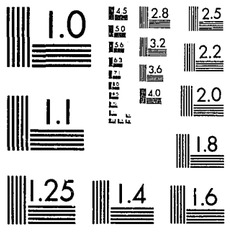




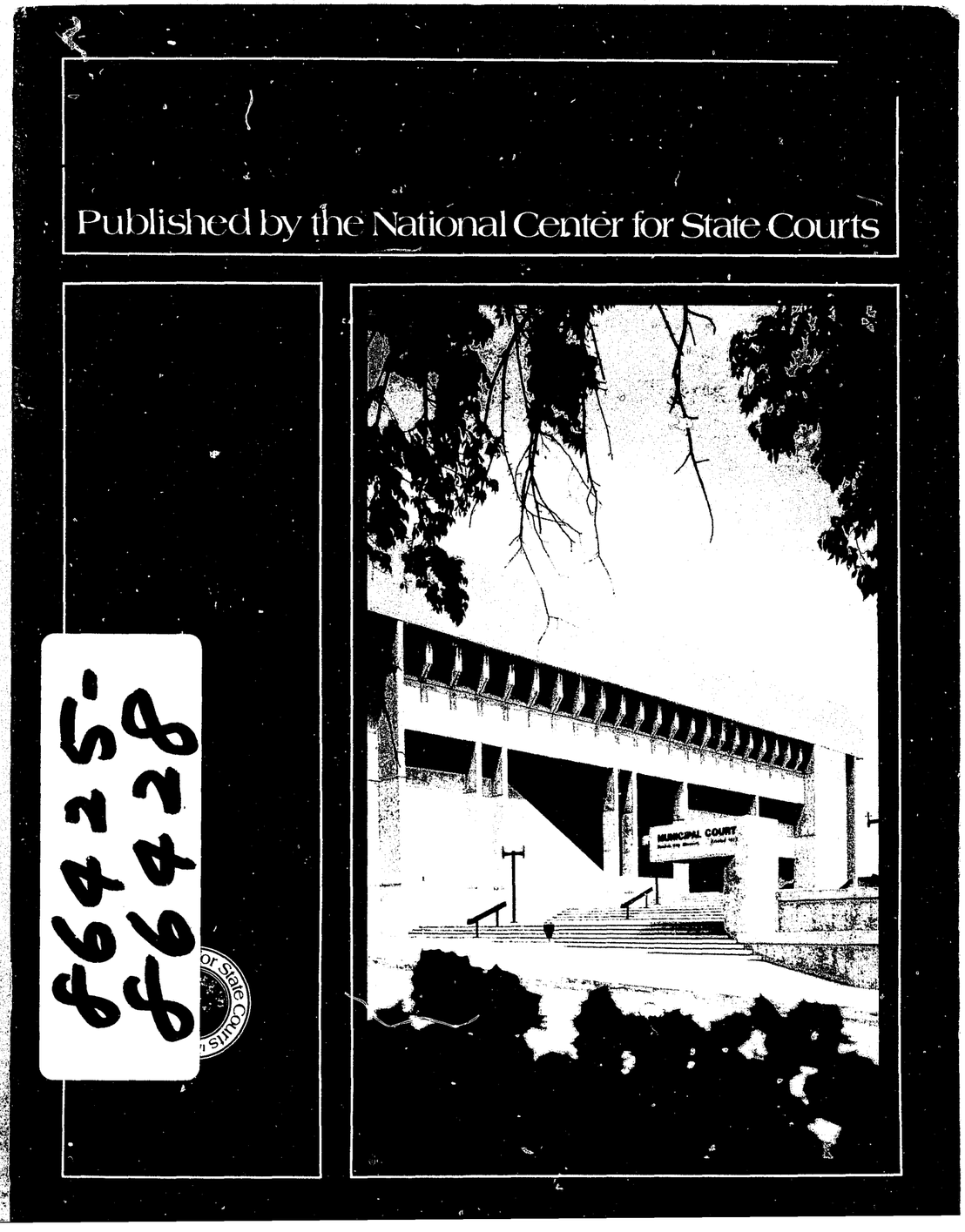

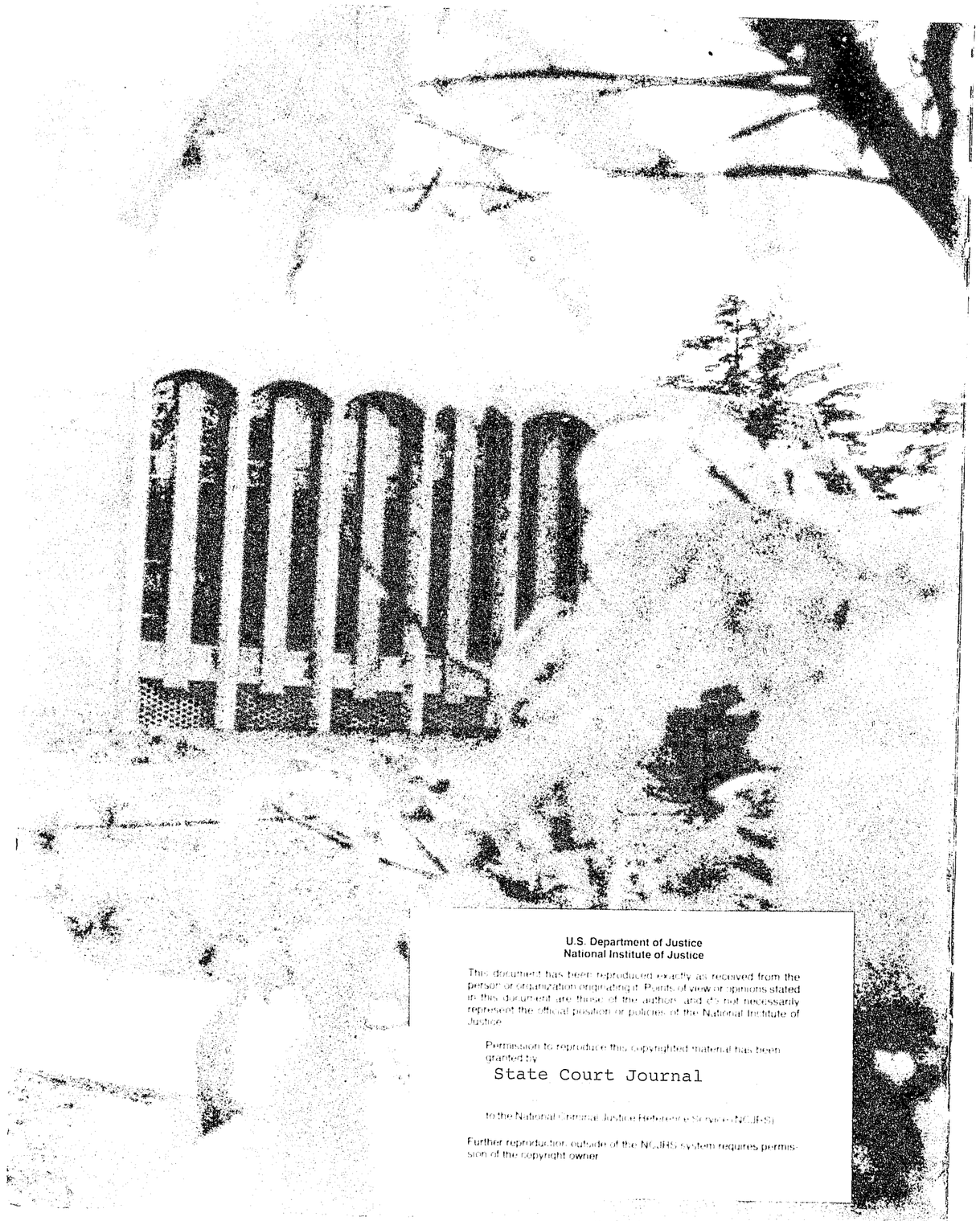







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# State Court Journal

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## Features



## Departments



### On the Cover

The Kansas City, Missouri, Municipal Court Building, dedicated in 1974, houses the Kansas City Municipal Division of the 16th Judicial Circuit Court of Missouri as well as the offices of the city prosecutor and the probation division of the Community Services Department. The three story concrete structure was designed by Linscott, Haylett, Wimmer and Wheat. Photo by Paul S. Kivett.

Illustrations on pages 5, 12, and 13 by Marilou Gilley.

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# Inside metropolitan juvenile courts: How their structure affects the outcome of cases

*By Jeanne A. Ito, Janice Hendryx, and Vaughan Stapleton*

The judicial and executive initiatives commenced in 1967 by the Supreme Court's landmark opinion of *In re Gault* and by the President's Commission on Law Enforcement and Administration of Justice set in motion numerous changes in the juvenile justice system designed to ensure due process of law for youthful offenders. Passage of the Juvenile Justice and Delinquency Prevention Act in 1974 created additional pressures and incentives for standardization, diversion, and deinstitutionalization.

Today's juvenile courts operate under a myriad of pressures—from courts, commissions, Congress, scholars, legislatures, standards groups—to institute various reforms. Suggested reforms include the adoption of different philosophies, changes in who is to be included in or excluded from the court's jurisdiction, new organizational alignments and structures, new procedures, additional services, and improvements in how services should be organized and administered.

Many suggested reforms are controversial. While *In re Gault* marked a recognition of the "child-saving" movement gone awry, many fear the consequences of transforming the traditional *parens patriae* approach to juvenile justice into a "junior criminal court." Must the juvenile court abandon its rehabilitative goals in order to ensure due process for youth?

There is no measure of the structure of juvenile courts prior to the Gault decision against which to compare today's juvenile courts. A current picture, however, is a necessity in assessing the need for various recommended reforms. The study reported here provides this through a survey of the structural, organizational, and procedural characteristics of metropolitan juvenile courts. At the conclusion of the survey, a pilot study was conducted in three of the courts in the survey to assess the effects of structure on case outcomes.

The National Center's survey of metropolitan juvenile courts was designed to gather information on juvenile court jurisdiction and its location within the state court system and on judicial officers, due process procedures, intake, detention, and social services. Project members interviewed by mail or telephone two respondents, usually one judge and one court administrator or probation officer, for each of 150 courts.

An analysis of this information revealed a typology of metropolitan juvenile courts based on five structural dimensions.[1] The two key features that define four major types of juvenile justice systems (see Figure 1) are centralization of authority and differentiation/task specification. Centralization refers to court control of probation. While most metropolitan juvenile courts still maintain administrative control of probation, in some jurisdictions probation and other court-related social services are administered by the executive branch. Differentiation/task specification refers to the involvement of the prosecutor in deciding whether to file a formal petition. While in the stereotypical traditional juvenile court, the court, i.e., a court officer, including a probation or intake worker in a court-administered department, makes this decision, the prosecutor's office has become more and more involved in referring cases to the court for official handling. Descriptions of each of the major types follow:

*Type I: Integrative/Interventionist*—A Type I court is centralized and undifferentiated, i.e., the court controls probation and intake. The prosecutor does not participate in the decision whether to file a petition. The interests of the child and the state (represented by the court) are not seen as opposed, and the structure of decision making does not readily accommodate the adversary approach. The court *is* the system; all needed information is within the court system and the system's orientation is holistic. Type I courts are characterized by central control over social services, detention, and the adjudicative process. The judge, or a person directly under the judge's authority, is likely to make all decisions concerning whether a petition is to be filed, a youth detained, and how the case will be processed.

*Type II: Transitional*—As in Type I courts, Type II courts share the characteristic of centralization of authority (administrative control of probation). In Type II courts, however, the prosecutor is involved in the decision to file a petition. This type is transitional in the sense that the prosecutorial role is not combined, as it is in Type IV, with the separation of the probation department from the administrative control of the court. Thus, although there is the beginning of a double screening process, it is not as fully developed as that found in Type IV.

*Type III: Divergent*—Type III is labeled divergent because the presence of relatively few courts of this type suggests that the correlation of low centralization of authority and low role differentiation/task specification is rare.

*Type IV: Autonomous/Noninterventionist*—Type IV courts are characterized by decentralization and high differentiation/task specification. Social services are administered by an executive agency and a prosecutor is involved in the decision to file a petition. The court is the terminal processing point of a case that has passed through a number of non-court agencies and administrative decisions. The judge is dominant in the courtroom, but his or her authority is limited outside that setting. The role of decision making is adversary; the case—not the youth—dominates decision making, and adjudication will be on the basis of legally relevant criteria stipulated by procedures designed to limit evidence. Social information concerning the condition of the child is decentralized and not introduced until the court formally establishes jurisdiction. The orientation of the participants in case processing is specialized and defined by participation in dominant sponsoring organizations.

The empirical typology of metropolitan juvenile courts in part reflects the existence of the two major types of juvenile courts (i.e., the "traditional" and "due process") suggested in the literature. More importantly, however, it reveals

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variations in court structure and procedure that are not adequately captured by existing simplistic typologies.

The other three dimensions identified by the research are scope of jurisdiction, intake discretion, and formalization. Scope of jurisdiction refers to whether or not the court has retained jurisdiction over status offenses, i.e., those acts that would not be offenses if committed by an adult. Increasingly, jurisdiction over status offenses has been eliminated. Intake discretion refers principally to the authority of the probation or intake staff to impose informal probation or restitution without a formal judicial hearing. The distinguishing characteristic of this dimension is that the discretion is nonjudicial and that it is exercised in cases prior to (or instead of) a formal petition. The Center's study found the organization of intake to be a critical factor in distinguishing types of courts. The empirical indicator of formalization is bifurcation of adjudication and disposition into two separate hearings. The study also found, however, variation in other aspects of structural formality, e.g., the holding of a formal arraignment. The following sections discuss more fully our findings in each of these areas.


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## Centralization of Authority: Who Controls Probation?

The juvenile court was founded as basically a social service agency. Critics of the juvenile court in this role have argued for administration of at least some services by an executive agency. Controversy over control of probation and support services has focused on the appropriate functions of the court and the issues of accountability, conflict of interest, and efficiency.[2] The appropriate role for the court in the administration of services was not addressed in this study. The survey data did indicate, however, the extent to which metropolitan juvenile courts maintain control over probation, detention, social services, and which personnel provide these services.

For purposes of this study, the probation department was defined as the organization performing the majority of traditional probation functions, regardless of its title. To determine the degree of control exercised by the court, three questions were asked: Who has principal administrative control of the probation department, who provides the funds, and who hires and fires the employees?

Of the 150 jurisdictions surveyed, the majority (61 percent) reported that the court has principal administrative control of the probation department; 33 percent are administered by an executive agency. Limited jurisdiction courts, however, are slightly more likely to control probation than are general jurisdiction courts. The court has primary responsibility for hiring and firing probation personnel in 64 percent of the courts, and in 40 percent of the jurisdictions the probation department is a line item in the court's budget.

Courts that administer probation were found more likely to administer various court-related social services. Also, the court is less likely to administer services when probation is administered at the state level than when it is administered by a local executive agency. Courts with administrative control of probation are far more likely to be responsible for social services than courts with probation administered by either level of the executive branch.

Administration of detention facilities involves many of the same issues as probation and social services. The present survey found that detention facilities are administered principally by the executive branch (64 percent). In 36 percent of the jurisdictions, the court has primary control. The majority of detention facilities (73 percent) are funded principally by county governments. Even though only 17 percent of the detention facilities are under a state agency, 37 percent receive some funding from the state. The data show that judicial administration of detention is associated with court control of the initial review of complaints. Also, detention is more likely to be executively administered in courts of limited jurisdiction than in courts of general jurisdiction.

Lawson et al. identified three primary models of court personnel systems: patronage, merit, and collective bargaining.[3] While courts traditionally have lagged behind the executive branch and the private sector in implementing personnel systems, generally they have followed that order of progression when adopting new personnel systems. We would expect to find a patronage system in the stereotypical traditional juvenile court.

The survey found that, indeed, executively administered probation and detention staffs are more likely to have employee protection systems than those administered by the courts. Also, detention facilities operated by a state executive agency are more likely to have both merit systems and unions for detention personnel than those controlled by a local executive agency or court. These findings may reflect Lawson's "cultural lag" in court management or simply the variation in the organizational structure of court systems.

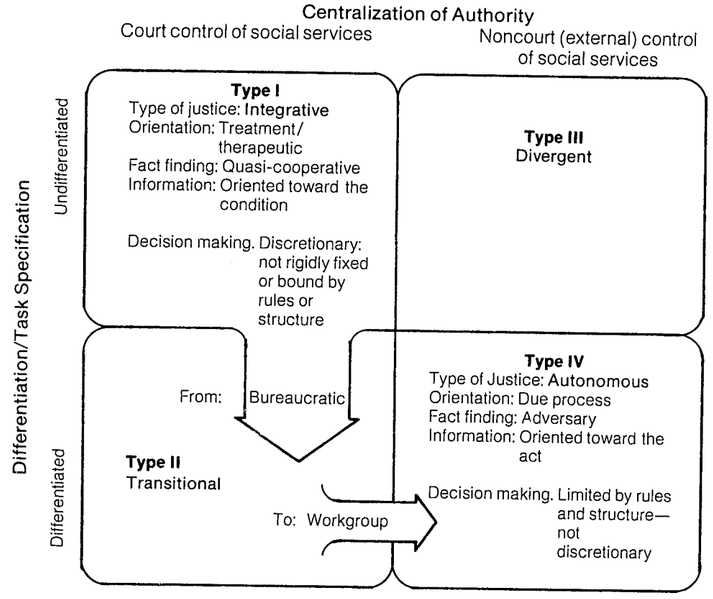


FIGURE 1
**A Paradigm of Contemporary Juvenile Justice**

## Task Specification: A New Role for the Prosecutor

In approximately half of the courts studied, the prosecutor is involved in the decision to file a formal petition. The data indicate that the role of the prosecutor is related to administrative control of probation. The prosecutor's office makes the decision whether to file petitions in 88 percent of the courts with executively administered probation. Of the 81 courts that administer probation, most (57 percent) have their intake staffs decide whether petitions are filed. In 37 percent of these 81 courts the prosecutor makes that decision.

It is likely that the involvement of the prosecutor at intake followed the introduction of prosecutors to represent the state's interest in juvenile adjudicatory proceedings. The study found that in all but five of the courts the prosecutor organizes the case for presentation when a violation of the criminal law is alleged.

Part of the prosecutorial function in the criminal court is plea negotiation. The study revealed that plea bargaining (as distinguished from sentence bargaining) has become common practice in metropolitan juvenile courts. In 85 percent of the courts surveyed it was reported that "the counsel for the juvenile or other representative of the juvenile negotiates with someone concerning the plea to be entered." In almost 80 percent of these courts these negotiations are conducted with the prosecutor alone. In another 16 percent, the prosecutor is joined in negotiations by a representative of probation. Plea bargaining is more likely to take place in courts in which probation is administered by the executive branch and in which the prosecutor is involved in intake.

Even with the introduction of adversarial proceedings for juveniles, some have felt that the dispositional hearing should not be adversarial in nature. A little over half (53 percent) of the courts reported that the prosecutor must be present at disposition. The presence of the prosecutor is more likely to be required when the juvenile court is part of a court of general jurisdiction than when it is a court of limited jurisdiction and also when probation is an executive branch function rather than administered by the court. The changing role of the prosecutor is a significant gauge of the change that continues to take place in the juvenile justice system.

## Scope of Jurisdiction: Status Offender Orientation

While 21 courts indicated that their jurisdiction does not include status offenses, many other courts revealed differential handling of alleged status offenders. Proceedings are less likely to be adversarial. For example, the prosecutor organizes the case for presentation in court in less than two-thirds of the courts that handle status offenders. Rather, the other significant participants in these proceedings are the probation officer and "someone else" (the complainant or social agency representative.)

Dispositional options also differ for status offenders. While the option of placement in nonsecure facilities is available in 75 percent of the courts, courts in which the prose-

cutor is involved in the decision to file and in which probation is administered by the executive branch are more likely to have nonsecure facilities as an option for status offenders and less likely to have secure facilities available for them.

**Structure of Intake: How Much Discretion?**

Juvenile courts, since their inception, have had procedures and staff to screen referrals and to resolve some cases without formal court processing.[4] As the juvenile court has evolved and come under increasing criticism, intake has been one of the targets. Intake traditionally has exercised considerable discretion not only in deciding which cases are referred to court but also in the "informal" disposition of cases not referred for a judicial hearing. Intake workers have been able to place juveniles on probation with no legal determination of facts or other legal safeguards. As the potential for abuse has become recognized, procedures have become more formalized, and the decision-making criteria have been made more explicit.

Court-employed probation officers traditionally screened referrals to the court. Over the years, probation departments have become more specialized and more of them have come under the control of an executive agency. Thus, we have the more specific title—intake officer instead of probation officer; there are separate intake units and more intake is being performed by employees of the executive branch of government and by prosecutors.

The data indicate that intake is performed by a division of an executive- or court-administered probation department in 115 of the courts. There are 18 courts in which intake is shared by the probation department and the prosecutor's office. The prosecutor has sole responsibility for intake in 11 courts. Six courts reported that clerks, magistrates, or other court employees do the screening.

Several questions were asked to clarify the specific responsibilities included in each court's intake function and to distinguish types of intake staffs. Responders were asked who has responsibility for initially examining the complaint and who is responsible for deciding whether to file a petition. They also were asked to tell how the review is done, the purpose of the review, and the nature of the issues to be decided (e.g., probable cause, jurisdiction, best interest, whether to detain).

Although 91 of the courts have administrative control of probation, only 58 of these courts reported that court intake staff has sole responsibility for the initial review of complaints. Of the 49 courts reporting that an executive branch or other agency has principal administrative control of probation, 36 reported that an executive agency intake staff has sole responsibility for initial review of complaints.

The data indicate the development of a two-stage screening process in approximately half of the courts studied. Court intake is responsible for all screening in about two-thirds of the courts with one-stage processing. In all of the courts with a two-stage screening process, the prosecutor is involved in the decision to file a petition. In more than half of these courts an executive agency initially reviews the complaint, and in 30 percent of the courts with double screening the court conducts the initial review.

The development and increase in the use of shared screening is likely a response to increased concern with the due process rights of juveniles. Another response is the development in several jurisdictions of a three-stage process that singles out the more serious cases that may result in the loss of liberty. For these cases full application of due process rights is assured. Status offense cases or misdemeanors may be diverted or referred to agencies.

Responders were asked if the court conducted a nonjudicial conference to try to resolve the case without formal court involvement before or after a petition was filed. When court- or executive-administered intake conducts the initial review they almost always hold a nonjudicial conference. They are almost twice as likely to have a conference than courts in which the prosecutor does the initial review. Although both court and executive intake have considerable discretion before a petition is filed, executive intake is more likely to lose discretion after a petition is filed than is court-administered intake.

Much of the research that has been conducted on intake processes has sought to determine the criteria used and their relative weights in the decision to file a petition or to process informally. In the traditional juvenile court, which emphasizes the condition of the child and is oriented toward treatment, we would expect social factors to influence decision making. This research has resulted in varied findings. Slightly more than a third of the courts in the survey reported that the processing decision is made on legal factors only (including previous record) while almost two-thirds consider both social and legal factors. In the remaining 3 percent, intake is merely a clerical function, and any decisions to dismiss cases or divert them are made after a petition has been filed.

Several studies of intake have asserted that it is the least regulated function in the juvenile justice system.[5] It has been suggested that the combination of wide discretion and limited provisions for due process may produce the greatest opportunity for abuse. While most juvenile justice experts agree that intake should act in the best interest of the youth and needs to have informal processing options, they also recognize the need for procedural safeguards. The study found that intake plays a critical role in informing youths of their rights, and in the majority of courts intake provides the first notification.

Intake officers continue to exercise a great deal of discretion in deciding how youths will be handled and in the types of cases they have authority to consider. Intake, originally con-

*Continued on page 34*



END

## Juvenile courts

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ceived to screen out frivolous complaints and resolve minor disputes, today has become, for an increasing number of juvenile courts, a vehicle for maintaining the therapeutic or rehabilitative goals of the juvenile court while preserving basic rights.

**Formalization: How Many Hearings?**

The criminal justice model toward which many see the juvenile justice system moving is characterized by a formalization of procedures. This includes a formal arraignment, or preliminary hearing, an adjudicatory hearing, and a dispositional hearing, rather than the one informal hearing characteristic of the traditional model. The survey provides information concerning the extent to which these elements of formalization are present in metropolitan juvenile courts.

The survey found evidence that a formal arraignment hearing is used in cases of alleged delinquency in 58 percent of the courts. In status offense cases, 56 percent of the courts that handle such cases use a formal arraignment. Formal arraignment proceedings are more likely to be held when probation is an executive function and when the prosecutor is involved in intake.

While most juvenile cases are probably still uncontested and often the only hearing deals with disposition, to test the formalization of the system the survey asked, "Is there a *mandatory minimum* time interval between adjudication and disposition?" Only 22 percent of the courts responding said "yes." A requirement that the hearing be bifurcated is more likely when juvenile jurisdiction is part of a general jurisdiction court, when probation is executively administered, and when court intake does not have responsibility for filing petitions.

Many respondents indicated that while hearings are not bifurcated by requirement, they are in practice. Thirty-two courts were thus identified as holding separate dispositional hearings, for a total of 65, or 43 percent of the total sample. General jurisdiction courts are slightly more likely to bifurcate their hearings (whether by rule or practice) than courts of limited jurisdiction. Bifurcation is also more likely when probation is an executive function and when the prosecutor is involved in intake.

**Integration: A Separate Juvenile Court?**

Another important factor in describing juvenile courts today is the location of juvenile jurisdiction. The "juvenile court" was founded almost 100 years ago on the premise that juvenile matters are distinct from adult criminal matters and should be handled in a separate institution. This institution was to have its own procedures designed to "help" juveniles in trouble and its own personnel with expertise in dealing with problem youth. This "separateness" of the juvenile court was to become its hallmark. The stereotypical "traditional" juvenile court was a court of special or limited jurisdiction presided over and administered by a juvenile judge, assisted primarily by social service personnel.

Various pressures, however, have promoted a blurring of the distinctions between the juvenile court and the adult criminal court. One such pressure is the general court unification movement, which has sought to improve the efficiency of the justice system through the consolidation of courts.[6] Another is found in standards groups who see the location of juvenile jurisdiction in a limited or special court as an indication of lower status in the justice system, a status that threatens the quality of juvenile justice.[7] Critics of the juvenile court have come to associate its very existence as a unique entity with the deprivation of due process for juveniles and have sought changes that would bring juvenile courts to more closely resemble adult criminal courts. Still others associate the juvenile court and its staff with "mollycoddling" and demand the purportedly more punitive stance of the adult courts.

This study did not directly address the question of the effect of the location of juvenile jurisdiction on the quality of justice. It did, however, attempt to determine the extent to which metropolitan juvenile courts are separate and distinct within the justice system.

The survey questionnaire asked whether a court was of general or limited jurisdiction to determine the location of juvenile jurisdiction within the court system. The data show that 63 percent of the metropolitan juvenile courts are general jurisdiction courts. Many of them, however, remain as special divisions of the general trial court system. Jurisdiction, therefore, cannot be considered a good indicator of the separateness or integration of the juvenile court. General jurisdiction does, however, seem to be correlated with executive control of probation and prosecutorial involvement in the filing decision.

The described variations may reflect changes in juvenile court structure. While the present survey can provide only a static portrait, it suggests the nature and directions of change. We conceive of juvenile courts as "open systems"[8] reacting to external events and adapting to strain through the gradual introduction of new elements. For example, *Gault* mandates the introduction of defense counsel but defines neither the precise role nor the stage at which counsel is to be assigned. Studies of the role of attorneys in juvenile court suggest considerable role conflict when adversary-oriented counsel are introduced without adapting other elements of the system to a conflict model of adjudication. The introduction of a more active prosecutorial role may be an adaptive mechanism that reduces the role strain of a judge who had acted as both prosecutor and judge prior to the extensive use of defense counsel.

Similarly, a "triage" prescreening system that determines which cases become formal may be an adaptation to *Gault* and the diversion movement. The "triage" identifies cases that are not likely to result in incarceration and, therefore, do not require full application of due process guarantees. This adaptive strategy, which results in differential processing, allows for the development of individual subsystems, each with its own set of roles and procedures.

The typology reinforces Hagen's concept of juvenile justice as a loosely coupled set of subsystems.[9] There are several implications. If juvenile courts are not represented by a single, uniform system of case processing, it follows that research will have to take into account the variation and choose the sample accordingly. Past studies of case decisions in juvenile justice may reflect sampling errors and system differences.

**The Effect of Court Type on Case Outcomes**

After identification of different court types, the effect of court type on case outcome was tested in a pilot study. Data were gathered on youth "at risk" (point of entry into the juvenile justice system after police processing) from three jurisdictions that were included in the court survey. The pilot study was limited to exploring the effects of the two extreme ideal types—integrative justice and autonomous justice—on case disposition. The courts selected for analysis of disposition outcomes are two variations of Type I courts and a Type IV court.

The typology suggests that Type I courts are structurally adapted to open and discretionary use of information and, lacking prosecutorial screening of cases and a fully developed adversarial procedure, will be exemplars of systems that use offender traits in making processing decisions. Conversely, a Type IV court, exhibiting multiple screening systems and highly developed adversarial procedures, will restrict decision making to more formal, offense criteria except at final disposition, at which point the probation report can supply mitigating social information to be used by a judge in assessing the type and severity of the disposition.

**In courts characterized by the integrative model of justice, offender characteristics are significant predictors of disposition, whereas in the courts conforming to the autonomous justice model, only offense characteristics were significant predictors.**

The results show that, focusing on overall outcome in a court that can be characterized by the integrative model of justice, offender characteristics are significant predictors of disposition, whereas in the court that more closely conforms to the autonomous justice model, only offense characteristics were significant predictors. Furthermore, most of the contribution of offender characteristics in both types is due to discretionary variables; i.e., those considered legitimate decisional bases such as family composition and activity of the youth, rather than discriminatory variables (race and sex). The ability to predict disposition in only half of the cases in the integrative court, on the basis of the dependent variables, compared with the accurate prediction possible in three-fourths of the cases in the autonomous court, suggests that individualized justice dominates in the former and that the offense is the critical variable in the latter.

When case processing is broken down into two steps, intake and sentencing, differences between the courts are even more pronounced. Offender characteristics appear to be more important than the offense in deciding whether a case is to be handled officially or unofficially in the integrative court.

Focusing on the sentencing decision, however, an interesting difference emerges. The relative importance of offender characteristics remains approximately the same in the integrative court, but in the autonomous court, offender characteristics rather than offense become crucial in determining whether a juvenile is to be placed on probation or committed to an institution. These offender characteristics are largely discretionary—family composition and whether or not the youth is in school. This conforms with a philosophy of justice that restricts social information until after adjudication. In other words, discretion enters *after* a legal finding.

The second court approximating the traditional model, however, is closer to the autonomous court than to the other integrative court in its dispositional outcomes. Offense characteristics were found to predominate at all decision levels, although offender characteristics were also significant predictors of outcome. These results may be due in large part to the differences in use of discretion in the two Type I courts. The first court is characterized by low discretion at intake (a large proportion of cases referred are handled officially), while the second uses diversion screening a lot, rather than the informal probation disposition characteristic of traditional juvenile courts.

It is clear that any definitive study

of the determinants of decision making in juvenile courts must take into consideration structural variations of courts. It is equally clear that juvenile courts can be structured to accommodate due process requirements without sacrificing their rehabilitative mandate. □

NOTES

1. For a description of the analytical procedures used to develop the typology, see Vaughan Stapleton, David P. Aday, Jr., and Jeanne A. Ito, "An Empirical Typology of Metropolitan Juvenile Courts," forthcoming, *American Journal of Sociology*.

2. See Section III, "Juvenile Court Services" in John C. Hall, Donna Martin Hamparian, John M. Pettibone, Joseph L. White, eds., *Major Issues in Juvenile Justice Information and Training: Readings in Public Policy* (Columbus, Ohio: Academy for Contemporary Problems, 1981).

3. H. O. Lawson, H. R. Ackerman, and D. E. Fuller, *Personnel Administration in the Courts* (Boulder, Colo.: Westview Press, 1979).

4. R. A. Blumstein and R. A. Stafford, "Application of the Jussion Model to a Juvenile Justice System," Proceedings of the National Council of Juvenile Court Judges (December 1974), pp. 60-84; and L. T. Empey, *American Delinquency: Its Meaning and Construction* (Homewood, Ill.: Dorsey, 1978).

5. L. E. Cohen and J. R. Kluegel, "Selecting Delinquents for Adjudication: An Analysis of Intake Screening Decisions in Two Metropolitan Juvenile Courts," *Journal of Research in Crime and Delinquency* 16 (1979), pp. 143-163; and E. Z. Ferster and T. F. Courtless, "The Intake Process in the Affluent County Juvenile Court," *The Hastings Law Journal* 22 (May 1971).

6. See L. Berkson and S. Carbon, *Literature on Court Unification: An Annotated Bibliography* (Washington, D.C.: National Institute of Law Enforcement and Criminal Justice, 1978) and L. Berkson, "Why Probate Judges Fear Unified Courts," *The Judges Journal* 19 (1980), pp. 16-49.

7. National Task Force to Develop Standards and Goals for Juvenile Justice and Delinquency Prevention, *A Comparative Analysis of Standards and State Practices: Court Structure, Judicial and Non-Judicial Personnel, and Juvenile Records*, Volume III of IX (Washington, D.C.: National Institute of Juvenile Justice and Delinquency Prevention, 1977).

8. Katz and R. L. Kahn, *The Social Psychology of Organizations* (New York: Wiley, 1966).

9. J. Hagen, "Ceremonial Justice: Crime and Punishment in a Loosely Coupled System," *Social Forces* 58 (1979), pp. 506-527.

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