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Institute of Judicial Administration

American Bar Association

Juvenile Justice Standards

STANDARDS RELATING TO

Police Handling of Juvenile Problems

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

Hon. Irving R. Kaufman, *Chairman*

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

William S. White and
Margaret K. Rosenheim, *Chairmen of Drafting Committee I*
Egon Bittner, *Reporter*
Sheldon Krantz, *Reporter*

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Mary Anne Stewart
Povl W. Toussieng
Rena Uviller
Kenton Williams
Arthur Zitrin

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.

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Preface

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

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

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

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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.

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

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

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

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

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

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

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

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

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

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

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

An account of the history and accomplishments of the project

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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 I, which also includes the following volumes:

RIGHTS OF MINORS
ABUSE AND NEGLECT
NONCRIMINAL MISBEHAVIOR
JUVENILE DELINQUENCY AND SANCTIONS
YOUTH SERVICE AGENCIES
SCHOOLS AND EDUCATION

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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 2.2 was amended by adding a phrase making the standard for retention of police records subject to the relevant standards in *Juvenile Records and Information Systems.*

2. Standard 3.4 was amended by changing "interest" to "action."

3. Standard 3.5 was deleted and the text was added to the commentary to Standard 3.2.

Commentary to Standard 3.5 was deleted.

4. Commentary to Standard 2.3 was revised by adding a cross-reference to Standard 4.3.

5. Commentary to Standard 2.4 was revised by adding a clarification that the prohibition against the police initiating their own deterrence or treatment programs is not intended to proscribe police recreational, athletic, or educational programs for the community.

6. Commentary to Standard 2.5 was revised by conforming the text in the quotation of *Interim Status* Standard 5.6, as published in the tentative draft, to the approved version, by bracketing "less than one year," changing "clear and convincing evidence" to "the evidence as defined below," substituting "a class one juvenile offense involving

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a crime of violence" for "first or second degree murder," and deleting Standard 5.6 B. 3.

The commentary was revised further by expanding the reference to the policy against detaining juveniles in adult facilities discussed in the commentary to *Interim Status* Standard 5.4, to include the addition to the revised commentary, i.e., that juvenile court authorities in small communities shall have the duty to designate facilities to be used for juvenile detention in which such juveniles will not be in contact with adult detainees.

7. Commentary to Standard 3.2 was revised by inserting the text of former Standard 3.5, as noted in Item 3 above.

The commentary was revised further by adding cross-references to *Interim Status* Standard 5.3 and *Pretrial Court Proceedings* Standards 5.1, 6.1, and 6.2, which deal with limitations on the juvenile's capacity to waive constitutional rights before trial, based on the juvenile's presumed susceptibility to official pressure, especially while in police custody.

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Introduction

In preparing the standards and commentaries that follow, the reporters have been guided by several underlying principles. Since these principles reflect common themes throughout the volume, we feel that it is important to summarize them at the outset.

A. These standards recognize that the police now serve as a primary source of referral and diversion of juvenile problems, including delinquency problems, away from the juvenile court, and adopt the approach that they should continue to do so.

B. In order to provide greater direction to police and ensure greater accountability for their actions, however, these standards specify that police authority in the juvenile area must be clarified and structured.

C. Even with a clarification and structuring of police authority and responsibility for handling juvenile problems, though, the standards indicate that the police will and must continue to have discretion in how and when to respond to certain types of problems.

D. To the extent possible, these standards urge that police discretion be guided by police administrative policy. In particular the standards recommend that police policies emphasize officers' using the least restrictive alternative whenever possible in handling juvenile problems and attempting to identify the available alternatives to arrest. The standards propose that police policymaking involve input from other agencies to which police will be making referrals as well as from the public. In many instances joint policies with other agencies will be beneficial. A further theme in the policymaking area is that police administrators should attempt to support policies with positive incentives rather than negative sanctions.

E. The standards recognize that serious juvenile crime is a growing problem in this country and must be given priority attention. The standards provide that the same constitutional restrictions imposed in adult criminal investigations should apply to juvenile criminal investigations. In addition, however, the standards indicate that juveniles, unlike adults, should not be able to waive certain critical rights on

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their own. Further, the standards note that there are serious deficiencies in current caselaw on criminal investigative procedures, and research and development in this area is necessary.

F. In order for police agencies to give appropriate attention to the handling of juvenile problems, the standards recognize that some specialization is necessary. Thus, juvenile bureaus or juvenile officers are needed to assist in establishing policies, serve as liaison with other agencies, assume responsibility for follow up work, and provide training support. The standards also recognize, however, that most handling of juvenile problems will initially be in the hands of patrol officers, and police efforts at reform must take this into account. Emphasis is given to extra educational efforts for officers working in the juvenile field.

G. Because of the pivotal role the police play in juvenile justice, the standards urge police administrators to speak out regularly on deficiencies and gaps in services to young people. If major gaps and deficiencies continue, the police are placed in the untenable position of having problems with no or very limited referral possibilities.

Although the two reporters have worked together closely in preparing this volume, Dr. Egon Bittner is primarily responsible for Parts I and IV, Professor Sheldon Krantz, for Parts III and V, and the two share equal responsibility for Part II. During the project, Dr. Bittner was assisted by Rebecca Bluestone; Professor Krantz, by Mark Hartman, Norman Buckvar, Nina Zolt, and Stephen Shapiro. Both reporters relied heavily upon Evelyn Stern during the various stages and drafts and in the preparation of the final manuscript.

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Standards

PART I: INTRODUCTION

1.1 This volume focuses upon police handling of juvenile problems. Unlike most of the agencies dealt with in other volumes in the Juvenile Justice Standards series, police are not exclusively, or even primarily, an institution committed to coping with these problems. Accordingly, whatever is to be said about police dealings with juveniles should be considered in the context of the overall nature of police activity, of which this is an integral part.

1.2 The standards formulated in this volume reflect certain ongoing police reform efforts that are gaining credibility both within and outside police agencies and that hold forth genuine promise of constructive change. This approach may help ensure acceptability of the standards and add weight to currently worthwhile endeavors.

1.3 Most police work consists of inherently provisional procedures. In this work, the police function consists largely of mobilizing remedies for various problems, to be administered by other institutions. It is evident that what police can accomplish in this regard depends largely on what is available to them. Thus, many improvements in police handling of juvenile problems can only result from the availability of more appropriate and effective resources and services, both within and outside of the juvenile justice field, to which police can make referrals. This fact, too, introduces a degree of uncertainty into the formulation of proposed standards for police.

PART II: ROLE OF THE POLICE IN THE HANDLING OF JUVENILE PROBLEMS

2.1 Considerations of race, national origin, religious belief, cultural difference, or economic status should not determine how police exercise their authority.

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2.2 Police departments should retain juvenile records only when necessary for investigations or formal referrals to the juvenile or criminal justice systems. Police officers should avoid the stigmatizing effect of juvenile records by retaining only minimal records necessary for investigation and referral in accordance with *Juvenile Records and Information Systems* standards for retention of police records.

2.3 Since other volumes in the Juvenile Justice Standards Project conclude that serious harm can be done to juveniles simply by their being referred into the formal juvenile justice process, police should not make such referrals unless:

A. serious or repeated criminal conduct is involved; or

B. less serious criminal conduct is involved and lesser restrictive alternatives such as those described in Standard 2.4 are not appropriate under the circumstances.

2.4 For juvenile matters involving nuisance, mischievous behavior, minor criminal conduct (e.g., being intoxicated, engaging in minor thefts), or parental misconduct (such as neglect) not involving apparent criminal behavior, police should select the least restrictive alternative from the following courses of action, depending upon the circumstances:

A. nonintervention;

B. temporary assistance to those seeking or obviously needing such assistance (including situations in which the potential of serious physical harm is apparent);

C. short-term mediation and crisis intervention (e.g., resolution of family conflicts);

D. voluntary referral to appropriate community agencies; or

E. mandatory temporary referral to mental or public health agencies under statutory authorization to make such referrals (e.g., to detoxification program).

In dealing with juvenile problems, police agencies should not attempt to initiate their own deterrence or treatment programs (such as informal probation), but rather should limit their services to short-term intervention and referral.

2.5 In order to stimulate police handling of juvenile problems (both criminal and noncriminal) in ways that are consistent with previous and subsequent standards, the following steps should be taken:

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A. Juvenile codes should narrowly limit police authority to utilize the formal juvenile justice process.

B. Juvenile codes should clarify the authority and immunity from civil liability of police to intervene in problems involving juveniles in ways other than through use of their arrest power in dealing with matters in which the juvenile or criminal courts are to be involved. This means authority and emphasis should be given to the use of summons in lieu of arrest. For matters in which police must act to assist a juvenile in need against his or her will, authority to take a juvenile into protective custody or to make a mandatory temporary referral should be specified and should be properly limited. It should also be specified that a juvenile cannot be detained, even temporarily, in adult detention facilities.

C. Police agencies should formulate administrative policies structuring the discretion of and providing guidance to individual officers in the handling of juvenile problems, particularly those that do not involve serious criminal matters. Such policies should stress:

1. avoiding the formal juvenile justice process unless clearly indicated and unless alternatives do not exist;
2. using the least restrictive alternative in attempting to resolve juvenile problems; and
3. dealing with all classes and races of juveniles in an even-handed manner.

D. Police training programs should give high priority, in both recruit and inservice training, to available and desirable alternatives for handling juvenile problems.

E. Police administrators should work collaboratively with both public and private agencies in ensuring that adequate services are available in various neighborhoods and districts so that referrals can be made to such services, and ensuring that joint policies and common understandings are reached whenever necessary. In addition, police administrators, because of their knowledge of deficiencies in this area, should focus attention on gaps in public and private resources that must be filled in order to meet the needs of juveniles and their families, and on the unwillingness or inability of existing agencies and institutions to respond to the needs.

PART III: THE AUTHORITY OF THE POLICE TO HANDLE JUVENILE DELINQUENCY AND CRIMINAL PROBLEMS

3.1 Serious juvenile crimes require the concern and priority attention of police as well as other agencies within the criminal and

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juvenile justice systems and the public at large. Police work in handling such cases should follow patterns similar to those used in the investigation of serious crimes committed by adults.

3.2 Police investigation into criminal matters should be similar whether the suspect is an adult or a juvenile. Juveniles, therefore, should receive at least the same safeguards available to adults in the criminal justice system. This should apply to:

A. preliminary investigations (e.g., stop and frisk);
B. the arrest process;
C. search and seizure;
D. questioning;
E. pretrial identification; and
F. prehearing detention and release.

For some investigative procedures, greater constitutional safeguards are needed because of the vulnerability of juveniles. Juveniles should not be permitted to waive constitutional rights on their own. In certain investigative areas not governed by constitutional guidelines, guidance to police officers should be provided either legislatively or administratively by court rules or through police agency policies.

3.3 Even if a juvenile is taken into custody under authority other than the arrest power (see Standard 2.5), police should be subject to the same investigative restrictions set forth above in the handling of the juvenile.

3.4 The action by a police officer in filing a complaint against a juvenile either in a juvenile or in a criminal court should be subject to review by a prosecutor (to determine legal sufficiency) and by probation or intake staff (to determine if formal action is appropriate under the surrounding circumstances).

PART IV: IMPLICATIONS OF THE POLICE ROLE FOR POLICE ORGANIZATION AND PERSONNEL

4.1 All police departments should establish a unit or officer specifically trained for work with juveniles. The nature of the allocation must necessarily vary from department to department.

A. In departments where small size, the nature of community needs, or other considerations do not justify the assignment of even one officer to work with juveniles on a full-time basis, one officer

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should nevertheless be explicitly assigned the principal responsibility for the task, even while he or she might be expected to work in other areas.

B. Wherever resources permit even minimal specialization of function, the full-time appointment of a juvenile officer should receive highest priority.

C. Departments capable of staffing bureaus specializing in work with juveniles should consider the adequate staffing of them as a matter of highest priority.

D. A formalized network of connection for the communication of information and the transfer of cases between the juvenile bureau (or the juvenile officer) and other segments of the department should be established.

E. A formalized network of connection for the communication of information and the transfer of cases between the juvenile bureau (or the juvenile officer) and analogues in departments of adjoining jurisdiction should be established.

4.2 The juvenile officer or the supervising officer of a juvenile bureau should, in conjunction with the chief administrator of the department and other relevant juvenile justice agencies, formulate policies and training relative to police work with juveniles, implement established policies, and oversee their implementation throughout the department.

A. Juvenile officers should be selected from among officers who have mastered the craft of basic police work, and who have acquired, beyond that, the skill and knowledge their specialization calls for.

B. In departments having juvenile bureaus, the supervising officer should be of sufficiently high rank to convey the importance of both the position and the area of responsibility.

C. The juvenile officer or the supervising officer of a juvenile bureau should have the principal responsibility for the development and maintenance of relations within the department, with other agencies within the juvenile justice process, such as the court, the prosecutor, and intake staff, and with other community youth-serving agencies. He or she should have the principal responsibility for the development and maintenance of relations across jurisdictional boundaries with other departments.

D. The juvenile officer or members of juvenile bureaus should represent the police department in most matters connected with juveniles, vis-a-vis other institutions. In situations where such representation calls for the participation of other officers, juvenile officers should supervise or assist in such representations, depending on circum-

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stances, and they should receive information about all representations that take place without their knowledge at the earliest possible opportunity.

E. Juvenile officers should take charge of all cases that go beyond an initial and informal handling that might have been administered by other officers. When the primary responsibility falls upon other segments of the department, as in cases involving serious crimes, juvenile officers should participate in investigations and prosecutions.

F. In cases that have gone beyond the initial and informal treatment accorded to them by other officers, but are judged upon investigation not to require referrals to other institutions, juvenile officers should be responsible for all counseling, guidance, and advice that might be incidentally required to reach a disposition of the case.

4.3 Since most juvenile cases begin by interventions of the uniformed patrol and a large share of these do not go beyond the initial intervention, standard police practices should be planned and instituted for patrol officers along lines of policies developed by the juvenile officers or the juvenile bureau.

A. As a rule, members of the uniformed patrol should assume full responsibility for the handling of all problems and disturbances subject to on-site abatement. In this capacity, they are to employ the least coercive measures of control and they should avail themselves of the aid of such nonpolice resources as are directly available in the context of the problem or disturbance.

B. While it is in the nature of patrol that all uniformed officers are expected to deal with any problem they encounter, at least provisionally, every patrol unit should contain at least one officer to whom the handling of problems involving juveniles will be assigned, to the fullest extent possible. This officer should remain under the administrative control of his or her patrol unit and should function as a formal link between the unit and the juvenile officer or the juvenile bureau.

C. Police should transfer cases in which further work is indicated to juvenile officers. When circumstances make it mandatory that a juvenile be arrested, detained, placed, or referred to an outside institution, the juvenile officer or the juvenile bureau should be notified without delay about the action taken and the reasons for taking it.

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4.4 The principal task of police policy-making concerning juveniles should be to maintain flexible response readiness toward actually existing and emerging service and control needs in the community, and an assurance of maximum possible availability of alternative remedial resources to which problem cases can be referred for further care.

A. The juvenile officer or the supervising officer of the juvenile bureau should formulate policy in close coordination with the community relations officer or the community relations unit of the department.

B. Policy formulation should include recognition of the role of the uniformed patrol in police work involving juveniles, and orientation of its potential effectiveness to the proper aims of service and control.

C. The juvenile officer or the supervising officer of the juvenile bureau should formulate procedures and set standards for the transfer of cases from the uniformed patrol to the juvenile bureau; set limits for counseling, advice, and guidance provided by the juvenile unit; and provide guidance for the transfer of cases from the police to other institutions.

D. The basic principle of police policy concerning juveniles should be to rely on least coercive measures of control while maintaining full regard for considerations of legality, equity, and practical effectiveness.

4.5 Adequate staffing of programs for policing juveniles should be a matter of overriding significance.

A. Officers should be selected and appointed to work with juveniles as patrol officers and as juvenile officers on the basis of demonstrated aptitude and expressed interest.

B. To qualify for appointments as juvenile officers, officers should be fully competent members of the police and possess an educational background equivalent to graduation from college. The educational background standard should not be applied retroactively.

C. The initial assignment should be on a probationary basis during which the officers work under supervision and with restricted decision-making authority, and are given inservice training that should include internship placements in several institutions, the juvenile courts, schools, and social service agencies among them.

D. In the selection of patrol officers to work with juveniles, and of juvenile officers, first consideration should be given to otherwise

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eligible officers who share the racial, ethnic, and social background of the juveniles with whom they will work.

E. The practice of appointing responsible and interested young people to function in the role of paraprofessional aids in police work with juveniles should be encouraged.

PART V: THE NEED FOR INCENTIVES AND ACCOUNTABILITY: DIRECTIONS FOR NEEDED IMPROVEMENTS AND FURTHER RESEARCH

5.1 Police agencies should establish positive incentives to encourage their personnel to support the thrust of these and other standards in the Juvenile Justice Standards series. These incentives should include:

A. appropriate status and recognition for the juvenile bureau and juvenile officers, given the importance of their task;

B. formulation of policy guidelines in the juvenile area that assist officers in handling juvenile problems, both criminal and noncriminal in nature;

C. provision of creative recruit, inservice, and promotional training that explores both juvenile policy guidelines and the philosophy behind them;

D. establishment of criteria for measuring effectiveness in handling juvenile problems that are consistent with departmental policy guidelines and with these standards; and

E. use in promotional examinations of material relating to the role of police in handling juvenile problems.

5.2 Police policies should be developed with appropriate input from other juvenile justice agencies, community social service programs, youth service agencies, schools, and citizens. Each year, police agencies should issue a report describing their handling of juvenile problems, the alternative approaches they have used, and the problems encountered in complying with departmental policies on the handling of juvenile problems.

5.3 High priority should be given to ensuring that police officers are made fully accountable to their police administrator and to the public for their handling of juvenile problems. This will require effective community involvement in police programs, administrative sanctions and procedures, and remedies for citizens whenever warranted. The need for research on and development of sanctions and remedies is particularly acute at this time.

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In addition, juvenile bureaus and juvenile officers should periodically monitor the effectiveness of juvenile policies and the extent of compliance with them. Further, they should learn from the juvenile court, from other agencies, and from the public about any problems that may be arising with departmental policies or with their execution. Information obtained from these and other sources should be used for policy review and the development of new or modified training efforts.

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Standards with Commentary

PART I: INTRODUCTION

1.1 This volume focuses upon police handling of juvenile problems. Unlike most of the agencies dealt with in other volumes in the Juvenile Justice Standards series, police are not exclusively, or even primarily, an institution committed to coping with these problems. Accordingly, whatever is to be said about police dealings with juveniles should be considered in the context of the overall nature of police activity, of which this is an integral part.

Commentary

Of all the institutions of government dealing with juveniles, none are charged with, or have assumed, as wide and diffuse a range of responsibilities as the police. In a very large number of problems involving young people, the police officer is likely to be the first official called upon to intervene; indeed, he or she is often the only official who has to cope with ill-defined difficulties caused by, or inflicted upon, juveniles. Finally, because of their early involvement in the exercise of public care and control, the police are in the position to give complex problems a presumptive definition and thereby impel subsequent treatment in certain directions. Thus, the strategic significance of the role of the police in the overall organization of juvenile justice is obvious. Accordingly, the formulation of norms of proper procedure for the police is a matter of great importance and consequence.

The task of formulating such norms for the police is encumbered by a special difficulty that is not encountered in most other agencies or programs to which the Juvenile Justice Standards are addressed. While most other agencies and programs have been deliberately instituted and authorized to deal with young people, the police function is much less the product of explicit planning than the result of circumstances. Though the police mandate does not exclude dealing

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with juveniles, and most police departments have created juvenile bureaus and the position of juvenile officer for this purpose,[1] these concerns are reflected in the general scheme of police work only to a limited extent. It is obvious that dealing with juveniles cannot be the only or even the principal duty of the police, but always is, and must be, coordinated with other tasks. Hence, police work with juveniles acquires a cast and orientation reflecting general features of the police mandate more than the principles embodied in the juvenile justice system. These are the constraints within which recommended standards must be formulated. Failure to recognize these constraints would be harmful and would undermine the likelihood of the adoption of the standards in actual practice. None of these comments is meant to imply that the leading ideals of juvenile justice reform should be compromised to ensure their favorable reception by the police, but they must be drafted with full regard for realities, without which they will be fated to a place on dusty shelves, the familiar graveyard of good but impractical intentions.

Underlying these standards for the reform of police practice is the recognition that the police are not a juvenile agency. Careful consideration is given in the materials that follow to: A. the organizational independence of the police; B. the functional significance crime control has in police work, despite the limited amount of time allocated to it in practice; C. the existence of the extraordinarily complex and little understood police task of peacekeeping; and, D. the inherently reactive nature of police work that poses difficult problems for planning and the programmatic organization of the police role.[2]

1.2 The standards formulated in this volume reflect certain ongoing police reform efforts that are gaining credibility both within and outside police agencies and that hold forth genuine promise of constructive change. This approach may help ensure acceptability of the standards and add weight to currently worthwhile endeavors.

Commentary

It is often assumed that the police represent the conservation of the status quo. It is also commonly assumed that police practice and organization tend to be relatively unchanging. Although there is

[1] *See R. Kobetz, The Police and Juvenile Delinquency* 43-59 (1971) for a survey of information on this matter.

[2] *See* Appendix I for a detailed discussion of these four problems and certain other matters connected with them.

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some truth to these assumptions, the police are not quite as stationary as they might seem. Indeed, in the past decade, police practice and organization, and thinking about the police have undergone far-reaching change, change we are still in the midst of.

While the development is not uniform, and while it certainly is not in evidence everywhere, it seems to have gained momentum, encouraging hope that many changes that have been advocated for a long time are either taking hold or will be seriously considered.

Important new theoretical and pragmatic thinking about the police began in the late 1960s and continues to the present time. This new thinking is reflected in such writings as the President's Commission on Law Enforcement and Administration of Justice, *Task Force Report: Police* (1967); ABA Standards for Criminal Justice, *The Urban Police Function* (1973); and National Advisory Commission on Criminal Justice Standards and Goals, "Police" (1973).[3] On a narrower level, suggested legal proposals for dealing with criminal investigative procedures have been dealt with extensively by the Arizona State University, "Model Rules for Law Enforcement" (1973) and the American Law Institute, "Model Code of Prearraignment Procedure" (1975).

Many significant theories about and proposals for changes in American policing have come from these studies. More important, some of these proposals are being attempted on experimental bases by several police departments. Most of the financial support for the experimentation is coming from two sources: the Law Enforcement Assistance Administration and the Police Foundation. Two areas currently receiving considerable focus deserve particular comment.

The first is the restructuring of police responsiveness and accountability to a higher level of civic responsibility. This is in line with the fundamental precepts on which the modern, urban police force was founded in England in 1829, as a people's police. The idea reflects Anglo-American principles of government, as contrasted to the concepts of policing originating in eighteenth-century Europe, which were oriented to the defense of established governmental regimes. In our times, greater responsiveness means the recognition of and understanding for the aspirations of oppressed segments of society to social, political, and economic justice. Within past years, most police officials adhered to the view that "professionalized" police departments must enforce the law fully and

[3] It is also reflected in the works of individual authors such as *J. Wilson, Varieties of Police Behavior* (1969); E. Bittner, "The Functions of the Police in Modern Society" (Public Services Publication No. 2059, 1970); *J. Rubinstein, City Police* (1973); and *H. Goldstein, Policing in a Free Society* (1977).

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without regard to public sentiment. In effect, this meant that only certain people in a community—those in positions of influence—were having any effect on police operations. Today, many police officials have begun to listen, often despite personal feelings, to the voices of many who have not been listened to before. In certain cities, extensive experimentation is under way on community-oriented policing.[4] Its objective is to hold individual officers accountable for delivering services related to the expressed needs of a community based upon community profile studies. Other cities are in the midst of formulating and testing policies structuring police discretion in sensitive areas of law enforcement.[5] Some departments are undertaking such policy development systematically with the active involvement of departmental personnel after the importance of doing so was stressed by the various prestigious national studies. Other departments have experimented with community participation in the police policymaking process.[6] The police have also responded in a rational manner in recent years to demonstrations and other forms of political and social protest. Much was learned from the disastrous confrontations of the late 1960s and early 1970s. In addition, many experiments have been and are now being conducted on how the police should respond to such community crises as domestic disputes, by temporarily resolving crises and by serving as referral agents.[7] Not all these various projects and experiments have worked. They suggest, however, that many police departments are now making serious efforts to be more responsive and accountable to the various communities they serve. Thus, the traditional narrow notion of "police-community" relations appears to be expanding.

The second trend reflects the realization that police practice must be lifted from the level of a relatively low-grade occupation as it was traditionally conceived to a level that is in closer accord with the seriousness and complexity inherent in police work. This calls for the upgrading and broadening of the recruitment base, including opening up career opportunities in policing for minorities and for women. This process is under way now, although some of the changes

[4] *See* J. Boydstun and M. Sherry, "San Diego Community Profile" (1975).

[5] One example is the work of the Boston Police Department in conjunction with the Boston University Center for Criminal Justice. This work is being supported by the National Institute of Law Enforcement and Criminal Justice under Grant #75-NI-99-0078.

[6] One department undertaking such work is the Dayton Police Department. See reference to this and other community involvement efforts in *R. Wasserman, M. Gardner, and Cohen, Improving Police/Community Relations* (1973).

[7] *See, e.g.,* M. Bard, "Training Police as Specialists in Family Crisis Intervention" (1970).

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have been the result of court intervention. In many areas, police departments on their own are experimenting with broader personnel objectives, such as expanded opportunities for women.[8] Many exciting efforts are under way in the field of police training at all levels—recruit and inservice (including promotional and specialized training). This can readily be seen by visiting various police academies around the country.[9]

The quest for more competent policing has also inspired a good deal of experimenting with organizational structure within police agencies, most of which is intended to create conditions in which line personnel are afforded opportunities and rewards for more thoughtful and deliberate work. Possibly the most significant idea along these lines has been the concept of "team policing." Although the term "team policing" has been used to describe a variety of experiments in various cities, it can generally be defined as an effort to delegate to a group of officers "responsibility for police services in an area or neighborhood and to work as a unit in close contact with the community to prevent crime and maintain order."[10] Studies made of team policing have suggested that the concept has considerable promise both in enhancing the quality of police work for individual officers and in improving police services to the community.[11] It is easy to overestimate the significance of ideas such as those connected with "team policing" (in which police officers are encouraged to cultivate an independent understanding of the problems they confront and to formulate methods for coping with them). Approaches like this, however, do have the effect of removing certain obstacles that organizational forms had placed between the conscientious practitioner and responsible practice. Experiments are also under way in reforming the objectives and structure of the investigative or detective function within police agencies.[12] Such experimentation is desperately needed, as a recent national study of the detective function by the Rand Corporation indicated.[13]

Some of the innovations and experiments summarized above have followed suggestions received from the outside; others have been set into motion by forces within the police establishment. Whatever their origin, some of them are becoming part of the ways in which

[8] *See, e.g., C. Milton, et al., Women in Policing* (1974).

[9] Some examples are the Boston Police Department, the Los Angeles Police Department, and the Dade County, Florida, Regional Academy.

[10] *See L. Sherman, et al., Team Policing: Seven Case Studies* xiv (1973).

[11] *Id. see also P. Bloch and D. Specht, Neighborhood Team Policing* (1973).

[12] *See, e.g., P. Bloch and D. Bell, Managing Investigations: The Rochester System* (1976).

[13] *P. Greenwood and J. Petersilia, The Criminal Investigation Process* (1975).

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police officers think and work. They must be regarded as much a part of the factual reality of policing as the more traditional approaches. From the perspectives of the Juvenile Justice Standards Project, the ongoing trends of change and conceptual development in the police field are especially worthy of attention. The aims of the project will be well served by formulating its recommendations to the greatest extent possible in alignment with ongoing change, benefiting from its momentum while adding weight to the impetus of independently desirable reform.

In view of the complex nature of policing, the current nature of its development, and the diverse range of police organizations to which the standards are addressed, it is neither possible nor appropriate for this volume to contain definitive or precise standards. For this reason, like the ABA Standards for Criminal Justice, *The Urban Police Function*, most of the standards that follow are standards in the loosest sense of the term. Primarily, they represent an approach for thinking about and dealing with the critical juvenile problems and needs confronting police agencies.

1.3 Most police work consists of inherently provisional procedures. In this work, the police function consists largely of mobilizing remedies for various problems, to be administered by other institutions. It is evident that what police can accomplish in this regard depends largely on what is available to them. Thus, many improvements in police handling of juvenile problems can only result from the availability of more appropriate and effective resources and services, both within and outside of the juvenile justice field, to which police can make referrals. This fact, too, introduces a degree of uncertainty into the formulation of proposed standards for police.

Commentary

In the course of their daily work, police officers are required to cope with a staggering variety of problems, all of which have their special definitions and all of which may in their development become the concern of specialized remedial agencies. Some of these problems are turned over to prosecutors, others end up in the hands of physicians, some are taken over by social workers, and others simply fade back into the more inchoate remedial resources contained in the social fabric of the community. Even though the police are aware of the various definitions of problems they face, prior to

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their transition for further process, they treat them as police officers, not as prosecutors, physicians, or social workers. The potential target to which a case is likely to move colors the treatment accorded to it by the police, but it neither preempts the function of the target agent, nor suspends the relevance of the police officer's own concerns. Thus, it must be said that from the perspective of a working police officer, it matters that the person with whom he or she comes to deal is a juvenile, but it does not matter in the same way he or she presumes it might matter to certain others, who are more specifically oriented to this fact.

It could be said—without implying that this defines the nature of the police mandate—that a police officer functions as a universal referral agent, plucking problems out of the body politic, and moving them into settings in which they will be treated according to their respectively relevant definitions. Naturally, not all problems the police encounter are transferred to other control and remedial agents and institutions; only the more serious ones. Further, the police are not the only ones who locate troubles and refer them to appropriate institutions for further control and treatment. But in modern society, the function of the police as a well-functioning link between problems of all sorts and their solutions has become very important. Almost every crime must pass through their hands before it reaches the other organs of the administration of justice. Beyond that, a large amount and variety of lapses of normalcy and order are expected to reach the various targets of their remedies through police service. It is rather obvious that the success of this operation depends entirely on the availability, capacity, and response-readiness of receiving agents and institutions. Nor do the uncertainties concerning the existence of outside resources affect only the possible treatment of those cases in which transfer is deemed necessary. They also cast a shadow on dealings with problems of lesser urgency. Hence, the recommendations concerning the work of the police with juveniles must provide for change and variation in the availability and structure of terminal facilities for juveniles. They must be formulated with a degree of looseness and flexibility that permits adaptation in the light of circumstances, and they must often take the form of outlines concerning the process of policy formation rather than the forms of determined policy. This difficulty is addressed in part by identifying areas in which administrative rule making by the police, and policy formation in accordance with the aims of the Juvenile Justice Standards Project, is necessary, and by outlining possible alternatives for this purpose.

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PART II: ROLE OF THE POLICE IN THE HANDLING OF JUVENILE PROBLEMS

2.1 Considerations of race, national origin, religious belief, cultural difference, or economic status should not determine how police exercise their authority.

Commentary

Together with all other agents and agencies functioning in the juvenile justice system, the police owe this rule unqualified adherence. The enjoinder to nonprejudicial decisionmaking and conduct comprises the most fundamental principles of the rule of law and of the ideals of justice and would seem, therefore, not to be in need of supportive commentary. Experience teaches that, while verbal assent may be taken for granted, putting the ideal into practice is fraught with difficulties. Some of the difficulties have to do with deeply ingrained attitudes. The survival of these attitudes calls for a sustained educational effort and for vigorous supervisory control. Both must be made into concerns of the highest priority. The police, together with all other institutions, must exercise relentless scrutiny over their own practices in this regard, without waiting for expressions of grievance. But scrutiny must be based on analysis, and analysis reveals that discriminatory practices are not solely a function of the personal biases of functionaries. Some of these practices are deeply rooted in the structures of social life and tend to have an aspect of "the ways things happen to work out," rather than being attributable to bigotry. This is not said to exculpate bigots nor does bringing up these matters lead readily to solutions. The conditions that appear to place some segments of society in a position of greater advantage than others must be faced, though, if the pledge to fairness is to be redeemed.

In the following, it will be taken for granted that most police administrators are seriously committed to the aim of nondiscriminatory practice and to the eradication of prejudice. The primary objective of this standard will be to point to circumstances that cause meeting the aim to require more than setting one's mind to it. No matter how resolute a police officer might be, he or she will sometimes confront the dilemma of having to exert disciplinary control over unacceptable behavior of some juveniles while knowing that such behavior is primarily the result of the absence of adequate recreational opportunities, of wholesome home environments, and of mature guidance, associated with poverty and discrimina-

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tion. Clearly, an officer cannot retreat from the duty to maintain the public order, yet it does not seem entirely fair and practical to force those juveniles off the street who have no more suitable place to go. It will not be the purpose of this discussion to suggest that policemen can or should be burdened with the responsibility to remedy the conditions to which discriminatory outcomes are subtly related. Instead, the purpose is to raise considerations within which the rule of fairness must be made to matter and to prevail. This kind of analysis will help in providing the intellectual background against which police work can be raised to the level of a fully reasoned practice and thereby professionalized.

The ideal of the civil order for the defense of which police forces are founded and maintained is embodied primarily in the middle class existence. Its main features are: a stable income, interest in property, the structuring of all social relations with full regard for membership in nuclear families in which the breadwinner has a stable occupational career, and the allocation of an extraordinarily large share of the general wealth to freely chosen private consumption. Everything that can be understood as located in this order or connected with its maintenance—notably the structures that provide for gainful employment and for budgeted household spending—is regarded as right and proper; everything that seems incongruous with it appears suspect, if not outright deviant. Thus, poor people who are incapable of, or uninterested in, maintaining middle class aspirations live under the stigma of opprobrium, even though they are no longer spoken of quite as unabashedly as the "dangerous classes" as they used to be in the past.[14]

Given the sobriety and methodicalness of middle class culture, children and young people well into their late teens are relegated to a special status. While they are growing up, they are spared the rigors of adult life. At the same time, they are not entitled to enjoy the rights of adults. Police officers, like everybody else, know that young persons are a special class of human beings. They also know, together with everybody else, that to deal properly with them one must understand them. It is no secret that there are widely differing and competing views in our society of what constitutes a proper understanding of juveniles. There is no reason to suppose that there exists an even approximate uniformity of views among police officers.

[14] Concerning the meaning of the term "dangerous classes" in relation to policing, see Silver, "The Demand for Order in Civil Society: A Review of Some Themes in the History of Urban Crime, Police, and Riot" in *The Police: Six Sociological Essays* 1-24 (D.J. Bordua ed. 1967).

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Yet all this disagreement, ranging all the way from the "spare the rod, spoil the child" school of thought to any of the most recent theories of permissive child psychology, comprise a unified body of presuppositions. These presuppositions concern less the *images* of childhood prevalent in our society than the *place* reserved for them. That is, all the debates concerning the right ways to raise children deal with the question of what ought to be done given certain circumstances, while the circumstances themselves receive no examination.

A short excursion into history is necessary to set the framework for the analysis of the topic. The standard understanding of our own times involves three long-range secular trends: A. the growth of nation-states; B. the rise of the commercial-industrial system known as capitalism; and C. the development of science. Recent research has drawn attention to a fourth trend of equivalent social significance. It concerns the evolution of the modern concept of the family and of childhood since the seventeenth century.[15] Neither the idea of kinship nor of young age was invented three hundred years ago. But they have been undergoing a profound transformation during this period that has culminated in our times.[16] In most other civilizations, and during the Middle Ages of the Western tradition, distinctions of age did not bar people from participating in all aspects of social life. Children of a rather tender age, in terms of our own perceptions, were far less inhibited in access to adult work and recreation. Their manners and morals were much less the target of any special adult solicitude than they are today. During the seventeenth century, a momentous change began that has led to the formation of what we now regard as normal childhood. Over time, children were progressively removed from the arena of indiscriminate sociability and their lives became progressively restricted to the family household and to institutions especially created for them. As a result, children and young people, often up to early adulthood, were progressively barred from participating in adult affairs of all kinds. Dealings between them and adults became governed by a special code of decency and decorum. This transformation was accompanied by changes in the dominant ideas about the nature of childhood. But what matters more is that these ideas were embodied

[15] *Cf. P. Aries, Centuries of Childhood: A Social History of Family Life* (1962); *D. Hunt, Parents and Children in History* (1970); *T.K. Raab & R.I. Rotberg*, eds., *The Family in History: Interdisciplinary Essays* (1973).

[16] These observations draw on a recent and rapidly growing body of research on the history of the family and of childhood, of which the works cited in note 15 are representative.

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in the creation of a separate world of childhood and young age, set apart from the hustle and bustle of adult existence, and distant from adult pleasure and travail. The focal institutional structures to which childhood existence is largely confined are the nuclear family household which has displaced the earlier, extended family network as the context of everyday life and the protracted educational experience that has been universalized by the requirements of compulsory school attendance. A child is expected to be found in these settings most of the time, while other settings are selectively chosen for their suitability for the presence of juveniles.

It is a matter of the greatest importance that the progressive segregation of young people from adults in social life is a class-related phenomenon and that the acceptance of this norm has been descending downwards in the class structure over time. In the seventeenth century, the trend was reflected only in the lives of a narrow stratum of aristocratic elite. During the industrial revolution, it permeated into the life style of the propertied middle classes, where it reached its highest development. But the people of the nineteenth-century peasantry and of the working classes were not touched by it and their children were drawn into adult work, fun, and misery in ways that scandalize contemporary consciousness. The class-bound culture of the urban ghettos and of certain "backward" areas of our own times still does not reflect the ideals of protectiveness toward the privacy of family life as the shelter for childhood. Aside from these enclaves, the idea of socially distinct childhood and young age has become the dominant moral norm of our times, and it determines the orientation of the political, economic, and educational institutions toward young people in the most general sense. The norm is coerced upon those people who have not adopted it spontaneously or who have not succeeded in accommodating to it because of certain realities of their existence; notably, their failure in achieving the level of material well-being upon which acceptance of the norm is conditioned.

The imposition of the new norm of childhood upon the people on the bottom of the social heap in the United States has a history that deserves special mention. In response to the large influx of immigrants from non-English speaking parts of Europe, who were largely of peasant origin, the so-called child-saving movement came into existence, to aid in the Americanization and the embourgeoisement of their offspring.[17] Though this movement issued mainly from philanthropic motives, it gave rise to the juvenile justice sys-

[17] *A. Platt, The Child Savers: The Invention of Delinquency* (1969).

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tem and to the special coercive measures that are associated with it. Thus, in the United States, the special condition of childhood was very early attended by a public interest in it and by the development of institutions equipped to take over where the family was thought to have failed or neglected to do its duty.

The institutionalization of this kind of childhood calls for a special appreciation of the importance of children and of the importance of meeting what are perceived to be their needs and for the mobilization of substantial resources and facilities required to meet the needs. Both the attitudinal and the material investment became feasible only in connection with the precipitous drop in infant and childhood mortality rates experienced in the past several decades. They are closely connected with an optimistic future orientation that is a leading feature of the modern social ethos, especially in the United States. Under ordinary circumstances, each set of parents faces separately the immense responsibility for the care of their offspring. They are, as a whole, far more considerate and better instructed about children than their predecessors. To cope with problems of child raising, Americans have mounted an attack of mind-boggling complexity. The efforts of parents are augmented by the services of a host of professional specialists, among whom are pediatricians, teachers, child psychologists, recreation directors, clergymen, authors of children's books, athletic coaches, and juvenile justice personnel. All these services are supposed to function in conjunction with parental control and the nexus between children and society is through the parental home and under the aegis of parental protection. Having no standing of their own in relation to others, it is natural that children should be regarded as fully accountable for their presence, demeanor, and appearance, both to their parents and to other adults when parental control is thought to have lapsed. The condition of pervasive scrutiny binds the children and their parents alike, for parents are not only entitled to know everything, they are also obliged to find out.

The comprehensive authority of parents to control and direct the lives of their children is based on the paramount importance of the process of socialization in childhood, a process, one must remember, that now extends well into the late teens. Children are persons on the way to becoming adults and everything they do or is done to them is in some sense preparatory for later life. Every activity and experience matters merely in terms of its future consequences and is, therefore, devoid of any inherently valued significance of its own.

Three aspects of juvenile conduct attract a great deal of attention and serve as criteria for judging how well a young person is moving

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in the direction of becoming a normal adult. Performance in school is the most important one. Educational progress is closely connected with strong parental guidance and encouragement. Youngsters from intact middle class homes are more strongly motivated and more likely to succeed to and past college. Only slightly less important than good study habits are good manners. But mannerliness is in the main the ceremonial correlate of middle class ideals to which reference was made earlier. The permitted liberties and required deportment characteristic for the main part of society is different than for both the upper class elite and the lower classes. The main point is that mannerliness is not a free-floating aspect of conduct but is anchored in material circumstances of life. The third important part of a child's life comprises recreational activities. Children are expected to play. This is a subtle matter calling for the appreciation of play and games as serious activities. Two things are worth mentioning in connection with it. First, within this sphere, young people have gained some measure of independence from adult control, creating what is often referred to as a youth culture which comprises certain forms of esthetic appreciation and styles of leisure activity.[18] Play is the child's frontier of freedom. Second, despite the inherent feature of freedom, play is always structured.[19] In past times, such structure was related to supernatural sanction and recreation was understood as recreating harmony between man and the powers of the cosmos. In our times, the penumbra of supernatural reference fell away and recreation acquired the primarily psychological significance of character building and tension release. But even in its secular form recreation retains canons of morality, fair play, and aesthetic appreciation of form and, owing to this, is regarded as wholesome and desirable. Thus, play is a peculiarly tamed form of freedom, always attended by the risk that fun could turn into its antithesis, scandal.

All these considerations function as tacit presuppositions, structuring the ways encounters between juveniles and the police take shape. They are the unspoken but clearly heard part of citizens' complaints about juveniles. And young people know that these considerations are part of the regime under which they live, regardless of whether the regime is embodied in parental control or in the hassle from others to which they feel exposed. In the hands of the police, the

[18] *P. Goodman, Growing Up Absurd: Problems of Youth in an Organized Society* (1950); *B.N. Berger, Looking for America: Essays on Youth, Suburbia, and Other American Obsessions* (1971).

[19] *J. Huizinga, Homo Ludens: A Study of the Play Element in Culture* (1950); *R. Callinois, Man, Play, and Games* (1961).

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control acquires a sharper edge, partly because the police tend to intervene when other controls are thought to have failed and partly because of the contingencies of police practice itself. Consider the following case of encounter. Patrol officers approach a group of juveniles in a public place with the demand, "What's going on here?" to which they receive the reply,"We weren't doing anything." The case is apt to have a history of its own, in the course of which the arrival of the police signals that developments have moved to the wire, so to speak. Moreover, there is in the minds of both the police and of the juveniles a sense of how such encounters have developed in the past. Because the problem in these situations is more often than not nondescript and because the police are more interested in abating a problem rather than in finding out what it is, what takes place during the encounter matters more than what brought it about. That is, the decision of what has to be done by the police takes shape in relationship to how the juveniles act toward the police and, within a very considerable range of seriousness of citizens' complaints, the weight of substantive misconduct will be mitigated by expressions of diffidence on the part of the juveniles and aggravated by their recalcitrance.[20] The recalcitrance is taken, in the first place, as a violation of the standard of accountability. Beyond that, it stands to reason that the youth who will sass the police will be even more obstreperous with others. Moreover, the patrol officers are apt to express their demand in an undiplomatic manner to gain tactical advantage over possible resistance. The main reason why they act to discourage opposition even before it comes to the fore, wisely or foolishly, is that they know they will not be able to retreat in the face of it. But the gambit itself sets an ironically appropriate response into motion. Adventuresome youths treat these encounters as a game of "chicken," testing their fortitude and stamina against the police. Thus, what was initially merely a breach of the norm of accountability becomes a breach of a norm of decorum (i.e., juvenile disrespect toward adults in authority). Because most of these encounters take place in public space, they constitute a challenge to the police dominion over the public space.[21] Inasmuch as the order of life abroad, as distinct from life at home, is structured around adult interest from which youth is barred, the presence of

[20] I. Piliavin and A. Briar, "Police Encounters with Juveniles," 70 *Am. J. of Soc.* 206-214 (1964); C. Werthman, "The Function of Social Definitions in the Development of Delinquent Careers, in President's Commission on Law Enforcement and Administration of Justice, *Task Force Report: Juvenile Delinquency and Youth Crime* 166-169 (1967), *A. Cicoural, The Social Organization of Juvenile Justice* (1968).

[21] *J. Rubinstein, City Police*, esp. at 290-301 (1973).

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youth abroad, in the absence of specific justification, is problematic and subject to possible preventive regulation. Indeed, it is only a slight exaggeration to say that for the working patrol officer, juveniles do not so much cause trouble as they are trouble.

The strength of the police perception of the troublesome character of young people varies and it applies with greatest force to youths from disadvantaged backgrounds for easily understandable reasons. Judged by the conceptions discussed in the foregoing remarks, their childhood is virtually anarchic. Residing in the deteriorating urban ghettos, their lives are far less confined in the family household; their parents lack the facilities and resources to create a protected environment for them that is indispensible to appropriate guidance and control. In simplest terms, the material circumstances of their families do not, by accepted standards, provide a place to raise children in. Many children from disadvantaged backgrounds seem not to be imbued with educational aspiration; their performance in school is notoriously disappointing. Consequently, their lives are not stabilized by an extended educational curriculum, their time is not occupied by study, and their existence is not directed toward the promises of future success that commitments to education project. Further, having grown up within a different code of deference and demeanor, middle class mannerliness is alien to them. The language of lower class street life is filled with vulgarity (vulgarity means reflecting the customs of the *vulgus*, i.e., the common people) and much that is to them good-natured banter deeply offends outsiders. Finally, disadvantaged children are very poorly supplied with amenities that lend to juvenile recreation its sense of acceptable normalcy. Not only do these children lack the sheltered spaces of the playroom or park and have to seek recreational opportunities where they interfere with adult business and convenience, but their playing—like the rest of their lives—is rough and likely to overshoot boundaries of propriety and, therefore, attract censure.

It is clear that normal adolescence is, to a great extent, a function of the material circumstances surrounding it. The absence of these circumstances does not doom a person, but it does make living up to expected standards far more difficult and unlikely. It is merely a superficial gloss to say that the police are required to impose middle class standards on lower class youth. In fact, considering the start in life the latter get, much more is expected of them than of their more fortunate peers. Lower class youths are held to middle class standards far more stringently than middle class youths if only because the shield of protection that the privacy of the well-appointed home and parental influence afford in occasion of misconduct is lacking in their lives. Seen from the perspective of the working police

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officer, whatever his or her attitudes concerning race and class might be, disadvantaged youths demand much more attention and intervention than others. Since docility is not ingrained into these youths, a vicious cycle of recrimination, hostility, and distrust is set into motion, within which every encounter projects the possibility of troubles beyond itself. One must not minimize the seriousness of the dilemma in which the police find themselves. On the one hand, they cannot retreat from their duty to keep the peace and to enforce the law. On the other hand, if their claim to professional status is to be respected, they cannot function as mindless instruments of coercion. One sometimes hears from police officers that they have become more prejudiced against minority and lower class people than they were at the time they entered the police force, and they point to experience as justifying the shift of attitude. But this justification draws only on the most superficial aspects of experience. Many officers are aware that circumstances of life play a role in misconduct. But they argue that changing such circumstances is not part of their mandate and that they are powerless to change them. Others are likely to overlook in the ghettos some forms of misconduct they would undertake to control elsewhere. Against all these attitudes, it must be said that neither greater aggressiveness nor resignation nor invidious neglect are the proper responses ensuring nondiscriminatory police work. Instead, the first step in the direction of fair and effective intervention is a comprehensive understanding of the problems a police officer faces. Even if understanding does not contain the wisdom needed for the choice of right remedies directly, it can be counted on to keep from causing harm. For example, while a police officer cannot provide street kids with a playground and may have to prevent them from engaging in those activities they choose in place of normal recreation, he or she need not approach them in ways that increase their resentment.

In sum: in our society, the ideal nondiscriminatory practice poses a demanding task for the police. The banishment of personal prejudice and bias is the first and indispensible step toward it. Real circumstances have a way of causing that which was banished to creep back. But this is not beyond human control and it is an instance of bad faith to shrug one's shoulders about it.

2.2 Police departments should retain juvenile records only when necessary for investigations or formal referrals to the juvenile or criminal justice systems. Police officers should avoid the stigmatizing effect of juvenile records by retaining only minimal records necessary for investigation and referral in accordance with *Juvenile*

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Records and Information Systems **standards for retention of police records.**

Commentary

Twenty-five years ago, Edwin Lemert argued in an influential book that the determination of delinquency involves two distinct judgments. The first condemns an act of transgression. The second stigmatizes the agent as a transgressor. The point of Lemert's distinction is that the latter goes beyond establishing the connection between act and agent. It establishes a paramount characterization of a person, setting the framework in terms of which every aspect of his or her life will be evaluated and making all of his or her activities and intentions presumptively suspect. Ultimately, such a person accepts the identity assigned to him or her and the prophecy becomes self-fulfilling. The dynamics of the process are complex, but the bureaucratic formalities of social control, among which recordkeeping is the most notable, play a significant part in it.[22] "Having a record" has acquired the idiomatic meaning of being a habitual transgressor. For the harried official, the mere existence of a notation becomes the smoke signifying fire. The person referred to therein may be treated with suspicious scrutiny and may even be judged by it without examination.[23]

Since the potentially untoward effects of records cannot be adequately controlled and since the police most assuredly must not do anything that might contribute to the turning of an occasional transgressor, or a person who had the misfortune of being fortuitously involved in the investigation of a police problem, into a hardened delinquent, police departments should refrain from keeping records about juveniles except when they are necessary for serious investigations and for the orderly processing of cases through the juvenile or criminal justice systems.[24]

This standard is recommended in the firm belief that its adoption will prevent far more harm than it is likely to cause. It should not be overlooked that such a proposal may deny the police some poten-

[22] *E. Lemert, Social Pathology, A Systematic Approach to the Theory of Sociopathic Behavior* (1951).

[23] For an analysis of the general problem of the untoward potential of bureaucratic records, see *A. Miller, The Assault on Privacy: Computers, Data Banks, and Dossiers* (1971); Shakespeare put the following plaint in the mouth of Jack Cade, "Is it not a lamentable thing, that the skin of an innocent lamb should be made into parchment? That parchment, being scribbl'd o'er, should undo a man?" *King Henry the Sixth*, Part II, Act IV, Scene II.

[24] For a broader examination of problems in this area, see the *Juvenile Records and Information Systems* volume.

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tially significant information. Since recordkeeping in important cases remains permissible, this is not likely to be the case often. Yet it might happen and it should come as no surprise if conscientious police officers would seek to lessen this effect by instituting some kind of informal recordkeeping. Such evasions must be controlled. In the end, the faithful implementation of the rule depends on the police officers' understanding of, and solemn commitment to, the aim for which it is instituted: that the police must not contribute to the proliferation of the very problems they are mandated to control.

One further matter must be dealt with in connection with "giving someone a record." Police officers are well aware of its stigmatizing effect and they do take this into account in their work. The decisions in this regard are modulated by the anticipation of effects on a youngster's future. It is only natural that, in this process, stereotypes play a part, if only because officers often lack the resources and opportunities to conduct intensive inquiries in individual cases. Thus, young people whose backgrounds indicate that they are bound for promising futures are likely to be treated with circumspect regard for the harm having a record might cause them. By the same reasoning, youngsters whose origin indicates that their life chances are not very bright and who might be assumed to get into trouble again anyway, pose less of a problem in this regard. Juveniles of the first kind are presumed to know what they stand to lose, and that this justifies the risk of giving them a second chance. But youngsters of the second kind are thought to be, on the average, less docile and provident and less likely to learn the lessons intended in a warning. Even when the decision does not depend on stereotyping, the police officer is faced with a situation in which he or she can expect that the parent will assume control of a middle class juvenile where the officer leaves off, and that such parents can mobilize additional remedies in the form of therapy or counseling to prevent future misconduct. On the other hand, juveniles who do not have such backgrounds, whose family circumstances are estimated to be actually or potentially unstable, or whose parents are deemed to be incapable of exercising effective control, are considered more likely to become the targets of police interest. Underlying these perceptions is the idea of the social order and of a social stability that places extraordinarily heavy emphasis on nuclear family structure. This idea is so deeply ingrained that it obscures the possible appreciation of alternative forms of social organization in which the typical middle class family is not the main medium of human existence. In fact, alternative forms of intimate communal organization tend to be viewed with suspicion and distrust.

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Thus, insofar as records are usually kept with a view toward their potential usefulness, one finds that the norm against recordkeeping is joined with the norm of nondiscriminatory practice.

2.3 Since other volumes in the Juvenile Justice Standards Project conclude that serious harm can be done to juveniles simply by their being referred into the formal juvenile justice process, police should not make such referrals unless:

A. serious or repeated criminal conduct is involved; or

B. less serious criminal conduct is involved and lesser restrictive alternatives such as those described in Standard 2.4 are not appropriate under the circumstances.

Commentary

A constant theme throughout the entire series of Juvenile Justice Standards is that severe restrictions should be placed upon the use of the formal juvenile justice process. This theme is reflected, for example, in the proposals relating to narrowing the scope of juvenile codes,[25] to diverting many juvenile problems to other community resources,[26] and to setting the highest priority on releasing juveniles instead of detaining them in custody.[27] Other volumes in the series urge that the juvenile court should no longer have jurisdiction over status offenses and should have its delinquency jurisdiction limited to matters that would be criminal if committed by adults. These volumes also suggest that minor criminal offenses, particularly those committed by first-time offenders, should whenever possible, be diverted away from formal processing and adjudication. This volume strongly endorses these approaches. See Standard 4.3.

There are many reasons for limiting juvenile court jurisdiction. They include: 1. the serious harm that can be done to juveniles simply by their being referred into the formal juvenile justice process; 2. the inability of the juvenile courts to respond effectively and appropriately to many of the matters brought before them; 3. the value of utilizing community resources and restraints for most juvenile problems; and 4. the need to have the formal juvenile justice process focus its limited resources on more serious problems.[28]

[25] *See* the *Juvenile Delinquency and Sanctions* volume.

[26] *See, e.g.*, the *Noncriminal Misbehavior* and *Youth Service Agencies* volumes.

[27] *See* the *Interim Status* volume.

[28] Many commentators have discussed these issues. *See, e.g., E. Schur, Radical Non-Intervention: Rethinking the Delinquency Problem* (1973) and President's Commission on Law Enforcement and Administration of Justice, *Task Force Report: Juvenile Delinquency and Youth Crime* 9-21 (1967).

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Because of these and other concerns, Standard 2.3 specifies that police should not make formal referrals to the juvenile court unless: A. serious or repeated criminal conduct is involved; or B. less serious criminal conduct is involved and lesser restrictive alternatives are not appropriate under the circumstances.

Although this approach should reduce the number of problems that courts, prosecutors, defense counsel, and intake staff, among others, will have to face, the same will not be true for the police. They will still have to respond to calls for service and decide what to do about a situation at hand. Standard 2.3 and the standards that follow attempt to provide guidance on the choices the police have other than referring cases to the juvenile court and a sense of the priorities to be given to these choices.

Some commentators have, in the past, expressed great reservation about giving the police (as opposed to intake staff, for example) the major responsibility for the diversion or referral of juvenile problems.[29] The truth of the matter is that the police have always had and fulfilled this responsibility, but this has received little public attention. The difficulty with the current system is not that police do refer or divert most of the juvenile cases before they become court issues; it is that most police actions are taken on an *ad hoc* basis by individual officers and are not guided either by departmental policies or joint policies with other juvenile justice agencies. Further, current actions are subject to little accountability either within or outside of police agencies.

A portion of the extent of police diversion of juveniles is revealed in the most recent FBI *Uniform Crime Reports.* According to the over 8,500 reporting police agencies, 1,709,564 juveniles were taken into custody during 1974. This figure reflects not only Crime Index offenses, but covers all offenses except traffic and neglect cases.[30] Of this total police agencies report that 44.4 percent of the juveniles were handled within their respective police departments and were released; 47 percent were referred to juvenile court jurisdiction; 2.5 percent were referred to welfare agencies; 2.4 percent were referred to other police agencies; and 3.7 percent were referred to criminal courts.[31] There is no breakdown of how various types of offenses were handled within these categories. These figures reveal only the

[29] Some of these arguments are examined in President's Commission on Law Enforcement and Administration of Justice, *Task Force Report: Juvenile Delinquency and Youth Crime* 9-10 (1967).

[30] Federal Bureau of Investigation, "Crime in the United States—1974," *Uniform Crime Reports* 177 (1975).

[31] *Id.*

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percentage of referrals made *after* a child is taken into custody. An even higher percentage of all problems with juveniles are dealt with on the street without any formal action being taken.[32] As pointed out earlier, this is as it should be. The standards that follow attempt to develop a conceptual framework and some specific guidelines for the diversion by police of juvenile problems.

2.4 For juvenile matters involving nuisance, mischievous behavior, minor criminal conduct (e.g., being intoxicated, engaging in minor thefts), or parental misconduct (such as neglect) not involving apparent criminal behavior, police should select the least restrictive alternative from the following courses of action, depending upon the circumstances:

A. nonintervention;

B. temporary assistance to those seeking or obviously needing such assistance (including situations in which the potential of serious physical harm is apparent);

C. short-term mediation and crisis intervention (e.g., resolution of family conflicts);

D. voluntary referral to appropriate community agencies; or

E. mandatory temporary referral to mental or public health agencies under statutory authorization to make such referrals (e.g., to detoxification program).

In dealing with juvenile problems, police agencies should not attempt to initiate their own deterrence or treatment programs (such as informal probation), but rather should limit their services to short-term intervention and referral.

Commentary

Introduction

Standard 2.3 recommended that police not make referrals to the formal juvenile justice process unless: A. serious or repeated criminal conduct is involved; or B. less serious criminal conduct is involved and lesser restrictive alternatives are not appropriate under the circumstances. Similar recommendations have been made by the International Association of Chiefs of Police.[33] It recommended, for

[32] *See, e.g.*, President's Commission on Law Enforcement and Administration of Justice, *Task Force Report: Juvenile Delinquency and Youth Crime* 12 (1967); and Weiner and Willie, "Decisions by Juvenile Officers," 77 *Am. J. of Soc.* 199-210 (1971). For an excellent bibliography of the police diversion literature, *see M. Neithercutt, Bowes, and Moseley, Arrest Decisions as Preludes to? An Evaluation of Policy Related Research*, Vol. 2, 105-119 (1974).

[33] *R. Kobetz* and *B. Bosarge, Juvenile Justice Administration* 77, 89 (1973).

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example, that juveniles allegedly involved in status offenses, vagrancy and runaway, incorrigibility, misdemeanor offenses, and first offenses should be seriously considered for diversion from the formal adjudicatory process.

As noted in the commentary to Standard 2.3, determining that certain problems should not be referred to juvenile court does not relieve the police of concern over the matter. This will continue to be so even if juvenile court jurisdiction is substantially narrowed. Whether a matter is defined as criminal or delinquent or merely foolish behavior may be irrelevant to the public if it is troubled or angered by an event.

This standard attempts to deal with the question of what the police should do about juvenile problems that should not be referred to juvenile court. It attempts to define various types of behavior, identifies possible options for dealing with this behavior, and provides a sense of priority in selecting among these options. This material should be read in tandem with several of the standards in the *Noncriminal Misbehavior* volume.[34]

This standard carries into the area of police handling of juveniles a theme that has developed in other standards throughout the Juvenile Justice Standards Project—that in dealing with juveniles, the police should select the least restrictive alternative available in attempting to resolve problems. In many ways, this approach mirrors a strategy suggested recently by Professor Edwin Shur:[35]

> Thus, the basic injunction for public policy becomes: leave kids alone whenever possible. This effort partly involves mechanisms to divert children away from the courts but it goes further to include opposing various kinds of intervention by diverse social control and socializing agencies. . . . Subsidiary policies would favor collective action programs instead of those that single out specific individuals; and voluntary programs instead of compulsory ones.

In many instances, the police should "leave kids alone" and should refuse to intervene in certain situations. Police, for example, should make it clear that they will not get involved in such matters as truancy cases; juvenile possession and use of alcohol, tobacco, or nonaddicting drugs such as marijuana (unless other problems such as

[34] Specifically, attention should be addressed to the following: Part I (juvenile acts of misbehavior, ungovernability, or unruliness); Part II (juveniles in circumstances endangering their safety); Part III (runaway juveniles); Parts IV and V (services relating to juveniles in family conflict); and Part VI (emergency services for juveniles in crisis).

[35] *E. Schur, Radical Non-Intervention: Rethinking the Juvenile Delinquency Problem* 155 (1973).

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abusive behavior or serious illness are associated with it); and disagreements between parents and children.

The police, however, do have to get involved in most of the problems about which requests for service are made, for the nature and seriousness of a problem rarely take shape until the police arrive at the scene. This standard is written with this fact in mind.

Moreover, the provision in Standard 2.4 prohibiting police from initiating their own deterrence or treatment programs is not intended to proscribe police recreational, athletic, or educational programs for the community.

Defining Different Types of Juvenile Problems

Police action is heavily oriented to emergent features of problems and police decisions are crucially influenced by circumstances assessed in accordance with common sense. This makes it difficult to try to develop a sharply defined taxonomy of police problems and activities. To be sure, uncertainty is not present in every case. A homicide is simply defined, regardless of the situation, and the initial decisions can be simply stated and implemented. The same is true of many other serious offenses and probably also for some other problems of a noncriminal nature. The majority of police interventions, however, are not that easily typified. The matter can be easily illustrated. Assume a case involving a serious rift between an older adolescent and his or her parents, in consequence of which the adolescent is denied access to his or her parental home. The adolescent then decides to "break in," to redeem what he or she regards as his or her possessions, *e.g.*, clothes, records, sports equipment, etc. Suppose the adolescent is apprehended and that the vindictive parent demands that the case be treated as burglary. Or assume a case of a youth who has often stayed away from home overnight, who, on one occasion, remains absent for several nights. Should he or she be considered a runaway? Consider further that in these and in even more ambiguous cases, the police must define the nature of the problems on the basis of their *prima facie* features. It is then easy to see that applying typified definitions calls for a great deal of interpretative work.

All this should not be taken as precluding the possibility of a conceptual clarification of the scope of police problems and should not prevent efforts to delineate some internal differentiation. Suggested police alternatives cannot be dealt with separately from the types of juvenile problems the police confront. It must be remembered that every proposed scheme is primarily an aid for analysis and that the proposed categories do not apply mechanically. Thus, the categories that will be outlined below must be viewed as inte-

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grated considerations that come into play in deciding the nature of actual cases and in electing an appropriate course of remedial action. In general terms, as the material below notes, juvenile problems traditionally viewed to require police intervention but not involving serious criminal conduct include: 1. abuse (by parents); 2. neglect (by parents); 3. nuisance; 4. mischief; and 5. minor violations or minor criminal offenses. These categories and their implications to the police will now be examined.

Abuse. Since cases of child abuse are likely to contain the conceptually separate element of adult culpability, it ought to be emphasized that regard for the welfare, health, and safety of the child must take unqualified precedence over all other considerations. This may introduce some complications into enforcing the provisions of the penal law, the resolution of which ought to be left to juvenile authorities. This restriction is limited, however, to cases in which the putative offender is the child's parent, formal or informal guardian, or sibling, and it should not apply in cases where a child has been the victim of crimes by strangers, acquaintances, or friends. The nature of the intervention by the police must depend partly on the gravity of the abuse and partly on the need for immediate remedies. In all cases involving physical injuries, all police officers ought to have responsibility for securing medical examinations and emergency care. While it is imaginable that in some cases this responsibility could be reliably entrusted to others, the mere fact that someone volunteers the service does not relieve the police officer of the responsibility. This gives police officers unusual powers, empowering them to remove children from parental care on what, in subsequent review, may come to be seen as insufficient grounds. Children, however, are frail, vulnerable, and often uncomplaining when they are victimized. More importantly, perhaps, the indefeasible duty of police officers to take charge of children injured by their parents constitutes, by implication, a condemnation of brutality, even when such brutality has not been deliberately malicious. In any case, it seems preferable to assume the risk of doing too much rather than too little in such cases, on both expediential and moral grounds.

Not all serious abuse does consist of battery. Without attempting to exhaust all possibilities, the rest could be conceived of in three other types that are more easily exemplified than defined. The first is loosely similar to sumptuary crimes. Here one encounters incest resulting from seduction (forceful incests being implicitly contained in the category of physical harm), and the habituation of children to the use of drugs and alcohol. The next has to do with isolation of children—as exemplified in cases of children raised in locked attics or basements without any human contacts—and with

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children raised in manifestly bizarre settings, often as a result of the mental illness of parents. The last has to do with what might be called the Oliver Twist syndrome, where children are coerced or induced to engage in predatory criminal activities. In some of these cases, the disclosure creates hazards warranting the immediate removal of the child. In general, these matters ought to be investigated with a view towards a referral to other remedial resources. In this area, juvenile authorities ought to be considered solely as an alternative of last resort.

Neglect. The problem of child neglect is extraordinarily complex and its treatment, generally speaking, does not belong within the sphere of police competence. Still, the police are often summoned, or become otherwise involved, when standards of sufficient care or supervision are not met. Some of these cases are so flagrant, either because they are combined with abuse, or because they amount to effective abandonment, as to call for emergency relief. In these instances, patrol officers ought to be required to mobilize some care and to refer the cases to juvenile officers or other agencies for more lasting solutions. Aside from such extreme situations, the police should refrain from intervening. This does not preclude drawing the attention of persons who might be expected to take an interest in the neglected children, or of social service agencies, to cases of neglect. The most important stricture they should observe is that they must not intervene coercively on the basis of some ideals of child care. It is quite clear that in some settings, children who are not the object of constant parental solicitude and supervision are, nevertheless, not neglected. The presence of alternative forms of child care and reliance on it calls for a sympathetic understanding of the morphology of informal community organization characteristic of various urban subcultures.

Though the problem of runaway children is usually treated as distinct from neglect, it differs from it mainly in that the lapse of parental or other care is due to the child's initiative rather than to neglect. Leaving aside the possibility that this distinction itself may be specious or superficial, runaway children ought to be aided in the same manner as neglected children. That is, patrol officers ought to be required to provide emergency help and should refer cases to juvenile officers or to other agencies that specialize in handling runaways. Police officers should not be required to return a runaway child home against the child's wishes. Recommending respect for the child's will is not meant to minimize problems associated with this approach nor preclude the possibility of going against it. In the first place, the child's guardians are entitled to immediate notice and police officers must have the authority to detain a child long enough

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to permit guardians to reclaim him or her. Furthermore, ordinary adult foresight about risks of victimization and exposure ought to play a role in making decisions about runaways.

In all of this, the uppermost consideration is that the police officer ought not to take the part of an adversary who will be evaded and opposed. The officer's interest should be in creating favorable conditions for the resolution of conflict, because the dealings with runaways, with lost children, or with children who simply wander, provide an important didactic opportunity. If a child is helped in time of crisis, and has any grievance seriously considered, such consideration is likely to make a lasting impression.

In sum, police dealings with cases involving the absence or lapse of parental care and supervision, for whatever reason, ought to be limited to noncoercive aid, and coercive measures should be permitted solely to ward off imminent danger. In these latter cases, coercive detention ought to be strictly limited to the time required to let others take charge. In some circumstances, it might be expedient to transport a runaway, but this should be done in a supportive manner. Finally, all decisions concerning care and supervision should be made with full recognition for normal patterns of child care in the community of which the child is a member.

Nuisance. Nuisance cannot be defined except by its relationship to time and place and, while it may be deemed trivial when considered in isolation, it can become the source of deeply ingrained resentment. Although nuisance can normally be defined as behavior caused by exuberance or idleness, no clear cut line separates it from harmful mischief. From the police perspective, juvenile nuisance presents, more than anything else, the "damned if they do and damned if they don't" dilemma. Ideally, one would want to recommend that the police have no duty to ease the burden of children being part of society. It is unlikely, however, that children or adolescents "doing their thing" will be suffered in the midst of adult pursuits. It is equally unlikely that residents of suburbs will abide the presence of a noisy crowd of teenagers in the vicinity of their homes in the late evening hours. Indeed, it is likely that the police will be called and often presented with over-dramatized complaints. While many patrol officers are skilled in handling such complaints and solve them to almost everybody's satisfaction, this is not always the case. Inconsiderate or ill-considered intervention can lead to unnecessary conflict that can rapidly escalate into ugly confrontations between youth and the police. In some instances, deterioration comes about even when patrol officers act wisely and civilly. In others, it results from police rudeness and prejudice. Without question, calm and

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resolutely firm intervention is the most effective way to abate conflict resulting from nuisance. It will also contribute to the formation of the idea, in the minds of police and of citizens, that police work is a service involving reason rather than muscle, making as high demands for intelligence as for courage. In general, the very frequent situational nuisances ought to be defined as wholly tractable in their occasional settings, with a sympathetic understanding for the tenor of youthful behavior, relying on persuasion and didactics, and avoiding coercion.

Mischief. There is no line of behavioral distinction between mischief and nuisance but what is seen as mischief often involves transgressions of a more serious kind. The conduct receives its definition from the attribution of motives. Juveniles are said to be mischievous when they act in conscious disregard for norms, and often with the deliberate intention of giving offense or causing harm. Still, the definition provides that although the youngsters are thought to "know better," the conduct is subject to benign and more pedagogical than punitive correction. The category reflects attitudes of everyday life and common sense rather than professional reasoning or the laws of juvenile justice. The prevailing view is that children are naturally mischievous, that this should not cause alarm, but must not pass unnoticed. The police have the duty to prevent mischief, to protect public and private property against it, and to shield its victims against harassment and injury. It is reasonable that police should be empowered to act more forcefully in these cases than in cases involving innocent nuisance. That is, while nuisances should be dealt with in a spirit of good cheer and comradery, mischief calls for a measure of sternness. When a transgression is defined as mischievous rather than delinquent, however, persons other than the police ought to be called upon to impose restraint and sanctions. Police intervention should be limited to transferring the case to others. This is, in fact, commonly done in cases of children from stable middle class homes. A definitional shift is likely to occur from nuisance to mischief and from mischief to delinquency, though, when youth of lower class origin are involved. Such a shift is obviously inappropriate.

Considerable attention has been given to nuisance and mischief not because they involve matters of great social significance in themselves, but to draw attention to the fact that certain forms of control may create more problems than they solve. In police work, it should be a matter of occupational skill to avoid procedures that cause the resentment of youth and that goad them into resistance, especially when it is known beforehand that the resistance will have

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to be overcome by force. Judicious and seasoned police officers do not need this kind of advice. In fact, there is no better source for learning how these difficult situations should be handled than the practice of these officers. Many departments, however, employ some officers who have not learned these lessons. Though this is known and often condemned among the police, very little may be done about it. That is, officers who employ what is euphemistically called an aggressive approach, who act prejudicially and brutally, and who gratuitously provoke the very problems they are supposed to control, are often neither reprimanded nor told to refrain from doing it.

Police departments should begin to pay more attention to the fact that some officers encounter a vastly greater amount of resistance in their work than others. Further, police departments should not assign those officers who have the lowest tolerance for resistance to the handling of problems where it is most likely encountered. This means that some of the most skillful officers must of necessity be assigned to blighted areas of the city, where resentment against police, particularly among juveniles, is likely to be high. In sum, the handling of relatively trivial but frequent juvenile problems often calls for consummate skills. This is true partly because recourse to force is not justified in their handling, and partly because inept handling may lead to an unnecessary proliferation of problems and can have the consequence of setting young people adrift on a course leading to great social harm and personal ruin.

Minor violations or minor criminal offenses. For the purposes of this volume, violations will be defined, for the most part, as that part of juvenile delinquency in which infraction might well not be deemed to be criminal if committed by adults. In some instances, however, the term may encompass some acts that would be recognized as criminal if committed by an adult. These acts are interpretatively assimilated to the domain of minor transgressions and, when formal complaints are filed, are alleged to be of this nature. All cases contained in this category call for the assessment of the need or desirability for formal referral to juvenile authorities. Thus, these cases always call for pre-judicial determinations, even though there is widespread agreement that referrals ought to be made only after all possible alternatives have been exhausted. Because of the pre-judicial determination and in order to ensure that alternatives will receive exhaustive consideration, later standards will indicate that most of these cases should be referred from the patrol to juvenile officers. It should usually be the final responsibility of the juvenile officer to decide whether a juvenile should be returned to the care of his or her

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guardians, whether he or she should be referred for aid to a youth service bureau, or whether he or she should be referred to juvenile authorities.

The discussion of the morphology of police cases calls for two further comments. The first deals with what might be called its logic and the second with the relevance of the juvenile's age. The several categories that have been proposed might be viewed as focal conceptions of problems. While they are relatively clear at their respective cores, it would be a mistake to treat them as sharply distinct from one another where they abut. The ambiguity, overlap, and uncertainty one finds in the area where neglect and abuse or nuisance and mischief meet is deliberately retained in recognition of the fact that police discernment and intervention are constrained by both common sense and technical reasoning. Since the police can never—or only very rarely—act in ways that disregard how things matter in everyday life, it is not useful to formulate standards that are foreign to police work. But police intervention does lend a greater determinateness to problems than they naturally have in the fabric of informal social interaction. These categories are intermediate and transitional between common sense and technical forms.

The second area deals with the issue of the relevance to police of a juvenile's age. While it is difficult to overemphasize the significance of age, it is even more difficult to specify with precision how and in what ways age should matter. Rather than belabor the obvious points that there is a difference between the neglect of infants and fourth-graders, or that a two-year-old and a twelve-year-old casting stones into windows are not doing the same thing, or that eight-year-olds and eighteen-year-olds are not runaways of the same kind, consideration should be given to developing a general scheme of age categories for use in decision making. The scheme should probably deliberately disregard the various age grading systems originating in scientific research, partly because of their controversial nature, but more importantly because police decision making is located in the midst of the functional organization of society. The closest society comes to cutting childhood into segments is in the segmentation of the educational process. It might be appropriate, therefore, to use preschool, grade school, junior high school, and high school as categories of distinction mainly on the recognition that each of them constitutes a relatively separate environment and universe of social relations. This is admittedly a coarse scheme, especially in early years, and the relevance of the school environment varies from social stratum to social stratum. Still, the educational segmentation matters more in structuring juvenile life and orienting adult attitudes

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towards children than any other categories. Therefore, it has obvious merits even though it raises such questions as how to deal with a child in kindergarten or one who has just completed grade school and has not yet entered junior high school.

The acceptance of an age grading scheme means that the types of police problems outlined above might be broken down, in every case, into four age subcategories. In the resulting twenty-four loci, some will be without content (there are not likely to exist any preschool delinquents, for example) while some will be fuller and more differentiated in content than others, (for example, in cases involving the neglect of preschool children). The twenty-four category scheme introduces a rich but manageable complexity into decision making. The typology is flexible in practice while furnishing distinctions with which police officers must reckon and which they will be required to invoke when justifying decisions.

Options and Priorities for the Police in the Handling of Juvenile Problems

In the standard preceding this one, it was proposed that police give emphasis to utilizing the least restrictive alternative for dealing with various types of juvenile problems. Further, many of these problems were defined and discussed. It is now important to identify more clearly what options are available to the police in handling these problems and what sense of priority should be given to these options. As noted in the standard, when the police do arrive at the scene of a problem, their options (other than initiating the formal juvenile justice process) should be as follows:

A. Nonintervention. In many instances, after sorting out the facts, the police might properly decide that the problem does not merit police involvement. If the police had known the nature of the problem in advance, as in the examples given earlier (*e.g.*, minor family dispute), they might have refused to respond to the call for service in the first place. In such situations, the police should simply withdraw without taking any further action.

B. Temporary assistance to those seeking or obviously needing such assistance. When the police arrive at a scene, there is often no conflict over what needs to be done. This is the case, for example, when a child is hurt and needs to be taken to the hospital. A more difficult issue arises when a child may be in danger of harm (from a parent, for example) and there is a dispute over the need for police intervention. Such circumstances should be guided by Standard 2.1 of the *Noncriminal Misbehavior* volume. In part, Standard 2.1 provides that a juvenile may be taken into limited protective custody

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under circumstances in which a police officer believes that there may be a substantial and immediate danger to the juvenile's physical safety (*e.g.*, parental abuse, extremely young runaway). Careful limitations are placed upon the use of protective custody (*e.g.*, notice, time restrictions, places where juvenile may be taken, etc.), and these limitations are clearly necessary.[36]

C. Short-term mediation and crisis intervention. Much police time is devoted to attempting to resolve disputes and conflict, even if only temporarily. In a juvenile context, disputes may arise between and among juveniles on the streets and within schools; between juveniles and parents or neighbors, and between juveniles and store owners, among others. This is the *order maintenance* side of police work and, at best, is an extremely sensitive and potentially explosive task. It must be understood that a range of skills and options must be available to police officers in undertaking this task.[37] Oftentimes, even though the police should attempt to resolve conflict with mediation skills and compassion, it will also have to be clear that police can make arrests (under appropriate circumstances) and use force, if necessary, to prevent matters from getting out of hand. In some instances, police may be required to temporarily move antagonists (or some of them) to other locations (outside a residence, across a street, to the stationhouse) to help reduce tensions. In most jurisdictions, the authority of police to move people temporarily to other locations (and against their will) may have to be clarified, both to give officers proper latitude to handle potentially dangerous problems and to prevent abuses of such authority. Whenever possible, juvenile officers should be used to handle tense conflicts involving juveniles. Since this is not always possible, all patrol officers should be trained in short-term mediation and crisis intervention involving juvenile problems.

D. Voluntary referral to appropriate community agencies. Although police officers may be able to resolve an immediate crisis or cool tensions temporarily, they do not have (nor should they be expected to have) the skills to deal with most of the underlying problems that cause most crises to arise. To the extent that longer term help is possible, it must come not from the police but from families, social service agencies (such as family counseling services),

[36] *See also* Standard 5.7 of the *Interim Status* volume, which establishes criteria for the use of protective custody for a child who is being referred to juvenile court but who, under normal circumstances, should have been released on a citation pending a hearing.

[37] *See* M. Bard, "Training Police as Specialists in Family Crisis Intervention" (1970).

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schools, hospitals, and mental health agencies, among others.[38] The police, more than any other agency of government, are in a position to spot problems that require attention and to make referrals for people in need. It is often not possible for patrol officers to keep abreast of various community programs that provide services to children and their families (although juvenile officers should attempt to keep abreast of such agencies and their strengths and deficiencies). Thus, the police should refer matters on a voluntary basis to youth service agencies and allow those agencies to either provide necessary services or refer juveniles and their families to other agencies and programs that will. As noted in earlier standards, police agencies should not attempt to initiate their own deterrence or treatment programs (such as informal probation or counseling), but rather should limit their services to short-term intervention and referral.

E. Mandatory temporary referral to mental or public health agencies under statutory authorization to make such referrals. In some instances, the police must make referrals on an involuntary basis. Such referrals might be necessary, as is pointed out in Standard 6.1 of the *Noncriminal Misbehavior* volume, when "any juvenile, as a result of mental or emotional disorder, or intoxication by alcohol or other drug, is suicidal, seriously assaultive or seriously destructive toward others, or otherwise similarly evidences an immediate need for emergency psychiatric or medical evaluation and possible care." Police authority to take juveniles into custody under such circumstances and to make mandatory temporary referrals should be specifically authorized by statute. The authority should be carefully circumscribed and subject to reporting requirements. Whenever possible, the authority should be utilized by a juvenile officer or approval for such action should be given in advance by such an officer. When this is not possible, the officer should be notified as quickly after the referral has been made as is feasible.

In deciding among these various options short of initiating the juvenile justice process, emphasis should always be given to using the least restrictive alternative which may be appropriate under the circumstances. Thus, resolving problems voluntarily at the scene or making voluntary referrals of problems should be encouraged whenever possible. Involuntary actions such as taking juveniles to the stationhouse or making mandatory referrals should be reserved for the most serious situations.

Although this standard recommends that the police should use the

[38] *See* the *Youth Service Agencies* volume.

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least restrictive alternative, it does not suggest that the police should begin to adopt a policy of ignoring potentially troublesome social problems. The police must continue to respond to calls for service from the frightened, the angry, and the troubled. This standard, for the most part, attempts to clarify the options and preferences for police action or inaction once officers have arrived at the scene.

2.5 In order to stimulate police handling of juvenile problems (both criminal and noncriminal) in ways that are consistent with previous and subsequent standards, the following steps should be taken:

A. Juvenile codes should narrowly limit police authority to utilize the formal juvenile justice process.

B. Juvenile codes should clarify the authority and immunity from civil liability of police to intervene in problems involving juveniles in ways other than through use of their arrest power in dealing with matters in which the juvenile or criminal courts are to be involved. This means authority and emphasis should be given to the use of summons in lieu of arrest. For matters in which police must act to assist a juvenile in need against his or her will, authority to take a juvenile into protective custody or to make a mandatory temporary referral should be specified and should be properly limited. It should also be specified that a juvenile cannot be detained, even temporarily, in adult detention facilities.

C. Police agencies should formulate administrative policies structuring the discretion of and providing guidance to individual officers in the handling of juvenile problems, particularly those that do not involve serious criminal matters. Such policies should stress:

1. avoiding the formal juvenile justice process unless clearly indicated and unless alternatives do not exist;

2. using the least restrictive alternative in attempting to resolve juvenile problems; and

3. dealing with all classes and races of juveniles in an even-handed manner.

D. Police training programs should give high priority, in both recruit and inservice training, to available and desirable alternatives for handling juvenile problems.

E. Police administrators should work collaboratively with both public and private agencies in ensuring that adequate services are available in various neighborhoods and districts so that referrals can be made to such services, and ensuring that joint policies and common understandings are reached whenever necessary. In addition, police administrators, because of their knowledge of deficiencies in this area, should focus attention on gaps in public and private

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resources that must be filled in order to meet the needs of juveniles and their families, and on the unwillingness or inability of existing agencies and institutions to respond to the needs.

Commentary

In order to give impetus to many of the recommendations in this volume, both legislative action and administrative action by police agencies will be necessary. Essentially, this action will be needed: 1. to codify the view held throughout the Juvenile Justice Standards volumes that far more limited use should be made by the police of the formal juvenile justice process and to codify and give structure to the authority of the police to take custody over juveniles and their problems; 2. to provide guidance to police in the ways in which they should respond to various types of juvenile problems; and 3. to have the police assert greater leadership in stimulating the community to provide proper resources for the handling of juvenile problems.

Juvenile Code Revision

Most existing juvenile codes provide overly broad authority for the police to take juveniles into custody and to refer to the juvenile court matters relating both to criminal and noncriminal activity. Thus, the police can refer virtually all types of problems to juvenile courts if they choose to do so. However, as described under Standard 2.3, most police agencies divert a substantial percentage of juveniles away from juvenile courts. Police officers do so because they understand better than almost anyone the severe limitations of juvenile courts. Decisions whether or not to refer matters to the courts, however, are currently being made on an *ad hoc* and often arbitrary basis. It is necessary, therefore, to limit both the jurisdiction of the juvenile courts and police authority to refer juveniles to them. Guidance for this effort comes both from the *Juvenile Delinquency and Sanctions* and the *Noncriminal Misbehavior* volumes.

Standard 2.3 of *Juvenile Delinquency and Sanctions*, for example, limits juvenile delinquency liability to conduct which would be designated a crime if committed by an adult. Further, in *Noncriminal Misbehavior*, Standard 1.1 eliminates juvenile court jurisdiction of juvenile acts of misbehavior, ungovernability, or unruliness that do not violate the law. Those standards then set up special procedures for handling: 1. juveniles in circumstances endangering safety; 2. runaway juveniles; 3. juveniles in family conflict; and 4. juveniles in crisis and in need of emergency services.

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All of these provisions have important implications for police authority. First, future legislative reform should separate police authority to initiate delinquency or criminal proceedings from other actions relating to the need for emergency housing, protection, or medical care.

With reference to delinquency or criminal matters, even if the decision is made to initiate court proceedings, preference should be given legislatively to releasing the juvenile with a citation[39] or releasing the juvenile to a parent when he or she has been charged with a minor offense. In this regard, these standards support Standard 5.6 and 5.7 of the *Interim Status* volume which provide as follows:

> 5.6 Guidelines for status decision.
>
> A. Mandatory release. Whenever the juvenile has been arrested for a crime which in the case of an adult would be punishable by a sentence of [less than one year] the arresting officer should, if charges are to be pressed, release the juvenile with a citation or to a parent, unless the juvenile is in need of emergency medical treatment, requests protective custody, or is known to be in a fugitive status.
>
> B. Discretionary release. In all other situations, the arresting officer should release the juvenile unless the evidence as defined below demonstrates that confined custody is necessary. The seriousness of the alleged offense should not, except in cases of a class one juvenile offense involving a crime of violence, be sufficient grounds for continued custody. Such evidence should only consist of one or more of the following factors as to which reliable information is available to the arresting officer:
>
> 1. that the arrest was made while the juvenile was in a fugitive status;
>
> 2. that the juvenile has a recent record of willful failure to appear at juvenile proceedings.

As *Interim Status* also indicates, if juveniles are taken into custody, they should not, under any circumstances, be detained in adult detention facilities. However, in small communities which do not have special facilities designed for the detention of juveniles, the local juvenile court authorities have the duty to designate facilities for that purpose, provided that such designated facilities not include premises in which the juvenile would come into contact with adult detainees.

Aside from this criminal and delinquency authority, there must be

[39] For a similar recommendation as to adults, *see* American Law Institute, "Model Code of Pre-Arraignment Procedures" 14 (1975) and National Advisory Commission on Criminal Justice Standards and Goals, "A National Strategy to Reduce Crime" 90 (1973).

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clarification as well of the authority of the police to use methods other than referral to the juvenile justice process to deal with the variety of juvenile problems they confront. Consistent with the recommendations in Standard 3.3 of the ABA Standards for Criminal Justice, *The Urban Police Function* (Approved Draft 1973), this should involve enactment of recognized and properly limited authority and protection while operating thereunder:

A. to deal with self-destructive conduct such as that caused by drugs, alcohol, or mental illness (see Standard 6.1 of the *Noncriminal Misbehavior* volume);

B. to engage in mediation and the resolution of conflict in order to avoid potentially serious violations of the criminal law or to prevent serious physical harm; and

C. to temporarily remove a juvenile from a jeopardized situation (see Standards 2.1 and 3.1 of the *Noncriminal Misbehavior* volume).

As noted in *The Urban Police Function*, Standard 3.3, at 105, "[t]he ambiguity which currently exists with respect to police authority to act when a person is in need of help is unfortunate" and requires attention. Precedent in areas such as protective custody can be found in legislation, i.e., the District of Columbia legislation that decriminalized public drunkenness, established a comprehensive detoxification program, and authorized the police to refer alcoholics to detoxification facilities or to their homes.[40]

Finally, steps must be taken to clarify the issues surrounding the civil liability of police officers for improper conduct. The ABA Standards proposed that:

> In order to strengthen the effectiveness of the tort remedy for improper police activities, municipal tort immunity, where it still exists, should be repealed and municipalities should be fully liable for the actions of police officers who are acting within the scope of their employment as municipal employees.[41]

The need for such action in the various jurisdictions continues to be a pressing one and applies equally to misconduct in the handling of juveniles and adults. As is noted in the commentary to Standard 5.3 however, effective citizen remedies have, for the most part, yet to be developed and priority attention must be given to research in this area.

Police Administrative Policymaking

Legislative reform of the scope suggested in the previous section will not, in and of itself, provide sufficient guidance to the police.

[40] *D.C. Code Ann.* §§ 24-521, 24-535 (1973).

[41] ABA Standards for Criminal Justice, *The Urban Police Function*, Standard 5.5, at 167.

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For clarifying the authority of the police to handle delinquency matters and other juvenile problems does not (nor should it) eliminate police discretion in this area. As noted in Standard 2.4, the police have many options available in responding to juvenile problems once the decision is made not to initiate the juvenile justice process.

Although some departments have issued carefully developed criteria or guidelines to govern adjustment or referral,[42] these departments are clearly the exception. Police officers in most departments are usually left to their own devices in deciding how to handle individual cases. This must raise legitimate cause for concern, as the President's Crime Commission points out in its discussion of all informal adjustments made by police and court personnel:

> There are grave disadvantages and perils, however, in the vast continent of sublegal dispositions. It exists outside of and hence beyond the guidance and control of articulated policies and legal restraints. It is largely invisible—unknown in its detailed operations—and hence beyond sustained scrutiny and criticism. Discretion too often is exercised haphazardly and episodically, without the salutary obligation to account and without a foundation in full and comprehensive information about the offender and about the availability and likelihood of alternative dispositions. Opportunities occur for illegal and even discriminatory results, for abuse of authority by the ill-intentioned, the prejudiced, the overzealous. Irrelevant, improper considerations—race, nonconformity, punitiveness, sentimentality, understaffing, overburdening loads may govern officials in their largely personal exercise of discretion. The consequence may be not only injustice to the juvenile but diversion out of the formal channels of those whom the best interests of the community require to be dealt with through the formal adjudication and dispositional process.[43]

A number of different kinds of recommendations have been offered to deal with police discretion in pre-judicial adjustment. In summary, the President's Commission recommended that this challenge be met through: 1. the formulation of policy guidelines for release, for referral to nonjudicial sources, and for referral to the juvenile court; 2. the circulation of these guidelines to all agencies of delinquency control for review and appraisal at periodic intervals; 3. the availability of juvenile specialists within police departments at all hours to assist officers in pre-judicial decisionmaking; 4. the use of policy guidelines and information about juveniles and community resources for inservice training; 5. the use of youth service bureaus for adjust-

[42] *See, e.g.,* Baltimore, Maryland Police Department, General Order 5-76 (March 1976), which established pre-intake adjustment policies.

[43] President's Commission on Law Enforcement and Administration of Justice, *The Challenge of Crime in a Free Society* 82 (1967).

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ment after juveniles have been taken into custody; 6. the cessation of police hearings or the imposition of sanctions by the police; and 7. the restriction of court referrals to those cases that involve serious criminal conduct or repeated misconduct of a more than trivial nature.[44]

A major component of the President's Commission recommendations, the development of policy guidelines to structure and control police discretion, has also received considerable attention from other sources. The International Association of Chiefs of Police, for example, recommended the following in 1973:

> It is recommended that *all* police departments with the assistance of departmental legal counsel, develop guidelines and policies governing the disposition of juvenile cases at the police level and that these guidelines and policy statements be published and distributed to all officers. It is further recommended that training programs be initiated at the recruit and in-service level to familiarize *all* officers with police dispositional procedures in juvenile cases.[45]

Such guidelines and training programs should primarily be developed under the supervision of the juvenile bureau or juvenile officers and should be formulated after consultation with prosecutors, intake staff, juvenile court judges, and the staff of youth servicing agencies.[46] Guidelines should contain policies such as those reflected in Standards 2.3 and 2.4 as well as those related to criminal investigative procedures covered in Standard 3.2 *infra.* For further discussion of the need for policy, see Part V *infra.*

Police Leadership in Stimulating the Availability of Needed Community Resources

As noted in *The Urban Police Function,* the police do not operate in a vacuum in confronting and resolving juvenile problems.[47]

> For police to be effective, the systems upon which they rely must also be effective. It is, for example, of little value to equip police with the

[44] *Id.* at 80, 82-83.

[45] *R. Kobetz and B. Bosarge, Juvenile Justice Administration* 153 (1973).

[46] *See, e.g.,* National Advisory Commission on Criminal Justice Standards and Goals, "A National Strategy to Reduce Crime" 79 (1973). For an interesting proposed legislative guideline to police policymaking, *see* Section 22.03 of the Proposed Texas Juvenile Code reported in *F. Miller, R. Dawson, G. Dix, and R. Parnas, Criminal Justice Administration and Related Processes* 1261-62 (1971).

[47] ABA Standards for Criminal Justice, *The Urban Police Function* 252, 262 (1973).

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> information and training that enable them to refer troubled individuals to a social agency if, upon contact with the social agency, the referred individuals find that the agency is disinterested or is incapable of providing any significant assistance.
>
> * * *
>
> If resources do not exist in a community to deal adequately and quickly with . . . problems, the police are placed in the impossible position of having to deal with people in desperate need of help but with nowhere to take them. . . . Unfortunately, many communities will not deal with these issues until the police (who recognize the problems more than anyone else) speak out. If they do not, they will continue to be forced to deal alone with problems not of their making and certainly not within their ability to resolve.

Given the unique perspective and expertise police agencies have in recognizing deficiencies in community resources for young people and for families in crisis, police administrators and juvenile officers should work collaboratively with relevant public and private agencies to identify and respond to services that are available for police referrals, services that are unavailable and needed, and agencies and programs that are unwilling to provide appropriate services even though it is within their mandate to do so. As indicated in the quoted material from the ABA Standards, when other agencies and programs (both public and private) are unwilling or unable to assume their responsibilities for taking referrals of a community's serious juvenile problems, police administrators should inform the public of this fact and point out the implications of this for the police and the community at large.

PART III: THE AUTHORITY OF THE POLICE TO HANDLE JUVENILE DELINQUENCY AND CRIMINAL PROBLEMS

3.1 Serious juvenile crimes require the concern and priority attention of police as well as other agencies within the criminal and juvenile justice systems and the public at large. Police work in handling such cases should follow patterns similar to those used in the investigation of serious crimes committed by adults.

Commentary

Thus far, the standards and commentary have concentrated on the police handling of juvenile problems that do not involve serious conduct—nuisance or mischievous behavior, minor criminal activity,

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and certain parental misconduct. This is as it should be since these are the problems that most often confront police agencies and the juvenile courts.

This does not suggest, however, that the problems of serious juvenile crime should be ignored. They cannot be. The F.B.I. Uniform Crime Reports, released in November 1975, reveal that juveniles account for a substantial percentage of serious crime in this country. In 1974, for example, 31 percent of all Crime Index Offenses[48] that were solved involved persons under eighteen years of age.[49] More specifically, persons under eighteen accounted for 33 percent of all persons arrested for robbery,[50] 53 percent of those arrested for burglary,[51] 55 percent of those arrested for motor vehicle theft,[52] and 10 percent of those arrested for murder.[53] In most categories, arrests of juveniles are increasing significantly faster than the proportionate increase in the juvenile population and comparable increases in adult arrests for similar crimes.[54] Further, in some large cities, dangerous and sometimes uncontrollable juvenile gangs are again menacing the streets.[55]

According to the over 8,500 reporting police agencies, 1,709,654 juveniles were taken into custody during 1974. This number represents not only arrests for Crime Index Offenses, but for all offenses except traffic and neglect cases. Many arrests were apparently for minor matters, since 44.4 percent of the juveniles were handled within the respective police departments and released and an additional 2.5 percent were referred to other police agencies.[56] Undoubtedly, of the 47 percent of those juveniles who were arrested and referred to juvenile court, many were also for minor crimes and nuisance behavior. Even with all this being so, serious juvenile crime, particularly violent crime against the person, is a national problem of considerable scope.

It is also clear that sentiment toward juveniles who commit seri-

[48] Crime Index Offenses include: criminal homicide, forcible rape, robbery, aggravated assault, burglary, larceny, and motor vehicle theft.

[49] Federal Bureau of Investigation, "Crime in the United States—1974" *Uniform Crime Reports* 42 (1975) (hereinafter referred to as Uniform Crime Reports—1974).

[50] *Id.* at 26.

[51] *Id.* at 31.

[52] *Id.* at 35.

[53] *Id.* at 19.

[54] *Id.* at 42, 45.

[55] Salpukas, "Vicious Youth Gangs Plague Detroit," *New York Times*, Aug. 18, 1976, at 1, Col. 6.

[56] "Uniform Crime Reports—1974," at 177.

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ous crimes is hardening. More and more, public officials and others are calling for harsher sentences for juveniles who commit violent crimes.[57] In doing so, some attribute the dramatic rise in serious juvenile crime to the fact that "youthful offenders know they will not be punished."[58] Others strongly argue that the reasons for increases in serious juvenile crime are far more complicated than that. Regardless of the reasons, serious juvenile crime is a reality that must be addressed.

From a police perspective, this means that, in the handling of serious criminal matters, particularly violent crimes against the person, police investigative personnel and techniques should probably be the same for adults and juveniles alike. Investigations for both should be governed by the same constitutional standards (provided for in the Bill of Rights and the fourteenth amendment for criminal cases—see Standard 3.2 *supra*) and by the same priority concern. The only distinctions that might be made between juvenile and adult serious crime cases relate to: 1. the court to which the matter is to be initially referred; 2. the place where an offender is to be detained if pretrial detention is necessary; and 3. any special police responsibility set forth in juvenile codes or court rules with reference to notifying parents or court personnel (such as probation officers) whenever a juvenile has been taken into custody.

As part of an overall police policy for dealing with serious juvenile crime, police administrators should consider limiting the discretion of officers in diverting juvenile suspects arrested for serious crimes prior to an initial court appearance. Recent polling by the International Association of Chiefs of Police reveals considerable interest among police officials in diverting carefully selected juvenile misdemeanants and first offenders from the formal adjudicatory process.[59] With reference to diversion, it was recommended by those polled that the following factors concerning the nature of the offense must be taken into consideration in any decision to divert juvenile first offenders at the pretrial stage:[60]

1. The crime must not be considered to be a major one such as murder, armed robbery, forcible rape or aggravated assault.

2. There should be no evidence of dangerous offenses against the person.

[57] *See, e.g.*, Nemy, "Skyrocketing Juvenile Crime: Are Stiffer Penalties the Answer?" New York Times, Feb. 21, 1975, at 31, Col. 1.

[58] *See, e.g.*, statement of Joseph Busch, District Attorney of Los Angeles County, in Nemy, "Skyrocketing Juvenile Crime: Are Stiffer Penalties the Answer?" *supra* n. 57.

[59] *R. Kobetz* and *B. Bosarge, Juvenile Justice Administration* 89 (1973).

[60] *Id.* at 87-88.

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3. The degree of criminal sophistication should be considered, such as the use of burglary tools, premeditation, and the use of a weapon or strongarm tactics. These factors generally dictate the need for referral to juvenile court.

4. The desire of the victim or complainant to prosecute must be respected.

This appears to reflect rational policy at this time in our history.

3.2 Police investigation into criminal matters should be similar whether the suspect is an adult or a juvenile. Juveniles, therefore, should receive at least the same safeguards available to adults in the criminal justice system. This should apply to:

A. preliminary investigations (e.g., stop and frisk);

B. the arrest process;

C. search and seizure;

D. questioning;

E. pretrial identification; and

F. prehearing detention and release.

For some investigative procedures, greater constitutional safeguards are needed because of the vulnerability of juveniles. Juveniles should not be permitted to waive constitutional rights on their own. In certain investigative areas not governed by constitutional guidelines, guidance to police officers should be provided either legislatively or administratively by court rules or through police agency policies.

Commentary

Introduction

A basic question relating to police investigative procedures involving the criminal acts of juveniles has been confronting the courts for some time: should juveniles in the pretrial stage of the juvenile justice process receive the same, greater, or lesser constitutional safeguards than those available to adults at the pretrial stage in the criminal justice process?

Many of the existing interpretations governing constitutional restrictions in the area of police investigative procedures have been widely condemned. Given limited developments of specific constitutional guidelines in the juvenile area to date, priority should be focused on experimenting with alternative procedures that are consistent both with individual rights and law enforcement needs.

When the Supreme Court recognized the applicability of certain adult procedural safeguards for the adjudicative phase of juvenile

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delinquency proceedings in *In re Gault*[61] in 1967, it appeared that this question would eventually be answered in the affirmative. The Court's opinion in *McKeiver v. Pennsylvania*[62] four years later, however, made this prediction more problematical. In *McKeiver*, the Court indicated that, given the distinct nature and objectives of the juvenile court system, all constitutional requirements surrounding a criminal prosecution do not have to be extended to juvenile proceedings. The Court's opinion, which dealt with the issue of right to jury trial, limited the applicability of the Bill of Rights even though it recognized the massive failures of juvenile justice in this country.

With the future movement of the Supreme Court in the juvenile area so unclear, it is essential that attention be focused on the circumstances under which the same, greater, or lesser constitutional protections should be allowed in the police investigation stages of juvenile cases and under what rationale. For example, should greater intrusions than are normally allowed under the fourth amendment for adults be allowed where the justification is that the intrusions are needed to protect juveniles from their home environment, to protect them from themselves, or to accelerate a necessary treatment program? Or should there be greater protections in certain areas such as waiver of counsel or consent to search because a child is not in as good a position as an adult to make certain crucial decisions affecting his or her welfare? Issues such as these will be examined in this section. As will also be noted, some of the issues within this area are important but, under existing caselaw, are not of constitutional dimension. Many of these involve discretionary issues relating to decisions to arrest and to charge. In the absence of constitutional direction on these issues, focus will be on needs for legislative reform, court rules, and the administrative policies of agencies such as the police, the prosecutor, and the courts.

The Application to Juveniles of Constitutional Safeguards Available to Adults at the Pretrial Stage in the Criminal Justice Process—A Theoretical Framework

In assessing future possible approaches by the Supreme Court in articulating constitutional safeguards for juveniles at the pretrial stage of the juvenile justice process, it is important to understand developments to date. In establishing constitutional standards in the area of juvenile rights, different members of the Supreme Court have essentially relied upon two separate theories: 1. the in-

[61] 387 U.S. 1 (1967).
[62] 403 U.S. 528 (1971).

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dependent meaning of the due process clauses of the fifth and fourteenth amendments; and 2. various provisions within the Bill of Rights (made applicable to the states through their incorporation into the fourteenth amendment due process clause).

Even though there has been a clear split among various members of the Court on the basis for decisions in the area of juvenile rights, most opinions seem to have relied upon the independent meaning of the due process clause. The basis for this approach flows from earlier lower court cases on juvenile rights. In *Pee v. United States*,[63] for example, a federal juvenile case, the Court of Appeals for the District of Columbia, after concluding that a delinquency matter was not a "criminal case," flatly stated that juveniles were not protected by the specific provisions of the Bill of Rights. Instead, the court indicated that the source of any federally mandated juvenile rights was located in the more general requirements of due process and fair treatment. Similar language was used by the Supreme Court in *Kent v. United States*, 383 U.S. 541 (1966), in discussing an underlying rationale for that decision. Justice Fortas was even more specific writing for the majority in *Gault* in using a due process approach as a basis for holding that a juvenile had a right to counsel in adjudicatory proceedings. In *Gault* (except for Fortas' analysis of the privilege against self incrimination, which is discussed later in this section) and later in *In re Winship*, 397 U.S. 358 (1970), a due process analysis was used to require similar rights for juveniles that had already existed for adults through specific provisions in the Bill of Rights. In *McKeiver*, the Supreme Court halted the pattern established in *Gault* and *Winship* and indicated that a due process approach does not necessarily lead to equal rights for juveniles and adults. In *McKeiver*, a plurality of the Court used the due process clause to give juveniles lesser rights than were accorded to adults. In refusing to extend to juveniles the sixth amendment right to jury trial, the Court concluded that jury trials were not necessary for a fair determination of guilt in juvenile proceedings.

The separate notion that specific provisions within the Bill of Rights should apply to juvenile proceedings gains support from one aspect of the *Gault* opinion and from the recent case of *Breed v. Jones*.[64] As part of the majority opinion in *Gault*, Justice Fortas specifically held that the fifth amendment's privilege against self incrimination is applicable in the case of juveniles as it is with respect to adults. In reaching this result, Justice Fortas stated:

[63] 274 F.2d 556 (D.C. Cir. 1959).
[64] 421 U.S. 519 (1975).

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> Against the application to juveniles of the right to silence, it is argued that juvenile proceedings are "civil" and not "criminal," and therefore, the privilege should not apply. It is true that the statement of the privilege in the Fifth Amendment, which is applicable to the States by reason of the Fourteenth Amendment, is that no person "shall be compelled in any *criminal case* to be a witness against himself."
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> * * *
>
> It would be entirely unrealistic to carve out of the Fifth Amendment all statements by juveniles on the ground that these cannot lead to "criminal" involvement. In the first place, juvenile proceedings to determine "delinquency," which may lead to commitment to a state institution, must be regarded as "criminal" for purposes of the privilege against self-incrimination. To hold otherwise would be to disregard substance because of the feeble enticement of the "civil" label of convenience which has been attached to juvenile proceedings.
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> * * *
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> In addition, apart from the equivalence for this purpose of exposure to commitment as a juvenile delinquent and exposure to imprisonment as an adult offender, the fact of the matter is that there is little or no assurance in Arizona, as in most if not all States, that a juvenile apprehended and interrogated by the police or even by the juvenile court itself will remain outside of the reach of adult courts as a consequence of the offense for which he has been taken into custody.[65]

In *Breed*, Chief Justice Burger, for a unanimous Court, held that the double jeopardy clause of the fifth amendment, as applied to the states through the fourteenth amendment, precluded trying a juvenile in adult criminal court after an adjudicatory proceeding on the matter had been held in juvenile court. In so doing, Chief Justice Burger commented:

> We believe it is simply too late in the day to conclude, as did the District Court in this case, that a juvenile is not put in jeopardy at a proceeding whose object is to determine whether he has committed acts that violate a criminal law and whose potential consequences include both a stigma inherent in such a determination and the deprivation of liberty for many years. For it is clear under our cases that determining the relevance of constitutional policies, like determining the applicability of constitutional rights, in juvenile proceedings, requires that courts eschew "the 'civil' label-of-convenience which has been attached to juvenile proceedings," and that "the juveniles process . . . be candidly appraised."[66]

[65] *In re* Gault, 387 U.S. 1, 49-50 (1967).
[66] Breed v. Jones, 421 U.S. 519, 529 (1975).

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It is not clear how much can be read into these holdings. *Gault* and *Breed* certainly do not suggest any firm movement toward adoption of former Justice Black's view that the Bill of Rights should be incorporated fully into the fourteenth amendment due process clause for juveniles as well as for adults.[67] The opinions do suggest, however, that fundamental fairness at least requires selective incorporation of certain provisions of the Bill of Rights into the juvenile area and that the Court will not restrict such development by simply relying upon artificial criminal-civil distinctions.

Extensive debate over the value of using a due process as opposed to an incorporation approach may be of limited value since differences between the two may not be as great as might first be imagined. For even if courts continue to prefer to employ a due process approach, the specific provisions of the Bill of Rights, particularly in the fourth amendment area, should remain very important and influence any result reached. Justice Harlan, one of the major proponents of a due process approach for both juveniles and adults, always recognized that the Bill of Rights would flavor any due process rights.[68] Justice Brennan, concurring in *McKeiver*, seems to have built upon Justice Harlan's foundation. Brennan distinguished between incorporation and due process by noting that the former requires that a certain procedure be followed, and the latter requires that a certain result be reached. To determine that result, Justice Brennan turned to the Bill of Rights and tried to identify the substantive rights that the procedures described within the Bill of Rights were intended to protect. Having identified those rights, Brennan tested the particular state procedure in *McKeiver* to determine whether it adequately protected those rights. While one may disagree with the result the Justice reached in *McKeiver*, the methods used seem to be appropriate ones.

Regardless of which analytical approach is used, it would appear that juvenile rights at the pretrial investigative stage can be adequately

[67] *See, e.g.*, Justice Black's concurring opinion in *In re* Gault, 387 U.S. 1, 59–64 (1967). For a good analysis of the approaches of the various justices, including Justice Black's, *see S. Davis, Rights of Juveniles: The Juvenile Justice System* 177-187 (1974).

[68] In an excellent analysis of the due process model in Duncan v. Louisiana, 391 U.S. 145, 177 (1968), Justice Harlan noted the two-fold relationship between the Bill of Rights and the due process clause: "In the first place it has long been clear that the Due Process Clause imposes some restrictions on state action that parallel Bill of Rights restrictions on federal action. Second, and more important than this accidental overlap, is the fact that the Bill of Rights is evidence, at various points, of the content Americans find in the term 'liberty' and of American standards of fundamental fairness."

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protected only by procedures that are at least as broad as those required by the Bill of Rights for adults. First of all, fundamental fairness would seem to dictate that police treat adults and juveniles equally for comparable types of investigations and that they be held to the same level of accountability for their actions. This will be examined in greater detail in the sections that follow. In addition, following the approach taken in *Breed*, provisions such as the fourth amendment should be incorporated into the fourteenth amendment due process clause for juvenile cases because: A. police investigations of juvenile offenders might result in criminal as well as delinquency charges; and B. the potential punishment of juvenile offenders that might result from police investigations can be equally severe regardless of which forum is ultimately selected to hear the case.

There are advantages as well as limitations in using either approach. An independent due process analysis will not always interfere with a state's decision to give juveniles rights inferior to those the Bill of Rights requires states to give adults. On the other hand, the flexibility of a due process approach is such that it is also possible that states could be required to give juveniles greater rights than the Bill of Rights requires them to give adults because of a juvenile's immaturity, age, and lack of sophistication. It is also possible, however, that a similar result could be reached by interpreting the language and scope of various provisions of the Bill of Rights more broadly for persons in need of greater protections.

Since the nature of police investigations into criminal matters is similar whether the suspect is an adult or a juvenile (as is the potential for punishment upon conviction), juveniles should receive at least the same safeguards available to adults in the criminal justice process.[69] This should apply to: A. preliminary investigations (*e.g.*, stop and frisk); B. the arrest process; C. search and seizure; D. questioning; E. pretrial identification; and F. prehearing detention and release. Interestingly enough, in the sections that follow, it will be noted that many state court decisions, both before and since *Gault*, have assumed that the Bill of Rights applies in the police investiga-

[69] A third line of analysis based on the equal protection clause of the fourteenth amendment (often in conjunction with the due process clause) has also been used by some courts to strike down procedures that discriminate against juvenile defendants. While some courts merely state the conclusion that the equal protection clause has or has not been violated by a particular procedure—*e.g.*, *In re* Appeal in Pima County, 515 P.2d 600 (Ariz. 1973)—other courts, most notably in New York, have realized that several problems attend an equal protection analysis and they have tried to deal with those problems in a realistic manner. In People *ex rel.* Guggenheim v. Mucci, 352 N.Y.S.2d 561 (Sup. Ct.

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tive stage of the juvenile process, often without indicating why or how that result is reached.

The Application to Juveniles of Constitutional Safeguards Available to Adults at the Pretrial Stage of the Criminal Justice Process—Specific Areas

The fourth amendment—preliminary investigations, the arrest process, and search and seizure.

As was indicated earlier, none of the cases thus far considered by the Supreme Court has held that the fourth amendment is applicable to juveniles within a juvenile court context. Virtually all lower courts that have considered the issue, however, have held or assumed that it is.[70] In *State v. Lowry*,[71] for example, the court expressed the following view:

Crim. Term 1974), *aff'd* 360 N.Y.S.2d 71 (Sup. Ct. App. Div. 1974), the New York Supreme Court concluded that "the only justification for denying to juveniles all of the rights afforded to adults can be the benefits derived from progressive dispositions." If those benefits disappear, so does the justification for the distinct treatment and handling of juveniles.

The importance of the ultimate disposition of the juvenile underlies much of the Supreme Court's opinion in Gault. Gault ultimately rejected a suggested distinction for constitutional purposes between confinement and imprisonment of juveniles, but nevertheless noted the failure of juvenile courts and facilities to rehabilitate or treat juveniles. Thus, there is the suggestion in Gault that if juvenile facilities were less like prisons, the required due process rights owed juveniles could be reduced. The need to rehabilitate juvenile offenders (or at least attempt to do so) even though it may not be necessary to do so with adults has been emphasized in several federal district court opinions. A Rhode Island district court has held that "due process in the juvenile justice system requires that the post-adjudicative stage of institutionalization further this goal of rehabilitation." Thus, "(b)ecause such conditions of confinement . . . are antirehabilitative . . . [such confinement is a] violation of equal protection and due process of law." Inmates of Boys' Training School v. Affleck, 346 F. Supp. 1354 (DRI 1972). A similar result was reached in Baker v. Hamilton, no doubt aided by a judicial determination of legislative intent that juveniles should be rehabilitated and not punished. Nevertheless, the court concluded that the Kentucky practice violated the fourteenth amendment because "it is treating for punitive purposes the juveniles as adults and yet not according them for due process purposes the right accorded to adults." 345 F. Supp. 345 (Ky. 1972). This type of analysis might extend to the pretrial investigative stages of the process as well.

[70] *See, e.g.*, State v. Young, 216 S.E.2d 586 (Ga. 1975); *In re* Marsh, 237 N.E.2d 529 (Ill. 1968); and State v. Lowry, 230 A.2d 907 (N.J. 1967). For a general review of cases in this area, *see S. Davis, Rights of Juveniles: The Juvenile Justice System* 54-59 (1974); *S. Fox, The Law of Juvenile Courts in a Nutshell* 92-104 (1971).

[71] 230 A.2d 907, 911 (N.J. 1967). For a discussion of this and other cases,

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> Is it not more outrageous for the police to treat children more harshly than adult offenders, especially when such is violative of due process and fair treatment? Can a court countenance a system where, as here, an adult may suppress evidence with the usual effect of having the charges dropped for lack of proof, and on the other hand, a juvenile can be institutionalized—lose the most sacred possession a human being has, his freedom—for 'rehabilitative' purposes because the Fourth Amendment right is unavailable to him?

There is little consistency among the courts, however, in the rationale used in reaching this result. This was noted by Samuel M. Davis in *Rights of Juveniles: The Juvenile Justice System* 56-57 (1974):

> Courts have employed various rationales in handling, or in some cases evading, the question of the fourth amendment's application. A number of federal cases, for example, indicate a trend toward holding the provisions of the Bill of Rights directly applicable in federal juvenile proceedings, rather than utilizing the due process analysis of *Gault*.
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> * * *
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> Indeed, some state courts have expressed the view that the provisions of the fourth amendment are applicable to juveniles in the same way and for the same reason they are applicable to adults, *i.e.*, by virtue of the decision in *Mapp v. Ohio*, rather than by virtue of a due process and fair treatment analysis. Since the exclusionary rule is not necessarily limited to criminal cases, this approach is taken apparently to negate the argument that certain constitutional rights guaranteed in criminal proceedings are inapplicable to juvenile proceedings because of their civil nature.
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> Most of the state courts that have dealt with the applicability of the fourth amendment to juvenile proceedings have relied on the traditional due process and fair treatment analysis that existed prior to *Gault*, or in some post-*Gault* cases, have relied on constitutional due process standards announced in *Gault* to extend to juveniles the same protections afforded adults in the criminal process.
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> A number of other state courts, however, hold the fourth amend-

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see Young, "Searches and Seizures in Juvenile Court Proceedings," 25 *Juvenile Justice* 26 (May 1974).

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> ment applicable to juvenile proceedings, either expressly or by implication, without stating the basis or rationale for doing so.

In any event, in spite of the absence of direction from the Supreme Court, there is virtual unanimity nationally that the fourth amendment and its exclusionary rule applies to juvenile court cases. Thus, current constitutional standards governing stop and frisk and search and seizure apply in juvenile cases.[72] Some areas are difficult to translate into a juvenile context, however. These include: 1. taking juveniles into custody; and 2. consent by juveniles to waive fourth amendment rights. These issues will now be examined.

1. Taking juveniles into custody.

There has been considerable and understandable confusion over the issues of whether fourth amendment standards and common law and statutory requirements relating to arrest apply when the police take custody of juveniles and what the effect is regardless of whether the answer to this question is yes or no. This confusion, as pointed out by Ferster and Courtless,[73] stems from the fact that there are broader purposes for bringing juveniles within *the custody* of the juvenile justice system than arrest for criminal or delinquent acts:

> The phrase "taking into custody" instead of "arrest," is used in thirty-six jurisdictions. . . . Juveniles may be taken into custody not only for committing acts which would be crimes if committed by adults but also for "status" offenses, such as running away, and for being in "situations" which may endanger their welfare.[74]

It is interesting to note that all the model acts recognize these broader purposes and give the police broad authority to take juveniles into custody (although narrower than many of the existing state statutes). For example, Section 13 of the "Uniform Juvenile Court Act" provides:[75]

[72] For a sample of cases in these areas, *see In re* Lang, 44 Misc. 2d 900, 255 N.Y.S.2d 987 (N.Y. City Fam. Ct. 1965) (stop and frisk); and *In re* Marsh, 237 N.E.2d 529 (Ill. 1968) (search and seizure).

[73] Ferster and Courtless, "The Beginning of Juvenile Justice, Police Practices, and the Juvenile Offender," 22 *Vand. L. Rev.* 567 (1969). *See also S. Davis, Rights of Juveniles: The Juvenile Justice System* 38-54 (1974).

[74] *Id.* at 583.

[75] For a comparable provision, see "Legislative Guide" § 18.

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(a) A child may be taken into custody:
  (1) pursuant to an order of the court under this Act;
  (2) pursuant to the laws of arrest;
  (3) by a law enforcement officer [or duly authorized officer of the court] if there are reasonable grounds to believe that the child is suffering from illness or injury or is in immediate danger from his surroundings, and that his removal is necessary; or
  (4) by a law enforcement officer [or duly authorized officer of the court] if there are reasonable grounds to believe that the child has run away from his parents, guardian, or other custodian.

(b) The taking of a child into custody is not an arrest, except for the purpose of determining its validity under the Constitution of this State or of the United States.

Under certain circumstances, it may well be necessary to allow the police to take custody of juveniles even though there is no basis to arrest:

> While it seems clear that the Fourth Amendment sets limits to arresting activity, it is far from clear that a child may constitutionally be taken into custody only under circumstances that would justify arrest of an adult. Both the statutes and court decisions express a *parens patriae* concern for protecting children by removing them from harmful surroundings that would probably be accepted as a constitutionally permissive seizure of their persons.[76]

But, as Professor Fox further points out, combining the authority to take custody for delinquency purposes with the authority to take custody for welfare or other purposes can result in circumventing a juvenile's constitutional rights:

> Courts have sometimes greatly abused this *parens patriae* doctrine, however, by finding, for example, that when the police were investigating a complaint of use of obscene language and interference with use of playground equipment, "the minor herein was found in such surroundings as to endanger his welfare," upon his refusal to identify himself to the police. *In re* James L., Jr.[77] Arrests cannot be justified by such semantic manipulations.[78]

[76] *Fox, supra* n. 70, at 94.

[77] Case is reported in 194 N.E.2d 797 (Cuyahoga County, Ohio Juv. Ct. 1963).

[78] Fox at 95.

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Thus, by allowing the police to take juveniles into custody under the same statute both when they have committed acts that justify their arrest and prosecution and when they have committed no such acts but require assistance or protection, the application of fourth amendment standards to such a statute becomes blurred and confused. What should happen, for example, when juveniles make incriminating statements after they have been taken into custody to "remove [them] from surroundings which endanger [their] welfare?" Should probable cause and warrant requirements apply in situations where police intervene not because of criminal acts but because of such matters as being neglected, being a truant, or being a runaway?

Although it can be argued that police authority should be restricted to intervention in criminal-type situations and under traditional fourth amendment arrest restrictions, it must be recognized that the police undoubtedly need authority to intervene in many situations involving juveniles without having to invoke the arrest power.

It is difficult to argue, for example, that the police should be precluded from taking a juvenile into custody when his or her health or life is endangered unless they have the basis for a constitutional arrest.[79] The needs in this area obviously require more than simply reducing police authority to intervene to criminal-type situations. Standards must be developed that deal comprehensively with police authority and restrictions both in criminal-type situations and situations where intervention is for other essential reasons and arrest and prosecution are not contemplated.

In criminal-type situations, requirements should undoubtedly reflect the same strict constitutional standards and common law distinctions that relate to arrest of adults.[80] In nonarrest situations, police authority to take juveniles into custody or otherwise intervene in their lives should be carefully circumscribed and limitations should be placed upon the use of nonarrest custody to obtain evidence or otherwise assist in the investigation of potential criminal or delin-

[79] Ferster and Courtless, "The Beginning of Juvenile Justice, Police Practices, and the Juvenile Offender," 22 *Vand. L. Rev.* 567, 589 (1969).

[80] *See, e.g.,* California's new statute on arrest of juveniles, which became effective on March 4, 1972: "625.1. A peace officer may, without a warrant, take a minor under the age of 18 into temporary custody as a person described in Section 602: (a) Whenever the officer has reasonable cause to believe that the minor has committed a public offense in his presence. (b) When the minor has committed a felony, although not in the officer's presence. (c) Whenever the officer has reasonable cause to believe that the minor has committed a felony,

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quency cases. The suggestion that the standards should openly acknowledge the need for police authority to intervene in certain situations without reliance upon the power to arrest and to clearly distinguish between police intervention in arrest and nonarrest situations and the implications of such intervention has support in *The Urban Police Function.* These standards recommend that the police have authority to use methods other than arrest and prosecution in certain instances to deal with the variety of behavioral and social problems that they confront. The suggestion is that recognized and properly limited authority be considered in areas such as interference with the democratic process, self-destructive conduct, resolution of conflict, and prevention of disorder, but that this authority to intervene without having to invoke the arrest power is not to be used to circumvent fourth amendment requirements and is subject to checks and balances of its own.[81]

In summary: in drafting standards in the arrest area, distinctions must be made between taking juveniles into custody for criminal vs. noncriminal reasons and between the nature and limits of the authority to act in both situations. As *The Urban Police Function* notes in considering the issue in an adult context, this difficult task should not be handled simply by drafting omnibus arrest procedures:

> Neither should legislatures, under an omnibus arrest procedure, confer authority upon police to help drunks, settle family disputes, or maintain order. The task of conferring specific and appropriately limited authority is likely to be a difficult one, but it is necessary if police are to be given the authority and guidance needed to deal with a variety of increasingly complex problems.[82]

2. Consent and fourth amendment rights.

a. Nature of consent.

During criminal investigations of adults, a search may be conducted without a warrant and without probable cause whenever

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whether or not a felony has in fact been committed. (d) Whenever the minor has been involved in a traffic accident and the officer has reasonable cause to believe that the minor had been driving while under the influence of intoxicating liquor and any drug."

[81] ABA Standards for Criminal Justice, *The Urban Police Function* 94–113 (1972).

[82] *Id.* at 99.

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an effective consent is given. The significant case on what constitutes effective consent is *Schneckloth v. Bustamonte*, 412 U.S. 218 (1973). The court held that a consent can only be valid if it was "voluntarily given, and not the result of duress or coercion, express or implied." The test under *Schneckloth* is "totality of the circumstances," and while knowledge of the right to refuse is a factor to be considered, lack of specific waiver is not dispositive:

> Voluntariness is a question of fact to be determined from all the circumstances, and while the subject's knowledge of a right to refuse is a factor to be taken into account, the prosecution is not required to demonstrate such knowledge as a prerequisite to establishing a voluntary consent.[83]

Thus, the normal test of waiver, "an intentional relinquishment or abandonment of a known right or privilege"[84] was not applied to consent searches. It was distinguished as applicable only to those constitutional rights which, unlike the fourth amendment, are intended to protect a fair trial and the reliability of the truth-determining process.[85] In *Schneckloth*, the test that was developed was specifically limited to situations when the subject of the search was not in custody. It was assumed by many, therefore, that a more stringent test, such as notice of right to refuse consent and waiver, might be required once a person is taken into custody since the situation is inherently more coercive. This notion was dispelled, however, by the recent case of *United States v. Watson*, 46 L. Ed. 2d 598 (1976). The Supreme Court, in *Watson*, upheld a consent search after the defendant was arrested even though he had not been informed he could withhold consent. The Court applied the *Schneckloth* test and simply considered the totality of the circumstances (*e.g.*, whether threats or promises had been made, level of intelligence, etc.).

Most cases that have considered the issue have held that juveniles, like adults, can consent to a search made without probable cause or a warrant.[86] It is likely that the "voluntariness" test will also be held to apply to juvenile cases. If this is so, it is suggested that age, intelligence, level of education, and level of sophistication should be heavily weighed in making a determination on voluntariness. In

[83] 412 U.S. at 248-249.

[84] *See* Johnson v. Zerbst, 304 U.S. 458 (1938).

[85] For further discussion of this point, *see J. Israel and W. LaFave, Criminal Procedure in a Nutshell: Constitutional Limitations* 143-149 (1975).

[86] *See, e.g., In re* Ronny, 40 Misc. 2d 194, 242 N.Y.S.2d 844 (Queens County Fam. Ct. 1963).

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addition, prior to an arrest, a key factor in determining the validity of consent might be whether the police also informed the juvenile's parents or guardian of their desire to conduct a search and whether they allowed the juvenile to confer with someone.

Certain juveniles will be unable to comprehend their rights and options and would be unable to respond in an uncoerced manner when approached by police. This might include juveniles who are quite young or who have never been in trouble before. For those juveniles, a voluntary consent should not be possible unless they have been able to confer with a parent or guardian. Even where a juvenile has had the opportunity to confer with a parent, any consent to search may still be involuntary if it is later demonstrated that the parents' interests conflicted with the child's.[87]

Aside from this, it might be argued that an appropriate constitutional standard for juveniles is that they cannot give a voluntary consent unless they are informed of their right to refuse consent. This suggests that the test rejected by the Court in *Schneckloth* should be adopted for juveniles, given the greater likelihood of their lack of sophistication and their greater susceptibility to apparent or real coercion. In other words, this may be an example of an area where, because of greater vulnerability, due process may require greater rights for juveniles than for adults. In addition, after a juvenile has been taken into custody, it may be appropriate to require that notice be given of a right to counsel before consent to search is obtained. Again, although *Watson* does not require this for adults, the greater vulnerability of juveniles may dictate a different constitutional standard.

Even if these suggested tests are not given constitutional status, they should be adopted legislatively or administratively as a matter of public policy. Similar standards were proposed in 1975 by the American Law Institute in its "Model Code of Pre-Arraignment Procedure." In part, the suggested standards provide as follows:[88]

> § 240.2 Requirements of Effective Consent
>
> (1) *Persons from Whom Effective Consent May Be Obtained.* The consent justifying a search and seizure . . . must be given, in the case of
>
> (a) Search of an individual's person, by the individual in question

[87] *See* McBride v. Jacobs, 247 F.2d 595 (D.C. Cir. 1957).

[88] American Law Institute, "Model Code of Pre-Arraignment Procedure," § 240.2 (1975). *See also* Arizona State University College of Law, "Model Rules for Law Enforcement, Warrantless Searches of Persons and Places" (1974), rule 701A, which specifies that an officer obtain written consent on a form which notifies a person in custody of his or her right to refuse to give consent.

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> or, if the person be under the age of 16, by such individual's parent or guardian;
>
> * * *
>
> (2) *Required Warning to Persons Not in Custody or Under Arrest.* Before undertaking a search, . . . an officer present shall inform the individual whose consent is sought that he is under no obligation to give such consent and that anything found may be taken and used in evidence.
>
> (3) *Required Warning to Persons in Custody or Under Arrest.* If the individual whose consent is sought . . . is in custody or under arrest at the time such consent is offered or invited, such consent shall not justify a search and seizure . . . unless in addition to the warning required by Subsection (2), such individual has been informed that he has the right to consult an attorney, either retained or appointed, and to communicate with relatives or friends, before deciding whether to grant or withhold consent.

b. Third party consent.

In some instances, a third party may be able to consent to a search by police for evidence that may be used to incriminate another person. This *may* (but not always) be appropriate when a third party: 1. serves as an agent for a suspect;[89] 2. owns the property being sought or the premises being searched;[90] or 3. has joint access to or control of premises or property.[91] In a juvenile context, the issue has often arisen as to "whether a parent may validly permit police to search a child's room, closet, bureau or other area of the family home used by him."[92] According to Professor Fox's review of the cases on this issue, in almost all of them, the consent given by parents was held to be valid.[93] In a limited number of cases, however, it has been held that a parent cannot consent to a search of a child's bedroom and personal effects.[94] Out of some of these cases comes the notion that a parent should not be able to consent to a search of a child's room or possessions when a child has reached adulthood, when an older child has locked his or her room, when a child has specifically told a parent that his or her room is off bounds, or when there is conflict between a parent and a child. The problem with these factors is that the police are normally entitled to rely upon the

[89] Stoner v. California, 376 U.S. 483 (1964).

[90] *See, e.g.*, Bumper v. North Carolina, 391 U.S. 543 (1968).

[91] United States v. Matlock, 415 U.S. 164 (1974); Coolidge v. New Hampshire, 403 U.S. 443 (1971); Frazier v. Cupp, 394 U.S. 731 (1969).

[92] *See S. Fox, The Law of Juvenile Courts in a Nutshell* 102 (1971).

[93] *Id.* at 103.

[94] *See, e.g.*, People v. Flowers, 179 N.W.2d 56 (Mich. 1970).

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apparent authority of a third person to give consent, even though such authority may not in fact exist.[95]

In developing approaches to this area, it should be recognized that consent searches should not be encouraged. Even with the totality of the circumstances test, consent searches are among the most difficult of the exceptions to search warrants to uphold, and properly so.[96] Thus, on both constitutional and practical grounds, the police should attempt consent searches only as a last resort and, when attempting to obtain consents, should be guided by the concerns reflected in this commentary. Otherwise, cases may unnecessarily be lost.[97]

c. Questioning.

In *Gault*, it was specifically held that the fifth amendment privilege against self-incrimination applies to juvenile proceedings. This, in turn, has been interpreted to mean that *Miranda v. Arizona*[98] applies to juveniles as well.[99] Concluding that *Miranda* applies to juvenile cases only begins the inquiry, however. *Miranda* dictates both that certain warnings be given on the right to counsel and the right to remain silent and that absent a voluntary, knowing, and intelligent waiver of these rights, subsequent statements made without the advice to counsel will be inadmissible at trial. In juvenile cases, *Miranda* raises at least two important issues: 1. to whom must the warnings be given; and 2. under what circumstances can a waiver be obtained from a juvenile? Within these standards, it is suggested that these issues should be resolved as follows: juveniles should be entitled to greater safeguards than currently protect adults when they are questioned by police following an arrest.

(a) When a juvenile is arrested, taken into custody, or otherwise deprived of his or her liberty in a significant manner, the juvenile *and* a parent or guardian must be given *Miranda* warnings and any statement made before both are so informed is inadmissible in any subsequent proceeding.

(b) Following an arrest, a juvenile may be questioned only after conferring with counsel. All such questioning must take place in

[95] *See* United States v. Matlock, 415 U.S. 164 (1974).

[96] *See* Arizona State University Law School, "Model Rules for Law Enforcement, Warrantless Searches of People and Places" 49 (1974).

[97] For an examination of search and seizure issues in a school setting, see the *Schools and Education* volume.

[98] 384 U.S. 436 (1966).

[99] *See, e.g., In re* Creek, 243 A.2d 49 (D.C. Ct. App. 1968); State v. Loyd, 212 N.W.2d 671 (Minn. 1973); and *In re* Rust, 278 N.Y.S.2d 333 (Fam. Ct. 1967).

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counsel's presence unless the right to counsel has been previously waived.

(c) The right to counsel may only be waived after the juvenile has conferred with counsel and this waiver must take place in counsel's presence.

The reason for this approach primarily is that most "juveniles are not mature enough to understand their rights and are not competent to exercise them."[100] Thus, both as a constitutional matter and as a matter of public policy, juveniles should not be allowed to waive their privilege against incrimination and their right to counsel without mature guidance.

There is little evidence thus far that the courts are willing to establish stricter rules for juveniles than for adults as a matter of constitutional principle. As noted in the commentary to the American Law Institute, "Model Code of Pre-Arraignment Procedure" 361-62 (1975), the majority rule seems to follow *State v. Gullings*[101] as to waiver, which provides:

> It cannot be said that a juvenile cannot waive constitutional rights as a matter of law. It may be more difficult to prove because of his age, but it is a factual matter to be decided by the trial judge in each case.

According to the ALI, there is a minority rule that "a minor may not waive his rights without either first seeing a lawyer or his parents having been notified and the police obtaining their waiver of the minor's rights."[102] The ALI also points out that there is a middle view which reflects that although a juvenile may not be capable of understanding his or her rights, questioning may go forward if it is conducted with "the utmost fairness and in accordance with the highest standards of due process and fundamental fairness."[103] Discussion of the rationale behind the proposed requirements follows.

(1) To whom must warnings be given?

Although many courts recognize that juveniles need special protection during the interrogation process, they are uncertain about how to ensure it be given. One trend, provided both by court decisions and legislation, requires the police to give the *Miranda* warnings both to the juvenile and to a parent or guardian. For example,

[100] *See* Ferster and Courtless, "The Beginning of Juvenile Justice, Police Practices and the Juvenile Offender," 22 *Vand. L. Rev.* 567, 596-97 (1969).

[101] 416 P.2d 311, 315 (Ore. 1966).

[102] American Law Institute, "Model Code of Pre-Arraignment Procedure" 362 (1975). The leading case reflecting this position apparently is Lewis v. State, 288 N.E.2d 138 (Ind. 1972).

[103] *See* State in Interest of S.H., 293 A.2d 181, 184-85 (N.J. 1972).

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the Indiana Supreme Court, in *Lewis v. State*,[104] held that parents must be informed of the *Miranda* rights of their child. A similar result has recently been reached in Missouri.[105] This approach, however, has been rejected in Wisconsin.[106] Several states by statute require that *Miranda* warnings be given to both child and parent or legal guardian.[107]

Certainly, there are problems with a *per se* rule. First of all, if parents are temporarily unavailable, the police will be stymied. Second, a *per se* rule may unnecessarily restrict questioning in some cases since there are juveniles who are sophisticated enough to understand their rights (maybe even better than their parents). On balance, however, a warning to a parent or guardian should be required. In most instances, any delay in locating a parent will only be a temporary one. This should not be harmful if a juvenile is already in custody. And even though a child may know his or her rights, as *Miranda* noted, "The Fifth Amendment privilege is so fundamental [that] we will not pause to inquire whether the defendant was aware of his rights without a warning being given." 384 U.S. at 468. Parents, however, do not always provide added protections for a child. Sometimes, for a variety of reasons, a parent may unwisely or vindictively induce a child to waive his rights. In other words, a parent may not serve the best interest of the child.[108] The strict requirements for waiver, discussed next, should eliminate much of this danger.

(2) Under what circumstances can a waiver be obtained from a juvenile?

A second part of the *Miranda* decision deals with the events following a proper warning to a defendant of his or her constitutional rights. Even if proper warnings are given, if a statement is made "without the presence of an attorney, a heavy burden rests on the government to demonstrate that the defendant knowingly and intelligently waived his privilege against self incrimination and his right to counsel."[109] The Supreme Court, however, gave little indication in *Miranda* about what would constitute a knowing and intelligent waiver. While *Miranda* assumes that a suspect may make a statement without first conferring with counsel, and subsequent

[104] 288 N.E.2d 138 (Ind. 1972).

[105] *In re* K.W.B., 500 S.W.2d 275 (Mo. Ct. App. 1973).

[106] Theriault v. State, 223 N.W.2d 850 (Wis. 1974).

[107] *See, e.g., Colo. Rev. Stat. Ann.* § 22-2-2(3) (c) (Supp. 1971); *Conn. Gen. Stat. Ann.* § 17-66(a) (Supp. 1973); *Okla. Stat. Ann.* tit. 10, § 1109(a) (Supp. 1973).

[108] *See, e.g.*, State v. Thompson (N.C. 1975).

[109] 384 U.S. at 475.

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cases have held that juveniles may do so as well, these recommendations go beyond this view. They require that a juvenile be given an opportunity to confer with counsel and that any questioning take place in counsel's presence.

No court has yet fully adopted this approach. The recommendation derives some support from two early Supreme Court decisions. In *Haley v. Ohio*,[110] Justice Douglas' plurality opinion came close to suggesting that the factor of age alone may require the presence of an attorney before a confession could be held to be voluntary. Fourteen years later, Justice Douglas, writing this time for a majority of the Court in *Gallegos v. Colorado*,[111] used a totality of the circumstances approach but suggested that special tests be used for a juvenile because "a 14 year old boy, no matter how sophisticated" cannot be expected to comprehend the significance of his actions.

Although only one case could be found that required that a juvenile have the assistance of counsel before making a statement, other courts have noted the desirability of such a requirement.[112] Still others have required that a juvenile be given an opportunity to consult with a parent, counsel, or a mature advisor, following which a waiver may be obtained in that person's presence.[113] The "Legislative Guide for Drafting Family and Juvenile Courts" § 26, prepared in 1969 by the United States Children's Bureau, did provide that a child's statement should not be admissible unless the child was advised by counsel. This position is supported in Standard 5.3 C. of the *Interim Status* volume, which provides: "If the police question any arrested juvenile concerning an alleged offense in the absence of an attorney for the juvenile, no information obtained thereby or as a result of the questioning should be admissible in any proceeding."[114] The standard does go on to allow the juvenile to waive this right, however.

Counsel is preferable to a parent during any interrogation in many instances because a parent may either not know or not care about what is in a child's best interest. Thus, imposing counsel at this stage may be the only way to ensure that a waiver is voluntarily and intelligently made. This is the view of Professor Sanford Fox:

> That the presence of parents at an interrogation would generally promote the exercise of the child's rights, and diminish the likelihood

[110] 332 U.S. 597 (1948).

[111] 370 U.S. 49 (1962).

[112] Ezell v. State, 489 P.2d 781 (Okla. Crim. App. 1971).

[113] *See, e.g.*, Lewis v. State, 288 N.E.2d 138 (Ind. 1972).

[114] For examples of state statutes requiring the presence of a parent, guardian, or attorney during interrogation, see *N.M. Stat. Ann.* § 13-14-25(A) (Supp. 1973); *Colo. Rev. Stat. Ann.* § 22-2-2(3)(c) (Supp. 1971).

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> of waiver, is subject to grave doubt. There is, in the first place, reason to believe that being an adult provides no guarantee against being intimidated by police surroundings. But there is not only this probable nullification to consider of any protection afforded by having parents present. Account must also be taken of the possibility that the child may feel that he must exonerate himself before his parent by cooperating, and not appear to be stubborn, by refusing to give the police a statement. Thirdly, the earlier mentioned resentments and embarrassments brought about by being summoned to the stationhouse may lead the parent to influence the child affirmatively in the direction of waiver and, therefore, punishment. To the extent these considerations are at play, and it is desirable to minimize juvenile waivers, it would make much more sense for the law to require prompt notice and presence of an attorney. . . .[115]

If this requirement is not adopted either by court decision or statute, as a *per se* rule, then, at least, as part of the totality of the circumstances test, strong emphasis should be given to the presence or absence of counsel at the time of waiver and interrogation. This should particularly be true for children who are quite young (*e.g.*, ten), who have limited intelligence or maturity, or who have been pressured to cooperate by their parents.

d. Pretrial identification.

In 1967, the Supreme Court, in three cases,[116] fashioned new constitutional rules relating to pretrial identification. In *United States v. Wade* and *Gilbert v. California*, the Court held that after a suspect has been indicted, he has a right to counsel at a lineup. This right is based upon the right to counsel and right of confrontation provisions of the sixth amendment and the view that a post-indictment lineup is a critical stage of a criminal proceeding. Unless the right to counsel is waived, the pretrial identification cannot be used at a subsequent trial and the state must prove that any in-court or other identification was not based upon the tainted lineup. In *Stovall v. Denno*, the Court also held that, quite aside from sixth amendment requirements, the due process clause prevents the use of identification procedures that are unduly suggestive and are conducive to misrepresentation. The previous due process test examined the totality of the circumstances to measure reliability.

The Court, in *Wade*, recognized that its extension of "critical stage" to lineup proceedings and requirement of counsel was not an entirely satisfactory solution to certain aspects of the pretrial

[115] *The Law of Juvenile Courts in a Nutshell* 129 (1971).

[116] United States v. Wade, 388 U.S. 218 (1967); Gilbert v. California, 388 U.S. 263 (1967); and Stovall v. Denno, 388 U.S. 293 (1967).

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identification problem. In fact, the Court invited the development of alternative solutions:

> Legislative or other regulations, such as those of local police departments, which eliminate the risks of abuse and unintentional suggestions at lineup proceedings and the impediments to meaningful confrontation at trial may also remove the basis for regarding the stage as "critical." But neither Congress nor the federal authorities have seen fit to provide a solution. What we hold today "in no way creates a constitutional straightjacket which will handicap sound efforts at reform, nor is it intended to have this effect."[117]

Since *Wade*, arguments have been made that the lawyer's presence required in *Wade* is not effective in preventing unfairness, creates unnecessary personnel problems for the legal profession, and overlooks the need for regulations which minimize the evils at lineups.[118] It has also been clear that most courts have been extremely reluctant to invalidate convictions based upon questionable pretrial identifications. Therefore, courts have tended to restrict *Wade* and *Gilbert* to their facts (to post-indictment matters) and found that few identifications, regardless how questionable, violated *Stovall's* due process test, or even after finding tainted identifications, determined the error was harmless error. Further, the Supreme Court cases did not deal directly with other important identification matters such as at the scene identifications, use of photographs, taking of fingerprints, etc.

In later cases, the Supreme Court has supported the restrictive views of most lower courts by severely limiting the impact of earlier decisions. In *Simmons v. United States*,[119] the Court refused to impose strict restrictions on the use of photographs during a period of time when suspects were still at large. In *Kirby v. Illinois*,[120] the Court held that the *Wade-Gilbert* requirement applies only to lineups occurring "at or after the initiation of adversary judicial criminal proceedings—whether by way of formal charge, preliminary hearing, indictment, information, or arraignment."[121] In the 1972 opinion in *Neil v. Biggers*,[122] the Court indicated that in assessing pre-*Wade* cases, it would not easily find due process violations. Un-

[117] United States v. Wade, 388 U.S. 218, 239.

[118] *See, e.g.*, Read, "Lawyers at Lineups: Constitutional Necessity or Avoidable Extravagance?" 17 *U.C.L.A. L. Rev.* 339 (1969).

[119] 390 U.S. 377 (1968).

[120] 406 U.S. 682 (1972).

[121] 406 U.S. at 689.

[122] 409 U.S. 188 (1972).

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necessary suggestiveness in identifications would not be enough. A subsequent in-court identification would be inadmissible only if, under the totality of the circumstances, it was unreliable. This type of analysis is also now being used by lower courts in post-*Wade* cases. And, in *United States v. Ash*,[123] the Court held that a person in custody had no right to have counsel present while witnesses viewed a post-indictment photographic display.

Although the Supreme Court has not ruled on the issue, lower courts have assumed that the *Wade-Gilbert-Stoval* identification tests apply to juvenile cases.[124] Further, one recent case has applied *Kirby* as well and reversed an earlier ruling that *Wade* requirements applied to pre-indictment lineups.[125] What this indicates is that the confusion existing in adult cases has successfully been transferred to the juvenile setting.

It has been suggested by some that far more rigid requirements on identification procedures should be established in juvenile cases. For example, one author has even suggested that a juvenile should never be subjected to a lineup.[126] While such a *per se* restriction is probably not justifiable, particularly for serious crime investigations, there may be areas in which juveniles should be entitled to greater protections. For example, there may be a need to establish more rigid constitutional standards in such areas as waiver of right to counsel at a lineup (and the required presence of counsel and parents) for the same reasons set forth in the previous section on questioning. Of greater importance, however, is the need to develop standards (through legislation or court rules) and police policies that could give content to the entire area of pretrial identification. This relates not only to witness identifications at lineups and showups and through photographs, but also to requiring suspects to submit to various nontestimonial identification procedures such as fingerprinting, handwriting examples, voice samples, photographs, and blood samples.

In this latter area, since the case of *Davis v. Mississippi*,[127] which suggested such procedures would be constitutional, some states have enacted legislation authorizing a magistrate to require a suspect to submit to such procedures when: 1. there is probable cause to

[123] 413 U.S. 300 (1973).

[124] *See, e.g., In re* Holley, 268 A.2d 723 (R.I. 1970); *In re* Carl T., 1 Cal. App. 3d 344, 81 Cal. Rptr. 655 (1955).

[125] Jackson v. State, 300 A.2d 430 (Md. App. 1973).

[126] Cannon, "Lineups in Detention Are Constitutionally Impermissible," 5 *Clearinghouse Rev.* 441 (1970).

[127] 394 U.S. 721 (1969).

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believe that an offense has been committed; 2. there are reasonable grounds, not amounting to probable cause to arrest, to suspect that a specified person committed an offense; and 3. the results of specific nontestimonial identification procedures will be of material aid in determining whether the suspected person committed the offense.[128] There is need for far more development in all of these areas. Some useful proposed standards and proposed model rules have been developed by the American Law Institute and Arizona State University School of Law.[129] In addition, police agencies, such as the District of Columbia Metropolitan Police Department and the New York City Police Department have developed comprehensive policies and others, such as the Boston Police Department, are in the midst of doing so now. This kind of development should be continued, since in the absence of clearer direction from the courts, police agencies will have to assume greater responsibility for ensuring fairness and reliability in identification procedures.

In recent years, some legislation has placed certain added restrictions on the photographing and fingerprinting of juveniles and on the retention of any photographs and fingerprints that are taken.[130] Certainly, there are strong policy reasons to limit widespread taking of juvenile fingerprints and photographs. On the other hand, there may be important reasons for such procedures when serious crimes are involved and fingerprints and photographs of a juvenile taken into custody (by an arrest or under a court order) may assist in solving a crime. Standard 19.6 of the *Juvenile Records and Information Systems* volume which this volume endorses, acknowledges this view, but goes on to say that prints and photographs should be destroyed if a juvenile is found not guilty or delinquent.

e. Prehearing detention and release.

Many state statutes and model rules devote substantial attention to requirements and criteria for notifying parents or guardians and for detaining and releasing juveniles after they have been taken into

[128] *See, e.g., Ariz. Rev. Stat. Ann.* § 13-1424 (1971); *Idaho Code* § 19-625 (Supp. 1972). *See also* Proposed Federal Rules of Criminal Procedure, § 41.1 (1971).

[129] American Law Institute, "Model Code of Prearraignment Procedure §§ 160.1-160.7 and §§ 170.1-170.8 (1975) and Arizona State University School of Law, "Model Rules for Law Enforcement, Eyewitness Identification" (1974).

[130] *See, e.g.,* 18 U.S.C.A. § 5038 (1974) (fingerprints and photographs cannot be taken without the written consent of a judge unless the juvenile is prosecuted as an adult). *See also S.C. Code Ann.* § 15-1281.20 (1962).

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custody. Section 724 of the New York Family Court Act, for example, provides:

> (a) If a peace officer takes into custody [he or she] shall immediately notify the parent.
>
> (b) After making every reasonable effort to give notice under paragraph (a), the peace officer shall
>
> (i) release the child to the custody of his parent upon the written promise, without security, of the person to whose custody the child is released that he will produce the child before the family court in that county at a time and place specified in writing; or
>
> (ii) forthwith and with all reasonable speed take the child directly, and without his first being taken to the police station house, to the family court unless the peace officer determines that it is necessary to question the child, in which case he may take the child to a facility designated by the appropriate appellate division of the supreme court as a suitable place for the questioning of children and there question him for a reasonable period of time; or
>
> (iii) take the child to a place designated by rules of court for the reception of children.
>
> (c) In the absence of special circumstances, the peace officer shall release the child in accord with paragraph (b)(1).
>
> (d) In determining what is a "reasonable period of time" for questioning a child, the child's age and the presence or absence of his parents or other person legally responsible for his care shall be included among the relevant considerations.[131]

In spite of the attention given to these areas, Professor Fox has pointed out that major deficiencies continue to exist.[132] For example, he notes that in most jurisdictions, there is no obligation to release an arrested child to his or her parents even though this is implicit in most of the model acts. Also, many states do not prohibit and even condone taking juveniles to police stations after arrest—a practice that Professor Fox argues should be explicitly disapproved.[133] Finally, he points out that even in states like California, where there is explicit statutory language giving high priority to release of juveniles by police, the detention rate continues to be high.[134] Therefore, the need exists to strengthen standards governing police responsibility upon arrest. This is accomplished by Standards 5.1,

[131] *See also* "Legislative Guide" §§ 20 and 21, and "Uniform Act" §§ 14 and 15.

[132] *See generally S. Fox, The Law of Juvenile Courts in a Nutshell* 104-116 (1971).

[133] *Id.* at 109.

[134] *Id.* at 110.

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5.3, 5.4, 5.6, and 5.7 of the *Interim Status* volume. In summary, these standards focus on the formulation of police policies favoring release, require notification of parents upon arrest, require transportation of any detained juvenile to an appropriate juvenile facility within two hours after arrest, and prohibit holding any arrested juvenile in a police detention facility prior to release or transportation to a juvenile facility. Of further interest is the requirement set forth in Standard 4.1 of the *Pretrial Court Proceedings* volume that a juvenile has a right to a probable cause hearing. This standard properly incorporates the doctrine of *Gerstein v. Pugh*[135] into the juvenile justice process.

Other relevant standards defining the restrictions on the juvenile's capacity to waive rights while in custody are *Interim Status* Standard 5.3 and *Pretrial Court Proceedings* Standards 5.1, 6.1, and 6.2. In general, even a juvenile deemed to be sufficiently mature to decide whether to waive a right may not do so except in the presence of and after consultation with counsel and after affording a parent a reasonable opportunity to consult with the juvenile and counsel. The juvenile's right to counsel may not be waived. These restrictions are imposed because juveniles are considered more susceptible to influence than adults, especially while in police custody.

3.3 Even if a juvenile is taken into custody under authority other than the arrest power (see Standard 2.5), police should be subject to the same investigative restrictions set forth above in the handling of the juvenile.

Commentary

As noted in earlier sections, the police may have many reasons, other than the commission of a criminal-type offense, for taking a child into custody. These might include removing a child from a situation where he or she is in danger of serious bodily injury, taking a child to a detoxification center, or picking up a very young runaway. In view of the current broad power the police have to take juveniles into custody, there is considerable concern over restricting police investigative procedures only to situations where a child has been arrested for commission of a crime or an act of delinquency. The concern is that whenever the police would like to undertake an

[135] 420 U.S. 103 (1975). In Gerstein, the Court held that "the Fourth Amendment requires that a judicial determination of probable cause be made as a prerequisite to extended restraint on liberty following arrest."

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interrogation and circumvent *Miranda*, a child will not be arrested but will be taken into custody for some other reason. Whether or not this is a real cause for concern is unclear. Even if it would only happen occasionally, there should be no opportunity to do indirectly what cannot be done directly. For this reason, regardless of why a child is taken into custody, evidence should not be admissible in a subsequent criminal or delinquency proceeding unless it was obtained in accordance with the fourth, fifth, sixth, and fourteenth amendment requirements for criminal proceedings.

3.4 The action by a police officer in filing a complaint against a juvenile either in a juvenile or in a criminal court should be subject to review by a prosecutor (to determine legal sufficiency) and by probation or intake staff (to determine if formal action is appropriate under the surrounding circumstances).

Commentary

Until recently, it has been assumed that the "treatment" rather than the "punitive" orientation of the juvenile justice system eliminates the need to test the legal basis for the arrest and subsequent charges filed against a juvenile prior to adjudication. Since the process is always supposed to act "in the best interests of the child," little concern has been given to early screening for sufficiency of evidence or compliance with the technical requirements of the Bill of Rights.

In theory, this is quite different from how the process works in adult cases. There the prosecutor more often than not performs a role of providing guidance to and review of police action and of deciding whether or how to proceed in a case:

> [In adult cases,] the prosecutor wields almost undisputed sway over the pretrial progress of most cases. He decides whether to press a case or drop it. He determines the specific charge against a defendant. When the charge is reduced, as it is in as many as two-thirds of all cases in some cities, the prosecutor is usually the official who reduces it.
>
> In the informal, noncriminal, nonadversary juvenile justice system there are no 'magistrates' or 'prosecutors' or 'charges,' or, in most instances, defense counsel. An arrested youth is brought before an intake officer who is likely to be a social worker or, in smaller communities, before a judge. On the basis of an informal inquiry into the facts and circumstances that led to the arrest, and of an interview with the youth himself, the intake officer or the judge decides whether or not a case should be the subject of formal court proceedings. If he decides it

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> should be, he draws up a petition, describing the case. . . . Thus, though these officials work in a quite different environment and according to quite different procedures from magistrates and prosecutors, they in fact exercise the same kind of discretionary control over what happens before the facts of a case are adjudicated.[136]

It is understandable why prosecutors have not been more involved in juvenile cases up to now. For what do prosecutors know about treatment and care of juveniles? But given the now-accepted fact that constitutional safeguards and checks and balances are equally needed within the juvenile justice system, the role of prosecutors, magistrates, or other legal officials within this system should be considered anew.

In some jurisdictions, the need for some early screening for legal sufficiency by trained legal personnel has already been recognized. For example, in Minnesota, a court rule requires that every petition filed with the juvenile court (with minor exceptions) "shall be drafted by the county attorney upon a showing to him of reasonable grounds to support the petition."[137]

Given the potential serious impact of delinquency or criminal charges against juveniles and the need to provide guidance to and review of the actions of police officers in the complex area of investigation and charging, standards should provide for precomplaint investigative guidance and review of the legal sufficiency of actions already taken and to be taken. Certain cases should not get to the complaint stage, and police officers should receive direct guidance so they do not continue to make "legal" mistakes. As part of this development, consideration should be given to proposed guidelines suggested recently by Boston University School of Law, Center for Criminal Justice:

> The Office for Juvenile Prosecution should consult regularly with the Office of Legal Counsel to the Police Department for the purpose of:
> (a) keeping the police informed of current legal and court developments;
> (b) encouraging and assisting in the preparation and enforcement of police department guidelines for juvenile cases, including criteria for police intervention, custody and detention practices, and discretion to dispose of cases without referral to court.

* * *

[136] President's Commission on Law Enforcement and Administration of Justice, *The Challenge of Crime in a Free Society* 11 (1967).

[137] Rules of Procedure Minnesota Probate-Juvenile Courts, rule 3-1 (1975).

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> In addition to the prosecutor's responsibility to give general guidance and assistance with regard to police operations involving juveniles, he should instruct and advise police officers on matters pertaining to particular cases. His approval should be required for all applications to the court for issuance of arrest and search warrants.
>
> * * *
>
> The prosecutor, in conjunction with probation staff, has an important role at court intake to ensure that cases inappropriate for judicial handling, and only such cases, are dismissed or diverted. Prior to the filing of any complaint with the court the prosecutor should review the case to assess its merits. He also has the responsibility to initiate proceedings to transfer cases for criminal trial.[138]

Certainly, adding review for legal sufficiency at this stage, while ending some abuses, may create new ones since prosecutors, for example, may abuse their discretion as well as police officers or intake personnel. This will require that a prosecutor's office, if it is to perform a review role, should develop a statement of policies to guide the exercise of prosecutorial discretion in juvenile cases just as has been recommended for adult cases.[139] It will also require that the relative roles and authority of prosecutors and intake staff in precomplaint screening be dealt with carefully in the standards. For the suggested relationship between these two agencies, see the *Prosecution* and *Juvenile Probation Function: Intake and Predisposition Investigative Services* volumes.

PART IV: IMPLICATIONS OF THE POLICE ROLE FOR POLICE ORGANIZATION AND PERSONNEL

4.1 All police departments should establish a unit or officer specifically trained for work with juveniles. The nature of the allocation must necessarily vary from department to department.

A. In departments where small size, the nature of community needs, or other considerations do not justify the assignment of even one officer to work with juveniles on a full-time basis, one

[138] Boston University School of Law, Center for Criminal Justice, "Prosecution in the Juvenile Courts: Guidelines for the Future" 90-91, 99 (1973).

[139] *See* ABA Standards for Criminal Justice, *The Prosecution Function* § 2.5 (1971).

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officer should nevertheless be explicitly assigned the principal responsibility for the task, even while he or she might be expected to work in other areas.

B. Wherever resources permit even minimal specialization of function, the full-time appointment of a juvenile officer should receive highest priority.

C. Departments capable of staffing bureaus specializing in work with juveniles should consider the adequate staffing of them as a matter of highest priority.

D. A formalized network of connection for the communication of information and the transfer of cases between the juvenile bureau (or the juvenile officer) and other segments of the department should be established.

E. A formalized network of connection for the communication of information and the transfer of cases between the juvenile bureau (or the juvenile officer) and analogues in departments of adjoining jurisdiction should be established.

Commentary

In traditional and well-established crime control programs, the criminality of juveniles received relatively subordinate consideration. Even while concern about the youthful offender was mounting, the deployment of police resources was oriented mainly to coping with adults. Criminal statistics of the most recent years reveal, however, that the rising rates of crime are, to an alarmingly disproportionate extent, the function of transgressions committed by young people. Assuming the validity of these observations (and there are no reasons to doubt it) juvenile criminality would seem to be deserving of more determined and more methodical attention than it has received in the past. Indeed, it would have to be considered as the principal target of all efforts to arrest the overall increases in crime rates.

Opinions about the specific causes of this state of affairs and about the magnitude of them tend to differ, but one can, without taking sides in the controversy, point to widespread agreement that juvenile crime seems to be a part of a larger problem. Though the problem is variously defined, most commentators speak about it as a loosening in intergenerational coherence resulting from a breakdown or weakening in the inherited mechanisms of the family, the school, and other institutions, which no longer guarantee untroubled growing up. In our times, the transition between childhood and

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adulthood appears to take place less under the aegis of adult control than in the medium of a peer-pressure determined youth culture. This youth culture is not only distinct from and independent of adult life, it seems to be in many ways opposed to it.[140] While the overall problem is certainly beyond the scope of police concerns, it does pose difficulties for police officers that they cannot afford to neglect. For they, by dint of their mandate, are required to plug the holes of lapsed control and become, thereby, the epitome of oppression (not only in the eyes of the young person against whom they have cause to proceed, but also in the eyes of other juveniles on grounds of age-group solidarity). In the lexicon of modern interpretation, the police function is to alienated youth the quintessential expression of the "system." But even if this conception of things is deemed exaggerated, it is surely true that young people have become to the police a far more serious problem than they have ever been in the past, that the relations between the police and youth have become difficult, and that this is a problem of extraordinary seriousness.[141] After all, young people do grow up to be adult citizens whose conception of things becomes shaped in early experience. None of this is intended to suggest that the police have the capacity or the duty to mend the social fabric where it has become threadbare. Instead, the foregoing remarks merely recommend that dealing with youth poses special technical problems that must be faced soberly and resolutely. Thus, police departments may no longer hope to somehow muddle through in their dealings with young people. They must assign resources to the task on a planned basis and they must develop and engage special skills for coping with it. In bureaucratized settings, such intentions can be implemented only by means of specifically and formally set task assignments. Ordinarily, such recommendations are taken as imposing new burdens, but the full burden already rests on the police in any case. The official recognition may not lighten it, but it will place it where it might perhaps be more easily, and will assuredly be more effectively, borne.

The organization of police work with juveniles must necessarily vary depending on the size of the police department, the kind of community in which it is located, and the amount and quality of resources available in the community. It is obvious that depart-

[140] *B. Berger, Looking for America: Essays on Youth, Suburbia, and Other American Obsessions* (1971); Douglas, "Youth in Turmoil," Public Health Services Publication No. 2058 (1970).

[141] *D. Bouma, Kids and Cops: A Study in Mutual Hostility* (1969).

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ments consisting of very few officers are not likely to develop features of internal division of labor encountered in large metropolitan organizations. Moreover, the department serving an affluent retirement community will need to distribute its capacities differently from one serving a lower class industrial town. The range of capacity and need notwithstanding, every department should assign to at least one officer the responsibility of being its juvenile officer either on a part-time or on a full-time basis. It must not be assumed, nor should it be required, that the juvenile officer in small departments would be actually involved in all police encounters with juveniles. As we will have occasion to indicate later, many (perhaps most) such encounters are likely to take place in the course of the undifferentiated patrol function. But the officer should receive communications concerning such encounters and keep a record of them, and he or she should take charge of all cases going beyond the stage of on-the-scene abatement in accordance with provisions specified in later standards below.

Even though the need for a juvenile officer might not be overtly manifest in smaller communities, the rise of such need can never be ruled out. In such circumstances, the relative rarity of untoward incidents competes with their seriousness. Typical incidents involving juveniles are, of course, serious in an altogether different sense than appalling crimes. Their importance is often not immediately seen, but is contained in the latent consequences of their resolution. There can be no doubt that the inept, unskilled, and improvident treatment of a seemingly innocent case may set into motion a train of results that will place a very high price on the initial neglect and may create conditions that become progressively more difficult to handle. Simple prudence suggests that all police departments ought to be equipped for such eventualities; that they ought to be able to draw on the services of officers who are skilled and knowledgeable to meet them as they arise; and that none can afford to rely on catch-as-catch-can methods in these matters.

Though the discussion of the specific function of juvenile officers and of juvenile bureaus will appear later in the volume, one aspect deserves emphasis now. Because work with juveniles calls for special procedures and involves special considerations, there is a risk that officers specializing in it might become isolated in their own departments. Wherever this occurs, there is the chance that the good work done within the sphere of the specialist will be undone elsewhere. Beyond that, there is the perhaps even greater hazard that the larger resources of the department as a whole will cease to be as adequately

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available to the specialist as they should be. Accordingly, it becomes a matter of very great importance that the movements of communication and the exercise of reciprocal influence not be left to chance or mere good will.

Further, because the lives of young people are not wholly contained within the boundaries of a department's legal jurisdiction, it is important that a formulated mechanism of communication of information and of transfer of work be established and maintained between adjoining departments. Such mechanisms are capable of being planned in accordance with actually prevailing facts of ecology and social organization. For example, in the mobilization and maintenance of such networks, recognition should be given to such matters as overlapping school districts, the location of recreational facilities, the characteristic patterns of movement and congregation of youth, and so on.

4.2 The juvenile officer or the supervising officer of a juvenile bureau should, in conjunction with the chief administrator of the department and other relevant juvenile justice agencies, formulate policies and training relative to police work with juveniles, implement established policies, and oversee their implementation throughout the department.

A. Juvenile officers should be selected from among officers who have mastered the craft of basic police work, and who have acquired, beyond that, the skill and knowledge their specialization calls for.

B. In departments having juvenile bureaus, the supervising officer should be of sufficiently high rank to convey the importance of both the position and the area of responsibility.

C. The juvenile officer or the supervising officer of a juvenile bureau should have the principal responsibility for the development and maintenance of relations within the department, with other agencies within the juvenile justice process, such as the court, the prosecutor, and intake staff, and with other community youth-serving agencies. He or she should have the principal responsibility for the development and maintenance of relations across jurisdictional boundaries with other departments.

D. The juvenile officer or members of juvenile bureaus should represent the police department in most matters connected with juveniles, vis-a-vis other institutions. In situations where such representation calls for the participation of other officers, juvenile officers

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should supervise or assist in such representations, depending on circumstances, and they should receive information about all representations that take place without their knowledge at the earliest possible opportunity.

E. Juvenile officers should take charge of all cases that go beyond an initial and informal handling that might have been administered by other officers. When the primary responsibility falls upon other segments of the department, as in cases involving serious crimes, juvenile officers should participate in investigations and prosecutions.

F. In cases that have gone beyond the initial and informal treatment accorded to them by other officers, but are judged upon investigation not to require referrals to other institutions, juvenile officers should be responsible for all counseling, guidance, and advice that might be incidentally required to reach a disposition of the case.

Commentary

The need for specialization in police work with juveniles was recognized in the United States long ago. The fact that a special aptitude and inclination were called for was recognized as early as 1850, when the City Council of Boston determined that one officer was to be assigned the sole responsibility for dealing with children and young people generally.[142] When the legislature of the State of Illinois created the first juvenile court in 1899, its first presiding judge proceeded immediately toward securing the cooperation of the Chicago Police Department in the creation of a special squad of juvenile officers.[143] That police work with juveniles called on skills that went beyond those normally associated with routine police work was recognized when the New York Police Department placed its juvenile bureau under the direction of a social worker in 1930 and staffed it with both social workers and police officers.[144] The late August Vollmer, one of the most celebrated innovators in modern police work, had, during his tenure as Chief of Police in Berkeley, California, attributed principal signifi-

[142] *R. Lane, Policing the City* 62 (1967).

[143] *R. Kobetz, The Role of the Police and Juvenile Delinquency* 148ff. (1971).

[144] C. Pizzutto, "The Police Juvenile Unit: A Study in Role Consensus" (Ph.D. dissertation, Brandeis University 1968).

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cance to work with juveniles and drew on every professional resource available to him to place its practice on a rational basis.[145]

At present, the state of specialization is reflected in the following figures drawn from a survey conducted by the International Association of Chiefs of Police. Of approximately 1,400 departments that responded to the survey, nearly 450 had juvenile units or officers in 1960. The number of such departments almost doubled by 1969. Four out of five departments in the Middle Atlantic, East North Central, and Pacific states make special appointments, but the rate drops to one out of two in the East South Central states. All departments in the United States numbering three hundred or more officers have juvenile officers, while more than half of the departments staffed by fewer than three hundred but more than thirty officers provide for specialization. Paradoxically, the largest departments assign significantly smaller amounts of their manpower resources to juvenile work (1.8 percent in departments numbering 2,000 officers or more) than small or middle size departments (3.0 percent to 4.1 percent in departments numbering from 20 to 1,000 officers). The overall rate of assignment is, of course, strikingly low (2.7 percent) considering the acknowledged significance of the problem of juvenile delinquency, not to mention other juvenile problems affecting the police. It is more difficult to determine the level of training and skill associated with the assignment. But it is significant that about 90 percent of the responding departments report that their juvenile officers receive some specialized training outside the police department.[146]

Before commenting about the special training, skill, and knowledge that should be connected with juvenile work, it must be emphasized that such police work must be built upon general mastery of the craft of policing. The specialization must add to, rather than detract from or function in lieu of, the basic police vocation. The tasks of juvenile officers are, like the tasks of all police officers, oriented to the solution of those problems in which force may have to be used. This is not a very precise definition, but it clearly includes criminal conduct; conduct involving serious transgressions; all sorts of situations containing serious perils to personal safety and to property; and situations in which decisive action must be taken for the maintenance of public order. It is difficult to draw boundaries around such problems, and it makes sense for the police to begin

[145] *A. Parker, The Berkeley Police Story* 79ff. (1972).
[146] *R. Kobetz, The Role of the Police and Juvenile Delinquency*, ch. 2 (1971).

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to deal with problems before they have reached a highly critical stage. For while the mandate of the police is always backed up by the potential recourse to force, the occupational skill of police officers consists of coping with problems successfully without having to fall back on the use of the ultimate remedy. And it is with regard to that skill and the knowledge connected with it that juvenile officers need special training. It is difficult to set forth in detail what proper preparation might comprise. In rough outline, it should involve the study of those academic disciplines that all types of youth workers find useful in their respective vocations; understanding of the various competencies of those remedial agents with whom the officers might have to cooperate; and acquaintance with a body of fact and theory such as that dealt with in the volumes of the Juvenile Justice Standards Project. Beyond that, juvenile officers should acquire knowledge about the youth culture or cultures of the community they serve. They must have detailed knowledge about actual patterns of youth activity in and out of institutional settings. And they must collect information about, and engage in the analysis of, established and emergent patterns of the various troubles involving young people.

To provide the maximum degree of freedom for the appropriate exercise of skill and the use of specialized knowledge, juvenile officers or juvenile bureaus must be given proper status within a department. In larger departments, this means that the supervisor should be of sufficiently high rank to convey both the importance of the position and the area of responsibility. Only this kind of arrangement will secure recognition for the importance of the function and prevent its subordination to other tasks. This arrangement also ensures that policy planning for juvenile work will be placed on a par with policy planning of other aspects of the department's functions. This becomes especially important for the development of lateral ties to other parts of the organization. For when such arrangements are less structured, they generally tend to be less dependable and more cumbersome to administer. The relatively high locus of juvenile work in the administrative scheme of the department, and the relative independence associated with it, is also important in representing the department relative to other institutions.

It is neither feasible nor desirable to preclude other officers from dealing with juveniles in ways that bring them into contact with other institutions. Members of the uniformed patrol are especially likely to deal with problems at the site of their occurrence and may have to involve various persons in pursuing the solution they seek to attain. But when such contacts or referrals are not naturally

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contiguous to the handling of emergent problems, but rest instead on investigations and considered judgment, the task of representing the police should be assigned to juvenile officers. Thus, in cases in which the initial contact with a juvenile was not made by a juvenile officer, the juvenile should become the charge of the juvenile officer in all cases that go beyond the initial contact. Juvenile officers should, in conjunction with the prosecutor and the intake staff, institute proceedings on behalf of (or against) the juvenile in the courts; they should arrange for the placement of all detained juveniles in cases of neglect or abuse; and they should decide on and execute every other kind of referral they deem appropriate in all other cases involving troubled or troublesome youth. Moreover, all appeals from outside sources, especially from other institutions, for police assistance in matters involving juveniles should be assigned as often as possible to juvenile officers. In any event, no extended dealings with juveniles by other segments of the police department should be possible, nor should decisions to refer a case be made, without the participation of juvenile officers in the process. When more extended dealings with certain cases result in decisions in which formal referrals to other agencies are not indicated, juvenile officers should have the responsibility for administering all such counseling and advice as might be required to bring such cases to a desired conclusion. It should be emphasized that the recommendation for counseling and advice should not be taken to suggest that juvenile officers should develop separate programs of quasi- or unofficial probation. We agree with the recommendation of the International Association of Chiefs of Police that, if such supervision is deemed necessary, it ought to be referred to some more appropriate agency. Still, juvenile officers ought to be free to do that amount of counseling which is required to bring a case to some kind of conclusion, without thereby encouraging the expectation that they will continue with it in a way that might constitute a full course of remedial treatment of the sort justifiably expected from social workers or psychologists.[147]

It was mentioned earlier that it is difficult to draw boundaries around the scope of the function of police officers generally, and especially of juvenile officers. The difficulty is in part due to problems of deployment. In the case of juvenile officers, this calls for decisions about maintaining certain organizational ties that would afford them easy access to problems in which their services are required. This means they must be available at a place and time where they might be able to deal with developing problems at the stage

[147] *R. Kobetz and B. Bosarge, Juvenile Justice Administration* 166ff. (1973).

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where more effective and less coercive solutions are still possible. Some departments have moved in this direction in ways that might be regarded as audacious compared to a more traditional conception of the police mandate. In these departments, juvenile officers are assigned on a more or less permanent basis to institutions serving youth, especially high schools.[148] The leading purpose of such undertakings is to establish conditions of trust between juvenile officers and young people, in the context of which incipient problems can be resolved. For example, when officers are assigned to high schools, they are instructed to act as confidants to youths who turn to them. This does not mean that they cannot act in the traditional role of the police officer and that they must refrain from treating police problems in a police manner. But it does mean that they should seek to be appreciated by the population they serve as being generally for them, rather than against them. Perhaps this role could be best described as being envoys of the police in an alien territory. They clearly remain police officers, oriented to dealing with crime, depredation, strife, and troubles, and they are known as such in the place of their assignment. But like envoys generally, they are also known as trusted friends for the duration of their status as a persona grata. And in this role, they are assumed to have a sympathetic understanding for the interest and values honored in the setting to which they are assigned and to be able to represent these interests and values vicariously vis-a-vis the institution from which they themselves originate. As the analogy is intended to suggest, the assignment places great stress on diplomacy and tact. The risk associated with such programs is that the envoys will lose touch with their department, that they might be viewed as co-opted to the context of their assignment, and that they will thereby forfeit their usefulness. The main source of this risk is, however, in the attitudes of more conservative police officials who tend to view such activities as lying beyond the scope of the police mandate. In trying to overcome this impediment, it should be remembered that the traditional isolation of the police from the policed people is one of the most deeply ingrained, but wholly unexamined, working assumption of the police. Given the tenacity of this view, overcoming it where it impedes potentially useful innovation must involve careful planning. Hence, assigning an officer to a high school may involve more preparatory work inside than outside the department. But the assignment contains another hazard worth mentioning. The position of a trusted envoy is capable of being exploited for undercover purposes. Police depart-

[148] *Id.* at 516ff.

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ments and individual police officers should be mindful that the short-term gains that might be realized by violations of trust are substantially outweighed by the prospect of maintaining a lasting and efficient service relationship.

In the broader area of criminal investigations, police officers, particularly in the investigation of certain types of crimes, such as drug offenses, often rely upon informants. Informants typically are persons who, in exchange for a favor or favors (money, decision not to arrest, reduced charges, less harassment, etc.), provide information to the police about criminal activity. It has been argued by some that restrictions should be imposed upon the ability of police to use juveniles as informants since juveniles are more susceptible to being pressured into serving in this capacity for invalid reasons (such as false charges). This is countered, however, by the recognition that juveniles, like adults, often know about, and are at the periphery of, serious crimes and may serve as the vital or only link to successful prosecutions by serving in an informant capacity. This being the case, it is difficult to support an absolute rule against using juveniles as informants. On the other hand, given the dangers of potential abuses in this area, juvenile officers should develop policies for their departments establishing limits on the circumstances under which juveniles can be used as informants.

4.3 Since most juvenile cases begin by interventions of the uniformed patrol and a large share of these do not go beyond the initial intervention, standard police practices should be planned and instituted for patrol officers along lines of policies developed by the juvenile officers or the juvenile bureau.

A. As a rule, members of the uniformed patrol should assume full responsibility for the handling of all problems and disturbances subject to on-site abatement. In this capacity, they are to employ the least coercive measures of control and they should avail themselves of the aid of such nonpolice resources as are directly available in the context of the problem or disturbance.

B. While it is in the nature of patrol that all uniformed officers are expected to deal with any problem they encounter, at least provisionally, every patrol unit should contain at least one officer to whom the handling of problems involving juveniles will be assigned, to the fullest extent possible. This officer should remain under the administrative control of his or her patrol unit and should function as a formal link between the unit and the juvenile officer or the juvenile bureau.

C. Police should transfer cases in which further work is indicated

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to juvenile officers. When circumstances make it mandatory that a juvenile be arrested, detained, placed, or referred to an outside institution, the juvenile officer or the juvenile bureau should be notified without delay about the action taken and the reasons for taking it.

Commentary

"Under traditional police organization, the initial responsibility for confronting the entire range of police problems rests with the patrol officer."[149] In accordance with this view, which reflects prevailing practice, patrol officers take on the function of general practitioners of police craft. When they encounter a problem, their first duty (though not necessarily the first step in the chronology of their action) is to determine whether solving it lies within the sphere of their own competence or whether it calls for transfer to another segment of the police department. But this distinction contains a possibly misleading implication. It should not be taken to suggest that the patrol officer deals with relatively simpler matters and forwards the more complicated or demanding problems to specialists. In the first place, the problems patrol officers deal with are generally of critical seriousness and importance, certainly to the people with whom the officers come into contact. They are often quite complex, but they can be addressed and solved, at least provisionally, by relatively informal means in their natural settings of occurrence. That is, patrol officers should not be viewed as police officers of lesser capacity or competence than their specialist colleagues. Contrary to common prejudice, the work of the patrol officer is probably as demanding of skill and knowledge, if done properly, as any other within the police field. Second, as far as methods are concerned, the patrol officer tends to be oriented to settings while the specialist is oriented to cases. The distinction is relative, of course. Generally speaking, however, patrol officers must be alert to the scenic complexity of problems and, in situations where referrals of cases to specialists are not indicated, their objectives consist of trying to return life to a state of normalcy. In their most characteristic activities, they seek to abate disorder and to dissolve problems provisionally rather than solve them permanently. Hence, the work within the patrol officers' specific sphere of competence seems superficial and desultory. They must deal with family disputes, broken water mains, suicide attempts, robberies, traffic jams, barroom brawls, lost chil-

[149] President's Commission on Law Enforcement and Administration of Justice, *Task Force Report: The Police* 121 (1967).

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dren, and on and on, always attempting to return things to what they were before they got out of hand (and generally without trying to get to the so-called roots of the problems). In some of these situations, they transfer cases to specialists. But when they do not, as in the majority of their actions, they use whatever devices, means, and procedures are appropriate in reconstituting the disrupted order, always cognizant of the possibility that they may have to use force to succeed. This seemingly catch-as-catch-can work keeps the patrol officer constantly on the run, so that seasoned patrol officers often begin the description of their duties by stating that basic to their duties is not knowing what they will run into next.

Patrol activity tends to thicken in some problem areas of the city, producing an often conspicuous regime of police control. This condition results from patrol deployment strategies that are presumably based on calculated assessments of need. Quite apart from the fact that this justification does not always withstand critical scrutiny, it has been noted that massive patroling can, in combination with other factors, have a destabilizing effect on social life.[150] While patrol officers do keep hazardous developments from deteriorating into disasters in blighted areas of the city, and are in these areas in large numbers because these hazards are more prevalent there then elsewhere, their very presence and their understandable readiness to intervene aggressively creates rancor and resentment that by itself attenuates orderliness. The situation is aggravated because police are often outsiders in communities of racial and ethnic minorities, and by being outsiders, do not perceive (or misperceive) the possibility of internal controls. The external incentive of the police presence in the various slums of the cities has led to its perception as a military force of occupation. Until fairly recently, the patrol force in most large departments was organized through a highly militaristic command structure. The rule was, and in some departments still is, to maintain a state of centrally controlled responsiveness to troubles, while deploying forces near target areas. This resulted in a strange and unwieldy combination of strong disciplinary control, with bureaucratic formalism in all matters pertaining to internal organization, and largely unsupervised and unregulated discretionary freedom at the level of the individual officer's dealings. Facing outside, patrol officers were largely acting on the basis of their own judgment rather than executing commands. Facing inside, however, they had to

[150] Concerning the first, *see* Morales, "Police Deployment Theories and the Mexican American" in *Police in America* 188-125 (J. Skolnick and T. Gray eds. 1975); concerning the second, *J. Baldwin, Nobody Knows My Name* (1962) and *C. Brown, Manchild in the Promised Land* (1965).

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assume the posture of low level soldier-bureaucrats to their superiors.[151]

In recent years, the inherited patterns have come under a considerable amount of scrutiny and, in many departments, efforts have been made to change them. Most of these changes involve experimentation with the idea of team policing, though the term itself is not universally accepted, even among police officials who try to innovate. The basic direction of innovation, whether it is identified with team policing or not, is directed toward the administrative decentralization of the patrol function. The initial impulse for this kind of change came from England in the 1960s, where it was referred to by the designation of team policing. It has since been tried and adopted in numerous departments in the United States, taking on a variety of forms.[152] The general principle underlying all such attempts is the location of the primary responsibility for the organization of patrol activity at the level of a patrol district, generally under the command of a sergeant. In its more conservative forms, team policing involves merely a decentralization of command and responsibility. In its more daring forms, as attempted, for example, in Kansas City, teams of patrol officers organize patrol activities on ongoing consultation with one another. In the latter, supervisory personnel preside over team conferences, monitor the overall patrol activities in the district, provide integration, take care of unforseen contingencies, and furnish liaison with central headquarters.

Team policing still tends to have the character of a special project in many departments. It is often supported by outside grants-in-aid which include funds for special training and outside consultations. Moreover, even when these projects benefit from understanding central administrations, they should not be thought of as wholly liberated from more traditional pressures. Finally, the projects are often staffed by volunteer officers who tend to be young aspiring police officers interested in changing police work from a low grade occupation into a serious, professional endeavor. While it is premature to judge, it is fairly clear that what has happened in this area will leave its mark on patrolling. More importantly perhaps, the idea has attracted the interest of the most aspiring police officers dedicated to the aim of improving the quality of life in patrolled areas. It should be noted that the aim is not wholly altruistic, though it surely draws

[151] E. Bittner, "The Functions of the Police in Modern Society" 55ff. (Public Health Service Publication No. 2059, 1970).

[152] E. Higgins, "An Analysis of Team Policing" (M.A. thesis, Northeastern University undated); *see also* Sherman, et al., "Team Policing: Seven Case Studies" (1973).

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on the practical idealism of participating officers. Since the area they patrol is defined as their responsibility and since they know that they will have to take care of all problems sooner or later—"they" in this case referring to a known team of associates—it seems to them more expedient to be well informed, to be carefully considerate in decision making, and to try to work effectively. In San Diego, for example, where the term team policing is not used, patrol officers engage in ethnographic, demographic, and other types of area studies, and gain a better background understanding of problems calling for police intervention. In sum, it seems reasonable to expect that where patrol work is organized along ideas of team policing, one is apt to find a more ready receptivity for police youth treatment programs based on a more comprehensive understanding of youth problems in modern society than might be the case otherwise.

Closely connected with team policing is the concept of the generalist-specialist patrol officer. While all members of a patrol team are eligible for all kinds of assignments, some acquire special skills in the handling of certain types of police problems. When, for example, a case involves a family crisis, the patrol officer specializing in this area will be called upon to attend to it if he or she is available, or will be drawn in as soon as he or she becomes available.[153] The same holds true for cases involving various types of crimes and other types of problems. The main difference between such kinds of internal referrals within a team and referrals to centrally-located specialists is that the problem remains within the domain of the team's joint competence and care. The invidious distinction between the low grade character of the work of the patrol as compared with the more prestigious activities of specialists disappears, together with the whole range of demoralizing consequences associated with it. In proposing the role of the generalist-specialist member of a patrol team who would be oriented to work with youth, we wish to capitalize on this expectation. That is, we propose that the organizational structures we have outlined thus far will furnish a favorable context for responsible and judicious practice.

Neither the idea of team policing nor the concept of the generalist-specialist alters the fundamental nature of the patrol mandate. Each only builds on the recognition of certain unavoidable realities of patrol work, notably the officer's need for independent knowledge, skill, and judgment. Further, each seeks to create favorable organizational conditions for the proper exercise of these

[153] M. Bard, "Training Police as Specialists in Family Crisis Intervention" (1970).

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faculties and thus renders them more practically effective. This is mainly done by removing obstacles inherent in any archaic management system that might once have had some useful purposes but has outlived its usefulness.[154] The attuning of police work to real and changing, rather than presumed and static, needs is facilitated, and conditions that encourage the "I just work here" attitude of patrol officers are eliminated. Patrol remains oriented to maintaining the public order, to keeping the peace, to the handling of all kinds of emergencies, and to coping with danger and depredation. Its procedures remain directed toward an actual constellation of real circumstances, and the patrol officer's efforts remain directed toward dissolving problems. But now patrolling is patterned by an immediate and full regard for cultural peculiarities and the structural needs of the patrolled community. For example, generalist-specialist team patrol officers working with juveniles would not make decisions and act with reference to the *absence* of the middle class nuclear family household in a Puerto Rican barrio. They will, presumably, not fall back prematurely in perhaps unnecessary coercive measures on the assumption that no kinship control exists to be invoked. They will, instead, know about and make decisions considering the existing family structures in the particular neighborhood. They will, in other words, try to draw upon features of family strength rather than on the consideration of weaknesses that are attributed to it. In drawing upon them, the officers will implicitly contribute to their significance and effectiveness. The respectful recognition of a particular form of cultural and communal order is never a passive act. Such recognition always imports and attributes added value to the milieu. More importantly perhaps, it draws the patrol officer into it, even if only as a respected alien. This is the ultimate basis of trust between the policed people and the police, without which the expectation of effective functioning is a vain hope. The moral consensus between a particular community and the police can be maintained over time if it is embodied in a scheme of functioning reciprocities of service and responsibility.

At the level of patrol officers dealing with youth, the assumption of reciprocity provides that just as the officers will reckon with and fall back on socio-cultural structures in their efforts to maintain

[154] The militarization of the police was itself once the result of reform efforts, instituted to cope with the sloth and corruption with which police work became infused through the machine politics of urban government. That overcoming the scandals of bossism in cities has created new and perhaps no less serious neglect and iniquity has not gone unnoticed, *cf. R. Merton, Social Theory and Social Structure* 72ff. (1961).

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order and keep the peace, so the community might avail itself of their services to gain access to facilities and remedies that are located outside of it. At the moment, such external facilities and remedies, especially as they involve the institutions of social control, are viewed with deep and pervasive distrust by minorities and poor people since they have been too often invoked prejudicially against them or, at least, with little regard for their just interest. But it is foolish to think that any community might wish to have persistent troublemakers and predators—young or old—in its midst. Communities would undoubtedly want to cooperate in crime control if such control were made available under suitable auspices.[155] The present animus of the disadvantaged segments of society against the police, especially the hostility of the youth of these segments, means that people prefer, on balance, the burdens of victimization and disorder to what the police actually do to control them.

In sum, the patrol officer who will deal with problems involving juveniles by using the informal channels of influence and diversion existing in a community, thereby enhancing regard for them, will also be the one called upon to remove from this context young people whose conduct warrants removal. Such decisions are more likely to be perceived as generally warranted and necessary and people will not only accept them, (insofar as coercive action can ever be acceptable by those exposed to it), but may be reasonably expected to help in their implementation. Although in this context the coercive capacities of the police are shifted from being relatively early and sometimes arbitrary solutions to being measures of last resort, the fact that their use is available serves as a reminder to all concerned that no matter how service-oriented patrol officers might be, they recognize limits and enforce them.

In cases involving serious crimes committed by young people or in cases in which dispositions require more protracted work, the generalist-specialist would transfer them to the juvenile officer or juvenile bureau together with all information available at this point. But the contact between the two ought not to be limited to such transfers. The juvenile officer or the juvenile bureau ought to be regularly informed about patrol work with juveniles. This is likely to be accomplished through the use of written reports. Regular and frequent briefings should take place, therefore, in which the state of the district and the nature of work with youth is discussed. Such exchanges of information must be reciprocal if they are to be effective. This channel of communication should also serve the purpose of transmitting policy from the juvenile officer to patrol officers.

[155] *R. Wintersmith, Police and the Black Community* (1974).

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4.4 The principal task of police policy-making concerning juveniles should be to maintain flexible response readiness toward actually existing and emerging service and control needs in the community, and an assurance of maximum possible availability of alternative remedial resources to which problem cases can be referred for further care.

A. The juvenile officer or the supervising officer of the juvenile bureau should formulate policy in close coordination with the community relations officer or the community relations unit of the department.

B. Policy formulation should include recognition of the role of the uniformed patrol in police work involving juveniles, and orientation of its potential effectiveness to the proper aims of service and control.

C. The juvenile officer or the supervising officer of the juvenile bureau should formulate procedures and set standards for the transfer of cases from the uniformed patrol to the juvenile bureau; set limits for counseling, advice, and guidance provided by the juvenile bureau; and provide guidance for the transfer of cases from the police to other institutions.

D. The basic principle of police policy concerning juveniles should be to rely on least coercive measures of control while maintaining full regard for considerations of legality, equity, and practical effectiveness.

Commentary

The formulation from the outside of policy in substantive terms is not only impractical but distinctly inadvisable. Several considerations can be cited in support of this view. First, while there is agreement that organs of government should be guided by explicitly stated principles of operation and decision making, the framing of such guidelines is best accomplished from within. Second, policy formulation concerns primarily the alignment of available resources and facilities with intended aims. It must depend on what is practically possible within actually existing and changing circumstances. Third, even while policies remain limited by scarce means, they also reflect aspirations to transcend them and should, accordingly, be kept open-ended rather than fixed, to an uncertain degree (albeit not too uncertain to compel those functioning under their jurisdiction). Fourth, the very existence of the police attests to the fact that even the most highly organized society is incapable of providing for every possible contingency. One ought not to be misled, however, by the

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fact that the high drama insinuated by the last consideration is not readily visible in the routine performances of police officers. Even while police often deal with admittedly relatively trivial matters, in many actions the critical urgency of police intervention is merely hidden. Moreover, the assessment of the seriousness of a police intervention is frequently attenuated by the benefit of hindsight. Finally and foremost, when disaster looms and everything else has failed, the police must move. Even though such situations are mercifully quite rare, the possibility and necessity of dealing with them when they occur is central to policing.

All this was mentioned not to suggest that rational policy formulation for dealing with juveniles is not possible, but rather what such policy making must reckon with. In brief, it must strive for maximum clarity in the determination of substantive aims and procedures while all of its provisions remain under constant review. At any time, there are answers as to what needs to be done and how it is to be done. But none of the answers are final. In other words, policy is both unchanging and changing: a state of affairs and a process.

The juvenile officer formulates police policy with regard to juveniles. Such policy requires the sanction of the chief executive officer of the department as a part of overall departmental policy. We treat the obvious need for integration at this level as a reality constraint. As was mentioned earlier, the police are, contrary to all the other agencies discussed in the Juvenile Justice Standards Project, not a juvenile agency. Instead, the police deal with matters of interest to the project only among other concerns. Still, it is important to indicate that proper police aims with regard to juveniles ought to be aligned with some recent changes in police practice. In connection with this, we have discussed favorably the possibilities associated with the decentralization of the uniformed patrol, the formation of team policing, and the functions of the generalist-specialist patrol officer. The only thing that needs to be added to what we have already said is that while the juvenile officer is the source of policy, implementation is not likely to be effective if it consists of a one way flow of directives. Juvenile officers can become desk-bound and relatively isolated.[156] It is indispensable that juvenile officers seek consultations with the uniformed patrol. Such consultations should not be left to chance occurrence but should take place on a regularly scheduled basis. This will afford the juvenile officer opportunities to oversee the implementation of policies, while mobilizing informational input from the patrol to policy formation.

[156] D. Black and A. Reiss, "Police Control and Juveniles," 35 *Am. Soc. Rev.* 65, at n.7 (1970).

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In addition to the vertical link to the chief executive officer and the lateral link to patrol, policy planning by the juvenile officer calls for specific cooperation with the community relations officer or the community relations unit. The idea of police-community relations as an explicitly staffed function came to the fore in the middle of the 1960s in connection with then widespread incidents of large-scale urban protest movements.[157] In brief, the main purpose of these structures was to open channels of communication between the police and various segments of urban populations and to make the police more aware of felt service needs and more attentive to expressions of grievance. To attain this objective, police officers were, and are, assigned to formal and informal community organizations and placed in settings of all kinds, not for purposes of control, but to listen, talk, help, and do whatever else might help in creating conditions of trust and cooperation between the people and the police. Police-community relations officers were placed where they were most needed; namely, in the most aggrieved and most disadvantaged segments of society. As with the case of team policing, the innovation has not been instituted everywhere; it takes different forms and the success it can claim varies. It is fair to say that even a minimally adequate endeavor of this sort opens certain contacts to the police that are closed without it. One thing is quite certain. Wherever a network of relationship has been established, the police need not function as total outsiders, viewing problems without reference to context. Optimally, they will police in accordance with the interests of the policed population and will be perceived as such.

While the maintenance of community relations is important for policing generally, it is vastly more important in the policing of juveniles. For in this work, the police are far less likely to deal with an isolated individual than with a situation in which normal care, supervision, or control may have lapsed and where intervention may require the involvement of many other people and institutions. Of course, not all problems can be solved even provisionally by following this route. But where this route is possible, it better serves society that it be used rather than neglected. In the policy planning of the juvenile officer, the community relations officer serves as the surveyor of the scene of possibilities. Even though we expect juvenile officers to strike out on their own in these directions, they and the community relations officers are obviously capable of aug-

[157]D. Andreotti, "Present Problems in Police-Community Relations" in *Confrontation: Violence and the Police* 113-129 (C. Hormachea and M. Hormachea eds. 1971); *W. Hewitt* and *C. Newman*, eds., *Police-Community Relations: An Anthology and Bibliography* (1970).

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menting one another's resourcefulness considerably. In other words, the community relations officer has exactly the kind of information juvenile officers need to make available to the patrols with whom they cooperate. Simple information transfer will not be sufficient in this situation, however, because the effective kind of knowledge does not consist of mere data, useful though they might be, but of a more intimate kind of acquaintance. What matters more than knowing about people is knowing the people in the structured settings of their lives and work, and being known by them. It is with a concern for the achievement of this aim that we urge the cooperation between the juvenile officer and the community relations officer, especially in joint policy planning.

The location of the juvenile officer between patrol and institutions outside the police to whom cases may be referred calls for policy planning in three related areas. The first concerns the division of responsibility between the patrol and the juvenile officer. As a general rule, patrol officers deal with all those problems in which the institution of formal measures of coercive control are not deemed necessary and that can be solved more or less at the time and in the place when and where they were encountered. No strict boundaries can be formulated to limit the scope of such competence, nor is it possible to rule out entirely the occasional need for arresting a juvenile or taking a juvenile to a medical facility without first securing the concurrence of the juvenile officer. But it is precisely because no norms can be fixed here that policy understandings must be formulated in this area. The responsibility for the formulation of such policy rests with the juvenile officer, but that responsibility is not met except in consultation with the patrol. We believe that cases that have been transferred to juvenile officers from patrol call primarily for an assessment as to whether a juvenile should be further transferred to the care and jurisdiction of some institution outside of the police. There will be some cases in which the decision will be more or less a foregone conclusion. But even they are apparently regarded as in need of further investigation and work-up before the final decision is actually made. We believe further that juvenile officers should not be expected to assume the responsibility for counseling and supervision that go substantially beyond the limits of what can be reasonably associated with investigation and workup. Here again, special circumstances might possibly create special needs or opportunities. Next when juvenile officers are engaged in various kinds of special project assignments as, for example, when they are placed in high schools with the view of making their services available to young people on a more or less established basis, specific

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policy should be formulated. Such assignments often involve the establishment of relations of trust, the faithful maintenance of which might sometimes conflict with otherwise standard reporting requirements. It would be unfair to both the assigned officer and to those who confide in him or her if some standards with regard to this problem were not formulated. Moreover, such officers often deal with problems that have not reached the definition of what in police work would otherwise be regarded as a case. They cannot be held to the otherwise accepted limitations in the extent of counseling and supervision. Last, apart from situations of special merit the juvenile officer merely handles all cases in which, either because of their complexity or their seriousness, more intensive and more extensive consideration is called for than can be accorded to them by the patrol. In deciding whether a case should or should not be referred to an outside agency, a juvenile officer should not entertain as one of the available alternatives that he or she could possibly act the part of a social worker or therapist. That concept controls the setting of standards and procedures for the transfer of cases outside the police. What agency will be selected as the target of the transfer will depend on the nature of the problem.

Three further considerations should play a role in transfer policy. First, the nonavailability of the kind of agency that would be ideally appropriate to receive certain cases might create pressures to have them retained under police care. Such arrangements should be avoided. Second, the mere fact that some cases may seem to fall within the sphere of competence of some remedial institution is not, in and of itself, a sufficient reason for a formal transfer. Instead, there must be compelling reasons for a transfer. Thus, for example, the realization that some youngster might possibly benefit from some form of psychological counseling is not enough for instituting a transfer. The decision should be based on the determination of a serious need for the service. Third, except for cases where transfers are mandated by law, either because the problem involves serious crimes that must be referred to the courts, or because imminent dangers to health or safety are involved, all transfers should be based on the voluntary consent of the involved youth and his or her guardians. But requiring voluntary consent is not identical with requiring volunteered consent. Of course, the consent must be informed and the opportunity to refuse it must be made explicitly available, but officers should not feel called upon to refrain from attempting to use influence, persuasion, and pressure. Above all, runaways should not be forced against their wills to homes from which they fled; nor should anyone be coerced into accepting

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psychiatric care, except where statutory authority requires hospitalization. This leads to the last and most important point concerning policy formation. Preference should always be given to a lesser coercive remedy over its more coercive alternative. That the choice calls for controlling anger and the retributive impulse is obvious but does not make choosing easier. The rule calls for optimism and hope on the part of officials whose work experience contains little to nurture these attitudes. Perhaps it is best to comment that the rule is fully justified by prudence alone, even while it also contains elements of humane sentiment and even though the two are ineluctably connected. We believe this means that when coercive measures must be used, they must be used, and when noncoercive measures can be used, they should be used. We take this to mean also that the choice of more coercive measures requires stronger justification than does the choice of their less coercive alternatives. It might be well to remember that success is never guaranteed, but the use of force almost always produces some lasting harm.

4.5 Adequate staffing of programs for policing juveniles should be a matter of overriding significance.

A. Officers should be selected and appointed to work with juveniles as patrol officers and as juvenile officers on the basis of demonstrated aptitude and expressed interest.

B. To qualify for appointments as juvenile officers, officers should be fully competent members of the police and possess an educational background equivalent to graduation from college. The educational background standard should not be applied retroactively.

C. The initial assignment should be on a probationary basis during which the officers work under supervision and with restricted decision-making authority, and are given inservice training that should include internship placements in several institutions, the juvenile courts, schools, and social service agencies among them.

D. In the selection of patrol officers to work with juveniles, and of juvenile officers, first consideration should be given to otherwise eligible officers who share the racial, ethnic, and social background of the juveniles with whom they will work.

E. The practice of appointing responsible and interested young people to function in the role of paraprofessional aids in police work with juveniles should be encouraged.

Commentary

The work of officers dealing with juveniles, as patrol officers and as juvenile officers, involves fiduciary considerations to an extent

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that goes substantially beyond what is commonly expected of the police. The decisions they are constantly called upon to make depend less often on preformulated decision making standards than upon assessments of circumstances, on child welfare projections that defy all attempts at precise definition, and on sober but sympathetic consideration of troubled and troublesome youth. Thus, it would seem reasonable that assignments to this difficult task should be based on a sense of calling. It is common knowledge that not all adults are temperamentally and intellectually equipped for it. Some people who think they are, are not; some who say they are may not even think they are. Accordingly, expressions of interest should be treated as a condition of selection but not a sufficient condition. Some added evidence of aptitude should be in evidence. Judgments about such evidence are admittedly difficult to make, but they are not impossible. In any case, what matters is that facts of past performance and initiative receive careful examination which, though they might not always guarantee the choice of the best suited person, will surely identify the unsuited person. We think that the elimination of unsuited candidates is more important with regard to juvenile officers than in all other assignments in police work because errors and malpractice in this area have much more long lasting consequences than in other areas. Young persons set on a course of troubles have more years left to cause trouble than adults.

Since work with juveniles is perceived as different from the rest of the police work and is sometimes associated by some police officers with maudlin sentimentality, it is important to mention that the assignment should not become the refuge of persons who are regarded as unfit for policing generally, or who select it to reverse their career choice. Distance between juvenile work and the rest of policing, and the separation of the juvenile officer are undesirable. Wherever this occurs, the whole range of problems that reform seeks to remedy reappears. Hence, we urge that juvenile officers be selected from officers whose competence in and dedication to policing generally are beyond question. Moreover, the aim of formulating standards for police work with juveniles would be undermined if, as a result of their adoption, the juvenile officers and their bureaus become a separate agency, only incidentally connected with the police by a semi-tolerated organizational arrangement. They either work with the rest of their department or their existence becomes redundant, acquiring the character of another kind of service that might be performed better by others.

The requirement of a higher level of educational attainment than is commonly expected of police officers is in line with the recruit-

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ment aspiration of the police generally. The number of college graduates in police work is increasing and will probably soon reach a level ensuring a sufficient pool of eligible candidates for special assignments, even if we are to believe that making graduation from college a condition for police employment generally remains practically impossible. The requirement is based on the assumption that the study of social science has much to contribute to the fund of knowledge juvenile officers need in their work. But other considerations are at least as important as the acquisition of information. Though it is a rough rule, there can be scarcely any doubt that one is much more likely to find the more gifted, the more aspiring, and the more resolute among those who have turned to higher education after high school than among those who did not. Naturally, accidents of opportunity and other extraneous factors still play an important part in career development, especially for youth originating in disadvantaged segments of the community and due consideration should be given to that, a matter to which we return presently when discussing the use of paraprofessionals. Generally speaking, however, the choice of college and the survival in college might well serve as the useful index of potential. Higher education, quite apart from transmitting information, does serve to develop the mind. At the very least, we have no other institution that is as much concerned with the exercise of intellectual faculties and of rational judgment. We certainly do not wish to be taken as suggesting that book-learning contains all the answers, and we would further insist that probably no more than a fraction of those who succeed in college ought to be considered for policing. Indeed, we made a point of mentioning the criterion of police experience before the criterion of formal education. But we do believe that, in the combination of the two, the second should receive the consideration to which it is entitled on merit.

As in any complex occupation, independent performance should follow a period of closely supervised practice. How this should be organized depends too much on personnel resources and other variable circumstances for generalized recommendations. Departments of small size should furnish their officers with opportunities for supervised practice in larger departments. We consider it to be an essential part of inservice training of juvenile officers during their probationary period that they be exposed to the workings of those institutions to which they will transfer cases and upon whose cooperation they will depend. Since, to the best of our knowledge, nothing of this kind has been done thus far anywhere, we find it difficult to spell out our recommendation with great specificity. But

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we think that juvenile officers should, by some special arrangement, be placed on a full-time basis for at least two weeks with the juvenile court, schools, and some juvenile service agency. They should be able to see for themselves the problems with which probation officers, school counselors, and social case workers cope; they should learn something about the procedures employed in these functions; and they might hopefully be given opportunities to try their hand at doing what they observe done. Such placements are likely to work best if they are reciprocal, but this recommendation goes somewhat beyond the scope of what we are called upon to consider.

One of the greatest obstacles militating against good policing is created by deeply ingrained—and frequently amply justified—distrust and hostility towards the police from members of ethnic and racial minorities. We will not belabor the point that only officers free of the kinds of biases and prejudices that justify these attitudes are eligible for appointments as patrol officers working with youths, or as juvenile officers. But this may not be enough. Officers must be recruited from among minorities in sufficient numbers to compensate for the past neglect of this source of recruitment. Beyond that, however, considerations of sheer expediency suggest that all measures must be taken that would allay the suspicion—even when it is not well founded—that some poor black youth was treated coercively in a situation in which his or her white middle class peer might have received kinder treatment. This does not mean that only black patrol officers or black juvenile officers could work in black neighborhoods nor that they could not work in white neighborhoods. It only means that the patrol and the juvenile units will have the ethnic and racial composition that eliminates, or at least minimizes as far as possible, the implication of systematic bias. Moreover, it seems reasonable and useful that patrol officers working with youths and juvenile officers should preferably be of the same ethnic or racial background as their charges. Because such dealings are often centered around authority problems, it makes good sense to reduce the strangeness of an already strange and powerful disciplinarian, thereby allowing the assertion of constraint and direction from a source that is not the target of resentment because of imputations of prejudice. Lastly, a patrol officer of, let us say, Puerto Rican origin, is not only less likely to be accused of being a tool of ethnic bigotry than his or her Anglo counterpart, he or she is also far more likely to have a good understanding of both the needs and the mischief of Puerto Rican youngsters.

The President's Commission on Law Enforcement and Administration of Justice recommended the establishment of a special

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corps of police functionaries recruited from among persons in their late teens.[158] It proposed that such persons would have law enforcement training but would assume an auxiliary service role. Among the various tasks that could be assigned to these young people, the Commission mentioned first work with juveniles. No reports are available concerning the implementation of this recommendation. We repeat the recommendation. The appointment of people in their late teens to work with the police on matters concerning juveniles would serve a double purpose, both parts of which are exceedingly important. First and foremost, it would serve to bridge gaps of understanding between youths and adults where such gaps exist. It does not seem far fetched to assume that they might be more influential with their age-mates than adults, where the exercise of influence might suffice to rectify an untoward situation or tendency. And young people in trouble might possibly find it easier to turn to them for help than to patrol officers or juvenile officers. But their role must be monitored; it must be kept clear that their function is auxiliary; and they are neither authorized nor expected to assume the full responsibilities of police officers. Second, the possibility of such placement could be used by the police as a method of locating persons whose recruitment into police work is judged desirable. It would seem especially desirable that such appointments be made from among youngsters who, because of social disadvantage, might not on their own reach college. For such youngsters, programs could be arranged that would combine a suitable form of part-time employment in the police with college enrollment, all with the understood prospect of a career in police work.

PART V: THE NEED FOR INCENTIVES AND ACCOUNTABILITY; DIRECTIONS FOR NEEDED IMPROVEMENTS AND FURTHER RESEARCH

5.1 Police agencies should establish positive incentives to encourage their personnel to support the thrust of these and other standards in the Juvenile Justice Standards series. These incentives should include:

A. appropriate status and recognition for the juvenile bureau and juvenile officers, given the importance of their task;

B. formulation of policy guidelines in the juvenile area that

[158] President's Commission on Law Enforcement and the Administration of Justice, *Task Force Report: The Police* 123 (1967).

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assist officers in handling juvenile problems, both criminal and noncriminal in nature;

C. provision of creative recruit, inservice, and promotional training that explores both juvenile policy guidelines and the philosophy behind them;

D. establishment of criteria for measuring effectiveness in handling juvenile problems that are consistent with departmental policy guidelines and with these standards; and

E. use in promotional examinations of material relating to the role of police in handling juvenile problems.

Commentary

Standards mean little unless ways are found over time to translate them into practical and acceptable working procedures and programs. To implement the standards in this volume and the philosophy behind them will require, among other things, that police agencies: 1. give priority to the effective handling by police of juvenile problems—both criminal and noncriminal in nature; 2. formulate policy guidelines for personnel that are consistent with the thrust of these standards; 3. establish positive incentives for personnel to comply with such guidelines in this area; and 4. continually monitor the effectiveness of the guidelines and compliance with them.

Giving priority to the juvenile area means that police agencies (and the legislative and executive branches in their jurisdictions) will have to strengthen their commitment to juvenile bureaus or juvenile officers and to the training of patrol officers in the handling of juvenile problems. It is not difficult to justify giving priority to this area, given the time currently spent by police on noncriminal juvenile problems and juveniles' increasing involvement in the total crime problem. Thus, it is suggested here that increased police resources be devoted to juvenile problems, in terms of both additional backup of specialized personnel and improving skills of the patrol force. This might involve specialized inservice training in the handling of juvenile problems for all patrol officers or such training for selected officers who will then be expected to provide some expertise to a team policing unit. The specific recommendations relating to resources, specialization, and training are covered in Standards 4.1–4.3 and supporting commentary.

Central to the implementation of these standards is the formulation by police agencies of administrative policies and guidelines. Many of the standards in this volume relate to the handling of noncriminal problems, decisions to charge or divert delinquency mat-

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ters, and the handling of criminal investigations involving juveniles.[159] Although the implementation of some of these proposals might involve legislative changes, most can be implemented through the promulgation of administrative policies. Policies are needed, for example, to provide guidance on the handling of such problems as runaways, children in need of emergency services, and family crises of various sorts. In addition, policies are needed to structure discretion on the diversion of certain criminal or delinquency matters away from the juvenile court as well as the use of citations in lieu of arrest in some instances. Finally, guidelines are needed on the permissible use of various investigative procedures such as interrogation, search and seizure, and eyewitness identification. The rationale for policy making is covered more specifically in Standards 2.5 and 4.4 of this volume and in supporting commentary. The areas in which policy is most needed are identified in the standards and supporting commentary set forth in footnote 164.

The mere formulation of policy alone will not by any means ensure compliance with it. Police administrators and their superior officers must show that they are firmly committed to those policies. A commitment can be shown both by what is said by administrators and by the establishment of incentives that stimulate compliance. Incentives should be positive in nature as opposed to sanctions for failing to comply. Positive incentives include basing status, pay, and promotional decisions, at least in part, on compliance with policies that implement these standards. In other words, work performance of personnel in the juvenile area and advancement within the department should be measured by such criteria as effectiveness in selecting the least restrictive alternative in the handling of noncriminal juvenile problems (see Standard 2.5) and the diversion to proper agencies of minor delinquency matters that did not merit the involvement of the juvenile court (see Standard 2.3). Police administrators can also demonstrate their commitment to these standards and their own policies for implementing them by the attention devoted to them in police training at all levels—recruit, inservice, and promotional (see Standard 2.5 D.). Training should focus not only on the policies but also on the reasons for them and how they apply in practice. Training must also be used to indicate that the police are referral agents not only for the criminal and juvenile justice systems, but for social service systems such as public and mental health agencies as well. This will require that police officers obtain comprehensive information on the scope of community agencies

[159] *See, e.g.*, Standards 2.3, 2.5, 3.2, and 3.3.

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that are or should be available to handle various types of juvenile problems.

Finally, police administrators should continually monitor their policies to ensure that they are providing positive guidance and that they are relevant to the needs and concerns of police personnel. If certain policies, for example, stress diversion of certain types of cases away from juvenile court, periodic monitoring should determine if the policies are effective in encouraging this result. Without such monitoring, the reasons why policies are or are not being implemented will never be uncovered. Monitoring might reveal, for example, that diversion policies are not understood or that referrals continue to be made to the juvenile court because other agencies are simply unwilling to accept referrals from the police. As is proposed in Standard 5.3, such monitoring should involve talking to working officers about the policies and their problems with following them and should be undertaken by the juvenile bureau or juvenile officers who have general policy-making responsibility in the juvenile area.

5.2 Police policies should be developed with appropriate input from other juvenile justice agencies, community social service programs, youth service agencies, schools, and citizens. Each year, police agencies should issue a report describing their handling of juvenile problems, the alternative approaches they have used, and the problems encountered in complying with departmental policies on the handling of juvenile problems.

Commentary

Since a primary role of the police involves making referrals to a range of agencies and programs, it is essential that police policies be consistent with the policies and philosophies of those agencies and programs. This requires that police agencies, probably through their juvenile officers, obtain input from sources such as the juvenile court, probation officers, and the prosecutor's office as well as from public and private social service agencies such as youth service agencies, prior to drafting policies and guidelines for the handling of juvenile problems. In many instances, as Standard 2.5 E. and supporting commentary reflect, it will be even more beneficial for the police to formulate joint policies and common understandings with such agencies and programs whenever possible.

In drafting policies on juvenile matters, however, the police should solicit input from sources other than public and private

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agencies. Citizen input is needed as well. This was also noted in the ABA Standards for Criminal Justice, *The Urban Police Function:*

> But openness of policy and administrative rules alone is not sufficient to satisfy the need to involve citizens in policy formulation. There must, in addition, be ways to allow representative citizens to participate in or review policy formulations that relate to sensitive issues surrounding the nature of the police role, objectives and priorities of police services, and methods to be used in achieving objectives and priorities.
>
> Reasonable means for citizen participation on these issues can do much to reduce tensions in a community.[160]

The purpose of citizen participation should go beyond reducing tension, however. Such participation is needed to learn about juvenile problems and needs in various neighborhoods and to test the feasibility of various approaches for handling such problems as runaways, minor offenses, and families in crisis. Citizen participation can take many forms: citizens' advisory committees, public meetings, or even circulation of draft policies for comment and review. Whatever model is chosen, juvenile officers should be involved in this process. Further discussion of these issues can be found in Standards 2.5 and 4.4 and supporting commentary.

Finally, given the importance of juvenile problems in most communities, police agencies should release periodic reports on the problems and the police role in responding to them. These reports should reflect what the department's policies are, the types of services provided by the police, and the types and numbers of referrals the department makes. In addition, as Standard 2.6 E. proposes, because of their knowledge of deficiencies, police agencies should point out in these reports A. gaps in public and private resources that must be filled in order to meet the needs of juveniles and their families, and B. the unwillingness of existing agencies and institutions to respond to the needs. Otherwise, the public will often be unaware of the difficulties police officers face in attempting to find programs or agencies to which appropriate referrals can be made.

5.3 High priority should be given to ensuring that police officers are made fully accountable to their police administrator and to the public for their handling of juvenile problems. This will require effective community involvement in police programs, ad-

[160] ABA Standards for Criminal Justice, *The Urban Police Function* 140 (1973).

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ministrative sanctions and procedures, and remedies for citizens whenever warranted. The need for research on and development of sanctions and remedies is particularly acute at this time.

In addition, juvenile bureaus and juvenile officers should periodically monitor the effectiveness of juvenile policies and the extent of compliance with them. Further, they should learn from the juvenile court, from other agencies, and from the public about any problems that may be arising with departmental policies or with their execution. Information obtained from these and other sources should be used for policy review and the development of new or modified training efforts.

Commentary

This standard is in line with two overriding principles that are contained in the ABA Standards for Criminal Justice, *The Urban Police Function*. The first is that "high priority must be given for ensuring that the police are made fully accountable to their police administrator and to the public for their actions."[161] The second is that, although primary emphasis for implementing standards should be given to positive incentives (as we noted in Standard 5.1), there will remain the need for some effective legal sanctions designed to prevent or to redress abuse of police authority. Accountability both to a police administrator and to the public can best be achieved by the monitoring, citizen involvement, and periodic reporting described in Standard 5.2 and in supporting commentary. In addition, this standard suggests that police policies and performance should also be measured by having a juvenile bureau or juvenile officers request feedback from the various agencies that must interact with the police—the juvenile court, youth service agencies, etc.

The ABA Standards for Criminal Justice, *The Urban Police Function* comprehensively reviewed the existing legal sanctions that are currently available to prevent or to redress abuse of police authority.[162] These include: A. the exclusion of evidence obtained by unconstitutional means, B. criminal and tort liability for knowingly engaging in unlawful conduct, C. injunctive actions to terminate a pattern of unlawful conduct, and D. local procedures for handling complaints against officers, procedures that usually operate administratively within police departments. The conclusion of those standards was that all of these sanctions had serious deficiencies and

[161] *Id.* at 144.
[162] *Id.* at 150-170.

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needed to be strengthened. This conclusion continues to be the case today.

Because of the continuing deficiencies in this area, it is recommended that priority in research and development be given to improving sanctions and citizen remedies for police abuses of authority, including those relating to the handling of juvenile problems.

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Appendix A: Role of the Police in Urban Society

The police force, as we know it, came into existence in the twisting and turning growth of local government in the United States over the past century. It took shape in response to changing social needs, as these needs were perceived, and it accordingly embodied changing purposes. It is a remarkable product of history that has proven, over and over again, resistant to external control and to reform, despite its relatively low status in the hierarchy of importance among the institutions of the state. To some, saying that the police are a product of history may seem to be a plea for excuses, and all attempts to understand may seem to be efforts to justify what is. But taking this view is an act of faith, not an argument. Those who believe that history is man-made have a duty and perhaps the wisdom to try to grasp reality in its full complexity before they tilt against it. Only people who know their circumstances can hope to take charge of their fate. Reformers, especially, are not entitled to flights into the abstraction of pure desiderata, because reform that does not recognize facts is a vain and futile undertaking.

It is, of course, impossible and unnecessary to furnish within the framework of this volume a complete description of police practice, of the exigencies to which it is responsive, the constraints under which it functions, and the objectives to which it appears to be oriented. Still, to comply with the stricture expressed in Standard 1.1, we must try to outline briefly the principal realities of the police function in modern society; and we must do that not by citing legalistic formulations of the police mandate, but by drawing attention to how such formulations are embodied, insofar as they are, in effective patterns of practice. One good way of doing this is to consider what the existence of the police makes available to society that would not be available in their absence. This approach seeks a middle ground between abstract norms of the kind one finds in legal provisions and descriptions of what police officers *actually do* as part of their occupational routine.

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The approach is admittedly not free of complications, and it cannot be denied that following it faithfully must inevitably lead to the disclosure that in some places corrupt police officials create a shield of protection for the operation of certain criminal enterprises. But it seems quite clear that neither the police officials involved in such schemes, nor the people who benefit from them, could ever make such arrangements in the open or defend them as proper upon disclosure. To be sure, under some circumstances, the police sometimes adopt the deliberate policy of limited tolerance for certain illegal activities. Such policies, however, cannot involve or depend on the self-serving quid-pro-quo built into the just-mentioned example. Indeed, such policies, when adopted, would seem to require the justification of being instituted in the quest of some other public interest. But does not raising the matters of propriety and the public good place us back in the position of arguing from the abstract principle we sought to avoid? We think not. We think it makes good sense and that it is not too difficult to distinguish between answers one obtains when asking what ought to be done on grounds of abstract principle, and the answers one gets when asking people involved in an activity what they consider important, necessary, and on balance desirable, in a practical and worldly sense. To be sure, answers of the latter kind do not compel uncritical assent, and people who advance them often add that outsiders cannot be expected to appreciate their seriousness. They help, though, in understanding the reasons behind an activity and, by extension, the activity itself. More importantly, such answers are likely to reveal where proposed reforms of practices might gain an effective foothold. Asking the question also involves the common decency of paying those whose work one presumes to put in good order the consideration of serious interest in what they do and what they seek to accomplish. In sum, by looking at what police work uniquely accomplishes, we attempt to hold in view at once what is actually done and the sense of legitimacy with which it is manifestly associated.

With this proviso in mind, we propose that every existing substantive definition of the scope of the police mandate must be either so broad and ambiguous as to be meaningless or far too narrow. Indeed, even efforts to enumerate the duties of the police eclectically must result in inventories, the last item of which is etcetera. Every seasoned police officer knows and outside observers who have studied the police confirm (*cf.* Banton, Wilson, Reiss, Bittner) that the police deal with so staggering a variety of problems

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that there neither exists nor is there imaginable any human predicament, social relationship, or situation that could never become the proper business of the police. The main point here is not merely that police officers actually happen to meddle in all sorts of things, but rather that the potential necessity and acknowledged legitimacy of police intervention dwells in all circumstances known to man. In dire need and crisis, whatever its nature, police officers do not ask whether this kind of intervention is authorized by ordinance or statute; they move into action. Citizens also know that they can "call the cops" in such situations and that the cops will come and do what has to be done. Accordingly, the function of the police could be said to consist of dealing with every untoward matter over which effective control must be exerted without delay, regardless of whether it involves opposing crime or taking care of lost children or anything else. Even though all available evidence and the assessments issued by the police themselves indicate that dealing with matters connected with the enforcement of the provisions of the criminal codes constitutes only a relatively small fraction of all police work, the activity claims a position of paramount importance. Correlative to the normative priority of crime control interest in police work is the fact that police officers have an exclusive monopoly regarding the role they play in the criminal process. That is, no one else is supposed to busy himself with catching criminals. It is easy to see that this part of crime fighting is an activity with a special cast and that it is invested with tensions that are likely to gain ascendancy over and dominate all other interests, even without regard to the symbolic significance assigned to it. To say that police officers think of themselves as crime fighters above everything else means that they tend to view most problems they encounter, as far as possible, primarily from the vantage point of this interest, that they tend to look for aspects of possible criminality in most troubles they encounter, and that they tend to feel most in their own element when troubles can be addressed under the auspices of the conceptions of the penal law. This does not mean that they actually always handle problems they encounter in this manner, but merely that this outlook is apt to determine the initial approach to encountered troubles, all things being equal.

Until fairly recently, the part the police were supposed to have played in the criminal process was conceived of in the following terms: whenever in a case there was no formal justification for invoking the law, the police were not supposed to have any further business with it. Recent studies revealed that this ministerial con-

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ception of the police mandate contained vast distortions of police duties or, in any case, police officers did not feel called upon to act in accordance with it. The point here is not that police practice is slipshod, however true it may be in some cases. The point is that decisions to invoke the law are always discretionary—even down to the rare and uninteresting instances of open-and-shut cases—in which the provisions of the penal codes play a role together with situational and practical considerations. The discretionary character of police law enforcement poses difficult and complicated problems. It has received extended analysis in a growing body of literature[1] which we need not consider here beyond taking note of two principal aspects of the decision-making process. In the first place, police officers often do not invoke the law because they feel that the general objectives of crime control might be served better by warnings, because they think that the reputation of a respectable person might be unduly damaged by prosecution, because they know that some provisions of the criminal codes were not intended for full enforcement, and because of other reasons of this kind. On the other hand, police officers sometimes invoke the law in cases involving minor infractions for reasons that have little or nothing to do with the invoked norm. It is important that in most such cases the arrest is formally correct, but it was not made to implement a norm; instead, the arrest was made possible by the norm, while the real reason for it is embedded in a complex of peace-keeping and order-maintaining considerations. For example, a person might be taken into custody and charged with public drunkenness not because he or she was drunk and chargeable on that account, but because arresting him or her was indicated as the most appropriate way of gaining control over a potentially hazardous situation.[2] It goes without saying, of course, that discretionary law enforcement involves in both of these aspects relatively minor infractions and that opportunities for the exercise of discretion decline with the relative seriousness of the offense.

The decisions to invoke the law or not to invoke it operate on a largely preselected sample of crimes. Apart from law enforcement involving consensual-type crimes like prostitution or gambling and certain specially investigated criminal activities, the fact that offenses have been committed becomes known to the police through citizen complaints. Available information indicates that people do

[1] *See, e.g., W. LaFave, Arrest: The Decision to Take a Suspect into Custody* (1965).

[2] *See, e.g.,* Bittner, "The Police on Skid Row," 32 *Am. Soc. Rev.* 699-715 (1969).

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not report all crimes to the police and such reporting varies concomitantly with the seriousness of the crimes.[3] Moreover, it has been established that black people are less likely to report crimes to the police than whites.[4] Thus, it appears that though the people know that crimes should be reported to the police, they do so selectively; they often doubt that reporting crimes to the police will lead to solutions, and they sometimes express misgiving about reporting to the police. In short, there does not seem to exist a fully consensual basis of cooperation between the police and citizens in crime control. Nevertheless, the primacy of significance of crime control among police activities corresponds to the opinion of most people, including police officers, that the role the police play in criminal law enforcement is either the principal, or among the principal justifications of their existence, and that all other police activities are in various ways incidentally and occasionally even only spuriously related to it. Competent observers differ in their assessments of how effective the police are as crime fighters. But one police effect is beyond reasonable question. The criminal justice system could not function without the police and, under present conditions, the absence of the police would quickly lead to the system's disestablishment. Thus, it could be said that the part the police play in the criminal process makes the difference between the existence and the nonexistence of official opposition to crime. And correspondingly, in the absence of the police, victims of crimes would have nowhere to turn and would be forced to accept victimization as an ordinary risk to a far greater extent than they do now.

Police crime control involves, on one hand, certain skill, resources, and organization and, on the other hand, is restricted by the norms of criminal procedure. The two elements, one directed toward the objective of increasing efficiency, and the other directed toward the protection of procedural rights of citizens, are often in conflict with each other.[5] But there is one aspect of the role of the police in criminal law enforcement that has received no attention at all, not because it is unknown but because it is commonly taken for granted. Though it is true that the police initiate the prosecution of virtually

[3] *See* Ennis, "Criminal Victimization in the United States, A Report of a Research Study Submitted to the President's Commission on Law Enforcement and Administration of Justice" (1967).

[4] Biderman, et al., "Report on a Pilot Study in the District of Columbia on Victimization and Attitudes Towards Law Enforcement, A Report of a Research Study Submitted to the President's Commission on Law Enforcement and Administration of Justice" (1967).

[5] *See J. Skolnick, Justice without Trial* (1967).

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all the crimes that keep the majority of our criminal courts busy and our correctional facilities full, there are certain crimes in the prosecution of which the police do not participate, at least as a rule. For example, the police are typically not involved in cases involving criminally culpable conduct of officials in office, nor are they typically involved in the prosecution of criminally culpable transgressions against provisions regulating the conduct of business or the practices of the professions. This is a complicated problem, and the lack of police interest is probably due in some measure to the general reluctance of our administration of justice to proceed against persons about whom it is believed that, though they may have transgressed, they are not really criminals. It is probably also true that the lack of involvement of the police in these matters is due in some part to the fact that they do not possess the appropriate investigative skills, and to the fact that such cases often call for legal decisions—for example, whether a case involves a civil or a public wrong—which only lawyers can make. Finally, many such crimes are dealt with by other law enforcement agencies. All these possibly valid reasons notwithstanding, there exists a simpler explanation for the police abstention in these cases.

It appears that the interest of the police is limited to those crimes in which it is assumed that the charged person will attempt to evade prosecution by flight. The distinction involves a gross typification. Some people who have killed will not flee, and this may be known about them. But in general terms, homicide is the type of crime about which it is assumed that the person who is guilty of it will have to be brought forcibly to the bar of justice. By the same token, a second-hand car dealer who turns back odometers on automobiles in preparation to selling them fraudulently may, in fact, flee when discovered. It is assumed that, in situations like these, suspects have much more to lose by illegally evading prosecution than by facing it, and the likelihood of this assumption is even greater if the situation involves something like a conspiracy on the part of corporate executives to fix prices. It can be said, therefore, that from the perspective of the police officer, it truly does not matter whether a crime is committed by a wealthy white person or by an impoverished black person. If the former happens to be involved in a burglary, he or she will be, if at all possible, pursued, caught, and charged. If the latter happens to be suspected of fraudulent tax evasion, he or she would be left alone by the police. All that seems to matter is whether the suspected person transgresses in ways upper class persons typically transgress or whether he or she transgresses in ways lower class persons typically transgress.

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Some services the police provide share with criminal law enforcement the aspect of specific statutory authorization. The most prominent among them is traffic control. The fact that traffic control has become a police responsibility can be variously justified. In the first place, since police officers are already on the streets, they might as well do it. Furthermore, driving is fraught with danger and motor traffic is crisis prone. Finally, the control of traffic relies heavily on the use of penal sanctions, even though transgressions are, for the most part, not defined as crimes. The rest of statutorily-delegated duties are derived mainly from local ordinances, and they vary considerably from place to place. This includes such things as the issuance of firearms permits, the licensing of certain enterprises, the taking of the census, and so on. The only reasons why these matters deserve mention in a cursory review of what the police furnish to society is because they attest to the common practice of the local government to call upon the police for necessary services for which there are no special organs or facilities. That is, the police officer is, so to speak, the utility-player in the game of local statecraft. Mayors, aldermen, and city councils are just as apt to "call the cops" to do things that need to be done as the rest of us in our private spheres. This highlights the fact that one of the things the existence of the police provides is a seemingly unstructured availability to meet needs regardless of their nature.

While there is merit to thinking of the police function in the criminal process as a referral procedure that occasionally has a relatively simple structure, and while referrals tend to receive disproportionately prominent public attention, to think of the police function merely in those terms is misleading and misguided. In fact, the far more common and the more routine parts of police work are considerably more complex than those activities that are usually referred to when the occupation is characterized. In those areas, the capacity to invoke the law (even when invoking it is not actually contemplated) functions as a resource for doing police work together with other control methods. The arrest power, ordinarily considered in terms of the legal norms that are supposed to govern it, thus becomes assimilated to another domain of procedures in which considerations of legality are either irrelevant or of only marginal relevance. In this character, the power to make arrests remains in the background and its potential availability serves mainly to strengthen the hand of the police in the effective application of alternative control measures.

When one pursues this insight, there comes into view a vast array of problems and related police activity in which cases might possibly

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be referred for further process to prosecutors or other agents, but which are for various reasons dealt with by police officers from beginning to end in the setting in which they occur however provisional the end might be. These practices—sometimes called "peace keeping" as distinct from "law enforcement"—engage the bulk of resources and personnel of the police. They are said to be of "poor visibility," and there exists no commonly agreed-upon understanding of their structure. Yet, these activities comprise police work par excellence, and in them originates the effect the existence of the police have upon society.

In other words, police officers refrain from invoking the law not merely in the absence of a sufficiently significant probable cause, but also because actually available alternatives seem more fitting. But to say that the activities of peace keeping are not well understood—or, more precisely, that no one has thus far succeeded in formulating the terms that authorize their availability—does not mean that these practices are not surrounded by a sense of necessity, seriousness, and importance, nor that justifications cannot be obtained when justifications are called for in actual instances. That is, peace keeping is occupationally structured and has thematic unity (concerning which more will be said later), but existing accounts of its necessity and sensibility tend to be either so general as to be meaningless or so specific as to depend wholly on the circumstances of its incidents.

The social medium within which police work is practiced can perhaps be best characterized by reference to the attitude reflected in the expression "let's call the cops." The attitude draws its viability and is encouraged by the ready responsiveness of the police, as compared with other services. It is well known that they make house calls and that one needs no appointments with them, though, to be sure, actual reliance on police service varies considerably among different segments of society. Two aspects of this situation are of special interest. First, it appears that citizens feel justified in summoning the police in connection with anything whatsoever, and there is nothing that could not become the proper business of police attention under suitable circumstances. And second, in "calling the cops," the caller invests the matter he or she presents to the police with the aspect of a crisis. It is, of course, impossible for the police to possess all the remedial skills of all remedial agents, but it would take an extraordinarily sheltered mind to suggest that police officers ought to excuse themselves when facing a problem for the handling of which they lack otherwise available skills and let disaster run its course. Obviously, the choice lies in some middle

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ground, a choice that is far easier to assert in principle than to locate in practice.

Leaving the difficulty in abeyance, for the time being, the point that must be recognized is that the response readiness of the police and the open range of problems to which they respond make the programmatic organization of police responsibility exceedingly difficult. In further analysis of this fact, it must be kept in mind that the problems police officers face are never short of the "irrelevancies" of the occasion, that matters do not have the conceptual purity which permits lawyers and philosophers to treat them in principled analysis, but that they are enmeshed in cascading events that are apt to swamp finer points of ethical or technical distinction even before they can be formulated. The most notable feature of this domain of police activity is that there exists no formal authorization for its exercise or, more precisely, that its authorization can only be inferred from imputation of responsibilities that are stated in terms so vague that they neither specify nor exclude anything.

How, then, do police departments and individual police officers know what they must do? Though this state of affairs is not fully replicated in any other institution of government, it is known that some regulatory bodies sometimes operate under such broadly defined legislative delegations that the specific nature of their responsibilities and discretionary powers are at best ambiguously known. In these cases, however, the state of affairs has been the topic of a vast body of legal scholarship and judicial opinion. Precisely the opposite is the case for police work. While the term "police discretion" has become something of a shibboleth in recent writing, what has been said about it does not resemble even remotely in precision, depth, and factuality the treatment that the Civil Aeronautics Board, the Interstate Commerce Commission, or even the local zoning authorities have received. Thus, it is no exaggeration to say that the terms on which the bulk of police service is made available to society are not known. The situation is paradoxical. For while legislators, judges, administrators, and scholars have not succeeded in formulating a meaningful authorization for the police, ordinary citizens of minimal competence appear to have a virtually unfailing grasp of when, where, how, why, and for what purpose to properly invoke police interventions. Of course, such citizens are not required to justify what they know implicitly; their knowledge only needs to work in practice.

The state of apparent correspondence between the public's expectations and what police officers actually do and consider properly

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defensible can be readily placed into evidence by simply observing routine police practice. But the observation raises more questions than it answers. In the first place, it ought to be possible to describe the organization of this working arrangement. Moreover, it is obvious that the arrangement is far from untroubled. We will now turn to the elucidation of some features of the arrangement, and we will try to indicate how it works out.

Leaving out the investigation of crime and the performance of certain internal administrative functions (that in police departments police officers type, keep records, repair automobiles, and answer telephones is interesting but does not make these things police work), what seems to unite all the situations with which police officers are required to deal—regardless of whether they involve illness, discord, fun, or ceremony—is that someone thought that emergency help was necessary to ward off the risk of injury, loss, or harm, or to ward off the proliferation of danger, disorder, or inconvenience. It is, of course, not totally unheard of for police officers to locate occasions of interventions on their own, but the vast majority are solicited by citizens. This happens to be a well-known but wholly unanalyzed fact. Consider first that the situations into which police officers are drawn almost always contain a discordant element. In most cases, there is open conflict, and in the rest there are some latently conflicting interests at play. Consider further that in the majority of cases, the police are called by someone who has a partisan interest in the ongoing situation, who by calling the police becomes the complainant in the case and acquires the opportunity to propose a provisional definition of the situation. And consider finally that in calling the police, the complainant has aligned himself or herself with the forces of order. Police officers know, of course, that complainants could be devious or wrong and that police help is sometimes sought in the pursuit of undeserved or illicit advantage and that the presumption that they have been called for just ends and in good faith may have to be set aside on the basis of evidence or suspicion. Nevertheless, in regard to the proverbial two sides of any problem, the complaint has a strategic advantage, if only because the alternative is relegated to the polemically inferior status of a rebuttal. But neither complainants nor people complained about, especially not the latter, are randomly distributed in society. Thus, the very circumstances of police work produce experiences in which the figure of the typical "troublemaker" emerges. It must be stressed that the profile of the trouble maker is not simply the product of complainants' versions of trouble. It acquires its contours in police dealings with people complained about. It is only

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natural that in the strategic asymmetry of the police approach, their relationship to the person complained about should be itself troubled, this person be on the defensive, and his or her defense likely to give offense.

The skewing of police work that results from the ways it is mobilized by citizens must be understood in connection with another factor. Though the police may be called upon for any purpose whatever, the governing expectation is limited to the abatement of difficulties; they are not supposed to solve problems but rather to dissolve them. In this situation, the judgment of the respective merits of competing claims is subject to peculiar distortions. There are, as it were, simple rights and troublesome rights, and he or she who seeks to abate problems is likely to give precedent to the former over the latter. Claiming the right to free expression is more troublesome than asserting one's right to undisturbed peace. The defense of continued possession seems in closer accord with order than the struggle to gain possession of what one feels unjustly deprived of. Above all, rights associated with activities affected by a socially recognized purpose, especially activities connected with making a living, take precedence over the right to do what is merely not proscribed. In some ultimate sense, he or she who asserts the troubled claims may be entitled to prevail. But police officers do not feel obliged nor do they have the opportunity to deal with ultimate questions, and in their attempts to put distance between competing claims they are more likely to abridge liberties associated with troublesome rights than with simple rights. Thus, for example, if a businessman were to complain that the kids in front of his store disturb his affairs, then a police officer is likely to feel that those kids might as well exercise their rights to freedom of expression and do what is not prohibited someplace else. Moreover, he or she is not likely to feel responsible for the fact that an accessible "someplace else" does not exist as far as those kids are concerned.

To continue the example, it is, of course, far less likely that kids will complain about businessmen than vice-versa, and since the kids who are most likely to be complained about are those who have no place else to go, the police officer is structurally placed in the position of having to exact concessions from a select group of people who are more likely to be young than adult, more likely to be poor than rich, and more likely to be black than white. Now, it is sometimes said that people who become police officers tend to be biased against minorities beforehand. However true or false this may be, when police officers are taken to account on this score, they point to the factors we have just alluded to as the justification of

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their practices. That is, they point to the circumstances we have discussed as the demand conditions that explain why police work turns out to be what it is, and we believe that this is not a point that should be neglected in studies of practices on which reform recommendations will be based.

There must, of course, exist a range of degrees of perceived seriousness of need at which citizens are apt to consider a situation ripe for "calling the cops." At one extreme, the range includes circumstances in which the felt need is related to the mere expectation of police availability. Recourse to convenience is here combined with the belief that police officers will know what to do and will be able to do it, at least to the extent of setting further and more appropriate remedies into motion. This awareness of response readiness is encouraged by the police. At the other end of the range, the motive of convenience is taken by a sense of massive and urgent necessity. These are situations in which it is thought that only the police can cope. What are these situations? Clearly they include cases of crime, albeit only those in which, according to typified perceptions, the culprit needs to be caught. When one studies other types of police activity, one finds contained in them a feature they share with catching criminals, namely, that they tend to be invested with that kind of urgency that might justify the use of force to overcome resistance. There are two reasons why this feature may not always be visible on first glance in what police officers do. First, police officers should no more be expected to be on duty all the time—i.e., be engaged in activities that lie within the specific and unique sphere of their competence—than teachers to educate or physicians to practice medicine. People in all occupations often do things during their working hours that have little to do with their specific vocation. Second, and far more importantly, situations that call for police intervention rather than other remedies are not those in which force will be used, but rather those in which force *might have* to be used. That potential may be close at hand in some circumstances and may be remote in others, but it seems to be always copresent with the police.

It is difficult to overemphasize the importance of the qualification regarding the possible rather than the actual necessity of force. Complaints do not necessarily court the use of force in all instances, and police officers do not ordinarily use force when they intervene. All the same, the arrival of the police on the scene always means that whatever they will ultimately decide to do must not be opposed at the time. Again, this does not mean that citizens cannot protest a police decision nor that such protest will go unheeded. It only means

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that the police officer is not required to give protest the kind of considerate attention it might receive if it were presented in the form of motions in a court of law. Further, the police officer is both authorized and required not to retreat in the face of opposition and to compel by force, if necessary, what he or she finally decides to be necessary. The police, alone among all agents of government, are in a position to coerce a solution to a problem, albeit only a provisional solution, upon the consideration of mere situational exigency. This knowledge must be understood as part of the reason people solicit police intervention. The capacity to use force is taken for granted by police officers. The people against whom the police proceed know about the possibility that force may be used and conduct themselves accordingly. Indeed, it is this common knowledge together with skillful police work that accounts for the fact that, in most situations in which force might have had to be used, it was not necessary.

One cannot understand how the capacity to use force—again, not the use of force, but the capacity to use it—functions in critical situations without considering the scenic and temporal structure of police practice. Virtually all occupations appropriate the settings within which they take place. Teaching is done in schools; medicine is practiced in hospitals; justice is administered in courts; business is conducted in offices, shops, stores, and so on. Even in construction and in firefighting, the terrain is provisionally taken over. The locale of police work, however, is the world. Police do whatever needs to be done wherever it happens to be in need of doing. Furthermore, in all other occupations, the scheduling of activities is internally determined. Teachers have schedules, physicians have appointments, judges have calendars. So it is in virtually all vocations even when a certain response readiness to emergencies is maintained. Police work, however, is scheduled largely by the fall of events in society. Thus, circumstances lend to the activities of police officers the aspect of a then-and-there urgency that is essentially inhospitable to study, analysis, and reflection, even when in particular cases it might seem feasible.

We might now summarize provisionally what the existence of the police makes available that would not be available in their absence. In the first place, the police provide the function of initiating prosecution against those offenders who need to be caught. Though their effectiveness in this regard is often questioned, there is little doubt that what police do is commonly perceived as the most prominent expression of official opposition to crime. Catching criminals calls for a variety of skills and resources, but it most assuredly also projects

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the possibility of the use of force against those who resist. Indeed, as we indicated, police interest in crime is limited to those who are thought likely to resist. Furthermore, police intervention is uniquely appropriate in critical situations of all kinds in which force may have to be used to bring about abatements or solutions. Finally, owing to their easy availability—which in itself must be understood as related to, and possibly derivative of, the first two functions—the police may be called upon for a virtually limitless variety of services by private persons on an *ad hoc* basis, or by other agencies of government on more or less regular terms, all of which defy inventory, let alone systematization.

We mentioned earlier that both law enforcement and peace keeping are structurally permeated by tendencies toward class and race bias. This is so, we propose, because the police are mainly interested in those crimes in which the people from the ghettos, the barrios, the blighted areas, and the tenderloin districts specialize, and because the people who are most often complained about come from these areas. We must now add that the people living in these areas have less access to alternative resources than others, that they are more dependent on police services than others, and that they themselves solicit police interventions more often; i.e., they tend to "call the cops" in situations where people of means might go to psychiatrists, to marriage counselors, to lawyers, or to hospitals. As a result of this, these areas of the city receive intensive surveillance. And so apparent need, and the response oriented to it, close into a cycle that has its own momentum. Police officers come to see the greater need for coercive control in the lives of the people on the bottom of the social heap. Things complained about generalize and become more easily seen as involving criminality than they might have had they been located elsewhere. In this, the fact that the possible use of force is the police officer's unique competence has special significance because force is thought to be more acceptable in the lower class life style. What police officers can do and what presents itself as in need of doing seem to feed upon each other, creating a situation in which the working police officer is apt to feel most fittingly in his or her element. It is important to emphasize that race and class bias are built into the occupational routines, that this is the way things work out. This makes it much more difficult to say that the police are racists and leave it at that. For it is plain that things are not that simple and that changing them will take more than six hours of instruction in the social psychology of race relations. One cannot leave this matter without noting that the police are met with anger, distrust, and resistance by members of disadvantaged and aggrieved

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segments of society. These reactions harden the already existing tendencies toward race and class bias on the part of the police. Since police officers consider themselves to be guardians of peace and order, and act as official representatives of public authority, they treat expressions of resentment toward the police as vindicating biases. Thus comes into existence a vicious cycle of recrimination that is not likely to be broken by the casual, albeit well-meant, approach presently taken toward it.

The reason why immense powers over the lives of citizens are assigned to persons recruited with the view that they will be engaged in a low grade occupation is complicated. Perhaps the single most important factor is that the institution of the police was initially created to cope with what were called in the nineteenth century the "dangerous classes."[6] In the struggle to contain the internal enemy and in the efforts to control violence, depredation, and evil, police work took on some of the features of its targets and became a tainted occupation. Moreover, in its early history, American police were closely associated with corrupt urban government. As a result, the police officer was perceived as a mindless, brutal, and corrupt cop. The efforts, mounted first under the Hoover Administration and later more methodically in the years following World War II, to purge police work of sloth, corruption, and brutality inadvertently strengthened the view that it is so simple an occupation that it consists mainly of doing what one is told and keeping out of trouble. This happened because reformers like the late Chief William Parker of Los Angeles militarized their departments to gain effective administrative control. But the new image of the police officer as a snappy, low-level, soldier-bureaucrat created no inducement for people of higher aspirations to elect police work as their life's work. The stringent command structure was aided by defining the nature of police work in terms of the meanest task that could be assigned to an officer. Emphasis on obedience to commands and on relatively unsophisticated performance caused the recent efforts to upgrade recruitment to have disappointing results. Few people who have worked for a college degree would want to elect an occupation that calls only for a high school diploma. Those who do are likely to be from among the least competent of college graduates, ironically confirming the view that a college education is not what it is cracked up to be. But, however much this situation conforms to inherited and unquestioned presuppositions, it is paradoxical nevertheless.

[6] Silver, "The Demand for Order in Civil Society: A Review of Some Themes in the History of Urban Crime, Police, and Riot" in *The Police: Six Sociological Essays* 1-24 (Bordua ed. 1967).

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For when one considers the performance of those activities that lie within the specific sphere of police competence, one is compelled to recognize that they address problems of critical significance at least to the people they touch and that police work, at its core, involves matters of great complexity, seriousness, and necessity. Further, while physicians, clergymen, teachers, and others who have important responsibilities have bodies of technical knowledge and schemes of norms to guide them, police officers have only an inchoate lore to aid them and must acquire their knowledge and skill largely on their own. Finally, the mandate to deal with situations in which force may have to be used implies the very special trust that force will be used only when absolutely unavoidable and only in necessary amounts. Given the dangers that naturally inhere in violence and its dynamics, the exigency of its controlled use in police work makes it an extraordinarily difficult vocation when performed properly, and one that only the most stable, the most judicious, and the most aspiring among us would seem to be qualified for.

This ideal is, of course, quite remote under prevailing circumstances. But in recent years, the view that police work calls for more than muscle and agility has been gaining in recognition. To be sure, physical stamina is indispensible, as it is in dentistry, for example, but it must be combined with knowledge and skill. In our society, the need for knowledge and skill is ordinarily met through formal education, especially higher education. Suitable programs of this nature are now in the first stages of organization. And many departments are taking steps to remove from the administrative structure those petty and irksome features of internal organization associated with military demeanor that have, in the past, militated against the development of policing as an informed, reasoned, and skilled practice. Both the development of professional education and the organizational transformation of police departments to a point where they will facilitate professional policing will take time. At present, movement in the first seems more vigorous than in the second. But this must be expected in a heavily bureaucratized setting in which most positions in the upper echelon are occupied by persons who have joined the police under auspices that now seem archaic. In any case, even here things have moved far enough along to justify the demand that juvenile officers, for example, must be selected from among college graduates.

Despite the fact that the police may be properly conceived of as a link in the remedial process, it is well known that they have achieved a very considerable degree of organizational independence. For reasons connected with their history, mainly the struggle to gain freedom

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from the corrupting influence of machine politics that dominated early urban government in the United States, the police came to occupy a position in which they were largely immune to effective control by any one of the three branches of government. In this position, they failed to develop effective ties of cooperation with other organs of the polity. The relatively high degree of freedom of action that the institution as a whole enjoys has an analogue in the relatively high degree of freedom of action that police officers enjoy within the institution. Indeed, it has been observed that in no other organ of government do functionaries at the level of line personnel exercise as much unrestricted discretion as police officers.[7] Hence, one often finds that functionaries in other spheres of remedial control, *e.g.*, prosecutors or psychiatrists in receiving hospitals, are in a position of having to "put up" with whatever the police produce for them or to simply refuse cooperation. It is rather the exception than the rule that friction and misunderstanding at points of transfer are dealt with through collaborative negotiations. More often receiving agencies will simply confront the police with independently-formulated terms under which cases will be accepted—as happened, for example, when the courts formulated the exclusionary rules. Correspondingly, the police tend to dump problems into the laps of others with relatively little concern for the ultimate outcome of such referrals.

[7] *K. Davis, Discretionary Justice* (1969).

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Appendix B: Relevant Standards from Other Volumes in the Juvenile Justice Standards Series

JUVENILE DELINQUENCY AND SANCTIONS*

1.1 Purposes.

The purposes of a juvenile delinquency code should be:

A. to forbid conduct that unjustifiably and without excuse inflicts or risks substantial harm to individual or public interests;

B. to safeguard conduct that is without fault or culpability from condemnation as delinquent;

C. to give fair warning of what conduct is prohibited and of the consequences of violation;

D. to recognize the unique physical, psychological, and social features of young persons in the definition and application of delinquency standards.

1.3 Discretionary dismissal.

The juvenile court should dismiss a delinquency proceeding if, having regard to the nature of the conduct charged to constitute an offense and the nature of the attendant circumstances, it finds that:

A. the person or persons whose personal or property interests were threatened or harmed by the conduct charged to constitute the offense were members of the juvenile's family, and the juvenile's conduct may be more appropriately dealt with by parental authority than by resort to delinquency sanctions; or

B. the conduct charged to constitute the offense

1. did not actually cause or threaten the harm or evil sought to be prevented by the law defining the offense or did so only to a trivial extent, or

2. presents such other extenuations that it cannot reasonably be regarded as within the contemplation of the legislature in forbidding the conduct.

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2.1 Age.

The juvenile court should have exclusive original jurisdiction in all cases in which conduct constituting an offense within the court's delinquency jurisdiction is alleged to have been committed by a person

A. not less than ten and not more than seventeen years of age at the time the offense is alleged to have been committed; and

B. not more than twenty years of age at the time juvenile court delinquency proceedings are initiated with respect to such conduct; and

C. for whom the period of limitations for such offense has not expired.

2.2 Offense.

A. The delinquency jurisdiction of the juvenile court should include only those offenses which are:

1. punishable by incarceration in a prison, jail, or other place of detention, and

2. except as qualified by these standards, in violation of an applicable federal, state, or local criminal statute or ordinance, or

3. in violation of an applicable state or local statute or ordinance defining a major traffic offense.

B. For purposes of this standard, major traffic offense should include:

1. any driving offense by a juvenile less than thirteen years of age at the time the offense is alleged to have been committed, and

2. any traffic offense involving reckless driving; driving while under the influence of alcohol, narcotics, or dangerous drugs; leaving the scene of an accident; and such other offenses as the enacting jurisdiction may deem sufficiently serious to warrant the attention of the juvenile court.

C. Any offense excluded by this standard from juvenile court jurisdiction should be cognizable in the court having jurisdiction over adults for such offenses, notwithstanding that the alleged offender's age is within the limits prescribed by Standard 2.1 supra.

2.3 Elimination of uniquely juvenile offenses.

Juvenile delinquency liability should include only such conduct as would be designated a crime if committed by an adult.

2.4 Elimination of private offenses.

Conduct that is not intended to cause, and does not cause or risk, injury to the personal or property interests of another should be decriminalized.

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Accordingly, juvenile delinquency liability should not be based upon:

A. acquisition or possession for personal use; use; or being under the influence of marijuana or alcohol;

B. acquisition or possession for personal use of obscene or pornographic materials;

C. except as provided in Standard 4.1 infra, engaging in consensual sexual behavior;

D. gambling.

NONCRIMINAL MISBEHAVIOR*

1.1 Noncriminal misbehavior generally.

A juvenile's acts of misbehavior, ungovernability, or unruliness which do not violate the criminal law should not constitute a ground for asserting juvenile court jurisdiction over the juvenile committing them.

2.1 Limited custody.

Any law enforcement officer who reasonably determines that a juvenile is in circumstances which constitute a substantial and immediate danger to the juvenile's physical safety may, if the juvenile's physical safety requires such action, take the juvenile into limited custody subject to the limitations of this part. If the juvenile consents, the law enforcement officer should transport the juvenile to his or her home or other appropriate residence, or arrange for such transportation, pursuant to Standard 2.2. If the juvenile does not so consent, the law enforcement officer should transport the juvenile to a designated temporary nonsecure residential facility pursuant to Standard 2.3. In no event should limited custody extend more than six hours from the time of initial contact by the law enforcement officer.

2.2 Notice to parent: release; responsibility of persons taking juvenile from limited custody.

A. The officer taking a juvenile into limited custody should inform the juvenile of the reasons for such custody and should contact the juvenile's parent, custodian, relative or other responsible person as soon as practicable. The officer or official should inform the parent, custodian, relative, or other responsible person of the

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reasons for taking the juvenile into limited custody and should, if the juvenile consents, release the juvenile to the parent, custodian, relative, or other responsible person as soon as practicable.

B. The officer so releasing a juvenile from limited custody should, if he or she believes further services may be needed, inform the juvenile and the person to whom the juvenile is released of the nature and location of appropriate services and should, if requested, assist in establishing contact between the family and the service agency.

C. Where a parent or custodian could not be reached and release was made to a relative or other responsible person, the officer should notify the parent or custodian as soon as practicable of the fact and circumstances of the limited custody, the release of the juvenile, and any information given respecting further services, unless there are compelling circumstances why the parent or custodian should not be so notified.

D. Where a juvenile is released from limited custody to a person other than a parent or custodian, such person should reasonably establish that he or she is willing and able to be responsible for the safety of the juvenile. Any such person so taking the juvenile from limited custody should sign a promise to safeguard the juvenile and to procure such medical or other services as may immediately be needed.

2.3 Inability to contact parents; use of temporary nonsecure residential facility; options open to the juvenile; time limits.

A. If the law enforcement officer is unable by all reasonable efforts to contact a parent, custodian, relative, or other responsible person; or if the person contacted lives at an unreasonable distance; or if the juvenile refuses to be taken to his or her home or other appropriate residence; or if the officer is otherwise unable despite all reasonable efforts to make arrangements for the safe release of the juvenile taken into limited custody, the law enforcement officer should take the juvenile to a designated temporary nonsecure residential facility licensed by the state for such purpose. The staff of such facility should promptly explain to the juvenile his or her legal rights and the options of service or other assistance available to the juvenile and should in no event hold the juvenile for a period longer than six hours from the time of the juvenile's initial contact with the law enforcement officer.

2.4 Immunity for officer acting in good faith pursuant to standards.

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A law enforcement officer acting reasonably and in good faith pursuant to these standards in releasing a juvenile to a person other than a parent or custodian of such juvenile shall be immune from civil or criminal liability for such action.

3.1 A. If a juvenile is found by a law enforcement officer to be absent from home without the consent of his or her parent or custodian, and it is impracticable to secure the juvenile's return by taking limited custody pursuant to Part II of these standards, the juvenile should be taken to a temporary nonsecure residential facility licensed by the state for such purpose.

6.1 When any juvenile, as a result of mental or emotional disorder, or intoxication by alcohol or other drug, is suicidal, seriously assaultive or seriously destructive toward others, or otherwise similarly evidences an immediate need for emergency psychiatric or medical evaluation and possible care, any law enforcement officer, member of the attending staff of an evaluation psychiatric or medical facility designated by the county (state, city, etc.) or other professional person designated by the county (state, city, etc.) may upon reasonable cause take, or cause to be taken, such juvenile into emergency custody and take him or her to a psychiatric or medical facility designated by the county (state, city, etc.) and approved by the state department of health (or other appropriate agency) as a facility for emergency evaluation and emergency treatment.

6.2 A. As soon as practicable after taking a juvenile not known to be emancipated into emergency custody under this Part, the officer, member of the attending staff, or other authorized professional person should notify the juvenile's parent or custodian of the fact of the juvenile's custody, physical and mental condition, and the location of the facility for emergency evaluation and treatment to which the juvenile is to be or has been taken.

B. Such facility should require an application in writing stating the circumstances under which the juvenile's condition was called to the attention of the officer, member of the attending staff or other authorized professional person, and stating why that person believes as a matter of personal observation that the juvenile is suicidal, seriously assaultive or seriously destructive toward others, or otherwise similarly evidences an immediate need for emergency psychiatric or medical evaluation and possible care.

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ABUSE AND NEGLECT*

1.1 Family autonomy.

Laws structuring a system of coercive intervention on behalf of endangered children should be based on a strong presumption for parental autonomy in child rearing. Coercive state intervention should occur only when a child is suffering specific harms as defined in Standard 2.1. Active state involvement in child care or extensive monitoring of each child's development should be available only on a truly voluntary basis, except in the situations prescribed by these standards.

1.2 Purpose of intervention.

Coercive state intervention should be premised upon specific harms that a child has suffered or is likely to suffer.

1.3 Statutory guidelines.

The statutory grounds for coercive intervention on behalf of endangered children:

A. should be defined as specifically as possible;

B. should authorize intervention only where the child is suffering, or there is a substantial likelihood that the child will imminently suffer, serious harm;

C. should permit coercive intervention only for categories of harm where intervention will, in most cases, do more good than harm.

1.4 Protecting cultural differences.

Standards for coercive intervention should take into account cultural differences in child rearing. All decisionmakers should examine the child's needs in light of the child's cultural background and values.

1.5 Child's interests paramount.

State intervention should promote family autonomy and strengthen family life whenever possible. However, in cases where a child's needs as defined in these standards conflict with his/her parents' interests, the child's needs should have priority.

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1.6 Continuity and stability.

When state intervention is necessary, the entire system of intervention should be designed to promote a child's need for a continuous, stable living environment.

1.7 Recognizing developmental differences.

Laws aimed at protecting children should reflect developmental differences among children of different ages.

1.8 Accountability.

The system of coercive state intervention should be designed to ensure that all agencies, including courts, participating in the intervention process are held accountable for all of their actions.

2.1 Statutory grounds for intervention.

Courts should be authorized to assume jurisdiction in order to condition continued parental custody upon the parents' accepting supervision or to remove a child from his/her home only when a child is endangered in a manner specified in subsections A.–F.:

A. a child has suffered, or there is a substantial risk that a child will imminently suffer, a physical harm, inflicted nonaccidentally upon him/her by his/her parents, which causes, or creates a substantial risk of causing, disfigurement, impairment of bodily functioning, or other serious physical injury;

B. a child has suffered, or there is a substantial risk that the child will imminently suffer, physical harm causing disfigurement, impairment of bodily functioning, or other serious physical injury as a result of conditions created by his/her parents or by the failure of the parents to adequately supervise or protect him/her;

C. a child is suffering serious emotional damage, evidenced by severe anxiety, depression, or withdrawal, or untoward aggressive behavior toward self or others, and the child's parents are not willing to provide treatment for him/her;

D. a child has been sexually abused by his/her parent or a member of his/her household (alternative: a child has been sexually abused by his/her parent or a member of his/her household, and is seriously harmed physically or emotionally thereby);

E. a child is in need of medical treatment to cure, alleviate, or prevent him/her from suffering serious physical harm which may result in death, disfigurement, or substantial impairment of bodily functions, and his/her parents are unwilling to provide or consent to the medical treatment;

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F. a child is committing delinquent acts as a result of parental encouragement, guidance, or approval.

2.2 Need for intervention in specific case.

The fact that a child is endangered in a manner specified in Standard 2.1 A.-F. should be a necessary but not sufficient condition for a court to intervene. In order to assume jurisdiction, a court should also have to find that intervention is necessary to protect the child from being endangered in the future. . . .

4.1 Authorized emergency custody of endangered child.

A. Any physician, police or law enforcement official, or agent or employee of an agency designated pursuant to Standard 4.1 C. should be authorized to take physical custody of a child, notwithstanding with wishes of the child's parent(s) or other such caretaker(s), if the physician, official, or agent or employee has probable cause to believe such custody is necessary to prevent the child's imminent death or serious bodily injury and that the child's parent(s) or other such caretaker(s) is unable or unwilling to protect the child from such imminent death or injury; provided that where risk to the child appears created solely because the child has been left unattended at home, such physician, official, or agent or employee should be authorized only to provide an emergency caretaker to attend the child at home until the child's parent returns or sufficient time elapses to indicate that the parent does not intend to return home; and provided further that no such physician, official, or agent or employee is authorized to take physical custody of a child without prior approval by a court . . . unless risk to the child is so imminent that there is no time to secure such court approval. Any physician or police or law enforcement official who takes custody of a child pursuant to this standard should immediately contact an agency designated pursuant to Standard 4.1 C., which should thereupon take custody of the child for such disposition as indicated in Standard 4.2.

B. Any physician, police or law enforcement official, or agent or employee of an agency, who takes custody or care of a child pursuant to Standard 4.1 A. should be immune from any civil or criminal liability as a consequence of such action, provided that such person was acting in good faith in such action. In any proceeding regarding such liability, good faith should be presumed.

C. The state department of social services (or equivalent state agency) should be required to designate at least one agency within each geographic locality within the state . . . whose agents or em-

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ployees would be authorized to take custody of children pursuant to Standard 1.1. To qualify for such designation, an agency must demonstrate to the satisfaction of the state department that it has adequate capacity to safeguard the physical and emotional well-being of children requiring emergency temporary custody pursuant to this Part. The state department should be required to promulgate regulations specifying standards for personnel qualification, custodial facilities, and other aspects of temporary custodial care which an agency must provide, or have access to, regarding children subject to this Part. Each agency designated should thereafter be required to demonstrate . . . that it continues to meet the requirements for designation pursuant to this standard, in view of its efficacy in safeguarding the wellbeing of children subject to this Part.

INTERIM STATUS*

5.1 Policy favoring release.

Each police department should adopt policies and issue written rules and regulations requiring release of all accused juveniles at the arrest stage pursuant to Standard 5.6 A., and adherence to the guidelines specified in Standard 5.6 B. in discretionary situations. Citations should be employed to the greatest degree consistent with the policies of public safety and insuring appearance in court to release a juvenile on his or her own recognizance, or to a parent.

5.2 Special juvenile unit.

Each police department should establish a unit or have an officer specially trained in the handling of juvenile cases to effect arrests of juveniles when arrest is necessary, to make release decisions concerning juveniles, and to review immediately every case in which an arrest has been made by another member of the department who declines to release the juvenile. All arrest warrants, summonses and possible citations involving accused juveniles should be handled by this unit.

5.3 Duties.

The arresting officer should have the following duties in regard to the interim status of an accused juvenile:

A. Inform juvenile of rights. The officer should explain in clearly understandable language the warnings required by the constitution

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regarding the right to silence, the making of statements, and the right to the presence of an attorney. The officer should also inform every arrested juvenile who is not promptly released from custody of the right to have his or her parent contacted by the department. In any situation in which the accused does not understand English, or in which the accused is bilingual and English is not his or her principal language, the officer should provide the necessary information in the accused's native language, or provide an interpreter who will assure that the juvenile is informed of his or her rights.

B. Notification of parent. The arresting officer should make all reasonable efforts to contact a parent of the accused juvenile during the period between arrest and the presentation of the juvenile to any detention facility. The officer should inform the parent of the juvenile's right to the presence of counsel, appointed if necessary, and of the juvenile's right to remain silent.

C. Presence of attorney. The right to have an attorney present should be subject to knowing, intelligent waiver by the juvenile following consultation with counsel. If the police question any arrested juvenile concerning an alleged offense in the absence of an attorney for the juvenile, no information obtained thereby or as a result of the questioning should be admissible in any proceeding.

D. Recording of initial status decision. If the arresting officer does not release the juvenile within two hours, the reasons for the decision should be recorded in the arrest report and disclosed to the juvenile, counsel, and parent.

E. Notification of facility. Whenever an accused juvenile is taken into custody and not promptly released, the arresting officer should promptly inform the juvenile facility intake official of all relevant factors concerning the juvenile and the arrest, so that the official can explore interim status alternatives.

F. Transportation to facility. The police should, within two hours of the arrest, either release the juvenile or, upon notice to and concurrence by the intake official, take the juvenile without delay to the juvenile facility designated by the intake official. If the intake official does not concur, that official should order the police to release the juvenile.

5.4 Holding in police detention facility prohibited.

The holding of an arrested juvenile in any police detention facility prior to release or transportation to a juvenile facility should be prohibited.

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5.5 Interim status decision not made by police.

The observations and recommendations of the police concerning the appropriate interim status for the arrested juvenile should be solicited by the intake official, but should not be determinative of the juvenile's interim status.

5.6 Guidelines for status decision.

A. Mandatory release. Whenever the juvenile has been arrested for a crime which in the case of an adult would be punishable by a sentence of less than one year, the arresting officer should, if charges are to be pressed, release the juvenile with a citation or to a parent, unless the juvenile is in need of emergency medical treatment (Standard 4.5), requests protective custody (Standard 5.7), or is known to be in a fugitive status.

B. Discretionary release. In all other situations, the arresting officer should release the juvenile unless clear and convincing evidence demonstrates that continued custody is necessary. The seriousness of the alleged offense should not, except in cases involving first or second degree murder, be sufficient grounds for continued custody. Such evidence should only consist of one or more of the following factors as to which reliable information is available to the arresting officer:

1. that the arrest was made while the juvenile was in a fugitive status;
2. that the juvenile has a recent record of willful failure to appear at juvenile proceedings:
3. that the juvenile is charged with a crime of violence which, in the case of an adult, would be punishable by a sentence of one year or more, and is already under the jurisdiction of a juvenile court by way of interim release in a criminal case or probation or parole under a prior adjudication.

5.7 Protective custody.

A. Notwithstanding the issuance of a citation, the arresting officer may take an accused juvenile to an appropriate facility designated by the intake official if the juvenile would be in immediate danger of serious bodily harm if released, and the juvenile requests such custody.

B. A decision to continue or relinquish protective custody shall be made by the intake official in accordance with [other standards herein].

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6.4 Responsibility for status decision.

Once an arrested juvenile has been brought to a juvenile facility, the responsibility for maintaining or changing interim status rests entirely with the intake official, subject to review by the juvenile court. Release by the facility should be mandatory in any situation in which the arresting officer was required to release the juvenile but failed to do so.

7.1 Authority to issue summons in lieu of arrest warrant.

Judges should be authorized to issue a summons (which may be served by certified mail or in person) rather than an arrest warrant in every case in which a complaint, information, indictment, or petition is filed or returned against an accused juvenile not already in custody.

7.2 Police favoring summons over warrant.

In the absence of reasonable grounds indicating that, if an accused juvenile is not promptly taken into custody, he or she will flee to avoid prosecution, the court should prefer the issuance of a summons over the issuance of an arrest warrant.

7.3 Application for summons or warrant.

Whenever an application for a summons or warrant is presented, the court should require all available information relevant to an interim status decision, the reasons why a summons or warrant should be issued, and information concerning the juvenile's schooling or employment that might be affected by service of a summons or warrant at particular times of the day.

7.4 Arrest warrant to specify initial interim status.

A. Every warrant issued by a court for the arrest of a juvenile should specify an interim status for the juvenile. The court may order the arresting officer to release the juvenile with a citation, or to place the juvenile in any other interim status permissible under these standards.

B. The warrant should indicate on its face the interim status designated. If any form of detention is ordered, the warrant should indicate the place to which the accused juvenile should be taken, if other than directly to court. In each such case, the court should simultaneously file a written statement indicating the reasons why no measure short of detention would suffice.

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7.5 Service of summons or warrant.

In the absence of compelling circumstances that prompt the issuing court to specify to the contrary, a summons or warrant should not be served on an accused juvenile while in school or at a place of employment.

SCHOOLS AND EDUCATION*

1.12 A. Neither school officials nor police officers (nor other officials) should have any power to take a juvenile into custody, with or without a warrant, by reason of the fact alone that a juvenile is absent from school without valid justification.

B. A duly authorized school official may return a student to school if the student is found away from home, is absent from school without a valid justification, and agrees to accompany the official back to school.

2.2 A. A consent that would validate an otherwise prohibited action of a school official, a police officer, or other government official, or a waiver of any right created by these standards is effective as a consent or waiver only if:

1. the consent or waiver is voluntary in fact;
2. the student is clearly advised
   a. that the consent or waiver may be withheld, and
   b. of any possible adverse consequence that might result from such consent or waiver.
3. the student's parent, except when a reasonable effort to inform the parent is unsuccessful,
   a. is informed of the fact that the student's consent or waiver will be sought,
   b. has the opportunity to be present before the consent or waiver is given (unless a student over fourteen years of age objects to the parent's presence); and
   c. expressly approves of the consent or waiver (unless a student over sixteen years of age has knowledge of the parent's lack of approval and gives or repeats his or her consent or waiver thereafter); and,
4. either
   a. there is no evidence of coercion or

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b. any evidence of coercion that exists is satisfactorily rebutted.

B. In addition to the requirements specified in Standard 2.2 A., a student who is entitled to counsel (retained or provided) under these standards may give an effective consent or waiver only if the student

1. is advised of his or her right to counsel
2. is given an opportunity to obtain counsel, and
3. either
   a. makes the consent or waiver through counsel or
   b. waives the right to counsel in accordance with Standard 2.2 A.

C. The burden of proving that a student's consent or waiver meets the requirements of Standard 2.2 A. should be carried by any party relying upon the consent or waiver to establish the validity of an action, the inapplicability of a right, or the admissibility of evidence.

D. In determining whether the consent or waiver was voluntary in fact, each of the following should be considered as evidence tending to indicate that the consent or waiver was involuntary:

1. the student's parent was not informed of the fact that the student's consent or waiver would be sought;
2. the parent was not present when the consent or waiver was given;
3. the parent did not approve of the consent or waiver;
4. the consent or waiver was given in the school building;
5. the consent or waiver was given in the office of the school principal or some other administrative official of the school;
6. the consent or waiver was given in the presence of the school principal or some other administrative official of the school (unless there is unambiguous evidence that the school official acted in a manner that would have been understood by the student as attempting to help the student to make a voluntary choice);
7. the consent or waiver was given without the assistance of counsel;
8. the consent or waiver was requested by a school official, a police officer, or other government official;
9. the consent or waiver was not in writing;
10. the consent or waiver was given by a student under twelve years of age.

E. Standard 2.2 A. applies to any consent or waiver under these standards, including but not limited to

1. consent to a search otherwise proscribed by Part VIII;
2. consent to interrogation otherwise proscribed by Part VII

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(except that the prohibition of Standard 7.2 cannot be avoided by consent or waiver);

3. waiver of a right to object to any excludable evidence;

4. waiver of any procedural right provided by Part V; and

5. consent to the administration of any drug, physical test (such as a urinalysis), psychological test, or any other procedure not required of all students by a general rule promulgated pursuant to the school board's authority in accordance with Part III.

F. If the student's opportunity to enjoy any right or privilege otherwise available is conditioned, in whole or in part, upon the student's consent or waiver, the consent or waiver should be conclusively presumed to be invalid.

7.1 If an interrogation of a student by a police officer concerning a crime of which the student is a suspect occurs off school premises and not in connection with any school activity, the validity of the interrogation should in no way be affected by the student status.

7.2 The interrogation of a student by a police officer for any purpose should not take place in school, or away from school when the student is engaged in a school related activity under the supervision of a school official, except

A. when it is urgently necessary to conduct the interrogation without delay in order to avoid

1. danger to any person,

2. flight from the jurisdiction of a person who is reasonably believed to have committed a serious crime, or

3. destruction of evidence; or

B. when there is no other reasonably available place or means of conducting the interrogation.

7.3 A. When, pursuant to standard 7.2, a police officer interrogates a student who is on school premises or engaged in a school activity and who is suspected of a crime, the student should be advised of this suspicion in terms likely to be understood by a student of the age and experience involved; should be advised of the right to counsel (including state-appointed counsel if the student is indigent), the right to have a parent present, and the right to remain silent; and should be advised that any statement made may be used against the student.

B. If, pursuant to standard 7.2, a police officer interrogates a student who had not theretofore been suspected of conduct covered by Standard 7.3 A. but during such interrogation information is

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obtained, either from that student or from any other source, that would lead a reasonable person to suspect the student of such conduct, the interrogation should immediately thereafter be governed by Standard 7.3 A.

7.4 A. If a school official interrogates a student suspected of a crime

1. at the invitation or direction of a police officer,
2. in cooperation with a police officer, or
3. for the purpose of discovering evidence of such conduct and turning that evidence over to the police, the interrogation should be subject to all of the requirements of a police interrogation under Standard 7.3 A.

B. In connection with any interrogation of a student by a school official that leads directly or indirectly to information that results in criminal charges against the student, it should be presumed in the absence of affirmative proof to the contrary that each of the characteristics identified in Standard 7.4 A., 1.-3. applies to the school official's interrogation.

7.5 A. If a school official interrogates a student who is suspected of student misconduct that might result in a serious discriplinary sanction, the student should be advised of this suspicion in terms likely to be understood by a student of the age and experience involved, and should be advised of the right to have a parent or other adult present and the right to remain silent.

B. If, under Standard 7.5 A., the sanction that might result from the suspected misconduct includes expulsion, long-term suspension, or transfer to a school used or designated as a school for problem juveniles of any kind, the interrogation should be subject to all of the requirements of a police interrogation under Standard 7.3 A.

7.6 Any evidence obtained directly or indirectly as a result of an interrogation conducted in violation of these standards should be inadmissible (without the student's express consent) in any proceeding that might result in the imposition of either criminal or disciplinary sanctions against the student.

7.7 If an interrogation of a student by a school official or police officer is conducted without providing the student the safeguards specified in Standard 7.5 A., evidence obtained directly or indirectly as a result of that interrogation should be inadmissible (without the student's express consent) in any proceeding that might result in

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the imposition of either criminal or serious disciplinary sanctions against the student so interrogated.

8.1 The limits imposed by the fourth amendment upon searches and seizures conducted by police officers are not qualified or alleviated in any way by reason of the fact that a student is the object of the search or that the search is conducted in a school building or on school grounds.

8.2 A search by a police officer of a student, or a protected student area, is unreasonable unless it is made:

A. 1. under the authority and pursuant to the terms of a valid search warrant,

2. on the basis of exigent circumstances such as those that have been authoritatively recognized as justifying warrantless searches,

3. incident to a lawful arrest,

4. incident to a lawful "stop," or

5. with the consent of the student whose person or protected student area is searched; and

B. in a manner entailing no greater invasion of privacy than the conditions justifying the search make necessary.

8.3 As used in these standards, a protected student area includes (but is not limited to):

A. 1. a school desk assigned to a student if

a. the student sits at that desk on a daily, weekly, or other regular basis,

b. by custom, practice, or express authorization the student does in fact store or is expressly permitted to store in the desk, papers, equipment, supplies, or other items which belong to the student, and

c. the student does in fact lock or is permitted to lock the desk whether or not

(1) any school official or a small number of other students have the key or combination to the lock,

(2) school officials have informed the student or issued regulations calculated to inform the student either that only certain specified items may be kept in the desk or that the desk may be inspected or searched under specified conditions,

(3) the student has consented to or entered into an agreement acknowledging the restrictions described in Standard 8.3 A. 1. c. (1) and (2) above, or

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(4) the student has paid the school for the use of the desk;

B. 1. a school locker assigned to a student if

a. the student has either exclusive use of the locker or jointly uses the locker with one or two other students and

b. the student does in fact lock or is permitted to lock the locker whether or not

(1) school officials or a small number of other students have the key or combination to the lock,

(2) school officials have informed the student or issued regulations calculated to inform the student either that only certain specified items may be kept in the locker or that the locker may be inspected or searched under specified conditions,

(3) the student has consented to or entered into an agreement acknowledging the restrictions described in Standard 8.3 B. 1. b. (1) and (2), or

(4) the student has paid the school for the use of the locker;

C. 1. a motor vehicle located on or near school premises if

a. it is owned by a student, or

b. has been driven to school by a student with the owner's permission.

8.4 As used in these standards, a search "of a student" includes a search of the student's

A. body,

B. clothes being worn or carried by the student, or

C. pocketbook, briefcase, duffel bag, bookbag, backpack, or any other container used by the student for holding or carrying personal belongings of any kind and in the possession or immediate proximity of the student.

8.5 The validity of a search of a student, or protected student area, conducted by a police officer in school buildings or on school grounds may not be based in whole or in part upon the fact that the search is conducted with the consent of:

A. a school official, or

B. the student's parent except insofar as the parent's approval is necessary to validate a student consent.

8.6 A. If a school official searches a student or a student protected area:

1. at the invitation or direction of a police officer,

2. in cooperation with a police officer, or

3. for the purpose of discovering and turning over to the police

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evidence that might be used against the student in a criminal proceeding,

the school official should be governed by the requirements made applicable to a police search under Standard 8.2.

B. In connection with any search of a student or student protected area that leads directly or indirectly to information that results in criminal charges against the student, it will be presumed in the absence of affirmative proof to the contrary that each of the characteristics identified in Standard 8.6 A. 1.-3. applies to the school official's search.

8.7 A. If a search of a student or protected student area is conducted by a school official for the purpose of obtaining evidence of student misconduct that might result in a serious disciplinary sanction, the search is unreasonable unless it is made:

1. under the authority and pursuant to the terms of a valid search warrant, or

2. with the consent of the student whose person or protected student area is searched, or

3. after a reasonable determination by the school official that

a. it was not possible to detain the student and/or guard the protected student area until police officers could arrive and take responsibility for the search and

b. failure to make the search would be likely to result in danger to any person (including the student), destruction of evidence, or flight of the student; and

4. in a manner entailing no greater invasion of privacy than the conditions justifying the search make necessary.

B. If, under Standard 8.7 A., the sanction that might result from the suspected misconduct includes expulsion, long-term suspension, or transfer to a school used or designated as a school for problem students of any kind, the search should be subject to all of the requirements of a police search under Standard 8.2.

8.8 Any evidence obtained directly or indirectly as a result of a search conducted in violation of these standards should be inadmissible (without the student's express consent) in any proceeding that might result in either criminal or disciplinary sanctions against the student.

8.9 If a search of a student by a school official is conducted without providing the student the safeguards specified in Standard 8.7 A. evidence obtained directly or indirectly as a result of that search

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should be inadmissible (without the student's express consent) in any proceeding that might result in the imposition of either a criminal or a serious disciplinary sanction against the student searched.

RECORDS AND INFORMATION*

19.1 Rules and regulations.

A. Each law enforcement agency should promulgate rules and regulations pertaining to the collection, retention, and dissemination of law enforcement records pertaining to juveniles.

B. Such rules and regulations should take into account the need of law enforcement agencies for detailed and accurate information concerning crimes committed by juveniles and police contacts with juveniles, the risk that information collected on juveniles may be misused and misinterpreted, and the need of juveniles to mature into adulthood without the unnecessary stigma of a police record.

19.2 Duty to keep complete and accurate records.

A. All information pertaining to the arrest, detention, and disposition of a case involving a juvenile should be complete, accurate, and up to date.

19.3 Allocation of responsibility for record-keeping.

Each law enforcement agency should designate a specific person or persons to be responsible for the collection, retention, and dissemination of law enforcement records pertaining to juveniles.

19.4 Retention of records in a secure and separate place.

Each law enforcement agency should maintain law enforcement records and files concerning juveniles in a secure place separate from adult records and files.

19.5 Duty to account for release of law enforcement records.

Law enforcement agencies should keep a record of all persons and organizations to whom information in the law enforcement records pertaining to juveniles has been released, the dates of the request, the reasons for the request, and the disposition of the request for information.

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19.6 Juveniles' fingerprints; photographs.

A. Law enforcement officers investigating the commission of a felony may take the fingerprints of a juvenile who is referred to court. If the court does not adjudicate the juvenile delinquent for the alleged felony, the fingerprint card and all copies of the fingerprints should be destroyed.

B. If latent fingerprints are found during the investigation of an offense and a law enforcement officer has reason to believe that they are those of the juvenile in custody, he or she may fingerprint the juvenile regardless of age or offense for purposes of immediate comparison with the latent fingerprints. If the comparison is negative, the fingerprint card and other copies of the fingerprints taken should be immediately destroyed. If the comparison is positive and the juvenile is referred to court, the fingerprint card and other copies of the fingerprints should be delivered to the court for disposition. If the juvenile is not referred to court, the print should be immediately destroyed.

C. If the court finds that a juvenile has committed an offense that would be a felony for an adult, the prints may be retained by the local law enforcement agency or sent to the [state depository] provided that they should be kept separate from those of adults under special security measures limited to inspection for comparison purposes by law enforcement officers or by staff of the [state depository] only in the investigation of a crime.

D. A juvenile in custody should be photographed for criminal identification purposes only if necessary for a pending investigation unless the case is transferred for criminal prosecution.

E. Any photographs of juveniles, authorized under subsection D., that are retained by a law enforcement agency should be destroyed

1. immediately, if it is concluded that the juvenile did not commit the offense which is the subject of investigation, or

2. upon a judicial determination that the juvenile is not delinquent; or

3. when the juvenile's police record is destroyed pursuant to Standard 22.1.

F. Any fingerprints of juveniles that are retained by a law enforcement agency should be destroyed when the juvenile's police record is destroyed pursuant to Standard 22.1.

G. Willful violation of this standard should be a misdemeanor.

19.7 Statistical reports.

A. Each law enforcement agency should prepare a monthly

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and annual statistical report of crimes committed by juveniles and of the activities of the agency with respect to juveniles.

B. The statistical report should include a maximum amount of aggregate data so that there can be meaningful analysis of juvenile crime and the activities of the agency with respect to juveniles.

C. The principal state law enforcement agency of each state should develop standardized forms for collecting and reporting data to insure uniformity.

20.1 Police records not to be public records.

Records and files maintained by a law enforcement agency pertaining to the arrest, detention, adjudication, or disposition of a juvenile's case should not be a public record.

20.2 Access by the juvenile and his or her representatives.

A juvenile, his or her parents, and the juvenile's attorney should, upon request, be given access to all records and files collected or retained by a law enforcement agency which pertain to the arrest, detention, adjudication, or disposition of a case involving the juvenile.

20.3 Disclosure to third persons.

A. Information contained in law enforcement records and files pertaining to juveniles may be disclosed to:

1. law enforcement officers of any jurisdiction for law enforcement purposes;

2. a probation officer, judge, or prosecutor for purposes of executing the responsibilities of his or her position in a matter relating to the juvenile who is the subject of the record;

3. the state juvenile correctional agency if the juvenile is currently committed to the agency;

4. a person to whom it is necessary to disclose information for the limited purposes of investigating a crime, apprehending a juvenile, or determining whether to detain a juvenile;

5. a person who meets the criteria of Standards 5.6 and 5.7.

B. Information contained in law enforcement records and files pertaining to a juvenile should not be released to law enforcement officers of another jurisdiction unless the juvenile was adjudicated delinquent or convicted of a crime or unless there is an outstanding arrest warrant for the juvenile.

C. Information that is released pertaining to a juvenile should include the disposition or current status of the case.

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20.4 Warnings and nondisclosure agreements.

Prior to disclosure of information concerning a juvenile to a law enforcement agency outside of the jurisdiction, that agency should be informed that the information should only be disclosed to law enforcement personnel, probation officers, judges, and prosecutors who are currently concerned with the juvenile. The outside agency should also be informed that the information will not be disclosed unless the agency is willing to execute a nondisclosure agreement.

21.1 Rules providing for the correction of police records.

Each law enforcement agency should promulgate rules and regulations permitting a juvenile or his or her representative to challenge the correctness of a police record pertaining to the juvenile.

22.1 Procedure and timing of destruction of police records.

Upon receipt of notice from a juvenile court that a juvenile record has been destroyed or if a juvenile is arrested or detained and has not been referred to a court, a law enforcement agency should destroy all information pertaining to the matter in all records and files, except that if the chief law enforcement officer of the agency, or his or her designee, certifies in writing that certain information is needed for a pending investigation involving the commission of a felony, that information, and information identifying the juvenile, may be retained in an intelligence file until the investigation is terminated or for one additional year, whichever is sooner.

YOUTH SERVICE AGENCIES*

1.1 Enabling legislation.

Jurisdictions should by statute require the development of community-based youth service agencies which will focus on the special problems of juveniles in the community. The statutes should permit each local agency to be structured in accordance with the character and needs of the community, both initially and over time as experience is gained from working with juveniles and families in the community, provided that each such agency functions in a manner consistent with the following standards, which are designed to protect the rights of participants, to ensure that services are pro-

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vided to juveniles diverted from the formal court system as well as to improve the delivery of needed services for all juveniles and their families.

2.1 Service provision.

The primary objective of a youth service agency should be to ensure the delivery of needed services to juveniles in the community and their families, including juveniles diverted to the agency from the formal court system. Several approaches may be pursued to accomplish this objective. At a minimum, the agency should be responsible for developing and administering needed resources to provide effective services to youth. Once such services exist, the agency should develop:

A. an up-to-date listing of available community services for juveniles and their families;

B. a community-wide self-referral system for juveniles and families in need of service;

C. a comprehensive service system oriented to diagnose participant needs and to ensure the delivery of services to juveniles and families through existing resources by such means as coordination, advocacy, or purchase of services; and

D. an effective monitoring system.

4.4 Police referrals.

Processing by the formal juvenile justice system usually begins with police contact; therefore the police should become a prime source of formal referrals to the youth service agency in order to ensure early diversion. To encourage such referrals:

A. police should be included in the planning and administration of the youth service agency;

B. diversion to the youth service agency should be made an official policy of the department;

C. written guidelines should be promulgated to ensure that diversion occurs in appropriate cases (see Standard 4.5);

D. every referral to the juvenile court should be accompanied by a written statement of the referring officer explaining why the juvenile was not diverted to the youth service agency.

4.5 Police diversion standards.

Police diversion should be made pursuant to guidelines in order to avoid discrimination based on race, color, religion, national origin, sex, or income. At a minimum, the following standards should be observed:

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A. No juvenile who comes to the attention of the police [or court] should be formally referred to the youth service agency if, prior to the existence of the diversionary alternative, that juvenile would have been released with a warning. Such juveniles should, however, be informed of the existence of the program, the services available, and their eligibility for such services through a voluntary self-referral.

B. In keeping with Standard 1.1 of the Noncriminal Misbehavior volume eliminating the jurisdiction of the juvenile court over juveniles for acts of misbehavior, ungovernability, or unruliness that do not violate the criminal law, such juveniles should not be formally referred to the youth service agency.

C. All juveniles accused of class four or five offenses (as defined in Standard 5.2 of the Juvenile Delinquency and Justice volume) who have no prior convictions or formal referrals should be formally referred to the youth service agency rather than to the juvenile court.

D. All other juveniles accused of class four or five offenses who have been free of involvement with the juvenile court for the preceeding twelve months should be formally referred to the youth service agency rather than to the juvenile court.

E. Serious consideration should be given to the formal diversion of all other apprehended juveniles, taking into account the following factors:

1. prosecution toward conviction might cause serious harm to the juvenile or exacerbate the social problems that led to his or her criminal acts;
2. services to meet the juvenile's needs and problems may be unavailable within the court system or may be provided more effectively by the youth service agency;
3. the nature of the alleged offense;
4. the age and circumstances of the alleged offender;
5. the alleged offender's record, if any;
6. recommendations for diversion made by the complainant or victim.

4.6 Police liaison.

If representatives of the police are not on the managing board of the youth service agency, and no police staff are active in the agency itself, the police should assign a staff person to oversee productive relations with the agency and to encourage diversion.

5.1 Voluntarism.

A fundamental premise in the administration of a youth service

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agency program must be that participation by the juveniles should be voluntary. In the case of formal referrals, therefore, juveniles should only be required to attend two program planning sessions. Such attendance may properly be assured by allowing further juvenile court proceedings in the event of nonattendance. Except as provided in Standard 5.3, the youth service agency should not have the authority to refer juveniles back to the court on the ground of nonparticipation after the initial planning sessions. Juveniles and families who are informally referred to the youth service agency should be free to drop out of the program without penalty at any time.

5.3 Refusal by the juvenile to participate.

If a formally referred juvenile refuses to participate in a service program after the initial planning sessions, the youth service agency should have the authority to file a recommendation with the police and the court that the juvenile not be diverted if apprehended subsequently unless the juvenile enters into a written agreement for services of a specified duration (termed a participation agreement), which also specifies that failure to abide by the agreement will allow referral back to the court. The youth service agency should make use of the nondiversion recommendation only in exceptional circumstances. The juvenile must be informed of the existence and meaning of the agency action.

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