

Institute of Judicial Administration

American Bar Association

Juvenile Justice Standards



STANDARDS RELATING TO

Corrections Administration

Recommended by the
IJA-ABA JOINT COMMISSION ON JUVENILE JUSTICE STANDARDS

Hon. Irving R. Kaufman, *Chairman*

Approved by the
HOUSE OF DELEGATES, AMERICAN BAR ASSOCIATION, 1979

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Preface

The standards and commentary in this volume are part of a series designed to cover the spectrum of problems pertaining to the laws affecting children. They examine the juvenile justice system and its relationship to the rights and responsibilities of juveniles. The series was prepared under the supervision of a Joint Commission on Juvenile Justice Standards appointed by the Institute of Judicial Administration and the American Bar Association. Seventeen volumes in the series were approved by the House of Delegates of the American Bar Association on February 12, 1979.

The standards are intended to serve as guidelines for action by legislators, judges, administrators, public and private agencies, local civic groups, and others responsible for or concerned with the treatment of youths at local, state, and federal levels. The twenty-three volumes issued by the joint commission cover the entire field of juvenile justice administration, including the jurisdiction and organization of trial and appellate courts hearing matters concerning juveniles; the transfer of jurisdiction to adult criminal courts; and the functions performed by law enforcement officers and court intake, probation, and corrections personnel. Standards for attorneys representing the state, for juveniles and their families, and for the procedures to be followed at the preadjudication, adjudication, disposition, and postdisposition stages are included. One volume in this series sets forth standards for the statutory classification of delinquent acts and the rules governing the sanctions to be imposed. Other volumes deal with problems affecting nondelinquent youth, including recommendations concerning the permissible range of intervention by the state in cases of abuse or neglect, status offenses (such as truancy and running away), and contractual, medical, educational, and employment rights of minors.

The history of the Juvenile Justice Standards Project illustrates the breadth and scope of its task. In 1971, the Institute of Judicial Administration, a private, nonprofit research and educational organi-

zation located at New York University School of Law, began planning the Juvenile Justice Standards Project. At that time, the Project on Standards for Criminal Justice of the ABA, initiated by IJA seven years earlier, was completing the last of twelve volumes of recommendations for the adult criminal justice system. However, those standards were not designed to address the issues confronted by the separate courts handling juvenile matters. The Juvenile Justice Standards Project was created to consider those issues.

A planning committee chaired by then Judge and now Chief Judge Irving R. Kaufman of the United States Court of Appeals for the Second Circuit met in October 1971. That winter, reporters who would be responsible for drafting the volumes met with six planning subcommittees to identify and analyze the important issues in the juvenile justice field. Based on material developed by them, the planning committee charted the areas to be covered.

In February 1973, the ABA became a co-sponsor of the project. IJA continued to serve as the secretariat of the project. The IJA-ABA Joint Commission on Juvenile Justice Standards was then created to serve as the project's governing body. The joint commission, chaired by Chief Judge Kaufman, consists of twenty-nine members, approximately half of whom are lawyers and judges, the balance representing nonlegal disciplines such as psychology and sociology. The chairpersons of the four drafting committees also serve on the joint commission. The perspective of minority groups was introduced by a Minority Group Advisory Committee established in 1973, members of which subsequently joined the commission and the drafting committees. David Gilman has been the director of the project since July 1976.

The task of writing standards and accompanying commentary was undertaken by more than thirty scholars, each of whom was assigned a topic within the jurisdiction of one of the four advisory drafting committees: Committee I, Intervention in the Lives of Children; Committee II, Court Roles and Procedures; Committee III, Treatment and Correction; and Committee IV, Administration. The committees were composed of more than 100 members chosen for their background and experience not only in legal issues affecting youth, but also in related fields such as psychiatry, psychology, sociology, social work, education, corrections, and police work. The standards and commentary produced by the reporters and drafting committees were presented to the IJA-ABA Joint Commission on Juvenile Justice Standards for consideration. The deliberations of the joint commission led to revisions in the standards and commentary presented to them, culminating in the published tentative drafts.

The published tentative drafts were distributed widely to members of the legal community, juvenile justice specialists, and organizations directly concerned with the juvenile justice system for study and comment. The ABA assigned the task of reviewing individual volumes to ABA sections whose members are expert in the specific areas covered by those volumes. Especially helpful during this review period were the comments, observations, and guidance provided by Professor Livingston Hall, Chairperson, Committee on Juvenile Justice of the Section of Criminal Justice, and Marjorie M. Childs, Chairperson of the Juvenile Justice Standards Review Committee of the Section of Family Law of the ABA. The recommendations submitted to the project by the professional groups, attorneys, judges, and ABA sections were presented to an executive committee of the joint commission, to whom the responsibility of responding had been delegated by the full commission. The executive committee consisted of the following members of the joint commission:

Chief Judge Irving R. Kaufman, *Chairman*
Hon. William S. Fort, *Vice Chairman*
Prof. Charles Z. Smith, *Vice Chairman*
Dr. Eli Bower
Allen Breed
William T. Gossett, Esq.
Robert W. Meserve, Esq.
Milton G. Rector
Daniel L. Skoler, Esq.
Hon. William S. White
Hon. Patricia M. Wald, *Special Consultant*

The executive committee met in 1977 and 1978 to discuss the proposed changes in the published standards and commentary. Minutes issued after the meetings reflecting the decisions by the executive committee were circulated to the members of the joint commission and the ABA House of Delegates, as well as to those who had transmitted comments to the project.

On February 12, 1979, the ABA House of Delegates approved seventeen of the twenty-three published volumes. It was understood that the approved volumes would be revised to conform to the changes described in the minutes of the 1977 and 1978 executive committee meetings. The *Schools and Education* volume was not presented to the House and the five remaining volumes—*Abuse and Neglect*, *Court Organization and Administration*, *Juvenile Delinquency and Sanctions*, *Juvenile Probation Function*, and *Noncriminal*

Misbehavior—were held over for final consideration at the 1980 mid-winter meeting of the House.

Among the agreed-upon changes in the standards was the decision to bracket all numbers limiting time periods and sizes of facilities in order to distinguish precatory from mandatory standards and thereby allow for variations imposed by differences among jurisdictions. In some cases, numerical limitations concerning a juvenile's age also are bracketed.

The tentative drafts of the seventeen volumes approved by the ABA House of Delegates in February 1979, revised as agreed, are now ready for consideration and implementation by the components of the juvenile justice system in the various states and localities.

Much time has elapsed from the start of the project to the present date and significant changes have taken place both in the law and the social climate affecting juvenile justice in this country. Some of the changes are directly traceable to these standards and the intense national interest surrounding their promulgation. Other major changes are the indirect result of the standards; still others derive from independent local influences, such as increases in reported crime rates.

The volumes could not be revised to reflect legal and social developments subsequent to the drafting and release of the tentative drafts in 1975 and 1976 without distorting the context in which they were written and adopted. Therefore, changes in the standards or commentary dictated by the decisions of the executive committee subsequent to the publication of the tentative drafts are indicated in a special notation at the front of each volume.

In addition, the series will be brought up to date in the revised version of the summary volume, *Standards for Juvenile Justice: A Summary and Analysis*, which will describe current history, major trends, and the observable impact of the proposed standards on the juvenile justice system from their earliest dissemination. Far from being outdated, the published standards have become guideposts to the future of juvenile law.

The planning phase of the project was supported by a grant from the National Institute of Law Enforcement and Criminal Justice of the Law Enforcement Assistance Administration. The National Institute also supported the drafting phase of the project, with additional support from grants from the American Bar Endowment, and the Andrew Mellon, Vincent Astor, and Herman Goldman foundations. Both the National Institute and the American Bar Endowment funded the final revision phase of the project.

An account of the history and accomplishments of the project

would not be complete without acknowledging the work of some of the people who, although no longer with the project, contributed immeasurably to its achievements. Orison Marden, a former president of the ABA, was co-chairman of the commission from 1974 until his death in August 1975. Paul Nejelski was director of the project during its planning phase from 1971 to 1973. Lawrence Schultz, who was research director from the inception of the project, was director from 1973 until 1974. From 1974 to 1975, Delmar Karlen served as vice-chairman of the commission and as chairman of its executive committee, and Wayne Mucci was director of the project. Barbara Flicker was director of the project from 1975 to 1976. Justice Tom C. Clark was chairman for ABA liaison from 1975 to 1977.

Legal editors included Jo Rena Adams, Paula Ryan, and Ken Taymor. Other valued staff members were Fred Cohen, Pat Pickrell, Peter Garlock, and Oscar Garcia-Rivera. Mary Anne O'Dea and Susan J. Sandler also served as editors. Amy Berlin and Kathy Kolar were research associates. Jennifer K. Schweickart and Ramelle Cochrane Pulitzer were editorial assistants.

It should be noted that the positions adopted by the joint commission and stated in these volumes do not represent the official policies or views of the organizations with which the members of the joint commission and the drafting committees are associated.

This volume is part of the series of standards and commentary prepared under the supervision of Drafting Committee III, which also includes the following volumes:

INTERIM STATUS: THE RELEASE, CONTROL, AND DETENTION OF ACCUSED JUVENILE OFFENDERS BETWEEN ARREST AND DISPOSITION
DISPOSITIONS
DISPOSITIONAL PROCEDURES
ARCHITECTURE OF FACILITIES

Addendum of Revisions in the 1977 Tentative Draft

As discussed in the Preface, the published tentative drafts were distributed to the appropriate ABA sections and other interested individuals and organizations. Comments and suggestions concerning the volumes were solicited by the executive committee of the IJA-ABA Joint Commission. The executive committee then reviewed the standards and commentary within the context of the recommendations received and adopted certain modifications. The specific changes affecting this volume are set forth below. Corrections in form, spelling, or punctuation are not included in this enumeration.

1. Standard 3.2 F. 2. was amended by adding training and promotion to appointment as areas for affirmative action to achieve equivalence for women and men.

2. Standard 4.10 F. was amended to incorporate the restriction proposed by Commissioners Wald and Polier to require that stimulant, tranquilizing, and psychotropic drugs be used only when the department has a procedure for monitoring their effects by a licensed physician who is independent of the department. A footnote describing that restriction and the inability of the volume's editorial committee to resolve the independent monitoring requirement was deleted.

3. Standard 4.10 G. 1. was amended to authorize the court to approve the use of techniques that manipulate the environment of consenting juveniles under sixteen if parental consent is denied or unavailable.

Commentary was revised accordingly.

4. Standard 7.2 was amended to change the maximum size of residential facilities from twenty to twelve to twenty and to bracket

twelve to twenty, in conformity with *Architecture of Facilities* Standard 6.3.

Commentary was revised accordingly.

5. Standard 7.6 D. was amended to eliminate the prohibition against routine searches of visitors and the requirement that the director have probable cause to believe the visitor may possess contraband, following which the director could delay the visit to apply for a search warrant or obtain the visitor's written consent to the search. As amended, the standard permits nonintrusive routine searches, intrusive searches based on consent or probable cause, and other searches based on reasonable cause to believe contraband is present. The amendment arises from the principle that constitutional safeguards afforded adult prisoners apply equally to juveniles in correctional institutions except for additional protections compelled by the special needs of juveniles.

Commentary was revised accordingly.

6. Standard 7.11 A. 1. was amended by changing the maximum size of a secure facility from twenty to twelve to twenty to conform to *Architecture of Facilities* Standard 6.3. See Item 4 above.

Commentary was revised accordingly.

7. Standard 8.6 A. was amended to expand the provision which would permit disciplinary action for sexual behavior forbidden by law to include behavior forbidden by statute or reasonable institutional regulations. This amendment conformed the standard to the definition of "law" in the commentary.

Commentary was revised to reflect the more explicit language of the amendment.

8. Standard 8.9 D. was amended to make the juvenile's right at disciplinary hearings to call witnesses and present evidence conditional on the effect not being unduly hazardous to institutional safety or correctional goals and to subject the juvenile's right to confront and cross-examine adverse witnesses to the discretion of the correctional officials.

9. Commentary to Standard 4.9 was revised to note that the right to medical treatment as part of a safe, human, caring environment should include the opportunity to obtain advice concerning abortions, consistent with the juvenile's right to abortions discussed in *Planned Parenthood v. Danforth*.

10. Commentary to Standard 4.14 A. 2. was revised to state that housekeeping work performed by adjudicated delinquents must be of the kind that would be performed by the juvenile in his or her own home.

11. Commentary to Standard 5.2 D. was revised to discuss the

ABA Section of Family Law's proposal that all findings of willful noncompliance with dispositional orders give rise to a new dispositional hearing, contrary to the provision in the standard which limits new hearings to cases in which the court preliminarily determines that the next most severe disposition may be imposed.

12. Commentary to Standard 7.6 K. was revised to add a cross-reference to the principle which was applied to determine the constitutional safeguards properly afforded to juveniles in connection with visitor searches by correctional officials in Standard 7.6 D. (see Item 5 above) and to apply it to searches of the juvenile's person, room, area, and property.

13. Commentary to Standard 7.10 D. was revised to expand the discussion of classification of nonsecure residential settings other than foster homes as group homes, especially with respect to residential treatment programs.

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Corrections Administration

Introduction

This volume covers the basic issues of the organization and administration of juvenile corrections as well as the legal rights and responsibilities of juveniles under correctional supervision. The standards, taken as a whole, represent a model of juvenile corrections that is more restricted in scope and more modest in purpose than that which has characterized earlier eras. This model is consistent with a statement by Francis Allen on juvenile justice:

In few localities have we fully achieved the elementary objectives of decency and humanity in dealing with the misbehaving child. The attainment of these objectives, although sometimes obstructed by formidable difficulties, is surely not impossible. One difficulty may be that our larger ambitions may sometimes divert us and prevent us from achieving the more modest goals.¹

The limitations on the scope of juvenile corrections as set forth here arise, in part, from positions previously established in other volumes of the Juvenile Justice Standards Project. In particular, three critical boundaries should be noted:

1. The jurisdiction of juvenile corrections is confined to those juveniles adjudicated for offenses that would be crimes if committed by adults. Such jurisdiction, therefore, does not include "status offenders."²

2. The responsibility for the determination of the dispositional category resides solely with the court. The *Juvenile Delinquency and Sanctions* and *Dispositions* volumes determine the following dispositional alternatives:

- a. reprimand and release;
- b. suspended disposition;
- c. restitution order;

¹"The Juvenile Court and the Limits of Juvenile Justice," 11 *Wayne L. Rev.* 685 (1965).

²See the *Noncriminal Misbehavior* volume.

- d. fine;
- e. community service;
- f. community supervision;
- g. foster home;
- h. nonsecure facility (such as group home);
- i. secure facility.

The department responsible for the administration of juvenile corrections has no authority to modify the category of disposition ordered by the court. Its discretion is limited to placement of the juvenile in a program that is within the dispositional category previously determined by the court:

3. The court has responsibility for determining the length of the dispositional order. The *Juvenile Delinquency and Sanctions* volume sets forth maximum time periods for each disposition.³ The juvenile corrections department is not, as in the past, responsible for the administration of semi-indeterminate dispositional orders.⁴ This has two important administrative consequences:

- a. no decision-making process is required within the department to determine the time of program termination;
- b. juveniles are not subject to a period of parole or after-care supervision upon discharge from a residential program.⁵

Several important considerations permeate this volume of standards:

1. The corrections department is required to provide a safe, human, caring environment for adjudicated juveniles.* As developed here, the concept of a safe, human, caring environment should not be confused with a "right to treatment" nor equated with coercive treatment measures. These standards require that any corrections program should enhance and in no way inhibit the juvenile's normal growth and development.

2. The standards favor the imposition of the least restrictive disposition, and emphasize the development of nonresidential

³The *Juvenile Delinquency and Sanctions* volume (Part VII) provides a framework that limits the length of any dispositional order in terms of the class of offense for which the juvenile has been adjudicated. With regard to the most serious offenses, the maximum disposition that the court may impose is thirty-six months for nonsecure programs and foster homes, and twenty-four months for secure residential programs.

⁴There is, however, provision for a 5 percent reduction for good time, in the length of certain dispositions. See Standard 7.9.

⁵The court is, however, able to order placement in a nonresidential program after a residential program if the total period does not exceed that permissible for the offense. See the *Dispositions* volume Standard 3.3 C.

*The reporter prefers the phrase "basic level of care" to "safe, human, caring environment," which has been adopted by the commission.

programs and nonsecure residential programs in order to make minimal use of secure settings. The standards also aim to reduce the total number of juveniles within corrections programs. New programs should not result in a widening of the scope of the jurisdiction of the corrections department.⁶

3. Residential programs with more than twenty juveniles should be phased out. The standards set the maximum size of a residential program at twenty adjudicated juveniles. These standards have been developed within the context of small facilities.

The standards are divided into nine parts. Part I sets forth general purposes and principles that should guide the administration of juvenile corrections. It is recognized that the carrying out of any juvenile court disposition contains an inherent tension. Such disposition must provide public protection but must also assure a safe, human, caring environment and access to services for the adjudicated juvenile. These standards assume that the juvenile corrections department can best achieve both of these dispositional ends by fully articulating and acknowledging this tension. To this end, the general principles stress the importance of using the least restrictive program, of fairness and legal rights, of accountability, and of reducing the total number of juveniles subject to correctional supervision.

Part II determines the jurisdictional boundaries of the department responsible for the administration of juvenile corrections. A single statewide department is preferred although the standards do allow local administration, when appropriate. Administrative separation from both adult corrections and mental health services is recommended. The role of the federal government is limited to standard-setting and funding and does not include direct program administration. At all times, the department retains responsibility for program placement and the development of quality control methods in both public and private programs.

Part III concerns organization and personnel. Given the great variety of geographic and political considerations involved, no single organizational model is preferred. When a statewide structure is not appropriate some degree of decentralized administration will be required. Personnel policy allows for both career and short-term appointments, recognizing that the personal qualities of the staff who work directly with juveniles are of paramount importance.

⁶ This position is consistent with the *Dispositions* volume Standard 2.1, in which the court is urged to make use of the least restrictive disposition appropriate to the seriousness of the offense; and Standard 3.3, stating a presumption against removing a juvenile from his or her home.

Affirmative action policies are strongly encouraged as is the recruitment of ex-offenders and the involvement of volunteers. Basic criteria for preservice and inservice training are set forth, together with the minimum requirements of a code of conduct for personnel.

Part IV describes the required features of all programs and expressly provides that adjudicated juveniles under correctional supervision retain all rights except those suspended or modified by the court's disposition. When the corrections department is called on to make decisions affecting a juvenile's rights or liberty within the correctional setting, due process protections are afforded the juvenile according to the nature of the decision, the setting in which the decision is made, and the importance of the interests of the juvenile at stake. The basic elements of a safe, human, caring environment are detailed, as are the necessary components of the provision of services. The provision of services is subject to a number of limitations, the most important being the requirement of the informed consent of the juvenile. Although there are some instances in which such consent is not required, the voluntary agreement to the receipt of services is a fundamental principle of these standards.

Further restrictions are placed on the use of drugs and behavior-modifying techniques, while unduly intrusive forms of intervention are prohibited. The standards set forth procedures for program placement and recommend the use of a variety of program settings, including settings primarily intended for nonadjudicated juveniles. Other issues covered in this part include work performed by adjudicated juveniles, a prohibition on all forms of corporal punishment, confidentiality of information pertaining to juveniles, and the responsibility of the department to develop program regulations.

Part V contains the procedural requirements for a modification of the court's original disposition. These procedures supplement the provisions set forth in the *Dispositions* volume (Part V), with the court retaining responsibility for modification. Noncompliance with an order of disposition (or one of its conditions) may result in modification but only after a judicial hearing at which the petitioner has the burden of proving willful noncompliance.

Part VI describes the variety of nonresidential programs that should be used. The term "community supervision" is preferred to "probation" to emphasize the administrative separation of dispositional supervision from intake and investigative tasks generally performed by probation departments. The conditions that the court may impose when making a community supervision order are limited. Such dispositions should set forth with specificity the intensity of supervision. Day custody and community service programs are also covered.

Part VII treats residential programs. The essential distinction between secure and nonsecure programs arises from staff control over residents' rights to enter or leave the premises. The central purpose of this part is to provide for as normal an environment as possible.⁷ The maximum limit of twenty residents in any residential program is centrally important in this respect. Additionally, links with the juvenile's home and community are encouraged, as are coeducational programs.

The discretion of program personnel in decisions concerning transfer and use of restraints is limited. Provision is made for intermittent, as well as for continuous, residence in programs. The requirements of specific types of residential programs are set forth. Foster homes, group homes, and other nonsecure programs are defined.

This part delineates the legal rights and responsibilities of juveniles under correctional supervision. Issues such as access to a telephone, mail censorship, visits, searches, hair and dress regulations, medical and dental care, and nutrition are covered. It is recognized that these are questions that are increasingly before the courts and it is hoped that these standards will provide the impetus for correctional systems to update their rules and practices without the necessity of court action.

Part VIII deals exclusively with the disciplinary system and while its focus is on the secure setting, it may also serve as a model for less restrictive settings. The standards set out three levels of infractions and provide examples of infractions within each category. The guiding principle of this part is: the more serious the infraction and the more onerous the possible sanction, the more formal the disciplinary procedure. The sanctions that may be imposed are enumerated along with sanctions—corporal punishment, for example—that may not be imposed. Procedures for the adjudication and disposition of alleged infractions are set forth.

Part IX covers mechanisms and procedures that ensure accountability in the administration of juvenile corrections. The most important of these are grievance procedures, monitoring and evaluation activities, and a planning process open to public scrutiny.

The development of these standards has benefited considerably from the constructive criticism of several persons directly involved in various aspects of the administration of juvenile corrections. The co-reporters were provided with invaluable assistance by Beth Sarat, Judy LaPook, and Charles Rose. Fred Cohen wishes especially to

⁷The concept of normalization, which closely parallels that of a safe, human, caring environment, is central to the *Architecture of Facilities* volume.

acknowledge the aid provided by Professor Sanford Fox. The reporters also gratefully express their appreciation for the continual support and advice of Allen F. Breed, former Director, California Department of Youth Authority and Chairperson of Drafting Committee III: Treatment and Corrections.

Standards

PART I: GENERAL PRINCIPLES

1.1 The administration of juvenile corrections: purposes.

The purpose of juvenile corrections is to carry out the court's dispositional order concerning adjudicated juveniles. The central purposes are the protection of the public, the provision of a safe, human, caring environment, and access to required services for juveniles.

1.2 Five general principles.

The administration of juvenile corrections should be guided by five general principles:

A. Control and care.

The administration of programs for adjudicated juveniles should provide for the degree of control required for public protection, as determined by the court, and a safe, human, caring environment that will provide for normal growth and development.

B. Least possible restriction of liberty.

The liberty of a juvenile should be restricted only to the degree necessary to carry out the purpose of the court's order.

C. Fairness and legal rights.

Programs for adjudicated juveniles should be characterized by fairness in all procedures, and by a careful adherence to legal rights.

D. Accountability.

The administration of juvenile corrections should be accountable on three levels: to the courts for the carrying out of the dispositional order; to the public, through the appropriate legislative or other public body, for the implementation of the statutory mandate and expenditure of public funds; and to the juvenile for the provision of a safe, human, caring environment and access to required services.

E. Minimization of the scope of juvenile corrections.

The administration of juvenile corrections should aim to provide services and programs that will allow the court to reduce the number of juveniles placed in restrictive settings.

PART II: JURISDICTION OF THE DEPARTMENT RESPONSIBLE FOR THE ADMINISTRATION OF JUVENILE CORRECTIONS

2.1 Statewide department.

A. Single statewide department.

There should be a preference for a single statewide department with responsibility for the administration of juvenile corrections rather than a proliferation of agencies at both the state and local level. The statewide department may be termed "the Department of Youth Services." In these standards it is referred to as "the department."

B. Location in executive branch of government.

The department should be located within the executive branch of the state government.

C. Exceptions to statewide jurisdiction.

When for political or geographic considerations, some programs are within the jurisdiction of local government and it is determined that they should remain subject to local control, the statewide department should be responsible for the setting and enforcement of standards and the provision of technical assistance, training, and fiscal subsidies.

2.2 Separate administration of juvenile and adult corrections.

A. Separation from adult corrections.

The department responsible for juvenile corrections should be operationally autonomous from the administration of adult corrections; the department should only have administrative responsibility for persons under eighteen years of age at the time of adjudication, or persons who are otherwise within the jurisdiction of the juvenile court.

B. Prohibition on transfers to adult corrections.

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

2.3 The department and mental health agencies.

A. Separation from mental health agencies.

The department should be administratively autonomous from the administration of mental health facilities.

B. Mental health services within correctional facilities.

The department should be responsible for providing either directly or by contract with a public or private mental health agency, neces-

sary mental health care and services for juveniles within facilities operated by the department.

C. Transfers to mental health agencies.

When it is believed that a juvenile under the jurisdiction of the department is mentally ill or mentally retarded and in need of such intensive residential care, custody, and control as requires transfer to a facility operated by a mental health agency, the department should return the juvenile to juvenile court and require the initiation of proceedings in the court having jurisdiction for commitment of the mentally ill or mentally retarded to secure care. The law governing such admission or commitment for juveniles not adjudicated delinquent should apply in all respects. The provisions of this standard should never be used by the department for punitive purposes.

D. Court's power to compel agencies to accept juveniles for mental health services.

When any adjudicated juvenile is found by the court to be mentally ill or mentally retarded, the court should have the power to compel acceptance of such juvenile by the mental health agency best equipped to meet the juvenile's needs.

2.4 The responsibility of the federal government.

A. The role of the federal government.

The federal government should take an important leadership role in juvenile corrections through standard-setting and through funding of state and local programs. Federal activity should, as far as possible, be centralized within a single agency.

B. Juveniles adjudicated in federal courts.

Agencies of the federal government should not have program responsibility for adjudicated juveniles. Juveniles adjudicated in federal court should be placed under the jurisdiction of the appropriate state department.

2.5 The department and the private sector.

A. Alternative means of program provision.

The department may provide directly or may purchase from the private sector programs required to carry out the court's dispositions. There should be a purchase of programs and services from the private sector when purchase avoids duplication and provides a wider range and greater flexibility and more adequately meets the needs of the individual juvenile than can be attained through direct provision by the department.

B. Quality control for public and private programs.

Standards developed by the department for programs it administers should apply to programs purchased from the private sector. The department's monitoring activities should apply to both public and private programs.

PART III: ORGANIZATIONAL STRUCTURE AND PERSONNEL

3.1 Organization.

No one model of organization is appropriate for all jurisdictions. The following principles should be observed:

A. Central administration should be responsible for overall departmental planning and policy development.

B. The following functions can be either centralized or decentralized, but are essential to effective administration:

1. budget and fiscal control;
2. personnel administration;
3. program development and standard setting;
4. program direction and control (supervision);
5. program monitoring (see Standard 9.3 C.);
6. program evaluation;
7. research;
8. grievance mechanisms (see Standard 9.2).

C. All of these administrative functions should serve to provide needed services to the juvenile near his or her home.

3.2 Departmental appointments.

A. The director.

The department's director should be appointed by the governor of the state and should report directly to the governor.

B. Director's appointing authority.

The director, within the context of a civil service merit system, should have appointing authority within the department. All appointments should be subject to an appropriate probationary period.

C. Short-term contracts.

The department's personnel policy should allow for short-term employment contracts, in addition to providing career opportunities.

D. Recruitment of youth counsellors.

Youth counsellor refers to personnel in direct or continual contact with juveniles. The department should recruit as youth counsellors persons who demonstrate the potential for a high level of enthusiasm, sensitivity, and energy in working with adjudicated juveniles in program settings. This potential could be reflected in academic qualifications, personal experience, or in a combination of both.

E. Recruitment of specialists.

The department should ensure that the qualifications of specialists recruited to provide specific services should not be below the minimum established by relevant professional bodies.

F. Affirmative action.

The department's recruitment policy and procedure should clearly demonstrate a preference for affirmative action, and in light of this preference the department should closely examine the recruitment practices of the private agencies with which it contracts. Affirmative action policies should include but not be limited to:

1. a preference for matching the ethnic and racial groups represented by the juveniles in the department's care with staff appointments and promotions;
2. the appointment, training, and promotion of women and men on an equivalent basis, based on job qualifications and needs;
3. career appointments for ex-offenders. Recognition should be given to their personal experience, which may be more relevant to the correctional process than formal academic qualifications. Educational training should be made available to augment such experience.

3.3 Personnel training.

A. The importance of personnel training.

The department should ensure that resources are made available for a high level of personnel training. Each program director should be responsible for making staff time available for training requirements.

B. Preservice and probationary training.

All personnel with direct supervisory responsibility for juveniles should receive a minimum of eighty hours of preservice training, and a further forty-eight hours during the first six months of employment. The training should consist of a comprehensive orientation in the tasks to be undertaken. The components of such training should include:

1. departmental policies, with special attention to the personnel code of conduct;
2. the background, needs, and rights of adjudicated and nonadjudicated juveniles, community resources, and individual and cultural differences;
3. supervision and security requirements as determined by the type of disposition; and
4. on-going problems faced by probationary personnel.

C. Inservice training.

All personnel with direct supervisory responsibility for juveniles

should receive a minimum of eighty hours of inservice training each year. The components of such training should include:

1. departmental policies, with attention given to modifications and to legal developments affecting the administration of juvenile corrections;
2. on-going problems faced by personnel;
3. preparation for new tasks and program settings.

D. Training and the private sector.

The department should review the training programs of the private agencies with which it contracts. When adequate training is not provided by the private agency, the contract between the department and the private agency should include an agreement that the department extend its training resources to the private agency.

E. Job rotation.

The department should provide opportunities for employees to broaden their knowledge and skills through a variety of job assignments, job enrichment, and job rotation.

3.4 Code of conduct for personnel.

A. Department's responsibility to develop code of conduct.

The department should develop a code of conduct for all personnel.

B. Code of conduct and contract of employment.

The code of conduct for employees should be a part of the employment contract entered into by the department and each employee.

C. Minimum requirements for the code of conduct.

The minimum requirements for the code of conduct should include:

1. conformance with personnel requirements for public employees;
2. an emphasis on the essential role played by staff in ensuring the integrity of all aspects of the department's policy;
3. stress on the staff's responsibility to provide a safe, human, caring environment for the juvenile and to respect all rights of juveniles set forth in these standards;
4. a prohibition of any form of physical or verbal abuse of juveniles by staff members or by other juveniles with the tacit approval of the staff;
5. an affirmative obligation on the part of staff to report violations by personnel of the code of conduct.

D. Disciplinary policies and procedures.

The department should develop disciplinary policies and procedures for personnel, in accordance with rules established for other public employees.

E. Departmental code of conduct and private agencies.

The department should ensure that the code of conduct for personnel is made known to all staff working in private agencies from which the department purchases programs and services. When private agency staff are not able to meet the standards laid down in the code, the department should terminate its contract with the agency.

F. Judicial remedies for juveniles and their parents.

There should be judicial remedies for juveniles and their parents or guardians, including the waiver of sovereign immunity and the award of counsel's fees to successful litigants, for violations of the code of conduct for personnel provided in these standards. Costs may be awarded against the plaintiff in suits found to be frivolous.

3.5 Management-employee relations.

Where adequate procedures are not provided for under civil service arrangements, the department should:

A. establish formal procedures for the determination of salaries and working conditions;

B. respect the union and bargaining rights of staff, within the context of civil service employment.

3.6 Volunteers.

A. Purposes.

The department should actively involve volunteers in programs, not to replace regular staff, but to enrich and supplement on-going programs.

B. Selection and recruitment of volunteers.

The department should recruit volunteers whose interests and capabilities are related to the identified needs of the juvenile.

C. Training and supervision of volunteers.

Volunteers should be provided with preservice orientation training and be supervised in their work by an experienced employee of the department or the private agency with which the department has contracted.

D. Use of volunteers in advocacy, program-planning, and monitoring activities.

Volunteers should be provided opportunities to participate in the planning and monitoring of juvenile corrections programs. They should also be involved in organizations that advocate change and

reform in the area of juvenile corrections. Additionally, volunteers should play a critical role in the independent monitoring of juvenile corrections programs by private groups. See Standard 9.4 A. 2.

PART IV: REQUIRED FEATURES OF ALL PROGRAMS

4.1 Definition of program.

A program for adjudicated juveniles is defined as any setting or activity directly administered or purchased by the department for the purpose of implementing the court's disposition.

4.2 Program directors and advisory committees.

A. Program director.

Each program should have a designated director, in whose absence an acting director should be designated. The program director should be accountable to the department for all aspects of the management of the program. In the case of a program purchased from the private sector, accountability to the department should be provided for in the contract between the department and the private agency.

B. Program advisory committees.

The department should encourage program directors to set up advisory committees of local persons to advise on aspects of program management and to facilitate the development of links with the community.

4.3 Legal status.

A juvenile who is adjudicated delinquent should suffer no loss in civil rights, except those rights that are suspended or modified by the nature of the disposition imposed, and by any special conditions allowed by law and made applicable by the court.

4.4 General considerations in determining rights and responsibilities.

Distinctions in the objectives of the juvenile justice system and in the level of development of juveniles require that the determination of the rights and responsibilities of juveniles under correctional supervision should not be based solely on their adult counterparts. In some situations, juveniles should be afforded more of the same rights extended to adults (*e.g.*, medical and dental care attuned to rapidly developing bodies and the need for preventive care). In other situations, a similar right should be recognized, but the legally acceptable adult solution viewed as inadequate (*e.g.*, a right of access to the courts, which may be satisfied for adults by providing an adequate

law library and allowing legal assistance by fellow inmates but satisfied for juveniles only by providing legal services). There are other situations in which juveniles will be under a set of obligations not similarly required for adults (*e.g.*, compulsory school attendance, compulsory vaccinations, etc.).

4.5 Due process applicable.

Basic concepts of due process of law should apply to a juvenile under correctional supervision. Alterations in the status or placement of a juvenile that result in more security, additional obligations, or less personal freedom should be subject to regularized proceedings designed to allow for challenge through the presentation of evidence to an impartial tribunal. The relative formality of such proceedings should be based on the importance of the juvenile's interest at stake, the permissible sanction, and the nature of the setting in which the decision is to be made. The more restrictive the setting, or the greater the permissible restriction or sanction, the greater the degree of formality required.

4.6 Program regulations.

The department, using these standards as a basis, should develop regulations for all programs that it administers or purchases.

4.7 Annual statement.

A. Program director's obligation to submit annual statement to the department.

Each program director should submit an annual statement to the department that sets forth, within the framework established by the department's regulations, the program's purpose, methods, and central features. At a minimum this statement should include:

1. elements of the safe, human, caring environment that are provided;
2. program regulations;
3. services available through the program;
4. the nature and extent of links between the program and the community;
5. staff duties, qualifications, and experience.

The statement should also include a summary of the data assembled by the program in accordance with Standard 9.3 C. 1.

B. Review by the department of program director's statement.

A preliminary statement in conformance with subsection A. should be reviewed and approved by the department before any program is given authority by the department to operate or, in the case of private agencies, authorized to receive funds from the depart-

ment. In the case of a program purchased from the private sector, the statement should form an integral part of the contract between the department and the private agency. The annual review of the program director's statement should be a major consideration in the department's decision as to whether to renew the authority to operate or receive public funds.

4.8 Prohibition on all forms of corporal punishment; limitations on the use of physical force by personnel.

A. Prohibition on all forms of corporal punishment.

No corporal punishment of any adjudicated juvenile within the jurisdiction of the department should be permitted. This prohibition allows no exceptions and applies equally to public and private programs.

B. Limitations on the use of physical force by personnel in relation to juveniles.

Personnel should be prohibited from the direct use or tacit approval of juveniles' use of physical force against other juveniles except:

1. as necessary in self defense or to prevent imminent injury to the juvenile, another person, or substantial property injury;
2. to prevent escape; or
3. when a juvenile's refusal to obey an order seriously disrupts the functioning of the facility. No more force should be used than is necessary to achieve the legitimate purpose for which it is used.

C. Any personnel using physical force against any juvenile should immediately file a written report with the department setting forth the circumstances of the act, the degree of force used, and the reasons for the use of force.

D. The provisions of this standard should be made a part of the code of conduct for personnel set forth in Standard 3.4.

4.9 Safe, human, caring environment.

A. Department's obligation to ensure a safe, human, caring environment.

A safe, human, caring environment is required by all juveniles in order to achieve normal growth and development. The department should have an affirmative obligation to ensure that all programs provide, and in no way inhibit, this safe, human, caring environment.

B. Components of a safe, human, caring environment.

A safe, human, caring environment includes the provision of opportunities for juveniles to:

1. enhance individuality and self-respect;
2. enjoy privacy;
3. develop intellectual and vocational abilities;
4. retain family and other personal ties;
5. express cultural identity;
6. relate and socialize with peers of both sexes;
7. practice religious beliefs;
8. explore political, social, and philosophical ideas;
9. enjoy a nutritious and varied diet;
10. receive dental and medical care, including birth control advice and services;
11. have a choice of recreational activities;
12. be safe from physical and psychological attack and abuse.

4.10 The provision of services.

A. The department's obligation to provide access to required services.

Over and above the provision of a safe, human, caring environment the department should ensure that adjudicated juveniles have access to those services that are required for their individual needs.

B. Services that all juveniles have an obligation to receive.

The department should ensure that adjudicated juveniles obtain those services that nonadjudicated juveniles have an obligation to receive. Such services should be of no less quality than those provided to juveniles not under correctional supervision.

C. Services necessary to prevent clear harm to physical health.

The department should ensure that adjudicated juveniles obtain any services necessary to prevent clear harm to their physical health.

D. Services mandated by the court as a condition to nonresidential disposition.

The department should ensure that adjudicated juveniles obtain services determined by the court as a condition of a nonresidential disposition. As required by the *Dispositions* volume, such services should not be mandated by the court if they may have harmful effects.

E. Requirement of the juvenile's informed consent to all other services.

The department should ensure that the informed written consent of the juvenile is obtained by the program director for any services other than those described in subsections A., B., C., and D., above. Any such consent may be withdrawn at any time.

F. Limitations on the use of drugs.

Stimulant, tranquilizing, and psychotropic drugs should only be used when:

1. in addition to the consent of the juvenile, the consent of the parents or guardian of any juvenile under the age of sixteen is obtained;
2. such drugs are prescribed and administered by a licensed physician;
3. the program has a procedure, approved by the department, for recording all administrations of such drugs to juveniles, and for monitoring the short- and long-term effects of such drugs by a licensed physician who is independent of the department (the record maintained by the program should include the type and quantity of the drug administered, together with the date and time of day; the physician's reason for the prescription; the physician's observations of the effects of the drug, together with the written observations of other personnel and those of the juvenile);
4. personnel who directly administer drugs to juveniles have received specialized training.

Under no circumstances should stimulant, tranquilizing, or psychotropic drugs be used for purposes of program management or control, or for purposes of experimentation and research. In emergency situations and when the consent of the juvenile cannot be obtained, drugs may be administered subject to the seventy-two-hour emergency treatment provisions contained in the *Noncriminal Misbehavior* volume.

G. Limitations on techniques that manipulate the environment of the juvenile.

The department should limit the use of techniques that manipulate the environment of the juvenile, or are of an intrusive nature. Such methods, which include behavior modification techniques, should only be used when:

1. in addition to the consent of the juvenile, the consent of the parents or guardian of any juvenile under the age of sixteen, or if parental consent is denied or unavailable, the approval of the court, is obtained;
2. none of the rights set forth in these standards is infringed;
3. there is no reduction in the safe, human, caring environment required by Standard 4.9.

Such techniques should be clearly explained to the juvenile. Under no circumstances should such techniques be used for purposes of program management or control.

H. Prohibition on the use of organic therapies.

Under no circumstances should the department permit the use of highly intrusive techniques such as psychosurgery or electrical stimulation of the brain.

4.11 Procedures to determine programs and services.

A. Responsibility of the department.

The department should develop procedures for the selection of appropriate programs and services in accordance with the principle of informed consent and other limitations set forth in Standard 4.10.

B. Organization and location.

1. It should be the responsibility of the local office of the state-wide corrections department to administer procedures for program selection. This may be undertaken by field office staff working in close collaboration with personnel at settings for preadjudicated juveniles and with court personnel.

2. Location of the juvenile during the program placement decision.

In the case of nonresidential dispositions, the juvenile should continue to reside at home during the transitional period when the decision as to program placement is made. In the case of residential dispositions the department may:

a. make the program placement decision while the juvenile is within a setting administered by the agency responsible for interim status;

b. place the juvenile in the residential program nearest to his or her home during the decision-making period;

c. establish transitional residential centers (secure and non-secure in accordance with the court's disposition) that provide a setting for placement decisions. Residence in such centers should be brief in duration and should not exceed [one week].

C. Criteria for program placement.

The department should establish criteria for program placement decisions. Such criteria should include:

1. Location of the juvenile's home. In accordance with Standard 7.3, there should be a presumption in favor of placing the juvenile in the program nearest to his or her home. In the case of residential dispositions the wishes of the juvenile should be solicited and taken into account.

2. Age and sex of the juvenile. The placement decision should take into account the age and sex of the juvenile, and the age and sex distributions of each program and of any program criteria

relating to age and sex agreed to by the department and the program director.

3. Needs of the juvenile for services. In accordance with the requirements of Standard 4.10, an assessment should be made of the juvenile's need for services and a determination made as to which program setting will best provide access to such services.

D. Information.

1. Preference for use of existing relevant information. There should be a preference for the use of existing relevant information rather than the generation of new information unless additional information is needed for the placement decision.

2. Limitations on testing. The department should ensure that psychological tests and other means of obtaining information relevant to the placement decision are undertaken only with the juvenile's informed consent when nonadjudicated juveniles would not be legally obligated to undergo such tests or to provide such information.

E. Decisions about placement and services as an on-going process.

The placement decision and the determination of appropriate services should be reviewed regularly by local staff and program personnel.

4.12 Mixing of adjudicated and nonadjudicated juveniles.

In terms of access to programs and services there should be no automatic prohibition on the mixing of adjudicated and nonadjudicated juveniles, in other than secure facilities.

4.13 The duration of services.

If a juvenile wishes to continue to receive services beyond the period of the disposition, the department should make these services available, if possible. Such services should, whenever possible, be funded from sources outside the juvenile justice system. When funded by the department, the duration of such voluntary aftercare should not exceed six months beyond the period of the disposition. Such services should not be provided unless the informed consent of the juvenile is obtained.

4.14 Work performed by adjudicated juveniles.

A. Limitations on coerced work.

Juveniles under correctional supervision should have a right not to participate in coerced work assignments unless:

1. the work is performed in the community as a part of a conditional disposition; or

2. the work is reasonably related to the juvenile's housekeeping or personal hygienic needs; or

3. the work is part of an approved vocationally oriented program for the juvenile.

B. Compensation.

1. When the juvenile is required to work as part of a program under subsection A. 3., and to the extent that such work benefits the facility or program, the juvenile should be compensated for such work. The state should not make any set-off claim for care, custody, or services against such compensation. Such compensation should be guided by the appropriate minimum wage statutes with consideration given to the age and capability of the juvenile.

2. Juveniles who volunteer for work assignments not connected with personal housekeeping or hygienic needs should also be fairly compensated for such work and not be subject to set-off claims against such compensation.

3. Juveniles injured while performing work as described in this standard should be entitled to workmen's compensation benefits.

C. Juvenile's access to earnings.

A special account, in the nature of a trust fund, should be established for the juvenile's earnings, and reasonable rules established for periodic withdrawal, expenditure, and release of the entire fund when correctional supervision is terminated.

4.15 Records and confidentiality.

A. The department should develop procedures to ensure the confidentiality of all information pertaining to juveniles within its jurisdiction.

B. The department should ensure that links with computer systems do not infringe on the preservation of confidentiality.

C. The juvenile's access to his or her own records should be governed by the *Juvenile Records and Information Systems* volume.

PART V: MODIFICATION OF DISPOSITIONS

5.1 Procedure for reduction of a disposition.

A. A petition for reduction of a disposition may be filed with the dispositional court anytime after the imposition of the order of disposition. The proper parties and the requisite grounds for such petition are set out in Part V of the *Dispositions* volume.

B. The court may reduce the disposition on the basis of the peti-

tion and any supportive documents that have been filed initially or subsequently at the request of the court.

C. If the court does not order the reduction of the disposition within [fifteen] days of the filing of the petition, then the petitioner should be entitled to a full dispositional hearing to be held within [thirty] days of the filing of the petition. Such hearings should be conducted in accordance with the relevant provisions of Part VI of the *Dispositional Procedures* volume.

D. Courts should develop rules which impose reasonable limits on the frequency with which such petitions may be filed by the juvenile or the juvenile's parents or guardian. Special provision should be made for additional filings when any subsequent petition raises a matter that was not previously brought to the attention of the court.

5.2 Procedure for willful noncompliance with order of disposition.

A. The department may petition the dispositional court charging the juvenile with a willful violation of the order of disposition.

B. Unless the petition is dismissed, the court should conduct a hearing on the petition in which the petitioner should have the burden of proving willful noncompliance by clear and convincing evidence. The juvenile and counsel for the juvenile should be given prior notice of the charges; should be present at all stages of such proceedings; and should have an opportunity to be heard, to be confronted with adverse witnesses, to cross-examine, and to offer evidence.

C. If the petition is sustained, the judge should make specific, written findings that are sufficient to provide effective appellate review.

D. Upon a finding of willful noncompliance, the court should determine the appropriate means to achieve compliance. If the court preliminarily determines that a disposition of the next most severe category may be imposed, the hearing should be conducted in accordance with Part VI of the *Dispositional Procedures* volume. If the court determines that only a warning or the modification of any previously imposed conditions may be imposed, the juvenile and his or her counsel should be present, have an opportunity to address the court, and be granted disclosure of any information in the court's possession bearing on disposition. No additional formality need be observed except as justice may require in appropriate cases.

PART VI: NONRESIDENTIAL PROGRAMS

6.1 General requirements.

A. Range of programs.

The department should make special efforts to develop and sustain a wide variety of nonresidential programs.

B. Purposes.

Such programs should be administered so as to enhance the juvenile's education, regular employment, or other activities necessary for normal growth and development.

C. The department should ensure that the cultural and geographic roots of the juvenile are respected.

6.2 Community supervision.**A. Purpose and definition.**

Community supervision refers to the supervision of an adjudicated juvenile by a designated field worker under varying levels of intensity and in compliance with any other conditions included in the court's dispositional order. Community supervision involves the field worker in the combination of surveillance and service provision or brokerage tasks.

B. Administration.

1. The department should normally perform community supervision functions through its local offices. Administrative arrangements should be determined according to local considerations and may include the purchase of services by the department from the private sector.

2. Field offices should be established and located in the area served. In rural outlying areas, the department may use mobile offices.

C. Conditions.

The court may specify a limited number of conditions designed to carry out a community supervision order. The court should determine conditions that fit the circumstances of the juvenile as indicated by the offense for which he or she has been adjudicated. Such conditions should:

1. be least restrictive of the liberty or privacy of the juvenile, and should respect the privacy of others;

2. ensure a safe, human, caring environment as defined by these standards;

3. provide for the juvenile's education, regular employment, or other activities necessary for normal growth and development.

Conditions may also include:

1. curfew stipulations or prohibitions from specified places;

2. determination of the intensity of the level of supervision (the court may, for example, in conjunction with the department, establish high, medium, and low levels of community supervision);

3. the payment of any fines or restitution orders as ordered by the court.

D. Discretion by the department to modify conditions.

Unless the court specifies to the contrary, the department should have the discretion to remove any conditions included in the community supervision order or to reduce the level of intensity. The court and the juvenile should be provided with written notification of any such modification.

E. Supervision practice.

The department should ensure that:

1. a field worker is assigned to each juvenile who is subject to a community supervision order;

2. the field worker, at the earliest opportunity, explains to the juvenile and the juvenile's parents or guardian the purposes of the supervision, any conditions specified by the court, and the range of services available;

3. the workloads of field workers should be determined according to the level of supervision intensity, using the following ratios as guides: high level: one field worker to fifteen juveniles; medium level: one field worker to thirty-five juveniles; low level: one field worker to fifty juveniles.

6.3 Day custody and community service programs.

A. Day custody programs.

The court may order the juvenile to a program of day custody, requiring him or her to be present at a specified place for all or part of every day or for certain days. The court may attach conditions to the order, subject to the limitations on community supervision orders set forth in Standard 6.2 C.

B. Community service programs.

1. Nature of the order. The court may order the juvenile to participate in a community service program. The court should specify the number of work hours required and the nature of the work to be undertaken. Work assignments should be for the general welfare of the community, within the ability of the juvenile and, where possible, related to the nature of the juvenile's offense. They should not expose the juvenile to public ridicule. The court should specify whether any earnings should be withheld from the juvenile. Any juvenile subject to a community service order should be covered by workmen's compensation benefits.

2. Administration. It should be the responsibility of the local office to identify suitable work locations. Community service programs may be administered by the nearest field office with responsibility for community supervision.

PART VII: RESIDENTIAL PROGRAMS

7.1 Secure and nonsecure facilities: definition and certification.

A secure facility is one that is used exclusively for juveniles who have been adjudicated delinquent and is characterized by exclusive staff control over the rights of its residents to enter or leave the premises on a twenty-four-hour basis.

A nonsecure facility refers to such residential programs as foster homes, group homes, and half-way houses, characterized by a small number of residents who have the freedom to enter or leave the premises under staff supervision.

The department should certify each residential program as secure or nonsecure and such certification, unless overturned in a court proceeding brought for that purpose, should determine any distinction in rights and responsibilities made in these standards.

7.2 Limitation on the size of residential facilities: maximum size of [twelve to twenty].

No residential facility should house more than [twelve to twenty] adjudicated juveniles. The department should discontinue the use of any residential setting that contains more than twenty adjudicated juveniles.

7.3 Links between juveniles and their homes.

In the determination of program placement, there should be a strong presumption in favor of retaining the juvenile within his or her own home community and against disrupting the juvenile's cultural and geographical roots. The department should ensure that links between the juvenile and his or her home and community are facilitated and preserved.

7.4 Limitations on the use of out-of-state programs.

A. Out-of-state programs should be utilized only when the department:

1. provides the court with written reasons showing that the program is not available within the state, why the department has not provided the program within the state, and why in-state programs are not sufficient to meet the juvenile's needs;
2. ensures that juveniles are placed in out-of-state programs only when such programs conform to these standards; and
3. monitors such programs in accordance with Standard 9.3 C.

7.5 Presumption in favor of coeducational programs.

There should be a presumption in favor of coeducational pro-

grams. When programs are not coeducational, there should be opportunities for frequent social contact between juveniles of both sexes.

7.6 General requirements of all residential programs.

A. The facility should conform in all respects to applicable health, fire, housing, and sanitation codes.

B. The juvenile should have reasonable access to a telephone to speak with counsel, the court, or any office of the department. Calls to family and friends should be allowed, subject to reasonable hours restrictions and, when long distance calls are made, to prior approval. The department should provide for a reasonable number of free telephone calls.

C. The juvenile should be able to send unopened letters and should not be required to disclose the contents of correspondence. Incoming parcels and letters may be inspected, but only in the presence of the juvenile to determine whether they contain such contraband as drugs or weapons.

D. Visits by the juvenile's family and friends should be liberally permitted, subject to the juvenile's schedule of activities and reasonable time limitations. At a minimum, visits should be allowed twice weekly.

Nonintrusive routine searches, such as metal detectors and baggage checks, are permissible; intrusive searches require consent or probable cause to believe the visitor may possess contraband; and other searches, such as patdowns, are permissible if there is a reasonable expectation that contraband is present.

E. Unless the juvenile is in a secure facility under restrictions that prohibit leaving the facility, reasonable access to social, athletic, or cultural events in the community should be provided.

F. The juvenile should be permitted, but never required, to attend religious services of his or her choice. The religious preference of the parents may be solicited or received by someone in authority and such preference should be made known to the juvenile. However, the parents' religious preference should not be used to coerce belief or attendance at religious services, or to alter a different preference held by the juvenile.

G. No censorship should be exercised over what the juvenile may listen to on the radio or watch on television. Reasonable regulation may be imposed on the amount, frequency, and time of day for such activities. There should be no censorship of reading materials, except that regulations may be developed for juveniles under the age of [twelve] concerning access to obscene material.

H. The juvenile should be offered a varied and tastefully prepared

diet that conforms to accepted nutritional standards. A special diet should be provided for a juvenile with particular medical needs, or when necessary to comply with the requirements of a juvenile's religious or cultural heritage.

I. The juvenile should be permitted to wear his or her own clothing. If the juvenile does not have adequate clothing, the program should make funds available for its purchase, and such clothing should be sufficiently varied as to avoid any institutional appearance among the juveniles. The department's budgetary guidelines should allow for the purchase of clothing, when required, at the time of discharge from the program.

Rules relating to the length or style of hair, facial hair, cosmetics, clothing, and the like should be based only on safety and health objectives and not the personal preferences of those in authority.

J. The sleeping and privacy arrangements for juveniles should be sufficiently varied so that individual and small group arrangements are available according to the needs and desires of the juvenile. There should be a prohibition against the predominant use of dormitory arrangements in which the opportunity for privacy and solitude are minimal and the need to provide surveillance-type security is mandated by the close proximity of the juveniles to one another.

K. Searches of the juvenile, the juvenile's room, sleeping area, or property should not be routinely undertaken. When there are reasonable grounds to believe that a search may uncover violations of the penal law or the regulations of the facility, including a belief that a weapon may be found, then a search may be authorized by the administrative head of the facility.

A record should be kept of the grounds for the search, when it was conducted, and what, if anything, was discovered and seized. The juvenile should generally be afforded the right to be present during any search of his or her room or property.

L. Comprehensive medical and dental care should be provided for each juvenile. No surgery should be permitted—except in the case of a grave emergency—without the informed consent of the juvenile and the parents or guardian.

M. Regulations necessary for the smooth functioning of the facility should be in writing, and be provided and explained to the juvenile as soon as possible upon the juvenile's arrival at the facility.

N. Access to legal counsel should be readily available in order to preserve the juvenile's right to contest the adjudication or disposition, to provide access to the courts on issues related to the governance or maintenance of the facility after all administrative remedies provided in these standards have been exhausted, and to

preserve or perfect any legal claims the juvenile may have that are unrelated to the adjudication, the disposition, or the facility.

7.7 Transfers between programs.

The department should have discretion to transfer juveniles between programs within the category of disposition determined by the court. Transfers should adhere to the following substantive and procedural requirements:

A. A request for a transfer may be initiated by the juvenile or by the program director. The request should be in writing and directed to a designated official within the department. When the request is received, it should be the responsibility of the department to notify the parents or guardian of the juvenile and to solicit their views on the request. When the request is initiated by the program director, the department should ascertain the views of the juvenile concerning the proposed transfer.

B. Unless the department finds that there is no reasonable basis for the transfer, that there are no vacancies, or that there are sufficient grounds to reject the request, the request from either party should ordinarily be granted.

C. Unless the transfer involves an emergency relating to the health and safety of the juvenile or others, the department should provide notice at least seven days in advance to the juvenile and the juvenile's parents or guardian. Any objections should be expeditiously reviewed by the department. If, after review, the department decides against allowing the transfer, the reasons for rejecting the request should be placed in the juvenile's file and the juvenile may thereafter utilize the grievance mechanisms to pursue any continuing objection.

D. When a proposed nonemergency transfer will result in a reduction of services, such transfer should be delayed until the resolution of any grievance that may be filed by the juvenile.

E. A major consideration in transfer decisions should be the proximity of the programs involved to the juvenile's home and community. If the proposed transfer results in placing the juvenile farther from home and the juvenile objects to the transfer, the department should show in writing that the court-ordered disposition cannot be provided nearer to the juvenile's home. A similar obligation resides with the department when the juvenile has requested a transfer to a program nearer home and the request has been denied. Considerations of proximity to the juvenile's home should be given priority in transfers to a program for which there is a waiting list.

7.8 Limitations on restraints and weapons.

A. Mechanical restraints.

Given the small size of programs, it should not be necessary to use mechanical restraints within the facility. The program director may authorize the use of mechanical restraints during transportation only.

B. Chemical restraints.

In extreme situations, chemical restraints may be used under strict controls. The department should develop regulations governing their use.

C. Weapons.

Under no circumstances should personnel take any weapons into the facility.

7.9 Provision of good-time credit.

The department may credit [5] percent good-time against the length of those dispositions subject to the disciplinary process set out in Part VIII. Good-time credits once earned should be forfeited only as a sanction of the disciplinary process.

7.10 Nonsecure programs.

A. Intermittent custody.

1. **Defined.** Intermittent custody may be ordered by the court, requiring that the juvenile be resident on an overnight or weekend basis in a nonsecure facility.

2. **Program.** The program should meet the basic requirements for residential programs as determined in these standards with modifications that allow for non-continuous residence. The department may use part of the capacity of group homes for the purpose of intermittent custody.

B. Foster homes.

1. **Defined.** A foster home is the home of one or more persons who, in addition to any children of their own, take in juveniles as temporary family members.

2. **The foster home.** The department should only use foster homes that are in compliance with state requirements. It should also ensure that the home has sufficient space to provide personal comfort and privacy for all persons living there.

3. **Foster parents and family members.** Members of the foster family should be in good physical health and should supply the department with a report of a physical examination on an annual basis. Foster parents should receive inservice training and support services from the department or the private agency involved.

4. **Placement of juveniles.** The department should ensure that the preferences of the juvenile are closely adhered to in the placement of a juvenile in a foster home.

5. **The department's supervisory responsibility.** The department

should retain ultimate supervisory responsibility for any juvenile placed in a foster home.

C. Group homes.

1. Defined. A group home is a community based residential dwelling for housing juveniles under the sponsorship of a public or private agency.

2. Maximum size. Group homes may have a capacity of between [four and twelve] juveniles depending on program requirements.

3. Use of community resources. Juveniles in the group home should whenever possible attend schools within the local school district. The group home should make full use of, and not duplicate, other community resources and services.

4. Program characteristics. The department should make use of a wide range of group home types. In accordance with Standard 4.10 E., it should ensure that the juvenile's informed consent is obtained prior to participation in any services. When a group home has adopted a "treatment" program approach that requires participation of all residents in the services provided, the juvenile should be allowed a preplacement stay. Any juvenile not willing to take part in such a program should be granted a transfer.

5. Staffing. Staffing requirements should be determined according to the type of group home program. As a general rule, there should be at least [one] staff person on duty with full time supervisory responsibility for every [five] juveniles, during those times when juveniles are in the facility. At least one staff person should sleep at the facility. There should be twenty-four-hour staff coverage. Other staffing patterns should be based on the program objectives and components and the characteristics of the juveniles in residence.

D. Other nonsecure settings.

Within the category of "group home," the department may use other nonsecure settings. Alternative nonsecure settings may include:

1. Rural programs. The department may use programs such as forestry camps, ranches, and farms that provide specific work or recreational activities in a rural setting. These programs may be most appropriately provided on a contract basis rather than being directly administered by the department.

2. Boarding schools. The department may purchase placements in boarding schools or other residential settings which primarily provide for nonadjudicated juveniles.

3. Apartment settings. For juveniles of working age, the department should experiment with the use of apartment complexes and other residential settings with or without resident staff.

7.11 Secure programs.

A. Limitations.

1. **Maximum size.** As set forth in Standard 7.2, the maximum size of a secure facility should not exceed [twelve to twenty] juveniles.

2. **Strategies to reduce the number of secure beds.** The department should develop strategies to reduce the number of secure beds within its jurisdiction.

B. Physical characteristics.

1. **Living arrangements.** The living arrangements should conform as nearly as possible to those provided for nonsecure facilities. As to items such as heat, ventilation, lighting, and sleeping areas, there should be no difference between secure and nonsecure facilities.

2. **Security.** Security refers to the provision of staff and resident safety, and to the prevention of escapes from the facility. Means to ensure security should consist of both physical features of the building and staffing arrangements. Given the facility's small size, there should be no surveillance of residents by closed circuit television, listening systems, or other such devices.

C. Security classification.

1. **Purpose.** The department should develop a security classification scheme for the residents of secure facilities. The purpose of the scheme should be to allow juveniles placed in the lower security category opportunities to participate in activities outside the facility.

2. **Criteria.** The department's classification scheme should be based on the nature of current and previous offenses, and on any history of violence and escape from secure facilities. The criteria should also include any findings of disciplinary proceedings concerning a juvenile while in the program. The extent to which a juvenile participates in services should not be a classification criterion.

3. **Determination of security category.** The determination of the security category should be made by the program director, subject to the approval of the local office. The juvenile should be notified of the security category and given an opportunity to challenge the determination through the grievance mechanism set forth in Standard 9.2.

D. Activities in the local community.

There should be a presumption in favor of juveniles within the lower security category taking full part in educational, work release, and recreational activities in the local community.

E. Program activities in the facility.

When it is not possible for juveniles to leave the facility, educational, recreational, and other activities should be provided within the secure facility.

1. Education. The department should ensure that educational services provided within the secure setting are at least equal in quality to those available in the community, and that they meet the individual needs of the juvenile. Given the size of the facility, educational services should be either on an individual or small group basis. The department should experiment with different methods in the deployment of educational personnel, including the use of a team of teachers to serve a number of facilities. The department may contract with public or private agencies for its teaching requirements or directly employ such personnel.

2. Vocational training. Similar considerations should apply to the provision of vocational training opportunities as apply to education. When possible, vocational training should be linked to work release programs.

3. Recreational activities. Juveniles should have access to a choice of individual and group recreational activities for at least two hours each day. Such activities should provide opportunities for strenuous physical exercise.

F. Staffing.

Staffing arrangements should aim to provide a safe, human, caring environment. Workloads developed by the department should provide for at least one staff person with full-time supervisory responsibility on duty for every [four] juveniles. Given the small size of the facility, all staff persons should be in direct interaction with juveniles. At least one staff person should be on duty and awake at night. Night duty may be performed by regular staff persons on a rotating basis, or by a special classification of personnel trained to handle emergencies.

G. Furloughs.

Juveniles in the lower security category should be permitted a weekend furlough at least every [two] months. All juveniles, regardless of security category, should be permitted a furlough of at least five days duration during the month prior to discharge.

H. Isolation.

1. Isolation of juveniles should be utilized only in accordance with the standards on discipline in Part VIII, or as a temporary emergency measure when the juvenile is engaging in conduct that creates an imminent danger of physical harm to the juvenile or others.

2. Emergency isolation. When a juvenile is isolated because of

conduct that creates a danger to self or others, the incident should be reported immediately to the program director and, when necessary, to the appropriate medical personnel. The case should be immediately reviewed, any required medical attention immediately undertaken, and a plan devised for the earliest release of the juvenile from isolation or for the provision of care in a more appropriate setting. Eight hours during the daytime should constitute the maximum duration for such confinement.

3. Protective custody. A juvenile may be isolated at his or her own request when such request arises out of a legitimate fear for his or her personal safety. When such protective custody is granted, the program director should immediately identify and resolve the underlying problem giving rise to the juvenile's request. Eight hours during the daytime should constitute the maximum duration for such confinement.

4. When possible, isolation should be accomplished in the juvenile's own room. The program director should determine whether any items should be removed from the room during the period of isolation. Such decision should be based on whether or not such items may be used as instruments of self-injury and not as a punitive measure.

5. If the facility does not utilize individual rooms, a room may be specially designated. Such room should resemble, as nearly as possible, the ordinary rooms of the facility.

6. If a room specially designated as an isolation room is required, such room should be planned and located in the staff office area and not in the bedroom section of the facility.

7. No special diet or extraordinary sensory or physical deprivations should be imposed in addition to the room confinement. Reading materials and regular periods of indoor and outdoor exercise should be available.

8. All juveniles in isolation should be visited at least hourly by a specially designated and trained staff person, and should be provided one hour of recreation in every twenty-four-hour period of isolation.

When the isolation is an emergency measure growing out of violent behavior, a staff member should remain with the juvenile. If considerations of safety make it impossible for the staff member to remain, the staff member should maintain constant observation of the juvenile.

When the juvenile is in isolation at his or her own request, the regular staff visits should be designed to clearly identify and quickly resolve the problem that led to the request for isolation.

9. Each incident during the period of isolation, along with the reasons for and the resolution of the matter, should be recorded and subject to at least monthly review by the program director and an individual or individuals assigned such a review function in the department.

PART VIII: THE DISCIPLINARY SYSTEM

8.1 Scope and application.

These standards apply to juveniles who as a result of an adjudication and an order of disposition have been removed from their homes and placed in a secure or nonsecure facility, with the exception of juveniles placed in foster homes. Disciplinary matters in the foster home setting, whether it be a long-term or short-term placement, should be governed by the law that regulates the parent-child relationship and any particular laws of the jurisdiction applicable to foster home [or group home] placements.

8.2 Objectives.

The objectives of these standards are:

A. to allow those charged with the custody and control of juveniles to reasonably regulate the behavior of those in their charge and to impose disciplinary measures congruent with the willful violation of the applicable regulations;

B. to promote fairness and regularity in the disciplinary system;

C. to separate major infractions from minor infractions and to prohibit the imposition of disciplinary measures in certain cases;

D. to promote the use of written regulations and to ensure that the juvenile know as precisely as possible what conduct is expected of him or her and what sanctions may be imposed;

E. to provide a procedural format for the imposition of disciplinary measures; and

F. to prohibit cruel and unusual punishment within juvenile correctional facilities.

8.3 Major infractions.

A. When a juvenile in a correctional facility is believed to have committed an offense that is a felony under the law of the jurisdiction, such offense should be processed in the same manner as an offense charged against a juvenile who is not in a correctional facility. If the charge is not otherwise pursued, the matter should be treated within the correctional facility as a major infraction.

B. If the appropriate authority elects to prosecute or refer the matter to juvenile court, some change may be required in the status of the accused juvenile within the facility for his or her own protection, for the protection of other residents, or for purposes of institutional integrity. The disciplinary board (see Standard 8.8) should determine whether probable cause exists to believe that the named juvenile is guilty of the alleged offense. If such cause is found to exist, the program director should determine whether restrictive measures are necessary for the protection of the juvenile, the protection of other residents, or for purposes of institutional integrity. If it is determined that restrictive measures are required, the least restrictive measures should always be used.

C. Representative of offenses that should be considered as major infractions are: murder; kidnapping; manslaughter; armed robbery; burglary; assault causing serious physical injury; rape; physical restraint of another with the threat of serious harm; arson; tampering with a witness; bribery; escape by use of force; possession of a prescribed narcotic drug;* inciting a riot; theft or destruction of property valued at \$500 or more; and sexual abuse.

8.4 Minor infractions.

A. A minor infraction that is an offense under the penal law may or may not be officially reported, according to the discretion of the person in charge of the facility. If it is reported and the appropriate authority elects to take action, then the procedures set out in Standard 8.3 should apply.

B. Representative of offenses that should be considered as minor infractions are: assault with no serious bodily injury; escape without use of force; threatening the physical safety of others; theft or destruction of property valued at under \$500; creating a disturbance; engaging in a riot; lying to a person in authority; willful and repeated disobedience of valid orders; reporting a false alarm; being in possession of or under the influence of alcohol or marijuana; and refusal to perform work assignments.

8.5 Petty infractions.

Representative of offenses that should be considered as petty infractions are: theft of property valued at \$5.00 or less; unauthorized use of property belonging to another; possession of contraband other than that treated in other categories; creating a fire, health, or safety

*"Narcotic drug" is not intended to include marijuana or any of its derivatives.

hazard; unauthorized leaving of the facility for less than twenty-four hours; attempted escape; refusal to attend school or classes when mandated by the compulsory school attendance law; and violation of any of the valid regulations of the facility not otherwise covered in the above standards.

8.6 Conduct that may not be subject to disciplinary action.

Juveniles should not be subject to disciplinary action for any of the following behavior:

A. sexual behavior that is not forbidden by statute or reasonable institutional regulations;

B. refusal to attend religious services;

C. refusal to conform in matters of personal appearance or dress to any institutional rule that is not related to health or safety;

D. refusal to permit a search of the person or of personal effects that is not authorized by these standards;

E. refusal to continue participation in any counselling, treatment, rehabilitation, or training program, with the exception of school or class attendance mandated by the compulsory school attendance law;

F. refusal to address staff in any particular manner or displaying what is viewed as a negative, hostile, or any other supposed attitude deemed undesirable;

G. possession of any printed or otherwise recorded material unless such possession is specifically forbidden by these standards;

H. refusal to eat a particular type of food;

I. refusal to behave in violation of the juvenile's religious beliefs;

J. refusal to participate in any study, research, or experiment;

K. refusal to take drugs designed to modify behavior or to submit to nonemergency, surgical interventions without consent.

8.7 Sanctions.

A. The sanctions available for less serious infractions may also be used for more serious infractions.

B. Major infractions—up to [ten] days room confinement, the loss of or prohibition from accrual of any or all good-time credits, a suspension of the privilege of earning good-time credits for a period not to exceed [thirty] days, and the suspension of designated privileges for a period not to exceed [thirty] days.

C. Minor infractions—up to [five] days room confinement, the loss of or prohibition from accrual of good-time credits not to exceed one-half of that currently earned, and the suspension of designated privileges for a period not to exceed [fifteen] days.

D. Petty infractions—reprimand and warning, and the suspension

of designated privileges for a period not to exceed [seven] days. A second petty infraction may be treated as a minor infraction but only if the juvenile is given advance written notice of such decision.

E. Designated privileges described—the type of privileges subject to suspension should include access to movies, radio, television, and the like; participation in recreational or athletic activities; participation in outside activities; off-ground privileges; and access to the telephone, except for calls to the juvenile's family or attorney.

F. Punishments proscribed—no corporal punishment should be inflicted, nor should a juvenile be required to wear special clothing or insignia, eat a restricted diet, alter the regular sleeping pattern, engage in arduous physical labor, or be under a rule of silence, or any other punishment designed to cause contempt, ridicule, or physical pain.

8.8 Disciplinary board: composition, when required.

A petty infraction need not be heard in a formal hearing. Discipline should be invoked on the basis of a written report submitted to the program director. The juvenile should be informed of the charge and be given an opportunity to be heard before the program director, or his or her designee.

Major and minor infractions should be subject to a hearing before an impartial disciplinary board, composed of five members. Two members of the board should be employees of the facility, and two members should be selected from a rotating group of citizens who have volunteered to serve on the board and who are appointed in a manner that will ensure their independence. The fifth member should be a nonvoting chairperson. A majority vote should be required for any decision by the board. The board should meet when there are cases to be heard.

8.9 Disciplinary procedure.

No sanctions should be imposed nor any record of the charge maintained for a major or a minor infraction unless the following procedural requirements are met:

A. Notice—verbal notice of the intent to prefer a charge should be given immediately after discovery of the alleged infraction, with written notice required within twenty-four hours thereafter. Such written notice should specify the rule violated; contain a brief description of the alleged conduct; and give the date, time, and place of the alleged conduct.

B. Time of hearing—the hearing should be held not later than seven days after service of the written notice. The juvenile should be

notified in writing of the time and place for the hearing as soon as that decision has been made.

C. Representation—the juvenile may select as a representative at the hearing an employee of the facility, an employee of the department, another resident, his or her own counsel, or any person who is a regular volunteer for that purpose.

D. Hearing—the chairperson of the disciplinary board should read the charge and ask the juvenile either to admit or deny it. If the charge is denied the chairperson should call and question the person making the charge, the juvenile, and any other persons deemed material witnesses. The juvenile or the juvenile's representative should have the opportunity to cross-examine any witness, subject to the discretion of officials of the correctional facility, to inspect and challenge any documentary or physical evidence, and to introduce evidence and call witnesses only when permitting the juvenile to do so would not be unduly hazardous to institutional safety or correctional goals.

E. Decision—the board should render a written decision based on clear and convincing evidence, and should notify the juvenile and the juvenile's representative of such decision within twenty-four hours. The decision should include:

1. a finding either of guilty or not guilty;
2. the reasons for the decision;
3. a summary of the evidence relied upon;
4. the sanction to be imposed, along with reasons for the sanction.

F. Record—the decision, when final, should become a part of the juvenile's record.

G. Finality and review—a petty infraction should not be subject to further review. A minor infraction may be reviewed by the program director, at the request of the juvenile. A major infraction should be automatically reviewed by the program director. Such review should include the decision and the sanction imposed. The reviewer may reverse the board's finding of guilt or reduce the severity of the sanction. Appeals from the program director's decision should be made to the independent review body described in Standard 9.2 C. 11.

PART IX: ACCOUNTABILITY

9.1 Basic requirements.

A. Additional mechanisms.

In addition to the accountability mechanisms that appear throughout these standards, five additional mechanisms are set forth in this Part. These are: information systems; grievance procedures; monitoring procedures; evaluation activities; and a planning process open to public scrutiny.

B. General principles.

Full accountability depends upon a combination of mechanisms within the department and independent of the department, upon similar application to privately and publicly administered programs, and upon access by the public to information concerning such mechanisms.

9.2 Grievance mechanism.

A. Defined.

A grievance mechanism is an administrative procedure through which the complaints of individuals about residential programs or department policies, personnel, conditions, or procedures can be expressed and resolved.

B. No single model is preferred.

While the establishment of some grievance mechanism is highly desirable, no single model or procedure exists that could be implemented in all residential programs for juveniles in the country. One of the essential elements for success should be resident and staff collaboration on details, and implementation should be guided by certain fundamental principles.

C. Principles to govern individualized grievance mechanisms.

1. Every resident assigned to any program unit should have the means to file a grievance and make use of any grievance procedure that is developed.

2. Each facility should design a mechanism appropriate to its physical set-up, the age and size of its population, and the focus of its program. The mechanism should be subject to review and approval by the department.

3. There should be available to any resident with an emergency grievance or problem, a course of action that can provide for immediate redress.

4. Elected residents and designated staff should participate in the development of procedures and in the operation of the grievance mechanism.

5. The mechanism employed should be simple and the levels of review kept to a minimum.

6. Residents should be entitled to representation and other

assistance at all levels, including informal resolution within the established procedure.

7. There should be brief time limits for the receipt of all responses to a grievance as well as for action that is required to relieve the grievance.

8. A course of action should be open to all parties to a grievance, staff and residents alike, for appealing a decision.

9. A juvenile should be guaranteed a speedy, written response to his or her grievance with reasons for the action taken. In the absence of such a response, there should be further recourse available to the juvenile.

10. Monitoring and evaluation of the entire operation by persons not connected with the facility should be required.

11. The procedure should include, as a final review, some form of independent review by a party or parties outside the department. Such review may be in the form of binding or nonbinding arbitration.

12. No reprisals should be permitted against anyone using the grievance mechanism.

13. The grievance mechanism should include an impartial method for determining whether a complaint falls within its jurisdiction.

14. Implementation of the grievance mechanism is a vital factor in its potential for success. This calls for administrative leadership and commitment, resident and staff involvement, a strong orientation and explanation program for new residents, and outside monitoring.

9.3 Organization of research and planning within the department.

A. Research and planning division.

The department should establish a research and planning division within its central office with organizational status similar to that of other divisions within the department. The division should have responsibility for:

1. the assembly and processing of data concerning all department activities;
2. continuous monitoring of all programs;
3. ensuring program effectiveness;
4. short- and long-term planning for the department;
5. coordination with appropriate state agencies.

B. Information system.

The research and planning division should develop an information system designed to serve the department's data needs for adminis-

tration, research, and planning. The data assembled should include:

1. basic characteristics of juveniles within the department's jurisdiction;
2. program descriptions and features;
3. departmental organizational arrangements such as local offices, field offices, and other units of administration;
4. characteristics of department personnel; and
5. fiscal data.

C. Monitoring activities.

The division should ensure program quality through the monitoring of all programs. Monitoring should include the compilation of basic data on all programs and regular visits to programs by monitoring teams. Monitoring should be designed to ensure compliance with the department's standards and the program's statement of purpose.

1. Basic program data. The division should establish guidelines for basic program data that should be recorded and provided to the division at least annually. At a minimum such data should include:

- a. standardized information on juveniles in the program;
- b. details concerning personnel and volunteers;
- c. narrative history of the program from inception;
- d. line item accounts of the program's allocation of funds and expenditures;
- e. description of the links between the program and the community within which it is located;
- f. description of regulations and standardized data on disciplinary hearings;
- g. description and data on the provision of a safe, human, caring environment;
- h. description and data on services provided;
- i. details concerning the relationship between the program and other public and private agencies.

2. Visits to programs by monitoring team. The division should send a monitoring team to visit each program at least twice annually. Depending on the nature of the program, the monitoring team should usually consist of two or three persons and the visit should be for a period of up to one week. When appropriate, unannounced follow-up visits should be made. At a minimum the monitoring team should:

- a. systematically interview all juveniles and staff involved in the program;
- b. observe every aspect of the program; and

c. review the program's procedures for recording information.

3. Use of monitoring results. The monitoring results should be used as the basis for decisions concerning required program changes or the termination of particular programs.

D. Evaluation of programs: process and outcome.

Evaluation refers to the measurement of program processes and outcomes. Depending on the level of independent evaluation, the division should carry out its own evaluation activities. Program evaluation should be of two types:

1. Process evaluation. Process evaluation determines whether the program is being implemented in accordance with its stated purposes and methods. The criteria for measurement should include the level of humaneness and fairness of the program's day-to-day operations, and the extent and quality of its community links.

2. Outcome evaluation. Outcome evaluation measures the program's effectiveness in terms of producing change in the direction of stated goals. Outcome evaluation should also endeavor to locate and measure unanticipated consequences of particular activities. The measurement criteria should include rates of recidivism, the personal development of juveniles under correctional supervision, and fiscal costs.

E. Planning.

The division should ensure that the department's short- and long-term planning includes:

1. full use of research findings;

2. close coordination with the planning activities of other criminal justice and children's service agencies;

3. providing public access to the department's planning documents, at least annually, and allowing public participation in the planning process; and

4. continuous review and modification based upon results of departmental monitoring and evaluation activities.

F. The department's annual report.

The division should have primary responsibility for the preparation of the department's annual report. The report should be published and widely disseminated. The report should include:

1. a summary of the department's program activities;

2. information on the operation of disciplinary and grievance mechanisms;

3. data concerning juveniles and department personnel;

4. the department's fiscal accounts; and

5. the department's planning for the future.

9.4 Independent monitoring and evaluation activities.

A. Independent monitoring of programs.

Monitoring activities, similar to those set forth in Standard 9.3 C., should also be performed independently of the department. Such activities should include:

1. Monitoring by a public agency. Jurisdictions should provide for the independent monitoring of juvenile corrections programs by a public agency. No single organizational model for such monitoring is preferred. The central considerations in the establishment of such an agency are its independence from the department with responsibility for juvenile corrections, and complete access to all programs and information.

2. Monitoring by private groups. Private groups should also monitor department programs. The department should recognize that such groups, which may focus either on all aspects of a program or on particular aspects of care and services, play an important role in maintaining a high level of program quality.

B. Independent evaluation.

Most evaluation activity should be undertaken independently of the department. There should be a diversification of evaluation functions among public and private agencies and universities. Evaluation should include the program process and outcome evaluation set forth in Standard 9.3 D. Additionally, there should be system-wide evaluation that addresses several or all programs within a given jurisdiction. Such evaluation should measure the impact of programs and other departmental activity on the juvenile justice process as a whole. The measurement criteria for the system-wide evaluation should include crime rates, fiscal costs, and movement of juveniles through the system.

Standards with Commentary

PART I: GENERAL PRINCIPLES

1.1 The administration of juvenile corrections: purposes.

The purpose of juvenile corrections is to carry out the court's dispositional order concerning adjudicated juveniles. The central purposes are the protection of the public, the provision of a safe, human, caring environment, and access to required services for juveniles.

Commentary

The purposes set forth in this standard require little comment or explanation, as they receive general discussion in the commentary to Standard 1.2 and detailed attention throughout the volume. It is, however, important to emphasize the context within which the administration of juvenile corrections is located, as determined by other volumes of the Juvenile Justice Standards Project. These volumes have located responsibility for the determination of the nature of disposition with the courts and not with the agency responsible for the administration of juvenile corrections. The *Juvenile Delinquency and Sanctions* and the *Dispositions* volumes explicitly require that dispositional responsibility reside with the court. Those volumes provide a rationale and structure for the court's sentencing task. As a consequence, significant limitations are placed on the discretion of agencies responsible for the administration of juvenile corrections.

Two of these limitations are of paramount importance. The court, and not the corrections agency, determines:

- A. the nature of the disposition; and
- B. the length of the dispositional order.

While not completely eliminated, the overall discretion of the corrections agency to shape the nature of the corrections program has been sharply curtailed. The context within which this volume has been developed is, therefore, very different from that which has generally characterized the administration of juvenile corrections. It is a context that is more limited and structured, and one that provides a more coherent foundation for administration than has generally characterized juvenile corrections.

1.2 Five general principles.

The administration of juvenile corrections should be guided by five general principles:

A. Control and care.

The administration of programs for adjudicated juveniles should provide for the degree of control required for public protection, as determined by the court, and a safe, human, caring environment that will provide for normal growth and development.

B. Least possible restriction of liberty.

The liberty of a juvenile should be restricted only to the degree necessary to carry out the purpose of the court's order.

C. Fairness and legal rights.

Programs for adjudicated juveniles should be characterized by fairness in all procedures, and by a careful adherence to legal rights.

D. Accountability.

The administration of juvenile corrections should be accountable on three levels: to the courts for the carrying out of the dispositional order; to the public, through the appropriate legislative or other public body, for the implementation of the statutory mandate and expenditure of public funds; and to the juvenile for the provision of a safe, human, caring environment and access to required services.

E. Minimization of the scope of juvenile corrections.

The administration of juvenile corrections should aim to provide services and programs that will allow the court to reduce the number of juveniles placed in restrictive settings.

Commentary

This standard sets out five general principles that should characterize the administration of juvenile corrections, and that form the central theme of these standards. As each of these principles is reflected in many of the standards set forth throughout the volume, only brief and introductory comment is provided here.

The administration of juvenile corrections involves the dual task of providing the degree of control determined by the type of disposition and ensuring a safe, human, caring environment for adjudicated juveniles. Public protection from juvenile crime should be explicitly acknowledged as a legitimate and central purpose of the juvenile justice process. Controls imposed on the juvenile should be explicit and not disguised or confused with offers of help.

At the same time, the corrections agency has an obligation to provide the adjudicated juvenile with a safe, human, caring environment, the components of which are described in Standard 4.9. The standards recognize a right to normal growth and development. Further, the standards impose the related requirement that all juveniles under correctional supervision have a right of access to certain services.

The standards also hold that the administration of juvenile corrections should in no way deprive any adjudicated juvenile of his or her civil rights, and should adhere at all times to fair procedures. See Standards 4.3 through 4.5.

A major shortcoming of the juvenile justice process has been its lack of accountability, and the administration of juvenile corrections has not been an exception. The standard points to the distinct ways in which administrators should be held accountable, and the theme of accountability occurs throughout the volume.

The critical need for greater accountability in juvenile justice has been expressed by many authorities. See Nejelski and LaPook, "Monitoring the Juvenile Justice System: How Can You Tell Where You're Going If You Don't Know Where You Are?" 12 *Am. Crim. L. Rev.* 9 (1974). The final part of this volume explicitly provides for mechanisms intended to provide for greater accountability in the administration of juvenile corrections.

Finally, these standards assume that the scope of juvenile corrections can become so wide as to be counterproductive. It holds that it is the goal of the juvenile justice system and the responsibility of juvenile corrections administrators to ensure that there are as few juveniles in correctional programs as possible, that the least possible intervention in the lives of juveniles occurs, and that the widest possible range of program options is available to the corrections agency.

The least restrictive disposition policy is discussed in the *Dispositions* volume. Although the dispositional decision is made by the court, it can be shaped by the corrections agency to a significant degree. The range of options with which the court is provided and the availability of more restrictive settings are important deter-

minants of sentencing practice, and these are matters on which the agency is often able to have a direct impact.

National commissions on criminal justice policy have agreed on the potentially harmful effects of the corrections process on juveniles. See President's Crime Commission, *Task Force Report: Juvenile Delinquency and Youth Crime* 47 (1967); NACCJSG, "A National Strategy to Reduce Crime" 23 (1973). Empirical support or refutation of the perspective that juveniles become labeled by the process and as a consequence are less able to avoid further delinquency has yet to be provided. See Wellford, "Labeling Theory and Criminology: An Assessment," 22 *Social Problems* 332 (1975), and Mahoney, "The Effect of Labeling Upon Youths in the Juvenile Justice System: A Review of the Evidence," 8 *Law & Society* 583 (1974). The possible dangers have, however, been pointed out in many studies. See, e.g., the conclusions of Wolfgang and colleagues, based on the Philadelphia birth cohort study, that "... the juvenile justice system, at its best, has no effect on the subsequent behavior of adolescent boys and, at its worst, has a deleterious effect on future behavior. For it is clear that, if a selection process is operating which routes hard core delinquents into the courts and correctional institutions, no benefit is derived from this encounter, for the subsequent offense rates and seriousness scores show no reduction in volume and intensity." M. Wolfgang, R. Figlio, and T. Sellin, *Delinquency in a Birth Cohort*, 243 (1972).

A number of studies have drawn attention to the danger that new programs intended as alternatives to more restrictive settings result in supplementation and not replacement. This supports the warning of Norval Morris that "we risk substituting more pervasive but less punitive control mechanisms over a vastly larger number of citizens for our present discriminatory and irrational selection of fewer citizens for more punitive and draconian punishments." *The Future of Imprisonment* 10 (1974). See in particular Paul Lerman, who found that "... correctional personnel can have a direct and indirect impact on rates of deviance processing and sanctioning. Adding a broad mandate to correct youth can result in a widening of the deviance defining boundaries and the creation of new forms of deviance and higher rates of sanctions. . . ." P. Lerman, *Community Treatment and Social Control* 219 (1975); and the National Assessment of Juvenile Corrections, which has reported that "relatively greater reliance on community-based services is not usually accompanied by a commensurate lowering of the rate of institutionalization—many states appear to be supplementing rather than supplanting corrections for juveniles. . . ." R. Vinter, G. Downs, and

J. Hall, "Juvenile Corrections in the States: Residential Programs and Deinstitutionalization" 59 (1975).

PART II: JURISDICTION OF THE DEPARTMENT RESPONSIBLE FOR THE ADMINISTRATION OF JUVENILE CORRECTIONS

2.1 Statewide department.

A. Single statewide department.

There should be a preference for a single statewide department with responsibility for the administration of juvenile corrections rather than a proliferation of agencies at both the state and local level. The statewide department may be termed "the Department of Youth Services." In these standards it is referred to as "the department."

B. Location in executive branch of government.

The department should be located within the executive branch of the state government.

C. Exceptions to statewide jurisdiction.

When for political or geographic considerations, some programs are within the jurisdiction of local government and it is determined that they should remain subject to local control, the statewide department should be responsible for the setting and enforcement of standards and the provision of technical assistance, training, and fiscal subsidies.

Commentary

The standard states a preference for locating the administration of all programs for adjudicated juveniles within a single statewide agency. The standard aims to reduce the uncoordinated and overlapping arrangements that typify many jurisdictions, and to allow for greater accountability and coherent planning. Numerous studies have criticized the proliferation of state and local agencies with responsibility for corrections programs. The President's Crime Commission found corrections to be the most fragmented component of the criminal justice system. See *Task Force Report: Corrections* 137 (1967). Many authorities have argued that greater centralization and consolidation would lead to improved standard setting, greater accountability and managerial controls, increased diversification and specialization, better financial support, and more equitable statewide distribution of resources.

See President's Crime Commission, *Task Force Report: Cor-*

rections 137 (1967); American Law Institute, "Model Penal Code, Part IV, The Organization of Correction" (1962); American Correctional Association, "Manual of Correctional Standards" 31 (1966); National Council on Crime and Delinquency/American Correctional Association, "Standard Act for State Correctional Services" (1966); Advisory Commission on Intergovernmental Relations, "State-Local Relations in the Criminal Justice System" 53, 232 (1971); HEW, Youth Development and Delinquency Prevention Administration, "Legislative Guide for Drafting State-Local Programs on Juvenile Delinquency" 7 (1973); NACCJSG, "Corrections" 439 (1973); R. Carter, R. McGee, and E.K. Nelson, *Corrections in America* 233 (1975); Schoen, "The Positive Aspects of Unified Correctional Programs" in "Proceedings of the Second Annual Management Seminar" 9 (National Association of State Juvenile Delinquency Program Administrators 1974). This standard favors the centralization and consolidation of the administration of programs for adjudicated juveniles. The *Interim Status* volume (Part XI) establishes a separate statewide agency to administer juvenile detention and other preadjudication matters. *The Juvenile Probation Function: Intake and Pre-disposition Investigative Services* volume states a preference for statewide administration of intake services.

A wide diversity of administrative arrangements characterizes the organization of juvenile corrections, although the trend has been toward more centralized state control. Thirty states have assumed some or all administrative responsibility for institutions, aftercare, and probation services. R. Sarri, R. Vinter, and R. Kish, "Juvenile Injustice: Failure of a Nation" 31 (1974).

Local entities have, however, generally retained control over juvenile probation. In twenty-four states juvenile probation is characterized by local administration, and in a further twenty by a combination of state and local control. R. Carter, R. McGee, and E.K. Nelson, *Corrections in America* 237 (1975).

Although this standard favors a single statewide agency, it recognizes that local geographic considerations and political traditions may in some circumstances justify local administration of programs. The need for local administration is especially likely to arise in the area of juvenile probation supervision, and for this reason some authorities have been reluctant to take a firm position on locating responsibility with either state or local government. See, e.g., ABA Standards for Criminal Justice, *Probation* 75 (1970).

These standards favor, wherever possible, placing responsibility for supervision with the statewide juvenile corrections agency. The lack of coordination of juvenile corrections has been noted in studies of

very varied states. See, *e.g.*, in relation to New York, Office for Children's Services, "Juvenile Injustice" 77 (1973), and "Report of the Governor's Panel on Juvenile Violence," Task Force 3, 7 (1976). A detailed analysis of the situation in Iowa found: "... agencies that function in specialized areas, such as probation or social work, lack accountability to other components of the system, a limitation which results in gaps in services as well as duplication of efforts to work with youth. . . . The problems associated with lack of communication and cooperation among juvenile justice agencies are compounded by an absence of common goals upon which the system must be grounded." Contemporary Studies Project, "Funding the Juvenile Justice System in Iowa," 60 *Iowa L. Rev.* 1303-04 (1975).

It is a central theme of these standards that corrections programs for adjudicated juveniles should connect with each other. These connections have important implications for policy in at least three respects:

A. a range of options should be available within dispositional categories, which should be known to all personnel with placement responsibilities;

B. programs should be made available, when appropriate, both simultaneously and sequentially;

C. the development of a range of program options encourages greater use of less restrictive dispositions.

Coates and Miller have referred to the total of all programs to fulfill a given function as "program sets," and if such sets are to be used as a strategy to achieve organizational goals, the centralized coordination of juvenile corrections is essential. See R. Coates and A. Miller, "Evaluating Large Scale Social Service Systems in Changing Environments: The Case of Correctional Agencies" (n.d.).

The fragmentation of the administration of juvenile corrections has produced other obstacles to sound policy development. Of particular importance is the absence of a sound information base that has resulted from typically uncoordinated arrangements. See R. Vinter, G. Downs, and J. Hall, "Juvenile Corrections in the States: Residential Programs and Deinstitutionalization" 7 (1975); and for a general discussion on the information needs and accountability, Nejelski and LaPook, "Monitoring the Juvenile Justice System: How Can You Tell Where You're Going If You Don't Know Where You Are?" 12 *Am. Crim. L. Rev.* 18 (1974).

The standard requires, in jurisdictions where some local administration remains, that the statewide department set and enforce standards. However, the experience with such arrangements, where they have existed, has not been encouraging. See R. Goldfarb and L.

Singer, *After Conviction* 233 (1973); and with regard to juvenile detention, G. Saleebey, "Hidden Closets: A Study of Detention Practices in California" (1975).

The administrative model endorsed by this standard is narrower than a single statewide agency with responsibility for the administration of all or a number of juvenile services including corrections. It should be noted that this model does not include the administration of non-court related services, such as intake and predisposition investigative services. The National Assessment of Juvenile Corrections found "... little consensus among the states about *which* services should be more closely linked to juvenile justice, or about the most appropriate forms for these links among state government agencies. Policy makers differ considerably in their views of which combinations are most desirable or feasible." R. Sarri, R. Vinter, and R. Kish, "Juvenile Injustice: Failure of a Nation" 32 (1974). This standard aims to restrict the scope of juvenile corrections; amalgamation with agencies responsible for other juveniles would make that task more difficult. The standard, however, does not preclude the development of agencies with a coordinating rather than administrative role for all juvenile and youth services.

2.2 Separate administration of juvenile and adult corrections.

A. Separation from adult corrections.

The department responsible for juvenile corrections should be operationally autonomous from the administration of adult corrections; the department should only have administrative responsibility for persons under eighteen years of age at the time of adjudication, or persons who are otherwise within the jurisdiction of the juvenile court.

B. Prohibition on transfers to adult corrections.

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

Commentary

These standards, while endorsing the centralization and coordination of juvenile corrections, provide that the department should be separate from the administration of adult corrections. The standard, therefore, is not in agreement with authorities recommending a consolidation of adult and juvenile corrections. See, *e.g.*, NACCJSG, "Corrections" 560 (1973). Although it is argued by such authorities that greater efficiency might result from joint administration of adult

and juvenile corrections, this standard is based upon considerations that are considered more persuasive. These are:

A. the underlying rationale for a separate juvenile justice process applies equally to the administration of juvenile corrections. The juvenile justice process serves to protect juveniles from full exposure to the criminal justice system.

B. considerable administrative initiative and leadership will be required to implement the policies of these standards.

Such leadership is likely to be less forthcoming and more diluted in an agency that also has responsibility for adult corrections. An agency with responsibility for both adult and juvenile corrections will tend to be preoccupied with matters pertaining to adults.

The standard holds that the department with responsibility for the administration of juvenile corrections should retain jurisdiction over persons under eighteen at the time of adjudication, or who are otherwise within the jurisdiction of the juvenile court. See the *Juvenile Delinquency and Sanctions* volume (Standard 2.1), which grants juvenile court jurisdiction over persons not less than ten and not more than seventeen at the time of the alleged offense, and not more than twenty at the time juvenile court proceedings are initiated with respect to such offense. This standard does not provide for a juvenile corrections agency that also has responsibility for adjudicated young adults. Several states have established youthful offender agencies that generally make special provisions for youths aged sixteen to twenty-three or twenty-five. These organizational arrangements are variants of the Model Youth Corrections Authority Act, developed by the American Law Institute in 1940. The youth authority concept has made little headway in the United States and may have lost some of its rationale with the lowering of the age of majority to eighteen. See generally Luger and Saltmen, "The Youthful Offender," in President's Crime Commission, *Task Force Report: Juvenile Delinquency and Youth Crime* 119 (1967); and American Correctional Association, "Manual of Correctional Standards" 579 (1966).

These standards require an absolute prohibition on the mixing of juvenile and adult offenders. The prohibition on transfer simply closes another means by which the prohibited "mix" might occur.

See *Baker v. Hamilton*, 345 F. Supp. 345 (W.D. Ky. 1972), prohibiting the sentencing of youths to county jail.

2.3 The department and mental health agencies.

A. Separation from mental health agencies.

The department should be administratively autonomous from the administration of mental health facilities.

B. Mental health services within correctional facilities.

The department should be responsible for providing either directly or by contract with a public or private mental health agency, necessary mental health care and services for juveniles within facilities operated by the department.

C. Transfers to mental health agencies.

When it is believed that a juvenile under the jurisdiction of the department is mentally ill or mentally retarded and in need of such intensive residential care, custody, and control as requires transfer to a facility operated by a mental health agency, the department should return the juvenile to juvenile court and require the initiation of proceedings in the court having jurisdiction for commitment of the mentally ill or mentally retarded to secure care. The law governing such admission or commitment for juveniles not adjudicated delinquent should apply in all respects. The provisions of this standard should never be used by the department for punitive purposes.

D. Court's power to compel agencies to accept juveniles for mental health services.

When any adjudicated juvenile is found by the court to be mentally ill or mentally retarded, the court should have the power to compel acceptance of such juvenile by the mental health agency best equipped to meet the juvenile's needs.

Commentary

The standard underscores the need for a sharp administrative demarcation between juvenile corrections and facilities for the mentally ill. At the same time it recognizes the very real problems that exist in many jurisdictions in the provision of mental health services required by adjudicated juveniles. The standard therefore places responsibility for ensuring that such services are provided with the juvenile corrections department. For descriptions of some of the difficulties in locating responsibility for adjudicated juveniles with mental health problems in New York, see Office of Children's Services, "Desperate Situation—Disparate Services" 28 (1973); and "Report of the Governor's Panel on Juvenile Violence," Task Force 2, 10 (1976). The provision of mental health services to a juvenile within the jurisdiction of the department should be subject to the requirement of the informed consent of the juvenile, as provided in Standard 4.10 E.

The standard holds that the same principles and procedures concerning admission to mental health facilities should apply to adjudicated and nonadjudicated juveniles. The separation of the two

administrative areas is necessary to ensure that all protections afforded to nonadjudicated juveniles are afforded to adjudicated juveniles.

When a juvenile under correctional supervision is believed to be mentally ill or mentally retarded and the department cannot adequately provide for the juvenile, the commitment if contemplated should be accomplished in the same manner as if the juvenile were not under supervision or in custody.

This standard is not intended to encourage such commitment proceedings. Rather, it speaks against the device of administrative transfers and places the juvenile in the same legal position that he or she would be in if still in the community. See *Baxstrom v. Herold*, 383 U.S. 107 (1967); *Mathews v. Hardy*, 420 F.2d 607 (D.C. Cir. 1969).

There has been criticism of the inappropriate transfer of adjudicated juveniles to mental health facilities. See Miller and Kenney, "Adolescent Delinquency and the Myth of Hospital Treatment" 12 *Crime & Delinq.* 38 (1966). These authors noted: "... the policy of admitting relatively healthy patients, however unacceptable their behavior may be, to psychiatric hospitals not only serves to establish the notion of illness but also delays the inevitable confrontation of the patient with his behavioral difficulties." *Id.* at 48.

2.4 The responsibility of the federal government.

A. The role of the federal government.

The federal government should take an important leadership role in juvenile corrections through standard-setting and through funding of state and local programs. Federal activity should, as far as possible, be centralized within a single agency.

B. Juveniles adjudicated in federal courts.

Agencies of the federal government should not have program responsibility for adjudicated juveniles. Juveniles adjudicated in federal court should be placed under the jurisdiction of the appropriate state department.

Commentary

The role of the federal government should be one of leadership rather than direct program administration. Until the enactment of the Juvenile Justice and Delinquency Prevention Act of 1974 (Public Law 93-415), there was little coordination of the various federal efforts in the area of juvenile justice and corrections, although a gradual and uneven trend in that direction can be traced from the establishment of the Children's Bureau by Congress in 1912. During

that period, much of the responsibility for juveniles resided within various agencies of the Department of Health, Education and Welfare. With the passage of the Omnibus Crime Control and Safe Streets Act of 1968 (and the establishment of the Law Enforcement Assistance Administration), the role of the Justice Department became more significant. In an attempt to reduce duplication, Congress set up the Intergovernmental Council to Coordinate All Federal Juvenile Delinquency Programs in 1971. Amendments to the Omnibus Crime Control and Safe Streets Act adopted in 1971 and 1973 required that there be a juvenile justice component to the comprehensive plan submitted by states to LEAA. These developments toward greater coordination and centralization of federal efforts culminated in the 1974 legislation that established an Office of Juvenile Justice and Delinquency Prevention within LEAA. The stated purposes of the new office are to evaluate federally assisted programs, provide technical assistance, develop training programs, oversee a centralized research effort concerning juvenile delinquency, and develop national standards. The legislation also established, as an independent entity, a Coordinating Council on Juvenile Justice and Delinquency Prevention, to bring together the representatives of the several federal agencies with responsibilities in this area.

The 1974 Act established certain policy priorities. It specified a number of "advanced techniques in developing, maintaining and expanding programs and services designed to prevent juvenile delinquency, to divert juveniles from the juvenile justice system, and to provide community-based alternatives to juvenile detention and correctional facilities." Public Law 93-415, Section 223 (a) (10). See generally U.S. Department of Justice, "Indexed Legislative History of the Juvenile Justice and Delinquency Act of 1974"; and Railsback, "Juvenile Justice," 52 *Chi.-Kent L. Rev.* 1 (1975).

The 1974 Act established a federal funding program to be administered by the new office for activities at the state and local level relating to juvenile justice. Most of this assistance is available through block grants allocated to states according to their under-eighteen populations. To receive an allocation, the state planning agency must submit a plan that meets the act's criteria. In addition the office can make direct or discretionary grants to public and private agencies; at least 25 percent, but no more than 50 percent, of the office's assistance funds must be made available in this way. This standard points to the shared responsibility of the national office and the state planning agencies in ensuring that the administration of juvenile corrections receives an adequate proportion of the funding. A study of the funding of juvenile justice in Iowa commented: "The amount of federal funds and the range of federal programs available to state

juvenile justice systems in the future will depend in large measure on how LEAA carries out its mandate to provide leadership in developing, coordinating, and implementing federal juvenile justice assistance programs. Of course, the effectiveness with which LEAA carries out this mandate will not be the sole determinant of the success of juvenile programs in Iowa. Equally important are the state agencies that serve as conduits for federal funds, the agencies that provide direct services to young people, and the method by which the State of Iowa itself finances these agencies." Contemporary Studies Project, "Funding the Juvenile Justice System in Iowa" 60 *Iowa L. Rev.* 1215 (1975).

State planning agencies are characterized by a variety of administrative arrangements but there has been little research attention given to their relative effectiveness. Studies have drawn attention to the absence of comprehensive planning, difficulties resulting from a lack of continuity of funding, and the low priority given to evaluation. See symposium on the operation and impact of LEAA, 5 *Colum. Human Rights L. Rev.* (1973). The National Assessment of Juvenile Corrections has reported that "... nowhere have we found that juvenile justice is receiving a major share of federal monies. Typically, allocations to juvenile justice services are at the bottom fifth among the 20% of the total." R. Sarri, R. Vinter, and R. Kish, "Juvenile Injustice: Failure of a Nation" (1974).

The 1974 Act promises much greater coordination at a state level than was revealed in these studies and requires that the juvenile justice plan for each state should "set forth a detailed study of the state needs for an effective, comprehensive, coordinated approach to juvenile delinquency prevention and the improvement of the juvenile justice system." Section 223(a)(8)1. A number of bodies at the national and state level have undertaken to closely monitor the implementation of the 1974 legislation. See, *e.g.*, National Youth Alternatives Project, "The Juvenile Justice and Delinquency Prevention Act: Some Guides to Impacting Its Implementation Locally" (1975).

While the federal government should encourage the setting of federal standards, consistent with the standards contained herein, this volume places responsibility for the administration of juvenile corrections at the level of state government. Agencies of the federal government should not have responsibility for administration of programs for juveniles adjudicated in federal courts.* Such juveniles

*For the purposes of this standard, the District of Columbia should be viewed as analogous to a state, and responsibility for the administration of juvenile corrections should be lodged with the appropriate agency of the District.

should be placed within the jurisdiction of the appropriate state department on a contract basis. The rationale for this position is:

A. the avoidance of duplication, and the need for coordination in the provision of programs for adjudicated juveniles, as set forth in Standard 2.1; and

B. the presumption in favor of retaining close links between the adjudicated juvenile and his or her home community as determined by Standard 7.3. Institutional programs administered by federal agencies are often very considerable distances from the juvenile's home.

The number of adjudicated juveniles in federal institutions or under the supervision of federal probation officers is comparatively small. During 1975, 304 juveniles were placed under the supervision of federal probation offices (data provided by Division of Information Services, Administrative Office of U.S. Courts). On February 2, 1976 there were 263 adjudicated juveniles in the custody of the Federal Bureau of Prisons (data provided by Federal Bureau of Prisons).

2.5 The department and the private sector.

A. Alternative means of program provision.

The department may provide directly or may purchase from the private sector programs required to carry out the court's dispositions. There should be a purchase of programs and services from the private sector when purchase avoids duplication and provides a wider range and greater flexibility and more adequately meets the needs of the individual juvenile than can be attained through direct provision by the department.

B. Quality control for public and private programs.

Standards developed by the department for programs it administers should apply to programs purchased from the private sector. The department's monitoring activities should apply to both public and private programs.

Commentary

This standard permits both the direct provision of programs by the department and the purchase of programs from the private sector. A great deal depends upon local circumstances. A preference is indicated for the purchase of programs when this avoids duplication or provides access to programs that would otherwise be unavailable. The President's Crime Commission stated: "Much more direct service under private auspices is needed in corrections to achieve the special

flexibility of operations possible only in the absence of the constraints which attend public management; to promote experimental, even speculative, innovations in service; and to draw into corrections the interest and the support of citizens." *Task Force Report: Corrections* 113 (1967). The standard requires that responsibility and accountability should remain firmly located with the department for both forms of program delivery.

Forty-nine states allow placement in private agencies as a specific dispositional alternative. See M. Levin and R. Sarri, "Juvenile Delinquency: A Comparative Analysis of Legal Codes in the United States" 54 (1974). In 1974 it was reported, on the basis of data from forty-six states, that 2,989 adjudicated juveniles committed to the care of public agencies were located in privately run residential facilities. The National Assessment of Juvenile Corrections found:

Four states could not report even basic information about youth in these facilities (if there were any), and twenty-three states reported that there were none in this category. Across the nation the total number of young offenders in the care and custody of the states who were assigned to private facilities constituted only about 10% of those in state-operated facilities. In only seven states did the average daily population exceed 100, and in only three states did such youth represent even 50% of those assigned to state institutions. R. Vinter, G. Downs, and J. Hall, "Juvenile Corrections in the States: Residential Programs and Deinstitutionalization" 12 (1975).

There is a long tradition of provision of programs for adjudicated youth by the private sector. To a large extent this has been through nonprofit religious foundations, many of them established in the latter part of the nineteenth century. See, e.g., A. Platt, *The Child Savers: The Invention of Delinquency* (1969); Fox, "Juvenile Justice Reform: An Historical Perspective" 22 *Stan. L. Rev.* 1225 (1970). The presence of well-established private agencies is especially associated with large cities, such as New York and Chicago. Their political influence with the state agencies with which they contract has sometimes posed special problems in terms of the setting of criteria for admission and in the provision of information on the quality of care.

The Committee on Mental Health Services Inside and Outside the Family Court in the City of New York has drawn attention to some of these difficulties.

The records document the highly selective policies of the [voluntary child-care] agencies, their steady withdrawal of services for the children most in need of skilled care and treatment, and the severe limitations

on the Court's ability to make appropriate dispositions for children it finds to be delinquent or in need of supervision. . . . Admission policies of these voluntary agencies have been tightened over the years so that it is now virtually impossible to place delinquent or acting-out children with them. "Juvenile Justice Confronted: Pretensions and Realities of Treatment Services" 53-54 (1972).

Racial discrimination has also been found to be present in the acceptance practices of some voluntary agencies. See Office for Children's Services, Judicial Conference of the State of New York, "Juvenile Injustice" 76 (1973), and Polier, "Myths and Realities in the Search for Juvenile Justice," 44 *Harv. Ed. Rev.* 121-122 (1974). See also *Wilder v. Sugarman*, 385 F. Supp. 1013 (S.D.N.Y. 1974), which seeks to test the constitutionality of state statutes requiring the religious matching of children with agencies controlled by persons of the same faith, and the resulting lack of equal opportunity for black, Protestant children to gain admission to agencies providing better programs than those available in the public sector.

The problems associated with the purchase of services from the private sector are not beyond resolution. In New York City, where the situation has been especially acute, the Office for Children's Services has recommended that a centralization of responsibility within the State Division for Youth would provide the basis for a more fair and accountable approach. "Juvenile Injustice" 77 (1973). In Massachusetts the process of rapid deinstitutionalization, which commenced in 1972, was greatly aided by the decision to make widescale use of the private sector in the development of alternatives. The Harvard Law School's Center for Criminal Justice, which is undertaking a long-term study of the changes in Massachusetts juvenile corrections, has reported:

The purchase of service strategy appears thus far to be successful. It is organized on a regional basis with regional offices assuming responsibility for decisions about individual youth and the Boston Office for policy, planning, and much of the evaluation. The variety of services is much wider than originally envisioned, ranging from various types of intensive care and secure setting through group homes, foster care, and nonresidential programs. Nonresidential programs range from the Neighborhood Youth Corps through recreation programs at community colleges to educational programs, work related training, and such unique possibilities as spending the summer rebuilding a boat. This great variety of types of programs appears to be one of the new system's greatest strengths, as it enables the department to meet more

needs of youth and the community than would be possible with any one program strategy. "Preliminary Analysis Relating to the Generalization of the Massachusetts Experience in Juvenile Corrections Reform" 8-9 (1975).

See also "Juvenile Corrections in Massachusetts," *Corrections Magazine*, Vol. II, No. 2 (Nov./Dec. 1975). For a detailed description of a wide range of programs provided by the private sector in Iowa, see Contemporary Studies Project, "Funding the Juvenile Justice System in Iowa," 60 *Iowa L. Rev.* 1257-1263 (1975).

The national pattern reflects the significance of programs not directly administered by state agencies. The National Assessment of Juvenile Corrections differentiates between state-run and state-funded programs (including nonprofit and commercial enterprises, and agencies of local government). Seventy-two percent of the states' total 1974 average daily populations in community corrections were assigned to state-funded programs. This same study found that the implementation of deinstitutionalization has taken place to the greatest extent in those states that rely most heavily on purchase-of-service and other vendor arrangements, and that "... utilization of resources outside those possessed by state juvenile agencies seems to offer greater capacity and more flexibility, and perhaps greater rapidity of program personnel." The study commented, however, that these gains in flexibility and economy may be offset by problems associated with monitoring and quality control. R. Vinter, G. Downs, and J. Hall, "Juvenile Corrections in the States: Residential Programs and Deinstitutionalization" 43-44 (1975).

The standard attaches great importance to the need for close monitoring of programs provided by the private sector. See also Standards 9.3 and 9.4, which specifically address methods for ensuring a high level of quality control in programs. In six states, the statutes on placement in private agencies by the courts have no provision for state standard-setting or inspection. M. Levin and R. Sarri, "Juvenile Delinquency: A Comparative Analysis of Legal Codes in the United States" 55 (1974). Most of the private agencies have been not-for-profit but note should be taken of the increasing role being played by profit-making commercial agencies in the provision of programs for adjudicated juveniles. There should be a presumption against the purchase of services from profit-making agencies. Data and information are not readily available concerning commercial agencies. A brief description of one commercial program in Iowa appears in Contemporary Studies Project, "Funding the Juvenile Justice System in

Iowa," 60 *Iowa L. Rev.* 1257-63 (1975); and of the Elan program in Maine, Governor's Panel on Juvenile Violence, New York State, "Final Report of Task Force IV," 16 (1976).

PART III: ORGANIZATIONAL STRUCTURE AND PERSONNEL

3.1 Organization.

No one model of organization is appropriate for all jurisdictions. The following principles should be observed:

A. Central administration should be responsible for overall departmental planning and policy development.

B. The following functions can be either centralized or decentralized, but are essential to effective administration:

1. budget and fiscal control;
2. personnel administration;
3. program development and standard setting;
4. program direction and control (supervision);
5. program monitoring (see Standard 9.3 C.);
6. program evaluation;
7. research;
8. grievance mechanisms (see Standard 9.2).

C. All of these administrative functions should serve to provide needed services to the juvenile near his or her home.

Commentary

This standard provides that no organizational model is appropriate for all jurisdictions. It is acknowledged that a purely statewide structure may not be appropriate in the case of very small states, or in others where some degree of local control of juvenile corrections has been retained. A centralized structure provides for a consistent statewide level of programs and allows for regional differences that might be critical to effective program development. The standard does not differentiate between the types of activity that are most appropriate to the central and to the regional office. The guiding principle should be that decisions concerning program placement and other immediate program matters should be the responsibility of the local office. Other functions, such as monitoring, might be shared by central and regional office personnel. Policy issues and departmental planning should be matters for the central office.

The particular structure of a department, within this broad framework will be determined by local considerations; there is no evidence

upon which a standard might provide specific guidance. In general, with a well developed regionalized structure, the central office should be small and not characterized by numerous divisions and hierarchical levels. The leading texts on the administration of corrections note the absence of any fixed or general organizational patterns for the central office. American Correctional Association, "Manual of Correctional Standards" 151 (1966); R. Carter, R. McGee, and E.K. Nelson, *Corrections in America* 253-254 (1975).

3.2 Departmental appointments.

A. The director.

The department's director should be appointed by the governor of the state and should report directly to the governor.

B. Director's appointing authority.

The director, within the context of a civil service merit system, should have appointing authority within the department. All appointments should be subject to an appropriate probationary period.

C. Short-term contracts.

The department's personnel policy should allow for short-term employment contracts, in addition to providing career opportunities.

D. Recruitment of youth counsellors.

Youth counsellor refers to personnel in direct or continual contact with juveniles. The department should recruit, as youth counsellors, persons who demonstrate the potential for a high level of enthusiasm, sensitivity, and energy in working with adjudicated juveniles in program settings. This potential could be reflected in academic qualifications, personal experience, or in a combination of both.

E. Recruitment of specialists.

The department should ensure that the qualifications of specialists recruited to provide specific services should not be below the minimum established by relevant professional bodies.

F. Affirmative action.

The department's recruitment policy and procedure should clearly demonstrate a preference for affirmative action, and in light of this preference the department should closely examine the recruitment practices of the private agencies with which it contracts. Affirmative action policies should include but not be limited to:

1. a preference for matching the ethnic and racial groups represented by the juveniles in the department's care with staff appointments and promotions;

2. the appointment, training, and promotion of women and men on an equivalent basis, based on job qualifications and needs;

3. career appointments for ex-offenders. Recognition should be given to their personal experience, which may be more relevant to the correctional process than formal academic qualifications. Educational training should be made available to augment such experience.

Commentary

This standard recognizes that the administration of juvenile corrections cannot be insulated from the political process. The appointment of the director of the department is a political decision in the sense that he or she will be directly involved with issues that are very much within the political domain. The backgrounds and qualifications of agency directors are varied, but there is no evidence as to what the most appropriate criteria for appointment should be. See generally E.K. Nelson and C. Lovell, "Developing Correctional Administrators" 23 (1969). There is, however, no doubt that an ability to manage the political process and demonstrated administrative skill are critical attributes if the director is to survive and be effective. There would seem to be little purpose in building in tenure for the director's appointment, or in limiting the discretion of the appointing authority. R. Carter, R. McGee, and E.K. Nelson write: "... none of [these] methods which appear to limit the discretion of the appointing power of the governor ever work perfectly. There is a school of thought in government which holds that, since the appointing power is elected by the people, and since he is responsible for the performance of his appointees, that no more obstacles than are absolutely necessary should be placed in the way of his having a free choice of his appointees with the possible exception of confirmation by the senate." *Corrections in America* 246 (1975). For a detailed description of the political context within which one director of a juvenile corrections agency operated see Ohlin, Coates, and Miller, "Radical Correctional Reform: A Case Study of the Massachusetts Youth Correctional System," 44 *Harv. Ed. Rev.* 74-111 (1974); and see generally R. Carter, R. McGee, and E.K. Nelson, *Corrections in America* 347-370 (1975); and J. Wallace, "Probation Administration," in *Handbook of Criminology* 965 (D. Glaser ed. 1974). For a study of the characteristics of senior administrators in adult and juvenile corrections, see E.K. Nelson and C. Lovell, "Developing Correctional Administrators" (1969). This study reported a rather narrow range of experience, commenting that the administrators "seem little involved with the efforts of the social and behavioral sciences to understand and explain deviant behavior and to develop

concepts to guide intervention in the complex set of problems. They are also isolated from organized efforts to advance and refine general understanding of administration, especially public administration." *Id.* at 31-32. For a discussion of the political and managerial skills required by the effective corrections administrator, see R. Carter, R. McGee, and E.K. Nelson, *Corrections in America* 271-279 (1975).

The personnel needs of a department will depend to a great extent on its management structure, and in particular on the extent to which it directly provides or purchases programs. The standard does not endorse a particular level of educational qualification that all employees should meet. Where specialized and professional services are required, personnel performing these duties should at least meet the minimum professional requirements.

The thrust of these standards is that the most critical work is that undertaken by employees (either of the department or of private agencies) who are involved directly with juveniles on a day-to-day basis. The standard designates these employees by the general term "youth counsellors." The standard holds that in this work it is personal qualities and not educational qualifications that are of paramount importance. Many juvenile corrections agencies have had difficulty in attracting sufficient persons of competence with adequate personal qualities, but it is far from clear that personnel problems are likely to be resolved through changes in salary structure and rigid educational selection criteria. See Geis and Cavanagh, "Recruitment and Retention of Correctional Personnel," 12 *Crime & Delinq.* 233 (1966). The authors observed: "... barriers into correctional work are likely to be seen as arbitrary attempts to impose status by controlling supply and demand. Though they may achieve their purpose to a limited extent, they fail to attend to the basic relationship between the vocational task and the social definition attached to it. It is this relationship which is of consummate importance for the resolution of issues of recruitment and retention of correctional personnel." See also NACCJSG, "Corrections" 471 (1973); Wald and Schwartz, "Trying a Juvenile Right to Treatment Suit: Pointers and Pitfalls for Plaintiffs," 12 *Am. Crim. L. Rev.* 125 (1974), who comment that there is "increasing use in juvenile treatment programs of non-traditional types of personnel such as community residents, group therapists without social work backgrounds, ex-offenders and college students as treatment personnel and as advocates for children in the community. . . . A good treatment program should have a healthy mix of academically trained supervisors and people whose child care credentials consist mainly of successful experience in dealing with children." Members of low-income groups and street people

should be recruited as youth counsellors; training programs should be provided to assist such persons in gaining the required skills. Departments should not be permitted to prescribe qualifications that will eliminate or restrict the eligibility of such indigenous population groups.

The standard does not imply that educational qualifications are unimportant, but holds that they should not be regarded as prerequisites in the consideration of potential candidates. In seeking persons who possess the personal qualities that will recognize and enhance the juvenile's potential for growth and development, personal experience may be as important as formal education.

The standard also stresses the importance of affirmative action in recruitment of personnel, with a preference for matching the ethnic and racial groups represented by the juveniles in the department's care. In 1969 a survey found that only about 13 percent of all corrections employees were members of racial minority groups. Joint Commission on Correctional Manpower and Training, "A Time to Act" (1969). See also NACCJSG, "Corrections" 474 (1973). No national information is available concerning juvenile corrections specifically, but the situation is certainly very far from a matching of personnel and juveniles in terms of ethnic and racial groups.

In *Morales v. Turman*, the court found that there was no active effort by the agency to recruit Blacks or Mexican-Americans despite the fact that a major racial imbalance existed. The situation within the Texas Youth Council was (in percentages):

	Anglo	Black	Mexican-American
Staff	83.5	13.7	2.5
Youth	49.1	34.1	23.9

See also NACCJSG, "Corrections" 474 (1973). See generally the evidence on nonwhite youths receiving more severe dispositions: R. Vinter, "The Juvenile Court as an Institution" in President's Crime Commission, *Task Force Report: Juvenile Delinquency and Youth Crime* 87 (1967); M. Wolfgang, R. Figlio, and T. Sellin, *Delinquency in a Birth Cohort* 220 (1972). It also appears likely that there will be a greater concentration of minority juveniles in the correctional process during the next fifteen years. See F. Zimring, "Dealing With Youth Crime: National Needs and Federal Priorities" 42 (1975).

Every attempt should be made to recruit women on an equal basis with men, and there is no reason to suppose that either men or women are more effective in working with juveniles of either sex.

The increased recruitment of women will advance the process of normalization in juvenile corrections. See NACCJSG, "Corrections" 476 (1973). In 1969 only 12 percent of adult and juvenile corrections personnel were women. Joint Commission on Corrections Manpower and Training, "A Time To Act" (1969).

Ex-offenders with the personal qualities described above should not be barred from employment by the department, as their particular experience may be a real strength that will be brought to their work. For similar recommendations see NACCJSG, "Corrections" 478 (1973). See especially the account of ex-offender employees with the New York State Division for Youth, M. Luger, "Utilizing the Ex-Offender as a Staff Member: Community Attitudes and Acceptance" in *Offenders as a Correctional Manpower Resource* 50 (Joint Commission on Correctional Manpower and Training 1968). For a theoretical rationale see Cressey, "Social Psychological Foundations for Using Criminals in the Rehabilitation of Criminals" 2 *J. Res. Crime & Delinq.* 49 (1965).

Information concerning recruitment criteria and practices of correctional agencies is somewhat uneven. The most comprehensive survey was conducted in 1966 by the National Council on Crime and Delinquency for the President's Commission on Law Enforcement and Administration of Justice. It found that practice was generally less stringent than various existing recommended standards, but that criteria for juvenile probation work were generally tighter than for institutional work. The survey revealed that 74 percent of the probation departments called for at least a bachelor's degree, and that 4 percent insisted on a graduate degree in social work or one of the allied social sciences. President's Crime Commission, *Task Force Report: Corrections* 137 (1967).

The same survey found that requirements for institutional staff varied with different jurisdictions. For institution superintendents, twelve jurisdictions required a graduate degree, twenty-eight a college background, and ten had no formally established educational requirements. With regard to the appointment of social workers, thirty-six jurisdictions required a college background, eleven of which required a graduate degree. As for "cottage" staff, who make up the great majority of institution employees and who are in most contact with juveniles, educational requirements were not established in half the states, and high school graduation was stipulated in the remaining. President's Crime Commission, *Task Force Report: Corrections* 147 (1967). See generally Joint Commission on Correctional Manpower and Training, "Perspectives on Correctional Manpower and Training" (1969).

On the nationwide deployment of personnel categories in public juvenile detention and corrections facilities see LEAA, "Children in Custody: A Report on the Juvenile Detention and Correctional Facility Census of 1972-73," 13 (1975).

The department should recruit some of its staff on short-term contracts, generally of three years' duration. In this way it will be able to attract persons who are not necessarily seeking a career in this work but are able to make a real commitment over a short period. Such short-term contracts have at least three advantages:

A. a wider range of persons, often young and energetic, are attracted to the department;

B. very intensive work, as is often involved in program settings, is difficult to sustain on a career basis;

C. a continual influx of such recruits would have a healthy impact on agencies that are often inclined to become narrow and institutionalized.

On the tendency for corrections personnel to be an insular group, see generally Esselstyn "The Social System of Correctional Workers," 12 *Crime & Delinq.* 117 (1966). See also E.K. Nelson and C. Lovell, "Developing Correctional Administrators" 32 (1969).

3.3 Personnel training.

A. The importance of personnel training.

The department should ensure that resources are made available for a high level of personnel training. Each program director should be responsible for making staff time available for training requirements.

B. Preservice and probationary training.

All personnel with direct supervisory responsibility for juveniles should receive a minimum of eighty hours of preservice training, and a further forty-eight hours during the first six months of employment. The training should consist of a comprehensive orientation in the tasks to be undertaken. The components of such training should include:

1. departmental policies, with special attention to the personnel code of conduct;

2. the background, needs, and rights of adjudicated and nonadjudicated juveniles, community resources, and individual and cultural differences;

3. supervision and security requirements as determined by the type of disposition; and

4. on-going problems faced by probationary personnel.

C. Inservice training.

All personnel with direct supervisory responsibility for juveniles should receive a minimum of eighty hours of inservice training each year. The components of such training should include:

1. departmental policies, with attention given to modifications and to legal developments affecting the administration of juvenile corrections;
2. on-going problems faced by personnel;
3. preparation for new tasks and program settings.

D. Training and the private sector.

The department should review the training programs of the private agencies with which it contracts. When adequate training is not provided by the private agency, the contract between the department and the private agency should include an agreement that the department extend its training resources to the private agency.

E. Job rotation.

The department should provide opportunities for employees to broaden their knowledge and skills through a variety of job assignments, job enrichment, and job rotation.

Commentary

This standard underscores the importance that should be given to the training of personnel working with adjudicated juveniles. The details of training requirements will vary according to the type of program, but in general terms it should serve the purposes of preparation for new tasks and improvement of current competence, and should provide a setting for confronting the on-going problems of personnel.

Numerous authorities have endorsed the importance of personnel training in developing recommendations. See, *e.g.*, C. Prigmore ed., "Manpower and Training for Corrections: Proceedings of an Arden House Conference, June 24-26, 1964" (1966); President's Crime Commission, *Task Force Report: Corrections* 100 (1967); Joint Commission on Correctional Manpower and Training, "A Time To Act" (1969); NACCJSG, "Corrections" 494 (1973). See also Chapter 319 of the Juvenile Justice and Delinquency Prevention Act of 1974 (Pub. Law 93-413), which established a National Institute of Corrections located within the Federal Bureau of Prisons. Surveys of corrections personnel training have found that it is given low priority by most agencies. A survey undertaken for the President's Crime Commission in 1966 found that more than half the responding agencies reported no organized training, and that most did not have a central unit to plan and organize training programs. H. Piven and A. Akabes,

"Education Training and Manpower in Corrections and Law Enforcement" in "Sourcebook II, In-Service Training" 3139 (HEW 1966). The Joint Commission on Correction Manpower and Training (which was established by Congress for a three-year period in 1966) reported in 1969 that less than 14 percent of corrections staff were involved in any kind of in-service training program, and that only 4 percent of all juvenile agencies had a full-time staff training program. Joint Commission on Correctional Manpower and Training, "A Time To Act" (1969). In 1973 another national commission reported: "This lack of staff development reflects an attitude of indifference about the services that staff provide to the clients of the system. It also suggests to staff that management feels keeping up with the field has low priority." NACCJSG, "Corrections" 469 (1973).

This standard holds that responsibility for personnel training should be located with the department's central office and with program directors. The central office should ensure that training resources are made available and the program director should organize staffing schedules to allow adequate time for training requirements.

The standard makes a distinction between preservice and inservice training, and recommends a minimum number of hours for all employees. For generally similar approaches see NACCJSG, "Corrections" 494 (1973), which recommended forty hours each year thereafter. See also California Youth Authority, "Division of Rehabilitation Services Administrative Manual" 115.1 (n.d.); California Youth Authority, "Standards for Juvenile Homes, Ranches and Camps" 11 (1972). The recommended minimum components of personnel training consist of some general issues which apply to all employees and matters specific to the particular tasks undertaken by the employee. See American Correctional Association, "Manual of Correctional Standards" 178 (1966); National Conference of Superintendents of Training Schools and Reformatories, "Institutional Rehabilitation of Delinquent Youth" 215 (1962); National Council on Crime and Delinquency, "Standards and Guides for the Detention of Children and Youth" 55 (1961); Child Welfare League of America, "Standards for Services for Child Welfare Institutions" 117 (1963); California Youth Authority, "Division of Rehabilitation Services Administrative Manual" 115 (n.d.); State of Illinois, Department of Corrections, Juvenile Division, "Administrative Regulations," Regulation 012 (1975); and see especially for detailed analysis of the problems of determining content and method, Joint Commission on Correctional Manpower and Training, "Targets for In-Service Training" (1968), and "Perspectives on Correctional Manpower and Training" (1969); Taylor and McEarchern, "Needs and Directions in Probation

Training," 30 *Fed. Prob.* 18 (1966). See also NACCJSG, "Corrections" 495 (1973); President's Crime Commission, *Task Force Report: Corrections* 101 (1967).

Preservice training should include, but not be limited to, the history, philosophy, and objectives of the department; an overview of court systems; human relations; sensitivity training; general care and treatment of juveniles; state service regulations; insurance and medical programs; security and safety; employee grievance procedures; responsibilities of the position; immediate work environment; performance standards; monitoring and evaluation procedures; work hours, time off, etc.

The standard, finally, provides for job rotation within the department and points to the department's responsibility for the training needs of the personnel of the private agencies with which it contracts.

3.4 Code of conduct for personnel.

A. Department's responsibility to develop code of conduct.

The department should develop a code of conduct for all personnel.

B. Code of conduct and contract of employment.

The code of conduct for employees should be a part of the employment contract entered into by the department and each employee.

C. Minimum requirements for the code of conduct.

The minimum requirements for the code of conduct should include:

1. conformance with personnel requirements for public employees;

2. an emphasis on the essential role played by staff in ensuring the integrity of all aspects of the department's policy;

3. stress on the staff's responsibility to provide a safe, human, caring environment for the juvenile and to respect all rights of juveniles set forth in these standards;

4. a prohibition of any form of physical or verbal abuse of juveniles by staff members or by other juveniles with the tacit approval of the staff;

5. an affirmative obligation on the part of staff to report violations by personnel of the code of conduct.

D. Disciplinary policies and procedures.

The department should develop disciplinary policies and procedures for personnel, in accordance with rules established for other public employees.

E. Departmental code of conduct and private agencies.

The department should ensure that the code of conduct for personnel is made known to all staff working in private agencies from which the department purchases programs and services. When private agency staff are not able to meet the standards laid down in the code, the department should terminate its contract with the agency.

F. Judicial remedies for juveniles and their parents.

There should be judicial remedies for juveniles and their parents or guardians, including the waiver of sovereign immunity and the award of counsel's fees to successful litigants, for violations of the code of conduct for personnel provided in these standards. Costs may be awarded against the plaintiff in suits found to be frivolous.

Commentary

This standard requires the development of a code of conduct for all staff, over and above the minimum requirements for other public employees. Such a code is necessary, given the nature of the pressures and responsibilities placed on all staff working in juvenile corrections settings. The code should govern staff persons' relationships with adjudicated juveniles and members of the public. Staff persons have considerable responsibility for the impact they might have on juveniles and the carrying out of the department's mandate. The code of conduct should therefore form a part of the employee's contract, by which he or she agrees to abide. It is equally important that the employees of private agencies with which the department contracts should be informed of the code of conduct and that adherence to the code is agreed to between the department and the private agency as part of the contract between them. The standard contains certain minimum requirements which should form the basis of a code. Related codes of ethics developed by correctional professional organizations include California Probation, Parole and Correctional Association, "Code of Ethics" (1946); Federal Probation Officers Association, "Code of Ethics" (1960); and American Correctional Association, "Code of Ethics" (1975).

3.5 Management-employee relations.

Where adequate procedures are not provided for under civil service arrangements, the department should:

A. establish formal procedures for the determination of salaries and working conditions;

B. respect the union and bargaining rights of staff, within the context of civil service employment.

Commentary

This standard underscores the importance of establishing formal procedures to determine staff salaries and working conditions, and to establish personnel disciplinary and grievance mechanisms. Well developed civil service systems will probably restrict the immediate control of the department within these areas. Carter, McGee, and Nelson have drawn attention to the diminishing role for departments of corrections as a consequence of the rise of employee unions.

These associations or unions tend to cut across departmental lines and to go directly to the political power structure of the state or other political jurisdiction. The heads of operating departments under this new set of practices are left outside the contractual relationship except to advise the political decision makers. The department head still has some room within the system, but it becomes more and more narrow as the employee groups become stronger politically. Aside from the 'bread and butter' items he still has some limited disciplinary control, power to assign workers to specific jobs and to administer grievance procedures. Even these powers are being challenged by advocates of independent ombudsmen and by employee pressures to control workloads and work assignments on the basis of worker preferences rather than administrative judgment. R. Carter, R. McGee, and E.K. Nelson, *Corrections in America* 358 (1975).

This assessment refers primarily to adult corrections, but it is valid, to a lesser extent, for juvenile corrections. Given the high level of diversification of programs endorsed by these standards, the department's role in determining staff conditions may well be significant. The principle which the standard speaks to is the establishment of fair procedures for the resolution of employee problems. See generally NACCJSG, "Corrections" 459 (1973); American Correctional Association, "Manual of Correctional Standards" 174 (1966); Advisory Commission on Intergovernmental Relations, "Labor-Management Policies for State and Local Government" (1969).

3.6 Volunteers.

A. Purposes.

The department should actively involve volunteers in programs, not to replace regular staff, but to enrich and supplement on-going programs.

B. Selection and recruitment of volunteers.

The department should recruit volunteers whose interests and capabilities are related to the identified needs of the juvenile.

C. Training and supervision of volunteers.

Volunteers should be provided with preservice orientation training and be supervised in their work by an experienced employee of the department or the private agency with which the department has contracted.

D. Use of volunteers in advocacy, program-planning, and monitoring activities.

Volunteers should be provided opportunities to participate in the planning and monitoring of juvenile corrections programs. They should also be involved in organizations that advocate change and reform in the area of juvenile corrections. Additionally, volunteers should play a critical role in the independent monitoring of juvenile corrections programs by private groups. See Standard 9.4 A. 2.

Commentary

This standard adopts the position, taken by numerous authorities, that volunteers are able to play an important role in corrections programs. The standard points to two central roles:

A. working directly with one or more juveniles, under the supervision of an experienced employee;

B. working with private advocacy, planning, or monitoring groups that urge agencies to abide by their standards and improve the quality of their work.

The first of these tasks has drawn most attention. The degree to which volunteers have been involved in programs with juveniles varies greatly among agencies, and this in part reflects the attitude held by employees toward volunteers. Joint Commission on Correctional Manpower and Training, "Volunteers Look at Corrections" (1969).

Volunteers provide one of the vital links between the program and the community, as was noted by the National Advisory Commission on Criminal Justice Standards and Goals: "One major reason why volunteer efforts should be expanded is that correction has too long been isolated from the mainstream of community action. . . . Administrators believe that the most important element in a successful volunteer program is a serious commitment on the part of the agency to use volunteers." NACCJSG, "Corrections" 104 (1973).

A number of agencies have developed standards to govern the recruitment and work of volunteers. See, e.g., preliminary draft of the California Youth Authority's "Standards on Volunteer Services" (1976). In addition, voluntary associations have become increasingly organized and coordinated, and the National Clearinghouse for

Volunteers in Courts publishes a newsletter from its office in Boulder, Colo. A review of several volunteer efforts is found in R. Goldfarb and L. Singer, *After Conviction* 589 (1973); see also K. Leenhouts, "Volunteers in Probation: Not Just A Band-Aid Story," in *A Nation Without Prisons* 133 (C. Dodge ed. 1975).

The standard agrees with other authorities that volunteers should come from all walks of life. The National Advisory Commission stated: "Volunteers should be recruited from the ranks of minority groups, the poor, inner-city residents, ex-offenders who can serve as success models, and professionals who bring special expertise to the field." NACCJSG, "Corrections" 480 (1973). Very little progress, however, has been made in terms of the active recruitment of a wide range of citizens. One group that offers enormous potential is the elderly, who often have both ample time and enthusiasm. The Foster Grandparent Program of the California Youth Authority is one model deserving replication and development. One attempt to involve professionals as volunteers has been the American Bar Association's National Volunteer Parole Aide Program, which has matched young lawyers with adult parolees; this could be creatively replicated in juvenile corrections. American Bar Association, "Volunteer Parole Aide: Questions and Answers" (n.d.).

The standard's second role for volunteers is equally important. The President's Crime Commission commented: "The mere presence of outsiders would serve to discourage illegal, unfair, or inhumane practice." President's Crime Commission, *Task Force Report: Corrections* 85 (1967).

A number of citizen watchdog groups exist, although these have mainly focused on adult corrections. Standard 9.4 A. 2. stresses the need for such groups to independently monitor programs for adjudicated juveniles. Much of the potential contribution of volunteers would be lost if all effort was invested in direct work with juveniles at the expense of monitoring and advocacy. See generally R. Carter, R. McGee, and E.K. Nelson, *Corrections in America* 367 (1975); American Correctional Association, "Manual of Correctional Standards" 287, 297 (1966); Child Welfare League of America, "Standard for Services for Child Welfare Institutions" 117 (1964); National Council on Crime and Delinquency, "Standards and Guides for the Detention of Children and Youth" 51 (1961). Finally, the department should be responsible for safeguarding the privacy and security of juvenile records when volunteers participate in monitoring activities. See Standard 4.15 and the *Juvenile Records and Information Systems* volume.

PART IV: REQUIRED FEATURES OF ALL PROGRAMS

4.1 Definition of program.

A program for adjudicated juveniles is defined as any setting or activity directly administered or purchased by the department for the purpose of implementing the court's disposition.

4.2 Program directors and advisory committees.

A. Program director.

Each program should have a designated director, in whose absence an acting director should be designated. The program director should be accountable to the department for all aspects of the management of the program. In the case of a program purchased from the private sector, accountability to the department should be provided for in the contract between the department and the private agency.

B. Program advisory committees.

The department should encourage program directors to set up advisory committees of local persons to advise on aspects of program management and to facilitate the development of links with the community.

Commentary

This standard ensures that the means for accountability between the program and the department are clearly provided for and understood. Program directors should be responsible for what occurs in the program and for keeping the department fully informed. When the department purchases a program, the line of communication may be through a private agency but in all cases accountability must be provided for in the contract.

Although responsibility for the administration of each program should reside with its director, advisory committees composed of persons from the community within which the program is located may provide considerable benefits. Such committees serve to encourage the program to take into account local viewpoints and in other ways provide an important link between the program and community. See R. Coates, "A Working Paper on Community Based Corrections: Concept, Historical Development, Impact, and Potential Dangers" 34 (1974); R. Coates and A. Miller, "Neutralization of Community Resistance to Group Homes" in *Closing Correctional Institutions* 67 (Y. Bakal ed. 1973).

4.3 Legal status.

A juvenile who is adjudicated delinquent should suffer no loss in civil rights, except those rights that are suspended or modified by the nature of the disposition imposed, and by any special conditions allowed by law and made applicable by the court.

Commentary

This standard encompasses two separable yet interconnected positions. First, there is the uniformly accepted view that an adjudication of delinquency imposes none of the civil disabilities or collateral consequences associated with criminal convictions. See HEW, "Legislative Guide for Drafting State-Local Programs on Juvenile Delinquency" § 35 (1973); National Conference of Commissioners on Uniform State Laws, "Uniform Juvenile Court Act" § 33 (1968), and National Council on Crime and Delinquency, "Standard Juvenile Court Act" § 25 (1969). The view expressed here is only partially dependent on the formalism that holds delinquency proceedings to be "civil" in nature. Civil disabilities in the criminal system are relics of a time when Anglo-American law imposed "outlawry" and "attainder." Such disabilities are of doubtful utility when applied to adult offenders and their importation into the juvenile system would serve no apparent useful purpose.

Second, adjudicated juveniles retain all rights afforded nonadjudicated juveniles, except those that are affected by the nature of the particular disposition and by any special conditions imposed by the judge. This statement supplements the "no loss of rights" position but adds the additional dimension that a juvenile enters the correctional process with as many legal rights as his or her nonadjudicated counterpart, except as modified by the inherent nature of the disposition and any special conditions lawfully attached by the judge. This is more a statement of general position than a detailed standard designed to cure a concrete problem. In a sense, it is the juvenile counterpart of the emergent view of adult offenders first expressed in *Coffin v. Reichard*, 143 F.2d 443, 445 (6th Cir. 1944), *cert. denied*, 325 U.S. 887 (1945)—a right not specifically lost by operation of law is retained. See also F. Cohen, "The Legal Challenge to Corrections" 64-66 (1969).

4.4 General considerations in determining rights and responsibilities.

Distinctions in the objectives of the juvenile justice system and in the level of development of juveniles require that the determination of the rights and responsibilities of juveniles under correctional

supervision should not be based solely on their adult counterparts. In some situations, juveniles should be afforded more of the same rights extended to adults (*e.g.*, medical and dental care attuned to rapidly developing bodies and the need for preventive care). In other situations, a similar right should be recognized, but the legally acceptable adult solution viewed as inadequate (*e.g.*, a right of access to the courts, which may be satisfied for adults by providing an adequate law library and allowing legal assistance by fellow inmates but satisfied for juveniles only by providing legal services). There are other situations in which juveniles will be under a set of obligations not similarly required for adults (*e.g.*, compulsory school attendance, compulsory vaccinations, etc.).

Commentary

This is a rather novel formulation designed to articulate the general considerations that have gone into the formulation of specific standards. This standard is intended to aid decision makers in dealing with the issues not covered here in detail. The comparative referent is the adult criminal system, a system that is rapidly developing a comprehensive body of correctional law. It is tempting to simply borrow from adult correctional law and yet the needs and demands upon juveniles are distinct.

While adult correctional law is the handiest analogue for the development of the rights and responsibilities of juveniles, it is clear that the borrowing ought not to be indiscriminate. A few courts have stated that "there is a legal distinction in the nature of treatment appropriate to a convicted felon and that accorded one adjudged a juvenile delinquent." *Nelson v. Heyne*, 355 F. Supp. 451, 457 (N.D. Ind. 1972); *aff'd* 491 F.2d 352 (7th Cir. 1974); *cert. denied* 417 U.S. 976 (1974). However, one does not encounter any effort to explain why, even in general terms, or to develop even the general formula provided here.

Put most simply, this standard is based on the view that the objectives of juvenile justice and the development of youths argue against exclusive reliance on adult rights and responsibilities in the development of the subsequent, more specific, standards. Upon analysis, it appears that, in some instances, juveniles require more or different attention (*e.g.*, medical and dental care). In other situations, such as access to the courts, while availability of a law library may meet legal obligations to an adult—see *Johnson v. Avery*, 393 U.S. 483 (1969)—this would not be adequate for generally less literate and less experienced juveniles. In yet a third situation, juveniles under correctional

supervision may be required to engage in activities linked to their socialization and development, such as compulsory school attendance, which are not legally required of adults.

This, of course, is a highly general standard and is designed to indicate a formula by which the development of the specific standards should be measured.

4.5 Due process applicable.

Basic concepts of due process of law should apply to a juvenile under correctional supervision. Alterations in the status or placement of a juvenile that result in more security, additional obligations, or less personal freedom should be subject to regularized proceedings designed to allow for challenge through the presentation of evidence to an impartial tribunal. The relative formality of such proceedings should be based on the importance of the juvenile's interest at stake, the permissible sanction, and the nature of the setting in which the decision is to be made. The more restrictive the setting, or the greater the permissible restriction or sanction, the greater the degree of formality required.

Commentary

The juvenile correctional process has long remained immune from basic concepts of due process. Only recently have the courts had occasion to examine some of the myriad discretionary decisions involving juveniles under correctional supervision. The isolation of juvenile corrections from due process concerns is well illustrated by the fact that the leading texts and casebooks in juvenile justice pay little or no attention to the corrections phase. See, *e.g.*, M.G. Paulsen and C.H. Whitebread, *Juvenile Law and Procedure* (1974); S. Fox., *Modern Juvenile Justice: Cases and Materials* (1972).

In writing about adult corrections just five years ago, this co-reporter stated:

A legal system that attempts to reflect the stated goals of corrections—the “cure” or social reintegration of offenders—is simply out of touch with the ideology, practices, and resources available to corrections. The notion that a benevolent or humanitarian purpose must necessarily cede a vast discretion to those who are in authority is highly questionable when such purpose actually is pursued; it is indefensible when that purpose is pure fiction.” F. Cohen, “The Legal Challenge to Corrections” 105 (1969).

One need not go much beyond Justice Fortas's observations in *Kent*⁸ and *Gault*⁹ to see just how applicable to juvenile corrections is the above quotation about an earlier era of adult corrections.

4.6 Program regulations.

The department, using these standards as a basis, should develop regulations for all programs that it administers or purchases.

Commentary

This standard underlies the importance of each department's developing its own set of regulations to apply to all programs. Most agencies with responsibility for juvenile corrections have a statutory obligation to develop such regulations, although these vary a great deal in terms of scope and specificity. See, for example, the comprehensive and specific regulations developed by the Illinois Department of Corrections, Juvenile Division, "Administrative Regulations," (1975).

4.7 Annual statement.

A. Program director's obligation to submit annual statement to the department.

Each program director should submit an annual statement to the department that sets forth, within the framework established by the department's regulations, the program's purpose, methods, and central features. At a minimum this statement should include:

1. elements of the safe, human, caring environment that are provided;
2. program regulations;
3. services available through the program;
4. the nature and extent of links between the program and the community;
5. staff duties, qualifications, and experience.

The statement should also include a summary of the data assembled by the program in accordance with Standard 9.3 C. 1.

B. Review by the department of program director's statement.

A preliminary statement in conformance with subsection A.

⁸*Kent v. United States*, 383 U.S. 541 (1966). *Kent* has the most widely quoted critique: "There is evidence . . . that there may be grounds for concern that the child receives the worst of both worlds: that he gets neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children." *Id.* at 556.

⁹*In re Gault*, 387 U.S. 1, 27 (1967), where the reference is to the euphemisms of correctional institutions and the reality of actual confinements.

should be reviewed and approved by the department before any program is given authority by the department to operate or, in the case of private agencies, authorized to receive funds from the department. In the case of a program purchased from the private sector, the statement should form an integral part of the contract between the department and the private agency. The annual review of the program director's statement should be a major consideration in the department's decision as to whether to renew the authority to operate or receive public funds.

Commentary

This standard requires that the program director provide the department with an annual written statement of the program's purpose and methods. It is not common practice for such a statement to be prepared, but it is essential if an adequate level of program quality control is to be achieved. The program statement should serve as a basis for:

A. the department's decision to renew the program's authority to operate;

B. the monitoring activities set forth in Standards 9.3 C. and 9.4 A.;

C. the contract, in the case of purchased programs, between the department and the private agency.

On the importance of departmental regulations, see especially *Morales v. Turman, Memorandum and Order* 383 F. Supp 53, 61 (E.D. Tex. 1974). The court criticized the "ephemeral, mythical, and indeed, almost nonexistent character of the central policy of the Texas Youth Council" and stated that "TYC 'policy' as embodied in the minutes [of the three member board of the Texas Youth Council] is close to undiscoverable and does not constitute a coherent body of regulations that are applied throughout the system; such rules and regulations as exist are local to single institutions or even subdivisions thereof." *Id.*

4.8 Prohibition on all forms of corporal punishment: limitations on the use of physical force by personnel.

A. Prohibition on all forms of corporal punishment.

No corporal punishment of any adjudicated juvenile within the jurisdiction of the department should be permitted. This prohibition allows no exceptions and applies equally to public and private programs.

B. Limitations on the use of physical force by personnel in relation to juveniles.

Personnel should be prohibited from the direct use, or tacit approval of juveniles' use of physical force against other juveniles except:

1. as necessary in self defense or to prevent imminent injury to the juvenile, another person, or substantial property injury;

2. to prevent escape; or

3. when a juvenile's refusal to obey an order seriously disrupts the functioning of the facility. No more force should be used than is necessary to achieve the legitimate purpose for which it is used.

C. Any personnel using physical force against any juvenile should immediately file a written report with the department setting forth the circumstances of the act, the degree of force used, and the reasons for the use of force.

D. The provisions of this standard should be made a part of the code of conduct for personnel set forth in Standard 3.4.

Commentary

The standard's prohibition on all forms of corporal punishment is consistent with all national recommendations concerning the administration of adult and juvenile corrections. American Correctional Association, "Manual of Correctional Standards" 55 (1966); National Conference of Superintendents of Training Schools and Reformatories, "Institutional Rehabilitation of Delinquent Youth" 151-152 (1962); National Council on Crime and Delinquency, "Standards and Guides for the Detention of Children and Youth" 86-87 (1961); NACCJSG, "Corrections" 31 (1973). Corporal punishment is prohibited by statute or administrative regulation in the federal (18 U.S.C. § 3564, 1964) and virtually every state system. See, e.g., State of Illinois, Department of Corrections, Juvenile Division, "Administrative Regulations" 510 (1975); State of Florida, "Detention-Adjustment Unit Manual" 4 (1974). A few states still permit personnel in juvenile institutions to use certain forms of corporal punishment. The abuses to which this practice leads in the corrections setting have been documented in the findings of several courts. See, e.g., *Nelson v. Heyne*, 355 F. Supp. 451 (N.D. Ind. 1972); and *Morales v. Turman* 383 F. Supp. 52, 72, 76 (E.D. Tex. 1974).

The standard holds that the use of physical force by staff should be prohibited except when necessary to prevent injury or escape or when a juvenile's refusal to obey an order seriously disrupts the functioning of the facility. This position is consistent with most administrative regulations that apply to the administration of juve-

nile corrections. See, *e.g.*, California Youth Authority, "Division of Rehabilitation Services Administrative Manual" (n.d.). See also Standard 8.7 F.

The standard also provides for the filing of a report with the department justifying each use of force by personnel against juveniles. This will serve as a check on abuse of the limited authorization of physical force contained in this standard.

4.9 Safe, human, caring environment.

A. Department's obligation to ensure a safe, human, caring environment.

A safe, human, caring environment is required by all juveniles in order to achieve normal growth and development. The department should have an affirmative obligation to ensure that all programs provide, and in no way inhibit, this safe, human, caring environment.

B. Components of a safe, human, caring environment.

A safe, human, caring environment includes the provision of opportunities for juveniles to:

1. enhance individuality and self-respect;
2. enjoy privacy;
3. develop intellectual and vocational abilities;
4. retain family and other personal ties;
5. express cultural identity;
6. relate and socialize with peers of both sexes;
7. practice religious beliefs;
8. explore political, social, and philosophical ideas;
9. enjoy a nutritious and varied diet;
10. receive dental and medical care, including birth control advice and services;
11. have a choice of recreational activities;
12. be safe from physical and psychological attack and abuse.

Commentary

These standards require that adjudicated juveniles have every opportunity to achieve normal growth and development and that the intervention of corrections programs in their lives should serve to enhance and in no way thwart that process. This standard holds that a safe, human, caring environment is required for normal growth and development to occur. The standards draw a distinction between the provision of a safe, human, caring environment and the provision of services (services are described in Standard 4.10).

It should be emphasized that the standards do not use the concept

of treatment or rehabilitation to include both care and services. The "right to treatment" is often used in this comprehensive sense. For example, the court of appeals in *Nelson v. Heyne*, 491 F.2d 352 (7th Cir. 1974) held:

In our view the "right to treatment" includes the right to minimum acceptable standards of care and treatment for juveniles and the right to individualized care and treatment. Because children differ in their need for rehabilitation, individual need for treatment will differ. When a state assumes the place of a juvenile's parents it assumes as well the parental duties and its treatment of its juveniles should, so far as can be reasonably required, be what proper parental care would provide. Without a program of individualized treatment the result may be that juveniles will not be rehabilitated, but warehoused, and that at the termination of detention they will be incapable of taking their proper places in free society; their interests and those of the state and the school thereby being defeated. Slip. at 13.

Two attorneys who have been in the forefront of "right to treatment" litigation have commented, after listing several clinical components of the right, that "[t]here is a consensus among juvenile experts that any successful treatment of a juvenile must include recognition of a normal adolescent's needs. . . . Juveniles deprived of such normalcy [a normal environment] in the past—as most delinquents have been—need it even more than ordinary youths. . . . [T]he absence of a normal healthy environment makes the clinician's work futile." Wald and Schwartz, "Trying a Juvenile Right to Treatment Suit: Pointers and Pitfalls for Plaintiffs," 12 *Am. Crim. L. Rev.* 133-134 (1974).

This standard, however, seeks to base the provision of a safe, human, caring environment on the equal protection clause of the fourteenth amendment. It has, for example, been held that under the equal protection clause, juveniles within an institution should have opportunities available to them similar to those available to juveniles in their own homes. *In re Savoy*, Nos. 70-4808 and 70-4714 (D.C. Juv. Ct, Oct. 13, 1970). Thus the right of juveniles in correctional institutions to receive medical care as provided in Standard 4.9 B. 10. should include the opportunity to obtain advice concerning abortions, consistent with *Planned Parenthood v. Danforth*, 428 U.S. 52 (1976), on the juvenile's right to abortion. It has also been argued that adjudicated juveniles should at least be afforded rights similar to those of adults in detention facilities, as neither group are held as convicted criminals. Note, "The Courts, the Constitution and Juvenile Institutional Reform" 52 *B.U.L. Rev.* 50 (1972). This Note con-

cluded: "Whether or not there exist constitutional or statutory rights to rehabilitation or treatment in the case of juveniles, an effort to achieve needed reform in the juvenile institutions can best be grounded in the scrutiny by courts of the conditions in these institutions as they actually exist." *Id.* at 62.

The components listed in the standard as the minimum ingredients of a safe, human, caring environment are similar in some respects to the "humane environment" defined in *Wyatt v. Stickney*, 344 F. Supp. 373 (M.D. Ala. 1972), which included rights to privacy, visitation, and telephone privileges, uncensored mail, freedom from unnecessary medication or experimental research, isolation, or restraints, freedom to wear personal clothing and to retain possessions, access to outdoor exercise, religious worship, and a nutritious diet. See generally NACCJSG, "Corrections" 31, 34, 558 (1973); R. Goldfarb and L. Singer, *After Conviction* 370 (1973); *Morales v. Turman*, where the court found that many juveniles in Texas institutions were confined in "an environment that is exceedingly deprived—psychologically, emotionally, and physically." The court concluded that juveniles held by the Texas Youth Council "have a constitutional and statutory right to the following elements of an adequate professional treatment plan":

1. adequate casework services by an individual trained and experienced in the treatment of adolescents;
2. a physical plant designed to maximize the child's security, privacy, and dignity;
3. freedom from unnecessary confinement in close quarters or restriction of legitimate activities;
4. opportunity for adequate recreation and exercise and constructive and entertaining leisure time activities;
5. freedom from unnecessary or arbitrary invasions of privacy;
6. an adequate, well-prepared, and well-served diet, supervised by a licensed dietician;
7. opportunity for free communication with persons outside the institution by mail and telephone;
8. a coeducational living environment, except in the case of very small facilities for one sex only, which must provide frequent and regular contacts with members of the opposite sex in variety of settings;
9. the liberty to exercise freedom of choice in areas such as dress, hairstyle, choice of friends, and other personal matters;
10. an environment that permits the juvenile to express—either verbally or non-verbally—the emotions (such as anger, affection, or unhappiness) that he may feel, unless the expression is harmful or destructive. *Morales v. Turman: Memorandum and Order*, 383 F. Supp. 53, 100 (E.D. Tex. 1974).

This standard recognizes that the history of juvenile corrections has been far from satisfactory in meeting basic human needs. Amid much rhetoric concerning rehabilitative techniques (which have usually not been provided; and even when provided and evaluated have not shown much successful impact) the administration of juvenile corrections has tended to neglect its basic obligation.

4.10 The provision of services.

A. The department's obligation to provide access to required services.

Over and above the provision of a safe, human, caring environment the department should ensure that adjudicated juveniles have access to those services that are required for their individual needs.

B. Services that all juveniles have an obligation to receive.

The department should ensure that adjudicated juveniles obtain those services that nonadjudicated juveniles have an obligation to receive. Such services should be of no less quality than those provided to juveniles not under correctional supervision.

C. Services necessary to prevent clear harm to physical health.

The department should ensure that adjudicated juveniles obtain any services necessary to prevent clear harm to their physical health.

D. Services mandated by the court as a condition to nonresidential disposition.

The department should ensure that adjudicated juveniles obtain services determined by the court as a condition of a nonresidential disposition. As required by the *Dispositions* volume, such services should not be mandated by the court if they may have harmful effects.

E. Requirement of the juvenile's informed consent to all other services.

The department should ensure that the informed written consent of the juvenile is obtained by the program director for any services other than those described in subsections A, B., C., and D., above. Any such consent may be withdrawn at any time.

F. Limitations on the use of drugs.

Stimulant, tranquilizing, and psychotropic drugs should only be used when:

1. in addition to the consent of the juvenile, the consent of the parents or guardian of any juvenile under the age of sixteen is obtained;

2. such drugs are prescribed and administered by a licensed physician;

3. the program has a procedure, approved by the department, for recording all administrations of such drugs to juveniles, and for

monitoring the short- and long-term effects of such drugs by a licensed physician who is independent of the department (the record maintained by the program should include the type and quantity of the drug administered, together with the date and time of day; the physician's reason for the prescription; the physician's observations of the effects of the drug, together with the written observations of other personnel and those of the juvenile);

4. personnel who directly administer drugs to juveniles have received specialized training.

Under no circumstances should stimulant, tranquilizing, or psychotropic drugs be used for purposes of program management or control, or for purposes of experimentation and research. In emergency situations and when the consent of the juvenile cannot be obtained, drugs may be administered subject to the seventy-two-hour emergency treatment provisions contained in the *Noncriminal Misbehavior* volume.

G. Limitations on techniques that manipulate the environment of the juvenile.

The department should limit the use of techniques that manipulate the environment of the juvenile, or are of an intrusive nature. Such methods, which include behavior modification techniques, should only be used when:

1. in addition to the consent of the juvenile, the consent of the parents or guardian of any juvenile under the age of sixteen, or if parental consent is denied or unavailable, the approval of the court, is obtained;

2. none of the rights set forth in these standards is infringed;

3. there is no reduction in the safe, human, caring environment required by Standard 4.9.

Such techniques should be clearly explained to the juvenile. Under no circumstances should such techniques be used for purposes of program management or control.

H. Prohibition on the use of organic therapies.

Under no circumstances should the department permit the use of highly intrusive techniques such as psychosurgery or electrical stimulation of the brain.

Commentary

This standard recognizes that some adjudicated juveniles may require certain services over and above the safe, human, caring environment. The thrust of the standard is that such services should be, with some specified exceptions, of a voluntary nature. It should also be

noted that the standards do not assume that the needs of adjudicated juveniles are necessarily different from those of other juveniles. Increasingly, during the last ten years, the treatment model has become discredited. See in particular American Friends Service Committee, "Struggle for Justice" 34 (1971); Martinson, "What Works? Questions and Answers About Prison Reform" 35 *Public Interest* 22 (1974).

Despite the collapse of the treatment model with its assumptions of pathology and viable rehabilitation techniques, much of the organizational apparatus associated with it has remained intact. This is especially evident in the administrative and organizational arrangements of juvenile corrections. Many settings for adjudicated juveniles describe their approach in ways similar to this training school in Connecticut: "The philosophy and technique of Reality Therapy is the basic treatment approach employed at Long Lane School. The major vehicle for problem solving will be daily group meetings which are patterned after Guided Group Interaction and Positive Peer Culture models." State of Connecticut, Department of Children and Youth Services, "Long Lane School Treatment Program" 2 (1976). Although there are differences in terms of the theoretical assumptions and actual techniques, the basic approach to the juvenile as a person in need of treatment has continued to dominate the stated purposes for such settings.

A large number of studies have, however, drawn attention to the gap that often exists between the stated treatment purposes of the program and the actual daily routine. See in particular D. Street, R. Vinter, and C. Perrow, *Organization for Treatment* (1966), and A.E. Bottoms and F.H. McClintock, *Criminals Coming of Age: A Study of Institutional Adaptation in the Treatment of Adolescent Offenders* (1973). In *Nelson v. Heyne*, the court of appeals noted: "Experts testified at the trial, and the defendants admit, that the Quay system of behavior classification is not treatment. . . . The record shows very little individual treatment programmed, much less implemented at the School; and it is unclear exactly how much time is spent in individual counselling. We conclude that the district court could properly infer that the Quay system as used in the School failed to provide adequate rehabilitation treatment." *Nelson v. Heyne*, 491 F.2d 352 (7th Cir. 1974) slip. at 12. Even when it can be shown that the treatment model has been implemented, careful evaluative studies have failed to demonstrate that it has produced successful results. See, e.g., G. Kassebaum, D. Ward, and D. Wilner, *Prison Treatment and Parole Survival* (1971); D. Lipton, R. Martinson, and J. Wilks, *The Effectiveness of Correctional Treatment* (1975).

For purposes of conceptual clarity, the standard avoids using the words treatment or rehabilitation and instead refers to services that adjudicated juveniles may be required to receive. As a general rule, the standard holds that the provision of services to adjudicated juveniles should be voluntary on the part of the juvenile; the juvenile should be free to accept or reject such services at any time. Three exceptions to the rule of voluntary services appear in the standard:

1. services that all juveniles are legally obliged to accept;
2. services required to prevent clear harm to physical health;
3. services mandated by the court as a condition to a nonresidential disposition. This provision is consistent with the *Dispositions* volume, which provides: "The court may sentence the juvenile to a program of community academic or vocational education or counseling, requiring him or her to attend sessions designed to afford access to opportunities for normal growth and development." (Standard 3.2 D. 1.) That same standard does not permit imposition by the court of remedial programs that may have harmful effects without the informed consent of the juvenile. The rationale for permitting court mandated services as part of a nonresidential disposition is detailed in the *Dispositions* volume. The central purpose intended is to encourage courts to impose a nonresidential disposition in cases where they might otherwise decide that a residential program is required.

With the exception of these three instances, it is the standard's purpose to prohibit the coercive imposition of services upon adjudicated juveniles. This position is consistent with that of a number of authorities. See American Friends Service Committee, "Struggle for Justice" 98 (1971); N. Morris, *The Future of Imprisonment* 17 (1974); A. von Hirsh, *Doing Justice: The Choice of Punishments* 127 (1976); Group for the Advancement of Corrections, "Toward a New Corrections Policy: Two Declarations of Principles" 11 (1974); and the National Advisory Commission on Criminal Justice Standards and Goals, which held: "No offender should be required or coerced to participate in programs of rehabilitation or treatment nor should the failure or refusal to participate be used to penalize an inmate in any way in the institution." NACCJSG, "Corrections" 44 (1973). This standard insists upon the written and informed consent of the juvenile prior to receiving service such as individual casework, group counselling, psychotherapy, specialized educational courses, job skill development, and vocational training. It is recognized that there are difficulties in ensuring the voluntary nature of consent within the context of a corrections program and that this is especially difficult in relation to juveniles. There should therefore be an obligation on

the part of the department to develop procedures that protect the juvenile's ability to make a free choice in both public and private program settings. Such procedures should permit the juvenile to withdraw consent at any time. See generally Fox, "The Reform of Juvenile Justice: The Child's Right to Punishment," 25 *Juvenile Justice* 2 (1974).

The standard imposes limitations, over and above the requirement of the juvenile's consent, on the provision of certain services that may have harmful effects. In the case of stimulant, tranquilizing, and psychotropic drugs, parental consent is also required for juveniles under the age of sixteen, and the standard specifies the procedures that should be followed in the administration of such drugs to juveniles in corrections settings. In emergency situations, when the consent of the juvenile cannot be obtained, the provisions for seventy-two-hour emergency treatment contained in the *Noncriminal Misbehavior* volume should apply.

The standard reflects the considerable concern over the widespread use of such drugs as Ritalin and Dexedrine in corrections settings and in the schools. These and other drugs have been used, often in an indiscriminate manner, with so-called hyperactive children. See Stoufe and Steward, "Treating Problem Children with Stimulant Drugs," 289 *New England J. Med.* 407 (1973); Note, "Drug Control of School Children: The Child's Right to Choose," 46 *S. Cal. L. Rev.* 585 (1973); Grinspoona and Singer "Amphetamines in the Treatment of Hyperkinetic Children," 43 *Harv. Ed. Rev.* 515 (1973); P. Schrag and D. Divoky, *The Myth of the Hyperactive Child* (1975).

Psychotropic drugs are those of a mind-altering capacity, including substances such as Thorazine and Antectine. See generally Goodman and Gilman, eds., *The Pharmacological Basis of Therapeutics* (4th ed. 1970). The courts, on several occasions, have found psychotropic drugs to have been improperly used in juvenile corrections institutions. See *In re Owens* (No. 70J 21520, Cook County, Ill., Cir. Ct., County Dept. Juv. Div. July 9, 1971), where the court found that Thorazine was used on juveniles without careful medical review, without investigation of less intrusive means for controlling conduct, and possibly for purely punitive purposes. In *Pena et al. v. New York State Division of Youth* (70 Civ. 4868 1976), the court reviewed a number of abuses that had occurred at a state training school, and found: "Thorazine has been administered intramuscularly at Goshen as a punishment or as a behavior control device. Goshen has obtained standing orders, known as PRN orders, from physicians for such injections for every child upon his admission to the institution, and

such orders have been renewed as a matter of perfunctory routine. Thorazine has been administered by nurses at Goshen without appropriate follow up checks for possible side effects.” Slip. at 16. In *Morales v. Turman, Memorandum and Order*, 383 F. Supp. 53, 104 (E.D. Tex. 1974), the court found:

At the TYC institutions, Thorazine and other mind-affecting drugs are often prescribed for juveniles, including juveniles who have not been diagnosed as psychotic and juveniles who have abused drugs in the past. For example, in the fall of 1972, about half of the students at Crockett were taking regular dosages of a psychotropic drug. . . . One of the TYC psychiatrists occasionally leaves a standing order for the nurses that, with regard to specified students, intramuscular injections of psychotropic drugs may be given as needed. 383 F. Supp. at 122, 123.

See also *Nelson v. Heyne*, 355 F. Supp. 451 (N.D. Ind. 1972), *aff'd* 491 F.2d 353 (7th Cir. 1974). After reviewing the use of Antectine (which produces a sensation of near drowning) in an adult aversive treatment program in California medical facilities, Shapiro commented: “Such gross assaults upon personal autonomy should dispatch any notions that officialdom in general or the medical profession in particular can safely be left to their own devices in determining the nature and occasions for intervention in human mentation for purposes of achieving mind/behavior control.” Shapiro, “Legislating the Control of Behavior Control: Autonomy and the Coercive Use of Organic Therapies,” 47 *S. Cal. L. Rev.* 246 (1974).

The standard provides for limitations on programs that seek to manipulate the environment of the juvenile or are intrusive in other ways. In addition to parental consent or judicial approval when the juvenile is under sixteen, the department must ensure that the program does not result in any reduction in the safe, human, caring environment defined in Standard 4.9.

A number of techniques that manipulate the environment have been developed in relation to both adult and juvenile corrections programs. Token economy and other reward-punishment systems have also been used, and these are generally covered by the term behavior modification. Milan and McKee have defined behavior modification as “the systematic application of proven principles of conditioning and learning in the remediation of human problems.” M. Milan and J. McKee, “Behavior Modification: Principles and Applications in Corrections” in *Handbook of Criminology* 745 (D. Glaser ed. 1974). For a general review see Costello, “Behavior Modification and Corrections: Current Status and Future Potential”

(unpublished paper 1972). Costello concluded his review of program and research literature on a note of optimism: "It appears that behavior modification has much of importance and potency to offer corrections. Possibly this will be the beginning of a new story in corrections, one with a happy ending." *Id.* at 98. For descriptions of behavior modification techniques as applied in juvenile correction settings, see Karaki and Levinson, "A Token Economy in a Correctional Institution for Youthful Offenders," 13 *How. J. Penology & Crime Prevention* (1970); Phillips, "Achievement Place: Token Reinforcement Procedures in a Homestyle Rehabilitation Setting for 'Predelinquent' Boys," 1 *J. Applied Behavior Analysis* 213 (1968); Phillips, "Behavior Shaping for Delinquents," 7 *Psychology Today* 74 (1973); Cohen, "Educational Therapy: The Design of Learning Environments," 3 *Res. in Psychotherapy* 21 (1968); and generally M. Milan and J. McKee, "Behavior Modification: Principles and Applications in Corrections" in *Handbook of Criminology* 745 (D. Glaser ed. 1974).

The standards holds that the additional limitations on the use of such programs should apply even when the program emphasizes positive rather than negative reinforcements. The standard is consistent with the position of Wexler, who has countered the argument that positive reinforcements are in need of a lesser degree of regulation on two grounds:

A. Even assuming that offensive means are not used to shape behavior, it is still "... essential to insure that their behavior-shaping goals comport with satisfactory legal and ethical standards." Wexler, "Behavior Modification and Other Behavior Change Procedures: The Emerging Law and the Proposed Florida Guidelines," 11 *Crim. L. Bull.* 603 (1975).

B. "... Clinical endeavors in applying positive reinforcements to build desired behavior have often involved, in practice, alarming means. Some of the aversive items and events employed in institutional settings as reinforcers are: meals, beds, ground privileges, privacy, attendance at religious services, etc." *Id.* at 603. See also R. Schwitzebel, *Development and Legal Regulation of Coercive Behavior Modification Techniques With Offenders* (1971); Wexler, "Token and Taboo: Behavior Modification, Token Economies and the Law," 61 *Cal. L. Rev.* 81 (1973); Wexler, "Of Rights and Reinforcers," 11 *San Diego L. Rev.* 957 (1964).

This standard does not prohibit the use of positive reinforcement techniques, but departments should be mindful that such techniques can go far in the direction of highly intrusive and regimented behavior modification methods.

The standard prohibits techniques that irreversibly alter the personality, and certain other techniques of a highly intrusive nature. The standard endorses the view that these more highly intrusive techniques are so potentially harmful that the adjudicated juvenile should not be subject to them, even if his or her informed consent is obtained. See *Kaimowitz v. Department of Mental Health*, 73-19434-AW (Cir. Ct. of Wayne County, Mich. July 10, 1973), where a Michigan three-judge trial court held that as a matter of law, involuntarily confined patients cannot give legally adequate consent to experimental psychosurgery. The court held that "the three basic elements of informed consent—competency, knowledge and voluntariness—cannot be ascertained with a degree of reliability warranting resort to use of such an invasive procedure."

Such techniques include, but are not limited to:

A. Psychosurgery. Psychosurgery may be defined as the "surgical removal or destruction of brain tissue or the cutting of the brain tissue to disconnect one part of the brain from another with the *intent of altering behavior*. Usually it is performed in the absence of direct evidence of existing structural disease or damage in the brain." National Institute of Mental Health, "Psychosurgery: Perspective on a Current Problem" 1 (1973). Psychosurgery has retained some professional advocates. See, for example, V. Mark and F. Ervin, *Violence and the Brain* (1970). In a recent review, Peter Breggin wrote: "Psychosurgery has a long and awesome history as a means of social control, and it is being resurrected for this purpose within our institutions, and within society at large. It is no exaggeration to say that we are in danger of a growing use of psychosurgery to intimidate and control our population." "Psychosurgery for the Control of Violence: A Critical Review" in *Neural Bases of Violence and Agression* 370 (W.S. Fields and W.H. Sweet eds. 1975). Breggin comments further:

[M]ental patients are so vulnerable and so easy to victimize that even the most voluntary patient in the most open hospital has little control over what happens to him. Psychosurgery will be a particular menace to these individuals. But the situation of the captive child in a state institution or the incarcerated adult in a state prison is even more disastrous. Both are entirely under the control of authorities whose major intention is to manage them in the most economical and most efficient manner. Most of the first 50,000 victims of psychosurgery were incarcerated mental patients. The next 50,000 may be incarcerated children and state penitentiary prisoners. *Id.* at 370.

Psychosurgery has come under increasing challenge. See, for exam-

ple, LEAA Guideline, "Use of LEAA Funds for Psychosurgery and Medical Research" (June 18, 1974). This guideline stated that no LEAA funds should be used for projects involving any aspect of psychosurgery.

B. Electrical stimulation of the brain. This activity has been described by Delgado: "[M]ovements, sensations, emotions, desires, ideas, and a variety of psychological phenomena may be so induced, inhibited, or modified by electrical stimulation of specific areas of the brain." J. Delgado, *Physical Control of the Mind: Toward a Psychocivilized Society* 257 (1969). This activity, generally known as electric shock treatment, is covered in the above described LEAA funding restrictions. See LEAA Guideline, "Use of LEAA Funds for Psychosurgery and Medical Research" (June 18, 1974).

4.11 Procedures to determine programs and services.

A. Responsibility of the department.

The department should develop procedures for the selection of appropriate programs and services in accordance with the principle of informed consent and other limitations set forth in Standard 4.10.

B. Organization and location.

1. It should be the responsibility of the local office of the statewide corrections department to administer procedures for program selection. This may be undertaken by field office staff working in close collaboration with personnel at settings for preadjudicated juveniles and with court personnel.

2. Location of the juvenile during the program placement decision. In the case of nonresidential dispositions, the juvenile should continue to reside at home during the transitional period when the decision as to program placement is made. In the case of residential dispositions the department may:

a. make the program placement decision while the juvenile is within a setting administered by the agency responsible for interim status;

b. place the juvenile in the residential program nearest to his or her home during the decision-making period;

c. establish transitional residential centers (secure and non-secure in accordance with the court's disposition) that provide a setting for placement decisions. Residence in such centers should be brief in duration and should not exceed [one week].

C. Criteria for program placement.

The department should establish criteria for program placement decisions. Such criteria should include:

1. Location of the juvenile's home. In accordance with Standard 7.3, there should be a presumption in favor of placing the juvenile in the program nearest to his or her home. In the case of residential dispositions the wishes of the juvenile should be solicited and taken into account.

2. Age and sex of the juvenile. The placement decision should take into account the age and sex of the juvenile, and the age and sex distributions of each program and of any program criteria relating to age and sex agreed to by the department and the program director.

3. Needs of the juvenile for services. In accordance with the requirements of Standard 4.10, an assessment should be made of the juvenile's need for services and a determination made as to which program setting will best provide access to such services.

D. Information.

1. Preference for use of existing relevant information. There should be a preference for the use of existing relevant information rather than the generation of new information unless additional information is needed for the placement decision.

2. Limitations on testing. The department should ensure that psychological tests and other means of obtaining information relevant to the placement decision are undertaken only with the juvenile's informed consent when nonadjudicated juveniles would not be legally obligated to undergo such tests or to provide such information.

E. Decisions about placement and services as an on-going process.

The placement decision and the determination of appropriate services should be reviewed regularly by local staff and program personnel.

Commentary

This volume of standards was developed within a framework that places the determination of the dispositional category firmly with the court. See the *Juvenile Delinquency and Sanctions* and *Dispositions* volumes. Since responsibility for determining the category of disposition rests with the court, this standard is addressed to that area of discretion that resides with the department in the placement of the juvenile in a particular program within such a category, and in the provision of required services.

The standard has three central presumptions:

A. the juvenile should play a major role in the determination of services to be provided;

B. geographic links with the juvenile's home community are of paramount importance; and

C. since there is no viable typology within which juveniles can be placed and from which the appropriate program and services can be determined, an early, fixed determination of services is likely to be unrealistic and considerable flexibility of services should be maintained over the period of the disposition.

A number of authorities have recommended the full involvement of the offender in assessment procedures. The National Advisory Commission on Criminal Justice Standards and Goals commented: "Offenders should be involved in assessing their own problems and needs and in selecting programs to resolve them." "Corrections" 200 (1973). See also Group for the Advancement of Corrections: "The heavily prescriptive approach to the offender, arising from which the medical model is merely a recent consequence, should be replaced with arrangements which encourage the offender to make a genuine initiative as to the services to be provided to him." "Toward a New Corrections Policy: Two Declarations of Principles" 10 (1974).

There is growing agreement that reception/diagnostic centers and classification units are based upon outdated notions such as the individualized treatment model and the availability of treatment resources. See, e.g., NACCJSG, "Corrections" 213 (1973). Separate reception/diagnostic centers are reported to exist in thirteen states—R. Goldfarb and L. Singer, *After Conviction* 64 (1973)—and elsewhere classification units within institutions often exist. In some jurisdictions, very elaborate classification systems have been devised; for example, the use of a typology based upon levels of interpersonal maturity. See M. Warren, "Interpersonal Maturity Level Classification: Juvenile Diagnosis and Treatment of Low, Middle and High Maturity Delinquents" (1966); H. Quay, "Classification in the Treatment of Delinquency and Antisocial Behavior" in *Issues in the Classification of Children* 377 (N. Hobbs ed. 1975); M. Argyle, "A New Approach to the Classification of Delinquents with Implications for Treatment" (1961). These traditional methods of classification have come to be viewed as obsolete in view of:

A. the failure to develop viable typological schemes;

B. the lack of continuity between the diagnostic process and the program setting;

C. the impersonality of the assembly line procedures within many of the special facilities and units.

This standard recommends the discontinuation of such reception/diagnostic areas. For a similar recommendation, see National Advi-

sory Commission on Criminal Justice Standards and Goals, "Corrections" 213 (1973) and Wald and Schwartz, who comment:

One of the most dangerous tendencies in the juvenile justice field is over dependence on pseudo-scientific diagnosis and classification typologies. Isolated diagnostic reception centers abound where the same personnel grind out the same boilerplate descriptions of youths and their needs day after day. Phrases like 'better self-image' 'needs to stop manipulating authority figures,' 'needs to adjust to peers,' 'needs a new value system,' 'has poor impulse control,' 'needs a sheltered environment' appear with depressing frequency. They rarely point the way toward tangible help for the child. "Trying A Juvenile Right to Treatment Suit: Pointers and Pitfalls for Plaintiffs," 12 *Am. Crim. L. Rev.* 127 (1974).

The standard provides alternative settings for the program placement process. The underlying principle is that the decision should be made in a setting near the juvenile's home. In the case of nonresidential dispositions, the juvenile should continue to reside at home. With residential dispositions, the placement decision may be made while the juvenile is located in a detention facility (see the *Interim Status* volume) or else in the residential facility nearest to the youth's home. Additionally, when required, the department may establish transitional residential centers specifically for placement decision-making purposes.

This standard is based upon the presumption that the placement decision is not a highly complex matter requiring a great deal of investigation and information. It should not be a lengthy process, and placement in a transitional center should not exceed one week. The criteria for program placement are essentially basic facts concerning the juvenile such as age, sex, and place of residence. In conformance with Standard 4.10, a determination of needs over and above a safe, human, caring environment should be made and particular services provided. The choice of program setting is clearly important in terms of provision of such services. It is especially important to the local office staff with responsibilities for program placement that a full range of placement alternatives be available to them, and that they be fully informed of what services each program offers. For an example of a placement scheme that provides access to a very wide range of options, see State of Illinois, Department of Children and Family Services "Unified Delinquency Intervention Services" 20 (Proposal to LEAA 1974).

This standard addresses the information requirements for program placement decision makers, and it is not anticipated that much additional information will be required beyond that available at the time of disposition. The standard requires that the informed consent of the juvenile must be obtained prior to the administration of any test to which nonadjudicated juveniles would not be subject. As stated above, complete information on the placement alternatives is of prime importance at this stage. See J. Mercer, "Psychological Assessment and the Rights of Children" in *Issues in the Classification of Children* 130 (N. Hobbs ed. 1975).

The standard simplifies what is often regarded as a complex and time-consuming process and stresses the significance of juvenile involvement in the decision. Program placement should not be seen as an unalterable decision, and it should be recognized that needs for services can change. The delivery of required services should, when necessary, be arranged on a sequential and simultaneous basis. See R. Coates and A. Miller, "Evaluating Large Scale Social Service Systems in Changing Environments: The Case of Correctional Agencies" (n.d.). The department should be open to experimentation in its decision-making procedures and might, for example, develop a voucher system of service selection. See Greenberg, "A Voucher System for Correction," 19 *Crime & Delinq.* 212 (1973).

4.12 Mixing of adjudicated and nonadjudicated juveniles.

In terms of access to programs and services there should be no automatic prohibition on the mixing of adjudicated and nonadjudicated juveniles, in other than secure facilities.

Commentary

Many of the programs and services used by the department may be intended primarily for nonadjudicated juveniles. The purpose of this standard is to stress that A. the department should make use of a very wide range of settings, and B. it is a less stigmatizing process for the adjudicated juvenile to be in a setting not associated with delinquency control and juvenile justice. A group home, administered by a private agency, might contract with the department and with other public agencies. The department might place a juvenile in a residential setting that serves a high proportion of its residents on a parental fee-paying basis. The UDIS project in Illinois, which seeks to provide a wide array of alternative programs in lieu of training school placement, is able to purchase places within programs dealing with a variety of youth. See State of Illinois, Department of Children and

Family Services, "Unified Delinquency Intervention Services" 21-23 (Proposal to LEAA 1974). See also Center for Criminal Justice, Harvard Law School, "Preliminary Analysis Relating to the Generalizability of the Massachusetts Experience in Juvenile Corrections Reform," 9 (1975).

Two exceptions should be made with regard to the mixing of adjudicated and nonadjudicated juveniles: A. secure facilities (see Standard 7.11); and B. secure settings that house juveniles prior to adjudication (see the *Interim Status* volume, Standard 10.4). It is recognized that the mixing allowed by this standard could potentially give rise to abuse. At no time should such mixing be used as a punitive measure. Any placement of a nonadjudicated juvenile in a program in which more than 50 percent of the juveniles are adjudicated should be regarded with extreme skepticism; such placement should only occur with excellent justification.

4.13 The duration of services.

If a juvenile wishes to continue to receive services beyond the period of the disposition, the department should make these services available, if possible. Such services should, whenever possible, be funded from sources outside the juvenile justice system. When funded by the department, the duration of such voluntary aftercare should not exceed six months beyond the period of the disposition. Such services should not be provided unless the informed consent of the juvenile is obtained.

Commentary

These standards provide for dispositions of fixed duration, and do not allow for mandatory periods of parole or aftercare supervision. See the *Juvenile Delinquency and Sanctions* volume (Part V). The standards do permit the court to impose dispositions on a sequential basis, provided that the total duration of the disposition does not exceed the maximum period allowed for the offense in question. See the *Dispositions* volume, Standard 3.3 C. This standard allows the department to continue providing services for a period of up to six months after the period of the disposition has expired. Such an extension of services should occur only at the express request of the juvenile and with his or her informed consent; wherever possible, it should be funded by sources outside the juvenile justice process.

The purpose of this standard is to reduce the likelihood of abrupt termination of services beneficial to the juvenile. For example, a juvenile may wish to continue participation in a special educational

program. Similarly, a juvenile may prefer to remain in a foster home placement for an additional period of time.

The department's role should, as far as possible, be that of an advocate for rather than a provider of such extended services. The department should be cautious not to over-extend its reach by maintaining contact with juveniles no longer under its jurisdiction.

4.14 Work performed by adjudicated juveniles.

A. Limitations on coerced work.

Juveniles under correctional supervision should have a right not to participate in coerced work assignments unless:

1. the work is performed in the community as a part of a conditional disposition; or
2. the work is reasonably related to the juvenile's housekeeping or personal hygienic needs; or
3. the work is part of an approved vocationally oriented program for the juvenile.

B. Compensation.

1. When the juvenile is required to work as part of a program under subsection A. 3., and to the extent that such work benefits the facility or program, the juvenile should be compensated for such work. The state should not make any set-off claim for care, custody, or services against such compensation. Such compensation should be guided by the appropriate minimum wage statutes with consideration given to the age and capability of the juvenile.

2. Juveniles who volunteer for work assignments not connected with personal housekeeping or hygienic needs should also be fairly compensated for such work and not be subject to set-off claims against such compensation.

3. Juveniles injured while performing work as described in this standard should be entitled to workmen's compensation benefits.

C. Juvenile's access to earnings.

A special account, in the nature of a trust fund, should be established for the juvenile's earnings, and reasonable rules established for periodic withdrawal, expenditure, and release of the entire fund when correctional supervision is terminated.

Commentary

Juveniles under correctional supervision have not been convicted of a crime, and the thirteenth amendment to the United States Constitution prohibits involuntary servitude except "as punishment for crime." "They are, however, forced to do tedious and boring work

each day, such as mowing lawns, painting, and polishing floors. Often they are used as staff substitutes, which in some jurisdictions violates existing regulations. For this work they receive little, if any, compensation."¹⁰

There are several interrelated problems with enforced labor by juveniles, which first should be sorted out. Labor that benefits the community or the facility may also serve the needs of the juvenile. It may be part of a vocational training program, the opportunity to practice existing skills, or simply a relief from tedium. On the other hand, unless it is argued that all labor is beneficial to the laborer, there is some work that seems clearly designed only for institutional maintenance.¹¹

One rule for deciding whether work assignments have therapeutic or rehabilitative value is proposed by mental health attorney Bruce Ennis: "If a given type of labor is therapeutic we would expect to find patients in private facilities performing that type of labor. Conversely, labor which is not generally performed in private facilities should be presumed . . . to be cost-saving rather than therapeutic."¹²

Even if one were able to cleanly separate "therapeutic" from "nontherapeutic" labor, that does not end the problem. As the Second Circuit Court of Appeals pointed out, if nontherapeutic work is concededly involuntary, even compensation for the work will not necessarily satisfy the thirteenth amendment for, "the mere payment of a compensation unless the receipt of the compensation induces consent to the performance of the work, cannot serve to justify forced labor." *Jobson v. Henne*, 355 F.2d 129, 132 at n. 3. (2d Cir. 1966).

The approach taken in this standard is to create a general right not to participate in coerced work assignments unless the work is performed in the community as part of a conditional disposition and

¹⁰ Silbert and Sussman, "The Rights of Juveniles in Training Schools and the Experience of a Training School Ombudsman," 40 *Brooklyn L. Rev.* 605, 619-20 (1974). The case of "Philip" is reported here, a youth who worked in the storeroom six hours a day, five days a week, for which he received a candy bar. *Id.* at 626.

¹¹ See *Jobson v. Henne*, 355 F.2d 129 (2d Cir. 1966), for the proposition that cost-saving and therapeutic labor are not mutually exclusive.

¹² Ennis, "Civil Liberties and Mental Illness," 7 *Crim. L. Bull.* 101, 123 (1971). This formula is criticized by Wexler, "Token and Taboo: Behavior Modification, Token Economies, and the Law," 61 *Calif. L. Rev.* 81, 97 (1973) as too simplistic. He notes that the characteristics of patients in private and public mental institutions are quite distinguishable. Private patients typically have means, skills, and experience relatively short stays, whereas public patients are likely to have been unemployed for long periods, lack skills, be relatively old, and suffer stigmatization on release.

imposed under the restraints established in the *Dispositions* volume; the work is reasonably related to the juvenile's housekeeping or personal hygienic needs, as would be performed by the juvenile in his or her own home (making one's bed, keeping the living and sleeping area clean, etc.); or the work is part of an approved vocationally oriented program for the juvenile.

Only the latter category should create any problems. First, it should be noted that fair compensation is required for labor performed as part of the vocational program to the extent that such work benefits the facility or program. A few examples should be helpful. If the juvenile is taking a course in automobile mechanics and, as part of the course, works on engines kept in the shop and used only for educational purposes, then no claim for compensation arises. However, if the student is put to work on public vehicles and does maintenance and repairs, then a right to fair compensation would arise. Similar examples could be spelled out if the training involved plumbing, electrical work, home repair, or similar areas of work-study.

The important factor here is the existence of an approved vocationally-oriented program. This precludes the argument that mopping floors and repairing or painting a facility is bound to be a learning or rehabilitative experience. Undoubtedly, close cases will arise, creating a bona fide dispute. The grievance mechanism should be available for the resolution of such disputes.

Juveniles clearly should have the right to volunteer for work assignments not connected with a larger program of services. When such labor is performed, the juvenile is entitled to fair compensation for such work.

While it may be constitutional to assess the juvenile for "care and custody," it would not seem to be a wise policy to pursue. Certainly if the charges imposed amounted to the complete depletion of the earnings, the juvenile would have been deprived of the opportunity of learning the value of saving, of having a measure of financial independence on release, and of making financial judgments while under supervision.¹³

The "no setoff" position is recommended for the juvenile who receives wages as part of a larger, vocationally-oriented program as well.

Wages should be deposited in a special account for the juvenile and this account should be treated as a trust fund. Rules should be established concerning withdrawals, expenditures, and release of the entire fund when supervision is terminated.

¹³ For a related discussion see Friedman, "The Mentally Handicapped Citizen and Institutional Labor," 87 *Harv. L. Rev.* 567, 574-75 (1974).

4.15 Records and confidentiality.

A. The department should develop procedures to ensure the confidentiality of all information pertaining to juveniles within its jurisdiction.

B. The department should ensure that links with computer systems do not infringe on the preservation of confidentiality.

C. The juvenile's access to his or her own records should be governed by the *Juvenile Records and Information Systems* volume.

Commentary

This standard underlines the department's responsibility to ensure the confidentiality of juvenile records. Only brief comment is required. See generally the *Juvenile Records and Information Systems* volume; M. Levin and R. Sarri, "Juvenile Delinquency: A Comparative Analysis of Legal Codes in the United States" 58 (1974). Given the gaps in many statutory provisions, there is considerable need of administrative procedures to protect juvenile records. It has been observed: "Most record privacy problems do not arise out of accident or occasional error; they are built into the organizational record keeping process itself." C. Lister, M. Baker, and R. Milhous, "Record Keeping, Access, and Confidentiality" in *Issues in the Classification of Children* 545 (N. Hobbs ed. 1975). An important concern is the development of guidelines governing interagency dissemination of records on adjudicated juveniles. See, e.g., Florida Department of Health and Rehabilitative Services, Directive # 5.03 (1973).

The problem of preserving confidentiality has become more complex with the increased use of computerized data. One commentator has noted: "Immunity from being listed in a computerized information system seems largely limited to those who can pay for private services, or those designed as 'private.'" Polier, "Myths and Realities in the Search for Juvenile Justice," 44 *Harv. Ed. Rev.* 112 (1974). See generally Russell Sage Foundation, "Guidelines for the Collection, Maintenance, and Dissemination of Public Records" (1970); HEW, Secretary's Advisory Committee on Automated Personal Data Systems, "Records, Computers and the Rights of Citizens" (1973).

PART V: MODIFICATION OF DISPOSITIONS

5.1 Procedure for reduction of a disposition.

A. A petition for reduction of a disposition may be filed with the dispositional court anytime after the imposition of the order of dis-

position. The proper parties and the requisite grounds for such petition are set out in Part V of the *Dispositions* volume.

B. The court may reduce the disposition on the basis of the petition and any supportive documents that have been filed initially or subsequently at the request of the court.

C. If the court does not order the reduction of the disposition within [fifteen] days of the filing of the petition, then the petitioner should be entitled to a full dispositional hearing to be held within [thirty] days of the filing of the petition. Such hearings should be conducted in accordance with the relevant provisions of Part VI of the *Dispositional Procedures* volume.

D. Courts should develop rules which impose reasonable limits on the frequency with which such petitions may be filed by the juvenile or the juvenile's parents or guardian. Special provision should be made for additional filings when any subsequent petition raises a matter that was not previously brought to the attention of the court.

Commentary

In the *Dispositions* volume, Standard 5.1, a juvenile, a juvenile's parents, or the correctional authority with responsibility for the juvenile may petition the dispositional court for reduction either of the nature or duration of the disposition. This standard creates the procedure by which the reduction may be sought.

The request should be by written petition or motion filed with the dispositional court, along with any supporting documents bearing on the matter. It would be inappropriate to approach the judge except by written motion or petition or in open court in order to prevent unwarranted intrusions on the judge or the appearance of "dealing."¹⁴

The request may be made anytime after the imposition of the order of disposition and no further time limits are proposed.¹⁵ The rationale for allowing the request at any time is that the standards do not contemplate the creation or the continuation of parole boards having the power of discretionary release. Thus, it is the judge who has the effective authority to alter the disposition and to alter it without exclusive reference to the discovery of new matter.

The court should remain continuously available to the designated

¹⁴ ABA Standards for Criminal Justice, *Sentencing Alternatives and Procedures*, Commentary 279 (1968).

¹⁵ See, e.g., Fed. R. Crim. Pro. Rule 35, 18 U.S.C.A. Rule 35 (1976), which places a 120-day limit on reduction of a sentence, with the exception of an illegal sentence, which may be corrected at any time.

parties, subject to the development of rules designed to prevent repeated filings where nothing that is materially new is added or where insufficient time has elapsed for a change in conditions to have occurred.

The standards also contemplate that dispositions will be imposed with proximity to the juvenile's home as a vital guiding principle. On the other hand, it must be recognized that some juveniles will be at a distance from their home and the dispositional court.

Thus, this standard permits the judge to order the reduction of the disposition as requested on the petition and any supporting documents. If the judge does not order the reduction within [fifteen] days of the filing of the petition, the juvenile is entitled to a full dispositional hearing at which he or she has the right to be present.

Given the prospect of repeated petitions and the expense and inconvenience of repeated appearances, it is all the more important that courts develop reasonable rules governing the frequency of such petitions and that the parties be encouraged to make a strong case in the petition and supporting documents.

5.2 Procedure for willful noncompliance with order of disposition.

A. The department may petition the dispositional court charging the juvenile with a willful violation of the order of disposition.

B. Unless the petition is dismissed, the court should conduct a hearing on the petition in which the petitioner should have the burden of proving willful noncompliance by clear and convincing evidence. The juvenile and counsel for the juvenile should be given prior notice of the charges; should be present at all stages of such proceedings; and should have an opportunity to be heard, to be confronted with adverse witnesses, to cross-examine, and to offer evidence.

C. If the petition is sustained, the judge should make specific, written findings that are sufficient to provide effective appellate review.

D. Upon a finding of willful noncompliance, the court should determine the appropriate means to achieve compliance. If the court preliminarily determines that a disposition of the next most severe category may be imposed, the hearing should be conducted in accordance with Part VI of the *Dispositional Procedures* volume. If the court determines that only a warning or the modification of any previously imposed conditions may be imposed, the juvenile and his or her counsel should be present, have an opportunity to address the court, and be granted disclosure of any information in the court's possession bearing on disposition. No additional formality need be observed except as justice may require in appropriate cases.

Commentary

This standard provides the procedural mechanism for the enforcement of dispositional orders. In the *Dispositions* volume, Standard 5.4, the grounds for finding a violation and permissible response are set out.

Few states have legislative provision for hearings when a claim is made that a juvenile is in violation and an authoritative response is sought.¹⁶ In light of *Morrissey v. Brewer*, 408 U.S. 471 (1972) and *Gagnon v. Scarpelli*, 411 U.S. 718 (1973), there is little left to the argument that a conditional status is a matter of grace and subject to alteration at the will of an agency or court.

In *State ex rel. Bernal v. Hershman*, 54 Wis. 2d 626, 196 N.W.2d 721 (1972), the Wisconsin court specifically extended to juveniles the *Morrissey* revocation rights as well as the right to counsel.

A petition charging the willful violation of any part of the order of disposition may be filed with the dispositional court by any person having responsibility for a juvenile under correctional supervision. Law enforcement officers are not designated as petitioners here in the belief that violations should be filtered through the correctional authority. If the violation also amounts to a new act of delinquency, law enforcement authorities have the discretion to initiate a new proceeding or go through the violation procedure.

Unless the petition is dismissed, the court should conduct a full hearing on the alleged violation wherein the petitioner has the burden of proving willful noncompliance by clear and convincing evidence. Since a violation may be followed by relatively serious consequences, the preponderance of evidence standard is too light a burden to reflect the possible consequences, while proof beyond a reasonable doubt required at the adjudication, seems too onerous, given the existence of control over the juvenile. See *In re Maricopa County*, 111 Ariz. 135, 524 P.2d 1310 (1974), requiring only a "preponderance" in a juvenile probation revocation case.

The juvenile and his or her counsel have a right to be present during all stages of the proceedings. See *People ex rel. Silbert v. Cohen*, 29 N.Y.2d 12, 323 N.Y.S.2d 422, 271 N.E.2d 908 (1971). Any doubts about requiring counsel should be laid to rest on the basis of a presumption that juveniles cannot be assumed able to

¹⁶ See M. G. Paulson and C. H. Whitebread, *Juvenile Law and Procedure* 181 (1974).

adequately represent themselves in such matters, while it is conceivable that some adults may. In *Gagnon v. Scarpelli*, 411 U.S. 778, 790 (1973), the Court refused to require counsel in all cases of adult probation revocation but emphasized the significance of an individual's not being capable of speaking for him- or herself.

The juvenile and counsel are entitled to prior notice of the charges, an opportunity to be heard and to be confronted with adverse witnesses, the right to present witnesses and evidence, and the right to cross-examination. It should be noted that the right to confront witnesses provided in these standards is innovative. This is a minimal due process format and is strongly recommended for adoption.

If the petition is sustained, the judge should make specific, written findings adequate for effective appellate review.

This standard separates the issue of violation from the issue of disposition. Logically, proof of the violation is a precondition to a consideration of what is an appropriate response. Certainly the evidence for violation is distinguishable from the evidence relevant to disposition. In addition, the judge has a different set of concerns in fashioning the disposition, and the *Dispositions* volume, Standard 2.1 calls for the judge to operate within the framework of the "least restrictive alternative." See F. Cohen, "The Legal Challenge to Corrections" 34 (1969).

The dispositional-type hearing may be conducted immediately after the violation hearing. If the court preliminarily determines that a disposition in the next most severe category may be imposed, then it is recommended that a full dispositional hearing be conducted. See the *Dispositional Procedures* volume, Part VI.

If it appears that only a warning or modification of conditions previously imposed will suffice, then a less formal proceeding seems in order. See, e.g., *Argersinger v. Hamlin*, 407 U.S. 25 (1972), for a similar view on right to counsel when liberty is not at stake. The juvenile and his or her counsel should be present in court, have an opportunity to be heard, and be granted disclosure of any information in the court's possession bearing on disposition. The ABA Section of Family Law proposed that the standard be changed to require a separate dispositional hearing in all cases in which there has been a finding of willful noncompliance. The executive committee decided to retain the standard as drafted, reasoning that the court at the violation hearing should be familiar enough with the circumstances to make unnecessary a new hearing when only a warning or modification of conditions should be imposed.

PART VI: NONRESIDENTIAL PROGRAMS

6.1 General requirements.

A. Range of programs.

The department should make special efforts to develop and sustain a wide variety of nonresidential programs.

B. Purposes.

Such programs should be administered so as to enhance the juvenile's education, regular employment, or other activities necessary for normal growth and development.

C. The department should ensure that the cultural and geographic roots of the juvenile are respected.

Commentary

The department should develop a wide range of nonresidential programs. A paradox of juvenile corrections is the dearth of nonresidential programs, despite the savings they provide compared with residential programs. The National Assessment of Juvenile Corrections has reported that day treatment and other types of nonresidential programs (not considering probation supervision) are not frequently used, and do not exist at all in some states. R. Sarri and P. Isenstadt, "Remarks presented at the Hearings of the House of Representatives Select Committee on Crime" 16 (1973). If there are advantages to residence as the basis for the program, they are not easily discernible. Empey, for example, has observed that there is little reason to suppose that "forced residence in a community group home is superior to nonresidential programming." L. Empey, "Juvenile Justice Reform: Diversion, Due Process and Deinstitutionalization" in *Prisoners in America* 45 (L. Ohlin ed. 1973). Findings from an in-depth study of a residential program supported this conclusion:

Even though the Silverlake program was located in the community, reentry problems for many boys remained. This condition speaks to one of the perpetual limitations of *residential* programs, which, even though located in the community, still cannot really be an integral part of the boy's community life. It leaves both boys and staff with a very real gap when it comes to dealing with the neighborhoods, the families, the peers, and the schools with which the delinquents must eventually come to terms." L. Empey and S. Lubeck, *The Silverlake Experiment: Testing Delinquency Theory and Community Intervention* 173 (1971).

See also L. Empey and M. Erickson, *The Provo Experiment* 152 (1972).

Nonresidential programs, with the exception of probation supervision, are, in addition to being scarce, especially precarious. See, for example, the account of the discontinuance of Provo in Utah in L. Empey and M. Erickson, *The Provo Experiment* 155 (1972), and of Essexfields in New Jersey in F. Stephenson and R. Scarpitti, *The Rehabilitation of Delinquent Boys: Final Report* (1967). These and similar experiences underline the priority the department should attach to initiating and sustaining nonresidential programs. By such special efforts, a few states have been successful in developing a wide range of nonresidential programs. In June 1975, the Massachusetts Department of Youth Services (which does not have responsibility for probation supervision) had 550 juveniles in nonresidential programs (and a further 770 on a minimal form of aftercare supervision), compared with about 700 youths in residential programs. Center for Criminal Justice, Harvard Law School, "Preliminary Analysis Relating to the Generalizability of the Massachusetts Experience in Juvenile Corrections Reform" 9 (1975).

The standard emphasizes that nonresidential programs should enhance and not disrupt the juvenile's normal growth and development. Certain types of nonresidential programs have the potential of being highly intrusive and raise issues that are more often associated with the residential setting. One review of control and therapy techniques observed: "Therapeutically, electronic systems can allow the offender to remain in the community, where he must ultimately learn to live. Also, behavior modification techniques such as operant and classical conditioning procedures can be remotely applied." R. Schwitzebel, *Development and Legal Regulation of Coercive Behavior Modification Techniques with Offenders* 64 (1971). The standard emphasizes that the department's obligation to ensure the juvenile a safe, human, caring environment (see Standard 4.9) applies to nonresidential as well as to residential programs.

6.2 Community supervision.

A. Purpose and definition.

Community supervision refers to the supervision of an adjudicated juvenile by a designated field worker under varying levels of intensity and in compliance with any other conditions included in the court's dispositional order. Community supervision involves the field worker in the combination of surveillance and service provision or brokerage tasks.

B. Administration.

1. The department should normally perform community supervision functions through its local offices. Administrative arrange-

ments should be determined according to local considerations and may include the purchase of services by the department from the private sector.

2. Field offices should be established and located in the area served. In rural outlying areas, the department may use mobile offices.

C. Conditions.

The court may specify a limited number of conditions designed to carry out a community supervision order. The court should determine conditions that fit the circumstances of the juvenile as indicated by the offense for which he or she has been adjudicated. Such conditions should:

1. be least restrictive of the liberty or privacy of the juvenile, and should respect the privacy of others;

2. ensure a safe, human, caring environment as defined by these standards;

3. provide for the juvenile's education, regular employment, or other activities necessary for normal growth and development.

Conditions may also include:

1. curfew stipulations or prohibitions from specified places;

2. determination of the intensity of the level of supervision (the court may, for example, in conjunction with the department, establish high, medium, and low levels of community supervision);

3. the payment of any fines or restitution orders as ordered by the court.

D. Discretion by the department to modify conditions.

Unless the court specifies to the contrary, the department should have the discretion to remove any conditions included in the community supervision order or to reduce the level of intensity. The court and the juvenile should be provided with written notification of any such modification.

E. Supervision practice.

The department should ensure that:

1. a field worker is assigned to each juvenile who is subject to a community supervision order;

2. the field worker, at the earliest opportunity, explains to the juvenile and the juvenile's parents or guardian the purposes of the supervision, any conditions specified by the court, and the range of services available;

3. the workloads of field workers should be determined according to the level of supervision intensity, using the following ratios as guides: high level: one field worker to fifteen juveniles; medium level: one field worker to thirty-five juveniles; low level: one field worker to fifty juveniles.

Commentary

This standard uses the term community supervision rather than probation supervision in order to emphasize the administrative separation of intake and investigation from the supervision tasks of the traditional probation department. This is consistent with Standard 2.1, which sets forth the components of the statewide department, and with *The Juvenile Probation Function: Intake and Predisposition Investigative Services* volume. The standard allows both the direct provision of community supervision by the department and its purchase from the private sector.

For an historical account of probation supervision in the United States, see R. Goldfarb and L. Singer, *After Conviction* 206-215 (1973); Grinnell, "The Common Law History of Probation," 32 *J. Crim. L. & Crim.* 15 (1941); Meyer, "A Half-Century of Probation and Parole," 42 *J. Crim. L.C. & P.S.* 707 (1952); concerning the development of juvenile probation, alongside juvenile courts, see Schultz, "The Cycle of Juvenile Court History," 19 *Crime & Delinq.* 457 (1973); see also National Council on Crime and Delinquency, "Correction in the United States" in President's Crime Commission, *Task Force Report: Corrections* 130 (1967).

Probation is the most widely used disposition for juveniles. A 1966 survey found that 223,800 juveniles were under probation supervision. The same survey found that although every state had statutory provision for juvenile probation, in sixteen states supervision was not uniformly available in all counties, and in 165 counties in four states no juvenile probation services were available. National Council on Crime and Delinquency, "Correction in the United States" in President's Crime Commission, *Task Force Report: Corrections* 134 (1967). Existing statutory provisions usually provide for an open-ended period of probation supervision, often terminating at age twenty-one, although statutes increasingly require juvenile courts to set maximum time limits on probation. M. Levin and R. Sarri, "Juvenile Delinquency: A Comparative Analysis of Legal Codes" 53 (1974). This standard assumes a fixed, not indeterminate, period of supervision, consistent with the *Juvenile Delinquency and Sanctions* volume, Standard 6.2 which permits the court to determine the length of the supervision order within a range of six to thirty-six months.

Community supervision involves the field worker in a variety of tasks that vary from one juvenile to another. The tasks include surveillance (contact with the juvenile to satisfy the field worker that the juvenile is avoiding criminal behavior), counselling (discussion and advice that might be provided in an individual or group setting),

and the provision of required services (with the field worker often acting in a brokerage role rather than providing such services directly). See National Council on Crime and Delinquency, "Correction in the United States" in President's Crime Commission, *Task Force Report: Corrections* 132 (1967); R. Goldfarb and L. Singer, *After Conviction* 250 (1973), P. Keve, *Imaginative Programming in Probation and Parole* (1967); Newman, "Concepts of Treatment in Probation and Parole Supervision," 25 *Fed. Prob.* 11 (1961); NACCJSG, "Corrections" 317 (1973); Ohlin, Piven, and Pappenfort, "Major Dilemmas of the Social Worker in Probation and Parole," 2 *N.P.P.A.J.* 211 (1956). For an examination of perceptions of worker and supervisor on the task of supervision see E. Studt, "Surveillance and Service in Parole" (1972).

These standards place the administration of community supervision within the jurisdiction of the statewide department. (See Standard 2.1.) By endorsing the local administration of community supervision, the standard recognizes that varying local circumstances need to be considered, including whether appropriate programs are to be purchased from the private sector. The rationale for this administrative model is set forth in Standard 3.1. For a general review of probation administrative issues, see J. Wallace, "Probation Administration" in *Handbook of Criminology* 949 (D. Glaser ed. 1974). The standard holds that the immediate administration of community supervision should be undertaken in field offices located in the area or neighborhood served. Juvenile probation administration has often been located in the court building. This may be appropriate for the intake and investigation work of probation officers. See *The Juvenile Probation Function: Intake and Predisposition Investigative Services* volume. Supervision, however, should be located in field offices administered by the department or the private agency with which the department has contracted. In rural areas, the department should provide mobile units to reduce the amount of travel required of juveniles. For a similar recommendation see NACCJSG, "Corrections" 333 (1973).

The standard places responsibility for the determination of any conditions of the community supervision order on the court. This is consistent with the *Dispositions* volume, Standard 3.2 C. 1. The standard places limitations on the nature of conditions that may be imposed, with the underlying principle that a condition should not infringe on the safe, human, caring environment as set forth in Standard 4.9.

The principle of not duly disrupting the life of the individual on probation supervision has been endorsed elsewhere. See ABA Standards for Criminal Justice, *Probation* 44 (1970), which states: "Con-

ditions imposed by the court should be designed to assist the probationer in leading a law-abiding life. They should be reasonably related to his rehabilitation and not unduly restrictive of his liberty or incompatible with his freedom or religion." See also American Law Institute, "Model Legal Code" art. 301 (1962); *Porth v. United States*, 10 Crim. L. Rptr. 2244 (10th Cir., Dec. 13, 1971); *People v. Dominquez*, 64 Cal. Rptr. 290 (2d Cir. 1967). See generally R. Goldfarb and L. Singer, *After Conviction* 234 (1973).

This standard sets forth some conditions that could be included in a community supervision order. It should be noted that these conditions include the determination of the level of intensity of the community supervision. The standard suggests that three levels of community supervision be established with the court making the determination as to which level of supervision determines the amount of contact between field worker and juvenile. In this three-level scheme the high level condition might involve one contact each day; the medium level one contact each week; and the low level one contact each month. The department should establish community supervision programs of varying intensities to meet the court's requirements. As a general rule, the collection of fines and restitution payments should be the responsibility of the court rather than the department, but as a condition to a community supervision order the payment of fines and restitution may be made a condition by the court and thereby involve the department in the administration of these orders. On the use of fines and restitution orders, see the *Dispositions* volume, Standard 3.2 B. 1. and 2.

It should be noted that the standard does not allow for a period of residence in any facility as a condition of a community supervision order. This is consistent with the position of the President's Crime Commission, *Task Force Report: Corrections* 30 (1967). See also Mattick and Aikman, "The Cloacal Region of American Correction," 381 *Annals* 109 (1969). Such a condition is supported by some authorities—see, e.g., ABA Standards for Criminal Justice, *Probation* 45 (1970)—but it would not be consistent with the policy of these standards, which make a sharp distinction between residential and nonresidential dispositions. See the *Juvenile Delinquency and Sanctions* volume, Part VII. On probation conditions generally, see Best and Burzon, "Conditions of Probation: An Analysis," 51 *Geo. L.J.* 809 (1963); for a study that found an increase in the revocation rate as more probation conditions were imposed, see Davis, "A Study of Adult Probation Violation Rates by Means of the Cohort Approach," 55 *J. Crim. L.C. & P.S.* 70 (1964); see generally Hink "The Application of Constitutional Standards of Protection to Probation," 29 *U. Chi. L. Rev.* 483 (1962).

The department should ensure that the field worker designated to supervise the juvenile explains the purposes and any conditions of the order to the juvenile and the parents or guardian. Such explanation should be given in the language primarily spoken by the juvenile and his or her parents, and should be in addition to that provided by the court at the time of disposition. See the *Dispositional Procedures* volume, Standard 7.1 A. 2. Although the standard holds that the court and not the department should determine the nature of any conditions, the court may authorize the department to terminate any condition or reduce the level of intensity. If the department does authorize a modification, the court and juvenile should be provided with written notice of such modification. (See also Part V.)

The standard does not propose a specific caseload size as appropriate to all situations. A more useful approach is to establish the field worker's caseload according to the level of supervision intensity determined by the court. The notion of the ideal maximum caseload has been challenged in recent years. For much of this century, the caseload of fifty was taken to be the appropriate size. Actual caseloads, however, were generally much larger. In a survey conducted in 1966, it was found that the medium juvenile probation caseload was between seventy-one and eighty cases, and that 10.6 percent of juveniles on probation supervision were in caseloads of over 100. President's Crime Commission, *Task Force Report: Corrections* 140 (1967). The Commission commented:

It is obviously impossible to set forth precise standards by which the proper size of a probation caseload may be determined under all sorts of conditions. Differences will exist from time to time and from jurisdiction to jurisdiction in types of cases carried, levels of officers' skills, degrees to which supplemental services are available in the community, size of the geographic area served, and financial ability of the community to invest in good service. *Id.* at 139.

Accordingly, the President's Crime Commission set a staffing ratio of one to thirty-five rather than recommending a specific caseload size. President's Crime Commission, *The Challenge of Crime in a Free Society* 169 (1967). The concept of caseload size has been challenged by several other authorities. See R. Carter and L. Wilkins, "Caseloads: Some Conceptual Models" in *Probation and Parole* 290 (Carter and Wilkins eds. 1970); National Advisory Commission on Criminal Justice Standards and Goals, "Corrections" 319 (1973). Research findings have provided support for these challenges to the caseload concept. Studies of adult probation have failed to find an association between number of contacts and success or failure on

probation. See J. Robison, L. Wilkins, R. Carter, and Wahl, "The San Francisco Project: Final Report" (1969); see also J. Havel, "Special Intensive Parole Unit, Phase IV: The Parole Outcome Study" (1965). Some studies have, however, found a relationship with respect to juvenile probation. See Adams, "Some Findings from Correctional Caseload Research," 31 *Fed. Prob.* 48 (1967); D. Lipton, R. Martinson, and J. Wilks, *The Effectiveness of Correctional Treatment: A Survey of Treatment Evaluation Studies* 55 (1975), who reported: "Intensive probation supervision (15 juvenile caseload) is associated with lower recidivism rates for males and females under 18." The workload concept has been used by a number of authorities concerned with probation practice, and has usually, in addition to supervision, allowed for time spent in investigation and intake duties. See Newman, "Workload Determination Project" (Los Angeles County Probation Department 1966); American Correctional Association, "Manual of Correctional Standards" 109 (1966).

This standard holds that the workload approach can be usefully refined to take into account the required intensity of the supervision. The standard provides a formula for determining the field worker's caseload. These ratios are related to the number of expected contacts between juvenile and field worker referred to above. The recommended ratios should be seen as guides rather than absolutes, so that other considerations can be taken into account, such as the extent to which the field worker operates in a brokerage role, facilitating the provision of required services rather than personally providing them. As stated above, the court may permit the department to reduce but not increase the level of supervision intensity. Such discretion is likely to be used in the case of many juveniles after an initial period of supervision. See R. Goldfarb and L. Singer, *After Conviction* 248 (1973).

6.3 Day custody and community service programs.

A. Day custody programs.

The court may order the juvenile to a program of day custody, requiring him or her to be present at a specified place for all or part of every day or for certain days. The court may attach conditions to the order, subject to the limitations on community supervision orders set forth in Standard 6.2 C.

B. Community service programs.

1. Nature of the order. The court may order the juvenile to participate in a community service program. The court should specify the number of work hours required and the nature of the work to be undertaken. Work assignments should be for the general welfare of the community, within the ability of the juvenile

and, where possible, related to the nature of the juvenile's offense. They should not expose the juvenile to public ridicule. The court should specify whether any earnings should be withheld from the juvenile. Any juvenile subject to a community service order should be covered by workmen's compensation benefits.

2. Administration. It should be the responsibility of the local office to identify suitable work locations. Community service programs may be administered by the nearest field office with responsibility for community supervision.

Commentary

The department should develop a range of nonresidential programs which provide more supervision than is available through community supervision programs. The primary purpose of such programs is to provide the courts with alternatives to residential placements. The *Dispositions* volume, Standard 3.2 C. 2., sets forth a specific disposition of day custody as distinct from the conventional practice of requiring attendance at a day center as a condition of probation supervision. A variety of such nonresidential programs have been developed, but this has generally remained a neglected area of juvenile corrections. Day programs may include a number of activities, such as alternative schools, special work assignments, and the offer of various services. The juvenile may be required to attend the program for all or specified parts of the day. While attendance is required, the provision of any services is governed by Standard 4.10.

For descriptions of day programs, see L. Empey and M. Erickson, *The Provo Experiment* (1972); Brodersen, "San Joaquin County: A Day Care Treatment Center," 24 *Calif. Youth Authority Q.* 20 (1972); Post, Hicks, and Montfort, "Day-Care Program for Delinquents: A New Treatment Approach," 14 *Crime & Delinq.* 353 (1968). E. Harlow, "Community Based Correctional Programs: Models and Practices" (1971); Harlow, "Intensive Intervention: An Alternative to Institutionalization," 2 *Crime & Delinq. Lit.* 272 (1970); L. Empey, "Alternatives to Incarceration" (1967); Klapmuts, "Community Alternatives to Prison," 5 *Crime & Delinq. Lit.* 305 (1973); C. McEwen, "Subculture in Community-Based Correctional Programs for Youth" 23 (1975); Stephenson and Scarpitti, "Essexfields: A Non-Residential Experiment in a Group Centered Rehabilitation of Delinquents," 31 *Am. J. Correction* 12 (1969); Henderson, "Day Care for Juvenile Delinquents: An Alternative to Out-of-Home Placements," 53 *Judicature* 19 (1969).

A particularly intensive form of day program is the Community

Advancement Program in Worcester, Massachusetts. The contract between CAP, a private agency, and the Department of Youth Services guarantees that each youth who is "tracked" will have at least five hours of supervision a day, seven days a week, and that his or her counsellor or other staff persons will be on call twenty-four hours a day for crisis intervention. The cost to the department in 1975 was \$97 a week per juvenile. The director of the program is quoted as saying: "We track kids. We shadow kids. We're on their backs, we're in their hair. We know where they are and what they're doing all the time. A counsellor never has more than two or three tracking kids." Serrill, "The Community Advancement Program," 11 *Corrections Magazine* 13 (1975).

Community service programs have not been widely used in the United States and have generally developed in an informal manner following the initiative of juvenile courts or probation departments. Two such examples are the Community Youth Responsibility Program in East Palo Alto, California—see K. Geiser, "Youth Services Field Study: Area 2" (Interim Report prepared for the Juvenile Justice Standards Project, 1974)—and the Alameda County Volunteer Bureau program. See Sullivan, "Convicted Offenders Become Community Helpers," 56 *Judicature* 33 (1973).

Community service orders have been a dispositional option in certain parts of England and Wales since 1972. Following a report by the Home Secretary's Advisory Council on the Penal System entitled "Non-Custodial and Semi-Custodial Penalties" (1970), provision for sentences of community service were included in the Criminal Justice Act of 1972. Under this legislation, which initially covered six pilot jurisdictions, offenders, aged seventeen and over could be required by the court to work on an unpaid task for a period of between forty and 240 hours. Services performed have included such tasks as building, renovating gardens, hospital work, and assisting the handicapped. There are three requirements: 1. the offender must give his or her consent to the order; 2. suitable work arrangements must exist; 3. the probation officer should show that the order will be useful to the offender and community.

The community service orders are administered by probation departments, which have established a new position of community service organizer. Much of the community service work is undertaken on weekends. Since April 1975, the scheme has been extended to all probation departments. The attitude of probation officers toward community service has been positive. Home Office, Research Unit, "Community Service Orders: A Critical Assessment" (1974). See also Home Office, Research Unit, "Community Service Orders" (1975); Bergman, "Community Service in England," 39 *Fed. Prob.* 43

(1975); Newton "Alternatives to Imprisonment: Day Fine, Community Service Orders and Restitution," 8 *Crime & Delinq. Lit.* 117 (1976). Prins, "Whither Community Service?" 16 *B.J. Crim.* 73 (1975).

There is much more that might be done in the United States in developing community service orders, although some caution has been sounded. The Committee for the Study of Incarceration commented: "The offender is to perform work that benefits the public; even if the offender is not thereby reformed, the thinking runs, at least the community gains from the work done. Once criminal sanctions are given a semblance of beneficence, they have a tendency to escalate it, if in punishing, one is (supposedly) doing good, why not do more?" A. von Hirsch, *Doing Justice: The Choice of Punishments* 121 (1976).

PART VII: RESIDENTIAL PROGRAMS

7.1 Secure and nonsecure facilities: definition and certification.

A secure facility is one that is used exclusively for juveniles who have been adjudicated delinquent and is characterized by exclusive staff control over the rights of its residents to enter or leave the premises on a twenty-four-hour basis.

A nonsecure facility refers to such residential programs as foster homes, group homes, and half-way houses, characterized by a small number of residents who have the freedom to enter or leave the premises under staff supervision.

The department should certify each residential program as secure or nonsecure and such certification, unless overturned in a court proceeding brought for that purpose, should determine any distinction in rights and responsibilities made in these standards.

Commentary

The characterization of facilities as secure or nonsecure is based on the relative freedom of movement of the residents and its size and atmosphere. Traditionally, one would focus on the presence or absence of walls, fencing, towers, gate control, and the like. However, these items, while surely symbolic of security, are not determinative factors. For example, a high degree of security can be achieved without walls but with the use of surveillance personnel and equipment along with rules restricting movement.

Thus, it seems more appropriate to look primarily at the conditions of ingress and egress. Recognizing that the definition provided

here is too general to decide close cases with any certainty, the department is given the responsibility of certifying residential programs as secure or nonsecure for the purpose of distinctions in rights, responsibilities, and programs made in these standards.

Many important issues turn on the characterization of a facility as secure or nonsecure. They include the initial dispositional decision, the department's placement decision, programmatic concerns, and transfer.

7.2 Limitations on the size of residential facilities: maximum size of [twelve to twenty].

No residential facility should house more than [twelve to twenty] adjudicated juveniles. The department should discontinue the use of any residential setting that contains more than twenty adjudicated juveniles.

Commentary

By recommending that the maximum size of residential programs be limited to twelve to twenty juveniles, the standard's purpose is to bring to a conclusion the era of the large training school.

In his history of institutionalization in America, David Rothman wrote: "The history of the asylum is not without a relevance that may be more liberating than stifling for us. We still live with many of these institutions, accepting their presence as inevitable. Despite a personal revulsion, we think of them as always having been with us, and therefore always to be with us. We tend to forget that they were the invention of one generation to serve very special needs and not the only possible reaction to social problems." *The Discovery of the Asylum* 295 (1971). Since the early 1970s, the possibility of closing large juvenile institutions has received growing support. In 1973 the National Advisory Commission on Criminal Justice Standards and Goals called for the phasing out of all major institutions for juveniles within five years. "Corrections" 360 (1973). On the varied patterns that exist across the nation, in terms of reliance on traditional institutions and the move toward community-based alternatives, see R. Vinter, G. Downs, and J. Hall, "Juvenile Corrections in the States: Residential Programs and Deinstitutionalization" (1975). Considerable attention has been given to the abandonment of state and county training schools in Massachusetts between 1971 and 1973. Y. Bakal ed., *Closing Correctional Institutions* (1973); A. Rutherford, "The Dissolution of the Training Schools in Massachusetts" (1974); Ohlin, Coates, and Miller, "Radical Correctional Reform: A Case Study of the Massachusetts Youth Correctional System," 44 *Harv.*

Ed. Rev. 74 (1974); Serrill, "Juvenile Corrections in Massachusetts," 12 *Corrections Magazine* 3 (1975). For a comparison of the Massachusetts experience and the situation elsewhere in the United States, see Center for Criminal Justice, Harvard Law School, "Preliminary Analysis Relating to the Generalizability of the Massachusetts Experience in Juvenile Corrections Reform" (1975). The standard should be seen in the context of a much lower reliance by the courts on the use of residential settings. See the *Dispositions* volume, Standards 2.1 and 3.3.

It is virtually impossible to prove that a corrections institution of one size or another will lead to a more favorable post-disposition outcome on the part of the youths placed there. The impact of institution placement on delinquents is poorly researched generally and data relating to size of institutions are almost totally lacking. To illustrate this, one large state juvenile corrections agency concerned with long-range planning for programs for delinquents attempted to identify all available information and research concerning size of institutions. The search was thorough and led to three kinds of information bases:

A. computerized information in retrieval systems searches, including those of education (ERIC, LANCERS), health (MEDEX), mental health and retardation, and criminal justice;

B. library searches in the fields of health, education, criminal justice, architecture, mental retardation, recreation, and the aged;

C. anecdotal experiential opinion from workers in all of the above fields.

The study covered all of the above-related fields, assuming that residential institution size is a concern in each of these areas and there is a shared need for the adaptive variability of institutions. This search found little upon which a standard for size of institutions for the care of any of these subject groups could be formulated beyond generalizations favoring "smallness" and rejecting "bigness." Furthermore, no direct cost-benefit data were located; no data spoke to size for economy or to size for opportunity versus size for effectiveness trade-off.

Hard data, then, relative to minimal size for adequate training or weighing varieties of learning against maximum size while allowing an institution to maintain humaneness is not available. Standards regarding optimum size of institutions must be arrived at by using other measures that support a reasonable figure rather than one established by any proven formula.

The standard of twelve to twenty adopted by this commission is

obviously low and far below current practice in most of the fifty states, where institutions are commonly found that serve 200, 400, or even 800 youths. Moreover, the standard represents a figure that will not be achieved immediately. Quite possibly, interim goals such as an intermediate goal of 100-bed institutions need to be set to encourage action toward eliminating the giant institutions that exist in many states today, while working toward the smaller-size institutions that this commission believes are necessary if the secure institutions in which delinquents are placed are to be in accord with other standards adopted by the commission.

In arriving at this position and the standard of twelve to twenty, some of the measures used in the absence of hard data are those that follow.

The first measure is concerned with the purpose the institution is to serve. Purpose will dictate the type and magnitude of services provided. The primary question then becomes one not of how large or how small an institution should be, but what services and criteria are necessary to implement the goals and policies. In the context of these standards, this provides a most concrete guideline for determining size.

The commission's commitment to using generic community services, the values and purposes laid out in Part I of these standards, the *Dispositions* volume, Standards 2.1 and 3.3, and the general approach of this volume have important implications for both architectural and administrative policy. Reference should also be made to the *Architecture of Facilities* volume, Standards 1.1 and 2.1, dealing with the normalization of institutional settings; 2.2 concerning the institution in a community setting; 1.9 soft architecture; and 3.3 adaptive architecture. See also Standards 4.5 and 4.9 *supra*.

Research studies have underlined the critical importance of the size of the program in terms of the juvenile's experience. The National Assessment of Juvenile Corrections reports that preliminary findings show: "Large facilities of all types, wherever they are located, tend to have a higher proportion of youth who respond negatively about the program and staff." R. Sarri, R. Vinter, and R. Kish, "Juvenile Injustice—Failure of a Nation" 21 (1974). A study of community-based programs found that the most positive responses were elicited from youth in small programs (size around ten) as compared with large programs (size over twenty). This study noted three central differences between the small and large programs:

A. the task of keeping track of youth and maintaining some control over their relationships was far less demanding in small programs;

B. in the large programs, the facilities to accommodate them were imposing and "unhomelike," whereas the small programs were housed in residences very much like those housing families in the same residence;

C. in the small programs the youths experienced a much greater ease in feeling involved in the operation of the program. C. McEwen, "Subcultures in Community-Based Correctional Programs for Youth" 11 (1975).

In the interest of normalization, it is desirable to provide a network of small facilities consistent with this standard within a reasonable distance of the youths' homes in order to foster and maintain family relationships. In further interest of normalization, buildings are to be used whose appearance is similar to residential buildings in the surrounding areas. Such settings promote the use of community resources to the greatest possible extent. Small size permits institution environments that do not project an assumption of deviant behavior by its residents, while still offering staff a wide range of options to ensure the degree of security required. Institutions with populations much in excess of twenty attempting to fulfill these purposes will develop negative visibility and fail to become part of the community.

Management factors must also receive consideration in determining facility size. Here is one area of juvenile corrections that does have a research literature—living unit size is unanimously supportive of a figure ranging from eighteen to twenty-five as the size beyond which the simple logistics of moving people about defeats the intent of the program to normalize rather than regiment. For literature supporting standards of approximately twenty for living unit size, see President's Crime Commission, "Special Committee on Correctional Standards" in *Task Force Report: Corrections* 212 (1967); American Correctional Association, "Manual of Correctional Standards" 588 (1966); Child Welfare League of America, "Standards for Services for Child Welfare Institutions" 34 (1964). For research on living unit size see D. Knight, "Impact of Living Unit Size in Youth Training Schools" (1971); C. Jesness, "The Fricot Ranch Study" (1965).

Scheduling, controlling, feeding, moving, supplying, equipping, and meeting timetables for large groups imposes depersonalization on staff and resident alike, and negatively influences the relationships of staff to resident, resident to staff, staff to staff, and resident to resident. With all citations speaking generally to wieldy size and human scale, see: Citizens Committee for New York, "The New York Training School System; Findings and Recommendations" (1969); H. Jones, *Children In Trouble* (1970); Statements of Train-

ing School Directors Before Sub-Committee to Investigate Juvenile Delinquency of the Committee of the Judiciary, U.S. Senate, 92nd Congress, First Session, 118, 432 (May 1971); *Morales v. Turman*, 383 F. Supp. (E.D. Tex. 1974); *Nelson v. Heyne*, 355 F. Supp. 451 (N.D. Ind. 1972); *Inmates of Boys' Training School v. Affleck*, 346 F. Supp. 1354 (D.R.I. 1972).

The analogy to supportive data from research into living unit size cannot be carried on beyond this point since size problems in an institution are only partially offset by small living units. The depersonalization and regimentation stemming from large living units is certainly transferable to institution size, however, and large institutions regenerate the problem of size in movement about the institution and in the provision of services to the residents.

The second such measure might be termed the "informed common sense" approach. This approach relies heavily upon reason tempered by experience and rests primarily on the collective opinion of many formal organizations and individuals who have experience or informed concern regarding the issue. Much information is contained in their various standards projects carried out over the past fifteen years. The range is great and it is highly likely that some of these groups would no longer stand behind the standard for institutions' size they developed some fifteen years ago. Representatives of these groups and their recommended capacity figures are:

The Massachusetts Department of Youth Services has set a maximum of 12 for secure facilities. Massachusetts Department of Youth Services, "Task Force on Secure Facilities" (1976).

"The Report of the Governor's Panel on Juvenile Violence" (1976) recommends a maximum of 25 for secure facilities.

"Standards for Juvenile Homes, Ranches, and Camps" (1972), published by the California Youth Authority, recommends 100.

President's Crime Commission, "Special Committee on Correctional Standards," *Task Force Report: Corrections* (1967) recommends 150.

"The Manual of Correctional Standards" (1966) of the American Correctional Association recommends a maximum of 100.

The Child Welfare League of America, in "Standards for Services for Child Welfare Institutions" (1964), recommends a maximum of 50.

The National Conference of Superintendents of Training Schools and Reformatories, in "Institutional Rehabilitation of Delinquent Youth" (1962) recommends 150.

"Institutions Serving Delinquent Youths" (1962), HEW, Children's Bureau, recommends a maximum of 150.

“Standards and Guides for the Detention of Children and Youth,” published by the National Council on Crime and Delinquency, recommends a maximum of 100.

Many of these standards, as may be seen from the dates, were developed in the early and mid sixties when the trend away from institutions ranging from populations of 300 to 600 was just getting underway and when the value of the immersion of the institution and after-care program in the community was just being recognized.

National surveys have found that the actual sizes of juvenile institutions have usually remained in excess of the standards set by the authorities cited above. The survey undertaken for the President's Crime Commission reported: “Despite the advantage cited for the smaller institutions the trend has been in the other direction. The great bulk of the juvenile population is now housed in facilities considerably larger than the prescribed standard. The principal concession to the standard is an occasional attempt to break down large institutions into several smaller administrative units in the hope that each will take on the climate of a small separate entity.” President's Crime Commission, *Task Force Report: Corrections* 147 (1967). A survey undertaken by LEAA in 1971 found that 144 of the nation's 192 state and county training schools were over 100 in capacity and that 86 of these institutions had capacities exceeding 200. Of 114 ranches, 12 had capacities exceeding 100. LEAA, “Children in Custody” (1974). A recent survey of community-based programs found a range in size from 4 to 32, with an average size of 11. R. Vinter, G. Downs, and J. Hall, “Juvenile Corrections in the States: Residential Programs and Deinstitutionalization” 31 (1975).

The third measure would be the application of humanitarian consideration. This means that prior to settling upon one maximum or another, the standard setters would first establish minimum conditions that must exist in the institution, all other considerations aside, to guarantee the “safe, human and caring environment” called for by Standard 4.9.

Examples might be safe environment; ample, attractive, and nutritious food; complete medical services; or the location of the facility in one particular geographical area to avoid separating juveniles from family and community.

Important as such a measure is, it provides no actual guide to facility population size, as such qualitative factors do not lend themselves to measure. Nevertheless, in their overall impact, they relate to quality and thus to small size.

The fourth measure is cost or cost effectiveness. Behind this measure is the assumption that public monies are limited and that the overall demand for the financial support of desirable projects far

outstrips the availability of such financing. Some levels of services will be ruled out on the basis of the manner in which priorities are established and these priorities in turn will relate to the known or predicted effectiveness of the project in relation to the total dollars required to support it. The cost of staffing many small facilities may be greater than one large one, but within the context of these standards, two factors must be considered. First, the commission's recommendation that status offenders be removed from court jurisdiction will result in a significant decrease in institution population. Although the agency may have some of its budget reallocated, it is likely to be left with more money per resident than before. Second, cost effectiveness must be measured in a system-wide context. For example, if an increased expenditure per youth caused by utilizing small secure facilities results in even a slight reduction in the recidivism rates, the system-wide benefits will be justified. Accurate measurement of this anticipated outcome requires assessment over an extended period of time.

The difficulties of arriving at an optimum size recommendation are obvious from the qualifications that are offered throughout this commentary. The intent of this standard is clear. Existing large facilities must be phased out and replaced by a network of small community-based facilities. Within the context of these standards, it must be recognized that achieving such a network of small community-based facilities is a long-term goal and in the intervening period the role of traditional correctional institutions for adjudicated delinquents must be assessed. In the light of current trends, it appears that the movement toward smaller institutions will continue. Criticism of the high costs of large traditional institutions and the notoriously poor return for these expenditures as measured by recidivism rates will probably accelerate. It must be recognized, however, that achievement of the goal of small institutions on the national scene has been uneven at best, and in all but a few locations, institutions are still far too large. For the immediate future, it is probably safe to assume that the training school or large institution will continue to be part of the juvenile corrections system in some form or another. During this period, it remains a high priority policy matter to influence the size and nature of the institutions in which juveniles will be held. It is proposed, therefore, as part of this standard that the population of existing large facilities be reduced to a maximum of 100 residents and that each living unit house no more than twenty youths. It is further recommended that these facilities be phased out by 1980 and replaced by a network of smaller community-based facilities with a population of approximately twenty residents. In this time frame, no new large institutions should be built and existing institutions should

be reduced in size to meet the maximum population of 100 recommended for this interim period. In the intervening years before final implementation of the standard of twelve to twenty, evaluation studies should be carried out concerning the size of juvenile facilities. For example, there should be studies comparing the impact of various facilities having between 20 and 100 in population on such criteria as recidivism, staff attitudes, cost impact and cost effectiveness, and other problems not foreseen by these standards. This would work toward the development of a data base that would be as nearly value free as possible, and would serve to assist in intelligent decision making about program planning and implementation.

The standard does not prevent the department from placing juveniles in programs exceeding twenty when such settings are primarily intended for nonadjudicated juveniles. The department might, for example, within the group home dispositional category, make a placement in a boarding school. (See Standard 7.10 D.)

7.3 Links between juveniles and their homes.

In the determination of program placement, there should be a strong presumption in favor of retaining the juvenile within his or her own home community and against disrupting the juvenile's cultural and geographical roots. The department should ensure that links between the juvenile and his or her home and community are facilitated and preserved.

Commentary

This standard requires the retention of links between the adjudicated juvenile and the community. Three important purposes are served by the retention of such connections:

A. many of the components of the safe, human, caring environment (set forth in Standard 4.9) are located within the juvenile's own community;

B. the juvenile can retain continuity in primary relationships (see J. Goldstein, A. Freud, and A. Solnit, *Beyond the Best Interests of the Child* [1973]);

C. resources and services existing in the community should be fully used, and should not be duplicated by the department. See, e.g., the Group for the Advancement of Corrections: "... correctional services in the domains of health, education and welfare are generally inadequate as to either quality or quantity and usually both. Whenever possible, these services should be delivered through the channels by which they are available to ordinary citizens." "Toward a New Corrections Policy: Two Declarations of Principles"

11 (1974). Continuity in the provision of such services depends a great deal upon the retention of the juvenile in the community.

Traditionally, residential programs have often been highly disruptive of links with the community. In part, this arose from a policy of attempting to separate the juvenile from influences which were assumed to be criminogenic. See D. Rothman, *The Discovery of the Asylum* 79 (1971); A. Platt, *The Child Savers: The Invention of Delinquency* 101 (1969). In recent years the isolated and rural institutional setting has come under increasing challenge, and the importance of the community as the setting for programs has been stressed. See, e.g., President's Crime Commission, *The Challenge of Crime in a Free Society* 159 (1967); NACCJSG, "Corrections" 221 (1973); *Morales v. Turman*, 383 F. Supp. 53 (E.D. Tex. 1974).

The alternative policy is generally termed community-based corrections. Usage of the term "community-based" has, however, often obscured rather than clarified the issues involved. It has, for example, been held that "community treatment can become semantic trivia for traditional programs, whose physical location in an urban community is the sole basis for identifying the program as community-based"—R. Sarri, R. Vinter, and R. Kish, "Juvenile Injustice: Failure of a Nation" 37 (1974)—and that "community treatment, however, as a term used to describe such wide variety of efforts at every stage of the correctional process, has lost all descriptive usefulness except as a code-word with connotations of 'advanced correctional thinking' with implied value judgments against the 'locking up' and isolation of offenders." E. Harlow, "Community Based Correctional Programs: Models and Practices" 1 (1971). Robert Coates has brought some conceptual clarity to the term with his focus on linkages rather than location.

The words 'community-based' focus our attention on the nature of the linkages between programs and the community. A key set of variables which sharply focuses on this linkage notion which provides a basis for the differentiation among programs is the *extent* and *quality* of relationships between program staff, clients, and the community in which the program is located. . . . The nature of these client and staff relationships with the community provides the underpinning for a continuum of services ranging from the least to the most community-based. Generally, as the frequency, duration, and quality of community relationships increases, the program becomes more community-based. "A Working Paper on Community-Based Corrections: Concept, Historical Development, Impact and Potential Dangers" 3 (1974).

This standard places emphasis on the juvenile's own community rather than community in a generic sense. The standard establishes a

presumption in favor of retaining the juvenile in his or her own home community. It should be noted that placement in a "community-based" program might involve considerable geographic separation from the juvenile's own home and community. On the importance of retaining links with the juvenile's own home and community, see Child Welfare League of America, "Standards for Services for Child Welfare Institutions" 30 (1963); *Morales v. Turman*, 383 F. Supp. 53 (E.D. Tex. 1974).

7.4 Limitations on the use of out-of-state programs.

A. Out-of-state programs should be utilized only when the department:

1. provides the court with written reasons showing that the program is not available within the state, why the department has not provided the program within the state, and why in-state programs are not sufficient to meet the juvenile's needs;
2. ensures that juveniles are placed in out-of-state programs only when such programs conform to these standards; and
3. monitors such programs in accordance with Standard 9.3 C.

Commentary

This standard aims to discourage the use of out-of-state program placements. There should be a presumption in favor of placing a juvenile within his or her own state because: A. maintenance of the cultural and geographic roots of the juvenile, as set forth in Standard 7.3, is facilitated; and B. the department is better able to ensure a high level of quality control.

The principle of placing both adult and juvenile offenders within the jurisdiction of their own states is recognized by the Interstate Compact Legislation. The Federal Probation Act, 18 U.S.C. § 3653 provides for the transfer of supervisory jurisdiction to any other federal district or to another court district within a state. The Interstate Compact for the Supervision of Parolees and Probationers, which has been adopted by every state and supplemented by the administrative practices agreed on by compact administrators, provides for the transfer of jurisdiction among states. See Brendes, "Interstate Supervision of Parole and Probation," 14 *Crime & Delinq.* 253 (1968). Interstate Compact on Juveniles (1955) and Interstate Corrections Compact (1968) in "Compendium of Model Correctional Legislation and Standards," Part VII (1972).

When a juvenile is placed in an out-of-state program, the department should ensure that the juvenile has opportunities for continued contact and visitation with his or her parents and family.

7.5 Presumption in favor of coeducational programs.

There should be a presumption in favor of coeducational programs. When programs are not coeducational, there should be opportunities for frequent social contact between juveniles of both sexes.

Commentary

This standard establishes a presumption in favor of coeducational residential programs. This is consistent with the department's obligation to ensure a safe, human, caring environment (see Standard 4.9). To experience normal growth and development, juveniles require regular opportunities to socialize with peers of both sexes. Heterosexual experience and problems should be dealt with as they arise. Research on coeducational correction settings does not suggest that such problems outweigh the advantages. See Ruback, "The Sexually Integrated Prison: A Legal and Policy Evaluation," 3 *Am. J. Crim. Law* 301 (1975). The standard is consistent with the policy trend in a number of major jurisdictions. See, for example, California Youth Authority, "Draft Standards" (n.d.): "To the extent practicable, Youth Authority institutions shall be coeducational: where not practicable, coeducational experiences shall be provided from community resources." (Draft Standard 86.8.) The National Advisory Commission on Criminal Justice Standards and Goals recommended: "The correctional system should abandon the current system of separate institutions based on sex and develop a fully integrated system based on all offenders' 'needs'." NACCJSG, "Corrections" 379 (1973). The problems of single-sex correctional institutions have been well documented. See, e.g., D. Ward and G. Kassebaum, *Women's Prison: Sex and Social Structure* (1965); R. Giallombardo, *The Social World of Imprisoned Girls: A Comparative Study of Institutions for Juvenile Delinquents* (1974).

Residential programs for adjudicated juveniles have traditionally been single-sex settings. The national survey undertaken in 1966 for the President's Crime Commission reported that only 13 of 220 state-supported institutions were coeducational. President's Crime Commission, *Task Force Report: Corrections* 144 (1967). Five years later another national survey reported that 35 of 192 training schools and 3 out of 114 camps and ranches were coeducational. LEAA, "Children in Custody: A Report on the Juvenile Detention and Correctional Facility Census of 1971," 4 (1974).

Males greatly outnumber females in the juvenile corrections process. See LEAA, "Children in Custody: A Report on the Juvenile

Detention and Correctional Facility Census of 1971," 7 (1974), which found that of adjudicated juveniles, 66 percent were male and 17 percent female. Where this imbalance of the sexes makes the provision of coeducational programs impossible, the department should ensure regular contact with young people of the opposite sex. See also Standard 4.12, which recommends the use of programs not primarily serving adjudicated juveniles.

7.6 General requirements of all residential programs.

A. The facility should conform in all respects to applicable health, fire, housing, and sanitation codes.

B. The juvenile should have reasonable access to a telephone to speak with counsel, the court, or any office of the department. Calls to family and friends should be allowed, subject to reasonable hours restrictions and, when long distance calls are made, to prior approval. The department should provide for a reasonable number of free telephone calls.

C. The juvenile should be able to send unopened letters and should not be required to disclose the contents of correspondence. Incoming parcels and letters may be inspected, but only in the presence of the juvenile to determine whether they contain such contraband as drugs or weapons.

D. Visits by the juvenile's family and friends should be liberally permitted, subject to the juvenile's schedule of activities and reasonable time limitations. At a minimum, visits should be allowed twice weekly.

Nonintrusive routine searches, such as metal detectors and baggage checks, are permissible; intrusive searches require consent or probable cause to believe the visitor may possess contraband; and other searches, such as patdowns, are permissible if there is a reasonable expectation that contraband is present.

E. Unless the juvenile is in a secure facility under restrictions that prohibit leaving the facility, reasonable access to social, athletic, or cultural events in the community should be provided.

F. The juvenile should be permitted, but never required, to attend religious services of his or her choice. The religious preference of the parents may be solicited or received by someone in authority and such preference should be made known to the juvenile. However, the parents' religious preference should not be used to coerce belief or attendance at religious services, or to alter a different preference held by the juvenile.

G. No censorship should be exercised over what the juvenile may listen to on the radio or watch on television. Reasonable regulation

may be imposed on the amount, frequency, and time of day for such activities. There should be no censorship of reading materials, except that regulations may be developed for juveniles under the age of [twelve] concerning access to obscene material.

H. The juvenile should be offered a varied and tastefully prepared diet that conforms to accepted nutritional standards. A special diet should be provided for a juvenile with particular medical needs, or when necessary to comply with the requirements of a juvenile's religious or cultural heritage.

I. The juvenile should be permitted to wear his or her own clothing. If the juvenile does not have adequate clothing, the program should make funds available for its purchase, and such clothing should be sufficiently varied as to avoid any institutional appearance among the juveniles. The department's budgetary guidelines should allow for the purchase of clothing, when required, at the time of discharge from the program.

Rules relating to the length or style of hair, facial hair, cosmetics, clothing, and the like should be based only on safety and health objectives and not the personal preferences of those in authority.

J. The sleeping and privacy arrangements for juveniles should be sufficiently varied so that individual and small group arrangements are available according to the needs and desires of the juvenile. There should be a prohibition against the predominant use of dormitory arrangements in which the opportunity for privacy and solitude are minimal and the need to provide surveillance-type security is mandated by the close proximity of the juveniles to one another.

K. Searches of the juvenile, the juvenile's room, sleeping area, or property should not be routinely undertaken. When there are reasonable grounds to believe that a search may uncover violations of the penal law or the regulations of the facility, including a belief that a weapon may be found, then a search may be authorized by the administrative head of the facility.

A record should be kept of the grounds for the search, when it was conducted, and what, if anything, was discovered and seized. The juvenile should generally be afforded the right to be present during any search of his or her room or property.

L. Comprehensive medical and dental care should be provided for each juvenile. No surgery should be permitted—except in the case of a grave emergency—without the informed consent of the juvenile and the parents or guardian.

M. Regulations necessary for the smooth functioning of the facility should be in writing, and be provided and explained to the juvenile as soon as possible upon the juvenile's arrival at the facility.

N. Access to legal counsel should be readily available in order to preserve the juvenile's right to contest the adjudication or disposition, to provide access to the courts on issues related to the governance or maintenance of the facility after all administrative remedies provided in these standards have been exhausted, and to preserve or perfect any legal claims the juvenile may have that are unrelated to the adjudication, the disposition, or the facility.

Commentary

In essence, this standard articulates the basic rights of juveniles in residential programs regardless of security classification. The underlying premise of this standard is that administrative discretion must be minimized and that each residential facility should be under a uniform set of minimal obligations that are clearly understood and are capable of ready enforcement.

The standard contains issues that have received legal attention, issues that are more in the realm of preferred policy, and issues that have mixed features.

A. The administrative guidelines for the inspection of juvenile facilities in such states as Illinois or California call for conformity with applicable health, fire, housing, and sanitation codes. This provision would call on the fire marshal and county health department as an additional check on the department's responsibilities for monitoring facilities.

This would seem to be a minimal obligation given the significance of preserving the life, safety, and well being of young people under the control of the state.

B. This section is drawn primarily from S. Krantz, et al., "Model Rules and Regulations on Prisoners' Rights and Responsibilities," Rule IC-5 (1973). The benefits of access to a telephone, both to receive and make calls, seem readily apparent. It is a means to maintain contact with family and friends, and to make immediate contact with counsel when required. Indeed, the Office of Adult Corrections for the State of Washington (Memorandum #70-6) has stated that denial of access to telephone service is punitive.

There are logistical problems as well in ensuring equality of access. Installation of pay phones involves little expense. For those juveniles without funds to call, there should be a provision for a limited number of calls at state expense with the use of collect calls encouraged when that is possible.

The logistical problems can be allayed by assigning times to use the phone and by employing reasonable limits on when nonemer-

gency calls may be received. Such regulations should be posted and made known to family and visitors.

C. "Most juvenile institutions inspect, censor, and, at times, prohibit mail from coming in and going out of the facility." J. Silbert and A. Sussman, "The Rights of Juveniles Confined in Training Schools" in *Prisoners' Rights Sourcebook* 357, 367 (M. Hermann and M.G. Haft eds. 1973).

The United States Supreme Court, in two recent decisions, *Procunier v. Martinez*, 416 U.S. 396 (1974); *Wolff v. McDonnell*, 418 U.S. 539 (1974), dealt at length with the censorship and inspection of prisoners' mail. In brief, the Court found a first amendment right in the person outside the facility, whether that person be an intended recipient or writer. The legitimate governmental interests were found to be the preservation of internal order and discipline, security to prevent escapes or unauthorized entry, and rehabilitation. So long as the restraint on inmate correspondence furthers a legitimate governmental interest unrelated to the suppression of expression and is no broader than required, the censorship is likely to be upheld.

It is clear that censorship based on critical comments is proscribed and that there is a requirement that there be some means to complain about the censorship; it is also clear that incoming attorney mail can be opened, but not read, if done in the inmate's presence.

The Court's decisions on mail censorship are far more restrictive of the individual's rights than many opinions previously rendered by lower courts. See *Palmigiano v. Travisono*, 317 F. Supp. 776 (D.R.I. 1970). The cases noted, however, deal with sentenced adults who are housed in state prisons. It is problematical whether they are intended to apply to juveniles, especially in a facility that is not secure and that necessarily is smaller than the institutions whose practices were under review.

In any event, the Court was dealing with the problem at the constitutional level and not at the policy level, and it necessarily had before it considerations of federal-state relations and institutional restraints. Thus, for all of these reasons, it is no sign of disrespect to the Court to take a different position here. We deal with a different population, a group that has not been convicted of a crime, and with settings where security issues do not carry the same weight.

This section resembles the view expressed by Judge Grant in *Nelson v. Heyne*, 355 F. Supp. 451, 457-58 (N.D. Ind. 1972): "Defendants have failed to present any rationale for imposing a 'correspondence list,' or limiting persons with whom Plaintiffs may correspond, or opening outgoing mail. Accordingly, . . . the Defendants are permanently enjoined from the continuation of these practices.

With respect to incoming mail, Defendants may only open those types of mail receptacles reasonably likely to be designed to carry contraband.”

This subsection does recognize a legitimate security and control interest in those who must manage and administer the facility. However, there is no readily apparent interest in reading or censoring for content, especially in the nonsecure setting. It should be noted that even secure settings would be greatly reduced in size under these standards and with that reduction in size, there is a concomitant reduction in security concerns.

Any inspection of *incoming* matter should be limited to the detection of contraband and should be done in the presence of the juvenile in order to assure the juvenile that privacy is being respected. While the standard permits inspection of both mail and parcels, serious thought should be given to a further limitation; that is, to receptacles in which contraband might be contained.

Finally, it should be noted again for emphasis that censorship and inspection needs have traditionally been closely tied to security needs. It follows then, that the lower the degree and utilization of security, the weaker the case for any interference with mail and parcels.

D. The right to have visitors on a regular basis is a crucial aspect of the juvenile's maintenance of links with the community. The more restrictive the setting, the more crucial is the right.

In *Morales v. Turman*, 364 F. Supp. 166, 175 (E.D. Tex. 1973), the court determined that, “[f]ailure to allow and encourage full participation of family and interested friends in the program of a youthful offender constitutes a violation of the juvenile's state and federal right of treatment.” The emergency interim relief provided that “[v]isitation by family and friends of TYC inmates shall be (1) for at least two hours a day on at least two separate days between Monday and Friday, except holidays; (2) on Saturdays, Sundays, and holidays between 9:00 am and 5:00 pm.” 364 F. Supp. at 180.

This subsection is not as detailed as it might be due to the variety of settings in which the right to visit might apply. For example, the need to make available a special room or area for visits would apply in the larger, more secure residential settings but would make little sense—and, indeed, would likely be counterproductive in a foster home or in some group homes.

Also, there are issues concerning approved visitors lists, surveillance during the visit, the possibility of specifying the minimum time for a visit, whether or not personal contact is permitted, and limits on the number of visits. The mere listing of such issues makes it clear that they grow out of institutions with relatively large populations

where security needs are paramount. With severe limitations on institutional size and population, such concerns simply lose any force they may have had in the prison or typical training school setting.

The department and program directors should act to fill in the gaps left here by the enactment and promulgation of more detailed rules. The principle of liberal allowance of visits and the recognition of the significance of visits is of fundamental importance. A decent respect for the privacy of the visitor and the juvenile also should be a primary factor in the formulation of more detailed rules.¹⁷

This subsection does make a statement concerning searches of visitors, a problem that has been limited to high population and high security facilities. The executive committee applied the principle that the constitutional safeguards afforded adults are adequate for juveniles unless greater protection is justified by the special needs of juveniles. Indiscriminate searches of visitors is surely a negation of the general policy of encouraging and facilitating visits. On the other hand, it is understood that in a restrictive setting, and for some individuals, the prospect of bringing in contraband is real. The approach taken here is to require that, except for routine nonintrusive searches, the program director have cause to believe that a specific visitor possesses contraband or that the visitor consent to the search. The search should be no more intrusive than is necessary to confirm or deny the belief.

E. This subsection posits an obligation to provide access to social, athletic, or cultural events with a stated preference for bringing the juvenile to the event rather than bringing the event to the juvenile. The premise here is that all residential programs should strive to maintain links with the community as an aspect of normalizing the residential placement.

Morales v. Turman, 383 F. Supp. 53, 100 (E.D. Tex. 1974) determined that all juveniles under the authority of the TYC have a constitutional and statutory right to an “[o]ppportunity for adequate recreation and exercise and constructive and entertaining leisure time activities.” This is very much the view adopted here with the addition of an expressed preference for going into the community, where possible, to attain the objectives. See also American Psychiatric Association, “Standards for Psychiatric Facilities Serving Children and Adolescents” § 43 and Commentary (1971).

F. The right of a juvenile to change his or her faith or to abstain from religious activities is not as clear as some of the other rights set

¹⁷See S. Krantz, “Model Rules and Regulations of Prisoners’ Rights and Responsibilities,” Rule IC-6 and Commentary (1973), for a very detailed approach to visits in a penal setting.

out in this standard. This is an area where the claims of the parents may collide with the preference of the juvenile and create serious problems for administrators. The rights of parents to control the religious upbringing of their children repeatedly has been recognized by the Supreme Court.¹⁸ Thus, the argument can be made that in this instance the state acts in loco parentis and is bound to recognize the religious preference of the parents. Indeed, there are states that impose on correctional agencies the obligation to foster the religious development of the child.¹⁹ This, in turn, would appear to raise serious questions under the establishment clause of the first amendment.

The position taken here is that there is an obligation to the juvenile to facilitate his or her attendance at religious services but never to require such attendance. How to facilitate religious worship obviously will depend on the nature of the setting. Where the juvenile is in a community-based residential setting it is simply a matter of allowing the juvenile to attend the nearest place of worship. In the more restrictive settings it may be necessary to arrange for an appropriate clergyman to conduct services in a designated area.

No child should be required to engage in religious pursuits, whether or not the parents so desire. Implicit in this position is that no adverse consequences should flow from a decision not to engage in religious pursuits. To that end, it is of dubious validity to record whether or not a juvenile attends religious services. Such information too easily may be used to improperly influence future decisions.

The parents' religious preferences ought not to be ignored, but should the state engage in the business of enforcing those views, it would appear to have crossed the admittedly unclear line of the establishment clause. As a matter of policy, it is repugnant to visualize the state actually coercing a juvenile to subscribe to religious views and practices that are held by the parents but not by the child.

The question can become even more complicated if the parents are split on their religious beliefs and engage in "holy warfare" over the child's beliefs. See *Martin v. Martin*, 308 N.Y. 136, 123 N.E.2d 812 (1954). This prospect merely underscores the wisdom of allowing the parents to persuade but making it plain that no child will be coerced to accept beliefs or engage in practices not personally held. In determining a foster placement, for example, the decision can be made so as to match the juvenile's faith with that of the foster parents. Again, the problem becomes exacerbated as the placement setting increases in size.

¹⁸ *Wisconsin v. Yoder*, 406 U.S. 205, 232-34 (1971).

¹⁹ *Ill. Ann. Stats., Charities and Pub. Welf.* (23) § 2627, 2656 (1953).

G. Those charged with the custody of a juvenile certainly have the right to impose reasonable regulations on the amount, frequency, and time of day for the viewing of television or listening to a radio. What is objectionable is any effort to censor content. Television and radio engage in self-censorship in any event and it is difficult to conceive of anything being broadcast that is so clearly harmful as to permit the practice of censorship.

If anything, the censorship would likely be based on the personal tastes of the censor. The age difference between the censor and the juvenile should not be a legitimate basis for dictating what is or is not worth hearing or viewing. The right to regulate hours can be used as a device to keep very young children away from late hour "adult fare," but this right should not be permitted to serve as a cover for content censorship generally.

Children will seek their own level as to what they can read and as to what interests them. Variety and self-determination in what is read should be the preferred approach. Obscene material represents a special case, especially for younger children. While we do not subscribe to the view that sexually explicit material is inherently harmful to juveniles,²⁰ we do recognize the deeply held views involved in the issue.

From a strict legal standpoint, material that is obscene—a concept that includes but goes beyond the term sexually explicit—is not protected by the first amendment, and the Supreme Court has evidenced special concern for keeping such material from children. *Miller v. California*, 418 U.S. 15, 18–19 (1973). In this standard, we indicate that regulations may be developed for juveniles under the age of twelve concerning access to sexually explicit material. There can be no doubt as to the constitutionality of such a provision, although we recognize that there may surely be debate as to the wisdom of the policy, and as to any age that is selected as a cut-off point. Of course, state statutes regulating access to sexually explicit material should at all times remain in force, and in no event should the regulations adopted pursuant to this standard place greater restrictions on access for adjudicated juveniles than is provided by such statutes for non-adjudicated juveniles.

In recognition of the intense and widely-held views concerning the propriety of exposing children to obscene material, the standard allows some censorship but would not allow older juveniles to be prohibited from possessing such material.

²⁰ See L. Kupperstein, "The Role of Pornography in the Etiology of Juvenile Delinquency" in *I Technical Report of the Commission on Obscenity and Pornography* 103, 109 (1971), to the effect that there is not the slightest evidence of exposure to pornography as a causative factor in delinquent behavior.

H. In *Morales v. Turman*, 383 F. Supp. 53, 97 (E.D. Tex. 1974), Judge Justice wrote:

The expert witnesses attested that providing for an adolescent's normal physical development is an important part of his or her needs. Such provisions must, of course, include adequate nourishment. In the case of adolescents, who go through spurts of rapid growth, a variety of nutritious foods must be available for a minimally adequate food program. It is also important that food be properly prepared and appealing.

In this subsection we adopt the essence of the above statement and make it a right adhering to juveniles under correctional supervision.²¹ The right to an adequate diet is a longstanding legal right of persons in confinement. Here we make that right explicit and add the requirements of variety and tasteful preparation as an admonition against the reliance on dull and standardized institutional fare.

The measure of nutritional adequacy should be the recommended daily dietary allowances as established by the Food and Nutrition Board, National Research Council, National Academy of Sciences. At least three meals each day, plus a snack, should be provided, with no meals served more than thirteen hours apart.²² Food should be budgeted at moderate cost level as identified by the Agricultural Research Service, U.S. Department of Agriculture. Menus should be planned by a professionally qualified dietitian sufficiently in advance to permit purchasing the scheduled menu ingredients. Meals should be served on dishes and be attractively presented.

Nutrition education should be provided to all residents. It should be coordinated with food service, and utilize the dining room as a learning laboratory. Residents should be given information about their body needs so that they can make intelligent food choices. If food is not accepted and consumed, the goal of ensuring nutritional health is defeated.

A juvenile whose medical condition calls for a special diet should, of course, be provided with the appropriate food and drink. Such diet should be prescribed by a medical doctor and supervised by a dietitian. Also, there are religious and cultural dictates that should be

²¹ For more specific guidance see "National Research Council of National Academy of Sciences, "Recommended Dietary Allowance" (8th ed. 1973).

²² In *Inmates of Boys' Training School v. Affleck*, 346 F. Supp. 1354, 1370 (D.R.I. 1972), Chief Judge Pettine saw no need to feed inmates on a schedule that ensured their hunger, and held that as long as the schedule was maintained there was a right to daily canteen privileges and a right to have food in their rooms.

recognized. This actually requires little inconvenience and expense, and can hardly jeopardize any legitimate interests of the state. See *Barnett v. Rogers*, 410 F.2d 995 (D.C. Cir. 1969).

I. The right protected here is that of individuality in one's personal appearance. Arguments for uniformity in appearance are based most often on the need for security and discipline. However, even where a security argument might have some merit—and we believe that the concern expressed is vastly overstated—it fails to take into account the social and psychological “stripping” that occurs. As Erving Goffman puts it, “cosmetics” and clothing are part of one's identity kit for the management of one's “personal front.” E. Goffman, *Asylums* 20 (1961).

In some institutions, children are compelled to wear ill-fitting uniforms with little or no variation in style or color. When an escape is suspected, “breeze attire”—extra-large pants with no belt, shoes without laces, or pajamas—may be required. This can only degrade the juvenile and its use should be prohibited.

Attractive and varied clothing seems especially important to young people. It generally creates a sense of worth and dignity and is especially significant when a juvenile has been removed from the home and neighborhood and whatever identity strengths were felt there. In addition to diversity in clothing, it should, of course, be appropriate for the occasion and climate and kept clean and in good repair. In addition, individual alterations in clothing (sewing on a patch, cutting bluejeans to a different length) should be allowed. See Children's Bureau, HEW, “Institutions Serving Children” 96 (1973).

Variety in appearance is, of course, not limited to one's own clothing. The length and style of one's hair, wearing facial hair, and using cosmetics are other significant means of self-expression. Health and safety factors seem to be the only legitimate basis for regulation here. If a juvenile is involved in food preparation or service, requiring a hairnet is in order. Work that may be performed around hazardous machinery calls for similar caution.

The cases involving hair length and dress codes are in conflict and provide little authoritative guidance. Compare *Stevenson v. Board of Education*, 462 F.2d 1154 (5th Cir. 1970) with *Breen v. Kahl*, 419 F.2d 1034 (7th Cir. 1969). While *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (1969), involving a first amendment right to wear armbands to school as a means to protest the Vietnam war, might have been used to establish broad rights to individual dress and clothing, lower courts tend to limit it to first amendment claims.

Thus, while the constitutional claims here may be ambiguous, as a

matter of sound policy, and subject only to health and safety considerations, a right to individuality in dress and appearance is strongly recommended.

J. It is tempting to recommend that juveniles have a right to the privacy of a single room. While this may be desirable for some, perhaps many, juveniles, for others it would be a form of isolation and a disruption of the kind of living arrangements they have experienced all their lives. Thus it would be ill-considered to do more than recommend variety and attention to the needs and desires of the juvenile.

Dormitories housing large numbers of juveniles, with cots laid end to end, where surveillance is mandated, and where privacy and solitude are impossible, should be proscribed.

The principle to be pursued here is to maximize the juvenile's opportunities for privacy and solitude while recognizing that some youngsters will desire room sharing arrangements and others will not.

In the larger residential settings there are questions concerning locks on doors, having continuing access to toilet facilities, and the like. Those details are not addressed here but it is vital that where such facilities exist there should be as much freedom and privacy as possible. Requiring a resident to use a pan for toilet purposes, consistently locking in residents, not allowing the juvenile some control over the privacy of the sleeping area, are all incompatible with the spirit of this standard.

K. Any effort to regulate the search of juveniles, their rooms or sleeping areas, or personal property is novel. This subsection seeks to recognize the juvenile's right to privacy and gives the program director authority to authorize a search under certain conditions. As in subsection D. on visitor searches, the governing principle is to provide the same constitutional safeguards as for adults, unless additional protections arise from the special needs of juveniles.

As a predicate, it should be noted that routine searches and inspections in correctional facilities are based on security needs. Once again, the principle is, the lower the level of security, the less need for any searches.

The cumbersome and frequently mechanical process of requiring warrants is not recommended. However, it is recommended that records be kept of the search, when and by whom conducted, and what, if anything, was seized. In addition, the juvenile should be present during the search to provide credibility for any claims as to what was discovered, and to mitigate against the loss or destruction of property.

Finally, routine room inspections designed to ensure that rules concerning order and cleanliness are being observed are not con-

sidered to be searches. These inspections can be done on a regular, discretionary basis.

L. Requiring that the juvenile have access to comprehensive medical and dental services is hardly a novel or surprising proposition. The need is self-evident, although questions of implementation and detail may not be so clear.²³

A threshold question is whether residential programs should develop the needed comprehensive service or make suitable arrangements in the open community. The smaller the facility the more prohibitive the costs of equipment and personnel. However, even in larger facilities, from the standpoint of maintaining links with the community and normalizing the placement as much as possible, use of community resources seems preferable.

Emergency care situations may require a nurse to be on duty or readily available even when the comprehensive service is in the community. Naturally, since this standard relates to all residential programs, the size, location, and characteristics of the facility will determine how best to cope with a medical emergency. The critical point is that such a situation must be anticipated and care made available.

In accordance with findings and recommendations of the American Academy of Pediatrics,²⁴ health programs must go beyond the mere provision of medical care and include a health program designed to protect and promote health by utilizing appropriate diagnostic, treatment, and continuity of care measures.²⁵ Once again, programmatic considerations must be based on the individual characteristics of the facility.

Emergency surgery may, of course, take place without express permission. Any other use of surgery is subject to the informed consent of the juvenile and his or her parents or guardian. In the event of a conflict between the juvenile and the parents, it would seem appropriate to seek a court order before proceeding and thus allow a judge to resolve the conflict based on the medical need presented, the juvenile's age and discretion, and the reasons for the objection.

M. Each facility should be obliged to prepare written regulations relating to the smooth functioning of the facility. These regulations

²³ See, e.g., *Inmates of Boys' Training School v. Affleck*, 346 F. Supp. 1354, 1373 (D.R.I. 1972).

²⁴ American Academy of Pediatrics, Committee on Youth, "Health Standards for Juvenile Court Residential Facilities" 452 (1973). These standards provide comprehensive guidelines to the vast number of details required of an adequate medical and dental program.

²⁵ *Id.* at 2.

should be written in such a fashion that they are easily understood and complied with. Where necessary, the regulations should be bilingual.

It should be the obligation of the program director to distribute and explain such regulations to the juvenile as soon as possible upon his or her arrival at the facility. The most obvious regulations relate to that conduct which may be subject to disciplinary proceedings. See Part VIII, *infra*. Under Standard 8.5, relating to petty infractions, some conduct is specified followed by a provision making a petty infraction of any violation of a valid regulation not otherwise specified.

Such regulations may include the hours for arising in the morning and for turning out the lights in the evening, housekeeping and reasonable maintenance chores, prohibitions against unreasonable noise, and the hours and place for eating. Each facility will have different arrangements for such matters and no standardized rules seem possible.

The basic idea here is to clearly specify the required and desired conduct and make certain that each juvenile understands what is expected of him or her. Failure to do so creates grounds for distrust and antagonisms that easily may be avoided.

N. The juvenile should have continuing access to legal counsel. (See the *Counsel for Private Parties* volume.) It should be an obligation of the facility to make such access available, although the obligation to provide counsel clearly rests elsewhere. Rules relating to correspondence and telephone usage may be considered an aspect of facilitating access to counsel.

In addition, no program director should impose barriers to meeting with counsel and to providing a private area for consultation. In most instances, providing a law library will not meet the needs of youngsters to preserve or pursue legal remedies.²⁶ Thus, it seems a needless expenditure to provide even a core collection of legal materials in the belief that this might meet right to counsel requirements.²⁷

7.7 Transfers between programs.

The department should have discretion to transfer juveniles between programs within the category of disposition determined by the

²⁶ *Gilmore v. Lynch*, 400 F.2d 228 (9th Cir. 1963), *aff'd* *Younger v. Gilmore*, 404 U.S. 15 (1971).

²⁷ In a facility with older juveniles, it is possible that such materials may be useful. For those wishing to consider that, see Resource Center on Correctional Law and Services, "Providing Legal Services to Prisoners: An Analysis and Report" 67 (1973).

court. Transfers should adhere to the following substantive and procedural requirements:

A. A request for a transfer may be initiated by the juvenile or by the program director. The request should be in writing and directed to a designated official within the department. When the request is received, it should be the responsibility of the department to notify the parents or guardian of the juvenile and to solicit their views on the request. When the request is initiated by the program director, the department should ascertain the views of the juvenile concerning the proposed transfer.

B. Unless the department finds that there is no reasonable basis for the transfer, that there are no vacancies, or that there are sufficient grounds to reject the request, the request from either party should ordinarily be granted.

C. Unless the transfer involves an emergency relating to the health and safety of the juvenile or others, the department should provide notice at least seven days in advance to the juvenile and the juvenile's parents or guardian. Any objections should be expeditiously reviewed by the department. If, after review, the department decides against allowing the transfer, the reasons for rejecting the request should be placed in the juvenile's file and the juvenile may thereafter utilize the grievance mechanisms to pursue any continuing objection.

D. When a proposed nonemergency transfer will result in a reduction of services, such transfer should be delayed until the resolution of any grievance that may be filed by the juvenile.

E. A major consideration in transfer decisions should be the proximity of the programs involved to the juvenile's home and community. If the proposed transfer results in placing the juvenile farther from home and the juvenile objects to the transfer, the department should show in writing that the court-ordered disposition cannot be provided nearer to the juvenile's home. A similar obligation resides with the department when the juvenile has requested a transfer to a program nearer home and the request has been denied. Considerations of proximity to the juvenile's home should be given priority in transfers to a program for which there is a waiting list.

Commentary

Transfers may be sought for a variety of reasons: for discipline; to avoid potential conflict; to obtain services not available in the transferring facility or program; to bring the juvenile closer to home; and for emergency care. Standard 2.3 provides for the transfer of a juvenile into the mental health or mental retardation system, and the

Dispositions volume prohibits the administrative transfer of a juvenile to a higher security facility, requiring a judicial hearing.

Thus, many of the transfer problems that have engaged the courts in recent years have been dealt with in other standards. The concern for increased security and stigma and the punitive transfer as an analogue of disciplinary proceedings should not be viewed as problems to be dealt with here under transfer.²⁸

With administrative transfers limited to the same category of disposition as previously determined by the court, the problems involved are reduced but not entirely eliminated. For example, a transfer may remove a juvenile even farther from his or her home environment, thus creating problems for the juvenile and those who may wish to visit. The juvenile may feel comfortable in the present program and simply not want to leave, and conversely the juvenile may wish to transfer and should have a procedure by which to seek such transfer.

The department has authority to transfer juveniles on the written request of a juvenile or a program director. Upon receipt of such request, the department should notify the parents or guardian of the juvenile and solicit their views. The juvenile should be notified by the program director at the time such a request is made.

Unless the transfer will result in a reduction of services available to the juvenile, it may be accomplished seven days after notice of the intent to pursue the transfer. The juvenile has a right to present as a grievance any unconsented-to-transfer or the denial of a request for transfer. The former will have to be presented in the facility to which the juvenile has been transferred.

When the proposed transfer will result in a reduction of services the transfer should be delayed until the matter is resolved by utilization of the grievance procedures. Emergency transfers arising out of an imminent threat to the health or safety of the juvenile may be accomplished without delay and should any question arise thereafter concerning the legitimacy of the claimed emergency, this too may be resolved in a grievance procedure.

This standard places a premium on a facility's proximity to the

²⁸In *Preiser v. Newkirk*, 422 U.S. 395 (1975), the Supreme Court could have spoken to the punitive, administrative transfer of adult offenders but found the case moot. See *White v. Gillman*, 360 F. Supp. 64 (S.D. Iowa 1973); *Chesney v. Adams*, 377 F. Supp. 887 (D. Conn. 1974); *Mathews v. Hardy*, 420 F.2d 607 (D.C. Cir. 1969).

For the use of transfers in the juvenile process see J. Silbert and A. Sussman, "The Rights of Juveniles Confined in Training Schools" in *Prisoners' Rights Sourcebook* 357, 361-62 (M. Hermann and M.G. Haft eds. 1973).

juvenile's home and if a transfer would move the juvenile a greater distance from home, the department is obliged to record its reasons why the court-ordered disposition cannot be accomplished nearer to home. Also, juveniles who request a transfer in order to be closer to home are given priority if a waiting list exists.

7.8 Limitations on restraints and weapons.

A. Mechanical restraints.

Given the small size of programs, it should not be necessary to use mechanical restraints within the facility. The program director may authorize the use of mechanical restraints during transportation only.

B. Chemical restraints.

In extreme situations, chemical restraints may be used under strict controls. The department should develop regulations governing their use.

C. Weapons.

Under no circumstances should personnel take any weapons into the facility.

Commentary

The standard holds that mechanical and chemical restraints should not be used within facilities. The rationale for this position is: 1. given the small size of the program these methods are not necessary; and 2. there has been a consistent history of abuse of these methods in juvenile corrections settings.

Most juvenile correction agencies have recognized the potential for abuse that these methods of restraint possess and have developed regulations governing their use. See, for example, California Youth Authority, Division of Rehabilitation Services "Administrative Manual," § 205 (n.d.); State of Illinois, Department of Corrections, Juvenile Division, "Administrative Regulations" §§ 204, 306 (1975). Such regulations have been prepared for large institutions rather than facilities with a maximum size of twenty as determined by these standards. Despite the development of agency regulations there has been considerable abuse of mechanical and chemical restraints. In *Morales v. Turman* the court found:

Tear gas and similar chemical substances have been used by agents or employees of the defendants on Mountain View inmates in situations in which no riot or other disturbance was imminent. One inmate, for example, was tear-gassed while locked in his cell for failure to work; another was gassed for fleeing from a beating he was receiving; and

another was gassed by a correctional officer while he was being held by two 200-pound correctional officers. *Morales v. Turman*, 383 F. Supp. 53 (E.D. Tex. 1974).

In *Pena v. New York State Division for Youth*, the court found that physical restraints had been used punitively and were not confined to the limited circumstances prescribed by state statute. The court found:

Boys' hands and feet have been bound by handcuffs and plastic straps at Goshen for hours at a time. They have been bound in this manner with a device connecting hands and feet behind their backs and have been left lying on their stomachs on the floor. They have been bound to beds. *Pena v. New York State Division for Youth*, 70 Civ. 4868, slip. at 16 (1976).

The court commented: "The court feels compelled to enjoin defendants to follow their own regulations because of the doleful record of noncompliance which has existed in the past." (Slip. at 12). See also *Inmates of Boys' Training School v. Affleck*, 346 F. Supp. 1345 (1972).

The standard allows two narrow exceptions to the prohibitions contained in sub-sections A. and B.:

1. Mechanical restraints. The program director may authorize the use of mechanical restraints during transportation to and from the facility.

2. Chemical restraints. In extreme situations a facility may use chemicals as a restraint. The department should develop regulations governing use, which should be incorporated into the Code of Conduct for Personnel described in Standard 2.4. Such regulations should contain stringent controls on access, and provide that chemical restraints may be used only to prevent serious injury to persons or property. The standard's requirement that staff should on no occasion take weapons into the facility is consistent with the administrative regulations of most correction agencies. See, e.g., State of Illinois, Department of Corrections, Juvenile Division, "Administrative Regulations § 305 (1975).

7.9 Provision of good-time credit.

The department may credit [5] percent good-time against the length of those dispositions subject to the disciplinary process set out in Part VIII. Good-time credits once earned should be forfeited only as a sanction of the disciplinary process.

Commentary

For those dispositional categories that are covered by the normal disciplinary process set forth in Part VIII, the length of the sentence may be reduced by 5 percent. In all cases, residents have the right to accumulate good time credits, and such credits, once earned, may only be forfeited as a sanction of the disciplinary process. See the *Dispositions* volume, Standard 5.3.

7.10 Nonsecure programs.

A. Intermittent custody.

1. **Defined.** Intermittent custody may be ordered by the court, requiring that the juvenile be resident on an overnight or weekend basis in a nonsecure facility.

2. **Program.** The program should meet the basic requirements for residential programs as determined in these standards with modifications that allow for non-continuous residence. The department may use part of the capacity of group homes for the purpose of intermittent custody.

B. Foster homes.

1. **Defined.** A foster home is the home of one or more persons who, in addition to any children of their own, take in juveniles as temporary family members.

2. **The foster home.** The department should only use foster homes that are in compliance with state requirements. It should also ensure that the home has sufficient space to provide personal comfort and privacy for all persons living there.

3. **Foster parents and family members.** Members of the foster family should be in good physical health and should supply the department with a report of a physical examination on an annual basis. Foster parents should receive inservice training and support services from the department or the private agency involved.

4. **Placement of juveniles.** The department should ensure that the preferences of the juvenile are closely adhered to in the placement of a juvenile in a foster home.

5. **The department's supervisory responsibility.** The department should retain ultimate supervisory responsibility for any juvenile placed in a foster home.

C. Group homes.

1. **Defined.** A group home is a community based residential dwelling for housing juveniles under the sponsorship of a public or private agency.

2. Maximum size. Group homes may have a capacity of between [four and twelve] juveniles depending on program requirements.

3. Use of community resources. Juveniles in the group home should whenever possible attend schools within the local school district. The group home should make full use of, and not duplicate, other community resources and services.

4. Program characteristics. The department should make use of a wide range of group home types. In accordance with Standard 4.10 E., it should ensure that the juvenile's informed consent is obtained prior to participation in any services. When a group home has adopted a "treatment" program approach that requires participation of all residents in the services provided, the juvenile should be allowed a preplacement stay. Any juvenile not willing to take part in such a program should be granted a transfer.

5. Staffing. Staffing requirements should be determined according to the type of group home program. As a general rule, there should be at least [one] staff person on duty with full time supervisory responsibility for every [five] juveniles, during those times when juveniles are in the facility. At least one staff person should sleep at the facility. There should be twenty-four-hour staff coverage. Other staffing patterns should be based on the program objectives and components and the characteristics of the juveniles in residence.

D. Other nonsecure settings.

Within the category of "group home," the department may use other nonsecure settings. Alternative nonsecure settings may include:

1. Rural programs. The department may use programs such as forestry camps, ranches, and farms that provide specific work or recreational activities in a rural setting. These programs may be most appropriately provided on a contract basis rather than being directly administered by the department.

2. Boarding schools. The department may purchase placements in boarding schools or other residential settings that primarily provide for nonadjudicated juveniles.

3. Apartment settings. For juveniles of working age, the department should experiment with the use of apartment complexes and other residential settings with or without resident staff.

Commentary

A. Intermittent custody.

The court may determine that the custodial disposition be intermittent rather than continuous. See the *Dispositions* volume,

Standard 3.3 D. This disposition would require that the juvenile be resident in a facility for certain days or week-ends as specified by the court. The department would be responsible for determining the nonsecure setting to be used for this purpose, and might make use of spare group home capacity.

Intermittent custody has been a rarely used disposition in the United States. Its use should be expanded, especially with regard to juveniles. See Harlow, "Intensive Intervention: An Alternative to Institutionalization," 2 *Crime & Delinq. Lit.* 17-19 (1970).

Some state statutes authorize the noncontinuous confinement of adults. See D.C. Code tit. 24, § § 461-470 (1966); N.Y. Family Ct. Act § 454(a) (1966 Supp.). For some foreign experience of intermittent custody, see Great Britain, Home Office, "Custodial and Semi-Custodial Penalties: Report of the Advisory Council on the Penal System" (1970).

B. Foster homes.

Foster homes are specifically recognized as a form of disposition for adjudicated juveniles in every state. In forty-four states there is a statutory requirement that a state agency approve foster homes prior to placing juveniles therein. In the remaining states this authority resides with the juvenile court or with county governing boards. M. Levin and R. Sarri, "Juvenile Delinquency: A Comparative Analysis of Legal Codes in the United States" 54 (1974). It has been estimated that on an average day in 1974 about 7,100 adjudicated juveniles were in foster homes. This arrangement usually involved one or two juveniles placed with a husband and wife serving as parent surrogates. R. Vinter, G. Downs, and J. Hall, "Juvenile Corrections in the States: Residential Programs and Deinstitutionalization" 62 (1975).

The standard does not specify that the foster home should be run by a married couple. It allows for situations in which a single person or persons might provide good foster care. It is the personal qualities of the foster parents that are important. Guidelines developed in Florida spell out these qualities, with foster parents required to be "mature, accepting, understanding, warm and able to set reasonable limits. They should have no personal needs to make them expect too much of others. They should be able to work under stress conditions." Florida Division for Youth Services, "Family Group Home Treatment Plan," 9. See generally, R. Andrews, E. Lawder, and J. Parsons, "Five Models of Foster Family Group Homes" (1974).

Foster parents require inservice training and other support services. Few juvenile corrections agencies have developed training programs for foster parents, but there are exceptions. The Florida

Division for Youth Services provides a monthly training session for a two-hour period. One private agency has created a network of foster care settings and a sophisticated array of support services for foster parents. See Browndale International Ltd., *Involvement Magazine* (Ontario, Canada). See also State of New York, Board of Welfare, "Criteria for Foster Care Placement and Alternatives to Foster Care" 29 (1975). The training and support needs of foster parents may be especially important in the care of older juveniles. A New York study has shown that the proportion of all juveniles aged twelve or over requiring foster placement will continue to rise until 1985. Bernstein, Snider, and Neezan, "A Preliminary Report: Foster Care Needs and Alternatives to Placement" 30 (1975).

Foster care for adjudicated juveniles has been generally underutilized. This is in part a consequence of the low level of payments that exist in many states. The National Assessment of Juvenile Corrections estimated that the per capita cost of foster care in 1974 was \$2,500. The study commented: ". . . the level of foster care appears to have been on a plateau in many states because the payment per child-day has been too low relative to costs for the foster parents. Thus it has been more and more difficult to recruit competent foster parents without increasing fees and hence costs." R. Sarri and E. Selo, "Evaluation in Juvenile Corrections" 13 (1975). The standard recommends that foster parents receive payment for their services over and above full reimbursement for the costs incurred.

The under-use of foster homes for adjudicated juveniles is also reflected in the fact that most foster care placements are initiated and funded through an agency that is not responsible for juvenile corrections. The National Assessment of Juvenile Corrections found in 1974: ". . . foster home care did not tend to be administratively or fiscally developed within the framework of state juvenile corrections policy—nor did it appear to have been historically connected with the juvenile justice system. If this approach were being employed as a deliberate means of deinstitutionalization, we would expect that the state juvenile corrections agency would be monitoring at least the number of placements." R. Vinter, G. Downs, and J. Hall, "Juvenile Corrections in the States: Residential Programs and Deinstitutionalization" 62 (1975). The same study also shows that the use of foster care was supplementing rather than substituting for other modes of corrections. The authors concluded: ". . . foster home services for delinquents do, indeed, constitute a promising direction for extending community corrections at significantly lower costs. Although this practice is not an innovation its deliberate inclusion in juvenile corrections policy evidently would be." *Id.* at 65. See W. Hardley,

"Foster Home Project," *Proceedings of the American Correctional Association* 347 (1960); Kellar, "Court Foster Home Program," 4 *N.P.A.J.* 57-65 (1958); National Study Service, "The Problem of Developing Adequate Foster Care for Wards of the California Youth Authority" (1964); Washtenaw County Juvenile Court, Michigan "Foster Home Development Project" (1964); Wisconsin Children and Youth Division, Public Welfare Department, "Foster Family Care: A Program in Transition" (1965); see generally, M. Wolins and I. Piliavin, "Institutions or Foster Family: A Century of Debate" (1964).

C. Group homes.

The standard holds that there is no one ideal type of group home and that the department should make placements in a variety of group home settings. Group homes should, however, share certain characteristics, in addition to the general requirements set forth in Standards 7.1 through 7.8. These are:

Maximum size of twelve. The standard recommends a lower maximum size for group homes than for other residential facilities. A maximum size of twelve rather than twenty lessens differences between the group home and other residences in the neighborhood. Small size also makes it less difficult for it to achieve other home-like qualities. See C. McEwen, "Subcultures in Community Based Corrections Programs for Youth" 11 (1975). Most state agencies recommend ten or twelve as the upper limit for group home programs. See, for example, Maryland Department of Juvenile Services, "Group Homes" 1 (n.d.); Indiana Youth Authority, "Group Homes for Young Parolees: Standards and Guidelines" 6 (n.d.). The National Assessment of Juvenile Corrections found that the settings located in its survey of community-based programs ranged in size from four to thirty-two, with an average size of eleven. R. Vinter, G. Downs, and J. Hall, "Juvenile Corrections in the States: Residential Programs and Deinstitutionalization" 31 (1975). An earlier national survey found that eighty-six percent of group homes and halfway houses had capacities under twenty-five. LEAA, "Children in Custody: A Report on the Juvenile Detention and Correctional Facility Census of 1971," 5 (1974).

Use of community resources. Group homes should not provide all inclusive programs but should make full use of existing community resources. Residents of the group home should attend local schools wherever possible and be encouraged to use other resources and services of the community. The standard's purpose is to maximize links

with the community and to make as normal as is possible the daily lives of the residents. See Standard 7.3. For a detailed analysis of the difficulties encountered in developing links between a group home and the community within which it is located, see L. Empey and S. Lubeck, *The Silverlake Experiment* 161 (1971). See also C. McEwen, "Subcultures in Community-Based Correctional Programs for Youth" 44 (1975).

An important consideration is the type of neighborhood in which the program is located. One practitioner has recommended: "Residents should be able to come and go and mix in with the neighborhood as much as possible. Program participants must feel relatively comfortable and safe in the area selected. . . . Areas in transition . . . provide good sites in which to locate. The community, however, should not be disorganized or deteriorating, but could be one where this process has stabilized or been reversed." Rachin, "So, You Want to Open a Halfway House" 36 *Fed. Prob.* 34 (1972). See also the comparative analysis of attempts to establish group homes in different neighborhoods, R. Coates and A. Miller, "Neutralization of Community Resistance to Group Homes" in *Closing Correctional Institutions* 67-84 (Y. Bakal ed. 1973).

This standard's position favoring the maximum use of existing community resources has crucial implications for program approach and staffing arrangements. The standard does not support the all-inclusive type of group home, which provides many needs and services within the facility. Weber has noted, in relation to this all-inclusive type, that it is difficult to distinguish it from a traditional institution. R. Weber, "A Report of the Juvenile Institutions Project" 180 (1966). Although the all-inclusive type is proscribed, a variety of program approaches should be encouraged.

An extensive literature exists, although little comparative research has been conducted on group home settings. The most systematic comparative study was undertaken by the California Youth Authority. This study identified five types of group homes ranging from very protective settings to those allowing considerable autonomy. See T. Palmer, "The Group Home Project Final Report: Differential Placement of Delinquents in Group Homes" (1972); and "A Review of Accumulated Research in the California Youth Authority" 62 (1974). Many group homes are characterized by heavy emphasis on group method such as guided group interaction. A particularly influential program was carried out at Highfields. See L. McCorkle, A. Elias, and F. Bixby, *The Highfields Story: An Experimental Treatment Project for Youthful Offenders* (1958). A very detailed and comprehensive study of a group home using group methods is L.

Empey and S. Lubeck, *The Silverlake Experiment* (1971). This study gave close attention to both the internal dynamics of the program and the various linkages with the community. For a group home approach based on psychoanalytical theory, see D. Miller, *Growth to Freedom: The Psychosocial Treatment of Delinquent Youth* (1964). General overviews are located in M. Warren, "Correctional Treatment in Community Settings: A Report on Current Research" (1972); Harlow, "Intensive Intervention: An Alternative to Institutionalization," 2 *Crim. & Delinq.* 272 (1970); O.J. Keller and B. Alper, *Half-way Houses: Community Centered Corrections and Treatment* (1970). See also Florida Division for Youth Services, "Walter Scott Criswall House: An Opportunity for Youth" (n.d.); Gula, "Group Homes: New and Differential Tools in Child Welfare, Delinquency and Mental Health," 43 *Child Welfare* 393 (1964); McGrath, "Residential Group Center for Delinquent Girls," 14 *Welfare Rptr.* 66 (1968); Turner, "A Community Group Home for Delinquent Girls," 21 *Calif. Youth Authority Q.* 14 (1968); Schoen, "PORT: A New Concept of Community Based Correction," 36 *Fed. Prob.* 35 (1973).

When juveniles are in the facility there should be one staff person on duty for every five juveniles. The nature of the programs should generally determine staffing requirements and tasks. In particular, the following considerations are important:

1. The standard's purpose is to fully utilize existing community resources. Consequently, staff will be involved in advocacy and coordinating roles that combine identifying and linking up with such services as are required; a considerable proportion of staff time may be spent away from the facility.
2. Some programs may be based on group techniques which require that the number of staff remain small. See, e.g., L. Empey and S. Lubeck, *The Silverlake Experiment* 86 (1971). Other program approaches may require a greater staff presence within the facility.
3. Adequate time off should be provided to prevent staff from becoming over-extended.

In many parts of the country, group homes have been relatively under-used compared to institutional placements. The 1973 LEAA survey located only 149 programs in the nation, with a total population of 1600. LEAA, "Children in Custody: Advance Report on the Juvenile Detention and Correctional Facility Census of 1972-1973," 9 (1975). In 1974 the National Assessment of Juvenile Corrections, using somewhat broader program definitions, identified a total average daily population of 5,663 juveniles in state-related community-based residential programs. This study found that the average daily population in such facilities varied from zero in six states to a high in

one state of 800. The average was 110 juveniles for forty-eight reporting states. R. Vinter, G. Downs, and J. Hall, "Juvenile Corrections in the States: Residential Programs and Deinstitutionalization" 32 (1975). It should be noted that this study found that per capita cost for these programs varies greatly. In thirty-five states for which full data was available, the average annual *per capita* cost was \$5,501. In four states the average cost was in excess of \$10,000 per annum for each juvenile. *Id.* at 40.

D. Other nonsecure settings.

The standard provides the department with considerable flexibility in the development of nonsecure residential programs. Within the "group home" dispositional category the department, with the agreement of the court and the juvenile, may use settings other than the small urban residences described above. Three examples of such settings are set forth in the standard. This standard requires that a specific work or recreational purpose be served by camp programs so that such programs do not become rural institutions. For this reason, in many instances it may be preferable for the department to purchase rather than directly provide camp programs. This will provide the department with much greater flexibility in program development. The rural setting of such programs may present difficulties in terms of community links as provided for in Standard 7.3. A time limit of two or three months placement in these programs is appropriate, with the balance of the dispositional period to be spent in a group home.

Juvenile corrections has been characterized by a number of rural programs under such headings as "camps," "farms," and "ranches." These programs have in many cases been little different from training schools. Often quite large, such programs are usually administered by local rather than state agencies. See, for example, California Department of Youth Authority, "Standards for Juvenile Homes, Ranches and Camps" (1972). There have been a number of programs that are in accordance with the purpose of this standard, i.e. short-term programs with a specific work or recreational orientation. See F.J. Kelly and D.J. Baer, *Outward Bound as an Alternative to Institutionalization for Adolescent Delinquent Boys* (1968); Kelly and Baer, "Physical Challenge as a Treatment for Delinquency," 17 *Crime & Delinq.* 437 (1971); Williman and Chun, "Homeward Bound, "An Alternative to the Institutionalization of Adjudicated Juvenile Offenders," *Fed. Prob.* 52 (1973); Nold and Wilpers, "Wilderness Training as an Alternative to Incarceration," in *A Nation Without Prisons* 155 (C. Dodge ed. 1975); Bailey, "Can Delinquents Be Saved By the Sea? The

Florida Ocean Sciences Institute," 1 *Corrections Magazine* 77 (1974).

The standard also allows the department to use boarding schools and other settings intended principally for nonadjudicated juveniles. A number of state agencies do use such settings, but a great deal more could be done, even within the fixed dispositional time limits adopted by these standards. The relationship of one juvenile corrections agency and a private boarding school is described by Serrill, "Juvenile Corrections in Massachusetts," 2 *Corrections Magazine* 19 (1975). Finally, the standard urges experimentation with other forms of residential settings, including apartment complexes with or without resident staff. See, e.g., Luger, "Innovations in the Treatment of Juvenile Offenders," 381 *Annals* 69 (1969).

The ABA Section of Family Law recommended amending the standard to remove other nonsecure settings from the category of group homes. Although the executive committee acknowledged the confusion that can arise from defining certain programs as group homes because size restrictions and other provisions may be inapplicable to such settings, such as residential treatment facilities or boarding schools populated predominantly by nonadjudicated juveniles, other provisions would apply. One such provision would be limitations on the duration of an involuntary placement in the program. As discussed in the commentary to Standard 7.2, it is in the interest of normalization that the standards support the development of a network of community facilities, readily accessible to the juvenile's family and friends, whose small size would approximate a homelike atmosphere. This standard is an outgrowth of the basic policy favoring community-based residential and nonresidential programs.

7.11 Secure programs.

A. Limitations.

1. Maximum size. As set forth in Standard 7.2, the maximum size of a secure facility should not exceed [twelve to twenty] juveniles.

2. Strategies to reduce the number of secure beds. The department should develop strategies to reduce the number of secure beds within its jurisdiction.

B. Physical characteristics.

1. Living arrangements. The living arrangements should conform as nearly as possible to those provided for nonsecure facilities. As to items such as heat, ventilation, lighting, and sleeping areas, there should be no difference between secure and nonsecure facilities.

2. **Security.** Security refers to the provision of staff and resident safety, and to the prevention of escapes from the facility. Means to ensure security should consist of both physical features of the building and staffing arrangements. Given the facility's small size, there should be no surveillance of residents by closed circuit television, listening systems, or other such devices.

C. Security classification.

1. **Purpose.** The department should develop a security classification scheme for the residents of secure facilities. The purpose of the scheme should be to allow juveniles placed in the lower security category opportunities to participate in activities outside the facility.

2. **Criteria.** The department's classification scheme should be based on the nature of current and previous offenses, and on any history of violence and escape from secure facilities. The criteria should also include any findings of disciplinary proceedings concerning a juvenile while in the program. The extent to which a juvenile participates in services should not be a classification criterion.

3. **Determination of security category.** The determination of the security category should be made by the program director, subject to the approval of the local office. The juvenile should be notified of the security category and given an opportunity to challenge the determination through the grievance mechanism set forth in Standard 9.2.

D. Activities in the local community.

There should be a presumption in favor of juveniles within the lower security category taking full part in educational, work release, and recreational activities in the local community.

E. Program activities in the facility.

When it is not possible for juveniles to leave the facility, educational, recreational, and other activities should be provided within the secure facility.

1. **Education.** The department should ensure that educational services provided within the secure setting are at least equal in quality to those available in the community, and that they meet the individual needs of the juvenile. Given the size of the facility, educational services should be either on an individual or small group basis. The department should experiment with different methods in the deployment of educational personnel, including the use of a team of teachers to serve a number of facilities. The department may contract with public or private agencies for its teaching requirements or directly employ such personnel.

2. Vocational training. Similar considerations should apply to the provision of vocational training opportunities as apply to education. When possible, vocational training should be linked to work release programs.

3. Recreational activities. Juveniles should have access to a choice of individual and group recreational activities for at least two hours each day. Such activities should provide opportunities for strenuous physical exercise.

F. Staffing.

Staffing arrangements should aim to provide a safe, human, caring environment. Workloads developed by the department should provide for at least one staff person with full-time supervisory responsibility on duty for every [four] juveniles. Given the small size of the facility, all staff persons should be in direct interaction with juveniles. At least one staff person should be on duty and awake at night. Night duty may be performed by regular staff persons on a rotating basis, or by a special classification of personnel trained to handle emergencies.

G. Furloughs.

Juveniles in the lower security category should be permitted a weekend furlough at least every [two] months. All juveniles, regardless of security category, should be permitted a furlough of at least five days duration during the month prior to discharge.

H. Isolation.

1. Isolation of juveniles should be utilized only in accordance with the standards on discipline in Part VIII, or as a temporary emergency measure when the juvenile is engaging in conduct that creates an imminent danger of physical harm to the juvenile or others.

2. Emergency isolation. When a juvenile is isolated because of conduct that creates a danger to self or others, the incident should be reported immediately to the program director and, when necessary, to the appropriate medical personnel. The case should be immediately reviewed, any required medical attention immediately undertaken, and a plan devised for the earliest release of the juvenile from isolation or for the provision of care in a more appropriate setting. Eight hours during the daytime should constitute the maximum duration for such confinement.

3. Protective custody. A juvenile may be isolated at his or her own request when such request arises out of a legitimate fear for his or her personal safety. When such protective custody is granted, the program director should immediately identify and resolve the underlying problem giving rise to the juvenile's request.

Eight hours during the daytime should constitute the maximum duration for such confinement.

4. When possible, isolation should be accomplished in the juvenile's own room. The program director should determine whether any items should be removed from the room during the period of isolation. Such decision should be based on whether or not such items may be used as instruments of self-injury and not as a punitive measure.

5. If the facility does not utilize individual rooms, a room may be specially designated. Such room should resemble, as nearly as possible, the ordinary rooms of the facility.

6. If a room specially designated as an isolation room is required, such room should be planned and located in the staff office area and not in the bedroom section of the facility.

7. No special diet or extraordinary sensory or physical deprivations should be imposed in addition to the room confinement. Reading materials and regular periods of indoor and outdoor exercise should be available.

8. All juveniles in isolation should be visited at least hourly by a specially designated and trained staff person, and should be provided one hour of recreation in every twenty-four-hour period of isolation.

When the isolation is an emergency measure growing out of violent behavior, a staff member should remain with the juvenile. If considerations of safety make it impossible for the staff member to remain, the staff member should maintain constant observation of the juvenile.

When the juvenile is in isolation at his or her own request, the regular staff visits should be designed to clearly identify and quickly resolve the problem that led to the request for isolation.

9. Each incident during the period of isolation, along with the reasons for and the resolution of the matter, should be recorded and subject to at least monthly review by the program director and an individual or individuals assigned such a review function in the department.

Commentary

The policy underlying this standard is that the department shares with the court the responsibility for limiting the use of secure facilities. The *Juvenile Delinquency and Sanctions* volume and the *Dispositions* volume limit the court's use of secure settings to juveniles adjudicated for the most serious offenses. The presumption in favor

of using the least restrictive disposition whenever possible is strongly emphasized in the *Dispositions* volume. These volumes of standards require that placement within a secure setting should be a specific disposition made by the court. The department should not have the discretion to transfer a juvenile from a nonsecure to a secure setting.

Although the responsibility for determining the dispositional category firmly resides with the court, the department is able to influence the process, and in particular it should: A. develop an array of programs that provide the court with alternatives to secure facilities; B. seek to reduce the total number of secure beds within its jurisdiction. It is important that these two goals be pursued simultaneously, so that the total number of residential placements is not increased. The National Assessment of Juvenile Corrections has shown that the development of community-based programs has not by itself usually resulted in deinstitutionalization. R. Vinter, G. Downs, and J. Hall, "Juvenile Corrections in the States: Residential Programs and Deinstitutionalization" 59 (1975). See generally commentary to Standard 1.2.

The department should consider setting a secure-bed quota for the state. The quota system has been used with some success in Massachusetts, where an upper limit is placed on the number of juveniles the department has in secure programs at any one time. See Serrill, "Juvenile Corrections in Massachusetts," 11 *Corrections Magazine* 9 (1975); Massachusetts Department of Youth Services, "Secure Treatment Policy Manual" (1976). The quota system as a means of strictly limiting the number of secure beds during the period prior to disposition was recommended in the *Interim Status* volume, Standard 10.5 B., which recommends the determination of a statewide quota of secure beds for detaining preadjudicated juveniles.

Wide variations exist in the rates of institutionalization across the country. Per capita rates of average daily state institutional populations (per 100,000 of the total state population), for example, varied in 1974 from 43.1 in Wyoming to 14.3 in California and 2.2 in Massachusetts. The differences cannot be accounted for in terms of the prevalence of juvenile crime. R. Vinter, G. Downs, and J. Hall, "Juvenile Corrections in the States: Residential Programs and Deinstitutionalization" 17 (1975). These very marked different rates of incarceration point to the responsibility of both courts and juvenile corrections departments to develop strategies that give substance to the principle of using the least restrictive disposition.

Standard 7.2 provides that the size of any secure facility should not exceed twelve to twenty juveniles. The standard should also be read with reference to the features required of all programs (set forth

in Part IV) and to Standards 7.3 through 7.9. As a consequence of the small number of residents and the high level of staff-resident interaction, such devices as closed circuit television and listening devices should not be used. There should be as much mobility for residents as is consistent with the provision of security. (See the *Architecture of Facilities* volume.)

Correctional authorities have long recognized the association between staff and resident morale and institutional security. The American Correctional Association has commented:

If prisoners are committed to inactivity, moral degradation, humiliation, and mental stultification, then the desire within them to escape or to throw off the shackles of their unnatural restraints will become so strong that secure facilities and procedures will be breached sooner or later. . . . The greatest effectiveness will most certainly be attained where sound security procedures, combined with enlightened human treatment of prisoners, gain the willingness to co-operate in the difficult prison situation. "Manual of Corrections" 367-368 (1966).

See also National Conference of Superintendents of Training Schools and Reformatories, "Institutional Rehabilitation of Delinquent Youth" 198 (1962). The National Advisory Commission on Criminal Justice Standards and Goals stated: ". . . security has become a self-perpetuating phenomenon. Intense security creates an atmosphere conducive to offender behavior that creates much more security. Mechanical devices for security, now used greatly in excess of actual requirement, should be eliminated whenever possible." "Corrections" 366 (1973); see also National Council on Crime and Delinquency, "Standards and Guides for Detention of Children and Youth" 88 (1961).

Consistent with the principle underlying Standard 7.3., the standard favors the use of community resources and services for some residents of the secure facility. The standard proposes a classification scheme, the purpose of which is to provide residents in the low security category with opportunities to take advantage of such resources. There is no reason to suppose that all juveniles sentenced to security facilities by the courts require close security for the full duration of the disposition.

The standard gives the department discretion to develop the security classification scheme and the decision-making process itself. The standards have generally sought to limit many areas of discretion located with corrections administrators, but the determination of security categories within secure settings is appropriately lodged with

the department and program director who are accountable for the control and care of juveniles. This is consistent with the position of most authorities. See, *e.g.*, American Correctional Association, "Manual of Correctional Standards" 368 (1966); NACCJSG, "Corrections" 213 (1973). See also Massachusetts Department of Youth Services, "Secure Treatment Policy Manual" 91 (1976). The procedures used by the department to determine security categories should be made known to all residents, and the grievance mechanism set forth in Standard 9.2 should provide residents with an opportunity to have decisions reviewed.

Although some residents of secure settings will be involved in educational and other activities in the community, it will be necessary to ensure that such activities are also made available within the facility. In determining procedures for the provision of good quality educational services, the standard recommends experimentation with different methods of delivery. The department should take advantage of the small numbers of juveniles involved by providing for individual needs, including the provision of bilingual programs and courses that address the ethnic and racial cultures represented in the facility. See *Morales v. Turman*, 383 F. Supp. 53 (E.D. Tex. 1974); and NACCJSG, "Corrections" 368 (1973), which recommended the full use of community resources; and generally Roberts, "Developing Perspective of Correctional Education," 31 *Am. J. Corrections* 14 (1969).

The provision of full vocational training programs within the facility will pose difficulties for the department, given its small size. The department should experiment with new forms of service delivery such as mobile units that visit a number of secure settings. For residents in the appropriate security category every effort should be made to provide vocational training and work experience in the community. Although the provision of vocational training opportunities will present a very considerable challenge to the administration of the small secure facility, it may result in innovative approaches that are superior to the generally poor record of many large correctional institutions. See, *e.g.*, National Advisory Commission on Criminal Justice Standards and Goals, which commented: "In institutions they [offenders] are trained too often in a skill for which there are no jobs at all or no jobs in the community to which they will return. Often the job is being phased out as obsolete." "Corrections" 370 (1973). See also R. Goldfarb and L. Singer, *After Conviction* 61 (1973); and generally Allen, "Lessons Learned from Vocational Training Programs in the Prison Setting," in "Education and Training in Correctional Institutions" 3 (University of Wisconsin 1968).

The provision of a very wide range of recreational activities will also pose problems within the small secure setting. The facility should, at a minimum, provide space and equipment for activities such as pool, weightlifting, basketball, music, and art. Juveniles should have access to strenuous "large muscle" physical exercise. Community resources should be used whenever possible. At the discretion of the program director, juveniles in the high security category may be permitted to use local swimming pools and other resources with staff supervision. See generally American Correctional Association, "Manual of Correctional Standards" 519 (1966); NACCJSG, "Corrections" 383 (1973); National Conference of Superintendents of Training Schools and Reformatories, "Institutional Rehabilitation of Delinquent Youth" 120 (1962).

The standard provides for a higher staff-resident ratio than for nonsecure residential programs, underlining the fact that good security is largely a consequence of staffing arrangements. The standard does not call for a great differentiation of staff tasks, and all staff including the program director and his or her assistant should be in direct interaction with residents. Precise staffing arrangements will be determined by the degree to which juveniles are involved in activities outside the facility. Assuming that half the residents are enrolled in local schools or engaged in work release programs, a nine-post coverage would be appropriate (three youth counsellors for the a.m. shift, five youth counsellors for the p.m. shift, and one night supervisor). This coverage includes a senior youth counsellor (assistant program director) but does not include the director, or any specialists such as teachers. On staff-juvenile ratios and staffing patterns, see California Youth Authority "Standards for Juvenile Homes, Ranches and Camps" 10 (1972); California Youth Authority, "Standards for Juvenile Halls" 19 (1973); National Council on Crime and Delinquency, "Standards and Guides for the Detention of Children and Youth" 164 (1961).

This standard, consistent with the policy of retention of links with the community (Standard 7.3), and the general requirements concerning correspondence, telephone usage, and visits set forth in Standard 7.6., allows for lower security residents to take a furlough once every two months. To facilitate readjusting to home and community the standard allows for a furlough of at least five days duration in the final month of the disposition. All residents should be allowed furloughs in connection with serious illness or death in the family.

Any use of isolation—whether denominated solitary confinement, room lockup, or administrative or punitive segregation—must be viewed as a serious, additional deprivation of liberty and made sub-

ject to the most stringent safeguards. In four recent decisions involving the isolation of juveniles, the courts independently agreed that solitary confinement does not serve rehabilitative ends but constitutes a form of punishment that under certain conditions may have definite detrimental effects on children.²⁹

Aside from the question of whether any use of isolation is justifiable or permissible, the courts have approached the issue in terms of cruel and unusual punishment, an assessment of the duration and conditions of confinement; as an aspect of the right to treatment, an assessment of whether treatment or rehabilitative ends may be served; and, finally, whether the particular isolation was accomplished with the requisite procedural formalities. While no court has decided that the use of isolation per se is unconstitutional—whether the inmate is an adult or a juvenile—the substantive and procedural net is being drawn in around the use of isolation, making it an increasingly disfavored measure. See *Morales v. Turman*, 383 F. Supp. 53, 83 (E.D. Tex. 1974).

Isolation tends to be seen as an exclusively punitive measure. On analysis, however, it is clear that this is not always the case. It is, therefore, crucially important that in each instance the reasons for isolation and the goals sought to be achieved thereby are fully articulated and made known to the juvenile.

As a rehabilitative or therapeutic measure, isolation seems indefensible. Used judiciously and in a carefully circumscribed manner it can serve as the most onerous sanction for serious rule infractions, as a self-protective measure for juveniles who temporarily wish to avoid contact with their peers or staff, and as a temporary emergency measure when an juvenile is engaging in conduct that creates a clear and imminent danger of physical harm to the juvenile or others.

The three grounds for using isolation appear to be the only legitimate reasons for its employment, and each is sufficiently distinctive as to merit separate discussion. As a preliminary matter, however, this standard recommends generally against the establishment of a separate room for isolation. In some settings, this will not be feasible. For example, if rooms are shared, the isolation of one roommate would unfairly affect anyone else sharing the room. When isolation is used as a temporary measure to aid in the control of a violent juvenile, a staff member should either be present in the room or physi-

²⁹ *Morales v. Turman*, 383 F. Supp. 53 (E.D. Tex. 1974); *Martarella v. Kelley*, 349 F. Supp. 575 (S.D.N.Y. 1972); *Inmates of Boys' Training School v. Affleck*, 386 F. Supp. 1354 (D.R.I. 1972); *Hollis v. New York State Department of Social Services*, 322 F. Supp. 473 (S.D.N.Y. 1970).

cally able to observe the juvenile during the isolation. Where the construction or design of the facility does not allow for such observation, some special arrangement may have to be made.

It should be stressed that the standard prefers the use of the juvenile's room where possible and, where that is not possible, any specially designated room should be as nearly like the other rooms as possible. This is not merely an expression of taste or an effort to avoid stigma; it is to reinforce the prohibition against the use of windowless, extraordinarily small, frequently bare, and often unsanitary isolation rooms such as have been the subject of litigation. See, e.g., *Jordan v. Fitzharris*, 257 F. Supp. 674 (N.D. Cal. 1966).

Punitive isolation is the most severe sanction allowed for an infraction of the rules. See Part VIII, *infra*. It is the isolation itself that is the sanction. The room is not to be stripped of furnishings and the juvenile may not be placed on a special diet or denied reading material or exercise.

It is recognized that this is an extreme sanction and that there is a case to be made for its absolute prohibition. See G. Konopka, *The Adolescent Girl in Conflict* 113 (1966). On the other hand, the procedurally and substantively limited use of isolation as a sanction can be an important factor in dealing internally with a major or minor infraction. With stringent safeguards concerning the duration and conditions of confinement, it is not so distinct from the discipline imposed at times in family settings; and isolation can provide the necessary, last resort type of control needed by those who must administer programs.

Some provision must be made for the youngster who wishes to drop out from the daily routine for a time. This desire could be based on real (or imagined) fear or could simply be a way to request a respite from the daily routine. Such a request is subject to numerous interpretations ranging from program failure, a legitimate fear for personal safety, or a form of malingering. The view expressed here is that such a request normally should be granted with a concomitant obligation on the staff to work quickly toward the identification and resolution of the underlying problem giving rise to the request.

The juvenile who is engaged in violent behavior represents a threat to self and others and an immediate response is required. Isolation is not viewed here as a solution but rather as a temporary measure and one that is preferable to reliance on such drugs as thorazine, on mechanical restraints, or on the infliction of even defensive violence by staff or other juveniles. An eight-hour time limit during the day time is recommended here for emergency isolation and protective custody.

The stay in emergency isolation should be quite brief and limited to safety considerations. The use of isolation in this circumstance should be viewed not only as an emergency step but as the initiation of more appropriate measures to deal with the problem. Those measures may include medical intervention or the initiation of disciplinary proceedings, but in any event they should be responsive to the problem beyond simply isolating the juvenile for more than the time necessary to achieve order and safety.

Each incident in the use of isolation, along with the reasons for and the resolution of the matter, is to be recorded and subject to at least monthly review internally and by the department. This is an important aspect of the general monitoring responsibilities of the department. It is assumed that any pattern of excessive use of isolation should be grounds for immediate review and appropriate measures by the department. In addition, juveniles should have access to the grievance mechanisms provided for in these standards when the claim is excessive or irregular use of isolation.

PART VIII: THE DISCIPLINARY SYSTEM

8.1 Scope and application.

These standards apply to juveniles who as a result of an adjudication and an order of disposition have been removed from their homes and placed in a secure or nonsecure facility, with the exception of juveniles placed in foster homes. Disciplinary matters in the foster home setting, whether it be a long-term or short-term placement, should be governed by the law that regulates the parent-child relationship and any particular laws of the jurisdiction applicable to foster home [or group home] placements.

Commentary

The scope and application of a disciplinary system is a question of some difficulty. Recent judicial efforts to bring procedural regularity to the imposition of discipline on juveniles under correctional supervision have focused on the training school setting and the use of such measures as lengthy stays in isolation under harsh and dehumanizing conditions, the use of corporal punishment, and other cruel or degrading measures.

These standards are based on a correctional model that precludes the large training school, that proscribes abusive punishments, and

that provides stringent controls on the use and conditions of isolation. This does not mean that concern for fair disciplinary procedures and measures is eliminated; it does mean that the concerns are of a different sort. Arbitrariness and inequity are not exclusively related to population size or to a situation in which extremely harsh penalties may be meted out. Additionally, standards must still be concerned with accuracy and fairness in fact finding, and with providing a participatory role for a juvenile accused of misconduct and faced with sanctions.

When the juvenile is living at home or in a home-like situation (which certainly includes the foster placement), the law governing the parent-child relationship should apply to discipline. While abuse in discipline undoubtedly occurs and will continue to occur in home-like settings, a due process format is not likely to provide the remedy, to say nothing of the cost and inconvenience of such an arrangement.

The further one moves from the home or the foster home situation toward larger population institutions, the more compelling the case for greater formality in the disciplinary process. In the group home situation, the number of juveniles involved will be greater than the home or foster home situation but smaller than the largest facility. A group home is under the same constraints as any other program or facility as to sanctions that are proscribed and many, perhaps the great majority, will not even have an isolation area.

We have found the question too close to issue a clear recommendation as to the applicability of this part to small group homes. Where a jurisdiction elects not to include group homes under the disciplinary system recommended here, it will still seem imperative to require that the general objectives in Standard 8.2 *infra* be made applicable.

Group homes may require different sanctions than those provided in Part VIII, but group homes should use these standards as guidelines. Most important are the requirements of written regulations and of ensuring that such regulations are communicated and understood. The procedure for petty infractions, Standard 8.8, may then commend itself for adoption in small group home situations.

8.2 Objectives.

The objectives of these standards are:

A. to allow those charged with the custody and control of juveniles to reasonably regulate the behavior of those in their charge and to impose disciplinary measures congruent with the willful violation of the applicable regulation;

B. to promote fairness and regularity in the disciplinary system;

C. to separate major infractions from minor infractions and to prohibit the imposition of disciplinary measures in certain cases;

D. to promote the use of written regulations and to ensure that the juvenile know as precisely as possible what conduct is expected of him or her and what sanctions may be imposed;

E. to provide a procedural format for the imposition of disciplinary measures; and

F. to prohibit cruel and unusual punishment within juvenile correctional facilities.

Commentary

The stated objectives are largely self-explanatory. The standards that follow are designed to facilitate the accomplishment of these objectives. When there are questions of interpretation, or a need to address gaps in this Part, or a requirement of greater specificity, reference should be made to these objectives.

8.3 Major infractions.

A. When a juvenile in a correctional facility is believed to have committed an offense that is a felony under the law of the jurisdiction, such offense should be processed in the same manner as an offense charged against a juvenile who is not in a correctional facility. If the charge is not otherwise pursued, the matter should be treated within the correctional facility as a major infraction.

B. If the appropriate authority elects to prosecute or refer the matter to juvenile court, some change may be required in the status of the accused juvenile within the facility for his or her own protection, for the protection of other residents, or for purposes of institutional integrity. The disciplinary board (see Standard 8.8) should determine whether probable cause exists to believe that the named juvenile is guilty of the alleged offense. If such cause is found to exist, the program director should determine whether restrictive measures are necessary for the protection of the juvenile, the protection of other residents, or for purposes of institutional integrity. If it is determined that restrictive measures are required, the least restrictive measures should always be used.

C. Representative of offenses that should be considered as major infractions are: murder; kidnapping; manslaughter; armed robbery; burglary; assault causing serious physical injury; rape; physical restraint of another with the threat of serious harm; arson; tampering with a witness; bribery; escape by use of force; possession of a pro-

scribed narcotic drug;* inciting a riot; theft or destruction of property valued at \$500 or more; and sexual abuse.

Commentary

Subsection A. takes the position that when a juvenile in a correctional facility is accused of committing an offense that is a felony under the law of the jurisdiction, the juvenile should be proceeded against in the same manner as a nonadjudicated juvenile accused of the same offense. That is, the juvenile should have the same preliminary proceedings available, with the same costs and benefits, regardless of his or her current confinement.

The discretion to proceed or not should be left to officials not connected with the department or the individual facility. If the charge is not pursued the manner may be treated within the facility as a major infraction.

If the charge is pursued against the juvenile it may, in some cases, be necessary to alter the status of the juvenile within the facility, pending the outcome of such charges. The reasons for such alteration could be the protection of the juvenile, the protection of other residents, or the maintenance of institutional integrity. This phrase refers to the needs individual institutions may have to respond to the willful violations of their most serious prohibitions. This standard provides a procedure whereby the disciplinary committee makes a preliminary finding of probable cause. The juvenile should have the right to appear, call, and cross-examine witnesses at such a hearing. The program director is empowered to impose restrictive measures if necessary for one of the three enumerated purposes.

At no time should any restrictive measures imposed infringe upon any constitutional rights of the juvenile, and in particular the presumption of innocence in favor of the juvenile must be respected and acknowledged within the facility at all times. Evidence of any indictment, charge, etc. may not be admitted as proof of guilt of the infraction charged.

The program director's decision may be appealed by the juvenile through the grievance mechanism. (Standard 9.2.)

8.4 Minor infractions.

A. A minor infraction that is an offense under the penal law may or may not be officially reported, according to the discretion of the

*"Narcotic drug" is not intended to include marijuana or any of its derivatives.

person in charge of the facility. If it is reported and the appropriate authority elects to take action, then the procedures set out in Standard 8.3 should apply.

B. Representative of offenses that should be considered as minor infractions are: assault with no serious bodily injury; escape without use of force; threatening the physical safety of others; theft or destruction of property valued at under \$500; creating a disturbance; engaging in a riot; lying to a person in authority; willful and repeated disobedience of valid orders; reporting a false alarm; being in possession of or under the influence of alcohol or marijuana; and refusal to perform work assignments.

Commentary

When the alleged conduct is a minor infraction, although an offense under the penal law, there should be discretion whether to refer the matter to the external authorities or to deal with it internally. When this position is enacted into law, it should be taken as an exception to any other rule of law requiring that an offense be reported.

The conduct included in subsection B. demonstrates that while the penal law may have been violated, the infractions tend to involve matters that closely relate to the program or the facility, and that may be capable of successful internal resolution. There is, of course, discretion to refer the matter outside, in which case the procedure noted in Standard 8.3 *supra* would apply.

As with major infractions, the listing in subsection B. is representative only and designed to provide guidance rather than offer a firm position as to what should or should not be included.

8.5 Petty infractions.

Representative of offenses that should be considered as petty infractions are: theft of property valued at \$5.00 or less; unauthorized use of property belonging to another; possession of contraband other than that treated in other categories; creating a fire, health, or safety hazard; unauthorized leaving of the facility for less than twenty-four hours; attempted escape; refusal to attend school or classes when mandated by the compulsory school attendance law; and violation of any of the valid regulations of the facility not otherwise covered in the above standards.

Commentary

It is important to categorize petty infractions as the least serious breaches of the regulations. Significant procedural distinctions are drawn between major and minor infractions and petty infractions.

The listing of infractions is representative only. It should also be noted that "housekeeping" regulations not otherwise included here should be treated as petty infractions for procedural and sanctioning purposes.

8.6 Conduct that may not be subject to disciplinary action.

Juveniles should not be subject to disciplinary action for any of the following behavior:

- A. sexual behavior that is not forbidden by statute or reasonable institutional regulations;
- B. refusal to attend religious services;
- C. refusal to conform in matters of personal appearance or dress to any institutional rule that is not related to health or safety;
- D. refusal to permit a search of the person or of personal effects that is not authorized by these standards;
- E. refusal to continue participation in any counselling, treatment, rehabilitation, or training program, with the exception of school or class attendance mandated by the compulsory school attendance law;
- F. refusal to address staff in any particular manner or displaying what is viewed as a negative, hostile, or any other supposed attitude deemed undesirable;
- G. possession of any printed or otherwise recorded material unless such possession is specifically forbidden by these standards;
- H. refusal to eat a particular type of food;
- I. refusal to behave in violation of the juvenile's religious beliefs;
- J. refusal to participate in any study, research, or experiment;
- K. refusal to take drugs designed to modify behavior or to submit to nonemergency, surgical interventions without consent.

Commentary

One of the objectives of this standard is to prohibit the imposition of discipline in certain specified instances, and to make reasonably clear the type of conduct that should not be made subject to discipline.

Subsection A. prohibits the imposition of discipline for any sexual conduct not prohibited by law. "Law" in this context refers not only to statutory prohibitions but also to reasonable institutional regu-

lations. It is acknowledged that common areas within the facilities develop a certain public nature. The development of reasonable regulations governing sexual conduct in such areas is therefore a legitimate institutional function. However, departments should ensure that such regulations are not unduly restrictive in view of the age and sexual development of the juveniles, and that regulations describe forbidden behavior with sufficient specificity to meet the standards of a penal code.

It will be noted that with few exceptions, the prohibitions stated here parallel positions taken elsewhere in these standards. Subsection F., refusal to address staff in a particular fashion or the display of a particular attitude, is new and reflects concern for the numerous reported instances in which staff punish children for "disrespect." The inherent arbitrariness of this discipline and the resentment it causes in the juveniles are adequate reasons for its prohibition.

8.7 Sanctions.

A. The sanctions available for less serious infractions may also be used for more serious infractions.

B. Major infractions—up to [ten] days room confinement, the loss of or prohibition from accrual of any or all good-time credits, a suspension of the privilege of earning good-time credits for a period not to exceed [thirty] days, and the suspension of designated privileges for a period not to exceed [thirty] days.

C. Minor infractions—up to [five] days room confinement, the loss of or prohibition from accrual of good-time credits not to exceed one-half of that currently earned, and the suspension of designated privileges for a period not to exceed [fifteen] days.

D. Petty infractions—reprimand and warning, and the suspension of designated privileges for a period not to exceed [seven] days. A second petty infraction may be treated as a minor infraction but only if the juvenile is given advance written notice of such decision.

E. Designated privileges described—the type of privileges subject to suspension should include access to movies, radio, television, and the like; participation in recreational or athletic activities; participation in outside activities; off-ground privileges; and access to the telephone, except for calls to the juvenile's family or attorney.

F. Punishments proscribed—no corporal punishment should be inflicted, nor should a juvenile be required to wear special clothing or insignia, eat a restricted diet, alter the regular sleeping pattern, engage in arduous physical labor, or be under a rule of silence, or any other punishment designed to cause contempt, ridicule, or physical pain.

Commentary

Four principles underlie this standard: 1. the more serious the infraction the more serious the possible sanction; 2. the proscription of physically harmful or degrading sanctions; 3. the limiting of administrative discretion by the enactment of a schedule of sanctions while also providing juveniles with notice of possible sanctions for infractions; 4. the use of the least restrictive sanctions consistent with effective enforcement of the regulations.

Lesser sanctions always may be applied for the more serious infractions in order to provide flexibility. However, the principle of proportionality in sanctions would be violated if the reverse step were taken.

It should be conceded that there is a certain arbitrariness in assigning time limits to sanctions. A maximum of ten days isolation, even under the humane conditions prescribed elsewhere in these standards, will be viewed as excessive by some. To others, it will not be sufficient response for a major infraction. In *Lollis v. New York State Department of Social Services*, 322 F. Supp. 473 (S.D.N.Y. 1970), a two-week confinement of a fourteen-year-old girl in night clothes in a stripped room, with no access to recreational facilities or reading matter, was held to be a cruel and unusual punishment. Judge Lasker appeared to base his decision on the combination of factors noted above and, indeed, specifically stated that he did not mean to intimate that the isolation of children under any circumstances is unconstitutional. 322 F. Supp. at 482-83.

In *Nelson v. Heyne*, 355 F. Supp. 451 (N.D. Ind. 1972), the district court heard evidence concerning the use of a nine-by-twelve isolation room, where inmates were shackled to their beds while the door was open, and where inmate-staff contact was sporadic. One boy had spent fifty-seven consecutive days in isolation and a total of 150 days in isolation over an eighteen-month period. The court did not prohibit the use of isolation nor did it place time limits on its use. Rather, it concerned itself with the lack of procedures leading to isolation, the need for periodic review, and the conditions of confinement.

There is little in the way of legal authority on point and little expertise to rely on when the conditions of confinement are separated from the narrow question of duration. In light of the relatively brief terms that may be judicially imposed on juveniles and in the belief that young people experience time in a different way from adults—it passes more slowly and the need for activity makes isola-

tion especially painful—a maximum of ten days isolation for major infractions and five days for minor infractions seems sufficiently long to achieve deterrence and punishment goals.

This standard leaves open the prospect of the repeated use of isolation for repeated infractions over time. Discretion to refer the matter to external authorities exists. Neither choice is especially attractive for a program director but it is a decision that is left to him or her.

Loss or suspension of good-time credit or the prohibition from accruing good-time credits, and the loss of designated privileges, which are described in subsection D., constitute the other available sanctions.

Provision is made for elevating a second petty infraction to a minor infraction in the belief that it is appropriate to allow for a harsher response to repeated and relatively serious misconduct. The juvenile should be informed in writing of the decision to so proceed.

Proscribed punishments are specified in subsection F. It may seem redundant to list what may not be done after having detailed the sanctions that are available. The purpose in doing so is to emphasize the unavailability of certain sanctions that too often have been employed by those in juvenile corrections. The punishments employed in states as diverse as Texas, Rhode Island, New York, and Indiana often read like horror stories. That beatings and degradation could still be in such wide use is sufficient reason to specifically prohibit them in these standards. See, *e.g.*, *Morales v. Turman*, 383 F. Supp. 53, 72-78 (E.D. Tex. 1974), for a description of practices in Texas held to be cruel and unusual.

8.8 Disciplinary board: composition, when required.

A petty infraction need not be heard in a formal hearing. Discipline should be invoked on the basis of a written report submitted to the program director. The juvenile should be informed of the charge and be given an opportunity to be heard before the program director, or his or her designee.

Major and minor infractions should be subject to a hearing before an impartial disciplinary board, composed of five members. Two members of the board should be employees of the facility, and two members should be selected from a rotating group of citizens who have volunteered to serve on the board and who are appointed in a manner that will ensure their independence. The fifth member should be a nonvoting chairperson. A majority vote should be required for any decision by the board. The board should meet when there are cases to be heard.

Commentary

The seriousness of the alleged infraction is a factor in determining the seriousness of the possible sanction, and the seriousness of the possible sanction determines the requisite procedural formality. Thus, a petty infraction that may be sanctioned only by reprimand and warning and the suspension of privileges for up to seven days requires little procedural formality. The juvenile must, of course, be informed of the charge and have an opportunity to be heard before the program director. Beyond notice and the opportunity to defend or explain, no additional procedural safeguards are recommended. A petty infraction is not subject to administrative proceedings although major and minor infractions should be heard before an impartial tribunal. The principle of an impartial tribunal seems to be well accepted both in discipline and parole revocation cases. However, the problem relates to competing standards of impartiality. In *Wolff v. McDonnell*, 418 U.S. 539, 571 (1974), the Supreme Court refused to find impartial a Nebraska prison's adjustment committee, which was composed entirely of prison employees. In *Morrissey v. Brewer*, 408 U.S. 471 (1972), the Court required a "neutral and detached" hearing body in a parole revocation proceeding but concluded that a parole board qualified. In addition to the required preliminary hearing, "neutrality" could be accomplished if the hearing officer was a parole agent or supervisor, so long as the hearing officer had no prior direct involvement in the case.

Thus, the Supreme Court has upheld the right of corrections employees to sit in judgment of those under correctional supervision, so long as the decisionmakers have no prior, direct involvement with the case. It is difficult to imagine how this comports either with neutrality or impartiality. It seems obvious that the appearance as well as the possibility of actual influence is present when fellow workers judge each other. In addition, such a situation creates a conflict of interest, creates tension by placing competing loyalties into a decision-making process that requires impartiality, and makes it difficult for the individual being judged to believe that a fair proceeding is possible.

This standard recommends that the board be composed of five members, two of whom may be employees of the facility (and thus familiar with its operation); two of whom should be selected from a rotating panel of citizens, and a nonvoting chairperson. The panel could be volunteers composed of gubernatorial appointees, or selected by any other means that assures impartiality. The important point is to bring into the decision-making process at least two mem-

bers of a board who have no direct contact with the department, the facility, or the program.

8.9 Disciplinary procedure.

No sanctions should be imposed nor any record of the charge maintained for a major or a minor infraction unless the following procedural requirements are met:

A. Notice—verbal notice of the intent to prefer a charge should be given immediately after discovery of the alleged infraction, with written notice required within twenty-four hours thereafter. Such written notice should specify the rule violated; contain a brief description of the alleged conduct; and give the date, time, and place of the alleged conduct.

B. Time of hearing—the hearing should be held not later than seven days after service of the written notice. The juvenile should be notified in writing of the time and place for the hearing as soon as that decision has been made.

C. Representation—the juvenile may select as a representative at the hearing an employee of the facility, an employee of the department, another resident, his or her own counsel, or any person who is a regular volunteer for that purpose.

D. Hearing—the chairperson of the disciplinary board should read the charge and ask the juvenile either to admit or deny it. If the charge is denied the chairperson should call and question the person making the charge, the juvenile, and any other persons deemed material witnesses. The juvenile or the juvenile's representative should have the opportunity to cross-examine any witness, subject to the discretion of officials of the correctional facility, to inspect and challenge any documentary or physical evidence, and to introduce evidence and call witnesses only when permitting the juvenile to do so would not be unduly hazardous to institutional safety or correctional goals.

E. Decision—the board should render a written decision based on clear and convincing evidence, and should notify the juvenile and the juvenile's representative of such decision within twenty-four hours. The decision should include:

1. a finding either of guilty or not guilty;
2. the reasons for the decision;
3. a summary of the evidence relied upon;
4. the sanction to be imposed, along with reasons for the sanction.

F. Record—the decision, when final, should become a part of the juvenile's record.

G. Finality and review—a petty infraction should not be subject to further review. A minor infraction may be reviewed by the program director, at the request of the juvenile. A major infraction should be automatically reviewed by the program director. Such review should include the decision and the sanction imposed. The reviewer may reverse the board's finding of guilt or reduce the severity of the sanction. Appeals from the program director's decision should be made to the independent review body described in Standard 9.2 C. 11.

Commentary

With isolation and loss of good-time credits at stake, as well as privileges that materially contribute to the juveniles' quality of life, there is a due process right to ensure that losses of such liberties are not arbitrarily imposed. *Wolff v. McDonnell*, 418 U.S. 539, 537 (1974). The requirement of a disciplinary board composed of at least two citizens not connected with juvenile corrections is one of the most significant steps one can take to reduce arbitrariness. More, however, is needed.

This standard calls for immediate verbal notice of the alleged infraction, to be followed by written notice within twenty-four hours. Rudimentary due process requires such notice—specification of the rule violated; a description of the alleged conduct; and the date, time, and place of the alleged conduct. When the hearing is set, the juvenile obviously must be informed as to time and place.

Emphasis is placed on speedy hearing, not later than three days after the written notice with some delay possible at the insistence of the juvenile or those bringing the charge.

No absolute right to counsel is recommended. See *Wolff v. McDonnell*, 418 U.S. 539, 570 (1974). The lack of a recommendation here is not based entirely on a fear of creating an adversary situation or retarding correctional goals. Rather, we are of the view that the objective here is representation, and a right to counsel is simply one way, and in this setting perhaps not the best way, to obtain it. In any event, it is not likely that lawyers in sufficient numbers, with adequate training, will be available. Further, by allowing the juvenile to select a person upon whom he or she relies we do not eliminate lawyers but simply give the option of selection to the juvenile. We do not envision a system of compensation for such efforts. A lawyer's involvement will be on the same basis as a selected employee or any non-lawyer, adult or juvenile, who is asked and agrees to appear.

The proceeding itself can be somewhat informal, with the chairperson reciting the charge and asking the juvenile to admit or deny it.

If the charge is denied, the chairperson should call and question the person making the charge and the juvenile as well as any material witnesses. There should be an opportunity to call and cross-examine witnesses, to inspect and challenge any documentary evidence, and to introduce evidence to the extent that doing so is not unduly hazardous to legitimate institutional concerns. The executive committee endorsed the position of the ABA Section of Criminal Law that the same criteria for potential disruption should apply to limitations on the constitutional rights of persons in state prisons as in juvenile correctional facilities.

Flexibility is desirable on such matters as the length of the hearing or any examination or cross-examination of witnesses. If no one is formally presenting the case against the juvenile, the members of the board will have to be alert to ask questions designed to bring out the affirmative case.

A written decision should be rendered within twenty-four hours, and such decision should include the finding, reasons for the decision, a summary of the evidence relied upon, and the sanction to be imposed along with the reasons for the sanction. When final, the decision should be incorporated into the juvenile's record.

A decision involving a major or minor infraction may be reviewed by the program director, who may reverse a finding of guilt or substitute a lesser sanction. Consideration was given to a recommendation for review either at the departmental level or by some independent body. Given the limitation on sanctions and fairly stringent requirements for isolation—the most onerous sanction—independent review seems unnecessary. Another level of review is time consuming for everyone and creates an additional expense for the program.

In addition, the grievance mechanisms in Part IX can be used. An individual complaint relating to discipline as well as a claim of general abuse could be made the subject of a grievance.

Jurisdictions may wish to experiment with additional avenues of review. To the extent that sanctions are made less onerous than those recommended here or more procedural safeguards are provided, such experimentation is encouraged.

PART IX: ACCOUNTABILITY

9.1 Basic requirements.

A. Additional mechanisms.

In addition to the accountability mechanisms that appear throughout these standards, five additional mechanisms are set forth in this

Part. These are: information systems; grievance procedures; monitoring procedures; evaluation activities; and a planning process open to public scrutiny.

B. General principles.

Full accountability depends upon a combination of mechanisms within the department and independent of the department, upon similar application to privately and publicly administered programs, and upon access by the public to information concerning such mechanisms.

Commentary

The necessity of making the administration of juvenile corrections accountable to the public, to the courts, and to the juvenile subject to the correctional process has been a central theme of this volume. In this final section, a number of specific accountability mechanisms are set forth. Each of these has a component that is internal to the department as well as one that is independent of the department. For a discussion of the need for accountability in the administration of juvenile justice agencies, see Nejelski and LaPook, "Monitoring the Juvenile Justice System: How Can You Tell Where You're Going If You Don't Know Where You Are?" *12 Am. L. Rev.* 9 (1974). See also Wolfgang, "Making the Criminal Justice System Accountable," *18 Crime & Delinq.* 15 (1972).

9.2 Grievance mechanism.

A. Defined.

A grievance mechanism is an administrative procedure through which the complaints of individuals about residential programs or department policies, personnel, conditions, or procedures can be expressed and resolved.

B. No single model is preferred.

While the establishment of some grievance mechanism is highly desirable, no single model or procedure exists that could be implemented in all residential programs for juveniles in the country. One of the essential elements for success should be resident and staff collaboration on details, and implementation should be guided by certain fundamental principles.

C. Principles to govern individualized grievance mechanisms.

1. Every resident assigned to any program unit should have the means to file a grievance and make use of any grievance procedure that is developed.

2. Each facility should design a mechanism appropriate to its physical set-up, the age and size of its population, and the focus of

its program. The mechanism should be subject to review and approval by the department.

3. There should be available to any resident with an emergency grievance or problem, a course of action that can provide for immediate redress.

4. Elected residents and designated staff should participate in the development of procedures and in the operation of the grievance mechanism.

5. The mechanism employed should be simple and the levels of review kept to a minimum.

6. Residents should be entitled to representation and other assistance at all levels, including informal resolution within the established procedure.

7. There should be brief time limits for the receipt of all responses to a grievance as well as for action that is required to relieve the grievance.

8. A course of action should be open to all parties to a grievance, staff and residents alike, for appealing a decision.

9. A juvenile should be guaranteed a speedy, written response to his or her grievance with reasons for the action taken. In the absence of such a response, there should be further recourse available to the juvenile.

10. Monitoring and evaluation of the entire operation by persons not connected with the facility should be required.

11. The procedure should include, as a final review, some form of independent review by a party or parties outside the department. Such review may be in the form of binding or nonbinding arbitration.

12. No reprisals should be permitted against anyone using the grievance mechanism.

13. The grievance mechanism should include an impartial method for determining whether a complaint falls within its jurisdiction.

14. Implementation of the grievance mechanism is a vital factor in its potential for success. This calls for administrative leadership and commitment, resident and staff involvement, a strong orientation and explanation program for new residents, and outside monitoring.

Commentary

A. Defined.

The definition of a grievance mechanism used here is intentionally broad. It can include an ombudsman program and a structured, multi-level procedure of the sort preferred in this standard. Legal

service programs, volunteer programs, and resident council operations are not included in this definition.

An ombudsman program is distinguishable from the structured program in that once a juvenile files a complaint with the ombudsman he or she cedes control over its progress and resolution.³⁰ In the structured program the juvenile is an active party, presenting his or her case, deciding on further review, and perhaps even collaborating with other juveniles in a collective (i.e., class action type) proceeding.

A recent survey conducted by the Center for Correctional Justice revealed a high level of interest among juvenile correctional administrators in dealing with complaints of confined juveniles in some formal manner.³¹ Further study by the Center's staff disclosed basic problems in the variety of programs that were uncovered: lack of visibility, delay, little use or knowledge of the complaint mechanism, lack of credibility, and the like.

The standards presented here, while intentionally broad in language, are designed to be responsive to the problems uncovered by the Center for Correctional Justice's pioneering work in this area.

B. No single model is preferred.

Residential programs are too varied in size, physical arrangements, age and characteristics of their residents, and program focus for any single model to be preferred. Thus, rather than present a "program package," these standards present a series of principles that should be implemented in light of the particular characteristics of the facility or program, and available resources.

Recent studies indicate that resident and staff collaboration on the details and implementation of the program is a *sine qua non* for success. A grievance mechanism, as opposed to an ombudsman program, appears to lend itself more easily to meaningful resident-staff involvement. This means the assignment of power to make real decisions and thus a willingness on the part of administrators to share some power. When all power continues to reside with those in authority, inmates and residents remain skeptical to the point where the grievance mechanism is not credible and is not used.³²

³⁰See W. Gellhorn, *When Americans Complain* (1966); Ombudsman Committee of the Section of Administrative Law of the American Bar Association, "Development Report" (July 1, 1973-July 30, 1974) for a listing of the international and United States ombudsman programs.

³¹J.M. Keating, Jr. et al., "Seen But Not Heard: A Survey of Grievance Mechanisms in Juvenile Correctional Institutions" (n.d.) (hereafter cited as "Seen But Not Heard").

³²See J.M. Keating, Jr., "Toward a Greater Measure of Justice: Grievance Mechanisms in Correctional Institutions" 35-37 (1975) (hereinafter cited as "Toward a Greater Measure of Justice").

C. Principles to govern individualized grievance mechanisms.

Access to a grievance mechanism by every resident of a program unit must be a fundamental principle in the design of the specific mechanism. When individuals are in any form of confinement and are left without legitimate channels to express their complaints, the system invites its own subversion or the intervention of outside agencies or processes.

There are occasions when verbal discussion with staff simply will not satisfy an aggrieved person. Capricious decisions and abuse of authority must be dealt with in some fashion and a grievance mechanism that provides ready access by any juvenile is the course recommended here.

As indicated earlier, each facility should design a mechanism based on its special characteristics and the characteristics of its residents. The department should review and approve such mechanisms, not to achieve uniformity but to make certain that the basic principles set out here have been observed.³³

Speed in obtaining a response is a general principle but, in addition, provision must be made for the emergency grievance or complaint. A juvenile who is in isolation, denied a furlough, or who believes that life-preserving medical care is not being provided cannot be expected to wait very long for the resolution of the problem. Thus, there must be a device designed to expedite contact with the first-level person who handles the grievance and for that person to speed the matter to investigation and resolution.

Experience has shown that there is no more important principle here than resident-staff participation in the development and implementation of the procedures, and in the operation of the program. In the Karl Holten facility, operated by the California Youth Authority, residents and line staff representatives jointly designed their own procedure, restricted only by departmental principles; residents and line staff participate on an equal basis in the committee that hears complaints initially at the first level; residents and staff were trained together and given joint responsibility for explaining the procedure to their respective constituencies; both residents and line staff may appeal unfavorable decisions at each level of the procedure; both have representation on the outside review panel; residents may represent fellow residents at each step of the procedure; in each living unit, resident clerks have a key role in operating the procedure, including administration of the entire process.³⁴

³³ See "Toward a Greater Measure of Justice" and "Seen But Not Heard" for a description of program option.

³⁴ "Seen But Not Heard" at 75.

This type of involvement has produced impressive results in that knowledge and use of the procedure is widespread, enthusiasm among staff, administrators, and residents is high, and some residents report feeling like a human being with rights—a novel experience for many residents of juvenile facilities.³⁵

Simplicity and relatively few levels of review are important factors. In the collaborative model proposed here, staff and residents—possibly with the aid of expert consultants—would design the mechanism so that a first level of review might include four voting members—two staff and two residents—with a nonvoting chairperson acting as mediator. The second level of review could then be the program director and the matter then might go either to someone in the department or to outside arbitration.

The first operational decision concerns how the juvenile gets the grievance before the review body, and this too should be made as simple as possible. Once the grievance is filed, the first level of review should be to move quickly to investigate and process the matter.

Representation of residents, in the form of aid in preparing and presenting the grievance, should be considered in the design of every grievance mechanism. Again, there are a variety of ways to achieve representation: develop lay advocacy programs either in the community or among the residents; train a panel of staff members in advocacy and allow the grievant to select a representative; allow a resident to use any other resident or employee regardless of training; allow residents to call upon outsiders for representation; and so on.

Time limits, as indicated earlier, are a critical factor. Complaint processing programs in adult and juvenile facilities show a reluctance to subject the administration to time constraints and this appears to be a critical factor in their lack of success.³⁶ The California Youth Authority, on the other hand, allows less than thirty days to provide a grievant with a final response, including review of the grievance by an outside review panel.³⁷

Time limits should be placed on each level of decision as well as for the requisite action to relieve the grievance. On the latter point, it would be well to divide grievances into large categories for the purpose of effectuating the relief. For example, if the matter relates to the structure, staffing, or equipping of the facility it is likely that

³⁵ *Id.* at 77.

³⁶ "Toward a Greater Measure of Justice" at 40-41.

³⁷ *Id.* at 61. It should also be noted that in the first sixteen months of the operation of the CYA procedure, an average population of 500 residents submitted over 700 complaints.

more time will be required for compliance than in the case of an individual grievance relating to food, clothing, or the like.

A multilevel structure, as proposed here, presupposes an appeal process. Such a process should be open to residents and staff alike. The procedure for taking an appeal should be speedy and as simple as possible. The appeal itself should be in writing, if only for record keeping and subsequent evaluation purposes.

We do not envision a *de novo* proceeding here but there is no need to constrain the program director, should he or she be the first level of appeal, from having some or all of the parties personally appear before him or her. More often than not, the written statement of the appeal and the reasons and the arguments appearing therein should be relied upon.

The appeal, of course, must be answered and this should be in writing and provide some explanation for the action taken. If the answer is not timely the party appealing should be permitted to proceed at once to the next stage of the process.

Reprisals for the use of the grievance mechanism are, of course, antithetical to the philosophy of a grievance mechanism. Perhaps the best way to protect against reprisals is to adopt a policy allowing no record of the filing of grievance to be maintained in any juvenile's file.

The final step in the grievance process should include access to some form of independent review by a party or parties outside the department. This review may take the form of binding or nonbinding arbitration. In the study conducted by the Center for Correctional Justice it was concluded that "there are no successful operating grievance mechanisms anywhere in corrections that do not include some form of outside review. . . ."³⁸

Accepting the idea of outside review and deciding on whether it should be binding or nonbinding are among the most difficult decisions for an administrator. Indeed, accepting a form of binding arbitration may not be legal under the law of many jurisdictions since, in a sense, it means binding a state agency or facility outside of the statutory scheme for the exercise of its authority.

Nonbinding arbitration, in which the grievant and the program director each select a member and such members, in turn, select a third member from a panel, may be the most feasible model at this time. The third party could be selected from a panel previously selected by staff and residents or from the American Arbitration Association.

³⁸ "Toward a Greater Measure of Justice" at 86.

Monitoring and evaluation by outside persons is vital and should not present the same sort of problems as independent review. Monitoring is required to ensure that procedural requirements are followed, to ensure implementation of decisions, and to prevent reprisals.

Evaluation requires explicit criteria for determining whether a grievance mechanism is working. From among the many possible criteria available—*e.g.*, reduction in resident frustration, reduction of violence, reduction in litigation—the Center for Correctional Justice finally settled on two key factors by which to evaluate such mechanisms:

A. Volume. Do residents use the mechanism and seek redress for grievances?

B. Effect. Do complaints result in clarification and change of policies?³⁹

These criteria may prove misleading but they represent a start. It is conceivable that volume may diminish if a program is and remains responsive to previously submitted grievances.

There must, of course, be some way to determine what matters are within the jurisdiction of the grievance mechanism. The clearest candidates for inclusion are bureaucratic issues: problems arising from the application of departmental, institutional, and program rules and regulations; policy issues; and disputes over the content of rules. Other likely matters are questions arising from transfers, and grievances arising from the program director's decision on an appeal of a disciplinary matter.

Finally, implementation is critical. Implementation involves a careful assessment of the rate and direction in which to proceed with the grievance mechanism, orientation and training, careful explanation of the mechanism, and probably the use of one carefully selected facility as a model.

9.3 Organization of research and planning within the department.

A. Research and planning division.

The department should establish a research and planning division within its central office with organizational status similar to that of other divisions within the department. The division should have responsibility for:

1. the assembly and processing of data concerning all department activities;
2. continuous monitoring of all programs;

³⁹*Id.* at 103.

3. ensuring program effectiveness;
4. short- and long-term planning for the department;
5. coordination with appropriate state agencies.

B. Information system.

The research and planning division should develop an information system designed to serve the department's data needs for administration, research, and planning. The data assembled should include:

1. basic characteristics of juveniles within the department's jurisdiction;
2. program descriptions and features;
3. departmental organizational arrangements such as local offices, field offices, and other units of administration;
4. characteristics of department personnel; and
5. fiscal data.

C. Monitoring activities.

The division should ensure program quality through the monitoring of all programs. Monitoring should include the compilation of basic data on all programs and regular visits by monitoring teams. Monitoring should be designed to ensure compliance with the department's standards and the program's statement of purpose.

1. **Basic program data.** The division should establish guidelines for basic program data that should be recorded and provided to the division at least annually. At a minimum such data should include:

- a. standardized information on juveniles in the program;
- b. details concerning personnel and volunteers;
- c. narrative history of the program from inception;
- d. line item accounts of the program's allocation of funds and expenditures;
- e. description of the links between the program and the community within which it is located;
- f. description of regulations and standardized data on disciplinary hearings;
- g. description and data on the provision of a safe, human, caring environment;
- h. description and data on services provided;
- i. details concerning the relationship between the program and other public and private agencies.

2. **Visits to programs by monitoring team.** The division should send a monitoring team to visit each program at least twice annually. Depending on the nature of the program, the monitoring team should usually consist of two or three persons and the visit should be for a period of up to one week. When appropriate,

unannounced follow-up visits should be made. At a minimum the monitoring team should:

- a. systematically interview all juveniles and staff involved in the program;
- b. observe every aspect of the program; and
- c. review the program's procedures for recording information.

3. Use of monitoring results. The monitoring results should be used as the basis for decisions concerning required program changes or the termination of particular programs.

D. Evaluation of programs: process and outcome.

Evaluation refers to the measurement of program processes and outcomes. Depending on the level of independent evaluation, the division should carry out its own evaluation activities. Program evaluation should be of two types:

1. Process evaluation. Process evaluation determines whether the program is being implemented in accordance with its stated purposes and methods. The criteria for measurement should include the level of humaneness and fairness of the program's day-to-day operations, and the extent and quality of its community links.

2. Outcome evaluation. Outcome evaluation measures the program's effectiveness in terms of producing change in the direction of stated goals. Outcome evaluation should also endeavor to locate and measure unanticipated consequences of particular activities. The measurement criteria should include rates of recidivism, the personal development of juveniles under correctional supervision, and fiscal costs.

E. Planning.

The division should ensure that the department's short- and long-term planning includes:

1. full use of research findings;
2. close coordination with the planning activities of other criminal justice and children's service agencies;
3. providing public access to the department's planning documents, at least annually, and allowing public participation in the planning process; and
4. continuous review and modification based upon results of departmental monitoring and evaluation activities.

F. The department's annual report.

The division should have primary responsibility for the preparation of the department's annual report. The report should be published and widely disseminated. The report should include:

1. a summary of the department's program activities;

2. information on the operation of disciplinary and grievance mechanisms;
3. data concerning juveniles and department personnel;
4. the department's fiscal accounts; and
5. the department's planning for the future.

Commentary

A. Research and planning division.

The department should give a high priority to research and planning, and all such activities should be coordinated within one of the department's major divisions. The administration of corrections has not generally attached much importance to research activity, although there have been a number of exceptions. The most striking is the California Youth Authority, which established a research division in 1958. See "A Review of Accumulated Research in the California Youth Authority" (1974). The dearth of research activity within correction agencies has received frequent comment. See President's Crime Commission, *Task Force Report: Corrections* 13 (1967); NACCJSG, "Corrections" 496 (1973). For a critical analysis of the state of correctional research, see D. Ward, "Evaluative Research for Corrections" in *Prisoners in America* 184 (L. Ohlin ed. 1973); Cressey, "The Nature and Effectiveness of Correctional Techniques," 23 *Law & Contemp. Prob.* 754 (1958); G. Kassebaum, D. Ward, and D. Wilner, *Prison Treatment and Parole Survival: An Empirical Assessment* (1971).

B. Information system.

Many corrections agencies do not have a systematic information system. The National Commission on Criminal Justice Standards and Goals commented:

Correctional agencies typically make [these] decisions from a cumbersome, usually disorganized file. The information in the file is so confused that it must often be supplanted by intuition. Clearly, if more knowledgeable decisions are to be made, more readily usable information must be provided. "Corrections" 523 (1973).

A constant criticism of agencies responsible for the administration of juvenile justice is the absence of reliable information, even with regard to quite basic matters. See, for example, Nejeleski and LaPook, "Monitoring the Juvenile Justice System: How Can You Tell Where You're Going If You Don't Know Where You Are?" 12 *Am. L. Rev.*

9 (1974). For example, in New York State the juvenile corrections agency was unable to supply a committee with data on the offense character of the juveniles in its institutions. "Report of the Governor's Panel on Juvenile Violence" (1976); see generally NACCJSG, "Corrections" 519-527 (1973).

C. Monitoring activities.

Quality control has generally been afforded low priority by most juvenile corrections agencies. Few agencies have developed systematic procedures to obtain information from programs or to undertake comprehensive and ongoing inspections. The need for efficient quality control procedures is equally important for publicly and privately provided programs. The Massachusetts Department of Youth Services, which relies heavily on the private sector for programs, has developed a systematic monitoring effort based in the central office and involving regional personnel. See Serrill, "Juvenile Corrections in Massachusetts," 11 *Corrections Magazine* 12 (1975); Anderson, "Monitoring Deinstitutionalized Youth Services" (1976). These standards call for a much more comprehensive approach to quality control than mere distribution of departmental regulations and standards. Responsibility for quality control is placed with both program personnel and the department's central office. The effort of assembling required data on a regular basis by program personnel together with systematic inspections by a department monitoring team are intended to provide a solid basis for good quality programs. Subsequent standards supplement this effort by providing for process evaluation (Standard 9.3 D. 1.) and independent monitoring of programs (Standard 9.4 A.). The standard holds that if the monitoring effort is to be effective, the department must be prepared to make full use of the results in bringing about suggested changes and, where necessary, terminations of programs.

D. Evaluation of programs.

The standard proposes that evaluation of programs should address both process and outcome. Less attention has generally been given to the former; it has been referred to as the attempt to examine the unknown "black box" containing the interactions and incidents of the daily life of the program. See L. Empey and S. Lubeck, *The Silverlake Experiment* 109 (1971). It has been suggested that at least five criteria should be measured in process evaluation:

1. *effort* (e.g., cost, time, types of personnel expended to achieve goals);

2. *level of performance* (number of individuals who complete the program compared to those who enroll);
3. *adequacy of performance* (e.g., value of program to juveniles);
4. *efficiency* (relative cost of the program);
5. *organizational processes* (e.g., program attributes that relate to success or failure).

See R. Sarri and E. Selo, "Evaluation Process and Outcome in Juvenile Corrections: Musings on a Grim Tale" in *Evaluation of Behavioral Programs* 258-303 (P. Davidson, F.C. Clark, and L.W. Hamerlynck eds. 1974). These researchers commented: "Only when we can establish linkages between events within the program and subsequent outcomes can we have knowledge that is needed for policy recommendations. Yet, most evaluative research continues to expend more resources on unrelated measurement of inputs rather than process and outputs." *Id.* at 46. See also C. Weiss ed., *Evaluating Action Programs* (1972); Lerman, "Evaluating Studies of Institutions for Delinquents," 13 *Social Work* 15 (1968).

Outcome evaluation has received considerable attention with regard to corrections programs for both juveniles and adults. Its focus has mainly been on rates of recidivism. The extensive evaluation literature has been comprehensively reviewed. See Bailey, "Correctional Outcomes: An Evaluation of 100 Reports," 57 *J. Crim. L.C. & P.S.* 158 (1966); Robison and Smith, "The Effectiveness of Correctional Programs," 17 *Crime & Delinq.* 579 (1971); Clark, "Juvenile Offender Programs and Delinquency Prevention," *Crime and Delinq. Lit.* 377 (1974). The most comprehensive survey of corrections evaluation research is the review of studies reported between 1945-1967, D. Lipton, R. Martinson, and J. Wilks, *The Effectiveness of Correctional Treatment* (1975). For a summary, see Martinson, "What Works? Questions and Answers About Prison Reform," 35 *Public Interest* 22 (1974).

The standard holds that recidivism should not be the only measure of program outcome. Additional outcomes such as the growth and development of the juveniles and the costs incurred by the program should also be taken into account. See Lerman, "Evaluative Studies of Institutions for Delinquents," 13 *Social Work* 55 (1968); R. Sarri and E. Selo, "Evaluation Process and Outcome in Juvenile Corrections: Musings on a Grim Tale" in *Evaluation of Behavioral Programs* 253 (P. Davidson, F.C. Clark, and L.W. Hamerlynck eds. 1974); Ohlin, Coates, and Miller, "Evaluating the Reform of Youth Corrections in Massachusetts," 12 *J. Res. Crime & Delinq.* 3 (1975). See also D. Glaser, *Routinizing Evaluation* (1973); F. Caro ed., *Readings*

in *Evaluation Research* (1971); S. Adams, "Evaluation Research in Corrections: A Practical Guide" (1974); NACCJSG, "Corrections" 504 (1973); L. Wilkins, *The Evaluation of Penal Measures* (1969).

E. Planning.

The standard locates the responsibility for the department's planning within the research and planning division. This underlines the close interdependence of research and planning. See Garabedian, "Research and Practice in Planning Correctional Change, 17 *Crime & Delinq.* 41 (1971); K. Polk, "Organizational Structures for Research in Correctional Rehabilitation" in "Research in Correctional Rehabilitation" 51-55 (U.S. Joint Commission for Correctional Manpower and Training 1967); NACCJSG, "Corrections" 531 (1973); Rabow, "Research and Rehabilitation: The Conflict of Scientific and Treatment Roles in Correction," 1 *J. Res. in Crime & Delinq.* 67 (1964).

The standard holds that there should be public access to the planning documents generated by the department and public involvement in the planning process. For an examination of public participation in comprehensive juvenile justice planning at a state level, see National Youth Alternatives Project, "The Juvenile Justice and Delinquency Prevention Act: Some Guides to Its Implementation Locally" (1975). See Public Law 93-415, § 223(a) for composition of the state planning advisory group. The advisory group must have between twenty-one and thirty-three members, a majority of whom are not public employees, and at least one third of whom are under age twenty-six at the time of their appointment.

9.4 Independent monitoring and evaluation activities.

A. Independent monitoring of programs.

Monitoring activities, similar to those set forth in Standard 9.3 C., should also be performed independently of the department. Such activities should include:

1. Monitoring by a public agency. Jurisdictions should provide for the independent monitoring of juvenile corrections programs by a public agency. No single organizational model for such monitoring is preferred. The central considerations in the establishment of such an agency are its independence from the department with responsibility for juvenile corrections, and complete access to all programs and information.

2. Monitoring by private groups. Private groups should also monitor department programs. The department should recognize that such groups, which may focus either on all aspects of a pro-

gram or on particular aspects of care and services, play an important role in maintaining a high level of program quality.

B. Independent evaluation.

Most evaluation activity should be undertaken independently of the department. There should be a diversification of evaluation functions among public and private agencies and universities. Evaluation should include the program process and outcome evaluation set forth in Standard 9.3 D. Additionally, there should be system-wide evaluation that addresses several or all programs within a given jurisdiction. Such evaluation should measure the impact of programs and other departmental activity on the juvenile justice process as a whole. The measurement criteria for the system-wide evaluation should include crime rates, fiscal costs, and movement of juveniles through the system.

Commentary

A. Independent monitoring.

In order to achieve a high level of program quality, there should be independent monitoring, in addition to the department's own monitoring capability. Considerable difficulties can be encountered in the establishment and operation of viable mechanisms for independent monitoring, and it is not surprising that there has been little development in this area. A major problem facing all regulating agencies is the pressure towards cooption, which arises in part because of difficulties of access to required information. There has been some experience with judicially supervised institutional modifications. See Note, "The Wyatt Case: Implementation of a Judicial Decree Ordering Institutional Change," 84 *Yale L. J.* 1338 (1975), which pointed to the need for a full-time staff, some professional expertise, clearly defined powers and authority to gain access to information, and ability to make recommendations. See also *Morales v. Turman*, 383 F. Supp. 33 (E.D. Tex. 1974), where the court appointed its own monitor to oversee the implementation of the interim order; see especially Institute of Judicial Administration, "The Ellery C. Decision, A Case Study of Judicial Regulation of Juvenile Status Offenders" (1975).

A publicly funded monitoring agency might oversee a number of public agencies, including juvenile corrections. In Massachusetts, the Office for Children (created by statute, Chapter 785 of the Acts of 1972) has such powers, combined with licensing authority. See Office for Children, "Regulations for the License of Approved Group Care Facilities" (1974).

B. Independent evaluation.

The commentary to Standard 9.3 D. does not require much amplification. The standard points to the need for additional evaluation by persons and agencies independent of the department, if the research efforts are to be insulated from pressures to compromise its findings. See P. Rossi and W. Williams, *Evaluating Social Programs: Theory, Practice and Politics* (1972); and D. Ward and G. Kassebaum, "On Biting the Hand that Feeds: Some Implications of Sociological Evaluations of Correctional Effectiveness" in *Evaluating Action Programs* (C. Weiss ed. 1972); D. Ward, "Evaluative Research for Corrections" in *Prisoners in America* 202 (L. Ohlin ed. 1973).

This standard points to the need for system-wide evaluation, in addition to the focus on specific programs. System-wide evaluation is concerned with the overall impact of the department's activities, and includes taking account of unanticipated consequences that might have occurred. Coates and Miller have observed in relation to this type of research:

The hallmark of the system model approach is the attempt to depict the interrelationships of programs being evaluated within the larger social service systems and other impinging systems by increasing the number of variables under consideration. Evaluation then becomes the analysis of the shifting balance of forces operating on a system's clients, including both those forces under the control of the agency and those not under the agency's control. R. Coates and A. Miller, "Evaluating Large Scale Social Service Systems in Changing Environments: The Case of Correctional Agencies" 4 (n.d.).

See also R. Coates and A. Miller, "Criminal Justice, Sets, Strategies, and Components: Programs Evaluating Change in the Criminal Justice System" in *Criminal Justice Research* 125 (E. Viano ed. 1975). One such design has been developed in the context of community-based programs by Gary Miller. See "Evaluation Designs" in *Community-Based Alternatives to Juvenile Incarceration* 188 (O. Bengur and A. Rutherford 1975). The system-wide perspective with attention to unanticipated consequence of selected policies of a corrections agency was used by Paul Lerman in his reanalysis of data on the Community Treatment Project and the probation subsidy scheme in California. See *Community Treatment and Social Control* (1975). The Harvard Law School's major study of changes in juvenile corrections in Massachusetts between 1970 and 1977 is attempting to explore several system-wide issues. See Ohlin, Coates, and Miller, "Radical Correctional Reform: A Case Study of the

Massachusetts Youth Correctional System,” 44 *Harv. Ed. Rev.* 74 (1974); Ohlin, Coates, and Miller, “Evaluating the Reform of Youth Correction in Massachusetts,” 12 *J. Res. Crime & Delinq.* 8 (1975); and Center for Criminal Justice, Harvard Law School, “Preliminary Analysis Relating to the Generalizability of the Massachusetts Experience in Juvenile Corrections Reform” (1975).

Dissenting View

Statement of Commissioner Justine Wise Polier

Many of the proposed standards in this volume are of great value in that they would assure due process for children or youth charged with delinquent conduct and strengthen nonresidential services for such children.

However, I do not agree with the central theme as stated (commentary to Standard 9.1) that the administration of juvenile justice should be made "subject to the correctional process," and dissent from the standards based on this position. It is unfortunate that the laudable aim of assuring due process in the administration of juvenile justice is linked with the proposal that it should be administered by state correctional departments. This is unwise and unnecessary since there are better alternatives. Some states have placed responsibility for services to adjudicated delinquents in divisions for youth, departments for children and youth, or in human resources departments where the special needs of youth can be expected to receive greater attention. The proposed standard, which would restrict shortening of a sentence for "good time" served by a juvenile to 5 percent (Standard 7.9), thus barring consideration of the development, growth, or change of a juvenile, is but one illustration of the failure of the proposed standards to recognize differences between juvenile and adult offenders.

I must also dissent from the thesis that the dispositional authority resides only with the court as part of its sentencing task, and that the agency to which custody is entrusted should not be permitted to reduce the length of stay or move a youth to a less restrictive category on the basis of the youth's adjustment as observed (commentary to Standard 1.1). This position is in conflict with the right to the least restrictive placement, and with the right to receive appropriate care and treatment so long as the freedom of a child or youth is limited by state action.

Subsequently, two of the proposed standards deviate from such

absolute dispositional authority of the courts. The first would permit departments of corrections to make security classifications to allow youth placed by them in lower risk categories to participate in community activities, and have weekend furloughs (Standard 7.11 C. 1., D., G.). This is consistent with the volume's purpose to provide maximum normal community participation for delinquents. The second is more difficult to rationalize. It would limit the dispositional authority of the courts indirectly by giving corrections departments authority to set secure bed quotas for a state in order to restrict the usage of secure facilities by the courts (Standard 7.11 A. 2. and commentary to Standard 7.11).

Apart from these issues, I do not agree with two underlying themes of this volume from which many of the standards are derived.

First are the assumptions and conclusions that the goal of rehabilitation for youth is hardly worth consideration, that the juvenile justice process is not be "disguised or confused with offers of help" (commentary to Standard 1.2, Five General Principles), and that "[i]ncreasingly, during the last ten years, the treatment model has been discredited" (commentary to Standard 4.10). In fact, the latter has rarely been made available to delinquent children. As a result of these positions, mandated services would be allowed only to the extent that nonadjudicated juveniles are obliged to receive them (Standard 4.10 B.), and when necessary to prevent clear harm to physical health (Standard 4.10 C.). Informed and written consent of a juvenile would be required prior to providing casework, group counseling, specialized education courses, job skill development or vocational training (commentary to Standard 4.10) or psychological testing to which a nonadjudicated juvenile would not be subjected (commentary to Standard 4.11). While the worthy motivation behind these standards may be to reduce institutionalization, there is serious question as to whether these proposed restrictions would not result in further deprivation of services for the most seriously delinquent youths whom the court finds in need of residential placement.

The second underlying theme from which I dissent rests on a generalized distrust of governmental intervention or services that has become widespread, for good reason, during the past decade. Illustrative of resulting standards are the requirements that services noted above to assist in the growth and development of youth (though unrelated to any physical or mental health intervention) may not be provided without informed and written consent from the juvenile. The standards would restrict parole and aftercare services to six months after the dispositional date, even when the youth wishes such services (Standard 4.13 A.).

The standards would also limit the role of the federal government to funding and standard setting with a prohibition against providing direct programs to help youth (Standard 2.4 and commentary). In view of the vast gaps in service programs for disadvantaged and delinquent youth, their fragmentary nature, the lack of model programs, and the wide discrepancy in services among the states, there is, in my judgment, great need for a far more vital role by the federal government than would be allowed under the proposed standards.

Finally, I do not agree with the statement that “[p]ublic protection from juvenile crime should be explicitly acknowledged as a legitimate and central purpose of the juvenile justice process.” (commentary to Standard 1.2, Five General Principles). Rather, I believe that fresh re-thinking is needed at this time to develop positive concepts of justice and to fashion programs to insure services essential to substantive due process with the same ardor as the procedures embraced to insure procedural due process.

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