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Institute of Judicial Administration

American Bar Association

Juvenile Justice Standards

STANDARDS RELATING TO

The Juvenile Probation Function: Intake and Predisposition Investigative Services

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, 1980

Charles Z. Smith, *Chairman of Drafting Committee II*
Josephine Gittler, *Reporter*

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DRAFTING COMMITTEE II—COURT ROLES AND PROCEDURES

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John E. Echohawk	Bertram Polow
Jewel Goddard	George H. Revelle
Frank N. Jones	Cruz Reynoso
Florence M. Kelley	M.D. Taracido

This document was prepared for the Juvenile Justice Standards Project of the Institute of Judicial Administration and the American Bar Association. The project is supported by grants prepared under Grant Numbers 71-NI-99-0014; 72-NI-99-0032; 74-NI-99-0043; and 75-NI-99-0101 from the National Institute of Criminal Justice and Law Enforcement, and 76-JN-99-0018; 78-JN-AX-0002; and 79-JN-AX-0025 from the National Institute of Juvenile Justice and Delinquency Prevention, Office of Juvenile Justice and Delinquency Prevention, Law Enforcement Assistance Administration, U.S. Department of Justice, the American Bar Endowment, the Andrew W. Mellon Foundation, the Vincent Astor Foundation, and the Herman Goldman Foundation. The views expressed in this draft do not represent positions taken by the funding sources. Votes on the standards were unanimous in most but not all cases. Specific objections by individual members of the IJA-ABA Joint Commission have been noted in formal dissents printed in the volumes concerned.

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. Twenty volumes in the series have been approved by the House of Delegates of the American Bar Association.

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, 1978, and 1979 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.

In February 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. Of the five remaining volumes, *Court Organization and Administration*, *Juvenile Delinquency and Sanctions*, and *The Juvenile Probation Function* were approved by the

House in February 1980, subject to the changes adopted by the executive committee. *Abuse and Neglect* and *Noncriminal Misbehavior* were held over for final consideration at a future 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 twenty volumes approved by the ABA House of Delegates, 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 founda-

tions. 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 II, which also includes the following volumes:

TRANSFER BETWEEN COURTS
COURT ORGANIZATION AND ADMINISTRATION
PROSECUTION
COUNSEL FOR PRIVATE PARTIES
PRETRIAL COURT PROCEEDINGS
ADJUDICATION
APPEALS AND COLLATERAL REVIEW

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 2.4 E. 7. was amended by bracketing the three-month period for filing a petition.

2. Standard 2.5 A. 7. was amended by bracketing the three-month period for filing a petition.

3. Standard 3.3 E. 2. was amended by adding the requirement that summaries of prior contacts with the system include the dispositions made and the reasons given for the disposition following each such contact.

4. Standard 4.2 was amended by bracketing executive agency administration of intake and predisposition investigative services.

Commentary was revised to explain that the brackets were added in response to vigorous opposition from representatives of juvenile and family court judges and others to executive control of such services, thereby making the designation of the executive agency precautionary rather than mandatory.

5. Standard 5.1 C. was amended to add equivalent experience as an alternative to the stated minimum educational requirements for personnel from areas in which applicants with the educational qualifications are not available.

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Commentary was revised accordingly.

6. Standard 5.2 A. was amended to bar arbitrary discharge of intake and investigating officers during the probationary period as well as after its completion.

Commentary was revised accordingly.

7. Commentary to Standards 2.11 A. and B. was revised to note the recommendations of the ABA Section of Criminal Law and Young Lawyers Division, whereby the former urged deletion of the provisions in order to give officers the freedom to conduct their investigation as they chose, but the latter disagreed, on the ground that the standards provide sufficient latitude for the investigating officers. The executive committee of the joint commission voted to retain the standards as written, endorsing the position of the Young Lawyers Division.

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*The Juvenile Probation Function:
Intake and Predisposition
Investigative Services*

Introduction

An organizational entity known as juvenile probation has long played a unique and very significant role in the juvenile justice system. Juvenile probation agencies have traditionally performed four different functions at different stages of the juvenile court process. At the preadjudicatory stage these agencies are largely responsible for intake screening. The purpose of intake screening is to determine what action, if any, should be taken on complaints that are made to the juvenile court and that allege a juvenile to be delinquent. At the preadjudicatory stage these agencies are also often involved in the making of interim detention decisions and the operation of interim detention facilities. Interim detention refers to the placement of juveniles in secure facilities at any point during the period between arrest and the issuance of a dispositional order by the court. At the dispositional stage these agencies are responsible for supplying predisposition reports to judges making dispositional decisions with respect to juveniles whom the court has adjudicated delinquent. These predisposition reports, which are based on predisposition investigations, contain information thought to be of relevance in the fashioning of an appropriate dispositional order. Finally, at the correctional stage these agencies are largely responsible for the supervision of juveniles whom the court has adjudicated delinquent and placed on probation.

This volume deals with only two of the functions traditionally performed by juvenile probation—the intake function and the predisposition investigative function. Other volumes deal with interim detention and the supervision of juvenile probationers.¹ It should also be noted that this volume deals only with the handling of delinquent juveniles. While some juvenile probation agencies handle both delinquent juveniles and neglected juveniles, they are primarily concerned with the former rather than with the latter,

¹See *Interim Status and Corrections Administration*.

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and another volume of standards deals with the problem of the neglected juvenile.²

Part I of this volume contains definitions of terms used throughout. Such a definitional section is necessary because of the diverse and confusing terminology commonly used in connection with the matters dealt with in this volume.

Part II contains standards relating to the intake function, the volume's major focus. Intake is one of the most critical points in the juvenile justice system, for it is then that a decision is made as to what action to take regarding a juvenile who is allegedly delinquent and who has been brought to the attention of the juvenile court. It may be decided at intake that the juvenile should be judicially processed. As a result a petition will be filed against the juvenile initiating formal judicial proceedings, and such proceedings may lead to the juvenile being adjudicated delinquent by the court. Another alternative is for no further action to be taken against the juvenile. Still another alternative is for the juvenile to be handled nonjudicially, which involves the taking of some action with respect to the juvenile without the filing of a petition or a formal delinquency adjudication. One of the more common forms of nonjudicial handling is placement of the juvenile on nonjudicial probation, under which the juvenile is supervised for a period of time generally by personnel of a juvenile probation agency, without specific judicial authorization for such supervision. Nonjudicial handling may also often take such forms as the referral of a juvenile to a community agency for services. The importance of intake screening can be seen from the fact that nationwide approximately half of the total number of juveniles brought to the attention of juvenile and family courts are handled at intake without the filing of a petition.

A central premise of the standards relating to the intake function is that intake screening and certain forms of nonjudicial handling of juveniles should be encouraged. Nonjudicial handling has the following briefly stated benefits. It allows the exercise of some control over and the provision of services to a delinquent juvenile without the detrimental consequences of judicial processing, which labels the juvenile as a delinquent and by so doing stigmatizes the juvenile. Primarily for this reason, nonjudicial handling is more effective than judicial processing in "rehabilitating" the juvenile. In addition, nonjudicial handling keeps court dockets at a manageable level in relation to the limited resources available for the judicial processing of juveniles.

²See *Abuse and Neglect*.

Underlying the intake standards, however, is also the recognition that there are dangers in encouraging the nonjudicial handling of juveniles because of its potential for misuse. Some forms of nonjudicial dispositions, such as nonjudicial probation, may result in substantial intervention in the juvenile's life for a substantial period of time without the truly intelligent and voluntary consent of a juvenile and his or her parents. Moreover, intake officers generally have virtually unlimited discretion in making intake dispositional decisions. Such discretion can be exercised in an arbitrary or discriminatory manner; it also leads to the unequal treatment of juveniles because different intake officers handle similarly situated juveniles differently; and it may simply be exercised in an imprudent or ill-advised manner with the result that juveniles who should be judicially processed are handled nonjudicially and vice-versa. The aforementioned problems are compounded by the informality of the intake process, and the fact that almost no procedural due process protections are afforded juveniles at intake.

The intake standards reflect the view that intake screening and nonjudicial handling are highly beneficial provided they are properly used, and the objective of these standards is to minimize the dangers that they will be misused. In accordance with this objective, these standards call for the narrowing of the range of intake dispositional alternatives by eliminating those forms of nonjudicial dispositions that are most susceptible to abuse and by surrounding the other forms of nonjudicial dispositions with safeguards aimed at preventing such abuse. For example, one standard provides that nonjudicial probation is not a permissible intake dispositional alternative. These standards also call for the promulgation of administrative guidelines and rules that enunciate clearly defined criteria for intake dispositional decisionmaking. Finally, the standards call for the introduction of procedural due process protections to juveniles during this process. For example, one standard provides that juveniles should have the right to the assistance of counsel at intake.

Part III consists of standards relating to predisposition investigations and reports. While these standards endorse the making of predisposition investigations and the use of predisposition reports by the court in making a dispositional decision with respect to a juvenile whom the court has adjudicated delinquent, the endorsement is a qualified one. These standards take a more skeptical view than is usually taken of the value of a comprehensive predisposition investigation and report, that are usually viewed as the *sine qua non* of an informed dispositional decision by the court. Informa-

tion is too often collected as a result of a comprehensive predisposition investigation that is neither necessary nor relevant to the court's dispositional decision and that is highly inaccurate. At the same time, the comprehensive investigation constitutes a serious invasion of the privacy of the juvenile and his or her family, may prove harmful to their reputations, and requires a considerable expenditure of resources. These standards also contain requirements regarding access to predisposition reports that are designed to prevent the court from being prejudiced by the contents of the report. Thus, the standards provide that a report should not be submitted to the court until it has actually adjudicated a juvenile delinquent and that the report should be disclosed to the parties to the proceedings, including the juvenile's counsel.

Part IV sets forth standards relating to the organization, administration, and financing of intake and investigative services. These standards are directed at securing the effective and efficient delivery of these services. This requires that the structure of juvenile probation agencies and other agencies responsible for providing intake and investigative services be soundly conceived. Perhaps the key standard in this regard is that which provides that these services should be administrated by an executive agency rather than by the judiciary. Although the prevailing pattern of administration at the present time is judicial, administration of these services is not a proper judicial function and may interfere with the impartiality of judicial proceedings. Moreover, the judiciary generally lack the time, interest, training, and expertise that are necessary for optimum administration of these services. Other standards deal with the organization of intake and predisposition investigative services on the state level and on a local level, the financing of these services, and the specialization of the intake, investigative, and probation supervision functions.

Finally, Part V contains standards regarding the personnel of juvenile probation agencies and other agencies responsible for intake and predisposition investigative services. If intake and investigative services are to be of high caliber, the personnel who actually deliver these services must be adequate for this task from both a qualitative and quantitative standpoint, and the purpose of the personnel standards is to emphasize the importance and the necessity of attention to personnel matters. These standards cover specially such matters as personnel selection, tenure, promotion, education, training, salaries, and workloads, as well as the use of paraprofessionals and volunteers.

Standards

PART ONE: DEFINITIONS

1.1 Definitions as used herein:

A. "Juvenile probation" is an organizational entity that furnishes intake, investigative, and probation supervision services to juvenile courts.

B. "Juvenile probation services" consist of intake, investigative, and probation supervision services.

C. A "juvenile probation officer" is an individual who provides intake, investigative, or probation supervision services.

D. A "complaint" is a report made to a juvenile court that alleges that a juvenile is delinquent and that initiates the intake process.

E. A "petition" is a formal legal pleading that initiates formal judicial proceedings against a juvenile who is the subject of a complaint to determine whether the court has and should exercise jurisdiction over the juvenile.

F. "Intake services" consist of the intake screening and disposition of complaints.

G. "Intake" is a preliminary screening process initiated by the receipt of a complaint, the purpose of which is to determine what action, if any, should be taken upon the complaint.

H. An "intake officer" is an individual who screens complaints and makes intake dispositional decisions with respect to complaints.

I. "Investigative services" consist of the conducting of predisposition investigations and the preparation of predisposition reports.

J. A "predisposition investigation" is the collection of information relevant and necessary to the court's fashioning of an appropriate dispositional order after a juvenile has been adjudicated delinquent.

K. A "predisposition report" is a report based upon a predisposition investigation furnished to the court prior to the court's issuance of a dispositional order.

L. An "investigation officer" is an individual who conducts predisposition investigations and prepares predisposition reports.

M. "Probation supervision services" consist of the supervision of juveniles who have been placed on judicial probation.

N. "Judicial probation" refers to the supervision of a juvenile who has been adjudicated delinquent and who remains in his or her own home, by a designated individual or agency for a designated period of time during which he or she may be required to comply with certain restrictive conditions with respect to his or her conduct and activities pursuant to a dispositional order of the court.

O. "Parent" means the juvenile's natural parent, guardian, or custodian.

PART II: JUVENILE COURT INTAKE

Section I: General Standards

2.1 Availability and utilization of intake services.

Intake services should be available to and utilized by all juvenile courts.

Section II: Dispositional Alternatives at Intake

2.2 Judicial disposition of a complaint.

"Judicial disposition of a complaint" is the initiation of formal judicial proceedings against the juvenile who is the subject of a complaint through the filing of a petition. After intake screening, judicial disposition of a complaint may be made.

2.3 Unconditional dismissal of a complaint.

The "unconditional dismissal of a complaint" is the termination of all proceedings against a juvenile. Unconditional dismissal of a complaint is a permissible intake dispositional alternative.

2.4 Nonjudicial disposition of a complaint.

A. "Nonjudicial disposition of a complaint" is the taking of some action on a complaint without the initiation of formal judicial proceedings through the filing of a petition or the issuance of a court order.

B. The existing types of nonjudicial dispositions are as follows:

1. "Nonjudicial probation" is a nonjudicial disposition involving the supervision by juvenile intake or probation personnel of a juvenile who is the subject of a complaint, for a period of time

during which the juvenile may be required to comply with certain restrictive conditions with respect to his or her conduct and activities.

2. The "provision of intake services" is the direct provision of services by juvenile intake and probation personnel on a continuing basis to a juvenile who is the subject of a complaint.

3. A "conditional dismissal of a complaint" is the termination of all proceedings against a juvenile subject to certain conditions not involving the acceptance of nonjudicial supervision or intake services. It includes a "community agency referral," which is the referral of a juvenile who is the subject of a complaint to a community agency or agencies for services.

C. A "community agency referral" is the only permissible nonjudicial disposition, subject to the conditions set forth in Standard 2.4 E. Intake personnel should refer juveniles in need of services whenever possible to youth service bureaus and other public and private community agencies. Juvenile probation agencies and other agencies responsible for the administration and provision of intake services and intake personnel should actively promote and encourage the establishment and the development of a wide range of community-based services and programs for delinquent and nondelinquent juveniles.

D. Nonjudicial probation, provision of intake services, and conditional dismissal other than community agency referral are not permissible intake dispositions.

E. A nonjudicial disposition should be utilized only under the following conditions:

1. A nonjudicial disposition should take the form of an agreement of a contractual nature under which the intake officer promises not to file a petition in exchange for certain commitments by the juvenile and his or her parents or legal guardian or both with respect to their future conduct and activities.

2. The juvenile and his or her parents or legal guardian should voluntarily and intelligently enter into the agreement.

3. The intake officer should advise the juvenile and his or her parents or legal guardian that they have the right to refuse to enter into an agreement for a nonjudicial disposition and to request a formal adjudication.

4. A nonjudicial disposition agreement should be limited in duration.

5. The juvenile and his or her parents or legal guardian should be able to terminate the agreement at any time and to request formal adjudication.

6. The terms of the nonjudicial agreement should be clearly stated in writing. This written agreement should contain a statement of the requirements set forth in subsections 2.-5. It should be signed by all the parties to the agreement and a copy should be given to the juvenile and his or her parents or legal guardian.

7. Once a nonjudicial disposition of a complaint has been made, the subsequent filing of a petition based upon the events out of which the original complaint arose should be permitted for a period of [three (3)] months from the date the nonjudicial disposition agreement was entered into. If no petition is filed within that period its subsequent filing should be prohibited. The juvenile's compliance with all proper and reasonable terms of the agreement should be an affirmative defense to a petition filed within the [three-month] period.

2.5 Consent decree.

A. A consent decree is a court order authorizing supervision of a juvenile for a specified period of time during which the juvenile may be required to fulfill certain conditions or some other disposition of the complaint without the filing of a petition and a formal adjudicatory proceeding.

A consent decree should be permissible under the following conditions:

1. The juvenile and his or her parents or legal guardian should voluntarily and intelligently consent to the decree.

2. The intake officer and the judge should advise the juvenile and his or her parents or legal guardian that they have the right to refuse to consent to the decree and to request a formal adjudication.

3. The juvenile should have an unwaivable right to the assistance of counsel in connection with an application for a consent decree. The intake officer should advise the juvenile of this right.

4. The terms of the decree should be clearly stated in the decree and a copy should be given to all the parties to the decree.

5. The decree should not remain in force for a period in excess of six (6) months. Upon application of any of the parties to the decree, made before expiration of the decree, the decree, after notice and hearing, may be extended for not more than an additional three (3) months by the court.

6. The juvenile and his or her parents or legal guardian should be able to terminate the agreement at any time and to request the filing of a petition and formal adjudication.

7. Once a consent decree has been entered, the subsequent filing of a petition based upon the events out of which the original complaint arose should be permitted for a period of [three (3)] months from the date the decree was entered. If no petition is filed within that period its subsequent filing should be prohibited. The juvenile's compliance with all proper and reasonable terms of the decree should be an affirmative defense to a petition filed within the [three-month] period.

Section III: Criteria for Intake Dispositional Decisions

2.6 Necessity for and desirability of written guidelines and rules.

A. Juvenile probation agencies and other agencies responsible for intake services should issue written guidelines and rules with respect to criteria for intake dispositional decisions. The objective of such administrative guidelines and rules is to confine and control the exercise of discretion by intake officers in the making of intake dispositional decisions so as to promote fairness, consistency, and effective dispositional decisions.

B. These guidelines and rules should be reviewed and evaluated by interested juvenile justice system officials and community-based delinquency control and prevention agencies.

C. Legislatures and courts should encourage or require rulemaking by these agencies with respect to criteria for intake dispositional decisions.

2.7 Legal sufficiency of complaint.

A. Upon receipt of a complaint, the intake officer should make an initial determination of whether the complaint is legally sufficient for the filing of a petition on the basis of the contents of the complaint and an intake investigation. In this regard the officer should determine:

1. whether the facts as alleged are sufficient to establish the court's jurisdiction over the juvenile; and
2. whether the competent and credible evidence available is sufficient to support the charges against the juvenile.

B. If the officer determines that the facts as alleged are not sufficient to establish the court's jurisdiction, the officer should dismiss the complaint. If the officer finds that the court has jurisdiction but determines that the competent and credible evidence available is not sufficient to support the charges against the juvenile, the officer should dismiss the complaint.

C. If the legal sufficiency of the complaint is unclear, the officer

should ask the appropriate prosecuting official for a determination of its legal sufficiency.

2.8 Disposition in best interests of juvenile and community.

A. If the intake officer determines that the complaint is legally sufficient, the officer should determine what disposition of the complaint is most appropriate and desirable from the standpoint of the best interests of the juvenile and the community. This involves a determination as to whether a judicial disposition of the complaint would cause undue harm to the juvenile or exacerbate the problems that led to his or her delinquent acts, whether the juvenile presents a substantial danger to others, and whether the referral of the juvenile to the court has already served as a desired deterrent.

B. The officer should determine what disposition is in the best interests of the juvenile and the community in light of the following:

1. The seriousness of the offense that the alleged delinquent conduct constitutes should be considered in making an intake dispositional decision. A petition should ordinarily be filed against a juvenile who has allegedly engaged in delinquent conduct constituting a serious offense, which should be determined on the basis of the nature and extent of harm to others produced by the conduct.
2. The nature and number of the juvenile's prior contacts with the juvenile court should be considered in making an intake dispositional decision.
3. The circumstances surrounding the alleged delinquent conduct, including whether the juvenile was alone or in the company of other juveniles who also participated in the alleged delinquent conduct, should be considered in making an intake dispositional decision. If a petition is filed against one of the juveniles, a petition should ordinarily be filed against the other juveniles for substantially similar conduct.
4. The age and maturity of the juvenile may be relevant to an intake dispositional decision.
5. The juvenile's school attendance and behavior, the juvenile's family situation and relationships, and the juvenile's home environment may be relevant to an intake dispositional decision.
6. The attitude of the juvenile to the alleged delinquent conduct and to law enforcement and juvenile court authorities may be relevant to an intake dispositional decision, but a nonjudicial disposition of the complaint or the unconditional dismissal of the

complaint should not be precluded for the sole reason that the juvenile denies the allegations of the complaint.

7. A nonjudicial disposition of the complaint or the unconditional dismissal of the complaint should not be precluded for the sole reason that the complainant opposes dismissal.

8. The availability of services to meet the juvenile's needs both within and outside the juvenile justice system should be considered in making an intake dispositional decision.

9. The factors that are not relevant to an intake dispositional decision include but are not necessarily limited to the juvenile's race, ethnic background, religion, sex, and economic status.

Section IV: Intake Procedures

2.9 Necessity for and desirability of written guidelines and rules.

Juvenile probation agencies and other agencies responsible for intake services should develop and publish written guidelines and rules with respect to intake procedures.

2.10 Initiation of intake proceedings and receipt of complaint by intake officer.

A. An intake officer should initiate proceedings upon receipt of a complaint.

B. Any complaint that serves as the basis for the filing of a petition should be sworn to and signed by a person who has personal knowledge of the facts or is informed of them and believes that they are true.

2.11 Intake investigation.

A. Prior to making a dispositional decision, the intake officer should be authorized to conduct a preliminary investigation in order to obtain information essential to the making of the decision.

B. In the course of the investigation the intake officer may:

1. interview or otherwise seek information from the complainant, a victim of, witness to, or co-participant in the delinquent conduct allegedly engaged in by the juvenile;

2. check existing court records, the records of law enforcement agencies, and other public records of a nonprivate nature;

3. conduct interviews with the juvenile and his or her parents or legal guardian in accordance with the requirements set forth in Standard 2.14.

C. If the officer wishes to make any additional inquiries, he or

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she should do so only with the consent of the juvenile and his or her parents or legal guardian.

D. It is the responsibility of the complainant to furnish the intake officer with information sufficient to establish the jurisdiction of the court over the juvenile and to support the charges against the juvenile. If the officer believes the information to be deficient in this respect, he or she may notify the complainant of the need for additional information.

2.12 Juvenile's privilege against self-incrimination at intake.

A. A juvenile should have a privilege against self-incrimination in connection with questioning by intake personnel during the intake process.

B. Any statement made by a juvenile to an intake officer or other information derived directly or indirectly from such a statement is inadmissible in evidence in any judicial proceeding prior to a formal finding of delinquency unless the statement was made after consultation with and in the presence of counsel.

2.13 Juvenile's right to assistance of counsel at intake.

A juvenile should have an unwaivable right to the assistance of counsel at intake:

A. in connection with any questioning by intake personnel at an intake interview involving questioning in accordance with Standard 2.14 or other questioning by intake personnel; and

B. in connection with any discussions or negotiations regarding a nonjudicial disposition, including discussions and negotiations in the course of a dispositional conference in accordance with Standard 2.14.

2.14 Intake interviews and dispositional conferences.

A. If the intake officer deems it advisable, the officer may request and arrange an interview with the juvenile and his or her parents or legal guardian.

B. Participation in an intake interview by the juvenile and his or her parents or legal guardian should be voluntary. They should have the right to refuse to participate in an interview, and the officer should have no authority to compel their attendance.

C. At the time the request to attend the interview is made, the intake officer should inform the juvenile and his or her parents or legal guardian either in writing or orally that attendance is voluntary and that the juvenile has the right to be represented by counsel.

D. At the commencement of the interview, the intake officer should:

1. explain to the juvenile and his or her parents or legal guardian that a complaint has been made and explain the allegations of the complaint;
2. explain the function of the intake process, the dispositional powers of the intake officer, and intake procedures;
3. explain that participation in the intake interview is voluntary and that they may refuse to participate; and
4. notify them of the right of the juvenile to remain silent and the right to counsel as heretofore defined in Standard 2.13.

E. Subsequent to the intake interview, the intake officer may schedule one or more dispositional conferences with the juvenile and his or her parents or legal guardian in order to effect a non-judicial disposition.

F. Participation in a dispositional conference by a juvenile and his or her parents or legal guardian should be voluntary. They should have the right to refuse to participate, and the intake officer should have no authority to compel their attendance.

G. The intake officer may conduct dispositional conferences in accordance with the procedures for intake interviews set forth in subsections D. and E.

2.15 Length of intake process.

A decision at the intake level as to the disposition of a complaint should be made as expeditiously as possible. The period within which the decision is made should not exceed thirty (30) days from the date the complaint is filed in cases in which the juvenile who is the subject of a complaint has not been placed in detention or shelter care facilities.

Section V: Scope of Intake Officer's Dispositional Powers

2.16 Role of intake officer and prosecutor in filing of petition: right of complainant to file a petition.

A. If the intake officer determines that a petition should be filed, the officer should submit a written report to the appropriate prosecuting official requesting that a petition should be filed. The officer should also submit a written statement of his or her decision and of the reasons for the decision to the juvenile and his or her parents or legal guardian. All petitions should be countersigned and filed by the appropriate prosecuting official. The prosecutor may refuse the

request of the intake officer to file a petition. Any determination by the prosecutor that a petition should not be filed should be final.

B. If the intake officer determines that a petition should not be filed, the officer should notify the complainant of his or her decision and of the reasons for the decision and should advise the complainant that he or she may submit the complaint to the appropriate prosecuting official for review. Upon receiving a request for review, the prosecutor should consider the facts presented by the complainant, consult with the intake officer who made the initial decision, and then make the final determination as to whether a petition should be filed.

C. In the absence of a complainant's request for a review of the intake officer's determination that a petition should not be filed, the intake officer should notify the appropriate prosecuting official of the officer's decision not to request the filing of a petition in those cases in which the conduct charged would constitute a crime if committed by an adult. The prosecutor should have the right in all such cases, after consultation with the intake officer, to file a petition.

PART III: PREDISPOSITION INVESTIGATIONS AND REPORTS

3.1 Availability and utilization of investigative services.

Investigative services should be made available to and utilized by all juvenile courts.

3.2 Necessity for and desirability of written guidelines and rules.

Juvenile probation agencies and other agencies performing investigative services should establish written guidelines and rules for the conduct of predisposition investigations and the preparation and submission of predisposition reports.

3.3 Scope of investigation; formulation of postdisposition plan; format, contents, length, and disclosure of report.

A. The scope of a predisposition investigation that the investigating officer conducts should be carefully tailored to the needs of the individual case and should vary depending upon the type of case and the issues involved. The officer should only collect evidence relevant to the court's dispositional decision.

B. When it is appropriate for the investigating officer to conduct a comprehensive investigation, the officer may secure information from existing records of the juvenile court, law enforcement agencies,

schools, and other agencies with which the juvenile has come in contact and from interviews and conferences with the juvenile, the juvenile's family, school personnel, and individuals having knowledge of the juvenile.

C. An officer conducting a predisposition investigation may refer a juvenile for a physical or mental examination to a physician, psychiatrist, or psychologist only if a court order authorizing an examination is obtained. Such a court order should be issued only after a hearing on the need for such an examination.

D. The officer conducting the predisposition investigation should explore community resources as well as other resources that might be available to assist the juvenile. The officer should then formulate a postdisposition plan for the care and, where appropriate, for the treatment of the juvenile.

E. A written predisposition report summarizing the significant findings of the investigation should be prepared. The format, contents, and length of the report should be flexible. A comprehensive report should ordinarily include the following:

1. a summary of the facts with respect to the conduct of the juvenile that led to the adjudication;
2. a summary of the juvenile's prior contacts with the juvenile court and law enforcement agencies, including the disposition following each contact and the reasons therefor;
3. a summary of the juvenile's home environment, family relationships and background;
4. a summary of the juvenile's school and employment status and background;
5. a summary of the juvenile's interests and activities;
6. a summary of any significant physical problems of the juvenile and description of any behavior problems of the juvenile that the officer learns of or observes in the course of the investigation, provided the officer is careful not to represent these observations as qualified professional evaluations;
7. a summary of the results and recommendations of any significant physical and mental examinations; and
8. an evaluation of the foregoing information, a recommendation as to disposition, and a suggested postdisposition plan of care and treatment.

F. The predisposition report should contain only information that is relevant to the court's dispositional decision, and all information should be presented in a concise, factual, and unbiased manner. The report should indicate how much time and effort was expended upon the investigation and the sources of information in the report.

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G. The predisposition report should not be open to public inspection, but the juvenile's counsel and the attorney representing the state in connection with dispositional proceedings should be given access to the report.

3.4 Investigation; when conducted. Report; when submitted.

A. An investigating officer should not conduct a predisposition investigation until a juvenile has been adjudicated delinquent, unless the juvenile with the advice of counsel consents to an earlier investigation.

B. An investigating officer should submit the predisposition report to the court subsequent to adjudication and prior to disposition. In no event should the court consider the report in advance of adjudication.

**PART IV: ORGANIZATION AND ADMINISTRATION
OF JUVENILE INTAKE AND PREDISPOSITION
INVESTIGATIVE SERVICES**

4.1 Specialization of the intake, investigative, and probation supervision functions.

A. Whenever possible, intake screening, predisposition investigations, and supervision of juveniles should be treated as specialized functions.

B. Juvenile probation agencies or other agencies responsible for performing these three functions should not ordinarily simultaneously assign probation supervision duties as well as intake screening and predisposition investigative duties to the same individual. Such agencies should either establish separate units for each of these three functions or establish one unit with the responsibility for intake screening and predisposition investigation and another unit with the responsibility for supervision of juvenile probationers.

4.2 Executive agency administration vs. judicial administration.

Intake and predisposition investigative services should be administered by an [executive] agency rather than by the judiciary.

4.3 State vs. local organization and administration.

Intake and predisposition investigative services should be organized and administered either at the state level on a statewide basis or partly at the state level and partly at the local level.

4.4 Financing of intake and predisposition investigative services.

State funds should be made available to subsidize intake and predisposition investigative services in jurisdictions where local juvenile probation agencies or other local agencies provide these services and these services are presently financed primarily out of local funds.

PART V: INTAKE AND INVESTIGATIVE PERSONNEL

5.1 Qualifications and selection of officers.

A. Statewide mandatory minimum standards should be established for the selection procedures and for the qualifications of individuals to be employed as juvenile intake and investigating officers in professional staff positions.

B. The qualifications required for professional staff positions may include formal education or training of a certain type and duration, previous work experience of a certain type and duration, previous job performance of a certain quality, and personal characteristics and skills that are related to successful performance of intake and investigating duties.

C. The minimum educational requirements for entry level professional staff positions should be a bachelor's degree supplemented by a year of graduate study in social work or the behavioral sciences, a year of full-time employment under professional supervision for a correctional or social services agency, or equivalent experience.

D. Agencies should select individuals for professional staff positions upon a merit basis.

E. Agencies should recruit and employ as juvenile intake and investigating officers individuals, including minority group members and women, from a wide variety of backgrounds.

5.2 Tenure and promotion.

A. Intake and investigating officers should not be subject to arbitrary discharge during or after a probationary period.

B. Juvenile probation agencies and other agencies responsible for intake and investigative services should establish career ladders, and juvenile intake and investigating officers should be promoted in accordance with such career ladders on a merit basis. Career ladders should be structured so that officers have the choice of promotion along two different tracks. One promotion track should be available for officers who wish to do intake screening and conduct predisposi-

tion investigations. Another promotion track should be available for officers who wish to perform supervisory or administrative duties.

5.3 Education and training.

A. The appropriate state agency should establish statewide mandatory minimum standards for preservice and inservice education and training programs for intake and investigating officers.

B. State and local agencies responsible for providing predisposition investigative services should jointly plan and develop preservice and inservice training programs for officers at every level.

C. Colleges and universities should be encouraged to establish and maintain both undergraduate and graduate degree programs that will prepare individuals who wish to perform intake and investigative services.

5.4 Salary scales.

A. Salary scales of intake and investigative personnel at every level should be commensurate with their education, training, and experience and comparable to those in related fields.

B. Salary scales should be structured so that promotion to a supervisory position is not the only means of obtaining a salary increase. Merit salary increases should be available for outstanding job performance and for completion of advanced education or training.

5.5 Workloads and staff ratios.

A. Juvenile probation agencies and other agencies responsible for intake and predisposition investigative services should establish standards for workloads and staff ratios.

B. Workloads of intake and investigating officers should vary depending upon such factors as the specific functions performed by an officer, the complexity and seriousness of the cases that the officer handles, the education and training of the officer, the availability of clerical and other support services, and the availability of community resources that can be utilized by the officer in performing his or her duties.

5.6 Employment of paraprofessionals and use of volunteers.

A. Juvenile probation agencies and other agencies responsible for intake and predisposition investigative services should recruit, employ, and train individuals who do not possess the qualifications necessary for employment as intake and investigating officers as paraprofessional aides to assist intake and investigating officers.

Paraprofessionals should be given an opportunity to participate in career development programs that can lead to advancement on the career ladder to professional staff positions.

B. Agencies should recruit and employ as paraprofessionals individuals from a wide variety of backgrounds, including minority group members and women.

C. Juvenile intake and investigating officers should establish and maintain programs utilizing citizen volunteers.

D. Citizen volunteers may successfully perform a wide variety of functions ranging from the direct provision of services to juveniles to office work of an administrative or clerical nature.

E. Volunteers may be recruited from a wide variety of backgrounds and sources depending upon the functions they are to perform. Juvenile intake and investigating officers should carefully screen volunteers in order to insure that they have the qualifications necessary for the work to which they will be assigned.

F. Agencies should establish preservice and inservice orientation and training programs for volunteers.

Standards with Commentary

PART I: DEFINITIONS

1.1 Definitions as used herein:

A. "Juvenile probation" is an organizational entity that furnishes intake, investigative, and probation supervision services to juvenile courts.

B. "Juvenile probation services" consist of intake, investigative, and probation supervision services.

C. A "juvenile probation officer" is an individual who provides intake, investigative, or probation supervision services.

D. A "complaint" is a report made to a juvenile court that alleges that a juvenile is delinquent and that initiates the intake process.

E. A "petition" is a formal legal pleading that initiates formal judicial proceedings against a juvenile who is the subject of a complaint to determine whether the court has and should exercise jurisdiction over the juvenile.

F. "Intake services" consist of the intake screening and disposition of complaints.

G. "Intake" is a preliminary screening process initiated by the receipt of a complaint, the purpose of which is to determine what action, if any, should be taken upon the complaint.

H. An "intake officer" is an individual who screens complaints and makes intake dispositional decisions with respect to complaints.

I. "Investigative services" consist of the conducting of predisposition investigations and the preparation of predisposition reports.

J. A "predisposition investigation" is the collection of information relevant and necessary to the court's fashioning of an appropriate dispositional order after a juvenile has been adjudicated delinquent.

K. A "predisposition report" is a report based upon a predisposition investigation furnished to the court prior to the court's issuance of a dispositional order.

L. An "investigation officer" is an individual who conducts predisposition investigations and prepares predisposition reports.

M. "Probation supervision services" consist of the supervision of juveniles who have been placed on judicial probation.

N. "Judicial probation" refers to the supervision of a juvenile who has been adjudicated delinquent and who remains in his or her own home, by a designated individual or agency for a designated period of time during which he or she may be required to comply with certain restrictive conditions with respect to his or her conduct and activities pursuant to a dispositional order of the court.

O. "Parent" means the juvenile's natural parent, guardian, or custodian.

Commentary

Standard 1.1 contains definitions of important terms used throughout this volume. Since various aspects of the juvenile probation function are the focus of the volume, Standard 1.1 first defines the term "juvenile probation." As defined in subsection A., this term refers to an organizational entity that furnishes intake, investigative, and probation supervision services to juvenile courts. Juvenile probation agencies have in fact traditionally had the responsibility for providing intake and investigative services and probation supervision services as well as responsibility for the interim detention and shelter care of juveniles prior to the final disposition of their cases. Intake, investigation, and probation services are known collectively as juvenile probation services and the term "juvenile probation services" is so defined in subsection B. Similarly the term "juvenile probation officer" is commonly used to refer to an individual who performs any of these services, and is so defined in subsection C.

Subsections D., E., F., G., and H. set forth definitions relating to intake services, which consist of the intake screening and disposition of complaints. A distinction must be made at the outset between a complaint and a petition. The term "complaint" is defined as a report made to a juvenile court by the police, schools, social welfare agencies, parents, or other agencies and individuals, that alleges that a juvenile is delinquent and that initiates the intake process. Such a report is sometimes called a referral. The term "petition" is defined as a formal legal pleading that initiates judicial proceedings against a juvenile who is the subject of a complaint. The term "intake" is defined as a preliminary screening process the purpose of which is to determine what action should be taken on a complaint. The three main dispositional alternatives at intake are as follows: the judicial disposition of a complaint through the filing of a petition; the dismissal of a complaint; or the nonjudicial disposition of a complaint,

that involves the taking of some action on a complaint without the initiation of judicial proceedings through the filing of a petition. See Standard 2.4 and commentary thereto for a detailed categorization and description of the different types of nonjudicial dispositions. The term "intake officer" is defined as an individual who screens complaints and makes dispositional decisions concerning these complaints at intake. Since the majority of individuals who perform these duties are employees of juvenile probation agencies, they are commonly referred to as juvenile probation officers.

Subsections I., J., K., and L. contain definitions regarding investigative services, consisting of the conduct of predisposition investigations and the preparation of predisposition reports. The term "predisposition investigation" is defined as the collection of information that is relevant and necessary to the court's disposition of the case of a juvenile adjudicated delinquent, and the term "predisposition report" is defined as a report summarizing the results of the predisposition investigation that is provided the court for use in fashioning an appropriate dispositional order. Such investigations are also called social studies or histories. A predisposition investigation is to be distinguished from an intake investigation. An intake investigation is often made at the intake stage to assist the intake officer in making an intake dispositional decision. A predisposition investigation, by contrast, is conducted after a complaint has been screened at intake and a petition has been filed, and it should normally not be commenced without the consent of the juvenile upon advice of counsel, until after the juvenile has been adjudicated delinquent. The term "investigating officer" is defined as an individual who conducts predisposition investigations and prepares predisposition reports. Here again such individuals are commonly referred to as juvenile probation officers.

The definitions in subsections M. and N. deal with probation supervision services, that consist of supervising juveniles placed on judicial probation. The term "judicial probation" is defined as a postadjudication judicial disposition, under which a juvenile is subject to supervision for a designated period of time during which he or she may be required to comply with certain other designated restrictive conditions.*

Finally, subsection O. defines the term "parent" as the juvenile's natural parent, guardian, or custodian.

*It should be noted that the *Corrections Administration* volume uses the term "community supervision" to describe "judicial probation."

PART II: JUVENILE COURT INTAKE

Section I: General Standards

2.1 Availability and utilization of intake services.

Intake services should be available to and utilized by all juvenile courts.

Commentary

Standard 2.1 calls for the intake screening of complaints in all juvenile courts. Such screening may result in the filing of a petition and the formal judicial disposition or handling of a complaint, the dismissal of the complaint, or the nonjudicial disposition or handling of the complaint. The standard thus endorses the general practice of nonjudicial disposition of complaints involving the taking of some action on a complaint without the filing of a petition. See Standard 2.4 and commentary thereto for a categorization, definition, and discussion of the various types of nonjudicial dispositions.

Juvenile court intake, in one form or another and under one name or another, has been a feature of juvenile courts since their inception. See Wallace and Brennan, "Intake and the Family Court," 12 *Buff. L. Rev.* 442-46 (1963) for a historical review of intake. The juvenile court intake process has its counterpart in the adult criminal court screening process, which is used to determine whether an adult accused of committing a criminal offense should be brought to trial. There are, however, several significant differences between the two processes. The President's Commission on Law Enforcement and the Administration of Justice made the following observations in this regard:

Intake is set apart from the screening process used in the adult criminal courts by the pervasive attempt to individualize each case and the nature of the personnel administering the discretionary process. In criminal justice at the postarrest stage, decisions to screen out are entrusted to the grand jury, the judge, or usually, to the prosecutor. The objective is screening, as an end in itself; attempts to deliver service to those screened out are rare.

At intake in the juvenile court, screening is an important objective. But referral to, if not insistence upon, service and imposition of controls are additional goals. Thus the express function of intake is likely to be more ambitious than that of its criminal law counterpart.

In the juvenile court intake process there is nothing comparable to the

very role played by the prosecutor in criminal cases during bargaining for dismissal or lesser charges. Instead, the agreement—to adjust, for example, or to file for neglect or supervision rather than delinquency—is made between the probation officer and the juvenile and his parents. In some places the judge is directly engaged in the process, as when he actually participates in informal hearings that culminate in informal dispositions. In other places he is general supervisor of the staff's execution of informal adjustments and consultant on difficult cases. President's Commission on Law Enforcement and Administration of Justice, "Task Force Report: Juvenile Delinquency and Youth Crime" 14-15 (1967) (hereinafter cited as President's Commission, *Delinquency Task Force Report*).

In most states and in the District of Columbia, juvenile court acts provide for some type of intake screening process. In thirty states and the District of Columbia statutory provisions appear to make intake screening mandatory;³ in eight states statutory provisions appear to make intake screening discretionary,⁴ and in two states statutory provisions do not clearly indicate whether there is

³ *Alaska Stat.* § 47.10.020 (1975); *Ark. Stat. Ann.* §§ 45-410, 45-411 (Cum. Supp. 1975); *Cal. Welf. & Inst'ns Code* § 652-653 (West 1972); *Conn. Gen. Stat. Ann.* § 17-61 (Cum. Supp. 1976); *D.C. Code Ann.* § 16-2305(a) (1973); *Fla. Stat.* § 39.04(1) (1975); *Hawaii Rev. Stat.* § 571-21 (1968); *Idaho Code Ann.* § 16-1628 (Cum. Supp. 1975); *Ind. Ann. Stat.* §§ 31-5-2-1, 31-5-7-8 (Burns 1973); *Iowa Code* § 232.3 (1975); *Kan. Stat. Ann.* § 38-816(b) (1973); *Ky. Rev. Stat. Ann.* § 208.070 (1972); *La. Rev. Stat. Ann.* § 13:1574 (Supp. 1976); *Me. Rev. Stat. Ann.* tit. 15, § 2601 (1964); *Md. Ann. Code, Cts. & Judic. Proceedings* § 3-810(b) (Cum. Supp. 1975); *Mo. Rev. Stat.* § 211.081 (1969); *Mont. Rev. Codes Ann.* § 10-1209(1) (Cum. Supp. 1975); *Nev. Rev. Stat.* § 62.128(1) (1973); *N.M. Stat. Ann.* § 13-14-14(A) (Supp. 1975); *N.D. Cent. Code* § 27-20-19 (1974); *Okla Stat.* tit. 10, § 1103(a) (1971); *Ore. Rev. Stat.* § 419.482(2) (1975); *Pa. Stat. Ann.* tit. 11, § 50-201(2) (Cum. Supp. 1975); *R.I. Gen. Laws Ann.* § 14-1-10 (Supp. 1975), §§ 8-10-17, 8-10-22 (1969); *S.C. Code Ann.* § 15-1095, 14 (Cum. Supp. 1975); *S.D. Compiled Laws Ann.* § 26-8-1.1 (1976); *Tex. Fam. Code Ann.* § 53.01(a) (1975); *Utah Code Ann.* § 55-10-83 (Supp. 1975); *Wash. Rev. Code* § 13.04.060 (1974) (mandatory intake screening by juvenile probation officers in counties having such officers); *Wis. Stat.* § 48.19 (1973); *Wyo. Stat. Ann.* § 14-115.12 (Cum. Supp. 1975) (mandatory intake screening to be done by prosecutor with assistance of department of health and social services and the county and state probation departments).

⁴ *Colo. Rev. Stat. Ann.* § 19-3-101 (1973); *Ga. Code Ann.* § 24A-1001 (Cum. Supp. 1975); *Ill. Rev. Stat.* ch. 37, § 703-8 (1973); *Mich. Comp. Laws* § 712A.11 (1970); *Miss. Code Ann.* § 43-21-11 (Cum. Supp. 1975); *N.Y. Family Ct. Act* § 734 (McKinney 1975); *N.C. Gen. Stat.* § 7A-281, 7A-289.7 (Cum. Supp. 1975) (discretionary intake screening after petition filed); *Tenn. Code Ann.* §§ 37-206, 37-210 (Cum. Supp. 1975); see also *Ariz. Rev. Stat. Ann.* § 8-228 (Cum. Supp. 1975); *Va. Code Ann.* § 16.1-164 (1975).

either mandatory or discretionary intake screening.⁵ A juvenile court intake unit may exist pursuant to court rule or simply to an administrative directive, even in the absence of an explicit statutory mandate for such a unit.⁶

All of the various model acts and standards call for the creation and maintenance of a juvenile court intake unit.⁷ A number of authorities have likewise advocated court attached intake services. *E.g.*, National Advisory Commission on Criminal Justice Standards and Goals, "Corrections" 251, 266 (1973) (hereinafter cited as National Advisory Commission, "Corrections"); President's Commission, *Delinquency Task Force Report* 16; see R. Kobetz and B. Bosarge, *Juvenile Justice Administration* 242 (1973).

The intake stage of the juvenile court process is very important because a large number of juveniles referred to the court are handled nonjudicially without the filing of a petition as a result of intake screening. Existing statistics on delinquency cases disposed of by juvenile and family courts indicate that nationally more than half of all cases referred to these courts are handled nonjudicially without the filing of a petition. See Office of Youth Development, U.S. Department of Health, Education and Welfare, "Juvenile Court Statistics 1973" at 3, 7-8, 11 (1975) (hereinafter cited as 1973 Juvenile Court Statistics); Office of Youth Development, U.S. Department of Health, Education and Welfare, "Juvenile Court Statistics 1972" at 2, 8, 12 (1974) (hereinafter cited as 1972 Juvenile Court Statistics).

Intake screening and the nonjudicial handling of complaints is in part the outgrowth of the very broad nature of the juvenile court's jurisdiction and the fact that some juveniles are unnecessarily referred to the court. Juvenile and family courts have jurisdiction over juveniles who engage in conduct that would constitute

⁵ *Ala. Code* tit. 13, § 352 (1958); *Mass. Gen. Laws Ann.* ch. 119, § 57 (Cum. Supp. 1976).

⁶ *E.g.*, *Arizona Juvenile Court Rules of Procedures*, Rule 2 (1973), *Delaware Family Court Rules*, Rule 80 (1974).

⁷ Council of Judges, National Council on Crime and Delinquency, "Model Rules for Juvenile Courts," Rules 2-4 (1969); National Council on Crime and Delinquency, "Standard Juvenile Court Act" § 12 (1959); Advisory Council of Judges, National Probation & Parole Association, "Guides for Juvenile Court Judges" 36 (1957); National Conference of Commissioners on Uniform State Laws, "Uniform Juvenile Court Act," § 10 (1973); W. Sheridan, Children's Bureau, U.S. Department of Health, Education and Welfare, "Standards for Juvenile and Family Courts" 53 (1966); Youth Development and Delinquency Prevention Administration, U.S. Department of Health, Education and Welfare, "Legislative Guide for Drafting State-Local Programs on Juvenile Delinquency" § 16, B-16 (1972).

a criminal offense if engaged in by an adult. In the adult criminal justice system, the substantive criminal law is not fully enforced either at the police level or the prosecution level; police officers exercise a great deal of discretion in making arrest decisions and prosecutors have a great deal of discretion in making prosecutorial charging decisions. See generally, W. LaFave, *Arrest: The Decision to Take a Suspect into Custody* (1965) (hereinafter cited as LaFave); F. Miller, *Prosecution: The Decision to Charge a Suspect with a Crime* (1969). The exercise of discretion in the enforcement of the substantive criminal law in the juvenile justice system as well as in the adult criminal justice system is necessary and desirable because of the ambiguity and vagueness of many criminal statutes. This ambiguity and vagueness is the result of poor draftsmanship, limitations upon the effectiveness of language, and the inability of legislators to foresee all of the enforcement problems that may arise with respect to a particular criminal statute. LaFave 70. The exercise of discretion is also necessary and desirable because of legislative "overcriminalization." Such overcriminalization is the result of the failure of legislatures to repeal obsolete criminal statutes, the enactment of all-inclusive criminal statutes for administrative convenience in order to eliminate loopholes through which offenders can escape, and the practice of enacting criminal statutes that the legislature does not actually expect to be enforced but that place the legislature on record as opposing conduct considered to be immoral. ABA Standards for Criminal Justice, *The Urban Police Function* 119 (1973); LaFave, "The Prosecutor's Discretion in the United States," 18 *Am. J. Comp. L.* 532, 533 (1970).

The need for and desirability of some type of screening process prior to the commencement of formal judicial proceedings is even greater in the juvenile justice system than in the adult criminal justice system because juvenile and family courts have jurisdiction over juveniles whose behavior is not criminal but is nevertheless regarded as socially undesirable, as well as over juveniles who commit criminal offenses. This noncriminal misbehavior is statutorily defined largely in terms of the juvenile's condition rather than in terms of the commission of specific acts. Accordingly, jurisdiction over juveniles who engaged in noncriminal misbehavior is commonly referred to as status offense jurisdiction, and such juveniles are commonly referred to as status offenders.⁸ Status offense jurisdictional statutes

⁸ The *Noncriminal Misbehavior* volume deals in detail with the status offense jurisdiction of juvenile and family courts. It should be noted that the Juvenile Justice Standards Project recommends the elimination of such jurisdiction in that volume.

are typically worded extremely vaguely and cover a wide range of noncriminal misbehavior. *E.g.*, Iowa Code § 232.2 (13) (i) (j) (1975) (juvenile court has jurisdiction over a juvenile “[w]ho is uncontrolled by his parents, guardian, or legal custodian by reason of being wayward or habitually disobedient” or “[w]ho habitually departs himself in a manner injurious to himself or others”); N.Y. Family Ct. Act § 712(b) (McKinney 1975) (family court has jurisdiction over juvenile “who does not attend school. . . or who is incorrigible, ungovernable or habitually disobedient and beyond control of parent or other lawful authority”). A concomitant of defining status offense jurisdiction in such a vague and all encompassing fashion is the exercise of discretion by juvenile officials in determining how to handle a complaint alleging a juvenile to be within the jurisdiction of the court by virtue of noncriminal misbehavior. See President’s Commission, *Delinquency Task Force Report* 10.

The case for intake screening and nonjudicial handling of complaints also rests on the argument that the filing of a petition and the judicial handling of a complaint may well have detrimental consequences for a juvenile who is the subject of the complaint. It is widely recognized that the juvenile justice system has largely failed to achieve its goal of rehabilitating juveniles who are formally processed through juvenile or family courts. See *e.g.*, *In re Gault*, 387 U.S. 1, 22 (1967); President’s Commission, *Delinquency Task Force Report* 7. Evidence of this failure can be seen in the high rate of recidivism among juveniles who are formally processed through juvenile and family courts. See *In re Gault*, 387 U.S. 1, 22 (1967).⁹

It is also widely recognized that the formal judicial processing of delinquent juveniles may actually exacerbate or perpetuate rather than ameliorate their problems because judicial processing labels a juvenile as a delinquent, which has the effect of stigmatizing the juvenile. See *e.g.*, E. Lemert, *Instead of Court: Diversion in Juvenile Justice* 11-15 (1972) (hereinafter cited as Lemert, *Instead of Court*);

⁹ It has been suggested that the failure of the juvenile justice system to realize its rehabilitative goal is attributable to a lack of resources; it has also been suggested that this failure is due to the fact that knowledge about the causes of delinquency and existing methods of behavior modification are not sufficiently advanced to enable realization of the rehabilitative goal on a significant scale; and it has been suggested that this failure is due to the fact that delinquency is not so much the product of individual deviancy as the product of “a multitude of pervasive societal influences well beyond the reach of the actions of any judge, probation officer, correctional counselor or psychiatrist.” President’s Commission, *Delinquency Task Force Report* 8. See also American Friends Service Committee, “Struggle for Justice: A Report on Crime and Punishment in America” 34-47 (1971).

E. Schur, *Radical Non-Intervention* 118-23 (1973) (hereinafter cited as Schur); S. Wheeler, L. Cottrell, and A. Romasco, *Juvenile Delinquency: Its Prevention and Control* 22-27 (1966) (hereinafter cited as Wheeler); Lemert, "The Juvenile Court—Quest and Realities," in President's Commission, *Delinquency Task Force Report* 92-93 (hereinafter cited as Lemert, "Quest and Realities"). The stigma of being labeled a delinquent may make it difficult for a juvenile who is attempting to lead a nondelinquent life to be successfully reintegrated into the community, because this stigmatization has negative economic and social impact. Formal judicial processing gives a juvenile an official court record. While most jurisdictions have statutes limiting access to juvenile court records, they have proved inadequate to preserve the confidentiality of these records, and their contents are generally available to employers, government agencies, and other interested parties. See generally H. Miller, *The Closed Door* 24-25 (1972) (hereinafter cited as Miller); Lemert, "Records in the Juvenile Court" in *On Record: Files and Dossiers in American Life* 355 (S. Wheeler ed. 1969); Kogon and Loughery, "Sealing and Expungement of Criminal Records—The Big Lie," 61 *J. Crim. L.C. & P.S.* 378, 383-85 (1970). Juveniles with court records face curtailment of employment opportunities. Lemert, *Instead of Court* 12; Miller 32-33; President's Commission, *Delinquency Task Force Report* 16. See also Schwartz and Skolnick, "Two Studies of Legal Stigma" in *The Other Side* 103 (H. Becker ed. 1967). Moreover, family, peers, neighbors, and school officials may react negatively to them with the result that they become socially isolated. Lemert, *Instead of Court* 12; President's Commission, *Delinquency Task Force Report* 16.

According to a widely accepted theory of deviant behavior known as labeling theory, the stigma of being labeled a delinquent as a result of judicial processing and the associated detrimental economic and social consequences may serve to reinforce the juvenile's antisocial tendencies. Lemert, *Instead of Court* 11-15; Schur 118-25; Wheeler 23. See generally H.S. Becker, *Outsiders: Studies in the Sociology of Deviance* (1973); Gibbs, "Conceptions of Deviant Behavior: The Old and the New" 9 *Pacific Sociological Rev.* 9 (1966); Kitsuse, "Societal Reactions to Deviant Behavior: Problems of Theory and Method," 9 *Social Problems* 247 (1963); E. Goffman, *Stigma: Notes on the Management of Spoiled Identity* (1963). Labeling theorists describe this process as follows: Judicial processing of a juvenile who commits a delinquent act labels the juvenile as a delinquent, with the judicial hearing functioning as a "degradation" ritual. Lemert, *Instead of Court* 12. Individuals and institutions in the juvenile's life react negatively to the juvenile, which has the effect of cutting off

legitimate opportunities for success and recognition and which leads to the social isolation of the juvenile. The juvenile increasingly associates with other similarly labeled, comes to think of himself or herself as delinquent, and organizes his or her behavior accordingly. In short, the labeled juvenile "begins to employ deviant behavior or a role based upon it as a means of defense, attack or adjustment to the overt or covert problems created by the societal reaction to his behavior" and "moves into. . . secondary deviation." Mahoney, "The Effect of Labeling upon Youths in the Juvenile Justice System: A Review of the Evidence," 8 *Law & Soc. Rev.* 583, 584 (1974).¹⁰

The nonjudicial disposition of a complaint may be more effective than the judicial disposition of a complaint not only because nonjudicial handling is less stigmatizing than judicial processing, but also because the juvenile and his or her parents generally have more of a voice in determining the nature and extent of intervention in the juvenile's life in connection with the former than in connection with the latter. The nonjudicial disposition of a complaint, theoretically at least, is based upon a nonjudicial disposition agreement that may provide for a program of services that is entered into by the juvenile and his or her parents intelligently, voluntarily, and with the assistance of counsel. Giving the juvenile and his or her parents a choice in determining the nature and extent of intervention is likely to give them a greater sense of freedom and fairness with respect to this intervention than they might otherwise have, and hence they are more likely to cooperate fully with any program of services than they might otherwise be. Gough, "Consent Decrees and Informal Services in the Juvenile Court: Excursions Toward Balance," 19 *U. Kan. L. Rev.* 733, 734 (1971).

Intake screening and the nonjudicial handling of complaints also

¹⁰The labeling theory has recently been criticized largely on the ground that existing evidence does not establish its validity. See, e.g., Mahoney, "The Effect of Labeling upon Youths in the Juvenile Justice System: A Review of the Evidence," 8 *Law & Soc. Rev.* 583 (1974). A few empirical studies cast doubt on the validity of labeling theory, but other studies lend at least some support to the theory, and the results of still other studies are contradictory. Compare Foster, Dinitz, and Reckless, "Perceptions of Stigma Following Public Intervention for Delinquent Behavior," 20 *Social Problems* 202 (1972) with Culbertson, "The Effect of Institutionalization on the Delinquent Inmates' Self-Concept," 66 *J. Crim. L. & C.* 88 (1975) and McEachern, "The Juvenile Probation System," *Am. Behavioral Scientist* 1 (1968). It should also be noted that there are relatively few empirical studies on the effect of labeling upon juveniles in the juvenile justice system, and many are methodologically suspect. The most that can be said at this point is that existing empirical evidence on this subject is inconclusive, and more research in the area is needed.

serve the function of conserving scarce judicial resources. Every year a large number of juveniles are referred to juvenile and family courts for delinquent conduct. President's Commission, *Delinquency Task Force Report* 11. In 1973, an estimated 1,430,700 delinquency cases involving 986,000 juveniles were handled by juvenile and family courts. 1973 Juvenile Court Statistics 1. The volume of these cases has been steadily increasing. During the period 1960 through 1973, their number more than doubled. 1973 Juvenile Court Statistics 1. In addition, the introduction of greater procedural regularity into juvenile court proceedings in the wake of *In re Gault*, 387 U.S. 1 (1967) has led to a greater number of judicial hearings and lengthier hearings. As it has been pointed out, more than half of all delinquency cases brought to the attention of juvenile and family courts are handled nonjudicially without the filing of a petition at the intake level. If there were no intake screening and all of these cases were judicially processed, a tremendous increase in judicial resources would be necessary. In a number of jurisdictions juvenile and family courts are "undermanned, underbudgeted, and overloaded," and it is questionable whether such additional resources could or would be made available. See President's Commission, *Delinquency Task Force Report* 10.

The foregoing dictates the conclusion that intake screening and certain forms of nonjudicial handling are desirable. Nevertheless, such screening and handling can be abused and misused, and they pose some serious problems in terms of concepts of substantive and procedural due process. Subsequent sections examine more closely these problems with respect to several aspects of the intake process, namely, the range of intake dispositional alternatives, the criteria for intake dispositional decisions, intake procedures, and the scope of the intake officer's dispositional powers.

Section II: Dispositional Alternatives at Intake

2.2 Judicial disposition of a complaint.

"Judicial disposition of a complaint" is the initiation of formal judicial proceedings against the juvenile who is the subject of a complaint through the filing of a petition. After intake screening, judicial disposition of a complaint may be made.

Commentary

One dispositional alternative at intake is obviously to initiate formal judicial proceedings against a juvenile who is the subject of a

complaint through the filing of a petition. As Standard 2.2 indicates, the term "judicial disposition of a complaint" is used in these standards to refer to this type of disposition.

While nationwide less than 50 percent of all juveniles who are the subject of a complaint are handled judicially, the number of juveniles handled judicially increased by 13 percent between 1972 and 1973. 1973 Juvenile Court Statistics 3; 1972 Juvenile Court Statistics 3. The percentage of juveniles handled judicially is greater in rural courts than in urban and semi-urban courts. See 1973 Juvenile Court Statistics; 1972 Juvenile Court Statistics.

It has been observed that a judicial disposition at intake is "the 'classic' disposition used in 'serious' and last resort cases." D. Cressey and R. McDermott, *Diversion from the Juvenile Justice System* 20 (1974). Judicial disposition of a complaint is appropriate when the complaint is legally sufficient to support the filing of a petition and when such filing is in the best interests of the juvenile and the community. See Standards 2.7 and 2.8 and commentary thereto.

2.3 Unconditional dismissal of a complaint.

The "unconditional dismissal of a complaint" is the termination of all proceedings against a juvenile. Unconditional dismissal of a complaint is a permissible intake dispositional alternative.

Commentary

Another dispositional alternative at intake is to terminate all proceedings against a juvenile, which represents a decision to take no action on the complaint. It includes the unconditional discharge of a juvenile after a warning or lecture or a short conference with the juvenile and his or her parents. The term "unconditional dismissal of a complaint" is used in these standards to refer to this type of disposition, and under Standard 2.3 this is a permissible disposition.

Unconditional dismissal appears to be relatively common. See D. Cressey and R. McDermott, *Diversion from the Juvenile Justice System* 19 (1974); President's Commission, *Delinquency Task Force Report* 15. Such a disposition is appropriate when the court has no jurisdiction over the juvenile who is the subject of the complaint or when the evidence is insufficient to support the allegations of the complaint. It is also appropriate when the complaint is legally sufficient to support the filing of a petition but when the juvenile is not in need of supervision or services and the allegedly delinquent conduct is minor. See Standards 2.7 and 2.8 and commentary thereto.

2.4 Nonjudicial disposition of a complaint.

A. "Nonjudicial disposition of a complaint" is the taking of some action on a complaint without the initiation of formal judicial proceedings through the filing of a petition or the issuance of a court order.

B. The existing types of nonjudicial dispositions are as follows:

1. "Nonjudicial probation" is a nonjudicial disposition involving the supervision by juvenile intake or probation personnel of a juvenile who is the subject of a complaint, for a period of time during which the juvenile may be required to comply with certain restrictive conditions with respect to his or her conduct and activities.

2. The "provision of intake services" is the direct provision of services by juvenile intake and probation personnel on a continuing basis to a juvenile who is the subject of a complaint.

3. A "conditional dismissal of a complaint" is the termination of all proceedings against a juvenile subject to certain conditions not involving the acceptance of nonjudicial supervision or intake services. It includes a "community agency referral," which is the referral of a juvenile who is the subject of a complaint to a community agency or agencies for services.

C. A "community agency referral" is the only permissible nonjudicial disposition, subject to the conditions set forth in Standard 2.4 E. Intake personnel should refer juveniles in need of services whenever possible to youth service bureaus and other public and private community agencies. Juvenile probation agencies and other agencies responsible for the administration and provision of intake services and intake personnel should actively promote and encourage the establishment and the development of a wide range of community-based services and programs for delinquent and nondelinquent juveniles.

D. Nonjudicial probation, provision of intake services, and conditional dismissal other than community agency referral are not permissible intake dispositions.

E. A nonjudicial disposition should be utilized only under the following conditions:

1. A nonjudicial disposition should take the form of an agreement of a contractual nature under which the intake officer promises not to file a petition in exchange for certain commitments by the juvenile and his or her parents or legal guardian or both with respect to their future conduct and activities.

2. The juvenile and his or her parents or legal guardian should voluntarily and intelligently enter into the agreement.

3. The intake officer should advise the juvenile and his or her parents or legal guardian that they have the right to refuse to enter into an agreement for a nonjudicial disposition and to request a formal adjudication.

4. A nonjudicial disposition agreement should be limited in duration.

5. The juvenile and his or her parents or legal guardian should be able to terminate the agreement at any time and to request formal adjudication.

6. The terms of the nonjudicial agreement should be clearly stated in writing. This written agreement should contain a statement of the requirements set forth in subsections 2.-5. It should be signed by all the parties to the agreement and a copy should be given to the juvenile and his or her parents or legal guardian.

7. Once a nonjudicial disposition of a complaint has been made, the subsequent filing of a petition based upon the events out of which the original complaint arose should be permitted for a period of [three (3)] months from the date the nonjudicial disposition agreement was entered into. If no petition is filed within that period its subsequent filing should be prohibited. The juvenile's compliance with all proper and reasonable terms of the agreement should be an affirmative defense to a petition filed within the [three-month] period.

General Commentary

Still another type of dispositional alternative at intake is the taking of some action on a complaint without the filing of a petition or the issuance of a court order. This type of disposition is referred to in this volume as a "nonjudicial disposition." Among the wide and confusing variety of terms also used to refer to this type of intake disposition are the following: nonjudicial adjustment, handling, or processing; informal disposition; adjustment. See, *e.g.*, W. Sheridan, Children's Bureau, U.S. Department of Health, Education and Welfare, "Standards for Juvenile and Family Courts" 53 (1966) (hereinafter cited as Sheridan, "Standards for Juvenile Courts"); National Advisory Commission, "Corrections." "Diversion" is still another term commonly used to refer to this type of disposition. Its use is avoided in these standards, however, because it is used in a number of ways and hence its meaning is ambiguous. See Cressey and McDermott 5-8.

In thirty-four states, juvenile or family court acts specifically pro-

vide for the nonjudicial disposition of complaints at intake.¹¹ Similarly, the various model acts and standards authorize the nonjudicial disposition of complaints at intake.¹² The use of nonjudicial dispositions is extensive and widespread. President's Commission, *Delinquency Task Force Report*.

Nonjudicial dispositions can and do take many different forms. Standard 2.4 B. defines the three existing basic categories of nonjudicial dispositions, according to the nature and degree of intervention in the life of a juvenile that each represents and the agency primarily responsible for the juvenile after the intake dispositional decision is made. These three categories are (1) nonjudicial probation, (2) provision of intake services, and (3) conditional dismissal. Standard 2.4 B. also defines community agency referral, which is one type of conditional dismissal.

Nonjudicial probation.

The first basic category of nonjudicial dispositions is "nonjudicial probation," defined in Standard 2.4 B. 1. as the supervision of a

¹¹ *Alaska Stat.* § 47.10.020(a) (1975); *Ariz. Rev. Stat. Ann.* § 8-228(A) (Cum. Supp. 1975); *Ark. Stat. Ann.* § 45-411(2) (Cum. Supp. 1975); *Cal. Welf. & Inst'n's Code* § 654 (West Cum. Supp. 1976); *Colo. Rev. Stat. Ann.* § 19-3-101(2) (c) (1973); *Conn. Gen. Stat. Ann.* § 17-61 (Cum. Supp. 1976); *Fla. Stat.* §§ 39.01(21), 39.04(1) (b) (1975); *Ga. Code Ann.* § 24A-1001 (Cum. Supp. 1975); *Hawaii Rev. Stat.* § 571-21 (1968); *Idaho Code Ann.* § 16-1807 (Cum. Supp. 1975); *Ill. Rev. Stat.* ch. 37, § 703-8 (1973); *Iowa Code* § 232.3 (1975); *Ky. Rev. Stat. Ann.* § 208.070(1) (1972); *La. Rev. Stat. Ann.* § 13:1574(A) (Cum. Supp. 1976); *Md. Ann. Code, Cts. & Judic. Proceedings* § 3-810 (Cum. Supp. 1975); *Mich. Comp. Laws* §§ 712A.2(e), 712A.11 (Supp. 1975); *Miss. Code Ann.* § 43-21-11 (Cum. Supp. 1975); *Mo. Rev. Stat.* § 211.081 (1969); *Mont. Rev. Codes Ann.* § 10-1209 (Cum. Supp. 1975); *N.M. Stat. Ann.* § 13-14-14 (Supp. 1975); *N.Y. Family Ct. Act* § 734 (McKinney 1975); *N.C. Gen. Stat.* § 7A-281, § 7A-289.7 (Cum. Supp. 1975); *N.D. Cent. Code* § 27-20-10 (1974); *Okla. Stat. Ann.* tit. 10, § 1103(a) (1971); *Ore. Rev. Stat.* § 419.482 (1975); *Pa. Stat. Ann.* tit. 11, § 50-304 (Cum. Supp. 1976); *S.C. Code Ann.* § 15-1095.14 (Cum. Supp. 1975); *S.D. Compiled Laws Ann.* § 26-8-1.1 (Supp. 1976); *Tenn. Code Ann.* § 37-210 (Cum. Supp. 1975); *Tex. Fam. Code Ann.* § 53.03 (1975); *Utah Code Ann.* § 55-10-83(2) (Supp. 1975); *Va. Code Ann.* § 16.1-164 (1975); *Wash. Rev. Code* § 13.04.056 (1974); *Wis. Stat.* § 48.19 (1973).

¹² Council of Judges, National Council on Crime and Delinquency, "Model Rules for Juvenile Courts," Rule 4 (1969) (hereinafter cited as NCCD, "Model Rules"); National Council on Crime and Delinquency, "Standard Juvenile Court Act" § 12 (1959) (hereinafter cited as NCCD, "Standard Act"); Advisory Council of Judges, National Probation & Parole Association, "Guides for Juvenile Court Judges" 36 (1957) (hereinafter cited as "Judges Guides"); National Conference of Commissioners on Uniform State Laws, "Uniform Juvenile Court

juvenile by juvenile intake or probation personnel for a period of time during which the juvenile may be required to comply with certain restrictive conditions with respect to his or her conduct and activities, without the filing of a petition or the issuance of a court order. The terms "informal" or "unofficial probation," "informal" or "unofficial supervision," and "nonjudicial supervision" are also used to refer to this category of disposition.

Nonjudicial probation has a postadjudication counterpart in judicial or official probation, which is a judicial disposition under which a juvenile who has been adjudicated delinquent is released subject to supervision by a juvenile probation officer. See R. Kobetz and B. Bosarge, *Juvenile Justice Administration* 322-26 (1973) (hereinafter cited as Kobetz and Bosarge); President's Commission, *Delinquency Task Force Report* 15.

While a number of jurisdictions have juvenile or family court acts authorizing the nonjudicial disposition of a complaint, there is little statutorily defined dispositional alternative at intake. There are only a few exceptions.¹³

Although there is little express statutory authority for the use of nonjudicial probation, its use is widespread. It appears that about 20 percent of all juveniles who are the subject of complaints are placed on nonjudicial probation, but there is considerable variation from community to community in the use of informal probation, and in some communities the percentage of juveniles placed on informal probation is greater than 20 percent. See President's Commission, *Delinquency Task Force Report* 15; Ferster and Courtless, "The Intake Process in the Affluent County Juvenile Court," 22 *Hastings L.J.* 1127 (1971) (hereinafter cited as Ferster and Courtless).

The use of nonjudicial probation as an intake dispositional alternative is controversial. The benefits of nonjudicial probation are the

Act" § 10 (1973) (hereinafter cited as "Uniform Juvenile Court Act"); W. Sheridan, Children's Bureau, U.S. Department of Health, Education and Welfare, "Legislative Guide for Drafting Family and Juvenile Court Acts" § 13 (1969) (hereinafter cited as Sheridan, "Legislative Guide"); W. Sheridan, Children's Bureau, U.S. Department of Health, Education, and Welfare, "Standards for Juvenile and Family Courts" 57 (1966) (hereinafter cited as Sheridan, "Standards for Juvenile Courts"); Youth Development and Delinquency Prevention Administration, U.S. Department of Health, Education and Welfare, "Legislative Guide for Drafting State-Local Programs on Juvenile Delinquency" § 16 (1972) (hereinafter cited as YDDPA, "Legislative Guide").

¹³ *Cal. Welf. & Inst'ns Code* § 654 (West Cum. Supp. 1976); see *Colo. Rev. Stat. Ann.* §§ 19-3-191(3) (b), 19-5-102(3) (1973); *Conn. Gen. Stat. Ann.* § 17-61 (Cum. Supp. 1976); *Fla. Stat.* § 959.28 (1975); *Md. Ann. Code, Cts. & Judic. Proceedings* § 3-810-(f) (Cum. Supp. 1975).

same as those of nonjudicial dispositions generally. Advocates of nonjudicial probation contend that placing delinquent juveniles with problems on nonjudicial probation rather than adjudicating them delinquent and placing them on judicial probation permits the exercise of some control over them and the provision of services to them without the detrimental consequences of formal judicial processing. See *e.g.*, National Advisory Commission, "Corrections"; President's Commission, *Delinquency Task Force Report* 16. Underlying this position is the widely held view that formal judicial processing of a juvenile who is brought to the attention of the juvenile court serves to label the juvenile a delinquent, which stigmatizes the juvenile, and that this stigma has such negative economic and social effects as curtailment of employment opportunities. This position also reflects the view that such processing and the stigma of being labelled delinquent may in fact reinforce the juvenile's antisocial tendencies. See commentary to Standard 2.1 and authorities therein cited at 24-31 for a more detailed discussion of the disadvantages of formal processing.

Critics of nonjudicial probation have asserted that it is not significantly less stigmatizing than an adjudication of delinquency and placement on judicial probation. It does appear that juvenile court contacts resulting in a juvenile being placed on nonjudicial probation may stigmatize the juvenile and can be harmful to him or her from an economic and social standpoint. For example, there is some evidence that employers discriminate against job applicants who have had contacts with the juvenile justice system as juveniles, and do not carefully distinguish between those who have been adjudicated delinquent and those who had police and juvenile court contacts that did not lead to a delinquency adjudication. See Gough, "The Expungement of Adjudication Records of Juvenile and Adult Offenders: A Problem of Status" *Wash. U.L.Q.* 147, 153 (1966); Schantz, "Relieving the Stigma of Arrest and Conviction Records" in *Criminal Defense Techniques* 42-51 (R. Cipes ed. 1969). Similarly, it is conceivable that juvenile court contacts not leading to a delinquency adjudication can produce a negative self-image. *Cf.* the *Youth Service Agencies* volume. Because of the paucity of empirical data, it is difficult to accurately assess the extent, if any, to which nonjudicial probation is significantly less stigmatizing than an adjudication of delinquency that results in the placement of the juvenile on judicial probation.

Critics of nonjudicial probation have also asserted that certain juveniles who engage in delinquent conduct and have problems cannot be dealt with successfully through nonjudicial supervision and ser-

vices. It should be noted in this regard that the nature of nonjudicial probation varies a great deal depending upon such factors as "policy of the probation department, ideology and training of the supervisory probation officer, size of the probation officer's case load, availability of service agencies and . . . the degree of cooperation of the juvenile." Cressey and McDermott 45. Some nonjudicial probationers are intensively supervised and receive counselling as well as other services, but others have little or no contact with their supervising officers and do not receive much in the way of counselling or other services. Cressey and McDermott 45, 47-48; Governor's Study Commission on Juvenile Justice, "Administration of Juvenile Justice in California" 47 (1960); Ferster and Courtless 1144. Here again, it is difficult to accurately assess the effectiveness of nonjudicial probation because there is little empirical data on this subject. See Ferster and Courtless 1142-43.

Advocates of nonjudicial probation also assert that its use is beneficial because it conserves resources by reducing court dockets. See commentary to Standard 2.1 and authorities cited therein at 24-31. for a more detailed discussion of the extent to which nonjudicial handling of juveniles brought to the attention of the juvenile court saves judicial resources. Critics of nonjudicial probation have, however, asserted that it may cost more than it saves in terms of time, money, and personnel. One authority has made the following observations:

Since it is generally acknowledged that courts place more children on probation unofficially than would be placed if official hearings were held, the savings in time and money are questionable. While the judge himself may be spared some lengthy official cases, what about his staff? . . . [Unofficial] probation cases overload the probation staff and make the conscientious probation officer's job doubly difficult, and if additional probation officers are hired, the initial savings are wiped out. Fradkin, "Disposition Dilemmas of American Juvenile Courts" in *Justice for the Child* 118, 125 (M. Rosenheim ed. 1962) (hereinafter cited as Fradkin).

Nonjudicial probation has been criticized not only on the ground that its asserted benefits are illusory but also on the ground that it is susceptible to abuse. It may in fact become a vehicle for substantial intervention in the lives of juveniles and their families. A juvenile put on informal probation is subject to supervision by intake or probation personnel and may have to comply with a wide variety of restrictive conditions during the probationary period. In many jurisdictions there are no statutory limitations on the length of the probationary

period, and it may continue for a considerable time. There is never any judicial determination that this substantial intervention is warranted in accordance with procedural due process protections. As the President's Commission on Law Enforcement and the Administration of Justice has stated:

The punitive uses of informality are improper and dangerous. Substantial interference with parental judgment and curtailment of the juvenile's activities must be preceded by adjudication or the intervention is extralegal. The well-known practice of informal probation is vulnerable to attack on this ground; by measuring a juvenile's conduct according to conditions informally laid down by officials of the State, it constitutes an interference with choices of parents and juvenile that is legitimate, under our legal traditions, only when the basis for intervention has been established in accordance with procedural rules. President's Commission, *Delinquency Task Force Report* 17.

Juveniles may in fact be put on nonjudicial probation in cases in which they would not be adjudicated delinquent if a petition were to be filed because the court has no jurisdiction over the juvenile or the evidence is insufficient to support the charges against the juvenile. See Cressey and McDermott 44; Demnitz, "Ferment and Experiment in New York: Juvenile Cases in a New York Family Court," 48 *Cornell L. Rev.* 499, 514 at n. 68 (1963); Note, "Informal Disposition of Delinquency Cases: Survey and Comparison of Court Delegation of Decision-Making," 1965 *Wash. U.L.Q.* 258, 285 (hereinafter cited as Note, "Informal Disposition of Delinquency Cases").

A juvenile, however, may consent to nonjudicial probation. The juvenile's consent arguably operates as a waiver of his or her right to a judicial determination. Although the concept of waiver is a somewhat elusive one in both the criminal justice system and the juvenile justice system, it is well-established that a waiver is not valid unless it is voluntary. See, e.g., *Brady v. United States*, 397 U.S. 742 (1970); *Boykin v. Alabama*, 395 U.S. 238 (1969); *Miranda v. Arizona*, 384 U.S. 436 (1966); *Johnson v. Zerbst*, 304 U.S. 458 (1938).

While the voluntariness of a juvenile's consent is important from the standpoint of the legitimacy of intervening in his or her life through placement on nonjudicial probation, it is also relevant to the success of the nonjudicial probation. A juvenile whose consent to nonjudicial probation is involuntary is less likely to benefit from the probation than one whose consent to nonjudicial probation is voluntary. Cf. National Advisory Commission, "Corrections" 45;

R. Nimmer, *Diversion: The Search for Alternative Forms of Prosecution* 99 (1974) (hereinafter cited as Nimmer); Friedman, "Dilemmas of Correctional Law and Rehabilitation" in "Proceedings: Second Annual Workshop on Corrections and Parole Administration" 57, 68-9 (San Antonio, Texas, March 1974).

One measure of the voluntariness of a juvenile's consent to nonjudicial probation is whether the acceptance is knowing and intelligent. Cf. *Boykin v. Alabama*, 395 U.S. 238 (1969); *Miranda v. Arizona*, 384 U.S. 436 (1966); *Carnley v. Cochran*, 369 U.S. 506 (1962); *Von Moltke v. Gillies*, 332 U.S. 708 (1948). But see *Schneekloth v. Bustamonte*, 412 U.S. 218 (1973). While the juvenile's acceptance of nonjudicial probation may be knowing and intelligent in theory, it is often questionable whether it is in reality. Since intake officers are generally court officials, an officer's recommendation of nonjudicial probation may sound like an official disposition of the court to a juvenile and his or her parents. Cressey and McDermott 44; see also National Juvenile Law Center, *Law and Tactics in Juvenile Cases* 206 (2 ed. 1974) (hereinafter cited as National Juvenile Law Center). Even if the juvenile and his or her parents are aware that they have the option of refusing nonjudicial probation and insisting on a formal adjudicatory proceeding in the juvenile court, they may not have the knowledge and information necessary to make an intelligent choice between this option and the option of accepting the probation.

Another measure of the voluntariness of a juvenile's consent to nonjudicial probation is the extent to which it is the product of coercive pressures. In many instances the juvenile will wish to forestall the filing of a petition, and the intake officer will make it known to the juvenile that he or she can do so by accepting nonjudicial probation. Consent to nonjudicial probation under these circumstances can be viewed as the product of a threat by the intake officer to seek the filing of a petition unless the juvenile consents, or alternatively it can be viewed as the product of a promise by a prosecutor not to seek the filing of a petition provided the juvenile consents. It can be argued that consent induced by such a threat or promise is not truly voluntary. Cf. *Bram v. United States*, 168 U.S. 532, 542-43 (1897). Consent under these circumstances, however, can also be viewed as the product of a perfectly permissible and mutually advantageous agreement between the juvenile and the intake officer. Cf. *Brady v. United States*, 397 U.S. 742, 751-55 (1970). For a juvenile who believes that delinquency adjudication is probable in the event that a petition is filed, the advantages of entering into an agreement for nonjudicial probation are obvious.

By entering into such an agreement the juvenile avoids the trauma and stigma associated with a filing of a petition and a delinquency adjudication. The intake officer may also regard an agreement for nonjudicial probation as advantageous, because nonjudicial probation may be a more effective means of helping a juvenile than formal judicial processing, and may save scarce judicial resources.

After a juvenile consents to nonjudicial probation, questions may still arise with respect to the voluntariness of the juvenile's acceptance of supervision and services and compliance with conditions of probation. At least one juvenile court act specifically authorizes the filing of a petition based upon the original complaint against a juvenile who has been placed on nonjudicial probation,¹⁴ and most juvenile and family court acts do not expressly preclude the subsequent filing of a petition. Thus, it has been suggested that the cooperation of a juvenile during a probationary period may be induced not so much by the juvenile's desire to solve his or her problems as by a desire to avoid the filing of a petition.

It has also been suggested that the filing of a petition after a juvenile has been placed on nonjudicial probation because of his or her alleged failure to comply with the conditions of nonjudicial probation is "legal double jeopardy." NCCD, "Model Rules" 15; see also Kobetz and Bosarge 259; Ferster and Courtless 1141. The constitutional prohibition against double jeopardy applies not only to adults but also to juveniles and prohibits a juvenile from being tried twice for the same offense, but jeopardy in the constitutional sense does not attach until a petition has been filed and the juvenile or family court judge has begun to hear the evidence at an adjudicatory hearing. *Breed v. Jones*, 421 U.S. 519, 531 (1975); *cf. Downum v. United States*, 372 U.S. 734 (1963). Hence jeopardy in the constitutional sense would not attach to the placement of a juvenile on nonjudicial probation, which occurs without the filing of a petition and an adjudication of delinquency. Several commentators have also taken the position that it is unfair to permit the filing of a petition based upon the original complaint once a juvenile has been placed on nonjudicial probation. See Kobetz and Bosarge 259; Ferster, Courtless and Snethen, "Separating Official and Unofficial Delinquents: Juvenile Court Intake," 55 *Iowa L. Rev.* 864, 882-83 (1970) (hereinafter cited as Ferster, Courtless, and Snethen); Gough, "Consent Decrees and Informal Service in the Juvenile Court: Excursions Toward Balance," 19 *Kan. L. Rev.* 733, 738-39 (1971) (hereinafter cited as Gough). It is true that a juvenile who has been placed on nonjudicial probation and refuses to cooperate with the

¹⁴ *Cal. Welf. & Inst'n Code* § 654 (West, Cum. Supp. 1976).

supervising officer and abide by the conditions of probation obtains a "record," and if a petition is subsequently filed against the juvenile and the juvenile is adjudicated delinquent, his or her conduct could result in a more severe disposition than might otherwise have been the case. Hearings on H.R. 9007 before the Subcommittee on Courts, Civil Liberties, and the Administration of Justice of the House Commission on the Judiciary, 93rd Cong., 2nd sess. 75 (1974); see also, Kobetz and Bosarge 262. It is, however, at least arguably, not inherently unfair for an intake officer to file a petition based upon the original complaint because of the juvenile's failure to comply with the conditions of probation provided they were proper and reasonable and the juvenile's noncompliance was in fact intentional.

In summary, the use of nonjudicial probation poses serious problems. Its benefits are speculative and it appears to be susceptible to abuse. One possible response to abuses associated with nonjudicial probation is to eliminate its use altogether. See, *e.g.*, President's Commission, *Delinquency Task Force Report* 18019; Kobetz and Bosarge 259; ABA Committee on Juvenile Delinquency, Criminal Law Section, "Committee Reports and Comments on the Draft of the Juvenile Task Force of the National Conference on Criminal Justice" 11 (undated); Sheridan, "Legislative Guide," comment to § 33 at 36. Another possible response to the abuses associated with nonjudicial probation is to surround its use with safeguards. See, *e.g.*, National Advisory Commission, "Corrections" 255; NCCD, "Model Rules," Rule 4 and commentary at 13-15; Ferster, Courtless, and Snethen 883. Among the safeguards that have been suggested are the following: a requirement that a juvenile admit facts sufficient to bring him or her within the jurisdiction of a court; a requirement that the juvenile and his or her parents consent voluntarily and intelligently to the nonjudicial probation; a requirement that the juvenile have the right to the assistance of counsel in connection with any negotiations or discussions with respect to nonjudicial probation; and a requirement that any restraints imposed upon the juvenile as a result of nonjudicial probation be minimal.

The relative merit of these two approaches is difficult to assess. Elimination of the use of nonjudicial probation as an intake dispositional alternative means the elimination of the abuses associated with its use, but this approach may have the undesirable effect of increasing the rate at which juveniles are judicially processed, the detrimental consequences of which have been previously described. In many instances the intake officer may believe that some supervision of the juvenile is necessary and may feel compelled to make a judicial disposition of the complaint unless nonjudicial probation is

available as an alternative. On the other hand, the effectiveness of the proposed safeguards aimed at preventing the abuses associated with nonjudicial probation has not been determined. On balance it would seem that the potential for abuse of nonjudicial probation is so great as to outweigh its ostensible benefits.

Provision of intake services and conditional dismissal.

The second basic category of nonjudicial dispositions is the provision of intake services as defined in Standard 2.4 B. 2. The provision of intake services refers to the direct provision of services by intake and probation personnel on a continuing basis to a juvenile who is the subject of a complaint. It does not include the direct provision of services to a juvenile by intake or probation personnel on an emergency or short term basis. A wide variety of services may be provided, but the most common is counseling of various sorts. The provision of intake services differs from nonjudicial probation in that nonjudicial probation, unlike the provision of intake services, involves an attempt to exercise some control over the juvenile through supervision. Only a few juvenile and family court acts specifically set forth the provision of intake services as an intake dispositional alternative.¹⁵ This type of nonjudicial disposition has received relatively little attention from researchers and scholars, and there is little available data concerning its use.

The third basic category of nonjudicial dispositions is the conditional dismissal. Standard 2.4 B. 3. defines conditional dismissal as the termination of all proceedings against a juvenile subject to conditions other than the juvenile's acceptance of nonjudicial probation or intake services. For example, the intake officer may dismiss the complaint on the condition that the juvenile make restitution, attend school, or obtain employment.

The most common kind of conditional dismissal, however, is the community agency referral. As defined in Standard 2.4 B. 3. a community agency referral involves the termination of all proceedings against the juvenile on condition that the juvenile obtain services from a community-based agency or agencies. Community-based agencies may provide a wide variety of needed services including individual, group, and family counseling, mental health programs, drug rehabilitation programs, special education, vocational guidance, tutoring, recreational programs, shelter care, and residential care.

There is little specific statutory authorization for a community

¹⁵ *Mont. Rev. Code Ann.* § 10-1209 (Cum. Supp. 1975); *Pa. Stat. Ann.* tit. 11, § 50-304(b) (Cum. Supp. 1976); *Wis. Stat.* § 48.19 (1973); see also *Mich. Comp. Laws* § 712A.2(e), 712A.11 (Cum. Supp. 1976).

agency referral at intake.¹⁶ Almost all of the model acts and standards, however, endorse the use of the community agency referral.¹⁷ A number of authorities have likewise endorsed its use. See, e.g., National Advisory Commission, "Corrections" 353; President's Commission, *Delinquency Task Force Report* 18. The extent of its actual use cannot be determined on the basis of existing data. But see Cressey and McDermott 17.

Both the provision of intake services and a community agency referral involve the continuing provision of services to a juvenile, the former by an intake agency and the latter by a community agency. The advantage of both is that the juvenile is spared the detrimental consequences of formal processing through the juvenile justice system and they conserve judicial resources by eliminating the need for formal judicial proceedings. See commentary to Standard 2.1.

Many authorities view the referral of a juvenile to a community agency for services as preferable to the provision of services on a continuing basis by the intake agency. See, e.g., National Advisory Commission, "Corrections" 353; President's Commission, *Delinquency Task Force Report* 18-22; Sheridan, "Standards for Juvenile Court" 58-59. The President's Commission on Law Enforcement and the Administration of Justice summarized the advantages of a community agency referral as follows:

There should be expanded use of community agencies for dealing with delinquents nonjudicially and close to where they live. Use of community agencies has several advantages. It avoids the stigma of being processed by an official agency regarded by the public as an arm of crime control. It substitutes for official agencies organizations better suited for redirecting conduct. The use of locally sponsored or operated organizations heightens the community's awareness of the need for recreational, employment, tutoring, and other youth development services. Involvement of local residents brings greater appreciation of the complexity of delinquents' problems, thereby engendering the sense of public responsibility that financial support of programs requires. President's Commission, *Delinquency Task Force Report* 19.

Ideally, then, an intake officer should act as a "broker" of services,

¹⁶ *Ariz. Rev. Stat. Ann.* § 8-228(a) (Cum. Supp. 1975); *Ark. Stat. Ann.* § 45-411(2) (Cum. Supp. 1975); *N.M. Stat. Ann.* § 13-14-14(B) (Supp. 1975); *N.C. Gen. Stat.* § 7A-289.7(3) (Cum. Supp. 1975); *Pa. Stat. Ann.* tit. 11, § 50-304 (Cum. Supp. 1976).

¹⁷ NCCD, "Standard Act" § 12 and comment thereto at 32; Sheridan, "Legislative Guide," § 13(d) and comment thereto at 15; Sheridan, "Standards for Juvenile Courts" 58; YDDPA, "Legislative Guide" § 16; see also NCCD, "Model Rules," Rule 4; "Judges Guides" 36.

identifying community-based services that fit the specific needs of a juvenile who is the subject of a complaint, and referring the juvenile to the agency or agencies that can provide these services to the juvenile. If, however, the officer is to play this role, adequate services must be available from community agencies. In 1967 the President's Commission on Law Enforcement and Administration of Justice, recognizing the need for community-based services for juveniles, called for the establishment of "youth services bureaus," which would coordinate existing community services for delinquent and nondelinquent juveniles and would also provide or encourage the development of services lacking in the community. President's Commission, *Delinquency Task Force Report* 20-21. Although this recommendation was well received, recent studies indicate that relatively few youth services bureaus of the sort the President's Commission envisioned have been established.¹⁸ See National Advisory Commission, "Corrections" 79; S. Norman, National Council on Crime and Delinquency, "The Youth Service Bureau" (1972); Youth Authority, State of California, "National Study of Youth Services Bureaus" 34 (1972). In recent years community-based services for juveniles have increased in both quality and quantity, but the sad reality is that in many communities, particularly smaller rural or semi-rural ones, community-based services for juveniles are still inadequate or nonexistent. See Office of Children's Services, Office of Court Administration, State of New York, "Probation: Problem Oriented—Problem Plagued" 38 (1974); Kelley, Schulman, and Lynch, "Decentralized Intake and Diversion," *27 Juvenile Justice* 3, 5, 8 (1976) (hereinafter cited as Kelley, Schulman, and Lynch). Some community agencies view juveniles who have been brought to the attention of the juvenile court as troublesome and less likely than nondelinquent juveniles to respond to the agency services, and they may be reluctant to accept referral of these juveniles from intake personnel. See the *Youth Service Agencies* volume, commentary to Standard 5.7 at 54-61; Cole, "Diversion and the Juvenile Court: Competition or Cooperation," *17 Juvenile Justice* 33, 34 (1976); see also Rosenheim, "Notes on Helping: Normalizing Juvenile Nuisances," *50 Social Service Rev.* 177, 181 (1976); cf. Nimmer, 37-38 (1974). Hence, the direct provision of services to juveniles by intake and probation personnel at the intake level as an alternative to formal judicial processing may be necessary, albeit less de-

¹⁸ Another volume of standards, entitled *Youth Service Agencies*, deals in detail with the subject of youth services bureaus and contains several studies of existing bureaus.

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sirable than the provision of services to them by community agencies.

To some extent the provision of intake services to juveniles by intake and probation personnel and the placement of juveniles on nonjudicial probation are undoubtedly a response to the lack of community agencies to which intake personnel can refer a juvenile. One effect, however, of the development and use of these forms of nonjudicial dispositions may be to discourage the establishment of community-based services and programs for the juvenile, for as long as the juvenile court is providing services to juveniles with problems, the community is not forced to provide them. This, of course, assumes that the community would be able and willing to allocate the resources for an adequate service system in the event that intake services were not available.

Another problem with the use of the community agency referral as an intake dispositional alternative is the lack of follow through once an intake officer refers a juvenile to another agency for services. The President's Commission on Law Enforcement and Administration of Justice described what can happen as follows:

Typically the official agency gets in touch with a clinic, social agency, youth board, or other similar organization. But the time to explain a referral to the juvenile or a member of his family is short, and in the impersonal, populous districts of an urban area the referral case is often lost. The juvenile may not arrive at the selected place of service, or he may be refused service without the referring official's finding out in time to take other steps. Even where there is a well-articulated referral system with smoothly operating procedures, sheer number of cases may substantially lessen its effectiveness. If the time lapse between apprehension and referral is a matter of days, the subsequent followup by a selected community resource may occur at a point when the juvenile and his family have surmounted their initial fear, anger, or regret and concern, and the contact is regarded as an unwelcome reminder of past unpleasantness instead of an avenue of help in time of crisis. President's Commission, *Delinquency Task Force Report* 18.

In short, a follow-up of community agency referrals is necessary in order to insure that juveniles whom intake personnel refer to community agencies for services actually receive these services. Follow-up is also necessary to evaluate the effectiveness of the referral process and referral services so that deficiencies in this process and in these services can be identified and corrected. Kelley, Schulman, and Lynch 6.

The community agency referral, unlike nonjudicial probation, does not involve an attempt on the part of intake or probation per-

sonnel to exert control over the juvenile, and as a result it is less susceptible to abuse than nonjudicial probation, but abuse of the community agency referral can and does occur. Juveniles may be referred to community agencies for such programs as drug treatment, which imposes various highly restrictive conditions on the juvenile. See National Advisory Commission, "Corrections" 89-90. Moreover, the community agency referral is not without coercive possibilities. Here again a juvenile may consent to a community agency referral because of a desire to avoid the filing of a petition rather than a desire to solve his or her problems. Although community agencies lack the coercive powers of juvenile and family courts over juveniles, they can refer a juvenile back to the court if the juvenile refuses to participate in agency programs. Thus, community agencies can deal with juveniles in a manner inconsistent with concepts of substantive and procedural fairness. See Nejelski, "Diversion: The Promise and Danger," *Crime & Delinq.* (1976).

Safeguards against abuse of the nonjudicial disposition.

As the foregoing indicates, the three existing basic categories of nonjudicial dispositions—nonjudicial probation, the provision of intake services on a continuing basis, and conditional dismissal including a community agency referral—are to some extent susceptible to abuse. Accordingly, as long as these nonjudicial dispositions continue to exist, their use must be structured in such a way that they are less susceptible to abuse in jurisdictions allowing them. Several safeguards that have been suggested to minimize the abuses associated with nonjudicial dispositions are discussed below.

Voluntary consent requirement. One possible safeguard for the use of the nonjudicial disposition is a requirement that the juvenile and his or her parents voluntarily consent to the nonjudicial disposition. As has been pointed out, the nonjudicial disposition may result in substantial intervention in the juvenile's life, without any judicial determination that such intervention is warranted, and if the juvenile and his or her parents do not voluntarily consent to the nonjudicial disposition, the intervention it produces is in essence coercive.

A few of the model acts provide that a juvenile and his or her parents must consent to a nonjudicial disposition.¹⁹ And other authorities have endorsed a voluntary consent requirement. National Advisory Commission, "Corrections" § 8.2 at 266; Gough 738;

¹⁹ NCCD, "Standard Act" § 12 at 31; "Uniform Juvenile Court Act," § 10(b) (3) at 410; see also Sheridan, "Standards for Juvenile Courts" 59.

Comment, "Alternative Preadjudicatory Handling of Juveniles in South Dakota: Time for Reform," 19 *S. Dak. L. Rev.* 207, 219 (1974) (hereinafter cited as Comment, "South Dakota Preadjudicatory Handling"). Note, "Informal Disposition of Delinquency Cases" 271. A few family and juvenile court acts do in fact contain such a requirement.²⁰

A statutory requirement, however, that a juvenile and his or her parents voluntarily consent to a nonjudicial disposition does not necessarily insure that the consent will in fact be voluntary. One approach to this problem is to treat a nonjudicial disposition as a contractual agreement between the intake agency, as represented by the intake officer, and the juvenile and his or her parents. This agreement consists in essence of a commitment by the intake officer not to seek the filing of a petition in exchange for a commitment by the juvenile and sometimes his or her parents to undertake certain designated obligations and responsibilities. The intake officer should inform the juvenile and his or her parents that they have the right to refuse an offer of a nonjudicial disposition. In addition, the juvenile should be given the right to the assistance of counsel in connection with any negotiations regarding a nonjudicial disposition agreement. See Standard 2.13 and commentary thereto. If the juvenile and his or her parents accept the offer, the terms of the agreement should be reduced to writing and signed by parties to the agreement, including the juvenile providing he or she is capable of doing so, and a copy should be given to the juvenile and his or her parents. The purpose of these requirements is to insure that the consent of the juvenile and his or her parents is voluntary.

Voluntary participation and noncompliance with terms of agreement. Just as the entry of the juvenile and his or her parents into a nonjudicial disposition agreement should be voluntary, their participation in a program of supervision or services pursuant to the agreement should be voluntary. The corollary of a voluntary partici-

²⁰ *Conn. Gen. Stat. Ann.* § 17-61 (Cum. Supp. 1976); *Colo. Rev. Stat. Ann.* § 19-3-101(2) (c) (III) (1973); *Fla. Stat. Ann.* § 39.04(1) (b) (Cum. Supp. 1976); *Ga. Code Ann.* § 24A-1001(a) (3) (Cum. Supp. 1975); *Hawaii Rev. Stat.* § 571-21(a) (1968); *Iowa Code* § 232.3 (1975); *Md. Ann. Code, Cts. & Judic. Proceedings* § 3-810(e) (Cum. Supp. 1975); *Mich. Comp. Laws Ann.* §§ 712A.2(e) (Cum. Supp. 1976); *N.D. Cent. Code Ann.* § 27-20-10 (1) (c) (1974); *Pa. Stat. Ann.* tit. 11, § 50-304(b) (2) (Cum. Supp. 1976); *S.D. Compiled Laws Ann.* § 26-8-1.1 (Supp. 1976); *Tenn. Code Ann.* § 37-210(a) (3) (Cum. Supp. 1975); *Tex. Fam. Code Ann.* § 53.03(a) (2) (1975); *Utah Code Ann.* § 55-10-83(2) (Supp. 1975); *Wash. Rev. Code* § 13.04.056 (1974).

pation requirement is that the juvenile should be free to withdraw from the agreement at any time and request the filing of a petition and a formal adjudication. *E.g.*, D.C. Code Ann. § 16-2314 (1973); See National Advisory Commission, "Corrections" § 8.2(3) (h) and commentary thereto at 255. *Cf. Klopfer v. North Carolina*, 386 U.S. 213 (1967).

There remains the related question of whether a nonjudicial disposition agreement should preclude the subsequent filing of a petition based upon the original complaint. Several commentators have advocated such a bar on the ground that the subsequent filing of a petition under these circumstances may constitute legal double jeopardy and is unfair. See National Advisory Commission, "Corrections" 255, 256; Gough 256; *cf. Kobetz and Bosarge* 262. As has been pointed out, however, the filing of a petition based upon the original complaint against a juvenile who has entered into a nonjudicial disposition agreement, cannot be said to constitute legal double jeopardy, and it can be argued that the filing of a petition is not inherently unfair when a juvenile fails to comply with reasonable and proper terms of the agreement and the noncompliance is intentional and material. Moreover, if a nonjudicial disposition agreement is made a total bar to the subsequent filing of a petition based upon the original complaint, intake officers may become reluctant to make nonjudicial dispositions in cases in which they have any doubt about its success. Thus, such a bar may have the undesirable effect of reducing the rate of nonjudicial handling of juveniles. Nevertheless, the juvenile should not be subject to the threat of petition filing for an indefinite period of time.

One approach to this problem is to provide that, once a nonjudicial disposition agreement is made, a petition may be filed for only a limited period of time such as three months. If, however, the juvenile has complied with proper and reasonable terms of the agreement, such compliance should be an affirmative defense to the charges if a petition is filed. Thus, a juvenile could obtain, through a motion to dismiss the petition, a judicial determination as to whether there has been noncompliance with the material terms of the agreement and as to the reasonableness of the terms of the agreement. A hearing on the motion to dismiss would be analogous to a probation revocation hearing.

Restrictions upon nature and extent of intervention. Another possible safeguard for the use of nonjudicial dispositions is to place restrictions upon the nature and extent of intervention in a juvenile's life. While the terms of nonjudicial disposition agreements

should generally be open to negotiation, there should be some limitations upon those terms in order to prevent excessive intervention in the juvenile's life as the result of the agreement.

As a general rule, restraints imposed upon the juvenile's freedom pursuant to a nonjudicial disposition agreement should be minimal. See National Advisory Commission, "Corrections" § 8.2(3) (g) at 266. Thus, a nonjudicial probation agreement should not be permitted to authorize removal of a juvenile from his or her home, temporary detention in a secure facility, or placement in a shelter care facility. Gough 737. But *cf.* President's Commission, *Delinquency Task Force Report* 22.

As has been pointed out, nonjudicial probation arguably ought not to be a permissible intake dispositional alternative in part because it can result in extensive intervention in the juvenile's life. In jurisdictions where nonjudicial probation is a permissible intake dispositional alternative, only those conditions that could be imposed upon a juvenile in connection with judicial probation should be imposed in connection with nonjudicial probation. Since the subject of the permissibility of various conditions of judicial probation is beyond the scope of this volume,* suffice it to say that probation conditions should not be unduly restrictive or incompatible with the juvenile probationer's freedom of speech and assembly, right to counsel, freedom of religion, or liberty and they should be reasonably related to his or her rehabilitation. See generally ABA Standards for Criminal Justice, *Probation* § 3.2 and commentary thereto; Comment, "Juvenile Probation: Restrictions, Rights and Rehabilitation" 16 *St. Louis U.L.J.* 276 (1971).

Duration limitations. Another possible safeguard for the use of nonjudicial dispositions is a limitation on the duration of a nonjudicial disposition agreement. Such a limitation is a means of preventing intervention in the juvenile's life from continuing for an excessive period of time. It would also seem sensible in view of the paucity of empirical data indicating that lengthy supervision and services are any more effective than intensive short-term supervision and services. See Gough 738.

Several of the model acts and standards place time limits upon supervision or services in connection with the nonjudicial disposition of a complaint,²¹ as have several commentators. National Ad-

*The permissible scope of judicial probation (community supervision) is treated in the *Corrections Administration* volume.

²¹NCCD, "Model Rules," Rule 4 and comment at 13-14; NCCD, "Standard Act" § 12 at 14; Sheridan, "Legislative Guide" § 13 at 14; Sheridan, *Standards for Juvenile Courts* 59; "Uniform Juvenile Court Act" § 10(b) at 411; *see also* YDPPA, "Legislative Guide" § 16 at 12.

visory Commission, "Corrections" 255; Gough 238; Note, "Informal Disposition of Delinquency Cases" 883; Comment, "South Dakota Preadjudicatory Handling" 219. Several states also impose statutory time limits, ranging from two months to six months, the most common being three months with a court ordered extension possible.²²

It would seem that the duration of a nonjudicial disposition agreement should depend to some degree upon the nature and extent of the intervention in the juvenile's life. The more substantial and extensive the intervention, the shorter should be the duration of the agreement. Thus, in jurisdictions where all three basic categories of nonjudicial dispositions—nonjudicial probation, the provision of intake services, and the conditional dismissal including a community agency referral—are permissible alternatives, more stringent limits should be imposed on an agreement providing for nonjudicial probation than on an agreement providing for provision of intake services or an agreement for a conditional dismissal, because the former generally involves more substantial and extensive intervention than the latter. For example, it would be possible to limit the duration of an agreement for nonjudicial probation to three months and an agreement for the provision of intake services or a conditional dismissal, including the community agency referral, to six months. This kind of scheme may also have the advantage of discouraging the use of nonjudicial probation by intake officers and encouraging their use of the preferable types of nonjudicial dispositions. In any event, it would seem that nonjudicial disposition agreements should not continue in effect for more than twelve months.

Commentary on Standard

Standard 2.4 deals with the permissibility of the use of various kinds of nonjudicial dispositions and sets forth some requirements

²² *Colo. Rev. Stat. Ann.* § 19-3-101(2) (c) (3) (a) (1973) (6 months); *Conn. Gen. Stat. Ann.* § 17-61 (Cum. Supp. 1976) (3 months with court authorized extension possible); *Ga. Code Ann.* § 24A-1001(b) (Cum. Supp. 1975) (3 months with court authorized extension for additional 3 months possible); *Hawaii Rev. Stat.* § 571-21(a) (1968) (3 months); *Ill. Rev. Stat. ch. 37, § 703-8(6)* (1973) (3 months); *Iowa Code* § 232.3 (1975) (3 months); *Md. Ann. Code, Cts. & Judic. Proceedings* § 3-810(f) (Cum. Supp. 1975) (90 days with court authorized extension possible); *N.D. Cent. Code Ann.* § 27-20-10(2) (1974) (3 months with court authorized extension for additional 3 months possible); *Pa. Stat. Ann.* tit. 11, § 50-304(c) (Cum. Supp. 1976) (6 months with court authorized extension for 3 months possible); *S.D. Compiled Laws Ann.* § 26-8-1.1 (Supp. 1976) (3 months); *Tenn. Code Ann.* § 37-210(b) (Cum. Supp. 1975) (3 months with court authorized extension possible); *Tex. Fam. Code Ann.* § 53.03(a) (1975) (6 months); *Utah Code Ann.* § 55-10-83(2) (Supp. 1975) (2 months with court authorized extension for 2 months possible).

for their use. Under Standard 2.4 C. and D. the only permissible non-judicial disposition is a referral to a community agency.

Standard 2.4 C., which authorizes a community agency referral, in effect defines the role of an intake officer as that of a broker and coordinator of community based services and programs for juveniles who are brought to the attention of the juvenile court and who the intake officer believes are candidates for nonjudicial handling. Performance of this role involves the identification of the services a juvenile needs, the location of an agency or agencies that will provide these services, and the referral of the juvenile to such an agency or agencies. An obvious prerequisite for this type of service delivery system is the existence of community based services that offer sufficient quantity, variety, and quality to meet the service needs of juveniles who can and should be handled nonjudicially. Accordingly, Standard 2.4 C. states that juvenile probation agencies and agencies responsible for intake screening should encourage and promote the creation and expansion of community based programs for delinquent and nondelinquent youth.

Standard 2.4 D. specifically disapproves the use of nonjudicial probation as a nonjudicial disposition. This standard reflects the view that the potential for abuse and the actual abuse of nonjudicial probation are so great that it is preferable to eliminate its use altogether.

Standard 2.4 D. also specifically disapproves the use of the provision of intake services on a continuing basis as a nonjudicial disposition. This standard reflects the view that it is more appropriate for community agencies than for juvenile probation agencies or other agencies responsible for intake screening to provide needed services to juveniles handled nonjudicially. This standard, however, is not intended to preclude intake personnel from providing services such as counseling to a juvenile on a short term emergency basis.

Standard 2.4 E. sets forth requirements for the use of nonjudicial dispositions that are aimed at reducing, if not eliminating, the abuses associated with their use. These requirements should be applied to all categories of nonjudicial dispositions in jurisdictions where the placement of a juvenile on nonjudicial probation or the provision of intake services to a juvenile as well as referral of a juvenile to a community agency are permissible.

Standard 2.4 E. 1. specifies that a nonjudicial disposition should take the form of a contractual agreement between the intake officer and the juvenile and his or her parents or legal guardian, under which the officer agrees not to seek the filing of a petition in exchange for a commitment by the juvenile and his or her parents or legal guardian to undertake certain obligations and responsibilities. Under Standard

2.4 E. 2. the juvenile and his or her parents or legal guardian must enter into this agreement voluntarily and intelligently. Standard 2.4 E. 3. provides that the intake officer must inform the juvenile and his or her parents or legal guardian of their right to refuse the offer of a nonjudicial disposition. Under Standard 2.4 E. 6. all the terms of the agreement must be put in writing. These requirements are intended to insure that the agreement is entered into voluntarily and intelligently. It should be noted in this regard that Standard 2.13 provides that a juvenile has a right to counsel at the intake stage, and one of the functions of counsel at this stage is to see to it that any nonjudicial disposition is voluntary and intelligent.

Standard 2.4 E. 4. minimizes the danger that nonjudicial dispositions may last for an excessive period of time by providing that they must be limited in duration.

Under Standard 2.4 E. 5. the juvenile and his or her family have the right to terminate the nonjudicial disposition at any time. Thus, if they find that the supervision or services they have agreed to are unduly onerous or unacceptable for some reason, they always have the option of refusing the supervision or services and requesting the filing of a petition and a formal adjudication.

Finally, Standard 2.4 E. 7. provides that once a nonjudicial disposition is made proceedings against the juvenile must be terminated and cannot be reinstated through the filing of a petition after the lapse of three months. This standard allows an intake officer to file a petition within a period not exceeding three months from the date the agreement was entered into by the juvenile if the juvenile does not comply with the terms of the agreement. Under this standard, however, if a petition is filed within this three month period, the juvenile's compliance with all proper and reasonable terms of the agreement is an affirmative defense to the petition's allegations. The standard contemplates that conditions a court could impose upon a juvenile in connection with placement on judicial probation should be deemed reasonable and proper conditions and that conditions the court could not impose shall not be deemed reasonable and proper. This standard also contemplates that the juvenile should have the burden of production and the state should have the burden of persuasion in the issue of compliance and the issue of reasonableness and propriety of a condition.

2.5 Consent decree.

A. A consent decree is a court order authorizing supervision of a juvenile for a specified period of time during which the juvenile may be required to fulfill certain conditions or some other disposi-

tion of the complaint without the filing of a petition and a formal adjudicatory proceeding.

A consent decree should be permissible under the following conditions:

1. The juvenile and his or her parents or legal guardian should voluntarily and intelligently consent to the decree.

2. The intake officer and the judge should advise the juvenile and his or her parents or legal guardian that they have the right to refuse to consent to the decree and to request a formal adjudication.

3. The juvenile should have an unwaivable right to the assistance of counsel in connection with an application for a consent decree. The intake officer should advise the juvenile of this right.

4. The terms of the decree should be clearly stated in the decree and a copy should be given to all the parties to the decree.

5. The decree should not remain in force for a period in excess of six (6) months. Upon application of any of the parties to the decree, made before expiration of the decree, the decree, after notice and hearing, may be extended for not more than an additional three (3) months by the court.

6. The juvenile and his or her parents or legal guardian should be able to terminate the agreement at any time and to request the filing of a petition and formal adjudication.

7. Once a consent decree has been entered, the subsequent filing of a petition based upon the events out of which the original complaint arose should be permitted for a period of [three (3)] months from the date the decree was entered. If no petition is filed within that period, its subsequent filing should be prohibited. The juvenile's compliance with all proper and reasonable terms of the decree should be an affirmative defense to a petition filed within the [three-month] period.

Commentary

Still another dispositional alternative that may be available to the intake officer is the consent decree. Standard 2.5 A. defines a consent decree as a court order authorizing the disposition of a complaint without a formal finding of delinquency in accordance with the terms of an agreement between an intake officer and a juvenile who is the subject of the complaint and his or her parents or legal guardian.

Standard 2.5 authorizes a consent decree procedure subject to certain conditions. Such a procedure has been widely advocated. A 1967 recommendation of the President's Commission on Law Enforcement and Administration of Justice provided the original impetus for the use of a consent decree procedure. President's Commission, *Delinquency Task Force Report*. Since then this concept has been widely endorsed. See *e.g.*, National Advisory Commission, "Corrections" 255-56, 267; Gough 733; Greenberg, "The Consent Decree and New York Family Court Procedure in 'JD' and 'PINS' Cases," 23 *Syr. L. Rev.* 1211 (1972) (hereinafter cited as Greenberg). "South Dakota Preadjudicatory Handling" 215. One recent model act likewise includes a provision for a consent decree procedure. Sheridan, "Legislative Guide" § 33.

Standard 2.5 would nevertheless require a change in practice in many jurisdictions. Only a few legislatures have adopted the recommendations of the President's Commission and other authorities for a consent decree procedure.²³ In a few jurisdictions a consent decree procedure has apparently been instituted without express statutory authority, but this appears to be the exception rather than the rule. See Gough 743; J. McDonough, D. King, and J. Garrett, *Juvenile Court Handbook*, Appendix Y (1970).

A consent decree is an intermediate step between the nonjudicial disposition of a complaint and the judicial disposition of a complaint that can result in a delinquency adjudication. Both a consent decree and a nonjudicial disposition entail an agreement between the juvenile who is the subject of a complaint, his or her parents, and the intake officer for the adjustment of the complaint without formal judicial processing, and the terms of a consent decree may resemble those of a nonjudicial disposition agreement. What distinguishes the consent decree from a nonjudicial disposition is that the agreement the juvenile, his or her parents, and the intake officer enter into is incorporated into a written document that receives judicial approval. Thus a consent decree is in essence a nonjudicial disposition that has been put in the form of a court order.

The benefits of a court decree procedure are the same as those of nonjudicial dispositions generally. Proponents of the consent decree procedure assert that a consent decree, like the nonjudicial disposi-

²³ *D.C. Code Ann.* § 16-2314 (1973); *Mont. Rev. Codes Ann.* § 10-1224 (Cum. Supp. 1975) *Nev. Rev. Stat.* § 62.128(5) (1973); *Pa. Stat. Ann.* tit. 11, § 50-305 (Cum. Supp. 1976); *Wyo. Stat. Ann.* § 14-115.29 (Cum. Supp. 1975).

tion of a complaint, allows the exercise of some control over or the provision of service to a juvenile without the detrimental consequences of a delinquency adjudication, which labels the juvenile a delinquent and stigmatizes the juvenile. National Advisory Commission, "Corrections" 255; Sheridan, "Legislative Guide" 36; Gough 737. See commentary to Standard 2.1 and authorities cited therein. It is questionable, however, whether the entry of a consent decree is significantly less stigmatizing than a delinquency adjudication. When a consent decree is entered, there is no formal finding of delinquency, but the consent decree does involve the court in the disposition of the complaint. Moreover, all of the statutorily authorized consent decree procedures presently in existence provide for the filing of a petition prior to the entry of a consent decree. Furthermore, there is some evidence that a juvenile's contacts with the police or juvenile court that do not lead to a delinquency adjudication may be as stigmatizing as a delinquency adjudication. See commentary to Standard 2.4 and authorities cited therein.

Proponents of the consent decree procedure also contend that a consent decree, like the nonjudicial disposition of a complaint, saves the scarce resources of personnel, time, and money. See Gough 737. While there are undoubtedly some savings, it is unclear whether they are significant. See Kobetz and Bosarge 262; Ferster, Courtless, and Sneath, "Separating Official and Unofficial Delinquents; Juvenile Court Intake," 55 *Iowa L. Rev.* 864, 886-87 (1970). On one hand the consent decree procedure is more expensive from the standpoint of judicial resources than the nonjudicial disposition of a complaint, inasmuch as the consent decree must be judicially approved. On the other hand the consent decree is less expensive from this standpoint than the formal judicial processing of a juvenile, which requires adjudicatory and dispositional proceedings. Likewise, a consent decree may require more involvement on the part of the counsel and intake personnel than a nonjudicial disposition but less involvement on their part than the formal judicial processing of a juvenile.

Since a consent decree is similar to a nonjudicial disposition, it is subject to many of the same criticisms; it may result in excessive intervention in the juvenile's life for an excessive period of time, and it has coercive possibilities. See commentary to Standard 2.1. Consent decrees are arguably not as inherently susceptible to abuse as nonjudicial dispositions, because the court must approve a consent decree. This assumes, however, that the court will examine the terms of the agreement in order to determine whether they are proper and

will ascertain whether the agreement is entered into by the juvenile voluntarily with full knowledge of his or her rights, and the court may in fact simply rubber stamp applications for a consent decree.

Thus, the extent to which consent decrees are susceptible to abuse depends upon whether they are surrounded with safeguards. Among the safeguards that have been suggested are the following: a requirement that the consent of the juvenile and his or her parents to the decree be intelligent and voluntary; a requirement that the juvenile have the right to the assistance of counsel in connection with the consent decree; a requirement that the restraints that the decree imposes upon the juvenile's freedom be minimal; limitations upon the duration of the decree; and a prohibition against the filing of a petition based upon the original complaint once a consent decree has been entered. See *e.g.*, National Advisory Commission, "Corrections" 256; Sheridan, "Legislative Guide," § 33 at 35; Gough 737-39; Greenberg 1223-24; "South Dakota Preadjudicatory Handling" 218-22. See commentary to Standard 2.4 for a discussion of these proposals. Under Standard 2.5 B. a consent decree may be utilized only subject to certain conditions that are aimed at reducing, if not eliminating, any abuse of the consent decree procedure. See commentary to Standard 2.4 for a discussion of these conditions.

Section III: Criteria for Intake Dispositional Decisions

2.6 Necessity for and desirability of written guidelines and rules.

A. Juvenile probation agencies and other agencies responsible for intake services should issue written guidelines and rules with respect to criteria for intake dispositional decisions. The objective of such administrative guidelines and rules is to confine and control the exercise of discretion by intake officers in the making of intake dispositional decisions so as to promote fairness, consistency, and effective dispositional decisions.

B. These guidelines and rules should be reviewed and evaluated by interested juvenile justice system officials and community-based delinquency control and prevention agencies.

C. Legislatures and courts should encourage or require rulemaking by these agencies with respect to criteria for intake dispositional decisions.

Commentary

Standard 2.6 provides that juvenile probation agencies and other agencies having responsibility for the provision of intake services should formulate and publish written guidelines and rules with respect to the criteria for intake dispositional decisions by intake officers.

As has been pointed out, an intake officer has three basic alternatives in the disposition of a complaint—judicial disposition, dismissal, or nonjudicial disposition. Intake officers generally have broad and largely uncontrolled discretion in deciding upon a dispositional alternative because of the lack of meaningful criteria for intake dispositional decisions. See Kobetz and Bosarge 245-46; President's Commission, *Delinquency Task Force Report*.

Juvenile and family court acts authorizing intake screening typically provide that a petition should be filed when filing is in the best interest of the juvenile and the community, but do not specify the basis upon which this determination is to be made.²⁴ A few of these acts contain no criteria whatsoever for intake dispositional decisions.²⁵ In recent years some courts, acting essentially in an administrative capacity, have issued written guidelines and rules aimed at governing the way in which intake officers should exercise their discretion in making intake dispositional decisions, and a few juve-

²⁴ *Alaska Stat.* § 47.10.020 (1975); *Colo. Rev. Stat. Ann.* § 19-3-101 (1973); *Conn. Gen. Stat. Ann.* § 17-61 (Cum. Supp. 1976); *D.C. Code Ann.* § 16-2305 (1973); *Fla. Stat. Ann.* § 39.04(1) (b) (Cum. Supp. 1976); *Hawaii Rev. Stat.* § 571-21(a) (1968); *Idaho Code Ann.* § 16-1628 (Cum. Supp. 1975); *Ind. Ann. Stat.* §§ 31-5-2-1-, 31-5-7-8 (Burns 1973); *Iowa Code* § 232.3 (1975); *Kan. Stat. Ann.* § 38-816 (1973); *Ky. Rev. Stat. Ann.* § 208.070 (1972); *La. Rev. Stat. Ann.* § 13:1574 (Cum. Supp. 1976); *Me. Rev. Stat. Ann.* tit. 15 § 2601(1) (1964); *Md. Ann. Code, Cts. & Judic. Proceedings* § 3-810 (Cum. Supp. 1975); *Mich. Comp. Laws* § 712.11 (1970); *Miss. Code Ann.* § 43-21-11 (Cum. Supp. 1975); *Mo. Rev. Stat.* § 211.081 (1969); *Mont. Rev. Codes Ann.* § 10-1209(4) (d) (Cum. Supp. 1975); *Nev. Rev. Stat.* § 62.128 (1973); *N.M. Stat. Ann.* § 13-14-14(A) (Supp. 1975); *N.C. Gen. Stat. & 7A-289.7(1)* (Cum. Supp. 1975); *N.D. Cent. Code* § 27-30-29 (1974); *Okla. Stat. Ann.* tit. 10 § 1103(a) (Cum. Supp. 1975); *Ore. Rev. Stat.* § 419.482(2) (1975); *R.I. Gen. Laws Ann.* § 14-1-10 (Supp. 1975); *S.C. Code Ann.* § 15-1095.14 (Cum. Supp. 1975); *S.D. Code Ann.* § 26-8-1.1 (Supp. 1976); *Tenn. Code Ann.* § 37-206(2) (Cum. Supp. 1975); *Tex. Fam. Code Ann.* § 53.10(a) (1975); *Utah Code Ann.* § 55-10-83(2) (1974); *Wis. Stat.* § 48.19 (1973); *Wyo. Stat. Ann.* § 14-115.12 (Cum. Supp. 1975) see also *Vt. Stat. Ann.* § 646(1) (Cum. Supp. 1975); *W. Va. Code Ann.* § 49-5-7 (1976).

²⁵ *Ill. Rev. Stat. ch. 37, § 703-8* (1973); *N.Y. Family Ct. Act.* § 734 (McKinney 1975).

nile probation agencies have likewise promulgated such guidelines and rules. See, *e.g.*, D.C. Superior Court Rules, Rules Governing Juvenile Proceedings, Rule 103 (1971); Maryland Department of Juvenile Services "Intake Criteria," reprinted in National Juvenile Law Center, *Law and Tactics in Juvenile Cases* 204 (2d ed. 1974). However, there has been relatively little rulemaking of this sort. Ferster and Courtless 1133-34. As a result, individual intake officers are largely responsible for making intake dispositional decisions using their own informal criteria based upon their experiences and observations and those of their colleagues and supervisors.²⁶ See Office of Children's Services, Office of Court Administration, State of New York, "Probation: Problem Oriented—Problem Plagued" 34-35 (1974).

Some discretion by intake officers in making intake dispositional decisions is necessary, as it would be difficult to formulate completely unambiguous guidelines and rules on the criteria for intake dispositional decisions. One source of this difficulty is the limitation of the effectiveness of language. Another is that there are so many considerations relevant to the intake dispositional decision, and those who must draft guidelines and rules cannot envision the facts of all future cases.

²⁶In *Conover v. Montemuro*, 328 F. Supp. 994 (E.D. Pa. 1971), rev'd 477 F.2d 1073 (3rd Cir. 1973), the plaintiffs sought a declaratory judgment from a federal district court that the intake process in the Philadelphia juvenile court was constitutionally deficient on the ground that the "Commonwealth of Pennsylvania by failing to promulgate by statute or rule standards to govern the intake process gives unbridled discretion to the intake interviewer and fails to give juveniles notice of the factors affecting the critically important question whether to refer juveniles for a full court hearing, thereby denying juveniles due process of law." This case has had a long and complicated procedural history and the district court has never ruled on the validity of this claim. The district court originally dismissed the suit, relying upon the abstention doctrine, but on appeal the district court's decision in this regard was reversed. On remand the district court suspended proceedings in the case pending promulgation of rules governing juvenile proceedings by the Pennsylvania Supreme Court and no further action was taken in the case.

Conover v. Montemuro appears to be the only reported case in which broad and uncontrolled discretion on the part of intake officers in making intake decision was challenged on federal constitutional grounds. There is, however, some other authority dealing with the exercise of discretion by administrative agencies in different contexts that at least arguably suggests that due process requires that intake dispositional decisions be made in accordance with ascertainable administrative standards. See *e.g.*, *Holmes v. New York City Housing Authority*, 398 F.2d 262 (2d Cir. 1968).

Some discretion on the part of the intake officer in making intake dispositional decisions is not only necessary but also desirable. One of the basic principles of the juvenile justice system is the principle of individualized justice, which dictates that juvenile justice officials tailor their decision on the disposition of juveniles at various stages of the system to suit the individual needs of juveniles rather than simply responding in a previously defined fashion to the nature of the delinquent conduct. See D. Matza, *Delinquency and Drift* 111-12 (1964); National Juvenile Law Center 203. The individualized treatment of the juvenile at the intake stage requires that intake officers be given some discretion in making intake dispositional decisions. If intake officers were to have little or no discretion in making these decisions and were instead to make them in strict accordance with rigid guidelines and rules precisely and narrowly defining the criteria for these decisions, the result would be decisions that fail to sufficiently take into account the particular facts and circumstances of some cases.

Intake officers, however, can abuse their broad and largely uncontrolled discretion in intake dispositional decisions, as they can exercise this discretion in an arbitrary or discriminatory manner. For example, they can enforce their own highly subjective value judgments, or they may be influenced by such factors as race, sex, and socio-economic status, which should have no bearing on the intake dispositional disposition. See President's Commission, *Delinquency Task Force Report* 17.

Moreover, this broad and largely uncontrolled discretion leads to inconsistent and unequal handling of juveniles who have engaged in similar behavior. Such inconsistency and inequality in the handling of juveniles is attributable to the lack of uniformity in the criteria that individual officers use in making intake dispositional decisions and to the fact that different officers apply the same criteria differently. While some individualization of treatment of juveniles at intake is desirable, serious questions of fairness arise when there are gross disparities in intake dispositional decisions on similarly situated juveniles.

In addition, some intake officers lack the training, experience, and judgment to make intake dispositional decisions wisely, and they exercise their discretion in making these decisions in an ill-advised or imprudent manner. Juveniles who have committed serious criminal offenses and who should be judicially processed for the sake of public safety are handled nonjudicially. Conversely, juveniles who do not present any real threat to public safety may

be unnecessarily judicially processed and suffer the detrimental consequences of being stigmatized as a delinquent as a result of such processing. See President's Commission, *Delinquency Task Force Report* 17; V. Burns and L. Stern in President's Commission, *Delinquency Task Force Report* 396.

In view of the foregoing, Standard 2.6 A. recommends that juvenile probation agencies and other agencies responsible for providing intake services formulate and issue written guidelines and rules on the criteria for intake dispositional decisions as a means of confining and controlling the discretion that intake officers exercise in making these decisions in order to produce fairer, more consistent, and more effective decision making. A number of authorities have advocated such rulemaking. Thus the President's Commission on Law Enforcement and the Administration of Justice recommended:

Written guides and standards should be formulated and imparted in the course of inservice training. Reliance on word of mouth creates the risk of misunderstanding and conveys the impression that pre-judicial dispositions are neither desirable nor common. Explicit written criteria would also facilitate achieving greater consistency in decision making. President's Commission, *Delinquency Task Force Report* 21.

It is sometimes suggested that legislatures should and could enunciate meaningful statutory criteria for intake dispositional decision making. Legislators and their staffs, however, are less well-equipped than the agencies responsible for providing intake services to enunciate meaningful criteria for intake dispositional decisions because the former, unlike the latter, lack direct knowledge of the various kinds of problems that can arise. Cf. K. Davis, *Discretionary Justice* 36 (1969) (hereinafter cited as Davis).

Rulemaking with respect to the criteria for intake dispositional decisions by juvenile probation agencies and other agencies responsible for providing intake services can take several forms. These agencies can issue guidelines and rules identifying the factors that are relevant to an intake dispositional decision and that indicate the relative weight to be given these factors. It is not always easy, however, to prepare guidelines and rules consisting of somewhat abstract generalizations of this sort that are meaningful and that also contain all the needed qualifications. Alternatively, rulemaking can take the form of the issuance of guidelines and rules consisting of a series of

hypothetical fact situations, a statement of the problems posed by these situations, the agency's suggested dispositional decision as to each of these hypothetical situations, and a statement of the agency's reasons for the suggested disposition. *Cf.* Davis 59-64.

Whatever form rulemaking in this area takes, Standard 2.6 B. further recommends that juvenile justice system officials and agencies in the community serving delinquent juveniles should have some input into such rulemaking. Juvenile justice system officials, including police officers, prosecutors, and juvenile and family court judges, obviously have an interest in and are affected by guidelines and rules dealing with criteria for intake dispositional decisions, as they determine in large part whether juveniles who are the subjects of complaints are handled judicially. Likewise, community based youth service agencies also have an interest in and are affected by these guidelines and rules, as they sometimes bring allegedly delinquent juveniles to the attention of the juvenile court and intake officers sometimes refer juveniles to such agencies for services. Individuals and agencies are in a good position to evaluate and review these guidelines and rules and their involvement in the formulation of them has the added advantage of fostering their cooperation with intake personnel.

Standard 2.6 C. specifies that legislatures should encourage rulemaking regarding the criteria for intake dispositional decisions by juvenile probation agencies and other agencies providing intake services. Legislatures can do this by enacting legislation delegating administrative rulemaking responsibility to agencies providing intake and investigative services and requiring compliance therewith.²⁷ *Cf.* ABA Standards for Criminal Justice, *The Urban Police Function* § 4.4 (1973) (hereinafter cited as ABA Police Standards). One possibility in this regard is for the legislature to statutorily authorize intake screening and the nonjudicial handling of a juvenile only if guidelines and rules for the intake process have been issued by the agency responsible for providing intake services, and the nonjudicial handling of the juvenile is in accordance with these guidelines and rules.²⁸ *Cf.* Tex. Fam. Code Ann. § 52.10(c) (1975).

²⁷It should be noted that express delegation of rulemaking power to such an agency is not necessarily a prerequisite for such rulemaking. One noted authority has stated: "Lack of a statutory provision which separately grants a rulemaking power is not a justification for failure to issue rules. Whenever an officer has a discretionary power to decide what to do in a particular case, he necessarily has power to announce how he will exercise that power." Davis 220.

²⁸In states that have state administrative procedure acts, another possibility worth considering is the application of the requirements of such acts to intake

Standard 2.6 C. also specifies that courts should encourage rule-making regarding the criteria for intake dispositional decisions by intake agencies. Courts can do so by sustaining such guidelines and rules provided they are constitutional and are properly issued. *Cf.* ABA Police Standards § 4.4. And in those jurisdictions where intake services are the administrative responsibility of the judicial branch of government, the judiciary should see to it that such guidelines and rules are issued.

2.7 Legal sufficiency of complaint.

A. Upon receipt of a complaint, the intake officer should make an initial determination of whether the complaint is legally sufficient for the filing of a petition on the basis of the contents of the complaint and an intake investigation. In this regard the officer should determine:

1. whether the facts as alleged are sufficient to establish the court's jurisdiction over the juvenile; and
2. whether the competent and credible evidence available is sufficient to support the charges against the juvenile.

B. If the officer determines that the facts as alleged are not sufficient to establish the court's jurisdiction, the officer should dismiss the complaint. If the officer finds that the court has jurisdiction but determines that the competent and credible evidence available is not sufficient to support the charges against the juvenile, the officer should dismiss the complaint.

agencies. In the majority of jurisdictions intake services are judicially administered and the agencies that actually provide these services are considered part of the judicial branch of the government rather than the executive branch of government. Hence these agencies are not regarded as being subject to state administrative procedure acts, which do not apply to courts and legislative bodies. Standard 4.2, however, recommends that responsibility for the provision of intake services be lodged in an agency of the executive branch of government. Even if intake agencies are executive agencies, application of the requirements of state administrative procedure acts to the making of guidelines and rules with respect to intake dispositional decisions is not without problems. For example, these acts typically provide that all rules must be open to public inspection, and it can be argued that some degree of uncertainty as to the exact nature of an intake agency's policies regarding the judicial handling of juvenile offenders is necessary in order for the substantive law of delinquency to have any deterrent impact. *Cf. Bonfield, "The Iowa Administrative Procedure Act," 60 Iowa L. Rev. 731, 787-88 (1975) (hereinafter cited as Bonfield).* However, an exception to the general requirement that agencies make all rules available for public inspection could be created, and this exception could encompass guidelines and rules on criteria for intake dispositional decisions.

C. If the legal sufficiency of the complaint is unclear, the officer should ask the appropriate prosecuting official for a determination of its legal sufficiency.

Commentary

Standard 2.7 A. provides that in evaluating a complaint for purposes of making a dispositional decision the intake officer must first determine if the complaint is legally sufficient. See Kobetz and Bosarge, 244; Ferster, Courtless, and Snethen 869-70. This involves a determination of whether the facts as alleged are sufficient to establish the jurisdiction of the court and whether the evidence is sufficient to support the charges against the juvenile. Only evidence that is credible and that would be admissible at an adjudicatory hearing should be considered. Obviously these are legal questions, which the intake officer may not have the expertise to resolve. Therefore, Standard 2.7 C. provides that an intake officer should consult the appropriate prosecuting official in the event that he or she has any doubts about the legal sufficiency of the complaint. Standard 2.7 B. provides that the complaint should be dismissed if the intake officer determines that the complaint is not legally sufficient, since filing under these circumstances would only result in a waste of judicial resources and cause the juvenile needless anxiety.

2.8 Disposition in best interests of juvenile and community.

A. If the intake officer determines that the complaint is legally sufficient, the officer should determine what disposition of the complaint is most appropriate and desirable from the standpoint of the best interests of the juvenile and the community. This involves a determination as to whether a judicial disposition of the complaint would cause undue harm to the juvenile or exacerbate the problems that led to his or her delinquent acts, whether the juvenile presents a substantial danger to others, and whether the referral of the juvenile to the court has already served as a desired deterrent.

B. The officer should determine what disposition is in the best interests of the juvenile and the community in light of the following:

1. The seriousness of the offense that the alleged delinquent conduct constitutes should be considered in making an intake dispositional decision. A petition should ordinarily be filed against a juvenile who has allegedly engaged in delinquent conduct constituting a serious offense, which should be determined on the

basis of the nature and extent of harm to others produced by the conduct.

2. The nature and number of the juvenile's prior contacts with the juvenile court should be considered in making an intake dispositional decision.

3. The circumstances surrounding the alleged delinquent conduct, including whether the juvenile was alone or in the company of other juveniles who also participated in the alleged delinquent conduct, should be considered in making an intake dispositional decision. If a petition is filed against one of the juveniles, a petition should ordinarily be filed against the other juveniles for substantially similar conduct.

4. The age and maturity of the juvenile may be relevant to an intake dispositional decision.

5. The juvenile's school attendance and behavior, the juvenile's family situation and relationships, and the juvenile's home environment may be relevant to an intake dispositional decision.

6. The attitude of the juvenile to the alleged delinquent conduct and to law enforcement and juvenile court authorities may be relevant to an intake dispositional decision, but a nonjudicial disposition of the complaint or the unconditional dismissal of the complaint should not be precluded for the sole reason that the juvenile denies the allegations of the complaint.

7. A nonjudicial disposition of the complaint or the unconditional dismissal of the complaint should not be precluded for the sole reason that the complainant opposes dismissal.

8. The availability of services to meet the juvenile's needs both within and outside the juvenile justice system should be considered in making an intake dispositional decision.

9. The factors that are not relevant to an intake dispositional decision include but are not necessarily limited to the juvenile's race, ethnic background, religion, sex, and economic status.

Commentary

Standard 2.8 A. provides that once it is determined that the complaint is legally sufficient for the filing of a petition, it must be determined whether it is appropriate and desirable to make a judicial disposition of the complaint through the filing of a petition or to make some other disposition of the complaint. This determination is social rather than legal in nature. As was previously pointed

out, juvenile and family court acts typically provide that a petition should be filed if it is in the best interests of the juvenile and the community or the public, but do not specify the criteria upon which this decision should be based. See commentary to Standard 2.6 at 58-64. Standard 2.8 A. incorporates this best interest standard, but elaborates somewhat on it by providing that the determination of the best interests of the juvenile and the community involves a determination of whether a judicial disposition would cause undue harm to the juvenile or exacerbate the social problems that led to his or her delinquent acts, whether the juvenile presents a substantial danger to others, and whether the referral of the juvenile to the court has already served as a desired deterrent. This formulation is derived from National Advisory Commission, "Corrections" § 3.1 at 45. Standard 2.8 B. 1.-9. sets forth the specific factors that should be regarded as relevant and those that should not in this determination. These factors are discussed below.

1. Seriousness of offense.

Under Standard 2.8 B. 1. one of the primary factors that should be considered in determining the disposition of a complaint is the nature of the offense with which the juvenile is charged. A juvenile alleged to have committed a serious offense should ordinarily have a petition filed against him or her. The members of the public are entitled to be protected from the harmful effects of serious crime. Conduct on the part of a juvenile that constitutes a serious criminal offense may or may not mean that the juvenile presents a real danger to the public, but an allegation of such conduct in a legally sufficient complaint is sufficient to justify judicial handling of the complaint.

Most commentators agree that when a juvenile is alleged to have committed a serious offense a petition should be filed against the juvenile. See, e.g., Burns and Stern, "The Prevention of Juvenile Delinquency," in President's Commission, *Delinquency Task Force Report* 353, 361 (hereinafter cited as Burns and Stern); Ferster, Courtless, and Snethen 874; Kobetz and Bosarge 247; Sheridan, "Juvenile Court Intake," 2 *J. Fam. L.* 139, 149 (1962) (hereinafter cited as Sheridan); J. Olson and G. Shepard, U.S. Department of Health, Education and Welfare, "Intake Screening Guides" 50 (undated) (hereinafter cited as Olson and Shepard).

It appears that the nature of the offense is in fact a significant factor in intake dispositional decision making. Some juvenile court rules and administrative rules issued by juvenile probation agencies

specify the nature of the offense as a factor to be considered by an intake officer in making an intake dispositional decision. See, *e.g.*, D.C. Superior Court Rules, Rules Governing Juvenile Proceedings, Rule 102 (1971) (hereinafter cited as D.C. Super. Ct. Rules); "Florida Intake Manual" 17 (undated); Maryland Department of Juvenile Services, "Intake Criteria," reprinted in National Juvenile Law Center, *Law and Tactics in Juvenile Cases* 204 (2d ed. 1974) (hereinafter cited as Maryland Department of Juvenile Services, "Intake Criteria"). And several studies have produced empirical data dictating the conclusion that this is a prime determinant of the intake dispositional decision. See, *e.g.*, Terry, "Discrimination in the Handling of Juvenile Offenders by Social-Control Agencies," 4 *J. Research in Crime & Delinq.* 218 (1967) (hereinafter cited as Terry, "Discrimination in the Handling of Juvenile Offenders"); Terry, "The Screening of Juvenile Offenders," 58 *J. Crim. L.C. & P.S.* 173 (1967) (hereinafter cited as Terry, "Screening of Juvenile Offenders"); Thomas and Sieverdes, "Juvenile Court Intake: An Analysis of Discretionary Decision-Making," 12 *Criminology* 413 (1975) (hereinafter cited as Thomas and Sieverdes); R. Kiekbusch, "Juvenile Court Intake: Correlates of Dispositioning" (Ph.D. thesis, University of Michigan 1973) (hereinafter cited as Kiekbusch); but see Ferster, Courtless, and Snethen 874.

There remains the question of what offenses are to be considered serious. One alternative is to define a serious offense in terms of the traditional felony-misdemeanor distinction. Ferster, Courtless, and Snethen 874. The fact that the alleged offense would be a felony if committed by an adult does not, however, necessarily mean the offense is "serious." President's Commission on Crime in the District of Columbia, "Report of the President's Commission on Crime in the District of Columbia 661 (1966) (hereinafter cited as D.C. Report); see Ferster, Courtless, and Snethen 874; Kobetz and Bosarge 247. For example, a group of juveniles who find access into a house that has long been unoccupied and take objects valued at thirty dollars may have committed what constitutes a felony in some jurisdictions. They do not, however, necessarily constitute such a serious threat to society that they should be handled judicially simply because they have engaged in conduct amounting to a felony. *Cf. In re Johnson*, 30 Ill. App. 2d 439, 174 N.E.2d 907 (1961).

Another alternative is to in effect define "serious" offense by enumerating the specific offenses an allegation of which should lead to judicial disposition of the complaint. Several commentators have recommended this approach. See, *e.g.*, Ferster and Court-

less 1151 (petition should be filed where complaint alleges sale of narcotic drugs, armed robbery, multiple charges of one or more of the following: assault, burglary, robbery, or auto theft); Sheridan 149 (petition should be filed when complaint alleges homicide, forcible rape, purse snatching, aggravated assault, and burglary). And some juvenile courts and juvenile probation agencies have issued rules reflecting this approach. *E.g.*, D.C. Super. Ct. Rules, Rule 102 (petition should be filed when complaint alleges homicide, forcible rape, robbery while armed, attempt to commit any such offense, assault with intent to commit any such offense, and burglary in the first degree); see also H. B. Thompson, "California Juvenile Court Deskbook" § 4.7 (1972) (petition should be filed when complaint alleges homicide, robbery, sex offense, narcotics violation, aggravated assault, burglary, or car theft) (hereinafter cited as "California Juvenile Court Deskbook"). Here again, however, a juvenile may engage in conduct that constitutes one of the enumerated offenses but that nonetheless is not really "serious" under the circumstances. For example, grabbing a schoolmate's purse with a small amount of change in it technically constitutes the crime of robbery.

Under Standard 2.8 B. 1. the focus is upon the particular offense that the juvenile is alleged to have committed, and the seriousness of the offense is measured by the nature and extent of the harm to others, actual and perceived, that the juvenile's alleged conduct produced. Among the factors having a bearing in this regard are the following: whether the conduct caused death or personal injury, severity of personal injury, extent of property damage, value of property damaged or taken, whether property taken is recovered and whether victim was threatened or intimidated by display of weapons, by physical force, or verbally. See Maryland Department of Juvenile Services, "Intake Criteria"; see also T. Sellin and M. Wolfgang, *The Measurement of Delinquency* 157-64 (1964).

Since the *Noncriminal Misbehavior* volume recommends the elimination of the status offense jurisdiction of juvenile and family courts, Standard 2.8 B. 1. is premised on the assumption that complaints alleging only that a juvenile has committed what is in effect a status offense could not result in the filing of a petition. See commentary to Standard 2.1. In those jurisdictions, however, where juvenile or family courts presently have or retain jurisdiction over status offenders, a status offense would not be deemed a serious offense in light of the aforementioned criteria.

2. Prior contacts.

Under Standard 2.8 B. 2. another one of the primary factors that should be considered in determining the disposition of a complaint is the nature and number of the juvenile's prior contacts with the juvenile court.

Standard 2.8 B. 2. reflects the prevailing view that the nature and number of prior contacts should be an important factor in determining the disposition of a complaint, as such contacts may be indicative of the juvenile's degree of commitment to a delinquent career. It is reasonable to conclude that the conduct for which the juvenile has been referred to the juvenile court is not an isolated act of delinquency when the juvenile has a prior referral for a serious offense or several prior referrals for minor offenses. Previous contacts are also an important factor because they may indicate that past efforts to assist the juvenile nonjudicially have failed.

Commentators have generally approved the practice of taking prior contacts into account in determining the disposition of a complaint. *E.g.*, Kobetz and Bosarge 248; Olson and Shepard 50; President's Commission, *Delinquency Task Force Report* 17; Burns and Stern 361; Ferster and Courtless 1151; Sheridan 150; Note, "Juvenile Delinquents: The Police, State Courts, and Individualized Justice," 79 *Harv. L. Rev.* 775, 789 (1966).

It appears that the nature and number of prior contacts is in fact a significant factor in intake dispositional decision making. Some juvenile court rules or rules issued by juvenile probation agencies expressly state that the juvenile's prior contacts should be considered in making decisions with respect to the disposition of a complaint by intake officers. See, *e.g.*, D.C. Super. Ct. Rules, Rule 102(a) (2); "Florida Intake Manual" 17; Maryland Department of Juvenile Services, "Intake Criteria"; see also "California Juvenile Court Deskbook" § 4.7. And there are empirical data indicating that this factor has an important impact on such decisions. See Terry, "Screening of Juvenile Offenders" 177; Terry, "Discrimination in Handling of Juvenile Offenders" 218; see also J. Eaton and K. Polk, *Measuring Delinquency* 47-51 (1961) (hereinafter cited as Eaton and Polk).

Although Standard 2.8 B. 2. does not specify the type of prior contact that should be taken into consideration in making an intake dispositional decision and that would call for the judicial disposition of a complaint, there are some general observations in this regard that can be made. If the complaint that led to a prior contact and

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the available evidence was not legally sufficient for an adjudication, the prior contact should not be taken into consideration in making an intake dispositional decision. Accordingly, extreme caution should be exercised in placing any weight on a prior contact that did not result in an adjudication. Similarly, a complaint should not be judicially handled simply because the juvenile who is the subject of the complaint has been previously referred for conduct that did not constitute a serious offense. Such a prior contact, at least standing alone, is not necessarily indicative of a need for judicial handling.

Standard 2.8 B. 2. also does not specify the number of prior contacts that would dictate the judicial disposition of a complaint. It would seem, however, that if the juvenile who is the subject of the complaint has previously been referred three or more times, serious consideration should be given to the filing of a petition.

3. Participation of other juveniles.

Standard 2.8 B. 3. provides that another factor relevant to an intake dispositional decision is whether the juvenile was alone or in the company of other juveniles who are alleged to have engaged in the same delinquent conduct. If it is determined that a petition should be filed against one of the juveniles, a petition should be filed against the other juveniles for substantially similar conduct. Such a policy is designed to insure that all juveniles allegedly involved in the delinquent conduct receive equal treatment. See D.C. Super. Ct. Rules, Rule 103(4); National Council on Crime and Delinquency, Advisory Council of Judges, "Guides for Juvenile Court Judges" 39 (1963).

4. Age and maturity of juvenile.

Standard 2.8 B. 4. provides that still another factor relevant in determining the disposition of a complaint at intake is the age and maturity of the juvenile, because these factors may have a bearing upon whether the juvenile's conduct was the product of an immature impulse or was premeditated and whether the juvenile was aware of the wrongfulness of the conduct. If the juvenile is very young, his or her conduct may be only an immature impulse without great significance. In such situations a judicial disposition of the complaint should generally not be made. See Olson and Shepard 49; Sheridan 150. This standard does not contemplate, however, that a petition should not be filed against a juvenile merely on the basis of the juvenile's age. As one commentator has pointed out, the "tendency

to overlook the conduct of young children can be unfortunate since it may expose the community to further danger and negate opportunities for early detection and treatment of delinquent children." Sheridan 150.

Standard 2.8 B. 4., providing as it does that the age and maturity of the juvenile is relevant to an intake dispositional decision, is consistent with the recommendations of several authorities. *E.g.*, Olson and Shepard; Sheridan 150.

The extent to which the age and maturity of the juvenile actually influence intake dispositional decision making is unclear. A few juvenile and family court rules and administrative rules issued by juvenile probation agencies specify that the age and maturity of the juvenile are to be considered in determining the disposition of a complaint. *E.g.*, D.C. Super. Ct. Rules, Rule 103(3); "Florida Intake Manual" 17; Maryland Department of Juvenile Services, "Intake Criteria." Some empirical studies indicate that the age of the juvenile is a significant factor in intake dispositional decision making, but others indicate that it is not a significant factor except when the juvenile is very young. Compare Terry, "Screening of Juvenile Offenders" 177, 178, with Note, "Informal Disposition of Delinquency Cases," 1965 *Wash. U.L.Q.* 256, 269, and Kieckbusch 183-84; see also Eaton and Polk 15-16.

5. School attendance and behavior; family situation and relationships.

Standard 2.8 B. 5. provides that the juvenile's school attendance and behavior and the juvenile's family situation and relationships are factors that may also be relevant to the intake dispositional decision. It has been suggested that if a juvenile has a poor school and home adjustment, a petition should be filed even if the delinquent conduct does not constitute a serious offense. See, *e.g.*, "California Juvenile Court Deskbook" § 4.7 at 18.

The juvenile's school attendance and behavior may be relevant to a determination of how the complaint should be handled because it may have a bearing on whether the juvenile's delinquent conduct is symptomatic of some deeper problems.

Similarly, the willingness and ability of the juvenile's parents to deal effectively with the juvenile's delinquent conduct and to cope with any underlying problems the juvenile might have has a bearing on whether they will provide the juvenile with needed supervision and help. In this regard the attitudes of the juvenile's parents may be significant. The parents may or may not recognize that the juvenile

has problems, and they may or may not appear to be concerned about the juvenile's problems. Even if the parents appear to be concerned, they may or may not be capable of adequately supervising the juvenile. Some authorities believe that the time of day the delinquent conduct occurred may be some indication of the type of supervision offered by the parents. For example, if a juvenile under fourteen engages in delinquent conduct very late at night or early in the morning, it may indicate that the juvenile is not being adequately supervised. Kobetz and Bosarge 248; Olson and Shepard 50; Sheridan 150.

Standard 2.8 B. 5. is consistent with the recommendations of a number of authorities that factors such as school attendance and behavior, parental attitudes, and family background should be considered in making an intake dispositional decision. See, e.g., "California Juvenile Court Deskbook" §§ 4.5, 4.7; Kobetz and Bosarge 248; Olson and Shepard 51; Sheridan 151; see also Wallace and Brennan, "Intake and the Family Court," 12 *Buff. L. Rev.* 442, 449 (1963).

The extent to which this standard is consistent with existing practice is unclear. Administrative rules issued by several probation agencies specify that the aforementioned factors are relevant in determining the disposition of the complaint. The empirical studies of intake dispositional decision making have produced inconclusive and somewhat conflicting evidence as to the significance of these factors in such decision making. See Kiekbusch 184-85; see also President's Commission, *Delinquency Task Force Report* 17.

6. Attitude of the juvenile.

Under Standard 2.8 B. 6. the attitude of the juvenile toward the offense charged and law enforcement and juvenile court authorities may be relevant to intake dispositional decision making, but the intake officer should generally not give much weight to this factor.

Some commentators have taken the position that the juvenile's attitude should be taken into account in making an intake dispositional decision. Kobetz and Bosarge 248; Waalkes, "Juvenile Court Intake—A Unique and Valuable Tool," 10 *Crime & Delinq.* 117, 119 (1962). But others have disputed the relevance of this factor. President's Commission, *Delinquency Task Force Report* 17; ABA Committee on Juvenile Delinquency, Criminal Law Section, "Committee Reports and Comments on the Draft of the Juvenile Task Force of the National Conference on Criminal Justice" 11 (undated)

(hereinafter cited as ABA Committee, *Juvenile Delinquency Report*).

It has been suggested that if the juvenile is uncooperative and hostile it is reasonable for the intake officer to conclude that a nonjudicial disposition will not be successful. Kobetz and Bosarge 248. It is questionable, however, whether the juvenile's attitude can be accurately measured by the intake officer and whether an uncooperative attitude on the juvenile's part is really a good indicator of the success of a nonjudicial disposition. The President's Commission on Law Enforcement and Administration of Justice summed up the risk of relying on the juvenile's attitude in making an intake dispositional decision as follows:

Even more troubling is the question of the significance of a juvenile's demeanor. Is his attitude, remorseful or defiant, a sound measure of his suitability for . . . individual handling? Can . . . anyone . . . accurately detect the difference between feigned and genuine resolve to mend one's ways or between genuine indifference to the law's commands and fear engendered defiance? President's Commission, *Delinquency Task Force Report* 17.

Standard 2.8 B. 6. also provides that a juvenile's denial of the allegations of the complaint should not preclude the nonjudicial disposition or the unconditional dismissal of the complaint. This standard would require a change in practice in many jurisdictions. Several juvenile and family court acts require an admission of facts sufficient to establish the jurisdiction of the court as a prerequisite to the nonjudicial disposition of the complaint.²⁹ Even in jurisdictions where there is no such statutory requirement, intake officers frequently will not make a nonjudicial disposition of a complaint unless the juvenile makes such an admission. ABA Committee, "Juvenile Delinquency Report"; see D.C. Report 645; Hufford, "Juvenile Justice in Arizona: Intake," 16 *Ariz. L. Rev.* 239, 253-54 (1974) (hereinafter cited as Hufford); see also Maryland Department of Juvenile Services, "Intake Criteria."

The majority of model acts and standards set forth a similar re-

²⁹ *Colo. Rev. Stat. Ann.* § 19-3-101(2) (c) (II) (1973); *Conn. Gen. Stat. Ann.* § 17-61 (Cum. Supp. 1976); *Ga. Code Ann.* § 24A-1001(a) (1) (Cum. Supp. 1975); *Hawaii Rev. Stat.* § 571-21(a) (1968); *Iowa Code* § 232.3 (1975); *Mont. Rev. Codes Ann.* § 10-1210 (Cum. Supp. 1975) (consent decree); *N.D. Cent. Code* § 27-20-10(1) (a) (1974); *Pa. Stat. Ann.* tit. 11 § 50-304(b) (3) (Cum. Supp. 1976); *S.D. Compiled Laws Ann.* § 26-8-11 (Supp. 1976); *Tenn. Code Ann.* § 37-210(a) (1) (Cum. Supp. 1975); *Utah Code Ann.* § 55-10-83(2) (Supp. 1975).

quirement.³⁰ Two of the more recent model acts, however, contain no such requirement.³¹ Commentators have also differed over the relevance and significance of a juvenile's denial of the allegations of the complaint. Compare National Advisory Commission, "Corrections" 255, 266-67; Gough 738; with ABA Committee, "Juvenile Delinquency Report" 11.

The rationale for requiring the juvenile to admit his or her guilt in order to be eligible for a nonjudicial disposition is unclear. It appears to be based in part upon the assumption that a juvenile's refusal to acknowledge his or her guilt and accept responsibility for his or her conduct, at least in the face of substantial evidence of the juvenile's guilt, makes it doubtful that a nonjudicial disposition will be successful in rehabilitating the juvenile. As has been previously indicated, however, the juvenile's maintenance of innocence does not necessarily mean that a juvenile will not comply with the terms of a nonjudicial disposition agreement. For example, it may be that the juvenile is simply too embarrassed to admit his or her guilt.

Moreover, requiring an admission of the allegations of the complaint by the juvenile as a prerequisite for a nonjudicial disposition is inconsistent with the objective of avoiding stigmatization of the juvenile as a delinquent, which is one of the objectives of nonjudicial handling. Such an eligibility requirement constitutes an announcement that only delinquent juveniles or juveniles who are probably delinquent are handled nonjudicially. If such a requirement becomes known, the fact that a juvenile is handled nonjudicially may be sufficient to label the juvenile as a delinquent, thus stigmatizing the juvenile. Furthermore, such a requirement forces a juvenile to waive his or her constitutional privilege against self-incrimination, which may have a chilling effect on the juvenile's exercise of his or her right to remain silent.

The nonjudicial disposition of a complaint, which may result in substantial intervention in the juvenile's life, assumes that the juvenile has committed a delinquent act that would justify intervention. If a juvenile is innocent of any wrongdoing the complaint should be dismissed. *Cf.* National Advisory Commission on Criminal Justice Standards and Goals, "Courts" 33 (1973). Thus, Standard 2.7 provides that a complaint should be dismissed unless the intake officer determines that it is legally sufficient for the filing of a petition that involves a determination as to whether the available evidence

³⁰NCCD, "Model Rules," Rule 4; NCCD, "Judges Guides" 40; NCCD, "Standard Act" § 12; "Uniform Juvenile Court Act" § 10; Sheridan, "Standards for Juvenile Courts" 59.

³¹Sheridan, "Legislative Guide" § 13; YDDPA, "Legislative Guide" § 16.

is sufficient to support the allegations of the complaint. There may, however, be evidence sufficient to support these allegations despite the juvenile's denial. In short, the sufficiency of the evidence to support the allegations of the complaint should be determined not only upon the basis of the juvenile's admission or denial of these allegations but also upon the basis of other available evidence.

7. Attitude of complainant or victim.

Standard 2.8 B. 7. provides that another factor relevant to the intake dispositional decision is the wishes of the complainant or victim with respect to the disposition of the complaint. However, a nonjudicial disposition of the complaint or its unconditional dismissal should not be precluded for the sole reason that the complainant or victim wishes a petition to be filed and a formal adjudication to be made. See Standard 2.16 and commentary thereto for a more detailed discussion of a complainant's authority to file a petition or obtain review of an intake officer's dispositional decision.

8. Availability of services.

Under Standard 2.8 B. 8. a final factor of relevance to the intake dispositional decision and deserving of mention is the availability of services needed by the juvenile within the juvenile justice system and outside the system. This standard provides that if services to meet the juvenile's needs either are unavailable within the juvenile justice system or may be provided more effectively outside the system it would normally be appropriate and desirable to make a nonjudicial disposition of the complaint, involving referral to another public or private agency or agencies for services. See Maryland Department of Juvenile Services, "Intake Criteria." Cf. National Advisory Commission, "Corrections" 95. See Standard 2.4 C. and commentary thereto for a more detailed discussion of use of the community agency referral as an intake dispositional alternative.

9. Race, ethnic background, religion, sex, and economic status.

It must be emphasized that factors such as the juvenile's race, ethnic background, religion, sex, and economic status should not be taken into consideration in determining what disposition to make of a complaint. These characteristics of a juvenile have no legitimate bearing on the disposition of a complaint at intake. See President's Commission, *Delinquency Task Force Report* 17.

It should be noted that there are factors such as place of residence or family characteristics that may be associated with the irrelevant factors of race and ethnic background and economic status, and it is difficult to keep these factors separate when making an intake dispositional decision. President's Commission, *Delinquency Task Force Report* 17. See Juvenile Justice Standards Project, *Proceedings of the M.A.G.C., Juvenile Justice Symposium* 34-35 (1974), for a discussion of minority group family patterns and intake dispositional decision making.

Since similarly situated juveniles should be treated equally at the intake stage regardless of race, ethnic background, religion, sex, and economic status, differential treatment of juveniles with respect to the intake dispositional decision on the basis of these characteristics is a matter of concern. A large number of the juveniles who are referred to the juvenile court are members of minority groups. Several commentators have observed that intake dispositional decisions are influenced by this factor, and there are some statistical data supporting these observations. See, e.g., Cohn, "Criteria for the Probation Officer's Recommendation to the Juvenile Court Judge," 9 *Crime & Delinq.* 262 (1963); see also N. Goldman, *The Differential Selection of Juvenile Offenders for Court Appearances* 42 (1963); but see Terry, "Screening of Juvenile Offenders" 177-78. Similarly, it appears that there is differential treatment of male and female juveniles in terms of the intake dispositional decision, and commentators have suggested that this differential treatment is a form of sex discrimination. See, e.g., Chused, "The Juvenile Court Process: A Study of Three New Jersey Counties," 26 *Rutgers L. Rev.* 488 (1973); Riback, "Juvenile Delinquency Laws: Juvenile Women and the Double Standard of Morality," 19 *U.C.L.A.L. Rev.* 313 (1971); Terry, "Screening of Juvenile Offenders" 178; cf. Rogers, "For Her Own Protection . . . : Conditions of Incarceration for Female Juvenile Offenders in the State of Connecticut," 7 *Law & Soc. Rev.* 223 (1972); but see Kieckbusch 94.

Section IV: Intake Procedures

2.9 Necessity for and desirability of written guidelines and rules.

Juvenile probation agencies and other agencies responsible for intake services should develop and publish written guidelines and rules with respect to intake procedures.

Commentary

Standard 2.9 recommends that agencies responsible for providing intake services to juvenile courts issue rules governing the procedures utilized by the intake personnel.

Many juvenile and family courts, which provide for some type of intake process, expressly authorize intake personnel to conduct an investigation in order to determine the appropriate disposition of a complaint at intake.³² Only a few of these statutory provisions specify in any detail the procedures to be followed in making such an investigation.³³ In recent years, juvenile and family courts, acting in an administrative capacity, and juvenile probation agencies have increasingly issued written guidelines and rules with respect to intake procedures.³⁴

The thrust of Standard 2.9 is to promote administrative rule-making regarding the procedural aspects of the intake process. The benefits are similar to the benefits of administrative rulemaking with respect to the criteria for intake dispositional decisions, which have already been discussed in detail. See commentary to Standard 2.6. The development and publication of comprehensive written ad-

³² *Alaska Stat.* § 47.10.020(a) (1975); *Ark. Stat. Ann.* § 45-411(1) (Cum. Supp. 1975); *Cal. Welf. & Inst'ns Code* § 652 (West 1972); *Colo. Rev. Stat. Ann.* § 19-3-101(1) (c) (1973); *Conn. Gen. Stat. Ann.* § 17-61 (Cum. Supp. 1976); *D.C. Code Ann.* § 16-2305(a) (1973); *Hawaii Rev. Stat.* § 571-21(a) (1968); *Idaho Code Ann.* § 16-1807 (Cum. Supp. 1975); *Ill. Rev. Stat.* ch. 37, § 703-8 (1973); *Ind. Ann. Stat.* § 31-5-7-8 (Burns 1973); *Iowa Code* § 232.3 (1975); *Kan. Stat. Ann.* § 38-816(b) (1973); *Ky. Rev. Stat. Ann.* § 208.070(1) (1972); *La. Rev. Stat. Ann.* § 13:1574(A) (Cum. Supp. 1976); *Me. Rev. Stat. Ann.* tit. 15 § 2601(1) (1964); *Mich. Comp. Laws* § 712A.11 (1970); *Miss. Code Ann.* § 43-21-11 (Cum. Supp. 1975); *Mo. Rev. Stat.* § 211.081 (1969); *Mont. Rev. Codes Ann.* § 10-1209(1) (Cum. Supp. 1975); *Nev. Rev. Stat.* § 62-128(1) (1973); *N.M. Stat. Ann.* § 13-14-14(A) (Supp. 1975); *N.Y. Family Ct. Act* § 734(a) (i) (McKinney 1975); *N.C. Gen. Stat.* § 7A-289.7(1) (Cum. Supp. 1975); *Okla. Stat.* tit. 10, § 1103(a) (1971); *Ore. Rev. Stat.* § 419.482(2) (1975); *R.I. Gen. Laws Ann.* § 14-1-10 (Supp. 1975); *S.C. Code Ann.* § 15-1095.14 (Cum. Supp. 1975); *S.D. Compiled Laws Ann.* § 26-8-1.1 (Supp. 1976); *Utah Code Ann.* § 55-10-83(2) (Supp. 1975); *Wis. Stat.* § 48.19 (1973).

³³ *But see Ill. Rev. Stat.* ch. 37 § 703-8 (1973); *Ind. Ann. Stat.* § 31-5-7-8 (1973); *Mont. Rev. Codes Ann.* § 10-1209(2)-(3) (Cum. Supp. 1975); *N.M. Stat. Ann.* § 13-14-14(B) (Supp. 1975); *N.Y. Family Ct. Act* § 734(a), (c), and (d) (McKinney 1975); *N.C. Gen. Stat.* § 7A-289.7(1) (Cum. Supp. 1975); *R.I. Gen. Laws Ann.* § 14-1-10 (Supp. 1975); *Utah Code Ann.* § 55-10-83(2) (Supp. 1975).

³⁴ *See, e.g.,* California Department of Youth Authority, "Standards for the Performance of Probation Duties" 15-17 (1970); Delaware Family Court Rules, Rule 90 (1974); D.C. Rules of Procedure—Juvenile Proceedings, Rule 102 (1972); Missouri Rules of Practice and Procedure in Juvenile Courts, Rules 3 & 4 (undated).

ministrative policies and rules setting forth the procedures to be followed by intake personnel in dealing with juveniles and their families furnish guidance to intake personnel as to their duties and responsibilities and make it easier for juveniles and their families to ascertain exactly what their procedural rights are. In the absence of such administrative rulemaking the procedures that intake personnel utilize in dealing with juveniles and their families may be unfair, inadequate, or even nonexistent.

2.10 Initiation of intake proceedings and receipt of complaint by intake officer.

A. An intake officer should initiate proceedings upon receipt of a complaint.

B. Any complaint that serves as the basis for the filing of a petition should be sworn to and signed by a person who has personal knowledge of the facts or is informed of them and believes that they are true.

Commentary

Under Standard 2.10 A. it is provided that a complaint should initiate intake proceedings. Standard 1.1 has defined a complaint as a report made to the juvenile court alleging a juvenile to be delinquent. It is to be distinguished from a petition, a formal legal pleading that initiates judicial proceedings. The complaint may be made by any individual or agency, and it may be either written or oral and need not be sworn. This standard is consistent with most juvenile and family court acts. See Nev. Rev. Stat. § 62.128(1) (1973); R.I. Gen. Laws Ann. § 14-1-10 (Supp. 1975). It is also consistent with the various model juvenile and family court acts. See, e.g., NCCD, "Model Rules," Rule 2; Sheridan, "Legislative Guide" § 13(a).

Under Standard 2.10 B., however, any complaint that is the basis for the filing of a petition must be in writing and must be sworn. Another volume of standards deals in more detail with the requirements with respect to a complaint that is the basis for the filing of a petition.³⁵

2.11 Intake investigation.

A. Prior to making a dispositional decision, the intake officer should be authorized to conduct a preliminary investigation in order to obtain information essential to the making of the decision.

³⁵ See the *Pretrial Court Proceedings* volume, Standard 1.1 and commentary thereto.

B. In the course of the investigation the intake officer may:

1. interview or otherwise seek information from the complainant, a victim of, witness to, or co-participant in the delinquent conduct allegedly engaged in by the juvenile;
2. check existing court records, the records of law enforcement agencies, and other public records of a nonprivate nature;
3. conduct interviews with the juvenile and his or her parents or legal guardian in accordance with the requirements set forth in Standard 2.14.

C. If the officer wishes to make any additional inquiries, he or she should do so only with the consent of the juvenile and his or her parents or legal guardian.

D. It is the responsibility of the complainant to furnish the intake officer with information sufficient to establish the jurisdiction of the court over the juvenile and to support the charges against the juvenile. If the officer believes the information to be deficient in this respect, he or she may notify the complainant of the need for additional information.

Commentary

Standard 2.11 A., B. and C. deals with the nature and scope of the investigation an intake officer may conduct prior to making a decision on how to handle a complaint.

Most juvenile and family court acts that contain provisions authorizing the making of intake investigations do not specify in any detail the nature and scope of such investigations. These statutory provisions are supplemented by detailed court rules or administrative rules in a relatively small number of jurisdictions. See commentary to Standard 2.9.

Intake investigations range in scope from perfunctory to extensive. An investigation typically involves the collection of information about the nature of and circumstances surrounding the alleged offenses, basic facts about the juvenile such as his or her age, sex, race, address, school status, and prior record, and basic facts about the juvenile's parents or legal guardian such as their names, addresses, and occupations. See Sheridan, "Standards for Juvenile Courts" 54. An investigation may, however, involve a wide-ranging inquiry into the juvenile's general behavior, mental, emotional, and physical state, and home, family, and school environment. See California Department of Youth Authority, "Standards for the Performance of Probation Duties" 15-17 (1970). See also Ind. Ann. Stat. § 31-5-7-8 (1973); Kan. Stat. Ann. § 38-816 (1973); R.I. Gen Laws Ann. § 14-1-10 (Supp. 1975).

An intake officer may need information beyond that which appears in the complaint in order to make a sound intake dispositional decision. A wide-ranging inquiry, however, into social factors such as the juvenile's general attitudes and behavior, home, family, and school circumstances may result in the collection of information that is not only unnecessary to the intake dispositional decision, but is also unreliable. See Ferster, Courtless, and Snethen, 864, 878. Moreover, such an investigation constitutes an invasion of the privacy of the juvenile and his or her family that is unwarranted at least prior to the filing of a petition and a delinquency adjudication. See Shuker, Silverman, and Teitelbaum, "The Worst of Both Worlds," Ohio State Legal Services Association, *Course on Law and Poverty: The Minor* 9, 38, at n. 3 (1968); Dyson and Dyson, "Family Courts in the United States," 9 *J. Fam. L.* 1, 3 (1969); Sheridan, 139, 147. Comment, "The Role of the Attorney in Juvenile Court Intake Processes," 13 *U. St. Louis L.J.* 69, 87 (1968). The more extensive the investigation, the more serious the invasion of privacy becomes. Moreover, an investigation that entails the questioning of such individuals as school officials and neighbors may be harmful to the reputation of the juvenile and his or her family.

Standard 2.11 A., B. and C. attempts to strike a balance between the need to provide intake officers with the information essential to sound dispositional decisions and the need to protect juveniles and their families from unwarranted and undue invasions of privacy and the harm to their reputations that extensive intake investigations can produce.

Under 2.11 A. and B. an intake officer may interview or otherwise seek information from individuals having some knowledge of the alleged delinquent conduct without the consent of the juvenile or his or her parents. Such individuals would include the complainant, a victim of, a witness to, and a co-participant in the conduct. The officer may also check court records, law enforcement records, and public records of a non-private nature without their consent. Finally, the officer may conduct interviews with the juvenile and his or her parents. Under Standard 2.11 C. the officer can conduct more extensive inquiries only if the juvenile and his or her parents consent.

After reviewing these standards, the ABA Section of Criminal Law recommended striking 2.11 A. and B. to allow intake officers the freedom to conduct the investigation as they see fit. The Young Lawyers Division supported retention of A. and B., with which the executive committee of the joint commission concurred.

Standard 2.11 D. deals with the intake officer's responsibility for the gathering of evidence in support of the charges against the juvenile. Under Standard 2.7 the intake officer is required to make a

preliminary determination of the sufficiency of the evidence in support of the charges against the juvenile. The generally accepted view is that the responsibility for gathering evidence in the support of the allegations of the complaint should rest with the complainant rather than the intake officer. Kobetz and Bosarge 244. Intake officers have neither the expertise nor the resources to gather evidence in support of the allegation of the complaint, which is really a law enforcement task. Moreover, gathering such evidence may affect the intake officer's ability to make a truly impartial decision as to how the complaint should be handled. Accordingly, Standard 2.11 D. provides that the complainant rather than the intake officer should have the responsibility for gathering evidence, and this standard provides that if the intake officer determines that the evidence the complainant presents in support of the allegations of the complaint is insufficient, the officer should so notify the complainant and give him or her an opportunity to furnish additional evidence. Standard 2.11 D. contemplates that in cases when the complainant is not a law enforcement agency, the complainant can and should refer the matter to the appropriate law enforcement agency for this purpose. This standard is based on County of Scaramento, California, Juvenile Division, "Probation Department Intake Policy and Statement" 3 (April 1, 1969). See also Mont. Rev. Stat. Ann. § 10-1209 (Cum. Supp. 1975).

2.12 Juvenile's privilege against self-incrimination at intake.

A. A juvenile should have a privilege against self-incrimination in connection with questioning by intake personnel during the intake process.

B. Any statement made by a juvenile to an intake officer or other information derived directly or indirectly from such a statement is inadmissible in evidence in any judicial proceeding prior to a formal finding of delinquency unless the statement was made after consultation with and in the presence of counsel.

General commentary

Standard 2.12 deals with the questioning of a juvenile by intake personnel during the intake process.

In the course of the intake process, intake officers frequently question a juvenile concerning his or her alleged commission of an offense. National Juvenile Law Center 200. Maron, "Constitutional Problems of Diversion of Juvenile Delinquents," 51 *Notre Dame Lawyer* 22, 39 (1975) (hereinafter cited as Maron); see also Comment, "The Role of the Attorney in Juvenile Court Intake Processes,"

13 *St. Louis U.L.J.* 69, 77-78 (1968) (hereinafter cited as Comment, "Role of Attorney"). Intake questioning "is a prolific source of juvenile admissions." Dorsen and Reznick, "In re Gault and the Future of Juvenile Law," *Fam. L.Q.* 41 (December 1967) (hereinafter cited as Dorsen and Reznick); see Hufford 260. Note, "Rights and Rehabilitation in the Juvenile Courts," 67 *Colum. L. Rev.* 281, 332-33 (1967); Note, "Juvenile Delinquents: The Police, State Courts, and Individualized Justice," 79 *Harv. L. Rev.* 775, 789 (1966). Statements made by a juvenile to an intake officer in the course of the intake process may be incriminating and may be used against the juvenile in several ways. The officer may decide to file a petition or seek the filing of a petition on the basis of the juvenile's incriminating statements. Hufford 261; but see Comment, "Role of Attorney" 78-79. In the event a petition is filed, these statements may be admitted in evidence against the juvenile to support a formal finding of delinquency or to impeach the juvenile's testimony at an adjudicatory hearing. Maron 39.

Privilege against self-incrimination at intake.

The first issue regarding the questioning of a juvenile by intake personnel during the intake process is whether the juvenile has a privilege against self-incrimination. In the landmark decision of *In re Gault*, 387 U.S. 1, 13, 55 (1967), the United States Supreme Court held that "the constitutional privilege against self-incrimination is applicable in the case of juveniles as it is with respect to adults," but it specifically limited its holding to the adjudicatory stage of delinquency proceedings. While there is little reported case law concerning intake questioning of juveniles, there is a great deal of case law concerning police custodial questioning of juveniles. It is well established that a juvenile has a constitutional privilege against self-incrimination in connection with police custodial interrogation. See S. Davis, *Rights of Juveniles* 86-97 (1974) (hereinafter cited as Davis, *Rights of Juveniles*); S. Fox, *The Law of Juvenile Courts in a Nutshell* 121-28 (1971) (hereinafter cited as Fox); M. Paulsen and C. Whitebread, *Juvenile Law and Procedure* 91-95 (1974) (hereinafter cited as Paulsen & Whitebread). Since a juvenile's statements to an intake officer, like a juvenile's statements to a police officer, may be incriminating and may be used later against the juvenile, it follows that a juvenile should have a constitutional privilege against self-incrimination at the intake stage.³⁶

³⁶It should be noted that several juvenile and family courts acts provide or can be interpreted as providing that a juvenile has a statutory privilege against self-incrimination with respect to questioning by intake personnel. *Cal. Welf. &*

Waiver of privilege against self-incrimination.

There remains the perplexing issue of under what circumstances, if any, a juvenile's waiver of the privilege against self-incrimination in connection with questioning by intake personnel is valid. Several different approaches to this issue can be and have been taken. One approach is to require as a prerequisite for a valid waiver that the juvenile be warned that he or she has the right to remain silent and the right to the assistance of counsel prior to waiver. Another approach is to require that the juvenile's parents, guardian, or custodian be present prior to and during questioning and participate in the waiver decision. Still another is to require that counsel be present prior to and during questioning. Finally, waiver of the privilege at the intake stage can simply be prohibited.

Case law contains very few decisions specifically concerning the validity of a juvenile's waiver of his or her privilege against self-incrimination at intake. There are, however, a number of decisions concerning the validity of a juvenile's waiver of the privilege during police custodial questioning that are applicable by analogy to intake.

It is necessary at the outset to summarize briefly the case law concerning the validity of an adult's waiver of his or her constitutional privilege against self-incrimination in order to understand the case law with respect to a juvenile's waiver of the privilege. The landmark decision in this area is *Miranda v. Arizona*, 384 U.S. 436 (1966). In *Miranda*, the United States Supreme Court held that the constitutional privilege against self-incrimination was fully applicable to police custodial interrogation of a suspect and that a suspect had the right to consult with counsel prior to questioning and to have counsel present during questioning. The Court also required the police to give the suspect certain warnings regarding to his or her right to remain silent and the right to assistance of counsel prior to custodial questioning and enunciated an exclusionary rule with respect to confessions elicited by the police without the proper warnings. See J. Israel and W. LaFave, *Criminal Procedure in a Nutshell* 210-56, 295-301 (1975) (hereinafter cited as Israel and LaFave) for a more detailed summary of the law regarding the admissibility of extra-judicial confessions in adult criminal proceedings.

It can be argued that juveniles, unlike adults, should be deemed

Inst'n's Code § 627.5 (1972); *Conn. Gen. Stat. Ann.* § 17-66d(a) (Cum. Supp. 1976); *Ga. Code Ann.* § 24A-1001(c) (Cum. Supp. 1975); *Md. Ann. Code, Cts. & Judic. Proceedings* § 3-811 (Cum. Supp. 1975); *N.M. Stat. Ann.* § 13-14-25(B) (Supp. 1975); *N.Y. Family Ct. Act* § 735 (McKinney 1975); *Okla. Stat.* tit. 10, § 1109(a) (1971); *Pa. Stat. Ann.* tit. 11, § 50-304(d) (Cum. Supp. 1976).

incompetent as a matter of law to make an extrajudicial waiver of the privilege against self-incrimination because of their immaturity and lack of experience. See, e.g., Comment, "The Juvenile Offender and Self-Incrimination," 40 *Wash. L. Rev.* 189, 200-201 (1965). Note, "Waiver of Constitutional Rights by Minors: A Question of Law or Fact?" 19 *Hastings L.J.* 223, 224 (1967). Courts, however, have refused to so hold. See the leading case of *People v. Lara*, 67 Cal. 2d 365, 432 P.2d 202, 62 Cal. Rptr. 586 (1967), cert. denied, 392 U.S. 945 (1968), for a discussion of the legal competency of a juvenile with respect to an extra-judicial waiver of his or her privilege against self-incrimination.

Prior to *In re Gault*, the Supreme Court had held that the fourteenth amendment due process clause required the suppression of a juvenile's involuntary extrajudicial confession and that the voluntariness of a confession was to be determined under the "totality of circumstances" surrounding the juvenile's making of a confession. *Gallegos v. Colorado*, 370 U.S. 49 (1962); *Haley v. Ohio*, 332 U.S. 596 (1948). In *In re Gault*, 387 U.S. 1, 43 at n. 74, the Supreme Court held that juveniles as well as adults have a constitutional privilege against self-incrimination, but the Court expressly declined to rule on the applicability of *Miranda* to juveniles and juvenile proceedings. Many other courts, relying for the most part on the principles enunciated in *In re Gault*, have concluded that the *Miranda* warnings must be given juveniles prior to police custodial interrogation and that statements given without the proper warnings are inadmissible.³⁷ *In re Dennis M.*, 70 Cal. 2d 444, 450 P.2d 296, 75 Cal. Rptr. 1 (1969); *In re Creek*, 243 A.2d 49 (D.C. Ct. App. 1968); *In re D.*, 245 So. 2d 273 (Fla. App. 1971); *People v. Horton*, 126 Ill. App. 2d 401, 261 N.E.2d 693 (1970); *State v. Sinderson*, 455 S.W.2d 486 (Mo. 1970); *In re Rust*, 53 Misc. 2d 51, 278 N.Y.S.2d 333 (Fam. Ct. 1967); *In re Burrus*, 275 N.C. 517, 169 S.E.2d 879 (1969), *aff'd*, 403 U.S. 528 (1971); *Leach v. State*, 428 S.W.2d 817 (Tex. Civ. App. 1968); *In re Forrest*, 76 Wash. 2d 84, 455 P.2d 368 (1969). But see *State in the Interest of S.H.*, 61 N.J. 108, 293 A.2d 181 (1972); *State in the Interest of R.W.*, 115 N.J. Super. 286, 279 A.2d 709 (App. Div. 1971), *aff'd per curiam*, 61 N.J. 118, 293 A.2d 186 (1972).

Even in cases where the proper *Miranda* warnings are given, courts have sometimes suppressed a juvenile's confession on the ground

³⁷Courts are divided over whether *Miranda* warnings must be given to the juvenile's parents as well as the juvenile prior to police custodial interrogation. Compare, e.g., *Freeman v. Wilcox*, 119 Ga. App. 325, 167 S.E.2d 163 (1969) with *In re Fletcher*, 251 Md. 520, 248 A.2d 364 (1968).

that the juvenile's waiver of his or her *Miranda* right was not intelligent and voluntary. See, e.g., *Freeman v. Wilcox*, 119 Ga. App. 325, 167 S.E.2d 163 (1969); *People v. Pounds*, 64 Misc. 2d 634, 315 N.Y.S.2d 672 (1970). In determining the voluntariness of the waiver, courts have revitalized and utilized the pre-*Miranda* and pre-*Gault* totality of circumstances test. E.g., *Lopez v. United States*, 399 F.2d 865 (9th Cir. 1968); *West v. United States*, 399 F.2d 467 (5th Cir. 1968), cert. denied, 393 U.S. 1102 (1969); *Mosley v. States*, 438 S.W.2d 311 (Ark. 1969); *In re Dennis M.*, 70 Cal. 2d 444, 450 P.2d 296, 75 Cal. Rptr. 1 (1969); *State v. Dillon*, 93 Idaho 698, 471 P.2d 553, cert. denied, 401 U.S. 942 (1971); *McClintock v. State*, 253 Ind. 333, 253 N.E.2d 233 (1969); *State v. Hinkle*, 479 P.2d 841 (Kan. 1971); *State v. Melanson*, 259 So. 2d 609 (La. App. 1972); *Walker v. State*, 12 Md. App. 684, 280 A.2d 260 (1971); *Commonwealth v. Cain*, 279 N.E.2d 706 (Mass. 1972); *State v. Sinderson*, 455 S.W.2d 486 (Mo. 1970); *In re Aaron D.*, 30 App. Div. 2d 183, 290 N.Y.S.2d 935 (1968); *State v. Dawson*, 278 N.C. 351, 180 S.E.2d 140 (1971); *Commonwealth v. Porter*, 449 Pa. 153, 295 A.2d 311 (1972); *Vaughn v. State*, 3 Tenn. Crim. App. 54, 456 S.W.2d 879 (1970); *State v. Prater*, 77 Wash. 2d 526, 463 P.2d 640 (1970); *State v. Barker*, 4 Wash. App. 121, 480 P.2d 778 (1971). Among the factors that courts have considered in determining whether the waiver was voluntary are the juvenile's age, intelligence, education, prior contacts with law enforcement officers and juvenile court officials, physical condition, knowledge of the substance of the charge and of the nature of his or her right to remain silent and to consult with an attorney, and the presence or absence of parents. See *West v. United States*, 399 F.2d 467 (5th Cir. 1968), cert. denied, 292 U.S. 1102 (1969) and 87 A.L.R. 2d 624 (1963) for a more detailed discussion of the factors relevant to this determination.

Many courts have expressed concern about the ability of juveniles to make an intelligent and voluntary waiver of their *Miranda* rights without the presence of a parent or counsel even though they are given the proper *Miranda* warnings, and some of these courts have found a juvenile's waiver of *Miranda* rights in the absence of parents or counsel to be invalid despite the fact that proper warnings were given. See, e.g., *Commonwealth v. Cain* 279 N.E.2d 706 (Mass. 1972); *Lewis v. State*, 288 N.E.2d 138 (Ind. 1972); *State v. White*, 494 S.W.2d 687 (Mo. App. 1973); *In re Aaron D.*, 30 App. Div. 2d 183, 290 N.Y.S.2d 935 (1968); *In re William L.*, 29 App. Div. 2d 182, 287 N.Y.S.2d 218 (1968); *Ezell v. State*, 489 P.2d 781 (Okla. Crim. App. 1971); *Story v. State*, 452 P.2d 822 (Okla. Crim.

App. 1969); see also *Walker v. State*, 12 Md. App. 684, 280 A.2d 260 (1971); *State in Interest of S.H.*, 61 N.J. 108, 293 A.2d 181 (1972). One court has held that a juvenile may execute a valid waiver of *Miranda* rights only after consultation with parents or attorney. *Lewis v. State*, 288 N.E.2d 138 (Ind. 1972); see Note, 6 *Ind. L. Rev.* 577 (1973). Similarly, another court has indicated that a waiver made without the presence of parents or counsel is invalid unless the police have made a reasonable effort to obtain the presence of the parents. *State v. White*, 494 S.W.2d 687 (Mo. App. 1973); see also *State in the Interest of S.H.*, 61 N.J. 108, 293 A.2d 181 (1972). Still another court has stated that a juvenile is not capable of making a valid waiver without the presence of a parent or counsel unless it appears beyond a reasonable doubt that the juvenile fully understood the nature and consequences of waiver. *Ezell v. State*, 489 P.2d 781 (Okla. Crim. App. 1971); *Story v. State*, 452 P.2d 822 (Okla. Crim. App. 1969). Most courts, however, have refused to hold that the absence of a parent or counsel automatically invalidates the waiver, rather they have taken the position that it is simply a factor, albeit an important factor, in determining whether the waiver was intelligent and voluntary. See e.g., *In re Dennis M.*, 70 Cal. 2d 444, 450 P.2d 296, 75 Cal. Rptr. 1 (1969); *Walker v. State*, 12 Md. App. 684, 280 A.2d 260 (1971); *State v. Hogan*, 212 N.W.2d 664 (Minn. 1973); *Mullen v. State*, 505 P.2d 305 (Wyo. 1973).³⁸

Legislatures have on the whole been willing to go somewhat further than courts in protecting the juvenile's privilege against self-incrimination. Several legislatures have enacted legislation prohibiting the use of a juvenile's extra-judicial statements to intake personnel during the intake process in subsequent adjudicatory hearings.³⁹ One juvenile court act provides that an extrajudicial statement made by a juvenile to intake personnel should not be admitted into evidence against the juvenile unless it was made in the presence of the juvenile's parent, guardian, or counsel;⁴⁰ one provides that such statements should not be admitted unless it was made in the presence

³⁸ Courts have differed as to the effect of a juvenile's specific request for a parent before or during police custodial interrogation. One state supreme court has held that such a request involves the privilege against self-incrimination and that all interrogation must thereupon cease. *People v. Burton* 6 Cal. 3d 375, 491 P.2d 793, 99 Cal. Rptr. 1 (1971); see also *Commonwealth v. Harmon*, 440 Pa. 195, 269 A.2d 744 (1970). But there is authority to the contrary. See e.g., *People v. Pierre* 114 Ill. App. 2d 283, 252 N.E.2d 706 (1st Dist. 1969).

³⁹ *Ga. Code Ann.* § 24A-1001(c) (Cum. Supp. 1975); *Md. Cts. & Judic. Proceedings* § 3-811 (Cum. Supp. 1975); *N.Y. Family Ct. Act* § 735 (McKinney 1975); *Pa. Stat. Ann.* tit. 11, § 50-304(d) (Cum. Supp. 1976).

⁴⁰ *Okla. Stat.* tit. 10, § 1109(a) (1971).

of the juvenile's parent or guardian;⁴¹ and one provides that such statements should not be admitted unless made with advice of counsel.⁴² Finally, several simply provide that a juvenile's extrajudicial statement, which would be constitutionally inadmissible in an adult criminal proceeding, should not be admitted into evidence against the juvenile.⁴³

While waiver of the privilege against self-incrimination is a familiar concept in the adult criminal justice system, in *In re Gault*, 387 U.S. 1, 55 (1967), the Supreme Court recognized that "special problems" may arise with respect to the waiver of the privilege by a juvenile and that the greatest care must be taken to guarantee that any admission by a juvenile is "not the product of ignorance of rights or of adolescent fantasy, fright or despair." Special problems may arise with respect to a juvenile's waiver of the privilege because of his or her intellectual and emotional immaturity and inexperience. This immaturity and inexperience means that juveniles are generally less capable than adults of understanding the nature of their rights and the consequences of waiver. See *In re Gault*, 387 U.S. 1, 45-46 (1967); *Haley v. Ohio*, 332 U.S. 596 (1948); see generally Ferguson and Douglas, "A Study of Juvenile Waiver," 7 *San Diego L. Rev.* 39 (1970) (hereinafter cited as Ferguson and Douglas). It also means that a juvenile is generally more susceptible than an adult to intimidation. See *In re Gault*, 387 U.S. 1, 45-46 (1967); *Haley v. Ohio*, 332 U.S. 596, 599-600 (1948); NCCD, "Model Rules," Comment to Rule 25 at 54. In addition, it appears that juvenile confessions are frequently "untrustworthy and distort the truth." *In the Matter of Four Youths*, D.C. Juv. Ct. (1961), cited in *In re Gault*, 387 U.S. 1, 55 (1967); see NCCD, "Model Rules" 54.

The *Miranda* requirements, which were designed to protect an adult's privilege against self-incrimination, would not appear to be sufficient to protect a juvenile's privilege. First, it is doubtful that the *Miranda* warnings are sufficient to insure that a juvenile's waiver of the privilege is intelligent. See *State in Interest of S.H.*, 61 N.J. 108, 115, 293 A.2d 181 (1972); Davis 95; Note, "Waiver of Constitutional Rights by Minors: A Question of Law or Fact?" 19 *Hastings L.J.* 223, 225 (1967) (hereinafter cited as Note, "Waiver of Constitutional Rights by Minors"); "Recent Developments,"

⁴¹ *Conn. Gen. Stat. Ann.* § 17-66d(a) (1972).

⁴² *N.M. Stat. Ann.* § 13-14-25(B) (Supp. 1975).

⁴³ *Ga. Code Ann.* § 24A-2002 (Cum. Supp. 1975); *Mont. Rev. Codes Ann.* § 10-1218(1) (c)(i) (Cum. Supp. 1975); *N.D. Cent. Code Ann.* § 27-20-27(2) (1974); *Tenn. Code Ann.* § 37-227(b) (Cum. Supp. 1975); *Vt. Stat. Ann.* tit. 33, § 652(a) (Cum. Supp. 1975); see also *S.C. Code Ann.* § 15-1095.19 (Cum. Supp. 1975).

1972 *U. of Ill. L.F.* 624, 629 (hereinafter cited as *Ill. L.F.*, "Recent Developments"); Casenote, 3 *Seton Hall L. Rev.* 482, 489 (1972) (hereinafter cited as Seton Hall Casenote). An empirical study indicates that a vast majority of randomly sampled juveniles failed to understand the *Miranda* warnings. Ferguson and Douglas 53-54. It is also doubtful that the *Miranda* warnings are sufficient to dispel the anxiety and fear that intake questioning may instill in some juveniles. See Note, "Waiver in the Juvenile Court," 68 *Colum. L. Rev.* 1149, 1163 (1968) (hereinafter cited as Note, "Waiver in the Juvenile Court"); Note, "Miranda Guarantees in the California Juvenile Court," 7 *Santa Clara Lawyer* 114, 117-18 (1966); Comment, "The Juvenile Offender and Self-Incrimination," 40 *Wash. L. Rev.* 189, 197 at n. 38 (1965); see also *Haley v. Ohio*, 332 U.S. 596 (1948).

In addition, it should be noted that intake officers sometimes undercut the impact of *Miranda* warnings by formulating and presenting the warnings in a way that discourages a juvenile's exercise of his or her *Miranda* rights. See Vinter, "The Constitutional Responsibilities of Court-Related Personnel" in *Gault: What Now for the Juvenile Court* 122, 127 (Nordin ed. 1968); cf. Lefstein, Stapleton, and Teitelbaum, "In Search of Juvenile Justice: *Gault* and Its Implementation," 3 *Law & Soc. Rev.* 491, 522-24 (1969) (hereinafter cited as Lefstein, Stapleton, and Teitelbaum). For example, an intake officer may give warnings very rapidly and then quickly change the subject, or an officer may give the warnings and then tell the juvenile that "I am here to help you" and urge the juvenile to tell the truth so that he or she can receive help. See Hufford 260-62.

While a juvenile can challenge the validity of a waiver of *Miranda* rights on the ground that the waiver was unintelligent or involuntary, despite the fact the "proper" *Miranda* warnings were given, the "totality of circumstances" test that courts have used in determining the validity of waiver of *Miranda* rights is difficult to administer and has been severely criticized. See e.g., Fox 123-124; Lefstein, Stapleton, and Teitelbaum 538-39; see generally Israel and LaFave 220; "Developments in the Law: Confessions" 79 *Harv. L. Rev.* 935, 954-84 (1966). This test is vague and amorphous and as a result it gives little guidance to police and intake officers as to what they are permitted to do once they give the juvenile the *Miranda* warnings, and it leads to divergent results in the courts when the validity of a waiver of these rights is challenged. Since there is usually no objective record concerning the waiver, the issue of the validity of the waiver must frequently be resolved under this test on the basis of credibility, which can produce "swearing contests"

between the juvenile and the officer who elicited the juvenile's confession. In addition, some courts appear to have been less than zealous in applying the test.

One suggested solution to the problem of insuring that a waiver of the privilege against self-incrimination in connection with intake questioning is truly intelligent and voluntary is to require the presence of a juvenile's parent prior to and during intake questioning so that the parent can assist the juvenile with respect to the waiver decision. See *e.g.*, NCCD, "Model Rules," Rule 25 and Comment at 53-55; see also Skoler, "The Right to Counsel and the Role of Counsel in Juvenile Court Proceedings," 43 *Ind. L.J.* 558, 572 (1968); Saylor, "Interrogation of Juveniles: The Right to a Parent's Presence," 77 *Dick. L. Rev.* 543, 559-60 (1973); Note, "Waiver in the Juvenile Court" 1163; Seton Hall Casenote 489. It can be argued that such a requirement is helpful in this regard because the parent can evaluate the options regarding waiver for the juvenile, explain these options and their relative merits to the juvenile, and provide the juvenile with moral and emotional support.

It is questionable, however, that the mandatory presence and assistance of a parent is sufficient to protect the juvenile's privilege against self-incrimination. Parents, even educated and intelligent parents, may not be knowledgeable about the consequences of waiver or capable of accurately assessing the desirability of waiver. See Lefstein, Stapleton, and Teitelbaum 546-52; McMilhan and McMurtry, "The Role of Defense Counsel in the Juvenile Court—Advocate or Social Worker?" 14 *St. Louis U.L.J.* 561, 570 (1970) (hereinafter cited as McMilhan and McMurtry). While the *Miranda* warnings set forth the consequences of waiver, there is reason to believe that many adults as well as juveniles do not fully understand these warnings. See *e.g.*, Leiken, "Police Interrogation in Colorado: The Implementation of *Miranda*," 47 *Denver L.J.* 1 (1970); Griffiths and Ayres, "A Postscript to the *Miranda* Project: Interrogation of Draft Protesters," 77 *Yale L.J.* 300 (1967); "Interrogations in New Haven: The Impact of *Miranda*," 76 *Yale L.J.* 1519 (1967). Being an adult is also no guarantee of immunity from intimidation, and some parents, especially poor and uneducated parents, may be fearful of the authority of an intake officer, who is generally a court official. See Fox 129, Paulsen and Whitebread 93; Schlam, "Police Interrogation and 'Self'-Incrimination of Children by Parents: A Problem Not Yet Solved," 6 *Clearinghouse Rev.* 618, 620 (1973) (hereinafter cited as Schlam). Moreover, there is not necessarily an identity of interest between the juvenile and his or her parents and they cannot always be depended upon to pro-

tect the juvenile. In some cases, especially those in which the juvenile is alleged to be a status offender, the juvenile's parent may actually be the party who brought the juvenile to the attention of the police or juvenile court. See Lefstein, Stapleton, and Teitelbaum 547-48. Even where there is no such overt conflict of interest between the juvenile and his or her parents, the parents may be hostile to the juvenile for getting in trouble and causing them embarrassment and inconvenience, which may lead them to tell the child to cooperate with the intake officer and confess. See Fox 129, Paulsen and Whitebread 93; McMilhan and McMurtry 570; Schlam 620. In short, a juvenile's parents may not always act in a manner consistent with the best interest of the juvenile. *Cf. State v. Hinkle*, 206 Kan. 472, 479 P.2d 841 (1971); *State v. Sinderson*, 455 S.W.2d 486 (Mo. 1970). Furthermore, if the parents are present during questioning, the juvenile may feel it necessary to exonerate himself or herself before them, and may attempt to do so by falsely denying the commission of the offense or making up false stories. See Fox 129; Schlam 620.

Another solution to the problem of insuring that a juvenile's waiver of the privilege against self-incrimination in connection with intake questioning is truly voluntary and intelligent is to require that counsel be present so that the juvenile can have the assistance of counsel in making the waiver decision. Sheridan, "Legislative Guide"; § 26; National Law Center 200; Maron 39; Comment, "The Role of the Attorney" 77-79; Note, "The Need for Counsel in the Juvenile Justice System: Due Process Overdue," 1974 *Utah L. Rev.* 333, 346 (1974) (hereinafter cited as Note, "The Need for Counsel"); see also Davis, *Rights of Juveniles* 96-97; Fox 129; Paulsen and Whitebread 94; Lefstein, Stapleton, and Teitelbaum, 543-44; Schlam 620. An attorney, by virtue of his or her training and experience, is much more likely than a lay person to understand the consequences of waiver and to give the juvenile competent advice as to when waiver is advisable. See Lefstein, Stapleton, and Teitelbaum 549; *cf. Powell v. Alabama*, 287 U.S. 45, 69 (1932); *Johnson v. Zerbst*, 304 U.S. 458, 463 (1938); *Gideon v. Wainwright*, 372 U.S. 335, 344 (1963). The attorney is also in a position to give the juvenile objective advice uncolored by personal interests and emotional involvement. See National Juvenile Law Center 78; Paulsen and Whitebread 94.

It is possible to go even further and simply make a juvenile's privilege against self-incrimination at intake in effect unwaivable by prohibiting the use of any statements made by the juvenile to an intake officer during the intake process in the event a petition is sub-

sequently filed. This approach has been endorsed by a variety of authorities. See President's Commission, *Delinquency Task Force Report* 38; National Advisory Commission, "Corrections," § 8.2 at 266; Gough 737; Maron 45; Note, "The Need for Counsel" 346; Comment, "Alternative Preadjudicatory Handling of Juveniles in South Dakota: Time for Reform," 19 *S. Dak. L. Rev.* 207, 218 (1974). One reason for prohibiting the use of a juvenile's intake statements is to protect the juvenile's privilege against self-incrimination. To the extent, however, that this is the sole purpose of prohibiting their use, it would seem sufficient to provide that a juvenile could validly waive the privilege only after consultation with counsel. A related but nonetheless distinct reason for prohibiting their use is to encourage full disclosure on the part of the juvenile to the intake officer and to facilitate open discussion between them so that the intake officer can make an informed decision with respect to the disposition of a complaint. Full disclosure and open discussion are obviously more likely in a situation where a juvenile's statements can not be later used against him or her than in a situation where such use can occur.

Commentary on standard

Standard 2.12 A. provides that a juvenile should be able to exercise his or her privilege against self-incrimination at the intake stage. The extension of the privilege to juveniles at the intake stage is necessary in view of the fact that a confession or otherwise incriminating statement that a juvenile makes to an intake officer may be later used against the juvenile at the adjudicatory stage.

Standard 2.12 B. precludes the admission of statements by a juvenile to intake personnel during the intake process made without the presence and advice of counsel. This standard is based upon the "Legislative Guide for Drafting Family and Juvenile Court Acts." Sheridan, "Legislative Guide" § 26. As has been pointed out, providing the juvenile with the assistance of counsel is the best method of making certain that the juvenile's waiver of the privilege is not the product of ignorance or fear. Accordingly, Standard 2.12 B. provides in effect that a juvenile can validly waive the privilege only after consultation with counsel. An uncounseled juvenile can not validly waive the privilege even if the proper *Miranda* warnings are given and the juvenile's parents, guardian, or custodian are present. This standard, however, is not intended to disapprove either the requirement of *Miranda* warnings or of parental presence prior to and during intake questioning. It simply reflects the view that these require-

ments are not sufficient to adequately protect the juvenile's privilege against self-incrimination at intake.

The exclusionary rule that Standard 2.12 B. enunciates is applicable not only to statements obtained from a juvenile as the result of questioning by an intake officer but also to the "spontaneous" admissions of a juvenile to an intake officer. The rule in this respect goes beyond the *Miranda* exclusionary rule, which applies only to statements obtained as the result of police custodial interrogation without the proper *Miranda* warnings. See *Miranda v. Arizona*, 384 U.S. 436, 444 (1966); see generally Israel and LaFave 240-45. This exclusionary rule also applies to evidence derived directly or indirectly from statements or admissions made by a juvenile to an intake officer. Such exclusion or "derivative evidence" is intended to incorporate "the fruit of the poisonous tree" doctrine, under which evidence derived from an illegal arrest or search is generally inadmissible in an adult criminal prosecution. See *Wong Sun v. United States*, 371 U.S. 471 (1963); see generally Pitler, "The Fruit of the Poisonous Tree" Revisited and Shepardized, 56 *Calif. L. Rev.* 579 (1968). Finally, this exclusionary rule precludes the use of statements and admissions made to an intake officer during the intake process at a later adjudicatory hearing to support a delinquency adjudication in the event a petition is filed, but it does not preclude the use of such statements or admissions at a dispositional hearing after the juvenile has been adjudicated delinquent.

2.13 Juvenile's right to assistance of counsel at intake.

A juvenile should have an unwaivable right to the assistance of counsel at intake:

A. in connection with any questioning by intake personnel at an intake interview involving questioning in accordance with Standard 2.14 or other questioning by intake personnel, and

B. in connection with any discussions or negotiations regarding a nonjudicial disposition, including discussions and negotiations in the course of a dispositional conference in accordance with Standard 2.14.

General commentary

Standard 2.13 deals with the juvenile's representation by counsel during the intake process. The first issue in this regard is whether the juvenile's right to assistance of counsel should be extended to the intake stage. Assuming that the juvenile should have a right to counsel at intake, there remains the issue of whether this right should be waivable.

Right to counsel at intake.

It is unsettled whether a juvenile has a constitutional right to counsel at intake. In *In re Gault*, 387 U.S. 1, 31 at n. 48, 36 (1967), the United States Supreme Court held that the assistance of counsel was constitutionally required at the adjudicatory stage of delinquency proceedings, but the Court refused to pass on the question of a juvenile's right to counsel at the pre-adjudicatory stage. In determining at what point the sixth amendment right to counsel attaches in adult criminal proceedings, the Supreme Court has held that it attaches at a "critical stage" of the proceedings. It can be argued that the intake stage is a "critical stage" because it is the stage at which a decision is made with respect to the filing of a petition that can lead to a delinquency adjudication. Several Supreme Court decisions lend some support to this argument. See *Coleman v. Alabama*, 399 U.S. 1 (1970) (preliminary hearing is a critical stage); *United States v. Wade*, 388 U.S. 218 (1967) (post-indictment line up is a critical stage); *White v. Maryland*, 373 U.S. 59 (1963) (arraignment is a critical stage); *Hamilton v. Alabama*, 368 U.S. 52 (1961) (arraignment is a critical stage). In *Kirby v. Illinois*, 406 U.S. 682, 688-89 (1972), however, the Court stated that "the right to counsel attaches only at or after the time that adversary judicial proceedings have been initiated" and that such proceedings begin upon the occurrence of a "formal charge, preliminary hearing, indictment, information, or arraignment." Cf. *Gerstein v. Pugh*, 420 U.S. 103 (1975). See Maron 33-40 for an excellent development of the arguments on the juvenile's constitutional right to counsel at intake.

There have been surprisingly few reported decisions dealing with the juvenile's constitutional right to counsel at intake. In *In re S.*, 341 N.Y.S.2d 11 (1973) and *In re H.*, 337 N.Y.S.2d 118 (1972), the New York Family Court held that a juvenile does not have the right to counsel at intake on the ground that there was no need for counsel at this stage because the juvenile's statements at intake were statutorily inadmissible in subsequent proceedings in the event a petition was filed.

While the majority of juvenile and family court acts provide that a juvenile is entitled to the assistance of counsel,⁴⁴ they vary as to

⁴⁴*Ariz. Rev. Stat. Ann.* § 8-225(a) (Cum. Supp. 1975); *Cal. Welf. & Inst'ns Code* § 634 (1972); *Colo. Rev. Stat. Ann.* § 19-1-106 (1973); *Conn. Gen. Stat. Ann.* § 17-66(b), 17-66(c) (1975); *D.C. Code Ann.* § 16-2304(a) (1973); *Ga. Code Ann.* § 24A-2001(a) (Cum. Supp. 1975); *Hawaii Rev. Stat.* § 571-41 (Supp. 1975); *Idaho Code Ann.* § 16-1809 (Cum. Supp. 1975); *Ill. Rev. Stat. ch. 37*, § 701-20 (1973); *Iowa Code* § 232.28 (1975); *Kan. Stat. Ann.* § 38-817(a) (Cum. Supp. 1975); *Ky. Rev. Stat. Ann.* § 208.060(3) (a) (Cum. Supp. 1974); *Md. Ann. Code* § 3-821 (Cum. Supp. 1975); *Mass. Gen. Laws Ann. ch.*

when this right to counsel attaches. One of these acts indicates that a juvenile who has been taken into police custody and brought before an intake officer has a right to counsel in connection with any interrogation.⁴⁵ Another lists the specific proceedings in which a juvenile has the right to counsel, but does not include intake proceedings in this list.⁴⁶ A few indicate that the right to counsel attaches when the juvenile is first brought before the court.⁴⁷ Several indicate that the right attaches when a petition is filed or at the commencement of judicial proceedings.⁴⁸ Others provide that the juvenile has such a right in connection with judicial hearings and proceedings.⁴⁹

Most juvenile and family court acts, however, are ambiguous about the stage at which the right to counsel attaches. Many state that a juvenile has the right to counsel "in all proceedings under this chapter" or contain similar language to the same effect.⁵⁰

119, § 39F (Cum. Supp. 1976); *Minn. Stat.* § 260.155(2) (1974); *Mont. Rev. Codes Ann.* § 10-1218 (3) (Cum. Supp. 1975); *N.Y. Family Ct. Act* § 741(a) (McKinney 1975); *N.C. Gen. Stat.* § 7A-285 (Cum. Supp. 1975); *N.D. Cent. Code* § 27-20-26(1) (1974); *Ohio Rev. Code Ann.* § 2151.352 (Page Supp. 1976); *Okla. Stat. tit. 10,* § 1109 (1971); *R.I. Gen. Laws Ann.* § 14-1-31 (1969); *S.C. Code Ann.* § 15-1095.19 (Cum. Supp. 1975); *S.D. Compiled Laws Ann.* § 26-8-22.1, 26-8-22.2 (1976); *Tenn. Code Ann.* § 37-226 (Cum. Supp. 1975); *Tex. Fam. Code Ann.* § 51.10 (1975); *Utah Code Ann.* § 55-10-96 (1973); *Vt. Stat. Ann. tit. 33,* § 653 (Cum. Supp. 1975); *Va. Code Ann.* § 16.1-173 (1975); *W. Va. Code Ann.* § 49-5-10 (1976); *Wis. Stat.* § 48.25(6) (1973); *Wyo. Stat. Ann.* § 14-115.23 (Cum. Supp. 1975).

⁴⁵ *Cal. Welf. & Inst'ns Code* § 627.5 (1972) (the court "shall appoint counsel for the minor if he appears at hearing without counsel").

⁴⁶ *Tex. Fam. Code Ann.* § 51.10 (1975).

⁴⁷ *Neb. Rev. Stat.* § 43-205.06 (S700. 1975); *N.Y. Family Ct. Act* § 741(a) (McKinney 1975); *Wyo. Stat. Ann.* § 14-115.23 (Cum. Supp. 1975).

⁴⁸ *Kan. Stat. Ann.* § 38-817(a) (Cum. Supp. 1975); *Ky. Rev. Stat. Ann.* § 208.060 (3) (a) (Cum. Supp. 1974); *N.M. Stat. Ann.* § 13-14-25(E) (Supp. 1975).

⁴⁹ *Hawaii Rev. Stat.* § 571-41 (Supp. 1975); *Idaho Code Ann.* § 16-1809 (Cum. Supp. 1975); *Mass. Gen. Laws Ann. ch. 119,* § 39F (Cum. Supp. 1976); *Minn. Stat.* § 260.155(2) (1974); *N.C. Gen. Stat.* § 7A-285 (Cum. Supp. 1975); *Ore. Rev. Stat.* § 419.498(2) (1975); *R.I. Gen. Laws Ann.* § 14-1-31 (1969); *S.C. Code Ann.* § 15-1095.19 (Cum. Supp. 1975); *Va. Code Ann.* § 16.1-173 (1975); *Wis. Stat.* § 48.25(6) (1973).

⁵⁰ *Ariz. Rev. Stat. Ann.* § 8-225(A) (Cum. Supp. 1975); *Colo. Rev. Stat. Ann.* § 19-1-106 (1973); *Conn. Gen. Stat. Ann.* §§ 17-66b, 17-66c (1975); *Ga. Code Ann.* § 24A-2001(a) (Cum. Supp. 1975); *Md. Ann. Code* § 3-821 (Cum. Supp. 1975); *Mont. Rev. Codes Ann.* § 10-1218(3) (Cum. Supp. 1975); *N.D. Cent. Code* § 27-20-26(1) (1974); *Ohio Rev. Code Ann.* § 2151.352 (Page Supp. 1976); *Okla. Stat. tit. 10* § 1109 (1971); *Pa. Stat. Ann. tit. 11* § 50-317 (Cum. Supp. 1976); *S.D. Compiled Laws Ann.* § 26-8-22.1 (Supp. 1975); *Tenn. Code Ann.* § 37-226 (Cum. Supp. 1975); *Utah Code Ann.* § 55-10-96 (1973); *Vt. Stat. Ann. tit. 33* § 653 (Cum. Supp. 1975).

A few state that a juvenile has the right to counsel at a "critical stage" of the proceedings.⁵¹ See National Juvenile Law Center 198; Hufford 259. Such provisions, however, can also be construed as giving the juvenile a right to counsel only in connection with judicial proceedings. Finally, several of these acts simply state that a juvenile has the right to counsel without specifying the stage at which it attaches.⁵²

Most of the model acts are also somewhat ambiguous about the stage at which the right to counsel attaches. One model act provides that a juvenile is entitled to counsel at the intake stage,⁵³ but three others provide that a juvenile is entitled to the assistance of counsel "at all stages of the proceedings."⁵⁴

A number of commentators have recommended the extension of the right to counsel to the intake stage. *E.g.*, National Juvenile Law Center 198-201; National Council on Crime and Delinquency, "Provision of Counsel in Juvenile Proceedings" 9, 21 (1970); Dorsen and Reznick 41-42; Gough 737; Skoler 568. Note, "South Dakota Preadjudicatory Handling" 218; Note, "The Need for Counsel" 346-51; Comment, "The Role of the Attorney" 69. See also National Advisory Commission, "Corrections" 266; Paulsen and Whitebread 128; Paulsen, "*Kent v. United States: The Constitutional Context of Juvenile Cases*," 1966 *Sup. Ct. Rev.* 167, 189 (1967) (hereinafter cited as Paulsen). Only a few commentators have expressed reservations about affording juveniles the right to counsel during the intake process. Ferster and Courtless 1147-48; Rosenheim and Skoler, "The Lawyer's Role at Intake and Detention Stages of Juvenile Court Proceedings," 11 *Crime & Delinq.* 167 (1965) (hereinafter cited as Rosenheim and Skoler).

In practice counsel rarely participate in intake proceedings even when they are permitted to do so. E. D. Dyson and R. B. Dyson, "Family Courts in the United States," 9 *J. Fam. L.* 1, 5-6 (1969); Ferster and Courtless 1147; Hufford 260; Rosenheim and Skoler 173; Comment, "The Role of the Attorney" 70-71. The reason for this situation is unclear. It may be that parents do not regard counsel as necessary until a petition is filed and the juvenile is told to appear at a judicial hearing; it may be that attorneys view their role as that of advocates at the adjudicatory stage and believe that participation in intake proceedings is unnecessary because the

⁵¹ *D.C. Code Ann.* § 16-2304(a) (1973); *N.J. Stat. Ann.* § 2A:4-59 (Cum. Supp. 1976).

⁵² *Ill. Rev. Stat.* ch. 37, § 701-20 (1973); *Iowa Code* § 232.28 (1975).

⁵³ NCCD, "Model Rules," Rule 39.

⁵⁴ NCCD, "Uniform Act" § 26(a); NCCD, "Standard Act" § 19; Sheridan, "Legislative Guide" § 25.

objective of the intake process is to avoid, whenever possible, formal judicial processing of juveniles; or it may be that they think that their intervention at intake and assertion of the juvenile's "rights" will be counterproductive because it will antagonize the intake officer who makes the dispositional decision. See D. Besharov, *Juvenile Justice Advocacy* 167-68 (1974); Ferster and Courtless 1147.

Despite the fact that juveniles are only rarely represented by counsel at the intake stage, counsel can and should perform a number of valuable functions at this stage. One function is to assist the juvenile in connection with questioning by intake personnel in the course of the intake process in order to insure that any waiver by the juvenile of his or her privilege against self-incrimination is intelligent and voluntary. National Juvenile Law Center 200; Dorsen and Rezneck 41; Ferster, Courtless, and Sneathen 889; Maron 39; Note, "The Need for Counsel" 346; Note, "The Role of the Attorney" 71. See Note, "Juvenile Delinquents: The Police, State Courts and Individualized Justice," 79 *Harv. L. Rev.* 775, 789 (1966). An intake officer will frequently question a juvenile about his or her commission of the offense charged, and the juvenile may make a statement of an incriminating nature as a result of such questioning. See commentary to Standard 2.12 and authorities therein cited. Only a few juvenile and family court acts expressly prohibit the admission of such statements into evidence in the event a petition is filed. See Ga. Code Ann. § 24A-1001(c) (Cum. Supp. 1975); Md. Ann. Code, Cts. & Judic. Proceedings § 3-811 (Cum. Supp. 1975); N.Y. Family Ct. Act § 735 (McKinney 1975); Pa. Stat. Ann. tit. 11 § 50-304(d) (Cum. Supp. 1976). Thus, the role of counsel at an adjudicatory hearing may be quite limited unless counsel can also be present prior to and during intake questioning. If counsel is present, counsel can explain the consequences of waiver to the juvenile and give the juvenile advice with respect to the waiver decision. Counsel can also see to it that the officer does not improperly question the juvenile or coerce the juvenile into confessing. See commentary to Standard 2.12 and authorities cited therein. In short, the assistance of counsel is necessary at the intake stage to protect the juvenile's privilege against self-incrimination in jurisdictions where a juvenile's statements to intake personnel at this stage are admissible in any subsequent adjudicatory hearing.

Even if the use of such statements to support a delinquency adjudication is prohibited, the juvenile can still benefit from the assistance of counsel at intake. Intake officers make the initial and sometimes the final determination as to the disposition of the complaint. They generally have a wide range of dispositional alternatives

including the filing of a petition, a nonjudicial disposition of the complaint, and the dismissal of the complaint. See standards 2.2-2.4 and commentary thereto. In many cases the juvenile and his or her family may wish to avoid the filing of a petition and formal judicial processing and counsel can act as an advocate for the juvenile and his or her family with respect to the intake dispositional decision.

Upon receipt of a complaint, an intake officer must first determine whether it is legally sufficient for the filing of a petition, which involves determining whether the court has jurisdiction over the juvenile and whether the evidence is sufficient to support the allegations of the complaint. See Standard 2.7 and commentary thereto. Intake officers are generally not lawyers and have no formal legal training. See Hufford 258. Hence they cannot always be expected to be aware of and knowledgeable concerning any evidentiary problems. Counsel can speak to "the points of law and jurisdiction and make sure that requirements in this area are met." Rosenheim and Skoler 169-70; see National Juvenile Law Center 199; Comment, "The Role of the Attorney" 79. For example, the conduct that the juvenile is alleged to have engaged in may not constitute a criminal offense or otherwise bring the juvenile within the jurisdiction of the juvenile court, and counsel can make this known to the intake officer. Similarly, counsel can speak to the issue of whether the evidence is sufficient to support the allegations of the complaint and "ascertain whether the police or other complaining parties have presented a prima facie case in support of their allegations." Rosenheim and Skoler 170; see Comment, "The Role of the Attorney" 80.

If the complaint is legally sufficient for the filing of a petition, the intake officer must then determine whether the filing of a petition and formal judicial processing would be in the best interests of the juvenile and the community, and the officer normally has considerable discretion in making this determination. See Standard 2.8 and commentary thereto. When the juvenile or his or her parents wish to avoid the filing of a petition, counsel can assist them in effectively presenting their views. Ferster and Courtless 1148; Maron 40. Such assistance can be particularly helpful to poor and uneducated juveniles or their parents who may lack effective communication skills. See Paulsen 189. When counsel knows the juvenile and his or her parents, counsel may be able to provide the intake officer with information concerning the juvenile, his or her family situation, and home environment that might militate in favor of a nonjudicial disposition of the complaint or even dismissal of the complaint. Isaacs, "The Role of the Lawyer in Representing Minors in the Family Court," 12 *Buff. L. Rev.* 501,

509 (1963) (hereinafter cited as Isaacs); Maron 40; Rosenheim and Skoler 170, Comment, "South Dakota Preadjudicatory Handling" 218; see Comment, "The Role of the Attorney" 80-81. In addition, counsel can identify and explore the availability of agencies and programs in the community to which the juvenile or his or her family could be referred for needed services, and counsel can suggest such a referral to the intake officer as an alternative to the filing of a petition and the formal judicial processing of the juvenile. National Juvenile Law Center 199; Isaacs 509; Packel, "A Guide to Pennsylvania Delinquency Law," 21 *Villanova L. Rev.* 1, 30-31 (1975) (hereinafter cited as Packel).

Counsel has a further role to play in the event that the intake officer determines that the nonjudicial disposition of the complaint rather than the filing of a petition is appropriate. Nonjudicial dispositions, especially in jurisdictions allowing nonjudicial probation, may result in substantial intervention in the juvenile's life and very real restrictions on his or her conduct and activities, and acceptance of a nonjudicial disposition by a juvenile should be intelligent and voluntary. See commentary to Standard 2.4. Counsel can inform the juvenile and his or her parents of their right to refuse to accept a nonjudicial disposition, can explain the consequences of acceptance to them, and can assist them in assessing their options. National Juvenile Law Center 199; Ferster, Courtless, and Snethen 891; Rosenheim and Skoler 170; Note, "South Dakota Preadjudicatory Handling" 218.

The juvenile can also benefit from the involvement of counsel in intake proceedings in the event a petition is filed. Early legal representation tends to be more effective representation, and involvement of counsel in intake proceedings allows counsel to familiarize himself or herself with the case against the juvenile and get an early start on case preparation. Rosenheim and Skoler 170; National Juvenile Law Center 199.

Despite the fact that counsel can perform a number of valuable functions at the intake stage, there has been some opposition to the extension of the right to counsel to the intake stage on the ground that the regular participation of counsel in intake proceedings would disrupt the intake process and destroy its informality and flexibility. See Rosenheim and Skoler 1-3. Since lawyers rarely appear at intake at the present time, the impact of their participation in intake proceedings has been limited, but there is reason to believe that affording juveniles the right to counsel at intake would not unduly disrupt the intake process. In one juvenile court that experimented with extending the right to counsel to the intake stage, the results appear

to have been positive rather than negative. See Ralston, "Intake: Informal Disposition or Adversary Proceeding," 17 *Crime and Delinq.* 160, 167 (1971). The impact of counsel at intake, however, depends to some extent on counsel's knowledge of and familiarity with the intake process and the manner in which counsel presents the juvenile's case to the intake officer. Use of traditional criminal trial tactics may be inappropriate and can even be counterproductive from the standpoint of the juvenile's interest. See Packer 29. Accordingly, it may be necessary to "accommodate his or her manner of presentation to the generally informal and noncontentious nature of the intake process, having regard to the specific issues presented at this stage under formal rules and in practice." See the *Counsel for Private Parties* volume.

Waiver of right to counsel.

If a juvenile is given the right to the assistance of counsel at intake, the question arises as to whether this right should be waivable.

Since juveniles do not currently have a generally recognized right to counsel at intake, there is little or no statutory or case law dealing directly with waiver of counsel at intake. There is, however, statutory and case law with respect to the waiver of the right to counsel in connection with police custodial questioning and in connection with judicial proceedings, that is relevant to waiver of counsel at intake.

The statutory and case law with respect to the waiver of the right to counsel in connection with police custodial interrogation has been previously described. Generally speaking, a waiver of the right to counsel under these circumstances must be voluntary in order to be valid, and the voluntariness of the waiver is measured by the totality of circumstances. See commentary to Standard 2.12.

On the subject of the waiver of the right to the assistance of counsel in connection with judicial proceedings, the Supreme Court has stated that a waiver of the constitutional right to counsel by an adult criminal defendant is "an intentional relinquishment or abandonment of a known right or privilege" that must be "knowingly and intelligently" made in order to be valid under the due process clause of the fourteenth amendment. *Johnson v. Zerbst*, 304 U.S. 458 (1938); see *Carnley v. Cochran*, 369 U.S. 506 (1962); *Von Molke v. Gillies*, 332 U.S. 708 (1948). Courts have applied this standard in conjunction with the totality of circumstances test in determining the validity of a juvenile's waiver of counsel in connection with judicial proceedings. See, e.g., *McBride v. Jacobs*, 247 F.2d 595 (D.C.

Cir. 1957); *In re J.F.T.*, 320 A.2d 322 (D.C. Ct. App. 1974); *In re S.*, 29 N.Y.2d 206, 325 N.Y.S.2d 921, 275 N.E.2d 577 (1971); *In re H.*, 2 Cal. 3d 513, 86 Cal. Rptr. 7, 468 P.2d 204 (1970); *Application of Estrada*, 403 P.2d 1 (Ariz. Ct. App. 1965); *McAlpine v. State*, 457 S.W.2d 428 (Tex. Civ. App. 1970).

The majority of family and juvenile court acts do not deal expressly with the waiver of a juvenile's right to counsel in connection with judicial proceedings. Those acts that do deal expressly with this subject vary in their provisions. One authorizes juveniles to waive the right to counsel by themselves provided the waiver is intelligent.⁵⁵ One requires the concurrence of the juvenile and his or her parents or guardian for a valid waiver.⁵⁶ One permits waiver by the parent or guardian alone.⁵⁷ And one provides that the parents alone may waive when the juvenile is under the age of twelve, that the juvenile and his or her parents may waive when the juvenile is over the age of twelve, and that a juvenile over twelve may waive without the concurrence of his or her parents provided the juvenile does so with the advice of counsel.⁵⁸ In addition, a few make counsel nonwaivable at certain stages of the proceedings,⁵⁹ and several authorize the court to appoint counsel in the absence of a request for counsel if the court deems representation by counsel necessary to protect the interest in question.⁶⁰

Just as the waiver of the privilege against self-incrimination by a juvenile poses special problems, so also does the waiver of the right to the assistance of counsel because the general immaturity and inexperience of juveniles affects their ability to make a truly voluntary and intelligent waiver of rights. The difficulties of administering the totality of circumstances test, that is used in most jurisdictions to determine the validity of a juvenile's waiver of counsel in this regard, has already been discussed in detail. And it appears for reasons previously pointed out that the assistance of counsel is necessary at intake to insure the validity of a waiver of the privilege against self-incrimination and to protect other rights of the juvenile.

⁵⁵ *Cal. Welf. & Inst'ns Code* § 634 (West 1972).

⁵⁶ *N.M. Stat. Ann.* § 13-14-25(E) (Supp. 1975).

⁵⁷ *Pa. Stat. Ann.* tit. 22, § 50-31 (Cum. Supp. 1976).

⁵⁸ *Mont. Rev. Codes Ann.* § 10-1218 (Cum. Supp. 1975).

⁵⁹ *La. Rev. Stat. Ann.* § 13:1571.5 (1976); *Tex. Fam. Code Ann.* § 51.10 (1975). See also 18 U.S.C. §§ 5032, 5034.

⁶⁰ *Colo. Rev. Stat. Ann.* § 19-1-106 (1973); *Conn. Gen. Stat. Ann.* § 17-66c (1975); *Okla. Stat.* tit. 10, § 1109(b) (1971); *S.D. Compiled Laws Ann.* § 26-8-22.2 (Supp. 1976); *Utah Code Ann.* § 55-10-96 (1973); *Vt. Stat. Ann.* tit. 33, § 653 (Cum. Supp. 1975); see *D.C. Code Ann.* § 16-2304 (court may appoint counsel over objection of juvenile, his or her parent, guardian, or custodian.)

See commentary to Standard 2.12. Accordingly, if juveniles are afforded the right to the assistance of counsel at intake, it would seem advisable to make the right to counsel nonwaivable.⁶¹

Commentary on standard

In view of the foregoing, Standard 2.13 provides that a juvenile should have a nonwaivable right to counsel at intake. In some instances, however, a complaint is disposed of summarily by the intake officer without any questioning of the juvenile or discussion with the juvenile with respect to disposition of the complaint, and a requirement that counsel be retained or appointed under these circumstances may serve no useful purpose and may simply unduly delay the disposition of the complaint. Therefore, Standard 2.13 provides that a right to counsel should attach at that point in the intake process when the intake officer holds an intake interview with or otherwise questions the juvenile.

It is recognized that Standard 2.13, providing as it does for a non-waivable right to counsel, may prove difficult to implement in some areas, particularly rural and semi-rural areas, because they lack the legal and financial resources necessary to meet this standard. Nevertheless, this standard is recommended as a goal, the achievement of which is highly desirable and toward which efforts should be directed. In order to achieve this goal it may be necessary to experiment with new methods of delivering legal services to juveniles, such as employment of attorneys to represent juveniles on a regional basis.

2.14 Intake interviews and dispositional conferences.

A. If the intake officer deems it advisable, the officer may request and arrange an interview with the juvenile and his or her parents or legal guardian.

B. Participation in an intake interview by the juvenile and his or

⁶¹It should be noted that in *Faretta v. California*, 422 U.S. 806 (1975), the Supreme Court held that an adult criminal defendant has a constitutional right to waive the assistance of counsel and to proceed *pro se*. *Faretta*, however, did not deal with a juvenile's waiver of counsel, and in *In re Gault*, 387 U.S. 1 (1967), and *McKeiver v. Pennsylvania*, 403 U.S. 528 (1971), the Supreme Court made it clear that not all requirements with respect to adult criminal proceedings that are constitutional in nature are applicable to juvenile delinquency proceedings. As has been pointed out, there is good reason for distinguishing juveniles from adults for purposes of waiver of important rights such as the right to counsel because of the general immaturity and inexperience of juveniles. Moreover, *Faretta* does not preclude the court from appointing counsel to advise a defendant who is representing himself or herself *pro se*, and the role of counsel at intake has been defined as primarily an advisory role.

her parents or legal guardian should be voluntary. They should have the right to refuse to participate in an interview, and the officer should have no authority to compel their attendance.

C. At the time the request to attend the interview is made, the intake officer should inform the juvenile and his or her parents or legal guardian either in writing or orally that attendance is voluntary and that the juvenile has the right to be represented by counsel.

D. At the commencement of the interview, the intake officer should:

1. explain to the juvenile and his or her parents or legal guardian that a complaint has been made and explain the allegations of the complaint;
2. explain the function of the intake process, the dispositional powers of the intake officer, and intake procedures;
3. explain that participation in the intake interview is voluntary and that they may refuse to participate; and
4. notify them of the right of the juvenile to remain silent and the right to counsel as heretofore defined in Standard 2.13.

E. Subsequent to the intake interview, the intake officer may schedule one or more dispositional conferences with the juvenile and his or her parents or legal guardian in order to effect a non-judicial disposition.

F. Participation in a dispositional conference by a juvenile and his or her parents or legal guardian should be voluntary. They should have the right to refuse to participate, and the intake officer should have no authority to compel their attendance.

G. The intake officer may conduct dispositional conferences in accordance with the procedures for intake interviews set forth in subsections D. and E.

Commentary

Standard 2.14 deals with intake interviews and dispositional conferences. An intake interview is an interview that the intake officer holds with the juvenile and his or her parents for the purpose of obtaining information that will assist the officer in making an intake dispositional decision. The interview is also sometimes utilized by the intake officer to arrange a nonjudicial disposition agreement. If the officer is unable to effect the nonjudicial disposition of the complaint at the initial intake interview, he or she may subsequently hold dispositional conferences for this purpose. Although the holding of intake interviews and dispositional conferences is fairly common,

only a few juvenile or family court acts specifically provide for such meetings between the intake officer and the juvenile and his or her parents.⁶²

Standard 2.14 sets out the procedure to be followed by intake officers in connection with intake interviews and dispositional conferences. This procedure is largely self-explanatory. Under Standard 2.14, participation by the juvenile and his or her parents or legal guardian in an intake interview or dispositional conference is voluntary.

Since participation by a juvenile and his or her parents in an intake interview or dispositional conference should be voluntary, the intake officer should not have the power to compel their attendance through the use of a subpoena. See, *e.g.*, N.M. Stat. Ann. § 13-14-14(B) (Supp. 1975); N.Y. Family Ct. Act § 734(d) (McKinney 1975); S.D. Codified Laws § 26-8-1.1 (Supp. 1976); Utah Code Ann. § 55-10-8.3(2) (Supp. 1975).

Standard 2.14 also provides that the juvenile has the right to remain silent and the right to the assistance of counsel at an intake interview or dispositional conference, and that it is the duty of the intake officer to inform the juvenile and his or her parents of these rights.

2.15 Length of intake process.

A decision at the intake level as to the disposition of a complaint should be made as expeditiously as possible. The period within which the decision is made should not exceed thirty (30) days from the date the complaint is filed in cases in which the juvenile who is the subject of a complaint has not been placed in detention or shelter care facilities.

Commentary

Standard 2.15 is designed to insure that the intake dispositional decision is made as expeditiously as possible. As one commentator has noted:

Juvenile court intake process is a screening mechanism. It is essentially an office and not a field process. . . . It is . . . in the nature of a review or evaluation of information which should be supplied by the person or

⁶²Ill. Rev. Stat. ch. 37, § 703-8(1) (1973); Mont. Rev. Codes Ann. § 10-1209(2) (Cum. Supp. 1975); N.M. Stat. Ann. § 13-14-14 (B) (Supp. 1975); N.Y. Family Ct. Act § 734(a) (1) (McKinney 1975); N.C. Gen. Stat. § 7A-289.7(1) (Cum. Supp. 1975).

agency seeking to file a petition. It can and should be an expeditious process. Exposure of children and families to a long period of uncertainty as to what is going to happen may, for many, increase tension and anxiety. For younger children, delay makes it difficult to relate a court experience to an incident which may have happened weeks before. For those in detention, delay may be a damaging experience as well as the imposition of an unnecessary economic burden upon the community.

[A]n extended investigation . . . involving highly personal family matters cannot be justified before the filing of a petition.

It should also be recognized that the filing of a petition, which after a complete study and/or hearing proved to be unnecessary, can always be dismissed by the court without prejudice to the parties.

All of the above factors argue against a long extended intake process. Sheridan 146-47.

See also Kobetz and Bosarge 255.

Standard 2.15 provides that the period within which an intake dispositional decision must be made should not exceed thirty days from the date the complaint is filed in cases in which the juvenile who is the subject of the complaint has not been removed from his or her home and placed in detention or shelter care facilities. See also N.C. Gen. Stat. § 7A-289.7(1) (Cum. Supp. 1975). This limit upon the length of time that may elapse between the receipt of a complaint and a final decision as to the disposition of the complaint by an intake officer is to be distinguished from limits on the duration of a nonjudicial disposition. See commentary to Standard 2.4.

Standard 2.15 contemplates that more stringent time limits should be imposed on the intake process in cases in which the juvenile has been removed from home, but the standard does not address the issue of precisely what these time limits should be. See *e.g.*, Mont. Rev. Codes § 10-1209(7) (Cum. Supp. 1975); Nev. Rev. Stat. § 62.128 (1973). Another volume of standards deals with this issue.⁶³

Section V: Scope of Intake Officer's Dispositional Powers

2.16 Role of intake officer and prosecutor in filing of petition: right of complainant to file a petition.

A. If the intake officer determines that a petition should be filed, the officer should submit a written report to the appropriate prose-

⁶³*Interim Status* volume.

cuting official requesting that a petition should be filed. The officer should also submit a written statement of his or her decision and of the reasons for the decision to the juvenile and his or her parents or legal guardian. All petitions should be countersigned and filed by the appropriate prosecuting official. The prosecutor may refuse the request of the intake officer to file a petition. Any determination by the prosecutor that a petition should not be filed should be final.

B. If the intake officer determines that a petition should not be filed, the officer should notify the complainant of his or her decision and of the reasons for the decision and should advise the complainant that he or she may submit the complaint to the appropriate prosecuting official for review. Upon receiving a request for review, the prosecutor should consider the facts presented by the complainant, consult with the intake officer who made the initial decision, and then make the final determination as to whether a petition should be filed.

C. In the absence of a complainant's request for a review of the intake officer's determination that a petition should not be filed, the intake officer should notify the appropriate prosecuting official of the officer's decision not to request the filing of a petition in those cases in which the conduct charged would constitute a crime if committed by an adult. The prosecutor should have the right in all such cases, after consultation with the intake officer, to file a petition.

Commentary

Standard 2.16 deals with the scope of the intake officer's dispositional powers and review of the officer's decisions. This standard is derived from the Florida Juvenile Court Act, Fla. Stat. Ann. § 39.05 (1975); see also D.C. Code Ann. § 16-2305 (1973); Md. Ann. Code, Cts. & Judic. Proceedings §§ 3-810, 3-812 (Cum. Supp. 1975); Mont. Rev. Codes Ann. § 10-1209 (Cum. Supp. 1975); Nev. Rev. Stat. § 16.128 (1975). See also the *Prosecution Function* volume, which is also derived largely from the Florida Juvenile Court Act.

There are several major issues regarding the scope of the intake officer's dispositional powers. The first issue is whether an officer should have the authority to file or seek the filing of a petition without the consent of a prosecutorial official. Juvenile and family court acts contain a wide variety of provisions in this regard. A large number of these acts permit an officer to file or authorize the filing of a petition without review by or with the consent of a third party.⁶⁴

⁶⁴ Ala. Code tit. 13, § 352 (1959); Ark. Stat. Ann. § 45-423 (Cum. Supp.

Some require the prosecutor to file or authorize the filing of a petition;⁶⁵ others require the court to authorize the filing of a petition;⁶⁶ and still others require the prosecutor or the court to file or authorize the filing of a petition.⁶⁷

The various model acts differ with respect to the authority of an intake officer to file a petition. Two of the more recent of these acts would permit an officer to file a petition only after review by and with the consent of the prosecutor.⁶⁸ Two of the acts, however, would permit the officer to file a petition without prosecutorial review or consent.⁶⁹

Although there is opinion to the contrary, the better view is that

1975); *Cal. Welf. & Inst'n's Code* § 650 (West 1972); *Del. Code Ann.* tit. 10, § 932 (1974); *Ill. Rev. Stat.* ch. 37, § 704-1 (1973); *Iowa Code* § 232.3 (1975); *Ky. Rev. Stat. Ann.* § 208.070 (1972); *Me. Rev. Stat. Ann.* tit. 15, § 2602 (1964); *Mass. Gen. Laws Ann.* ch. 119, § 54 (1975); *N.H. Rev. Stat. Ann.* § 169:3 (1964); *N.J. Stat. Ann.* § 2A:4-53 (Cum. Supp. 1975); *N.M. Stat. Ann.* § 13-14-15 (Supp. 1975); *N.Y. Family Ct. Act* § 634 (McKinney 1975); *N.C. Gen. Stat.* § 7A-281 (Cum. Supp. 1975); *N.D. Cent. Code* §§ 27-20-19, 27-20-20 (1974); *Ohio Rev. Code Ann.* § 2151.27 (Page Supp. 1975); *Ore. Rev. Stat.* § 419.482 (1975); *Pa. Stat. Ann.* tit. 11, §§ 50-302, 50-314 (Cum. Supp. 1976); *Tenn. Code Ann.* § 37-219 (Cum. Supp. 1975); *Va. Code Ann.* § 16.1-164 (1975); *Wash. Rev. Code* § 13.04.060 (1974); *W. Va. Code Ann.* § 49-5-7 (1976).

⁶⁵ *Ariz. Rev. Stat. Ann.* §§ 8-221, 8-233 (1956) ("county attorney shall cause petitions . . . to be drafted and filed"); *Colo. Rev. Stat.* § 19-3-101 (1973); *D.C. Code Ann.* § 16-2305 (1973); *Fla. Stat.* § 39.05 (1975); *Md. Ann. Code, Cts. & Judic. Proceedings* §§ 3-810, 3-812 (Cum. Supp. 1975) (intake officer may authorize the filing of a petition but prosecutor must prepare and file the petition); *Minn. Stat.* § 260.131 (1974) (any reputable person "may petition the court" but the county attorney "shall draft the petition upon the showing of reasonable grounds to support the petition"); *Mont. Rev. Codes Ann.* §§ 10-1209; 10-1215 (Cum. Supp. 1975); *Neb. Rev. Stat.* § 43-205 (1975 Supp.); *Nev. Rev. Stat.* § 62-128 (1975); *Tex. Fam. Code Ann.* § 53.04 (1975); *Vt. Stat. Ann.* tit. 33, §§ 644, 655 (Cum. Supp. 1973).

⁶⁶ *Alaska Stat.* § 47.10.020 (1975); *Conn. Gen. Stat. Ann.* § 17-61 (Supp. 1976); *Ga. Code Ann.* §§ 24A-1601; 24A-1602 (Cum. Supp. 1975) (court or person authorized by court must authorize the filing of a petition); *Hawaii Rev. Stat.* § 571-21 (1968); *Idaho Code Ann.* § 16-1628 (Supp. 1975); *Ind. Ann. Stat.* § 31-5-7-8 (Burns 1973); *Kan. Stat. Ann.* § 38-816 (1973); *Mass. Gen. Laws Ann.* ch. 119, § 54 (Cum. Supp. 1976); *Mich. Comp. Laws* § 712A.11 (1970); *Miss. Code Ann.* § 43-21-11 (Cum. Supp. 1975); *Mo. Rev. Stat.* § 211.081 (1969); *Okla. Stat. Ann.* tit. 10, § 1103 (Cum. Supp. 1975); *S.C. Code Ann.* § 15-1095.14 (Cum. Supp. 1975); *S.D. Compiled Laws Ann.* § 26-8-1.1 (Supp. 1975); *R.I. Gen. Laws Ann.* § 14-1-11 (1969); *Utah Code Ann.* § 55-10-83 (Supp. 1975); *Wis. Stat.* § 48.19 (1973).

⁶⁷ *La. Rev. Stat. Ann.* § 1574 (Supp. 1976); *Wyo. Stat. Ann.* § 14-115.12 (Cum. Supp. 1975).

⁶⁸ YDDPA, "Legislative Guide" § 16; Sheridan, "Legislative Guide" § 13.

⁶⁹ NCCD, "Model Rules," Rule 5; "Uniform Act" § 20.

an intake officer's determination with respect to the filing of a petition should be subject to review by an appropriate prosecuting official who should make the final decision as to whether to file a petition. The "Legislative Guide for Drafting Family and Juvenile Court Acts" summarized the argument for such a procedure as follows:

First, he [the prosecutor] is the person with the expertise concerning the person responsible for conducting the proceeding and for representing the State. It is not the intention, however, to limit the prosecuting official's review to the legal sufficiency of the complaint. He should also be concerned with the need to protect the child and the community. Studies have shown that the highly therapeutic approach of some intake personnel has resulted in the filing of petitions merely on the basis that the child needed service—service which could be provided by community agencies without court intervention. Sheridan, "Legislative Guide" 15.

Accordingly, Standard 2.16 A. and C. provides that an intake officer should make an initial determination as to how a complaint should be handled, which should then be subject to review by the appropriate prosecuting official. Under this standard an intake officer is not authorized to file a petition. If an officer determines that a petition should be filed, the officer must make a recommendation to that effect to the appropriate prosecuting official, who should review the matter and make the final decision.

A second closely related issue is whether the prosecutor should have the right to overrule an intake officer's decision not to file or seek the filing of a delinquency petition. Juvenile and family court acts also contain a wide variety of provisions relating to this issue. Some of these acts expressly provide for prosecutorial review of an intake officer's negative decision with respect to the filing of a petition.⁷⁰ Some in effect permit the prosecutor to file a petition despite the fact that the intake officer decided against filing.⁷¹

⁷⁰ *D.C. Code Ann.* § 16-2305 (1973); *Fla. Stat.* § 39.05 (1975); *Md. Ann. Code, Cts. & Judic. Proceedings* §§ 3-810, 3-812 (Cum. Supp. 1975); *Mont. Rev. Codes Ann.* § 10-1209 (Cum. Supp. 1975); *Nev. Rev. Stat.* § 62.128 (1975).

⁷¹ *Ala. Code* tit. 13, § 352 (1959); *Ariz. Rev. Stat. Ann.* §§ 8-221, 8-233 (1956); *Ark. Stat. Ann.* § 45-423 (Cum. Supp. 1975); *Del. Code Ann.* tit. 10, § 932 (1974); *Ill. Rev. Stat.* ch. 37, § 704-1 (1973); *Iowa Code* § 232.3 (1975); *Ky. Rev. Stat. Ann.* § 208.070 (1972); *La. Rev. Stat. Ann.* § 1374 (Supp. 1976); *Me. Rev. Stat. Ann.* tit. 15, § 2602 (1964); *Mass. Gen. Laws Ann.* ch. 119, § 54 (1975); *Minn. Stat.* § 260.131 (1974); *Neb. Rev. Stat.* § 43-205 (1975 Supp.); *N.H. Rev. Stat. Ann.* § 169.3 (1964); *N.J. Stat. Ann.* § 2A:4-

Others in effect permit the prosecutor to file under these circumstances if the court authorizes the filing.⁷² Still others provide that an intake officer or an intake officer authorized by the court may file a petition and can be interpreted as not permitting the prosecutor to file under the aforementioned circumstances.⁷³

Here again the various model acts differ with respect to prosecutorial veto of an intake officer's decision not to file or seek the filing of a petition. Three expressly provide for prosecutorial review of an intake officer's determination that a petition should not be filed,⁷⁴ but one does not allow the prosecutorial veto of such a decision.⁷⁵

The primary reason for allowing prosecutorial veto is that an intake officer may decide to not recommend filing in cases in which the prosecutor, who represents the interests of the community, has some reason to believe that court action is necessary to protect the community. There are also, however, arguments that would dictate not allowing prosecutorial veto. The prosecutor, who is an attorney, generally is less likely than the intake officer to have the training and expertise necessary to determine whether the nonjudicial handling of the juvenile would be feasible and effective. In addition, the prosecutor, who is normally an elected official, may be unduly sensitive to community disapproval, actual or potential, of the nonjudicial handling of some juveniles even though such handling is consistent with juvenile court philosophy and policy.

53 (Cum. Supp. 1975); *N.M. Stat. Ann.* § 13-14-15 (Supp. 1975); *N.Y. Family Ct. Act* § 634 (McKinney 1975); *N.C. Gen. Stat.* § 7A 281 (Cum. Supp. 1975); *N.D. Cent. Code* §§ 27-20-19, 27-20-20 (1974); *Ohio Rev. Code Ann.* § 2151.27 (Page Supp. 1975); *Ore. Rev. Stat.* § 419.482 (1975); *Pa. Stat. Ann.* tit. 11, §§ 50-302, 50-314 (Cum. Supp. 1976); *Tenn. Code Ann.* § 37-219 (Cum. Supp. 1975); *Tex. Rev. Civ. Stat.* art. 2338-1, § 7 (1975); *Vt. Stat. Ann.* tit. 33, §§ 644, 655 (Cum. Supp. 1973); *Va. Code Ann.* § 16.1-164 (1975); *W. Va. Code Ann.* § 49-5-7 (1976).

⁷²*Alaska Stat.* § 47.10.020 (1975); *Conn. Gen. Stat. Ann.* § 17.61 (Cum. Supp. 1976); *Ga. Code Ann.* §§ 24A-1601, 24A-1602 (Cum. Supp. 1975) (court or person authorized by court must authorize the filing of a petition); *Hawaii Rev. Stat.* § 571-21 (1968); *Idaho Code Ann.* § 16-1628 (Supp. 1975); *Kan. Stat. Ann.* § 38-816 (1973); *Mass. Gen. Laws Ann.* ch. 119, § 54 (Cum. Supp. 1975); *Mich. Comp. Laws* § 712A.11 (1970); *Miss. Code Ann.* § 43-21-11 (Cum. Supp. 1975); *Okla. Stat. Ann.* tit. 10, § 1103 (Cum. Supp. 1975); *S.C. Code Ann.* § 15-1095.14 (Cum. Supp. 1975); *S.D. Compiled Laws Ann.* § 26-8-1.1 (1976); *R.I. Gen. Laws Ann.* § 14-1-11 (1969); *Utah Code Ann.* § 55-10-83 (Supp. 1975); *Wis. Stat.* § 48.19 (1973).

⁷³*Cal. Welf. & Inst'ns Code* § 650 (West 1972); *Ind. Ann. Stat.* § 31-5-7-8 (Burns 1973); *Mo. Rev. Stat.* § 211.081 (1969); *Wash. Rev. Code* § 13.04.060 (1974).

⁷⁴Sheridan, "Legislative Guide" § 13; "Uniform Act" § 10; YDDPA, "Legislative Guide" § 16.

⁷⁵NCCD, "Model Rules," Rule 5.

Under Standard 2.14 C., if an officer determines that a petition should not be filed, the officer must notify the appropriate prosecuting official who may overrule the officer and file a petition. This standard, however, anticipates that the prosecutor will exercise caution in overruling an intake officer's determination that a petition should not be filed and will do so only when it is clear that filing a petition is necessary to protect the safety of the community.

The third major issue is whether the complainant should be able to file a delinquency petition or obtain review of an intake officer's determination that a petition should not be filed. Here again juvenile and family courts vary. A substantial number of these acts appear to give the complainant an absolute right to file a petition.⁷⁶ Several expressly give the complainant the right to obtain prosecutorial review of an officer's negative decision on the filing of a petition,⁷⁷ and one expressly gives the complainant the right to obtain judicial review of such a decision.⁷⁸ The remainder, which constitute a majority, do not explicitly give the complainant either the right to file a petition without the consent of a third party or the right to obtain prosecutorial or judicial review of an intake officer's determination that a petition should not be filed.

As regards the rights of the complainant, the various model acts conflict. None of these acts gives the complainant an absolute right to file a petition, but two do give the complainant the right to prosecutorial review of an intake officer's decision not to file or seek the filing of a petition.⁷⁹

Even if an intake officer concludes that the filing of a petition is inappropriate or not proper, it can be argued that a complainant who is the victim of the juvenile's alleged offense should have the right to file a petition as a means of obtaining redress for the harm

⁷⁶ *Ala. Code* tit. 13, § 352 (1959); *Ark. Stat. Ann.* § 45-423 (Cum. Supp. 1975); *Del. Code Ann.* tit. 10 § 932 (1974); *Ill. Rev. Stat.* ch. 37, § 704-1 (1973); *Ky. Rev. Stat. Ann.* § 208.070 (1972); *Me. Rev. Stat. Ann.* tit. 15, § 2602 (1964); *Mass. Gen. Laws Ann.* ch. 119, § 54 (1975); *N.H. Rev. Stat. Ann.* § 169:3 (1964), *N.J. Stat. Ann.* § 2A:4-53 (Cum. Supp. 1975); *N.Y. Family Ct. Act* § 634 (McKinney 1975); *N.C. Gen. Stat.* § 7A-281 (Cum. Supp. 1975); *Ohio Rev. Code Ann.* § 2151.27 (Page Supp. 1975); *Ore. Rev. Stat.* § 419.482 (1975); *Pa. Stat. Ann.* tit. 11, §§ 50-302, 50-314 (Cum. Supp. 1976); *Tenn. Code Ann.* § 37-219 (Cum. Supp. 1975); *Va. Code Ann.* § 16.1-164 (1975); *W. Va. Code Ann.* § 49-5-7 (1976).

⁷⁷ *Fla. Stat.* § 39.05 (1975); *D.C. Code Ann.* § 16-2305 (1973); *Md. Ann. Code, Cts. & Judic. Proceedings* §§ 3-810, 3-812 (Cum. Supp. 1975); *Mont. Rev. Codes Ann.* § 10-1209 (Cum. Supp. 1975); *Nev. Rev. Stat.* § 62.128 (1975).

⁷⁸ *Cal. Welf. & Inst'ns Code* § 655 (West 1972).

⁷⁹ Sheridan, "Legislative Guide" § 13; YDDPA, "Legislative Guide" § 16.

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suffered. The juvenile court, however, does not exist to vindicate private wrongs. See *In re Edwin R.*, 67 Misc. 2d 452, 454, 323 N.Y.S.2d 909, 911 (Fam. Ct. 1971). It can also be argued that allowing a complainant to file without the consent of the intake officer provides a useful check on the officer who may have exercised his or her discretion with respect to the filing of a petition in an improper or undesirable manner. The drawback of giving a complainant the absolute right to file is that it may lead to the filing of groundless and ill-advised petitions. See "Uniform Act," Commissioner's note to § 19 at 416.

Standard 2.16 C. attempts to strike a balance between these competing interests by giving a complainant a right to prosecutorial review of an intake officer's determination that a petition should not be filed. See Olson and Shepard 55; see also National Advisory Commission, "Corrections" 254; Ferster and Courtless 1131-32. Under this standard an officer must notify a complainant of a negative decision with respect to the filing of a petition and of the reasons for this decision. The complainant can then obtain review of the decision by the prosecutor.

PART III: PREDISPOSITION
INVESTIGATIONS AND REPORTS

3.1 Availability and utilization of investigative services.

Investigative services should be made available to and utilized by all juvenile courts.

Commentary

Standard 3.1 states that investigative services, which consist of the conducting of predisposition investigations and the preparing of predisposition reports, should be made available to and utilized by all juvenile courts.

The purpose of a predisposition investigation is to collect information necessary and relevant to the court's fashioning of an appropriate dispositional order with respect to a juvenile whom the court has adjudicated delinquent. A predisposition investigation is to be distinguished from an intake investigation. An intake investigation is conducted by an intake officer at the intake stage in order to assist the officer in making a decision regarding the disposition of a complaint. A predisposition investigation is conducted by an investigating officer in cases in which there has been a judicial disposition of a complaint at intake resulting in the filing of a petition and the court has subsequently adjudicated the juvenile delinquent. After a pre-

disposition investigation, the officer prepares a predisposition report, which should summarize the results of the investigation and set forth a recommendation as to disposition and which is presented to the judge for use in making his or her dispositional decision.

Many juvenile and family court acts require that a presentence investigation be conducted in every case prior to the court's issuance of a dispositional order.⁸⁰ Other acts authorize the court in its discretion to order a presentence investigation.⁸¹ A few specify that an investigation is mandatory in certain types of cases and discretionary in other types of cases.⁸² The actual practice regarding presentence investigations and reports appears to vary widely from court to court. One study indicates that reports are rarely employed in some courts

⁸⁰ *Ark. Stat. Ann.* § 45-434 (Cum. Supp. 1975); *Cal. Welf. & Inst'n's Code* § 581 (West 1972); *Conn. Gen. Stat. Ann.* § 17-66 (1973); *D.C. Code Ann.* § 16-2319 (1973); *Fla. Stat.* § 39.09(3) (1975); *Idaho Code Ann.* § 16-1814 (Cum. Supp. 1975) (no decree other than discharge may be entered without social investigation); *Ill. Rev. Stat. ch. 37, § 705-1* (1973) (a juvenile cannot be committed to department of correction without report of social investigation); *Iowa Code* § 232.14 (1975); *Ky. Rev. Stat. Ann.* § 208.140 (1972); *Mass. Gen. Laws Ann. ch. 119, § 57* (Cum. Supp. 1976); *Miss. Code Ann.* § 47-21-19 (1972); *Mont. Rev. Codes Ann.* § 10-1221 (Cum. Supp. 1975); *Nev. Rev. Stat.* § 62.197 (1973); *N.H. Rev. Stat. Ann.* § 169:9 (Supp. 1973); *N.M. Stat. Ann.* § 13-14-29 (Supp. 1975); *S.D. Compiled Laws Ann.* § 26-8-22.11 (Supp. 1976); *Wash. Rev. Code* § 13.04.040 (1974); *Wyo. Stat. Ann.* § 14-115.28 (Cum. Supp. 1975).

In some jurisdictions where a predispositional investigation is statutorily required it has been held that a failure on the part of a judge to order a predispositional report prior to making a dispositional decision constitutes reversible error. See e.g., *Norwood v. City of Richmond*, 203 Va. 886, 128 S.E.2d 425 (1962); *Strode v. Broby*, 478 P.2d 608 (Wyo. 1970).

⁸¹ *Ala. Code tit. 13, § 360* (1959); *Alaska Stat.* § 47.10.210 (1975); *Colo. Rev. Stat.* § 19-1-108 (1973); *Del. Code Ann. tit. 10, § 935(e)* (1974); *Ga. Code Ann.* § 24A-2101(a) (Cum. Supp. 1975); *Hawaii Rev. Stat.* § 571-45 (Supp. 1975); *Ind. Stat. Ann.* § 33-12-2-22 (Burns 1975); *Kan. Stat. Ann.* §§ 38-804a, 38-804c (Cum. Supp. 1975); *Me. Rev. Stat. tit. 15, §§ 2601, 2610* (1964); *Md. Ann. Code, Cts. & Judic. Proceedings* § 3-818 (Cum. Supp. 1975); *Mich. Comp. Laws* § 712A.12 (1970); *Minn. Stat.* § 260.151 (1974); *Mo. Rev. Stat.* § 211.401 (1969); *Neb. Rev. Stat.* § 43-207 (1974); *N.Y. Family Ct. Act.* § 746 (McKinney 1975); *N.C. Gen. Stat.* § 7A-285 (Cum. Supp. 1975); *N.D. Cent. Code* § 27-20-28 (1974); *Okla. Stat. Ann. tit. 10, § 1115* (1971); *Ohio Rev. Code Ann.* § 2151.14 (Page 1968); *Ore. Rev. Stat.* § 419.500 (1975); *Pa. Stat. Ann. tit. 11, § 50-319* (Cum. Supp. 1975); *R.I. Gen. Laws Ann.* § 8-10-9 (1969); *S.C. Code Ann.* § 15-1375 (1962); *Tenn. Code Ann.* § 37-228 (Cum. Supp. 1975); *Tex. Fam. Code Ann.* § 54.04 (1975); *Va. Code Ann.* § 16.1-164 (1975); *W. Va. Code Ann.* § 49-5-14 (1976); *Wis. Stat.* § 48.08 (1973); see also *Ariz. Rev. Stat. Ann.* § 8-205 (1956); *La. Rev. Stat. Ann.* § 13:1569(9) (Cum. Supp. 1976).

⁸² *Utah Code Ann.* § 55-10-99 (Supp. 1975); *Vt. Stat. Ann. tit. 33, § 655* (Cum. Supp. 1975).

and regularly employed in others. See Ferster and Courtless 196-97; but see Paulsen and Whitebread 170.

The various model acts and standards either require or authorize predisposition investigations and reports.⁸³ A number of authorities have likewise approved the use of the predisposition investigation and report. *E.g.*, President's Commission, *Delinquency Task Force Report* 35; see L. Arthur and W. Gauger, *Disposition Hearings: The Heartbeat of the Juvenile Court* 1-2 (1974); Paulsen and Whitebread 171; National Council on Crime and Delinquency, "Juvenile Probation" in *Sourcebook on Probation and Parole* 146, 149-50 (C. Newman ed. 3d ed. 1975).

Nevertheless, the predisposition investigation and report, like intake screening and the nonjudicial handling of a juvenile, can be misused and abused. One prominent commentator summarized the objections to the predisposition investigation and report as follows:

Prehearing investigation is unsound both sociologically and legally. . . . for the following reasons: (1) the social and psychological sciences have not yet attained a level of diagnostic skill where it is possible, even under optimum circumstances of investigation, to determine from 'underlying problems' in the individual's history either the fact of present delinquency or the danger of future serious misconduct. (2) A court is not the proper place for the performance of a general child-welfare work either upon all children or upon that particular small minority that may come to be exposed to court contact rather than to a more apt source; it is designed rather for cases where authority must be used because of particular and dangerous conduct or neglect. (3) The facilities of the court are far from adequate for such social and psychological investigations as might lead even to reasonably sound inferences as to the child's past sociogenic and psychogenic history, let alone his present or future delinquency. Probation officers generally are not behavior experts, nor are they usually professional case workers, though they may employ quite properly some case-work methods. Specialists in the field of case-work would hesitate, upon discovering a few general problem traits in the background of a case, to draw conclusions from them that the child should be exposed to authoritarian adjudication in order to remedy his potential delinquency or that he needed the 'help' of a court. (4) The 'evidence' that is procured by the officer and provided to the court must perforce reflect the haste and lack of trained skill that characterizes prehearing investigations. . . . P. Tappan, *Juvenile Delinquency* 213-24 (1949).

Since these objections to the use of the predisposition investigation

⁸³"Judges Guides" 49-56; NCCD, "Model Rules," Rule 29; NCCD, "Standard Act" § 23; "Uniform Act" § 28; Sheridan, "Legislative Guide" § 30; Sheridan, "Standards for Juvenile Courts" 65-68; YDDPA, "Legislative Guide" 19.

and report have a great deal of validity, Standard 3.1 is intended to give only a qualified approval to their use, and the aim of the subsequent standards dealing with the predisposition investigation and report is to insure that they are properly used.

3.2 Necessity for and desirability of written guidelines and rules.

Juvenile probation agencies and other agencies performing investigative services should establish written guidelines and rules for the conduct of predisposition investigations and the preparation and submission of predisposition reports.

Commentary

Standard 3.2 calls for juvenile probation service agencies and other agencies that administer and provide investigative services to develop and publish written guidelines and rules concerning the conducting of predisposition investigations and the preparing of predisposition reports. The benefits of such rulemaking are similar to those previously discussed with respect to intake. See Standard 2.6 and commentary thereto. Investigating officers have an enormous amount of discretion with respect to the timing and scope of investigations. Administrative guidelines and rules are one method of curbing abuse of this discretion. Such guidelines and rules also promote the gathering of information that is accurate and relevant to the court's dispositional decision.

3.3 Scope of investigation; formulation of postdisposition plan; format, contents, length, and disclosure of report.

A. The scope of a predisposition investigation that the investigating officer conducts should be carefully tailored to the needs of the individual case and should vary depending upon the type of case and the issues involved. The officer should only collect evidence relevant to the court's dispositional decision.

B. When it is appropriate for the investigating officer to conduct a comprehensive investigation, the officer may secure information from existing records of the juvenile court, law enforcement agencies, schools, and other agencies with which the juvenile has come in contact and from interviews and conferences with the juvenile, the juvenile's family, school personnel, and individuals having knowledge of the juvenile.

C. An officer conducting a predisposition investigation may refer a juvenile for a physical or mental examination to a physician, psychiatrist, or psychologist only if a court order authorizing an examination is obtained. Such a court order should be issued only after a hearing on the need for such an examination.

D. The officer conducting the predisposition investigation should explore community resources as well as other resources that might be available to assist the juvenile. The officer should then formulate a postdisposition plan for the care and, where appropriate, for the treatment of the juvenile.

E. A written predisposition report summarizing the significant findings of the investigation should be prepared. The format, contents, and length of the report should be flexible. A comprehensive report should ordinarily include the following:

1. a summary of the facts that led to the adjudication, with respect to the conduct of the juvenile;
2. a summary of the juvenile's prior contacts with the juvenile court and law enforcement agencies, including the disposition following each contact and the reasons therefor;
3. a summary of the juvenile's home environment, family relationships and background;
4. a summary of the juvenile's school and employment status and background;
5. a summary of the juvenile's interests and activities;
6. a summary of any significant physical problems of the juvenile and description of any behavior problems of the juvenile that the officer learns of or observes in the course of the investigation, provided the officer is careful not to represent these observations as qualified professional evaluations;
7. a summary of the results and recommendations of any significant physical and mental examinations; and
8. an evaluation of the foregoing information, a recommendation as to disposition, and a suggested postdisposition plan of care and treatment.

F. The predisposition report should contain only information that is relevant to the court's dispositional decision, and all information should be presented in a concise, factual, and unbiased manner. The report should indicate how much time and effort was expended upon the investigation and the sources of information in the report.

G. The predisposition report should not be open to public inspection, but the juvenile's counsel and the attorney representing the state in connection with dispositional proceedings should be given access to the report.

Commentary

Standard 3.3 sets forth the powers, duties, and responsibilities of the investigating officer who conducts predisposition investigations and prepares predisposition reports.

Standard 3.3 deals specifically with the scope of a predisposition investigation and the contents of a predisposition report. Statutory and administrative guidelines in this regard generally suggest that the investigation should be extensive and that the report should include not only information concerning the juvenile's delinquent conduct and prior record, but also information concerning social factors such as the juvenile's home, family, and school environment and clinical factors such as the juvenile's physical and mental state, a recommendation with respect to disposition, and a postdisposition treatment plan.⁸⁴ Most of the various model acts as well as most of the literature on this subject are to the same effect. The following description of a "model" predisposition report is typical:

If the diagnostic study is to accomplish its purpose it must include skilled analysis of the child's perceptions of and feelings about his violations, his problems, and his life situation. It must shed light on the value systems that influence his behavior. It must consider the degree of his motivation to solve the problems productive of deviate behavior, as well as his physical, intellectual, and emotional capacities to do so. It must examine the influence of members of his family and other significant persons in his life in producing and possibly solving his problems. Neighborhood and peer group determinants of his attitudes and behavior must be analyzed.

All of this information must be brought together into a meaningful picture of a complex whole composed of the personality, the problem, and the environmental situation which must be dealt with. This configuration must be considered in relation to the various possible alternative dispositions available to the court. Out of this, a constructive treatment plan must be developed. "Correction in the United States, Juvenile Probation" 13 *Crime & Delinq.* 41, 44 (1967).

A comprehensive report of this sort, however, is not possible without an extensive investigation, which has certain costs. Extensive investigations result in a serious invasion of the privacy of juveniles and their families. Since they may involve the questioning of such individuals as school officials and neighbors, they can prove harmful to the reputation of juveniles and their families. See commentary to

⁸⁴ See *Conn. Gen. Stat. Ann.* § 17-66 (1973); *Idaho Code Ann.* § 16-1814 (Cum. Supp. 1975); *Ill. Rev. Stat.* ch. 37, § 705-1(3) (1973); *Iowa Code* § 232.14 (1974); *Ky. Rev. Stat. Ann.* § 208.140 (1972); *Mass. Gen. Laws Ann.* ch. 119, § 57 (Cum. Supp. 1976); *Minn. Stat.* § 260.151 (1974); *Mont. Rev. Codes Ann.* § 10-1221(2) (Cum. Supp. 1975); *N.H. Rev. Stat. Ann.* § 109.9 (1973); *N.M. Stat. Ann.* § 13-1429 (1975); *Vt. Stat. Ann.* tit. 33, § 655(b) (Cum. Supp. 1975); D.C. Super. Ct. Rules, Rule 32(c) (1975).

Standard 2.11. In addition, they require considerable resource expenditure that is not always warranted, especially in cases involving minor delinquent conduct.

Nevertheless, it does not necessarily follow that an extensive predisposition investigation is either impermissible or inappropriate. In determining the proper scope of an investigation, the objective of the juvenile dispositional-correctional process is important. While this subject is not directly within the purview of this volume and is covered in detail in other volumes,⁸⁵ a few brief comments in this regard are in order here. The juvenile dispositional-correctional process, theoretically at least, has traditionally had as its aim the rehabilitation of juvenile offenders. See President's Commission, *Delinquency Task Force Report* 2-3; W. Stapleton and L. Teitelbaum, *In Defense of Youth* 5-15 (1972); Mack, "The Juvenile Court," 23 *Harv. L. Rev.* 104 (1969). Given this aim, information of a social and clinical nature concerning the juvenile as well as information about the juvenile's delinquent conduct and prior record is relevant to the court's dispositional decision inasmuch as it presumably aids the court in fashioning a dispositional order tailored to the specific treatment needs of the individual juvenile. See Paulsen and Whitebread 171.

In recent years, however, the validity of the rehabilitative-therapeutic ideal has increasingly come under attack. It is now widely recognized that the juvenile justice system has not succeeded significantly in rehabilitating juvenile delinquents. See, e.g., *In re Gault*, 367 U.S. 1, 22 (1967); President's Commission, *Delinquency Task Force Report* 7. See also Martinson, "What Works?—Questions and Answers About Prison Reform," 35 *Pub. Interest* 22 (1974).

Whatever the theoretical aims of the dispositional-correctional process, dispositions should be arrived at in accordance with well-established concepts of fairness and equity. Intervention by the juvenile court in a juvenile's life is largely coercive intervention, and the reality is that a juvenile adjudicated delinquent may be deprived of his or her liberty and placed in a juvenile correctional institution that does not provide the juvenile with meaningful rehabilitative opportunities. See *In re Gault*, 367 U.S. 1, 27 (1967). It has been suggested that under these circumstances principles of culpability and the principle of proportionality or "just desserts" ought to be applied in determining the appropriate disposition of a juvenile adjudicated delinquent. Adherence to these principles would dictate that the type and length of disposition should primarily reflect the seriousness of the delinquent conduct and the degree of culpability of the juvenile who engaged in the conduct. See American

⁸⁵ See the *Juvenile Delinquency and Sanctions* and *Dispositions* volumes.

Friends Service Committee, *Struggle for Justice* 147-48 (1971); A. Von Hirsch, *Doing Justice* 66-76 (1976); see also Katkin, Kramer, and Hyman, "Three Models of Juvenile Justice," 12 *Crim. L. Bull.* 165, 169 (1976). The greater the adherence to these principles the less need there is for the court to possess information of a social and clinical nature, as opposed to information about the delinquent conduct itself.

There are other problems with predisposition investigations that also dictate the conclusion that a less extensive investigation than that which is generally recommended might well be preferable. Information is too often collected indiscriminantly in the course of an investigation and reports too often contain information that is neither helpful nor relevant to the judge's dispositional decision. Moreover, reports not infrequently contain information regarding and assessments of the juvenile and his or her family that are inaccurate and biased. See Krasnow, "Social Investigation Reports in the Juvenile Court: Their Uses and Abuses," 12 *Crime & Delinq.* 151-57 (1966) (hereinafter cited as Krasnow); Frey and Bubany, "Pre-Adjudication Review of the Social Record in Juvenile Court: A Low-Visibility Obstacle to a Fair Process," 12 *J. Fam. Law* 391, 393 (1972-73) (hereinafter cited as Frey and Bubany). There is a very real danger of such inaccuracy and bias because investigating officers in preparing a report sometimes rely upon gossip and hearsay and upon their own highly subjective observations and judgments as well as the highly subjective observations and judgments of others concerning the juvenile and his or her family. The aforementioned problems are in part the consequence of the fact that many officers are inadequately trained and that they may often only have time to conduct a superficial investigation and prepare a superficial report because of their heavy caseloads. See R. Clegg, *Probation and Parole: Principles and Practices* 56 (1964); Krasnow 155.

Standard 3.3 A., dealing with the scope of a predisposition investigation, does not attempt to resolve the issue of what the objectives of the juvenile dispositional-correctional process should be and is designed to accommodate a variety of views as to this issue. This standard states that the scope of investigation should vary from case to case, and it indicates that in some cases an extensive investigation involving the collection of information of a social and clinical nature may be necessary or desirable. In other cases such an investigation may be unnecessary and undesirable. It should also be noted that there may be cases in which the court has sufficient information to make an appropriate dispositional decision without a predisposition investigation and report, and in such cases the court should be permitted to do so. For example, if a juvenile is adjudicated delin-

quent because of a relatively minor traffic offense, it generally should not be necessary for the court to have a predisposition report for purposes of making a dispositional decision.

Standard 3.3 B. lists some of the sources from which an officer may secure information in those cases in which an extensive investigation is appropriate. Under this standard the investigating officer may interview the juvenile in order to elicit dispositional information, but the juvenile should have the right to consult with counsel in connection with this questioning.

Standard 3.3 C. provides that an officer conducting a predisposition investigation may refer a juvenile for a physical or mental examination to the appropriate professionals. A number of juvenile and family court acts provide for physical and mental examinations of juveniles.⁸⁶ The findings of such examinations can sometimes be of assistance to judges making dispositional decisions. They entail, however, a great invasion of the juvenile's privacy and juveniles are sometimes committed to a secure or semi-secure facility for evaluation for a substantial period of time. Moreover, the reliability of the findings of intelligence and psychological tests and examinations is frequently

⁸⁶*Ala. Code* tit. 13, § 358 (1959); *Cal. Welf. & Inst'n's Code* § 741 (West 1972); *Colo. Rev. Stat.* § 19-3-107 (1973) (court may order examination if it appears from evidence at adjudicatory hearing that child may be mentally ill or deficient); *Conn. Gen. Stat. Ann.* § 17-66 (1973); *D.C. Code Ann.* § 16-2315 (1975); *Del. Code Ann.* tit. 10, § 937 (1974) (following adjudication court may defer proceedings pending examination); *Fla. Stat.* § 39.08 (1975); *Ga. Code Ann.* § 24A-2101(b) (Cum. Supp. 1975); *Hawaii Rev. Stat.* § 571-44 (1968); *Idaho Code Ann.* § 16-1814(4) (Cum. Supp. 1975) (upon entry of decree finding a child to be delinquent the court may order examination); *Ind. Stat. Ann.* § 31-5-7-21 (Burns 1973); *Kan. Stat. Ann.* § 38-823 (Cum. Supp. 1975) (during pendency of a hearing and before final order or decree court may refer child for evaluation); *Ky. Rev. Stat. Ann.* § 208.160(1) (Cum. Supp. 1974); *La. Rev. Stat. Ann.* § 13:1583 (Supp. 1976); *Md. Ann. Code, Cts. & Judic. Proceedings* § 3-818(b) (Cum. Supp. 1975); *Mass. Gen. Laws Ann.* ch. 119, § 68A (Cum. Supp. 1976); *Mich. Comp. Laws* § 712A.12 (1970); *Minn. Stat.* § 260.151(1) (1974); *Miss. Code Ann.* § 43-21-23 (1972); *Mont. Rev. Codes Ann.* § 10-1221 (Cum. Supp. 1975); *Neb. Rev. Stat.* § 43-206.03 (3) & (4) (Supp. 1975); *Nev. Rev. Stat.* § 62.197(2) (1973); *N.H. Rev. Stat. Ann.* §§ 169:9, 169:9a (Supp. 1973); *N.M. Stat. Ann.* § 13-14-29(b) & (d) (Supp. 1975); *N.C. Gen. Stat.* § 7A-286(6) (Cum. Supp. 1975); *N.D. Cent. Code* § 27-20-28(2) (1974); *Okla. Stat. Ann.* tit. 10, § 1120 (1971); *Pa. Stat. Ann.* tit. 11, § 50-519(b) (Cum. Supp. 1975); *R.I. Gen. Laws Ann.* § 14-1-51 (1969); *S.C. Code Ann.* § 15-1095.20(c) (Supp. 1975); *S.D. Compiled Laws Ann.* § 26-8-22.8 (Supp. 1976) (court may order examination whenever it appears from evidence at adjudicatory hearing that the child may be mentally ill or deficient); *Tenn. Code Ann.* § 37-228(c) (Cum. Supp. 1975); *Utah Code Ann.* § 55-10-85 (Supp. 1975); *W. Va. Code Ann.* § 49-5-4 (1976); *Wis. Stat.* § 48.24 (1973); *Wyo. Stat. Ann.* § 14-115.20 (Cum. Supp. 1975).

open to question. See Kobetz and Bosarge 266-67; Sussman, "Psychological Testing and Juvenile Justice: An Invalid Judicial Function," 10 *Crim. L. Bull.* 117 (1974); *Dispositional Procedures* volume. Accordingly, investigating officers should exercise restraint in referring a juvenile for a physical or mental examination in connection with a predisposition investigation and the use of the physical or mental examination ought to be surrounded with safeguards in order to prevent its abuse. Such safeguards include the following: a prohibition against a physical or mental examination prior to adjudication except with the consent of the juvenile upon the advice of counsel, or with the consent of the juvenile's guardian *ad litem* upon the advice of counsel; a requirement of a hearing, at which the juvenile should have the right to the assistance of counsel, prior to the issuance of an order; a prohibition against commitment of a juvenile to a hospital or other facility for such an examination except when the court finds that such an examination cannot be made on an outpatient basis; and a strict limit upon the duration of a commitment. Another volume deals in more detail with the subject of physical and mental examinations.⁸⁷

Standard 3.3 E. and F. deals with the contents of a predisposition report. Here again it must be emphasized that the contents of a report will vary depending upon the nature of the case and that it need not contain detailed social and clinical data.

Standard 3.3 E. suggests what a report should contain in cases in which a comprehensive report is appropriate and is self-explanatory. This standard is based upon standards issued by the California Youth Authority. California Department of the Youth Authority, "Standards for the Performance of Probation Duties" 15-17, 23-24 (1970); see also L. Arthur and W. Gauger, *Disposition Hearings, The Heartbeat of the Juvenile Court* 5 (1974); Schwartz, "Law and Tactics in Juvenile Court Sentencing," *Juvenile Court Practice Institute* 62 (1969); see generally P. Keve, *The Probation Officer Investigates* (1960).

Standard 3.3 F. indicates that the report should contain a statement of the sources of the information in it and a statement of the time and effort the officer has expended on the investigation. In addition, a copy of the reports on any physical or mental examination that has been made should be included. Such requirements are designed to aid the judge in assessing the relevancy, accuracy, and objectivity of the contents of the report.

Finally, Standard 3.3 G. provides that predisposition reports should

⁸⁷See *Dispositional Procedures*, Standard 2.3 D.

not be open to public inspection, as they contain information of a private nature that can stigmatize the juvenile and his or her family. Under this standard, however, these reports should be disclosed to the juvenile's counsel so that any irrelevant, inaccurate, or biased material in the report that is prejudicial to the juvenile can be refuted. As a matter of fairness, the attorney representing the state should have access to the report coextensive with that of the juvenile's counsel. The report should also be disclosed to the appellate court and the attorneys representing the juvenile and the state upon appellate review of the dispositional proceedings and the disposition. Limited disclosure should be made under certain circumstances to agencies and individuals having postdispositional correctional duties and responsibilities with respect to the juvenile. See generally Krasnow 156-164; Higgins, "Confidentiality of Presentence Reports," 28 *Albany L. Rev.* 12 (1964); Waterman, "Disclosure of Social and Psychological Reports at Disposition," 7 *Osgoode Hall L.J.* 213 (1969). Other volumes deal in more detail with the disclosure of predisposition reports.⁸⁸

3.4 Investigation; when conducted. Report; when submitted.

A. An investigating officer should not conduct a predisposition investigation until a juvenile has been adjudicated delinquent, unless the juvenile with the advice of counsel consents to an earlier investigation.

B. An investigating officer should submit the predisposition report to the court subsequent to adjudication and prior to disposition. In no event should the court consider the report in advance of adjudication.

Commentary

Standard 3.4 deals with the timing of the investigating officer's conducting of predisposition investigations and the submission of predisposition reports. It prohibits a predisposition investigation prior to adjudication without the consent of the juvenile upon the advice of counsel and prohibits the submission of a predisposition report to the court prior to adjudication, in the event that an investigation is in fact undertaken prior to adjudication.

This standard is consistent with various model acts and standards.⁸⁹ It is also consistent with the recommendations of various commentators. *E.g.*, Frey and Bubany 401.

⁸⁸See *Dispositional Procedures* Standard 2.4, and *Juvenile Records and Information Systems*.

⁸⁹NCCD, "Model Rules," Rule 29; Sheridan, "Legislative Guide" § 30; Sheridan, "Standards for Juvenile Courts" 66; YDDPA, "Legislative Guide" § 19. See also NCCD, "Standard Act" § 23.

Statutory provisions vary regarding the timing of the predisposition investigation and the submission of a predisposition report. A few prohibit the submission of a report or prohibit its use prior to the juvenile's being adjudicated delinquent,⁹⁰ and some prohibit its submission or use prior to adjudication except under certain circumstances, such as an admission by the juvenile of the allegations of the petition or the consent of the juvenile or his or her parents or both.⁹¹ The majority, however, contain no such prohibition. The practice of preadjudication review, by the judge, of a report has been a fairly common one. See *In re Corey*, 266 Cal. App. 2d 295, 72 Cal. Rptr. 115 (1968); Teitelbaum, "The Use of Social Reports in Juvenile Court Adjudications," 7 *J. Fam. L.* 2, 425 (1967) (hereinafter cited as Teitelbaum).

The preadjudication review of a predisposition report by the judge is in part the function of the extent to which there is a separation between the adjudicatory and dispositional phases of the juvenile court process. Preadjudication review of the report is necessary, at least in a contested case, unless there is a bifurcated hearing process under which the adjudicative and dispositional hearings are separate and distinct.⁹² Although some juvenile and family court acts require a bifurcated hearing process,⁹³ many do not contain such a requirement.⁹⁴

⁹⁰ *Del. Code Ann.* tit. 10, § 935 (1974); *D.C. Code Ann.* § 16-2319 (1973); *Md. Ann. Code, Cts. & Judic. Proceedings* § 3-818 (Cum. Supp. 1975); *N.Y. Family Ct. Act* § 746 (McKinney 1975); *Vt. Stat Ann.* tit. 33, § 655 (Cum. Supp. (1975)).

⁹¹ *Colo. Rev. Stat.* § 19-1-108 (1973); *Fla. Stat.* § 39.09 (1975); *Ga. Code Ann.* § 24A-2101(a) (Cum. Supp. 1975); *Hawaii Rev. Stat.* § 571-45 (Supp. 1975); *Iowa Code* § 232.14 (1975); *Minn. Stat.* § 260.151 (1974); *Nev. Rev. Stat.* § 62.197 (1973); *N.M. Stat. Ann.* § 13-14-29 (Supp. 1975); *N.C. Gen. Stat.* § 7A-289.6 (Cum. Supp. 1975); *N.D. Cent. Code* § 27-20-28 (1974); *Pa. Stat. Ann.* tit. 11, § 50-319 (Cum. Supp. 1975); *Utah Code Ann.* § 55-10-99 (Supp. 1975); *Wyo. Stat. Ann.* § 14-115.28 (Cum. Supp. 1975).

⁹² In *In re Gladys R.*, 1 Cal. 3d 855, 464 P.2d 127, 83 Cal. Rptr. 671 (1970), the California Supreme Court held that where the legislature intended to create a bifurcated hearing process, it was reversible error for the court to review the predisposition report before the adjudicatory hearing. For an excellent discussion of the constitutionality of the practice of the court's preadjudication review of a predisposition report see Frey and Bubany 395-97, and Teitelbaum 430-433. See also Annot. 43 A.L.R. 2d 1128, 1141-43 (1955). But see *In re Holmes* 379 Pa. 599, 109 A.2d 523 (1954), cert. denied, 348 U.S. 973 (1955).

⁹³ E.g., *Cal. Welf. & Inst'n's Code* §§ 701, 702, 706 (1972); *D.C. Code Ann.* § 16-2317(c) (1973); *Ga. Code Ann.* § 24A-2201(b)-(c) (Cum. Supp. 1975); *Md. Ann. Code, Cts. & Judic. Proceedings* § 3-820 (Cum. Supp. 1975); *N.Y. Family Ct. Act* §§ 746, 749 (McKinney 1975); *N.D. Cent. Code Ann.* § 27-20-29 (1974).

⁹⁴ E.g., *Ala. Code* tit. 13, § 354 (1958); *Ind. Ann. Stat.* § 31-5-7-15 (Cum. Supp. 1976); *Iowa Code* § 232.27 (1975); *Minn. Stat.* §§ 260.155, 260.185

The practice of preadjudication review of the predisposition report by the judge has been widely condemned. See, e.g., NCCD, "Model Rules" 61-62; Frey and Bubany, 399-402; Krasnow, 152-155; Teitelbaum 441. The main objection to the practice of preadjudication review of the predisposition report is that the report may contain information that is relevant to the judge's dispositional decision but irrelevant to the adjudicatory decision and that such information may prove prejudicial to the juvenile. The adjudicatory decision involves a determination as to whether the juvenile has engaged in delinquent conduct. The predisposition report often contains not only information relating to the juvenile's delinquent conduct but also information relating to the juvenile's prior record and information of a social and clinical nature. See commentary to Standard 3.3. Such information may be prejudicial to the juvenile because it may give the judge the impression that the juvenile has serious problems and is in need of some sort of supervision and services. As a result the judge may base his or her finding of delinquency upon social and clinical data indicating the juvenile needs "help" rather than upon legal proof of delinquent conduct. *In re R.*, 1 Cal. 3d 855, 860 at n. 5, 464 P.2d 127, 130 at n.5, 83 Cal. Rptr. 671, 674 at n.5 (1970); NCCD, "Model Rules" 29; Tappan, "Judicial and Administrative Approaches to Children with Problems," *Justice for the Child* 188 (M. Rosenheim ed. 1962); Krasnow 154, Frey and Bubany 391.

Another objection to preadjudication review of the report is that it may contain information that is relevant to the dispositional decision but that is false or unreliable. See commentary to Standard 3.3. Moreover, the predisposition report is not introduced as evidence in open court. Hence it is not subject to the rules of evidence that normally apply to the introduction of evidence at an adjudicatory hearing, and that constitute a safeguard against the introduction of false or unreliable evidence. See Frey and Bubany 393; Krasnow 155.

There are still other objections to preadjudication review of the report, which one commentator summarized as follows:

[I]nvestigation before adjudication, especially where a child denies commission of the delinquent act, is an unwarranted invasion of the privacy of a possibly innocent subject and his family and may spread knowledge of the proceedings throughout the neighborhood. Moreover, it is contended that such a practice inevitably fails to foster confidence in the justice meted out by the court and accordingly

(1974); *Miss. Code Ann.* § 43-21-19 (1972); *R.I. Gen. Laws Ann.* §§ 14-1-30 (1969), 14-1-32 (Supp. 1975).

subjects the investigator to resistance and noncooperation. Another argument is that, since some cases will be dismissed, the time and effort invested in conducting the social study at this point is an unwise expenditure of the probation staff's limited resources. Krasnow 154.

Given the potential for infringement of the juvenile's rights and prejudice to the juvenile associated with preadjudication review of the predisposition report by the judge, such review should be severely limited. One way to limit preadjudication review is simply to prohibit the making of a predisposition investigation report until the court adjudicates a juvenile delinquent. Such a limitation, however, would cause delay in the dispositional proceedings, and there is no real need for such a limitation in cases in which the juvenile voluntarily and intelligently consents to the making of a predisposition investigation because he or she does not intend to contest the case. Therefore, Standard 3.4 prohibits the making of a predisposition investigation before there is a formal delinquency adjudication except in cases in which the juvenile, upon advice of counsel, consents to an investigation before a formal adjudication.

**PART IV: ORGANIZATION AND ADMINISTRATION
OF JUVENILE INTAKE AND PREDISPOSITION
INVESTIGATIVE SERVICES**

4.1 Specialization of the intake, investigative, and probation supervision functions.

A. Whenever possible, intake screening, predisposition investigations, and supervision of juveniles should be treated as specialized functions.

B. Juvenile probation agencies or other agencies responsible for performing these three functions should not ordinarily simultaneously assign probation supervision duties as well as intake screening and predisposition investigative duties to the same individual. Such agencies should either establish separate units for each of these three functions or establish one unit with the responsibility for intake screening and predisposition investigation and another unit with the responsibility for supervision of juvenile probationers.

Commentary

Standard 4.1 is directed at jurisdictions in which the same organizational entity performs the three functions of intake screening, predisposition investigation, and the supervision of juveniles whom

the court has adjudicated delinquent and placed on judicial probation. In most jurisdictions, agencies known as juvenile probation agencies have traditionally provided juvenile and family courts not only with intake and investigative services, but also with probation supervision services.⁹⁵ As a result, intake investigative and probation supervision services are collectively known as juvenile probation services, and these services are actually provided at the operational level by individuals known as juvenile probation officers.

An individual officer may perform all three of the major line functions—intake screening, predisposition investigation, and supervision of juvenile probationers—performed by the agency as whole, or the officer may perform only one or two of these functions. The extent to which there is a specialization or narrowing of the functions that an individual officer performs depends in part upon the size of the staff of the agency for which the officer works. Some agencies, particularly in rural and semi-rural areas, have a staff consisting of a single officer with or without support personnel. Such an officer must be a generalist rather than a specialist and must perform all three of the aforementioned functions. There appears to be a trend toward the specialization of the intake function, and many larger and better staffed agencies have separate intake units. See Ferster and Courtless 1130 at n. 16. As to the predisposition investigative and the probation supervision functions, it appears that the officer who conducts a predisposition investigation on a juvenile generally supervises the juvenile in the event that the court places him or her on judicial probation. See Kobetz and Bosarge 429; see also Sheridan, "Standards for Juvenile Courts" 91.

Standard 4.1 A. recommends that juvenile probation agencies treat intake screening, predisposition investigation, and supervision of juvenile probationers as specialized functions and assign duties to juvenile probation officers accordingly. Such functional specialization is desirable for several reasons.

Functional specialization eliminates the fragmentation of energies and efforts that performance of all three functions by the same officer can produce. As a result of such fragmentation, all three of these functions may be performed ineffectively and inefficiently.

⁹⁵There are approximately 1,607 juvenile probation agencies in the fifty states and the District of Columbia. These agencies employ approximately 16,217 officers of which approximately 4,395 work exclusively with juveniles and approximately 11,822 work with both juveniles and adults. J. Newberger, "Organizational Patterns of Juvenile Probation and Detention Services: A Nation-Wide Survey and Analysis" 10-13 (Master's thesis, University of South Dakota 1974).

The more common result is that the probation supervision function is neglected in favor of the intake and investigative functions. It appears that officers who perform all three functions are sometimes so busy doing intake screening, conducting predisposition investigations, preparing predisposition reports, and making court appearances in connection with these reports that they do not have time to adequately supervise probationers. See Kendall, "A Study of the Juvenile Court of the District of Columbia, Part I: Caseflow and Calendar Management" in Committee on the Administration of Justice of the Judicial Council, Committee on the District of Columbia, U.S. Senate, Court Management Study Part II, 198 (May 1970); Czajkoski, "Functional Specialization in Probation and Parole," 15 *Crime & Delinq.* 238, 246 (1969) (hereinafter cited as Czajkoski). Although all three of these functions are generally considered equal in importance, the performance of the intake and investigative functions tends to take precedence over the probation supervision function because the officer doing intake screening and predisposition investigations must meet specific deadlines that are statutorily or judicially imposed.

Functional specialization also has other advantages. The performance of different functions may require somewhat different skills and knowledge. Functional specialization allows an officer to be assigned to the performance of the function he or she is best suited to perform because of personality, training, or experience, and it is to be expected that an officer who is assigned to the performance of one particular function will develop some expertise in it. In addition, functional specialization may facilitate supervisory control of officers.

Standard 4.1 B. recommends that juvenile probation agencies should establish a separate unit for each of the three functions. Alternatively, this standard recommends that these agencies should establish one unit for intake screening and predisposition investigation and another unit for supervision of juvenile probationers. In any event an officer should not simultaneously be assigned intake screening and predisposition investigative duties as well as probation supervision duties.

Combination of the intake and investigative function with the probation supervision function can lead to role conflict. Officers who supervise juvenile probationers play what is generally characterized as a "therapeutic" role and usually engage in some counseling of juvenile probationers. If the officer who is assigned to supervise the juvenile has previously had contact with the juvenile in connection with intake screening or a predisposition investigation, the officer

may find himself or herself "prejudiced against or oversympathetic toward the child and unable to function objectively." Kobetz and Bosarge 429. Furthermore, if the officer has filed or recommended the filing of a petition at intake, the juvenile and his or her family may resent the officer's actions. Likewise, if the officer has recommended to the court the placement of the juvenile on judicial probation or some more severe disposition, the juvenile and his or her family may resent the officer's action. Such resentment can hinder the establishment of the kind of rapport between the officer and the juvenile that is necessary for a "therapeutic" relationship. It has been argued that the intake screening and predisposition investigative functions should be combined with the probation supervision function on the ground that it is advantageous for the officer who supervises a juvenile probationer to have conducted the intake or presentence investigation with respect to the juvenile because the officer is already familiar with the case, has already established contact with the juvenile and his or her family, and has previously worked out a probation plan with them. See Czajkoski 243-44. On balance, however, the intake screening and predisposition investigative functions are more incompatible than compatible with the probation supervision function because of the potential for role conflict when an officer performs all three of these functions simultaneously.

While the performance of probation supervision duties is not compatible with either the performance of intake screening duties or predisposition investigation duties, intake screening and predisposition investigations are compatible, and it is desirable to combine them. The intake investigation generally covers much of the same ground as the predisposition investigation, and if the officer conducts both the intake investigation and the predisposition investigation needless duplication of efforts is avoided.

4.2 Executive agency administration vs. judicial administration.

Intake and predisposition investigative services should be administered by an [executive] agency rather than by the judiciary.

Commentary

Standard 4.2 addresses the controversial issue of whether administrative responsibility for intake and predisposition investigative services should be lodged in the judicial or in the executive branch of government.

Juvenile probation agencies have traditionally provided juvenile

courts with intake and predisposition investigative services as well as probation supervision services, and these services have traditionally been judicially administered. See Kobetz and Bosarge 327-28. Thus, the nation's first juvenile court act, which the Illinois Legislature enacted in 1899, specified that the juvenile court was to appoint juvenile probation officers to provide these services and to supervise them in the performance of their duties. State of Illinois Laws, An Act to Regulate the Treatment and Control of Dependent, Neglected and Delinquent Children § 6 (February 7, 1899).

There are several patterns with respect to the administration of juvenile probation services that include not only intake and predisposition investigative services but also probation supervision services. In the majority of jurisdictions juvenile probation services are judicially administered.⁹⁶ In a few jurisdictions the juvenile or family court has the option of appointing its own juvenile probation officers or obtaining juvenile probation services from an executive agency.⁹⁷ Another pattern is for an executive agency or a service to provide these services to juvenile and family courts.⁹⁸ In a few jurisdictions the employees of an executive agency serve as juvenile probation

⁹⁶ *Ala. Code* tit. 13, § 360 (1958) (juvenile court appoints juvenile probation officers from candidates certified by State Department of Public Welfare); *Ark. Stat. Ann.* §§ 45-410, 45-414 (Cum. Supp. 1975); *Conn. Gen. Stat. Ann.* § 17-57 (1973); *Del. Code Ann.* tit. 10, § 911 (1975); *Ga. Code Ann.* § 24A-601 (Cum. Supp. 1975); *Hawaii Rev. Stat.* § 571-6 (1968); *Ill. Rev. Stat. ch. 37*, § 706-5 (1973); *Ind. Ann. Stat.* § 33-12-2-19 (Burns 1975); *Iowa Code* § 231.8 (1975); *Kan. Stat. Ann.* §§ 38-804a, 38-804c, 38-805a, 38-814 (Cum. Supp. 1975); *La. Rev. Stat. Ann.* §§ 13:1587, 13:1587.1 (1968); *Mass. Gen. Laws Ann. ch. 276*, §§ 83, 83A (1972); *Mich. Comp. Laws* § 712A.9 (1970); *Mo. Rev. Stat.* § 211.351 (1969); *Mont. Rev. Codes Ann.* § 10-1234 (Cum. Supp. 1975); *Neb. Rev. Stat.* § 43-207 (1974); *N.J. Stat. Ann.* §§ 2A:4-11 (1952); 2A:168-5 (Cum. Supp. 1970); *Nev. Rev. Stat.* §§ 62.110, 62.115, 62.120, 62.122, 62.123 (1975); *N.M. Stat. Ann.* § 13-14-7 (Supp. 1975); *N.C. Gen. Stat.* § 7A.289.3 (Cum. Supp. 1975); *N.D. Cent. Code* § 27-20-05 (1974); *Ohio Rev. Code Ann.* §§ 2151.13, 2151.15 (Page 1968); *Ore. Rev. Stat.* §§ 419.602, 419.604, 419.606 (1975); *Pa. Stat. Ann.* tit. 19, § 1053 (1964); tit. 11, § 50-201 (Cum. Supp. 1976); *S.C. Code Ann.* §§ 15-1129, 15-1130, 15-1136, 15-1281.4, 15-1281.5, 15-1291.4, 15-1291.5, 15-1301.4, 15-1301.5, 15-1311.3, 15-1311.4, 15-1311.4, 15-1373, 15-1432, 15-1434 (1962); *S.D. Compiled Laws Ann.* §§ 26-7-3, 26-7-6, 26-7-7 (1967); *Tenn. Code Ann.* § 37-205 (Cum. Supp. 1975); *Utah Code Ann.* § 55-10-73 (1974); *Wash. Rev. Code* §§ 13.04.040, 13.07.040 (1974).

⁹⁷ *Ariz. Rev. Stat. Ann.* § 8-203 (1974); *Colo. Rev. Stat. Ann.* § 19-5-101 (1973); *Ky. Rev. Stat. Ann.* § 208.320 (1972); *Minn. Stat.* § 260.311 (1974).

⁹⁸ *Alaska Stat.* § 47.10.210 (1975); *D.C. Code Ann.* § 11-1722 (1973); *Fla. Stat.* § 959.28 (1975); *Me. Rev. Stat. Ann.* tit. 34, § 1591 (Supp. 1973); *N.H. Rev. Stat. Ann.* § 504:13 (Supp. 1973); *N.Y. Exec. Law* § 256 (McKinney 1972); *Vt. Stat. Ann.* tit. 33, § 638 (Cum. Supp. 1975); see also *Wyo.*

officers but they perform their duties under the supervision and control of the court.⁹⁹ Still another pattern of administration is a system under which the services provided to some courts within a jurisdiction are the administrative responsibility of the judiciary, and the services provided to other courts within the same jurisdiction are the administrative responsibility of an executive agency.¹⁰⁰

Although the majority of juvenile probation services are judicially administered, there is a serious question concerning the constitutionality of judicial administration of intake services. A juvenile is constitutionally entitled to an impartial and unbiased judge at an adjudicatory hearing under the due process clause of the fourteenth amendment. See *In re Murchison*, 349 U.S. 133 (1955); see also *In re Gault*, 387 U.S. 1, 25 (1967). Judges who select and supervise intake personnel are selecting and supervising persons who play a role akin to that of prosecutorial personnel in the adult criminal courts, since they make an initial and often final determination as to the filing of a complaint. It has been suggested that a judge may not perform prosecutorial functions as well as judicial functions on the ground, at least in part, that a genuinely impartial hearing conducted with critical detachment is difficult if the judge involves himself or herself in the prosecution of the case. See *Figueroa Ruiz v. Delgado*, 359 F.2d 718 (1st Cir. 1966); see also *In re Murchison*, 349 U.S. 133 (1955); *Wong Yang Sung v. McGrath*, 339 U.S. 33 (1950); *American Cyanamid v. F.T.C.*, 363 F.2d 757 (6th Cir. 1966). Similarly, a judge's involvement in the selection and supervision of intake personnel may render a genuinely impartial hearing conducted with critical detachment difficult. The judge knows that his or her own staff have concluded that the formal handling of the juvenile is necessary and desirable, and it is conceivable that this knowledge may have some impact on his or her decision, especially if the judge has a close and continuous supervisory relationship with the intake staff that has fostered a great deal of confidence in their judgment. ABA, "Committee Report" 7.

The issue of the constitutionality of judicial administration of intake under the due process clause of the fourteenth amendment has rarely been litigated and has yet to be resolved. There are only

Stat. Ann. §§ 5-84.1-5-84.3 (Cum. Supp. 1975) (juvenile probation officers appointed by county commissioners with approval of judge).

⁹⁹*Md. Code Ann.* art. 52A, § 14-17 (1972); *R.I. Gen. Laws Ann.* §§ 8-10-9, 8-10-17, 8-10-22 (1969); *W. Va. Code Ann.* § 49-5-15 (1976); *Wis. Stat.* §§ 48.06, 48.07 (1973).

¹⁰⁰*Cal. Welf. & Inst'ns Code* §§ 575, 576 (West 1972); *Idaho Code Ann.* § 16-1820 (Cum. Supp. 1975); *Miss. Code Ann.* §§ 43-23-43 (1972), 43-27-20 (Cum. Supp. 1975); *Tex. Rev. Civ. Stat. Ann.* art. 5142, 5142a, 5142a-2-5242c-4 (1971); *Va. Code Ann.* § 16.1-203-16.1-206 (1975).

two reported decisions on this issue.¹⁰¹ In *In re Reis*, 7 Crim. L. Rptr. 2151 (R.I. Fam. Ct. April 14, 1970), it was held that an intake procedure under which family court judges participated personally in intake proceedings was violative of the due process clause. (Under Rhode Island's intake procedure judges had access to investigative reports concerning juveniles written by intake personnel and they made the final decision as to when a report was to be filed.) In *In re Appeal in Pima County Anonymous Juvenile Action No. J-24818-2*, 110 Ariz. 98, 515 P.2d 600, cert. denied, appeal dismissed, 417 U.S. 939 (1974), it was held that an intake procedure under which a juvenile court judge generally supervised intake personnel does not offend due process requirements.

Whatever the constitutionality of judicial administration of juvenile intake services, there is a serious question about the propriety and desirability of judicial administration of agencies that provide intake services, predisposition investigative services, or juvenile probation services to juvenile and family courts. Juvenile and family court judges are increasingly required to pass upon claims by juveniles and their families that the actions of such agencies constitute a violation of their constitutional and statutory rights, and they are increasingly required to monitor the quality and quantity of agency services. In addition, where such agencies are judicially administered their increasing unionization has led to the involvement of judges and other court officials in negotiations with union representatives, and subsequent contract disputes may have to be resolved by the courts. Proper performance of these judicial functions calls for an impartial and independent judiciary. As one commentator has stated, "When the judge is also the administrator [of the juvenile probation agency], this is not possible since he is placed in the position of judging his own actions." Sheridan, "Legislative Guide" 8. In regard specifically to intake services, juvenile and family court judges are more likely to make an impartial and independent judgment as to whether to adjudicate a juvenile delinquent if they do not directly control the personnel who make intake dispositional

¹⁰¹In recent years several legislatures have enacted legislation transferring the control of juvenile probation services from the judiciary to an executive agency, and such legislation is sometimes challenged as violative of state constitutional provisions. See e.g., *Bowne v. County of Nassau*, 37 N.Y.2d 75, 371 N.Y.S.2d 449 (1975) (New York Court of Appeals rejected claim that the county was violative of state constitutional provisions on the ground that juvenile probation services were not part of the court system defined in the state constitution and hence judicial control of these services depended solely upon statutory authorization). See also *State ex rel. Weinstein v. St. Louis County*, 451 S.W.2d 99 (Mo. 1970); *In re Woodward*, 14 Utah 2d 336, 384 P.2d 110 (1963).

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decisions. Similarly, juvenile and family court judges are more likely to make an independent and impartial judgment in reviewing predisposition reports if they do not directly control the personnel who prepare these reports.

A related problem with judicial administration of juvenile probation services is that it may inhibit objective decision making on the part of intake and investigating officers. Intake and investigating officers are more likely to make intake screening decisions and predisposition recommendations based upon an impartial and independent evaluation of all relevant factors without being unduly influenced by the perceived views of the judiciary when the judiciary does not appoint and supervise them.

Still another objection to judicial administration of these services is that they are often sufficiently large and complex to call for "continuous intensive administrative attention," which judges do not have time to provide. President's Commission, *Corrections Task Force Report* 135; Kobetz and Bosarge 334; Keve 175-77. The extension of greater procedural protections to juveniles in the wake of *In re Gault* and its progeny, and the growth in the number of juveniles brought to the attention of the juvenile and family courts, has led to an increase in the number and length of judicial proceedings involving juveniles. Thus, the demands upon judges to perform traditional judicial functions have increased, with the result that they have less time to perform administrative functions. Moreover, judges frequently lack the interest and expertise necessary for effective administration. While they can delegate the responsibility for administration of these services to professional administrators, organizational effectiveness and continuity of policy are apt to be impaired in an agency subject to the administrative direction of both judges and professional administrators. President's Commission, *Corrections Task Force Report* 35.

It has been suggested that judicial administration is preferable to executive agency administration on the ground that juvenile and family court judges may have more confidence in a staff under their immediate control as opposed to a staff under the control of an executive agency. See President's Commission, *Corrections Task Force Report* 35; Keve 174-77. Executive agency administration, however, does not preclude the establishment of an effective working relationship between the agency staff and the judges of the court to which it is providing services. In jurisdictions where executive agency administration exists, there is some evidence that such relationships do develop. President's Commission, *Corrections Task Force Report* 35. Provision for the involvement of the judiciary in the development of policies, practices, and procedures

can and should be made in order to foster such relationships. One method of doing this is through the establishment of an advisory committee, the membership of which includes juvenile or family court judges to advise the agency on policies and procedures affecting the delivery of services by the agency to a juvenile or family court. See Sheridan, "Legislative Guide," Comment 8.

It has also been suggested that judicial administration is preferable to executive agency administration on the ground that juvenile and family court judges can generate considerable attention to and support for intake and predisposition investigative services as well as for probation supervision services by virtue of their position and that they are more likely to do so where the agency providing these services is judicially administered. Juvenile and family court judges, however, have an interest in adequate service provision whether the agency providing these services is administered by the judiciary or an executive agency, and there is no reason why they cannot generate attention to and support for these services even though they are administered by an executive agency.

In short, there are many disadvantages of judicial administration and the purported advantages upon examination would seem to be largely illusory. Accordingly, Standard 4.2 provides that the administrative responsibility for intake and predisposition investigative services should be lodged in an agency of the executive branch of government rather than the judicial branch. See ABA, "Committee Report" 7; Sheridan § 5 and comment thereto at 8-9; YDDPA, "Legislative Guide" 12-15, B-12-B-15a; Charters, "Nature of the State Agency," 26 *Juvenile Justice* 21, 25-26 (1975).

However, in response to the opposition of several representative groups of juvenile and family court judges and others to executive agency administration, the executive committee of the joint commission agreed to bracket it to indicate that although executive control is recommended, ultimately the choice rests with the individual states.

4.3 State vs. local organization and administration.

Intake and predisposition investigative services should be organized and administered either at the state level on a statewide basis or partly at the state level and partly at the local level.

Commentary

If an executive agency is given responsibility for administration and provision of intake and predisposition investigative services,

there remains the issue of whether this executive agency should be a state or local agency.

There are presently four basic types of organizational structure utilized in connection with intake and predisposition investigative services. They are as follows:

1. a centralized statewide system with services administered and provided by a single state agency;
2. a local system with services administered and provided by local agencies on a district, county, or municipal basis;
3. a local system with state standard setting with respect to such services, and state subsidization of such services;
4. a combined state and local system with local agencies administering and providing services in some areas, particularly larger and more populous areas, and a state agency administering and providing services in other areas.

In the majority of jurisdictions, intake and predisposition investigative services are judicially administered. Judicially administered services are organized in accordance with the organization of the juvenile court, which is generally organized on a county, municipal, district, or circuit basis. In the jurisdictions where an executive agency administers and provides intake and predisposition investigative services, the executive agency is generally a state agency. See J. Newberger, "Organizational Patterns of Juvenile Probation and Detention Services: A Nation-Wide Survey and Analysis" 15-18 (Master's thesis, University of South Dakota December 1974). See also Standard 4.2 and commentary thereto.

Organization of intake and predisposition investigative services on a local level has several advantages. One advantage is that local agencies can often generate greater support from citizens and other local agencies than a centralized state agency. See Advisory Commission on Intergovernmental Relations, "State and Local Relations in the Criminal Justice System" 239 (1971); Kobetz and Bosarge 332; President's Commission, *Corrections Task Force Report* 36. Another related advantage is that local employees tend to have closer ties with the community than state employees, which can translate into greater access to local resources. Access to local resources is important inasmuch as one of the important tasks of an intake officer is to utilize such resources in connection with the nonjudicial disposition of complaints. Kobetz and Bosarge 332; President's Commission, *Corrections Task Force Report* 36. Still another advantage is that local agencies are generally more flexible and less inclined to suffer from bureaucratic rigidity than the centralized state agency because of their smaller size. As the President's Commission on Law Enforcement and Administration of Justice has pointed out:

"[C]ombining all local probation services in several large states . . . could result in very large state operations. It would place a tremendous burden on administration. . . . If it were weak, ineffective, or politically determined, serious damage could result. While all of these risks prevail at lower levels of government . . . the impact of any single poor leader is less widely spread." President's Commission, *Corrections Task Force Report* 36.

A centralized state system, however, also has a number of advantages. Some of these advantages are related to the need for uniformity and equity. In jurisdictions where local agencies administer and provide intake and predisposition investigative services, there are great variations in the level of services provided within the state, and a state system generally means a more uniform level of services throughout the state. President's Commission, *Corrections Task Force Report* 36. In jurisdictions where local agencies provide services, there is also commonly a lack of uniformity in policies with respect to intake screening and predisposition investigations and reports; a state system generally means a greater uniformity in such policies. Such uniformity insures a greater degree of consistency in intake dispositional decision making by intake officers and in dispositional recommendations by investigating officers. See President's Commission, *Corrections Task Force Report* 36.

Other advantages of a state system stem from the fact that a state agency can draw upon the financial resources of the state in order to support intake and predisposition investigative services. Thus, a state agency generally has the resources to undertake programs such as preservice and inservice training programs for intake and investigating officers, and research and development programs. In addition, it has been suggested that state agencies have traditionally been more innovative in program development than local agencies. See Kobetz and Bosarge 332; President's Commission, *Corrections Task Force Report* 36.

Finally, a state system may facilitate the combination and coordination of juvenile correctional services, including probation supervision services. In many jurisdictions local juvenile probation agencies provide probation supervision services as well as intake and predisposition investigative services, and a state agency provides other juvenile correctional services. This produces an undesirable fragmentation of juvenile correctional services. If a juvenile who is adjudicated delinquent is placed upon judicial probation, a local juvenile probation agency has responsibility for the juvenile, but if some other disposition, such as institutionalization, is made, a state agency has responsibility for the juvenile. There are two basic approaches to the problem of fragmented juvenile correctional services.

One is to create an agency on the state level that is responsible for intake and predisposition investigative services, probation supervision services, and all other juvenile correctional services. Another is to separate probation supervision services and intake and predisposition investigative services and place the former in an agency on the state level that is responsible for all juvenile correctional services including probation supervision services.

In light of the foregoing, Standard 4.3 recommends that intake services be organized on the state level on a statewide basis or on a partly state and partly local basis. It disapproves of the completely or predominantly local system of administration and provision of services with no state standard setting for or subsidization of those services. This standard reflects the view that no single pattern of organization is applicable to all states. Each state must examine its own governmental and court structure, geography, transportation system, and resources in order to determine which of these organizational structures is preferable. YDDPA, "Legislative Guide" 2-3; see Charters, "The Nature of the State Agency," 26 *Juvenile Justice* 25-26 (hereinafter cited as Charters); see also Kobetz and Borsarge 335-37; National Advisory Commission, "Corrections" § 10.1 and commentary thereto at 331-32.

While Standard 4.3 contemplates that in some jurisdictions it may be appropriate to organize intake and predisposition investigative services at the state level on a statewide basis, it must be stressed that an overcentralized system can impede the effective and efficient delivery of services. See Charters 25-26. Accordingly, care should be taken to insure that service delivery remains local in nature and that it is responsive to and meets the needs of local communities.

Standard 4.3 contemplates that in other jurisdictions it may be appropriate for local agencies to administer and provide intake and predisposition investigative services. There should be state standard setting with respect to state subsidization of intake and predisposition investigative services in these jurisdictions. An appropriate state agency should be given the following duties, responsibilities, and powers:

1. the establishment of minimum standards for the provision of intake and predisposition investigative services by local agencies in order to insure an adequate and more uniform level of service throughout the state;
2. the establishment of minimum standards for the recruitment and selection of intake and investigative personnel and minimum standards for preservice and inservice training of intake and investigative personnel;
3. the development, provision, or subsidization of preservice

and inservice training programs for intake and investigative personnel;

4. the provision of technical and consultative services to local agencies;

5. the establishment of a research and planning unit to formulate and engage in research programs and planning activities and to develop and implement innovative programs designed to improve intake and investigative services; and

6. the administration and provision of intake and predisposition investigative services in communities that are unable to provide such services at the necessary level and in the necessary manner.

See Kobetz and Bosarge 338-98; see also National Advisory Commission, "Corrections" § 10.1 and commentary thereto at 331-32.

4.4 Financing of intake and predisposition investigative services.

State funds should be made available to subsidize intake and predisposition investigative services in jurisdictions where local juvenile probation agencies or other local agencies provide these services and these services are presently financed primarily out of local funds.

Commentary

Standard 4.4 is directed at jurisdictions where intake and predisposition investigative services are financed primarily out of local funds. In a number of jurisdictions, juvenile probation agencies, organized on a local rather than a statewide basis, provide these services, and as a result they are financed primarily out of local funds.¹⁰² Since localities vary in their ability to finance these services, wide disparities may occur among localities within a state with respect to the level at which these services are funded. See *e.g.*, Administrative Office of the Courts, State of New Jersey, "A Program for the Improvement of Probation Services" 2-3 (1973) (hereinafter cited as N.J. Report); "Contemporary Studies Project:

¹⁰² *E.g.*, Ala. Code. tit. 13, § 360 (1958); Ark. Stat. Ann. § 45-415 (Cum. Supp. 1975); Ga. Code Ann. § 24A-601 (Cum. Supp. 1975); Ill. Rev. Stat. ch. 37, § 706-6 (1973); Ind. Ann. Stat. §§ 33-12-2-18, 33-12-2-19 (Burns 1975); Iowa Code § 231.8 (1975); Kan. Stat. Ann. §§ 38-804a, 38-804c, 38-805a, 38-814 (Cum. Supp. 1975); Ky. Rev. Stat. Ann. § 208.320 (1972); La. Rev. Stat. Ann. tit. 13, §§ 1587, 1587.1 (1968); Mass. Gen. Laws Ann. ch. 276, §§ 83, 83A (1972); Mich. Comp. Laws § 712A.9 (1970); Mont. Rev. Codes Ann. § 10-1234 (Cum. Supp. 1975); Neb. Rev. Stat. § 43-207 (1974); N.D. Cent. Code § 27-20-05 (1974); Ohio Rev. Code Ann. § 2151.13 (Page 1968); Ore. Rev. Stat. § 419.604 (1975); Pa. Stat. Ann. tit. 19, §§ 1053, 1083 (1964); S.C. Code Ann. §§ 15-1129, 15-1281.4, 15-1291.4, 15-1301.4, 15-1311.3,

Funding the Juvenile Justice System in Iowa," 60 *Iowa L. Rev.* 1149, 1240-44, 1267-68 (1975) (hereinafter cited as Iowa Study). Moreover, in many localities local funding has reached its maximum level, and local resources are inadequate to finance the quantity and quality of services desirable. See Kobetz and Bosarge 339; N.J. Report 2; Iowa Study 1254.

Standard 4.4 recommends that the state subsidize intake and predisposition investigative services presently financed primarily out of local funds, but this standard does not recommend a particular method of subsidization because the appropriate method will vary from state to state. There are several alternatives in this regard. One is for the state to provide a direct subsidy to the juvenile probation agencies and other agencies on a local level that provide juvenile and family courts with these services. Another is for the state to pay in whole or in part the salaries of intake and investigating officers employed by these agencies. Still another is for the state to directly provide these agencies with supplementary services and personnel. See generally Kobetz and Bosarge 339, 342-44; National Advisory Commission, "Corrections" 315; President's Commission, *Corrections Task Force Report* 37.

PART V: INTAKE AND INVESTIGATIVE PERSONNEL

5.1 Qualifications and selection of officers.

A. Statewide mandatory minimum standards should be established for the selection procedures and for the qualifications of individuals to be employed as juvenile intake and investigating officers in professional staff positions.

B. The qualifications required for professional staff positions may include formal education or training of a certain type and duration, previous work experience of a certain type and duration, previous job performance of a certain quality, and personal characteristics and skills that are related to successful performance of intake and investigating duties.

C. The minimum educational requirements for entry level professional staff positions should be a bachelor's degree supplemented by a year of graduate study in social work or the behavioral sciences, a year of full-time employment under professional supervision for a correctional or social services agency, or equivalent experience.

D. Agencies should select individuals for professional staff positions upon a merit basis.

E. Agencies should recruit and employ as juvenile intake and investigating officers individuals, including minority group members and women, from a wide variety of backgrounds.

Commentary

The key to intake and predisposition investigative services of high quality is the staff of the juvenile probation agencies and other agencies providing these services. The provisions of Standard 5.1 with respect to qualifications of and selection of juvenile intake and investigating officers are aimed at encouraging the professionalization of intake and investigative personnel.

Standard 5.1 A. calls for the establishment of statewide mandatory minimum standards for the employment of intake and investigating officers. A number of authorities have advocated the establishment of such standards for the employment of juvenile probation officers by juvenile probation agencies, which are responsible for the provision of intake and predisposition investigative services in most jurisdictions. As the President's Commission on Law Enforcement and Administration of Justice pointed out:

For a long time society has protected its citizens by establishing procedures for admission of lawyers and surgeons to practice and by specifying criteria for certification of veterinarians, barbers, and architects. But only now is it beginning to determine the necessary qualifications for those to whom it assigns the duty of mending the broken lives of its children and families. Obviously, the enormously complicated task of the probation officer described above, which is essentially a matter of diagnosis and treatment of problems of social maladjustment, cannot be performed by persons about whom nothing more can be said than that they are "men of good will." President's Commission, *Corrections Task Force Report* 131.

Under Standard 5.1 B. there are two types of qualifications that are prerequisites for employment as entry level intake and investigative officers. The first states that prospective officers should have the education, training, and experience that will equip them for the performance of intake and investigative duties. Standard 5.1 C. suggests that the minimum educational requirements for entry level professional staff positions should be a bachelor's degree and one year of graduate study in social work or the behavioral sciences or one year of experience in a recognized social service or correctional agency. Similar minimum educational qualifications for juvenile probation officers have been widely advocated, but it appears that many

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juvenile probation agencies do not require officers to meet such qualifications. See commentary to Standard 5.3. The version of Standard 5.1 C. that appeared in the tentative draft was amended by adding "or equivalent experience" for communities in which applicants could not meet the educational requirements.

The second type of qualification under Standard 5.1 B. provides that intake and investigating officers should have personal characteristics that equip them for intake and investigative duties. For example, it is widely agreed that they should have the ability to develop constructive interpersonal relationships with juveniles and their families and to develop good working relationships with other juvenile justice system personnel and community-based youth service agencies. *E.g.*, National Advisory Commission, "Corrections" 272; President's Commission, *Corrections Task Force Report* 137.

Standard 5.1 E. provides that there should be no discriminatory employment practices on the basis of minority group status or sex, and that agencies should actively recruit and employ minority group members and women. The National Advisory Commission on Criminal Justice Standards and Goals summarized the reasons for such recruitment and employment policies as follows:

Because referrals to juvenile court typically include large numbers of minority group youngsters, staffing patterns should be reasonably representative of those groups. It also is critically important to have a good balance of male and female staff members as a part of normalizing intake procedures and detention. National Advisory Commission, "Corrections" 272.

5.2 Tenure and promotion.

A. Intake and investigating officers should not be subject to arbitrary discharge during or after a probationary period.

B. Juvenile probation agencies and other agencies responsible for intake and investigative services should establish career ladders, and juvenile intake and investigating officers should be promoted in accordance with such career ladders on a merit basis. Career ladders should be structured so that officers have the choice of promotion along two different tracks. One promotion track should be available for officers who wish to do intake screening and conduct predisposition investigations. Another promotion track should be available for officers who wish to perform supervisory or administrative duties.

Commentary

Standard 5.2 A. recommends that individuals who receive appointments as intake and investigating officers receive protection from

arbitrary discharge at any time, whether during or after an initial probationary period. See ABA Standards for Criminal Justice, *Probation* § 6.4 and commentary thereto at 91-92 (1970) (hereinafter cited as ABA *Probation Standards*). This can be done by giving officers tenure after such a period and permitting removal after a civil service commission hearing or its equivalent in accordance with previously issued regulations regarding removal. Highly qualified individuals may be reluctant to accept and to continue employment as intake or investigating officers unless they have some job security. Civil service and merit systems are the primary method of affording intake and investigating officers with such security, but those systems have undesirable features, including "the obstacles they pose to removal of unsatisfactory personnel." President's Commission, *Delinquency Task Force Report* 94. See R. Clegg, *Probation and Parole* 129-30 (1975). On balance the advantages of granting officers tenure after an initial probationary period as provided in Standard 5.2 A. would seem to outweigh its disadvantages.

Standard 5.2 B. also recommends the promotion of intake and investigating officers on a merit basis. It further recommends a two-track promotion system—one for those who wish to perform line functions and one for those who wish to perform supervisory or administrative functions. This standard is based upon a recommendation of the National Advisory Commission on Criminal Justice Standards and Goals. National Advisory Commission, "Corrections" 337. See ABA *Probation Standards* 102. Successful performance of line functions requires different skills, experience, and training than the successful performance of supervisory and administrative functions. Some individuals who excel in the performance of the former functions may not excel in the performance of the latter. Nevertheless, in many jurisdictions the only way an intake or investigating officer can receive a promotion and the raise in pay that generally accompanies a promotion is through acceptance of a supervisory or administrative position. Standard 5.2 B. would change this situation.

5.3 Education and training.

A. The appropriate state agency should establish statewide mandatory minimum standards for preservice and inservice education and training programs for intake and investigating officers.

B. State and local agencies responsible for providing predisposition investigative services should jointly plan and develop preservice and inservice training programs for officers at every level.

C. Colleges and universities should be encouraged to establish and maintain both undergraduate and graduate degree programs that will

prepare individuals who wish to perform intake and investigative services.

Commentary

The thrust of Standard 5.3 is that statewide minimum standards for the education and training of intake and investigative personnel should be developed and that intake and investigative personnel should have available ample opportunities for education and training.

Standard 5.3 provides that each state should establish mandatory minimum educational requirements for the employment of intake and investigative personnel. See Kobetz and Bosarge 397. Most professional associations recommend that a bachelor's degree and some graduate study in social work or the behavioral sciences should be required. *E.g.*, Children's Bureau, U.S. Department of Health, Education and Welfare, "Standards for Specialized Courts Dealing with Children" 86 (1954); Federal Probation Officers Association, "Professional Standards Endorsed by the Federal Probation Officers Association" 6 (April 1965). Other authorities have also advocated such educational requirements. *E.g.*, Kobetz and Bosarge 371, President's Commission, *Corrections Task Force Report* 137. While most states require that a probation officer have a bachelor's degree, they generally do not require a graduate degree or graduate study. See International Association of Chiefs of Police, "1973 Survey of Standards for the Education and Training of Juvenile Probation Officers," reprinted in Kobetz and Bosarge 371-78; President's Commission, *Corrections Task Force Report* 137.

Since entry level juvenile probation officers often have not had specialized training that adequately equips them for performing their duties, recruit training programs take on great importance. One professional association has recommended that a new officer be required to participate in a preservice training program consisting of a minimum of 400 hours of instruction. See Kobetz and Bosarge 383. Although most juvenile probation agencies do not have the resources for such programs, state or regional programs can be established to provide recruit training to new officers.

Regular inservice training programs are an important "part of the total process in which good juvenile probation officers are produced in the department's work force." Kobetz and Bosarge 385. While inservice training programs for juvenile probation officers have been widely recommended, many juvenile probation agencies do not have such programs. See *ABA Probation Standards* 100. Here again, there is a need for state or regional inservice training programs because

individual juvenile probation agencies generally lack the resources for such programs.

Colleges and universities can play a valuable role in both preservice and inservice education and training programs. Unfortunately, they do not offer programs of a type needed by juvenile probation personnel. Juvenile probation agencies and educational institutions need to work more closely together toward the establishment of educational programs related to the needs of juvenile probation personnel.

5.4 Salary scales.

A. Salary scales of intake and investigative personnel at every level should be commensurate with their education, training, and experience and comparable to those in related fields.

B. Salary scales should be structured so that promotion to a supervisory position is not the only means of obtaining a salary increase. Merit salary increases should be available for outstanding job performance and for completion of advanced education or training.

Commentary

Standard 5.4 A. calls for the salary scales of intake and investigative personnel to be commensurate with their education, training, and experience and to be comparable to those in related fields. Adherence to this standard is necessary in order to enable juvenile probation agencies and other agencies providing intake and investigative services to recruit and to retain quality personnel. See *ABA Probation Standards* § 6.7 and commentary thereto at 101-102; President's Commission, *Corrections Task Force Report* 94-95.

Standard 5.4 B. recommends that salary scales be structured so that increases can be obtained for outstanding job performance and the completion of advanced education or training as well as for promotion to a supervisory or administrative position. This standard is derived from the *ABA Probation Standards* § 6.7(b). See National Advisory Commission, "Corrections" 337; see also American Correctional Association, "Manual of Correctional Standards" 122 (1966). Making salary increases available for outstanding job performance encourages such performance and eliminates the economic pressure upon officers who excel in performing intake and predisposition investigative duties to advance to a supervisory or administrative position for which they may not be suited. See commentary to Standard 5.2. Similarly, making salary increases available to per-

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sonnel who complete advanced education and training provides an incentive for them to avail themselves of educational and training opportunities.

5.5 Workloads and staff ratios.

A. Juvenile probation agencies and other agencies responsible for intake and predisposition investigative services should establish standards for workloads and staff ratios.

B. Workloads of intake and investigating officers should vary depending upon such factors as the specific functions performed by an officer, the complexity and seriousness of the cases that the officer handles, the education and training of the officer, the availability of clerical and other support services, and the availability of community resources that can be utilized by the officer in performing his or her duties.

Commentary

Standard 5.5 is concerned with caseload and workload standards. As a result of insufficient personnel, excessive workloads are a recurring problem in the delivery of adequate intake and predisposition investigative services by juvenile probation agencies and other agencies. Standards exist purporting to suggest what the size of an average caseload for a juvenile probation officer should be. Some of the more recent standards have shifted to a workload concept under which units are assigned for each of the tasks performed by the officer and suggest what the size of an average workload should be. Existing caseload and workload standards are fairly arbitrary. See M. Neithercutt and D. Gottfredson, "Caseload Size Variation and Difference in Probation Parole Performance" 23-26 (undated), for a detailed discussion of the way in which these standards are formulated. Another problem with these standards is that they are directed at agencies providing probation supervision services as well as intake and predisposition investigative services, and they deal in large part with the caseloads or workloads of officers who supervise juvenile probationers.¹⁰³

Standard 5.5 A. does not suggest that standards be formulated that will fix the precise workloads officers should carry. Rather, it

¹⁰³ It should be noted that workload and caseload standards have been advocated primarily on the ground that reducing caseloads or workloads of officers supervising juvenile probationers improves the performance of probationers, but the evidence on this point is inconclusive. See Neithercutt and Gottfredson 1-20.

recommends the development of workload and staff ratio standards that will aid agencies providing intake and predisposition investigative services in evaluating and planning their present and future personnel needs. Various methods of developing these standards can be utilized. See Department of Youth Authority, State of California, "Standards for the Performance of Probation Duties" 10-14 (1970) (hereinafter cited as California Youth Authority Standards); see also Neithercutt and Gottfredson 26-28. Standard 5.5 B. lists several factors that should be taken into consideration in developing these standards. This list is derived from standards that the California Youth Authority issued and is not meant to be all-inclusive. California Youth Authority Standards 10-14.

5.6 Employment of paraprofessionals and use of volunteers.

A. Juvenile probation agencies and other agencies responsible for intake and predisposition investigative services should recruit, employ, and train individuals who do not possess the qualifications necessary for employment as intake and investigating officers as paraprofessional aids to assist intake and investigating officers. Paraprofessionals should be given an opportunity to participate in career development programs that can lead to advancement on the career ladder to professional staff positions.

B. Agencies should recruit and employ as paraprofessionals individuals from a wide variety of backgrounds, including minority group members and women.

C. Juvenile intake and investigating officers should establish and maintain programs utilizing citizen volunteers.

D. Citizen volunteers may successfully perform a wide variety of functions ranging from the direct provision of services to juveniles to office work of an administrative or clerical nature.

E. Volunteers may be recruited from a wide variety of backgrounds and sources depending upon the functions they are to perform. Juvenile intake and investigating officers should carefully screen volunteers in order to insure that they have the qualifications necessary for the work to which they will be assigned.

F. Agencies should establish preservice and inservice orientation and training programs for volunteers.

Commentary

Standard 5.6 approves the employment of paraprofessionals and the use of volunteers as an integral part of the staff of juvenile probation agencies or other agencies that provide intake and predispo-

sition investigative services. Paraprofessionals are individuals who do not possess the professional qualifications necessary for employment as entry level intake and investigating officers. The employment of paraprofessionals is one means of alleviating the personnel shortage that many agencies providing intake and predisposition investigative services face. Paraprofessionals are capable of successfully performing a number of tasks that intake and investigating officers normally perform, and agencies can and should restructure the jobs of these professionals so that some of their duties can be taken over by paraprofessionals. President's Commission, *Corrections Task Force Report* 102. Jobs can also be developed for paraprofessionals involving the performance of tasks and the provision of services that would not otherwise be performed or provided because of scarce personnel resources.

Employment of paraprofessionals is also a means of utilizing individuals who lack professional qualifications but who can establish better linkage between agencies providing intake and predisposition investigative services, juveniles, and the community. See ABA *Probation Standards* 95-97; President's Commission, *Corrections Task Force Report* 103. For example, former juvenile offenders may become paraprofessionals, and such individuals can be of special value to such agencies because they understand the problems of juvenile offenders and may be able to communicate with these juveniles more effectively than the professional staff.

Paraprofessionals are also a potential source of personnel for the professional staff of these agencies, and agencies employing paraprofessionals should set up career ladders offering them opportunities for advancement and should encourage and assist them in obtaining the training and education necessary for professional accreditation. President's Commission, *Corrections Task Force Report* 102-103; see also National Advisory Commission, "Corrections" 435-36.

The use of volunteers is another means of alleviating the personnel shortage that agencies providing intake and predisposition investigative services face and of establishing better linkage between these agencies, juveniles, their families, and the community. In recent years the use of volunteers has gained wide acceptance. See *e.g.*, ABA *Probation Standards* 93, 97-98; Kobetz and Bosarge 403-408; Joint Commission on Correctional Manpower "Recommendations" reprinted in ABA Council of State Governments, "Compendium of Model Correctional Legislation and Standards" VIII-13 (1972). National Advisory Commission, "Corrections" 271,

480-81; President's Commission, *Corrections Task Force Report* 104.

Volunteers can perform a wide range of tasks with respect to intake screening.

Volunteers can support and supplement the intake operation. In fact the use of volunteers can add a new dimension to the total intake service. Volunteers can greet youth and parents as they arrive at intake and provide an orientation to intake and court procedures. In addition, they can explain the roles of the intake counselor, probation officer, judge, prosecutor and defense counsel. They can also assist the family in filling out the intake fact sheet which contains the names of family members, place of employment, birth dates, school, address, phone number and other factual information. Finally, volunteers can be of assistance to families that are being referred to another agency for service after a determination has been made by the professional staff that no court action will be taken. They can expedite the referral by making appointments, clarifying instructions, providing transportation and follow-up on referrals to see that appointments are kept and services delivered. Olson and Shepard 60.

Volunteers can similarly perform a variety of tasks with respect to predisposition investigations. Among the tasks they can perform are record checks, making appointments with persons whom the investigating officer wishes to interview, and assisting the officers with their interviewing.

A good volunteer program depends on the careful selection and screening of volunteers, adequate preservice and inservice orientation and training programs, and adequate supervision. Guidelines for the establishment of a viable volunteer program are available from many sources. See, e.g., I. Scheier and J. Berry, *Serving Youth as Volunteers* (1972); I. Scheier and L. Goter, *Using Volunteers in Court Settings: A Manual for Volunteer Probation Programs* (1969); Law Enforcement Assistance Administration, United States Department of Justice, "Volunteers in Law Enforcement Programs" (1972); Youth Development and Delinquency Prevention Administration, U.S. Department of Health, Education and Welfare, "Volunteers in Court: Collected Papers" (1971); Fox, "A Handbook for Volunteers in Juvenile Court," 23 *Juvenile Justice* 13 (1975).

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