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"Parens Patriae vs. Due Process: The Development of an Empirical Indicator as
the Basis for an Evaluation of the Juvenile
Court from Two Competing Perspectives."

by

Dale Good

and

Bruce Hutchinson

Minnesota Crime Control Planning Board
444 Lafayette Road
St. Paul, Minnesota, 55101

ABSTRACT

This paper summarizes partial findings of an ongoing research project at the Minnesota Crime Control Planning Board. Five policy questions vis-a-vis the legal concepts of due process and parens patriae (or right to treatment) are utilized as the basis from which to develop empirical indices of the concepts. The index for each concept is applied to three Minnesota juvenile courts and the results with respect to the policy questions are reported. Concurrent validation tests are reported. The findings include considerable variation in the provision of due process and right to treatment across counties, a generally low to moderate level of provision, and an apparent trade-off in two counties between right to treatment and due process. With caveats about the tentative nature of the findings due to the small sample size, policy implications are discussed. Future analytical uses for the indices are suggested.

I. INTRODUCTION

Policymakers in juvenile justice are particularly concerned with monitoring the operation of the juvenile court given the broad statutory and case law mandate allowing the juvenile court to structure itself in accordance with either a due process (juvenile rights), or parens patriae (right to treatment) perspective. For example, Minnesota's juvenile code⁽¹⁾ specifies minimal

¹Chapter 260, Minnesota Statute, 1976.

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procedural protections for the child but does not, of course, prohibit a county from providing additional protections. Although the code is ambiguous with respect to right to treatment, mentioning for example, that the intent of the laws is to serve the "spiritual, emotional, mental, and physical welfare of the child,"⁽²⁾ the Minnesota Supreme Court Juvenile Justice Study Commission concludes that case law has confirmed a statutory right to treatment in Minnesota.⁽³⁾ However, the character of that right is less clearly specified, and the likelihood of considerable county variation in the implementation of that right is great.⁽⁴⁾ Thus, from a planning or policy-making perspective, the juvenile court presents a rather amorphous form from which to draw conclusions about effectiveness or to suggest changes to move the courts from one operational perspective to another.

Planners or policy-makers are asking five questions with respect to the issue of due process and right to treatment in the county juvenile courts:

1. Is there variation across courts in the handling of juvenile matters vis-a-vis right to treatment and due process?
2. What "level" of due process is being provided?
3. What "level" of right to treatment is being offered?
4. Do the courts seem to utilize them in a tradeoff (i.e. more right to treatment for less due process)?
5. Which of them (or what combination) is most successful in terms of outcome (e.g. return rate, or some other outcome measure)?

It is the purpose of this paper to empirically define due process and right to treatment. That is, we intend to operationally define - to make objective and measurable - these abstract legal concepts for the purpose of responding to the needs of the policymaker or planner as discussed in 1 through 5 above. This paper is part of a larger ongoing project and will thus be limited in scope, including only the following:

- a. a presentation of the operational definitions or indices or right to treatment and due process
- b. a justification for their operational definition
- c. a presentation of the results of their application to three Minnesota county juvenile courts
- d. verification and validity checks
- e. suggested future analytic directions

There is considerable interest in Minnesota at the present time in documenting the variations in procedural operation of the juvenile court⁽⁵⁾ and an under-current of debate about the most effective and most equitable operational

²ibid., 260.011, subdivision 1.

³Report to the Minnesota Supreme Court by the Supreme Court Juvenile Justice Study Commission, (November, 1976), p.80.

⁴ibid., pp. 86-88.

⁵The Minnesota Supreme Court Juvenile Justice Study Commission has received a grant to study procedural variation in the juvenile court and to revise the rules of procedure as necessary with the intent of giving them the weight of law.

principle (right to treatment vs. due process) for the juvenile court. (Questions 1 through 4 above) It was with this in mind that these measures have been developed; however, limitations on the scale of present research effort preclude presenting other than tentative results. It should be cautioned that the sample size of the present study prohibits more than speculation about the remaining counties in Minnesota and discussion of question 5 above. However, significant policy implications for questions 1 through 3 are evident even from a study of only three counties.⁽⁶⁾

II. OPERATIONAL DEFINITIONS AND INDEX CONSTRUCTION

Definitions

A legal (statutory or case law) definition of due process is relatively easy to obtain; however, the same cannot be said of right to treatment. For example, it is clear that while the U. S. Supreme Court has been rather specific in its mandated due process protections for juveniles, it has steered clear of any substantive definition of right to treatment while at the same time defending the rehabilitative ideal.⁽⁷⁾ A second problem encountered by the researcher attempting to measure these concepts is that although a legal definition of due process is readily available, many of the attributes that it specifies as component parts of due process are not available after the fact; that is, not available in formal records of the hearing. For example, ascertaining the courts' efforts to find delinquency only after a "preponderance of evidence"⁽⁸⁾ is impossible from records alone and less than objective under the best of circumstances.

Ideally, in constructing an index of any complex phenomenon one is either enumerating all the attributes of the particular phenomenon and providing a representative measure of each for the construction of the index, or, one is systematically sampling from the population of attributes to construct an index. Given that the phenomena in question present special difficulties for definition and data collection, index construction becomes less rigorous. The solution to this problem is as follows:

Right to Treatment:

Given the lack of a substantive definition of right to treatment either in case or statutory law, as mentioned above, we are suggesting a procedural definition as an alternative. This is less anomalous when one considers that a court is by definition procedurally vs. substantively grounded, hence the unwillingness of the Supreme Court to legally define right to treatment. Right to treatment and its analogous ideal, rehabilitation, imply a medical model, that is, diagnosis and therapy. Therefore, the court as diagnostician must provide a forum for diagnosis.

This can take place either in the courtroom with the help of trained social service professionals; or out of the courtroom after a finding on the cause,

⁶Minnesota Senate File 693, 1978 Session (1978).

⁷Kent vs. United States, 383 U.S. 541 (1966); in re Gault 387 U.S. (1967); in re Winship, 377 U.S. 358 (1970); and McKeiver vs. Pennsylvania, 403 U.S. 528 (1971). For a brief overview of this see Simpson "Rehabilitation as the Justification of a Separate Juvenile Justice System," California Law Review, Vol. 64, No. 4, (1976), pp. 991-999.

⁸In re Winship, 397 U.S. 358 (1970), at 360.

again with the assistance of social service case workers. Specifically, then, one would expect that a right to treatment orientation would result in the following procedures: separation of adjudicatory and dispositional hearings,⁽⁹⁾ utilization of "investigation and report" or the "social study," and having the expert witness of the trained diagnostician available at the hearings.

In effect then, the adherence to these procedures indicates a right to treatment orientation; for without a forum for diagnosis, diagnosis is impossible.

Due Process:

Although due process is easier to define, its attributes are not universally amenable to measurement. We have chosen then, from a policy perspective, one of the most crucial attributes - minimally, protection for the juvenile of a trained advocate, and maximally, a full adversarial process as the best fact finding mechanism, hence method, of arriving at a "preponderance of evidence" (or lack thereof). A second key attribute chosen is speed in arriving at a finding. Both of these elements utilize the adult criminal process as their analogue much as the Supreme Court has done in its recent decisions vis-a-vis due process. Here again, however, we are hypothesizing that the presence or absence of these attributes reflects an orientation, in this case, toward due process. We are not attempting to measure all the attributes of due process, rather choosing the above two key attributes of the adult criminal process and searching for their presence in juvenile court as reflective of a more basic orientation.

Operationalization:

The data for this research effort come from three Minnesota counties and include full "offense careers" or histories on 852 juveniles who committed 1,542 offenses from the first court contact to age 18. For each juvenile, basic demographic variables are included, plus variables from reports of court services, welfare departments, or psychiatric/psychological professionals. Data for each offense includes various law enforcement and court processing variables. Thus, the entire data base is offender rather than offense based in that a "court cohort" was chosen as the sampling frame. The research reported here utilizes a small portion of the available data, and questions on data sources or methodology should be addressed to the overall report of this research.⁽¹⁰⁾

The variables utilized for this index are collected for each offense heard by the court for each child (N=1542)⁽¹¹⁾. The data for each county represents an enumeration of the entire population of the court cohort. The variables are as follows:

Right to Treatment

- a. presence or absence of separate adjudicatory and dispositional hearing⁽¹²⁾

⁹Report to the Minnesota Supreme Court by the Supreme Court Juvenile Justice Study Commission, p. 87.

¹⁰Juvenile Justice in Minnesota: A Systems Analysis of Three Counties, Minnesota Crime Control Planning Board, forthcoming.

¹¹With the exception of 129 multiple simultaneous offense petitions which are to be analyzed separately.

¹²For the importance of a separate hearing process in the implementation, see Report to the Minnesota Supreme Court by the Minnesota Juvenile Justice Study Commission, p. 86-87.

- b. utilization of "investigation and report" or "social study" prior to disposition
- c. presence or absence of any social service professional at the hearing (welfare caseworker, probation officer, psychologist, psychiatrist, drug treatment workers, etc.)

Due Process

- a. attorney assigned (if not retained by the family) for a cause in which the court orders the juvenile be placed in secure detention
- b. attorney present (private or court appointed) at adjudicatory hearings on petitions for serious offenses (felony petitions)
- c. county attorney present at adjudicatory hearings for serious offense petitions (felony petitions)
- d. reference hearing held for petitions on serious offenses (felonies)⁽¹³⁾
- e. length of time between drawing of petition and adjudicatory hearing on serious offenses (felonies)⁽¹⁴⁾

Index Construction

For each concept the variables are treated as components of equal weight in a summative scale. The scale is thought to be summative as each concept reflects a continuum from none to complete, as per our definition. Each variable is treated as a "score," that is, so many "correct" decisions for the total of its opportunities, and then standardized as correct decisions per 100 opportunities. The average score, then reflects the average number of times out of 100 that the court made the correct decision for all of its opportunities (all the variables for each concept). Empirically, you may not find a perfect score (100) as in practice there may be some tradeoff between decisions (e.g., to utilize an "investigation and report" vs. having social service case workers at the hearings. However, it should allow an ordinal ranking and in theory a zero or 100 "score" is possible and has meaning.

¹³The first four variables are expected to measure the first attribute of due process mentioned in "Definitions" above. Analysis was limited to felony petitions to choose the most serious offenses that would be tried in the adult setting, and to avoid the debate on the rationale for treating status offenses under the delinquency jurisdiction. The reference hearing variable is utilized because it is constitutionally recognized that certification denies juvenile treatment rights and therefore mandates adequate due process protections. (See the Report to the Minnesota Supreme Court by the Supreme Court Juvenile Justice Study Commission, Appendix A.) In a practical sense it allows serious offenses to be heard in criminal court where the full panoply of procedural protections come to hear.

¹⁴In this case we recorded the percentage of cases heard within sixty days of petition. Looking at the adult process in Minnesota as a benchmark, we followed the Minnesota Rules of Court (1978) on criminal procedure. Although the processes are far from similar, there is some basis for comparing the petition to adjudication phase of the juvenile court process to the arraignment to "disposition" (adjudication) phase of the adult criminal process, where the rule is that the trial will be held within sixty days of demand after arraignment. Our variable is not measured as court days and so may be conservative.

III. RESULTS

Tables I.A and I.B present the results of the index construction for right to treatment and due process. Concepts are measured across three and five variables respectively. A score is listed on each variable for each county, and an average score for each county is shown at the foot of the column. A score can be interpreted as the average number of times out of 100 that the "correct" decision was made.

TABLE I.A

<u>Variable</u>	<u>RIGHT TO TREATMENT INDEX</u>		
	<u>Bedrock</u>	<u>County* Creek</u>	<u>Evergreen</u>
Separate Adjudicatory & Dispositional Hearings	34.1	23.0	5.3
Utilization of Investigation & Report	22.4	3.3	0.6
Social Service Caseworkers at Hearings	<u>77.0</u>	<u>40.9</u>	<u>24.3</u>
Average Score	44.5	22.4	10.0

*County names are fictitious

TABLE I.B

<u>Variable</u>	<u>DUE PROCESS INDEX</u>		
	<u>Bedrock</u>	<u>County* Creek</u>	<u>Evergreen</u>
Attorney assigned (or retained) when court orders secure detention	15.2	73.7	100.0
Attorney (private or court appointed) present at hearings on felony petitions	11.9	44.4	35.4
County attorney present at hearings on felony petitions	3.5	22.2	37.5
Reference hearings for felony cause	0.9	13.3	2.3
Time from petition to adjudicatory hearing for felony petitions less than 60 days	<u>97.4</u>	<u>78.0</u>	<u>97.0</u>
Average Score	25.8	46.3	54.2

*County names are fictitious

Section IV will attempt to test concurrent validity; however, some tentative conclusions about the indices are warranted. With respect to the research/policy questions outlined in Section I above, we can see that given our definition and operationalization of due process and right to treatment there is considerable variation among the counties in their operation, though they were not chosen for study with an expectation of finding that variation. Second, we can tentatively conclude that none of the three counties' performance is extremely good, with a maximum score of 44.5 of 100 opportunities for right to treatment in Bedrock County, and a maximum score of 54.4 of 100 opportunities for due process in

Evergreen County. Finally, we can see that in two counties there seems to be a "tradeoff" between right to treatment and due process. Bedrock County, which ranks highest on right to treatment, ranks lowest on due process; and Evergreen County, which ranks lowest on right to treatment, ranks highest on due process. Again, we must caution that with only three counties in our sample these conclusions should remain tentative. However, some clear cut policy implications are evident. For example, legislation introduced in the last session of the Minnesota legislature would mandate determinate sentences in juvenile court for specific violent or serious offenses committed by certain juveniles.⁽¹⁵⁾ A significant policy question might be how appropriate this proposed legislation is without accompanying mandated due process protections given the level of due process provided in even three Minnesota counties.

IV. VERIFICATION

This section will present, through the use of offense and dispositional data, tests of four expected relationships between severity of offense and severity of disposition given the due process-right to treatment classification scheme presented in Section III. For the purpose of analysis, the offense and dispositional variables were recorded into categories of increasing severity.⁽¹⁶⁾ Field research and data collection in the three counties under analysis sensitized the researchers to the fact that a case in juvenile court could be disposed of at either the adjudicatory or dispositional hearing. To arrive, therefore, at a simple measure of disposition for a case, the most severe court order was isolated at both the adjudicatory and dispositional hearings. The most severe of these two court orders was then taken as the final disposition for the case.

In this preliminary analysis; the hypothetical relationships between severity of offense and severity of disposition, and number of offenses and severity of disposition were used as criterion measures in a concurrent validity check on the due process-right to treatment county-level classification scheme. In the last twelve years, students of the juvenile court have seen several Supreme Court decisions handed down which were intended to ensure the juvenile of certain procedural safeguards while being processed by the juvenile court. (Kent v. United States, Gault and Winship) As noted in Section II, however, those procedural safeguards are largely unmeasurable. The classification scheme developed previously shows that variation across juvenile court jurisdictions in three Minnesota counties in the manner of processing juvenile cases does exist, and exists in a manner facilitating either right to treatment or due process. How these juvenile court procedural orientations may be expected to influence the dispositional process remains largely unexplored.

Given the broad dispositional discretion of the juvenile court, it is not unreasonable to expect variation across juvenile court jurisdictions in the manner of disposing of certain types of offenses. Codified adult criminal procedure⁽¹⁷⁾ generally isolates two factors to be utilized in determining disposition (sentence) severity of the offenses and the number of prior offenses.

¹⁵Minnesota Senate File 693, 1978 Session.

¹⁶Juvenile Justice in Minnesota: A Systems Analysis of Three Counties, Minnesota Crime Control Planning Board, forthcoming.

¹⁷cf. Minnesota Statutes, 1976.

Since the three Minnesota juvenile court jurisdictions being studied show procedural variation in the methods being explored, it is expected that this variation will influence how the juvenile court relates dispositions to both the severity of the offense being disposed and the number of prior offenses.

A juvenile court characterized procedurally as due process would be expected to adhere quite closely to the manner in which adult criminal courts relate severity of offense and number of prior offenses to severity of disposition. The following two research hypotheses were derived to test this proposition:

- H₁ The more severe the offense being disposed, the more severe the disposition.
- H₂ The greater the number of prior offenses, the more severe the disposition.

A juvenile court characterized procedurally as right to treatment presents much more difficult conceptual and empirical problems when examining the relationships between both severity of offense and severity of disposition, and number of prior offenses and severity of disposition. Rather than relying on severity of offense and number of prior offenses, the court is more likely to rely on socio-demographic data, psychological/psychiatric reports and family background data in arriving at an appropriate disposition that best treats the "whole individual." Unfortunately, such information was not systematically available in the three juvenile courts being studied. However, a juvenile court with a right to treatment procedural orientation would not be expected to emphasize offense severity or the number of prior offenses when affording a disposition designed to treat the "whole individual." To do so would be contrary to the parens patriae philosophy which subsumes the right to treatment concept. The following two research hypotheses were designed to test this proposition:

- H₃ There will be no direct relationship between severity of the offense being disposed and the severity of the disposition.
- H₄ There will be no direct relationship between the number of prior offenses and the severity of the disposition.

As indicated in Section III the three counties being studied were classified as follows:

BEDROCK	-	right to treatment
EVERGREEN	-	due process
CREEK	-	not classified

The null hypothesis of no relationship between severity of offense and severity of disposition for the due process county (Evergreen) was rejected. Table II.A shows the existence of a direct relationship between severity of offense and severity of disposition. Further, it is noted that the relationship obtains in the cases where there is no intervention, (32.2% of all status offenses have no court intervention, while 13.7% of all felony offenses have no court intervention) and where there is out-of-home placement. (12.2% of all status offenses receive out-of-home placement, while 25.5% of all felony offenses receive out-of-home placement.) Thus, although the null hypothesis is rejected, it can be seen that the relationship does not obtain uniformly.

The null hypothesis of no relationship between number of prior offenses and severity of disposition for Evergreen County was also rejected. Table II.B shows the existence of a direct relationship. Here it is noted that the relationship obtains in cases where there is out-of-home placement. (4.5% of all cases involving no prior offenses receive out-of-home placement, while 29.2% of all cases involving three or more prior offenses receive out-of-home placement) Again, although the null hypothesis is rejected, the relationship does not obtain uniformly.

For the right to treatment county, (Bedrock) the null hypothesis of a direct relationship between the severity of offense and the severity of disposition was rejected. Table III.A indicates that, in fact, an inverse relationship exists between the two variables. The inverse relationship primarily obtains in cases where there is out-of-home placement, (40.1% of all status offenses receive out-of-home placement, while 24.4% of all felony offenses receive out-of-home placement) and partially in cases where there is no intervention. (24.4% of all status offenses receive no intervention; 48.1% of all misdemeanor offenses receive no intervention; and 26.7% of all felony cases receive no intervention)

The null hypothesis of no direct relationship between the number of prior offenses and severity of disposition cannot be rejected for Bedrock County. III.B shows that there is a direct relationship between number of prior offenses and severity of disposition. The relationship obtains in cases where there is no intervention, (44.3% of all cases involving no prior offenses receive no intervention; while 13.4% of all cases involving three or more prior offenses receive no intervention) and in cases where there is out-of-home placement. (18.7% of all cases involving no prior offenses receive out-of-home placement, while 58.2% of all cases involving three or more prior offenses receive out-of-home placement)

Since Creek County was unclassified as emphasizing either due process or right to treatment, the decision was made to exclude it from the analysis. With only three county-level systems to work with, it was decided to focus only on those counties where a clear-cut due process or right to treatment classification could be made.

Clearly, the results of this preliminary attempt to relate dispositional information to a due process or right to treatment orientation must be viewed with caution. Although the null hypotheses were rejected in Evergreen County, there are several factors operating which could have affected the resulting relationships. First, the offenses being processed include a preponderance of status offenses. (56.2%) This fact alone could serve to blur any distinction between types of offenses. Second, the dispositional severity categories derived from the thirty-four original dispositions encountered during data collection are rough categories and are subject to differing interpretations, especially by researchers and practitioners. This is compounded by the fact that the intervention category contains more original dispositional categories than does either the no intervention or the out-of-home placement categories. When examining the Evergreen County tables, (Tables II.A and II.B) it can be seen that within categories of the independent variables, intervention contains the highest percentage of cases. These factors notwithstanding, it can be proposed that a due process procedural orientation exists in Evergreen County which approximates procedural safeguards found in the adult criminal justice system; and that the index of the process has been partially validated in that hypothesized relationships between severity of offense and severity of disposition, and number of offenses and severity of disposition were found to obtain.

TABLE II.A*

SEVERITY OF OFFENSE BY SEVERITY OF DISPOSITION - EVERGREEN COUNTY

	<u>Status</u>	<u>Misdemeanor</u>	<u>Felony</u>	<u>Row Total</u>
No Intervention	66 (32.2%)	28 (25.7%)	7 (13.7%)	101 (27.7%)
Intervention	114 (55.6%)	75 (68.8%)	31 (60.8%)	220 (60.3%)
Out-of-Home Placement	25 (12.2%)	6 (5.5%)	13 (25.5%)	44 (12.1%)
Column Total	205 (56.2%)	109 (29.9%)	51 (14.0%)	365 (100%)

$$x^2 = 18.83 \quad \text{d.f.} = 4 \quad p > .001$$

*All percentages appearing in table cells are column percentages

TABLE II.B*

NUMBER OF PRIOR OFFENSES BY SEVERITY OF DISPOSITION - EVERGREEN COUNTY

	<u>None</u>	<u>One</u>	<u>Two</u>	<u>Three or More</u>	<u>Row Total</u>
No Intervention	53 (29.8%)	19 (23.8%)	11 (26.2%)	18 (27.7%)	101 (27.7%)
Intervention	117 (65.7%)	53 (66.2%)	22 (52.4%)	28 (43.1%)	220 (60.3%)
Out-of-Home Placement	8 (4.5%)	8 (10.0%)	9 (21.4%)	19 (29.2%)	44 (12.1%)
Column Total	178 (48.8%)	80 (21.9%)	42 (11.5%)	65 (17.8%)	365 (100%)

$$x^2 = 33.43 \quad \text{d.f.} = 6 \quad p > .001$$

TABLE III.A*

SEVERITY OF OFFENSE BY SEVERITY OF DISPOSITION - BEDROCK COUNTY

	<u>Status</u>	<u>Misdemeanor</u>	<u>Felony</u>	<u>Row Total</u>
No Intervention	96 (24.7%)	125 (48.1%)	58 (26.7%)	279 (32.2%)
Intervention	137 (35.2%)	99 (38.1%)	106 (48.8%)	342 (39.5%)
Out-of-Home Placement	156 (40.1%)	36 (13.8%)	53 (24.4%)	245 (28.3%)
Column Total	389 (44.9%)	260 (30.0%)	217 (25.1%)	866 (100%)

$$x^2 = 75.44 \quad \text{d.f.} = 4 \quad p > .001$$

*All percentages appearing in table cells are column percentages

TABLE III.B*

NUMBER OF PRIOR OFFENSES BY SEVERITY OF DISPOSITION - BEDROCK COUNTY

	<u>None</u>	<u>One</u>	<u>Two</u>	<u>Three or More</u>	<u>Row Total</u>
No Intervention	220 (44.3%)	28 (18.4%)	13 (15.7%)	18 (13.4%)	279 (32.2%)
Intervention	184 (37.0%)	82 (53.9%)	38 (45.8%)	38 (28.4%)	342 (39.5%)
Out-of-Home Placement	93 (18.7%)	42 (27.6%)	32 (38.6%)	78 (58.2%)	245 (28.3%)
Column Total	497 (57.4%)	152 (17.6%)	83 (9.6%)	134 (15.5%)	866 (100%)

$$x^2 = 128.59 \quad \text{d.f.} = 6 \quad p > .001$$

Factors similar to those enumerated for Evergreen County also operated in the right to treatment (Bedrock) county. Although the null hypothesis of the existence of a direct relationship between severity of offense and severity of disposition was rejected, it is indeed difficult to interpret an inverse relationship. Again, of all offenses processed by the court, the majority were status offenses. (44.9%) This, coupled with the problem of researchers and practitioners interpreting the meaning of dispositional orders could have affected the reported relationship. The existence of a direct relationship between the number of prior offenses and severity of disposition serves to further confuse the attempt to validate the right to treatment classification. It may be the case that the more often a juvenile appears in court, the more likely the court is to consider the juvenile in need of some type of intervention. Since the relationship was most pronounced when the disposition was most severe, (Table III.B) a right to treatment orientation may be interpreted by the court to indicate that a higher degree of intervention is necessary to meet the juvenile's right to treatment. Alternatively, the direct relationship may indicate either a frustration at seeing juveniles in court more than once or a lack of dispositional alternatives.

Given the difficulty of empirically deriving dispositional indicators of right to treatment, any interpretation of the relationships observed are quite subjective. Further attempts to validate the existence of a right to treatment orientation in Bedrock County will be approached from an offender rather than an offense-based perspective. With the data presented from an offender-based perspective, it will be possible to develop summary measures for each juvenile in the sample across his or her entire history of juvenile court appearances, including measures of offender type (status, misdemeanor, felony) and disposition. (least severe to most severe) The results obtained in Bedrock County indicate that right to treatment at the dispositional phase of the juvenile court process may not be amenable to analysis using offense-based data.

V. FUTURE ANALYTICAL USES

A large sample of counties is necessary to adequately perform additional checks on validity. However, the ultimate goal of constructing indices of due process and right to treatment is to respond to the fifth policy question listed in Section I above; that is to examine what difference (if any) a particular operational perspective of a court has on some measure of outcome. In other words, what difference does it make that a court provides a high level of right to treatment versus due process? Of course the policy implications are clear -- if there is no difference, the advocates of due process would have an empirical basis for arguing for a juvenile court process closely modeled after the adult criminal process. A finding of no relationship of either variable to some measure of outcome allows policy decisions for either orientation only on the basis of external or philosophical criterion, but the debate would have been focused.

A considerable amount of work remains to be done to undertake the kind of multi-variate analysis suggested, and indeed much work remains in the development of meaningful outcome measures beyond simple recidivism, which is not a pure outcome measure. However, without serious efforts to empirically grapple with the issue of due process and right to treatment, little meaningful change in juvenile justice is likely to take place.



END