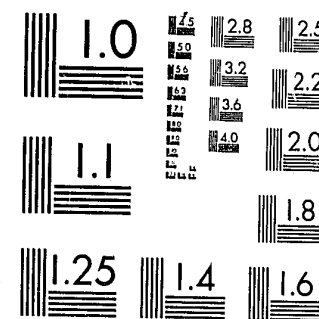


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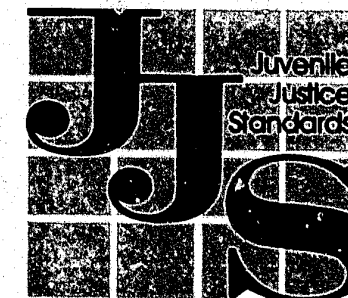
## Reports of the National Juvenile Justice Assessment Centers

### A Comparative Analysis of Juvenile Justice Standards and the JJDP Act

#### Volume II

- Deinstitutionalization of Status Offenders and Nonoffenders
- Separation of Juveniles From Incarcerated Adults

76582



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*Publications in the Juvenile Justice Standards  
Series*

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**Standards for the Administration of Juvenile Justice**

Report of the National Advisory Committee for  
Juvenile Justice and Delinquency Prevention

**Juvenile Justice Standards Symposium: A Summary**

**A Comparative Analysis of Juvenile Justice Standards  
and the JJDP Act (four volumes)**

*Volume I*

- Delinquency Prevention
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- Deinstitutionalization of Status Offenders and  
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- Separation of Juveniles From Incarcerated Adults

*Volume III*

- Reducing Detention and Commitments
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Office of Juvenile Justice and Delinquency Prevention  
*National Institute for Juvenile Justice and Delinquency Prevention*

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**A Comparative Analysis of  
Juvenile Justice Standards  
and the JJDP Act**

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*Volume II*

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- Deinstitutionalization of  
Status Offenders  
and Nonoffenders
  - Separation of Juveniles  
From Incarcerated Adults
- 

Robert W. McCulloh

U.S. Department of Justice  
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November 1981

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## Preface

The National Institute for Juvenile Justice and Delinquency Prevention set up an Assessment Center Program in 1976 in partial fulfillment of its mandate, under the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, (JJDP Act) to collect and synthesize information from available literature on all aspects of juvenile delinquency. Topical Assessment Centers were established on delinquent behavior and its prevention (University of Washington), the juvenile justice system (American Justice Institute), and alternatives to the juvenile justice system (University of Chicago). A fourth center (at the National Council on Crime and Delinquency) was created for integrated data analysis of the work of the other centers.

The present report is one of a four-volume series titled A Comparative Analysis of Juvenile Justice Standards and the JJDP Act, which was developed by the American Justice Institute. Each volume in this series examines two separate issues important to the juvenile justice system. (A listing of the subjects discussed is found on the inside front cover of each report.) Individual issues are analyzed by identifying pertinent provisions of the JJDP Act and then comparing relevant standards adopted by four nationally prominent organizations: The National Advisory Committee for Juvenile Justice and Delinquency Prevention, the Task Force on Juvenile Justice and Delinquency Prevention of the National Advisory Committee on Criminal Justice Standards and Goals, the Institute of Judicial Administration/American Bar Association Juvenile Justice Standards Project, and the American Correctional Association's Commission on Accreditation for Corrections.

Like other papers in the series of Reports of the National Juvenile Justice Assessment Centers, these analyses are intended to facilitate better understanding and action by policymakers, operational personnel, researchers, and the public on how the juvenile justice system can contribute to enhanced and enlightened child development and control.

David J. Berkman  
Director  
National Juvenile Justice  
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## Foreword

Consistent with the purposes of the Juvenile Justice and Delinquency Prevention Act (P.L. 93-415, as amended), Section 102(a)(5), this Office has supported the development of national standards for the administration of juvenile justice which address virtually every facet of the juvenile justice system. Included are standards developed by the National Advisory Committee for Juvenile Justice and Delinquency Prevention, the National Advisory Committee on Criminal Justice Standards and Goals Task Force on Juvenile Justice and Delinquency Prevention, and the Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards. In addition, national professional organizations, such as the American Correctional Association's Commission on Accreditation for Corrections, the National Council of Juvenile and Family Court Judges, the American Medical Association, and others have recently promulgated standards related to their specific disciplines.

With the existence of these various sets of standards representing diverse interests and experience, the National Institute for Juvenile Justice and Delinquency Prevention recognizes the enormous task it is for a State or local jurisdiction, agency, or program to review each of these comprehensive works, to sort out what each group recommends, and to decide where to begin in terms of implementation. Therefore, NIJJDP commissioned this Comparative Analysis to assist in the review of national standards, using the JJDP Act as a framework for structuring the review.

One of the major purposes of this Comparative Analysis is to identify the various recommendations adopted by national standards-setting groups which present options for implementing the major policy thrusts of the JJDP Act. While the Act clearly provides specific direction for improvements in the juvenile justice system, it does not spell out how such goals are to be achieved. Although none of the standards development efforts was undertaken, nor purports, to serve this specific purpose, most of the standards do reflect a substantial agreement with the major policy directions contained in the Act, even though the particular approaches may vary.

It is anticipated that this kind of analysis will be extremely useful to the juvenile justice field, not only because it includes all of the major sets of standards, but also because it provides a focus for standards implementation. It also serves as a means of highlighting major areas of agreement rather than disagreement and controversy. One may hope it will shift the debate from "whose standards get implemented" to "what are the priority areas in which standards can be used as an effective tool for generating and maintaining improvements in the quality of justice for juveniles."

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Acting Administrator  
Office of Juvenile Justice  
and Delinquency Prevention

James C. Howell  
Acting Director  
National Institute for Juvenile  
Justice and Delinquency Prevention

## Introduction

This second volume of the four-part series A Comparative Analysis of Juvenile Justice Standards and the JJDP Act examines two major issues:

- Deinstitutionalization of Status Offenders and Nonoffenders
- Separation of Juveniles From Incarcerated Adults.<sup>1</sup>

Like its three companion publications, the present review takes as its point of departure the Juvenile Justice and Delinquency Prevention Act of 1974, as amended (JJDP Act).<sup>2</sup> This introduction will briefly outline the structure of that legislation and describe the procedure employed in preparing these reports.

### JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT OF 1974, AS AMENDED\*

The JJDP Act represented a major Federal initiative in response to the "enormous annual cost and immeasurable loss of human life, personal security, and wasted human resources" caused by juvenile delinquency.<sup>3</sup> The Act culminated a considerable history of Federal assistance in this area with an attempt to provide "for the first time, a unified national program to deal with juvenile delinquency prevention and control within the context of the total law enforcement and criminal justice effort."<sup>4</sup> Following the original passage in 1974, minor amendments were added to the Act in 1976, and more substantial revisions were made in 1977.<sup>5</sup>

As amended, the JJDP Act is broad-scoped, addressing a diverse range of subjects affecting various levels of government. For example, at the Federal level, it creates, within the U.S. Department of Justice, the Office of Juvenile Justice and Delinquency Prevention along with other, related organizations. In addition to delineating the powers and responsibilities of these agencies, the Act also sets forth several directives intended to achieve greater coordination in Federal efforts to improve juvenile justice.

Of particular importance in the present context, the JJDP Act establishes two different types of Federal grant programs. These are designed "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."<sup>6</sup> The first grant mechanism, the "formula grant program" described in Sec. 223 of the Act,<sup>7</sup> accounts for the major portion of Federal financial

\*After these volumes were completed and while they were undergoing final editorial review, the 1980 Amendments to the JJDP Act were approved. The text in the individual analyses (as well as the text above) discusses the Act, as amended through 1977--the date of the last amendments prior to those of 1980. An Appendix A has been inserted at the end of each volume, identifying those portions of the 1980 Amendments pertinent to the issues discussed in each analysis.

assistance. Sec. 223 outlines certain requirements for the State planning process and directs that the lion's share of formula grant funding be devoted to specified "advanced techniques." The "advanced techniques" contemplated are described in rather general, flexible terms, amenable to adaptation by individual jurisdictions. This is in keeping with the JJDP Act's overall philosophy of providing States and localities considerable latitude in designing their own programs. In two areas, however, Sec. 223 is a good deal more specific: The deinstitutionalization of status offenders and nonoffenders and the separation of confined juveniles from "regular contact" with adults accused or convicted of crimes are identified as objectives of particularly high priority involving special monitoring and reporting requirements.\*

The other major grant program is outlined in Sec. 224 of the Act.<sup>8</sup> It authorizes Federal funding of "special emphasis prevention and treatment programs." While the grants under the two sections differ in several respects, there is a similar delineation of the types of projects eligible for support--here designated "special emphasis programs," rather than "advanced techniques." These, too, are described in flexible terms, affording grant recipients substantial leeway in tailoring programs to local conditions.

In preparing these analyses, the first task was to survey the JJDP Act, as amended--paying particular attention to the grant programs--and identify its major policy thrusts. A comprehensive listing would have been quite lengthy, since the Act alludes to myriad important subjects at least once, while dwelling on others in several different sections. Therefore, the decision was made to sketch only the major contours of the Act. A selective list of eight issues was formulated:

- Delinquency Prevention
- Diversion
- Deinstitutionalization of Status Offenders and Nonoffenders
- Separation of Juveniles From Incarcerated Adults
- Reducing Detention and Commitments
- Community-Based Alternatives to Incarceration
- Advocacy for Services
- Due Process/Procedural Safeguards.

The Act was thoroughly reviewed, and its positions in each of these areas were recorded.

#### STANDARDS GROUPS

The next task was to examine the work of several nationally prominent organizations that have issued standards for juvenile justice. The reports of the following four groups were reviewed:

- The National Advisory Committee for Juvenile Justice and Delinquency Prevention (itself established by the JJDP Act)

\*As is noted in Appendix A in the present volume, the 1980 Amendments to the JJDP Act added a third item to this list: the removal, within specified parameters, of juveniles from adult jails and lockups. The Amendments also modified somewhat the requirements applicable to deinstitutionalization and separation from adults.

- The Task Force on Juvenile Justice and Delinquency Prevention of the National Advisory Committee on Criminal Justice Standards and Goals
- The Institute of Judicial Administration/American Bar Association Juvenile Justice Standards Project
- The American Correctional Association's Commission on Accreditation for Corrections.

The first three groups addressed, with varying degrees of detail, the full spectrum of juvenile justice issues. The Commission on Accreditation for Corrections, on the other hand, confined its recommendations almost exclusively to juvenile correctional programs. All relevant reports of the 4 groups--a total of 31 publications--were examined in some detail.<sup>9</sup>

#### PURPOSE OF THE COMPARATIVE ANALYSIS

This four-part series attempts to identify linkages between the usually very general directions of the JJDP Act and the often rather detailed recommendations of the standards groups. The volumes do not attempt to champion the positions of any one group, to label one set of policy judgments "right" and another "wrong." Certainly the differences, as well as the similarities, in the four groups' positions on key issues are pointed out. But the purpose here is simply to outline options for implementing programs and policies that comply with the JJDP Act.

Indeed, choosing among the recommendations of these four groups need not be considered the only way of fulfilling the Act's directives. It is likely, though, that the publications of the four collectively represent the most thorough and professional examination of these issues to date. Thus, analyzing them comparatively should assist Federal, State, and local policymakers and operational personnel who undertake statutory revision, policy formulation, and program development.

#### FORMAT OF THE INDIVIDUAL ANALYSES

Each analysis consists of six principal parts:

- Description of the Issue
- Pertinent Provisions of the Act
- Summary of Positions Recommended by Standards Groups (Table 1)
- Analysis of the Standards
- Matrix of Interrelated Standards (Table 2)
- Appendix A, Relevant Provisions of the 1980 Amendments to the JJDP Act.

In addition, notes at the end of each paper provide extensive references to primary sources and occasional explanations of minor issues. An Appendix B in each volume sets forth a key to abbreviations, outlining the short-form titles used in the citations of the standards publications.

This format should enable different categories of readers to use these materials as they wish. For example, although the sometimes fairly lengthy Analysis of the Standards section is in many ways the heart of each analysis, the general reader can get a good overview of the discussion merely by reading the first three, usually brief, sections--particularly the summary in Table 1. Readers desiring a more



thorough treatment of the issues can review these analyses in detail. Finally, those who wish to explore individual subjects in depth will, of course, want to consult the original sources themselves. Even these readers, though, may be able to shorten a sometimes rather formidable research task by using the extensive annotations provided here and the reasonably detailed Matrix of Interrelated Standards.

#### NOTE TO THE READER

Since this Comparative Analysis examines the IJA/ABA Joint Commission's standards as they appeared in the 1977 Tentative Drafts, the reader is advised to consult the final volumes subsequently revised and/or approved by the ABA House of Delegates for changes in the standards reviewed here. In some instances this will result in modifications of the analysis conducted herein. The specific changes in the standards are noted in the "Addendum of Revisions in the 1977 Tentative Draft," which can easily be found in the section preceding the Table of Contents in the final IJA/ABA publications.

#### NOTES TO INTRODUCTION

1. For a definition of terms and a clarification of the scope of the subjects discussed, see the brief Description of the Issue sections at the beginning of the individual analyses.
2. 42 U.S. Code Sec. 5601 et seq. (1979 Supp.).
3. Id., Sec. 5601(b).
4. Office of General Counsel, Law Enforcement Assistance Administration, U.S. Department of Justice, Indexed Legislative History of the Juvenile Justice and Delinquency Prevention Act of 1974, p. 2 (1974). For a thorough review of the legislative history of the Act, see generally id. For brief discussions of prior Federal efforts in this area, see, e.g., id., pp. 1-2; IJA/ABA Youth Service Agencies, pp. 14-18.
5. For the legislative history of the amendments, see Committee on the Judiciary, U.S. House of Representatives, House Report No. 94-1155 Accompanying H.R. 13636 (1976); Committee of Conference, U.S. House of Representatives, House Report No. 94-1723 (1976); Committee on the Judiciary, U.S. Senate, Senate Report No. 94-847 (1976); Committee on Education and Labor, U.S. House of Representatives, House Report No. 95-313 (1977); Committee of Conference, U.S. House of Representatives, House Report No. 95-542 (1977); Committee on the Judiciary, U.S. Senate, Senate Report No. 95-165 Accompanying S. 1021 (1977); Committee of Conference, U.S. Senate, Senate Report No. 95-368 (1977).
6. 42 U.S. Code Sec. 5602(b)(4) (1979 Supp.).
7. See id., Sec. 5633.
8. See id., Sec. 5634.
9. For a full listing of the literature surveyed, see Appendix B.

## **Deinstitutionalization of Status Offenders and Nonoffenders**

#### DESCRIPTION OF THE ISSUE

This Comparative Analysis focuses principally on out-of-home placements of youths who have contact with the juvenile justice system because of alleged or adjudicated noncriminal misbehavior such as truancy, running away, and the like (often referred to as "status offenses"<sup>1</sup>), or because of alleged or adjudicated "dependency, neglect, or abuse."<sup>2</sup> More specifically, it considers whether such youths should be deinstitutionalized, by placing them--if at all--only in such facilities as foster homes or group homes, as opposed to (secure) detention or correctional facilities used primarily to house delinquents.

Few topics have been the subject of greater controversy than the threshold question of whether statutory proscriptions of status offenses should be retained, modified, or abolished outright,<sup>3</sup> and the placement of status offenders in juvenile "prisons" has been attacked frequently in the literature.<sup>4</sup> One can achieve the objective of deinstitutionalizing such juveniles by either: (1) eliminating the authority to intervene in these cases by repealing the laws altogether or (2) retaining (while perhaps modifying the scope of) the power to intervene, but altering the placement mechanism.

Since the primary concern of the present review is with deinstitutionalization, the bulk of the discussion that follows will explore the limitations on placement options--both prior to and following adjudication--that are imposed by the JJDP Act and the recommendations of the standards groups. The Comparative Analysis will conclude with a brief sketch of the postures of the standards-issuing groups on an important collateral issue--viz., what (if any) sort of intervention short of the prohibited placements do the groups endorse for cases of these types?

#### PERTINENT PROVISIONS OF THE ACT\*

While the JJDP Act sets forth some rather detailed requirements for the State planning process, in no other substantive, programmatic area does it provide such elaborate directives and mandates as it does in regard to deinstitutionalization of the categories of juveniles mentioned above. Sec. 223(a)(12)(A) of the Act specifies that in order to receive formula grant funding the State plan must

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\*After this Comparative Analysis was completed and while it was undergoing final editorial review, the 1980 Amendments to the JJDP Act were approved. The text above discusses the Act, as amended through 1977. Appendix A beginning on p. 63 of the present volume identifies those portions of the 1980 Amendments relevant here.

provide within three years after 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 such nonoffenders as dependent or neglected children, shall not be placed in juvenile detention or correctional facilities.<sup>5</sup>

Sec. 223(a)(12)(B) buttresses this requirement by specifying that the State plan must also

provide that the State shall submit annual reports to the Associate Administrator containing a review of the progress made by the State to achieve the deinstitutionalization of juveniles described in subparagraph (A) and a review of the progress made by the State to provide that such juveniles, if placed in facilities, are placed in facilities which (i) are the least restrictive alternative approach to the needs of the child and the community; (ii) are in reasonable proximity to the family and the home communities of such juveniles; and (iii) provide the services described in section 103(1).<sup>6</sup>

Sec. 103(1), in turn, defines a "community based" facility as "a small, open group home or other suitable place located near the juvenile's home or family," and details the types of services that "community based" facilities or programs should provide.<sup>7</sup>

Sec. 223(a)(14) endeavors to provide further substance to this framework by requiring that the State plan incorporate "an adequate system of monitoring jails, detention facilities, correctional facilities, and non-secure facilities" to insure compliance with the Sec. 223(a)(12)(A) deinstitutionalization directives. The same section requires annual reporting of the results of this monitoring to the Associate Administrator.<sup>8</sup> In addition, more particularized guidance for the monitoring function is to be found in the regulations set forth in LEAA's State Planning Agency Grants Guideline Manual. These regulations stipulate in pertinent part that:

For the purpose of monitoring, a juvenile detention or correctional facility is:

- (a) Any secure public or private facility used for the lawful custody of accused or adjudicated juvenile offenders or non-offenders; or
- (b) Any public or private facility, secure or non-secure, which is also used for the lawful custody of accused or convicted adult criminal offenders.<sup>9</sup>

Sec. 223(c) rounds out the whole scheme by outlining an enforcement mechanism unique to the deinstitutionalization requirement. It specifies that:

Failure to achieve compliance with the subsection (a)(12)(A) requirement within the three-year time limitation shall terminate any State's eligibility for funding under this subpart unless the Administrator, with the concurrence of the Associate Administrator, determines that the State is in substantial compliance with the requirement, through achievement of deinstitutionalization of not less than 75 per centum of such juveniles, and has made, through an appropriate executive or legislative action, an

unequivocal commitment to achieving full compliance within a reasonable time not exceeding two additional years.<sup>10</sup>

Thus, there is evident throughout the statutory framework a congressional intent to treat the issue of deinstitutionalizing status offenders and nonoffenders differently from other subjects mentioned in the Act, and to attach a particularly high priority to attaining this objective.

#### SUMMARY OF POSITIONS RECOMMENDED BY STANDARDS GROUPS

Table 1 on pp. 8 and 9 summarizes in a general fashion the recommendations of the four groups surveyed here which are pertinent to deinstitutionalization of status offenders and nonoffenders. The subsequent discussion in the Analysis of the Standards section elaborates the positions identified summarily in the table.



TABLE 1  
Summary of Positions Recommended by Standards Groups<sup>11</sup>

	NAC	Task Force	IJA/ABA (Tentative Draft, 1977)	CAC
Preadjudicatory Placement:	Authorizes placement only when the juvenile is "in danger of imminent bodily harm" and "no less coercive measure" will suffice or when no person is willing and able to provide supervision and care. Requires placement in "shelter facilities"; prohibits placement in "secure detention facilities." Specifies that contact with alleged or adjudicated delinquents should be "minimized."	Authorizes placement in "shelter care" only if it is "clearly necessary to protect the juvenile from bodily harm" and requires that "all available alternatives" to placement be exhausted. When it is employed, "every effort should be made" to assure the "least restrictive setting" and that the juvenile "does not come into contact with" delinquents.	Abolishes the court's traditional jurisdiction over status offenses.  Allows "limited custody" of a juvenile "in circumstances which constitute a substantial and immediate danger to the juvenile's physical safety" and in cases of running away. Authorizes placement only in a "temporary nonsecure residential facility."  Also establishes criteria for emergency, 72-hour commitment to psychiatric or medical facilities.	Specifies that status offenders should "be removed from juvenile corrections" and should not be placed in "juvenile detention facilities."  Does not prescribe criteria for removal from the home.
Noncriminal Misbehavior				
Abuse or Neglect	Allows placement only when there is a "substantial risk" of neglect if the child were returned home and "no other measure" than placement "will provide adequate protection." Recommends custody "in the most homelike setting possible." Specifies that neglected or abused children should not be placed in facilities housing accused or adjudicated delinquents.	Authorizes emergency removal of a child from the home only when it is "necessary to protect the child from bodily injury" and the parents are unwilling or unable to provide such protection. As to removals from an environment outside the home, requires that "no other satisfactory means is available." Inferentially prescribes deinstitutionalization by requiring that the child be "delivered immediately" to a specially designated State agency.	Authorizes "emergency temporary custody" when there is probable cause to believe that such custody is "necessary to prevent the child's imminent death or serious bodily injury" and the parents are unwilling or unable to prevent the death or injury. Requires that a special State agency be contacted "immediately" and that it "thereupon take custody," placing the child in a "nonsecure setting" that will adequately safeguard the child's well-being.	Recommends that neglected or abused children "be removed from juvenile corrections" and not be placed in "juvenile detention facilities."  Does not list criteria for removal from the home.

Summary of Positions: I. Preadjudicatory Placement

- A. Noncriminal Misbehavior--Three groups explicitly recommend placement in nonsecure facilities, and the fourth does so inferentially. Two groups specifically criticize any commingling with delinquent youth.
- B. Abuse or Neglect--Two groups explicitly call for placement in nonsecure facilities; the other two do so inferentially. One group explicitly condemns commingling with delinquents; at least one other group does so inferentially.

TABLE 1 (continued)  
Summary of Positions Recommended by Standards Groups<sup>12</sup>

	NAC	Task Force	IJA/ABA (Tentative Draft, 1977)	CAC
Postadjudicatory Placement:  Noncriminal Misbehavior	In general, recommends dispositions constituting "the least restrictive alternative" appropriate. As to placements, authorizes "foster care, a non-secure group home, or other nonsecure residential facility." Prohibits confinement in "a secure detention or correctional facility or institution."	"In no event shall the family court disposition confine the child in an institution to which delinquents are committed."	Abolishes the court's traditional jurisdiction over noncriminal misbehavior.  Creates a special, limited jurisdiction for judicial approval of "alternative residential placements"--which must be nonsecure.	Urges that status offenders "be removed from juvenile corrections" and specifically directs that they not be placed in training schools.
Abuse or Neglect	Overall, suggests dispositions that will protect the child "while causing as little interference as possible" with family autonomy. Requires clear and convincing evidence that the child "cannot be adequately protected from further neglect or abuse unless removed" before a placement "in a day-care program, with a relative, or in a foster home, group home, or residential treatment center" can occur.	Allows placement only after a finding that the child has been endangered and that removal is necessary to protect the child from further harm of the type precipitating the intervention. Authorizes placements "with a relative, in a foster family or group home, or in a residential treatment center."	Authorizes removal only after a finding that a child has been endangered and that the child cannot be protected from further harm of the type justifying intervention unless removed. Allows placements "with a relative, in a foster family or group home, or in a residential treatment center."	Recommends that nonoffenders "be removed from juvenile corrections." Prohibits placing these youths in training schools.

Summary of Positions: II. Postadjudicatory Placement

- A. Noncriminal Misbehavior--Three groups prohibit placements in correctional institutions. The fourth achieves the same result by abolishing the court's traditional jurisdiction over status offenses.
- B. Abuse or Neglect--Three groups (explicitly) limit dispositional alternatives to placement in nonsecure facilities; the fourth does so inferentially.

## ANALYSIS OF THE STANDARDS

Notwithstanding a marked difference between the IJA/ABA Tentative Draft's approach to noncriminal misbehavior and the other standards groups' treatment of that subject, considerable agreement emerges from the groups on the deinstitutionalization issue. Moreover, while each standards-issuing organization reviewed adopts a slightly different posture regarding abuse and neglect, once removal has occurred there is virtually a consensus as to what types of out-of-home placements are appropriate. Subject to minor qualifications, this prevailing agreement holds true for both pre- and post-adjudicatory placements.

### Preadjudicatory Placement

Both the National Advisory Committee (NAC) and the Task Force emphasize what they view as the too extensive reliance on preadjudicatory detention of juveniles charged with noncriminal misbehavior that has accompanied traditional status offense jurisdiction. The NAC, for example, observes that:

Although precise national data is not yet available, a number of studies have estimated that from 20 percent to over 50 percent of juveniles detained prior to disposition are status offenders.<sup>13</sup>

As to the propriety of such detention, the Task Force comments that:

What most of these children need is not detention but attention to specific needs and problems that have precipitated their behavior. Alternative methods that will relieve family tension and keep the juvenile within the home or community can and must be developed. Examples would be day care services, homemaker services, home detention with services and consultation given to the family on an ongoing basis, special foster placements, group homes, etc.<sup>14</sup>

Both of these groups--and the IJA/ABA, as well--emphasize the traumatic effects that even short-term out-of-home placements can have on impressionable juveniles, and all three organizations cite the JJDP Act's deinstitutionalization directive with approval.<sup>15</sup>

Effective implementation of the Act's deinstitutionalization requirement will likely entail the imposition of strictures on the placement-ordering powers of the police, the intake unit, and the court. The National Advisory Committee addresses police practices in this area in its Standard 2.243, which specifies the procedures to be followed after a decision to refer a juvenile to intake because of noncriminal misbehavior. This standard directs in pertinent part that:

Juveniles alleged to have engaged in noncriminal misbehavior should never be placed in a secure detention facility or a facility in which they will have regular contact with accused or convicted adult offenders.<sup>16</sup>

The position of the Task Force regarding police-executed placement decisions in cases involving status offenders seems generally in accord with that of the NAC, though it must be admitted that the Task Force's recommendations in this area are not as precise as they might be. Three standards, and their attendant commentary,

are pertinent: Standards 5.6, 5.9, and 12.8. Standard 5.6 is captioned Guidelines for Taking a Juvenile Into Custody. Its commentary states in part:

With the possible exceptions of runaways, police authority to take into custody a youth who is part of a Family with Service Needs [--the Task Force's terminology for its proposal for a revised status offense jurisdiction--] should not include the authority to place that youth in police detention. If out-of-home placement is required, the police should follow appropriate procedures for placing the youth in shelter care (see Standards 5.9 and 12.8).<sup>17</sup>

Standard 5.9 directs that:

The temporary detention of juveniles by the police should be protective in nature, not punitive. A juvenile should be held in police detention facilities no longer than is necessary for referral to juvenile intake or return to the parents. Juveniles being held in temporary detention should be under observation at all times. Under no circumstances should these juveniles be held in the same detention facilities with adults.<sup>18</sup>

The commentary to 5.9 states in part that:

The standard's intent is that detention in a police facility should be used only for those juveniles who have allegedly committed serious delinquent acts and pose a threat to themselves or others....[C]hildren taken into custody who are part of Families With Service Needs categories should not be placed in police detention facilities.<sup>19</sup>

But the same commentary continues as follows:

Possible exceptions to the...rule are runaways taken into custody. Such children may have to be placed in a secure facility to assure that they do not run away again, pending referral to juvenile intake.<sup>20</sup>

On the other hand, Task Force Standard 12.8, titled Families With Service Needs--Preadjudicatory Shelter Care, specifies that:

Preadjudicatory shelter care should not be used in any Families With Service Needs proceedings unless such shelter care is clearly necessary to protect the juvenile from bodily harm and all available alternative means for adequately providing such protection have been exhausted.

When it is necessary to provide temporary custody for a juvenile pending a Families With Service Needs proceeding, every effort should be made to provide such custody in the least restrictive setting possible, and to assure that the juvenile does not come into contact with juveniles detained pending delinquency proceedings or adjudicated delinquents awaiting disposition.<sup>21</sup>

Since it is eminently clear from the context that the Task Force uses the term "shelter care" in its commonly accepted sense as denoting only nonsecure facilities,<sup>22</sup> the previously cited commentary to Standards 5.6 and 5.9 seems not fully consistent with Standard 12.8. To be sure, the former commentary need not be read as conflicting with the latter standard, since the commentary is targeted to police

operations, whereas the context of the standard indicates that it is directed principally to the court--perhaps also speaking implicitly to the proper content of guidelines for decisions by intake personnel. But such a literal reading produces the anomalous conclusion that the Task Force intended to approve secure detention of runaways by police for a very limited duration, only to disapprove secure detention once such juveniles are actually referred to intake personnel and the court.<sup>23</sup> Insofar as the recommendations are in conflict, probably the standard itself should be read as outlining the Task Force's more considered position.

In general accord with Task Force Standard 12.8 (and likewise in conformity with its own previously cited Standard 2.24<sup>24</sup>) is the National Advisory Committee's Standard 3.153. This states that:

Persons subject to the jurisdiction of the family court over noncriminal misbehavior should not be detained in secure detention facilities.<sup>25</sup>

It directs that such juveniles should, instead, be placed in a foster home or "shelter facility"<sup>26</sup> and that:

When it is necessary to provide temporary custody for a juvenile pending a noncriminal misbehavior proceeding, every effort should be made to provide such custody in the least restrictive setting possible and to assure that contact with juveniles detained...[pending delinquency proceedings] or who have been adjudicated delinquent is minimized.<sup>27</sup>

One means of implementing this recommendation--a means which, in fact, seems required by the context, since the same standard also speaks generally to the proper content of intake guidelines for these cases--would be to stipulate in formally issued agency guidelines that intake personnel are not authorized to place an alleged status offender in any facility which is classified as secure. A similar limitation might be imposed on the powers of the court that reviews pretrial detention decisions in these cases.

As to how contact with alleged or adjudicated delinquents is to be "minimized" in jurisdictions lacking separate facilities, the NAC does not speak with detail.<sup>28</sup> But the following excerpt from the commentary to the generally parallel Task Force Standard 12.8 seems pertinent here:

This may cause considerable difficulties in many jurisdictions where only one facility exists for the preadjudicatory holding of all juveniles. However, even within such facilities separate wings or hallways, separate dining tables, and other separations can be designed for Families With Service Needs juveniles that will at least prevent any long-term contact with juveniles charged with delinquent acts.<sup>29</sup>

The positions of the Commission on Accreditation for Corrections (CAC) on the issues examined here seem, generally speaking, consistent with the recommendations of the National Advisory Committee and Task Force--though the CAC treats the subjects in less detail. Each of the five CAC manuals reviewed contains an introductory statement indicating that:

[I]t is the position of both...[the CAC and the American Correctional Association] that juveniles whose offenses would not be criminal if

committed by adults, including but not limited to status offenders and neglected, abused and dependent children, be removed from juvenile corrections.<sup>30</sup>

Given the (virtually) exclusive focus of the CAC proposals on corrections as such, the group understandably refrained from specifying a particular means--as, for example, eliminating jurisdiction altogether, or, in the alternative, limiting placement options--for achieving this objective. But two of the standards proposed by the CAC should be mentioned in the present context.

First of all, Standard 16 in the Administration manual specifies that correctional agencies should be required to demonstrate that:

There is, or the agency can document efforts to obtain, legislation prohibiting the placement of non-offender juveniles, such as abused, dependent or neglected children or persons in need of supervision in correctional facilities.<sup>31</sup>

The "discussion" (CAC's term for commentary) accompanying this standard indicates that the phrase "persons in need of supervision" is used to refer to status offenders.<sup>32</sup>

Also pertinent here is Standard 8005 in the Juvenile Detention manual. It proposes that the agency be required to show that:

Abused, dependent or neglected children and juveniles charged with offenses which would not be crimes if committed by adults are not held in the facility.<sup>33</sup>

A markedly different approach to the whole subject of status offenses is proposed in the IJA/ABA Tentative Draft on Noncriminal Misbehavior. At the outset, it abolishes the whole gamut of traditional jurisdiction over status offenders, stipulating in Standard 1.1 that:

A juvenile's acts of misbehavior, ungovernability, or unruliness which do not violate the criminal law should not constitute a ground for asserting juvenile court jurisdiction over the juvenile committing them.<sup>34</sup>

Thus, the IJA/ABA Draft does not really authorize "preadjudicatory placements" in the sense in which the NAC and the Task Force do, since noncriminal misbehavior is no longer a basis for an adjudicatory hearing.

Still, a variety of forms of limited intercession are authorized by the IJA/ABA proposals. Most pertinent here are Part II of the volume, outlining standards dealing with "limited custody," and Part III, setting forth standards concerning runaways. Standard 2.1 states in part that:

Any law enforcement officer who reasonably determines that a juvenile is in circumstances which constitute a substantial and immediate danger to the juvenile's physical safety may, if the juvenile's physical safety requires such action, take the juvenile into limited custody subject to the limitations of this part.<sup>35</sup>

The standard further directs that the officer should then, if the juvenile consents, transport the juvenile home (or to the residence of another person responsible for the juvenile).<sup>36</sup> But if the juvenile does not consent to returning home, then the officer is to take the juvenile to a "designated temporary nonsecure residential facility." The standard concludes with the stipulation that:

In no event should limited custody extend more than six hours from the time of the initial contact by the law enforcement officer.<sup>37</sup>

Moreover, Standard 2.3 makes clear that this same 6-hour limitation--still based on the initial contact by the officer--applies to the continuation of "limited custody" by the personnel at the "designated temporary nonsecure residential facility"--a facility which is to be licensed by the State for dealing with cases of this nature.

If the juvenile taken into limited custody and taken to such facility refuses to return home, and the safe release of the juvenile cannot be effectuated within six hours from the time of the juvenile's initial contact with the law enforcement officer...[then the juvenile is to be handled under Part III of the standards governing runaways].<sup>38</sup>

Two excerpts from the commentary to the standards outlining this "limited custody" procedure should be set forth here. First, the volume is quite explicit in its support of the philosophy that:

No release should be made to a person, including a parent, with whom the juvenile is unwilling to go.<sup>39</sup>

Second:

It is to be emphasized that the youth should not be taken to a temporary nonsecure residential facility unless that is a last resort and there is simply no acceptable way to effect the minor's safe release.<sup>40</sup>

Under the standards in Part III, runaways--together with other juveniles taken into "limited custody" who could not be safely released within the 6-hour period--are to be placed in a "temporary nonsecure residential facility licensed by the state for such purpose."<sup>41</sup> The facility staff is directed to undertake efforts to return the juvenile to the home--again, subject to his or her consent--or to an "alternative residential placement" (pursuant to Part V of the standards--a procedure that will be discussed below in the section on Postadjudicatory Placement).

The juvenile's stay in the temporary, nonsecure facility is to be subject to a 21-day maximum--unless the juvenile and the parents assent, in writing, to a longer stay.<sup>42</sup> At the expiration of the 21-day period, either a neglect petition is to be filed ("[i]f the parent or custodian has been derelict in giving consent"[to the juvenile's continued absence])<sup>43</sup> or an "alternative residential placement" is to be secured. As noted, the latter procedure will be discussed below, but to preview it just slightly: judicial involvement is authorized only if the juvenile and the parents are unable to agree on an alternative placement, and placement in a secure facility is prohibited.<sup>44</sup>

On the thorny subject of what level of security is appropriate in facilities handling runaways, the standards in the IJA/ABA Draft are quite consistent: they endorse placements only in nonsecure facilities. The commentary elaborates the underlying philosophical position as follows:

[I]t is inevitable that there will be some hard cases where the juvenile refuses to go home, and refuses to agree to any acceptable alternative living arrangements or refuses to stay in the temporary facility. These standards do not provide coercive sanctions to keep the juvenile there, on the conviction that the existence of such sanctions will inevitably lead back to a status offense jurisdiction. It is clearly the intent of the Congress [as expressed in the Runaway Youth Act] that the immediate needs of runaway youth who have violated no criminal law should be dealt with "in a manner which is outside the law enforcement structure and the juvenile justice system."...Moreover, it is reasonable to expect that the vast majority of runaway youth will be amenable to acceptable alternative living arrangements if they are not ordered to accept them and are not ordered to return home.<sup>45</sup>

Finally, the IJA/ABA Tentative Draft on Noncriminal Misbehavior authorizes one additional means of intercession involving emergency, short-term, out-of-home placements that should be mentioned briefly. Standard 6.1 states that:

When any juvenile, as a result of mental or emotional disorder, or intoxication by alcohol or other drug, is suicidal, seriously assaultive or seriously destructive toward others, or otherwise similarly evidences an immediate need for emergency psychiatric or medical evaluation and possible care, any law enforcement officer, member of the attending staff of an evaluation psychiatric or medical facility designated by the county (state, city, etc.) or other professional person designated by the county (state, city, etc.) may upon reasonable cause take, or cause to be taken, such juvenile into emergency custody and take him or her to a psychiatric or medical facility designated by the county (state, city, etc.) and approved by the state department of health (or other appropriate agency) as a facility for emergency evaluation and emergency treatment.<sup>46</sup>

The commentary to this standard notes that:

Presently, the juvenile court's status offense jurisdiction is frequently used as the basis of intervention in such problems as suicide attempts, drug overdoses, and the like. This Part provides a form of emergency short-term civil commitment.<sup>47</sup>

Standards 6.5 and 6.6 specify that, if emergency evaluation or treatment is required and cannot be effectuated on an outpatient basis, the juvenile may be committed to the psychiatric or medical facility "for a period not to exceed seventy-two hours"--after which time the juvenile is to be released (and, if necessary, offered continuing services on a voluntary basis) or an action is to be initiated pursuant to the State's mental health law.<sup>48</sup>

To recapitulate: The standards reviewed thus far illustrate a variety of different options for implementing the JJDP Act's deinstitutionalization directive in the context of preadjudicatory placements of status offenders. Both the National Advisory Committee and the Task Force support retention of a modified jurisdiction

over status offenders, but in so doing the National Advisory Committee definitely--and the Task Force apparently--stipulates that such juveniles ought to be placed only in nonsecure facilities. The CAC, in general, concurs, suggesting that such youth "be removed from juvenile corrections"<sup>49</sup> without specifying the means. The IJA/ABA Tentative Draft, though, outlines some rather specific mechanisms designed to achieve precisely that objective. And while this approach differs markedly from those advocated by the NAC and the Task Force, the IJA/ABA Draft expresses essential agreement with the positions of the latter two groups regarding the deinstitutionalization issue as such.

As to preadjudicatory placements of nonoffenders subject to intervention because of dependency, neglect, or abuse, the position of the CAC has already been noted in the materials quoted above--viz., that these youths, too, should "be removed from juvenile corrections" and their placement in juvenile detention facilities be barred.<sup>50</sup> The standards proposed by the NAC, the Task Force, and the IJA/ABA in this area present an interesting study in subtle contrasts--not without some very substantial areas of agreement--where slight variations in wording can sometimes be seen as embodying differing value judgments.

The point at which views diverge is in the delineation of substantive criteria governing whether preadjudicatory out-of-home placement is warranted--criteria which are, in turn, reflective of the groups' respective positions on the proper scope of jurisdiction in these cases. Roughly speaking, the positions of the three groups can be aligned on a continuum, with the NAC standards--themselves a good deal more rigorous than the laws presently in force in many States--probably the most permissive of the three regarding intervention and removal; the Task Force standards next; and the standards in the IJA/ABA Tentative Draft at the other end of the (actually not too broad) spectrum.

The NAC's Standard 3.154 authorizes preadjudicatory out-of-home placement only when, among other things, there is "a substantial risk" that the child would be subjected to one of the types of neglect or abuse specified (in Standard 3.113, the jurisdictional standard) if he or she were left in the home and "[t]here is no other measure that will provide adequate protection."<sup>51</sup> The approach of the Task Force is similar, though, in context, probably slightly less approving of removal, since its standards on jurisdiction appear to be a bit more narrowly drawn than the parallel NAC standard.<sup>52</sup> Task Force Standard 12.9, covering placements prior to adjudication, provides in part that:

Statutes governing emergency removal of Endangered Children from the home should:

...

2. Allow removal only when it is necessary to protect the child from bodily injury and the child's parents or other adult caretakers are unwilling or unable to protect the child from such injury.<sup>53</sup>

The commentary to Standard 12.9 states in part that:

The standard seeks to outline a framework for protecting children who are in genuine physical danger while minimizing the risks of unjustified or detrimental use of emergency procedures. Unwarranted removal can prove extremely traumatic for the child and parents.

To avoid improvident removals, the standard establishes a substantive test for removal--i.e., that the child is threatened with bodily injury and cannot be protected without removal.<sup>54</sup>

Task Force Standard 12.9 traces its lineage to--and constitutes a slight modification of--the proposals originally formulated on this subject in the IJA/ABA's Tentative Draft on Abuse and Neglect. The latter volume establishes somewhat more rigorous criteria for emergency out-of-home placements. Its Standard 4.1 specifies in part that:

Any physician, police or law enforcement official, or agent or employee of an agency designated...[to take emergency custody of endangered children] should be authorized to take physical custody of a child, notwithstanding the wishes of the child's parent(s) or other such caretaker(s), if the physician, official, or agent or employee has probable cause to believe such custody is necessary to prevent the child's imminent death or serious bodily injury and that the child's parent(s) or other such caretaker(s) is unable or unwilling to protect the child from such imminent death or injury...<sup>55</sup>

Obviously, the IJA/ABA's "imminent death or serious bodily injury" requirement is somewhat more narrowly drawn (and hence probably more restrictive of removals) than the Task Force's "bodily injury" criterion.

Whatever the variations in the groups' respective criteria for the removal decision though, the NAC, the Task Force, and the IJA/ABA concur in the view that, once preadjudicatory removal from the home has actually occurred, deinstitutionalization should be a guiding principle in the framework establishing the options for temporary placements. Thus, the three groups are unanimous in seeking to assure that neglected or abused children are placed only in safe, comfortable, nonsecure settings. There does seem to be a divergence of views, however, on whether it should be permissible to intermingle these children in nonsecure settings with juveniles awaiting trial on charges of delinquency or noncriminal misbehavior.

The previously cited NAC Standard 3.154 specifies that:

[E]very effort should be made to provide such custody in the most homelike setting possible. Juveniles subject to the neglect and abuse jurisdiction of the family court should not be placed in detention or correctional facilities or facilities housing juveniles or adults accused of or found to have committed a delinquent or criminal offense.<sup>56</sup>

Also pertinent here--and perhaps not entirely consistent with Standard 3.154--is NAC Standard 4.27 on Shelter Care Facilities. It states in part:

A shelter care facility is a nonsecure residential program used for the temporary custody of juveniles.

Neglected or abused children may be placed in shelter care facilities. However, they should not be commingled with juveniles accused or adjudicated of conduct constituting a delinquent offense or noncriminal misbehavior.<sup>57</sup>



The possible inconsistency, of course, stems from the fact that, whereas Standard 3.154 seems to interpose a complete bar on placing neglected or abused children in facilities with delinquents, Standard 4.27 simply prohibits "commingling" non-offenders with delinquent youth--but apparently does not require that placements in the same facilities be precluded altogether (though the commentary is not entirely clear on this point).<sup>58</sup> In another sense, though, Standard 4.27 seems to go beyond Standard 3.154, since 4.27, in addition, prohibits commingling with status offenders. In any case, the NAC standards are fully consistent and quite clear on the really key point: that neglected or abused children are to be placed only in nonsecure facilities.

The IJA/ABA Tentative Draft likewise restricts placement options for these children to nonsecure environments, directing that physical custody be undertaken by a specially designated agency. The commentary to Standard 4.1 states in part:

[O]nly specially qualified and carefully investigated agencies and facilities should be involved in the very delicate and difficult situation of temporary emergency custodial care.<sup>59</sup>

Standard 4.2 stipulates, among other things, that:

An agency taking custody of a child pursuant to Standard 4.1 should place the child in a nonsecure setting which will adequately safeguard his/her physical and emotional wellbeing.<sup>60</sup>

On the issue of commingling, the commentary accompanying Standard 4.2 states:

It is envisioned that these custodial facilities would not also primarily house children charged with or found guilty of delinquent acts and that these facilities would be open, nonsecure buildings.<sup>61</sup>

The latter excerpt is consistent with Standard 10.4 in the IJA/ABA's Interim Status volume, which--while prohibiting the placement of any juveniles not charged with crimes in secure detention facilities--specifically permits the commingling in nonsecure facilities of accused delinquents and "juveniles held for other reasons."<sup>62</sup> The commentary to this standard indicates that:

In order to avoid unnecessarily secure detention, this standard permits the alternative of nonsecure detention facilities that normally house juveniles not charged with crimes to be used also as interim facilities for criminal cases. For example, a house for runaways or a foster home for neglected children could be designated as the nonsecure detention facility for a particular juvenile charged with criminal conduct.<sup>63</sup>

Task Force Standard 12.9 inferentially prescribes that neglected or abused children be placed only in nonsecure facilities, since it calls for the same sort of procedure endorsed by the IJA/ABA--immediate delivery to a specially designated agency.<sup>64</sup> But on the issue of whether commingling these children with accused status offenders or delinquents should be permitted, the Task Force is silent.

#### Postadjudicatory Placement

Overall, the philosophical positions taken by the respective organizations on removal prior to adjudication hold true in the standards governing dispositions and postadjudicatory placements, as well.

NAC Standard 3.183, which governs postadjudicatory dispositions in noncriminal misbehavior cases, requires the court to select the "least restrictive alternative" appropriate to the case and limits placement options to

foster care, a nonsecure group home, or other nonsecure residential facility.<sup>65</sup>

It further states that:

In no case should the dispositional order or the enforcement thereof result in the confinement of a juvenile in a secure detention or correctional facility or institution.<sup>66</sup>

The commentary to NAC Standard 4.25 on Foster Homes states in part:

Once a child has been found to be involved in noncriminal misbehavior or to be a neglected child, foster homes are the preferred placement if the child cannot return home.<sup>67</sup>

It also observes:

Although the use of foster homes is desirable, there is some indication that they are not an integral part of most state juvenile corrections systems....This standard recommends expanding the use of foster care so that it becomes the primary out-of-home placement for neglected juveniles and those involved in noncriminal misbehavior and a more utilized placement for delinquents.<sup>68</sup>

In contrast to its previously cited recommendations on preadjudicatory placements,<sup>69</sup> the NAC's standards and commentary on postadjudicatory placements of status offenders do not contain a directive that contact between these juveniles and adjudicated delinquents be "minimized" or they not be "commingled" with neglected children. The pertinent standards do, however, establish size limitations of 12 juveniles for a group home and 6 for a foster home,<sup>70</sup> and the assumption seems to be that since truly dangerous delinquents with criminal sophistication will be removed to secure facilities, and since all of those categories of juveniles that are placed in nonsecure settings can be carefully supervised, any potential harms from commingling will be very minimal.

On the other hand, the Task Force--whose other recommendations on postadjudicatory placements of status offenders generally parallel those of the NAC--adopts a more rigorous stance on the issue of commingling with delinquents. Its Standard 14.23 directs that:

In no event shall the family court disposition confine the child in an institution to which delinquents are committed.<sup>71</sup>

The commentary to Standard 14.23 disapproves the placement of any adjudicated status offender in a secure facility, citing with approval the argument of the International Association of Chiefs of Police that:

The mixing together of status offenders and real delinquents in detention centers and reform schools helps to provide learning experience for the nondelinquents on how to become real delinquents.<sup>72</sup>

Actually, of course, the NAC also prohibits the particular types of commingling mentioned in this quotation, since it, too, limits placements in training schools and other secure facilities to delinquents.<sup>73</sup> But Task Force Standard 14.23 moves beyond that to prohibit any commingling of adjudicated status offenders and delinquents in postadjudicatory placements--even if these placements are nonsecure.

Given the CAC's recommendation that status offenders "be removed from juvenile corrections,"<sup>74</sup> that group devotes little attention to this issue. The CAC does, however, address the matter briefly in Standard 9004 in its manual on Juvenile Training Schools, which urges that agencies operating training schools be required to demonstrate that:

Abused, dependent or neglected children and youth charged with offenses which would not be a crime if committed by an adult do not reside in the facility.<sup>75</sup>

The IJA/ABA Tentative Draft on Noncriminal Misbehavior emphasizes that implementing such a prohibition--endorsed by all four of the groups surveyed here--will require a change in the current policies of many States. It indicates:

In the great majority of American jurisdictions, status offenders are subject to exactly the same dispositions as minors who commit crimes, including commitment to state training schools. Only a handful of states have followed New York in prohibiting the commitment of...[adjudicated status offenders] to state schools that house delinquent youth....Even in the few states where intermixing is prohibited, status offenders are likely to be treated similarly to delinquents.<sup>76</sup>

As previously noted, even though the IJA/ABA's Noncriminal Misbehavior volume does not sanction "postadjudicatory placements" in any conventional sense, the standards proposed in Part V of the volume do establish a mechanism whereby limited judicial cognizance may be invoked with regard to "alternative residential placements" for runaways and for other juveniles who were initially taken into "limited custody" but who could not be safely returned home within the 21-day maximum established for their stay in the designated temporary, nonsecure facility. Standard 5.1 limits the options to

alternative residential placement in a relative home, foster or group home, or other suitable family setting.<sup>77</sup>

The standard seeks to effectuate the alternative placement by voluntary agreement between the juvenile and his or her parents without any judicial involvement whenever possible. However, the standard does stipulate that:

No alternative residential placement should be arranged over the objection of a juvenile or of his or her parent or custodian, except that if they

cannot agree as to an alternative residential placement and a juvenile not emancipated refuses to return home, the juvenile court may approve an alternative residential placement, upon motion pursuant to this part.<sup>78</sup>

The commentary to Standard 5.4 which outlines the sort of newly created, limited-purpose judicial intervention that is envisioned--and expected to be invoked only as a last resort--states in part:

To strike some balance between the present coercion of the status offense jurisdiction and a complete "hands off" attitude toward the juvenile, which is unrealistic and infeasible, there would be created in the juvenile court a special jurisdiction to approve an alternative residential placement triggered by the filing of an appropriate motion. The exercise of this jurisdiction will assure that the placement selected meets at least minimal requirements for the juvenile's safety and welfare. It is provided that the court cannot command the return of a juvenile to the family home over his or her objection, since compelled return is likely to exacerbate the problems and provoke a runaway again....

A standard of "imperiled" has been adopted to underscore that the court should only disapprove alternative residential plans to which the juvenile agrees if they are seriously defective.<sup>79</sup>

Standard 5.3 provides that:

During any alternative residential placement, there should be provided to the juvenile and to his or her family such services as may be appropriate to the particular case, to the end that the juvenile may be reunited with the family as soon as practicable.<sup>80</sup>

The commentary emphasizes that:

It is the intent of these standards that, in most cases, alternative residential placement will be used only as an interim measure while services are provided to abate the problem and enable the juvenile to return to his or her family.<sup>81</sup>

And Standard 5.4 requires a 6-month review hearing, at which the court is to evaluate the interim services provided and approve or disapprove a 6-month continuation of the alternative placement--with each such 6-month extension to be followed by a similar hearing.<sup>82</sup>

With regard to deinstitutionalization, Standard 5.2 states:

In no event should alternative residential placement for a juvenile in conflict with his or her family, who has violated no criminal law, be arranged in a secure detention facility or in a secure institution used for the detention or treatment of juveniles accused of crimes or adjudged delinquent.<sup>83</sup>

As to commingling these juveniles with delinquents in nonsecure settings, the commentary to this same standard says:

Alternative residential placements should be made in nonsecure family or small group settings (i.e., not more than twenty juveniles at the largest). These standards do not prohibit such alternative residential placements with juveniles adjudged delinquent because, in many cases, the imposition of such a requirement could restrict the sources of funds and deter the development of such placement resources. However, if the placement resource is one primarily used for the housing and treatment of delinquent juveniles, it should not be used for alternative residential placements made pursuant to this Part.<sup>84</sup>

Thus, the NAC, the Task Force, and the IJA/ABA all concur in the view that dispositions for adjudicated status offenders--or, in the case of the IJA/ABA, orders for placements pursuant to a new, limited jurisdiction--should restrict placements to nonsecure settings. In addition, the Task Force recommends that commingling with delinquents be forbidden even in nonsecure facilities, and the IJA/ABA urges that placements not be made in facilities used "primarily" to house adjudicated delinquents.

An important corollary to the issues just discussed should also be mentioned. The IJA/ABA notes that:

Roughly a dozen states have prohibitions against direct commitment of status offenders to state training schools. However, a number of these states appear to allow an unruly child to be so committed on a second status offense, on the rationale that the juvenile has then violated a court order and thus become a delinquent.<sup>85</sup>

Thus, full adherence to the deinstitutionalization philosophy will require, in addition to a proscription of initial dispositional orders placing adjudged status offenders in secure facilities, a parallel prohibition against the same course of action in subsequent proceedings on the enforcement of the original dispositional order.<sup>86</sup>

This, of course, is the reason why the previously cited NAC Standard 3.183 directs that "[i]n no case should the dispositional order or the enforcement thereof" (emphasis added)<sup>87</sup> result in the confinement of an adjudicated status offender in a secure facility. In similar fashion, the commentary to the above-noted Task Force Standard 14.23 states that:

These restrictions are intended to cover not just the initial disposition but all dispositional orders stemming from a Families With Service Needs proceeding. Thus, an initial order to a juvenile to cease a certain behavior could not by violation of that order escalate to a commitment to an institution where delinquents are confined or that is locked or fenced.<sup>88</sup>

The IJA/ABA Tentative Draft also prohibits any placement in secure facilities of juveniles not charged with delinquency or adjudicated delinquent--whether by virtue of initial orders for "alternative residential placements" or on the basis of subsequent reviews of those orders.<sup>89</sup>

With regard to out-of-home placements of children following an adjudication of abuse or neglect, the position of the CAC--that these youth "be removed from juvenile corrections" and their placement in training schools prohibited--has already been

noted in materials quoted above.<sup>90</sup> The NAC addresses postadjudicatory dispositional options in these cases in Standard 3.184, which requires the court to select that disposition which will

adequately protect the juvenile while causing as little interference as possible with the autonomy of the family.<sup>91</sup>

The substantive criteria for removal from the home are a showing that the youth "cannot be adequately protected from further neglect or abuse unless removed" and a demonstration that out-of-home placement is "less likely to be damaging to the juvenile" than remaining in the home.<sup>92</sup> As to placement options, the standard authorizes

placement of the juvenile in a daycare program, with a relative, or in a foster home, group home, or residential treatment center.<sup>93</sup>

The latter language virtually duplicates that of Standard 6.3 in the IJA/ABA's Tentative Draft on Abuse and Neglect,<sup>94</sup> from which the NAC standard is derived. In like fashion, the NAC's substantive removal criteria stem from the IJA/ABA Draft's Standard 6.4 and the wording is, again, very nearly identical.<sup>95</sup> Moreover, the Task Force standards on this subject--Standards 14.25 and 14.27--also trace their lineage to the IJA/ABA proposals; so, the language in these standards--both as to placement options<sup>96</sup> and regarding removal criteria<sup>97</sup>--is, once again, almost exactly the same.

As in the area of preadjudicatory placements, then, the standards groups reviewed here are unanimous in the view that neglected or abused children should be deinstitutionalized and placed only in nonsecure facilities, such as foster homes or group homes. Moreover, in order to facilitate the reunion of the parents and the child whenever feasible--and to avert the harms that too often befall children who are "lost" in long-term foster care--the IJA/ABA, the NAC, and the Task Force all make provision for postdispositional monitoring of these placements by the courts. The groups agree that such hearings should be held (at a minimum) every 6 months.<sup>98</sup> And they also make provision for termination of parental rights in appropriate cases, with the intention of facilitating stable, long-term placements.<sup>99</sup>

#### Intervention Not Involving Placement

Having devoted the bulk of the foregoing discussion to an exposition of the prohibitions on commitments to (secure) detention and correctional facilities which the various groups have proposed--compliance with which will require a considerable alteration in the practices of many States--it may be useful at this point to comment briefly on the other side of the coin: those forms of intervention--short of, and as alternatives to, the proscribed placements--that the groups do countenance. The previously cited excerpt from the commentary to Task Force Standard 12.8 captures the tone of most of the groups' remarks in this area:

What most of these children need is not detention but attention to specific needs and problems that have precipitated their behavior. Alternative methods that will relieve family tension and keep the juvenile within the home or community can and must be developed.<sup>100</sup>

Accepting this analysis, both the Task Force and the NAC--the two groups that endorse retention of a circumscribed status offense jurisdiction--join with the IJA/ABA in urging that great emphasis be placed on the voluntary provision of services. Hence, in the commentary to its Standard 3.112--the very standard in which it urges that a modified status offense jurisdiction should usually be retained as a last resort--the National Advisory Committee urges that:

[F]ederal funds should be made available to assist any jurisdiction willing to abolish court jurisdiction over noncriminal misbehavior, to provide necessary services to juveniles and their families on a voluntary basis, and to evaluate the results and impact of this change.<sup>101</sup>

Moreover, the jurisdictional standard itself specifies that:

The family court should not exercise its jurisdiction over noncriminal misbehavior unless all available and appropriate noncoercive alternatives to assist the juvenile and his/her family have been exhausted.<sup>102</sup>

The latter requirement is a precise parallel to that set forth in Standard 10.2 in the Report of the Task Force. In the commentary to this standard, the Task Force emphasizes that:

The best and most effective place to treat the major portion of...[non-criminal misbehaviors] is outside of the family court system through services or programs that families can obtain or be involved in on a noncoercive, voluntary basis. Treatment voluntarily received should, by its very nature, be more effective than forced treatment. Furthermore, involvement in the court system, because a stigma may be attached to such involvement, should be avoided wherever feasible.<sup>103</sup>

The latter comments, of course, echo the views examined in the preceding Comparative Analysis on Diversion, and the remarks in that earlier review on an appropriate service mix are pertinent here.<sup>104</sup> In general, the NAC, the Task Force, and the IJA/ABA all concur in the view that it is important to provide both mechanisms for crisis intervention and an array of counseling and other supportive services to assist juveniles and their families on a continuing voluntary basis.<sup>105</sup>

In addition, as is apparent from the foregoing discussion, these three groups all endorse some forms of coercive intercession. Those endorsed by the IJA/ABA, which were treated in the greatest detail above, are the most circumscribed, including only: (1) "limited custody"; (2) placement in a temporary nonsecure residential facility; (3) emergency 72-hour civil commitment; and (4) alternative residential placement. By contrast, both the NAC and the Task Force urge that formal court jurisdiction over some types of noncriminal misbehavior be retained, but each of these groups would narrow the range of that jurisdiction. Specifically, the NAC's Standard 3.112 (which was adapted from the proposals of the Task Force) provides that--if all noncoercive options have been exhausted--court jurisdiction should be authorized for: (1) repeated truancy; (2) repeated running away; (3) repeated disregard for or misuse of lawful parental authority; and (4) "delinquent acts" by children below age 10.<sup>106</sup> The Task Force proposals endorse all of these and one additional jurisdictional basis: repeated possession or consumption of intoxicating beverages by juveniles.<sup>107</sup>

Moreover, the proposals of these two groups depart from the traditional approach to status offense jurisdiction in another respect, which should also be mentioned. Task Force Standard 10.3 provides:

In the Families With Service Needs proceedings, once jurisdiction is established, it should extend to the child, his or her parents, and any public institution or agency with a legal responsibility to provide needed service to the child or parents.<sup>108</sup>

The pertinent NAC standard incorporates virtually identical language.<sup>109</sup> The argument in favor of this expanded scope of jurisdiction is explained in the commentary to Task Force Standard 10.3 as follows:

Up to now, the traditional status offense jurisdiction of the juvenile and family courts has focused entirely on the individual child and his or her treatment....This exclusive emphasis on the child overlooks the family and institutional context in which most of these behaviors occur. The behavior of the juvenile or parent forms the basis for the Families With Service Needs jurisdiction. But it also serves as a symptom of some kind of distress within the family and institutional system.<sup>110</sup>

Basically, the intention is that, by extending the scope of its review--and, just as importantly, the range of its dispositional powers--beyond the actions of the individual child, the court will better grasp the causal factors leading to the behavior problems and be able to forge a more comprehensive remedy.<sup>111</sup>

This short sketch of the views of the Task Force and the NAC on the proper scope of the jurisdiction and authority of the court in these areas should be supplemented by a brief mention of these two groups' recommendations regarding coercive intervention by other agencies to deal with noncriminal misbehavior. The Task Force treats this subject in a rather general fashion: urging law enforcement officers to utilize the "least coercive alternative" appropriate to the case;<sup>112</sup> calling for the formal issuance of guidelines on "taking into custody" (that is, arresting);<sup>113</sup> endorsing the issuance of citations as a preferred option;<sup>114</sup> and advocating the development of formal guidelines for temporary police detention practices.<sup>115</sup>

The National Advisory Committee, by contrast, presents a panoply of rather particularized standards on this subject. In general, it offers more specific guidance than the other groups regarding intervention prior to (and, in many instances, instead of) judicial involvement based on noncriminal misbehavior. First of all, it outlines its general views on the proper bases for intervention because of non-criminal misbehavior.<sup>116</sup> Then it addresses the authority of law enforcement agencies to intervene in these cases.<sup>117</sup> It also details criteria to govern police officers' decisions on whether juveniles should be taken into custody because of such conduct<sup>118</sup> and criteria for determining whether to refer the case to the intake unit.<sup>119</sup> In addition, it specifies the procedures that officers should follow in cases where referral to intake is warranted,<sup>120</sup> as well as in cases where such referral is inappropriate.<sup>121</sup> Next, the NAC sets forth a series of standards that cover basically the same subject-matter as those just described--these directed not to actions by police officers, though, but instead to intervention by other government agencies, such as child protective service agencies, public schools, and the like.<sup>122</sup> There are also NAC standards on criteria for decisions by the intake unit in noncriminal misbehavior cases<sup>123</sup> and, of course, those on preadjudicatory out-of-home placements that were reviewed above.<sup>124</sup>

While the specifics of these rather detailed directives on the intervention process need not be recounted here, it should, as a general matter, be noted that:

[T]he circumstances in which intervention would be permissible are closely related to, but less circumscribed than those set forth for the jurisdiction of the family court...[in NAC Standard 3.112], in order to limit the possibility of out-of-home placement or the provision of services on a nonvoluntary basis to the more serious cases without curtailing the opportunities to offer voluntary assistance programs.<sup>125</sup>

To illustrate, just one standard from this rather lengthy series should be set forth here. This is Standard 2.12, probably the key directive in the entire sequence, since it outlines the NAC's general recommendations on the proper bases for and scope of intervention in this whole area. This standard states:

It is appropriate for society to intervene in the life of a juvenile and/or family when they are in need of services because of:

- a. Disregard for or misuse of lawful parental authority;
- b. Violations of the state compulsory education laws;
- c. A juvenile's unauthorized absence from his/her approved place of residence; or
- d. [Asocial]...or dysfunctional behavior by a juvenile resulting from his/her excessive use of alcoholic beverages.

Intervention in such circumstances should be limited to the provision of services on a voluntary basis unless such services have been offered and unreasonably refused or have proven ineffective after a reasonable period of utilization, and referral to the intake unit is otherwise appropriate under the criteria set forth in Standard 2.222. Juveniles alleged to have engaged in noncriminal misbehavior should not be taken into custody [except] in the circumstances described in Standards 2.232, 2.33 and 2.245.<sup>126</sup>

In two key respects this standard sweeps more broadly than NAC Standard 3.112, the standard covering the bases for the court's jurisdiction over noncriminal misbehavior, which was summarized above.<sup>127</sup> First, subparagraphs (a) through (c) in Standard 2.12 omit the requirement for a pattern of repeated misconduct that is set forth in Standard 3.112 as a prerequisite for judicial cognizance of such cases.<sup>128</sup> Second, subparagraph (d) in Standard 2.12 establishes misconduct stemming from excessive use of alcoholic beverages as a basis for intervention, though the NAC concluded that this was not an appropriate basis for invoking judicial proceedings.<sup>129</sup>

The appropriate course of intervention not entailing out-of-home placements for nonoffenders is perhaps less controversial than such intervention in the area of noncriminal misbehavior. As noted above, the three groups reviewed that address the issue each proposes slightly different bases for the court's jurisdiction in cases of abuse or neglect--with the NAC standard on this subject being somewhat more expansive than the parallel Task Force standards,<sup>130</sup> and the jurisdictional bases endorsed in the IJA/ABA Tentative Draft being the most narrowly drawn.<sup>131</sup> Overall, all three groups place special stress on the provision of services on a voluntary basis,<sup>132</sup> and probably the key feature of the intervention procedures--the proposed modifications of the substantive criteria governing removal from the home

and placement pending adjudication--has already been reviewed at some length.<sup>133</sup> Beyond this, the comments regarding the detail of the recommendations made in the context of noncriminal misbehavior generally hold true here also. The Task Force calls for the formal issuance of guidelines to cover police procedures in these cases, but it makes no specific recommendations on the appropriate content of those guidelines.<sup>134</sup> The NAC, on the other hand, offers a whole series of standards on procedures for intervention by law enforcement officers in neglect and abuse cases,<sup>135</sup> and--particularly important in this context--it also sets forth an array of standards to govern intervention by other government entities, such as child protective service agencies.<sup>136</sup>

#### MATRIX OF INTERRELATED STANDARDS

For readers interested in exploring individual issues in greater detail, Table 2 on the following page consists of a matrix, which uses the National Advisory Committee's recommendations as bases for identifying the interrelationships of all the major standards on deinstitutionalization of status offenders and nonoffenders that were surveyed in this analysis.

Immediately following the matrix are index pages, together with instructions for their use. These will permit ready identification of the subject-matter being compared. Titles which appear in parentheses on the index pages are not included in the original volume being cited, but have been supplied to facilitate identification of the content of the standards. Some titles have been shortened to fit the index format. The deletions are indicated by ellipses (...).



TABLE 2

Matrix of Interrelated Standards on  
Deinstitutionalization of Status Offenders and Nonoffenders

Deinstitutionalization of Status Offenders and Nonoffenders																																					
NAC Final Report	Report of the Task Force								IJA/ABA Noncriminal Misbehavior						IJA/ABA Abuse & Neglect				IJA/ABA Police		IJA/ABA Interim Status				IJA/ABA Archite- cture				IJA/ABA Correc- tions		CAC Adminstration	CAC Juvenile Detention	CAC Juvenile Training Schools				
	5.3	5.6	5.9	12.8	12.9	12.10	14.23	14.25	14.27	24.2	1.1	2.1	2.3	3.1	5.2	6.5	4.1	4.2	4.3	6.3	6.4	2.4	2.5	2.10	2.11	5.4	10.4	1.12	1.13	5.1	6.1	4.12	7.1	16	8005	9004	
2.243		●	●									●	●	●	●	●						●	●			●									●	●	
2.244	●	●	●														●					●															
3.153				●									●	●	●																			●	●		
3.154					●	●													●															●	●		
3.183							●				●				●																				●		●
3.184								●	●											●	●													●		●	
3.1811							●								●																			●		●	
3.1813								●	●											●	●													●		●	
4.21							●			●																		●		●			●	●			●
4.22							●																									●	●				
4.23				●	●	●	●	●	●				●	●	●				●	●	●	●			●		●		●			●	●				
4.25				●	●	●	●	●	●				●	●	●				●	●	●	●			●		●		●			●	●				
4.26				●	●	●							●	●	●				●	●				●			●		●						●		
4.27				●	●	●							●	●	●		●	●	●						●		●		●								
4.71							●	●	●						●					●	●														●		●



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TO USE THIS INDEX: Photocopy this page or clip it out as indicated. Lay it alongside the left edge of the matrix on page 28, lining up the corresponding numbers. Similarly copy or clip the index on page 31. Lay it along the top of the matrix.

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NAC Final  
Report

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Procedures Following a Decision to Refer to Intake--Neglect and Abuse	2.244
Criteria for Detention and Release--Noncriminal Misbehavior	3.153
Criteria and Procedures for Imposition of Protective Measures in Neglect and Abuse	3.154
Dispositional Alternatives and Criteria--Noncriminal Misbehavior	3.183
Dispositional Alternatives and Criteria--Neglect and Abuse	3.184
Enforcement of Dispositional Orders--Noncriminal Misbehavior	3.1811
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Training Schools	4.21
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Foster Homes	4.25
Detention Facilities	4.26
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Transfer From Less Secure to More Secure Facilities	4.71

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5.6	Guidelines for Taking a Juvenile Into Custody	
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12.8	Families With Service Needs--Preadjudicatory Shelter Care	
12.9	Endangered Children: Preadjudicatory Temporary Custody--Emergency Removal From the Home	
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14.23	Families With Service Needs--Dispositional Alternatives	
14.25	Endangered Children--Dispositional Resources	
14.27	Endangered Children--Removal of the Child From the Home	
24.2	Secure Residential Facilities	
1.1	Noncriminal Misbehavior Generally	IJA/ABA NONCRIMINAL MISBEHAVIOR
2.1	Limited Custody	
2.3	Inability To Contact Parents;...Temporary...Facility; Options Open to the Juvenile; Time Limits	
3.1	Use of Limited Custody...; Nonsecure Detention; Time Limits; Notification of Parents	
5.2	Prohibition Against Placement in Secure Facility	
6.5	Emergency Placement Not To Exceed Seventy-Two Hours	IJA/ABA ABUSE AND NEGLECT
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2.10	Secure Detention Facility	
2.11	Nonsecure Detention Facility	
5.4	Holding in Police Detention Facility Prohibited	
10.4	Mixing Accused Juvenile Offenders With Other Juveniles	IJA/ABA ARCHITECTURE
1.12	Secure Setting	
1.13	Nonsecure Setting	
5.1	Security	IJA/ABA CORREC-TIONS
6.1	Secure Detention Facility	
4.12	Mixing of Adjudicated and Nonadjudicated Juveniles	CAC ADMIN
7.1	Secure and Nonsecure Facilities; Definition and Certification	
16	(Exclusion of Status Offenders and Nonoffenders From Correctional Facilities)	
8005	(Exclusion of Status Offenders and Nonoffenders From Juvenile Detention Facilities)	CAC JUV DETEN
9004	(Exclusion of Status Offenders and Nonoffenders From Juvenile Training Schools)	CAC JUV TR SCHOOLS

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NOTES

For a complete listing of the abbreviations used in these notes, see Appendix B on pages 69-71.

1. The term "status offenses" is employed throughout this Comparative Analysis in its commonly accepted sense, as encompassing all of those forms of misbehavior that are prohibited by statute--under a whole host of different labels--when performed by juveniles, but do not involve conduct that would constitute crimes if committed by adults. See generally IJA/ABA Noncriminal Misbehavior, pp. 1-21, 35-41. For a helpful review of the widely varying terminology in State laws governing this subject, see the Appendix in id., pp. 74-83.

Two caveats--doubtless familiar to many readers--should also be attached: that many jurisdictions subsume such misconduct in their statutory definitions of "delinquency" (a term used throughout this study to refer only to violations of criminal laws by juveniles); and, that still other jurisdictions, while initially distinguishing between "status offenses" and "delinquency," in effect, create a broad avenue for converting the former into the latter by stipulating that violation of a court's dispositional order (whether initially issued following an adjudication of delinquent conduct or a status offense) constitutes delinquent behavior. See id., pp. 3, 6, 37.

2. Once again, of course, cross-jurisdictional variations in statutory wording more often obfuscate than clarify the conduct at issue. For a thorough review of the terminology employed in the laws of all 50 States, see Katz, Howe, and McGrath, "Child Neglect Laws in America," 9 Family Law Quarterly, pp. 3-372 (Spring 1975), cited in Report of the Task Force, p. 336.

At least in theory, the terms "dependency," "neglect," and "abuse" are analytically distinct. For purposes of the present review, however, they are aggregated and, consistent with common usage, are intended to denote the whole range of situations where intervention is premised on the fact that a nonoffender child's physical or emotional well-being is in jeopardy, usually through parental malfeasance.

3. Compare, e.g., IJA/ABA Noncriminal Misbehavior, pp. 1-21, 35-41 with Report of the Task Force, pp. 311-32, 796-800 and NAC Final Report, Commentary to Standards 2.12, 2.222, 2.232, 2.321, 3.112, and 3.144.
4. See, e.g., Report of the Task Force, pp. 393-95, 480-81; NAC Final Report, Commentary to Standards 3.153 and 3.183.
5. 42 U.S. Code Sec. 5633(a)(12)(A) (1979 Supp.). The Act defines "correctional institution or facility" as "any place for the confinement or rehabilitation of juvenile offenders or individuals charged with or convicted of criminal offenses." Id., Sec. 5603(12). LEAA's Guidelines defining "juvenile detention or correctional facility" will be noted below.
6. Id., Sec. 5633(a)(12)(B). The Associate Administrator mentioned in the first sentence is the head of the Office of Juvenile Justice and Delinquency Prevention (OJJDP). See id., Sec. 5611(c).
7. See id., Sec. 5603(1).

8. See *id.*, Sec. 5633(a)(14). The advisory group required in the State planning process may be given a role in this monitoring. See *id.*, Sec. 5633(a)(3)(F) (iv).

The cognate Sec. 5633(a)(13) proscribes "regular contact" between any juvenile (including delinquents) and adults detained on or convicted of criminal charges. This requirement is addressed in the other Comparative Analysis in this volume.

9. Department of Justice, Law Enforcement Assistance Administration, "Final Guideline Revision for Definition of Juvenile Detention or Correctional Facility," 44 Federal Register, p. 55784 (Sept. 27, 1979) (emphasis deleted). See also Department of Justice, Law Enforcement Assistance Administration, "Formula Grant Provisions of the Juvenile Justice and Delinquency Prevention Act of 1974, As Amended: Final Guidelines for Implementation," 43 Federal Register, pp. 36405-07 (Aug. 16, 1978).
10. 42 U.S. Code Sec. 5633(c) (1979 Supp.). The Administrator mentioned in the section is, of course, the head of LEAA; the Associate Administrator, again, the head of OJJDP. See note 6.

Technically, the finding of a violation of any of the requirements for the plan can, after appropriate procedures are followed, result in a termination of funding. See *id.*, Sec. 5633(d). But the deinstitutionalization proviso is singular in that it is the only directive subject to the specialized enforcement mechanism established by Sec. 5633(c).

11. Sources: NAC Final Report, Standards 2.243, 2.244, 3.153, 3.154, 4.23, 4.25, 4.26, and 4.27; Report of the Task Force, Standards 5.3 (pp. 201-02), 5.6 (pp. 206-08), 5.9 (pp. 214-15), 12.8 (pp. 393-95), 12.9 (pp. 396-98), and 12.10 (pp. 399-400); IJA/ABA Noncriminal Misbehavior, Standards 1.1 (pp. 35-41), 2.1 (pp. 41-42), 2.3 (pp. 44-45), 3.1 (pp. 46-50), 3.2 (pp. 50-52), 4.3 (pp. 53-54), 6.1 (pp. 61-62), and 6.5 (pp. 64-65); IJA/ABA Abuse and Neglect, Standards 4.1 (pp. 78-83), 4.2 (pp. 83-86), 4.3 (pp. 86-88), and 4.4 (p. 88); IJA/ABA Police, Standards 2.4 (pp. 33-45) and 2.5 (pp. 45-51); IJA/ABA Interim Status, Standards 2.10 (pp. 45-46), 2.11 (pp. 46-47), 5.4 (p. 70), and 10.4 (pp. 98-99); IJA/ABA Architecture, Standards 1.12 (p. 21), 1.13 (pp. 21-22), and 6.1 (pp. 68-69); CAC Administration, p. ix and Standard 16 (p. 4); CAC Juvenile Detention, p. xix and Standard 8005 (p. 2).
12. Sources: NAC Final Report, Standards 3.183, 3.184, 3.1811, 3.1813, 4.21, 4.22, 4.23, 4.25, and 4.71; Report of the Task Force, Standards 14.23 (pp. 480-81), 14.25 (pp. 484-85), 14.27 (pp. 488-91), and 24.2 (pp. 701-03); IJA/ABA Noncriminal Misbehavior, Standards 4.3 (pp. 53-54), and 5.1 through 5.4 (pp. 55-60); IJA/ABA Abuse and Neglect, Standards 6.3 (pp. 116-19) and 6.4 (pp. 119-29); IJA/ABA Corrections, Standards 4.12 (pp. 98-99) and 7.1 (pp. 118-19); IJA/ABA Architecture, Standards 1.12 (p. 21), 1.13 (pp. 21-22), and 5.1 (pp. 50-52); CAC Administration, p. ix and Standard 6 (p. 4); CAC Juvenile Community Residential Services, pp. vii, xix; CAC Juvenile Training Schools, pp. ix, xx and Standard 9004 (p. 1); CAC Juvenile Probation, pp. xx, 22.
13. NAC Final Report, Commentary to Standard 3.153.
14. Report of the Task Force, p. 394.

15. See *id.*, pp. 393-95; NAC Final Report, Commentary to Standard 3.153; IJA/ABA Noncriminal Misbehavior, pp. 5-6, 14-15.

16. NAC Final Report, Standard 2.243.

17. Report of the Task Force, p. 207.

18. *Id.*, p. 214

19. *Id.*, pp. 214-15.

20. *Id.*, p. 215. The commentary continues: "In all other cases, however, holding nondelinquent youths with alleged delinquents in police detention facilities should be scrupulously avoided." *Id.*

21. *Id.*, p. 393.

22. See *id.*, pp. 615-16, 665-66.

23. Alternatively, and perhaps more plausibly, while the term "shelter care" is seen as denoting only facilities that are "nonsecure," the latter term should perhaps be read as encompassing facilities that do place some limits (albeit short of those imposed in "secure" facilities) on the juveniles' rights of access and egress. Cf. NAC Final Report, Commentary to Standard 3.183. But cf. *id.*, Commentary to Standard 3.153; Report of the Task Force, pp. 615-16, 665-66, 706-08.

On a related matter: Whatever the convolutions of the Task Force stance on the "secure" facilities issue, this group does seem to be in accord with the second aspect of the previously cited LEAA Guidelines in this area--the proscription on placing these juveniles with adults. See the text accompanying note 9; Report of the Task Force, pp. 622-24, 667-68.

24. See the text accompanying note 16.

25. NAC Final Report, Standard 3.153.

26. For the NAC's definition of "shelter care facilities," see *id.*, Standard 4.27. See also *id.*, Standards 4.23, 4.25, and 4.26.

27. *Id.*, Standard 3.153. It might be mentioned, though, that while the range of placement options delineated here seems virtually identical to those (apparently) approved by the Task Force, the two groups seem to differ slightly on the substantive criteria proposed to determine when placements are warranted in these cases. Thus, this same NAC standard authorizes placement, not only in cases involving "danger of imminent bodily harm"--language which generally parallels that in Task Force Standard 12.8--but, in addition (as an alternative criterion), "when there is no person willing and able to provide supervision and care." The NAC is also more specific than the Task Force regarding intake guidelines. Compare *id.* and Commentary to Standard 3.144 with Report of the Task Force, pp. 393-95.

28. See NAC Final Report, Commentary to Standards 3.153 and 4.27.

29. Report of the Task Force, p. 394.
30. CAC Administration, p. ix. See also CAC Juvenile Detention, p. xix; CAC Juvenile Community Residential Services, pp. vii, xix; CAC Juvenile Training Schools, pp. ix, xx; CAC Juvenile Probation, p. xx.
31. CAC Administration, p. 4.
32. See id.
33. CAC Juvenile Detention, p. 2.
34. IJA/ABA Noncriminal Misbehavior, p. 35. See also IJA/ABA Juvenile Delinquency, Standard 2.3 (pp. 23-24); IJA/ABA Juvenile Probation, Standard 2.8 (pp. 64-65, 68).
35. IJA/ABA Noncriminal Misbehavior, p. 41. See also IJA/ABA Police, Standards 2.4 (pp. 33-45) and 2.5 (pp. 45-51).
36. See IJA/ABA Noncriminal Misbehavior, pp. 41-42. The officer need not actually transport the juvenile; alternatively, he or she may "arrange for such transportation." Id.
37. Id., p. 42.
38. Id., p. 44.
39. Id., p. 43.
40. Id., p. 45.
41. Id., p. 46. The commentary indicates that these nonsecure facilities (and the procedures established under Part III generally) are to conform to the requirements established by Title III of the JJDP Act--the Runaway Youth Act. See id., pp. 48-49; 42 U.S. Code Sec. 5701 et seq. (1979 Supp.). See also IJA/ABA Architecture, pp. 212-22; IJA/ABA Interim Status, pp. 46-47, 98-99.
42. See IJA/ABA Noncriminal Misbehavior, p. 46.
43. Id., p. 49. See also id., pp. 46, 50-51.
44. See id., pp. 55-60.
45. Id., p. 52. See also 42 U.S. Code Sec. 5711 (1976).
46. IJA/ABA Noncriminal Misbehavior, p. 61.
47. Id.
48. See id., pp. 64-66.
49. See note 30 and accompanying text.
50. See notes 30-33 and accompanying text.

51. See NAC Final Report, Standard 3.154. See also id., Standards 2.244 and 3.113.
52. Compare id. with Report of the Task Force, Standards 11.8 through 11.16 (pp. 353-70).
53. Id., p. 396. This standard authorizes emergency temporary custody without prior judicial approval only if there is not enough time to secure such approval. See id. The NAC and the IJA/ABA adopt the same position. See NAC Final Report, Standards 2.233 and 2.33; IJA/ABA Abuse and Neglect, Standard 4.1 (pp. 78-81).
54. Report of the Task Force, p. 396. See also id., Standard 12.10 (pp. 399-400) (establishing a parallel mechanism for removal of endangered children from an environment other than the home).
55. IJA/ABA Abuse and Neglect, p. 78. The standard continues in part: "...provided that where risk to the child appears created solely because the child has been left unattended at home, such physician, official, or agent or employee should be authorized only to provide an emergency caretaker to attend the child at home until the child's parent returns or sufficient time elapses to indicate that the parent does not intend to return home." Id. See also Report of the Task Force, p. 396 (accord). In addition, the IJA/ABA Draft requires court approval prior to removal unless there is not enough time to obtain that approval. See note 53.
56. NAC Final Report, Standard 3.154.
57. Id., Standard 4.27.
58. See id., Commentary to Standard 4.27.
59. IJA/ABA Abuse and Neglect, p. 83.
60. Id. This standard also places great emphasis on maintaining opportunities for parental visitation whenever feasible.
61. Id., p. 84. As will be noted below, this same "primarily" criterion is used in the commentary in the Noncriminal Misbehavior volume in regard to "alternative residential placements."
62. IJA/ABA Interim Status, p. 98.
63. Id., pp. 98-99 (emphasis original). See also id., pp. 46-47; IJA/ABA Architecture, pp. 21-22, 68-69; IJA/ABA Corrections, pp. 98-99.
64. See Report of the Task Force, pp. 396-98.
65. NAC Final Report, Standard 3.183.
66. Id. See also id., Standards 4.21, 4.22, 4.23, 4.25, and 4.26.
67. Id., Commentary to Standard 4.25.
68. Id.

69. See the text accompanying notes 27 and 57.
70. See NAC Final Report, Standards 4.231 and 4.25.
71. Report of the Task Force, p. 480. See also id., p. 799.
72. Id., p. 481, citing R. Kobetz and B. Bosarge, Juvenile Justice Administration (1973).
73. See NAC Final Report, Standards 4.21 and 4.26. See also id., Standard 4.22.
74. See note 30 and accompanying text.
75. CAC Juvenile Training Schools, p. 1.
76. IJA/ABA Noncriminal Misbehavior, p. 5. See also id., pp. 6, 74-83.
77. Id., p. 55.
78. Id.
79. Id., p. 59.
80. Id., p. 56.
81. Id.
82. See id., pp. 56-60.
83. Id., p. 55.
84. Id., p. 56 (emphasis original). See also IJA/ABA Architecture, pp. 21-22, 37-38, 50 (accord); IJA/ABA Corrections, pp. 98-99, 118-19 (accord).
85. IJA/ABA Noncriminal Misbehavior, p. 6. See also id., pp. 37-38; IJA/ABA Juvenile Delinquency, pp. 19-20, 23-24.
86. Such a limitation need not foreclose the option of filing a new complaint if the action in violation of the court order is also cognizable as a second status offense, or of filing a delinquency complaint if a violation of the criminal law itself is actually involved. See NAC Final Report, Standard 3.1811.

Aside from the limitations on the court's dispositional authority and enforcement powers suggested by the discussion in the text, full compliance with the deinstitutionalization directive will likewise require that the correctional agency be precluded from transferring an adjudged status offender from a non-secure facility to a secure facility. While such a stricture is implicit in the postures assumed by all four standards groups, only one group--the NAC--actually addresses this issue (and it does so rather circuitously). When NAC Standards 3.1811 and 4.71 and their commentary are read in conjunction, it is clear that the NAC intends that such transfers be prohibited. See id., Commentary to Standards 3.1811 and 4.71. Such a ban on transfers to secure facilities is likewise consistent with other, related standards endorsed by the other three groups. See IJA/ABA Corrections, Standards 4.5 (pp. 79-80), 5.4 (pp. 105-07),

and 7.7 (pp. 142-45); IJA/ABA Dispositions, Standard 5.4 (pp. 129-31); IJA/ABA Dispositional Procedures, Standard 6.3 (pp. 50-51); Report of the Task Force, Standards 14.22 (pp. 480-81), 19.6 (pp. 622-24), 20.4 (pp. 645-46), and 20.5 (pp. 647-48); CAC Juvenile Detention, Standards 8400-03 (pp. 81-82); CAC Juvenile Community Residential Services, Standard 6135 (p. 27); CAC Juvenile Training Schools, Standards 9461-63 (p. 93) and 9476-78 (p. 97); CAC Juvenile Probation, Standards 7141-48 (pp. 28-29), 7185-97 (pp. 37-39), 7213 (p. 42), 7216 (p. 43), and 7257-59 (p. 52).

87. See the text accompanying note 66.
88. Report of the Task Force, p. 481.
89. See IJA/ABA Noncriminal Misbehavior, pp. 37-38, 55-56. See also id., p. 52.
90. See the text accompanying notes 30 and 75.
91. NAC Final Report, Standard 3.184. See also id., Standard 3.1813 (on enforcement of dispositional orders in these cases).
92. Id., Standard 3.184.
93. Id.
94. See IJA/ABA Abuse and Neglect, p. 116.
95. See id., p. 120. Two differences between the standards should, however, be noted. First, while both groups require a previous adjudication of neglect or abuse before removal can occur, the two groups' proposed statutory bases for a finding of neglect or abuse vary, with those of the IJA/ABA being more narrowly drawn. Compare id., pp. 48-64, 120-29 with NAC Final Report, Standard 3.113. Second, the IJA/ABA proposal adopts a differential standard of proof, requiring a demonstration by clear and convincing evidence that the child cannot be protected without removal in all cases except those involving physical abuse--where a preponderance of the evidence is held to suffice. The NAC requires clear and convincing evidence in all cases. Compare id., Standard 3.184 with IJA/ABA Abuse and Neglect, p. 120.
96. See Report of the Task Force, pp. 484-85.
97. See id., pp. 488-91. The Task Force adopts the same differential standard of proof as the IJA/ABA, but employs just slightly different wording regarding the removal criteria. Instead of requiring proof that the child "cannot be protected from further harm of the type justifying intervention unless removed," the Task Force requires a showing that removal is "necessary in order to protect the child" from such further harm. Compare id. with IJA/ABA Abuse and Neglect, p. 120.
98. See id., Standards 7.1 through 7.5 (pp. 135-48); NAC Final Report, Standard 3.1812; Report of the Task Force, Standards 14.30 (pp. 496-97) and 14.31 (pp. 498-99).
99. See id., Standard 14.32 (pp. 500-01); IJA/ABA Abuse and Neglect, Standards 8.1 through 8.5 (pp. 148-63); NAC Final Report, Standard 3.185.

100. See note 14 and accompanying text.
101. NAC Final Report, Commentary to Standard 3.112 (emphasis deleted). See also id., Prevention Strategy: Focal Point Social Interaction--Strategy Cor. J-2, and Commentary to Standard 2.12.
102. Id., Standard 3.112.
103. Report of the Task Force, p. 318. See also id., pp. 312-13, 798-99; IJA/ABA Noncriminal Misbehavior, Standards 4.1 through 4.4 (pp. 52-55), 5.3 (p. 56), and 6.3 (pp. 63-64); IJA/ABA Youth Service Agencies, Standards 4.2 and 4.3 (pp. 40-42); IJA/ABA Schools, Standards 1.10 through 1.13 (pp. 50-55).
104. See also NAC Final Report, Prevention Strategies: Focal Point The Individual--Strategies Cor. F-1 and Cor. F-3; Focal Point Social Institutions--Strategy Cor. F-3 (regarding individual and family counseling, child protective services, and crisis intervention); Report of the Task Force, Standards 3.4 and 3.5 (pp. 90-94) (addressing the same issues). The IJA/ABA standards cited in note 103 are also pertinent here.
105. See generally the sources cited in notes 103 and 104.
106. See NAC Final Report, Standard 3.112.
107. See Report of the Task Force, Standards 10.1 through 10.8 (pp. 311-32). The Task Force also requires "repeated 'delinquent acts'" by children under age 10 (unless the offense is of a "serious nature")--a stipulation the NAC omits.
108. Id., p. 320.
109. See NAC Final Report, Standard 3.112.
110. Report of the Task Force, p. 320. See also id., pp. 313, 480, 799.
111. Thus, the dispositional authority is also broadened to include all of these parties. See id., pp. 313-14, 320-21, 480, 799; NAC Final Report, Standard 3.183.  
  
It might also be noted that among the dispositional options that the Task Force proposed to make available to the court--one useful particularly, though not exclusively, in cases involving runaways--is a new approach to the emancipation of minors. This is set forth in its Standard 14.24 on Responsible Self-Sufficiency. See Report of the Task Force, pp. 482-83. For a different approach to emancipation, see IJA/ABA Rights of Minors, Standard 2.1 (pp. 20-33).
112. See Report of the Task Force, Standards 4.3 (pp. 186-87) and 4.4 (pp. 188-89).
113. See id., Standard 5.6 (pp. 206-08).
114. See id., Standard 5.5 (pp. 205-06).
115. See id., Standard 5.9 (pp. 214-15). For IJA/ABA standards paralleling the citations in this and the three preceding footnotes, see IJA/ABA Police,

Standards 2.4 and 2.5 (pp. 33-51). See also IJA/ABA Noncriminal Misbehavior, Standards 2.1 through 2.4 (pp. 41-45); IJA/ABA Youth Service Agencies, Standard 4.4 (pp. 42-43).

116. See NAC Final Report, Standard 2.12. "The term 'intervention' is meant to indicate the moment the public official makes contact with the youth or family. It is not synonymous with referral to the family court or removal of juveniles from their home." Id., Introduction to The Intervention Function.
117. See id., Standard 2.21.
118. See id., Standard 2.232.
119. See id., Standard 2.222.
120. See id., Standard 2.243. See also id., Standard 2.245.
121. See id., Standard 2.241.
122. See id., Standards 2.31, 2.321, 2.33, 2.341, 2.342, 2.343, and 2.344.
123. See id., Standards 3.142, 3.144, 3.146, and 3.147.
124. See id., Standards 2.243 and 3.153. The pertinent excerpts from these standards appear in the text accompanying notes 16 and 25 through 27. See also id., Standards 3.155, 3.156, and 3.158 (regarding judicial review of detention and release decisions in these cases).
125. Id., Commentary to Standard 2.12.
126. Id., Standard 2.12.
127. See the text accompanying note 106.
128. Compare id., Standard 3.112 with id., Standard 2.12. True, subparagraph (b) in Standard 2.12 refers to "violations," but this is to be contrasted to "a pattern of repeated absences"--the language in Standard 3.112(a). Probably "violations" in Standard 2.12 is plural because, as the attendant commentary notes, "it is the intent of the standard that the schools take primary responsibility for resolving truancy problems including counseling the child and family, advising them of the availability of social and financial services, and providing alternative educational programs."
129. See id., Commentary to Standard 3.112. As noted in the text accompanying note 107, the Task Force, on the other hand, did endorse court jurisdiction based on repeated possession or consumption of alcoholic beverages.
130. Compare id., Standard 3.113 with Report of the Task Force, Standards 11.8 through 11.16 (pp. 353-70).
131. See IJA/ABA Abuse and Neglect, Standards 2.1 and 2.2 (pp. 48-64).
132. See the sources cited in note 104.



133. See the text accompanying notes 51 through 55.
134. See Report of the Task Force, Standards 4.3 (pp. 186-87), 5.2 (pp. 199-200), 5.3 (pp. 201-02), 5.6 (pp. 206-08), and 5.9 (214-15).
135. See NAC Final Report, Standards 2.13, 2.21, 2.223, 2.233, 2.241, 2.244, and 2.245.
136. See *id.*, Standards 2.31, 2.322, 2.33, 2.341, 2.342, 2.343, and 2.344.

## Separation of Juveniles From Incarcerated Adults

### DESCRIPTION OF THE ISSUE

Juveniles removed from their homes, either before or after an adjudicatory hearing, are placed in a variety of different settings, ranging from full-scale prisons housing convicted adult offenders to foster homes, which--at their best--preserve a family atmosphere with caring, supportive parental surrogates. Since the beginnings of the juvenile justice system in the 1890's, few practices have been more sharply criticized than the placement of youths in institutions where they mix with "hardened criminals" in an environment that is often emotionally traumatic for the juveniles, and not infrequently entails physical peril, as well.<sup>1</sup>

Despite the often repeated pleas on this subject, such practices persist--in a pervasive fashion.<sup>2</sup> This Comparative Analysis reviews those provisions of the Juvenile Justice and Delinquency Prevention Act pertinent to this issue and then surveys the positions of each of the standards-issuing groups with regard to separating juveniles from adults, with attention directed to both preadjudicatory and postadjudicatory placements.

### PERTINENT PROVISIONS OF THE ACT\*

In many respects, the Act's directives on separation of juveniles from adults parallel those on deinstitutionalization of status offenders and nonoffenders discussed in the preceding Comparative Analysis. For example, Sec. 223(a)(13) specifies that to qualify for formula grant funds the State's plan must provide that "juveniles alleged to be or found to be delinquent" (as well as the previously discussed youth involved with the system because of noncriminal misbehavior, abuse, or neglect)

shall not be detained or confined in any institution in which they have regular contact with adult persons incarcerated because they have been convicted of a crime or are awaiting trial on criminal charges.<sup>3</sup>

A further elaboration of this proscription of "regular contact" with incarcerated adults is found in the Law Enforcement Assistance Administration's (LEAA's) regulations issued pursuant to this section, set forth in that agency's State Planning Agency Grants Guideline Manual. These regulations provide in pertinent part:

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\*After this Comparative Analysis was completed and while it was undergoing final editorial review, the 1980 Amendments to the JJDP Act were approved. The text above describes the Act, as amended through 1977. The section of Appendix A which begins on page 66 identifies those portions of the 1980 Amendments relevant here.

This prohibition seeks as absolute a separation as possible and permits no more than haphazard or accidental contact between juveniles and incarcerated adults.<sup>4</sup>

Compliance with the separation requirement is to be monitored under Sec. 223(a)(14) in precisely the same fashion mandated for monitoring implementation of the deinstitutionalization directive. The State is obliged to provide "an adequate system of monitoring jails, detention facilities, correctional facilities, and non-secure facilities" to measure conformity with the requirement. And it must report the results of this monitoring annually to the LEAA Associate Administrator who heads the Office of Juvenile Justice and Delinquency Prevention.<sup>5</sup>

It should be emphasized that, of the wide range of recommendations embodied in the Act, Congress selected just two of these--the previously discussed deinstitutionalization requirement and the separation directive reviewed here--as proper subjects for continuous, full-scale monitoring and annual reporting requirements, indicating the very high priority that Congress attached to this pair of objectives. However, the Act establishes slightly different enforcement mechanisms for noncompliance with these two requirements. As noted in the earlier Comparative Analysis, failure to comply with the deinstitutionalization requirement within the prescribed 3-year period triggers an automatic termination of formula grant funding under Sec. 223(c) --with the proviso that a finding of "substantial compliance" (not less than 75 percent), together with an unequivocal commitment to achieving full deinstitutionalization of these youths, may authorize a 2-year extension of the deadline.<sup>6</sup>

By the terms of the Act, this automatic termination of funding under Sec. 223(c) applies only to the deinstitutionalization mandate. Nevertheless, in Sec. 223(d) Congress authorized essentially the same sanction--termination of formula grant funding--for noncompliance with the separation requirement. The slightly different termination procedure of Sec. 223(d) provides that if the Administrator of LEAA finds, following a specified notice and hearing procedure, that the State plan does not meet the requirements of Sec. 223--including, among others, the separation requirement--then funding may be terminated.<sup>7</sup> Given the high priority that Congress assigned to separation and the increased visibility of the issue generated by the monitoring and reporting procedures, noncompliance seems particularly likely to result in a funding cutoff.<sup>8</sup>

#### SUMMARY OF POSITIONS RECOMMENDED BY STANDARDS GROUPS

Table 1 on the following page summarizes, in an abbreviated fashion, the recommendations of the four standards groups surveyed here which are pertinent to the separation of juveniles from incarcerated adults, both before and after adjudication. The subsequent discussion in the Analysis of the Standards section elaborates the positions identified in Table 1 and pays particular attention to the points of agreement and divergence in the proposals presented by the four groups.

TABLE 1  
Summary of Positions Recommended by Standards Groups<sup>9</sup>

	NAC	Task Force	IJA/ABA (Tentative Draft, 1977)	CAC
Pre- adjudicatory Placements	Prohibits detaining juveniles in facilities where they have "regular contact" with adults. Specifies that secure detention facilities "should not be on the grounds of an institution used to house adults."	Specifies that police should "under no circumstances" detain juveniles in the same facilities as adults. Directs that "jails should not be used for the detention of juveniles."	States that laws re: police practices should proscribe detaining a juvenile "even temporarily" in adult facilities. "The interim detention of accused juveniles in any facility or part thereof also used to detain adults is prohibited."	Requires detention in juvenile facilities ("separate, self-contained units") whenever possible. Juveniles in adult facilities are to be "separated by sight and sound from adult offenders."
Post- adjudicatory Placements	Limits dispositional authority to placements in facilities not involving "regular contact" with adults. Training schools to be used "exclusively" for adjudicated delinquents and not to be located on the grounds of adult institutions.	Limits dispositional authority to placements in facilities for juveniles only. Prohibits correctional agency from placing juveniles in any facility housing adults.	Dispositional authority extends to "secure facilities" --defined as those used "exclusively" for adjudicated delinquents. Requires "an absolute prohibition" on mixing juveniles with adults.	Urges that juveniles be segregated from adult offenders. Training schools to be "separate, self-contained units."
Interagency Transfers	States preference for single State agency for juvenile corrections. "Transfers of juveniles from youth agencies to adult correctional agencies should be prohibited."	Recommends single State agency for juvenile corrections. Bars transfers to adult agencies.	Juvenile corrections agency to be "operationally autonomous" from adult corrections. Transfers to adult agencies prohibited.	Does not recommend an organizational model. Transfers to adult agencies inferentially (though not explicitly) prohibited.

Summary of Positions: I. Preadjudicatory Placements

Two groups categorically prohibit any placements with adults. One group requires separation from "regular contact" with adults; another requires separation "by sight and sound."

II. Postadjudicatory Placements

Two groups limit dispositional authority to juvenile facilities only; one group limits dispositions to those not involving "regular contact" with adults. One group urges separation in general terms.

III. Interagency Transfers

Three groups explicitly proscribe transfers to adult agencies; one does so inferentially.

## ANALYSIS OF THE STANDARDS

Each of the standards-issuing groups surveyed adopts a rather adamant stance on this issue. If two of the groups--the National Advisory Committee and the Commission on Accreditation for Corrections--employ terminology in their recommendations which stops slightly short of an absolute prohibition of any contact with adult offenders, clearly they do so on the basis of a candid appraisal of current fiscal constraints--with the intention of attaining the maximum separation possible immediately and without in any way diluting the urgency of their plea for total separation as soon as practicable. In general, the standards groups make the same case for separation that has been frequently chronicled in the literature on this subject<sup>10</sup>--with the arguments adduced being no less cogent because of their familiarity. For example, the groups note that even short-term detention with adults can be extremely traumatic for the juvenile emotionally and may expose the youth to substantial risks of physical peril;<sup>11</sup> that commingling with adults often provides "an education in crime";<sup>12</sup> and that to process juveniles through a separate judicial organ only to then mix them indiscriminately with adults in correctional facilities is to undercut altogether the underlying premise of a separate juvenile justice system.<sup>13</sup> The groups are also quite critical of existing "separate and apart" provisions and other halfway measures that have been more often honored in the breach than carefully followed.<sup>14</sup>

While none of the standards groups is unmindful of the budgetary constraints that frequently are responsible for current shortcomings, neither do they, because of that recognition, reduce the high priority that they assign to the separation issue.<sup>15</sup> The following comment by the Task Force is typical:

It must, of course, be recognized that the provision of adequate alternative facilities generally will require the allocation of additional resources. But it is believed that the social costs of continuing present practices are simply too great to bear.<sup>16</sup>

### Preadjudicatory Placements

At present, some of the most flagrant abuses of impressionable youth occur in the lockups and jails that are frequently employed for pretrial detention of juveniles and adults alike.<sup>17</sup> Only a handful of States currently provide, even in theory, an absolute prohibition of such intermingling at this stage of the proceedings--though juveniles are often held in such "temporary" quarters for extended periods of time.<sup>18</sup> Thus, compliance with the separation directives of the Juvenile Justice and Delinquency Prevention Act and the pertinent recommendations of the standards-issuing groups reviewed here--all of which are in general accord with the Act on this subject--will require alterations in the policies and practices of many jurisdictions. In keeping with the rather general character of most recommendations by standards organizations, none of the volumes proposes a detailed implementation plan for attaining the objective of separation. It seems clear, though, that making separation procedures fully operational will entail--aside from provision of adequate resources--a review, and likely a modification, of pertinent statutes, administrative guidelines, and agency policies governing the police, the intake unit, the court, and the corrections agency (or other organization responsible for custody prior to the court's disposition).

Two of the standards groups set forth directives targeted specifically to police operations. For example, immediately following its standard calling for guidelines

to structure the use of police discretion (4.4), the Task Force specifies in the portion of Standard 4.5 pertinent here that:

The police should not detain juveniles in facilities which are utilized to detain adults.<sup>19</sup>

The Task Force's Standard 5.9 on Guidelines for Temporary Police Detention Practices reiterates--and, indeed, strengthens--this same stipulation, stating in part that:

Under no circumstances should...juveniles [detained by police] be held in the same detention facilities with adults.<sup>20</sup>

The IJA/ABA's standards on police practices are in accord with this position. They call for a revision of juvenile codes to clarify the scope of police authority to intervene in juvenile matters, indicating that the revised laws should, among other things, specify that

a juvenile cannot be detained, even temporarily, in adult detention facilities.<sup>21</sup>

The IJA/ABA's volume on Interim Status concurs with this recommendation. Indeed, it even goes slightly further, stating in Standard 5.4 that:

The holding of an arrested juvenile in any police detention facility prior to release or transportation to a juvenile facility should be prohibited.<sup>22</sup>

While the National Advisory Committee's standards on police intercession are not in themselves fully explicit on this issue, it seems clear that the NAC is generally in accord with the positions taken by the Task Force and the IJA/ABA Joint Commission. This is affirmed by the commentary to NAC Standard 2.242, which states:

These standards would, of course, completely bar even the temporary holding of any juvenile in a police "lock up," or in any facility with adult detainees or adult offenders.<sup>23</sup>

To prohibit the commingling of juveniles with adults in police detention facilities is, to be sure, not synonymous with achieving separation in all preadjudicatory detention. The next stage of processing is undertaken by the intake unit. Three groups tender standards that speak with varying degrees of directness to the concept that it is important to include a separation requirement among the formally issued intake guidelines.<sup>24</sup> For example, Standard 10.2 in the IJA/ABA's volume on Interim Status (while not specifically mentioning intake guidelines) stipulates that:

The interim detention of accused juveniles in any facility or part thereof also used to detain adults is prohibited.<sup>25</sup>

A similarly general directive (with implications for intake and other components of the system, as well) is found in Task Force Standard 22.3, which simply states that:

Jails should not be used for the detention of juveniles.<sup>26</sup>

The National Advisory Committee addresses this subject in the same standard in which it calls for the formal issuance of written rules and guidelines to govern intake. Thus, Standard 3.151 provides in pertinent part:

In no case should a juvenile be detained in a facility [in] which he/she will have regular contact with adults accused or convicted of a criminal offense.<sup>27</sup>

Aside from incorporating separation requirements in statutes and agency guidelines governing law enforcement officers and intake personnel, another means of assuring adherence to the separation principle would be to explicitly delimit the pretrial dispositional authority of the court reviewing detention decisions so that the court could order placements only in facilities used exclusively for juveniles. While two groups explicitly impose such limitations on the court's postadjudicatory powers (and a third does so inferentially),<sup>28</sup> it appears that none of the groups speaks directly to this issue with regard to preadjudicatory placements. Still, such a limitation seems at least consonant with--if not mandated by--these groups' other, more general standards on detention before trial.

Directives requiring separation may also be targeted to the correctional agency itself (or other organization responsible for implementation of the detention decision prior to adjudication). The Commission on Accreditation for Corrections (CAC), for example, addresses the separation issue in this context by requiring that the correctional agency either provide separate detention facilities for juveniles or document its efforts in attempting to provide such facilities.<sup>29</sup> The CAC further specifies that the pertinent laws or agency guidelines should stipulate that:

When juvenile detention facilities are available, detained juveniles are housed in them and not in facilities for adult offenders; where adult facilities must be used, juveniles are separated by sight and sound from adult offenders and supervised by staff trained to work with juveniles.<sup>30</sup>

As to the proper physical plant for juvenile detention facilities, the Commission requires that:

If the facility is on the grounds of any other type of corrections facility, it is a separate, self-contained unit.<sup>31</sup>

While the National Advisory Committee's proscription of "regular contact" with adults seems not markedly different from the CAC's "separation by sight and sound" requirement, the Advisory Committee does offer a somewhat more rigorous directive on the physical plant for detention facilities. Citing with approval (and with emphasis supplied) the previously quoted language from the IJA/ABA Joint Commission prohibiting detention of an accused juvenile "in any facility or part thereof" also used to detain adults,<sup>32</sup> the Advisory Committee states that:

Detention facilities should be located within the community from which they draw their population. Such facilities should not be on the grounds of an institution used to house adults accused or convicted of committing a criminal offense.<sup>33</sup>

One other facet of the preadjudicatory detention issue should also be mentioned. Two groups--the IJA/ABA and the CAC--address the question of where juveniles who have been "waived over" for trial in the adult criminal courts should be detained. Both agree that even though these youths are subject to adult criminal procedures they ought not be commingled with adults in detention facilities. Standard 10.1 in the IJA/ABA's Interim Status volume states that:

When jurisdiction of the juvenile court is waived, and the juvenile is detained pursuant to adult pretrial procedures, the juvenile should be detained in a juvenile facility...<sup>34</sup>

The CAC expresses agreement with this position in its commentary.<sup>35</sup>

#### Postadjudicatory Placements

Once the juvenile has been adjudicated, the police and intake personnel are, of course, removed from the picture and the focus of the pertinent standards is concentrated on the court and the correctional agency. Two groups make explicit reference to the issue of separating juveniles from adults in their discussions of the court's dispositional authority following adjudication. The Task Force, for example, states in Standard 14.16 that:

In making dispositions of juvenile delinquency petitions, the court should be prohibited from:

...

3. Committing or authorizing a transfer to any penal institution or other facility used for pretrial detention of adults charged with crimes or for the execution of sentences of persons convicted of crimes.<sup>36</sup>

The National Advisory Committee imposes a similar limitation on the court's powers in Standard 3.182, which prohibits the court from ordering any placement in a facility in which the juvenile will have "regular contact" with adults accused or convicted of criminal offenses.<sup>37</sup>

The IJA/ABA standards incorporate the same strictures on the court's dispositional powers (albeit slightly less explicitly) by limiting the maximum sanction available to the court to placement in a "secure facility"--which is defined as one used "exclusively" for adjudicated delinquents.<sup>38</sup>

These restrictions on the court's dispositional authority are reinforced by a number of directives that focus on the correctional agency. Task Force Standard 19.6, for example, proposes in pertinent part that:

The State agency's authority to take action with respect to the juvenile commitment should be limited. Some activities should be specifically prohibited. For example, the State agency should not:

1. Place a juvenile in or transfer a juvenile to any institution or facility designated for the temporary or longtime incarceration of adults...<sup>39</sup>

Similarly, the commentary to Standard 2.2 in the IJA/ABA's volume on Corrections Administration indicates that:

These standards require an absolute prohibition on the mixing of juvenile and adult offenders.<sup>40</sup>

The Commission on Accreditation for Corrections is apparently in accord with this position. Standard 11 in its Manual of Standards for the Administration of Correctional Agencies calls for laws specifying that:

Juveniles, as defined by the statutes of the jurisdiction, are segregated from adult offenders.<sup>41</sup>

The Commission on Accreditation also speaks to the physical plant of placement facilities, specifying that if a training school is located on the same grounds with any other corrections facility it should be "a separate, self-contained unit."<sup>42</sup> As was true in the area of detention facilities, the National Advisory Committee also addresses this issue--and, once again, imposes slightly more rigorous requirements. The Advisory Committee's Standard 4.21 stipulates that training schools should be used "exclusively" for adjudicated delinquents,<sup>43</sup> and its Standard 4.2111 specifies that:

Training schools, to the greatest extent possible, should be located in or near the communities from which they draw their population. Such facilities should not be on the grounds of an institution used to house adults accused or convicted of committing a criminal offense.<sup>44</sup>

The IJA/ABA likewise calls for community-based secure facilities, proposing a whole series of standards on this subject in its Architecture of Facilities volume.<sup>45</sup>

It should also be stressed that the foregoing limitations on the correctional agency's authority to mix juveniles with adults are strongly reinforced by the organizational structures that the groups propose for that agency. The Task Force expresses a "strong preference" for a single statewide agency for juvenile corrections--perhaps to be incorporated under an "umbrella organization" including "a number of people-serving agencies," but to remain "a separate administrative entity."<sup>46</sup> The National Advisory Committee is in general agreement with this position, indicating in Standard 4.11 that:

Ordinarily, [residential programs for adjudicated juveniles]...should be administered by a single state agency.<sup>47</sup>

In a similar fashion, Standard 2.2 in the IJA/ABA's Corrections Administration volume states in pertinent part that:

The department responsible for juvenile corrections should be operationally autonomous from the administration of adult corrections...<sup>48</sup>

The IJA/ABA proposals likewise express a "preference" for a single statewide department for juvenile corrections, but (like the Task Force and the National Advisory Committee) stop short of mandating such an organizational structure in all instances--recognizing that in some cases local administration in conformity with State agency standards may be more appropriate.<sup>49</sup>

The standards of the Commission on Accreditation for Corrections abstain from proposing a particular organizational model--though they apparently require at least some degree of autonomy in programs intended for juveniles.<sup>50</sup>

#### Interagency Transfers

At least three of the standards groups buttress the requirement that services for adjudicated delinquents be administered under the aegis of a distinctly juvenile correctional agency by forbidding transfers of committed juveniles to adult agencies. The National Advisory Committee, for example, specifies in Standard 4.73 that:

Transfers of juveniles from youth agencies to adult correctional agencies should be prohibited.<sup>51</sup>

So, too, the IJA/ABA's Standard 2.2 in the Corrections Administration volume states that:

The department should not have authority to transfer a juvenile to the jurisdiction of the adult corrections agency, or to any institution or program administered by the adult corrections agency.<sup>52</sup>

The previously cited Task Force Standard 19.6 not only prohibits initial placement in, but likewise subsequent transfer to, facilities housing adults.<sup>53</sup>

While the Commission on Accreditation for Corrections does address the issue of transfers between facilities,<sup>54</sup> and while it (like the IJA/ABA and the National Advisory Committee)<sup>55</sup> requires a formal hearing when a juvenile is transferred to a more secure facility, the Commission does not explicitly prohibit transfers to adult facilities in its standards on transfers as such. Nevertheless, the CAC's general requirement that juveniles be segregated from adults probably extends to this issue also.<sup>56</sup>

Finally, it should also be mentioned that such a prohibition on transfers to adult agencies is not only consistent with, but is in fact required by, the LEAA regulations issued pursuant to Sec. 223(a)(13) of the Juvenile Justice and Delinquency Prevention Act. These regulations require the State Planning Agency to, among other things:

Assure that offenders are not reclassified administratively and transferred to a correctional authority to avoid the intent of segregating adults and juveniles in correctional facilities. However, this does not prohibit or restrict waiver of juveniles to criminal court for prosecution, according to State law. It does, however, preclude a State from administratively transferring a juvenile offender to an adult correctional authority for placement with adult criminals either before or after a juvenile reaches the statutory age of majority. It also precludes a State from transferring adult offenders to a juvenile correctional authority for placement.<sup>57</sup>



### MATRIX OF INTERRELATED STANDARDS

For readers wishing to explore individual issues in greater detail, Table 2 on the following page uses the National Advisory Committee's standards as bases for comparison and identifies the interrelationships of all of the major standards on separation of juveniles from incarcerated adults that were surveyed in this analysis.

Immediately following the matrix are index pages, together with instructions for their use. These will permit ready identification of the subject-matter being compared. Titles which appear in parentheses on the index pages are not included in the original volume being cited, but have been supplied to facilitate identification of the content of the standards.

TABLE 2

Matrix of Interrelated Standards on  
Separation of Juveniles from Incarcerated Adults

[illegible]

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TO USE THIS INDEX: Photocopy this page or clip it out as indicated. Lay it alongside the left edge of the matrix on page 53, lining up the corresponding numbers. Similarly copy or clip the index on page 57. Lay it along the top of the matrix.

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Procedures Following a Decision to Refer to Intake--Delinquency	2.242
Purpose and Criteria for Detention and Conditioned Release--Delinquency	3.151
Criteria for Dispositional Decisions--Delinquency	3.182
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2.5	(Statutory Revision and Police Administrative Policymaking)	
5.4	Holding in Police Detention Facility Prohibited	IJA/ABA INTERIM STATUS
10.2	Use of Adult Jails Prohibited	
11.1	Centralized Interim Status Administration in a Statewide Agency	IJA/ABA CORRECTIONS
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7.1	Secure and Nonsecure Facilities; Definition and Certification	IJA/ABA ARCHITECTURE
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3.3	Custodial	
2	(Administration of Adult and Juvenile Corrections)	CAC ADMINISTRATION
11	(Separation of Juveniles From Adult Offenders)	
12	(Use of Juvenile Detention Facilities; Separation of Juveniles By Sight and Sound From Adult Offenders)	
13	(Separate Detention Facilities for Juveniles)	CAC JUVENILE DETENTION
8004	(Separate Service Delivery System)	
8007	(Supervision of Service Personnel)	
8148	(Juvenile Detention Facility as Separate, Self-Contained Unit)	CAC JUVENILE COMMUNITY RESIDENTIAL SERVICES
6084	(Permission to Live in the Facility)	
6086	(Sleeping Rooms for Juveniles and Adults)	CAC JUVENILE TRAINING SCHOOLS
9006	(Administration of Adult and Juvenile Corrections)	
9021	(Supervision of Service Personnel)	
9161	(Juvenile Training School As Separate, Self-Contained Unit)	CAC JUVENILE PROBATION
7009	(Administration of Adult and Juvenile Corrections)	
7208	(Use of Juvenile Detention Facilities; Separation of Juveniles By Sight and Sound from Adult Offenders)	

(cut along dotted line)

## NOTES

For a complete listing of the abbreviations used in these notes,  
see Appendix B on pages 69-71.

1. For citations to some of the extensive literature on this subject, see, e.g., Report of the Task Force, pp. 667-68.
2. For data from recent surveys on these practices, see, e.g., id.; NAC Final Report, Commentary to Standard 4.26.
3. 42 U.S. Code Sec. 5633(a)(13) (1979 Supp.).
4. Law Enforcement Assistance Administration, Department of Justice, "Formula Grant Provisions of the Juvenile Justice and Delinquency Prevention Act of 1974, As Amended--Final Guideline Revision for Implementation," 43 Federal Register, p. 36406 (Aug. 16, 1978) (hereinafter cited as Final Guidelines).
5. See 42 U.S. Code Sec. 5633(a)(14) (1979 Supp.).
6. See id., Sec. 5633(c).
7. See id., Sec. 5633(d).
8. Note also the partial overlapping of the Act's separation requirement with its deinstitutionalization directive (and hence of this paper with its companion Comparative Analysis on Deinstitutionalization). The Act's deinstitutionalization provision prohibits placing status offenders or children who are neglected or abused in "juvenile detention or correctional facilities." Id., Sec. 5633(a)(12)(A). LEAA Guidelines define the latter term as including

(b) Any public or private facility, secure or non-secure, which is also used for the lawful custody of accused or convicted adult criminal offenders.

Law Enforcement Assistance Administration, Department of Justice, "Final Guideline Revision for Definition of Juvenile Detention or Correctional Facility," 44 Federal Register, p. 55784 (Sept. 27, 1979) (emphasis deleted).

9. Sources: NAC Final Report, Standards 2.242, 3.151, 3.182, 4.11, 4.21, 4.2111, 4.26, and 4.73; Report of the Task Force, Standards 4.5 (pp. 190-91), 5.9 (pp. 214-15), 14.16 (pp. 465-66), 19.2 (pp. 613-14), 19.3 (pp. 615-16), 19.6 (pp. 622-24), and 22.3 (pp. 667-68); IJA/ABA Police, Standard 2.5 (pp. 45-47); IJA/ABA Interim Status, Standards 5.4 (p. 70), 10.2 (pp. 97-98), and 11.1 (pp. 102-04); IJA/ABA Corrections, Standards 2.1 (pp. 49-52), 2.2 (pp. 52-53), and 7.1 (pp. 118-19); IJA/ABA Architecture, Standards 1.14 (p. 22) and 1.15 (p. 22); IJA/ABA Dispositions, Standard 3.3 E.2. (pp. 70-80); CAC Administration, Standards 2 (p. 1), 11 (p. 3), 12 (p. 3), and 13 (p. 3); CAC Juvenile Detention, Standards 8004 (p. 1), 8007 (p. 2), and 8148 (p. 31); CAC Juvenile Community Residential Services, Standards 6084 (p. 16) and 6086 (pp. 16-17); CAC Juvenile Training Schools, Standards 9006 (p. 2), 9021 (p. 5), and 9161 (p. 33); CAC Juvenile Probation, Standards 7009 (p. 2) and 7208 (pp. 41-42).
10. See generally the sources cited in notes 1 and 2.

11. See, e.g., Report of the Task Force, pp. 214-15, 667-68.
12. See, e.g., NAC Final Report, Commentary to Standard 4.26.
13. See, e.g., id.
14. See, e.g., id.
15. See id. See also the sources cited in notes 1 and 2.
16. Report of the Task Force, pp. 667-68. See also id., pp. 74-75; IJA/ABA Police, pp. 18-19; NAC Final Report, Commentary to Standard 4.26.
17. See, e.g., id.; Report of the Task Force, pp. 667-68.
18. See the sources cited in notes 1 and 2.
19. Report of the Task Force, p. 190.
20. Id., p. 214.
21. IJA/ABA Police, Standard 2.5 (p. 45).
22. IJA/ABA Interim Status, p. 70. See also id., Standard 5.3 F. (p. 68).
23. NAC Final Report, Commentary to Standard 2.242.
24. On the general subject of the importance of formally issued guidelines to structure discretion in intake decisions, see the preceding Comparative Analysis on Diversion.
25. IJA/ABA Interim Status, p. 97.
26. Report of the Task Force, p. 667.
27. NAC Final Report, Standard 3.151. To emphasize what should be readily apparent: This standard is not inconsistent with the National Advisory Committee's commentary to Standard 2.242 quoted earlier in the text accompanying note 23. To be sure, that commentary prohibits any placement of juveniles in police detention facilities, whereas this standard "only" proscribes "regular contact" with adults. But since any detention in police lockups--usually small, often ill-kept facilities--seems virtually certain to lead to "regular contact," this standard and the previous commentary seem fully consistent.
28. See the text accompanying notes 36-38.
29. See CAC Administration, Standard 13 (p. 3).
30. Id., Standard 12 (p. 3). But cf. CAC Juvenile Detention, Standard 8007 (p. 2) (authorizing "trusties" from adult facilities to work as service personnel in juvenile detention facilities so long as they are properly supervised).
31. Id., Standard 8148 (p. 31). See also CAC Juvenile Training Schools, Commentary to Standard 9161 (p. 33) (accord).

32. See the text accompanying note 25, cited in NAC Final Report, Commentary to Standard 4.26.
33. Id., Standard 4.26. For an elaborate discussion on the physical plant of detention facilities, see IJA/ABA Architecture, Standards 6.1 through 6.17 (pp. 68-86). These standards obviously assume a separation requirement, but do not explicitly address the issue.  
  
Also pertinent to the physical plant issue is the previously cited Task Force prohibition on the use of adult jails. See the text accompanying note 26.
34. IJA/ABA Interim Status, p. 97.
35. See CAC Administration, Commentary to Standard 12 (p. 3). See also NAC Final Report, Commentary to Standard 4.26 (citing decisional authority that is in accord). Cf. CAC Juvenile Detention, Standard 8006 (p. 2) (permitting such placements).
36. Report of the Task Force, p. 465.
37. See NAC Final Report, Standard 3.182.
38. See IJA/ABA Dispositions, Standard 3.3 E.2. (p. 70); IJA/ABA Corrections, Standard 7.1 (p. 118).
39. Report of the Task Force, p. 622.
40. IJA/ABA Corrections, p. 53.
41. CAC Administration, p. 3. See also id., p. ix; CAC Juvenile Community Residential Services, p. vii; CAC Juvenile Training Schools, p. vii. It might be noted, though, that while the two manuals last cited here mention a separation requirement in the introduction, neither contains an actual standard imposing such a requirement. And cf. CAC Juvenile Training Schools, Standard 9021 (p. 5) (requiring supervision of adult "trusties" employed as service personnel in juvenile facilities).
42. Id., Standard 9161 (p. 33).
43. See NAC Final Report, Standard 4.21.
44. Id., Standard 4.2111.
45. See IJA/ABA Architecture, Standards 5.1 through 5.12 (pp. 50-68). Once again, these standards assume separation from adults but do not address the issue directly.
46. Report of the Task Force, Standard 19.2 (pp. 613-14). See also id., Standard 19.3 (pp. 615-16).
47. NAC Final Report, Standard 4.11.
48. IJA/ABA Corrections, p. 52.

49. See *id.*, Standard 2.1 (pp. 49-52).
50. There is some ambiguity in the Commission's recommendations on this point. CAC Administration requires that if services for both juveniles and adults are administered by the same agency there should be "a separate service delivery system for juveniles." *Id.*, Standard 2 (p. 1). See also CAC Juvenile Detention, Standard 8004 (p. 1) (accord). The volume on Juvenile Training Schools, on the other hand, merely requires that:  
  
If services for adult and juvenile offenders are provided by the same agency, statements of philosophy, policy, program and procedure clearly distinguish the differences of intent between criminal codes and juvenile codes. *Id.*, Standard 9006 (p. 2).  
  
See also CAC Juvenile Probation, Standard 7009 (p. 2) (accord).
51. NAC Final Report, Standard 4.73.
52. IJA/ABA Corrections, p. 52.
53. See the text accompanying note 39.
54. See CAC Juvenile Detention, Standards 8401 and 8402 (p. 81); CAC Juvenile Community Residential Services, Standard 6135 (p. 27); CAC Juvenile Training Schools, Standards 9462 and 9463 (p. 93). Cf. CAC Juvenile Probation, Standard 7208 (pp. 41-42).
55. See NAC Final Report, Standard 4.71; IJA/ABA Corrections, Standard 4.5 (pp. 79-80). The Task Force is not explicit on this matter, but it is probably in accord. Cf. Report of the Task Force, Standard 20.4 (pp. 645-46).
56. See note 41 and accompanying text.
57. Final Guidelines, note 4 above, p. 36406.

## Appendix A

### RELEVANT PROVISIONS OF THE 1980 AMENDMENTS

#### Deinstitutionalization of Status Offenders and Nonoffenders

The 1980 Amendments modify Sec. 223(a)(12)(A) of the JJDP Act as follows (language which was added is underscored; that which was deleted is struck out):

[P]rovide within three years after 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 ~~juvenile detention or correctional facilities~~ secure detention facilities or secure correctional facilities.<sup>1</sup>

Sec. 223(a)(12)(B) remains intact in all essentials,<sup>2</sup> as does the monitoring requirement regarding deinstitutionalization (as newly defined), which was established by Sec. 223(a)(14)--though the latter is now renumbered Sec. 223(a)(15).<sup>3</sup> The stipulation in this same section that the results of such monitoring be reported annually to the head of OJJDP is, however, modified by the insertion of the following proviso:

...except that such reporting requirements shall not apply in the case of a State which is in compliance with the other requirements of this paragraph, which is in compliance with the requirements in paragraph (12)(A) and paragraph (13), and which has enacted legislation which conforms to such requirements and which contains, in the opinion of the Administrator, sufficient enforcement mechanisms to ensure that such legislation will be administered effectively.<sup>4</sup>

Furthermore, the definition, for purposes of monitoring, of "juvenile detention or correctional facility," that was cited from LEAA's State Planning Agency Grants Guideline Manual in the foregoing Comparative Analysis<sup>5</sup> is, in effect, supplanted by the new definitions of "secure detention facility" (in the amended Sec. 103(12)) and "secure correctional facility" (in the amended Sec. 103(13)).<sup>6</sup> The amended Sec. 103(12) states:

[T]he term 'secure detention facility' means any public or private residential facility which--(A) includes construction fixtures designed to physically restrict the movements and activities of juveniles or other individuals held in lawful custody in such facility; and (B) is used for the temporary placement of any juvenile who is accused of having committed an offense, of any nonoffender, or of any other individual accused of having committed a criminal offense.<sup>7</sup>



And the amended Sec. 103(13) states:

[T]he term 'secure correctional facility' means any public or private residential facility which--(A) includes construction fixtures designed to physically restrict the movements and activities of juveniles or other individuals held in lawful custody in such facility; and (B) is used for the placement, after adjudication and disposition, of any juvenile who has been adjudicated as having committed an offense, any nonoffender, or any other individual convicted of a criminal offense.<sup>8</sup>

Finally, the enforcement mechanism established in Sec. 223(c) is modified by a broadening of the "substantial compliance" proviso. As amended, Sec. 223(c) reads, in pertinent part, as follows:

Failure to achieve compliance with the subsection (a)(12)(A) requirement within the three-year time limitation shall terminate any State's eligibility for funding under this subpart unless the Administrator determines that the State is in substantial compliance with the requirement, through achievement of deinstitutionalization of not less than 75 per centum of such juveniles or through removal of 100 percent of such juveniles from secure correctional facilities, and has made, through appropriate executive or legislative action, an unequivocal commitment to achieving full compliance within a reasonable time not exceeding two additional years.<sup>9</sup>

The important feature to be noted is that the 100 percent removal stipulation added by the amendment applies solely to secure correctional facilities--not to secure detention facilities.

#### Notes

1. 42 U.S. Code Sec. 5633(a)(12)(A) (1979 Supp.), as amended by the Juvenile Justice Amendments of 1980 (Public Law 96-509). Given the modification of the Act's position regarding violations of dispositional orders evident from the first phrase underscored here, the earlier comments on this subject (in note 86 in the Comparative Analysis on Deinstitutionalization of Status Offenders and Nonoffenders, and the accompanying text) are no longer an accurate characterization of the position of the Act itself, as amended.

Moreover, the reference in the note that accompanied the earlier citation of this section as it appeared prior to the 1980 Amendments (note 5 in the Comparative Analysis on Deinstitutionalization) to the Act's definition of "correctional institution or facility" in Sec. 5603(12) is no longer pertinent. That definition was struck out by the 1980 Amendments and replaced by definitions of "secure detention facility" and "secure correctional facility" (in the new Sec. 5603(12) and (13)). These new definitions will be set forth above in the text of this Appendix.

2. There was one minor change (which requires modification of notes 6 and 10 in the earlier Comparative Analysis): the head of OJJDP is no longer titled Associate Administrator, but instead Administrator. See the amended Sec. 5603(5), 5611(c), 5633(a)(12)(B).

3. The new Sec. 5633(a)(14)--that is, the new Sec. 223(a)(14) of the Act--establishes requirements regarding the removal of juveniles from adult jails and lockups. These are explored at greater length in the Appendix to the Comparative Analysis on Separation of Juveniles From Incarcerated Adults. See generally the amended Sec. 5602(a)(8), 5633(a)(10)(H), 5633(a)(14), 5633(a)(15), 5633(a)(22), 5633(c), 5633(d), and 5634(a)(5)(A).

The monitoring requirement of what is now Sec. 5633(a)(15), and was formerly Sec. 5633(a)(14), extends to the stipulations regarding removal from adult jails and lockups, as well as the directives in Sec. 5633(a)(12)(A), 5633(a)(13).

4. Id., Sec. 5633(a)(15), as amended. The reference to the Administrator is to the head of OJJDP.

The note accompanying the original reference to the annual reporting requirement (note 8 in the Comparative Analysis on Deinstitutionalization) mentioned that the advisory group called for in the State planning process may be given a role in monitoring, citing Sec. 5633(a)(3)(F)(iv). That section is unaltered, and it is now supplemented by a revised Sec. 5633(a)(3)(F)(ii), which directs that this advisory group

shall submit to the Governor and the legislature at least annually recommendations with respect to matters related to its functions, including State compliance with the requirements of paragraph (12)(A) and paragraph (13).

5. See the text accompanying note 9 in the Comparative Analysis on Deinstitutionalization.
6. This is so because (as the text accompanying note 1 in this Appendix makes apparent) the Act's deinstitutionalization requirement (in the amended Sec. 5633(a)(12)(A)) no longer proscribes placement of the specified classes of juveniles in "juvenile detention or correctional facilities," but instead prohibits placing these juveniles in "secure detention facilities or secure correctional facilities."
7. Id., Sec. 5603(12), as amended.
8. Id., Sec. 5603(13), as amended.
9. Id., Sec. 5633(c), as amended. A minor deletion from the earlier text of this section, which takes account of the fact that the head of OJJDP is now designated Administrator rather than Associate Administrator, has not been noted in the text.

An additional paragraph added to Sec. 5633(c) establishes an enforcement mechanism (together with a "substantial compliance" exemption) for the new requirements regarding removal of juveniles from adult jails and lockups. These are discussed in the Appendix to the Comparative Analysis on Separation of Juveniles From Incarcerated Adults.

#### Separation of Juveniles From Incarcerated Adults

While the proscription of "regular contact" with incarcerated adults established in Sec. 223(a)(13) remains intact, a new Sec. 223(a)(14) has been added. It specifies that the State plan should

provide that, beginning after the 5-year period following the date of the enactment of the Juvenile Justice Amendments of 1980, no juvenile shall be detained or confined in any jail or lockup for adults, except that the Administrator shall promulgate regulations which (A) recognize the special needs of areas characterized by low population density with respect to the detention of juveniles; and (B) shall permit the temporary detention in such adult facilities of juveniles accused of serious crimes against persons, subject to the provisions of paragraph (13), where no existing acceptable alternative placement is available.<sup>1</sup>

The former Sec. 223(a)(14), now Sec. 223(a)(15), preserves the requirement that States monitor their residential facilities to ensure compliance with the "regular contact" prohibition of Sec. 223(a)(13), and it now also prescribes monitoring to ensure compliance with the requirements of the just-cited Sec. 223(a)(14).<sup>2</sup> As was noted in the earlier Appendix on Deinstitutionalization, however, a proviso has been inserted in Sec. 223(a)(15) that will in some instances exempt States from the requirement that they report the results of this monitoring annually to the head of OJJDP.<sup>3</sup>

The discussion in the preceding Comparative Analysis regarding the enforcement mechanism pertinent to the "regular contact" proscription is still fully accurate,<sup>4</sup> but it should be supplemented by noting here that a new paragraph has been added to the automatic termination of funding provision (Sec. 223(c)) to cover the new directives in Sec. 223(a)(14) on the removal of juveniles from adult jails and lockups. The paragraph inserted in Sec. 223(c) by the 1980 Amendments is:

Failure to achieve compliance with the requirements of subsection (a)(14) within the 5-year time limitation shall terminate any State's eligibility for funding under this subpart, unless the Administrator determines that (1) the State is in substantial compliance with such requirements through the achievement of not less than 75 percent removal of juveniles from jails and lockups for adults; and (2) the State has made, through appropriate executive or legislative action, an unequivocal commitment to achieving full compliance within a reasonable time, not to exceed 2 additional years.<sup>5</sup>

#### Notes

1. 42 U.S. Code Sec. 5633(a)(14) (1979 Supp.), as amended by the Juvenile Justice Amendments of 1980 (Public Law 96-509). See also the amended Sec. 5602(a)(8), 5633(a)(10)(H), 5634(a)(5)(A).
2. See the amended Sec. 5633(a)(15).
3. See note 4 in the Appendix to the Comparative Analysis on Deinstitutionalization of Status Offenders and Nonoffenders, and accompanying text.

Incidentally, the text accompanying note 5 in the Comparative Analysis on Separation of Juveniles From Incarcerated Adults, which, in the course of its discussion on reporting requirements, refers to the head of OJJDP as the Associate Administrator, is rendered inaccurate by the Amendments. See the amended Sec. 5603(5), 5611(c).

4. See the text accompanying notes 6 through 8 in the Comparative Analysis on Separation of Juveniles From Incarcerated Adults.

The statement above is (probably) subject to one qualification: whereas formerly Sec. 223(d) required the Administrator of LEAA to make certain findings, following a specified notice and hearing procedure, in order to terminate funding, now the section (apparently) specifies that these findings are to be made, and the pertinent hearing procedures to be followed, by the Administrator of OJJDP.

5. Id., Sec. 5633(c), as amended.

It might also be noted that the mention in note 8 in the Comparative Analysis on Separation of Juveniles From Incarcerated Adults of the Guidelines defining "juvenile detention or correctional facility" is now inappropriate in light of the 1980 Amendment's deletion of that phrase (which is discussed in the text accompanying notes 1 and 6 through 8 in the Appendix to the Comparative Analysis on Deinstitutionalization).

Finally, what effect, if any, the above-noted 1980 Amendments governing removal of juveniles from adult jails and lockups have on the LEAA regulations pertinent to classification and transfer of juveniles that were issued pursuant to the "regular contact" prohibition of Sec. 223(a)(13) (and quoted in the text accompanying note 57 in the Comparative Analysis on Separation) does not seem to be apparent.

## Appendix B

### KEY TO ABBREVIATIONS

Since the notes in these reports include extensive citations to a small number of volumes, the following standardized abbreviations have been adopted:

<u>Title</u>	<u>Abbreviation</u>
Publications by the American Correctional Association's Commission on Accreditation for Corrections:	
<u>Manual of Standards for the Administration of Correctional Agencies</u> (June 1979).	<u>CAC Administration</u>
<u>Manual of Standards for Juvenile Community Residential Services</u> (April 1978).	<u>CAC Juvenile Community Residential Services</u>
<u>Manual of Standards for Juvenile Detention Facilities and Services</u> (February 1979).	<u>CAC Juvenile Detention</u>
<u>Manual of Standards for Juvenile Probation and Aftercare Services</u> (July 1978).	<u>CAC Juvenile Probation</u>
<u>Manual of Standards for Juvenile Training Schools and Services</u> (March 1979).	<u>CAC Juvenile Training Schools</u>
Publications by the Institute of Judicial Administration/American Bar Association Juvenile Justice Standards Project (Tentative Draft, 1977):	
<u>Standards Relating to Abuse and Neglect</u> (R. Burt and M. Wald, Reporters).	<u>IJA/ABA Abuse and Neglect</u>
<u>Standards Relating to Adjudication</u> (R. Dawson, Reporter).	<u>IJA/ABA Adjudication</u>
<u>Standards Relating to Appeals and Collateral Review</u> (M. Moran, Reporter).	<u>IJA/ABA Appeals</u>
<u>Standards Relating to Architecture of Facilities</u> (A. Greenberg, Reporter).	<u>IJA/ABA Architecture</u>
<u>Standards Relating to Corrections Administration</u> (A. Rutherford and F. Cohen, Reporters).	<u>IJA/ABA Corrections</u>

Standards Relating to Counsel for Private Parties (L. Teitelbaum, Reporter).

Standards Relating to Court Organization and Administration (T. Rubin, Reporter).

Standards Relating to Dispositional Procedures (F. Cohen, Reporter).

Standards Relating to Dispositions (L. Singer, Reporter).

Standards Relating to Interim Status: The Release, Control, and Detention of Accused Juvenile Offenders Between Arrest and Disposition (D. Freed, J.L. Schultz, and T. Terrell, Reporters).

Standards Relating to Juvenile Delinquency and Sanctions (J. Junker, Reporter).

Standards Relating to the Juvenile Probation Function: Intake and Predisposition Investigative Services (J. Gittler, Reporter).

Standards Relating to Juvenile Records and Information Systems (M. Altman, Reporter).

Standards Relating to Monitoring (S. Bing and L. Brown, Reporters).

Standards Relating to Noncriminal Misbehavior (A. Gough, Reporter).

Standards Relating to Planning for Juvenile Justice (L. Buckle and S. Buckle, Reporters).

Standards Relating to Police Handling of Juvenile Problems (E. Bittner and S. Krantz, Reporters).

Standards Relating to Pretrial Court Proceedings (S. Fisher, Reporter).

Standards Relating to Prosecution (J. Manak, Reporter).

Standards Relating to Rights of Minors (B. Feld and R. Levy, Reporters).

Standards Relating to Schools and Education (W. Buss and S. Goldstein, Reporters).

IJA/ABA Counsel

IJA/ABA Court Organization

IJA/ABA Dispositional Procedures

IJA/ABA Dispositions

IJA/ABA Interim Status

IJA/ABA Juvenile Delinquency

IJA/ABA Juvenile Probation

IJA/ABA Juvenile Records

IJA/ABA Monitoring

IJA/ABA Noncriminal Misbehavior

IJA/ABA Planning

IJA/ABA Police

IJA/ABA Pretrial

IJA/ABA Prosecution

IJA/ABA Rights of Minors

IJA/ABA Schools

Standards for Juvenile Justice: A Summary and Analysis (B. Flicker, Project Director 1975-76).

Standards Relating to Transfer Between Courts (C. Whitebread, Reporter).

Standards Relating to Youth Service Agencies (J. Areen, Reporter).

Publication by the National Advisory Committee for Juvenile Justice and Delinquency Prevention:

Standards for the Administration of Juvenile Justice (1980).

Publication by the National Advisory Committee on Criminal Justice Standards and Goals' Task Force on Juvenile Justice and Delinquency Prevention:

Juvenile Justice and Delinquency Prevention: Report of the Task Force on Juvenile Justice and Delinquency Prevention (1976).

IJA/ABA Summary and Analysis\*

IJA/ABA Transfer Between Courts

IJA/ABA Youth Service Agencies

NAC Final Report

Report of the Task Force

\*While the other Tentative Drafts in this series were prepared by Reporters, reviewed by Drafting Committees, and thereafter examined and officially approved by the IJA/ABA Joint Commission, this exceptionally useful summary volume was individually authored by Barbara Flicker, who served as Project Director in 1975-76. Thus, in Tentative Draft form, it was not formally reviewed or approved by the Joint Commission. A revised Final Draft of the summary volume is forthcoming.

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