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# Juvenile crime — Is adult treatment the answer?

By WALLACE MLYNIEC

Despite statistics that show a national decline in both violent crime and crime committed by children, Alaska statistics indicate an opposite trend. In an attempt to reverse this trend, many people in Alaska have, as have citizens in other states with high crime rates, begun to call for tougher criminal laws and a reduction of the age at which a child is subject to the adult criminal process. Implicit in these demands is the belief that if laws get tougher and if children are subject to harsher penalties, crime will be reduced. Although these ideas seem logical, closer scrutiny reveals their invalidity. Moreover, the system envisioned by supporters of those ideas will cause more problems than it resolves.

There is little doubt that a system of jurisdiction based solely on age will result in speedier and less expensive processing of cases involving children who require the harsher penalties of the adult court. Full court hearings do take time and force prosecutors to prove to a judge that a child belongs in the adult rather than the juvenile system. Unfortunately, an age determinant system also drags many of the wrong children into the adult court. According to the U.S. Department of Justice, only 11 percent of the cases referred to juvenile court are crimes against persons. Homicide, rape, and robbery accounts for less than 3 percent of all such referrals. These studies also indicate that the majority



of children treated as adults are charged only with property offenses and not with dangerous, violent crimes.

Court procedures which permit the return of a case to the juvenile court upon a showing by the child that he is amenable to rehabilitation do not substantially improve the results since that procedure is dependent upon the quality of the legal services provided to the child rather than his behavioral profile. Finally, anyone who has participated in a bureaucratic urban court system knows that justice often become subordinate to political pressure, quick judgments based on sparse information and calendar control. As a result of these and other factors, many of the children sent to the adult system are sent there inappropriately.

When a child receives the harsher penalty of the adult court, crime may actually increase over the long term. Reformers often forget that few people who commit crime spend the

rest of their lives in jail. At some time, they are paroled or they complete their jail terms. If, during the period of incarceration, nothing occurs to redirect an inmate's behavior toward more productive outlets, imprisonment creates only a short term reduction in crime rate. No one believes that existing prisons rehabilitate inmates. Most people concede that prisons are places of violence where survival rather than rehabilitation becomes an inmates paramount concern.

Cunning and domination are the skills that inmates need and learn. The development of these skills is even more important among young inmates. Older inmates learn to live through their period of incarceration without becoming caught up in the violence. Younger inmates, either by choice or by necessity, must adapt to the violence. By the time they are released, they have learned skills that have prepared them neither for a trade nor a profession, but for crime, often more vicious than those committed before. Finally, the harsh penalties and reduction in crime sought by proponents of lowering the age of jurisdiction are often illusory. The Academy for Contemporary Problems recently found that while 90 percent of the children treated as adults pleaded guilty, fewer than one-half were incarcerated. The majority received fines or probation. Only 14 percent received prison sentences longer than 10 years but even most of them will be released prior to the expiration of their maximum terms. If those re-

leased or receiving short terms of imprisonment were processed in the juvenile court, the nature of their crimes and the extent of their juvenile records would virtually eliminate institutional placements. Thus, short-term crime reduction would occur through rehabilitation and long term reduction through bilitation would at least be possible.

Crime in America, no matter the numbers, remains a serious problem that can be faulted for seeking ways to protect us from vicious attacks or minor incursions onto our property. Yet we take simplistic approaches based on unclear or inaccurate premises and expect results. Causes of crime are basically unknown, probably many. What is certain, however, that we should not seek easy solutions that not accomplish the legitimate ends we wish to achieve, especially if those solutions cause hurt untold numbers of young people. A careful determination on a case by case basis remains the best way to balance the competing interests of individuals and society. It may cost a little more and take a little longer. Nonetheless, it provides the best method of achieving the correct result.

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ABSTRACT . . .

In Minnesota, the 1980 legislature statutorily defined a class of juvenile offenders presumed on the basis of age, alleged offense, and record of prior felony offenses to be unfit for treatment in the juvenile court. In this article we evaluate the effect of Minnesota's revised waiver statute by comparing cases in which waiver proceedings were initiated and in which transfer occurred for two time periods, before and after adoption of the legislatively defined presumptive criteria. Our findings suggest that the objective criteria adopted by the Minnesota legislature are not, in themselves, an adequate means for selecting juveniles for transfer to adult court. The criteria identify many juveniles whose records on close examination do not appear to be very serious and fail to identify many juveniles whose records are characterized by violent, frequent, and persistent delinquent activity.

must consider record of prior felony  
offense as well as age &  
alleged offense

establish presumptive criteria -  
prosecutor must still file  
waiver motion but burden  
shifted to defendant

result: criteria too simplistic  
& too rigid to be reliable

## Prosecuting Juveniles as Adults

### *The Quest for "Objective" Decisions*

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### WAIVER: PURPOSE, HISTORY, AND MAJOR TRENDS

Since the inception in the United States of a specialized judicial institution for dealing with children and youthful offenders, controversy has surrounded the determination of the boundary between the juvenile and the adult court. In all states, the age of the offender has been the major factor employed in deciding whether juvenile or adult court jurisdiction will attach in a particular case. Although the age specified has varied among states and, over time, within states, most statutes now set 18 as the age of original criminal court jurisdiction,<sup>1</sup> thereby providing that all juveniles 17 or younger initially are subject to the jurisdiction of the juvenile court. In addition to demarcation by age, all states provide for the consideration of other factors in determining jurisdiction in some cases. While age is the initial criterion used to decide a youth's eligibility

for juvenile court, other factors (such as seriousness of the alleged offense, past record, dangerousness, and suitability for treatment within the juvenile system) also may enter into the jurisdictional decision. The additional criteria specified and the legal mechanisms for making the decision to waive juvenile court jurisdiction vary tremendously from state to state. The stated intent of these varying standards and mechanisms, however, has been the same: to recognize and to provide for cases in which public safety or individual needs are served better by handling chronological juveniles as adults.

Historically, authority to make decisions regarding the waiver of juveniles to the adult criminal system was granted to the juvenile court judge, who exercised discretion within very broad guidelines set by the state legislature. Consistent with the informal, individualized approach derived from the *parens patriae* doctrine, formal rules of procedure and specific substantive standards rarely were utilized. Prior to reforms beginning in the 1960s then, judges could be said to have "made waiver decisions in an atmosphere of informal procedure and unfettered discretion" (Whitebread and Batey, 1981: 210-211).

The United States Supreme Court's 1966 ruling in *Kent v. United States* marked the beginning of major change in the waiver process. In addition to granting basic procedural rights to defendants, the Court in this case also listed eight substantive factors that judges might consider in making waiver decisions (*Kent v. United States*, 1966). In following years, state legislatures offered judges further guidance by specifying the findings needed to justify waiver and by providing lists of criteria to be considered during waiver proceedings (Sorrentino and Olsen, 1977; Simmons, 1978; Wagner, 1979).

Despite the procedural safeguards and substantive criteria enacted in the wake of the *Kent* decision, judicial discretion in the waiver process has been subjected to continued criticism. The substantive criteria still are considered by many to be too ambiguous to provide an adequate limitation of judicial discretion. Interpretation of the standards remains subjective and "the large number of factors that may be taken into consideration provides ample opportunity for selection and emphasis" as needed to justify the desired outcome (Zimring, 1981: 195). The potential for abuse of discretion continues to be high. The lack of specificity within the standards, for example, may allow judges to legitimate essentially political decisions (such as those made in response to public outrage over a particular crime) in the language of individual rehabilitation (Sorrentino and Olsen, 1977: 510-511; Malmquist, 1979). Others suggest that an ambiguous and discretionary waiver process has contributed substantially to the court's perceived inability to deter serious juvenile crime. Judicial waiver, according to these critics, inherently is unable to provide the certainty of punishment—in this case, the certainty of prosecution as

an adult—that they say is an essential element of effective deterrence (Feld, 1981: 515-518).

Additional criticisms of judicial discretion in the waiver decision are directed not at the ambiguity of the standards guiding the decision, but at the fundamental assumptions on which those standards are based. Standards or guidelines for the waiver decision usually are intended to provide indicators of a juvenile's dangerousness or nonamenability to treatment. But critics contend that it currently is impossible to predict with any accuracy whether or not treatment and rehabilitation are possible in a particular case or if a person is dangerous. If this is so, increased clarity and specificity in the standards for judicial waiver will do nothing to improve the decision-making process. According to this argument, the problem lies not in ambiguous language but in a lack of knowledge. If there are no reliable empirical methods for diagnosing, classifying, or treating juvenile offenders, the principles of amenability and dangerousness have no value for the waiver decision and should be abandoned (Feld, 1978).

Partially in response to such criticisms, a number of states have attempted to define a more objective basis for waiver decisions. Although a recent study of juvenile codes effective in 1981 found that 47 states have judicial waiver provisions in their juvenile codes, other transfer mechanisms often coexist with and affect judicial authority. For example, 14 states specify by statute certain offenses that automatically are excluded from juvenile court jurisdiction. These provisions are referred to as "excluded offense" or "automatic transfer" legislation, and at least four states have attempted to confine judicial discretion by using objective criteria to establish a presumptive or *prima facie* case that certain youths should be transferred (Hamparian et al., 1982: 44-65).<sup>2</sup>

While state legislatures increasingly have been willing in the past several years to consider and to enact both excluded offense provisions and provisions that specify the elements of a presumptive case for waiver, such attempts to reduce discretion in the waiver process are not without fault. Most statutes that attempt to more objectively define those juveniles who should be transferred to criminal court rely only on age and present offense and not on prior record. This approach has been criticized as being an overly broad method of effecting transfer (Zimring, 1981: 199-200) and as ignoring research findings that suggest that many juveniles arrested initially for serious, violent offenses will not face repeated charges of the same kind (Hamparian et al., 1978). In general, evidence indicates that when present offense is emphasized in selecting juveniles for transfer, there is a danger of identifying many first-time offenders for whom no treatment has been attempted and who are not likely to recidivate.

The controversies surrounding the process by which juveniles are transferred to the adult legal system point to larger issues in juvenile justice and criminal justice policy. Foremost among these issues is that of the discretionary authority accorded individual decision makers (law enforcement officers, prosecutors, judges, corrections officials) within the juvenile and criminal justice systems. Granted that the particular circumstances of each person and each offense may legitimately influence official decisions, how can equity be achieved while the arbitrary, prejudicial, and inconsistent application of the law is prevented? The more discretion given to individual decision makers, the greater the potential for abuse of that discretion.

In the past several years policymakers have moved to reduce the application of discretion in the criminal justice system by adopting measures intended to assure the like treatment of like cases. Attention has been directed to "channeling, reducing, and controlling" individual discretion in decisions such as those of pretrial release and of sentencing (Nagel, 1982). As part of this trend, for example, state legislatures have considered, and in some cases adopted, proposals to provide for fixed or determinate sentences imposed on the basis of an offender's current offense and past record. A major justification for mandatory sentencing plans is that reduction of judicial and parole board discretion correspondingly will reduce inequalities and discrepancies in sentencing. Whether or not this objective is likely to be achieved is a matter of continuing debate (Feeley, 1983: 148).

The issue of discretion in the juvenile justice system is even more problematic since the juvenile court was created expressly to provide individual and particularistic treatment to those defined by age as children. Gradually, however, in the face of what some viewed as the harsh and arbitrary treatment of children under its jurisdiction, the juvenile court has been modified to incorporate many of the due process protections found in adult criminal court. Furthermore, in some states objective dispositional guidelines based on current offense and prior record are receiving serious consideration. As the juvenile court shifts from a *parens patriae* to an increasingly legalistic basis and considers the adoption of dispositional practices common to adult courts, the logic of its continued existence as a separate institution is being questioned (Conrad, 1981).

The present study, while not attempting to address directly the general issues of discretion and of the continued existence of the juvenile court, analyzes a specific policy that bears on them both. By examining the kinds of juvenile cases that are transferred to adult court, something may be learned about the efficacy of age as the primary determinant of juvenile court jurisdiction. By analyzing the kinds of cases in which waiver proceedings were initiated before and after implementation of

statutorily defined "objective" criteria for waiver, something may be learned about the effect of such criteria as an alternative to the additional exercise of discretion.

### REVISIONS IN MINNESOTA WAIVER PROVISIONS

Minnesota is one of those states that have moved recently to limit judicial discretion and to establish a more objective basis for the waiver of juvenile court jurisdiction. Prior to 1980 the Minnesota Juvenile Court Act provided that a juvenile 14 years of age or older could be transferred to adult court if the juvenile court judge found that "the child is not suitable to treatment" or that the "public safety is not served" by handling the child within the juvenile court.<sup>3</sup> No further substantive guidance was provided by statute. In 1980 the state legislature established a classification scheme that defined a class of juvenile offenders *presumed* to be unfit for juvenile court treatment. These juveniles are identified on the basis of their age, alleged offense, and record of prior felony offenses. Briefly, a *prima facie* or presumptive case for waiver can be established if the juvenile was at least 16 years old at the time of the offense and meets one of the combinations of alleged offense and prior record shown in Table 1.<sup>4</sup>

The general purpose of the statutory revision was to facilitate the transfer to adult court of juveniles identified as serious offenders. By allowing the prosecutor to establish a presumptive case for waiver in those instances where the specific criteria are met, the effect of the change is to shift the initial burden of proof from the prosecutor to the defendant in this special category of cases.<sup>5</sup> Cases that do not meet the criteria also may be waived, although the burden of proof then rests on the prosecutor, who must show that the child is unsuitable to treatment or dangerous.

In substance, the presumptive criteria were intended to balance the severity of the alleged offense with the extent of the juvenile's prior record in identifying candidates for adult prosecution. As the severity level of the alleged offense increases, the number of prior felonies required decreases. Property and drug felony offenses require the most extensive prior record; violent felonies require the least extensive prior record.

Minnesota's statutory revisions come at a time when the very foundations of judicial discretion as exercised in the waiver process (and throughout the juvenile system) are being challenged, and when proposals to replace or to limit judicial discretion with objective formulas are being advanced by scholars and practitioners of juvenile justice. However, while the use of objective classification schemes to make waiver decisions has grown rapidly in recent years, these schemes often have

TABLE 1  
Requirements for a Presumptive Case for Transfer

Alleged Offense	Prior Record <sup>a</sup>
(1) Murder I	No prior record required.
(2) Murder II or III Manslaughter I Criminal Sexual Conduct I Assault I	Adjudicated delinquent for <i>one</i> felony offense committed in the preceding 24 months.
(3) Manslaughter II Kidnapping Criminal Sexual Conduct II Arson I Aggravated Robbery Assault II	Adjudicated delinquent for <i>two</i> felony offenses, not in the same behavioral incident, committed in the preceding 24 months.
(4) Any other felony (e.g., burglary, auto theft, drug-related felonies)	Adjudicated delinquent for <i>three</i> felony offenses, not in the same behavioral incident, committed in the preceding 24 months.

a. One year after the waiver statute was enacted, the legislature modified the prior record requirement by eliminating the requirement that delinquency be adjudicated officially in order for prior offenses to be counted. Since the adjudication requirement was in effect at the time of the study, it is the version used in the following analysis. Additional data collected by the authors indicates that the conclusions reached here would be the same regardless of which version of the criteria was utilized.

been criticized as being imprecise and overly inclusive in defining those juveniles who should be transferred to adult court. Minnesota's 1980 statute attempts to limit judicial discretion while also meeting some of the criticisms directed at objective classification formulas used in other states. Because the statute provides one of the most detailed and balanced formulas enacted to date, Minnesota's recent experience under the revised law provides an important opportunity to assess the utility of objective formulas in identifying those juveniles who require the sanctions of the adult criminal system.

#### METHODOLOGY

To evaluate the effect of Minnesota's revised waiver statute, demographic and case history data were obtained from juvenile court files in Hennepin County, an urban county of 900,000 people centered around the

city of Minneapolis.<sup>6</sup> Hennepin County was chosen because in Minnesota serious youth crime, the intended target of the new waiver statute, is primarily an urban problem. In 1979, for example, 40.7% of juveniles arrested in Minnesota for major offenses against persons came from Hennepin County.<sup>7</sup> As the state's most populous county, it also has the largest juvenile court caseload and transfers more juveniles to adult court than any other county.

In Hennepin County waiver proceedings are initiated by the county attorney. The prosecutor may choose to initiate waiver proceedings in cases that meet the recently enacted presumptive criteria, but is not required to do so. Furthermore, proceedings may be initiated in cases which do *not* meet the criteria but in which the juvenile's unsuitability to treatment or dangerousness can be claimed on other grounds. Because of these possibilities, demographic and case history data were obtained from juvenile court files for two analytically distinct categories of cases: (1) those in which the juvenile's age, alleged offense, and prior record were sufficient to satisfy the presumptive criteria; and (2) those in which waiver proceedings actually were initiated by the prosecutor. Examination of cases in the first category allows a determination of the number of cases meeting the presumptive criteria that were considered for transfer. Analysis of the second category, however, provides a description of all cases in which transfer proceedings were begun.

Overall 145 cases met either or both of the above conditions during the 18 months covered by the study. The group in which proceedings were initiated was identified readily through log books maintained by the juvenile court and the county attorney's office. Identification of the cases that met the presumptive criteria—out of the thousands of cases petitioned into court each year—was more difficult. The county's computerized tracking system provided an initial list of juveniles who were over 16 years of age and were charged with felony offenses during the designated study periods. The final selection was completed after a case-by-case examination of individual files that had passed the initial screening.

While the county attorney is responsible for initiating waiver proceedings, the judge retains authority for making the waiver decision. Therefore, it was also important to determine which of the initiated cases actually were transferred for criminal prosecution. Each case in the study was followed from initial court petition through final disposition, including trial and sentence in criminal court for those transferred to the adult system. The date of birth, sex, and race of each juvenile were recorded as was information on the juvenile's court record. Court record information included: (1) the date, type, and outcome of all prior and present offenses petitioned into court; and (2) all previous dispositions received by the juvenile.

Data for the study were obtained from three six-month time periods: January 1 through June 30, 1979; January 1 through June 30, 1980; and January 1 through June 30, 1981. The last six-month period followed implementation of the revised statute, while the first two periods occurred during the time before the revisions took effect.

## RESULTS

### WAIVER DECISIONS AND THE PRESUMPTIVE CRITERIA

General trends in the use of waiver proceedings in Hennepin County from the beginning of 1978 through the middle of 1981 are illustrated in Table 2. While the number of waiver motions *filed* by the county attorney during each six-month period remained virtually unchanged, the percentage of waiver motions *granted* increased substantially during the first six months of 1981 following implementation of the presumptive criteria. The increase in transfers granted cannot be attributed primarily to implementation of these criteria, however, as the percentage of waiver motions granted was virtually the same for cases that did not satisfy the presumptive criteria as it was for cases that did (83.3% and 82.6% respectively), indicating that the court's approval of waiver requests had increased across the board.

The next step in the analysis was to compare both cases in which waiver was sought and cases in which waiver was granted with the requirements of the presumptive criteria. As Table 3 indicates, a majority of cases in both categories failed to meet the presumptive criteria. That is, most juveniles transferred to adult court as well as most for whom waiver proceedings were initiated did not belong to the special class of offenders

who are now presumed by law to be unfit for juvenile court treatment. Following enactment of the revised statute, there was a slight increase in the proportion of transferred cases that did satisfy the criteria—from 22.2% before enactment to 34.5% after enactment. Despite this, however, even in the post-implementation period of January through June 1981, two-thirds of the juveniles transferred to adult court did not possess records sufficient to establish an initial presumption in favor of the transfer.

Even though most juveniles transferred do not meet the presumptive criteria, it might be assumed that juveniles who *do* satisfy the criteria are very serious offenders who are always or almost always transferred to adult court. The data do not support this assumption. Many juveniles who met the statutory requirements were never considered formally for transfer. While there was, as Table 4 indicates, an increase in the waivers granted for this group of offenders, this increase may be attributable partly to the previously discussed across-the-board increase in motions granted. Furthermore, even after the revised statute became effective, prosecutors chose to file waiver motions for only about half of the juveniles (54.5%) who met the criteria, while fewer (45.5%) actually were transferred to adult court.

Tables 3 and 4 suggest that there has been some change in the degree of correspondence between satisfaction of the presumptive criteria and involvement in waiver proceedings. What is more significant, however, is the continuation of large disparities even after the waiver process was

TABLE 2  
Use of Waiver Proceedings in Hennepin County: 1978-1981

Time Period	Motions Filed	Motions Granted	Percentage Granted
January-June 1978	28	14	50.0
July-December 1978	32	15	46.9
January-June 1979	35	19	54.3
July-December 1979	33	20	60.6
January-June 1980	38	17	44.7
July-December 1980	30	19	63.3
Six-month average for 1978-1980:	32.7	17.3	53.1
January-June 1981	35	29	82.9

TABLE 3  
Proportion of Cases Initiated and Transferred that Met the Presumptive Criteria

	Before Enactment <sup>a</sup>		After Enactment <sup>b</sup>	
	Number	Percentage	Number	Percentage
Initiated Cases				
Met criteria	15	20.5	12	34.3
Did not meet criteria	58	79.5	23	65.7
Total	73	100.0	35	100.0
Transferred Cases				
Met criteria	8	22.2	10	34.5
Did not meet criteria	28	77.8	19	65.5
Total	36	100.0	29	100.0

a. Cases petitioned into court from January 1 through June 30, 1979 and January 1 through June 30, 1980.

b. Cases petitioned into court from January 1 through June 30, 1981.

*reduction in number actually waived*

TABLE 4  
The Use of Waiver Proceedings in Cases that Satisfy  
the Presumptive Criteria

	Before Enactment <sup>a</sup>		After Enactment <sup>b</sup>	
	Number	Percent- age	Number	Percent- age
Total Cases Satisfying the Presumptive Criteria	42	100.0	22	100.0
Waiver Motion Filed	15	35.7	12	54.5
Waiver Granted	8	19.1	10	45.5

a. Cases petitioned into court from January 1 through June 30, 1979 and January 1 through June 30, 1980.

b. Cases petitioned into court from January 1 through June 30, 1981.

modified. Despite legislation that singles out for special consideration those juveniles who meet certain requirements of age, alleged offense, and prior record, prosecutors precluded waiver to adult court in almost one-half of the cases meeting the stated criteria.<sup>8</sup> Conversely, almost two-thirds of the cases in which motions for waiver were filed did not satisfy the criteria. It would appear then that the objective criteria in themselves have not provided prosecutors and judges with an adequate guide for deciding which juveniles should be handled as adults. Their decisions indicate that from their perspective the criteria identify many juveniles who should be retained in juvenile court and fail to identify many who should be transferred to adult court.

#### THE OBJECTIVE CRITERIA AND IDENTIFICATION OF SERIOUS OFFENDERS

Waiver decisions made by juvenile justice officials frequently did not coincide with the waiver decisions suggested by the legislatively defined presumptive criteria. This lack of coincidence does not mean that the criteria are totally useless; it does mean that the objective standards provided by the revised waiver statute do not in themselves give decision makers an adequate definition of juveniles to be transferred to adult court. The question remains as to why the objective criteria are an inadequate substitute for prosecutorial and judicial discretion in waiver decisions. More specifically, it is important to ask whether or not the criteria are effective in identifying those juvenile offenders considered serious, hard-core, or violent.

To address this question profiles were constructed of: (1) those juveniles meeting the presumptive criteria and (2) those juveniles involved in waiver proceedings. Variables used in constructing the profiles are those commonly accepted as indicative or definitive of serious delinquency: severity of the present offense (violent versus property or drug-related offenses); number of felony offenses charged in the present case; number of offenses, felony offenses, and violent offenses previously admitted or proven in court; length of time covered by the juvenile's official delinquency record (an indicator of the persistence of delinquent behavior and of the amount of time exposed to treatment within the juvenile system); and prior commitment to one of the state's juvenile institutions. No attempt was made to obtain an independent judgement of the youth's dangerousness or amenability to treatment or to measure subjective concepts like sophistication and cruelty. Only objective and verifiable data that can be readily and consistently found in official court records were utilized to construct the profiles.

Table 5 compares the profiles of juveniles whose age, offense, and prior record were sufficient to meet the presumptive criteria with those of juveniles who actually became involved in the waiver process. For this table, data from the entire 18-month study period were aggregated. Prosecutorial rather than judicial decisions were used because they represent the initial screening of waiver cases. Essentially the same results were obtained when judicial decisions to grant waiver were analyzed.

The differences between the group profiles presented in Table 5 are reduced somewhat by the fact that 27 cases were selected by both methods and therefore were counted in both groups. Even so, it is clear that those juveniles who satisfied the presumptive criteria possessed less serious records (as measured by the variables listed above) than those juveniles who actually became involved in the waiver process. Fewer than half of the juveniles identified by the presumptive criteria were charged with violent felonies or with multiple felonies. While they had, on the average, more prior felony offenses than the waiver group, their prior record was less likely to include violent offenses. Fewer than one-third of the presumptive criteria group had an official delinquency record that spanned more than three years, while almost 60% of the waiver group had official records spanning three years or more. Fewer than one-third of the presumptive criteria group had been placed previously in a state juvenile institution.

To provide an additional perspective, Table 6 focuses on cases that satisfied the presumptive criteria, and compares those that were accepted by the prosecutor as appropriate for waiver and those that were rejected. The pattern demonstrated previously in Table 5 clearly is repeated. Cases accepted for waiver were on the whole significantly more serious than

TABLE 5  
Comparison of Waiver Cases and Cases Selected by  
Objective Criteria

	Presumptive Criteria Satisfied		Motion for Waiver Filed	
	Num- ber	Per- centage	Num- ber	Per- centage
Total number of cases	64	100.0	108	100.0
Charged with violent felony	24	37.5	60	55.6
Charged with multiple felonies	28	43.8	68	63.0
Avg. number of prior offenses	7.1	—	7.6	—
Avg. number of prior felonies	4.2	—	3.1	—
One or more prior violent felo- nies	12	18.8	30	27.8
Juvenile court involvement ex- ceeding three years	18	28.1	64	59.3
Avg. length (yrs.) of juvenile court involvement	2.2	—	3.4	—
Prior commitment to state insti- tution	20	31.3	47	43.5

cases that were rejected. Most importantly, the data indicate that the presumptive criteria identify a rather large subgroup of juveniles who do not on closer examination appear to be very serious offenders. Though technically satisfying the minimum requirements established by the legislature, these youths (left-hand column of Table 6) typically are property offenders who have no history of violent offenses, either past or present. They also began their delinquency careers relatively late, have been known to the court for only one or two years, and consequently have been exposed to few of the treatment resources available to the court. While Table 5 suggests that the presumptive criteria fail to identify many juveniles with serious records, Table 6 shows that the criteria identify many juveniles whose overall records could not reasonably be described as serious, violent, or hard-core.

#### DISCUSSION

Judicial discretion in the making of waiver decisions has been subject to considerable criticism in recent years. Critics claim that the subjective guidelines under which most courts operate are extremely vague, and that the individualized and clinical methods used to determine the desirability of adult prosecution are unreliable. Discretionary waiver procedures therefore invite abuses and result in the faulty identification

TABLE 6  
Prosecutor's Decision to Request Waiver in Cases Satis-  
fying Presumptive Criteria

	Motion for Waiver Not Filed		Motion for Waiver Filed	
	Num- ber	Per- centage	Num- ber	Per- centage
Total number of cases	37	100.0	27	100.0
Charged with violent felony	8	21.6	16	59.3
Charged with multiple felonies	10	27.0	18	66.7
Avg. number of prior offenses	6.3	—	8.1	—
Avg. number of prior felonies	4.1	—	4.3	—
One or more prior violent felo- nies	3	8.1	9	33.3
Juvenile court involvement ex- ceeding three years	5	13.5	13	48.2
Avg. length (yrs.) of juvenile court involvement	1.5	—	3.2	—
Avg. age at first delinquency petition	15.5	—	14.3	—
Prior commitment to state insti- tution	6	16.2	14	52.0

of hard-core offenders. Support has been garnered for the replacement of subjective criteria with legislatively-defined objective standards by those who maintain that "a properly constructed legislative matrix, based on combinations of present offense and prior record, will identify hard-core youth more accurately and objectively than does individualized judicial inquiry" (Feld, 1978: 523).

Several states recently have established objective criteria that either automatically exclude certain juveniles from juvenile court jurisdiction or create a presumption in favor of exclusion. In 1980 Minnesota enacted a detailed statutory formula to govern its waiver process. The formula combines the variables of age, alleged offense, and prior record to identify juveniles presumed to be unfit for retention in the juvenile system.

Contrary to the claims of its supporters, the objective criteria adopted by the Minnesota legislature have not proven to be an adequate means for selecting juveniles for transfer to adult court. The criteria single out many juveniles whose records do not appear to be very serious and fail to identify many juveniles whose records are characterized by violent, frequent, and persistent delinquent activity. Despite its defects and potential for abuse, the traditional discretionary process used by prosecutors and juvenile court judges to make waiver decisions appears to be

more successful than the objective criteria alone in identifying the more serious juvenile offenders. Although critics of the discretionary waiver process contend that waiver decisions should be based only on objective variables related to the juvenile's behavior, the present study suggests that objective formulas—even those as sophisticated and balanced as Minnesota's—are too simplistic and too rigid to summarize such behavioral data in a reliable and consistent manner.

Critics of judicial waiver have emphasized the unreliability of clinical predictions of dangerousness and amenability to treatment while failing to recognize that judicial and prosecutorial discretion has never in practice been limited to such predictions. Discretion may, for example, involve the examination of important distinctions regarding the present offense (such as the extent of victimization) that are not captured by the formal charge alone. It may involve the synthesizing of information about the pattern of the juvenile's delinquent career, the nature of his response to prior treatment efforts, and numerous other factors not easily reducible to simplistic objective formulas. Abuses and mistakes undoubtedly occur when the discretionary process is used to determine who should be waived to adult court. The research presented here, however, suggests that objective selection formulas offer no simple solution to this complex problem.

While it might be tempting to believe that the problem lies solely in the quality of the objective criteria devised so far and that further research could help to construct actuarial or objective tables with far greater analytic power, the plausibility of such an approach is questionable. First, while the literature on clinical diagnosis and prediction generally has been quite negative, several studies of actuarial prediction as applied to criminal justice also have produced dismal results (Monahan, 1981: 101-104). Second, any effort to reduce the number of false negatives (juveniles who do not meet the criteria and yet are waived) probably would increase the number of false positives (juveniles who do meet the criteria but whose records generally are considered too weak to warrant transfer). Finally, it is important to remember that so-called objective data available from court records are based on previous exercises of discretion (decisions regarding arrest, prosecution, plea-bargaining, and disposition) that pervade the juvenile justice system and that are based only indirectly on the child's actual behavior. In short, there is no indication that further efforts to improve the reliability of objective waiver formulas would obtain significant results.

#### NOTES

1. Eight states set the age at 17 and four states set the original age of criminal court jurisdiction at 16 years of age (Hamparian et al., 1982: 43-44).

2. Seven states plus the District of Columbia allow the prosecutor to file charges in either juvenile or adult court against juveniles at specified ages for specified offenses (Hamparian et al., 1982: 62). However, these provisions, known as "concurrent jurisdiction," "direct file," or "prosecutorial choice" provisions, represent a transfer of discretion rather than an attempt to limit or eliminate discretion through objective criteria.

3. Since 1959 the waiver process has been governed by Minnesota Statute 260.125 as amended.

4. In this study the *prima facie* criteria refer to the criteria specified in Minnesota Statute 260.125 Subds. 3(2), 3(3), 3(4), and 3(5). Another section of the new waiver statute states that a *prima facie* case is established if the child "is alleged by delinquency petition to have committed an aggravated felony against the person and (a) in committing the offense, the child acted with particular cruelty or disregard for the life or safety of another; or (b) the offense involved a high degree of sophistication or planning by the juvenile." This section was excluded from the study because it could not be considered as part of an objective waiver formula due to the highly subjective nature of the factors listed. In any event, no cases that cited this section as a reason for waiver were found in Hennepin County.

5. If the presumptive case is un rebutted—if the defendant does not introduce significant evidence bearing on the issues of suitability for treatment or dangerousness—transfer for adult prosecution will occur (In re Welfare of Givens, 1981). On the introduction of significant evidence bearing on the allegations of unsuitability and dangerousness, the burden of proof moves back to the prosecutor.

6. Data from Hennepin County were collected as part of a larger study of waiver in ten Minnesota counties (Osburn and Rode, 1982). The data base for the larger study includes all cases in which reference proceedings were initiated between January 1, 1978 and June 30, 1981 in ten Minnesota counties.

7. Based on raw figures on Part I offenses against persons supplied by the Minnesota Bureau of Criminal Apprehension.

8. It should perhaps be noted that a wide variety of behaviors are included within the legal definition of a given offense. Thus the offense charged is not always a reliable indicator of the seriousness of the behavior. This fact may help explain prosecutorial choices at the same time that it calls into question the utility of charged offense as an objective criterion for reference.

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*Peter A. Rode is a Research Associate for the Urban Coalition of Minneapolis and was Research Director for the Minnesota Supreme Court Juvenile Justice Study Commission from 1980 to 1982. He has conducted research on resistance to military authority by lower-ranking soldiers and presently is investigating racial disparities in charging and sentencing decisions.*

#### ABSTRACT \* \* \*

*The justice model has emerged as an alternative to the discredited rehabilitative ideal as a basis for sanctioning policy. Retributivism or just deserts is offered as the primary justification for the criminal sanction in this model, although sometimes in combination with incapacitation and deterrence as companion rationales for sanctioning. Desert is, additionally, an integral component of a sense of justice that is presented as an attribute of the justice model. Desert, both as a rationale for sanctions and as the basis for justice, is drawn from the philosophical models of Immanuel Kant and John Rawls. However, these models have some rather disturbing implications that have not been addressed by proponents of the justice model. A critical examination of them and their implications for criminology is therefore in order.*

## Justice, Sanctioning, and the Justice Model

GRAY CAVENDER  
*Arizona State University*

Over the past several years there has been a renewed attentiveness to the policy implications of two somewhat philosophical topics: the criminal sanction and the concept of justice (American Friends Service Committee, 1971; van der Haag, 1975; von Hirsch, 1976; Fogel, 1979; Clarke, 1982). A revitalization of criminological interest in these matters was occasioned by a series of challenges to and the apparent collapse of the rehabilitative ideal.

The rehabilitative ideal was based on the assumption that criminal behavior was caused by factors that were beyond the control of an offender, factors that could be identified by experts who would then design treatment programs that would remedy the problem and thereby protect the offender and society from criminal behavior (Allen, 1981). This was the dominant theme of sanctioning from the late 1800s until significant criticisms were levied against the rehabilitative ideal during the 1970s. The rehabilitative ideal was condemned as an ineffective crime control strategy when evaluated in terms of recidivism and as a policy that fostered unfairness. The second criticism stemmed from the deter-



## Trial Courts

State of Alaska

THIRD JUDICIAL DISTRICT  
303 K STREET  
ANCHORAGE, ALASKA  
99501

CHILDREN'S INTAKE OFFICE  
Jay L. Warner  
Michaela Giesler  
Sandra Bonacker

January 9, 1984

Ms. Elizabeth J. Hickerson  
Senior Advisor  
Alaska State Legislature  
1024 West 6th Avenue, Suite 203  
Anchorage, Alaska 99501

Dear Ms. Hickerson:

In regard to your letter of January 5, 1984, I am supplying the following information: Due to the fact that the waivers have been so few here, I can give you information on everyone who has been handled in the Third Judicial District since I have been here which has been since 1968. The reason there have been so few waivers, in my opinion, is because of the degree of difficulty the statutes have placed on the State.

February, 1967: Armed Robbery waived to stand trial as an adult. Juvenile in the case had an extensive prior record and was almost 18 years of age.

July, 1969: Burglary in a dwelling; Contributing to the Delinquency of a Minor and Liquor Violation. Minor was 19 years of age; waiver was denied; you would have to consult with the Judge for the reason for denial.

May, 1971: Conspiracy to Kidnap; Kidnapping; Assault with a Deadly Weapon and Assault and Battery. Although the crimes were committed when the minor was 17, she was not arrested until age 18. She was waived to stand trial as an adult.

September, 1974: Assault with a Deadly Weapon; Concealing a Deadly Weapon. This 17 year old minor had already been institutionalized for shooting two people when he was 15 years of age. The present offenses also involved shooting another person. He was waived.

October, 1976: Two counts Armed Robbery. This 17 year old male had an extensive prior record and was waived.

September, 1978: First Degree Murder. This 16 year old boy was accused of Contract Murder. After a lengthy hearing he was not waived. You would need to talk to the Judge for the reason he was not waived.

December, 1979: Two counts of First Degree Murder; two counts of Armed Robbery. This 17 year old had a lengthy record and was waived to stand trial.

December, 1980: Armed Robbery; Attempted Rape. Although these offenses were

Ms. Elizabeth J. Herson  
January 9, 1984

committed when the minor was 17, he was not apprehended until 18 and brought back to the State from Oklahoma where he had been recently put on probation for Burglary in that State. Although the Court found grounds for waiver, the minor consented to the waiver and was waived.

December, 1981: Fifteen counts of Second Degree Burglary. This 17 year old, with an extensive prior record, was waived.

September, 1982: First Degree Burglary; Second Degree Theft; First Degree Murder. This 17 year old girl with an extensive prior record was waived.


September, 1982: First Degree Burglary; Second Degree Theft; First Degree Murder. This 16 year old male, with an extensive prior record was waived.

December, 1983: Three counts of First Degree Murder; Three counts of Attempted First Degree Murder, waiver is still pending.

In the above cases where it was alluded to the fact that the minor had an extensive record, this is meant to include that the minor had been on juvenile probation as well as juvenile institutional placements. I hope this information will be of some value to you.

As a citizen of the State of Alaska, I would urge that the Bill passed last year by the House, regarding Juvenile Waivers be re-introduced and passed by both Houses and signed by the Governor as I feel it would benefit citizens of the State as well as the juveniles who perpetrate crimes against the State. The Bill, regarding waivers, that the Governor vetoed last year was ineffective and "watered down". Thank you.

Yours truly,

  
Jay L. Warner  
Juvenile Intake Officer  
Third Judicial District

JLW/mer



## Alaska Court System

State of Alaska

303 "K" STREET  
ANCHORAGE, ALASKA  
99501

ARTHUR W. SNOWDEN II  
ADMINISTRATIVE DIRECTOR

(907) 274-8911

January 24, 1984

Ms. Elizabeth J. Hickerson  
Senior Advisor  
Senate Advisory Council  
1024 West 6th Avenue, Suite 203  
Anchorage, Alaska 99501

Dear Elizabeth:

First, let me apologize for being so tardy with this letter. My printer has been down for the last four days and my work has just been piling up.

You asked me to obtain the number of juvenile waivers in the first, second and fourth judicial districts. Mr. Jay Warner supplied you with the needed information on the third judicial district.

In the first judicial district there has been five waivers requested in the last five years. Two of these waivers were granted, two denied and one withdrawn. In the second judicial district there has been one waiver requested in the last five years and it was granted. In the fourth judicial district there were four waivers requested in the last five years. Three of these waivers were granted and one was denied.

If I can be of further assistance to you, please let me know.

Sincerely,

Sharon M. Henson  
Administrative Assistant

Eugene 9/85 W. Conf

premise: weaknesses in "get-tough" approach

## Conflicting Trends in Juvenile Justice Sanctioning: Divergent Strategies in the Handling of the Serious Juvenile Offender

By Troy L. Armstrong and David M. Altschuler

### Introduction

Increasing alarm over the problem of serious juvenile crime has generated intense feelings on the part of both the general public and the professional juvenile justice community. The professional perspective has been characterized by conflicting opinions about the origins, scope, handling and implications of the problem. This dispute among researchers, academics, practitioners and legislators has led to the emergence of at least two clearly identifiable and strongly opposing points of view. For convenience we will refer to these two approaches as the community-based and the "get tough" movements. Roots for this divergence in opinion must be traced ultimately to the assumptions, precepts and practices of the juvenile court movement.

Launched at the turn of the present century, this movement established those basic principles which were to govern the specialized treatment of youthful offenders over the next 80 years. At the heart of the juvenile court tradition lies the rehabilitative/treatment model espoused as essential for the handling of juvenile offenders. Eventually, disenchantment with the apparent shortcomings and purported excesses of this movement led to the emergence of widespread criticism. On the liberal end of the justice spectrum, one finds proponents of community-based treat-

ment who support the use of non-institutional settings for a wide range of offenders. These individuals draw inspiration and direction from and contribute to the reform efforts of the deinstitutionalization/diversion movement. At the opposite end of the spectrum are proponents of a control/punishment model who advocate the imposition of a harsher set of procedures and sanctions.

Woven throughout our discussion of the two opposing approaches is the argument that the rehabilitative ideal as originally embodied in the juvenile court movement should not be arbitrarily discarded but rather should be strengthened by linking it closely to the principles of consequences, individual accountability and social responsibility. Reflecting our own preferences for the selective use of community-based alternatives, we argue further that rehabilitation strengthened in this fashion can be effective with certain kinds of severely delinquent youths who have been placed in *specialty designed* community-based programs.

In discussing the basic thrust of the community-based approach, we will draw upon recently completed research where we have described and analyzed the overall organizing framework and intervention strategies of 11 programs across the country designed to

serve serious juvenile offenders.<sup>1</sup> In addition, by critically exploring the assumptions and characteristics of the "get tough" approach, we hope to reveal certain inherent weaknesses. Finally, as part of our overall analysis of official responses to this offender population, we will examine the definitional ambiguity which has added confusion to an already complex subject.

### The Juvenile Court Movement: Origins and Directions

Crucial to the rise of the juvenile court movement was the extensive penological theorizing of the early and mid-19th century. A central theme was the call for the differential treatment of juvenile offenders due to the inherent dangers of housing youthful and adult criminals together.<sup>2</sup> By 1850, this plea had led to the emergence of the reformatory movement where special correctional or training "schools" were established for juvenile offenders throughout the country.<sup>3</sup> The reformatory was distinguished from the traditional penitentiary by a policy of indeterminate sentencing and "organized persuasion" rather than "coercive restraint."<sup>4</sup>

Arising from these policies was the notion that if the handling of errant children required a special concept of responsibility with rehabilitation as its primary goal, the decision-making procedures for determining innocence or guilt would have to be different. Thus, the juvenile court movement represented a logical extension of the recognition that juvenile offenders required different processing and treatment. The emergence of the juvenile court marked the creation of juvenile delinquency as a behavioral category defined by a separate set of legal attributes.<sup>5</sup> Two principles which characterized criminological thought in the latter half of the 19th century had merged to form this concept of delinquency: children under a certain age were not responsible for criminal acts, and wayward children were in need of the protection and guidance provided by the court.

From its inception the juvenile court related to the juvenile offender as if he were a wayward child in need of nurturance. Several procedural consequences followed from this

stance. First, the court established a tradition of looking at the circumstances lying behind the offender's misconduct and of paying much less attention to the nature of the criminal act. In essence, the tendency has been to absolve the youth of responsibility for the act and to seek the cause of difficulty in the youth's wider sociocultural environment in order to administer the appropriate rehabilitative measures. Second, to provide help for misguided children the court has operated with a rehabilitative/treatment model of justice in which the primary goal was to employ therapeutic measures "designed to effect changes in the behavior of the convicted person in the interest of his own happiness, health, and satisfaction."<sup>6</sup>

### Reform of the Juvenile Court

The wide discretion exercised by the juvenile court over the behavior of youthful offenders continued without objection until the 1960s when persistent criticisms led to a major re-examination of many of the principles and practices which had previously been highly regarded and viewed as virtually unsailable. This reaction to the perceived shortcomings and failures of the court came mainly from the liberal wing of the juvenile justice community and marked the beginning of fundamental changes in the system.

A significant development in this call for reform was the increasingly active role taken by the federal government in stimulating planned change in the juvenile justice arena. One landmark event in the federal initiative was the issuance of a major report by the President's Commission on Law Enforcement and Administration of Justice. As Blackmore pointed out,

Its report, more than any other document of the time established the language of criminal justice reform for the seventies. Diversion, sentencing alternatives, alternatives to incarceration, decriminalization, deinstitutionalization and reintegration are just a few of the more significant terms the commission popularized.

The official Commission Report, *The Challenge of Crime in a Free Society*, was released in 1967 and called for a major overhaul of juvenile justice in each distinct facet of the

total system: enforcement and apprehension, courts and probation, corrections and parole. About the failure of the juvenile justice system, the Commission stated,

Studies conducted by the Commission, legislative inquiries in various states, and reports by informed observers compel the conclusion that the great hopes originally held for the juvenile court have not been fulfilled. It has not succeeded significantly in rehabilitating delinquent youth, in reducing or even stemming the tide of delinquency, or in bringing justice and compassion to the juvenile offender.<sup>8</sup>

The recommendations announced by the Commission were largely responsible for the wave of reform efforts which swept across local jurisdictions throughout the United States by 1970.

The set of criticisms leveled by the President's Commission are often referred to as the four Ds of juvenile justice reform: *decriminalization*, *due process*, *deinstitutionalization* and *diversion*.<sup>9</sup> Each related to a specific aspect of judicial processing which had been shown in its present form to run counter to the well-being and fair treatment of the youthful offender.

Among these four reform thrusts, due process, deinstitutionalization and, to a much more limited extent, diversion bear directly upon the community-based treatment of serious juvenile offenders. Measures to introduce *due process* into juvenile court proceedings were a reaction to the flagrant abuse of discretion in the decision-making process which affected the disposition of cases. A series of Supreme Court rulings starting with the 1967 *In re Gault* decision have introduced a number of statutory and constitutional guarantees into proceedings. However, these decisions have yet to accord juveniles all of the rights which adult defendants possess. The operating principles of the juvenile court continue to distinguish it in many ways from criminal court.

Efforts to *deinstitutionalize* and to *divert* adolescent offenders emerged as closely related activities in the reform of the juvenile justice system. As Klein suggests, "Both are attempts to replace formal, institutional processing with various forms of community treatment."<sup>10</sup> Closely linked in terms of their

goals, deinstitutionalization and diversion were both responses to an especial, glaring failure in the juvenile court movement, namely, the tendency of the court to commit even larger numbers of youngsters to institutions for the supposed purpose of helping them. This propensity for a wider and wider use of the reformatory model eventually led to a "warehousing" phenomenon in which large numbers of juveniles were being placed in children's jails differing little from adult prisons. In contrast to the founding philosophy behind the juvenile court movement which stressed that erring children should be protected and enriched rather than subjected to the harshness of the adult criminal system, the guiding principle for the humane treatment of juvenile offenders had been undermined, evolving into one relying upon the development of efficient mechanisms for the purpose of placing ever larger numbers of youths in secure, institutional custody.

#### The Community-Based Approach

The principal thrust of deinstitutionalization/diversion strategies to reverse the excesses of many years of overreliance upon secure, institutional placement came in a concerted, national effort to develop coherent systems of community-based alternatives for juvenile offenders at the state and local levels. Initially, emphasis was placed on so-called "lightweight" youngsters who had been charged with petty or status offenses and were thought generally to benefit most by being deflected from further involvement with the formal system. Points in processing where such alternative programs were usually placed included police contact, court intake, detention and other pre-adjudicatory locations.

Eventually, the community-based movement came to embrace youthful offenders exhibiting the entire gamut of criminal misconduct. This broadened response included those youngsters who were felt to be serious juvenile offenders. None of the programs for this difficult delinquent population, however, was initiated very early in the widespread move to develop community-based programs for youngsters either being removed from

correctional institutions or being diverted from further penetration into the system. This fact suggests that most program planners and administrators were reluctant to take on the responsibility for placing such offenders in community-based settings, may have believed it ill-advised, or succumbed to community opposition, resistance and public pressure. The decision to extend non-institutional (though not necessarily non-secure) care to youngsters who are generally viewed as the most difficult to manage and, on occasions, pose a physical threat to their communities has certainly played a role in stimulating recent efforts to crack down on the "permissive" approach to dealing with the problem of delinquency.

At this point we will turn our attention to a consideration of the characteristics of this "get tough" approach. This inquiry will include a review of the charges leveled by proponents of this approach against the rehabilitative/treatment model of justice and especially the attacks against the precepts and practices of more recently launched community-based interventions for serious juvenile offenders.

#### The "Get Tough" Approach

In response to the perceived failures and inadequacies of a national juvenile justice policy emphasizing diversion and deinstitutionalization, there has arisen across the country a tidal wave of so-called "get tough" proposals. These include:

- (1) a variety of ways to automatically waive or transfer youths charged with certain crimes from juvenile court jurisdiction to criminal court (the criteria for transfer sometimes requiring previous felony convictions);
- (2) lowering the age at which all young offenders come under the jurisdiction of criminal courts; and
- (3) imposing mandatory periods of incarceration upon conviction for specific offenses (previous convictions sometimes being required).

Common to all of these measures is the sincere belief of proponents that such actions will protect law-abiding citizens and reduce

the rate at which serious crimes are committed. The logical connection made is that predictable and largely inflexible consequences — if sufficiently strict and harsh — will have a major deterrent effect and thereby better protect the public. However, as we look more closely at the way in which these measures are expected to accomplish these goals, a number of critical questions arise.

The first two measures listed above — the use of automatic waiver and lowering the age of criminal court jurisdiction — are seen largely as means to insure that particular categories of offenders will face more severe and certain punishment, namely, incarceration. The use of certain and lengthy incarceration as a means to establish deterrence rests upon the premise that increasingly severe penalties will affect the perceptions of offenders about the risks entailed in the commission of future crimes. This assumes that (1) the measures will, in fact, raise the risks and (2) offenders will, to some degree, take into account the penalty associated with conviction.

It remains our belief, however, that these assumptions are rooted in highly questionable thinking. First, the relationship between the crime rate and the severity of punishment (specifically imprisonment) is far from being straightforward and is the subject of considerable debate.<sup>11</sup> Central to the criticisms are the arguments that (1) for more serious crimes, potential offenders are more likely to consider the possibility of apprehension and not the consequences of subsequent sanctioning, and (2) there are many instances in which little thought is given to apprehension, i.e. dire straits, impulsive behavior, diminished capacity, etc. Bowker has even argued that there is evidence the incarceration rate may, in fact, propel the crime rate.<sup>12</sup> The fact is no one has been able to demonstrate with any degree of certainty that deterrence is achieved by imposing harsher penalties. Given the current knowledge about human behavior in general and offender behavior in particular, one might be well advised to heed Bowker's observation that it is foolish to plunge ahead as if a sensible policy direction is clear.

Second, the nature of the relationship between crime and severity of punishment is

further complicated by the fact that sentencing represents only one aspect of a multifaceted system of justice. A number of intervening factors and processes play a critical role following the apprehension of a suspect and preceding the adjudication and disposition of the case. These considerations bear directly upon the argument that certain and swift punishment will occur in the criminal justice system. Therefore, we must consider the impact of the following: police decision about what charge to bring; role played by states' attorneys or prosecutors in determining the chargeable offenses; kind of negotiations engaged in by defense attorneys or public defenders; findings of juries; decisions of judges, magistrates or court referees; and influence of authority granted to correctional officials and parole bodies. In practical terms, incarceration is unlikely to be meted out "quickly and surely" following the commission of a crime. Moreover, there are innumerable opportunities for especially severe and inflexible penalties to be circumvented.

Consequently, it should come as no surprise that experiences with determinate sentencing and mandatory waiver for particular categories of offenders suggest that automatic penalties and theoretically immutable patterns of processing are, in fact, often accompanied by responses in other parts of the system which lessen the certainty of application and, contrary to all intentions, raise the possibility for fewer of these offenders to be subjected to the penalties.<sup>13</sup> Such responses may include downgrading of initial charges, later plea bargaining, fewer convictions by juries and, upon conviction, more lenient treatment at the hands of a criminal court than might be received through the juvenile court.

We would be remiss not to point out that criminal courts are already overburdened and are frequently criticized for the amount of time they consume in commencing trials and in processing cases. In addition, several inquiries on the use of discretionary transfer of juvenile offenders to criminal court indicate only a slight utilization of this option.<sup>14</sup> For example, Hamparian's study which exam-

ined procedures in Columbus, Ohio, concluded that the judges themselves have not been persuaded there is hope for exacting control of the chronic juvenile offender in adult courts and correctional facilities.

In addition to creating a credible deterrent effect, an equally important motive for imposing mandatory and more lengthy periods of incarceration is the provision of immediate community protection. This argument in favor of incapacitation is based on the presumed short-run benefits afforded a frightened public since the offender is theoretically securely locked away and isolated from community contact. Embedded in this argument are the beliefs that (1) community protection cannot be equally served in less onerous ways and (2) deterrence is best served by the strongest and most severe initial response, i.e. a prison sentence with no opportunity for early release. We will briefly discuss the plausibility of both of these beliefs in light of what is currently known about community protection and the value of imprisonment as a means to deter future criminal misconduct.

The assumption is that incarceration is the best way to immediately protect the public. However, the problem of escape or "running" is one endemic to most juvenile correctional systems. For example, research on the closing of the training schools in Massachusetts indicates that AWOL rates from one of the institutions and from all of the community-based programs established to replace these schools were identical.<sup>15</sup> This fact certainly raises the distinct possibility that the institutional system is no more able to keep an offender from getting back on the streets by escaping than is the community-based system. Furthermore, the evidence in Massachusetts suggests

that the pattern of running is not simply dependent on the characteristics of the youth but that youths are responding, at least in part, to the characteristics of the program. Programs with poor services will experience the most runs, making it critical that considerable thought and effort be given to providing constructive experiences for youths in order to hold on to them.<sup>16</sup>

In short, it may well be the case that the kinds of non-institutional programs which we will later describe (1) are capable of holding on to offenders at least as well as institutional pro-

grams and (2) operate without the risks that brutal conditions will "turn a marginal inmate into a raging animal."<sup>17</sup>

Rooted in the concept of deterrence is also the belief that the strongest initial response will deter future criminality, i.e. recidivism is inversely related to the level of harshness and suffering experienced while incarcerated. A number of important points should be made regarding this claim. Evidence indicating that institutional control can reduce future criminal activity is entirely lacking.<sup>18</sup> Given this circumstance, we are compelled to question the validity of the premise that there is a deterrent impact on individuals who experience first-hand the most severe forms of punishment the state has at its command.

A frequently stated reason explaining the failures of imprisonment to stop a person's involvement in crime is that prisons are simply not capable of rehabilitation. This assertion could just as easily be restated to the effect that prisons are not notably successful in demonstrating a deterrent impact on released prisoners. The fact that this claim is not stated as a failure of prisons to *deter* future criminal misconduct conveniently allows "get tough" proponents to attribute the poor record of prisons to a failure of rehabilitation. The possibility that brutal and inhumane conditions and practices may exacerbate criminal tendencies is summarily swept aside. In short, statements that prisons do not or cannot rehabilitate are simply another way of saying these institutions do not or cannot deter crime. To the extent they are failing, it is unlikely this can truthfully be blamed on the overabundance of rehabilitative programming in prisons or training schools.

While imprisonment is theoretically one option for achieving deterrence, there are actually an endless variety of ways in which social control can be imposed on young offenders.<sup>19</sup> The challenge is to provide those controls in such a way that the consequences are understood as a way to hold the young offender accountable while promoting social responsibility and meaningful change. This challenge is being met in certain programs, but much remains to be done.

### Considerations About the Incidence and Definition of Serious Juvenile Crime

Much of the momentum for the recent wave of "get tough" measures has come from pronouncements about the current level of serious juvenile crime, namely, that the problem has reached epidemic proportions. This argument is usually stated to indicate that not only has the incidence of such criminal activity greatly increased but also much if not most of such youthful misconduct is violent in nature. In addition, those advocating the harsher sanctioning of severely delinquent youngsters argue that youthful felons, who tend to be grouped together by "get tough" proponents for purposes of classification, deserve special considerations in processing (automatic use of waiver, widening of criteria for waiver and determinate sentencing). They point out further that youths who have committed index crimes against persons pose an acute danger to the community and require placement in secure institutional custody. These assertions do, indeed, contain some element of truth, especially with regard to the issue of potential dangerousness posed by a very small number of these offenders. Yet, much of the content of these arguments deserves to be highly qualified, even to the degree of casting serious doubts on the validity of the entire approach and its proposed means for reducing and solving the current juvenile crime problem. As part of our critical examination of the assumptions and precepts of the "get tough" school, we will explore in some detail the three key assertions stated above:

- (1) Exactly who is the serious juvenile offender warranting the imposition of new, severe sanctioning measures?
- (2) What is the current level of violent juvenile crime and has it been increasing at a rapid rate in recent years?
- (3) Are all youngsters who have committed index crimes against persons sufficiently dangerous as to automatically require placement in secure institutional custody?

It is best to begin our inquiry into these issues by looking at the difficulties presented by attempts to define the serious juvenile offender. Proponents of the "get tough" posi-

tion have repeatedly issued blanket calls for imposing harsher sanctions on *the serious juvenile offender*. Yet, considerable confusion exists regarding who belongs in this category. Few conceptual problems in criminology have been less amenable to clear solution than the development of an acceptable operational definition of the serious juvenile offender. In this regard, we have elsewhere indicated that,

... where the legal definition of seriousness is explicit, we found considerable variation across jurisdictional boundaries. This finding supports evidence increasingly reported in the literature — namely, that there is no common definition of the serious juvenile offender.<sup>20</sup>

Notwithstanding, it is crucial to arrive at some mutually acceptable perceptions about the parameters of the category or, at the very least, to have a shared understanding of the problems entailed in generating such a definition. This exercise must precede any attempt to develop eligibility criteria, design services or target potential clients for specific programs, whether institutional or community-based in nature.

In addressing this problem, McDermott and Joppich have suggested,

the task of defining the "serious juvenile offender" would be simplified if by "serious offender" we simply meant "a juvenile offender who has committed (or is alleged to have committed) a serious offense." However, a review of the literature quickly reveals that the "serious juvenile offender" is not always defined as a juvenile offender who commits a serious offense; chronicity or repetitiveness of offending is often a defining characteristic of the "serious juvenile offender." Thus, we are concerned here with two conceptually distinct questions:

- (1) What is a *serious juvenile offense*? and
- (2) Who is the *serious juvenile offender*?<sup>21</sup>

By posing these two separate, yet clearly related questions, they have demonstrated the need to consider two essential dimensions of seriousness — namely, the severity of the individual criminal act and the repetitiveness or chronicity of law-violating behavior.

Any attempt to determine the severity of a particular criminal offense usually entails an evaluation of the *characteristics* (a premeditated or spontaneous act, degree of malicious

intent, use of weapon, etc.) and the *consequences* (value of property damaged or stolen, extent of injury to victim) of the act. Although many researchers of serious crime exclude from their lists all crimes other than felonious acts of violence against persons (the FBI Index Crimes of murder and non-negligent homicide, robbery, aggravated assault and forcible rape), a more inclusive definition extending to major crimes against property can easily be justified. Only when the decision is arbitrarily made to restrict the definition of serious crime to those acts which physically threaten or actually harm persons is violence the key determinant. Certainly, the act of stealing, damaging or destroying valuable property can be seen as a serious matter posing a major threat to the well-being of a community. Several such property crimes (burglary, larceny and motor vehicle theft) were thought to be sufficiently serious to be included in the list of FBI Index Crimes.

Ultimately, the scaling of criminal behavior must involve some valuational scheme. In this regard, Zimring has noted,

If the definition of juvenile criminality is largely arbitrary, the definition of serious crime invites the analyst to embark on a difficult and ultimately illusive search for an acceptable standard of severity.<sup>22</sup>

The possible avenues suggested by Zimring for pursuing this goal include: (1) a purely subjective approach based upon a sense of loss felt by the victim as a result of the infliction of criminal harm, (2) an objective approach depending upon the collective judgment of a particular audience to establish a seriousness scale and (3) a "value informed" selection of serious crimes which relies upon the evaluator's own judgment in determining the severity of particular offenses. Consequently, the selection of particular kinds of unlawful behavior for inclusion in the category of serious offenses can range over a variety of different criminal acts and can reflect a number of philosophical positions.

Once severity has been determined, the next step toward generating a workable definition is taken by introducing the notion of chronicity, the other key variable in this process. On the basis of previous arrests, offend-

ers are frequently classified into three groups: first offenders, recidivists (two to four contacts) and chronics (five or more contacts). By intersecting severity of offense and repetitiveness of criminal behavior, one produces a matrix of categories reflecting various combinations of these two indicators. McDermott and Joppich argue that, in theory, this procedure produces four possible offender types:

- (1) offenders who commit five or more serious crimes and perhaps one or more non-serious crimes;
- (2) offenders who commit less than five serious crimes and perhaps one or more non-serious crimes;
- (3) offenders who commit five or more non-serious crimes and no serious crimes; and
- (4) offenders who commit less than five non-serious crimes and no serious crimes.<sup>23</sup>

Based on this scheme, these authors conclude that type-one offenders are serious juvenile offenders, that at least some type-two offenders should be regarded as serious juvenile offenders and that some of type-three and four offenders could possibly be regarded as serious juvenile offenders. Further, they suggest in any attempt to determine which type-two, three and four offenders to label as serious juvenile offenders that the Sellin-Wolfgang seriousness scale be used. Such a scale permits *cumulative seriousness* to be the guide for any classification of offenders. A similar solution to some of the definitional dilemmas surrounding the serious juvenile offender has been suggested by Smith et al.<sup>24</sup>

Based upon this brief examination of some of the issues critical in developing a workable definition of the serious juvenile offender, we see that an entire range of definitions tends to emerge, reflecting a variety of circumstances, antecedents and interpretations. These variants seem to indicate the need for a wide spectrum of intervention strategies, not a single monolithic response. This situation has critical implications for the appropriateness of both the community-based and the "get tough" approaches to handling the serious juvenile offender.

Clearly the youth who is chronically violent is viewed as a serious offender and will with rare

exceptions be placed in a secure setting. Another extreme, however, is the chronic offender who has never committed a serious crime. Obviously, somewhere between these two extremes are to be found those youngsters who have been adjudicated for one or more serious crimes against persons and/or property and have properly established a pattern of repetitive criminal activity. It is this kind of youthful offender who is labeled by the system as seriously delinquent but, in some cases, placed in community-based settings.<sup>25</sup>

### Prevalence

Next, we will explore the claim made "get tough" advocates that a sizable increase in serious crime among adolescents — especially crimes of violence — has been occurring over the recent past. Strasburg has noted that, "between 1960 and 1975, juvenile arrests for violent crimes has risen 293%."<sup>26</sup> This startling increase must be qualified, however, by the fact that a 52 percent increase occurred in the size of the adolescent population in the United States during the 1960s. Arrest rates per 100,000 population of juveniles-at-risk also indicate that violent criminal activity among adolescents intensified between 1960 and 1975.<sup>27</sup> Nonetheless, caution is advised in drawing conclusions about this trend of increasing violence. Although aggregated data from the Uniform Crime Reports (UCRs) indicate a sizable increase in youth violence during the 1960s across the four "Index Crimes Against Persons," this escalation has been followed in the 1970s by a period of relative stability in the rates of three of these four crime categories. Only aggravated assault has continued to show large increases in the 1970s.

Equally important in any discussion of serious juvenile crime is the fact that aggravated assault, along with robbery, seems to be the special domain of young offenders. Based upon their analysis of UCR data, Smith et al. point out that "aggravated assault and robbery account for over 90 percent of all juvenile arrests for violent index crimes during every year from 1964 to 1976."<sup>28</sup> But among all types of violent crime, these two categories are the least informative about the degree

seriousness of the offense. For example, aggravated assault can range from spur-of-the-moment fistfights to coldly calculated shootings. Similarly, robberies can range from the unarmed extortion of lunch money in the schoolyard to armed, life-threatening encounters. The point is that within these two categories the differences between two individual crimes may be as great as the difference between violent and non-violent crime. This fact has led Zimring to label these categories as "heterogeneous" since the characteristics of such crimes may vary enormously.<sup>29</sup> In addition, most offenders under the age of 20 who engage in robbery are unarmed, and arrests for both robbery and assault often involve a large number of accessories as well as principal offenders.

We can draw several conclusions from these observations:

- (1) *When the offense category is extremely serious and involves the crimes of homicide/non-negligent manslaughter and forcible rape, the number of youths under 18 years of age arrested for these acts is small.* In fact, the UCRs indicate no dramatic increase over any extended period of time in the number of juvenile murderers and rapists since the collecting of such data began. In addition, the probability of large numbers of youthful accessories being involved in serious crimes against persons greatly inflates these crime rates which are derived from UCR data, thereby significantly distorting the accuracy of these statistical findings.
- (2) *Those youngsters who are engaging in index crimes against persons are being arrested mainly for robbery and aggravated assault, but the extent to which the commission of such acts by juveniles is inflicting major physical/psychological harm and/or is actually life-threatening is subject to wide variation.* Both of these categories can include misconduct ranging from quite serious to rather innocuous acts. Also, youngsters in the commission of these crimes are much less likely to be armed with a deadly weapon than are adult offenders.

Consequently, claims being made by certain hard-line factions within the juvenile justice community about the epidemic level of violent crime being perpetrated by juveniles are exaggerated. In addition, the interpretation of the nature of such criminal behavior is in many cases misleading.

A careful analysis of available data seems to suggest that the greatest threat posed by adolescent offenders is not in terms of the extent to which they are engaged in "Index Crimes Against Persons," but rather the extent to which they are engaged in "Index Crimes Against Property." In contrast to violent crimes, where young adults (18 to 25 years of age) have consistently shown a greater involvement than have either juveniles (under 18 years of age) or older adults (25 years of age and older), serious property crimes are committed in greatest numbers by juvenile offenders.<sup>30</sup> Strasburg cites 1975 UCR data, showing that among all juveniles arrested for Index Crimes that year, 90 percent were arrested for index offenses against property and only 10 percent for index offenses against persons.<sup>31</sup> Supporting this position are the findings of Smith et al., which show that following the rapid increase in arrests of juvenile offenders for violent crimes during the 1960s, the proportion of serious property to violent crime arrests stabilized at about a nine-to-one ratio.<sup>32</sup>

By stressing the disproportionate extent to which youngsters are engaged in serious crimes against property (burglary, larceny and auto theft), we are not trying to negate the significance of those violent crimes committed by juveniles. But we do feel that in trying to develop consistent policies which represent rational responses to the scope and characteristics of serious youthful misconduct, crimes against property — given the scale of their occurrence — should command more of our total attention and may entail different considerations in devising intervention strategies to serious youth crime. Is automatic incapacitation the most promising approach to dealing with adolescent burglars and car thieves? To what extent are these kinds of offenders posing an immediate threat to their communities, requiring the drastic

and expensive step of utilizing secure institutional custody? In framing their responses to youth crime, officials need to conduct a thoughtful assessment of such questions.

### Dangerousness

Finally, we will turn our attention to the question of the degree of dangerousness posed by the serious juvenile offender. Although this matter is an issue of some importance in responding to the chronic property offender, the stakes become much higher with the violent offender since decisions made about processing this group can easily have serious, even fatal consequences for potential victims. The potential threat to the community posed by these offenders lies at the heart of most procedural changes favored by "get tough" proponents and requires careful review.

If one is trying to determine a sense of the level of potential harm the serious offender poses for his community, two interrelated issues must be addressed: *dangerousness* and *prediction of future behavior*. Among assaultive youths is a small group who will occupy a spot at the most violent end of any continuum of aggressive behavior. In referring to these individuals as "life-style violent juveniles," Vachss suggests

This youth exhibits a criminological, social, and economic life-style indelibly marked by chronicity of often-escalating violence. A single episode of violence will not suffice to bring a juvenile within the gamut of this classification. Our population is characterized by a distortion of societal values, a commitment to immediate gratification, and a (continually reinforced) alienation from societal structures and institutions.<sup>33</sup>

These offenders have been repeatedly arrested and adjudicated for assaultive acts against persons and can be appropriately labeled as chronically violent juvenile offenders. They are, indeed, dangerous, pose enormous threats to their communities and require placement in secure facilities. It is these youngsters who are responsible, in large part, for stimulating the recent national trend for imposing tighter controls and more severe sanctions on juvenile offenders. As suggested, however, the number of juveniles who are

chronically violent is extremely small. In fact, it is so short, while most researchers believe strongly that this small group of dangerous adolescent offenders should be responded to in a firm fashion, there is meager evidence to support the call to radically restructure waiver mechanisms, lower the maximum age for juvenile court jurisdiction or impose mandatory incarceration for entire categories of offenders.

The reported infrequency of chronic violent behavior among youngsters raises the critical point as to the number of acts of violence necessary for labeling an individual as dangerous. Armstrong and Altschuler have observed,

There must be some convincing indication that a pattern of violent behavior has already been established or will over time become established. As Mann suggests, a single incidence of violent behavior on the part of a juvenile offender hardly qualifies that individual as a dangerous offender. The vast majority of juveniles who are arrested for a violent offense never commit another "Index Crime Against Persons." Two important sets of research findings support this assertion. In a Vera Institute study cited by Strasburg, 29 percent of a sample of delinquent youngsters from three counties in New York State had been charged at least once with a serious violent crime. However, the proportion of offenders charged with serious violence on more than one occasion was much smaller, amounting only to six percent of the total sample. These figures parallel the earlier findings of Wolfgang and his colleagues in the classic Philadelphia cohort study. Consequently, great caution must be exercised in trying to predict future violent behavior based upon a prior act. In fact, although the mathematical odds favoring future violent behavior increase with subsequent violent crimes, even in these cases prediction is a risky matter. Wenk et al. assert that when using the very best predictors of future violence — a record of past violent behavior — predictions of violence are still incorrect in 19 of 20 cases.<sup>34</sup>

These observations suggest that a decision to automatically incapacitate a youth who has committed an "Index Crime Against Persons" is a risky step to take if predicated upon a prediction of future aggressive behavior unless a substantial history of such acts on the part already exists. Of course, the severity of the individual act may serve as a basis for

making the decision, but in the case of the heterogeneous categories of robbery and aggravated assault the decision should include considerations other than simply relying upon the labeled category of the offense. To assume a perspective advocated by many proponents of "get tough" measures — that the commission of any of the four "Index Crimes Against Persons" should qualify the youth as a public menace and should constitute sufficient grounds for initiating steps leading to secure institutional custody — is a fundamental misreading of the behavioral profiles of many adolescent offenders.

These findings regarding the issues of definitional ambiguity, frequency and severity of serious juvenile crime suggests that less drastic responses may be possible in many cases. The most promising direction, in our view, lies in a range of community-based interventions for certain kinds of severely delinquent youngsters.

#### **Research on Community-Based Programs for Serious Juvenile Offenders**

In spite of the recent surge of legislative efforts to redefine large numbers of youthful offenders as suitable for prosecution in criminal courts, a number of states are still strongly committed to the principles of rehabilitation and reintegration of severely delinquent youngsters within the confines of the juvenile justice system. This stance represents a belief that adolescence can be a troublesome stage in the maturational process, characterized by a multitude of special problems and needs. When this perception of juvenile misconduct is embraced, delinquent youth are viewed generally as young people who have committed crimes rather than as criminals who happen to be juveniles. Programmatically, this translates frequently into the use of non-institutional, community-based settings which emphasize the rational and reasoned use of various levels of control and supervision.

In a recently completed study, we describe and analyze the overall organizing framework and intervention strategies of 11 programs across the country designed to serve serious juvenile offenders.<sup>35</sup> We can charac-

terize these programs generally as trying to provide more humane care while maximizing reintegrative potential and minimizing present and future involvement in illicit forms of social behavior and conduct. An equally important feature of these programs is the gradual phasing and transition to open community living.

The research we undertook was based upon the desire to locate programs providing services to serious juvenile offenders in community-based settings; determine how these programs originated and developed; discern the principles, philosophy and reasons underlying program practices and operation; and discover what kinds of clients were being admitted. We did not carry out an evaluative or summative study of the programs.

We began our search for programs with the assumption that both residential and non-residential programs would be working with this difficult population. This notion was, in fact, confirmed by the research. We also found support for the findings of earlier research which indicated a paucity of programs exclusively serving juveniles convicted of violent crimes against persons. We chose programs exemplifying a wide range of treatment and clinical techniques, staff compositions, lengths of stay, etc. In addition, we decided to exclude programs not engaged in direct service provision as distinct from service brokerage and case management in order to obtain a purposive sample consisting of primary service providers.

Between May and November of 1980, our research team traveled more than 16,000 miles across the country visiting a fascinating array of programs. Among the residential programs, the number of clients ranged from four to 40; the average age extended from 13.8 to 16.3 years; staff size varied from two to 18; and direct supervision was maintained over clients from 3.7 to 18 months. The per diem costs in the five residential programs ranged from a low of \$23 to a high of \$80. Among the non-residential programs, the number of clients ranged from 11 to 31; the average age extended from 14.1 to 16.3 years; staff size varied from five to 27; and direct supervision was maintained over clients from

4.8 to 12 months. The per diem costs in the six non-residential programs ranged from a low of \$7 to a high of \$43.

The scope of this article does not permit a detailed discussion of individual programs or specific comparisons across selected programs. Instead, we will concentrate on several observations concerning the ability of the programs to serve serious offenders in ways which (1) assure public safety and (2) provide a reasonably sound basis for assuming the programs can succeed in deterring future criminal misconduct.

Contrary to popular belief, we have found that community-based programs are able to exert quite high levels of control and supervision, and are capable of transmitting to their clients a very clear sense that serious consequences follow from both criminal transgressions and continued inappropriate social behavior. There are, however, two related factors which have contributed to the widespread perception that providing security and asserting control are not part of, or cannot result from, community-based intervention strategies.

One factor contributing to this perception is that some helping professions have in the past frowned upon the use of control.<sup>36</sup> This position has fueled the false notion that a fundamental incompatibility exists between control and treatment.<sup>37</sup> In reality, however, developing social and personal controls are very much part of what occurs in well-developed, community-based alternative programs. These controls are part of the repertoire of social skills which are imparted during the normal maturational process for most youngsters. For this difficult population, however, a greater opportunity may exist for the transmission of such skills in community-based settings than in institutional facilities.

The second factor is that proponents of "get tough" responses are quick to assume that community-based programs are too lax and consequently are unable inherently to act as a deterrent. Once again, this notion of laxity was not generally borne out in our research. We found that the degree of laxity or strictness varied both within and between

programs, and was a function of the apparatus for more constant and close surveillance of particular offenders and the rate of each young person's progress within the program.

Programs which contained youngsters who, for various reasons, were presumed to need much closer or even constant supervision, did provide higher degrees of surveillance. This goal was achieved, however, in distinctly different ways depending upon the overall organizing framework of the program. For example, it was accomplished through staff who were numerous enough to work closely and intensely with the youngsters and through programming which kept the clients focused and busy during the hours of participation. It was also accomplished through intensive community training which incorporated unannounced spot checks, frequent and regular telephone contacts, mandatory meetings, advanced scheduling of all activities and the availability of residential backup for brief stays.

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**“. . . the rehabilitative ideal as originally embodied in the juvenile court movement should not be arbitrarily discarded but rather should be strengthened by linking it closely to the principles of consequences, individual accountability and social responsibility.”**

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Obviously, a great deal of thought and energy went into developing the various approaches and techniques used in the programs. Programs requiring a greater degree of security were capable of providing it without losing sight of the equally important goals related to the acquisition of responsibility, accountability and social control. A number of the programs, for example, made use of differential reinforcement — sometimes achieved through the mechanism of contingency contracting — to exert control. Increased mobility, autonomy and responsibility were used as privileges which had to be earned. In this way, limit setting and constructive reactions to stress were reinforced. Sanctions for rule infractions and misbehavior

ior included reprimand and individualized talk sessions, written exercises, work hours, curfews, mobility restrictions, loss of home visits, reduction in allowable activities, brief room confinement, group encounters, peer pressure, monetary restitution or reduction in allowance, stigmatizing garb, physical restraint in countering aggression or violent outbursts, reports to probation/youth authority/courts and program termination which was usually followed by return to the referral source for additional action. Given that progression in some of the programs was specifically tied to how youngsters *handled and reacted to* newly acquired privileges, variation in terms of degree of freedom of movement and level of earned responsibility was found to be operating within a single program.

The point must be made that certain community-based programs will, indeed, be more secure than others, some being rather secure at the beginning for all new clients and others being highly secure for clients throughout their participation. The manner and methods used to establish security are the principal determinants for providing the vital distinction between an impersonal, isolating and potentially alienating approach and one which insures a careful monitoring of the offender while minimizing maladaptive responses to prolonged isolation.

Much confusion surrounds the identification of concrete indicators of community-basedness in programming for youthful offenders. The critical ingredient in causing a program to be truly community-based is whether efforts are being made or actions being taken to involve community support systems and offenders' social networks in three distinct ways: (1) as recipients of service, (2) as providers of service and (3) for socially integrative purposes, e.g. visiting friends and family and having "normalized" contact with non-program clients and staff. It is the frequency, duration and nature of such contacts which provide the basis for determining community-basedness.<sup>38</sup> Once it is recognized that pre- and post-program experiences in the community are more likely to affect long-term outcomes than program experiences, it

is a logical step to stress the need to link clients up in some meaningful way with the forces in the community.<sup>39</sup>

To the extent that a youngster's experiences with a program in no way reflect or resemble life in the postprogram community to which he or she will return, the program is virtually admitting defeat even before the youngster has had an opportunity to prove him or herself.<sup>40</sup>

Care must also be taken to recognize that there is an important difference between community-based characteristics as defined and social climate within a program. Community-based linkages in the absence of humane and decent treatment within a program are unlikely to lead to the resolution of behavioral, cognitive or emotional problems and vice versa. Therefore, it is essential that small, community-based programs be subject to regular scrutiny. With the proliferation in the last several years of private, non-profit enterprises, the need for quality control and monitoring systems becomes all the more critical.

### Conclusions

In conclusion, two clearly distinct and opposing schools of thought for responding to serious juvenile crime have emerged over the past few years. The community-based approach arose as part of more broadly based reform efforts to overcome the shortcomings and failures of the rehabilitative/treatment model as practiced by the traditional juvenile court movement. These changes represented a refinement of the rehabilitative ideal, stressing the advantages of community linkages, individual accountability, responsibility and social control. The "get tough" approach was, in part, also a reaction to the excesses and failures of the traditional juvenile court movement, but additionally represented an attack on the supposed overpermissiveness of the subsequent reform measures of which community-based programming was a critical element. This approach borrowed heavily from the control/punishment model of justice which has long operated in the adult system. As an overall strategy, these efforts represented a commitment to the theoretical precepts of retribution, incapacitation and

deterrence. At the cutting edge of these endeavors are an expansion of the statutory definitions qualifying youthful offenders for waiver/transfer to criminal court and the introduction of determinant sentencing procedures for sanctioning juveniles in the justice system.

In this paper our analysis of many of the assumptions and precepts of the "get tough" approach seems to suggest a number of distortions, basic fallacies and oversimplifications. These problems suggest a need to move away from a purely punishment/control model toward a more effectively rehabilitative model, one informed, however, by a concern for control and supervision in the process of facilitating rehabilitation. In examining the strategies and organizing frameworks of the community-based approach to handling certain serious juvenile offenders, we have identified approaches which offer what we believe to be a more rational response to the special problems of this difficult population; one which incorporates enlightened social control, graduated consequences, supportive intervention and meaningful preparation for reintegration. Finally, we would note that important insights about the problems posed by the serious juvenile offender can be found in both the community-based and the "get tough" approaches, and caution is urged for avoiding the tendency to totally disregard the warnings of either of these schools of thought. Neither punishment eschewing decency nor rehabilitation lacking reasoned control will lead to a useful solution to this difficult and complex problem.

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prepared by Office of Justice Assistance, Dept. Law

AGE, SEX AND RACE OF PERSONS ARRESTED  
UNDER 18 YEARS OF AGE  
STATEWIDE

1981

			AGE					TOTAL UNDER 18	WHITE	BLACK	NATIVE	OTHER	
			10 and UNDER	11-12	13-14	15	16						17
MURDER / NONNEG MANSL.	01A	M	0	0	1	0	0	1	2				
		F	0	0	0	0	0	0	0	2	0	0	0
MANSLAUGHTER BY NEGLIGENCE	01B	M	0	0	0	0	0	0	0				
		F	0	0	0	0	0	0	0	0	0	0	0
FORCIBLE RAPE	02	M	0	0	2	2	3	1	8				
		F	0	0	0	0	0	0	0	2	1	3	2
ROBBERY	03	M	0	0	3	1	9	7	20				
		F	0	0	0	3	0	0	3	9	7	5	2
AGGRAVATED ASSAULT	04	M	2	8	5	9	10	18	51				
		F	0	0	1	3	0	4	8	40	0	12	7
BURGLARY	05	M	33	39	130	88	101	107	498				
		F	1	8	8	1	5	1	24	369	34	37	82
LARCENY / THEFT	06	M	181	218	300	188	199	199	1273				
		F	53	78	146	62	73	52	474	1279	148	236	86
MOTOR VEHICLE THEFT	07	M	4	12	45	38	38	38	175				
		F	1	1	5	3	4	3	17	121	5	25	41
OTHER ASSAULTS	08	M	3	5	14	12	28	29	93				
		F	0	3	13	10	9	9	44	67	7	36	27
ARSON	09	M	3	4	9	2	2	2	22				
		F	1	0	0	0	0	0	1	13	0	3	7
FORGERY & COUNTERFEITING	10	M	0	1	4	0	2	4	13				
		F	0	0	1	1	3	1	6	14	1	1	3
FRAUD	11	M	1	0	2	5	3	4	17				
		F	0	0	3	1	3	8	15	27	2	2	1
EMBEZZLEMENT	12	M	0	0	0	0	4	4	10				
		F	0	0	0	0	3	4	9	16	3	0	0
STOLEN PROPERTY	13	M	0	1	2	1	2	1	7				
		F	0	0	0	0	2	0	2	7	0	2	0
VANDALISM	14	M	64	38	47	36	36	45	268				
		F	7	2	3	3	3	12	30	205	8	38	47
WEAPONS	15	M	4	2	9	12	9	13	49				
		F	0	0	2	1	0	2	5	35	2	13	4
PROSTITUTION & COMM VICE	16	M	0	0	1	0	0	0	1				
		F	0	0	0	0	3	1	4	4	0	1	0
SEX OFFENSES	17	M	0	1	7	5	10	3	26				
		F	0	0	0	0	0	4	4	25	0	1	4
SALE - OPIUM, COCAINE, ETC.	18a	M	0	0	1	0	0	1	2				
		F	0	0	0	0	0	0	2	3	0	0	1
SALE - MARIJUANA	18b	M	0	1	2	1	4	0	8				
		F	0	0	1	1	0	1	3	8	0	1	2
SALE - SYNTHETIC DRUGS	18c	M	0	0	0	0	0	0	0				
		F	0	0	0	0	0	0	0	0	0	0	0
SALE - OTHER NON-NARCOTIC	18d	M	0	0	1	5	0	2	8				
		F	0	0	1	0	0	0	1	5	1	2	1
POSS - OPIUM, COCAINE, ETC.	18e	M	0	0	1	0	2	3	6				
		F	0	0	2	0	1	0	3	9	0	1	1
POSS - MARIJUANA	18f	M	1	4	50	40	73	67	235				
		F	1	1	22	20	15	8	67	260	10	26	6
POSS - SYNTHETIC DRUGS	18g	M	0	1	5	0	1	0	7				
		F	0	0	4	0	0	0	4	11	0	0	0
POSS - OTHER NON-NARCOTIC	18h	M	0	0	0	2	0	1	3				
		F	0	0	1	0	0	0	1	3	0	0	1
GAMBLING	19	M	0	0	0	0	0	0	0				
		F	0	0	0	0	0	0	0	0	0	0	0
OFFENSES AGAINST FAMILY	20	M	0	0	0	0	0	0	0				
		F	0	0	0	0	0	0	0	0	0	0	0
DRIVING UNDER THE INFLUENCE	21	M	2	0	1	3	18	61	85				
		F	0	0	1	0	3	8	12	73	0	15	9
LIQUOR LAWS	22	M	2	8	40	113	289	421	873				
		F	0	5	99	111	132	189	536	666	2	344	397
DRUNKENNESS	23	M	1	1	0	0	1	2	5				
		F	0	0	2	3	1	3	9	5	1	8	0
DISORDERLY CONDUCT	24	M	0	0	9	11	15	31	66				
		F	0	0	6	7	3	14	32	58	2	30	8
VAGRANCY	25	M	0	0	0	0	0	0	0				
		F	0	0	0	0	0	0	0	0	0	0	0
ALL OTHER OFFENSES	26	M	8	15	41	37	74	81	256				
		F	5	8	27	15	19	21	95	261	11	44	35
SUSPICION	27	M	0	0	0	0	0	0	0				
		F	0	0	0	0	0	0	0	0	0	0	0
CURFEW	28	M	4	9	67	01	83	63	309				
		F	5	4	58	45	32	32	198	285	5	92	125
RUNAWAY	29	M	4	5	22	7	13	6	60				
		F	2	7	30	12	7	2	60	82	1	22	12
TOTALS			397	492	1259	1020	1352	1608	6128	3964	251	1000	913

SB 264 rec 5-28-85

# **Juvenile & Family Court JOURNAL**

Special Issue — Summer 1984

juvenile waiver — p. 13  
nothing on fingerprinting juveniles

## **The Juvenile Court and Serious Offenders**

### **38 Recommendations**

The National Council of Juvenile and Family Court Judges

## PREAMBLE

The National Council of Juvenile and Family Court Judges reaffirms its longstanding position that the work of the juvenile and family court is of vital importance to American society.

The daily responsibilities of the court in protecting society, intervening in family disputes, rehabilitating youth and setting an example in the community require that the stature of the court be enhanced among the judiciary and the public by the provision of adequate resources and mechanisms which support the immense responsibility of juvenile court personnel and the juvenile justice system.

While youth must be held accountable for their behavior, proposals which would materially and adversely alter traditional individualized rehabilitative models and treatment philosophies of the juvenile justice system are unacceptable. Juvenile justice resources should accordingly primarily continue to be directed toward individualized treatment.

Juvenile and family court judges must act as leaders, advocates and catalysts in the planning, development, maintenance and allocation of juvenile court and juvenile justice system resources. The judge must actively seek opportunities to explain the goals, plans and problems of the juvenile and family courts through the media, court-citizen committees and civic groups and should strive to generate the involvement and support of the private sector in the work of the court.



ORGANIZED MAY 22, 1917

**National Council of Juvenile  
and Family Court Judges  
Office of Planning and Development  
University of Nevada  
P.O. Box 8970  
Reno, Nevada 8970  
(702) 784-6012**

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ORGANIZED MAY 22, 1937

LOUIS W. McHARDY / Executive Director

## NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES

UNIVERSITY OF NEVADA  
P.O. BOX 8978  
RENO, NEV. 89507  
(702) 784-6012

Dear Judge, Legislator or Civic Leader,

Endorsed by a great majority of the nation's juvenile and family court judges, the 38 recommendations in this report, if heeded, can go far toward ameliorating problems of serious juvenile crime in every state.

Will you and your staff please review this material and decide if it can be helpful in the reassessment of your laws, jurisdictional procedures and practices relating to the control and treatment of serious juvenile offenders.

For further information, technical assistance in implementing these recommendations or to obtain speakers please contact:

Planning and Development Office  
National Council of Juvenile and Family Court Judges  
P.O. Box 8970  
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Reno, Nevada 89507

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Hon. John P. Steketee  
President, 1984-1985

# FOREWORD

## *Introduction*

In recent years, America's juvenile courts — their personnel, their practices, their philosophies — have been the target of criticism from academicians, researchers, lawyers, legislators, elected officials and other well-intentioned people. Unfortunately and ironically, very little effort has ever been made to draw upon the experience, expertise and opinions of those most primarily involved — the nation's judges who exercise juvenile justice jurisdiction.

## *Serious Juvenile Offender*

Among the most hotly debated and volatile issues addressed within the criticism leveled at the juvenile and family courts in recent years has been the handling and treatment of the most serious juvenile offenders. Again, ironically, the juvenile court seems to have received about equal measures of complaint from those who believe that this variety of juvenile offender is being treated too leniently or not at all; and from those who believe that the courts impose unreasonably harsh and unjustifiable sanctions upon such youth.

What is often overlooked is the fact that only about 5% of juvenile delinquency adjudication in this country involves what has been labeled the "serious violent offender," those charged with the most serious personal crimes, and those about whom the public justifiably is most concerned.

## *Challenging Issues*

Nevertheless, this small percentage of our delinquent youth presents the juvenile court and the public with a number of complex and challenging issues to examine and, hopefully, resolve in a way that both recognizes the need to protect the public and yet does not lose sight of the individualized treatment and rehabilitation goals and principles which are the essence of the juvenile justice system.

The issues involved are weighty and not easily answered. They involve literally, the very future of our society and its willingness to provide the appropriate authority and resources to assure that the nation's courts can effectively deal with the serious juvenile offender.

## *Recommendations*

The recommendations which follow run the gamut of some of the most controversial and sig-

nificant issues facing the court and the public today — issues such as whether and, if so, when to protect the confidentiality of the juvenile and his family; whether to transfer a juvenile offender to adult court for trial and punishment; whether effective treatment and rehabilitation of certain offenders is even possible; and what constitutes effective treatment for the serious offender.

## *Metropolitan Court Judges*

These recommendations are the work product of judges from throughout the country. More specifically, they are the product of an effort initiated and carried out by the National Council of Juvenile and Family Court Judges' Metropolitan Court Judges Committee, which consists of over 30 of the Presiding Judges of the nation's largest cities and court systems.

The National Council's research arm, the National Center for Juvenile Justice, has calculated that over half of all the serious juvenile crime in the nation occurs within the jurisdiction of these metropolitan courts.

As Presiding Judges of the courts exercising juvenile justice jurisdiction within these large jurisdictions, the Metropolitan Court Judges Committee members are particularly qualified to speak out on the issues and they, with the assistance of nationally recognized consultants, critic advisors and Council staff, whose names are listed in the back of this document, have done the National Council and the public a service by offering their viewpoints as practicing judges on the many important issues involving the serious juvenile offender.

## *Proactive Stance*

Judges are often, and not always without reason, criticized for being "reactive" to the comments of others on public policy issues involving their areas of responsibility. I think the reader will find that, regarding the positions and policies recommended in this document, our judges have demonstrated a thoroughly "proactive" stance.

The National Council owes much to the quiet and effective leadership of the Metropolitan Court Judges Committee Chairman, Judge Nicholas A. Cipriani of Philadelphia, who toiled with the other committee members throughout a series of intense debates over the past year. The initial policy recommendations were based on extensive issue papers prepared by consultants retained under funds provided for this project by

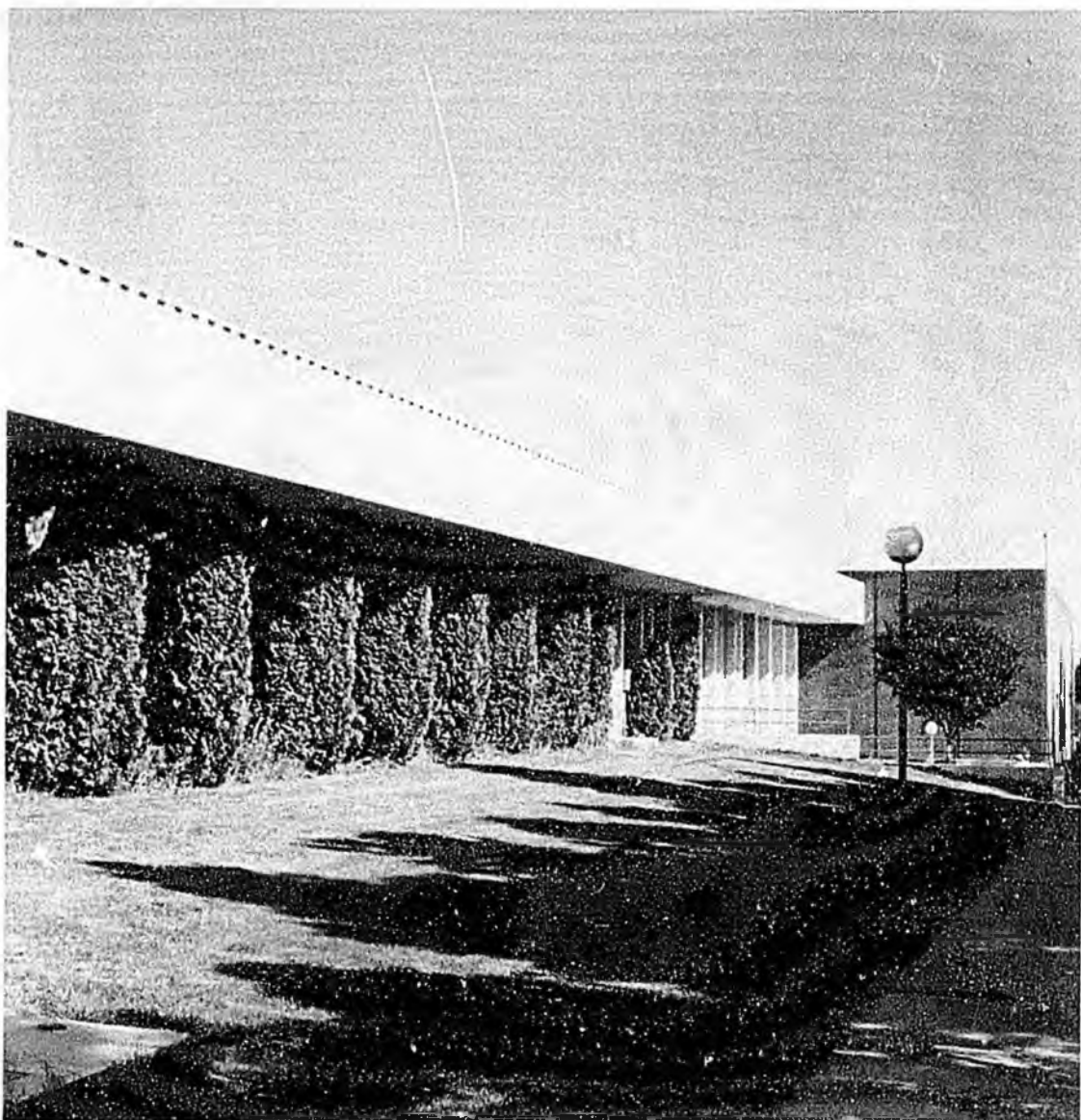
the Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice. Two three-day sessions were held late in 1983 to thoroughly debate the papers, the issues and the recommendations. More than 25 presiding metropolitan judges, assisted by consultants, critic advisors and staff, contributed to over 1500 pages of issue papers, commentary and discussion transcripts, from which this document has been distilled and developed.

Following these sessions, the initial recommendations from the committee were reviewed, debated and amended by the National Council's Board of Trustees at the Mid-Winter Board Meet-

ing in January, 1984, in Savannah, Georgia and received the Board's approval, subject to approval by the membership of the National Council.

Such approval, following debate, was unanimously given at the 47th Annual Conference, July 12, 1984, in Colorado Springs. Thus, this document reflects official policy of the National Council.

Hon. B. Thomas Leahy  
President, 1983-84  
August, 1984



*Judicial College Building, Headquarters for the National Council of Juvenile & Family Court Judges University of Nevada, Reno.*

# Recommendations

## I Disposition Policies

1. Serious Juvenile Offenders Should Be Held Accountable By the Courts
2. Individualized Treatment Should Be Considered for Every Juvenile
3. Rehabilitation Should Be a Primary Goal of the Juvenile Court
4. Social Investigations Should Be Used for Individualized Treatment

## II Causes and Prevention

5. Families and Schools Should Be Strengthened to Reduce Delinquency
6. Close Liaison Should Be Maintained Between the Courts and the Schools
7. The Impact of School Problems on Delinquency Should Be Researched
8. Business and Labor Should Provide Jobs and Job Training for Juveniles
9. The Causes of Delinquency Should Be Studied In Depth

## III Dispositional Guidelines

10. Guidelines Should Be Developed to Reduce Disparities
11. Provide Judicial Discretion for Individualized Treatment
12. A System-Wide Commission Should Devise the Guidelines

## IV Transfer to the Adult Criminal Court

13. Offenders Unamenable to Juvenile Treatment Should Be Transferred
14. The Juvenile Court Should Make the Transfer Decision
15. A New Transfer Decision Should Be Required for Subsequent Offenses

## V Confidentiality

16. Open Hearings
17. Police Should Be Informed of Court Actions in Their Cases
18. Juvenile Records Should Be Provided to Adult Courts When Sentencing
19. Legal Records of Juveniles Should Be Open to Those Who Need to Know
20. The Effects of Expunging Juvenile Records Should Be Researched

## VI Treatment Considerations

21. Programs in the Community Should Provide Adequate Public Protection
22. Programs Should Provide Assistance to Strengthen Families
23. Programs Should Provide Progress Reports and Family Involvement
24. Re-Entry into the Community Should Be Phased
25. Methods of Treating Serious Offenders Should Be Further Researched

## VII Specific Programs

26. Secure Facilities Should Be Provided for High-Risk Juveniles
27. Substance Abuse Programs Should Be Provided for Juveniles
28. Mental Treatment Facilities Should Be Designed for Juveniles
29. All Programs Should Be Studied for Adverse Impact on Families

## **VIII Status of the Court**

30. Courts for Children Should Have the Stature of General Trial Courts
31. Judges Should Have Long-Term Assignment to This Complex Court
32. Judges Should Lead in Developing Community Resources for Children
33. Research Should Have the Participation of Judges

## **IX Resources**

34. On-Going Training Should Be Provided for the Professional Staff
35. Courts Should Have a Broad Range of Dispositional Resources
36. Judges Should Ensure the Efficient Use of Existing Resources
37. Technical Assistance Should Be Provided for Court Operation
38. Training in Juvenile and Family Law Should Be Provided

# THE FACTS

## *A Definition of "Serious Juvenile Crime"*

The term "serious crime" historically has had no widely accepted definition. Definitions have varied with political philosophies and the prevailing winds of public sentiment as well as empirical research and delinquency theory. However, when researchers are asked to trend changes in the volume of serious crime, they are forced to utilize a definition that is consistent with available data. This practical restriction leads most to adopt as a measure of serious crime the FBI's statistics on the following offenses: **murder/non-negligent manslaughter, forcible rape, robbery, aggravated assault (which, as a group, are labeled "Violent Offenses"), burglary, larceny-theft, and motor vehicle theft (which, as a group, are labeled "Serious Property Offenses")**. Therefore, in the work that follows, "Serious Juvenile Crime" is defined as the "Violent" and "Serious Property" offenses committed by individuals who are below 18 years of age.

## *FBI Uniform Crime Reports' Arrest and Clearance Data*

It is a common exercise to compare the number of juveniles and adults arrested for serious crime and to conclude from this comparison the relative contribution of juveniles to the nation's serious crime problem. While juvenile arrest statistics reflect the number of juveniles who come in contact with law enforcement, they are a poor measure of the contribution of juveniles to the nation's total crime problem, for they are a count of persons arrested and not crimes committed. Juveniles tend to commit crime in groups more often than adults and are, in general, more easily apprehended. Therefore, to compare the arrest figures of juveniles and adults, and to interpret the comparison as a measure of the proportion of serious crime committed by each group, tends to overestimate the juvenile contribution to serious crime.

Each year a large number of serious crimes are reported to law enforcement agencies. Some of these crimes are "cleared" by arrest. A reported crime is cleared by arrest when a law enforcement agency has identified the offender and has sufficient evidence to charge the individual and take the individual into custody. Each year the FBI reports the percentage of crimes cleared in cities that were cleared by the arrest of a juvenile. Obviously, clearance statistics are a much better measure of the juvenile contribution to the seri-

ous crime problem than are arrest statistics. Clearance statistics are based on a count of crimes and not on a count of persons arrested; consequently, a portion of the bias in arrest figures is overcome even though that bias caused by the fact that juveniles are more easily apprehended is still present.

## *Violent Juvenile Crime*

Between 1964 and 1982 juveniles were responsible for about one in every ten violent crimes cleared (see Figure 1) and involved in two of every ten violent crime arrests. This difference can be explained by the fact that juveniles tend to commit crimes in groups. Both clearance and arrest data indicate that the relative responsibility of juveniles for the nation's violent crime problem has not changed since the mid-1960s. However, **the volume of violent crime committed by juveniles has increased; between 1964 and 1982, the number of juvenile violent crime arrests increased by 400%. But during the same period the number of adult arrests increased by 180%. Therefore, the growth in the volume of violent crime in this country between 1964 and 1982 should not be characterized as a growth in juvenile violence alone.** The responsibility for the growth in the volume of crime is shared proportionately by juveniles and adults.

## *Serious Juvenile Property Crime*

The portion of the nation's serious property crime problems attributed to juveniles has decreased dramatically since the mid-1960s. In 1964, 43% of all serious property crimes cleared were cleared by the arrest of juveniles, compared to only 24% of the total in 1982 (see Figure 2). From 1964 through 1982, while the number of juvenile serious property crime arrests increased by 40%, the number of adult arrests increased by 220%. Consequently, **juvenile arrests made up a much larger proportion of all serious property crime arrests in 1964 than they did in 1982.** In 1964, 55% of all persons arrested for a serious property crime were juveniles, compared to only 34% in 1982. Therefore, the growth in the number of serious property crimes between 1964 and 1982 can largely be attributed to a growth in the number of serious property crimes committed by adults.

Figure 1  
Violent Crimes  
Proportion Cleared: 1964-1982

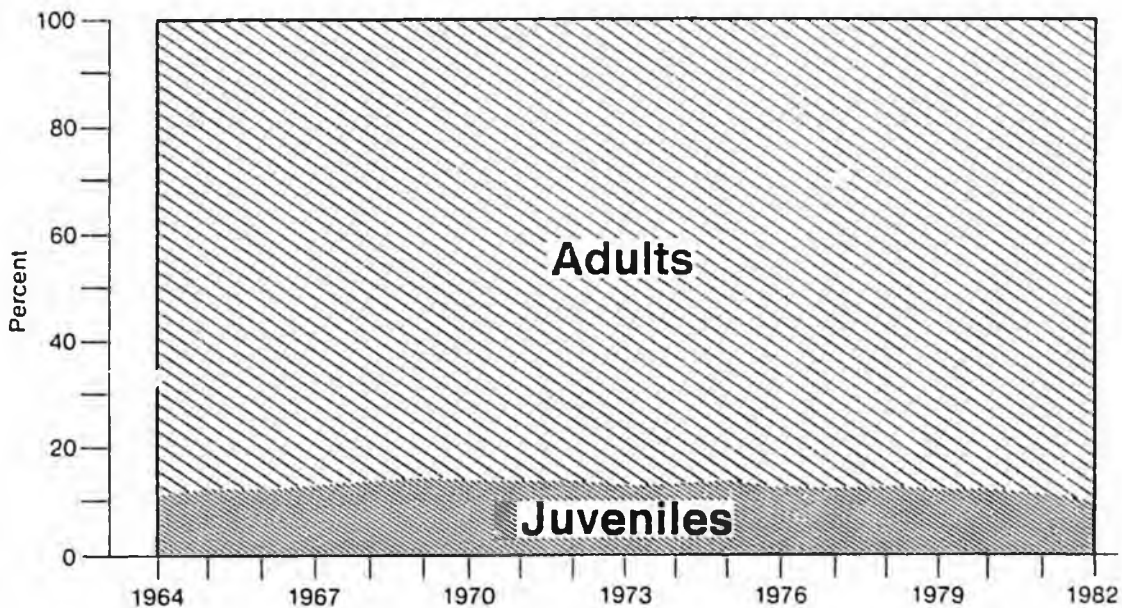
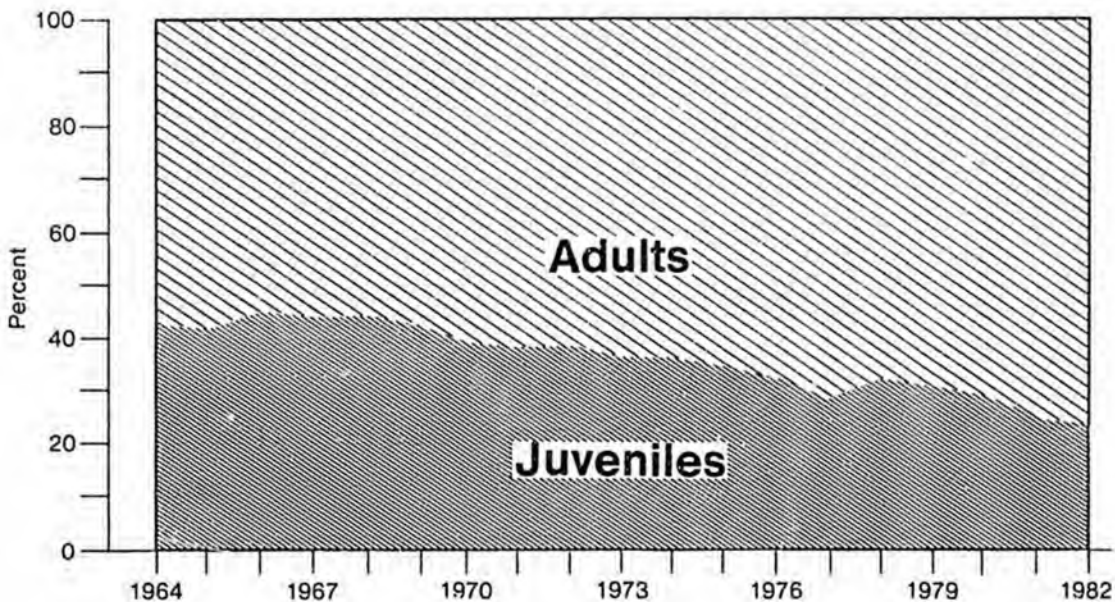


Figure 2  
Serious Property Crimes  
Proportion Cleared: 1964-1982



## *Serious Juvenile Offender Characteristics*

The Council's National Center for Juvenile Justice, through the support of the Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice, has established the National Juvenile Court Data Archive, which stores all available data on the juvenile courts' handling of youth referred for a delinquent or status offense. From this archive, 275,000 automated delinquency case records describing the activities of the juvenile courts in seven states (Alabama, California, Florida, Iowa, Kansas, Nebraska and Pennsylvania) in 1980 were analyzed and the results were used to develop the following information on serious juvenile offenders referred to juvenile courts.

In this sample, seven percent of all delinquency referrals were charged with a violent offense and another 46 percent with a serious property crime. Therefore, over half of all the delinquency cases processed by these juvenile courts involved a youth charged with a serious crime. Who were the serious offenders? Eight of every ten individuals referred for a violent or serious property offense were male. Forty-three percent of all youths charged with a violent offense, and 53% charged with a serious property offense, were 15 years of age or younger. Fifty-six per-

cent of all youths charged with a violent offense, and 45% charged with a serious property offense, had at least one previous referral to juvenile court.

## *Metropolitan Courts*

There were substantial differences between the character of juvenile court caseloads of metropolitan and nonmetropolitan areas in this seven state sample. Metropolitan courts, due to their larger populations, had much larger caseloads than courts in nonmetropolitan areas. However, even after controlling for differences in the number of juveniles in the general population, metropolitan juvenile courts had twice the rate of violent crime cases and a 16% higher rate of serious property crime cases than did the nonmetropolitan courts in the sample. In addition, compared to nonmetropolitan courts, a greater percentage of serious crime referrals to metropolitan courts involved a juvenile with a prior court history. Therefore, metropolitan areas not only had a greater proportion of their youth population involved in serious crime, but these youth were also more likely to be recidivists.

Metropolitan juvenile courts are faced with a greater serious crime problem than nonmetropolitan courts, and funding programs must be sensitive to this increased burden and responsibility.

**Each of the following thirty-eight recommendations was approved by the members of the National Council of Juvenile and Family Court Judges on July 12, 1984, at their Forty-Seventh Annual Conference in Colorado Springs, Colorado.**

# I | DISPOSITION POLICIES

## ***Serious Juvenile Offenders Should Be Held Accountable By the Courts***

*The primary focus of the juvenile court for the disposition of serious, chronic or violent juvenile offenders should be accountability. Dispositions of such offenders should be proportionate to the injury done and the culpability of the juvenile and to the prior record of adjudication, if any.*

The National Council of Juvenile and Family Court Judges recognizes that the principal purpose of the juvenile justice court system is to protect the public. For chronic offenders, violent offenders and juveniles who commit serious crimes, the public is best protected by holding them accountable, restricting their liberty as necessary and imposing consequences proportionate to the injuries done.

## ***Individualized Treatment Should Be Considered for Every Juvenile.***

*The needs of all serious, chronic or violent juvenile offenders are not the same. While many require secure placement, decisions regarding levels of security and intensity of treatment should be tailored to meet the offender's individual needs while being sensitive to concerns for public safety.*

Since no two children have the same personality, strengths and weaknesses, nor the same family supports and pressures, their dispositions must be individualized. While the severity of the present and prior offenses are critical in determining an appropriate response, the needs, circumstances and problems of the individual offender can vary enormously and dictate flexibility in intervention. Given this variation, responses can range from placement in secure, institutional facilities to relatively open, community-based programs.

## ***Rehabilitation Should Be a Primary Goal of the Juvenile Court***

*To the extent public safety will permit, the primary goal of the juvenile court should be rehabilitation, but with consideration for general deterrence, general prevention and the strengthening of social institutions such as families, schools and community organizations.*

Historically, the juvenile courts have adopted the principle that the public is best protected and the children best helped by focusing on the future and preventing new offenses by rehabilitating the individual delinquent, rather than focusing on the past by punishing an offense which is over and done. Rehabilitation has been remarkably successful for most juvenile offenders. It has not been successful for the small number of chronic and serious offenders. For them, strict accountability appears necessary.

## ***Social Investigations Should Be Used for Individualized Treatment***

*A thorough diagnostic assessment should be undertaken for all adjudicated serious, chronic or violent juvenile offenders and a treatment and placement plan submitted to assist the court at the dispositional hearing.*

Recognizing that jurisdiction over actual facility placement varies from state to state, the location of the diagnostic assessment (juvenile court vs. juvenile corrections agency) is intentionally unspecified in the original recommendation. The recommendation focuses on strengthening the process of determining where to place the serious juvenile offender regardless of which juvenile justice system component has authority to make that determination, but stresses the conviction of the judges that placement decisions should be judicial decisions.

not prescriptive sentencing. See p. 12.

## II CAUSES AND PREVENTION

### ***Families and Schools Should Be Strengthened to Reduce Delinquency***

*There exists strong evidence that the prevention of serious delinquency by the family, by the school, by friends and by socially organized communities is often more effective than that provided by the law.*

When social institutions are strong, communities well organized, parents and schools competent and caring, there is a very small serious delinquency problem. The deterrence provided by the juvenile justice system in such communities is an important backup, and should be supported and strengthened by the court. However, when these institutions are weak and provide little or no prevention, serious questions can be raised about whether the court can have a substantial effect.

### ***Close Liaison Should Be Maintained Between the Courts and the Schools***

*There should be a close and continuing relationship between the juvenile court and school authorities in every community.*

The court, the school and the police should cooperate in developing and implementing policies to deal with the problems of delinquency. There is a pressing need to examine the relationships between student abilities, inclinations and performance, classroom curricula, school attendance and delinquency.

### ***The Impact of School Problems on Delinquency Should Be Researched***

*Research is necessary to assist in the formulation of court and community policy as to truancy enforcement, compulsory school*

*laws, crimes in the schools, under-education and frustrated learning experiences.*

We need to know how curriculum tracking or its absence in elementary and secondary schools affects delinquency. We need to know which truants should be compelled back to school and which should be encouraged in vocational directions. And, we need to know how to recruit and retain highly skilled and motivated teachers to inner city schools. Included in the needed research is a program of study designed to determine why some schools or school administrators are successful in keeping truancy and serious delinquency low while others are not.

### ***Business and Labor Should Provide Jobs and Job Training for Juveniles***

*Juvenile court judges should enlist the aid of business and labor to provide more youth employment and training opportunities.*

The plight of many inner-city communities is aggravated by high unemployment, poor schools and ineffective social institutions. Jobs, like the school and family, can be an important socializing force in the community. When a youth can be committed to a job and the advancement a job provides, then that youth will be less likely to engage in serious delinquency. A partnership created between schools, businesses and the government to develop projects to tie schooling and employment together may offer the best hope. Because of their involvement in the youth problem, and because of their special knowledge of the hardships posed by excessive levels of youth unemployment, juvenile court judges have a special role to play in fostering these partnerships. By calling for juvenile court judges to be more active in enlisting the aid of business and labor,

this recommendation is in no way intended to diminish the responsibility of federal, state and local governmental agencies in providing youth employment and training.

### ***The Causes of Delinquency Should Be Studied In Depth***

*Adequate funds should be made available at the national level to provide for both short and long-term research into the causes and prevention of delinquency. The quality and utility of the research to improve the functioning of the juvenile justice system should*

*be enhanced by closer interaction between research investigators, judges, lawyers, probation officers and treatment staff.*

Dissemination of such research should be in a manner which makes the results accessible to persons working within the system. Long-term research on the causes and prevention of delinquency is critical if there is to be hope that in the future we will be closer to the solutions necessary for the reduction of delinquency. The results of previous long-term delinquency research demonstrate that such hope is not ill-founded. Criminology is a young science; one that needs and deserves support.

### III | GUIDELINES

#### ***Guidelines Should Be Developed to Reduce Disparities***

*Guidelines incorporating all decisional factors should be adopted as a means of reducing dispositional disparity for serious, chronic or violent offenders. The guidelines should be focused primarily on accountability, fitting the severity of the disposition to the severity of the present and past offenses.*

Guidelines which specify the criteria to be used in sentencing serious juvenile offenders, and which distinguish between them and the remainder of the delinquent population, can provide consistency with individualization.

Guidelines must be flexible, subject to continuous review and revision, to accommodate changing public and professional views of the legitimate social role of punishment in the sentencing of serious offenders.

#### ***Provide Judicial Discretion for Individualized Treatment***

*Provision should be made in any guidelines for the judge to be able to depart from the presumptive disposition upon setting forth in writing the specific aggravating and mitigating factors found to justify such departure.*

Guidelines for dispositions for the serious juvenile offender are urged. Often, full discretion tends toward greater inconsistencies. But, legislatively-imposed mandatory sentencing schemes, enacted to promote equity of sentences, tend to be both too extreme and too limited in scope. That is, disproportionately severe penalties are mandated or the necessary exercise of judicial discretion is drastically restricted, and other sources of disparities in decisionmaking are

ignored. The essential feature of any guideline system must be to preserve the discretion of the judge to depart from the guidelines' prescriptions if the judge feels that the interests of justice or equity will be better served.

Guidelines should include controls on plea bargaining so that a new disparity does not arise by shifting discretion from the judges to the lawyers.

#### ***A System-Wide Commission Should Devise the Guidelines***

*The guidelines for each state should be drawn, researched and, from time to time, modified by a commission of that state consisting of representatives of all sectors of the juvenile justice system.*

The guidelines should be developed, refined and continuously monitored by a commission which should: (a) be comprised of a representative group of juvenile justice policy-makers and practitioners, as well as citizen participants; (b) have the authority to develop and promulgate policy statements which will guide decision-makers in sentencing serious, chronic or violent juvenile offenders; and (c) have a staff of researchers and analysts sufficiently funded and authorized to conduct assessments of the impact of the guidelines on a continuing basis, and to work with the commission to draft revisions as needed. There should be a commitment on the part of the legislative and executive branches to provide the range of resources necessary to implement these guidelines.

The recommendation adopted does not specify by or under what authority (legislatively-authorized or otherwise) such guidelines would be developed. Such structure is intended to be left to the individual states.

## IV | TRANSFER TO THE ADULT CRIMINAL COURT

### *Offenders Unamenable to Juvenile Treatment Should Be Transferred*

*The juvenile court and juvenile justice system are in the best position to respond effectively to the problem of serious juvenile crime, however, there are juveniles for whom the resources and processes available to the juvenile court will serve neither to rehabilitate the juvenile, nor to provide a suitable sanction for the offense, nor to adequately protect the public. Such juveniles should be tried and, if convicted, sentenced in the adult criminal court.*

Transfer of juveniles to the adult criminal courts — also termed “waiver,” “certification,” “reference,” and “remand” — should be based upon the inability of the juvenile justice system to protect the public. The inability may be because juvenile court jurisdiction (which is based on the child’s age) will run out too soon. It may be because the juvenile court does not have a disposition which is commensurate with the seriousness of the offense. It may be because the juvenile court does not have access to a secure facility. The number of children transferred to the criminal courts can be reduced by extending the age when juvenile court jurisdiction expires and by providing the juvenile courts with a greater range of resources, including secure facilities.

### *The Juvenile Court Should Make the Transfer Decision*

*The decision to waive a juvenile from the juvenile court to the adult criminal court should be made by the judge of the juvenile court under guidelines developed to protect the constitutional rights of the juvenile and the safety of the public.*

The decision to transfer is made in most states by the juvenile court after a full due process hearing where the public’s rights and the juvenile’s rights are carefully protected and with assurance that the juvenile was probably involved in the offense before the right to juvenile proceedings is lost. In some states, however, the decision is made without a hearing by the prosecutor, who may be under political pressures. In some states, transfer is based simply on offense, regardless of whether the juvenile court has the facility to better protect the public. In some states, serious charges are filed in the adult court which then decides whether to transfer the child to the juvenile court. It should be recognized that juvenile courts and their professional staff are most experienced in analyzing juveniles, that they are best acquainted with what they can and cannot do and that they have demonstrated ability to provide fair and knowledgeable transfer proceedings.

To provide not only consistency in transfer decisions, but also to insure that they are made with full knowledge of the resources and facilities available to both the juvenile and criminal courts, guidelines should be prepared by a coordinated effort of the two courts, based on local resources, facilities and circumstances.

### *A New Transfer Decision Should Be Required for Subsequent Offenses*

*For subsequent charges, previously transferred juvenile, should be subject to juvenile court jurisdiction and its decision as to whether to transfer again.*

Children should not be denied future access to juvenile court jurisdiction solely on the grounds of prior transfer which resulted in acquittal. Also, automatic transfer fails to recognize that prior adult procedures may have effectively reduced such juveniles’ threat to the public safety.

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## V | CONFIDENTIALITY

### ***Open Hearings***

*Fact finding hearings involving juveniles charged with criminal law violations and hearings for transfer to an adult criminal court should generally be open to the public while dispositional hearings should generally be closed. In a given case the court should exercise discretion to open or close the hearing to the public.*

Our tradition of open government was the primary rationale advanced in support of this recommendation. Promotion of the state's interest in rehabilitation of juveniles and protection of innocent family members from adverse publicity were other issues considered. However, when a child is involved in a serious crime, the public, the victims and the police have a right to know how the juvenile court manages the trial where guilt or innocence is determined unless, in a rare case, the publicity will demonstrably cause more harm than good. Public safety overrides the reasons for confidentiality. Except in a rare case, however, public safety does not require the public to be present at the disposition hearing where all of the intimate details of the family will be discussed in order to determine the best means of helping the child and protecting the public.

### ***Police Should Be Informed of Court Actions in Their Cases***

*Juvenile courts should provide a law enforcement agency with the legal charge and disposition of juveniles referred by such agency for criminal law violations.*

It is important for reasons of efficiency and the administration of justice, as well as fairness to individuals who may have their cases acquitted or dismissed, that police be provided with accurate court information. Law enforcement agencies should have such information so they can main-

tain accurate records in cases where the individual becomes involved in subsequent criminal law violations, either as a juvenile or an adult.

### ***Juvenile Records Should Be Provided to Adult Courts When Sentencing***

*Once a person has been convicted of a crime in the adult criminal court, the legal record of any findings of guilt of charges of a criminal law violation in juvenile court should be made available to the adult criminal court upon its request.*

When an adult has been convicted of a crime, the criminal court judge, for sentencing purposes, needs to know if the individual has a prior record in the juvenile court equivalent to a finding of guilt on a criminal law violation.

### ***Legal Records of Juveniles Should Be Open to Those Who Need to Know***

*Legal records of juveniles adjudicated for criminal law violations should be open to the child, the parents, the child's attorney, the guardian ad litem, the prosecutor and, at the discretion of the judge, to any other person having a legitimate interest. "Legal" records would not include social histories, medical and psychological reports, educational records or a transcript of the dispositional hearings.*

Traditionally, hearings and records of juvenile courts have been deemed confidential and have been unavailable, often even to the parents and the press, in order to protect children from the punishment of publicity. For children abused and neglected by their parents, for children being adopted, for immature children involved in petty offenses, the justification for confidentiality is sound. For children who can be rehabilitated without danger to the public, the

reasoning is sound particularly where publicity will interfere with the rehabilitation. Where publicity will bring shame and abuse to brothers and sisters, grandparents and relatives without adding any useful information to the public or any better provision for its safety, confidentiality is merciful. When public safety is involved, those responsible for protecting the public must have access to the legal records of any juvenile charges and juvenile court dispositions, but even in these cases they have no need for access to the social records which contain the activities, marital problems, likes and dislikes, psychological evaluations or intelligence quotients of the various members of the child's family. The police need to know which children have violated the law and

what the court has done with them; they do not need to know the family's problems.

### *The Effects of Expunging Juvenile Records Should Be Researched*

*A study should be authorized to review the practice of sealing and expunging juvenile records to determine the impact on the administration of juvenile and criminal justice.*

The effects of the variations in statutes and practices from state to state in expunging, sealing and destroying records upon the administration of justice, is largely unknown, as is the extent to which it is a benefit or detriment to the juveniles.

## VI TREATMENT CONSIDERATIONS

### ***Programs in the Community Should Provide Adequate Public Protection***

*Community-based programs for serious, chronic or violent juvenile offenders should provide protection for the public and staff. Such security can best be achieved through limiting numbers of juvenile offenders, adequate staffing and program content.*

Issues of safety and security as they apply to the physical welfare of the community-at-large, program staff and the offender are important. Clearly, concerns for community protection, client control and supervision and program security are important to any discussion of community-based correctional programs for this difficult offender population. Contrary to the usual perception that proper levels of security can only be maintained in secure institutional settings, community-based programs are, in fact, able to exert intensive control and supervision and capable of transmitting to offenders a very clear sense that serious consequences follow from both criminal transgression and continued inappropriate social behavior. Rather than relying upon mechanical and physical constraints to maintain the required level of security, these programs utilize social, psychological and behavioral methods to achieve that goal. Security is accomplished through intensive use of staff numerous enough to work closely with offenders. Control is facilitated by keeping offenders busy at all times. In nonresidential programs, supervision requires intensive tracking of clients while they are away from the program facility.

### ***Programs Should Provide Assistance to Strengthen Families***

*No social policy or prevention program concerning delinquency should be adopted before careful attention is paid to the consequences of such a policy or program on families.*

Perhaps the greatest influence the court can have in its interventions is to be sensitive to the family causes of delinquency. But the general educative function of the court — the ability to influence other community institutions — is formidable. One duty of the juvenile court is to inform the community of the implications of weak families on the serious delinquency problem. Because of its special knowledge and interest in the problem, the juvenile court should be a leader in the fight to improve knowledge of effective parenting and to seek ways to deliver this knowledge to the community.

### ***Programs Should Provide Progress Reports and Family Involvement***

*Strategies which should be incorporated into a treatment plan for serious, chronic or violent juveniles include:*

- a. Frequent progress reports advising the juvenile of standing, achievements, deficiencies and expectations.*
- b. Involvement of the family with an analysis of the family's problems and assistance with these.*
- c. Academic education and social, vocational and employability training and assistance.*

All states should implement a "monitoring process" in order to assure residential placements provide the services called for under law and to assure the safety and rights of the public and the juveniles. The concept and process of accomplishing each of the above strategies should be clearly defined within each jurisdiction.

### ***Re-Entry into the Community Should Be Phased***

*Juvenile delinquents will eventually be returned to the community without court controls. Thus, reintegration into the community*

*should be supervised with intensive and adequate aftercare. When secure care is necessary, attention should be directed toward the gradual re-entry of youths into the community through a staging process utilizing half-way houses, group homes, day treatment and other appropriate aftercare programs.*

Far too often serious juvenile offenders are returned to the community "cold turkey," straight from secure placement without adequate resources and efforts for gradual reintegration into community living. Evaluation data suggests that failure to assist youths in this reintegration process often cause those gains made in residential placement to "wash out" upon the youth's return to the community. Serious offenders should move from secure care through a "staging process" with different levels of residential and community involvement prior to termination of aftercare.

### ***Methods of Treating Serious Offenders Should Be Further Researched***

*Research and evaluation on the treatment of serious, chronic or violent juvenile offenders should be continued with emphasis on rehabilitation, accountability and public safety.*

The only way significant improvements in treatment can occur is by implementing and systematically evaluating innovative programs. Following the lead of recent research efforts funded by the Office of Juvenile Justice and Delinquency Prevention in the U.S. Department of Justice, future studies should: develop programs which link theory and practice; utilize experimental models whenever possible; and examine what variations in treatment work best with which types of youth and in what settings.

## VII | SPECIFIC PROGRAMS

### ***Secure Facilities Should Be Provided for High-Risk Juveniles***

*For that group of high-risk delinquents who cannot be treated outside a closed setting, it is preferable to use small, secure treatment units.*

It is crucial that the court's disposition for the chronically violent be in secure placement which will allow time to conduct extensive diagnostic evaluations, and allow behavior to be stabilized and brought under control. High-risk offenders can best be treated and supervised in facilities housing only a small number. Larger, secure facilities have a tendency to display mass handling techniques with a level of impersonality and necessary regimentation. They display a greater reliance on mechanical forms of security. They promote "underground" and informal subcultures. They possess little discharge planning. They lack adequate after-care services. They create impersonal, dehumanizing environments and possibilities for physical abuse and violence by other juveniles or staff.

### ***Substance Abuse Programs Should Be Provided for Juveniles***

*Substance abuse treatment should be made a part of the dispositional plan for those serious, chronic or violent juvenile offenders whose criminal conduct is determined to be related to substance abuse. Juvenile and family courts must exercise leadership in the development of local community policies and programs to prevent and treat drug, alcohol and other substance abuse by juveniles.*

Research literature strongly suggests a close

connection between substance and alcohol abuse and serious delinquency. Although the precise mechanisms are unclear, the juvenile court sees the relationship with a frightening regularity. There is a pressing need for the judiciary to make these facts widely known and to actively work with other community leaders to seek ways to prevent and treat such abuse. There is need for statutory authority whereby the courts can require serious, chronic or violent juvenile offenders whose criminal conduct is clearly related to drug or alcohol abuse to submit to treatment. Too often in the past, the court has been able only to refer these offenders on a voluntary basis. Mandatory treatment for alcohol and substance abuse is necessary, with a concerted effort to coordinate both the judiciary and treatment providers to ensure appropriate services.

### ***Mental Treatment Facilities Should Be Designed for Juveniles***

*Separate and secure facilities should be provided for serious, chronic or violent juveniles who are mentally ill or emotionally disturbed.*

One of the most glaring deficiencies in the juvenile justice system is providing the care and treatment of serious, chronic or violent juvenile offenders who have been evaluated and diagnosed as being in need of mental health services. All such youth should receive appropriate care and services as the responsibility of the mental health system, which must be provided with necessary resources. These services should be made available to the juvenile correctional system by both private service providers and government community mental health services. Most of the serious, chronic or violent juvenile offenders requiring in-patient care need mental health services beyond the capabilities of juvenile correc-

tion departments. Also, the level of security needed is beyond that currently provided by children's mental health facilities.

### ***All Programs Should Be Studied for Adverse Impact on Families***

*Existing policies and prevention programs should be researched to determine which of them have adverse consequences for families.*

Society is rapidly moving away from the traditional family structure in which children are reared in two-parent homes and in which the mother does not work outside the home. Other

forces are causing equally important changes in the family. The dramatically rising proportion of children who are born to unmarried women causes major changes in the supervision and role models given children. These social shifts imply dramatic changes in the supervision and socialization of children. We do not fully understand the implications of these changes for serious delinquency, let alone how to affect them, or whether it would be desirable to affect them. There is need for careful research into the consequences of these changes in the family for delinquency. We need to be better informed of the potential consequences of our policy choices — particularly when one might be increased delinquency.

## VIII ■ STATUS OF THE COURT

### ***Courts for Children Should Have the Stature of General Trial Courts***

*Courts exercising jurisdiction in juvenile and family matters should be equivalent in rank and stature to courts of general jurisdiction.*

The juvenile and family courts have huge daily responsibilities protecting the public, intervening in family disputes, rehabilitating juveniles and setting an example in the community. These courts should have the stature among the judiciary and the public if they are to acquire adequate resources and mechanisms to support their immense responsibilities. The undeniable importance of the work of the juvenile and family courts should be reflected in their rank, stature and available resources.

### ***Judges Should Have Long-Term Assignment to This Complex Court***

*Judges should be selected on the basis of their professed interest in juvenile and family matters with an assignment for a substantial number of years to insure adequate training, adequate experience and adequate control of the court.*

The work of these courts must be better understood for society to afford it the status inherent in its responsibilities of intervening in the lives of children and their families.

To be effective, a judge requires special education and experience over a substantial number of

years, thus assignment to these responsibilities should be based upon proposed interest in, ability for and commitment to the special responsibilities involved.

### ***Judges Should Lead in Developing Community Resources for Children***

*Juvenile and family court judges must act as advocates and catalysts in the development and allocation of resources.*

Judges should actively seek opportunities to explain the goals, plans and problems of the court. They should develop a close and continuing relationship with schools, law enforcement agencies and business and labor organizations in the community. They should develop court-citizen committees to advise the court. They should seek out and utilize community resources to develop citizen-court volunteer programs appropriate to the needs of youth under their jurisdiction.

### ***Research Should Have the Participation of Judges***

*Juvenile and family court judges must have an active role in the development of relevant research involving the juvenile justice system and should advise on an individual basis concerning conclusions drawn and applicability.*

Research is necessary, but the practical experience and knowledge of judges who will be expected to use the product is necessary if the research is to be useful

## IX | RESOURCES

### ***On-Going Training Should Be Provided for the Professional Staff***

*Staff are the most important resource of the court; therefore, activities which promote professional development of court and juvenile justice system personnel are critical to maintaining quality programs and services and should be supported.*

The staff of a juvenile court and its attendant services are the key to successful program implementation. Professional development activities which improve the quality of staff are of great importance. Judges can and should be instrumental in insuring adequate staff development regardless of whether staff report directly to the court or to an administrative agency.

### ***Courts Should Have a Broad Range of Dispositional Resources***

*Probation is an essential resource of juvenile justice. Juvenile courts should act to strengthen the probation function through implementation of case classification procedures, restitution, constructive sanctions, service brokerage and other probation innovations.*

Probation is the primary service around which all other juvenile justice interventions are built, but it is too often taken for granted and too seldom reviewed for possible improvements. In some courts it has operated in a manner unchanged over the past thirty years, even though research has demonstrated program innovations which can modify and improve the effectiveness and efficiency of probation services.

### ***Judges Should Ensure the Efficient Use of Existing Resources***

*Resources to deal with serious crime in our nation's largest cities have never been available in adequate supply to ensure an effective and efficient response. While advocating for additional necessary resources, the juvenile court should also ensure that existing resources derive maximum utility from current levels of financial support.*

Juvenile courts must examine their current practices in order to better justify and substantiate

the need for additional resources. While necessary resources have never been available in the past, courts could do a better job of using those resources which currently exist. The court should secure additional funds to better accomplish its goals and assure that existing funds are being most effectively utilized.

### ***Technical Assistance Should Be Provided for Court Operation***

*The juvenile court and juvenile justice system are in need of assistance to implement their resources in an efficient and effective manner. Technical assistance to the juvenile justice system should be available from federal, state and local governments and from private sector sources. It should address current operating problems of the juvenile justice system and should be based upon the needs determined by that system.*

Technical assistance which addresses the operating concerns of the court could be extremely valuable in maximizing existing levels of resources. As such, a relatively small expenditure made to provide technical assistance could result in substantial savings. In order for such assistance to be valuable, however, it should be based on the perceived needs of the local court, rather than on the desire of the provider. Past technical assistance efforts have had limited utility because they have not heeded this point.

### ***Training in Juvenile and Family Law Should Be Provided***

*Appropriate curricula should be further developed, implemented and continued in the National Council of Juvenile and Family Court Judges, the nation's schools of law and other disciplines for career development of judges and other juvenile justice practitioners.*

The training programs of the National Council, currently reaching several thousand judges, lawyers, probation officers, court administrators and treatment staff in both the Reno headquarters and in most of the fifty states, should be expanded and participants provided with sophisticated research, professional textbooks and awarded degree credits.

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## National Council of Juvenile and Family Court Judges: Serving Judges, Youth and the Community

The National Council of Juvenile and Family Court Judges has been dedicated, since its founding in 1937, to improving the nation's diverse and complex juvenile justice system. The Council understands that an effective juvenile justice system must rely on highly skilled juvenile and family court judges, and has directed an extensive effort toward improving the operation and effectiveness of juvenile and family courts through highly developed, practical and applicable programs and training. Since 1969 the Council, through its Training Division, the National College of Juvenile Justice, has reached more than 53,500 juvenile justice professionals with an average of 40 training sessions a year — a record unparalleled by any judicial training organization in the United States.

The Council recognizes the serious impact that many unresolved issues are having upon the juvenile justice system and the public's perceptions of the problem as they affect, through legislation and public opinion, the juvenile court.

Serving as a catalyst for progressive change, the Council uses techniques which emphasize implementing proven new procedures and programs. Focus on meaningful and practical change and constant improvement is the key to the Council's impact on the system.

The Council maintains that juvenile justice personnel, and especially the nation's juvenile and family court judges, are best equipped to implement new concepts and other proposed improvements. The most effective method of bringing about practical and necessary changes within the juvenile justice system is through that system, and particularly through the judges themselves. Continuing, quality education is a keystone in producing this change.

The Council facilities, located at the University of Nevada, Reno, include modern classrooms and a law library. The Council uses its own housing facility to provide economical lodging and meals for both faculty and participants. These facilities offer an attractive environment for judges to explore practical solutions toward the betterment of juvenile justice. The Council, with its National Center for Juvenile Justice in Pittsburgh, maintains a staff of more than 50.

JUVENILE JUSTICE IN ALASKA  
a report to  
THE HONORABLE BILL SHEFFIELD  
GOVERNOR  
STATE OF ALASKA  
from the  
DIVISION OF FAMILY & YOUTH SERVICES  
March 19, 1985

John R. Pugh  
Commissioner  
Department of Health & Social Services

Michael L. Price  
Director  
Division of Family & Youth Services

## Executive Summary

Despite widespread and persistent beliefs, juvenile crime in Alaska is neither increasing nor becoming more violent. The best measures show that while adult crime has increased at the same rate as the Alaska's population, juvenile crime has declined both in total numbers and rate and is only one-fourth of total crime in the state. Only 2% of Alaska's juvenile crime is violent crime. This is 1/10 of serious, violent crime in the state and only 1/2 of 1% of total Alaska crime.

Because juveniles commit generally less serious crimes and have a greater potential for rehabilitation than adult offenders, Alaska's juvenile justice system operates differently from the criminal justice system. The vast majority of young offenders are first time and less serious offenders who can be successfully diverted from the formal juvenile justice system. Court action is reserved for repeat offenders and those who have committed serious offenses. Most are adequately controlled and rehabilitated in community settings. A small number require the control and structure of secure detention and treatment facilities.

Programs for juvenile offenders were separated from adult correction programs and transferred to the Division of Family and Youth Services four years ago. Since then juvenile delinquency has received greater attention and services provided to protect the public and rehabilitate young offenders have increased dramatically. The number of youth under probation supervision is up 45% and the average populations of juvenile detention and secure treatment facilities have increased by 58% and 30% respectively. With greater focus, remedial increases in service, and earlier intervention fewer youth are "slipping between the cracks." Serious or repeat offenders are identified and dealt with sooner reducing multiple offenses. In short, increases and improvements in service seem to have been a primary factor in reducing juvenile crime in Alaska.

Despite essential growth, detention facilities average 40% above capacity and there are waiting lists for entry into secure treatment programs. Even planned expansion will not meet projected needs for these services. Overburdened programs quickly become ineffective and continued reductions in juvenile crime cannot be expected in the face of a growing population and overburdened programs.

The response cannot be to simply build more and larger facilities. This simplistic approach focuses massive resources on a single aspect of juvenile delinquency and has been discredited by its failure elsewhere. Its virtually limitless costs alone preclude adoption of this approach. Instead the Department of Health and Social Services has developed a balanced strategy essential in a time of decreasing resources and increasing population. The strategy emphasizes regionalization and increases in prevention, early intervention and communitybased services accompanied by modest increases in secure detention and treatment capacity. Other management initiatives to implement this strategy are development of a systematic method of case management and implementation of a comprehensive management information system (SYSMIS).

A systematic method of case management will provide a framework for effectively allocating resources on individual client and overall program levels, and for short and long range planning. A comprehensive information system is essential to provide information needed for monitoring and evaluating services and programs, and for decision making.

This strategy will help limit the need for growth in costly institutions, make community-based services available on a broader basis throughout the state and insure that limited resources are used most effectively to protect the public and rehabilitate young offenders.

## DESCRIPTIVE ANALYSIS OF JUVENILE CRIME IN ALASKA

Certain misperceptions about juveniles and crime are widely accepted by the public and many policy makers and have influenced public policy relating to juvenile justice. These misperceptions are enforced periodically by sensational news reports and the entertainment media. It is important to consider these persistent perceptions in light of available facts if significant policy decisions are to be made wisely.

### Incidence of Juvenile Crime

The most widely accepted belief about juvenile crime is that it is widespread and increasing - that there is a juvenile crime wave far out of proportion with the number of juveniles and beyond the level of adult crime. Available facts, however, do not support this belief.

Conservative estimates of population growth indicate that the population of youth in Alaska (those 0 - 18 years of age) increased by approximately 15% from 1979 to 1983. As Chart I indicates this represents an increase of 19,000 juveniles from 134,000 to 153,000. The adult population is believed to have grown at about the same rate and to be slightly more than twice the size as the juvenile population - approximately 320,000 persons.

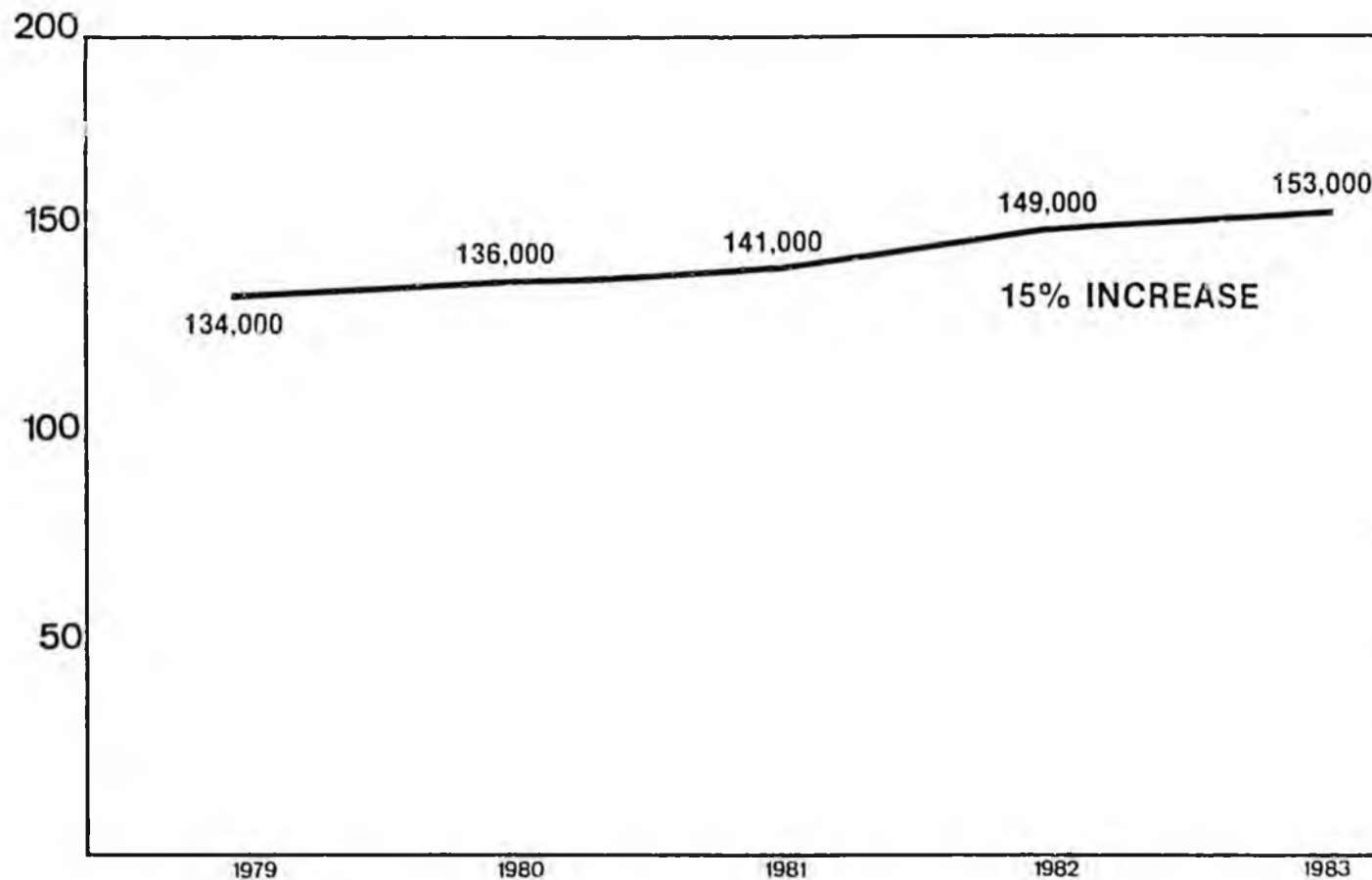
Despite the significant population increase juvenile crime as measured by arrests declined slightly. Chart 2 shows that juvenile arrests have remained relatively stable between 1979 and 1983, declining slightly - about 6%. In contrast adult arrests have shown a marked increase after 1980 and an overall increase during the five year period of about 13%. Juveniles arrests have declined despite population growth while increases in arrests of adults have essentially paralleled population growth.

Chart 3 illustrates another important measure of crime, the rate of arrest. The rate of juvenile arrests (arrests per 1000 persons) was relatively stable until 1982 when it declined sharply. This decline continued in 1983 resulting in an overall decline of 24% during the period 1979 - 1983. This decline follows a national trend of decreasing juvenile arrest rates. However, Alaska's juvenile arrest rate, 32.24 per 1000, is less than one half the most recently calculated national rate. (1) In contrast Alaska's adult arrest rate does not show a similar trend although the 1983 level was slightly (8%) below the 1979 high of 46.56 arrests per 1000 persons.

In summary, juvenile arrests in Alaska are declining despite significant population increases and the rate of juvenile arrest has declined substantially. Alaska's juvenile arrest rate is far below the national juvenile rate and 25% lower than Alaska's adult arrest rate.

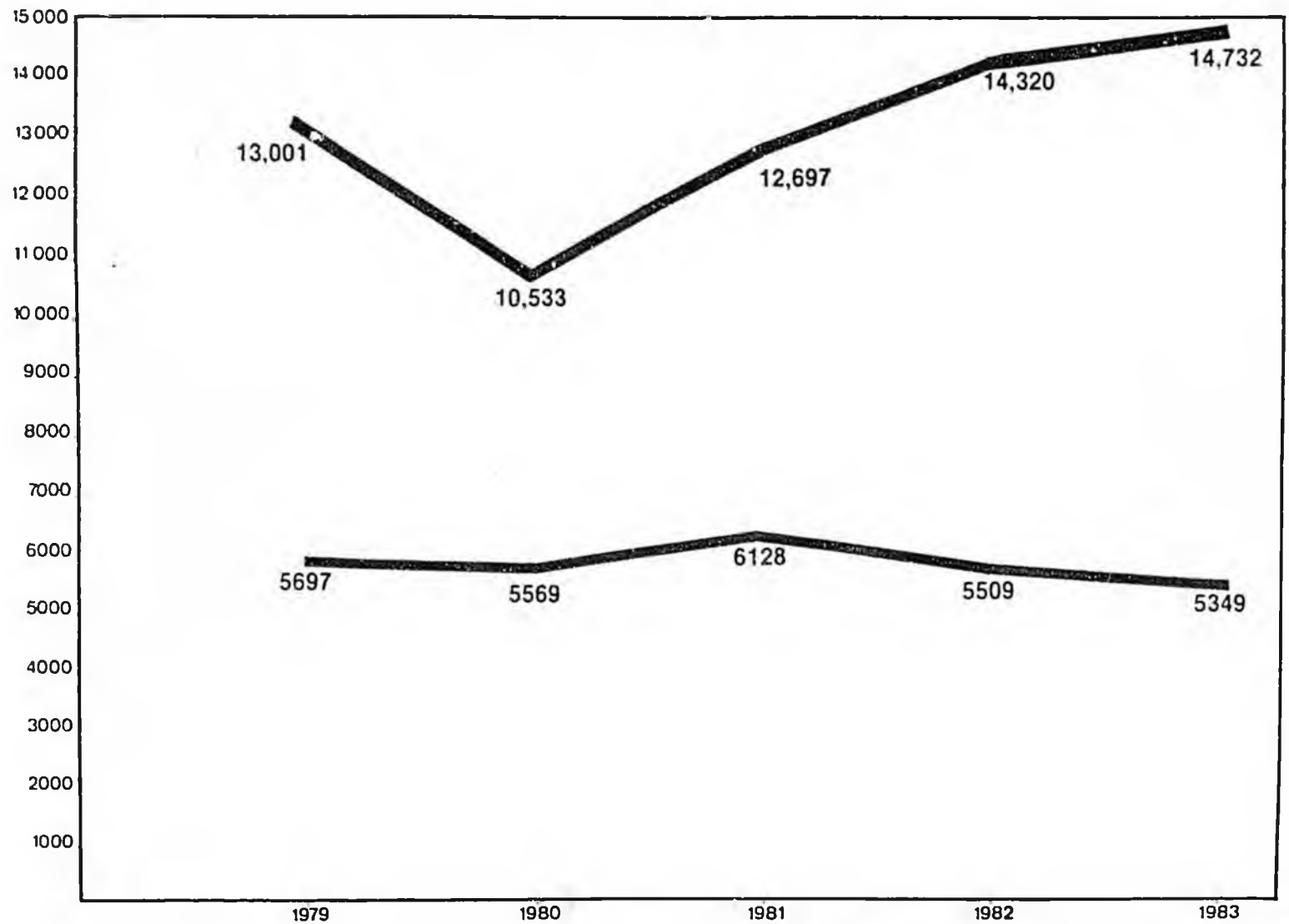
(1) Report to the Nation on Crime and Justice: The Data, U.S. Department of Justice, Bureau of Justice Statistics, 1983.

# ALASKA YOUTH POPULATION (0 to 18 Years)



Source Data *Alaska Population Overview — 1981*,  
Alaska Department of Labor,  
U S Bureau of Census, 1980

# ARRESTS IN ALASKA

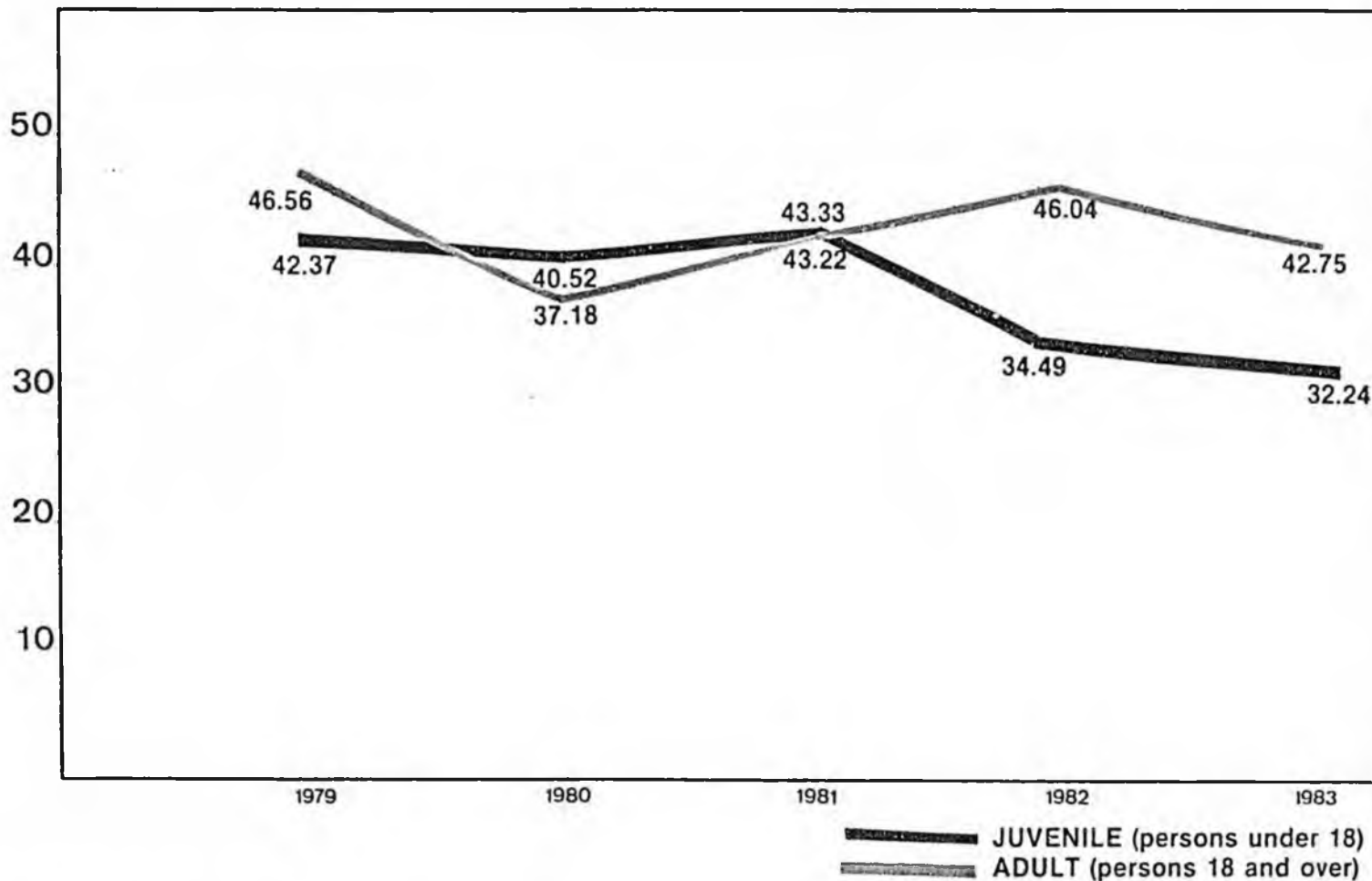


Source: *Crime in Alaska 1979-1983*, Department of Law  
Department of Public Safety

— JUVENILE (persons under 18)  
— ADULT (persons 18 and over)

# ALASKA ARREST RATES

ARRESTS  
PER 1000  
PERSONS



Data Sources: Arrest data, *Crime in Alaska — 1983*, Alaska Department of Public Safety  
*Alaska Population Overview — 1982*, Alaska Department of Labor

## Profile of Juvenile Crime

Another popularly accepted belief about juvenile crime is that it is characterized by a high level of violence - that juveniles commit a disproportionate number of violent crimes and that juvenile crimes often involve gratuitous violence.

Insight into the nature of juvenile crime in Alaska can be gained from studying the types and proportions of crimes for which juveniles are arrested and comparing these with adult arrests. Chart 4 depicts this information for 1983. Data for 1983 is shown since it is the most recent data available and because the pattern of arrests is essentially the same for the entire five year period.

Most importantly the data shows that arrests for serious violent crimes (homicide, rape, robbery, aggravated assault) are only a tiny proportion (2%) of juvenile arrests and only a small (10%) proportion of the total arrests for these crimes.

The data shows that juvenile crime in Alaska is primarily property crime (thefts, from shoplifting to burglary) which account for about one-half (49%) of all juvenile arrests. The other main categories of juvenile crime are liquor law violations such as minor consuming (21%), and status offenses such as runaway and curfew violations (8%). The smallest number and percentage of juvenile arrests (116 or 2% of total) is for serious violent crimes, - homicide, rape, robbery and aggravated assault. Other crimes against persons, such as misdemeanor assaults, account for only 3% of juvenile arrests.

A comparison of juvenile and adult arrests shows that arrests for violent crimes and crimes against people comprise a significantly greater proportion of adult arrests and that adult arrests for violent crimes are ten times greater than the number of juvenile arrests.

## Interpretation

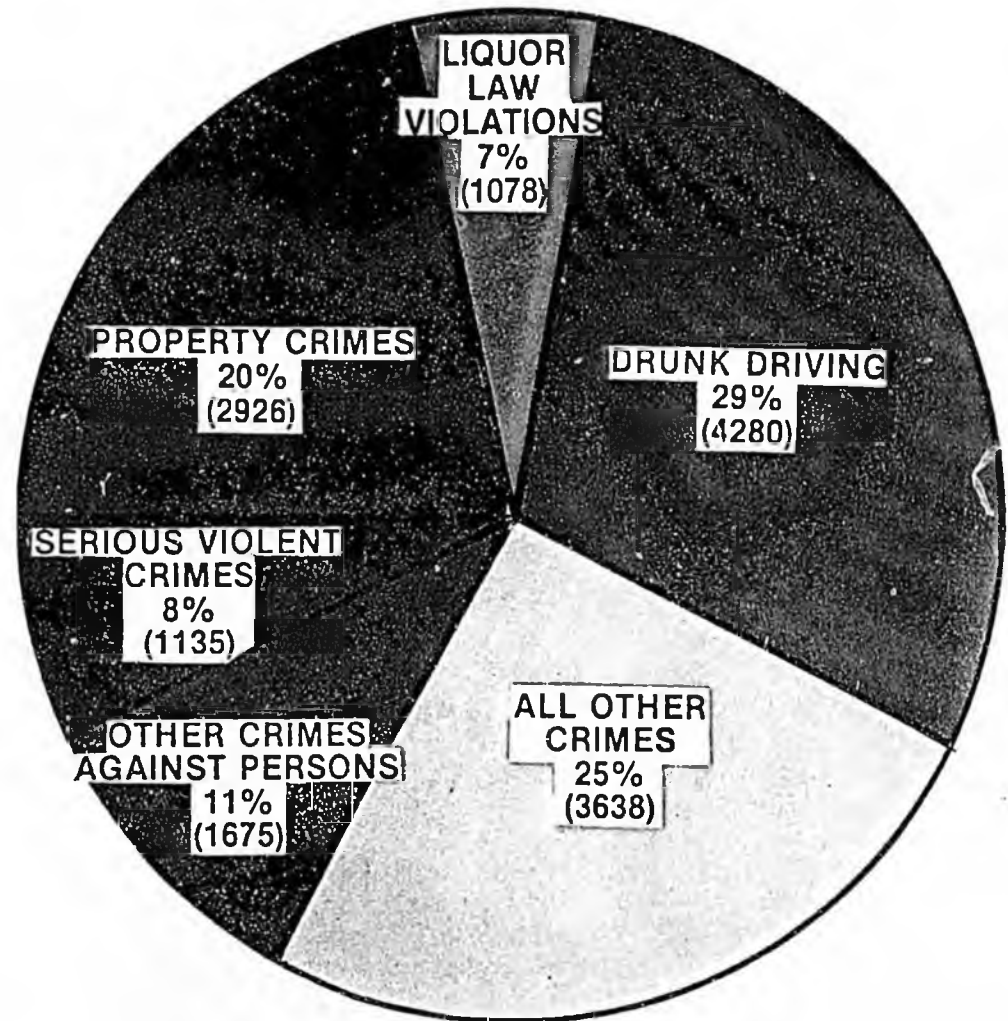
Although juvenile crime at any level is a serious social concern, national studies indicate that the magnitude of the problem is exaggerated in public perception. Studies and data also show that the public perception of a drastic and disproportionate increase in violent and serious crime by juveniles is erroneous. In fact, the National Crime Survey showed that during a recent five year period both the number and rate of personal victimizations by juveniles decreased while victimizations committed by adults increased. The same study showed that personal victimizations committed by juveniles were less serious in terms of weapons use, rate of injury, and financial loss, than similar crimes committed by adults. (2)

A study by Dr. Marvin Wolfgang of the University of Pennsylvania, which tracked all juveniles born in Philadelphia in 1958 is equally important in understanding violent juvenile crime. The Wolfgang study found that a small number of

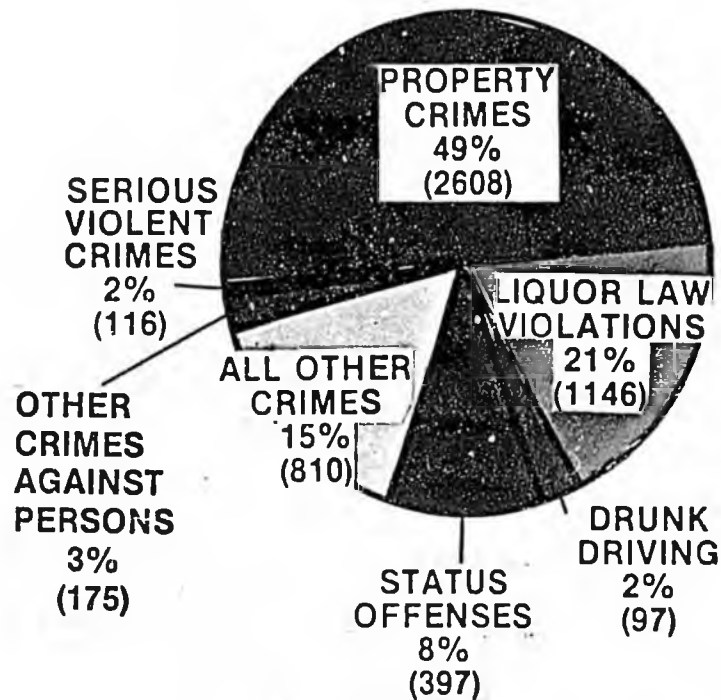
(2) Analysis of National Crime Victimization Survey Data To Study Serious Delinquent Behavior, U.S. Department of Justice, Criminal Justice Research Center, M.J. Hindelang and M.J. McDermott, 1981.

# PROFILE OF ARRESTS CY 1983

ADULT  
(14,732)



JUVENILE  
(5,349)



Data Source: Crime in Alaska — 1983  
Alaska Department of Public Safety

repeat offenders commits a disproportionate number, perhaps the majority, of violent crimes committed by juveniles. This study concluded that there is a need to be selective in identifying and dealing differently with that small number of juveniles while reacting in a far less severe manner to the majority of young offenders.

While there have been no such comprehensive studies specific to Alaska a comparison of Alaska and national data indicates that the findings of national studies probably hold true here. (3)

- o Alaskan juveniles comprise 32.5% of the state population while nationally juveniles make up 27.5% of the population.
- o Juvenile arrests comprise 26.6% of total arrests in Alaska compared to 19.8% nationally. This difference is approximately equal to the difference in the proportions of juveniles to the total population.
- o Only 2% of juvenile arrests in Alaska are for serious, violent crimes (murder, rape, robbery, aggravated assault) compared to 4.2% nationally.
- o Juvenile arrests for serious violent crimes in Alaska are 10% of the total number of arrests for these crimes compared to 18.5% nationally.
- o The proportion of juvenile arrests for violent crimes in Alaska has remained at the 10% level since 1979.
- o Nearly half (49%) of Alaska's juvenile arrests are for property crimes compared to 42% nationally. Two thirds of these arrests in Alaska are for thefts.
- o Status offenses (curfew, runaway, liquor law violations) account for nearly one third (29%) of Alaska juvenile arrests compared to 18% nationally.

In general terms, then, Alaska's juvenile crime patterns parallel national trends, with some important differences. While total juvenile crime and rate of juvenile crime are declining both nationally and in Alaska, these declines are accompanied nationally by a decline in the juvenile population while Alaska's juvenile population is increasing.

Perhaps the most important difference is in the level of violent crime. Violent crime by juveniles in Alaska is a much smaller proportion of both total juvenile crime and total violent crime than is the case nationally (about half the national proportions), and a minute proportion (one-half of 1%) of all crime in the state. Juvenile property crime is a higher proportion of total property crime in Alaska than is true nationally (47% vs 37%) and is the most prevalent type of juvenile crime. Juvenile crime in Alaska is largely (80%) property crime, liquor law violations, and status offenses. Juvenile crime is only about one-fourth (26.6%) of the total crime problem in the State compared to 20% nationally. The difference in these proportions is almost precisely the

(3) SOURCEBOOK OF CRIMINAL JUSTICE STATISTICS 1983, U.S. Department of Justice, Bureau of Justice Statistics.

same as the difference in the proportion of juveniles to the total state versus national population - 5%.

### JUVENILE JUSTICE SYSTEM IN ALASKA

Juvenile justice systems were established nationwide and in Alaska in recognition of significant differences in the characteristics and rehabilitative potential of adult and juvenile offenders and differences in the general types and seriousness of offenses committed by the two groups. The vast majority of juvenile crime is far less serious than adult crime and the likelihood of changing behavior of children is greater than the likelihood of rehabilitating adult offenders. In recognition of these differences the juvenile justice system has developed with a greater reliance on informal resolution, diversion, and intervention than is true in the adult criminal justice system. The emphasis of the juvenile system has been to employ the least intensive and least expensive interventions necessary to achieve the equally weighted goals of protection of the public and rehabilitation of the juvenile offender.

The juvenile justice system may be seen then as a screening process through which the less volatile and more readily rehabilitated youth are separated from those who present a danger to themselves and others. Assessments of the risk juvenile offenders present and of their rehabilitative needs are inherent in key decisions in the juvenile justice system and are of prime importance in the distillation process. The effectiveness of a juvenile justice system may be measured by its ability to accurately assess risk and need and provide services which successfully address each. The essence of evolution in juvenile justice is improvement in methods of assessing risk and need and providing more effective services.

### System Flow

Chart 5 illustrates in simplified form the flow of the juvenile justice system. The chart emphasizes key decision points and actions in the screening process. Because complete statistical information is not routinely collected, the chart illustrates estimated client flow during calendar year 1982 based on a sampling study by Wasserman and McNabb (4) (commissioned by the Division of Family and Youth Services).

Key decision points and actions illustrated are:

1. Decision to arrest - This is a decision of law enforcement based on evidence of a crime. The data shows that only about 3% of the total juvenile population is arrested even if multiple arrests are not considered.
2. Decision to detain or release to parent - Detention of juveniles on arrest is a decision made by police officers based on the officer's assessment of danger to the youth or others. As chart 5 illustrates, a substantial number of juvenile arrests (nearly half) result in secure detention. This occurs despite the fact that the vast majority of juvenile arrests are for

(4) Youth Services Research and Evaluation Report, P.Z. Wasserman and S.L. McNabb, 1983.

status or property offenses and most of those youths detained are eventually dealt with informally. It is clear that the rate of detention is unjustified by the types of offenses being committed and the level of danger presented by the youth. Certainly the national detention rate is far below the nearly 50% level found in Alaska. This high rate of detention has a significant impact on the population of juvenile detention facilities and locally operated municipal jails. It also causes a variety of problems including overcrowding in juvenile detention facilities, inefficient use of adult facilities, and detention of juveniles in adult facilities without statutorily required sight and sound separation from adults.

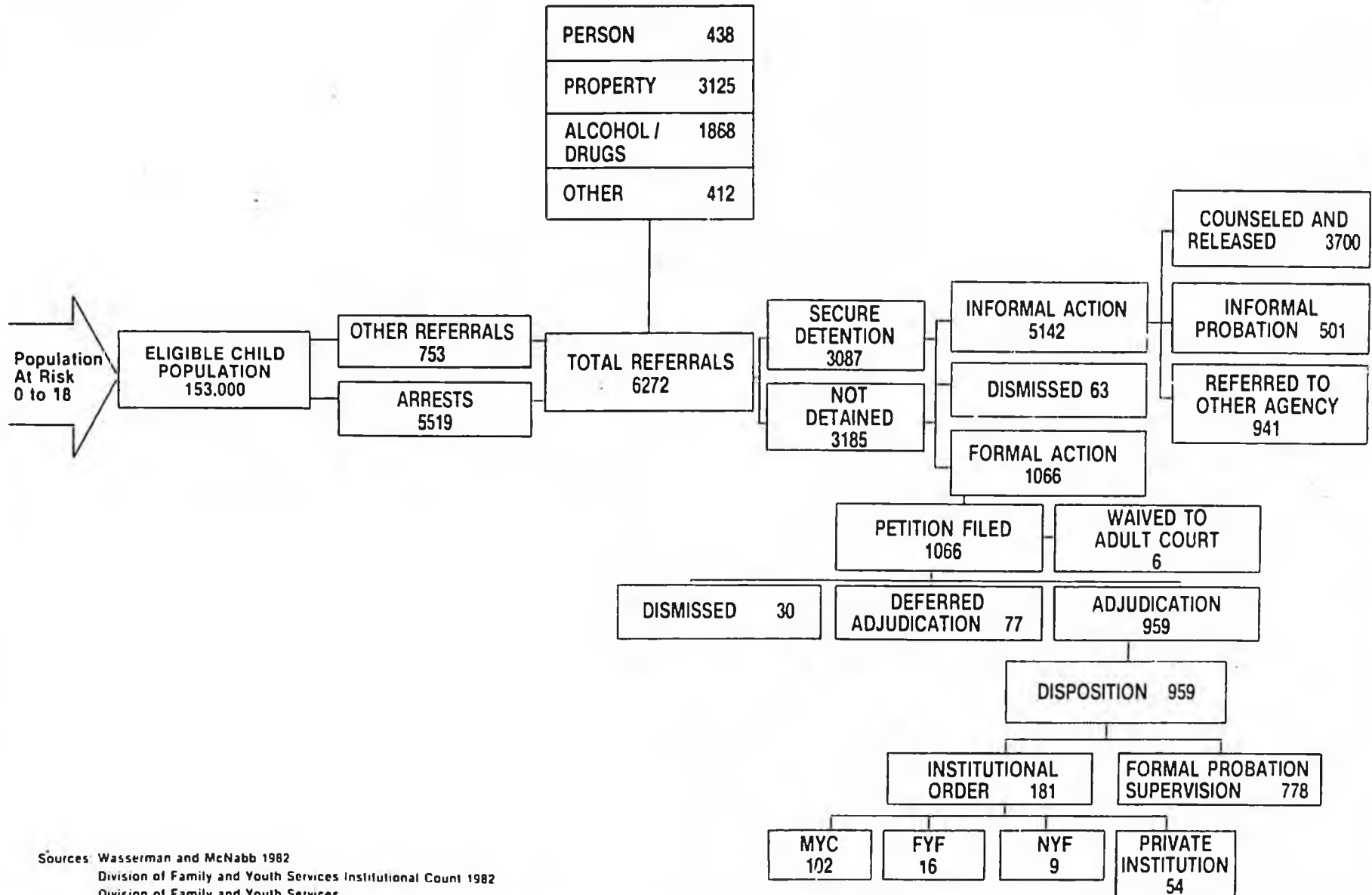
3. Decision to release from detention, dismiss, divert through informal action or initiate formal action - In general this is a decision of the DFYS intake officer, often in consultation with legal counsel. This decision is based on an assessment of (a) the offense, (b) the youth and the youth's past behavior, and (c) the likelihood that public protection and rehabilitation of the child can occur through informal action (e.g., restitution, community service, counseling, etc.) or that formal court action will be necessary to achieve these goals. Chart 5 shows and Chart 6 more graphically illustrates that the vast majority of juvenile offenders (first offenders and those who have committed less serious offenses) are diverted from the system and informal supervision is employed. Chart 6 indicates that an estimated 74% of juvenile offenders were diverted from the formal juvenile justice system in 1982. Eight percent required a higher level of intervention through informal probation supervision for a short period of time, up to six months. A very small number (1%) of cases were dismissed as unfounded or lacking sufficient evidence.
4. Formal action - Filing of formal delinquency petitions is the responsibility of the intake officer but may also be initiated by prosecutors. In a very small number of cases - those few juveniles who have committed offenses so serious and whose rehabilitative potential is so small that they can not be appropriately dealt with in the juvenile justice system - waiver of juvenile jurisdiction may be sought.

Formal petitions were filed in 17% or nearly 1,100 cases in 1982. The majority (90%) resulted in delinquency adjudications. Approximately 3% were dismissed before trial or were found insufficient to prove delinquency. Adjudication was deferred in about 7% of cases, generally conditioned upon satisfactory behavior under probation supervision. Waiver to adult jurisdiction occurred in 6 cases.

5. Disposition - After a finding of delinquency the court determines, within statutory guidelines, the general plan to be implemented to both protect the public and to rehabilitate the young offender. Chart 6 shows that the majority (72%) of formal actions resulted in formal probation supervision in the community. Approximately 181 cases (67%) resulted in orders requiring placement of youths in secure rehabilitative treatment facilities or structured private residential care facilities. The number of youth institutionalized is roughly one and one half times the number of

juveniles arrested for serious or violent crimes (181 institutionalizations versus 116 violent crime arrests) indicating that the most severe sanction and expensive treatment is reserved for those youth who present a danger to the community.

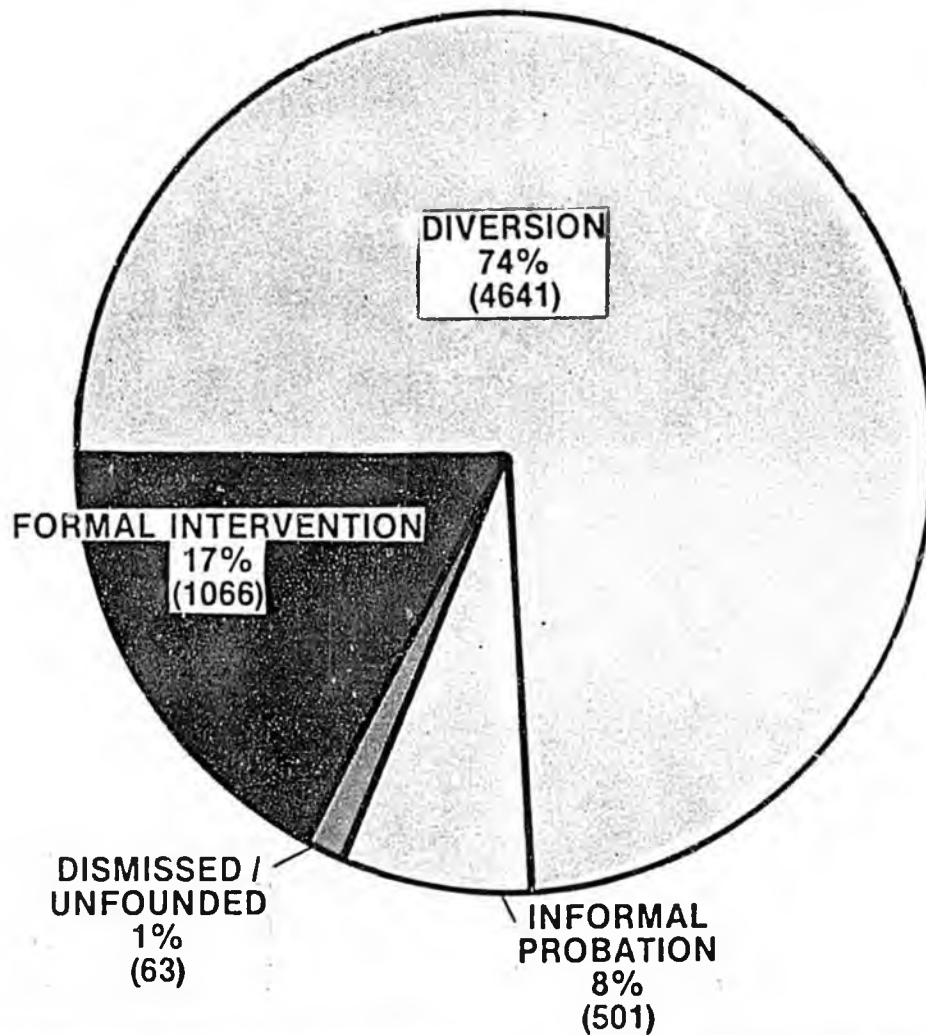
# JUVENILE JUSTICE SYSTEM CLIENT FLOW CY 1982



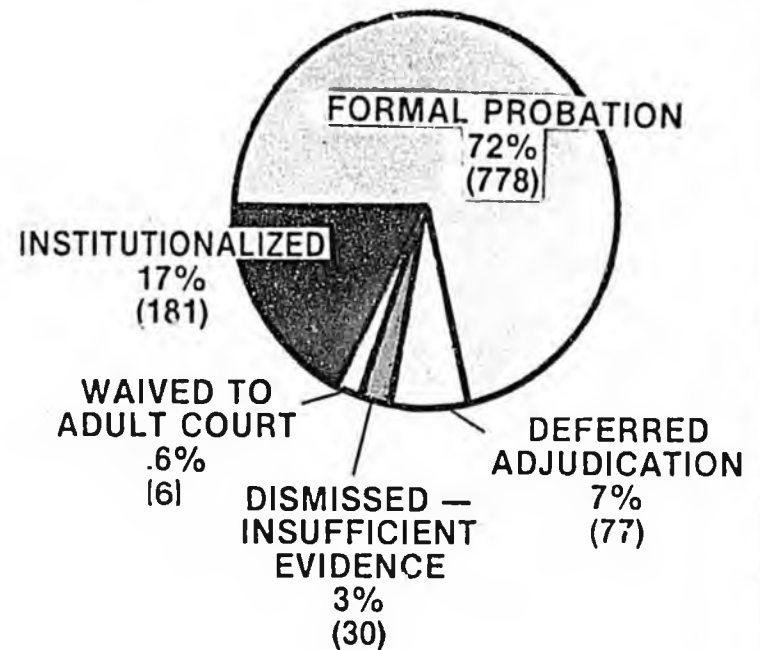
Sources: Wasserman and McNabb 1982  
 Division of Family and Youth Services Institutional Count 1982  
 Division of Family and Youth Services  
 Field Action Summaries 1982

# INTERVENTIONS EMPLOYED 1982

ARRESTED / REFERRED YOUTH  
6272



FORMAL INTERVENTIONS  
1066



## DHSS RESPONSE TO JUVENILE CRIME

### Perspective

Before December, 1980 responsibility for providing rehabilitation programs for juvenile offenders was assigned to the Division of Corrections within the Department of Health and Social Services. These programs were provided largely as an adjunct to adult correctional programs. In all areas of the state except Anchorage and Fairbanks probation officers were assigned both adult and juvenile cases. Only one facility existed for the detention and secure treatment of juveniles (McLaughlin Youth Center). Because of this structure juvenile programs were largely subordinated to adult programs. Responsibility for providing juvenile rehabilitation programs was transferred to the Division of Family and Youth Services in December, 1980; an action based on recommendations from several studies which indicated that increased efficiency and effectiveness could be expected from such a change. In December, 1984 full responsibility for performing the juvenile intake function for the superior court was administratively transferred to the Department of Health and Social Services. Previously this function had been split between the Alaska Court System and the Department of Health and Social Services. Court system employees performed the juvenile intake function in Anchorage, Fairbanks, Kenai and Palmer and DHSS juvenile probation officers performed the function in all other areas of the state.

### Growth in Demand for DHSS Services : Probation, Detention, Secure Treatment

Charts 7, 8 and 9 illustrate the significant increases in the demand for DHSS services to protect the community and to rehabilitate juvenile offenders.

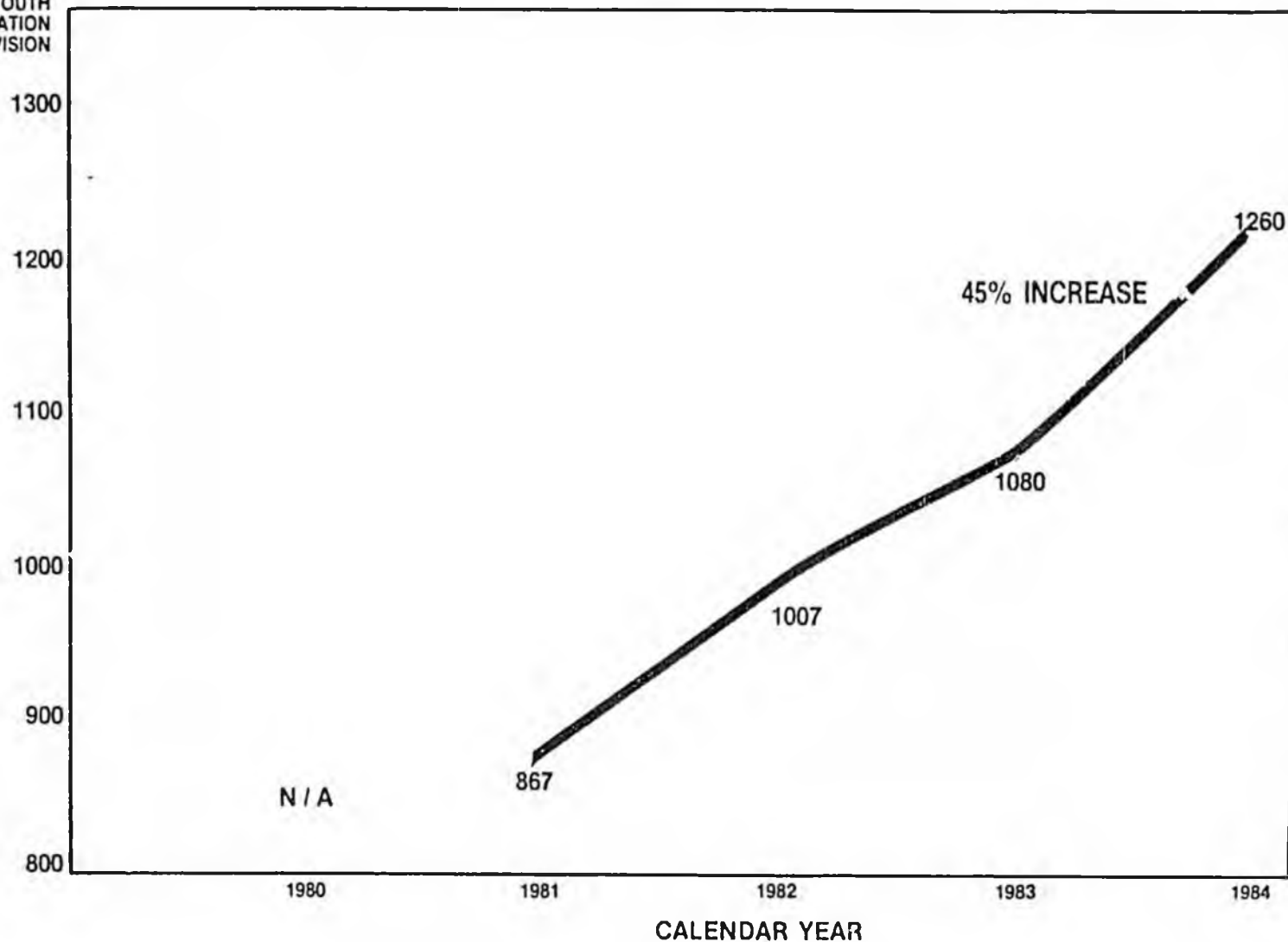
Probation: Chart 7 illustrates the average number of youth under probation supervision from 1981 through 1984. Youth under formal, court ordered supervision comprise 90% of these cases while youth under informal supervision as a diversion from formal justice system account for 10%. As is illustrated there was a 45% increase in the average number of youth under probation supervision during the four year period, rising from 867 in 1981 to 1260 in 1984.

Detention: Chart 8 illustrates the growth in the average number of youth detained in juvenile detention facilities since 1978. It also projects future growth and compares this with the actual and planned capacity of juvenile detention facilities.

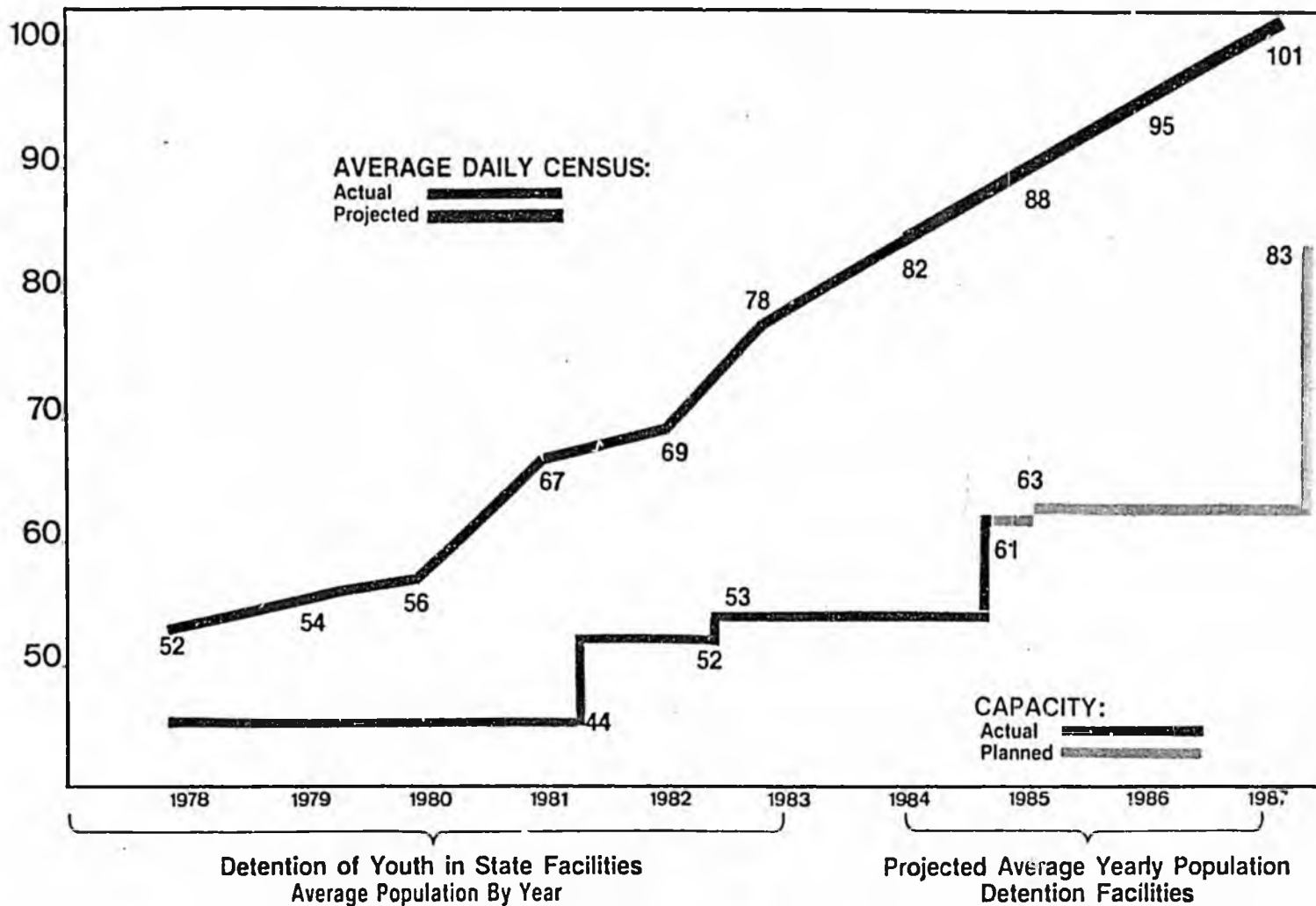
Between 1978 and 1984 there was a 58% increase in the average daily population of juvenile detention facilities. The average daily census was approximately 18% above actual capacity in 1978 and, despite growth in the capacity of juvenile detention facilities, presently exceeds actual capacity by approximately 40%. Juvenile detention facilities in Anchorage and Fairbanks are dangerously overcrowded at the present time and if the historical growth rate holds true to 1987 even the planned 30% increase in juvenile detention facility capacity will not meet the need and the detention facilities will continue to be seriously overcrowded.

# GROWTH IN PROBATION SERVICES

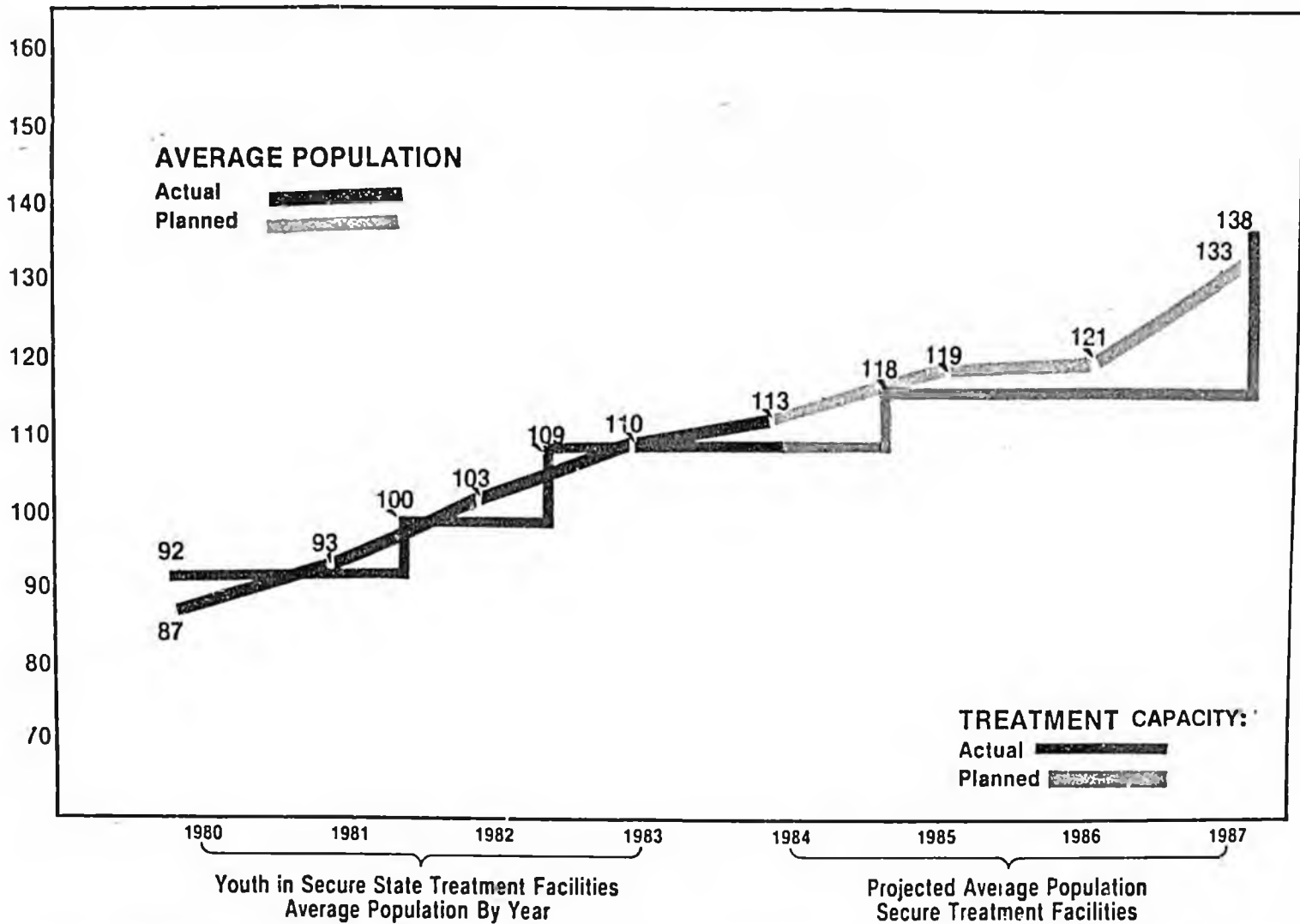
AVERAGE NUMBER  
OF YOUTH  
UNDER PROBATION  
SUPERVISION



# GROWTH IN DETENTION



# GROWTH IN SECURE TREATMENT



These figures do not include youth detained in municipally operated jail facilities around the state and do not, then, represent the full extent of the juvenile detention problem.

The significant growth in the population of juvenile detention facilities seems contradictory to what might be expected given the decrease in the number of juveniles being arrested. Obviously part of this increase may be explained by an increase in the detention capacity since an increase in the capacity, if filled, will lead to a higher daily population rate. However, the demand is far greater than increases in capacity. Possible explanations for this seeming contradiction are:

1. an over-utilization of detention upon arrest;
2. lack of immediate (24 hour) intake and diversion services result in the unnecessary detention of youth who do not truly present a danger to themselves or to the community (This was found to be true by a grand jury in the Fairbanks area and led to recommendations that DFYS assume greater intake authority in order to correct the problem.);
3. lack of sufficient secure treatment capacity which results in a backlog of adjudicated youth being held in detention pending placement in a secure treatment program.

Secure Treatment: Chart 9 illustrates the growth in secure treatment for juvenile offenders. The chart shows that the actual number of youth being treated in secure facilities is essentially the same as the capacity of those facilities. Projections show that this will continue to be true in the future. This does not provide a complete picture of the need for secure treatment because the population in secure treatment is administratively held at the rated capacity. Population is limited to maintain the effectiveness of the rehabilitation programs and preclude the development of a dangerous circumstance due to overcrowding. The number of youth in treatment at any given time is controlled through several important mechanisms:

1. an admission policy which requires the release of a youth who has completed the treatment program before admitting another youth;
2. decreases in the length of treatment which allows treatment of a greater number of youth without increases in facility capacity;
3. utilizing secure detention as an interim placement for youth who require secure treatment pending an opening in a secure treatment program;
4. placement of a strictly limited number of youth in secure facilities outside the state.

### Analysis

The dramatic growth in numbers of youth receiving probation, detention and secure treatment services seems unwarranted by the level and nature of juvenile

crime in Alaska. The number and rate of juvenile arrests shows a decrease and the seriousness of offenses committed by juveniles is relatively stable, yet there is an increasing number of juveniles under probation supervision, in detention, and in secure treatment. These seemingly contradictory sets of facts may be complementary instead. The following hypotheses may help explain some of the apparent anomalies in the data.

1. When rehabilitative services for juvenile offenders were part of an adult corrections agency, services for juveniles were subordinated to efforts to deal with adult criminals and many youths were allowed to "slip between the cracks" resulting in multiple offenses and arrests of the same youths before intervention occurred.
2. Reorganization of rehabilitative services for juvenile offenders within a child and family-focused agency resulted in increased attention to juvenile offenders and increased service levels.
3. Intervention in matters of juvenile delinquency is occurring earlier and higher levels of services are being provided.
4. Increased services and earlier intervention result in earlier identification of repeat offenders and greater use of the formal juvenile justice system to deal with these youth.
5. Earlier intervention, earlier identification of repeat or serious offenders, and higher service levels result in reductions in repeat offenses and arrests, and a lower overall rate of arrest.

## YOUTH SERVICES OUTLOOK : ISSUES AND STRATEGIES

The juvenile system has evolved rapidly since separation of juvenile rehabilitation programs from the adult correctional system four years ago. This evolution has included long delayed growth, increased sophistication, and change in emphasis. However a number of critical issues and problems remain and these must be addressed immediately or in the near future. The choices made in addressing these issues and problems will determine the structure of correctional services for youth and the allocation of resources within that structure for many years.

In general terms the broad problem being faced is that of protecting the public through rehabilitation and control of young offenders when the population of youth is increasing and resources are limited. Decisions made will determine whether Alaska develops a highly centralized approach relying heavily on long term institutional placements or adopts a regionalized approach relying more on prevention, early intervention, and community based treatment.

### Issues

Specific system problems to be addressed include:

1. a need for detention and secure treatment of juveniles which exceeds present capacities and will exceed planned expanded capacities;
2. a growing need for detention and secure treatment outside the major urban areas.
3. a need for alternative services and approaches in order to limit growth in expensive detention and secure treatment;
4. an increased need for probation and other community-based services.
5. a need for systematic prioritization of services based on risk and need of youth and available resources; and
6. a need for information on juvenile offenders sufficient to allow analysis of trends, evaluation of program effectiveness, short term plan adjustments, and long term planning.

### DFYS Strategy

The Division of Family and Youth Services has developed a balanced strategy for achieving its mandate to protect the public and rehabilitate juvenile offenders, while addressing current system problems. This strategy focuses on reducing deficits in certain critical services, limiting future need for expansion in institutional services, and containing costs through increased program efficiency and effectiveness. The strategy has five major initiatives which are:

1. Increasing secure detention and treatment capacity;

2. Increasing emphasis on prevention, early intervention, and community based services;
3. Regionalization of services;
4. Development of systematic case management system;
5. Development of a comprehensive management information system.

#### Initiative Number 1 : Increase in Detention and Secure Treatment

Chart 10 illustrates detention and secure treatment capacity of state operated juvenile facilities as they presently exist and as planned through FY 86. With additions planned through FY 86, detention capacity will increase by 46%, treatment capacity will increase 41%, and capacity for closed treatment (treatment for the most difficult and dangerous of juvenile offenders) will increase by 100%. The total capital cost of these increases will be approximately \$9.9 million. Additional operating costs are estimated at approximately \$4.2 million per year.

Even with these unavoidable additions to detention and treatment capacity, projections show that the demand for these services will meet or exceed the expanded capacity (charts 8 and 9). And, while development of increased detention and treatment capacities are necessary, charts 10 and 11 illustrate that these are expensive services. As chart 11 shows the true expense cannot be measured simply in terms of the initial capital costs. Construction costs of a 20 bed facility (a 20 bed facility is the minimum size for cost efficiency) comprise only 10% of the total life cycle cost of the facility. Operating costs of a facility account for 90% of total costs. Thus, even if all other factors were disregarded, costs alone would require that use of detention and secure treatment be highly selective.

#### Initiative Number 2 : Increased Emphasis on Community Based Services

To avoid unending increases in detention and secure treatment DFYS proposes to increase community-based rehabilitative efforts for juvenile offenders. These services include prevention and diversion services as well as probation supervision and alternatives such as foster care.

An initial step in increasing emphasis on community-based services, assumption of statewide control over the juvenile court intake function, was achieved on December 3, 1984. Implementation of uniform statewide policies for juvenile intake and the availability of intake officers on a 24 hour basis in state operated detention facilities will allow better and quicker screening to reduce unnecessary detention of youth who do not pose a danger to the public. It will also allow earlier and more effective intervention and diversion services following the initial arrest of juveniles. Funding of prevention and diversion programs through grants is an important part of increasing reliance on community-based services. A model program providing community service as a diversion alternative has recently been expanded to include restitution collection and to serve the most populated areas in the state.

# DIVISION OF FAMILY AND YOUTH SERVICES

## Secure Youth Facilities

	EXISTING CAPACITY FY 84					PLANNED ADDITIONS TO CAPACITY AND COSTS FY86					NET GAIN	
	DETENTION	TREATMENT	CLOSED TREATMENT	TOTAL BEDS	FY84 OPERATING COSTS	DETENTION	TREATMENT	CLOSED TREATMENT	TOTAL BEDS	CAPITAL COSTS		ADDITIONAL PLANNED OPERATING COSTS
McLaughlin Youth Center	44	78	13	136	6425.	0	0	5	5	800.	300.	5
Fairbanks Youth Facility	8	12		20	1520.	12	0	8	20	3250.	900.	20
Nome	1	9		10	936.	2	9	0	11	900.	700.	11
Bethel	0	0		0	0	8	12	0	20	3400.	1480.	20
Juneau	4	0		4	*	4	20	0	24	1500.	850.	24
<b>TOTALS</b>	<b>57</b>	<b>99</b>	<b>13</b>	<b>174</b>	<b>8881.</b>	<b>26</b>	<b>41</b>	<b>13</b>	<b>80</b>	<b>9850.</b>	<b>4230.</b>	<b>80</b>

Sources: Division of Family and Youth Services, Capital Budget, FY85  
 Department of Health and Social Services, Capital Plan, FY85  
 Division of Family and Youth Services, Budget FY84

\*Information not comparable operated as facility for both adult prisoners and juveniles in FY84

# TYPICAL YOUTH FACILITY COSTS

## 20 Beds

### CONSTRUCTION

Cost per bed 170,000

Cost per facility 3,400,000

### ANNUAL OPERATING

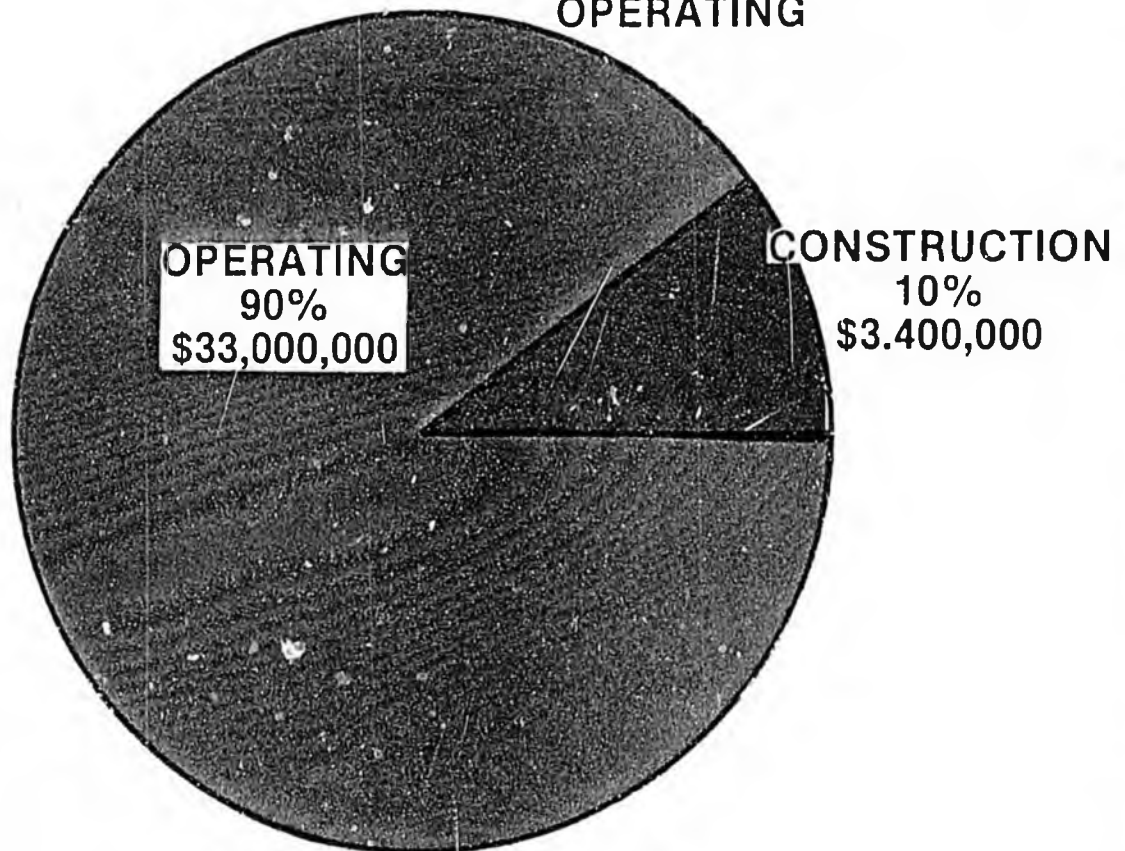
Staff cost 1,160,000

Food cost 72,000

Maintenance 60,000

Utilities 43,900

TOTAL ANNUAL OPERATING 1,335,900



Life Cycle Cost Comparison  
20 Year Life Expectancy