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1989 Judicial Conference: Juveniles, Justice and the Courts

REPORT OF THE COMMITTEE ON DELINQUENCY DECISION MAKING



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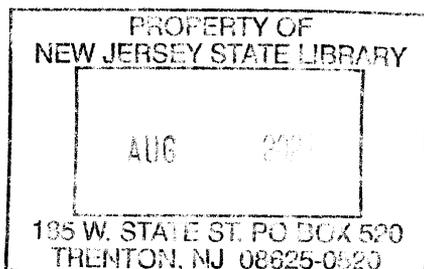
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I. Introduction

The Family Court does more than simply adjudicate delinquents. It also tries to ensure that youths posing risks are given those opportunities that will enable them to develop into responsible and resourceful citizens. In this regard, the Family Court Judge has to make numerous decisions about juvenile delinquency cases ranging from detention to disposition. These decisions are controlled by factors specified in the Code of Juvenile Justice and Court Rules. However, decisions are greatly influenced by external factors, including the availability of alternatives supported by services and programs. Additionally, no decision can be better than the information on which it is based.

The Committee on Delinquency Decision Making has taken on the task of reviewing all of the steps involved in processing a delinquency case from the filing of a complaint through screening for diversion, adjudication and disposition. In addition, as a necessary adjunct to this task, the Committee has reviewed issues involving procedures prior to filing complaints and after disposition of a case.

The extent of this task required the creation of five subcommittees with many additional members. The five subcommittees are:

- Diversion
- Detention and Alternatives
- Adjudication
- Role of Counsel
- Dispositions

These five subcommittees contain members from various public and private organizations across the state who have generously volunteered their efforts to produce comprehensive subcommittee reports. Each subcommittee provided an extensive report for its subject area, describing the current status in that area, identifying existing problems and outlining specific recommendations and standards for its subject area. The subcommittee reports have been edited by the Delinquency Decision Making Committee into this single, unified report. Duplicative sections have been deleted, and some additional material has been added or rewritten to create a cohesive report. In some instances it was impossible to make the organizational format of different sections completely consistent and still fairly reflect a subcommittee's work. As a result there are some inconsistencies in format in this report, particularly in the sections containing the recommendations and standards developed by the subcommittees.

In reviewing the recommendations and standards submitted by the five subcommittees the Delinquency Decision Making Committee decided that it would be fairer to indicate as to each item whether the Committee approved of or opposed the recommendation rather than to simply eliminate recommendations it disagreed with. Where there was a significant split on the Delinquency Decision Making Committee on

a particular item that has been indicated. Some minor changes were made to the recommendations and standards submitted by the subcommittees without indicating those changes in this report.

The Delinquency Decision Making Committee would like to thank its many subcommittee members whose dedicated service made this report possible. The Committee would also like to thank the Juvenile Delinquency Commission whose extensive research in this field has provided an invaluable resource for this Committee.

II. Historical Perspective

The New Jersey Code of Juvenile Justice went into effect on December 31, 1983. This Code replaced a revised Code that was enacted less than ten years earlier. A number of perceived problems with the juvenile justice system were referred to as indicating the need for reform. Among the perceived problems were that the system was overburdened, minor offenses and status offenses could be more effectively handled with less court involvement, the system was seen as secretive, the system did not seem to deal effectively with serious offenders, and the effect of family related problems on delinquency was ignored.¹

The Senate Judiciary Committee Statement to the New Jersey Code of Juvenile Justice described the original bill as follows:

This bill recognizes that the public welfare and the best interests of juveniles can be served most effectively through an approach which provides for harsher penalties for juveniles who are repetitive offenders, while broadening family responsibility and the use of alternative dispositions for juveniles committing less serious offenses.

The statement of purposes included in the New Jersey Code of Juvenile Justice is a more specific guide to purposes and intent of the Code.

This act shall be construed so as to effectuate the following purposes:

- a. To preserve the unity of the family whenever possible and to provide for the care, protection, and wholesome mental and physical development of juveniles coming within the provisions of this act;
- b. Consistent with the protection of the public interest, to remove from children committing delinquent acts certain statutory consequences of criminal behavior, and to substitute therefor an adequate program of supervision, care and rehabilitation;
- c. To separate juveniles from the family environment only when necessary for their health safety or welfare or in the interests of public safety;
- d. To secure for each child coming under the jurisdiction of the court such care, guidance and control, preferably in his own home, as will conduce to the child's welfare and the best interests of the State; and when such child is removed from his own family, to secure for him custody, care and discipline as nearly as possible equivalent to that which should have been given by his parents;
- e. To insure that children under the jurisdiction of the court are wards of

¹Juvenile Delinquency Disposition Commission, The Impact of the New Jersey Code of Juvenile Justice, (September 1986) pp. 13-18.

the State, subject to the discipline and entitled to the protection of the State, which may intervene to safeguard them from neglect or injury and to enforce the legal obligations due to them and from them. N.J.S.A. 2A:4A-21.

On the same date, a constitutional amendment and enabling statutes went into effect creating a Family Court that would unify the handling of all family related matters. While the creation of a Family Court was not solely in response to juvenile delinquency issues, it was intended that by unifying delinquency, divorce, custody and support and other family related cases in one court judges would be able to deal with all of a family's problems. "Theoretically, it enhances the court's ability to deal with delinquency in the context of the family by extending the court's jurisdiction beyond the juvenile to include parents, guardians or family members found to be contributing to delinquency or a juvenile-family crisis."²

A. DIVERSION

The practice of diverting minor offenses and offenders from the Juvenile Justice System has been a long standing goal of courts, police and policy makers.³ Traditionally, diversion has served to avoid the stigmatizing effect of labeling juveniles as "delinquents". The current Code of Juvenile Justice was designed to offer "more focus" and provide more direction for these efforts.

In this regard, the legislation codified practices and procedures for Court Intake and diversion in an attempt to structure a more efficient and responsive Intake system. The Juvenile Justice Task Force Advisory Committee on "Pre-Trial Practices" believed that a standardized and more streamlined diversionary process for minor offenders would provide the court with more time to concentrate on violent serious offenders who require more highly structured treatment programs.⁴

The Code provided for the establishment of a Court Intake Service in each county to be responsible for screening juvenile delinquency complaints and juvenile-family crisis referrals (N.J.S.A. 2A:4A-70). Intake staff are responsible for reviewing every delinquency complaint and making recommendations as to whether the complaint should be dismissed, diverted or referred for court action. Where a delinquency complaint alleges an offense which if committed by an adult would be a crime of the first, second, third or fourth

²Juvenile Delinquency Disposition Commission, The Impact of the New Jersey Code of Juvenile Justice, (September 1986), p. 15.

³The concept of Juvenile Conference Committees in New Jersey dates back to 1948. The need to establish an informal means to deal with minor offenders was recognized in 1952 by the late Chief Justice Arthur T. Vanderbilt. The Supreme Court subsequently authorized the appointment of Juvenile Conference Committee in municipalities throughout the State. Intake Diversion has been employed since the development and implementation of Juvenile and Domestic Relations Court Intake Services in the early 1970's.

⁴New Jersey Assembly Judiciary, Law, Public Safety and Defense Committee, Final Report of the Juvenile Justice Task Force Advisory Committee On "Pre-Trial Practices", (November 1980), p. 2.

degree or a repetitive disorderly persons offense, Intake staff must refer the complaint to court, unless the prosecutor consents to diversion. Further, Intake staff are required to consider certain factors in determining whether to recommend diversion (N.J.S.A. 2A:4A-71).

Complaints may be diverted to Juvenile Conference Committees (JCC) (N.J.S.A. 2A:4A-75) or Intake Services Conferences (ISC) (N.J.S.A. 2A:4A-74).⁵ The Code's primary focus with these two mechanisms is not on forcing an acknowledgement of guilt but in helping the juvenile and family prevent more serious future misconduct. JCC's function to set limits upon the actions of juveniles appearing before it by expressing community disapproval of the behavior with which it deals. In addition to diverting complaints to JCC's or ISC's, the Code provides that the Court may dispose of a minor delinquency complaint, alleging a disorderly persons or petty disorderly persons offense, as a juvenile-family crisis, when it is apparent that such a crisis exists. (N.J.S.A. 2A:4A-73).

Perhaps the most significant element of the current Code of Juvenile Justice was the elimination of the Juvenile In Need of Supervision (JINS) offense category which encompassed such status offenses as truancy, incorrigibility and running away from home. In its stead, the Code established a much broader area of jurisdiction to deal with serious juvenile and family problems (N.J.S.A. 2A:4A-22(g)). In so doing, the Code required that each county establish one or more 24-hour on-call Juvenile-Family Crisis Intervention Units (hereinafter referred to as CIU) as "... a mechanism which will provide troubled juveniles and their families a non-coercive opportunity to resolve conflicts and receive needed services".⁶

The creation of Juvenile Family Crisis Intervention Units resulted from the recognition that much juvenile misconduct stems from familial conflicts. Therefore, CIU's were structured to treat juvenile problems within the context of the family. The goal of these units is to stabilize the immediate crisis existing in a family unit by offering short term counseling services and making referrals to appropriate agencies. If a crisis continues despite the best efforts of a CIU and the exhaustion of available community services, the matter may be referred to court through the filing of a petition (N.J.S.A. 2A:4A-83). A major purpose of the units is to use early intervention to divert cases that would otherwise consume court time and resources.

Prior to the effective date of the Code, CIU's were established in eight counties. Some of the early court related family counseling initiatives undertaken by counties were started as grant funded programs.

The Code did not change the practice of police "station house adjustments" but whether it codified such diversion as "appropriate" is a matter of debate among Code interpreters.

At the time it was enacted, the Code was perceived by many as an attempt to

⁵Under the former Code, Intake Services Conferences were known as Pre-Judicial Conferences.

⁶New Jersey Senate Judiciary Committee, Statement to Assembly Bill No.644, (February 1982), p.1.

"get tough" with juvenile offenders while others viewed the law quite differently. A number of impact predictions were made regarding the Code. Predictions related to diversion included an increase in uniformity in decision making, an increase in uniformity in case processing and a decrease in the court's workload.⁷

B. DETENTION

On December 31, 1983 the New Jersey Code of Juvenile Justice went into effect. Prior to the Code of Juvenile Justice N.J.S.A. 2A:4-56 provided only two criteria for detention: securing the juvenile's presence at the next hearing and protecting the community where the physical safety persons or property of the community would be seriously threatened if the juvenile were not detained. The more detailed detention standards included in the current statute (N.J.S.A. 2A:4A-34) were intended to narrow discretion in the placing of juveniles in detention. In its findings The Juvenile Justice Task Force Advisory Committee on "Alternative Dispositions/Community-Based Programs" noted:

- Too many children are placed in detention without a legal reason, for minor offenses, or because there is no adult custodian.
- Youngsters remain in detention on a post-dispositional basis.
- Delinquent youngsters who could be placed in non-secure facilities are being placed in detention.

It was the belief of the Committee that tighter standards for placement will reduce annual admissions to these facilities without endangering the safety of the community.⁸

Unfortunately, that belief was overly optimistic. This subcommittee has found that, instead of having decreased since the enactment of the New Jersey Code of Juvenile Justice, the average daily population of juveniles in detention has increased 34% from 462 in 1983 to 620 in 1988. We cannot conclude that the reforms enacted led to this increase; it is possible that the increase in detention center population would have been greater without them. But it is disturbing that five years after the effective date of the Code this subcommittee has found that the problems that the drafters of the New Jersey Code of Juvenile Justice hoped to alleviate are increasing rather than decreasing in severity.

⁷Juvenile Delinquency Disposition Commission, The Impact of the New Jersey Code of Juvenile Justice - First Annual Report of the Juvenile Delinquency Disposition Commission, (September, 1986), p.17.

⁸Final Report of the Juvenile Justice Task Force Advisory Committee on "Alternative Dispositions/Community-Based Programs" To Assemblyman Martin A. Herman, Chairman and Members of the Assembly Judiciary Law, Public Safety and Defense Committee, (January 1981), p. 11.

C. ADJUDICATION

Changes in the current juvenile code may be viewed as an attempt to deal more rigidly with juvenile delinquency. A classic example of this more rigid approach is reflected in the more open standard for waiver to adult court in the new code. Each person, whether judge, prosecutor or public defender, working in the juvenile court system, brings with himself or herself a system of beliefs with respect to a position of parens patriae treatment or "criminal court" treatment of each child appearing.

This attitudinal pendulum swing must affect the decision maker at each stage of adjudication. A desire to help a desperate child toward reform or placement might easily affect a trial with respect to the finding of guilt if the judge feels that such a finding will open potential placement or a safe alternative to the child's current living situation.

The New Jersey Code of Juvenile Justice requires that every juvenile charged with delinquency be afforded all rights guaranteed to criminal defendants by the United States Constitution and the New Jersey Constitution, with the exception of the right to indictment, the right to a trial by jury and the right to bail. The same provision of the Juvenile Code also guarantees that all defenses available to an adult charged with a crime, offense or violation, shall be available to a juvenile charged with delinquency. N.J.S.A. 2A:4A-40. Our Supreme Court has held that the Code is constitutional with respect to the provision that denies a right to a trial by jury in juvenile proceedings.

D. ROLE OF COUNSEL

Prior to the middle of the nineteenth century no serious attempt was made to distinguish between adults and children who were engaged in criminal activities. At common law there was a minimum age for criminal liability,⁹ but, once that age was passed, the full majesty of the law could be brought to bear on the offender.

The first attempt in the United States to distinguish child offenders came, interestingly, not from the courts, but from the penal system. In the middle of the nineteenth century the concept of the reformatory was developed as a special form of prison for adolescents and young adults, offering, at least in theory, individualized treatment plans and a progressive form of discipline, based on the indeterminate sentence. The assumption was that appropriate treatment would lead to the offender reentering society as a productive citizen. One of the essential elements of the reformatory movement was that due process was unnecessary and inappropriate because the goal of the reformatory was to reform and not to punish.

The first juvenile courts were developed as a response to the ideology of the reformatory movement. Although there is some debate over the question, it is generally conceded that the first juvenile court in the United States was created in 1899 in Illinois.

⁹Children below that age, which apparently varied from time to time, were deemed to lack the mental capacity for criminal action.

The founders of that court, and its immediate successors, took the view that it was a special tribunal designed to determine the status of "troublesome children." The court was to act in parens patriae, and to use its wide discretion to resolve the problems of the child. The child was not accused of a crime, but was to be offered guidance and assistance which would enable him or her to return to society as a contributing member.

In light of this view, it was deemed both unnecessary and inappropriate for a child to be provided with counsel in juvenile proceedings. An attorney for the child could only interfere with the reformation process and prevent the court from accomplishing its goals. Similarly there was no role for a prosecutor, as the issue with which the court was to deal was the needs of the child, and only incidentally his or her misconduct.

This view of the juvenile court continued to be espoused by the court's advocates, although the reality of the court changed radically. As modern penology began to focus on retributive justice and the states failed to provide the funding necessary to allow the courts to operate programs which would provide reformation of the kind sought by the juvenile court movement, the indeterminate sentence and the court itself became more and more of a means of controlling intractable youth rather than of reforming them. In addition, the authority of the juvenile court to deal with conduct that would not have been criminal if committed by an adult allowed the court to be even more intrusive into the lives of children than would have been permitted an adult court.

The coup de grace to this traditional view of the juvenile court was given by the United States Supreme Court in In re Gault.¹⁰ In the Gault case the court restated the point that it had made in the Kent case¹¹ that "the admonition to function in a 'parental' relationship is not an invitation to procedural arbitrariness."¹² Justice Fortas, speaking for the court, recognized that children were entitled to many of the procedural safeguards offered to adult offenders, most notably, the right to counsel in proceedings which "may result in commitment to an institution in which the juvenile's freedom is curtailed."¹³ From that time forward the appointment of defense counsel for juveniles, at least in cases where institutionalization is a possibility, has been mandatory.

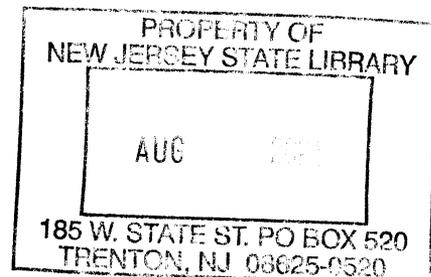
The effect of the grant of the right of counsel to the offender was to require the greater formalization of the juvenile court. If the defendant was to be represented by counsel, it was assumed that a similar right existed in the state and those states that had

¹⁰387 U.S. 1 (1967)

¹¹Kent v. United States, 383 U.S. 541 (1966)

¹²*Id.* at 555.

¹³Gault, *supra.* at 41.



not used prosecuting attorneys in the juvenile court began to add them.¹⁴

The mandate for the provision of counsel today in New Jersey is found in N.J.S.A. 2A:4A-38 and 39. Although counsel need not be provided the juvenile in a first detention hearing, if detention is continued following that hearing counsel must be provided the juvenile,¹⁵ and a second detention hearing scheduled within two court days at which the juvenile must be represented. In addition, under N.J.S.A. 2A:4A-39, the juvenile has the right to "be represented by counsel at every critical stage in the proceeding which, in the opinion of the court may result in the institutional commitment of the juvenile." That right may not be waived by the juvenile except in the presence of and after consultation with counsel and a waiver cannot be made by an incompetent juvenile although one can be made on his or her behalf by a guardian ad litem appointed to represent him or her.¹⁶

E. DISPOSITION

The disposition decision lies at the very heart of the juvenile justice process. This decision often shapes the juvenile's entire future. In selecting a dispositional alternative, a judge strives to employ the most appropriate mechanism to rehabilitate the juvenile and to deter future misconduct, while also being mindful of societal safety.

The creation of a Family Court and the enactment of a new Code of Juvenile Justice represented substantive changes in New Jersey's approach to juvenile misconduct and together provided a blueprint for juvenile justice in the state. A system of response was envisioned wherein community alternatives would be made available for less serious offenders and harsher penalties would be provided for serious or repetitive offenders.

To carry out this plan the Code authorized the use of a whole new range of juvenile delinquency dispositional options, a move that has been considered to be a major policy goal of the Code.¹⁷ However, no new programs or funding were provided to implement these additional options. Generally, the creation of new programs has been dependent on county initiative and funding. While some innovative programs have been established, budgetary constraints have unfortunately prevented full implementation of all of the dispositions authorized by the New Jersey Code of Juvenile Justice.

¹⁴It is interesting to note that in England the presence of defense counsel has not been seen as mandating that the prosecution also be represented by counsel and in many cases the prosecution in that country is represented by the police or a social service worker.

¹⁵N.J.S.A. 2A:4A-38(h)

¹⁶N.J.S.A. 2A:4A-39.

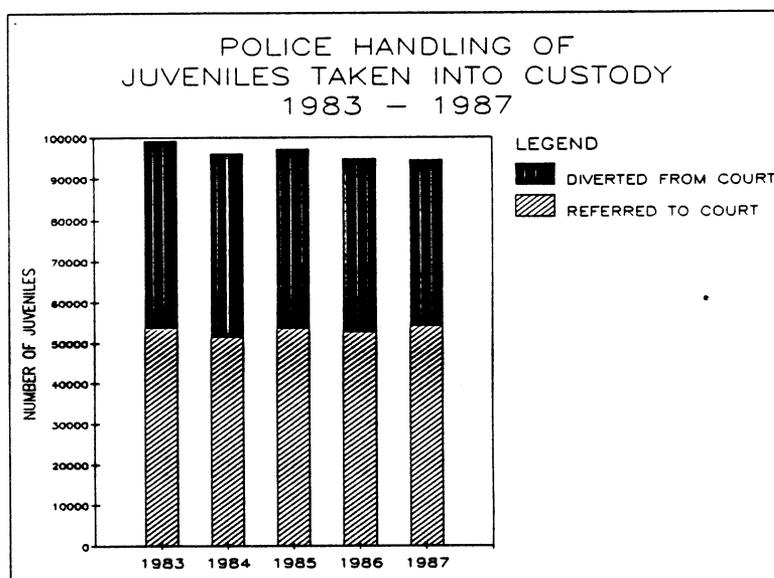
¹⁷Juvenile Delinquency Disposition Commission, The Impact of the New Jersey Code of Juvenile Justice, (September 1986), p. 13.

III. CURRENT STATUS

A. DIVERSION

Police Diversion

Juveniles are frequently diverted from the court system by local police departments. Police officers exercise broad discretion in determining how to handle juveniles, particularly those suspected of committing less serious offenses. These determinations result in two types of police or "pre-complaint" diversion; "street" or "pre-arrest" diversion where an officer observes or is aware of a juvenile's alleged misconduct/offense and decides not to take any formal action and "station house adjustment" where an officer takes a juvenile into custody and decides to handle the matter locally without filing a complaint. Currently, statewide guidelines governing police diversionary practices do not exist. The Diversion subcommittee recognized that the diversion decision is often inappropriately influenced by biases or extra-legal factors like family income, neighborhood, social status, race and community attitudes or mores. They noted, however, that there are legitimate factors which an officer should consider when dealing with juveniles. Such factors include the age of the juvenile, seriousness of the offense, prior contact with the police, an evaluation as to



whether a reprimand or a warning is appropriate or sufficient and an assessment as to whether there is appropriate/sufficient control over the juvenile by parents/guardians to seek treatment or counseling outside of the judicial system.

In the absence of uniform policies, action by police officers, particularly at the station house level, may take a variety of forms and often differs among and even within municipalities. In some departments the nature of the contact may be informal. It may consist of giving the juvenile a verbal warning, contacting parents, or doing both. Other departments employ more sophisticated methods which may involve the signing of a contract that requires the juvenile to meet specified conditions such as making restitution, performing community service or participating in appropriate referral services.

There is little or no statistical information available about youths suspected of committing offenses who are not taken into custody. For juveniles who are taken into

custody, data is available through state Uniform Crime Reports (UCR). These figures reflect that a consistently high percentage of all juveniles taken into custody by the police between 1983 and 1987 were not referred to court.¹⁸ This information also shows significant differences across counties in the rate of court referrals ranging, in 1986 for example, from a high of 89% in Salem County to a low of 27% in Ocean County.

There are a number of factors that influence the police diversion decision. One major factor is the availability of appropriate community resources. In localities in which many community based programs have been established, the municipal police departments generally tend to handle a larger proportion of juvenile matters locally. A survey of selected law enforcement representatives, conducted by a subcommittee member, revealed that such actions include: directing families to social service agencies for self referral; making referrals to Juvenile-Family Crisis Intervention Units, substance abuse awareness programs and DYFS (primarily where a situation of abuse and neglect is suspected); and employing community service.

A particularly important factor affecting this area is staff resources. Police departments that are well staffed and/or include juvenile officers who have received specialized training or are experienced in working with youths, are more apt to have lower rates of court referrals.

Court Diversion

Currently, a Court Intake Service exists in every county in New Jersey. Intake staff have been referred to as the "gatekeepers" of the court system because of their involvement in determining how a delinquency complaint should be processed. The diversion of juveniles charged with delinquent offenses from court hearings before judges is an established practice in this state and throughout the country. The Juvenile Delinquency Commission notes in its second annual report that court diversion is "...not a dismissal of charges - it is a decision to handle the case in another way."¹⁹

There are reasons for diverting juvenile offenders. One major reason is to avoid the stigma of a "criminal" label. Diversion also significantly reduces the court's workload which allows the court to focus on more serious offenders or other complex family problems. In addition, diversion provides a less costly and, in some cases, more appropriate method of resolving juvenile matters than court proceedings.

Court Intake reviews every delinquency complaint that is filed with the court and considers several factors in determining whether to recommend diversion. These factors consist of seriousness of the alleged offense, age and maturity of the juvenile, risk to the community, family circumstances including any history of drug/alcohol abuse, nature and number of prior contacts with the court, outcome of prior contacts, availability of appropriate referral services, and any recommendations expressed by interested parties

¹⁸State of New Jersey, Division of State Police, Crime in New Jersey, Uniform Crime Report, (1983-1987)

¹⁹Juvenile Delinquency Commission, Juvenile Justice - Toward Completing the Unfinished Agenda, (August 1988), p. 25.

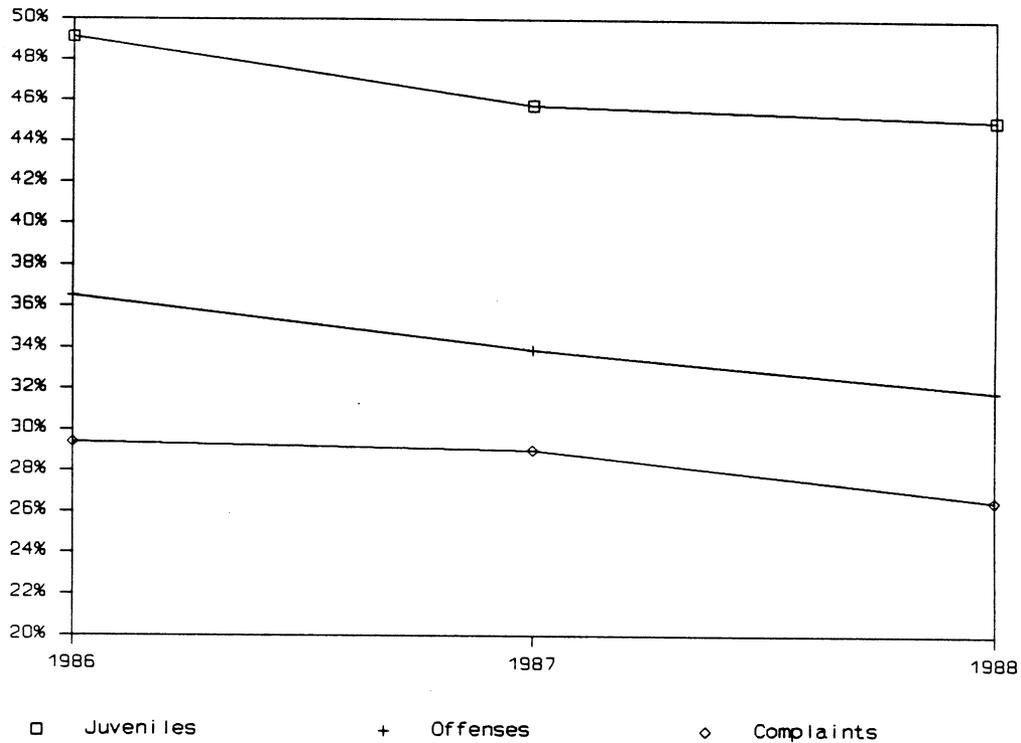
(N.J.S.A. 2A:4A-71(b)). The subcommittee recognized, however, that Intake staff frequently are not aware of information related to some of these factors and that existing historical information is not readily available as a result of current recordkeeping procedures.

The most common forms of diversion are Juvenile Conference Committees (JCC) and Intake Services Conferences (ISC). Complaints alleging very minor acts of delinquency may also be diverted to a Crisis Intervention Unit (CIU). Juvenile Conference Committees are made up of six to nine citizen volunteers. The Committees generally handle first-time offenders whom the court feels may benefit from the community's disapproval of their misconduct. The Code allows the court to appoint Juvenile Conference Committees but does not mandate such appointments. There are 567 municipalities in New Jersey and currently, there are 332 JCC's. The number of JCC's which exist in each county varies significantly and ranges from a high of 54 in one county to none in another. In most counties, the number of JCC's is not equal to the number of municipalities. In these situations, however, the Committees are usually set up regionally to serve the entire county.

Intake Services Conferences are typically used in cases that are slightly more serious. In this process, Intake staff who, for the most part, are experienced and familiar with the court system, meet with the juvenile and other involved parties to attempt to resolve the matter. ISC's are employed as a method of diversion in every county.

In addition to the diversionary alternatives set forth by the Code of Juvenile Justice, some counties have developed "offense specific" diversion programs. The subcommittee noted that such programs are designed to focus on particular behavior problems and are generally community/industry sponsored. A survey regarding this matter was conducted by the subcommittee with Family Division staff in every county. The survey reflected that in all 21 counties, at least one "offense specific" diversion program has been implemented. Several counties have established three or more such programs. These counties include Camden, Cape May, Cumberland, Essex, Gloucester and Monmouth. In some counties, it was found that these programs operate through Court Intake Services or a JCC. The survey findings are summarized below by type of program and the number of counties in which each program exists.

Type of Program	# of Counties
Drug/Substance Abuse	15
Arson	4
Sex Offender	9
Shoplifting	13
Auto Theft	1 (currently under development)
Crime Awareness	1
Vandalism	2
Motor Vehicle Safety	1

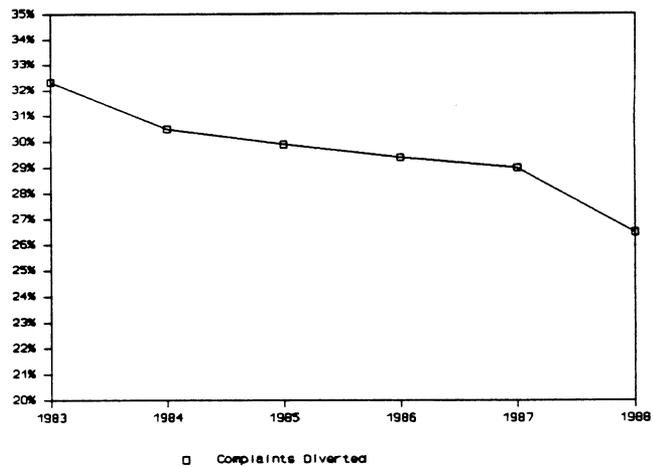


Court Diversion Rates 1986 - 1988

A good deal of information concerning court diversionary practices is available through the Statistical Services Unit of the Administrative Office of the Courts and the Unit Case database.²⁰ This information reflects that statewide, a consistently significant percentage of all delinquency matters received by the court between 1986 and 1988 were diverted. It is interesting to note, that the actual diversion rate differs according to the unit of measure: juveniles, offenses or cases.

²⁰On October 1, 1984, the Juvenile Delinquency Unit Case Reporting System was implemented statewide, in part, to capture information which would satisfy the data requirements of the statutorily created Juvenile Delinquency Disposition Commission (N.J.S.A. 2A:4A-49). This system collects information on a case-by-case basis at specific points in the case process and represents a major departure from the aggregate statistical methods traditionally employed in reporting workload activity.

Moreover, until recently, the unit of count for essentially all analysis efforts was limited to the complaint.²¹ Other available data shows that there are considerable variations across counties in diversion practices. These variations include the rate of cases diverted, the type of diversion program used and the type of offenses diverted. In this regard, the subcommittee noted that although the Code provides statutory criteria, diversion decisions frequently are based on local needs and approaches established within counties for



Complaint Diversion Rates
1983 - 1988

addressing juvenile matters. Some members believed that individual county policies reflect the attitudes of the Family Division Case Manager, while others felt they stem from judicial philosophies, particularly those of the Family Division Presiding Judge. Other factors such as internal operational needs, external pressures and demographics may also impact on the decision to divert.

Differences in diversion practices, which exist throughout New Jersey, were documented by the Juvenile Delinquency Commission through its analysis of 1986 court year data. The findings published in the Commission's second annual report reflected that statewide, 60% of diverted cases were referred to an ISC while 37% were diverted to a JCC, and less than 1% to CIU's. The data also showed, however, that counties rely on different diversion mechanisms: in Bergen County, 62% of the diverted cases were referred to JCC's; Sussex County referred 60% of its cases to JCC's; and by contrast, Ocean County referred 90% of its diverted cases to an ISC.²²

In addition, the JDC's analysis found that diverted cases involved a wide variety of charges including violent crimes, drug/alcohol related offenses, serious property crimes and less serious property crimes. In 1986, nearly 11% of all cases diverted involved 1st and 2nd degree charges.²³

One of the most important aspects of court diversion considered by the

²¹Data related to juveniles and offenses is derived from the Unit Case System. Figures for a full court year are not available prior to 1986 since the Unit Case System was implemented during the 1985 court year. Data on complaints is based on Juvenile Delinquency Monthly Trial Court Reports. These figures include pre-code activity and reflect a decrease in diversion rates.

²²Juvenile Delinquency Commission, Juvenile Justice - Toward Completing the Unfinished Agenda, (August 1988), p. 26.

²³Ibid., p. 27.

subcommittee was its success rate. Historically, the perception within the Judiciary has been that diversion serves as an effective tool for keeping juveniles out of the formal court process. Research conducted by the JDC substantiated this long held belief. In one study, the Commission identified all juveniles who were diverted for the first time in 1985 and examined their records over approximately a two-year period, through June 1987. The results of this effort reflected that a significant number of the diverted juveniles did not return to court. Their analysis also showed that some juveniles do return to court for one of two reasons: failure to comply with the terms of diversion or, for a new offense. Of the cases studied, 30% returned to court on new charges.²⁴

In other related research, the Commission looked at diverted juveniles who failed to comply with the terms of diversion. It found that in 1986, nearly 7% (1,585) of the total cases diverted (23,513) were returned to court for non-compliance.²⁵ Although this failure rate represents a very small portion of the total diversions, the JDC expressed concern over the fact that 40% (634) of all cases which fell in this category (1,585) were dismissed by the court.²⁶ The subcommittee members indicated that consideration should be given to the JDC's research findings and to the significance, or lack thereof, of these reported statistics.

Juvenile-Family Crisis Intervention Units

Since the enactment of the Code of Juvenile Justice, a CIU has been established in every county in New Jersey. Eleven CIU's were established outside of Family Division Intake, while the remaining ten units were established within Court Intake Services. A Crisis Intervention Manual, which was prepared by a Task Force and approved by the New Jersey Supreme Court, provides operating guidelines. Statewide, however, there are significant procedural variations among the units.

CIU's are a unique creation of the family court legislation. The units form a statutory bridge from the court system into the community to define and address familial problems and prevent them from becoming offenses or situations which require formal court processing. They also expand the court's involvement in the provision of social services. The definition of a juvenile-family crisis set forth in the Code includes those matters which prior to the Code were known as "JINS" cases (i.e., status offenses, which are actions that would not be considered an offense if committed by an adult like truancy or running away from home) but, also provides for far more than that (e.g., parent-child conflicts or other situations which are unique to the family and require outside intervention in the hope of resolving them).

²⁴Ibid, p. 29.

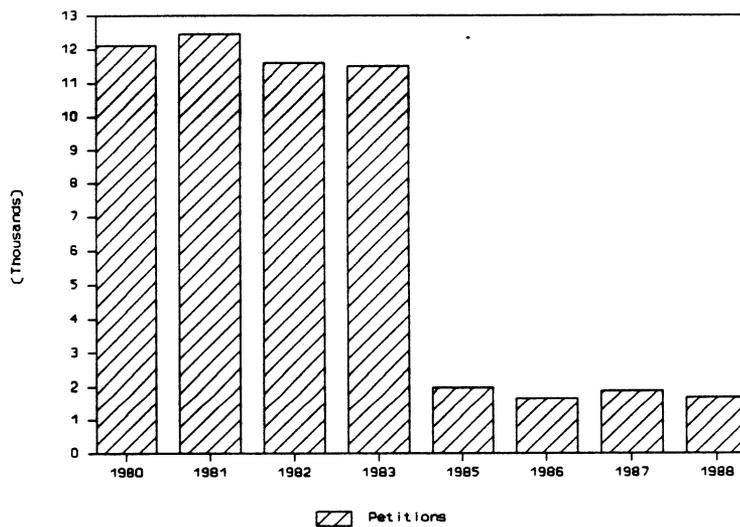
²⁵The 7% failure rate is an approximation derived by comparing the number of cases diverted during 1986 with the number of cases returned to court during the same time period. The figure is not based on an analysis of the same group of cases tracked over time.

²⁶Juvenile Delinquency Commission, Juvenile Justice - Toward Completing the Unfinished Agenda, (August 1988), p. 29.

Since their creation, CIU's throughout New Jersey have been used to address a variety of situations. Units receive juvenile-family crisis referrals from schools, police, the Division of Youth and Family Services, courts, parents, juveniles themselves, and others. CIU's deal with behavior which does not constitute the violation of any law and family problems that do not necessarily center around the conduct of a child member of the family. In some counties, the units may become involved much more directly in situations arising from the behavior of the parents alone. In addition to dealing with juvenile-family crises, CIU's also handle other types of offenses. A law enforcement officer may decide that particular incidents do not call for the signing of a delinquency complaint and will divert the matter to a CIU. Furthermore, the court may decide that the best mechanism for handling a delinquency complaint alleging a disorderly persons or petty disorderly persons offense is by referral to a CIU (N.J.S.A. 2A:4A-73). Less than 1% of delinquency complaints have been disposed of by the court in this manner.

A significant number of familial problems have been diverted to CIU's. Statistics compiled by the Administrative Office of the Courts show that the units have been effective in keeping a large number of these problems from the Court. A comparison of pre-1984 JINS and current juvenile-family crisis caseload data reflects a significant decrease in the number of petitions filed.²⁷

Recent figures, covering a five-month period in 1988, show that of the cases disposed statewide by CIU's, 11.5% resulted in the filing of petitions. This data also provides the individual referral rates for each unit, which ranged from a high of 42.4% in Salem County to a low of 1.8% in Morris County. In more than half of the CIU's (12) the percentage of cases disposed by petition fell below the figure



Comparison of JINS and J/FC Petitions

²⁷ Figures on JINS petitions obtained from New Jersey Judiciary 8 Year Superior Court Caseload Guide 1979-1986; Statistics on CIU petitions compiled from Monthly Trial Court Reports.

reflected for the state.²⁸

This court referral rate appears to be in keeping with estimates made in the findings of the Juvenile Justice Task Force Advisory Committee on "Alternative Dispositions/Community-Based Programs" that "...almost 80% of the children currently labelled as JINS offenders and processed through the court system and their families would benefit from ... services designed to avoid formal court processing".²⁹

Although it is generally acknowledged that CIU's have been successful in diverting matters away from formal system processing, when cases do require court referral, the units throughout the state function at varying levels of expertise. In some instances, the petitions are not properly handled and information needed by the court to proceed with the action is inadequate. As a result, there is a perception that in certain vicinages, CIU's are not operating in ways which are consistent with the Code of Juvenile Justice. Currently, however, the members believe that there is insufficient information about all Crisis Intervention Units to evaluate each individual unit.

The effectiveness of the CIU's is an area which has been addressed by the Juvenile Disposition Commission. In its First Annual Report, the Commission recognized the quantitative success of the CIU's as a diversion mechanism, but indicated that there was considerable disparity in the quality and quantity of services available across counties.³⁰ The Commission recommended that the Judiciary, through the Administrative Office of the Courts, together with the Department of Human Services, implement an annual evaluation program for the CIU's.³¹

As a result of this recommendation, legislation was enacted in the summer of 1987 which requires the AOC to monitor CIU operations and report its findings annually to the legislature. A monitoring program was implemented by the AOC and an evaluation of all 21 CIU's has been conducted through on-site surveys.

The findings of this effort reflected that all units are meeting minimum levels in standards of service, but that there are two key areas which have impacted overall effectiveness. One major problem is funding levels or operating budgets, which vary from county to county. Some units function solely on the appropriations received from the AOC and the Department of Human Services. The AOC gives each unit funds in amounts ranging from approximately \$6,000 - \$26,000 a year, which are determined by the volume of cases added; the monies provided by the Department of Human Services

²⁸Crisis Intervention Unit Report for State, February, 1988 - June, 1988. These figures were derived from a revised monthly statistical reporting form which was implemented statewide in February 1988. The form was revised by the AOC based on input received from representatives of ten CIU's, the CIU Task Force and a representative from the Department of Human Services. The form is designed to provide more comprehensive and reliable data and assist the AOC in reporting on CIU operations pursuant to N.J.S.A. 2A:12-4.

²⁹New Jersey Assembly Judiciary, Law, Public Safety and Defense Committee, Final Report of the Juvenile Justice Task Force Advisory Committee on "Alternative Dispositions/Community Based Programs," (January 1981), p. 16.

³⁰Juvenile Delinquency Disposition Commission, The Impact of the New Jersey Code of Juvenile Justice - First Annual Report of the Juvenile Delinquency Disposition Commission, (September 1986), p. 91.

³¹Ibid.

range from \$41,000 - \$61,000 a year, based on county population. Other units receive additional funding from the county budget.

The second area of concern relates to staffing. The Code of Juvenile Justice sets forth minimum educational and experiential requirements for unit personnel employed as counselors (N.J.S.A. 2A:4A-79). These minimum qualifications are being met in every CIU but the salaries which are offered for these skilled positions are generally low due to limited budgets and, there is wide disparity across units in the salary levels. In addition, the size of the staff component differs from county to county. In units which have a limited number of professional staff, the responsibility of responding to juvenile-family crises on a 24-hour basis is burdensome. In some counties, other individuals outside of the units have been given special training so that they can respond after hours to calls. In many counties there is little or no compensation for after hours work. Several counties do, however, pay staff a combination of flat fees and their regular salaries for on-call duties and responses.

Low salaries and the demands of being on-call may be contributing factors in the high turnover rates which many CIU's have experienced among the directors and counseling staff. Since January 1987, there have been nine changes in CIU directors; some units have had two changes in directors and one county has had three different directors during this time period. Included in these figures are two counties which have had complete changes in their CIU's staff and organization. The CIU's have experienced even higher turnover rates among line staff but there is no available data on the actual numbers.

The statewide analysis of CIU operations also revealed that despite the identified problems, the units are striving to provide essential services to troubled families.

In January 1988, the Association for Children of New Jersey (ACNJ) published the results of a study which it conducted on the Crisis Intervention Units in five counties.³² The findings of this limited research effort identified a variety of issues related to the operations of some CIU's that included inadequate recordkeeping, lack of uniform procedures, inability to address specific "concrete" service needs, lack of documentation regarding the exhaustion of community resources and the outcome of juvenile-family crisis cases. Because ACNJ restricted its study to the CIU's in five counties and presented aggregate data which did not reflect the performance of individual units, the CIU Directors serving on the subcommittee felt that the findings were very misleading and harmful to some units.

In discussing the current status of CIU's, the subcommittee members agreed that the juvenile-family crisis intervention system of seeking to treat juvenile-family problems in the context of the family as a whole, is a superior approach to the former JINS system that confined its focus to the juvenile's behavior which, in many instances, was simply a symptom of a larger, more pervasive family problem.

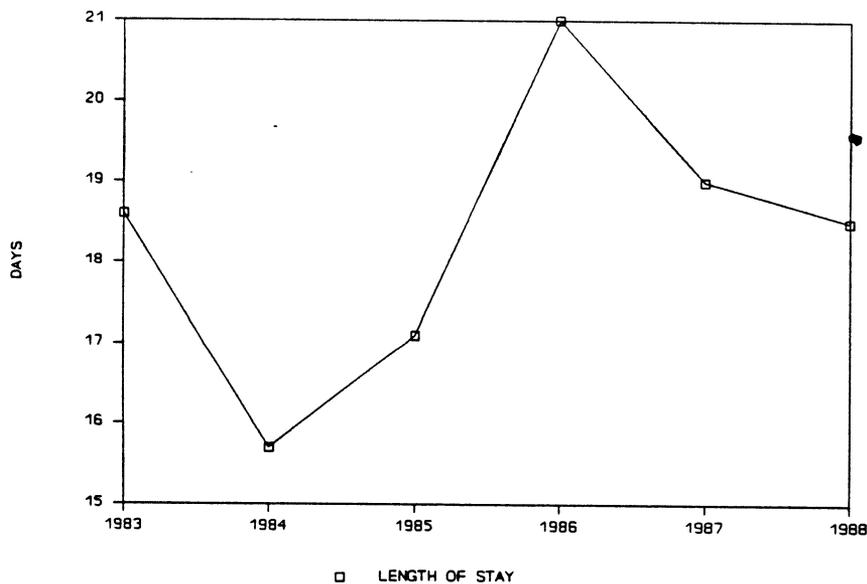
³²Association For Children of New Jersey, Out of Balance: New Jersey's Juvenile-Family Crisis Intervention System, (January 1988)

B. DETENTION

Detention Facilities

a. Capacity/Overcrowding:

Although juvenile detention center capacity statewide has increased from 533 in 1984 to 606 in 1988, overcrowding was identified as the major problem confronting juvenile detention facilities statewide. The number of juveniles in secure detention has never been higher than at the present time. Six counties -- Atlantic, Camden, Essex, Middlesex, Passaic and Union -- are overcrowded every day and a number of other counties have sporadic overcrowding problems. There are a number of reasons for the current overcrowding: enforcement of stricter drug laws, admission of relatively minor offenders into secure detention, lack of detention alternatives, and juveniles awaiting Department of Corrections placement (approximately 84 per day) or DYFS placement (at least 55 per day).³³ The most recent report of the Juvenile Delinquency Commission indicated that although following implementation of the New Jersey Code of Juvenile Justice the average length of stay in detention centers decreased in 1985, this has not been a steady trend. "In 1986 the average length of stay was 21 days, up 23% from 1985."³⁴



Department of Corrections Statistics show that the average length of stay shortened to 19 days for 1987 and to 18.5 days for 1988, but overcrowding is still a problem.

AVERAGE LENGTH OF STAY IN JUVENILE DETENTION CENTERS

³³Statistics provided by the Department of Corrections Juvenile Detention and Monitoring Unit.

³⁴Juvenile Delinquency Commission, Juvenile Justice--Toward Completing the Unfinished Agenda, (August 1988), p. 38.

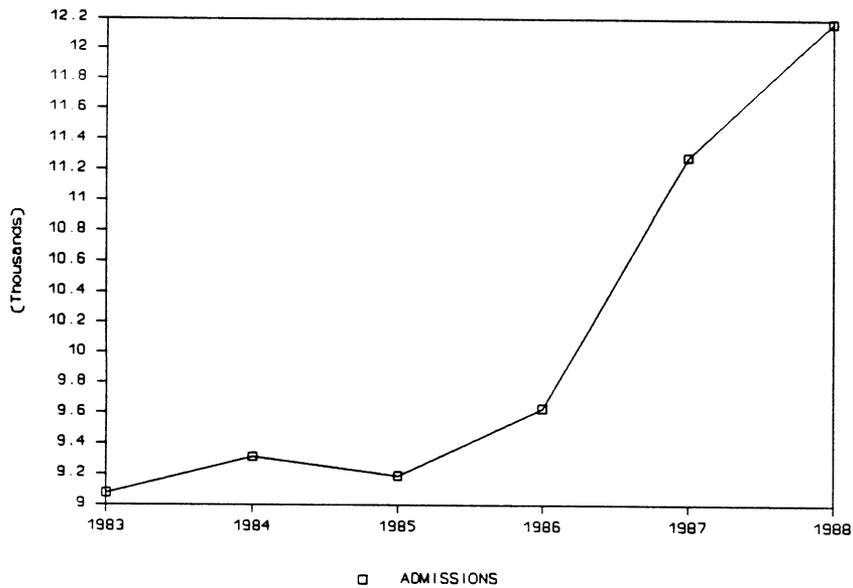
Statistics provided by the New Jersey Department of Corrections Juvenile Detention and Monitoring Unit revealed:

- Juvenile detention facilities were at 102% of their statewide capacity during 1988.
- The five most crowded facilities in 1988 were:

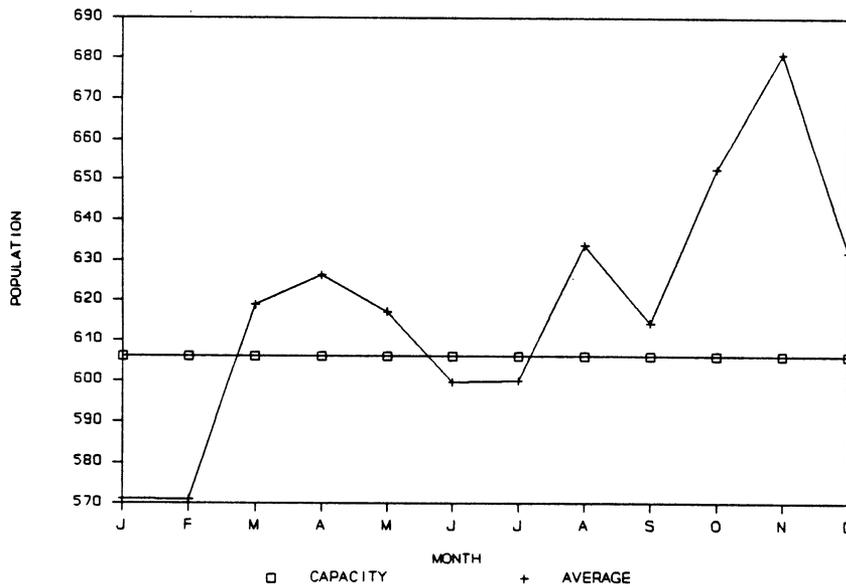
Passaic	-- 192%
Union	-- 157%
Essex	-- 141%
Atlantic	-- 125%
Camden	-- 115%

These percentages are yearly averages. All of these counties had peak overcrowding levels that were much higher. The juveniles held in these facilities represent more than half the juveniles being held in detention in New Jersey. For example, in November of 1988 daily average number of juveniles in detention statewide was 681. In the same month the daily average number of juveniles being held in these five facilities was 389.6, or 57.2% of the statewide total.

- Three facilities, Somerset, Warren and Bergen, were at less than half of their capacity for the year.
- Since 1983 the average daily population in detention has increased 34% going from 462 in 1983 to 620 in 1988.
- Since 1983 detention admissions have increased 34%, going from 9,076 in 1983 to 12,176 in 1988.



TOTAL YEARLY ADMISSIONS TO JUVENILE DETENTION CENTERS



STATEWIDE AVERAGE DAILY POPULATION OF JUVENILES IN DETENTION -- 1988

It is the perception of subcommittee members that as juvenile detention center populations increase allegations of child abuse within detention facilities, violence between detained juveniles, the use of solitary confinement, handcuffing and suicide attempts are also increasing.

b. Conditions and Services:

There are 17 county juvenile detention centers in New Jersey. Cape May, Hunterdon and Salem Counties contract with other counties for the use of their facilities. Somerset County contracts with the Department of Corrections for the use of space at the Skillman Training School.

There is considerable disparity in the conditions and programs provided in the State's juvenile detention facilities. Some facilities -- most notably Atlantic, Camden, Cumberland, Gloucester, Middlesex and Ocean -- have well-developed, comprehensive programs providing a high level of care to juveniles. On the other hand several facilities provide a daily environment which borders on child neglect.

There is wide disparity in the provision of educational services in juvenile detention facilities. In 1988, the Ocean County juvenile detention facility received a national award for educational excellence. Camden County received a similar award several years ago. In contrast, there are several severely overcrowded facilities where most juveniles receive at best, one hour a day of education. Some juveniles receive no education. It should be noted that temporary care facilities (detention centers and shelters) are the only facilities not protected by The Public School Education Act of 1975 (N.J.S.A. 18A:7A-1 et seq., commonly known as the "Thorough and Efficient Education Act") and The State Facilities Education Act of 1979 (N.J.S.A. 18A:7B-1 et seq.).

After overcrowding, the lack of appropriate mental health services for severely emotionally disturbed juveniles in detention is the most serious detention issue. This problem has been exacerbated over the past year due to the phasing out of the Adolescent Unit at Trenton Psychiatric Hospital. Some juveniles are placed in detention on minor charges because of the lack of residential mental health facilities. Once in detention, there is very little in the way of residential or outpatient services from mental health agencies available. Recently however, at the urging of the Juvenile Detention and Monitoring Unit and the New Jersey Juvenile Detention Association, the Division of Mental Health and Hospitals has been attempting to address this problem.

Standards for Detention

The detention standards in the initial legislation for the New Jersey Code of Juvenile Justice were more restrictive than those that were eventually enacted. The criteria recommended by the Pre-Trial Practices Committee of the Assembly Judiciary Committee's Juvenile Justice Task Force excluded fourth degree and repetitive disorderly

persons offenses. These offenses were added by the Assembly Judiciary Committee.³⁵

In its recent annual report the Juvenile Delinquency Commission compared New Jersey juvenile detention standards (N.J.S.A. 2A:4A-34) with four sets of model detention admission criteria. Three of the model criteria excluded fourth degree, disorderly and petty disorderly persons offenses and the fourth would probably also exclude most of these offenses. The Juvenile Delinquency Commission analyzed 1986 New Jersey detention admissions statistics and compared them with the model criteria. The Commission found that 17% of the juveniles detained in New Jersey were charged with petty disorderly or disorderly persons offenses as their most serious offense and that 6.8% of the juveniles detained were charged with fourth degree offenses as their most serious offense. These juveniles would not have been detained under the model criteria unless they had previously failed to appear in court.³⁶

Administrative Office of the Courts unit case statistics show that in calendar year 1988 the number of juveniles detained in New Jersey who were charged with petty disorderly or disorderly persons offenses as their most serious offense increased to 25.6%. County breakdowns of this information reveal widely differing practices among counties in the use of detention for these offenses. The percentages of juveniles detained for such offenses in 1988 ranged from a low of 12.6% in Essex County to a high of 51.6% in Salem County. In eight counties over 40% of juveniles detained fit into this category. In the five most crowded facilities in 1988 -- Atlantic, Camden, Essex, Passaic and Union -- 20.9% of juveniles detained were charged with petty disorderly or disorderly persons offenses as their most serious offense; in the three facilities that were at less than half of their capacity for the year -- Bergen, Somerset and Warren -- 44.3% of juveniles detained were charged with these offenses.

There is a need for additional research in this area to determine the effect which curtailing the detention of juveniles charged with petty disorderly or disorderly persons offenses would have on detention facility overcrowding. Since statistics matching the seriousness of the offense with average length of stay in detention centers are unavailable, reliable estimates of the reductions that would result from decreasing the use of detention for petty disorderly and disorderly persons offenses would have on the average daily population of detention facilities cannot be made. The Detention Subcommittee also noted that if detention criteria excluding juveniles charged with these offenses were adopted broad charging discretion could result in some of the juveniles in this category being charged with more serious offenses in order to justify detention.

Alternatives to Detention

The Detention Subcommittee felt that alternatives to detention are to be preferred and used wherever possible. Alternative programs maintain the juvenile's connection with

³⁵Ibid., p. 37.

³⁶Ibid., pp.34-36.

his or her family, school and community. Alternative programs are also less costly when compared with the expense of keeping a juvenile in a secure facility. Although alternatives are to be preferred, the subcommittee recognizes that there are many juveniles for whom, because of the serious nature of their offenses, or the repetition of offenses, or a previously demonstrated failure to appear for a hearing, detention is the only acceptable alternative. Some committee members reported that they have been seeing an increase in violent crimes and serious drug offenses and felt that the number of serious offenders for whom detention is the only appropriate alternative will increase in the future.

The use of alternatives to detention may also present a problem in some urban communities where the police may have diverted a juvenile several times before requesting that a juvenile be placed in detention. If the Family Court, which is seeing the juvenile for the first time again diverts the juvenile to a detention alternative the juvenile may become convinced that he or she will never be held accountable for his or her actions.

Below are brief descriptions of some existing programs in New Jersey that provide alternatives to the use of detention. The Detention and Alternatives Subcommittee does not have data available to determine the impact of these programs on detention admissions. It is possible that some of the juveniles admitted to these programs would not have been detained even if no alternative program was available and it is therefore impossible to determine how effective these programs are in reducing detention center populations. Further research is required to determine the relative effectiveness of these and other detention alternatives in alleviating detention overcrowding, ensuring the juvenile's appearance in court and protecting the public from the risk of new offenses being committed by the juvenile.

Hudson County Juvenile Screening Committee: A screening committee comprised of representatives from the Department of Juvenile Services, the Juvenile-Family Crisis Intervention Unit Juvenile Probation, County Mental Health, Youth Consultation Services Hudson County Shelter and chaired by the Court Liaison from the Division of Youth and Family Services meets each morning with the families of juveniles who are arrested and detained in the County. The screening committee's responsibilities include: ensuring that all alternatives to shelter care and detention are exhausted, exploring and implementing community based services with the family which will alleviate the need for out-of-home placement or minimize the length of stay in such placements, informing the Judge of the recommendations made by the screening committee and tracking the decisions made by the court.

Home Detention: Home detention, or house arrest, is an alternative to Detention used in several counties. Home Detention programs vary widely in the type and formality of enforcement mechanisms used to ensure that the juvenile complies with the home detention order.

The most informal type of home detention relies on the juvenile and the juvenile's family to ensure that the terms of the order are carried out. Two unresolved issues arise in the use of this type of home detention. The first issue is what, if any, sanctions should be imposed on family members who fail to report violations of home detention by a juvenile? The second issue is what the court's response should be if a family member

does report a violation of the Home Detention Order by the juvenile?

At least one county involves the local police in enforcing home detention orders by providing the police in the juvenile's home town with a copy of the order. The police then may arrest the juvenile if he or she is seen on the street in violation of the order.

More formal home detention programs may employ other forms of enforcement such as random telephone calls to the home by probation officers or electronic monitoring to ensure that the juvenile actually stays in the home. Most electronic monitoring systems require a telephone in the home. The juvenile is fitted with an electronic monitoring anklet which uses the telephone to signal that an unauthorized departure has taken place whenever the juvenile travels further than a specified radius from the telephone. Such programs, while costing approximately \$7.00 per day per juvenile, are relatively inexpensive compared to the cost of keeping a juvenile in a secure facility.

Host Homes: The Institute for Evaluation and Planning, Inc. in conjunction with the Monmouth County Department of Corrections, Division of Juvenile Services designed a host home program (known as Project Open House) as an alternative to a juvenile shelter. The program uses individual homes that can accommodate one or two juveniles for short term stays. The host home families are carefully screened and are trained to deal with the daily problems of adolescence. The families are also given ongoing support and training.

While this program is not currently being used as an alternative to secure detention it could be used as an alternative if certain additional conditions were met. First, the families would require additional screening and training to ensure that they would be prepared to meet the demands of serving a delinquent population. Additional supportive services would be necessary and the juveniles referred to the host homes would have to be carefully screened.

Bond: Bond or bail for juveniles is another alternative to detention that is used in some counties. This is most commonly used in the context of requiring juveniles residing out of state who are charged with minor offenses such as shoplifting, but who, because of their residence, are unlikely to appear for subsequent hearings, to post bond in order to be released. While the New Jersey Code of Juvenile Justice does not explicitly provide for the imposition of bond, N.J.S.A. 2A:4A-34(d)(8) does allow:

(8) Imposition of any other restrictions other than detention or shelter care reasonably related to securing the appearance of the juvenile.

Detention Subcommittee members were concerned that if bond is used to secure the appearance of the juvenile it should be used as an alternative for juveniles who would otherwise be detained in order to reduce detention populations. Subcommittee members were disturbed by the possibilities that some juveniles might be held in detention because of an inability to post bond.

Youth Advocacy Program (YAP): The Youth Advocacy Program is a community-based detention alternative that operates in Essex and Passaic Counties. Juveniles in this program remain at home but receive intensive supervision seven days a week. The

program provides up to thirty hours per week face to face contact with the juvenile and his or her family. The program also seeks to obtain interim services for the juvenile, undertakes to ensure the juvenile's appearance in court and makes a sentencing recommendation to the judge. The Youth Advocacy Program is currently funded to serve ten juveniles in each county.

Alternate Education Facilities: Liberty Park Group Center in Jersey City provides an educational setting that is used as an alternative to detention, as well as a final disposition. The program is run by the Bureau of Juvenile Services of the Department of Corrections in conjunction with the Hudson County Office of Criminal Justice Planning. It is one of a network of centers operated statewide by the Department of Corrections. Due to transportation limitations the program only serves juveniles from Jersey City.

Participants in the program are picked up from their homes between 8:00 and 9:00 a.m. and are returned home between 4:30 and 5:00 p.m., five days per week. Juveniles in the program take part in daily work crew assignments, individualized academic programs and daily group sessions.

Availability of Resources: The Detention Subcommittee recognizes that there may be other effective alternative programs in place that have not been described in the list above. Unfortunately none of the detention alternative programs described above is available in every county, and in fact some counties have none of these programs available. Even within counties the same programs are not available in all communities. There is a need for the establishment of a minimum level of services to be available in all counties.

C. ADJUDICATION

Increasing numbers of cases being adjudicated are resulting in added burdens on Family Court Judges, Prosecutors and Public Defenders. Because adjudication is the heart of the delinquency decision making system many of the issues discussed in this section impact on other areas such as detention overcrowding and issues regarding the role of counsel. There are time frames and notice requirements for adjudicatory hearings set forth in the new code. The purpose of the requirements is to attempt to balance the realistic time constraints present in any litigated matter with the need for a deliberate process which is especially important where the juvenile is detained. A juvenile in detention is entitled to have an adjudicatory hearing held within 30 days after the date of initial detention. If the hearing is not held within that time, on motion by the juvenile, the court shall within 72 hours fix a date certain, unless an extension is granted by the court for good cause shown. Moreover, written notice of any application for a postponement shall be furnished to the juvenile's counsel, who shall have a right to be heard on the application. N.J.S.A. 2A:4A-38(k); R. 5:21-7.

The following specific statutes present particularly difficult adjudication issues.

- A. Right to Counsel, N.J.S.A. 2A:4A-38(h)
- B. Juvenile-Family Crisis, N.J.S.A. 2A:4A-76

- C. Detention Hearing Statute, N.J.S.A. 2A:4A-38
- D. Assault Statute, N.J.S.A. 2C:12-1
- E. Fingerprint Records, Photographs of Juveniles, N.J.S.A. 2A:4A-61
- F. Referral to Another Court Without Juvenile's Consent, N.J.S.A. 2A:4A-26
(Waiver Statute)
- G. Sexual Assault, N.J.S.A. 2C:14 et seq.
- H. General Requirements of Culpability, N.J.S.A. 2C:2-2,
as Applied to Juveniles
- I. New Statutes or Court Rules

The length of time that juveniles spend in detention is a troublesome area. The Code of Juvenile Justice (N.J.S.A. 2A:4A-38) currently sets the following time frames:

- **initial hearing** the morning following detention,
- **second detention/probable cause hearing** within two days of initial hearing;
- **detention review** 14 days from prior detention hearing (also used as calendar call);
- **continuing detention review hearings** at intervals not to exceed 21 days;
- **adjudicatory hearing** within 30 days of detention. If the hearing is not held the court shall within 72 hours of motion by the juvenile set a date certain unless an extension is granted for good cause shown;
- **motions to suppress** filed within 30 days of the initial plea to the charge;
- **referral motions to Criminal Court**, when the juvenile meets statutory requirements filed within 30 days of the receipt of the complaint.

Maintaining priorities for detained youth and scheduling priorities and time frames for detained juveniles has been difficult. The new drug law is having a high impact on the length of stay of juveniles in detention because of the increase of mandatory representation and the length of time necessary to obtain lab reports.

Scheduling witnesses is also a matter of concern. In many cases, the various witnesses are key to a successful prosecution or defense. Police officers, probation officers and especially victims of juvenile crime, are frequently called to appear in court. These individuals are frequently inconvenienced as a result of:

- **non-appearance** of juveniles;
- **plea-bargaining** on the day of trial;
- **indiscriminate granting** of lay-overs.

Every party in a case has the right to have witnesses called on his or her behalf. In counsel mandatory cases, either the defense attorney or prosecutor ensures that appropriate witnesses are called to successfully present the case to the court. In counsel-not-mandatory cases, however, this may not be the case. Usually, there is neither a defense attorney nor a prosecutor involved in these cases.

The ineffective use of preliminary and pretrial hearings, which includes the use of calendar calls, is viewed as one of the biggest contributors to delays in adjudication. This issue may be more prevalent in those counties where a large percentage of the cases are handled by private counsel who may be more inclined (able) to file various motions at the adjudicatory stage of a case. Relevancy of the motions is not as important in this issue as is their timing; irrelevant or frivolous motions can usually be disposed of in fairly short order.

In several counties, witnesses, victims and defendants are held in the same waiting area. This creates a potential for intimidation and harassment of witnesses immediately prior to a hearing. N.J.S.A. 52:4B-26, Rights of crime victims and witnesses, provides that victims are to be provided with a secure but not necessarily separate waiting area.

In the past, the requirement that a juvenile be represented by counsel has usually involved only those cases wherein the juvenile's liberty would be seriously restricted by the potential disposition of the case, e.g., incarceration or residential placement. But R. 5:3-4(a) provides for a right of counsel "...if the matter may result in the institutional commitment or other consequence of magnitude to any family member..." Since a "consequence of magnitude" may be the imposition of a fine upon the juvenile or the revocation of a license for six months counsel may be required in increasingly larger numbers of cases.

A review of the various dispositional alternatives available to the court indicates that more than half do not restrict the liberty of the juvenile, nor do they appear to be a "consequence of magnitude." For example, the imposition of a fine or restitution is based upon the juvenile's ability to pay (except possibly the DEDR penalty and lab fees).

Some counties use referees in juvenile delinquency, counsel-not-mandatory proceedings. The referee acts as a fact finder and makes recommendations to the Family Part Judge regarding the disposition of a case. Since referees are not used in all counties this may result in disparity in the treatment of similarly situated juveniles.

Another area of concern is the treatment of minor juvenile offenders who reside out of state. In a delinquency case, out-of-state juveniles may be remanded to detention for offenses that would not result in detention for New Jersey residents.

Extradition of juvenile delinquents in another problem area. A reference manual on extradition entitled "Interstate Compact on Juveniles" was issued by the AOC in May 1988 but there is little awareness of this manual's existence at the county level.

D. ROLE OF COUNSEL

The mandate for the provision of counsel is found in N.J.S.A. 2A:4A-38 and 39 and R 5:3-4(a). Although counsel need not be provided at a first detention hearing, if detention is continued following that hearing counsel must be provided the juvenile,³⁷ and a

³⁷N.J.S.A. 2A:4A-38(h)

second detention hearing must be scheduled within two court days at which time the juvenile must be represented. Juveniles have the right under N.J.S.A. 2A:4A-39, to "...be represented by counsel at every critical stage in the proceeding which, in the opinion of the court may result in the institutional commitment of the juvenile." R. 5:3:4 further expands this right to include other family members "...if the matter may result in the institutional commitment or other consequence of magnitude to any family member." That right may not be waived by the juvenile except in the presence of and after consultation with counsel and a waiver cannot be made by an incompetent juvenile although one can be made on his or her behalf by a guardian ad litem appointed to represent him or her.³⁸

Little training is available for attorneys on juvenile delinquency law and procedures. Such programs as are now available are typically offered by the Office of the Public Defender or by individual prosecutor's offices for their own members and, in the case of public defender programs, some of the pool attorneys who receive cases from that office. No training is available for private attorneys practicing in this field.

The problems created by training deficiencies are compounded by the lack of a single resource available to the private bar or other individuals seeking information about local practice rules and procedures or about the use of diversion and local facilities available for juveniles. This is a problem because most private attorneys handling juvenile cases do so infrequently. They have no way of learning what may be expected of them by the court in the handling of a particular case.

Some attorneys who represent juveniles charged with delinquency are knowledgeable concerning diversion programs and advocate on behalf of their clients accordingly. However, not all counsel are aware of the opportunities for diversion and often the juvenile has no one representing his or her interests in the diversion component of the process.

There appears to be some variation from the generally accepted norm in the nature of representation and the attorney/client relationship in juvenile cases among lawyers who practice in this field. While attorneys clearly represent the juvenile's wishes at adjudicatory hearings it is not clear whether they should be representing the juvenile's wishes, or the best interests of the juvenile at dispositional hearings.

Except for those cases where public defender appointment is appropriate, the practices of the courts are varied concerning the handling of representation by counsel in conflict-of-interest situations. This may present problems when privately obtained counsel is representing the wishes of parents rather than those of the juvenile.

Several other issues relating to the role of counsel are the subject of concern. There is widespread confusion about the appropriate procedure to be followed to provide counsel for juveniles when their parents have failed to retain a lawyer or to complete an application for a public defender or when there are no parents available to do so. There is a lack of attention to litigation or advocacy regarding institutional issues or other systemic problems in the juvenile justice system. Some lawyers pay attention to the

³⁸N.J.S.A. 2A:4A-39.

progress of juvenile clients' dispositions while others cease to concern themselves with juveniles following the dispositional order.

It is rare that counsel is even aware of the case at the time of the initial detention hearing. When counsel does come into the case, the level of involvement and advocacy varies from county to county and from attorney to attorney. In some counties, probable cause hearings must be requested by the juvenile.

The handling of scheduling conflicts with the court's calendar and Public Defender assignment to the juvenile case is another area of concern. Many vicinages allow for vertical representation of the juvenile by the Public Defender which places control of case assignment with the Public Defender's Office. Eligible defendants are assigned counsel by the Office Director with each Public Defender assigned to a particular judge. The case remains with the attorney to disposition and is transferred from judge to judge when the Public Defender moves to another court. In other vicinages, Public Defender's are assigned to more than one judge within the Family Division at the same time. These and other factors allowing continuances to occur are common throughout the State.

In most counties, the prosecutor's office plays an active role in all aspects of the juvenile justice system, representing the interests of public safety. In this regard, the prosecutor in the Family Division frequently stands alone, in an adversarial relationship with the juvenile and his attorney, as well as with the other components of the system, namely intake, probation and the Department of Corrections.

E. DISPOSITION

The New Jersey Code of Juvenile Justice provided for a host of new dispositional alternatives. However, the court's ability to fashion dispositional orders tailored to a juvenile's unique needs has been severely restricted by a shortage of appropriate programs and services. Regrettably, the development of such programs and services was largely hampered by budgetary constraints. As a result, many of the new options authorized in the Code were "paper tigers" in that the legal authority for their use existed, but the actual programs necessary to make them a reality did not.

The Subcommittee has attempted to identify these "paper tigers" so that hopefully they may be transformed into reality. In this quest, the Subcommittee realizes that some of the types of programs/services it has identified as needed will have significant budgetary impact. Others may be brought to fruition via the creative or better coordinated use of existing resources. The Subcommittee hopes that the creation of the continuum of dispositional options envisioned by the authors of the Code may be brought closer to reality by this Report.

Dispositional Information

The Code provides that "[b]efore making a disposition, the court may refer the juvenile to an appropriate individual, agency or institution for examination and evaluation."

N.J.S.A. 2A:4A-42a. Additionally, "[i]n arriving at a disposition, the court may also consult with such individuals and agencies as may be appropriate to the juvenile's situation... [and] may convene a pre-dispositional conference to discuss and recommend disposition."
N.J.S.A. 2A:4A-42b. Pre-disposition Reports are ordered pursuant to the Rules of Court.
N.J.S.A. 2A:4A-43c. (See R. 5:24-2.)

While a Pre-disposition Report has been promulgated by the Administrative Office of the Courts, its use is not mandatory. A diagnostic evaluation and/or a needs assessment may be ordered by the court, but is not required. As a result, the quality of information that is made available to the court to assist it with its dispositional decision making varies with the volume of caseload and the availability of staff (or funds to request other appropriate individuals) to gather such information.

A statewide resource manual listing programs operated under the auspices of county probation departments has been compiled. Additionally, the county youth services plans compiled by each county also list resources available within the county. Moreover, the Governor's Committee on Children's Services Planning is in the process of developing a clearinghouse (including a directory) of state and countywide programs and services for juvenile offenders. However, apparently, at the present time there is no statewide compendium listing all available programs and services on both a state and countywide basis.

Disposition Hearing/Order

Pursuant to R. 5:20-4, the "parents, guardians or other person having custody, control and supervision over the juvenile shall be necessary parties to every proceeding in all juvenile delinquency actions". Pursuant to N.J.S.A. 2A:4A-41, the court is required to provide "written notice to the proper parties as to the date, time and place of such hearing and do so sufficiently in advance of the hearing to allow adequate time for preparation". At times, the parents/guardian of a juvenile are reluctant or recalcitrant in appearing for the disposition hearing.

The disposition hearing must be held within 30 days of the adjudication of delinquency as to juveniles placed in a detention center or shelter care facility. N.J.S.A. 2A:4A-41. If after 30 days a disposition order has not been entered, "the court shall, upon motion of the juvenile, fix a date certain for a dispositional hearing which shall be within 10 days of the motion unless an extension is granted by the court for good cause shown." R. 5:24-1(a). As to non-detention/shelter care cases, the disposition hearing must be held within 60 days after the adjudication of delinquency unless an extension is granted by the court for good cause shown. R. 5:24-1(b); N.J.S.A. 2A:4A-41.

During the 1986 - 1987 Court Year, 105,094 juvenile delinquency complaints were filed (a 5% increase over the previous Court Year).³⁹ The average time to termination

³⁹Annual Report of the New Jersey Judiciary - 1987, p.4-7A.

for juvenile delinquency matters during the 1987 Court Year was one month.⁴⁰

Pursuant to R. 5:24-4(a), an "order shall be filed in every case indicating the disposition thereof." At the present time, the use of a Standard Disposition Order Form is not required.

Parental Involvement

A major purpose of the Code is to preserve the unity of the family whenever possible and to separate the juvenile from the family environment only when necessary. Another key purpose is to secure for each juvenile such care, guidance and control, preferably in his own home, as will be conducive for the child's welfare and in the best interests of the State. N.J.S.A. 2A:4A-21. In order to effectuate the purpose of the Code, the court may:

Order the parents or guardian of the juvenile to participate in appropriate programs or services when the court has found either that such person's omission or conduct was a significant contributing factor towards the commission of the delinquent act, or, under its authority to enforce litigant's rights, that such person's omission or conduct has been a significant contributing factor towards the ineffective implementation of a court order previously entered in relation to the juvenile. N.J.S.A. 2A:4A-43b(15).

Additionally, one of the factors to be considered by the court in selecting a dispositional alternative is "whether the disposition supports family strength, responsibility and unity" and "provides for reasonable participation by the child's parents, guardian or custodian". N.J.S.A. 2A:4A-43a(4); (5).

In its First Annual Report, the Juvenile Delinquency Commission indicated that "the formal involvement of parents, guardians or family members in dispositional orders is limited."⁴¹ However, the Commission recognized that in addition to the parental involvement dispositions which are formally ordered by the court, frequently the court relies on voluntary parental involvement so that when a parent indicates willingness to cooperate with the court, formal involvement in a disposition may not be utilized. Additionally, the Commission noted that parental involvement is also used as a "condition" of probation and, consequently, would not be recorded as a disposition. Finally, some dispositions involve services which have a family focus component and thereby encourage parental involvement.⁴²

The Juvenile Delinquency Commission identified the following as obstacles to

⁴⁰Id.

⁴¹The Impact of the New Jersey Code, supra at 89.

⁴²Id. at 42.

dealing with delinquency in the context of the family:

Many juveniles do not have a "family" in the traditional sense. They are rootless. Others come from such bad family situations as to make parental involvement meaningless. There are significant practical, legal and philosophical issues related to family participation. To what extent is bad parenting "illegal"? Will ordering parental or family member involvement in dispositions have any impact? What type of dispositional involvement is practical? How can family member involvement be monitored? One Judge informed us that monitoring is the most difficult problem he faces, and that there are no programs he can refer parents to for counseling. Who provides services? If a family member fails to abide by a court order, what practical recourse is available?⁴³

Monitoring and Enforcement of Disposition Orders

Pursuant to N.J.S.A. 2A:4A-47 of the Code, a non-incarcerative disposition order generally terminates when a juvenile turns 18, or one year from the date of the order, whichever is later. No reference is made in the Code to the impact of this statutory provision on other statutes as to the mandatory payment of certain fines and penalties (e.g., the DEDR penalty and the forensic laboratory fee required under the Comprehensive Drug Reform Act).

The New Jersey Code of Juvenile Justice provides that:

[T]he court shall retain jurisdiction over any case in which it has entered a disposition under section 24 of this act and may at any time for the duration of that disposition, if after hearing, and notice to the prosecuting attorney, it finds violation of the conditions of the order of disposition, substitute any other disposition which it might have made originally. N.J.S.A. 2A:4A-45b.

Additionally, the court "may by its order retain jurisdiction in any other case." N.J.S.A. 2A:4A-45c.

In the Disposition Subcommittee's experience, generally the probation department files a complaint for violation of a standard condition of probation or for non-compliance with a dispositional order. This may include failure to report to probation or failure to complete a stipulated program or community service. Fines, penalties and restitution ordered through probation, but not paid, may constitute a violation. It is the Subcommittee's perception that even where a fine, penalty or restitution is the sole disposition ordered, the probation department is still generally responsible for collecting and crediting all payments.

A systematic monitoring system would serve to apprise the court of whether the provision of ordered services has actually taken place, and if so, whether such services are

⁴³Id. at 43.

efficacious. Additionally, such a system would provide essential feedback to the court as to the juvenile's (and in cases of parental involvement, parent's) dispositional progress, provide an intervention history as to each youth (and family), and alert the court to a need for additional intervention.⁴⁴

Programs, Services and Resources

1. Current Needs of Court-Involved Youth and Their Families.

Tragically, prior to the implementation of the 1984 Code, institutional care had "...been used in many instances because of the lack of appropriate alternatives."⁴⁵ As early as 1981, the Juvenile Justice Task Force's recommendations "address[ed] a serious need ... to develop a middle-ground solution for troubled juveniles who may not need to be confined, but could benefit from action more severe than a slap on the wrist."⁴⁶ The Code responded to this concern by expressly providing for a host of new dispositional alternatives. Revealing a certain duality, the Code also provides for more stringent penalties for the serious, repetitive offender.

It was anticipated that the provision of additional dispositional options would trigger the concomitant development of a host of appropriate programs and services for juvenile delinquents. Unfortunately, anticipation did not fully ripen into reality since no significant funding was made available for this purpose. A contributing factor is the lack of clearly defined roles and responsibilities for service provision between different levels, divisions and departments of government, particularly county and state. Reliance on county initiative to fund and develop programs for adjudicated youth has not been entirely successful. Despite increased emphasis on county and local involvement in planning for funding and providing family court services, the Juvenile Delinquency Commission has found that the number of juveniles under the custody of state-level executive departments has continued to increase since the enactment of the Code.⁴⁷

While the Code's provision for new dispositional options has generated the development of some new, creative non-incarcerative programs and services for juveniles, the policy goals of the Code have not been fully realized. Sadly, to this day, five years later, significant gaps in services remain. The disparity of family court dispositional resources between counties is great. An unfortunate reality is that the counties with the greatest needs, in terms of numbers of juveniles adjudicated delinquent, tend to be the

⁴⁴See "Tracking Case Outcomes", JDC Clearinghouse, p. 1-2 (August 11, 1989).

⁴⁵Final Report of the Juvenile Justice Task Force Advisory Committee on "Alternative Dispositions/Community - Based Programs", p. 1 (January, 1981) (hereinafter, Task Force Report).

⁴⁶Id.

⁴⁷Juvenile Justice - Toward Completing the Unfinished Agenda, Volume 1, p. 58 (August 1988) (hereinafter, Toward Completing the Unfinished Agenda).

counties with the fewest resources. While a number of reasonable factors appear to account for or contribute to this situation (for instance, counties with large delinquency problems are the urban counties that must also confront problems with deteriorating infrastructures, school systems, etc.) the resulting gap between needs and services is very real. To a large extent, budgetary constraints have been an impediment to the development of much needed services.

2. Judicial Authority to Order an Executive Agency to Provide Needed Services to Juvenile Delinquents within the Agency's Fiscal Limits.

In State in the Interest of D.F.,⁴⁸ the then Juvenile and Domestic Relations Court ruled that adjudicated juveniles have a constitutional and statutory right to treatment and inherent in that right is the court's power to specify the place of treatment of an adjudicated delinquent. The court was therefore deemed empowered to mandate the placement of a juvenile delinquent at a very expensive private institution and to order DYFS to bear the cost of the same.

The Appellate Division stated that adjudicated juveniles do not have a right to treatment without first being confined for the purposes of treatment; the right, if any, was deemed triggered by confinement, not by an adjudication of delinquency.⁴⁹ The Appellate Division stated:

The Juvenile Court is empowered to commit the juvenile to the care of DYFS or to place the juvenile in a "suitable" institution for the treatment of mental illness if the juvenile is found to be a danger to himself or others or to place him on probation subject to specific conditions. There exists, however, no specific statutory authority permitting the hybrid disposition ordered in the present case when the Juvenile Court committed D.F. to DYFS, invoking that agency's responsibility for D.F.'s care while, at the same time, foreclosing exercise of agency discretion by itself dictating a required disposition. We see nothing invalid in requiring the juvenile to submit himself to psychiatric care, either resident or outpatient, as a condition to probation where, as in this case, such care appears necessary for his well-being and in the best interest of those around him. Such disposition is made available in N.J.S.A. 2A:4-61(c) permitting the Juvenile Court judge to specify conditions to probation. He can even require that DYFS choose the appropriate institution. Attendance at a residential psychiatric facility in those circumstances will not, however, be at the cost of the State unless the facility chosen be a public one or unless DYFS, if requested, selects a private institution which, in light of its fiscal

⁴⁸138 N.J. Super. 383 (J. & D.R.Ct. 1975), mod. 145 N.J. Super. 381 (App. Div. 1976), certif. den. 74 N.J. 260 (1977).

⁴⁹State in the Interest of D.F., 145 N.J. Super. 381 (App. Div. 1976), certif. den. 74 N.J. 260 (1977).

realities, can be met out of its budget.⁵⁰

Recognizing the limitations imposed by the Appellate Division in D.F., in State in the Interest of Doe⁵¹, the then Juvenile and Domestic Relations Court ruled that it is up to DYFS to select the specific treatment facility for an adjudicated juvenile committed to that agency's care. Nevertheless, the "Juvenile Court has the authority to direct a rehabilitative plan for adjudicated children. This includes the inherent and statutory powers to require DYFS to provide specific treatment within its established procedures."⁵² Accordingly, the Doe court directed DYFS (which had not responded to the court's prior orders) to place the juvenile in an appropriate residential treatment facility (to be selected by DYFS). The facility was to be one that is reasonably designed to meet her needs and consistent with DYFS' budgetary responsibility.

Both Doe and D.F. preceded the enactment of the Code of Juvenile Justice. The Code provides that as to juvenile delinquents placed under the care of the Department of Human Services for the purpose of providing services to them:

Within 14 days, unless for good cause shown but not later than 30 days, the Department of Human Services shall submit to the court a service plan, which shall be presumed valid, detailing the specifics of any disposition order. The plan shall be developed within the limits of fiscal and other resources available to the department. If the court determines that the service plan is inappropriate, given existing resources, the department may request a hearing on that determination. N.J.S.A. 2A:4A-43b(5)

3. Evaluation of Existing Programs/Services.

The provision of "an adequate program of supervision, care and rehabilitation" is one of the key purposes of the Code. N.J.S.A. 2A:4A-21b. Additionally, among the factors to be considered by the court in determining an appropriate disposition is the juvenile's prior social service received and out-of-home placement history. N.J.S.A. 2A:4A-43a(3). While the Code does not explicitly require the evaluation of programs or services for juvenile delinquents, it recognizes some oversight by the Judiciary regarding the provision of services to them. For instance, the court may determine the appropriateness of a service plan submitted to it by DYFS as to juveniles adjudicated delinquent over whom that agency has been given responsibility pursuant to N.J.S.A. 2A:4A-43b(5).

The Juvenile Delinquency Commission has highlighted the importance of program efficacy and evaluation. Its Second Annual Report states that "evaluation of a delinquency

⁵⁰Id. at 389-390.

⁵¹169 N.J. Super. 585 (J. & D.R. Ct. 1979).

⁵²Id. at 593.

program must focus on how successfully it reduces recidivism. This is rarely done."⁵³ The dearth of evaluative efforts may be attributed to the difficulty in accurately identifying and measuring "what works" as well as the high cost of conducting evaluations.

4. Coordination of Service Delivery.

The New Jersey Code of Juvenile Justice demonstrates a marked concern for the provision of services to juvenile delinquents in a coordinated, comprehensive fashion. To ensure the systematic availability of services in each county, the Code requires that:

[T]he governing body of each county, in conjunction with the county department or such other persons designated by the county charged with responsibility for planning for youth services, shall submit to the Commissioner of the Department of Human Services a comprehensive plan for the provision of community services and programs to meet the needs of children under the jurisdiction of the Family Court and the provisions of this act and which shall be developed within the limits of fiscal and other resources available to the county. N.J.S.A. 2A:4A-91.

Upon the adoption of the initially submitted plan, a plan (including a needs assessment and resource inventory of youth services in the county) is to be submitted to the Commissioner every third year. N.J.S.A. 2A:4A-91g.

New Jersey's Action Plan for Children observed that "New Jersey's social services' resources have not been organized into a unified system of family-centered services."⁵⁴ Citing a study by the Commission on Children's Services, the Action Plan states:

The current service delivery system...does not have a focus for coordination of services at either the state or the local level. Neither broad policies nor administrative arrangements organize public and private programs into a unified system that effectively allocates existing resources...the current organizational scheme fosters fragmentation and duplication of services...Accountability for individual clients...is diminished. Some children never receive the services they need.⁵⁵

Incarceration/Aftercare

1. Recall, Aftercare and Intensive Supervised Visitation Programs.

The Task Force Report called for the provision of recall, where appropriate, of a

⁵³Toward Completing the Unfinished Agenda, *supra* at 67.

⁵⁴New Jersey's Action Plan for Children, p. 95 (1985) (hereinafter, Action Plan).

⁵⁵Id.

juvenile delinquent from incarceration prior to his/her parole.⁵⁶ The Code also authorizes the substitution of an alternative disposition not to exceed the duration of the original time to be served in the institution. N.J.S.A. 2A:4A-44d(2). Additionally, R. 5:24-5(a) provides that:

The court shall retain jurisdiction over every action in which it has entered an order of disposition for the duration of the dispositional terms and conditions. If the court finds at any time during the duration of the disposition, on notice and hearing, that the conditions of the order of disposition have been violated, it may substitute any other disposition which it might originally have made. If the disposition was an order of commitment or incarceration the court may, during the duration of that disposition, substitute any other disposition otherwise available to it. See also N.J.S.A. 2A:4A-45a.

As reported by the Juvenile Delinquency Commission:

The average daily population in the three Department of Corrections juvenile institutions has remained fairly stable, at slightly over 700 juveniles, since the summer of 1986. This is a return to the high institutional population levels of the early 1980s. This follows a three year period of declining populations which began in the summer of 1982. After dropping significantly in 1987, institutional commitments jumped 19% (to a total of 979) in 1988. That represents a significant increase. However, total annual commitments for each year since the new Code became effective (1984 through 1988) have never approached the pre-Code levels of 1982 and 1983.⁵⁷

Not surprisingly, the Commission observed that a "major concern of policymakers is overcrowding"⁵⁸ in incarcerative facilities. For instance, as the Commission observed, "[i]n June of 1986, the population of incarcerated juveniles exceeded the combined capacity of the institutions, a troubling phenomenon that had not occurred since August, 1982. Since that time, correctional institutions have been experiencing overcrowding".⁵⁹

The Juvenile Delinquency Commission has identified a significant gap in aftercare services. In a survey of County Youth Services Commissions, the absence of aftercare programs tied with general residential programs as the most widespread service gap.⁶⁰

⁵⁶Task Force Report, supra at 5.

⁵⁷"Update", supra at 1.

⁵⁸Toward Completing the Unfinished Agenda, supra at 48.

⁵⁹Id.

⁶⁰"Resources for Adjudicated Youth - What's Available. Results of a County by County Inventory", JDC Clearinghouse, p. 2 (January 15, 1988).

While some aftercare programs have been established, unfortunately, in some parts of the State this need may still not be fully met.

2. Mandatory Parole Disqualifiers for Juvenile Delinquents; Potential Exposure to Lengthier Incarcerative Terms than Convicted Adult Criminals Prior to Parole.

The Code authorizes the commitment of adjudicated delinquents to a statewide correctional institution "for terms not to exceed the maximum terms as provided herein for what would constitute...crimes if committed by an adult." N.J.S.A. 2A:4A-44d(1).

As to parole, the Code provides that:

The period of confinement shall continue until the appropriate paroling authority determines that such a person should be paroled; except that in no case shall the period of confinement and parole exceed the maximum provided by law for such offense. However, if a juvenile is approved for parole prior to serving one-third of any term imposed for any crime of the first, second or third degree, including any extended term imposed pursuant to paragraph (3) or (4) of this subsection, or one-fourth of any term imposed for any other crime the granting of parole shall be subject to approval of the sentencing court. N.J.S.A. 2A:4A-44d(2).

The Code does not specify a minimum length of incarceration as a prelude to parole eligibility. Pursuant to the Parole Act, "[e]ach juvenile inmate committed to an indeterminate term shall be immediately eligible for parole." N.J.S.A. 30:4-123.51.⁶¹ Presumptive tentative parole release terms and ranges for juvenile inmates are set forth in the New Jersey Administrative Code. N.J.A.C. 10A:71-3.21; 21 N.J.R. 768 (March 20, 1989).⁶²

The Code makes no reference to the applicability to adjudicated delinquents of parole disqualifier provisions which are mandatory as to certain convicted adult criminals pursuant to other statutes (e.g. the Graves Act).

3. Short Term Incarceration

For the first time, the Code authorized the commitment of certain juvenile delinquents to a county juvenile detention center for a term not to exceed 60 days. N.J.S.A. 2A:4A-43c. The purpose of this statutory provision is "to permit an alternative disposition, apart from the standard term of incarceration, which would provide a strong deterrent for youths who have been adjudicated [delinquent] for certain serious offenses."⁶³

⁶¹The Parole Act predates the effective date of the Code of Juvenile Justice.

⁶²See Appendix II.

⁶³Senate Judiciary Committee Statement, Assembly, No. 641, L. 1982, c.77.

Use of this dispositional option is contingent on an agreement between the county and the Department of Corrections and Corrections' certification of the detention facility for this purpose. N.J.S.A. 2A:4A-43c(2). The implementation of this program is a county option.

Since detention center commitment programs have been approved in only seven counties, this dispositional alternative has seen little use. The Juvenile Delinquency Commission has found that in 1985, 22 such commitments were made; in 1986 - 136; in 1987 - 140; and in 1988 - 153.⁶⁴ The decision to implement this option is contingent on county initiative. If established, its costs are county-borne. The Juvenile Delinquency Commission has observed that the optional nature of its use and the counties' reluctance to incur additional expenditures may have deterred the expanded use of this alternative.

Training/Public Education

The Code of Juvenile Justice makes no provision for the training of correctional officers. Pursuant to recently enacted legislation, the Police Training Commission has been invested with responsibility to review and approve new standards and course curricula developed by the Department of Corrections for both basic and in-service training of State and county corrections officers and juvenile detention officers. N.J.S.A. 52:17B-67(2)p (Assembly, No. 441, L. 1988, c. 176). An eight-week course is currently given to corrections officers working in correctional institutions. Corrections officers whether working in adult or juvenile correctional facilities apparently receive identical training.

The Code of Juvenile Justice makes no provision for the training of personnel serving adjudicated delinquents. Since the enactment of the Code, training regarding the juvenile justice area has been provided to Family Division Judges and Case Managers, as well as probation officers on several occasions. Training has encompassed the Code and various aspects thereof (e.g. waiver and the Comprehensive Drug Reform Act).

The Code of Juvenile Justice does not make explicit reference to educating the public about the workings of the juvenile justice system. Descriptive information regarding the workings of the juvenile justice system is not uniformly available on a statewide basis.

Minority Professionals in the Juvenile Justice System

The Code makes no reference to the employment of minority psychiatrists or psychologists in the correctional system. It is the Subcommittee's perception that there are extremely few (if any) minority psychiatrists or psychologists in the correctional system.

The Code makes no reference to the employment of minority professionals in the juvenile justice system. In the Subcommittee's view, there is a dearth of minority professionals in the juvenile justice system. Specifically, it is the Subcommittee's perception that there is an insufficient number of minority judges, social workers, probation officers and other professionals in the juvenile justice system.

⁶⁴"Update", supra at 2.

Equitable Dispositions

While the Code of Juvenile Justice requires the court to weigh certain factors prior to imposing disposition (N.J.S.A. 2A:4A-43a), it does not make explicit reference to the equitable imposition of dispositions on adjudicated delinquents. A dispositional disparity study has been undertaken by the Conference of Family Division Presiding Judges (and its Case Processing Committee).

IV. Problem Identification

A. DIVERSION

Police Diversion

1. Establishing Guidelines for Police Diversion

This was the most debated issue considered by the Diversion subcommittee on the topic of police diversion. The Diversion subcommittee members recognized that the decision as to whether or not a delinquency complaint is to be filed with the court is a law enforcement decision, but noted that since police diversion involves ad-hoc decision making, there should be guidelines to address this area. The members believed that the creation of guidelines will achieve greater uniformity in police diversionary practices and serve to advance the goals of the juvenile justice system. The members also felt that these guidelines should be developed by the executive branch, since the functioning of law enforcement entities is an executive, not a judicial, branch responsibility. This issue of guidelines for police diversion was identified in the findings of the Juvenile Justice Task Force Advisory Committee on "Alternative Dispositions/Community-Based Programs".⁶⁵

2. Availability to Police of Community Resources

The Diversion subcommittee members recognized that police officers should have various resources available to them. The members believed that any guidelines concerning police diversion should include recommendations for utilizing appropriate community resources and encouraged the development of such alternatives. The members indicated that this effort would serve to systematize what is now occurring on an ad-hoc basis.

3. Increased Prosecutorial Awareness of Police Diversion

The subcommittee members noted that there is no mechanism in place which allows county prosecutors to be advised of any prior contact(s) which a particular juvenile has had with local police when considering an intake recommendation to divert a delinquency complaint. The members agreed that although the prosecutor might benefit from such a disclosure, it would be inappropriate for the court's Intake unit to receive this type of information. They recognized, however, that the existing information gap negatively impacts the public's perception of the juvenile justice system. When a juvenile initially

⁶⁵New Jersey Assembly Judiciary, Law, Public Safety and Defense Committee, Final Report of the Juvenile Justice Task Force Advisory Committee on "Alternative Dispositions/Community Based Programs", (January 1981), p. 10.

Recommendation on this subject also are contained in the following:

• Juvenile Delinquency Commission, Juvenile Justice - Toward Completing the Unfinished Agenda, (August, 1988), p. 73.

• New Jersey Department of Law & Public Safety, Division of Criminal Justice, Juvenile Justice Action Plan Draft Edition, (October 1988), pp. 45-54.

enters the court system due to the filing of a delinquency complaint, the court treats the juvenile as a first-time offender. If, however, the juvenile has been involved in prior instances of police diversion, the general public may not view the complaint as the juvenile's first contact with the system. Unfortunately, in such situations, the court is often held responsible for action taken by entities which are outside of its jurisdiction and control.

Court Diversion

1. Refining Court Diversion

Although diversion procedures are essentially successful, there is need for improvement if the system is to have a positive impact upon those juveniles who had prior diversionary experiences and are charged with the commission of subsequent offenses. The court must guard against the idea that diverted cases are not as significant as those referred for court action.

A juvenile's ability to succeed at diversion may be affected by various factors. There is a need to gather additional information concerning these juveniles that will assist the court in targeting its efforts. These factors include the juvenile's ability to read and write, mental health status, whether the juvenile is developmentally disabled, whether a juvenile has special educational needs, the child's school status, out-of-home placement history, the level of social service involvement and the availability of other family resources (i.e., extended family).

The collection of specific qualitative data about particular juveniles will enable the court to make informed decisions on how their cases can best be processed and will serve to improve the chance of successful diversion. There is, however, a need to establish criteria as to when and how this information will be captured and where it will be maintained.

2. Strengthening the Court Intake Function

The Diversion subcommittee members recognized Intake as a key functional area of the juvenile justice system and identified the growing need for strong support teams in the counties, particularly in light of the rotation policy of the Judiciary. Many of the members believed that experience in the court system and family matters should be required for entry level intake positions. All of the members stated that training should be provided to Intake staff. In this regard, they emphasized the need for the court system to identify what it wants to accomplish and then to establish an operational framework within which Intake staff, as the "gatekeepers," may achieve desired goals. The members felt that training programs should be developed by each county to reflect local needs and available resources. The Administrative Office of the Courts, however, could assist in this effort by providing some basic training around core information.

3. Increasing Awareness Levels Concerning Variations in Court Practices

The Diversion subcommittee members recognized the need for judges and Intake staff to be aware of policies and procedures which exist across the state with regard to the diversion process. The members felt that a mechanism should be developed which allows individuals throughout New Jersey, who have the same functional responsibility, to meet and share experiences, attitudes and decision making processes. The members indicated that this could be addressed by periodically conducting separate conferences for both judges and Intake personnel. Some members also believed that interdisciplinary training sessions would be beneficial. This would address the need to provide Intake staff with an opportunity to share ideas and information with Family Division Judges.

4. Improving Communication between the Court and JCC's

The subcommittee recognized the need to establish regular and systematized communication between the court and the municipal Juvenile Conference Committees. The members believed that this will serve to provide Committees with necessary feedback and support their role in the juvenile justice system.

5. Monitoring Court Dispositions

The subcommittee members recognized the responsibility of the court to monitor its own orders to determine if there is compliance with the conditions imposed. The members noted that policies and standards need to be established to address this area and identified practical considerations such as calendaring techniques and staff resources. This need also was identified by the Juvenile Delinquency Commission in its second annual report.⁶⁶

6. Establishing Standards/Guidelines for Diverting Offenses

The subcommittee members recognized the possible need for criteria and guidelines as to the type of delinquency offenses or offenders which should be diverted. The members raised but did not resolve the issue of whether such guidelines should be uniform statewide, derived from a nucleus of standards, or county based in focus.

7. Establishing Offense Specific Diversionary Programs

Although the Code of Juvenile Justices provides for three types of diversion, the establishment of "offense specific" diversionary programs needs to be considered. These programs have the potential to be effective and should be replicated where appropriate. The subcommittee members also identified the need to develop a mechanism for

⁶⁶Ibid., p. 80.

discovering and evaluating these types of programs which may be in place around the country and for implementing them in New Jersey.

8. Increasing Involvement of the County Prosecutor in Court Diversion

There is a uniform statewide need for county prosecutors to appropriately exercise their responsibility and authority regarding diversion recommendations pursuant to N.J.S.A. 2A:4A-72 and R.5:20-1(c).

9. Changing Records Management Procedures

The filing system employed by a county may govern the availability of information which, in turn, may impact decision making. Currently there are two basic methods of maintaining juvenile records throughout the state - some counties have an "offender" based filing system where there is one physical folder for a particular juvenile containing all delinquency complaints and, other counties have an "offense based" system where each delinquency complaint for a particular juvenile is maintained in a separate file folder. Although the implementation of the automated system in the Family Division (FACTS) will serve to address information gaps, it is not a near term solution to any existing problems. There is also a need for a policy decision regarding records management procedures and a need to standardize such procedures.

Juvenile-Family Crisis Intervention Units

1. Increasing Levels of Knowledge about CIU's

There is a significant lack of coherent theory and application and a lack of appropriate awareness on the part of the Judiciary, judges, court staff, law enforcement personnel, schools and the community in general, about juvenile-family crisis jurisdiction, the operations of CIU's and the purposes which they serve. The subcommittee members cited the need for training and educational programs to enhance the awareness of CIU's and help ensure that the goals of the units will be met. The members noted that at the time the Code of Juvenile Justice was enacted, many anticipated that judges would have received broader training. The members also identified the need to disseminate better information and provide more effective training to "front line" personnel (particularly police) on recognizing and handling crisis matters. The subcommittee believes that the best approach for getting the necessary information about the goals of juvenile-family crisis intervention to the law enforcement community, would be to encourage the Attorney General and the Prosecutor's Association to assist in the development of a suitable program curriculum, which will be presented at the local level.

2. Enhancing the Functioning of Crisis Intervention Units

A problem related to the achievement of the goals of juvenile-family crisis matters is the functioning of the actual units. The subcommittee members recognized the need to strengthen the capabilities of unit staff and raise professional standards. Based on the subcommittee's discussion of this subject, it appears that the statutory intent to limit the appointment of CIU staff to qualified individuals is not being followed.

3. Improving the Presentation of Jurisdictional and Factual Data

In some counties, CIU petitions are not presented to the court in an efficient and professional manner, which impacts on its ability to process these actions. The members cited the need to develop more effective methods of presenting juvenile-family crisis petitions to the court that will address related problems.

4. Ensuring Involvement and Oversight by the Judiciary in CIU Operations

This is one of the most critical issues related to CIU's that was considered by the subcommittee. The members noted there is a need for greater Supreme Court involvement in the statewide operation of CIU's. Recently, an AOC staff person had been assigned on a part-time basis to work with the crisis units to provide technical assistance related to standardizing procedures, resolving issues and collecting reliable statistics. The members expressed the need to continue and enhance such efforts because there is a clear need to do more.

5. Improving Administrative Support for CIU's Within the Judiciary

The Diversion subcommittee discussed the functioning of crisis intervention units statewide and focused on the need for administrative support at the vicinage level. The members believe that in most vicinages, the intent of the CIU legislation has been overlooked or misunderstood by the Trial Court Administrator and Assignment Judge. There should be more effective control within the judiciary to ensure that necessary programs and services are available and functioning effectively. The members feel that the Supreme Court should develop a systematic program of accountability through the Assignment Judge who, as local manager of the Judiciary, has the responsibility to plan for and carry out all aspects of court operations under his authority.

6. Expanding the Diversion Base Through Community Resources

The decision to divert is often a decision to allow non-judicial or community based programs or agencies to respond to delinquency cases. The members noted, however, that diversion cannot be accomplished or effective without the existence of adequate resources. They stated that the focus of diversion should not be on diverting "from" the juvenile

justice system, but rather, on diverting "to" appropriate services which are well organized and carefully planned. In this regard, the subcommittee emphasized the need to recognize the vital role of the Youth Services Commissions in planning for court involved youth. The members believed that since the Commissions are in-tune with the community, they are able to focus their efforts and resources on the provision of programs and services that are specifically designed to meet the unique needs identified for particular areas. Youth Services Commissions are essential for supporting all aspects of the Family Court, not just the efforts of CIU's. The members identified the need for more administrative support at the county level by the Assignment Judge and Family Division Presiding Judge to ensure that the Commissions function as intended, are effectively utilized and are representative of all components of the juvenile justice system.

7. Ensuring Adequate Budgets for CIU's

In reviewing the operations of CIU's throughout New Jersey, the subcommittee discussed the legislation which is currently pending for the state assumption of county court budgets. The members noted that if such legislation is enacted, the CIU's which operate within Family Division Intake would be funded out of the state budget. Those CIU's which are outside of Court Intake, however, would continue to be funded by the county. The members identified this area as a potential problem and stated that the impact of the proposed funding plans must be carefully considered if New Jersey is to effect adequate and equal levels of services and operations in all CIU's.

8. Enforcing Court Orders

The subcommittee recognized the problem which exists statewide with respect to the enforcement of court orders entered upon juvenile-family crisis petitions and briefly discussed this matter. Guidance in the design and provision of appropriate forms would be very helpful in this regard. Training in this particular aspect of juvenile-family crisis jurisdiction, concerning the nature of enforcement of litigants rights and how such matters are processed, would also be useful.

B. DETENTION

1. Establishing and Enforcing Maximum Capacities for Detention Centers

This issue is the most critical issue to be discussed by the Detention subcommittee. The subcommittee members acknowledged detention overcrowding to be the most serious problem New Jersey faces in this area. Most subcommittee members do not believe that increasing juvenile detention center capacity will solve the problems of chronic overcrowding. It was generally felt that there will always be a tendency to fill whatever detention space is available.

The New Jersey Code of Juvenile Justice attempted to address this problem by providing in N.J.S.A. 2A:4A-37(c): "...No juvenile shall be placed in a detention facility which has reached its maximum population capacity, as designated by the Department of Corrections." This provision has been ineffective in preventing overcrowding in our juvenile detention centers because it is not clear from the statute who has the ultimate responsibility for enforcement. N.J.S.A. 2A:4A-37 "Place of detention or shelter" gives the Department of Corrections, in consultation with the administrator of the county facility the responsibility of assigning a maximum population capacity for each juvenile detention facility. It also gives the Department of Corrections the power to restrict new admissions if it determines that a juvenile detention facility "...is regularly over the maximum population capacity or is in willful and continuous disregard of the minimum standards for these facilities..." N.J.S.A. 2A:4A-37(f)(1).

Clearly, the Department of Corrections has authority to restrict admissions under the New Jersey Code of Juvenile Justice, but it is not clear whether it was also intended that judges should consider detention center capacity and refrain from committing juveniles to facilities that have reached their maximum capacity. The legislature may have intended judges to enforce maximum capacities, or it may have intended that detention decisions be made independently of such considerations and that responsibility for maintaining caps on population be strictly an executive function. This is a crucial issue that needs to be addressed by the 1989 Judicial Conference.

Another conflict arises between the responsibilities of state and county governments in this area. Although the Department of Corrections has monitoring and enforcement responsibilities for detention centers it is the counties that must run the centers and pay the bills. The State mandates standards but does not supply funding or support to help the counties meet those standards. It may be because of these multiple layers of responsibility, judicial and executive, state and county, that the clear legislative mandate of N.J.S.A. 2A:4A-37(c) that "...No juvenile shall be placed in a detention facility which has reached its maximum population capacity..." has been largely ignored.

2. Use of Detention for Juveniles Awaiting Placement to Non-secure Settings

Many juveniles in detention are there awaiting placement in non-incarcerative programs run by either the Department of Human Services or the Department of Corrections. A one day survey conducted by the New Jersey Department of Corrections Juvenile Detention and Monitoring Unit on June 6, 1988 found that of 639 juveniles in detention statewide 439 were on pre-adjudicated status and 170 were on post-adjudicated status. Of the 170 juveniles only 43 were awaiting incarceration; 73 were awaiting placement in Department of Corrections Community Programs and 54 juveniles were awaiting placement by the Department of Human Services. A directive of the Administrative Office of the Courts forbids housing juveniles awaiting placement by the

Division of Youth and Family Services in detention facilities.⁶⁷ This restriction would not apply to juveniles adjudicated delinquent who have not yet had a formal disposition entered. No breakdown was available indicating how many of the 54 juveniles reported as awaiting placement by the Department of Human Services had already been given a formal disposition. The Juvenile Delinquency Commission in its most recent report recommended:

...Current Detention Criteria should be amended to explicitly prohibit the continued detention of juveniles who have been adjudicated delinquent but whose dispositions do not involve a secure out-of-home or residential placement.⁶⁸

The detention rationales of protecting the community and ensuring the juvenile's appearance at the next hearing no longer apply where the juvenile has been adjudicated and is not awaiting incarceration. In these cases the rationale has changed to one of keeping the juvenile in detention for his or her own good so that the juvenile does not disappear or get into more trouble while awaiting placement. Judges may be reluctant to return a juvenile awaiting placement in a substance abuse program to a home environment where drugs are easily accessible. The Detention Subcommittee, while recognizing that it may not always be in the juvenile's best interest to return home while awaiting placement in non-secure settings, feels that it is inappropriate to keep these juveniles in detention.

3. Expediting Court Appearances of Detainees

Detention hearings and other court appearances should be expedited for juveniles in detention in order to minimize the length of stay for juveniles. One problem in this area is that in some counties it is difficult to meet the Code requirement for a second detention hearing within two court days if the juvenile is not represented by counsel at the initial detention hearing, N.J.S.A. 2A:4A-38(f), because it is difficult to obtain counsel for the juvenile within the two day period. The problem then arises of whether to hold the second hearing without counsel, or to postpone it.

4. Casework Services for Preadjudicatory Detained Juveniles

Juveniles should be entitled to mental health and other Human Services casework services while in detention awaiting adjudication.

⁶⁷Directive #5-80, (November 14, 1980).

⁶⁸Juvenile Delinquency Commission, Juvenile Justice--Toward Completing the Unfinished Agenda, (August 1988), pp. 74-75.

5. Maintaining Contact with Home and School

Detention Centers should have specific programs to enable juveniles to maintain contact with family members and schools. Maintaining these contacts while the juvenile is in detention will make the eventual rehabilitation of the juvenile an easier task. Some Detention Centers allow visitation on weekends, and upon court order, also allow some juveniles to be transported to their regular schools and attend classes during the day before being returned to the detention center after school. These programs are not available in many counties.

6. The Use of Detention for Juveniles Involved in a Juvenile-Family Crisis who Repeatedly Run Away from Shelters

The use of detention for juveniles involved in a juvenile-family crisis who repeatedly run away from shelters is a chronic problem. The New Jersey Code of Juvenile Justice forbids placing juveniles involved in a juvenile-family crisis in an institution "...which physically restricts such juvenile committed to or placed in it." N.J.S.A. 2A:4A-46(b). In spite of this a problem still exists. Juveniles who repeatedly run away from shelters are often charged with some other delinquency offense, such as the commission of a minor assault in the act of leaving the shelter, in order to justify placement in a detention center. In these cases many Detention Subcommittee members believe that the real reason for detention is the chronic runaway problem rather than the subsequent delinquency complaint. It should be noted that the Juvenile Delinquency Commission has established a subcommittee to address this issue.

7. Disparity in Information Available to the Court

Some Detention subcommittee members felt that often juvenile intake worker make after hours detention decisions by telephone without adequate information that result in unnecessary detention. There is also disparity in the amount of information available to judges at the time of detention hearings. In some counties judges receive reports from probation, while in others the judge has only the complaint and the juvenile's prior offenses available.

8. Disparity in Admission Criteria Across the State

It was the Detention Subcommittee's perception that there is a great deal of disparity in the type of cases for which detention is imposed across the state. The Detention Subcommittee contains members from both large and small, urban and rural counties. It appeared from subcommittee discussions that offenses which would never receive detention in counties with more widespread and violent crime may receive detention in smaller more rural counties. Some subcommittee members identified community pressure as one factor that might cause a juvenile to be detained where that

decision might not have otherwise been made. It was also felt that there is disparity between counties of similar size and type that cannot be attributed to differing community standards. The subcommittee also noted that minorities seem to be disproportionately over-represented in detention center populations.

9. Increased Use of Detention in Drug Cases

Many members of the Detention Subcommittee expressed concern that new stricter drug laws and enforcement policies will result in even more detention admissions that will exacerbate the serious overcrowding problems that already exist. Detention Center personnel on the subcommittee reported that they are already experiencing large increase in admissions due to additional drug cases.

10. Funding Mechanisms

State funding as a way of ensuring a minimum level of services in detention centers and alternative programs was discussed by the subcommittee. The subcommittee was split on this issue, with some members favoring the idea and others opposing it, fearing that county detention centers with good programs already in place would have their standards lowered.

11. Minimum Training for Detention Center Employees.

With the recent passage of the correctional officers training legislation (effective June 1989), all current and future custody staff in juvenile detention centers will be required to be trained by the Correctional Officers Training Academy (COTA) in the Department of Corrections. It is hoped this will increase the professionalism of staff. At the present time, there are some facilities where staff receive almost no training prior to working with juveniles.

12. Admission of Those Over the Age of 18 to Juvenile Detention Centers

Juvenile detention center personnel reported that there is a growing problem with youths 18 and over who are admitted to juvenile detention centers because they have violated parole or probation on a juvenile offense. These young adults do not have to participate in educational programs, are more violent and difficult to control and provide negative role models for the juveniles being held in the facility. The New Jersey Code of Juvenile Justice (N.J.S.A. 2A:4A-37) requires that such juveniles not be transferred to adult facilities in keeping with the requirements of the federal Juvenile Justice and Delinquency Prevention (JJDP) Act (42 U.S.C.S. 5633 et seq.). Federal funding is contingent with compliance with the JJDP Act, so it is unlikely that New Jersey can alter this requirement on its own.

13. Circulation of Incident Reports to Judges

Although no statistics were available, it was the perception of many Detention subcommittee members that charges of abuse of juveniles by detention center staff are increasing. Detention Centers are required to submit incident reports to the Department of Corrections whenever such charges are made, but the investigations that are performed by the Division of Youth and Family Services are confidential and the judiciary is rarely aware that such charges have been made. Incident reports are also filed for other occurrences, which judges are sometimes not informed of, such as suicide attempts. The subcommittee felt that it may be appropriate to also send copies of detention center incident reports to the Family Division Judge who is assigned to the juvenile's case and that this issue should be given serious consideration.

14. Delegation of Limited Decision Making Authority to Detention Center Staff

Some states, such as New York and Massachusetts, have classification systems that allow detention center staff limited discretion to place some juveniles either in the detention center or in an alternative program. This practice raises serious problems regarding delegation of authority and the interests of the prosecutor and defense counsel in being involved in the detention decision, but it is an issue that merits further consideration.

15. The Role of Family Division Intake

The role of Intake in the juvenile justice system is pivotal to the determination of who comes before the court. However, there are significant differences with intake processes from county to county. Disparities illustrate the need for changes to ensure that regardless of which county a youth resides in (s)he shall be afforded equal justice.

The New Jersey Code of Juvenile Justice assumes that Intake is able to provide machinery for referral of cases to appropriate agencies for the benefit of juveniles. Additionally, Intake often makes the initial detention decision. Intake has wide discretion in deciding which offenders to take into custody and/or place in diversionary programs.

Detention is often utilized when it is felt by the intake worker that the juvenile's placement in the home might be more deleterious to his rehabilitation than would his placement in detention. Additionally, placement in detention is often utilized as a punitive measure, supposedly causing the juvenile to move away from anti-social behavior.

The issues that must be addressed are whether Intake can or should have guidelines established to promote uniformity in detention and referral; and whether Intake should continue to exercise discretion which would be reactive to local needs and requirements but promote the lack of statewide uniformity.

C. ADJUDICATION

1. Particular Statutes Which May Present Difficult Adjudication Issues

a. Right to Counsel, N.J.S.A. 2A:4A-38(h)

In delinquency matters a juvenile has a right to be represented by counsel. Counsel will be appointed if necessary where the matter may result in the institutional commitment of the juvenile or other consequence of magnitude to the juvenile or any family member. Where the juvenile is referred to the public defender or where counsel is otherwise assigned to represent the juvenile, the court may order the parent to pay the fee of assigned counsel. R. 5:3-4. Procedurally, counsel is required for waiver hearings R. 5:22-2 and detention hearings R. 5:21-3(d). Where the parent is able to afford counsel but does not retain one, the court may assign counsel and order the parent to pay any counsel fees. Where the juvenile is not detained and there is no immediate hearing requiring his or her presence in court, counsel may not be obtained by the family until just prior to the adjudicatory hearing. This may result in adjournments. See N.J.S.A. 2A:4A-38(h) which requires that if a juvenile is not represented by counsel at the initial detention hearing, a second detention hearing is to be held within two days at which the juvenile is to be represented by counsel. See also N.J.S.A. 2A:4A-39 Right to Counsel and R. 5:3-4(a) Right to Counsel; Public Defender; Assignment of Counsel.

b. Juvenile-Family Crisis, N.J.S.A. 2A:4A-76

Petitions alleging a juvenile-family crisis can be filed with the court by court intake services only when in the judgment of the crisis intervention unit, a juvenile-family crisis still continues despite the exhaustion of available community services. This may also occur when the family refuses services. The court shall hold a hearing and consider the facts and recommendations of intake in order to determine the appropriate disposition. The juvenile, parent or family members may present witnesses and evidence to rebut the determination that a juvenile-family crisis exists. Disposition is authorized if the court finds a juvenile-family crisis does exist based upon a preponderance of the evidence presented. N.J.S.A. 2A:4A-86. Where out-of-home placement is considered, a petition for out-of-home placement shall be filed by intake and a hearing conducted within 24 hours of the filing. N.J.S.A. 2A:4A-89. Counsel is to be notified and, if indigent, counsel is to be appointed for the juvenile. A family service plan is to be submitted and a hearing held to consider the recommendations. If long-term out-of-home placement is considered and ordered, it is reviewed pursuant to the child placement review act, N.J.S.A. 30:4C-50 et seq.

Not all juveniles who appear before the court in a family crisis matter are entitled to have counsel appointed. Only when an out-of-home placement is being contemplated does the juvenile have a right to counsel which will be appointed by the court if the juvenile is indigent or if the parents otherwise refuse to provide to counsel.

c. Assault Statute, N.J.S.A. 2C:12-1

With respect to delinquency adjudications, the structure of the assault statute may provide difficulty in dealing with the activities of children. In assault cases without a weapon, a court during adjudication is faced with an adjudication choice of a finding of a second degree crime or simple assault, with no middle ground.

d. Fingerprint Records, Photographs of Juveniles, N.J.S.A. 2A:4A-61

Existing law provides that fingerprints of a juvenile may be taken only in certain instances. Where latent prints are found, comparison prints of a juvenile may be taken with either the consent of the court or the juvenile and his or her parent or guardian. These records must be destroyed when their purpose has been fulfilled. Juveniles may also be fingerprinted for identification purposes when detained or committed to an institution. These are also destroyed unless the juvenile is detained for delinquency; in such cases the institution may retain the records.

Where a juvenile age 14 or older is charged with a delinquency offense that constitutes a crime, the juvenile may be fingerprinted and these records may be retained by a law enforcement agency for criminal identification purposes. N.J.S.A. 2A:4A-61. Consequently, situations may arise where a law enforcement agency which seeks to retain prints of a juvenile over 14 who is charged with a crime must fingerprint a juvenile twice: once for comparison purposes and this set is subsequently destroyed and again when the juvenile is charged.

As to photographing juveniles, the Code provides that juveniles age 14 and older may be photographed without consent of the court or the juvenile. Under 14, consent is required. N.J.S.A. 2A:4A-61b.

e. Referral to Another Court Without Juvenile's Consent, N.J.S.A. 2A:4A-26
(Waiver Statute)

The Juvenile Code revised the waiver statute to identify certain offense situations in which waiver is presumed and to require the juvenile to prove, in these situations, that the probability of his or her rehabilitation in the juvenile system by age 19 substantially outweighs the reasons for waiver. In all other instances involving potential waivable offenses, the State must prove that the nature and circumstances of the charge or prior record of the juvenile are sufficiently serious that the interests of the public require waiver.

Although the changes in the waiver statute were intended to clarify which cases should be waived and to encourage greater use of this option for more serious offenders, in practice the number of waiver motions has declined. Waiver is utilized in less than one percent of all juvenile cases.

f. Sexual Assault, N.J.S.A. 2C:14 et seq.

In terms of age limitations, pursuant to N.J.S.A. 2C:14-2, a juvenile who commits an act of sexual penetration with another juvenile under the age of 13 has committed a first-degree aggravated sexual assault. If a juvenile commits an act of sexual contact with a juvenile victim under the age of 13 and the actor is at least four years older than the victim, the juvenile has committed a second-degree sexual assault. Sexual assault would also occur where the juvenile used force or coercion to commit sexual penetration, regardless of age of the victim. Sexual assault would also occur where the juvenile committed sexual penetration and is at least four years older than a victim aged 13 to 15 years old. Our criminal statutes which define the elements of criminal activity were not necessarily drafted with juveniles in mind. Consequently, situations can arise such that where a 13-year old engages in consensual sexual intercourse with another 13-year old and a sexual assault has not been committed, yet if two 12-year olds engaged in sexual intercourse, the actor could be charged with first degree aggravated sexual assault. Consequently, special consideration must be given in determining whether the development or maturation of the juvenile can support the requisite mental state required to prove culpability in sexual assault cases. See State in the Interest of C.P. and R.D., 212 N.J. Super 222 (Ch. Div. 1986).

g. General Requirements of Culpability, N.J.S.A. 2C:2-2, as Applied to Juveniles

The elements of culpability presented in Title 2C concerning adult criminal offenses must be given special consideration when carried over into the definition of delinquency. Obviously, the age and intelligence of children in an adjudication stage of delinquency must be considered within the philosophical definitions of culpability. In classic juvenile arson adjudications, for example, the complex interplay and recklessness present in the child's activity must be carefully scrutinized.

h. New Statutes or Court Rules

The subcommittee will consider whether court rules or statutes should address the issue of prior knowledge of a judge gained in a preliminary adjudication as affecting the subsequent adjudication of guilt or innocence.

2. Length of Detention

The time frames for handling cases where the juvenile is in detention are good and the court does make an effort to enforce them. In many cases these time frames are met. In many cases, however, enforcement is difficult for a variety of reasons. The result is an

increased length of time in detention for some juveniles. The following circumstances result in increased detention time:

- a. the new drug law and the increase in drug-related activity among youth has resulted in an increase in the number of drug cases appearing on counsel mandatory calendars and this may increase delays;
- b. a backlog in lab reports in some drug cases causes adjournments;
- c. where a regular calendar call is not utilized, the flow of discovery especially to private attorneys may not always be timely and may necessitate defense requests for adjournment;
- d. adjournments are often granted when the State is not prepared to proceed. Good cause is not clearly defined;
- e. the new drug law results in an increase of motions to suppress. When discovery is not received in a timely fashion, the delay is even more significant;
- f. the juvenile's constitutional right to suppress illegally obtained evidence frequently delays his or her right to adjudicatory hearings within 30 days;
- g. the grave nature of a referral to adult court requires significant time to prepare for the presentation and defense. The referrals are frequently not heard for several months. Appeals result in further delays. It is not uncommon for referral cases to take up to a year;
- h. the juvenile detained while awaiting a referral hearing is in "limbo." He or she will not have an adjudication hearing with 30 days but is not entitled to bail as is an adult.

3. Maintaining Priorities for Detained Youth and Scheduling Priorities and Time Frames for Detained Juveniles.

The new drug law is having a high impact on the length of stay of juveniles in detention because of the increase of mandatory representation and the length of time necessary to serve lab reports. The statute mandates that a juvenile held in detention be given an adjudication hearing within 30 days of detention. If there is no detention hearing held within 30 days, the court shall, within 72 hours of a motion by the juvenile, fix a date certain for the adjudicatory hearing unless an extension is granted by the court for good cause shown.

Time tables for the performance of certain procedures are either unclear, not complied with or not specified. The subcommittee considered whether time tables should be established which will assure the following:

- a. the expeditious receipt of laboratory reports. The reports should be received within two weeks from the preliminary hearing;
- b. that all discovery should have been received by the defense counsel by the pre-trial call. At the pretrial call, the defense counsel should be prepared to either set a trial date or plea the client;
- c. that, where necessary, the trial should be held within 10 days of the pretrial call;
- d. that the trial date should be set down as a try or release date. If the State is not prepared to try a case within 30 days, the juvenile should be released pending trial.

These time tables would also apply to juveniles charged with non-drug related offenses. A mechanism would need to be established in each vicinage which would assure the timely receipt of all discovery by defense attorneys so that probable cause hearings, pretrial calls and trials could all proceed within statutory limitations. A juvenile should not be penalized with increased detention time because of a breakdown in the flow of information. The court is instrumental in enforcing time constraints and should grant adjournments only under extraordinary circumstances.

4. Scheduling Witnesses

Police officers, probation officers and especially victims of juvenile crime, are frequently called to appear as witnesses. These individuals are frequently inconvenienced by unnecessary appearances as a result of the non-appearance of juveniles, plea-bargaining on the day of trial and the granting of adjournments.

These occurrences fail to recognize the value of the time given by these people in order to appear in court. Other than having been involved in the juvenile crime, there is probably nothing more frustrating than to have waited most of the morning or afternoon in a court waiting room, only to be told to go home because the case has been settled, or the juvenile cannot be found.

The successful prosecution or defense of the juvenile may be jeopardized if this situation persists. Witnesses for the defense or prosecution may not appear the next time they are called as a result of the delays mentioned, thereby causing a further delay of the case or dismissal.

5. Right to Have Witnesses Subpoenaed in Counsel-Not-Mandatory Cases

In counsel-not-mandatory cases there are usually no attorneys to ensure that witnesses are called for a hearing. Delays in adjudication of the case occur when the parties have not been appropriately advised that they have the right to have witnesses called for them. This is probably more important to the juvenile defendant than the victim, as the police usually indicate who they wish to be called for their side of the case and the court routinely notifies those persons. The juvenile defendant may appear for an adjudicatory hearing without witnesses, causing a delay in the adjudication of the case and inconvenience to the other witnesses who have been called by the court.

6. Ineffective Use of Preliminary/Pretrial Hearings

The ineffective use of preliminary and pretrial hearings, which includes the use of calendar calls, is viewed as one of the biggest contributors to delays in adjudication. Our experience indicates that these motions are usually filed at the time the court would be scheduling an adjudicatory hearing on the case. The nature of the motion may postpone the adjudication of the case, if only because of the time required to hear and rule on the motion. The need to call the same witnesses for various hearings on a case may cause these witnesses to quickly become disenchanted with the justice system and pose a threat to the equitable adjudication of the case.

7. Maintaining Victims, Witnesses and Defendants in the Same Waiting Area

The practice of holding all witnesses, the victim and the defendant in a juvenile case in the same waiting area while awaiting hearings on the case is inappropriate. The possibility of witness intimidation is a particular concern, especially in those matters which have involved physical confrontations, threats or abuse.

8. Use of the Counsel-Not-Mandatory Calendar

The counsel-not-mandatory calendar may be a useless effort given the nature of the offense committed and the potential penalties that can be imposed by the court upon juveniles and their families.

9. Disparity in the Use of Referees

Some counties use referees in juvenile delinquency, counsel-not-mandatory proceedings. While this practice is clearly provided for in R. 5:25-2, it is not occurring in every county and as such, a disparity in the treatment of juveniles exists.

10. Whether Juveniles are Spending Unnecessary Lengths of Time in Detention

In a delinquency case, out-of-state juveniles are remanded to detention. Juveniles are spending excessive lengths of time in detention until the proper paperwork is filed in both states.

11. Whether the Appropriate Parties are Aware of the AOC Reference Manual on Extradition.

There is an existing Reference manual on extradition entitled "Interstate Compact on Juveniles." Many of the parties in both states that need to initiate the process do not have copies of the Manual and forms or even know they exist. This causes unnecessary delays in processing the appropriate paperwork.

D. ROLE OF COUNSEL

1. Need for Special Training for Attorneys Participating in the Juvenile Justice System

While only a small segment of the bar practices in this area of law, the importance of the subject matter and the frequent use of relatively inexperienced counsel mandates that serious efforts be made to address the needs of such counsel. In addition, the practice and procedure in these matters is relatively poorly documented in statute and court rule, making it difficult for an attorney who is not familiar with the area to provide effective representation. Much of the information needed is relatively local including both local practice variants and the availability of programs for placement or diversion of the juvenile, requiring specialized information to be available.

2. To Whom These Training Programs Should Be Addressed

The only training now available is offered by the Office of the Public Defender or individual prosecutor's offices. These training programs, where they exist at all, often fail to address broad systemic issues and other persons needing training or having appropriate contributions are effectively excluded.

3. Need for a Centralized, Well Advertised Source of Information About Local Practice in the Juvenile Area

While private counsel may seek information regarding local practices and resources from local public defender or prosecutor's staff, some members of the bar may be unable or unwilling to make use of this opportunity. The information received in this manner may also be limited by the knowledge of the particular individual contacted. For the non-

attorney seeking such information (i.e., parent, teacher or the juvenile himself or herself) not even this resource is available in most cases. The juvenile, particularly, is likely to obtain incorrect or inadequate information from his or her peers and has no means of confirming its accuracy except through counsel, where counsel is provided.

4. Role of the Public Defender

Parents who are financially able to do so are expected to provide counsel for their children who are accused of delinquency. Those who believe they are unable to afford counsel must complete an application with the court to determine whether they qualify to have counsel appointed. From time to time juveniles are detained on delinquency charges without being represented by counsel and remain in detention unrepresented. Those juveniles seem to be in that predicament due to any of a number of causes: parents have failed or refused to retain the services of a lawyer to represent the juveniles' interests; parents have failed or refuse to complete the application for appointed counsel or have failed to provide sufficient information upon which a judgment can be made regarding indigency; or parents have not come forward and the whereabouts of an appropriate guardian cannot be ascertained. Detained juveniles are entitled to counsel by no later than the second detention hearing. Parents or guardians are not permitted to waive the right to counsel on behalf of their children.

Under the current law the court is empowered to determine whether a particular juvenile qualifies for public defender representation and the Office of the Public Defender is to provide representation in all such cases where there is a possibility of institutional commitment or another consequence of magnitude, which by definition applies to all detention cases. Procedures apparently exist only in a few counties for the court to appoint counsel over the objection or failure of parents who are not indigent to do so. Failure to have an expeditious process for determination of indigency and assignment of counsel deprives juveniles of this very important right.

5. Role of Private Counsel, Especially in Approving Diversion

The juvenile's right to counsel should include representation at every important phase of the case. If counsel is retained or appointed early enough it could be beneficial to the juvenile to have representation before those persons or agencies making decisions regarding diversion from the family court process.

6. Adjudicatory and Dispositional Role of Counsel, Type of Hearing

Juveniles who have a right to counsel have a right to be represented at all phases of the proceedings including preliminary hearings, adjudication and disposition. This right is the same whether the juvenile is represented by private counsel or by a public defender. Generally, the role of counsel is to advocate on behalf of the client and to assure that all elements of due process are met. There is some pressure on defense counsel in juvenile

matters to change their posture from that of advocate for the child's position which applied at the adjudication phase to one of asserting the juvenile's "best interests" regarding the disposition. If defense counsel fails or refuses to present the juvenile's wishes and to hold those other parties purporting to know the juvenile's "best interests" to the necessity of proving their case, there may be no one acting on the juvenile's behalf in this regard.

7. Conflicts (Codefendants, Parents or Juveniles). Who Pays for Counsel When the Parent is the Victim?

A long-standing mechanism exists for the Office of the Public Defender to assign a pool attorney to an indigent codefendant if a public defender staff attorney is representing someone else in the case. A non-indigent codefendant has a right to be represented by counsel independent of that representing other codefendants with whom there is a conflict of interest as well. The greater conflict of interest problem arises when the parents who are obliged to retain counsel on behalf of their children have an actual or potential conflict of interest with the defendant giving rise to the possibility that the parent may attempt to influence the attorney to take a position other than that desired by the juvenile. In addition to any confusion as to the positions of the various parties which may result, serious ethical problems arise in such a situation. Not all courts are aware of or apply the procedure outlined for the appointment by the court of private counsel in such conflict-of-interest situations.

8. Institutional Suits (Overcrowding, Federal Court, Cruel and Unusual Punishment)

Lawyers, either private or public defender, who represent individual clients rarely have the opportunity to address issues which apply to an entire class of juveniles. Sometimes to do so would be contrary to the client's interests if those private interests can be met without the additional effort and concomitant risk of defeat. Such attacks on broad scale issues also tend to require substantial resources of both time and money which are not available in the typical juvenile case. There is no public or private entity with the assigned mission of undertaking such litigation on behalf of minors in the juvenile justice system.

9. Post-Dispositional Follow-up by Counsel (Incarcerated Youth, Children Awaiting Placement, Recall, Waiting for DYFS)

Jurisdiction of the Family Part continues for the time that the court's disposition is in effect. Since the juvenile has rights which may need to be enforced from time to time regarding the disposition and since the court may recall the juvenile at any time for a modification of the disposition, which may even be requested by the juvenile, there is a need for representation by counsel well beyond the dispositional hearing.

10. Role of Counsel at Detention and Probable Cause Hearings

There is no question that the consequences of detention and probable cause hearings are sufficiently serious that the right to counsel applies. The role of counsel vis-a-vis the detention issue goes not only to the merits of the case under the detention standards within the law but also to the wisdom of detaining the juvenile in what might be a dangerous or overcrowded detention facility. The probable cause hearing is provided for in every case. A scheme by which this must be requested places the burden of serving extra time in detention on those very juveniles for whom the probable cause hearing is most likely to result in release. Those juveniles who, in consultation with their lawyers, decide that a probable cause hearing is inappropriate can waive the proceeding.

11. Control of the Juvenile Calendar When There is a Scheduling Conflict With the Court's Calendar and Public Defender Assignment to the Juvenile Case

A system of Public Defender assignment which places responsibility for case management outside the court has many inefficiencies in resource utilization. Timeframes are affected while awaiting assignment of counsel and costs of noticing the parties can be substantial. This system does not allow the Prosecutor the opportunity to assign counsel in any logical fashion and finally efficient utilization of judicial resources is dependant on outside influences.

12. There Should be a Commitment to Avoid Continuances

There are many causes for the continuances that often occur in the handling of juvenile delinquency cases. There may be delays in the assignment of counsel such as when a matter is to be assigned a "pool" attorney, which may not be decided until the Calendar Call. This delays disposition of the matter as a subsequent Calendar Call cannot be scheduled until an attorney is assigned. On occasion, a parent's inability to obtain counsel after being rejected for Public Defender representation may cause a matter to be continued. An attorney may have scheduling conflicts of which the court may not be aware. In some vicinages Public Defenders are assigned to more than one judge while system-wide an attorney may not be present when a future court date is set. Discovery may not be received from police which results in delays in an exchange between Prosecutor and Defense Attorney. In most instances Public Defenders have a wealth of experience in the handling of delinquency matters while in many Prosecutor's Offices neophyte attorneys unfamiliar with the operation of the court, staff the juvenile section. This imbalance in experience may result in lack of preparation or an agreement to continue without an understanding as to its appropriateness. All of the aforementioned circumstances point to situations when counsel is not prepared to proceed.

Several vicinages schedule multiple case types before the Family Part Judges. This at times frustrates counsel and may result in the parties disbursing which creates difficulty in trying to bring the parties together at a future date.

Delays in the disposition of matters filed with the court, in the form of continuances, can adversely affect any party to the action. For example, the victim's recall of circumstances may be seriously affected; or, the victim may choose not to proceed or may be unavailable. Continuances burden the case management system as new complaints are factored into the system already burdened with pending matters. Finally, the juvenile loses any benefit that might be gained to the swift disposition of the matter.

13. The Extent of the Prosecutor's Role in Juvenile Matters

The trend in this State toward the expansion of the prosecutor's role in the Family Part and toward more vigorous prosecution of juvenile offenders may be viewed either as a development that is long overdue, or as an erosion of the purpose of the juvenile system. As prosecutors take a more active role in critical decision-making stages in the system, such as the review of intake screening decisions, questions are raised concerning the standards that are applied in the exercise of prosecutorial discretion.

A prosecutor's decision to consent to court diversion of a delinquency complaint may be based upon the individual prosecutor's perception that the interests of the public will be satisfied by diversion from court or it may be based upon the application of established screening guidelines. The prosecutor's appearance in court at the detention hearing, probable cause hearing, formal and dispositional hearings representing the interest of the police, the individual victim and the public maintains a balance in the system that does not exist in the prosecutor's absence.

The decision to seek waiver of family court jurisdiction and referral to criminal court for adult prosecution is a significant option available to the prosecutor. Motions for waiver are filed in a very small percentage of waiver-eligible cases. The primary factor governing a decision to seek waiver in a serious case is the availability of longer prison sentences in criminal court, providing greater security for the public from that offender. Guidelines, if any, governing the exercise of this aspect of prosecutorial discretion may be difficult to apply, since practical consideration, primarily the strength of the prosecutor's case and the chances of securing a longer prison term for the offender, must be considered.

E. DISPOSITION

Dispositional Information

1. Provision of Dispositional Information to the Court Regarding Adjudicated Juveniles

In the Disposition Subcommittee's view, the quality and depth of information that is provided to the court to assist it with its dispositional decision making needs to be standardized on a statewide basis. Specifically, where there is a likelihood of incarceration and in other cases as feasible, an intensive needs assessment should be performed prior to disposition. Such an assessment is necessary in order to identify the juvenile's service, program and treatment needs as to key areas, such as family involvement, employment, education, mental health and substance abuse. Diagnostic evaluations of adjudicated delinquents as to these areas need to be performed in all cases where appropriate. By obtaining a complete appraisal of the juvenile's background, strengths and deficiencies, the court can discern the most appropriate dispositional alternative at an incipient stage of the juvenile's delinquency. As a result, repeated or prolonged court involvement can hopefully be avoided.

Additionally, the Pre-disposition Report Form needs to be revised and its use mandated on a statewide basis. The Pre-disposition Report should include information as to the following: the official and the juvenile's version of the incident, prior law enforcement contact(s) by the juvenile, including stationhouse adjustment(s), school related information (e.g. copies of all school records, grades, absences, suspensions), the juvenile's family background, his/her drug and alcohol involvement, prior involvement with the juvenile justice system (including program involvement of the juvenile and his/her parents), community based and other services received, prior placements and incarceration, the victim impact statement (if one is provided by the victim) and public disclosure notice. Where appropriate, non-binding recommendations as to viable dispositional alternatives need to be sought from various agencies/entities, for instance, from DYFS, YAP, the Department of Corrections or from an interagency team (see Issue 11). Ideally, the probation department personnel preparing the Pre-disposition Report would be housed within the courthouse where the Family Division is located in order to facilitate their availability to the Family Division judge.

In order to permit the pre-disposition unit, post-disposition and court program staff to amass the comprehensive dispositional information needed by the court, staff must be allotted sufficient time to perform this function effectively. Therefore, caseload standards should be established for such staff. Otherwise, their ability to provide the court with the in-depth information it requires to make a well informed dispositional decision could be seriously jeopardized.

The Subcommittee also feels that a statewide resource directory would help enhance the court's ability to select the most appropriate dispositional alternative. Specifically, all existing community based and state programs, services and resources, program availability

and eligibility criteria would be listed and described in the directory. Computerization would significantly assist in the compilation of such information. Judges and/or court support personnel could request that identified gaps in needed programs and services be listed in the resource directory. Such gaps would be brought to the attention of the Municipal, County and State Youth Services Commissions. Of course, to be fully effective, such a resource directory would have to be kept fully updated.

The Subcommittee notes that the Governor's Committee on Children's Services Planning is developing a clearinghouse (including a directory) of programs and services available state and countywide for juvenile offenders. The Subcommittee has been advised by Governor's Committee personnel that the directory will provide descriptive information about such programs and services, as well as program availability and eligibility criteria and other relevant information and that the directory will be periodically updated.

Dispositional Hearing/Order

2. Attendance at the Disposition Hearing

The absence of the juvenile's parents or guardian at a disposition hearing may impede the court's ability to glean important information from such individuals. For instance, the court may wish to question the parents/guardian as to conditions in the home, the parents' ability to properly supervise the juvenile and other related matters which impact on the selection of the appropriate dispositional alternative. Additionally, the court may wish to explain particular aspects of the disposition to the parents/guardian to ensure full compliance with the same by the juvenile (and the parents/guardian, as appropriate). For these reasons, it is vital to ensure the parents'/guardian's presence at the disposition hearing. Therefore, efforts should be made to have the juvenile's parents or guardians attend the disposition hearing. The court, of course, may need to conduct the disposition hearing in their absence, as required by the circumstances of the case.

The presence of other individuals may also be important at the disposition hearing. For instance, the court may wish to take testimony from program personnel as to the program's willingness to accept a particular juvenile and as to the type of services the program can provide. Consequently, the Subcommittee feels that the court should take testimony at a disposition hearing, as necessitated by the individual case.

3. When a Disposition Hearing Should Be Conducted

The Disposition Subcommittee discerns several obstacles to expeditious dispositional decision making. In the Subcommittee's experience, frequently the court may encounter delays in receiving vital information whose provision it has ordered that is needed to make a well informed dispositional decision. For instance, delays may occur in the provision of mental health evaluations, assessments and reports. Delays in bringing about a residential placement may also be frequently encountered in the DYFS residential placement process. As a result, valuable time is lost in expeditiously beginning the

juvenile's rehabilitation. The time strictures for conducting dispositional hearings which are required by the Code of Juvenile Justice and the Rules of Court should be strictly observed and relaxed only upon good cause shown. Emphasis should be placed on providing juveniles in detention/shelter care the swiftest disposition practicable.

Efforts should be made to remedy the causes of existing delays in the timely provision of information requested by the court. For instance, a task force or interagency team could be convened in each county to determine the specific barriers in the county regarding the expeditious provision of court ordered information and to recommend solutions to the same. Members of this task force should include representatives of the court, DYFS, mental health (particularly those with the capacity to prepare evaluations), education and others. The assistance of the County Youth Services Commission should be sought in such an endeavor. Identified problems could be remedied with the assistance of an interagency team. The interagency team could also assist with monitoring the timely provision of court-ordered information.

4. Disposition Order

The Subcommittee feels that the development and use of a standard Disposition Order Form for use on a statewide basis is essential. A standard Disposition Order Form would assist with dispositional data collection, for instance that collected via unit case. Additionally, the Order could be used to record important dispositional information, such as the imposition of conditions and time deadlines for the provision of certain reports, progress reports, etc. The Order could thereby significantly enhance the court's ability to monitor compliance with court imposed conditions and time deadlines.

The Order should set forth the statutory citation for the offense of which the juvenile is adjudicated delinquent. The Order should also include the various dispositional alternative (including parental involvement) which are authorized by the Code of Juvenile Justice. Additionally, the Order should specify the person, program or agency to provide the court with evaluations, reports or other services to the juvenile and his or her family and should designate the time period for compliance. The disposition Order should also specify the conditions imposed on adjudicated delinquents and their parents or guardians and designate the time period for compliance.

Correctional institutions should be advised of the terms of the disposition. Therefore, a copy of the Disposition Order should be transmitted to the Correctional institution to which the juvenile is committed.

Parental Involvement

5. Parental Involvement Orders; Enforcement; Services for Parents

The importance of parental involvement cannot be overstated. "Parents and the family are the fundamental social unit and members of the family unit must be held accountable for fulfilling their responsibilities to protect the well-being of the children.

Supported in their efforts by community services, parents must be encouraged to fulfill their roles and to recognize themselves as accountable.⁶⁹ The Disposition Subcommittee strongly feels that parental involvement should be a vital element of all programs and services for adjudicated delinquents. All youth-serving agencies should assist families in developing and implementing structure within the home so that the home is conducive to the positive development of the children. These agencies should support and encourage parental authority and obligation.

The strengths as well as the weaknesses of a family and its ability to assist in a juvenile's rehabilitation need to be assessed. Parents should be given an opportunity for input into the dispositional decision making process. A partnership between the court and the family needs to be forged so that together, the court and the family can attempt to remediate the juvenile's delinquency involvement.

Dispositions need to include orders providing for participation in established parenting skills programs, family counselling and therapy, where appropriate. Where lacking, such programs need to be established.

In some families, the lack of positive male role models may be a contributory reason for the negative development of young people, particularly young males. A significant role of youth serving agencies should therefore be to confront and encourage fathers and other adult male figures within the home to take a more active part in the development of their children. Where that is not possible, interaction with male figures outside the home (e.g. Big Brothers) should be sought.

Additionally, efforts need to be made to involve every facet of the adult community in exercising positive influence over juveniles. Community leaders should be mobilized in a delinquency prevention effort. For instance, in the area of substance abuse, a unified stand against the proliferation of drug usage by key community figures, such as, police, teachers, religious leaders, the social service system, ex-drug users and concerned adults can be especially effective.

In the Subcommittee's experience, unfortunately parents/guardians often refuse to abide by an order to participate in parental involvement, such as counselling. In the Subcommittee's view, such disobedience to the court's order not only manifests disrespect for the court but may also thwart the juvenile's progress toward rehabilitation.

Accordingly, the court should monitor and enforce compliance by family members with its order. An aid to litigant's rights proceeding (in which a litigant seeks enforcement of a court order) could be utilized to enforce a parental involvement order. Alternatively, a contempt proceeding could be used to coerce parental involvement. Consideration should also be given to the use of N.J.S.A. 2C:29-9 for enforcement purposes. Ideally, the enforcement proceeding would be conducted by the Family Division judge who heard the delinquency matter (or if not possible, by another Family Division judge).

In the Subcommittee's view, legislative amendment to the Code is necessary to specifically designate the willful violation by a parent/guardian of a parental involvement

⁶⁹Drugs - The American Family In Crisis: A Judicial Response - 39 Recommendations, Metropolitan Court Judges Committee Report, National Council of Juvenile and Family Court Judges, p. 19;31 (1988).

order as a separate (e.g. disorderly persons) offense. If the parent/guardian is found guilty, the court would have additional mechanisms at its disposal to effectuate parental involvement orders. For the purpose of consistency, in the Subcommittee's opinion such an amendment should apply to the willful violation of a parental involvement order whether the order was imposed in a juvenile delinquency or a juvenile/family crisis matter.

Monitoring and Enforcement of Disposition Orders

6. Legislative Amendment Regarding the Enforcement of Unpaid Fines, Fees and Penalties

In the Disposition Subcommittee's opinion, it is not clear whether N.J.S.A. 2A:4A-47 limits the court's ability to enforce the collection of unpaid fines, restitution, penalties or fees whose payment is mandated by another statute (e.g., the Comprehensive Drug Reform Act) to age 18 or one year from the date of the order (whichever is later). In the Subcommittee's view, legislative clarification is needed as to this area.

The Subcommittee also expresses reservation about the feasibility of collecting DEDR penalties from often indigent juveniles. The Subcommittee is concerned that otherwise indigent juveniles may be encouraged to sell drugs in order to finance the payment of these high penalties. In the Subcommittee's view, a discretionary financial penalty and/or community service would offer a more realistic alternative, yet suffice to emphasize to the juvenile involved the gravity of drug offenses. The Subcommittee therefore feels that amendment of the Comprehensive Drug Reform Act along these lines would be highly desirable.⁷⁰

7. Additional Mechanisms to Monitor Disposition Orders

The Subcommittee feels that additional monitoring mechanisms are necessary in order to ensure compliance with non-probationary orders and other orders as to which probation does not already perform a monitoring function. As to non-probationary dispositions, monitoring of disposition orders could be effectuated by requesting reports or evaluations from any person, program or agency designated by the court. Uniform monitoring systems need to be developed to ensure that juveniles, parents, agencies/entities/programs, schools and others meet their court ordered obligations and comply with court orders in a timely and satisfactory manner. For instance, follow-up is necessary as to the provision of court mandated tests, evaluations, assessments and services. The adequacy of the service provided to the juvenile and/or parent and the resulting progress made require tracking. In some cases, the lead agency of the collaborative team could be entrusted by the court with a monitoring function. The lead agency would contact all relevant agency and program representatives who (pursuant to a disposition order) provide services to the juvenile and his or her family and act as a

⁷⁰The Disposition Subcommittee was not in unanimous agreement as to this area.

liaison with the court in expeditiously advising the court as to their progress in carrying out the disposition order and alleged violations of court orders. Such a mechanism would be of significant assistance to the court.

As to all disposition orders, computer technology would be of great utility in tracking compliance with disposition orders. In this respect, the statewide implementation of the FACTS system should be of great benefit. The court should conduct a periodic review of disposition orders, as needed. A hearing on alleged non-compliance with a dispositional order should be conducted expeditiously.

Programs, Services and Resources

8. Sufficiency of Programs/Services Currently Available for Non-Incarcerated Juvenile Delinquents; Types of Programs/Services Most Greatly Needed⁷¹

Creative responses are needed. Innovative programs must be devised and where already in existence, their operation expanded throughout the state. Ideally, various types of complementary programs should be utilized in tandem and their usage be individually tailored to meet juveniles' specific needs. Obviously, additional funds are needed to support their development and/or expansion.

The Disposition Subcommittee has identified the following types of programs as needed by non-incarcerated juvenile delinquents:

a. Early Intervention Programs

The Subcommittee strongly feels that the earlier that appropriate intervention is attempted with juveniles and their families, the greater the likelihood of effectiveness. Therefore, the development of early intervention programs, especially those with community or education involvement components should be encouraged.

Alternative education programs are an example of a particularly needed early intervention mechanism. Such programs would provide a unique opportunity to those students who are at risk of terminating their education because of persistent absence or suspension, or lack of interest or frustration with traditional educational methods. Alternative education programs would be specifically geared to such students to encourage their interest in continued education. Additionally, the programs would provide counselling for students' behavioral, personal (and possibly other) problems. Also, linkages would be established between schools and community services and agencies to ensure the provision of needed resources to students and their families.

The use of volunteers in education is another possible early intervention mechanism. Pursuant to this approach, specially trained volunteer teachers would assist with the supervision of juvenile probationers. Supervision would take place on school premises and

⁷¹As to programs which are needed for incarcerated juveniles, see Issues 12 and 14; as to programs needed specifically by juvenile's families, see Issue 5.

would include special educational assistance to such juveniles, where appropriate. As such, the students' educational performance would hopefully be improved. (This program is presently being used in one of the counties in the State.)

Such an approach could also enhance communication between the educational and court systems and facilitate the provision of relevant information by schools to the judiciary. For instance, a mechanism could be established for the regular provision of progress reports by schools to probation staff as to probationary juveniles. As a result, probation staff could better monitor the juveniles' academic progress.

b. Wilderness/Outward Bound Programs

Wilderness/outward bound programs can be especially beneficial in instilling self-confidence, responsibility and motivation. They can also help develop group interaction skills. The wilderness/outward bound experience may comprise one element of a multi-faceted program or, where appropriate may be the focal point of the program. The Subcommittee feels that family involvement may be an especially important component of a wilderness/outward bound program.

c. Community Service/Restitution Programs

The Subcommittee feels that holding juveniles accountable for their actions is a significant element of rehabilitation. Restitution is an effective method of encouraging juvenile delinquents to face up to the financial consequences of their misdeeds. However, in order to make restitutionary payments feasible, opportunities for securing employment are needed. Coupling restitution with community service would be especially useful to instill a sense of responsibility in the juvenile toward the community he/she has wronged by his misdeed(s). An especially beneficial facet would be assigning juveniles to work for the county, resulting in monetary savings to the county for the work performed.

Community service and restitution are imposed with some regularity when accompanied by other dispositional options, such as probation. Specifically, community service orders were included in 14% (2,422) of all 1986 dispositions. In 1% of cases given dispositions in 1986 a restitutionary order was the most restrictive aspect of the disposition; in an additional 8%, a restitutionary order accompanied a more restrictive dispositional order. Both restitution and community service orders were generally accompanied by nothing more restrictive than probation.⁷²

In light of the extent of use of restitution and community service orders (when coupled with probation) the Subcommittee feels that a formal program devoted to these options would be beneficial. Reparation (via monetary payment or service to the community) would be constructively channeled and overseen by a formalized program.

⁷²Toward Completing the Unfinished Agenda, supra at 56-57.

d. Substance Abuse Treatment Programs

An area of special concern to the Subcommittee is the range and availability of services for juveniles with substance abuse problems. To a significant extent, unfortunately, our health care insurance system affects the availability of treatment services for juvenile substance abusers. While there is mandatory insurance coverage for alcoholism treatment, no such coverage exists for drug abuse treatment. Thus, while health care insurance programs enable insureds to obtain needed treatment for alcoholism, no means of subsidizing the costs for drug abuse detoxification and treatment exist, unless the insurance provider elects voluntarily to provide coverage.

Mandatory insurance coverage for alcoholism is not without its problems, however. In the Subcommittee's perception, our system of mandatory insurance coverage has encouraged greater use of inpatient hospitalization as the favored treatment, while discouraging less expensive outpatient or day care treatments that enable the substance abuser to maintain normal daily activities. In the Subcommittee's view, the large expenditures which are made for costly inpatient hospitalization may be better spent on less restrictive, more appropriate care. Financial incentives need to be redirected to reduce needlessly high health care costs for substance abuse treatment and to encourage a greater range of available services.

Mandated insurance coverage for substance abuse treatment would only reach those juveniles whose families are covered by health insurance. Juveniles at the highest risk - from indigent and working poor families - would not benefit. Additional program slots subsidized by State funds need to be made available. While as a part of the Governor's Blueprint for a Drug Free New Jersey, increased funding has been provided to support the development of additional health care provider services for juvenile substance abusers, these resources only reach a small proportion of juveniles. This is especially true as to the availability of residential beds in New Jersey for indigent juvenile substance abusers. Adjudicated delinquents have to fight for these limited spaces along with other juveniles who do not come through the court system. The Subcommittee notes that there is a need for residential programs for substance abuse. Specifically, at this time, there is presently one operating (Straight and Narrow) in the State.

The Subcommittee feels that existing resources are woefully inadequate to meet the needs of New Jersey's drug-involved delinquent juveniles. A broad spectrum of substance abuse treatment and services, to include increased detoxification, outpatient day care and inpatient treatment services as well as aftercare, is needed. These programs are especially needed for court-involved youth whose families lack medical insurance to pay for such services.

e. Residential Programs

The Code of Juvenile Justice authorizes the use of various types of residential options. For instance, at the state level, juveniles may be placed in one of the Department of Corrections' residential facilities or a DYFS operated facility. Juvenile

delinquents may also be committed to the Division of Mental Health and Hospitals under certain conditions. Additionally, a variety of other types of residential programs may also be also be available at the state or county level.

Statewide, in 1986⁷³ 4.8% of all juvenile delinquency cases given dispositions received a residential placement as the most restrictive aspect of the disposition; DYFS residential placements comprised 1%; Department of Corrections residential programs 2%, with the remainder comprising other residential placements.⁷⁴ Additionally, 17 cases were referred to either the Division of Developmental Disabilities or the Division of Mental Health and Hospitals.⁷⁵

In a survey of key actors in the juvenile justice system that was conducted by the Juvenile Delinquency Commission, residential programs were identified as the most needed.⁷⁶ In a subsequent survey of the County Youth Services Commissions by the Commission, residential programs, along with aftercare services, were consistently listed as the most needed.⁷⁷

In the Subcommittee's view, there is a pressing need to expand the availability of residential placements. According to one estimate,⁷⁸ there are approximately 600 or fewer non-correctional residential treatment center beds (half out-of-state) which might be appropriate for the "typical court" adolescent youth, over 200 group home beds and over 200 teaching parent/alternate care beds. In addition, there are beds for substance abusers (many of which are limited to children whose families can pay the full cost) and a limited number of beds in the mental health system. A significant number of these beds serve other than "court" children - "DYFS" children (who have been in the DYFS system for some length of time) or "mental health" youth. With the closing of state psychiatric hospital beds, increasing pressure for placements for "mental health" youth can be reasonably anticipated.

With rare exception, many residential programs do not provide specific programs for youth with specialized needs (arsonists, sex offenders, substance abuse/emotionally disturbed). While many of the residential treatment centers will accept some youth with these behaviors, generally these are youth for whom it is most difficult to find a residential placement.⁷⁹ Given the scarcity of residential services, judges may not have a viable option

⁷³Toward Completing the Unfinished Agenda, supra at 55.

⁷⁴Statistical Supplement, Juvenile Justice - Toward Completing the Unfinished Agenda, Volume II, Table 33 (August 1988).

⁷⁵Toward Completely the Unfinished Agenda, supra at 57.

⁷⁶Id. at 56.

⁷⁷Id.

⁷⁸This estimate is based on information provided by the New Jersey Association of Children's Residential Facilities.

⁷⁹Id.

to order a less restrictive dispositional alternative and may be forced to rely on a more restrictive correctional placement.

Additional residential programs are especially needed for hard to place and court-involved juveniles. Residential programs which refuse to accept court-involved juveniles should not be supported by the judiciary or executive agencies serving such youth.

f. High Risk Juvenile Offender Probation Programs

Probation is clearly the most frequently used disposition. Including its use in tandem with other dispositions, probation was ordered in nearly 6 out of 10 (58%) of the dispositions imposed in 1986.⁸⁰ As observed by the Juvenile Delinquency Commission, "[a]necdotal information suggests that probation is handling increasing numbers of serious offenders. That seems likely since status offenders were largely removed from formal court processing and the proportion of serious offenders before the court is increasing."⁸¹

It is apparent to the Subcommittee that there is an especially vital need for high risk juvenile offender probation programs. One possible approach would be to form a probation team pursuant to which the probation department could make the fullest use of community agencies including alternative schools, drug and alcohol facilities and other resources. For instance, several probation officers, each with a different area of expertise, could be assigned to jointly supervise each juvenile. Each officer would focus on a specific aspect of the youth's needs (e.g., intake/assessment and parental relationships, employment, substance abuse, education and vocational areas). Through case conferences, the officers would advise each other of the juvenile's progress in their respective areas of responsibility and discuss new needs and priorities. Together they would ensure the systematic identification and the coordinated delivery of services to the youths under their supervision.

g. Alternative to Incarceration Programs

In 1986, 7% of all juvenile delinquency cases disposed of received incarcerative dispositions.⁸² In a 1988 analysis, the Juvenile Delinquency Commission found that although in 1987, commitments decreased by 15%, the average daily incarcerative population continued to rise.⁸³ The Juvenile Delinquency Commission attributed this increase to service by juveniles of a greater portion of their original sentence.⁸⁴

⁸⁰Toward Completing the Unfinished Agenda, supra at 45.

⁸¹Id. at 46.

⁸²Id. at 47.

⁸³"826", JDC Clearinghouse, p. 1-2 (October 21, 1988) (hereinafter, "826").

⁸⁴Id. at 2.

In a more recent (March 1989) analysis, the Juvenile Delinquency Commission reported that "[a]fter dropping significantly in 1987, institutional commitments jumped 19% (to a total of 979) in 1988. That represents a significant increase".⁸⁵

The Commission perceived a serious overcrowding in our juvenile incarcerative facilities. The Commission concluded that "[t]here is general agreement that wherever we go we must improve our front-end strategies (e.g., prevention and treatment) to lessen the need for secure placement."⁸⁶

The Disposition Subcommittee is deeply concerned that juveniles may be incarcerated in overcrowded institutions. Yet, regrettably in the Subcommittee's perception there are insufficient alternative to incarceration programs available.

In the Subcommittee's view, a comprehensive, multi-faceted, structured program, stressing individual accountability and extensive family involvement would be especially beneficial. For example, intensive, individualized and frequent individual and group counseling services need to be provided to build self esteem, motivation and to provide guidance toward successful personal management. Counseling would help enforce the determination of juveniles to resist future delinquency involvement and promote behavior modification. Additionally, career counseling is necessary so that juveniles can be encouraged to develop, research and plan specific career choices.

Another important facet of such a program would be community service work. Ideally, community service work would be coupled with meaningful job training. As a result, the juveniles' employment skills would be enhanced. Simultaneously, accountability for their misdeeds would be wrought home.

Yet another component of such a program would be vigorous family involvement. Parents would be encouraged to attend family counseling sessions at which they would be taught to regain control of their households (where such control is lacking) and to recognize and deal successfully with emerging or demonstrative causes of delinquency. The parents' assistance would also be enlisted in implementing within the home specific rules and regulations, chores and scheduling to guide the juvenile's in-home behavior.

A comprehensive community based program would provide a viable alternative to incarceration. Such a program's multi-dimensional approach, in unifying rehabilitation, accountability and vigorous family involvement, may be a barometric vanguard for youth reform.

9. Judicial Authority to Order an Executive Agency to Provide Needed Services to Juvenile Delinquents within the Agency's Fiscal Limits

⁸⁵Update! Trends in Juvenile Correctional Populations", JDC Clearinghouse, p. 1 (March 24, 1989) (hereinafter, "Update").

⁸⁶"826", *supra* at 2.

The Family Division at times encounters resistance by executive agencies to implementing its orders. For instance, in State in the Interest of Doe,⁸⁷ the then Juvenile Court referred Doe to DYFS for possible residential placement and requested DYFS to submit a written report as to the same. At a dispositional hearing, the court ordered that Doe be placed under the care of DYFS with the recommendation of residential placement. The court's directions were not complied with. Thereafter, upon Doe's subsequent arrest on a delinquency charge, the court again directed that she be placed in the care of DYFS, with the recommendation of residential placement and requested a written report to the court on the status of the case. Once again, the order of the court was not implemented. Ultimately, Doe was incarcerated at the State Training School for Girls.⁸⁸

The Doe case highlights the need for an explicit declaration as to the authority of Family Division Judges to order an executive agency to provide needed rehabilitative services, in a timely fashion, to juvenile delinquents (in addition to an adjudicated delinquent's constitutional rights or rights which may inhere in the court's parens patriae jurisdiction). While the provision of appropriate services may be subject to the agency's fiscal limits, in the Subcommittee's view the court must be deemed empowered to require that a particular type of service be made available to adjudicated delinquents. Family Division Judges "must be assured of the necessary authority and resources to accomplish the objectives of this specialized court. More simply, courts must have all reasonable authority necessary to assure that the 'best interests' of the child within the jurisdiction and under the orders of the court are being met."⁸⁹ Otherwise, the tragedy that took place in Doe, that is, the ultimate incarceration of the juvenile due to the failure to provide her with appropriate treatment may recur.

10. Current Needs of Court-Involved Youth and Their Families; Evaluation of Existing Programs/Services

Some executive agencies are not adequately meeting current needs of court-involved juveniles and their families. Some executive agencies (e.g. DYFS) have too many responsibilities and are "spread too thin" in trying to meet them.

Executive agencies need to systematically, regularly conduct overall needs assessments on a statewide basis in order to ascertain the types of programs and services which are most greatly needed by juvenile delinquents and their families and coordinated statewide planning should be undertaken to meet these needs. The Subcommittee identified the following services and programs which need to be provided by executive

⁸⁷State in the Interest of Doe, *supra*.

⁸⁸*Id.*

⁸⁹Faculty Consortium Reports Key Issues Curriculum Enhancement Project 1988-1989, National Council of Juvenile and Family Court Judges, 40 *Juvenile & Family Law Journal*, p. 6 (1989).

agencies: more placements (especially for hard to place juveniles), aftercare services (especially where the juvenile's family is dysfunctional or where the juvenile's placement is distant from his/her residence), additional community based programs, sex offender programs and appropriate educational and psychological testing of juveniles.

Concomitantly, the court in each vicinage should conduct, on an annual basis a needs assessment as to the programs/services/ resources that most greatly need to be developed and/or expanded within the vicinage. Areas where the delivery of services overlap should be noted. An annual service plan should be compiled by the court in each vicinage setting forth resource/service/program needs (in a prioritized fashion) and action steps for efforts to develop the same. Service providers and agency representatives should be consulted. The plan should be periodically reassessed during the year.

The court should assume a leadership role in advocating for the development of needed services/programs/resources for adjudicated delinquents and their families and the expansion (where needed) of existing ones. The development of viable creative alternative to incarceration programs, recall from incarceration and intensive supervised probation programs should be stressed. Possible funding sources for needed programs should be identified. In the Subcommittee's view, the caliber of services and assistance which is provided by some executive agencies to the courts varies greatly from county-to-county. At times, an executive agency (e.g. the Division on Developmental Disabilities) utilizes very restrictive eligibility criteria for juveniles and attempts to shift responsibility over certain juvenile delinquents to another agency. As a result, jurisdictional disputes delay the provision of necessary services to such juveniles.

Clear, explicit guidelines need to be developed and promulgated by executive agencies as to the juveniles who fall within their area of responsibility. Such guidelines (including subsequent revisions) need to be developed with input from the Judiciary and made available to the Judiciary. Opportunity for input by the Judiciary into the development of programs/services provided by executive agencies is necessary in order to assure that the needs of all juvenile delinquents are sufficiently met.

The Subcommittee also discerns a need to regularly and systematically evaluate the efficacy and appropriateness of existing programs and services for juvenile delinquents. Such evaluation is vital to ensure that they are provided the best possible services/ programs to help bring about their rehabilitation. Otherwise, juveniles will be deprived of potentially beneficial services and their rehabilitation delayed. Service providers and programs need to be held accountable for the "product" they provide in order to make sure that their "product" is as effective as can be for juveniles who are ordered to receive it.

Judges ordering the provision of services to juveniles, as well as the providers themselves need to know what "works" and what doesn't. In light of today's budgetary constraints, "good money" can no longer be thrown after "bad". Ineffective, inappropriate or unnecessary programs/services must be identified and where necessary, improved or replaced by more efficacious, appropriate or needed ones. Judges require such information to help them make appropriate dispositional decisions. Service providers

should know the result of an evaluation of their "product" so that they may plan their continuance, discontinuance or modification.

While it may be difficult to accurately gauge the efficacy of some programs or dispositional services (and social scientists may heartily debate the definition of efficacy), some programs/services may be uniquely effective in reducing recidivism or at least clearly evidence some significant positive benefits to their recipients. Possibly, to be truly effective, some programs or services should be utilized simultaneously. In this respect, some authorities feel that programs relying exclusively on a one dimensional approach fail.⁹⁰ In any event, a judge ordering a particular program/service and the service provider need to know its benefits, for both individual and systemic purposes.

Therefore, programs and services which are provided by executive agencies and others should be regularly and systematically evaluated. The agencies, service providers and the court should be apprised of the outcome of the evaluation.

Programs operating under the auspices of the court should be evaluated periodically and at least every two years in each vicinage pursuant to a standard evaluation format. The evaluation should be conducted in each vicinage by the same consultant or group of consultants. Family Division Presiding Judges, Case Managers and program directors should be advised of the outcome of the evaluation. Efforts should be made to remedy reported program deficiencies.

The establishment of quality assurance standards for programs would go a long way toward ensuring their effectiveness. Program standards need to be established and adherence to the same monitored both as to state (including correctional) and community based programs, as well as programs operating under the auspices of the court. The program standards should encompass the minimum delivery of services, staffing levels and adequacy, program goals and methodologies.

11. Coordination of Service Delivery

The Disposition Subcommittee has identified as a significant problem the lack of sufficient coordination among the various agencies which provide services to juvenile delinquents. While Municipal, County and State Youth Services Commissions have made significant strides in ameliorating this problem as to their respective jurisdictional areas, much remains to be done vis-a-vis the services provided in individual cases. In this respect, the Subcommittee has discerned that a great deal of unnecessary duplication exists among the services provided by agencies to adjudicated juveniles and their families. For instance, many agencies work with the same families, at times providing similar services to them. Frequently there are "cracks and gaps" in the services provided, resulting in the failure of any agency to provide a much-needed service. These problems are engendered by little or no networking and inadequate communication among the various agencies servicing a particular adjudicated juvenile and his/her family. As a result, juveniles and

⁹⁰What Works in Treating Delinquency?", JDDC Clearinghouse, p. 1-2 (January 16, 1987) (referring to Justice For Our Children, Romig, Dennis (1978).

their families are not given the uniform consistent level of services which they require. Scarce resources are not utilized most efficiently.

The Subcommittee feels that a collaborative or team model would be a viable mechanism for improving inter-agency coordination. This model would involve the establishment of a team in every vicinage (or county) to be comprised of representatives of the court, probation, DYFS, mental health, social service agencies, schools, various programs (e.g., substance abuse) and possibly others. The court would refer cases to the team which would assess the needs of the juvenile (and where appropriate those of his/her family) and compile a proposed service action plan. A plan would be compiled where there is a likelihood of incarceration and in other cases as feasible. Input as to the plan would be sought from the juvenile's family. The plan would recommend the designation of a particular lead agency to provide the services called for in the plan, in conjunction with other agencies, as needed. The plan would be made available to probation and to the court.

By cooperatively identifying the juvenile's needs and jointly designating the appropriate vehicles to meet those needs, the team would develop a collective sense of responsibility for servicing the juvenile and implementing the treatment action plan (if it is adopted by the court). By regularly communicating with each other, the team components would readily identify areas where their respective services overlap, are fragmented or where gaps in services exist. To help resolve systemic problems, such information would be brought to the attention of the appropriate Youth Services Commissions for their consideration and action. As such, interagency functions and competition would be reduced and hopefully enhanced service delivery would result on an individual, as well as a systemic basis.

Incarceration/Aftercare

12. Recall, Aftercare and Intensive Supervised Probation Programs

The Disposition Subcommittee has identified a need for additional mechanisms to reduce overcrowding in correctional facilities. In this respect, the Subcommittee has identified a distinct need for programs such as intensive supervised probation and recall/aftercare which would permit the earlier release of juveniles from incarceration. In addition to shortening the length of incarceration for juveniles, such programs would help free up needed bedspace in correctional facilities.

An intensive supervised probation program would permit selected juvenile offenders to earn release from crowded facilities by entering into a program of comprehensive community based supervision. Juveniles could apply to the program immediately after disposition. The program would target juveniles while still incarcerated at a county juvenile facility, thereby permitting application prior to their transfer to a state correctional institution. Eligibility for the program would be determined shortly after the juvenile's application by a panel of three judges who would be appointed by the Chief Justice.

Juveniles could also be recommended to the panel by the disposition judge at the time of commitment.

If accepted into the program, the juvenile would be required to participate in a highly structured regimen of 12 - 18 months duration with an opportunity to earn early discharge. The program would stress accountability, structure and total involvement of the family in the supervision process. Participation in school, vocational, training and/or meaningful employment would be required. Compliance with a strict curfew would be expected. Psychological and aptitude testing, as well as mental health counseling would be provided. The juvenile would be required to set realistic progress goals and his/her efforts to attain the same would be systematically reviewed and evaluated. The juvenile would be monitored by a team of experienced probation officers who would be assigned small maximum caseloads; a psychologist would also be part of the team. Monitoring would include the use of electronic devices, where indicated. Appropriate sanctions would be established for violation of program conditions.

Somewhat similarly, a recall/aftercare program operating under the auspices of the court would also allow the earlier release from incarceration of certain selected juveniles. The court's recall director would monitor the juvenile's progress at the institution and after sufficient rehabilitative efforts have been demonstrated by the juvenile, screen appropriate candidates for release. Careful screening would ensure the release of only sufficiently rehabilitated juveniles and would help safeguard against the premature release of more hardened youth. Input would be sought from concerned parties (e.g., the prosecutor's office, the juvenile's corrections counselors, Parole Board representatives and others). The judge who imposed the disposition would make the recall determination at a recall hearing. At the recall hearing, the juvenile would be required to agree to abide by certain conditions. Aftercare services would be provided to those released from incarceration in order to facilitate their re-entry into the community and to prevent their future delinquent involvement. Close monitoring and supervision would be provided to recalled juveniles by supervisors who are aftercare specialists handling small caseloads.

Such a program should operate under the court. The programs's director and staff should be judiciary employees.

The Subcommittee has also identified a need for additional post-residential aftercare programs. Most striking is a need for the provision of aftercare subsequent to DYFS residential placement and after substance abuse inpatient residential treatment.

13. Mandatory Parole Disqualifiers for Juvenile Delinquents; Potential Exposure to Lengthier Incarcerative Terms than Convicted Adult Criminals Prior to Parole

While the Disposition Subcommittee did not unanimously agree regarding this area, according to most Subcommittee members, the parole disqualifier provisions which are mandatory as to certain convicted adult criminals (e.g. pursuant to the Graves Act) should not be applied to adjudicated delinquents. The Subcommittee feels that their extension to juvenile delinquents would generally be unduly harsh and inappropriate. Nevertheless,

the Subcommittee notes that bills have been introduced which, if enacted, would extend mandatory sentences to juvenile delinquents in certain cases and as such may be harbingers of public sentiment as to this area.⁹¹ It has come to the Subcommittee's attention that juvenile inmates may be potentially exposed to longer terms than adults prior to parole. The Subcommittee feels that further examination of this situation is warranted in order to ascertain whether inequities may exist.

The effect of N.J.S.A. 2A:4A-44d(2), pursuant to which the granting of parole is subject to the approval of the court if a juvenile is approved for parole prior to serving one-third of the term for a first, second or third degree crime or one-fourth of the term for any other crime, is also unclear. Research should be conducted as to whether adjudicated juveniles serve longer terms prior to parole than adults due to the impact of this statute.

14. Short-Term Incarceration

In the Subcommittee's view, school/day, work release and other programs need to be developed for juveniles who are held in short-term incarceration (as well as for juveniles who are detained pre- and post-dispositionally). School release programs are presently operating in several vicinages pursuant to which juveniles are released from the county juvenile detention center to attend school during the day and remain at the detention center at night, on holidays and on weekends. Where school districts are unwilling to readmit expelled or suspended students who are held in a detention center, alternative education programs could be utilized. The Subcommittee feels that the development of school release programs should be encouraged for appropriate juveniles held in detention so long as the school is willing to accept the juvenile for such purpose (or an alternative education program is available) and the school is willing to transport the juvenile to the school from the county juvenile detention center (or to finance the same).

Work release programs are also needed for detained juveniles. Such a program is being developed in one vicinage. Pursuant to this program, appropriate detained juveniles will be released during the day in order to work at a nearby hospital where they will also receive job training as nurse's aides.

The Subcommittee has also identified a need for several other programs for detained juveniles, especially for those who are detained awaiting a disposition hearing or post-dispositionally while awaiting placement or entry into a correctional program. For instance, pursuant to the practice in some counties prior to disposition, in-depth psychological, psychiatric and other necessary evaluations/assessments need to be made and reports made available to the court. Group therapy should be offered to appropriate detained juveniles. A mechanism needs to be established to designate responsibility for the provision of education to detained juveniles. The provision of funding for financing such programs and services to detained juveniles should be addressed.

⁹¹See, e.g., A-3086; S-605.

Training/Public Education

15. Training for State Correctional Personnel

The Disposition Subcommittee felt that additional training regarding the handling of juveniles should be provided to state correctional officers in juvenile institutions. Special sensitivity is needed for dealing with juvenile offenders. Therefore, state correctional officers working with juveniles require training that is uniquely geared to the handling of juvenile offenders and to the extent not presently done, such training should be provided.

16. Additional Training for Personnel in all Agencies/Entities Serving Adjudicated Delinquents

Personnel in all agencies/entities working with juveniles require training that specially addresses juvenile delinquents. For instance, personnel working with adjudicated delinquents need to familiarize themselves with techniques for developing comprehensive rehabilitative plans and available dispositional programs/ services/resources for adjudicated delinquents (including the eligibility criteria for the same). Other areas in which training would be beneficial are family and volunteer involvement in dispositions and monitoring and enforcement of disposition orders. Ideally, training programs for court support staff are designed so as to enable them to select training sessions which best suit their individual needs. Personal visits by the key actors involved in juvenile dispositions to programs and facilities (including correctional facilities) utilized for adjudicated delinquents are vital in order to ensure personal familiarity with them.

Attendance at training sessions should be mandatory for all Family Division Judges. Attendance at training sessions should not be prevented by calendar demands or other administrative responsibilities.

17. Need for Public Education Regarding the Juvenile Justice System

The Disposition Subcommittee discerns a need to educate the public as to the workings of the juvenile justice system.⁹² In the Subcommittee's view, the compilation of a pamphlet or brochure describing the workings of the juvenile justice system would go a long way toward meeting this need. Ideally, such a pamphlet or brochure would encompass a description of the following: juvenile/family crisis intervention units, dispositional alternatives for adjudicated delinquents, the function of probation and case management, correctional facilities and other relevant areas. Optimally, the pamphlet or brochure would be compiled pursuant to an interagency effort. It would be distributed

⁹²See "Confidentiality vs. 'The Public's Right to Know' - Where Do We Draw the Line?", JDC Clearinghouse, p. 1 (June 16, 1989).

to local newspapers and made available to victims and litigants, as well as possibly others.

Minority Professionals in the Juvenile Justice System

18. Need for Additional Minority Psychiatrists and Psychologists within the Correctional System

The Disposition Subcommittee has perceived the lack of availability of minority psychiatrists or psychologists in the correctional system as damaging to a juvenile's ability to benefit from such treatment. In the Subcommittee's view, juveniles may develop better rapport with treatment personnel who understand their individual problems. To facilitate the development of a more efficacious relationship between professionals and their clients, additional minority psychiatrists and psychologists are needed.

19. Need for Additional Minority Professionals within the Juvenile Justice System

The Subcommittee has viewed the insufficiency of minority professionals (e.g. judges, social workers and probation officers) in the juvenile justice system as potentially detrimental to adjudicated juveniles. Therefore, in the Subcommittee's view, more minority professionals are needed in the juvenile justice system.

Equitable Dispositions

20. Research Regarding Dispositional Disparity

The Disposition Subcommittee has discerned a need for research into whether undue disparity may exist as to the dispositions imposed on adjudicated delinquents. In the Subcommittee's view, such research needs to encompass an examination of the dispositions imposed on similarly situated adjudicated delinquents and the relevant factors as to the same, including the availability of resources. The Subcommittee feels that such research is extremely important and awaits the outcome of the Conference of Family Division Presiding Judges' dispositional disparity study.

V. Recommendations

A. DIVERSION

The Diversion Subcommittee of the Delinquency Decision Making Committee submitted the following recommendations concerning the issues identified in this report. A brief discussion follows each recommendation. Where there was a significant response to an issue by County Youth Services Commissions and others who received the Issue Paper for comment, the nature of the response is included in the appropriate discussion. Note that this review effort resulted in the receipt of twenty-two responses. A summary of these responses is contained in the appendix to this report.

Recommendation 1:

Guidelines governing the use of police diversion throughout the state should be established by the Executive branch of government.

Commentary

The creation of statewide guidelines will achieve greater uniformity in police diversionary practices and serve to advance the goals of the juvenile justice system. Nineteen of the twenty-two responses which were received to the issue paper favored the establishment of such guidelines. In implementing these guidelines at the local level, each community should supplement its copy of the guidelines to include a directory or an inventory of all community resources available locally. This information could materially assist police officers in making appropriate non-court referrals. The Judiciary should not play any role in the development of these guidelines since the court might, on occasion, be called upon to render decisions regarding the validity of the guidelines and their application in specific cases.

Delinquency Decision Making Committee Action: Opposed. The Committee felt that the development of police diversion guidelines would tend to inhibit the legitimate use of police diversion.

Recommendation 2:

The court intake function should be strengthened through the development and implementation of effective training programs.

Commentary

The intake function is a key component of the juvenile justice system and it should be enhanced. Theoretically, the best method of ensuring a strong intake function might

well be to require experience in the court system and in family matters for assignment to entry level intake positions. Realistically, though, such an approach is not always feasible for a number of reasons, including the inability of counties to attract such experienced applicants at existing salary levels. An ideal means, however, of achieving operating goals and system standards, is to provide comprehensive and effective training programs for intake personnel. Twenty of the twenty-two responses to the issue paper encouraged the development of appropriate training programs in this area. The majority of responses indicated that the responsibility for training should be shared by the Administrative Office of the Courts and the counties. The Administrative Office should provide some basic training around core information while each county should develop a specific curriculum which reflects local needs and available resources. The training should be designed to provide staff with knowledge of the legal process, an understanding of family dynamics, and the ability to work effectively with clients in the court system and address complex family matters efficiently and with compassion.

Delinquency Decision Making Committee Action: Approved.

Recommendation 3:

The Judiciary should conduct workshops and/or seminars designed to decrease variations in court intake practices that currently exist among counties and increase the awareness and use of effective case processing techniques that are employed throughout the State.

Commentary

There is a need to recognize that court practices and procedures differ from county to county. While in some instances these variations are appropriate, in others, it would be more suitable to standardize operations. The Administrative Office of the Courts should regularly conduct sessions that would allow individuals throughout New Jersey, who have the same functional responsibility, to meet and compare experiences, attitudes and decision-making processes. Separate meetings for both judges and court personnel, as well as joint interdisciplinary sessions would be beneficial and would provide effective mechanisms for this exchange of information and ideas. These sessions should be designed to promote uniformity, where appropriate and desirable.

Delinquency Decision Making Committee Action: Approved.

Recommendation 4:

The court, especially the Family Division Presiding Judge, should establish and maintain a process which creates an on-going dialogue between the Family Division and the volunteers who work as members of Juvenile Conference Committees (JCC's) or in other services utilized for diversion.

Commentary

There is an important need for regular and systematized communication between the court and those individuals who provide services to diverted youth, including community service agencies, substance abuse awareness programs, alcohol counseling programs and, especially, municipal Juvenile Conference Committees (JCC's). JCC's perform a vital function for the court system. The Committee's serve as the court's front lines and treat large numbers of juveniles who are diverted to them each year. Each Family Division Presiding Judge has a responsibility to establish and promote regular communication with the JCC's in his or her vicinage to set expectations, provide needed recognition and encourage comments or questions from Committee members. Open lines of communication will enable the Presiding Judges to determine the performance levels of individual JCC's, assess overall effectiveness and give the Committees essential feedback on how they are functioning. It also will allow the Judge to offer guidance or recommendations on improving operations, where necessary.

Delinquency Decision Making Committee Action: Approved.

Recommendation 5:

The court should ensure that JCC's exist to serve every community so that they are available to be considered as a possible diversionary alternative for every juvenile charged with a minor delinquent offense, regardless of place of residence.

Commentary

Juvenile Conference Committees serve as effective diversionary mechanisms. In many instances, JCC's provide more appropriate methods of resolving juvenile matters than court proceedings. The court in each county should appoint one or more JCC's, as necessary, so that all minor offenders may be afforded the same treatment options. The court should ensure that there is a sufficient number of JCC's appointed and that they are either situated geographically or organized regionally to provide services to every minor offender, regardless of where the juvenile resides in the county. The Administrative Office of the Courts could provide valuable assistance to counties in this effort through on-going activities related to the recruitment and training of volunteers.

Delinquency Decision Making Committee Action: Approved.

Recommendation 6:

The court should establish a mechanism for monitoring its orders to ensure that there is compliance by the juvenile, the family and the service provider with the obligations imposed through the diversion process.

Commentary

The court has the responsibility to monitor its orders to ensure that they are complied with and are effective. Without the existence of monitoring capabilities, court orders become meaningless. Intake staff, as the "gatekeepers" of the court system should assume responsibility for this task. Intake staff should not only screen delinquency complaints received by the court to determine how they should be handled, but also should monitor matters referred out of the system to measure the performance level and assess the impact of individual programs/ services. Such an approach would provide the court with essential insights and would benefit efforts aimed at delinquency prevention.

Delinquency Decision Making Committee Action: Approved.

Recommendation 7:

Court Intake staff should be responsible for reviewing diverted cases, and where there is a failure to comply with the terms of diversion, resolving the matter or referring to court those cases that require action by the court.

Commentary

The Family Division Presiding Judge should ensure that as part of the Intake Unit's responsibility for monitoring orders entered as a result of the diversion process, staff will notify the court where there has been a failure to comply with the terms of diversion pursuant to N.J.S.A. 2A:4A-74.

Delinquency Decision Making Committee Action: Approved.

Recommendation 8:

The court should encourage the development of offense-specific diversionary programs.

Commentary

There are certain types of conduct for which offense-specific diversionary programs are uniquely suitable. Effective offense-specific programs which currently exist in some counties focus on drug/substance abuse, sexual offenses and shoplifting. Programs of this nature should be developed and made available to all juveniles charged with delinquent offenses, regardless of where the juvenile resides in New Jersey.

Offense specific diversionary programs have been established with the assistance of youth organizations such as the Boy Scouts of America and the Boys Club of America, as well as through public and private mental health facilities. In some vicinages private industry or commerce has provided financial support for the development of this type of alternative programs. The Family Division in each county should foster on-going dialogues with members of society and people from other segments of government to inform them about the cost effectiveness of this program approach and encourage these individuals to participate in offering services to which juveniles may be diverted. The court should explore all sources of funding at both the state and local level and should work in partnership with the service delivery system that exists outside of it.

Delinquency Decision Making Committee Action: Approved.

Recommendation 9:

Family Division Judges and staff must receive effective training and be knowledgeable about juvenile-family crisis jurisdiction and the operation of Juvenile/Family Crisis Intervention Units.

Commentary

There is a need for judges and court staff to be more fully informed about juvenile-family crisis jurisdiction, the operations of CIU's and the purposes which they serve. Specialized training segments/workshops should be presented to judges through forums such as the Judicial College, the Family Division Retreat and periodic training conferences. Case management and court support staff would benefit from similar training opportunities. In addition, there is a need to continue to enhance awareness levels through on-going efforts. Twenty of the twenty-two responses to the issue paper identified the need to increase overall levels of knowledge in this substantive area. In addition, there were twenty-one responses which reflected that judges, in particular, should receive such training.

Delinquency Decision Making Committee Action: Approved.

Recommendation 10:

Effective training and educational programs concerning juvenile-family crisis jurisdiction and CIU operations should be provided to law enforcement personnel, schools, social service agencies personnel and the community in general.

Commentary

There is an important need to increase the awareness levels about CIU's, particularly with regard to "front-line" personnel. An increase in knowledge will assist people in identifying situations that may involve a family-in-crisis and require handling as such. The Attorney General and the Prosecutor's Association should participate in the development of a suitable curriculum for the law enforcement community which would be presented at the local level. It would be beneficial for a trained and experience member of the county CIU to be involved in local training activities by assisting in the design and presentation of this program. In addition, a specialized segment dealing with CIU's should be incorporated into the existing in-service training programs currently run by schools, DYFS and police academies. The Administrative Office of the Courts could assist in this effort through in-person and/or videotape presentations. Twenty-one of the responses to the issue paper identified the need to provide effective training programs to individuals in these fields.

Delinquency Decision Making Committee Action: Approved.

Recommendation 11:

The court should ensure that Crisis Intervention Units operate with sufficient numbers of staff with appropriate levels of expertise to meet the mandate of the Code.

Commentary

There is a need to improve the overall effectiveness of CIU's in New Jersey by addressing existing issues concerning staffing. The Code of Juvenile Justice sets forth minimum educational and experiential requirements for unit personnel employed as counselors (N.J.S.A. 2A:4A-79).

The juvenile-family crisis intervention unit shall have knowledge of community services and agencies and shall be especially trained in family counseling and crisis stabilization skills. ...in no instance shall the minimum qualifications for personnel employed as counselors and hired after the effective date of this act be less than a master's degree from an accredited institution in a mental health or social or behavioral science discipline including degrees in social work, counseling, counseling psychology, mental health or education. Equivalent experience is acceptable when it consists of a minimum of an associate's degree with a concentration in one of the

behavioral sciences and a minimum of 5 year's experience working with troubled youth and their families or a bachelor's degree in one of the behavioral sciences and 2 years' experience working with troubled youth and their families.

Although it appears that these minimum qualifications are being met in every CIU, staff generally are not compensated adequately for their skills due to budget restrictions and there is wide disparity in salary levels among counties. In some counties the number of staff assigned to the CIU is very limited which makes the responsibility of responding to juvenile-family crises on a 24-hour basis either extremely burdensome or impossible. In the latter instances, individuals outside of the units have been given special training so that they can respond to after hours calls. As a result of the low salaries, small staff complements and the demands of being on-call, many units have been troubled by high staff turnover.

There is a need to evaluate budget allocations and salary levels for CIU's and address related staffing problems. It is essential that existing issues be resolved so that units are able to successfully carry out the mandate of the Code.

Delinquency Decision Making Committee Action: Approved.

Recommendation 12:

Uniform statewide standards governing the nature and quality of information which must be gathered for the preparation of a juvenile-family crisis or out-of-home placement petition should be established.

Commentary

Although it is generally acknowledged that CIU's have been successful in diverting matters away from formal system processing, when cases do require court referral the units throughout the state function at varying levels of expertise. In some instances, the petitions which are filed with the court do not present all of the facts necessary for jurisdiction (N.J.S.A. 2A:4A-83). Minimum standards should be developed to ensure that information needed by the court to proceed is contained in the petition. This information should include a statement of the nature of the problem, a description of the community resources that were used, a discussion of available services that were not utilized and why, an assessment of the adolescent and the family and, recommendations for treatment.

The implementation of these standards will assist in ensuring that CIU's throughout the state are operating in ways which are consistent with the Code of Juvenile Justice.

Delinquency Decision Making Committee Action: Approved.

Recommendation 13:

The Judiciary should monitor compliance with the operating guidelines promulgated by the Supreme Court in the Juvenile-Family Crisis Intervention Manual.

Commentary

The Judiciary should ensure that all personnel who work with Juvenile-Family Crisis matters are aware of the existence of the Juvenile-Family Crisis Intervention Manual, are knowledgeable about the procedures which it contains and abide by these procedures. In addition, there is a need to establish a system for reviewing this Manual and all manuals pertaining to Family Division matters which have been prepared and are currently in effect. This could be accomplished during various conferences, meetings and training sessions that are regularly scheduled throughout the year. Moreover, it would be helpful for judges who are newly assigned to the Family Division to receive a complete set of such manuals. The Administrative Office of the Courts could enhance this effort by maintaining a listing for all available resource materials and a ready inventory of this information which would be disseminated upon request.

Delinquency Decision Making Committee Action: Approved.

Recommendation 14:

The Assignment Judge should take responsibility for ensuring compliance of the CIU with all requirements of law governing their operation.

Commentary

There is a need for the Assignment Judge in every vicinage to exercise the regulatory authority of the court over the functioning of the CIU's. For those CIU's which operate within Family Division Intake, the Assignment Judge's authority includes the enforcement of statutory requirements, court policies and Administrative Directives. For those CIU's which are outside of Court Intake, the authority includes the enforcement of the agreement between the agency providing services and the Administrative Office of the Courts, pursuant to N.J.S.A. 2A:4A-76.

Delinquency Decision Making Committee Action: Approved.

Recommendation 15:

The Assignment Judge and Family Division Presiding Judge should provide sufficient administrative support concerning the functioning and effectiveness of Youth Services Commissions.

Commentary

The current Code of Juvenile Justice emphasizes service provision at the local level and mandates, for the first time in history, statewide planning for court-related youth services. There is a need to recognize the vital role of the Youth Services Commissions (YSC's) in planning for court involved youth. Youth Services Commissions are reflective of the community and, as a result, are able to focus their attention to the provision of programs and services which will meet the unique needs identified for particular areas. To facilitate these efforts, the Assignment Judge and Family Division Presiding Judge should make every attempt to ensure that the county YSC includes individuals who adequately represent the diverse interests which exist within the county and that the Commission meets with sufficient regularity to address the important needs of court involved youths and their families. In addition, it is essential that the Presiding Judge or a designee participate in all Commission meetings and activities.

Delinquency Decision Making Committee Action: Approved.

Recommendation 16:

The Judiciary should ensure that a study is conducted to determine whether operating structure and lines of authority have any effect on the quality and ability of a Crisis Intervention Unit to meet the mandate of the Code.

Commentary

Since the enactment of the Code of Juvenile Justice, a CIU has been established in every county in New Jersey. Eleven CIU's were established outside of Family Division Intake, while the remaining ten units were established within Court Intake Services. Although the Administrative Office of the Courts has conducted an on-site evaluation of each unit to determine whether there is compliance with statutory requirements and the operating guidelines set forth in the Juvenile-Family Crisis Intervention Manual, it is not in a position, at this time, to assess whether one type of operating structure is more effective than the other. To date, there has been no definitive study conducted on this subject by any office or agency. There is, however, a critical need to pursue this matter, particularly in light of the legislation which is currently pending for the state assumption of court expenses presently being met through county budgets. If this legislation is enacted, the CIU's which operate within Family Division Intake would be funded out of the state budget, while those CIU's which are outside of Court Intake would most likely continue to be funded by county revenues. The impact of the proposed funding plan on CIU operations and the effectiveness of current operating structures must be carefully considered if New Jersey is to achieve equal performance and service levels in all CIU's throughout the state.

Delinquency Decision Making Committee Action: Approved.

B. DETENTION AND ALTERNATIVES

DETENTION CENTER OVERCROWDING

Detention center overcrowding was identified as the most serious problem confronting the juvenile detention system. In spite of a statewide increase in detention capacity from 533 in 1984 to 606 in 1988 severe overcrowding is a daily problem in at least six counties and many other counties have sporadic overcrowding problems. The following recommendations are designed to alleviate this growing problem.

Recommendation 1:

Statutory detention standards should be adopted by the legislature to restrict admissions of juveniles charged with disorderly and petty disorderly persons offenses as their most serious offense.

Delinquency Decision Making Committee Action: Approved. The committee was split on this issue, with some members feeling that judges should have the authority to detain such juveniles in order to protect them from engaging in harmful behavior.

Commentary

Administrative Office of the Courts unit case statistics show that in calendar year 1988 the number of juveniles detained in New Jersey who were charged with petty disorderly or disorderly persons offenses as their most serious offense increased to 25.6%. The Detention and Alternatives Subcommittee specifically endorses the bills currently before the legislature, A. No. 4084 and S. No. 3169 which restrict current detention criteria.

Recommendation 2:

N.J.S.A. 2A:4A-34(a) should be amended to eliminate the possible adverse affect on the health, safety or welfare of a juvenile of releasing the juvenile as a statutory criterium for detention.

Delinquency Decision Making Committee Action: Approved. The committee was split on this issue, with some members feeling that judges should have the authority to detain such juveniles in order to protect them from engaging in harmful behavior.

Commentary

Protection of the health, safety or welfare of a juvenile is not a legitimate purpose of detention and can be better provided in other ways.

Recommendation 3:

Reliance on the use of alternative programs to secure detention should be increased throughout the state.

Delinquency Decision Making Committee Action: Approved.

Recommendation 4:

County Youth Services Commissions should give priority to establishing a continuum of detention alternative services, from least to most restrictive alternatives, when allocating discretionary funding.

Delinquency Decision Making Committee Action: Approved.

Commentary

Alternative programs maintain a juvenile's connection with his or her family, school and community. Such programs are less expensive than secure detention and should be preferred and used wherever possible. The committee recognizes that there are many juveniles for whom, because of the serious nature of their offenses, or the repetition of offenses, or a previously demonstrated failure to appear for a hearing, detention is the only acceptable alternative. The limited capacity of our juvenile detention facilities should be conserved through the use of alternatives so that space will be available for those juveniles who must be held in secure detention. There were sixteen responses to the committee issue paper that favored increased reliance on the use of alternative programs and no responses opposing it.

Recommendation 5:

Additional detention facilities construction should not constitute the primary response to overcrowding problems. Such additional facilities should not substitute for the creation of alternative programs.

Delinquency Decision Making Committee Action: Approved, with one abstention. The committee was split on this issue with some members holding the opinion that detention facility expansion should be encouraged to reduce overcrowding.

Commentary

Although adding to current detention capacity may be necessary in some areas, it was not felt that this would solve overcrowding problems because there will always be a tendency to fill all available beds.

Recommendation 6:

Judges should consider detention center overcrowding when making detention decisions.

Delinquency Decision Making Committee Action: Approved. Some committee members disagreed, feeling that only the circumstance of the individual juvenile's case should be considered.

Recommendation 7:

Judges should be aware of the maximum capacity of the detention center in their county and should receive a daily census of juveniles being held in detention.

Delinquency Decision Making Committee Action: Approved.

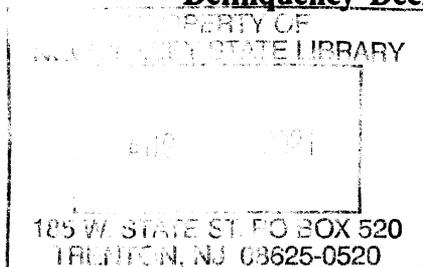
Commentary

While judges must always have the ability to detain an individual juvenile in appropriate cases, overcrowding should be a factor in making the detention decision. Judges should receive a daily census of juveniles in detention. When the detention population exceeds capacity Judges should consider releasing less dangerous offenders, with appropriate conditions such as home detention or participation in an alternative program, in order to free space for juveniles who require secure detention.

Recommendation 8:

Enforcing detention center maximum capacities should be the primary responsibility of an independent executive branch agency not subject to conflicts of interest with its enforcement responsibilities. Enforcement responsibility should be shared by County and State Government.

Delinquency Decision Making Committee Action: Approved.



Recommendation 9:

The existing enforcement responsibility of the Department of Corrections shall not be discretionary. The Department of Corrections should be required by statute to take action to enforce maximum capacities whenever those capacities are exceeded.

Delinquency Decision Making Committee Action: Approved.

Recommendation 10:

The Judiciary should take an active role in seeking to alleviate detention overcrowding by both considering overcrowding when making detention decisions and by advocating through Youth Services Commissions and on the State level for action to solve this problem.

Delinquency Decision Making Committee Action: Approved.

Recommendation 11:

Court appearances for juveniles in detention should be expedited in order to minimize the average length of stay for juveniles in detention.

Delinquency Decision Making Committee Action: Approved.

Commentary

Current statutory provisions regarding setting and enforcing maximum capacities for juvenile detention centers have proved ineffective in preventing severe overcrowding. The clear legislative mandate of N.J.S.A. 2A:4A-37(c) that "...No juvenile shall be placed in a detention facility which has reached its maximum population capacity..." has not been enforced. Multiple layers of responsibility between State and County government, and the Executive and Judicial branches have contributed to this problem. Both the Executive and Judicial branches of government at State and County levels should take action to work towards reducing overcrowding. Recommendation 8 does not recommend a specific executive branch agency to enforce maximum capacities because all agencies suggested, such as the Department of Corrections, the Attorney General's Office and the Department of Human Services appeared to have conflicts that might interfere with enforcement of maximum capacities.

Recommendation 12:

Juveniles awaiting placement in non-secure settings should not be kept in detention while awaiting placement. All child serving executive agencies should give priority to juveniles awaiting placement who are in detention. These agencies shall provide housing for juveniles awaiting placement in their residential programs.

Delinquency Decision Making Committee Action: Approved.

Recommendation 13:

Juveniles who are awaiting secure placement by the Department of Corrections should be moved out of detention centers within 48 hours of disposition. The Department of Corrections shall provide housing for juveniles awaiting placement in their programs.

Delinquency Decision Making Committee Action: Approved.

Commentary

The detention rationales of protecting the community and ensuring the juvenile's appearance at the next hearing no longer apply where the juvenile has been adjudicated and is not awaiting incarceration. While recognizing that it may not always be in the juvenile's best interest to return home while awaiting placement in non-secure settings, the committee feels that it is inappropriate to keep these juveniles in detention. It is in the best interest of a juvenile committed to the Department of Corrections to begin receiving rehabilitative services as soon as possible following disposition. Minimizing the amount of time juveniles remain in detention post-disposition will also help to ease overcrowding problems.

PROCEDURES AND INFORMATION REQUIREMENTS

Several concerns dealt with information requirements. It was apparent in discussions of the Detention and Alternatives Subcommittee that there is a great deal of variation among counties in the amount and types of information available when making a detention decision. This variation existed at both intake and hearing decision making levels.

Recommendation 14:

Standards should be established by the judiciary governing the amount and type of information required to be available to the judge and to juvenile intake workers when

making detention decisions. Intake workers should receive training on information gathering and decision making.

Delinquency Decision Making Committee Action: Approved.

Commentary

Uniform standards as to the information required should be established by the judiciary. The types of information required should include a narrative description of the incidents underlying a charge, information about the victim's condition, current living arrangements and family structure, the juvenile's prior record, an assessment of possible dangers the juvenile may present to the community and the extent of the juvenile's ties to the community. Training is necessary to enable intake workers to apply these uniform standards in their work.

Recommendation 15:

Incident reports that juvenile detention facilities are required to submit to the Department of Corrections should also be circulated to the Family Division Presiding Judge and the Judge who is assigned to the juvenile's case.

Delinquency Decision Making Committee Action: Approved. Some committee members disagreed. They were concerned that this information would unfairly prejudice judges in deciding the cases of juveniles involved in the incidents reported.

Commentary

Incident reports are required to be submitted to the Department of Corrections by Detention Centers regarding various occurrences such as allegations of abuse of juveniles by staff or suicide attempts. Review of incident reports by the Family Division Presiding Judge and the Judge who is assigned to a juvenile's case will keep them apprised of conditions in juvenile detention centers, and make them aware of incidents relating to individuals that may call for reconsideration of the appropriateness of keeping those individuals in detention. An exception to this policy should be made where the incident results in additional delinquency charges being filed in order to avoid giving prior knowledge to a judge of a case he may have to decide.

Recommendation 16:

The Intake worker who approves of an after-hours detention should be required to go to the detention center and/or the court the following day, if it is not a court day, even if the following day is a weekend or holiday, to review the decision in light of the juveniles' prior record and information available on the committing charge.

Delinquency Decision Making Committee Action: Opposed. The Committee disagreed with the above recommendation. In its place the Committee makes the following Recommendation:

Recommendation 16A:

Intake workers making detention decisions should be required to participate in initial detention hearings taking place on weekends or holidays. Intake workers should review the information forwarded to them at the time detention was ordered, and in the absence of sufficient personal information may have to: review court files to determine prior criminal record and record of appearances/non-appearances in court; review incident/arrest reports at the detention facility; and interview the juvenile to ascertain the availability of family members to whom the juvenile may be released and possible conditions of release.

Commentary

Often the information that is available when an after-hours decision to detain a juvenile is made is inadequate. This results in the juvenile being released when more complete information becomes available the next morning, or on the next court day if a weekend or holiday intervenes. It is unjust to detain a juvenile unnecessarily simply because of the inadequacy of interim information gathering procedures. It is therefore recommended that the process of gathering and reviewing additional information begin the following morning, regardless of holidays or weekends. Intake officers should receive additional compensation for such duty.

PROGRAMS, CONDITIONS AND SERVICES

Recommendation 17:

Juveniles should be entitled to mental health and other casework services while in detention awaiting adjudication.

Delinquency Decision Making Committee Action: Approved.

Commentary

Of the twenty-two responses to this committee's issue paper, twenty-one agreed that these services should be available to juveniles in detention while awaiting adjudication.

Recommendation 18:

Juvenile detention facilities should be required to have specific programs to enable juveniles to maintain contact with family members and school.

Delinquency Decision Making Committee Action: Approved.

Commentary

Maintaining these contacts while the juvenile is in detention will make the eventual rehabilitation of the juvenile an easier task.

Recommendation 19:

Detention should not be made available as an option for use with juveniles involved in a juvenile-family crisis who repeatedly run away from a shelter. Staff secure shelters, as described in State in the Interest of M.S. 73 N.J. 238, at 246, must be available for housing such juveniles.

Delinquency Decision Making Committee Action: Approved.

Commentary

The use of detention for juveniles involved in a juvenile-family crisis is inappropriate, and would be an additional burden on an already overcrowded detention system. Some other alternative should be developed to deal with this problem.

Recommendation 20:

The state should partially fund juvenile detention centers, with receipt of this funding being contingent upon compliance with state standards.

Delinquency Decision Making Committee Action: Approved.

Commentary

Additional funding to relieve counties of the full burden of funding juvenile detention centers is desirable. The committee did not favor full state funding since it was felt that this would lead to state control which would not result in better management. Partial funding contingent upon complying with state standards would also provide needed incentive for upgrading services in many counties.

Recommendation 21:

Judges should have discretion to order that youths over the age of eighteen, who may not be admitted to adult correctional facilities because they are charged with either outstanding juvenile offenses or violations of probation on juvenile offenses, not be held in detention centers with juveniles under the age of 18. The committee is aware that current law does not allow these youths to be transferred to adult facilities but feels that some alternative should be developed that would remove them from juvenile detention centers.

Delinquency Decision Making Committee Action: Approved.

Commentary

These young adults do not have to participate in educational programs, are more violent and difficult to control and provide negative role models for the juveniles being held in the facility.

Recommendation 22:

An interdisciplinary juvenile detention screening committee may be established in all counties.

Delinquency Decision Making Committee Action: Approved.

Commentary

Screening committees comprised of representatives from the Juvenile-Family Crisis Intervention Unit, Juvenile Probation, County Mental Health, the Division of Youth and Family Services, the County Shelter or alternative program and other appropriate service providers in the County should be established. The screening committee's responsibilities should include: ensuring that all alternatives to shelter care and detention are exhausted, exploring and implementing community based services with the family which will alleviate the need for out-of-home placement or minimize the length of stay in such placements, making a recommendation to the Judge and tracking the decisions made by the court.

Recommendation 23:

The opportunity to be released upon posting bond should be extended to juveniles who would otherwise be detained, but who a judge would be willing to release with an additional assurance of appearance. This practice should be encouraged as a method of reducing the number of juveniles requiring secure detention, and should not be used in

such a way as to result in the detention of juveniles who would have otherwise been released, simply because they cannot make bond.

Delinquency Decision Making Committee Action: Approved.

Commentary

Circumstances where the committee felt that this option should be considered include: minor offenders who would otherwise be detained because they have no ties to the community, those over the age of eighteen arrested for a prior juvenile offense, and juveniles awaiting waiver hearings where the prosecutor has made a motion to waive the juvenile to adult court.

Recommendation 24:

Existing statutory standards for education, should be extended to juvenile detention centers and shelter facilities.

Delinquency Decision Making Committee Action: Approved.

Commentary

Temporary care facilities (detention centers and shelters) are the only facilities not protected by The Public School Education Act of 1975 (N.J.S.A. 18A:7A-1 et seq., commonly known as the "Thorough and Efficient Education Act") and The State Facilities Education Act of 1979 (N.J.S.A. 18A:7B-1 et seq.). The juvenile's home school district is often unwilling to make a serious effort to serve a juvenile being held in detention. The "Thorough and Efficient Education Act" should be extended to temporary care facilities in order to ensure that juveniles in detention receive an appropriate education.

Recommendation 25:

Home detention is a restriction on liberty and should be viewed a form of detention which requires priority case management.

Delinquency Decision Making Committee Action: Approved.

Commentary

In order to avoid abuses home detention should not be used unless the criteria for detention are met, and should require the same review in order to avoid an indefinite restriction on a juvenile's liberty.

RESEARCH RECOMMENDATIONS

Recommendation 26:

The Atlantic County pilot program in which a committee including representatives of the Prosecutor, the Public Defender, the Division of Youth and Family Services, the Detention Center and others, recommends the exact nature of the restrictions to be placed on a juvenile awaiting trial, should be studied in order to determine whether it should be implemented in other counties.

Delinquency Decision Making Committee Action: Approved.

Recommendation 27:

Research is required to determine the relative effectiveness of various detention alternatives in alleviating detention overcrowding, ensuring the juvenile's appearance in court and protecting the public from the risk of new offenses being committed by the juvenile.

Delinquency Decision Making Committee Action: Approved.

C. ADJUDICATION

ISSUE I: PARTICULAR STATUTES WHICH MAY PRESENT DIFFICULT ADJUDICATION ISSUES

- A. Right to Counsel, N.J.S.A. 2A:4A-38(h)

Recommendation: None

Commentary

The Subcommittee notes that this issue has been addressed by the Role of Counsel Subcommittee.

Delinquency Decision Making Committee Action: This issue is deleted from this subcommittee's report.

- B. Juvenile-Family Crisis, N.J.S.A. 2A:4A-76

Recommendation: None

Commentary

The Subcommittee notes that this issue has been addressed by the Role of Counsel Subcommittee.

Delinquency Decision Making Committee Action: This issue is deleted from this subcommittee's report.

- C. Detention Hearing Statute, N.J.S.A. 2A:4A-38

Recommendation: None

Commentary

The Subcommittee notes that this issue has been addressed by the Detention Subcommittee.

Delinquency Decision Making Committee Action: This issue is deleted from this subcommittee's report.

D. Assault Statute, N.J.S.A. 2C:12-1

Recommendation 1:

Commentary

The Subcommittee recommends that the Legislature review this statute in consideration of the issue raised by the Subcommittee.

Delinquency Decision Making Committee Action: Approved.

E. Fingerprint Records, Photographs of Juveniles,
N.J.S.A. 2A:4A-61

Recommendation 2:

Commentary

The Subcommittee recommends that the Legislature review this statute in consideration of the issue raised by the Subcommittee.

Delinquency Decision Making Committee Action: Approved.

F. Referral to Another Court Without Juvenile's Consent,
N.J.S.A. 2A:4A-26 (Waiver Statute)

Recommendation 3:

Commentary

The Subcommittee recommends that the Legislature review this statute in consideration of the issue raised by the Subcommittee.

Delinquency Decision Making Committee Action: Approved.

G. Sexual Assault, N.J.S.A. 2C:14 et. seq.

Recommendation 4:

Commentary

The Subcommittee recommends that the Legislature review this statute to consider whether the development or maturation of a juvenile can support the requisite mental state required to prove culpability in sexual assault cases.

Delinquency Decision Making Committee Action: Approved.

H. General Requirements of Culpability, N.J.S.A.
2C:2-2, as Applied to Juveniles

Recommendation 5:

Commentary

The Subcommittee does not recommend this issue for review by the Legislature. However, it does recommend that the court carefully consider the elements of culpability as applied to juveniles.

Delinquency Decision Making Committee Action: Approved.

I. New Statutes or Court Rules - Prior Knowledge

Recommendation 6:

When a judge has prior knowledge of a case gained in preliminary adjudication procedures, the case should be referred to another judge.

Commentary

There is no need for an amendment to the statutes or the court rules. This issue can be resolved by referring the case to another judge so as to avoid the appearance that the prior knowledge has affected the subsequent adjudication of guilt or innocence.

Delinquency Decision Making Committee Action: Opposed. This recommendation may result in judge shopping and it will be very difficult to implement in small counties with a limited number of judges.

ISSUE 2: LENGTH OF DETENTION

Recommendation 7:

A. **The time requirements in the Code of Juvenile Justice pertaining to the length of detention should be enforced by the court.**

Delinquency Decision Making Committee Action: Approved.

B. **Home detention should be no longer that which would be served in a detention center.**

Delinquency Decision Making Committee Action: Opposed. The Committee was split on this issue. The prevailing position was that home detention affords more

freedom than does detention center. Home detention is not equivalent to house arrest.

C. After thirty days in home detention, a juvenile should be supplied with a wrist bracelet which will monitor the juvenile's whereabouts.

Delinquency Decision Making Committee Action: Opposed. Wrist bracelets are too expensive and home detention is not as restrictive as being in a detention center.

D. Continuing detention review hearings should be held in 14-day intervals, rather than the current 21-day interval.

Delinquency Decision Making Committee Action: Approved.

Commentary

The time requirements in the Code of Juvenile Justice pertaining to detention are adequate; however, in many instances they are not being enforced by the court. The court should take a more aggressive approach to the monitoring and enforcement of detention time frames.

Juveniles on home detention should not have their liberty restricted unnecessarily once the 30-day detention time period has passed; thus, the subcommittee recommends the use of electronic wrist bracelets for monitoring the juvenile's whereabouts once the thirty days has passed.

In order to meet detention time frames, the State should supply drug reports in a timely manner.

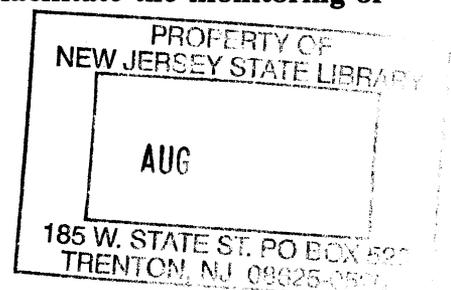
Holding continuing detention review hearings every 21 days unnecessarily delays proceedings. Fourteen-day review hearings will expedite the proceedings and facilitate adjudication hearings.

Delinquency Decision Making Committee Action: See Committee action set forth above under sections A, B, C and D.

ISSUE 3: MAINTAINING PRIORITIES FOR DETAINED YOUTH AND SCHEDULING PRIORITIES AND TIME FRAMES FOR DETAINED YOUTH

Recommendation 8:

Court staff should use consensual scheduling orders to facilitate the monitoring of deadlines.



Commentary

This issue relates to issue 2 discussed above. The use of consensual scheduling orders would enable court staff to monitor whether deadlines and time frames are being met.

Delinquency Decision Making Committee Action: Opposed. The court should control the scheduling.

ISSUE 4: SCHEDULING WITNESSES

Recommendation 9:

- A. The court should make every attempt to avoid inconveniencing witnesses.**
- B. There should be no plea bargaining on the day of trial.**

Commentary

Delays, postponements, plea bargaining and rescheduling serve to frustrate witnesses and may result in witnesses failing to reappear the next time the case is scheduled. The court should make a sincere effort to proceed with the case when it is scheduled. Plea bargaining on the day of trial should not be permitted, it should be worked out in advance.

Delinquency Decision Making Committee Action: As to A: Approved. As to B: Opposed. The day of trial is often the time when the juvenile decides to plea bargain, especially if witnesses are present.

ISSUE 5: RIGHT TO HAVE WITNESSES SUBPOENAED IN COUNSEL-NOT-MANDATORY CASES

Recommendation 10:

The juvenile should be informed at the preliminary appearance that he or she has a right to have witnesses at the counsel-not-mandatory hearing.

Commentary

In order to avoid unnecessary delays, the juvenile should be informed at the preliminary hearing that he or she is entitled to have witnesses at the counsel-not-mandatory hearing.

Delinquency Decision Making Committee Action: Approved.

ISSUE 6: INEFFECTIVE USE OF PRELIMINARY/PRETRIAL HEARINGS

Recommendation 11:

The use of preliminary/pretrial hearings should be maximized.

Commentary

Preliminary/pretrial hearings save police time and save inconvenience to witnesses. The court can appraise the juvenile of his or her rights at this hearing and the court can be advised of the juvenile plans to obtain counsel, and if so, the prosecutor can be advised to be present at future proceedings.

Delinquency Decision Making Committee Action: Approved.

ISSUE 7: MAINTAINING VICTIMS, WITNESSES AND DEFENDANTS IN THE SAME WAITING AREA

Recommendation 12:

A separate waiting area in the courthouse should be provided for victims, witnesses and defendants.

Commentary

There should be no contact between victims, witnesses and the defendant at the courthouse. Separate waiting areas should be provided to avoid the potential for confrontation.

Delinquency Decision Making Committee Action: Approved.

ISSUE 8: USE OF THE COUNSEL-NOT-MANDATORY CALENDAR

Recommendation 13:

The Juvenile Referee Program should be established in every county.

Commentary

The use of the Juvenile Referee Program can alleviate congested court calendars and it can serve to distinguish those less serious cases from those that need judicial attention.

Delinquency Decision Making Committee Action: Opposed. There is no training program for referees and no qualifications have been established for referees. The program takes away from judicial authority.

ISSUE 9: WHETHER OUT-OF-STATE JUVENILES ARE SPENDING UNNECESSARY LENGTHS OF TIME IN DETENTION

ISSUE 10: WHETHER THE APPROPRIATE PARTIES ARE AWARE OF THE AOC REFERENCE MANUAL ON EXTRADITION

Recommendation 14:

The AOC Reference Manual on Extradition, called "Interstate Compact on Juveniles," should be distributed to every county. It should be reviewed by those who process these cases.

Commentary

Proper procedure is set forth in the AOC reference manual on extradition. Those who process extradition cases should familiarize themselves with the manual to ensure that out-of-state juveniles do not remain in detention for excessive lengths of time.

Delinquency Decision Making Committee Action: Delete. Pursuant to information received from Probation that distribution of the manuals to each Family Division Judge, each Family Division Case Manager and each Chief Probation Officer was accomplished. In addition, an offer to provide training to county staff on request was made.

ISSUE 11: SHOULD THERE BE JURY TRIALS FOR JUVENILES?

Recommendation 15:

There should not be jury trials for juveniles.

Commentary

The parens patriae of the court replaces the jury trial system for juveniles. The purpose of a separate court for juveniles is rehabilitation and treatment. If a crime is so serious as to warrant a jury trial, then the juvenile should be waived up to the adult court. The juvenile system eliminates the grand jury and bail components of the adult criminal court and this should not be changed.

Delinquency Decision Making Committee Action: Approved.

ISSUE 12: WHAT SHOULD THE PROCEDURE BE WHEN A JUVENILE APPEARS WITH AN ATTORNEY AT A COUNSEL-NOT-MANDATORY HEARING?

Recommendation 16:

If a juvenile appears at a counsel-not-mandatory hearing with counsel, the prosecutor should be summoned and the case should proceed accordingly.

Commentary

If a juvenile seeks to be represented by counsel and, in fact, obtains one, the prosecutor should be called in before the case proceeds further. Representation should be afforded to both sides.

Delinquency Decision Making Committee Action: Approved.

ISSUE 13: SHOULD THERE BE PLEA BARGAINING IN JUVENILE MATTERS?

Recommendation 17A: Offense Plea Bargaining

Offense plea bargaining in juvenile matters should be established statewide. The plea bargaining guidelines recommended by the Family Division Practice Committee in its 1984-1985 Report should be adopted.

Commentary

Offense plea bargaining is currently taking place in several counties. The practice should be extended to all counties. Plea bargaining benefits both sides in that it helps to resolve matters amicably rather than taking the matter through the traditional process with uncertain results. The Committee notes that a plea bargaining form is currently being developed by the Family Division Practice Committee.

Delinquency Decision Making Committee Action: Approved. Offense plea bargaining was approved by the Delinquency Decision Making Committee. However, there was a strong opposing point of view. Some Committee members were of the opinion that children should not be taught that criminal activity can be bargained away. They should be made to realize that what they have done is wrong and that the offense cannot be diminished by a bargain. Offense plea bargaining can result in negative public perceptions because it looks like a slap on the juvenile's wrist. Offense plea bargaining may also encourage overcharging of offenses.

Recommendation 17B: Dispositional Plea Bargaining

Dispositional plea bargaining in juvenile matters should be established statewide.

Commentary

Dispositional plea bargaining is currently being conducted in several counties. The practice should be extended to all counties. Dispositional plea bargaining benefits both sides in that it helps to resolve matters amicably rather than taking the matter through the traditional process with uncertain results. The Committee notes that a plea bargaining form is currently being developed by the Family Division Practice Committee.

Delinquency Decision Making Committee Action: Opposed with one abstention.
The Committee disapproved this recommendation for the following reasons:

1. The Court's purpose with regard to disposition is to develop a rehabilitation plan that is in the best interest of the juvenile.

2. Most attorneys assigned to represent juveniles by both the public defender and the prosecutor have no knowledge or experience in the techniques involved in developing a rehabilitative treatment plan.

3. It is difficult for judges and staff who work with these plans consistently to develop a treatment plan which addresses the juvenile's needs, let alone for attorneys who are often just "passing through" the juvenile justice system.

4. The prosecutor represents the State and the State's interest is in having the juvenile restricted. The public defender represents the desires of the juvenile. Only the judge is in a position to consider a disposition which is in the best interest of the juvenile.

D. ROLE OF COUNSEL

ISSUE 1: IS THERE A NEED FOR SPECIAL TRAINING FOR ATTORNEYS PARTICIPATING IN THE JUVENILE JUSTICE SYSTEM?

Recommendation 1:

Special training should be required for all counsel participating in the juvenile justice system.

Commentary

All attorneys, including defense counsel and prosecutors should receive special training in juvenile practice and procedure to ensure that both sides are represented by well-qualified counsel. Such training protects the rights and entitlements of the parties and facilitates efficient case management. The training should be offered by the local bar association in conjunction with the Institute for Continuing Legal Education (ICLE), the Office of the Public Defender and the local prosecutor's office.

Delinquency Decision Making Committee Action: Approved.

ISSUE 3: IS THERE A NEED FOR A CENTRALIZED, WELL ADVERTISED SOURCE OF INFORMATION ABOUT LOCAL PRACTICE IN THE JUVENILE AREA?

Recommendation 2:

The Institute for Continuing Legal Education should compile a resource book on juvenile practice and procedure as part of its training course. The manual should be available in local county bar association libraries.

Commentary

As part of its training program, ICLE, with input from the Office of the Attorney General, the Prosecutor's Association and the Office of the Public Defender, should compile a general core of information into a book which would be available to attorneys not only through the training program but also through the local bar association libraries.

An addendum to the book could be added by the local Family Division Case Manager on local practice and procedure which might differ from the general information contained in the resource book.

Delinquency Decision Making Committee Action: Approved.

ISSUE 4: ROLE OF THE PUBLIC DEFENDER

Recommendation 3:

If a parent neglects or refuses to complete form 5A (application for the public defender) or there are no parents to complete form 5A, there should be a provisional assignment by the court of a public defender to the juvenile pending further information.

Commentary

Where the juvenile is unrepresented and there is no family available at first contact with the court, the court should appoint counsel provisionally. The statutes indicate that it is the court which determines indigency; therefore, the court is authorized to appoint counsel for a juvenile under these circumstances.

There exists an Administrative Directive which contains the procedures the court can employ when parents who are not indigent refuse to retain counsel for a juvenile. This Directive should be followed if this situation occurs.

This issue should be placed on the agenda of the Conference of Family Division Presiding Judge for its review and comment.

Delinquency Decision Making Committee Action: Approved with one abstention.

ISSUE 5: ROLE OF PRIVATE COUNSEL, ESPECIALLY IN APPROVING DIVERSION

Recommendation 4:

A training program for private counsel should include instruction on the various options available for the juvenile through diversion. The Division of Youth and Family Services should supply the court and counsel with a list of programs which are available for the juvenile through diversion.

Commentary

Private counsel is often unaware of the various options available to juvenile defendants through diversion. Well informed counsel can help guide the juvenile through the system and effectively advise the juvenile about the recommendations made by various agencies or persons making decisions concerning diversion.

Delinquency Decision Making Committee Action: Approved.

ISSUE 6: ADJUDICATORY AND DISPOSITIONAL ROLE OF COUNSEL, TYPE OF HEARING

Recommendation 5:

Counsel should advocate for the juvenile and leave the "best interest" determination to the court and those qualified to make that determination. This does not relieve an attorney from a duty to seek out other dispositional alternatives.

Commentary

Defense counsel should advocate for the juvenile and leave the "best interest" determination to the court and those qualified to make that determination. Defense counsel's first duty is to advocate for the juvenile. Defense counsel are not qualified by training to make a "best interest" determination contrary to the wishes of the juvenile since counsel are not social scientists.

The "best interest" standard has been imposed on the court and the overall juvenile justice system, but it does not apply to defense counsel. Defense counsel should distinguish between the juvenile's "want" and "need." The attorney should advocate for what the juvenile wants; otherwise, there may be an ethical conflict if counsel advocates against a client's interest. If defense counsel does not represent the juvenile's "wants," who will?

The juvenile's "needs" should be addressed by the court, social services and the appropriate agencies. Part of defense counsel's responsibility is to hold these entities accountable.

The use of pre-disposition conferencing in appropriate cases should be maximized, especially when there is the possibility that the juvenile is going to be incarcerated. Defense counsel, the prosecutor, the Division of Youth and Family Services and any other appropriate person or agency should be present at the conference. At this conference, defense counsel should represent the "wants" of the juvenile and the other entities can address the "needs."

Defense counsel should be made aware of the distinction between representing the juvenile's "wants" and "needs." This can be accomplished through training programs for counsel who handle juvenile cases.

Delinquency Decision Making Committee Action: Approved.

ISSUE 7: CONFLICTS (CODEFENDANTS, PARENTS OR JUVENILES). WHO PAYS FOR COUNSEL WHEN THE PARENT IS THE VICTIM?

Recommendation 6:

Regardless of who pays defense counsel, it is defense counsel's responsibility to advocate for the juvenile.

Commentary

When the parent has been the victim of the juvenile's acting out and the parent is paying for the juvenile's defense counsel, a conflict can arise as to whose interest counsel represents, the juvenile's or the parent's. Serious ethical problems can result. The court may wish to appoint counsel in this situation.

NOTE: There has been a recent change in the policy of the Office of the Public Defender. Pool attorneys may not be available for these conflict situations. An individual, separate attorney rather than a pool attorney is hired by the Office to handle conflicts. The court can assign representation for juveniles in conflict situations and judicial training programs should emphasize the necessity of appointing separate counsel for juvenile defendants in conflict situations.

Delinquency Decision Making Committee Action: Approved.

ISSUE 8: INSTITUTIONAL SUITS (OVERCROWDING, FEDERAL COURT, CRUEL AND UNUSUAL PUNISHMENT)

Recommendation 7:

Detention centers should be safe and habitable.

Commentary

The Public Advocate should take a more active role in pursuing institutional suits when conditions in detention centers are unsafe or uninhabitable. It is the responsibility of counsel who witness systemic injustice to individual juveniles or a class of juveniles to report it to the appropriate authority.

Counsel should report unsuitable conditions to the Family Division Presiding Judge, the Assignment Judge and/or the Public Advocate. Counsel in juvenile cases has an obligation to serve on Child Placement Review Boards, Youth Services Commissions, etc. This reporting responsibility and service obligation can be imparted to counsel through training programs and the resource manual.

The Subcommittee notes that there is a bill in the Assembly to create a Department of Child Advocacy.

Delinquency Decision Making Committee Action: Approved.

ISSUE 9: POST-DISPOSITIONAL FOLLOW-UP BY COUNSEL (INCARCERATED YOUTH, CHILDREN AWAITING PLACEMENT, RECALL, WAITING FOR DYFS)

Recommendation 8:

Defense counsel's advocacy for the juvenile should not cease at disposition.

Commentary

Defense counsel should not cease advocating for the juvenile defendant at disposition. It is counsel's responsibility to follow-up on services which have been allocated to the juvenile to ensure that the disposition is being carried out. This applies to children who are incarcerated awaiting placement, on recall, or waiting for the Division of Youth and Family Services to take action.

Defense counsel's responsibility to follow-up on the juvenile post-disposition can be imparted to counsel through juvenile practice and procedure training programs.

Delinquency Decision Making Committee Action: Approved.

ISSUE 10: ROLE OF COUNSEL AT DETENTION AND PROBABLE CAUSE HEARINGS

Recommendation 9:

Every juvenile should be represented at the earliest possible stage of the formal proceeding by a trained, knowledgeable attorney. Every prosecutor should be properly trained in juvenile practice and procedure.

Commentary

There should be aggressive advocacy on the part of defense counsel on behalf of the juvenile defendant at the earliest possible stage of the formal proceeding. If a juvenile does not have a parent or guardian immediately available to retain counsel for the juvenile, a provisional appointment of a public defender should be made by the court until indigency is determined.

Delinquency Decision Making Committee Action: Approved.

ISSUE 11: HOW DOES THE COURT CONTROL ITS JUVENILE CALENDAR WHEN THERE IS A SCHEDULING CONFLICT WITH THE COURT'S CALENDAR AND PUBLIC DEFENDER ASSIGNMENT TO THE JUVENILE CASE?

Recommendation 10:

The court should control its calendar and case assignments.

Commentary

Currently, there are conflicts in calendar control between the public defenders and the court. Often there are not enough public defenders to serve the number of judges who hear juvenile matters. This causes the court's calendar to be in disarray. The Office of the Public Defender must assign proper resources to handle the case load.

The Family Division Presiding Judge should talk with the head of the local public defender's office to review the public defender assignments to the juvenile court.

Delinquency Decision Making Committee Action: Approved.

ISSUE 12: THERE SHOULD BE A COMMITMENT TO AVOID CONTINUANCES

Recommendation 11:

All attorneys in juvenile proceedings have a responsibility to avoid unnecessary continuances.

Commentary

Counsel has a responsibility to move juvenile cases expeditiously through the system and to avoid unnecessary delays. This policy applies to defense counsel and prosecutors. It is in the best interest of the juvenile to have the case disposed of promptly. There should be a commitment by defense counsel and the prosecutor to avoid continuances.

The importance of moving cases through the system and avoiding continuances should be emphasized in the resource manual and in the training programs. This information should be conveyed by the Administrative Office to the Institute of Continuing Legal Education and to those planning local training programs.

Delinquency Decision Making Committee Action: Approved.

E. DISPOSITION

Recommendation 1:

Additional innovative programs/services for juvenile delinquents and their families must be developed and where existing, expanded. Programs should include family and community involvement components, as appropriate. Examples of needed programs are:

a. Early Intervention Programs

Examples of needed programs/program components are:

- (1) Alternative education programs/services.**
- (2) Use of volunteers to assist with after school supervision of juvenile probationers and to provide educational assistance to them.**
- (3) Provision of periodic progress reports by schools to probation staff regarding juvenile probationers.**
- (4) Community/family involvement component.**

b. Appropriate Educational, Psychological and Psychiatric Testing of Juveniles

c. Wilderness/Outward Bound Programs

Needed program elements are:

- (1) Wilderness/outward bound component as the focal point of the program or a major element of a multi-faceted program.**
- (2) Family involvement component.**

d. Community Service/Restitution Programs

Needed program components are:

- (1) Vocational training/employment opportunity.**
- (2) Reparation (monetary payment or service to the community).**

e. Community Based Programs

f. Substance Abuse Treatment Programs

A broad spectrum of substance abuse (drug and alcohol) treatment and services is needed (especially for indigent court involved juveniles) including the following:

- (1) Detoxification.**
- (2) Increased outpatient/day treatment services.**
- (3) Residential inpatient treatment for indigent juvenile substance abusers.**
- (4) Aftercare services.**

g. Family Counselling/Therapy/Skills Programs

h. Residential Programs

Additional residential programs are especially needed for hard to place court involved juveniles. The judiciary and executive agencies serving court involved youth should not support programs which refuse to accept such youth.

i. Post-Residential Aftercare Services

Aftercare services are needed especially where the juvenile's family is dysfunctional or where the juvenile's placement is distant from his/her residence.

j. Sex Offender Programs

k. High Risk Juvenile Offender Probation Programs

Needed programs/program components are:

- (1) Use of probation "team" approach.**
- (2) Case conferences.**

l. Alternative to Incarceration Programs

The following are needed programs/program components:

- (1) Comprehensive multi-faceted structured programs.**
- (2) Individual accountability.**
- (3) Extensive family involvement.**
- (4) Individual group, family and career counseling.**
- (5) Community service coupled with job training.**

m. Recall Programs

Recall programs should operate under the auspices of the court and should be directed and staffed by judiciary employees.

n. Intensive Supervised Probation Programs

o. Short-Term Incarceration Programs

Examples of needed programs and services for such juveniles are the following:

- (1) Mechanisms to provide education; school/day release.**
- (2) Work release.**
- (3) Psychological/psychiatric evaluations/assessments.**

In-depth psychological, psychiatric and other necessary evaluations/assessments should be performed and resulting reports made available to the court.

- (4) Group therapy.**

Delinquency Decision Making Committee Action: Approved.

Recommendation 2:

a. Parental Involvement Programs/Services

Programs/services for adjudicated delinquents should where feasible include a parental involvement component. Where the male parent is absent from the home, programs/services should encourage interaction with other male figures within or outside the home. The community (e.g., key community figures and leaders) should be mobilized in a delinquency prevention effort to exert a positive influence over juveniles.

b. Violation of Parental Involvement Orders

The Code of Juvenile Justice should be amended to designate the willful violation of a parental involvement order as a separate offense (e.g., a disorderly persons offense) both in juvenile delinquency and juvenile/family crisis matters.

Delinquency Decision Making Committee Action: Approved.

Recommendation 3:

Family Division Judges should have the authority to order an executive agency to provide needed rehabilitative services in a timely fashion to juvenile delinquents.

Delinquency Decision Making Committee Action: Approved.

Recommendation 4:

a. Needs Assessment

Executive agencies should conduct an overall needs assessment to ascertain which types of programs/ services are most greatly needed by juvenile delinquents and their families. Coordinated statewide planning should be undertaken to meet those needs.

b. Development of Programs, Services and Guidelines by Executive Agencies

Executive agencies should develop and promulgate clear, explicit guidelines as to juveniles who fall within their area(s) of responsibility. Such guidelines (including subsequent revisions) should be developed with input from the Judiciary and made available to the Judiciary. The Judiciary should be given an opportunity for input into the development of programs/services to assure that the needs of all juvenile delinquents are sufficiently met.

c. Evaluation of Programs/Services

Existing programs and services for juvenile delinquents not operating under the auspices of the court should be regularly and systematically evaluated; judges and service providers should be advised of the results of the same. Ineffective, inappropriate or unnecessary programs should be identified and where necessary, improved or replaced by more efficacious, appropriate or needed ones.

d. Quality Assurance Standards

Quality assurance standards should be established for programs for juvenile delinquents not operating under the auspices of the court. This includes the establishment of program standards (as to the minimum delivery of services, staffing levels and adequacy, program goals and methodologies) and monitoring of adherence to the same both as to state (including correctional) and community based programs.

Delinquency Decision Making Committee Action: Approved.

Recommendation 5:

The Code of Juvenile Justice should be amended to indicate that the parole disqualifier provisions which are mandatory as to certain convicted criminals (e.g., pursuant to the Graves Act) not be applied to adjudicated delinquents.

Delinquency Decision Making Committee Action: Approved.

Recommendation 6:

a. Training of Correctional Officers

State correctional officers in juvenile institutions should be provided additional training which is uniquely geared to the handling of juvenile offenders.

b. Training of Others

Personnel from other agencies/entities serving juvenile offenders should be provided additional training regarding the juvenile justice area.

Delinquency Decision Making Committee Action: Approved.

Recommendation 7:

The public should be provided information by agencies/ entities within the juvenile justice system regarding its operation.

Delinquency Decision Making Committee Action: Approved.

Recommendation 8:

a. Minority Professionals in the Juvenile Justice System

Additional minority professionals should be employed in the juvenile justice system.

b. Minority Psychologists/Psychiatrists in the Correctional System

Additional minority psychologists and psychiatrists should be employed in the correctional system.

Delinquency Decision Making Committee Action: Approved.

Recommendation 9:

Existing legislation should be clarified (by statutory amendment) as to whether N.J.S.A. 2A:4A-47 limits the court's ability to enforce the collection of unpaid fines, restitution, penalties or fees whose payment is mandated by another statute (e.g., the Comprehensive Drug Reform Act) to age eighteen or one year from the date of the order (whichever is later).

Delinquency Decision Making Committee Action: Approved.

Recommendation 10:

The Comprehensive Drug Reform Act should be amended to replace the mandatory D.E.D.R. penalties (currently applicable to juveniles adjudicated delinquent for the commission of drug offenses) with a discretionary financial penalty and/or service in a community service program.

Delinquency Decision Making Committee Action: Approved.

Recommendation 11:

Short term incarceration should be made available as a dispositional alternative in all counties which have county juvenile detention centers.

Delinquency Decision Making Committee Action: Opposed. While some members of the Delinquency Decision Making Committee agreed with the Subcommittee's recommendation, the majority of the Committee was concerned that the expansion of short term incarceration to counties where this dispositional option is presently not available would lead to the increased incarceration of adjudicated delinquents.

A. RESEARCH AGENDA RECOMMENDATIONS BY THE DISPOSITION SUBCOMMITTEE ENDORSED BY THE DELINQUENCY DECISION MAKING COMMITTEE

Research Agenda 1:

Research should be conducted by the appropriate agency to ascertain whether juvenile inmates may be potentially exposed to longer terms than adults prior to parole.

Research Agenda 2:

Research should be continued into whether undue disparity may exist as to dispositions imposed on adjudicated delinquents.

B. ADDITIONAL RESEARCH AGENDA RECOMMENDATION BY THE DELINQUENCY DECISION MAKING COMMITTEE

Research Agenda 3:

Research should be conducted as to whether adjudicated juveniles serve longer terms prior to parole than adults due to the effect of N.J.S.A. 2A:4A-44d(2) (pursuant to which the granting of parole is subject to the approval of the court if a juvenile is approved for parole prior to serving one-third of the term for a first, second or third degree crime or one-fourth of the term for any other crime).

VI. Proposed Trial Court Performance Standards

A. DIVERSION

Standard 1.

The court ensures that the intake function in every county is strengthened by developing and implementing effective training programs.

Commentary

The type, quality and level of training which intake staff currently receive varies from county to county. In most instances, when individuals are assigned to entry level intake positions, efforts to prepare new staff for their responsibilities are limited to on-the-job training. Rarely, if ever, do incoming staff participate in a structured orientation program. Thereafter, unit staff may periodically receive training through attendance at conferences, seminars and workshops.

There is a need to recognize the critical importance of training to the intake process and to institutionalize effective training programs regarding its operations. For entry level positions or personnel newly assigned to Family Division Intake, training should be geared toward providing the basic skills and techniques necessary to perform job functions successfully. For experienced intake employees regular in-service training should be conducted. This training should be designed to update staff on changes in procedural requirements as set forth by statutes, Court Rule, Administrative Directive or local policy, as well as to keep them abreast of the latest developments in counseling or other disciplines that are germane to their duties. The involvement of experts from various relevant fields in the training programs could greatly enhance the process.

The development of suitable training curriculums should be shared by the Administrative Office of the Court and Family Division Administration in each county. The AOC should offer fundamental information on subjects such as the law, the intake process and family dynamics, to provide a firm foundation upon which local programs may be built. These programs should address needs identified at the local level and should focus on the availability and effectiveness of resources/services. The AOC could provide technical assistance to the counties to coordinate and facilitate their training efforts. In addition, the AOC should organize and conduct statewide conferences or workshops involving judges and intake personnel which are designed to decrease existing variations in court intake practices and promote uniformity, where appropriate and desirable.

Performance will be measured by the implementation of training programs and by maintaining detailed information on how training was administered. In addition, an evaluation questionnaire should be developed for completion by the attendees of every training session. The responses to the questionnaire should be analyzed to determine

whether the participants thought the training was meaningful and to identify the possible need for modification or improvements.

Delinquency Decision Making Committee Action: Approved.

Standard 2.

The court, especially the Family Division Presiding Judge, ensures that there is regular and systematized communication between the Family Division and the volunteers who work as members of Juvenile Conference Committee (JCC's) or in other services utilized for diversion.

Commentary

Currently, the quality and level of contact which the court has with the individuals who provide services to diverted youth varies from county to county. This contact is particularly important with regard to the municipal JCC's because they serve as the court's front lines. Although JCC members routinely communicate with court staff regarding caseload activity, the members frequently feel that the Committee's are not an integral part of the court system because they seldom have the opportunity to meet with or speak to a Family Division Judge. The Committee members are sometimes frustrated by the lack of feedback they presently receive and often wonder if, in fact, the Committees are viewed as functioning effectively.

Each Family Division Presiding Judge has the responsibility to establish and promote regular communication with the JCC's in his or her vicinage. The Presiding Judge should develop procedures which support this effort and should consider factors such as the need to prepare a schedule for contacts, whether contacts should occur telephonically or in-person, whether it would be beneficial to meet with the JCC's either individually or in a group and, how to best provide feedback or assessments to the Committees.

Specific performance techniques need not be developed since maintaining this type of contact is a natural aspect of a Presiding Judge's responsibilities.

Delinquency Decision Making Committee Action: Approved.

Standard 3.

The court ensures that JCC's exist to serve every community so that they are available to be considered as a possible diversionary alternative for every juvenile charged with a minor delinquent offense, regardless of place of residence.

Commentary

The Code of Juvenile Justice allows the courts to appoint municipal Juvenile Conference Committees but does not mandate such appointments. There are 567 municipalities in New Jersey and currently, there are 332 JCC's. The number of JCC's which exist in each county varies significantly and ranges from a high of 54 in one county to none in another. In most counties, the number of JCC's is not equal to the numbers of municipalities. In these situations, however, the Committees are usually set up regionally to serve the entire county.

There is a need for the court in each county to determine whether one or more JCC's should be appointed so that all alleged minor offenders may be afforded the same treatment options. The court should analyze available information on its juvenile offender population to determine the number of alleged delinquents who would be eligible for diversion to a JCC based on statutory and other criteria. In addition, the court should evaluate the processing of cases by the JCC's which currently exist to ensure that their caseloads are manageable in size and enable the Committees to provide recommendations to the court, pursuant to timeframes set forth in the Guide for Juvenile Conference Committees.

The AOC should work closely with each county in their analysis of existing services and assist them in creating JCC's through on-going activities related to the recruitment and training of volunteers.

Performance will be measured by reviewing the results of local evaluation activities and, where it is determined that one or more JCC's are needed, by monitoring their appointment and ensuring that the JCC's are either situated geographically or organized regionally to provide services to every minor offender, regardless of where the juvenile resides in the county. In addition, comprehensive and accurate records will be maintained by both the AOC and the Family Division in each county regarding the number and name/location of the JCC's that exist in each county, the community(ies) they serve and their caseload activity.

Delinquency Decision Making Committee Action: Approved.

Standard 4.

The court employs a mechanism for monitoring its orders to ensure that there is compliance by the juvenile, the family and the service provider with the obligations imposed through the diversion process.

Commentary

The Code of Juvenile Justice requires intake staff to notify the Family Division Presiding Judge where it is determined that the obligations imposed in the diversion order are not being met. Although intake staff, for the most part, monitor the conduct of juveniles who appeared at Intake Service Conferences to ensure that there is compliance

with the terms of the court order during the diversion period, there is a need to enhance this process. Procedures should be established to systematize review activities and extend them to include not only a determination of adherence by parent or guardians and services providers to the obligations imposed as a result of diversion, but also an assessment of the impact and effectiveness of individual programs to which delinquency matters are diverted. The Family Automated Case Tracking System (FACTS) provides the capability to project and schedule future events for a case (e.g., review dates) and to record the results of events once they have occurred. As FACTS is installed in each county, the system may be used as an automated tickler file and will provide an efficient tracking mechanism.

Performance will be measured by the establishment of effective monitoring procedures and by determining whether the procedures are being used throughout the state.

Delinquency Decision Making Committee Action: Approved.

Standard 5.

The court encourages the development of "offense-specific" diversionary programs.

Commentary

In addition to the diversionary alternatives set forth by the Code of Juvenile Justice, counties have developed diversionary programs which address specific offenses. At least one offense-specific diversion program has been implemented in each of the 21 counties in New Jersey. Several counties have established three or more such programs. These programs are uniquely suitable for certain types of conduct. Effective offense-specific programs which currently exist in some counties focus on drug/substance abuse, sexual offenses and shoplifting. Alternative diversionary programs have been established with the assistance and financial support of youth organizations, public and private mental health facilities and private industry or commerce.

The establishment of offense-specific diversionary programs should be pursued. These programs have the potential to be very effective and should be replicated where appropriate. A mechanism should be developed to inform counties about the various alternative diversionary programs that presently exist throughout the state, how these programs were created and whether they are functioning successfully. Further, there is a need to look beyond New Jersey for such programs. Procedures should be developed which enable court staff to discover and evaluate programs of this nature which may be in place around the country and for subsequently implementing them where desirable. In addition, consideration should be given as to whether the Code of Juvenile Justice needs to be amended to recognize these alternative program and govern their operations.

To facilitate the creation of offense-specific diversionary programs, the Family Division in each county should explore all possible funding sources at both the state and

local level and should work in partnership with the service delivery system which exists outside of the court. The court should actively encourage private citizens and individuals from other segments of government to participate in offering service to which juvenile may be diverted.

Performance will be measured by the establishment of additional offense-specific diversion programs and by assessing the impact of these programs/services on the youths who are diverted to them. An important part of this assessment will involve the analysis of data related to recidivism rates.

Delinquency Decision Making Committee Action: Approved.

Standard 6:

The court ensures that effective training and educational programs about juvenile family crisis jurisdiction and Crisis Intervention Unit (CIU) operations are provided to judges, court support staff, law enforcement personnel, schools, social services agencies personnel and the community in general.

Commentary

Currently, there is a lack of understanding and consistency on the part of the judiciary, judges, court support staff, law enforcement personnel, social service agencies personnel and the community in general, about juvenile-family crisis jurisdiction, the operations of CIU's and the purposes which they serve. There is a need for court personnel and those individuals who work within or interact with the juvenile justice system to be made and kept fully informed and educated about this substantive area.

The Administrative Office of the Courts should establish a committee consisting of AOC and trial court staff and CIU personnel to develop an effective training curriculum on this subject. Specialized training sessions should be provided to judges, case management and court support staff through forums such as the Family Division Retreat, the Judicial College and periodic training conferences. AOC staff and experienced personnel from county CIU's should assist in efforts to educate law enforcement, school and social service agency personnel by participating in the design and/or presentation of local training program. Activities to increase public awareness should also be undertaken.

Performance will be measured by the implementation of training programs and by maintaining detailed information concerning how the training was administered (e.g., staff involved in training efforts, the number of participants and the nature of their work). This information is particularly important where the Judiciary is facilitating effort conducted by outside entities to increase awareness levels about CIU's. In addition, an evaluation questionnaire should be developed for completion by the attendees of every training session. The responses to the questionnaire should be analyzed to determine

whether the participants found the training to be useful and to identify the possible need for modifications or refinements.

Delinquency Decision Making Committee Action: Approved.

Standard 7.

The court ensures that Crisis Intervention Units Operate with sufficient numbers of staff with appropriate levels of expertise to meet the mandate of the Code of Juvenile Justice.

Commentary

There is a need to improve the overall effectiveness of CIU's in New Jersey by addressing existing issues concerning staffing. The Code of Juvenile Justice sets forth minimum educational and experiential requirements for unit personnel employed as counselors (N.J.S.A. 2A:4A-79). Although it appears that these minimum qualifications are being met in every CIU, staff generally are not compensated adequately for their skills due to budget restrictions and there is wide disparity in salary levels among counties. In some counties the number of staff assigned to the CIU is very limited, which makes the responsibility of responding to juvenile-family crisis on a 24-hour basis either extremely burdensome or impossible. In the latter instance, individuals outside of the units have been given special training so that they can respond to after hours calls. As a result of the low salaries, small staff complements and the demands of being on-call, many units have been troubled by high staff turnover.

The AOC should continue its activities related to the on-site evaluation of CIU operations throughout New Jersey. These evaluations should include an assessment of factors such as budget allocations and staff size and the findings should be reported to the legislature for consideration. Efforts should be made to achieve adequate operating budgets and optimum levels of staffing within the units.

Performance will be measured by the existence of an on-going monitoring program and by analyzing the results of these activities.

Delinquency Decision Making Committee Action: Approved.

Standard 8.

The court employs uniform statewide standards which govern the nature and quality of information that must be gathered for the preparation of a juvenile-family crisis or out-of-home placement petition.

Commentary

Although it is generally acknowledged that CIU's have been successful in diverting matters away from formal system processing, when cases do require court referral the units throughout the state function at varying levels of expertise. In some instances, the petitions which are filed with the court do not present all of the facts necessary for jurisdiction (N.J.S.A. 2A:4A-83). Minimum standards should be developed by the Administrative Office of the Courts to ensure that information needed by the court to proceed is contained in the petition. This information should include a statement of the nature of the problem, a description of the community resources that were used, a discussion of available services that were not utilized and why, an assessment of the adolescent and the family and, recommendations for treatment.

In addition, revised Juvenile-Family Crisis Petition and the Out-of-Home Placement Petition should be promulgated by the AOC for statewide use. These forms should address existing deficiencies regarding the jurisdictional and factual data that is currently presented to the court in CIU petitions.

Performance will be measured by the establishment of statewide standards and by monitoring to ensure that the standards are being followed throughout New Jersey. Performance will also be measured by the promulgation of the revised petition forms and by reviewing case files to ensure that the forms are utilized.

Delinquency Decision Making Committee Action: Approved.

Standard 9.

The Judiciary monitors compliance with the operating guidelines promulgated by the Supreme Court in the Juvenile-Family Crisis Intervention Manual.

Commentary

Following the enactment of the Code of Juvenile Justice, a Crisis Intervention Manual, which sets forth operating guidelines for CIU's, was prepared by a Task Force and approved by the New Jersey Supreme Court. Statewide, however, there are significant procedural variations among the units. The Judiciary should ensure that all personnel who work with Juvenile-Family crisis matters are aware of the existence of the Manual, are knowledgeable about the procedures which it contains and abide by these procedures. The Assignment Judge, as local manager of the Judiciary, should assist in this effort by ensuring that there is compliance with all requirements of law governing the operation of the CIU.

There is a need for the Assignment Judge in every vicinage to exercise the regulatory authority of the court over the functioning of the CIU's. For those CIU's which operate within Family Division Intake, the Assignment Judge's authority includes the enforcement of statutory requirements, court policies and Administrative Directives. For those CIU's which are outside of Court Intake, the authority includes the enforcement of

the agreement between the agency providing services and the Administrative Office of the Courts, pursuant to N.J.S.A. 2A:4A-76.

Performance will be measured by monitoring the operations of CIU's throughout the state and determining the extent to which the units comply with procedures and requirements.

Delinquency Decision Making Committee Action: Approved.

B. DETENTION AND ALTERNATIVES

PROPER USE OF DETENTION

The court should control the use of detention so as to protect the safety of the community, ensure that juveniles appear at hearings, and safeguard the rights and welfare of juveniles awaiting adjudication.

Standard 1. Detention Decision Making

The court ensures that all relevant and accessible information relating to the detention decision is obtained and given due consideration throughout the detention decision making process.

Delinquency Decision Making Committee Action: Approved.

Commentary

Uniform guidelines governing information gathering and decision making should be implemented statewide. Currently a great deal of variation exists among counties in the amount and type of information considered at all levels of the detention decision making process. These practices should be standardized in order to guarantee that similarly situated juveniles receive similar treatment.

A committee of experts in the field of detention should be established by the Administrative Office of the Courts to recommend guidelines for review by the Conference of Family Division Presiding Judges. These guidelines should be promulgated for use within one year. Training should be provided for intake officers in order to ensure that these guidelines are followed.

Performance shall be measured by the establishment of guidelines in accordance with this standard and by monitoring to ascertain that the guidelines are being used through the state.

Standard 1.1 Conditions of Detention

The court ensures that juveniles in detention are not improperly detained in facilities where overcrowding or other conditions present a threat to the health, safety and well-being of the juvenile.

Delinquency Decision Making Committee Action: Approved.

Commentary

Juvenile detention centers in many of our largest counties suffer from chronic and severe overcrowding. The court should accept responsibility for safeguarding the rights of juveniles in detention and should take those steps that are in its power to accomplish that goal.

The court should keep itself informed of the conditions in its county detention facility by being aware of the facility's capacity, by receiving a daily census of juveniles in detention and by reviewing copies of incident reports provided by the detention facility to the Department of Corrections. In individual cases where an incident report reveals an allegation of abuse or a suicide attempt the court should consider the appropriateness of retaining the juvenile in secure detention. While the court must always have the ability to detain an individual juvenile, it should consider overcrowding as a factor when making detention decisions. When the detention population exceeds capacity the court should consider releasing less dangerous offenders in order to free space for juveniles who require secure detention.

The judiciary should advocate through Youth Services Commissions and at the State level for action to reduce overcrowding and improve conditions in juvenile detention facilities.

Performance shall be measured by the extent to which each vicinage monitors detention center conditions and overcrowding within its vicinage, and takes positive steps to reduce overcrowding and improve conditions.

C. ADJUDICATION

STANDARD 1.

All detention time frames set forth in the Code of Juvenile Justice shall be rigorously enforced.

Delinquency Decision Making Committee Action: Approved.

STANDARD 2.

Juvenile procedures shall protect the rights of the juvenile defendant.

Delinquency Decision Making Committee Action: Approved.

STANDARD 3.

Offense plea bargaining in juvenile matters shall be established statewide.

Delinquency Decision Making Committee Action: Approved as modified. The Committee consensus was to disapprove of dispositional plea bargaining; therefore, this item was deleted from the proposed standard.

D. ROLE OF COUNSEL

STANDARD 1.

Every juvenile should be represented at the earliest possible stage of the formal proceeding by a trained, knowledgeable attorney. Every prosecutor should be properly trained in juvenile practice and procedure.

Delinquency Decision Making Committee Action: Approved.

STANDARD 2.

All attorneys involved in juvenile proceedings should advocate for their respective clients.

Delinquency Decision Making Committee Action: Approved.

STANDARD 3.

All counsel have a responsibility to avoid unnecessary continuances.

Delinquency Decision Making Committee Action: Approved.

E. DISPOSITION

INTRODUCTION

Budgetary constraints need to be taken into consideration to implement those Standards which would require additional personnel and/or other expenditures. The implementation of several Standards would require additional funding.

I. PROMOTE THE RULE OF LAW THROUGH FAIR DISPOSITION

A. INFORMATION

Standard 1

THE FAMILY DIVISION BASES ITS DISPOSITIONAL DECISIONS ON ACCURATE, RELEVANT AND COMPREHENSIVE INFORMATION COLLECTED PURSUANT TO UNIFORM STATEWIDE CRITERIA.

Standard 1.1

In all cases where there is a likelihood of incarceration and in other cases as feasible, an intensive needs assessment is conducted prior to disposition.

Standard 1.2

A diagnostic evaluation is performed as to adjudicated delinquents in all cases where appropriate.

Standard 1.3

In all cases where there is a likelihood of incarceration and in other cases as feasible, a proposed service/ action plan is compiled prior to disposition. Input is sought from the juvenile's family. An interagency assessment team assists with developing the proposed service/action plan.

Standard 1.4

A standard Pre-disposition Report Form is used on a statewide basis.

Standard 1.5

Dispositional information is provided to the court in a timely manner.

Standard 1.6

An updated statewide resource directory encompassing state and countywide programs, services and resources is made available to the court.

Commentary

The needs assessment identifies the juvenile's strengths and weaknesses, as well as service, program and treatment needs (e.g., family involvement, employment, education, mental health and substance abuse).

The service/action plan identifies the services/ resources (including aftercare) needed by the juvenile (and his/her family, where appropriate) and recommends the designation of a particular lead agency to provide the same (in conjunction with other agencies, as appropriate).

The Pre-disposition Report includes information as to the following: the official and the juvenile's version of the incident, prior law enforcement contact(s) by the juvenile, including stationhouse adjustment(s), school related information (e.g. copies of all school records, grades, absences, suspensions), the juvenile's family background, the juvenile's drug and alcohol involvement, prior involvement with the juvenile justice system (including program involvement by the juvenile and his/her parents), community based and other services received, prior placements and incarceration, the victim impact statement (if one is provided by the victim) and public disclosure notice.

Efforts are made to remedy the causes of existing delays in the timely provision of information requested by the court. A task force or interagency team determines in each county the specific barriers in the county regarding the expeditious provision of court ordered information and recommends solutions to the same. Identified problems are remedied with the assistance of an interagency team. The interagency team assists with pinpointing and remedying specific as well as systemic barriers to the expeditious provision of dispositional information that is needed by the court. The interagency team also assists with monitoring the timely provision of such information.

The resource directory is made available to Family Division Judges and Case Managers and the predisposition unit and post-disposition staff. The resource directory includes all resources, programs and services (including program availability and eligibility criteria) which are available on a county and statewide basis and also identifies gaps as to the same.

Delinquency Decision Making Committee Action: Approved.

B. HEARING

Standard 2

THE FAMILY DIVISION CONDUCTS DISPOSITION HEARINGS FAIRLY AND EXPEDITIOUSLY AND ORDERS DISPOSITIONS THAT PROMOTE THE JUVENILE'S REHABILITATION AND PROTECT THE PUBLIC.

Standard 2.1

Every effort is made to have the juvenile's parents or guardian attend the disposition hearing. In case of the parents'/guardians' absence from the disposition hearing, the court conducts the hearing without them, as warranted by the circumstances of the case. The court takes testimony at the disposition hearing, as needed.

Standard 2.2

The disposition hearing is conducted expeditiously and within the time constraints set forth by the Code of Juvenile Justice and the Rules of Court.

Standard 2.3

A standard Disposition Order Form is used on a statewide basis.

Standard 2.4

The Disposition Order specifies the person, program or agency to provide the court with evaluations, reports or other services to the juvenile and his/her family and designates the time period for compliance.

Standard 2.5

The Disposition Order specifies the conditions imposed on adjudicated delinquents and their parents and designates the time period for compliance.

Standard 2.6

The Disposition Order sets forth the statutory citation for the offense for which the juvenile is adjudicated delinquent.

Standard 2.7⁹³

A copy of the Disposition Order is transmitted to the correctional institution to which an adjudicated juvenile is committed.

Delinquency Decision Making Committee Action: Approved.

C. MONITORING

Standard 3

THE FAMILY DIVISION SYSTEMATICALLY MONITORS AND ENSURES COMPLIANCE WITH ITS DISPOSITION ORDERS.

Standard 3.1

The probation department monitors and reports to the court non-compliance with conditions of probation.

Standard 3.2

The probation department is responsible for collecting and crediting all fines, penalty and restitution payments and advising the court of default.

Standard 3.3

Uniform systems are used to monitor and enforce compliance with Disposition Orders by juveniles, parents, programs, agencies/entities and others. Upon the statewide implementation of the FACTS system, computer technology is utilized to track compliance with Disposition Orders.

Standard 3.4

⁹³Standard 2.7 was added by the Delinquency Decision Making Committee.

An alleged violation of a Disposition Order is brought to the attention of the court expeditiously.

Standard 3.5

The Family Division conducts a periodic review of Disposition Orders, as needed.

Standard 3.6

The Family Division expeditiously conducts a hearing on alleged non-compliance with a Disposition Order.

Commentary

The probation department continues to monitor and report to the court non-compliance with conditions of probation. Even where a fine, penalty or restitution is the sole disposition ordered, the probation department is generally responsible for collecting and crediting all payments and advising the court as to default. An interagency team may be used to assist with monitoring compliance with court orders.

Delinquency Decision Making Committee Action: Approved.

II. FAMILY INVOLVEMENT

Standard 4

THE FAMILY DIVISION EMPHASIZES THE ROLE OF THE FAMILY.

A. DECISION MAKING

Standard 4.1

The Family Division ensures participation by families in the dispositional decision making process.

B. ORDERS

Standard 4.2

The Family Division, where appropriate, specifies family participation in the Disposition Order.

C. FOLLOW-UP

Standard 4.3

The Family Division monitors compliance by family members with its order and uses contempt and other mechanisms to enforce such compliance.

Delinquency Decision Making Committee Action: Approved.

III. TRAINING

Standard 5

THE FAMILY DIVISION JUDGES AND PERSONNEL RECEIVE SPECIALIZED, ONGOING TRAINING.

Standard 5.1

Training is provided to Family Division Judges and personnel regarding but not limited to the following areas: techniques for developing comprehensive rehabilitative plans; dispositional resources, programs and services; family and volunteer involvement in dispositions; monitoring and enforcement of Disposition Orders.

Standard 5.2

Family Division Judges and key personnel are required to visit programs and facilities (including correctional facilities) for juvenile delinquents.

Commentary

Training programs for court support staff and probation officers handling juvenile delinquency matters are designed so as to permit them to select training sessions which best suit their individual needs. Attendance at training sessions is mandatory for newly

appointed, newly assigned and experienced Family Division Judges and personnel. Attendance at training sessions is not prevented by calendar clearance or other administrative responsibilities.

Delinquency Decision Making Committee Action: Approved.

IV. WORKLOAD

Standard 6

THE PRE-DISPOSITION UNIT, POST DISPOSITION AND COURT PROGRAM STAFF HAVE WORKLOADS WHICH ALLOW THEM TO PERFORM THEIR FUNCTIONS EFFECTIVELY AND EXPEDITIOUSLY.

Standard 6.1

Caseload standards are established for the pre-disposition unit, post-disposition and court program staff.

Commentary

A maximum caseload for which such individuals have responsibility is established in order to permit them to devote the necessary time to perform their functions effectively.

Delinquency Decision Making Committee Action: Approved.

V. COOPERATION WITH OTHERS

Standard 7

THE FAMILY DIVISION PROMOTES PROGRAM AND SERVICE DEVELOPMENT.

Standard 7.1

The Family Division brings to the attention of the Municipal, County and State Youth Services Commissions and service providers identified gaps in municipal, county and statewide services for their consideration and action.

Delinquency Decision Making Committee Action: Approved.

VI. EVALUATION/PLANNING

A. EVALUATION

Standard 8

THE FAMILY DIVISION UTILIZES QUALITY ASSURANCE STANDARDS FOR ITS PROGRAMS AND SERVICES AND PERIODICALLY EVALUATES THEM PURSUANT TO A STANDARD EVALUATION FORMAT.

Standard 8.1

Quality assurance standards for court programs are established as to program availability (based on vicinage needs), minimum delivery of services, staffing levels and adequacy, program goals and methodologies.

Standard 8.2

Programs operating under the auspices of the court are evaluated periodically and at least every two years in each vicinage pursuant to a standard evaluation format. The Family Division and program directors are advised of the evaluation results. Efforts are made to remedy reported program deficiencies.

Commentary

A standard evaluation format is designed and utilized for the evaluation. The evaluation is conducted in each vicinage by the same consultant or group of consultants. Family Division Presiding Judges, Case Managers and program directors are advised of the outcome of the evaluation.

Delinquency Decision Making Committee Action: Approved.

B. PLANNING

Standard 9

THE FAMILY DIVISION CONDUCTS A NEEDS ASSESSMENT ANNUALLY AND PURSUANT TO AN ANNUAL SERVICE PLAN, IDENTIFIES NEEDED PROGRAMS AND SERVICES AND ADVOCATES FOR THEIR DEVELOPMENT.

Standard 9.1

Each vicinage conducts on an annual basis a needs assessment as to the programs/services/resources that most greatly need to be developed and/or expanded within the vicinage. Areas where the delivery of services should be better coordinated are noted.

Standard 9.2

An annual service plan is compiled setting forth resource/service/program needs (in a prioritized fashion) and action steps for efforts to develop the same. Service providers and agency representatives are consulted. The plan is periodically reassessed during the year.

Standard 9.3

The court assumes a leadership role in advocating for the development of needed services/programs/resources for adjudicated delinquents and their families and the expansion (where needed) of existing ones. The development of viable creative alternative to incarceration programs, recall from incarceration and intensive supervised probation programs is stressed.

Standard 9.4

Possible funding sources for needed programs are identified.

Delinquency Decision Making Committee Action: Approved.

APPENDIX

Delinquency Decision Making Committee

Summary of Responses to Issue Paper

The Delinquency Decision Making Committee received a total of twenty-two responses to its issue paper. Twelve of the responses were from County Youth Service Commissions and the remaining ten responses were from other organizations or individuals involved in the juvenile justice system.

Below are summaries of the specific responses to issues that we asked for comments on. Not all respondents commented on every issue. Most answers were not simple yes or no answers but have been categorized as such for the purposes of this summary. The original responses to will be provided to our subcommittees so that they may review the complete answers for their subject areas. We have also categorized as Mixed/No Response those comments where either no response was given, a commission was too divided to agree to one response, or the response was too mixed to infer a yes or no response from.

I. Diversion:

A. Police Diversion

1. Should Guidelines be established governing the use of police diversion? (pg. A-11)

Yes 19 No 1 Mixed/No Response 2

- a. What role, if any, should the judiciary play in the review of such guidelines? (pg. A-11)

establish/monitor 1
limited/advisory 8
review 4
none 8
Mixed/No Response 1

2. Should police diversion guidelines include recommendations for utilizing appropriate community resources and encourage the development of such alternatives? (pg. A-12)

Yes 16 No 1 Mixed/No Response 5

B. Court Diversion

1. Should the court intake function be strengthened?

Yes 11 No 0 Mixed/No Response 11

- a. Should experience in the court system and family matters be required for entry level family intake positions? (pg. A-22)

Yes 8 No 8 Mixed/No Response 6

- b. Should training be provided to intake staff? (pg. A-22)

Yes 20 No 0 Mixed/No Response 2

- c. How should training responsibilities be divided between the counties and the Administrative Office of the Courts? (pg. A-22)

Share 12

Local 1

AOC 4

Mixed/No Response 5

C. Juvenile-Family Crisis Intervention Units (CIU's)

1. Is there a need to increase levels of knowledge about juvenile-family crisis jurisdiction, CIU operations, and the purposes they serve? (pg. A-33)

Yes 20 No 0 Mixed/No Response 2

- a. Should judges receive training in this area? (pg. A-34)

Yes 21 No 0 Mixed/No Response 1

b. Should better information and more effective training to "front line" personnel (particularly police) on recognizing and handling crisis matters be available? (pg. A-34)

Yes 21 No 0 Mixed/No Response 1

2. Should more effective methods of presenting juvenile-family crisis petitions to the court be developed? (pg. A-35)

Yes 7 No 7 Mixed/No Response 8

3. Should there be more effective control within the judiciary at the vicinage level to ensure that necessary programs and services are available and functioning effectively? (pg. A-35)

Yes 10 No 4 Mixed/No Response 8

a. Are the Trial Court Administrator and Assignment Judge in your vicinage sufficiently involved in overseeing CIU operations?

Yes 4 No 5 Mixed/No Response 13

II. Detention and Alternatives:

A. How should the problem of juvenile detention center overcrowding be addressed? (pp. B-2 - B-7)

Suggestions:

Remove juveniles waiting for placements. (2)

Clarify responsibility and accountability.

Uniform standards.

Do not detain for 4th degree or lesser offenses. (3)

Transfer sentenced juveniles to state facility.

Home Detention

1. Is there a need for increased reliance on the use of alternative programs to secure detention? (pp. B-9 - B-15)

Yes 16 No 0 Mixed/No Response 6

2. How should maximum capacities for juvenile detention centers be established and enforced? (pg. B-15)

a. Should additional detention center facilities be constructed? (pg. B-15)

Yes 6 No 4 Mixed/No Response 12

b. Should judges consider detention center capacity when making detention decisions? (pg. B-16)

Yes 7 No 5 Mixed/No Response 10

c. Should enforcing detention center maximum capacities be strictly an executive branch function? (pg. B-16)

Yes 7 No 10 Mixed/No Response 5

d. How should responsibility in this area be divided between state and county levels of government? (pg. B-16)

Both 7

• *County 1*

State 7

Mixed/No Response 7

B. Should juveniles be entitled to mental health and other Human Services casework services while in detention awaiting adjudication? (pp. B-6, B-19)

Yes 21 No 0 Mixed/No Response 1

C. Should detention be available as an option for use with juveniles involved in a juvenile-family crisis who repeatedly run away from a shelter? (pg. B-19)

Yes 4 No 13 Mixed/No Response 5

III. Adjudication:

- A. Is there a need to enhance enforcement of hearing time frames set forth in the New Jersey Code of Juvenile Justice in order to minimize the length of time juveniles remain in detention? (pg. C-12)

Yes 11 No 4 Mixed/No Response 7

- B. Are juvenile defendants in counsel-not-mandatory cases provided with adequate means to call witnesses in their own defense? (pp. C-16, C-17)

Yes 5 No 6 Mixed/No Response 11

- C. Is the counsel-not-mandatory calendar useful given the nature of the offense committed and the potential penalties that can be imposed by the court upon juveniles and their families. (pg. C-19)

Yes 9 No 3 Mixed/No Response 10

- D. Should any type of plea bargaining be permitted in juvenile delinquency cases?

Yes 15 No 3 Mixed/No Response 4

1. Should offense plea bargaining be permitted?

Yes 10 No 4 Mixed/No Response 8

2. Should disposition plea bargaining be permitted?

Yes 9 No 5 Mixed/No Response 8

3. Does allowing plea bargaining have an adverse affect by teaching juveniles that it is possible to bargain with authority?

Yes 7 No 7 Mixed/No Response 8

IV. Role of Counsel:

- A. Is there a need for special training for attorneys participating in the Juvenile Justice System? (pg. D-6)

Yes 18 No 1 Mixed/No Response 3

- B. In dispositional hearings should the role of the juvenile's counsel be to advocate for the child's position, or to assert the juvenile's "best interests" regarding the disposition? (pg. D-10)

*Child's Position 6
Best Interests 5
Mixed/No Response 11*

- C. Are juveniles being adequately represented in situations where there is a conflict being the interest of parents who may have retained counsel and the interest of the juvenile? (pg. D-11)

Yes 3 No 5 Mixed/No Response 14

- D. How should the juvenile calendar be controlled when there is a scheduling conflict between the court's calendar and Public Defender assignment to a juvenile case? (pg. D-14)

*Court should control 6
Maintain vertical representation 1
Mixed/No Response 15*

V. Disposition

- A. How can the provision of dispositional information to the court regarding adjudicated juveniles be optimized? (pg. E-5)

Suggestions:

Strong support staff.

PDR should not be mandatory.

PDR should be mandatory.

A complete report including family information as needed is required.

Training.

Pre-dispositional conferences.

Needs assessments are required.

Computer terminals should be in every courtroom.

B. Are there sufficient programs and or services currently available for meeting the legitimate rehabilitation needs of juvenile delinquents? (pg. E-8)

Yes 1 No 19 Mixed/No Response 2

1. If not, what types of programs/services are most greatly needed? (pg. E-8)

Suggestions:

<i>Substance Abuse</i>	13
<i>Mental Health</i>	7
<i>Alternatives to Incarceration</i>	3
<i>Alternative Education</i>	4
<i>Special Programs</i> <i>(sex offender, arson)</i>	5
<i>Job Skills Training</i>	2

C. Should the effectiveness of existing programs/services be evaluated? (pg. E-23)

Yes 20 No 1 Mixed/No Response 1

D. Are additional facilities or alternative programs needed in light of the shortage of bedspace for short-term incarceration purposes? (pg. E-34)

Yes 7 No 2 Mixed/No Response 13

1. Should short-term incarceration be available in every county?

Yes 13 No 2 Mixed/No Response 7

2. What are the legitimate purposes of short-term incarceration?

<i>Deterrence</i>	5
<i>Punishment</i>	5
<i>Accountability</i>	3
<i>Community Protection</i>	3
<i>Rehabilitation</i>	3
<i>Shock Incarceration</i>	1
<i>There Are None</i>	2

3. Should short-term incarceration programs include school release programs in appropriate cases?

Yes 11 No 3 Mixed/No Response 8

E. Should court-involved juveniles and/or their families be entitled to necessary rehabilitative treatment as a matter of right?

Yes 12 No 3 Mixed/No Response 7

