980, the Community Research Forum studied four jurisdictions, an urban-rural pair using the IJA/ABA standard, and another urban-rural pair not using the standards. The study concluded that a) the jurisdictions using specific, objective detention criteria achieved substantial reductions in their detained juvenile populations, b) failures to appear were fewer in the jurisdictions using the model criteria, and c) rearrest rates pending court appearance were also lower in the jurisdictions using the model criteria.

But only a handful of jurisdictions have implemented the approaches recommended by the national standards projects. A 1980 study found 17 states with no statute governing juvenile, pre-trial detention.

Even today, many of the states that do have statutes on juvenile detention use code language that is too broad or vague to provide effective control over juvenile detention. In these states, the detention decision remains a subjective judgment, made by the probation intake officer or the court, and similar cases may receive very dissimilar treatment. The picture of national detention practice, provided by the data collected for the Children in Custody reports, is evidence of the widespread failure to restrict juvenile pre-trial detention to cases in which it is absolutely necessary for public protection or to guarantee the appearance of the minor at a court hearing.

Guidance is provided by some model jurisdictions

For modernization of juvenile detention practice, we must look to model jurisdictions. Those jurisdictions have been motivated to reform detention practices for a variety of reasons, including serious problems of overcrowding, lawsuits, and concern

for the welfare of youth in the justice system. Below are brief descriptions of the progress made in four such jurisdictions.

1. Gennessee County, Michigan. Flint is the major city in Gennessee County. By court policy, the county has established specific detention criteria based on the seriousness of offense. A minor cannot be securely detained unless he/she has committed a serious offense and the minor's release would endanger public safety. Status offenders may not be securely detained. It is a specific policy of the court that a juvenile may not be held in the detention facility only because a parent refuses to accept custody or because there are transportation problems; these minors must be referred to non-secure alternative shelter.

2. Jefferson County, Kentucky. In response to claims of overuse of detention, Jefferson County (Louisville) adopted seven criteria for juvenile detention. Any minor not meeting one of these specific criteria cannot be securely confined before trial. To be detainable, a minor has to be charged with a listed, serious crime against persons or with escape; or has to have a multiple, recent offense history; or has to be the subject of a bench warrant, a court order, or an out-of-county felony hold. After implementation of the criteria, the detention rate in Jefferson County dropped by 50%. The public safety impact of the new criteria was tested, and the findings were that minors released under the new criteria were rearrested at about the same rate as under the old system, although failures to appear in court increased by 4%. The new criteria have now been in effect for approximately 8 years, and the county has continued to benefit from reductions in the detained juvenile population.

3. Salt Lake City, Utah. Salt Lake City has implemented specific, objective juvenile detention criteria as a result of a 1984 consent decree in a class action suit challenging the detention policies of the Salt Lake Juvenile court. Detention is now permitted only for the purposes of public protection or securing the attendance of the minor at future court procesdings. A minor may be detained to protect the public only if he/she is charged with a listed, serious offense, or if the minor has a recent history of multiple adjudications. A minor may be detained to ensure future court appearances only if he/she is an escapee or fugitive from another jurisdiction, has left three or more non-secure placements, or has failed to appear in court within the last year. The consent decree required the juvenile court to hold timely, due process hearings on eligibility for detention.

4. Santa Clara County, California. This is one of California's largest counties, with San Jose as its major city. In response to high population levels in its juvenile detention facility, Santa Clara County has adopted risk screening criteria for juvenile detention, developed by NCCD. The Santa Clara County system has been in effect for two years, and has helped that county cut its detention center population by approximately 50%. For each minor referred, a screening officer uses a uses a detention screening form which rates the minor for risk based on specific, objective criteria including the seriousness of the offense, past offense behavior, and probationary status. Minors scoring 10 or more points on the risk scale are eligible for detention; all others are designated for pre-trial release or intensive pre-trial supervision at home. One notable feature of the screening system is that it is applied immediately at intake, and the detain/release decision is made according to uniform standards applied in the first few hours after referral.

These four jurisdictions are not the only ones that have successfully addressed the problem of overuse of juvenile, pre-

trail detention. They are mentioned because they are among the best-known or best-researched examples. Each of these jurisdictions has tailored its own response to a problem of juvenile pre-trial detention. Some have taken administrative steps to reduce long waits in detention centers. Others have developed specific laundry lists of criteria for juvenile detention. And others have applied a new technology of risk assessment, using point scales to classify minors on the need for detention or eligibility for release. As models, they offer direction and guidance to other jurisdictions, and they offer hope that this serious, nationwide problem may be addressed in a meaningful fashion.

Senator KOHL. Thank you very much, Mr. Baird.

Mr. Reiser, I think you were suggesting that we need to understand—and you are right—that there is a history behind most every one of these young people who comes to court whether it is family or locale, or all the other reasons that contribute to finally winding up in juvenile court.

But in terms of the juvenile court system here in the District of Columbia, and how are we going to improve it and make it more effective? How could we make the system work more positively? What are your suggestions?

I am not suggesting that there are clear answers, because we all understand it is very complicated, but if you said, "Do this, do this, and do this," what would you say?

Mr. REISER. First of all, there is a plan to remodel the District of Columbia's juvenile justice system. It is a plan that was agreed to over 5 years ago by the District of Columbia that has never been implemented, so that in terms of reforming the part of the system that deals with the most serious offenders, reforming institutions so that there are specialized, secure facilities for kids who have serious problems. That plan exists.

To the extent that you are trying to improve the process of reintegrating kids into the community, through specialized facilities, job training programs, programs for substance abusing families, that plan exists.

To the extent that what you are trying to do is develop the kinds of objective criteria that Mr. Baird has talked about, and the judges talked about, to reduce excessive use of detention, that plan exists.

The mayor has recently announced a proposal to increase the use of diversion, and that plan is not, I think, in final form, but I think the second thing that needs to be done is to increase services for youth in the District outside of the juvenile court system.

Right now, it is not just a question of money, but we need money. What is happening is that money is coming out of one pocket for kids, and disappearing from somewhere else. School recreation centers are getting cut. The mayor just restored cuts in youth employment programs from last year.

The fact is that I agree with Dr. Feld to the extent that you have to provide services comprehensively, and they don't have to all be in the juvenile court system, and, indeed, I think a number of people talked about labeling. The more you label kids, the faster they end up in the criminal courts.

So I think we need to increase the diversion of kids out of the system. We need to identify at-risk kids early, we need to find good ways to help them. I have been working on a job training program which would integrate vocational training with a new alternative school, and I think that might help.

There are a lot of good things to look at, out there in the world. We just don't either have the money or the political will to implement in the District.

Senator KOHL. Political will—is that the same thing as money?

Mr. REISER. No.

Senator KOHL. What is the difference?

Mr. REISER. I hate to say this, and this is my personal view—this represents nothing about the Public Defender Service—but I think the truth is that part of the problem for the District results from its political status. I think people are very frightened in the local government that doing the kinds of things that everybody in this room has told you to do would be perceived as "soft on crime," and they are afraid.

I believe that there are many well motivated people in the District government who would do the right thing if they believed that they were encouraged to do so by Congress, as opposed to forbidden to do so.

I suspect that this would probably be much more persuasive to both you and to the other Senators than anything I could say, but this is basically a budget book that is put together by the Children's Defense Fund. I am not speaking for them, but a lot of the recommendations for comprehensive services, including improvements in the juvenile court, are described in this book, and I would certainly be happy to make copies available to the subcommittee.

Senator KOHL. Thank you.

Chris Baird, do you want to give us three or four specific recommendations for Wisconsin?

Mr. BAIRD. Wisconsin really needs to add some structure to the way the decisions are made about kids, and where they go in the system. Right now they are made on a highly individualized basis, they are dependent upon the interest level, the education, the experience of the individual staff member involved.

New staff are thrust into positions without much training, and forced to make decisions about where kids go, and what ends up happening in Wisconsin is that very similar kids get treated very differently by the system, depending on where you are from, and what your involvement was with the court.

Wisconsin, I think, could solve its problems fairly easily, because it is a very manageable system. It is not a big system; outside of the city of Milwaukee, most of the court systems are quite manageable. They incarcerate kids at a very high level, much higher than what they need to. Many of those kids are appropriate for community-based programs.

When we ran a standardized instrument, that used criteria typically used by many jurisdictions to indicate where kids need to go, what kinds of programs are necessary to deal effectively with them, we found that about 75 percent of the kids in training schools in Wisconsin didn't need to be there on a long-term basis, 25 to 30 percent didn't need to be there at all, and the others could be short-tracked through the system very quickly.

That has enormous cost implications, and it would allow money to be reallocated into prevention programs, where the money would do much more good than what it is doing now.

In many systems throughout the country, Wisconsin included, the cost of a secure bed per year ranges from $35,000 to $60,000. That is an enormous expenditure, and it is money that we are not spending very well.

Senator KOHL. When I walked through the system in Milwaukee, there were these dozens and dozens of kids just sitting around, doing nothing, getting in trouble with each other, being bored,

being unhappy, learning all the wrong things from each other, sitting around in that facility, some of them for a long, long time.

Now, that needs to be corrected, as quickly as possible. Don't you agree?

Mr. BAIRD. Absolutely. It is a waste of human potential, it is a waste of money. There are so many other places where these kids could be—even if they can't go home, there are so many alternatives that should be in place in the city of Milwaukee that would deal with these kids much more effectively, and produce some long-term good.

Those kids have to come out of that situation frustrated, bored——

Senator KOHL. Does everybody in the system recognize that the facility that we walked through is not doing anything of value except detaining kids. I would imagine everybody recognizes that—or virtually everybody.

If we had a dozen or two dozen people from the system here today, they would all say, "That's right, we need to get those kids out of that facility, and into more constructive surroundings," wouldn't they?

Well, why don't we? What is the problem?

Mr. BAIRD. I think Mr. Reiser hit it right on the head, it is political will. There is a real——

Senator KOHL. Political will. An unwillingness to make a decision to spend the money?

Mr. BAIRD. I think it is more than that.

Senator KOHL. Well, what is it?

Mr. BAIRD. When I looked at—for instance, when we went through the Los Angeles County court system, I came away with a clear idea that more money would not necessarily help that system, that there were an awful lot of resources available, but they were just misappropriated, or misallocated.

I think what is happening in most cities around the country is that the fear of crime is driving everything, and, although people know, in the city of Milwaukee, or in the city of Los Angeles, that those detention centers aren't doing anybody any good, the political courage to make the decision to release kids back to the community simply isn't there. People are afraid of those decisions at this point in time.

Senator KOHL. That is a good observation.

Any other comments that you would like to make, gentlemen?

Mr. Reiser?

Mr. REISER. If I could just echo something, or apply it to the District of Columbia. I think Mr. Baird is absolutely right, that it is not purely a question of resources, it is also resource allocation. If the kind of plan that was agreed to many years ago had been implemented, the District could actually save an enormous amount of money.

However, I would urge the subcommittee, in reauthorizing the JJDPA, to include a special mandate to improve juvenile justice in the District of Columbia, and I suspect that that would be more effective if it were accompanied by funding.

Thank you.

Mr. BAIRD. One last comment I would like to make is based on some of the earlier testimony. Some people talked about the differences, or the conflict, I guess, between the need of the court to provide services, and the need to control youth.

That argument has been going on for ages, throughout the correctional system, not only in juvenile justice, but in adult corrections as well. And, in fact, my belief is that there are many ways to get to heaven, and that programs, in themselves—services provided to kids—are, in themselves, a component of control.

You don't necessarily get control by locking up kids or putting them in a secure facility, and the juvenile court has a responsibility to look at other types of control, and other types of risk reduction, and that is exactly what programs are aimed to do. They are not an end in themselves, obviously, but they are there to rehabilitate the child, and if that occurs, that is every bit as effective as any other type of control that we exert upon a family or a child.

Senator KOHL. Thank you very much, you have been very helpful. Many of your insights are really acute, and I agree with much of what you say.

We will be in contact with you as we proceed to reauthorize the bill. Thank you very much.

Mr. BAIRD. Thank you.

Mr. REISER. Thank you.

Senator KOHL. The hearing is adjourned.

[Whereupon, at 12:20 p.m., the subcommittee adjourned.]

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