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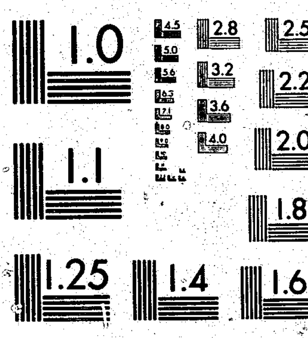

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THE COMPARATIVE DISPOSITIONS STUDY

HANDLING DANGEROUS JUVENILES: AN EXECUTIVE SUMMARY

AUTHORS

Judith L. Pilotta, Assistant Project Director
Evalyn C. Parks, Research Associate
Joseph L. White, Project Director
Sandra Clapsaddle, Administrative Assistant
Maralyn A. James, Administrative Assistant

The Academy, Inc.
A Center for Social Research
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ional Institute for Juvenile Justice and Delinquency Prevention

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The Comparative Dispositions Study

This volume is one of a series of reports prepared by The Academy in 1983 and 1984, to be published by the National Institute for Juvenile Justice and Delinquency Prevention. The volumes are entitled:

- Handling Dangerous Juveniles: An Executive Summary
- Statutes Related to Handling Dangerous Juveniles
- Practices in Nine Jurisdictions
- Statistical Appendix

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CDS Project Staff

Joseph L. White, *Project Director*
Judith L. Pilotta, *Assistant Project Director*
Sandra Clapsaddle, *Administrative Assistant*
Maralyn James, *Administrative Assistant*

John Allen, M.A.
Kelly Beyor
Carole Bildstein, M.S.W.
Beth Broidy Black, J.D.
Donna Clapsaddle
Mary Cole
Kevin Cornes
Sophia Davis, B.A.
Randall Emmelhainz, B.S.
Sheila Eubanks
Virginia Fahys-Smith, Ph.D.
Jack Foster, Ph.D.
Steven Freedman, J.D.
Carla Fuller
Marie Furjanic, J.D.
Van Gander
Donna Hamparian, B.A.
Richard Hilliard, B.A.
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Kristina Maki
Ralph Marcelli, M.A.
Thalia Oster, J.D.
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Constance Simmons, M.B.A., M.P.A.
Loren Sutton, B.F.A.
Samuel Sutton, B.A.
Kurt Weiland, J.D.
Charles G. Wood, B.A.

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CONTENTS

	Page
Acknowledgments	x
Project Advisory Committee	xii
Introduction	xiv
CHAPTER 1: THE LITERATURE	1
Crime and the Fear of Crime	1
Point-Counterpoint in the Judicial Hearing of Dangerous Juvenile Offenders	6
Point-Counterpoint in the Corrections Handling of Dangerous Juvenile Offenders	16
Recidivism Among Dangerous Juvenile Offenders	19
Public Expectations and Caveats	28
Conclusion	29
Footnotes	29
CHAPTER 2: OVERVIEW OF STATE STATUTES	35
Jurisdiction	36
Court Organization	39
Procedures	41
Sentences/Dispositions	57
Authority of Corrections Agencies	79
Footnotes	94
CHAPTER 3: CASE STUDY OVERVIEW	95
Los Angeles County, California	97
Dade County (Miami) Florida	99
Marion County (Indianapolis) Indiana	100
Orleans Parish (New Orleans) Louisiana	102
Baltimore City, Maryland	104
Montana	106
Erie County (Buffalo) New York	107
Vermont	109
King County (Seattle) Washington	111
Case Study Overview Conclusions	113
CHAPTER 4: STATISTICAL DATA OVERVIEW	119
What are the Data Characteristics	119
Footnotes	158
CHAPTER 5: CONCLUSIONS AND RECOMMENDATIONS	159
Conclusions	159
Recommendations	178

CONTENTS (Continued)

	Page
Volume Table Contents:	
TABLE 1: National Overview of Age Criteria for Delinquency and Criminal Jurisdiction in 1981 (By State, D.C., and Federal Codes)	36
TABLE 2: National Overview of Criminal and Juvenile Court Organization in 1981 (By State, D.C., and Federal Codes)	39
TABLE 3: National Overview of Referral Mechanisms in 1981 (By State, D.C., and Federal Codes)	42
TABLE 4: National Overview of Age and Offense Criteria for Applying Judicial Waiver Provisions in 1981 (By State, D.C., and Federal Codes)	45
TABLE 5: National Overview of Statutory Criteria for Applying Judicial Waiver Provisions in 1981 (By State, D.C., and Federal Codes)	49
TABLE 6: National Overview of Miscellaneous Provisions Related to Judicial Waiver Provisions in 1981 (By State, D.C., and Federal Codes)	52
TABLE 7: National Overview of Age and Offense Criteria for Applying Concurrent Jurisdiction Provisions in 1981 (By State, D.C., and Federal Codes)	54

CONTENTS (Continued)

		Page
TABLE 8:	National Overview of Age and Offence Criteria for Applying Excluded Offense Provisions in 1981 (By State, D.C., and Federal Codes)	55
TABLE 9:	National Overview of Number of Felony Classes Comprising Dangerous Offenses in 1981 (By State, D.C., and Federal Codes)	58
TABLE 10:	National Overview of Enhancement Statutes Affecting Criminal Sentencing in 1981 (By State, D.C., and Federal Codes)	60
TABLE 11:	National Overview of Juvenile Court Dispositional Options in 1981 (By State, D.C., and Federal Codes)	72
TABLE 12:	National Overview of Criminal Statutes Affecting Youth in Adult Courts in 1981 (By State, D.C., and Federal Codes)	77
TABLE 13:	National Overview of Operational Responsibility for Corrections Services in 1981 (By State, D.C., and Federal Codes)	79
TABLE 14:	National Overview of Agencies Responsible for Determining Termination of Probation/Parole Status in 1981 (By State, D.C., and Federal Codes)	91

CONTENTS (Continued)

		Page
TABLE 15:	National Overview: Statistical Data Set Characteristics (By Site, Source, Time Period, and Special Features)	121
TABLE 16:	National Overview: How Many Persons Are Represented in the Study?	128
TABLE 17:	National Overview: How Many Persons Were Transferred Between Courts?	130
TABLE 18:	National Overview: Which Group Was Most Dangerous?	134
TABLE 19:	National Overview: How Many Persons Were Judged Delinquent or Guilty?	137
TABLE 20:	National Overview: Which Group Was Found Guilty as Charged Most Often?	140
TABLE 21:	National Overview: Which Group Was Confined Most Often?	142
TABLE 22:	National Overview: Which Group Spent the Longest Time in Confinement?	149
TABLE 23:	National Overview: How Many Persons Came Back to Court?	151
TABLE 24:	National Overview: Which Group Came Back to Court More Often?	154

CONTENTS (Continued)

Page

TABLE 25: National Overview: Which At-Risk Population Was More Reactive? 174

Volume Figure Contents:

FIGURE 1: Overview of Relationship of Variables (By Critical Justice System Events) 123

FIGURE 2: National Overview: Who Was Guilty Most Often? 138

FIGURE 3: National Overview: Who Was Confined Most Often? 144

FIGURE 4: National Overview: Who Received the Longest Confinement Sentences? 146

FIGURE 5: National Overview: Who Was Reactive Most Often? 156

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ADVISORY COMMITTEE

ALBERT N. ABGOTT, independent businessman, is the owner of a printing and publishing business and a newspaper publishing business. He currently serves as Chairman of the Criminal Justice and Public Safety Steering Committee of the National Association of Counties (NACo). He is a founder of and continues to serve on the Erie County Youth Board, Buffalo, New York. Mr. Abgott is also active in a wide variety of youth-serving organizations.

JOHN P. CONRAD, author, researcher, and corrections specialist, is an independent consultant. His career in correctional administration covered 20 years in the California Department of Corrections, in which he served in both clinical and administrative capacities, ending as Chief of Research, from which position he resigned to accept appointment as Chief of Research of the U.S. Bureau of Prisons. He has also served as Chief of the Center for Crime Prevention and Rehabilitation of the National Institute of Law Enforcement and Criminal Justice, and as Senior Fellow for Criminal Justice of the Academy for Contemporary Problems.

RAY FARABEE, Senator in the Texas Legislature since 1975, represents a predominantly rural area in north Texas. He is on the Legislative Budget Board and is a member of the Texas Judicial Council. He serves as Chairman of the Senate State Affairs Committee and is a member of the Finance and Jurisprudence Committees. Senator Farabee has sponsored numerous bills in the areas of child welfare, juvenile justice, and drug abuse.

GWEN ADAMS HOLDEN is Assistant Vice-President of the National Criminal Justice Association, which represents the directors of state criminal and juvenile justice planning agencies. She formerly served with the Governor's Commission on the Administration of Justice in Vermont, specializing in correctional and juvenile justice program development.

EDWARD McLAUGHLIN, Judge of Family Court in Onondaga County (Syracuse), New York, is also adjunct professor of Family Law at Syracuse University, College of Law, and a lecturer in criminal justice administration. He has served as U.S. Attorney for the Northern District of New York State. He was also a consultant to the National District Attorneys Association's symposium on the IJA-ABA Standards of Justice Task Force.

The Comparative Dispositions Study

ADVISORY COMMITTEE

MICHAEL MILLER is Prosecuting Attorney, Franklin County, Ohio. He is a member of the National District Attorneys Association, the Ohio Prosecuting Attorneys Association, and the Society of Former Special Agents of the F.B.I. Mr. Miller is also a member of the Columbus Bar Association and the Ohio State Bar Association.

ANNE L. SCHNEIDER, Director of the Institute of Policy Analysis, holds a doctorate in Political Science from Indiana University. Currently she serves as Principal Investigator for a NIJJDP study on the Washington State Juvenile Justice Code. She is also Co-Principal Investigator for a NIJJDP evaluation project of Restitution Programs in 85 juvenile courts throughout the United States.

ANDREW J. SHOOKHOFF, Public Defender, currently serves as Chairperson of the National Legal Aid and Defender Association - Juvenile Law Section. He is also an Associate of the Metropolitan Public Defenders - Juvenile Division, Nashville, Tennessee. Mr. Shookhoff is a member of the Clinical Faculty at Vanderbilt Law School.

PEARL WEST is a consultant in the areas of juvenile justice, community organization, and women and careers. From 1976 through 1981, she served as Director of the California Youth Authority. She has been Adjunct Professor at the University of the Pacific. Mrs. West recently traveled to England and China to study their juvenile justice systems.

RICHARD WILLIAMS is a Judge of the Superior Court of New Jersey. Formerly he was District Attorney, Atlantic County (Atlantic City), New Jersey. He was Vice President of the National District Attorneys Association and President of the Atlantic County Bar Association. He is also a member of the New Jersey Supreme Court's Committee on Juvenile and Domestic Relations.

DEBORAH WYSINGER is a staff member of the National Institute for Juvenile Justice and Delinquency Prevention. She served as Project Monitor and as an Advisory Committee Member.

INTRODUCTION

This report was prepared with funds from the U.S. Office of Juvenile Justice and Delinquency Prevention, National Institute for Juvenile Justice and Delinquency Prevention (NIJJDP). It addresses what may well be the most significant juvenile justice issue of the decade. While hard to describe, the problem is easy to recognize: what to do about juveniles who commit very serious crimes. We appreciate the opportunity NIJJDP has given us to contribute to that debate.

The research centers on the legal and procedural ambiguities created when juveniles are arrested and charged with the commission of very serious offenses. Are they more juvenile than they are offender, or is it the other way around? Intertwined within this question are disparate aspects of American political theory and practice: the administration of criminal justice; a public policy that accords young people, by virtue of age alone, certain protections from full sanctions for offenses committed during their formative years; and a strong, Constitutionally based commitment to federalism.

As each state exercised its powers to establish its own courts and criminal code, it also created, within time, a legal mechanism for shunting "juveniles," "children," or "youth," away from the criminal system, to be treated in a manner consistent with the control of immature behavior.

At the same time, mindful of the likelihood that exceptional cases would occur, each state also created a means by which, under specified circumstances, childhood could, in effect, be forfeited. The protections established for children have never been, and were never intended to be, either complete or inviolate. Despite all the incomparability of state codes with regard to minimum age, exercise of discretion, and the lists of crimes which can result in the referral of juveniles to criminal court, all of them are consistent in two respects: all states have established juvenile courts and they all have created exclusions from juvenile court jurisdiction in the area of criminal responsibility. There is no exception anywhere in the country.

As has been well documented in this study, however, "a rose is a rose is a rose" doesn't apply to defining a "child." Childhood, instead, becomes a shifting set of administrative categories, moved left or right by parochial mores, bureaucratic structures, and anecdotal situations. There is no national standard and, lest the reader be misled, one is <u>not</u> being advocated in this report. Federalism is too deeply rooted to realistically suppose that states with uncommon laws would abandon their respective traditions. Instead, the intent of this study has tried to answer, with both qualitative and quantitative data, the following questions:

- Is it true that juveniles tried as adults, when convicted, are sentenced more severely than juveniles who are

adjudicated delinquent for the same types of offenses and who receive juvenile court dispositions?

- What inferences can be drawn when comparing the outcomes of these individuals with the justice system (adult or juvenile) that handled their cases?

In other words, when you have a system that treats some juveniles as children and treats others as adults, what evidence is there to determine if the policy objectives that caused the distinction are, in fact, being achieved? For example, if some crimes are too dangerous to permit juvenile court treatment, because harsher sanctions seem to be more appropriate, are harsher sentences being ordered by adult court judges? If correction (i.e., absence of recidivism) is the desired objective, which system (adult or juvenile) experiences greater recidivism?

It should be obvious to even the most casual observer of governmental behavior that discrepancies between policy decisions and program outcomes frequently occur and persist for years because no one knows for certain the incidence of the unintended outcomes. Put more simply, and within the context of this discussion, if the intent of trying juveniles as adults is to ensure that they're locked up if found guilty, it would be extremely important to determine how many of them are, in fact, being locked up. If the belief is that adult court sanctions more effectively curb recidivism than the dispositions available to juvenile courts, it would be important to know how many offenders come back to both courts after having been sanctioned. Either there is or is not a consonance between policy objective and program outcome. In either case, if the outcome is unsatisfactory, the policy must be re-examined.

This set of reports represents the culmination of over two years of arduous effort. Its orderly and uniform tables and charts belie the dissimilarities and eccentricities repeatedly encountered in state codes and local data systems. As much as two years were invested in some sites finding the right data sources, obtaining access approval, and extracting the information from hard-copy and automated records. Both the condition of records and the methods for retrieving offender-based data generally leave much to be desired. When compounded by the enormous strains placed on criminal justice agencies to keep up with just the daily flow of people and paper, the statistical data collection phase of this study assumed truly monumental proportions.

Yet, there was a bright side. If there was one overriding factor that made the completion of this study possible at all, it was the cooperation of both elected and appointed officials in the nine sites where data were collected. Over the many months of our work, judges, prosecutors, administrators, and data processors set aside their own priorities in order to accommodate our requests. They did so, we believe, because they considered the research worthwhile.

What make this report so valuable? What sets it apart from other

research projects? What motivated so many officials in so many agencies to extend their cooperation? Obviously, many needs were being served. Nevertheless, we believe the key may be found in the nature of the research itself. The report consists of almost 2,000 statutory citations, the results of approximately 200 on-site interviews, and some 1,500,000 data elements relating to approximately 25,000 specific offenders. All of this information has been reduced and simplified into compressed tables and graphs. For the most part (the case studies being the most notable exception), very little interpretation is offered. Hard-gotten information is presented in a straightforward manner. Clear, factual information: a surprisingly uncommon commodity in this Age of Information.

It may seem ironic for an outside research group to come into a jurisdiction, extract information, and then supply a report to the people who supplied the data. Such an irony would only occur to someone who never worked in a large, public agency. Given the volume of work and the operational priorities which are faced daily by courts, prosecutors, and corrections administrators, the only way many such reports can be generated is by outside researchers. Despite a strong desire for feedback (which research represents), the time and effort needed are simply not available from existing staff. The result of the absence of such feedback, however, means that many officials operate their agencies according to established guidelines, driven by inertia, occasionally redirected by effective lobbyists, but without really knowing how close they're coming to achieving the policy objectives that were established for their agencies. They don't like to work this way, but few choices are available to them.

We hope the Executive Summary and the accompanying volumes will also be used by legislators and administrators throughout the country, not just in the nine states where the data were collected. The report can serve as a model for designing similar projects, and it can stimulate public debate and legislative reform. The Literature Review and Statutory Summary are truly national in focus and are intended as ready reference works for students, researchers, and public officials. The overviews found in this volume should prove instructive to anyone wishing to review a comprehensive, national study on the subject of dangerous juvenile offenders. In addition, a firm foundation has been established for tracking changes in statutes, public opinions, court filings, judgments, confinements, and reactivity, using the findings in this study as points of comparison. The Academy is pleased to offer this contribution to the field.

Joseph L. White
Project Director

Columbus, Ohio
February 15,1985

CHAPTER 1

THE LITERATURE

A broad array of literature - academic, professional, and popular - addresses issues related to the handling of juvenile offenders. A reviewer is faced with seemingly endless streams of books, monographs, papers, and articles covering the history, philosophy, legal foundations, and treatment strategies of the juvenile justice system, as well as the etiology of and responses to violent and predatory juvenile delinquents. A more traditional literature review would likely touch, at least lightly, on most of those major themes. This review, however, approaches the literature from a much narrower perspective. It concentrates on the assumptions and expectations of policymakers, juvenile justice experts, and the general public, in terms of handling young defendants as either juveniles, or as adults in the justice system. It deals primarily with societal conditions that have provoked increasing advocacy for the handling of juvenile offenders, particularly those charged with violent offenses as adults, and with the policy implications for the justice system, for the general public, and for the offenders themselves.

A number of major studies have treated in detail issues which are outside the scope of this review. In particular, the interested reader is referred to Youth in Adult Courts: Between Two Worlds, a part of the Major Issues in Juvenile Justice Information and Training Project (Project MIJJIT), for a review of the salient literature concerning the development, operationalization, and legal foundations of referral mechanisms used around the country to try under-18 year olds as adults.[1] In addition, a second volume of the Project MIJJIT series, entitled Readings in Public Policy, contains ten excellent articles, written by national authorities on the relative advantages of the various transfer mechanisms, particularly judicial waiver, as well as some of the relative advantages inherent in both juvenile and adult system handling of serious juvenile offenders.[2]

Without repeating these arguments and observations, our review begins by examining some of the more recent public perceptions about crime, and the changes in public policy which these perceptions have appeared to influence.

CRIME AND THE FEAR OF CRIME

According to FBI figures, the rate of violent crime (defined as murder, nonnegligent manslaughter, rape, aggravated assault, and robbery) in American has, over the past 15 years, moved persistently upward. In 1980 alone, serious crimes (Part I offenses) increased 13 percent.[3] One source estimates that almost one out of every three households in the United States was directly affected in 1980 by some type of serious crime.[4]

Increases in crimes were not encountered just in urban areas. In 1979, for example, arrests for violent crimes increased by seven percent in suburban areas and 13 percent in rural areas.[5] The magnitude of the crime problem has prompted Chief Justice Burger to characterize the America of recent years as an "impotent society suffering a reign of terror in our homes and streets."[6] Americans have become understandably frightened by the proximity and seeming randomness of violent crime.

Numerous indications suggest that Americans are changing their living habits because of crimes which are perceived to be personally threatening.[7] Increased enrollment in self-defense classes, the popularity of gun ownership, the installation of more sophisticated intrusion alarm systems, and the avoidance of such activities as walking on the street after dark have become commonplace.[8] As Clemente and Kleiman have noted, "the cost of crime goes far beyond the economic and physical losses imposed by criminals. It extends to the forced alteration of daily living habits as well as to the negative psychological effects of living in a state of constant anxiety."[9]

A 1980 survey of U.S. residents found that the fear of crime may not correspond to risks actually associated with crime.[10] The survey showed that 70 percent of the U.S. population experienced either a vague uneasiness about crime in their communities or feared that they might become victims of such specific violent acts as murder, rape, or assault. These results suggest that Americans may be overly concerned about crime. Stated in another way, violent crimes may be so psychologically devastating that people see themselves as potential victims far beyond the statistical likelihood that their fears would ever be realized.

Some researchers have argued that there is an element of irrationality to the public's fear of crime.[11] A burgeoning area of empirical research now centers on scientifically documenting the relationship between that fear and the actual risks of victimization. The argument advanced is that if perceptions of the prevalence of crime do not correspond with actual crime rates, then policies should be designed to simultaneously attack crime and to change perceptions of its prevalence.

Because other national surveys have yielded similar results, it has been suggested the that fear of crime itself may be a major social problem.[12] Research has also suggested some interesting characteristics of the fear of crime. Dangerous crimes, which occur least often, are those which appear to be feared most.[13] It has also been shown that those demographic groups that are least likely to be victimized are often comprised of those persons who feel the most fear.[14]

Public attitudes concerning crime and potential victimization can significantly influence public policy decisions affecting all phases of the criminal and juvenile justice systems. In one survey, two-thirds of the respondents favored both the death penalty and increased police powers.[15] Other surveys found that respondents favored mandatory sentences for violent criminals and longer sentences for selected offenses than those

sentences actually served.[16] Courts were seen as excessively slow and too lenient. Respondents generally felt that the courts were doing a poor job.[17] The same attitudes were expressed with respect to juvenile courts.[18]

Public Attitudes Toward Juvenile Crime and Juvenile Justice

Given the public fear of crime and, in particular, the fear of violent crime, whether justified or exaggerated, it is critical within the context of this study to examine the extent of juvenile involvement in violent crime. The number of juveniles involved in the commission of violent crimes has been of particular interest in recent years. Many writers have indicated that a "violent juvenile crime wave" is occurring and have suggested that a different type of youth now dominates the juvenile criminal population.[19] Despite frequently expressed beliefs that violent juvenile crime is increasing markedly, that the victims of these crimes tend to be the most vulnerable members of society, and that most violent juvenile crimes are likely to result in serious injuries, the facts do not support these beliefs.[20] The number of violent juvenile crimes is not escalating significantly in the 1980s. Victims of juvenile crimes are seven times more likely to be other juveniles than victims from any other age group. The vast majority of violent crimes committed by juveniles do not result in serious physical injuries. When compared with similar crimes committed by adults, the National Crime Victimization Survey indicates that juvenile crimes are less serious in terms of weapon use, completion of theft, financial loss, and rate of injury.[21] Schuster has reported the results of research in a large metropolitan area that suggest that a substantial proportion of juveniles who were arrested for so-called "violent offenses" can hardly be considered to be violent in any reasonable sense of the word.[22]

The foregoing discussion is not intended to minimize the significance of violent juvenile crime: violent crimes committed by juveniles constitute a very real and pressing social problem. Even though the major proportion of violent crime is increasingly committed by adults, juveniles are responsible for more violent crimes than was true ten years ago. It seems that something new is occurring, as declining birthrates since the 1960s have failed to significantly reduce arrests of juveniles for violent crimes.

Public alarm over dangerous juvenile crime has currently become coupled with dissatisfaction regarding the juvenile justice system. The earlier referenced National Opinion Survey indicates that 78 percent of Americans believe that juvenile courts are too lenient with serious juvenile offenders.[23] Law enforcement officials are also critical of juvenile courts. Their negative evaluations not only revolve around

leniency but what is perceived to be "an almost wild inconsistency in sentencing, apparently unrelated to the severity of the crime involved."[24] Both the general public and law enforcement officials appear to be calling for more severe and more consistent sentences for dangerous juvenile offenders.

Nevertheless, the National Opinion Survey indicates that 73 percent of the respondents believe the primary role of the juvenile court should be treatment and rehabilitation of juvenile offenders rather than punishment.[25] As one astute writer has commented:[26]

> The public is confused. It reels in a turmoil of conflicting images of the harmless truant locked away for years and the evil young punk back on the street because of a lax juvenile system.

It is argued that much criticism of the juvenile court arises from a social control versus social rehabilitation paradox.[27] That is, the juvenile court is having difficulty, reflective of society's larger dilemmas, in merging the goals of both public safety and juvenile rehabilitation into a publicly credible response.[28]

Changes in the Juvenile Justice System

In order to meet the rising tide of criticism leveled at the perceived leniency of the juvenile justice system, specific changes have occurred in recent years. Rubin reports that there have been a variety of recent legislative changes, particularly with respect to dispositional alternatives for the juvenile court. These include mandatory-minimum institutional stays, the introduction of proportionality as a basis for juvenile court dispositions, and juvenile dispositions which resemble but do not exceed maximum adult sentences.[29]

System actors have advocated, for some time, the need for system change. In 1977, Judge Eugene A. Moore expressed his belief that:[30]

> The juvenile court system must have a punishment component. Whether this component takes the form of fixed sentences or a continuation of judicial discretion in dispositions doesn't matter, as long as the system recognizes the need for the component and uses it.

Philadelphia District Attorney F. Emmett Fitzpatrick stated:[31]

> There is a need for a properly written legislative mandate authorizing definite sentences of incarceration for those who, regardless of age, commit violent crimes.

In short, he argued that a juvenile, as well as an adult, must know that if he is found guilty of a violent crime, he is going to jail.

In April of 1978, the Criminal Justice Newsletter reported that the California Youth Authority, under pressure to deal more severely with dangerous juveniles, developed institutional release policies which required its more serious offenders serve longer periods of confinement.[32] U.S. News and World Report reaffirmed the trend:[33]

> Several state legislatures, outraged by releases of delinquents from prisons after only short terms, have enacted sentencing guidelines to insure that prison stays are more uniform.

In 1978, Washington State legislation established specific guidelines for the sentencing of juvenile offenders.[34] The new law stated the following purposes:

- to make a juvenile offender accountable for his or her behavior;
- to protect the citizenry from criminal behavior;
- to provide punishment commensurate with the age, crime and criminal history of the juvenile offender; and
- to provide for a clear policy to determine what types of offenders shall receive punishment, treatment, or both.

The Washington legislation, along with similar statutes in other jurisdictions, has its proponents and its opponents. Proponents say that, in the absence of such legislation, the juvenile system sent too many dangerous offenders back into the community after serving little if any confinement, sometimes without even appearing in court. Opponents say such legislation leaves too little room for judges to deal fairly with individual cases, and violates the rehabilitation ideal of the juvenile court. Vachss and Bakal go even farther to suggest that incarceration is short-sighted and does not provide a solution to the problem of dangerous juvenile offenders:[35]

> ... if the public were aware of the fact that juvenile prisons (as currently constructed and managed) can never be anything but crime incubators and that regardless of how harshly the great majority of juveniles are punished, they will reenter society as more competent criminals, then public attitudes might radically change.

Despite such changes in juvenile court sentencing practices, Ryerson forecast in her book, The Best-Laid Plans, a pessimistic note:[36]

> Still, if the change in our understanding of delinquency and how to deal with it is not total, it is nevertheless significant.

> All the changes in the juvenile court which have already occurred, and virtually all of those which may occur, confer directly or indirectly the belief that we do not know what to do about juvenile crime. This seems true even of the demands for harder sanctions; they represent more a desire to find symbols of community outrage than to advocate a strategy with any promise of success.

POINT-COUNTERPOINT IN THE JUDICIAL HANDLING OF DANGEROUS JUVENILE OFFENDERS

Over the past century, juvenile court responses have been characterized by the development of a treatment philosophy focused on the offenders rather than the offenses, one which emphasizes rehabilitation through service provision. At the same time, and the juvenile court movement notwithstanding, it has also consistently been recognized that some juveniles, particularly those charged with violent crimes, should be referred to the criminal court system. The juvenile codes in every state in the country provide at least one means by which dangerous juvenile offenders can be tried as adults. These statutes, although amended over the years, actually date back to the inital passage of the juvenile court acts.

Recently, public attitudes about the ability of juvenile courts to either contain or reduce juvenile crime have contributed to the growing belief that the problem can better be addressed through transferring larger numbers of juvenile offenders to criminal courts. Ryerson has described this shift in the following way:[37]

> In the late nineteenth and early twentieth centuries, the voices of social control and liberal reform spoke as one in favor of a new court for children and a new definition of delinquency. The movement for change in the juvenile justice system in the progressive period cast the effort to prevent crime and rehabilitate delinquents in the form of a court, but a court which was to resemble as little as possible those familiar in the criminal law.
>
> By the late 1960s, the spokesmen for crime control and humanitarian reform no longer spoke with one voice. They did, however, agree from their respective positions that the juvenile justice system had strayed too far from the criminal justice model. The return to that model, if still incomplete, nevertheless suggests a profound loss of faith both in the juvenile court idea and in the approach to social problems which it exemplified by its confidence in the fluid, scientific exercise of discretion.

The results of this loss of faith are readily apparent in both the juvenile and criminal justice systems. Both legislative and judicial branches of federal and state governments have instituted changes aimed at ensuring the increased likelihood of incapacitating dangerous juvenile offenders. These changes will be discussed under two broad categories: (1) mechanisms available to refer juveniles (under-18 year-olds) to criminal court; and (2) the rationale and policy implications of directing such offenders to either the juvenile court or the criminal court alternative.

<u>Mechanisms Available to Refer Juveniles to Criminal Court</u>

There are four legal mechanisms which result in the referral of youth below 18 years of age to the jurisdiction of the criminal courts. They are discussed fully in Chapter 2 of this Report. However, short definitions are offered here to assist in understanding the literature:[38]

- <u>Judicial Waiver</u>: A statute under which a juvenile court judge waives (binds over, certifies, remands, transfers) jurisdiction of a case involving a juvenile offender.
- <u>Concurrent Jurisdiction</u>: A statute under which juvenile and criminal courts posses equal jurisdiction over particular offenders or offenses and the court filing is determined by prosecutorial discretion.
- <u>Lower Age of Jurisdiction</u>: A statute defining the age of general criminal responsibility at an age below 18; persons above the minimum age of criminal jurisdiction (either 16 or 17) are automatically tried as adults.
- <u>Excluded Offense</u>: A statute under which a crime or certain categories of crimes are legislatively excluded from juvenile court jurisdiction; persons under the normal age of criminal jurisdiction are automatically referred to adult court when charged with these offenses. Included under this mechanism is the automatic referral of a person under the normal age of criminal jurisdiction who has previously appeared in criminal court due to a judicial waiver, commonly known as the "once waived, always waived" provision.

Several mechanisms may simultaneously exist in any given state and essentially serve the same function: they remove juvenile offenders from the jurisdiction of juvenile courts and place them within the jurisdiction of criminal courts.

In recent years, the number of attempts - both successful and

unsuccessful - by state legislatures to expand the opportunities for trying juveniles in adult courts has dramatically increased. Mlyniec observes that, even with the judicial waiver mechanism available, juvenile courts have been criticized for their apparent inability to have an impact on juvenile crime. He concludes that transferring juveniles into the adult criminal system may have taken on a new meaning in the public's view: "It is no longer a mere individualized alternative, but has become a focal point for society's demand for retribution and protection."[39] Moore also views the transfer of juveniles to adult courts as a growing and increasingly routine practice, but sees it as a recognition by the juvenile court that it cannot solve the many social problems which contribute to juvenile delinquency and that the services which juvenile courts and corrections systems can provide may be of no benefit to some youth.[40]

Because this current study focuses on a comparison of dispositions, correctional experiences, and postrelease outcomes of young offenders handled in both juvenile and criminal courts, it is important to understand the assumptions that undergird these alternatives. The following sections examine the arguments in favor of or against the transfer of juveniles to adult courts and review the expectations of policy makers regarding each policy option.

This review relies heavily on reported comments included in on-site interviews which form a part of the Project MIJJIT <u>Youth in Adult Courts</u> study.[41] Given the widely divergent philosophies and the general confusion among academics, professionals, and the public about how "best" to deal with violent juveniles, readers will not be particularly surprised to discover that the sum of the arguments supporting one side of the jurisdiction question or the other may, at times, be contradictory.

<u>Arguments Supporting the Transfer of Juveniles to Adult Courts</u>

Increases in the number of juveniles transferred to adult court jurisdiction seem to reflect the belief that sentences received by juveniles in criminal courts will reduce the threat of violent or dangerous juvenile crime. The arguments advanced in favor of trying juveniles in adult courts generally fall into one of three categories:

- philosophical;
- legal; and
- sentencing.

The major philosophical argument centers on personal accountability for miscreant behavior. The argument advanced is that juveniles of certain ages are aware of their actions and should be held responsible for them. Many juvenile justice practitioners appear to agree on the importance of

accountability. It is seen as one of the major theoretical arguments in favor of handling juveniles in adult courts.[42]

Van den Haag proposes that, after the age of thirteen, juveniles should be subject to the criminal justice system for indictment, trial, and sentencing. While not opposed to separate places of confinement once committed to corrections agencies, he argues that, "Not to hold them responsible for their offenses or not to punish them is to license and encourage juveniles to commit offenses."[43] At a 1983 national conference of Indiana's juvenile court judges, The Hon. William Clifford expressed his belief that juvenile court judges had, for too long, accepted the idea that children committing violent crimes are primarily a product of social problems and should not be treated harshly. Clifford said, "We have tended to put the blame on society, but I think more of us are going back to the traditional view that emphasizes individual responsibility."[44] Miller has observed: "The pendulum is swinging in favor of making juveniles accountable as adults, for adult crimes, at an earlier age."[45] Feld recommends the expanded use of excluded offense statutes as a means for creating a system of accountability for antisocial behavior, rather than one which concentrates principally on the youth's needs.[46] Fare has also recommended that accountability should be seen as a primary goal of the disposition process.[47]

From a philosophical perspective, then, as Feld and Fare point out, the arguments in favor of transferring juveniles to adult courts tend to de-emphasize the traditional parens patriae character of the juvenile court, with its strong emphasis on rehabilitation and treatment. Instead, they tend to promote a "just deserts" approach for culpable juveniles.[48] A number of juvenile justice professionals apparently agree that the transfer of juveniles to adult courts would increase the likelihood of "proper punishment" through incarceration.[49]

Another aspect of the transfer of juveniles to adult court which is viewed as advantageous is the "shock value" to the juvenile resulting from the more complicated, formal, and formidable processing to which adults are subjected.[50] As with shock probation, shock parole, and "scared straight" programs, it is argued that the sudden, intense intrusion of the adult system into a juvenile's life, for which he may be both physically and emotionally unprepared, may be so distressing and disturbing that it will cause him to renounce criminal behavior.

Amenability of juvenile offenders to treatment has long been one of the major assumptions behind the use of juvenile justice alternatives. Supporters of referral mechanisms, however, argue that the rehabilitation and treatment orientation of the juvenile justice system is inappropriate for, or simply wasted on, juveniles who commit dangerous, life-threatening acts. Consequently, juvenile court judges need the flexibility to remove than when they are considered to be unlikely to benefit from the options available in either the juvenile courts or juvenile corrections system.[51]

Yet, judicial discretion, one of the unique features of the juvenile

court system, has been severely critized by many writers who favor trying juveniles in adult courts. Their objections to current practices have extended to both the general informality of juvenile court procedures as well as to the particular applications of judicial authority. In his proposal for excluded offense statutes, Feld argues for the use of actuarial predictions which "make use of the relatively objective indicators offered by correctional statistical tables to make aggregate judgments."[52] In furthering his argument, Feld observes that judicial waivers now rely on "clinical judgments," which are subjective in nature and which result in a variety of inequalities.[53] Binder also voices the view that judicial discretion results in a philosophy and practice which "allows as consistent possibilities the institutionalization of a mildly unruly boy for a much longer period than a ruthless murderer," a result he believes to be inconsistent with the idea of justice.[54]

Hamparian et al.[55] reported several additional legal arguments supporting the practice of transferring juveniles to adult courts. Many of these arguments were based on the greater formality of adult criminal courts. It was argued that the transfer of juveniles to adult courts would ensure that the juveniles will enjoy, to a greater extent, the protections (such as due process guarantees, availability of bail, and trial by jury) guaranteed by the U.S. Constitution. The stricter standards prevailing in adult courts would encourage prosecutors to concentrate on the stronger cases and to prepare more competently for trial, resulting in fewer dismissals of charges. In addition, successful appeals would be more likely to result for juveniles handled in criminal court because of the formal nature of adult court proceedings.

Finally, two unrelated legal arguments were reported by the respondents of the Hamparian et al. survey.[56] First, youth in criminal courts would have the opportunity to be represented by more able defense counsel and to have their cases heard by judges who are better trained in constitutional rights. Second, the opportunity to transfer juveniles to criminal courts enables codefendants, one a juvenile and one an adult, to be tried together. The absence of such legislation led to a complete overhaul of the Vermont juvenile code in 1981, a circumstance more fully reported in Volume III of this Report.

The third major thread concerns the relative sentencing characteristics of juvenile and adult courts. It is generally argued that the punishment and incapacitation necessary for controlling dangerous juvenile offenders have not been evident in juvenile court dispositions. Feld's argument is representative of this view:[57]

> From the community's perspective, the principal values of exclusion (legislative exclusion of juveniles from the jurisdiction of juvenile court) are enhanced community protection through the greater security and longer sentences available in the adult system, increased general deterrence through greater certainty and visibility of consequences, and reaffirmation of fundamental norms.

Sentencing expectations for juveniles handled in adult courts, however, are also viewed in the opposite way. Instead of emphasizing the punishment and incapacitation which some authors expect from adult courts, the Youth in Adult Courts survey respondents cited expectations of quite a different character.[58] In addition to having a greater chance for acquittal, they believed that youth tried in adult courts are generally treated as first offenders if convicted (regardless of the length and nature of prior juveniles records). If placed on probation by an adult court, juveniles are likely to receive more lenient probation terms. Finally, juveniles sentenced by adult courts are less likely to receive sentences requiring incarceration, or they may actually serve less time, than they would have served if tried and sentenced in juvenile court.

Arguments Supporting the Retention of Juveniles in Juvenile Court

Most arguments that favor retaining dangerous juvenile offenders in juvenile court stress the traditional juvenile justice goals of rehabilitation and individualized treatment. At the same time, writers also focus on the negative aspects of the adult system. As with the arguments favoring transfer, the arguments against transfer can be categorized into the same three sets of arguments:

- philosophical;
- legal; and
- sentencing.

Two major philosophical issues were mentioned by the Youth in Adult Courts survey respondents.[59] First, the referral of juveniles to adult courts is seen as an acknowledgment that the juvenile court has failed in its duty to deal effectively with the problem of juvenile crime. This admission of failure coincides with public perceptions of juvenile courts as being ineffective. The point here is that supporters of juvenile court retention view such a conclusion to be an unacceptable abdication of the juvenile court's rehabilitation mandate: the juvenile court should continue to work with juveniles, despite past failures. Second, there is concern that transferring juveniles to adult courts results in negative labeling of youth at early ages, particularly if their cases receive extensive media attention.

As discussed above, supporters of referral of juveniles to adult courts frequently cited the greater procedural safeguards available in adult courts as a primary reason for their support. It is interesting to note, however, that opponents of transfer also mention the more formal, legalistic nature of adult court proceedings as a reason why juveniles should not be transferred to adult courts.[60] Treatment-oriented opponents of transfer tend to argue that the adversarial character of adult court

proceedings may be counterproductive for juvenile offenders, and that conviction in criminal court establishes permanent felony records. On the other hand, opponents concerned with the dispositional implications of transfer argue that criminal courts tend to underestimate the dangerousness of some young offenders and result in fewer sentences to incarceration. Finally, opponents of transfer point out that, regardless of the seriousness of the offense with which juveniles are charged, it is difficult to prosecute them in adult courts because of the appearance that attorneys, victims and witnesses are "ganging up on children," thereby resulting in fewer convictions.

Arguments against transferring juveniles to adult courts are commonly focused, in the literature, on sentencing practices, i.e., the leniency accorded to first-time, young offenders. Some relevant observations are offered by Conrad, Hicks, and Stamm. Conrad suggests that one consequence of referral to adult court -- that waived juveniles may not appear "tough" to criminal court judges who routinely deal with dangerous criminals -- was probably neither anticipated nor desired by legislators who made the transfer possible.[61] Hicks makes the point that youth, whose sometimes extensive juvenile records often cannot be used in adult courts, may have a better chance for leniency than in juvenile courts.[62] Stamm poses a challenging question when relating lenient sentencing practices to the use of referral mechanisms: "One is finally compelled to ask what logic there is in the use of probation or a minimum security facility for a child who was transferred out of court because he was too 'dangerous' and 'a security risk.' Such a child should have been kept in juvenile court."[63] Stamm's conclusion is by no means the only one which offers a way out of the quandry. Authors quoted earlier would probably respond that if probation or minimum security sentences are being meted out, criminal court judges are not doing their duty. The Twentieth Century Fund Task Force on Sentencing Policy Toward Young Offenders offered a similar observation to that of Stamm: "It appears, however, that, because of their age and the protections accorded juvenile court records, younger offenders receive more lenient treatment than older offenders in criminal courts."[64]

Hamparian et al. found that most (sentencing-based) arguments favoring juvenile court jurisdiction tended to reflect the position that juveniles tried in criminal courts can receive harsher sentences than if adjudged delinquent in juvenile court.[65] Proponents of the treatment orientation objected to the adult court practice of definite sentencing, which generally precludes release from confinement as a result of (or at the time of) rehabilitation. Finally, respondents suggested that criminal court judges might be inadequately experienced in the special problems involved in sentencing young offenders.

Use of Sentencing Guidelines

As discussed above in connection with recent changes in the juvenile justice system which have resulted from public pressure to deal more stringently with dangerous juvenile offenders, a number of state legislatures have enacted sentencing guidelines in an attempt to promote uniformity in sentencing. Given the striking differences in expectations about sentences shown by proponents and opponents of transfer to adult courts, it would appear instructive to examine empirical evidence of the changes in sentencing patterns resulting from the implementation of legislative or judicial guidelines. The most comprehensive study related to the impact of juvenile court sentencing guidelines, was published in 1983 by Schneider and Schram. In a ten volume report, the Washington State legislation was assessed from a number of viewpoints, and offered the following conclusions:[66]

> From a philosophical perspective, the reform signifies the end of parens patriae as the guiding doctrine of the court and the beginning of a new emphasis and new rationale for the juvenile system. The very language of the law signifies the end of the era: the word "offender" replaces the word "delinquent"; "juvenile" replaces "child"; and the word "punishment" is found throughout.
>
> Many goals of the reform were achieved: substantial changes occurred in organizational responsibilities and case processing; decision making at intake, filing, and sentencing clearly is more uniform, less disparate, and more proportionate to the seriousness of the offense and prior record of the youth.
>
> Sanctions in the post-reform system were more certain but -- at least for the first two years of the new system -- were less severe for most offenders. Violent offenders, however, and serious/chronic offenders were far more likely to receive incarcerative sanctions in the reform system. The ability to hold juveniles accountable increased markedly, primarily because of substantial increases in the proportion of diverted and adjudicated youths who were required to pay restitution or do community service work ....

Use of Juvenile Records in Criminal Court Proceedings

The avoidance of the use of juvenile records of prior adjudications by criminal courts has historically been based on two concerns:

- Since delinquency adjudications do not legally connote criminality, a juvenile should not be stigmatized and followed into adulthood by a juvenile court record. As Petersilia observes, "Protecting young adults from the ramifications of a non-serious delinquent record is appropriate. The real issue is whether the records of serious crimes committed by juveniles should be treated similarly."[67]

- The traditional posture of juvenile courts has been based on confidentiality and treatment, regardless of the seriousness of the behavior which brought the juvenile to court. Thus, unlike the situation in criminal courts, the specific behavior for which the juvenile was referred to juvenile court may quite quickly lose much of its relevance and, in many instances, may have little impact on the outcome of the juvenile proceeding. It is argued, therefore, that the use of juvenile records solely on the basis of delinquent acts can be misleading.

In fact, the legal access to juvenile court records by adult courts and prosecutors is more widespread than commonly imagined. (See Chapter 2 of this volume.) Yet, despite enabling legislation, the actual practice varies considerably throughout the country.

Petersilia has published one of the few studies which addresses the issue of the use of juvenile court records information in adult courts.[68] In a survey of prosecuting attorneys, she found that, in most jurisdictions, juvenile record information is received by prosecutors sporadically, most frequently from local police records. Prosecutors reported that final case dispositions were often missing from these arrest records; however, the extent to which juvenile record information was used by prosecutors in deciding case dispositions was not related to the prosecutors' opinion of the quality or completeness of the information. Knowledge of juvenile records was reported to affect prosecutorial diversion, dismissal of charges, and plea bargaining.

The significance of the juvenile record issue lies in the ability of officers of the court to accurately identify the most serious offenders. For juveniles waived to criminal court and for young adult offenders, the best source of this information is likely to be the official juvenile court record, and it may be argued that complete and accurate juvenile records should be easily accessible, or in every case provided, to criminal court decisionmakers. Regardless of this philosophical question, however, the findings of Petersilia's preliminary investigation indicate the need for further research on this topic.

Impact of Institutional Overcrowding on Sentencing

As mentioned above, many arguments for and against handling dangerous juveniles in juvenile or adult courts are concerned with conflicting expectations about the sentencing alternatives likely to be imposed by each court. It is frequently suggested that when dangerous juveniles are waived to adult courts and convicted, they are more likely to receive sentences to incarceration, which often must be served in adult prisons and jails. It is of interest, then, to examine the general issue of the impact of prison and jail overcrowding on judicial sentencing practices.

Recent data indicate that both prisons and jails are experiencing serious overcrowding problems.[69] More than 40 states are facing court challenges based on prison overcrowding, and more than 200 local jails face pending court orders to solve overcrowding problems. A number of reasons have been proposed to explain this phenomenon:[70]

- a bulge in the prime crime age bracket;
- more efficient court procedures;
- mandatory sentencing legislation, reflecting an ideological commitment to incarceration on the part of major system actors;
- longer and more frequent sentences of confinement;
- more stringent parole requirements; and
- a lack of any overarching policymaking body that could set priorities for the various subsystems within state and local government.

Finn's survey of courts at trial level or above asked judges how prison overcrowding has affected sentencing practices. He found that, "overall, more judges indicated that the judiciary has increased rather than decreased the number and length of prison sentences, either in response to public sentiment against 'coddling' criminals or to accommodate an increasing proportion of offenders who had committed violent crimes or are repeat offenders."[71] Similarly, Price, Weber, and Perlman found that:[72]

> judges have reacted to the call for reduced discretion with resistance, and some more vocal jurists have mounted a public relations campaign to show that their sentencing practices are what is desired by the community."

The Finn survey did find that judges are more likely to consider alternatives to imprisonment than they were in the past. Frequently

used alternatives cited by his respondents included probation, community service, and, ironically, sentences to local jails.[73] While empirical evidence is not directly available to address the question of the implications of these judicial attitudes on prison and jail overcrowding for the handling of juveniles in adult courts, it does appear that judges do not see institutional overcrowding as a primary consideration in sentencing decision. Many judges, however, do appear to feel that it is the responsibility of the appropriate corrections authority to determine how to handle any offenders sentenced by the courts.

POINT-COUNTERPOINT IN THE CORRECTIONS HANDLING OF DANGEROUS JUVENILE OFFENDERS

It has been suggested, throughout most of this review, that he crucial question is fundamentally concerned with post-sentencing implications. The important consideration thus becomes: Regardless of the court in which juveniles are handled, what are the correctional alternatives which juveniles may face following a determination of guilt or delinquency? The answers to this question frequently form the basis for arguments supporting either the transfer of dangerous juvenile offenders to adult courts, or the retention of these juveniles in the juvenile justice system.

Fewer than half of the states permit adult court judges to sentence youth to juvenile institutions, and most states do not maintain youth facilities or youth units within adult institutions. It is not unusual, therefore, for adult court judges to face the possibility of sentencing young people, between the ages of 14 and 17, to confinement among adult convicts.

Arguments Supporting the Transfer of Juveniles to Adult Courts

Hamparian et al. reported arguments in favor of handling juveniles in adult courts which were based on the correctional alternatives available in adult courts.[74] Following from the "amenability to treatment" assumption discussed above, it is argued that removing juveniles who are considered to be unamenable to rehabilitation allows juvenile corrections authorities to concentrate scarce resources on juveniles who are most likely to benefit from juveniles services. Further, it is noted that secure juvenile institutions are not available in most states to the extent believed necessary. Therefore, sentencing violent youth to adult corrections

facilities means that they can be appropriately controlled. The removal of these dangerous or violent youth to adult institutions, they argued, not only results in a reduction in the population of juvenile institutions but also lessens the likelihood of disruption or victimization of less dangerous or aggressive inmates in the juveniles facilities.

Arguments Supporting the Retention of Juveniles in Juvenile Court

The literature reveals strong agreement among writers who oppose the use of adult institutions for juveniles, whatever their preferences for a judicial forum. They point either to the likelihood that juveniles will become the victims of physical and/or sexual abuse by other, older inmates, or that rehabilitation is not likely to occur.[75] Vachss and Bakal emphatically state:

> The very possibility of rehabilitation in such a setting (adult corrections institution) is now uniformly denounced, and such authorities as the Federal Parole Board are now giving weight to immutable factors in their release decisions.[76]

Vachss and Bakal see no evidence to support the idea that adult institutions are potentially more rehabilitative than juvenile institutions, and reject the notion that adult facilities offer specialized treatment for youth who fit their definition of a "life-style violent offender."[77] Stamm advocates the use of waiver only for the purposes of treatment and rehabilitation and only when these purposes cannot be accomplished in the juvenile system. In closing his argument, however, he abandons even this reason as a serious justification for waiver because "there is so little evidence that the adult system can handle the rehabilitative mission."[78]

In addition to arguments regarding the lack of rehabilitation programs in adult institutions, the respondents to the Hamparian et al. survey noted several other disadvantages of handling juveniles in adult correction systems.[79] The implications for institutional administration and staff were considered particularly problematic. The threat of physical and/or sexual abuse in adult institutions demands that prison administrators devote substantial time to the protection of vulnerable juveniles or to separate them from the adult population. This can be extremely difficult in already overcrowded adult facilities. Furthermore, prison personnel are generally inexperienced in applying appropriate techniques for working with and controlling young inmates.

The Use of Parole Guidelines

In response to the growing criticism of the juvenile justice system for the perceived inequalities in its sentencing practices and the inadequacies of its individualized treatment orientation, a number of states have taken steps to alter their statutory and/or administrative approaches to decision-making both in terms of sentencing juveniles to confinement and releasing juveniles from confinement. The URSA Institute has recently completed the first phase of a larger study designed to describe the current status of these decision-making approaches and to investigate the policy implications of the approaches.[80] Their preliminary typology classifies states as either "determinate" (in which commitment length decisions are set by statute or release decisions are set by administrative guidelines) or "indeterminate" (in which commitment length or release dates are based on some type of individualized assessment of the juvenile's progress toward rehabilitation). Phase I findings indicate that, of the five states whose release decision-making approaches were classified as determinate, only one (Washington; see discussion above) had implemented sentencing guidelines. Four states had developed strategies in which release dates are determined after sentencing. In Arizona, Georgia, and Minnesota, administrative release guidelines are used by the corrections agency; in California, guidelines have been developed and are used by the parole board. The URSA Institute report also notes that a number of other states have, in the past several years, begun to develop or consider the implementation of guidelines.

A noticeable gap in the currently-available literature concerns the impact of release statutes or guidelines on the juvenile justice system and the juvenile offender population, although a number of relevant research questions are being addressed in the ongoing URSA Institute study. A sizeable body of literature concerning the parole guidelines developed and used by the U.S. Parole Commission has been published, however. One law review article devotes considerable attention to judicial reactions to the use of federal parole guidelines with young adult offenders.[81] The history of judicial decisions with respect to the use of parole guidelines with this population is of interest in that it reveals limits which can be placed on corrections decisions concerning offenders who have, in a sense, been sentenced in a criminal court under a judicial option which is philosophically akin to the traditional approach used with juveniles.

Under the Youth Corrections Act, federal judges have the discretion to determine whether an offender who is younger than 22 years of age at conviction should be sentenced as an adult, or should be sentenced under the Act and receive an indeterminate sentence. This decision is based on the judge's finding that the offender is able to benefit from the institutional treatment available under the Act. This idea, of course, is quite similar to the "amenability to treatment" arguments advanced by proponents of retaining juvenile court jurisdiction. Offenders sentenced

under the Youth Corrections Act receive indeterminate sentences; the maximum length of time an offender can serve under the Act is six years, and can be paroled at any time.

Because of the "amenability to treatment" requirement, rather than conviction offense, correctional progress is of paramount importance. The offender must be able to demonstrate, at some time during incarceration, that rehabilitation has taken place. Therefore, sentencing under the Youth Corrections Act has been seen to imply that parole decisions be based solely on institutional adjustment conduct. The U.S. Parole Commission, however, implemented standardized parole guidelines equally applicable to Youth Corrections Act prisoners and other convicted adults. While institutional adjustment is not a factor which is considered in paroling decisions under the guidelines, the severity of the conviction offense is the primary factor. In 1974, a U.S. district court required the Parole Commission to modify the guidelines when evaluating Youth Corrections Act prisoners for parole.[82] Only a year later, another U.S. district court held that the use of these guidelines for Youth Corrections Act prisoners was illegal.[83] The U.S. Tenth Circuit Court of Appeals subsequently found that the use of the federal parole guidelines effectively converted judicially imposed indeterminate sentences into fixed terms of confinement.[84] Under the guidelines, one-third of the maximum sentence must have been served before becoming eligible for parole. Thus, an indeterminate sentence has been changed to a determinate sentence of at least two years, nullifying the fundamental purpose of the indeterminate sentence and violating the Act. Since the sentencing court determines whether the offender will be sentenced as an adult or under the Act, the Parole Commission had assumed the authority to ignore the sentencing court's findings by using the same guidelines for parole.

No studies of the use of parole guidelines with juveniles were found. Because of the importance of the question of differential corrections handling of juveniles sentenced from juvenile and adult courts, comparative studies of the use of parole guidelines with these populations would be valuable.

RECIDIVISM AMONG DANGEROUS JUVENILE OFFENDERS

Given the public concern about the increasing dangerousness of crimes and the conflicting approaches to handing dangerous juvenile offenders, it is certainly reasonable to infer a similar concern regarding the extent to which juvenile offenders repeat their criminal behavior. Of particular interest to our current study would be a determination of whether differences in the tendency to repeat criminal behavior exist between juveniles retained in juvenile courts and juveniles waived to adult courts. This section will consider the question of recidivism, examining some of the methodological issues inherent in measuring recidivism, and reviewing

the more current recidivism studies.

Methodological Issues

The professional literature in the criminal and juvenile justice fields is replete with critiques of various aspects of the definition and measurement of recidivism. Because of the prevalence of this material, particularly in the academic and professional literature, we will not cover this subject exhaustively; rather, this review will provide an introduction to the most widely discussed issues which confront researchers who plan to utilize "recidivism" as an outcome variable. The major methodological problems in recidivism research will be discussed as they relate to definitional and tracking issues.

Definition of Recidivism

The search for the most appropriate definition of a yardstick by which we can measure a convicted offender's tendency to engage in continued criminal behavior has plagued social scientists for decades. As Harris and Moitsa[85] point out, the term which social scientists have chosen to describe this phenomenon - recidivism - means "a tendency to lapse into a previous behavior mode." However, because of the impossibility of gauging "tendencies" in human behavior, social scientists have generally tried to construct clear-cut measures which capture specific, identifiable and, in most cases, "official" instances of criminal behavior.

The problems of defining exactly what is meant by "recidivism" have been succinctly summarized by Sechrest et al. in a collection of readings addressing the intricacies of evaluating correctional programs:[86]

> Recidivism has been the traditional measure for assessing effectiveness of rehabilitation efforts. As an outcome measure, however, recidivism presents difficulties, not the least of which is that there is no agreement on a definition of recidivism: it is assessed in whatever way is convenient, whether it makes sense conceptually or not.
>
> Recidivism is usually measured as if it involves a binary outcome, which results in the loss of considerable information, decreasing the sensitivity of tests for program effects. Attempts to correct for that problem by producing a continuous scale, e.g. by weighting the seriousness of offenses, are probably only partially successful, and they may introduce other problems. Further empirical work on the standardization of measures of recidivism and on the suitability of multiple

measures could have a high payoff. Although a decrease in criminal activity is a necessary consequence of a successful program of offender rehabilitation, alternative ways of assessing the effectiveness of rehabilitation programs are needed.

Most frequently, recidivism measures used in social science research are restricted to events occurring within a period of criminal justice supervision, thus by-passing quantifiable measures of general positive behavioral adjustment. Within these constraints, however, there is still a wide range of behaviors which have been used as indicators of recidivism. These events span technical violations of probation (or parole) through rearrest, refiling, reconviction, and/or reincarceration. Obviously, these various indicators are so different that it is frequently impossible to compare even similar studies.

Numerous authors have noted the limitations of each of these approaches to the measurement of recidivism.[88] The use of technical violations of probation and parole, while possibly reflecting new criminal behavior, may simply indicate transgressions of one or more of the myriad conditions with which probationers or parolees must abide, or they may represent artifacts of intensive supervision. Rearrests, while more appropriate than technical violations as a recidivism measure, may reflect numerous instances of formal arrests by the police in which arrestees are subsequently released before charges are filed. Arrest data, while often readily accessible, obviously reflects a wide range of behaviors on the part of law enforcement officers, as well as the criminal behaviors of the arrestees. To use rearrests as the measure of recidivism would suggest that proof of guilt is somehow unrelated to determining subsequent criminal activity. It should also be noted that many arrestees who are guilty of the crimes for which they are arrested may never proceed to trial.

Formal filing of new charges, a somewhat more precise indicator of criminal behavior than rearrest, may also include a substantial number of innocent individuals and may also inadvertently capture local or state practices of overcharging. Reconvictions, although less vulnerable to the criticism of including innocent individuals or inappropriate charges, may fail to reflect a realistic incidence or a true picture of recidivism, since many offenders could have been guilty of new crimes and never be convicted of them. In addition, recidivism studies seldom last long enough to assure researchers that all recidivism has been identified. Finally, many researchers argue against the use of reincarceration as a measure of recidivism because of wide variations in judicial practices regarding sentences requiring institutionalization.

As Blumstein and Larson view the problem of error caused by the selection of an indicator of recidivism, the researcher is likely to find data biased in one of two ways.[89] In a Type I error, the researcher erroneously counts as recidivists those individuals mistakenly arrested, charged, or convicted. In a Type II error, the researcher loses data about real criminal behavior because of crimes which are never brought to the attention of the police; arrests which cannot be made or charges which are dropped

because of insufficient evidence; or because of acquittals of individuals who are "guilty-in-fact." Obviously, the farther into the criminal justice system one attempts to apply the definition the more Type II errors that can be expected; correspondingly, the greater decrease in Type I errors that can be expected. Blumstein and Larson conclude that:[90]

> As long as the measurement of recidivism is restricted to events occurring within the criminal justice system, and if the Type I errors are not unreasonable, any definition will underestimate the probability of 'repetition of crime,' the true but unknown recidivism.

In addition to determining the extent of penetration into the criminal justice system required before a behavior is defined as recidivism, some authors have argued that other characteristics of the behavior (such as frequency, magnitude, and severity of offense) may be more useful measures than simply a dichotomous yes/no indicator or the gross number of offenses commited.[91] Recidivism rates may reflect <u>any</u> new criminal behavior, no matter how minor or infrequent, or may require that the recordable behavior be at least as serious as, or more serious than, the behavior for which the offender was originally sentenced before being defined as recidivism.

After settling on a definition of recidivism, researchers then encounter the problem of computing the recidivism rate for a specific group of individuals. As mentioned above, recidivism is frequently used as a dichotomous variable, that is, the individual is either determined to be (or not to be) a recidivist. Recidivists, however, must still be aggregated in some way to express the overall rate of the group. Three methods of computing failure rates are most often used.[92] The first method, called the "total release cohort base method," expresses the recidivism rate as the number of individuals recidivating in a given time period as a percentage of the total number of individuals in the follow-up group. This computational method is appropriate in determining the point following release at which most failures (or highest proportion of failures) can be expected and in determining whether different types of releasees survive (that is, are not classified as recidivists) for different lengths of time. The "survivor cohort base method" computes the recidivism rate by viewing the number of recidivists as a percentage of individuals in the cohort who, at any specific time, have not previously been determined to be recidivists. This method is useful in identifying the periods of time following release at which the risk of failure is highest, and can be used to determine whether the risk of recidivism is different over time for different types of releasees. The "ex-post facto failure base method" computes the percentage of failures at any given time to the total number of failures during the entire follow-up period. This method allows the researcher to determine, among those who fail, how many individuals can be expected to have refrained from recidivating for any specified length of time.

This review of definitional and computational issues, while necessarily brief, does point out a number of the kinds of factors to

consider in designing recidivism studies, particularly in terms of identifying how the selected definition of recidivism will delimit the utility of the outcomes.

Follow-up Period for Measuring Recidivism

The length of time needed to determine whether recidivistic behavior has occurred is of interest to researchers for several reasons. In the first place, the length of the follow-up period must be long enough to allow the researcher to capture a substantial amount of the recidivism which is likely to occur. This factor is particularly important if a definition of recidivism such as reconviction or reincarceration requires a fairly long time period to emerge. While it was, for many years, an article of faith that most recidivistic behavior would occur within the first year or two following release, some studies now question that assumption and call for further investigation.[93]

Even so, the follow-up period should be short enough to be manageable during the course of the ordinary research study. Rarely will a project have the luxury of a follow-up period extending beyond two or three years beyond the date of sentence or post-confinement release.

In the past ten years, a great deal of interest has been shown in statistical techniques which link recidivism (failure) rates to the length of time from release to failure. Many of these techniques attempt to construct models to forecast the flow of recidivistic behavior among selected cohorts.[94] These models can also address the question of paramount importance to judges, corrections personnel, and the general public: are law-abiding behaviors exhibited by released offenders permanent or transitory?[95] The techniques used, although highly mathematical and abstruse, view recidivism as time-dependent and can provide valuable information concerning patterns of failure.

Other problems with recidivism measurement can be handled by versions of these mathematical techniques. Because they do not necessarily require follow-up periods of fixed length, loss of data on specific subjects may not be as serious a problem as it can be in less statistically-oriented studies. Barton and Turnbull point out that, in studies utilizing fixed ends for follow-up, data can be lost by "end of study censoring" (which refers to data on subjects who entered the follow-up population with less than a full follow-up period remaining to the study) and "loss to follow-up censoring" (in which data are lost because subjects cannot be found or their status is unknown after a portion of the follow-up period has elapsed).[96]

Results of Recidivism Studies

As with the preceding overview of methodological issues, the results of such research studies are reported extensively in the literature. Because of the wide variations in study design, definitions of recidivism used, and extent of detail provided in project reports, a comprehensive review of all recent recidivism studies would not be useful here; rather, we will briefly consider a limited number of recidivism studies dealing with several different types of offender populations in order to give at least a sketch of the range of results which researchers are currently reporting. This section will look at recidivism studies involving adult offenders, delinquents, and violent juvenile offenders, and will briefly summarize a number of evaluative studies targeted on specific types of treatment programs for juvenile offenders.

Recidivism and Adult Offenders

Reported recidivism rates of adult offenders, as might be expected, vary considerably from study to study. In developing a feedback model for predicting recidivism, Blumstein and Graddy found that, for adults who had been arrested for Index (Part I) offense, the probability of subsequent arrest was quite high - about 88 percent.[97] Belkin *et al.* had previously reported a similarly high rate (87.5 percent) for all adults arrested for all offenses.[98]

Holland *et al.* reported failure rates for adult male probationers who had been convicted of offenses ranging from technical probation violations to homicide and who had had an average of five prior convictions.[99] Their findings also demonstrate the extent to which recidivism rates can vary, depending upon the definition of recidivism which is used. They reported that 57 percent of the members of their study group were rearrested for any offense, 52 percent were reconvicted, and 37 percent were reincarcerated. However, when only violent crimes were used as recidivism indicators, the failure rates dropped to 15 percent for rearrests, 11 percent fo reconvictions, and 10 percent for reincarcerations.

Beck reported some interesting recent findings concerning recidivism rates of minority (Black and Hispanic) federal offenders as part of an evaluation of the effect on post-release behavior of placement in a community treatment center.[100] He defined recidivism as a new arrest or parole violation warrant, during the first twelve months after release, excluding minor offenses such as disorderly conduct, vagrancy, and public drunkenness. He found a recidivism rate of 35.7 percent in the comparison group of minority offenders who had not participated in the community treatment center program, compared to a 25 percent recidivism rate for minority community treatment center participants.

Finally, Holland et al. examined recidivism for adult male probationers convicted of violent and nonviolent felonies.[101] Possible outcomes were: probation success, probation failure involving a violent offense, and probation failure involving a nonviolent offense. They found that, in general, violence (as denoted by prior conviction of a violent felony) is a poor indicator of future similar behavior, that is, individuals previously convicted of violent offenses were not more likely to recidivate by committing new violent offenses. They also found that a history of nonviolent criminal offenses is strongly associated with recidivism (whether for the commission of new violent or nonviolent offenses), and speculate that a history of nonviolent offenses may be a manifestation of a generalized propensity for social deviance.

Recidivism and Juveniles Offenders

Hyde's recent review of the current issues in juvenile justice summarizes a number of published research efforts relative to juvenile criminality:[102]

> Recidivism...is even greater among juveniles than among adult offenders. Among juveniles the rate has been estimated at 74 to 85 percent, while for adults the rate estimates range from 25 to 70 percent."

Swain reports similar figures in looking at the adult experiences of juveniles who had had police contact before age 18.[103] Of those juveniles who had experienced police contact before age 18, 84 percent had police contact as adults. However, of those juveniles who had not had police contact before age 18, only 43 percent had such contact as adults. She concludes that only youth with fairly extensive histories of delinquent behavior can accurately be predicted to continue their criminal activities as adults.

Finally, as part of an evaluation of a residential treatment program for adjudicated delinquents, Lueger and Cadman reported a recidivism rate of 23 percent, using a restrictive definition of recidivism which required arrest for a felony offense and conviction for that offense or a lesser charge.[104]

Recidivism and Violent Juvenile Offenders

Without any doubt, the most frequently cited statistics concerning juvenile involvement in criminal behavior, and violent behavior in particular, are the Wolfgang, et al. findings.[105] Six percent of the juveniles in the birth cohorts studied were responsible for more than half of the recorded delinquent acts and approximately two-thirds of the violent offenses committed by members of the cohort.

However, a recent review of programs aimed at the serious and violent juvenile offender population compiled by Arthur D. Little, Inc. reported somewhat lower recidivism rates.[106] An evaluation of a residential and outreach program, using reinstitutionalization as the indicator of recidivism, reported a failure rate of 26 percent for all program participants, compared to a failure rate of 13 percent for juveniles who had successfully graduated from the program. Another residential and community program had a recidivism rate of 18 percent for all participants, using readjudication for a felony offense as the measure of recidivism. Finally, a nonresidential treatment program for delinquents reported a 10 percent recidivism rate for all program participants, using reinstitutionalization as the recidivism indicator.

Effectiveness of Treatment Programs for Juveniles

Romig surveyed a large number of treatment programs for juvenile offenders.[107] He reviewed only studies which measured effectiveness in terms of behavior and which included either a randomly-assigned or matched control group. Studies were classified in terms of the point within the juvenile justice system at which the program intervened. The types of programs examined and the impact of program participation are summarized below:

- Diversion programs - Eight projects (utilizing as their primary treatment techniques individual counseling, casework, and work experience) were reviewed. No significant differences were found in the subsequent behavior of program participants compared with nonparticipant control group members.

- Probation programs - Seventeen studies comparing the effectiveness of regular probation with a number of specialized probation programs (reduced caseloads, day treatment, residential group homes, lectures, psychodrama, intensive supervision, guided group interaction, individual counseling, transactional analysis, and use of volunteers) were examined. Not enough significant differences were found to clearly establish the effectiveness of any of these specialized programs.

- Probation subsidy programs - Two probation subsidy programs were examined; both programs were found to be ineffective with respect to reduced caseloads and intensive casework.

- Community residential programs - Eight community residential programs were examined; no significant differences in post-release behavior were found between program participants and nonparticipants, and in some instances, program participants were more unsuccessful than nonparticipants.

- Institutional programs - Twelve studies of institutional programs were reviewed. One program, involving the teaching of family communication skills, was clearly effective. A program utilizing milieu therapy and a program in which staff members and offenders were carefully matched were considered to be partly successful. No significant differences were found in the evaluations of the remaining nine programs.

- Deinstitutionalization - An evaluation of the Massachusetts deinstitutionalization effort revealed negative results in terms of a large number of factors, including runaways, high recidivism among girls, and more criminal proceedings in institutions.

- Parole - Eight studies of special parole programs were examined; all studies (particularly those of programs involving reduced caseloads, intensive treatment, casework, and individual or group counseling) indicated negative results for program participants.

As this review of treatment programs indicates, there is no evidence to suggest the effectiveness of any of the myriad treatment programs designed for juveniles.

Comparative Outcomes Research

A consideration of the foregoing recidivism information about adults, juveniles, and violent juvenile offenders suggests that, whatever the representative rate of recidivism may be, it is certainly a great deal higher than criminal justice professionals and the general public would like. The public concern about the prevalence of crime, particularly dangerous crimes, committed by juveniles is undoubtedly translated into an equal interest in the success of the corrections system in preventing the repetition of this sort of behavior. As we have seen, many of the arguments on both sides of the court jurisdiction issue center on aspects of this very question: which method affords society the greatest assurance that dangerous juvenile offenders will not commit crimes in the future?

At least a partial answer to this crucial question could be provided by recidivism research which compares failure rates of juveniles handled through the juvenile system with comparable juveniles waived to criminal court and handled through the adult system. A search for studies addressing these populations was conducted for this survey of the literature; neither reports of such research nor references to any work done in this field were found. Clearly, research of this nature would be an important contribution.

PUBLIC EXPECTATIONS AND CAVEATS

The thrust of this chapter has been to assess the public fear of crime, and dangerous juvenile crime in particular, to explore the effect this fear has had on the juvenile justice system, and to identify the implications of our bifucated justice system. Neither can public expectations be ignored. Hamparian et al. have provided some interesting and provocative comments concerning what the public expects with respect to the disposition of juvenile offenders, as well as some warnings about public misapprehensions and omissions in public policy.[108] According to the respondents of their survey, the handling of juvenile offenders in adult criminal courts contributes to public and community safety in a number of ways:

- increased frequency of incarcerating dangerous youth;
- longer incarceration periods for dangerous youth;
- fewer successful escapes from adult institutions; and
- greater accountability for criminal behavior exacted from offenders.

The general public may also feel satisfied that it is protected more effectively from violent juvenile offenders, as a result of a somewhat unusual side effect of transfer decisions. Because of sometimes lengthy delays between the request for judicial waivers, the actual transfer of jurisdiction, and the trials themselves, juveniles can be detained for long periods prior to judgment. Such confinements, occurring as they do, immediately after the criminal events, may contribute to a public sense of justice and well-being, even though sentences of confinement may not be ultimately ordered.

Respondents to the Hamparian et al. interviews also noted a number of other public expectations which can be met by transferring juveniles to the adult courts.[109] The public's disenchantment with juvenile courts appears to be appeased by transfers to adult courts, which are seen as making lasting and meaningful impressions on dangerous juveniles. Respondent perceptions of public interests can be summarized as follows:

- The public wants to believe that "something" is being done. Turning violent juvenile offenders over to adult courts buttresses that belief.

- The public wants retribution. The greater likelihood of prison terms and longer sentences which the public associates with adult courts are seen as promoting the retribution objective.

- The public wants to publicize the inadequacies of the juvenile justice system. Surrendering jurisdiction over violent juvenile offenders is seen as an admission by the juvenile courts that they are helpless to cope with juvenile criminality.

- The public would like to see juvenile courts as "dispensers of justice." This image is enhanced by transfer of dangerous juveniles to adult courts.

If these perceptions are accurate, then the public is either misinformed about the real effects of public policies, or is neglecting to associate the intended benefits with those effects. Sentencing practices in adult courts may not be as consistent as the public thinks. It may be unreasonable for the public to expect uniformly lenient, or uniformly severe, sentences from adult court judges for dangerous juvenile offenders except, perhaps, in single-judge jurisdictions. In one way or another, even in states where mandatory sentencing laws prevail, sentences vary in relatively similar cases.

In addition, it may be argued that juvenile court judges really want the opportunity for more secure placements in the juvenile system, not more opportunities to waive jurisdiction. If this interpretation is correct and if juvenile judges can convince state legislatures of the need for secure juvenile facilities, it will mean substantially greater financial investments for which the general public will have to pay.

CONCLUSION

In large measure, we really do not yet know which of these assumptions or expectations, if any, will prove to be well-founded. Many of them may be grounded in academic theory or legal considerations, but others may simply represent the best thinking of practitioners in the juvenile justice field. The fact remains, however, that we are still unable to distinguish, in any justifiable or definitive way, between reasonable and unreasonable assumptions. This current study is designed to help shed some light on these assumptions and expectations by addressing, in a research setting, some of the issues discussed in the literature reviewed here.

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CHAPTER 2

COMPARATIVE DISPOSITIONS: OVERVIEW OF STATE STATUTES

The purpose of this chapter is to present to the reader a national overview of state and federal statutes pertaining to the handling of dangerous juvenile offenders. All phases of the justice system are addressed, from referral procedures to termination of parole. Consistent with the theme of the study, the major orientation of this chapter focuses on comparing statutes which pertain to under-18 year old offenders in the juvenile system with roughly comparable laws governing the criminal justice system.

The basis for the Overview may be found in Volume 2 of this study, entitled "A Summary of State Statutes." Volume 2 describes in detail, for each state, the District of Columbia, and the federal government, the respective legal frameworks for referring, trying, and "correcting" dangerous juvenile offenders in both the juvenile and criminal systems. Because no two jurisdictions have completely identical statutes throughout the sequence of critical processing events, serious students of the comparative disposition issue are urged to consult the detailed summaries in Volume 2. For readers interested in the more generalized "big picture," this chapter should adequately serve their needs.

Many readers of this report will already be familiar with an earlier study, prepared by the Academy for Contemporary Problems, entitled "Youth in Adult Courts: Between Two Worlds."[1] The YAC study, as it has become known, was part of a project directed by Dr. Joseph L. White; its principal investigator was Ms. Donna M. Hamparian. In a number of respects, Volume 2 and this chapter represent an update (from 1978 to at least 1981 and in some cases to 1984) of the statutory information contained in that earlier report. At the same time, new pieces of information have been added for the first time. The two most prominent expansions consist of a very innovative means of comparing criminal sentencing powers with juvenile court dispositional authorities, and corrections statutes which, to our knowledge, have never been compiled in quite this way before. Volume 2 now renders the YAC study's statutory presentation obsolete, except for its valuable historical basis for measuring the extent of changes that have occurred over a three-to-six year period.

The format for this Overview closely follows the formats of the individual state and federal jurisdictional summaries of Volume 2. The major difference is that what follows here is an aggregation, by topic, of the state-specific (and federal) statutes into an understandable national overview. Again, the Overview is not intended to serve as a substitute for the companion volume. Its richly comprehensive descriptions of parochial laws cannot be captured in a national digest. Rather, it will best serve the needs of those readers who want to be able to quickly review how the 52 jurisdictions compare with each other in any of the following areas of the law:

- Jurisdiction
- Court Organization
- Procedures
- Sentences/Dispositions
- Authority of Corrections Agencies

JURISDICTION

Within the context of the overlapping jurisdictions between juvenile and criminal (adult) courts, there are two universal criteria utilized to determine the proper forum for trying cases against juveniles (under 18 year olds) who are charged with the commission of criminal-type offenses: the age of the offender and the type of offense. In some states, satisfaction of one or both of the statutorily established age and crime requirements is sufficient, in and of itself, to determine that eligible juveniles must be tried as juveniles or adults. For example, if a juvenile is under ten years of age in a state like Vermont that has set ten years as the minimum age for referring any juvenile to criminal court, the nature of the crime is irrelevant: the juvenile must be tried in juvenile court. On the other hand, the Pennsylvania legislature mandates that all charges of murder must be filed in criminal court without regard to the age of the offender. In New York, criminal charges must be filed against juveniles age 13 and older when the offense charged is murder; against juveniles age 14 and older accused of one or more of 15 specified felonies; and against all persons age 16 or older when charged with any crime, misdemeanor or felony.

Table 1 reflects the critical age criteria used in each state, the District of Columbia, and the federal code to determine jurisdiction over delinquents and under-18 year old criminal offenders. Table 2 combines age and offense criteria necessary to invoke criminal jurisdiction.

TABLE 1. NATIONAL OVERVIEW OF AGE CRITERIA FOR DELINQUENCY AND CRIMINAL JURISDICTION IN 1981 (BY STATE, D.C., AND FEDERAL CODES)

State, D.C., Federal	Juvenile Jurisdiction			Criminal Jurisdiction	
	Minimum (Delinquency)	Maximum Original	Maximum	Minimum (Referral)[a]	General
ALABAMA	None	18	21	14	18
ALASKA	None	18	19	None	18
ARIZONA	None	18	18	None	18

TABLE 1. (Continued)

State, D.C., Federal	Juvenile Jurisdiction Minimum (Delinquency)	Maximum Original	Maximum	Criminal Jurisdiction Minimum (Referral)[a]	General
ARKANSAS	None	18	18	14	18
CALIFORNIA	14	18	21 [b]	16	18
COLORADO	10	18	21	14	18
CONNECTICUT	None	16	None	14	16
DELAWARE	None	18	19	None	18
DISTRICT OF COLUMBIA	None	18	21	15	18
FLORIDA	None	18	21	None	18
GEORGIA	None	17	21	13	17
HAWAII	None	18	None	16	18
IDAHO	None	18	21	14	18
ILLINOIS	None	17	21	13	17
INDIANA	None	18	21	14	18
IOWA	None	18	21	14	18
KANSAS	None	18	21	16	18
KENTUCKY	None	18	19	16	18
LOUISIANA	None	17	21	15	17
MAINE	None	18	21	None	18
MARYLAND	None	18	21	14	18
MASSACHUSETTS	7	17	18	14	17
MICHIGAN	None	17	19 [c]	15	17
MINNESOTA	None	18	21	14	18
MISSISSIPPI	10	18	20	13	18
MISSOURI	None	17	21	14	17
MONTANA	None	18	21	16	18
NEBRASKA	None	18	20 [d]	None	18
NEVADA	8	18	21	None	18
NEW HAMPSHIRE	None	18	19	None	18
NEW JERSEY	None	18	21	14	18
NEW MEXICO	None	18	21	15	18
NEW YORK	7	16	21	13	16
NORTH CAROLINA	6	16	18	14	16
NORTH DAKOTA	7	18	20	14	18

TABLE 1. (Continued)

State, D.C., Federal	Juvenile Jurisdiction Minimum (Delinquency)	Maximum Original	Maximum	Criminal Jurisdiction Minimum (Referral)[a]	General
OHIO	None	18	21	15	18
OKLAHOMA	7	18	19	None	18
OREGON	None	18	21	16	18
PENNSYLVANIA	10	18	21	None	18
RHODE ISLAND	None	18	18	16	18
SOUTH CAROLINA	None	17	21	16	17
SOUTH DAKOTA	10	18	21	None	18
TENNESSEE	None	18	19	15	18
TEXAS	10	17	18	15	17
UTAH	None	18	21	14	18
VERMONT	10	18 [e]	18	10	18 [e]
VIRGINIA	None	18	21	15	18
WASHINGTON	None	18	21	16	18
WEST VIRGINIA	None	18	20	None	18
WISCONSIN	12	18	19	16	18
WYOMING	None	19	21	None	19
FEDERAL	None	18	21	16	18

a. Minimum age of criminal jurisdiction is determined by statutes relating to judicial waiver, concurrent jurisdiction, and/or excluded offenses. Where more than one transfer mechanism is permitted in a jurisdiction, each having a different minimum age for criminal jurisdiction, the earliest age for any of them appears above. Some jurisdictions permit juveniles to request judicial waivers at any age; however, these ages are not reflected above.

b. Juvenile court jurisdiction may extend to age 23 if offender was age 16 at time of committing certain crimes and subsequently committed to the Youth Authority.

c. Effective 1982, the maximum age of juvenile court jurisdiction was reduced to age 19.

d. Effective July 1, 1982, the maximum age of juvenile court jurisdiction was reduced to age 19.

e. Although correctly stated, many Vermont officials interpret adult court jurisdiction to generally begin at age 16.

COURT ORGANIZATION

The structures of courts vary widely throughout the United States. Statewide court organizations have evolved in some states, such as New York, over the past decade. Local responsibility for the purely judicial functions of some courts has been strengthened in states like Florida and Washington over the same period. Funding patterns have also helped to create an irregular patchwork where, in states such as Michigan and Texas, even local officials have great difficulty in answering simple questions about whether they work for "state" or "local" court systems.

Such problems, however, are extraneous to the issue of the trial of dangerous juvenile offenders. What is both relevant and interesting are the ways in which juvenile jurisdiction is part of (or separate from) the highest court of general criminal jurisdiction within each jurisdiction. The implication inherent within a review of court structures is that, particularly in rural counties, a single judge may hear cases against certain juvenile offenders twice: once as a juvenile court judge and again as a criminal court judge. The question of whether a judge, who orders a transfer from one court level to another only to hear the case so transferred, can be an "impartial trier of the facts" has been raised many times. Without commenting on either the jurisprudential wisdom or the practical economic pressures that created these practices, The Academy, in Table 2, presents the 1981 structure for each jurisdiction. Readers may then see where at least conjectural overlaps occur. The extent to which a single judge may hear the same cases he or she has transferred, or even where actual problems occur as a result of this practice, are beyond the scope of this study.

TABLE 2. NATIONAL OVERVIEW OF CRIMINAL AND JUVENILE COURT ORGANIZATION IN 1981 (BY STATE, D.C., AND FEDERAL CODES)

State, D.C., Federal	Highest Court of Criminal Jurisdiction	Courts That Generally Hear Juvenile Cases	Comment
ALABAMA	Circuit	(a) Circuit (b) District	Juvenile jurisdiction is concurrent, but is exercised as follows: (a) 11 counties; and (b) 56 counties plus Bessemer Division of Jefferson County.

TABLE 2. (Continued)

State, D.C., Federal	Highest Court of Criminal Jurisdiction	Courts That Generally Hear Juvenile Cases	Comment
ALASKA	Superior	Superior	
ARIZONA	Superior	Superior	
ARKANSAS	Circuit	County/Juvenile	
CALIFORNIA	Superior	Superior	
COLORADO	District	District/Denver Juvenile	
CONNECTICUT	Superior	Superior	
DELAWARE	Superior	Family	
DISTRICT OF COLUMBIA	Superior	Superior	
FLORIDA	Circuit	Circuit	
GEORGIA	Superior	Superior/Juvenile	
HAWAII	Circuit	Circuit/District	
IDAHO	District	District	
ILLINOIS	Circuit	Circuit	
INDIANA	Circuit	Circuit	
IOWA	District	District	
KANSAS	District	District	
KENTUCKY	Circuit	District	
LOUISIANA	District	District/Parish/City	
MAINE	Superior	District	
MARYLAND	Circuit	Circuit/District	
MASSACHUSETTS	Trial	Trial	
MICHIGAN	Circuit	Probate	
MINNESOTA	District	District/Probate	
MISSISSIPPI	Circuit	County/Chancery/Municipal	
MISSOURI	Circuit	Circuit	
MONTANA	District	District	
NEBRASKA	District	County/Juvenile	
NEVADA	District	District	
NEW HAMPSHIRE	Superior	District	
NEW JERSEY	Superior	Superior	
NEW MEXICO	District	District	
NEW YORK	Supreme	Supreme	
NORTH CAROLINA	Superior	District	

TABLE 2. (Continued)

State, D.C., Federal	Highest Court of Criminal Jurisdiction	Courts That Generally Hear Juvenile Cases	Comment
NORTH DAKOTA	District	District	
OHIO	Common Pleas	Common Pleas	
OKLAHOMA	District	District	
OREGON	Circuit	Circuit/County	
PENNSYLVANIA	Common Pleas	Common Pleas	
RHODE ISLAND	Superior	Family	
SOUTH CAROLINA	Circuit	Juvenile	
SOUTH DAKOTA	Circuit	Circuit	
TENNESSEE	Circuit	General Session/District	
TEXAS	District	District/County	
UTAH	District	Juvenile	
VERMONT	Superior	District	
VIRGINIA	Circuit	District	
WASHINGTON	Superior	Superior	
WEST VIRGINIA	Circuit	Circuit	
WISCONSIN	Circuit	Circuit	
WYOMING	District	District	
FEDERAL	District	District	

PROCEDURES

One basic assumption of this study pertains to the manner in which statutory "referral mechanisms" can be classified. Using a variation of a scheme first enunciated by Schornhorst,[2] all such mechanisms were classified into one of four categories:

- judicial waiver;
- concurrent jurisdiction;
- excluded offenses; and
- lower age of jurisdiction.

A comprehensive discussion of each category may be found in the YAC study referenced earlier.[3] Briefly, these terms are defined below:

- Judicial Waiver - Statutes which accord to juvenile court judges the discretion to "waive" their jurisdiction, over certain cases, in favor of criminal courts. In various jurisdictions, this transfer mechanism is also referred to as bindover, certification, referral, remand, and transfer.

- Concurrent Jurisdiction - Known also as "direct file" or "prosecutorial choice" provisions, these statutes essentially delegate to prosecuting attorneys the nonappealable discretion to file charges, under certain circumstances, against juveniles in either juvenile or adult courts.

- Excluded Offenses - Statutes under which legislatures expressly exclude specific offenses from juvenile court jurisdiction and require charges based on such offenses to be filed in the adult system.

- Lower Age of Jurisdiction - Statutes in 11 states in which legislatures have fixed the age of criminal responsibility (and hence exclusive adult court jurisdiction) at either 16 or 17.

Table 3 presents an overview of these four referral mechanisms. As can be seen, a number of jurisdictions utilize two or more of them. Because of the highly specific criteria associated with each mechanism to be described later in this section, the laws are usually quite clear as to the applicability of a particular mechanism to each individual case.

TABLE 3. NATIONAL OVERVIEW OF REFERRAL MECHANISMS IN 1981 (BY STATE, D.C., AND FEDERAL CODES).

	Referral Mechanisms			
State, D.C., Federal	Judicial Waiver	Concurrent Jurisdiction	Excluded Offenses	Lower Age of Jurisdiction
ALABAMA	X			
ALASKA	X			
ARIZONA	X			
ARKANSAS		X		
CALIFORNIA	X			
COLORADO	X	X		
CONNECTICUT	X			X
DELAWARE	X		X	
DISTRICT OF COLUMBIA	X		X	
FLORIDA	X	X		

TABLE 3. (Continued)

State, D.C., Federal	Referral Mechanisms: Judicial Waiver	Concurrent Jurisdiction	Excluded Offenses	Lower Age of Jurisdiction
GEORGIA	X	X		X
HAWAII	X			
IDAHO	X		X	
ILLINOIS	X			X
INDIANA	X		X	
IOWA	X			
KANSAS	X		X	
KENTUCKY	X			
LOUISIANA	X		X	X
MAINE	X			
MARYLAND	X		X	
MASSACHUSETTS	X			X
MICHIGAN	X			X
MINNESOTA	X			
MISSISSIPPI	X		X	
MISSOURI	X			X
MONTANA	X			
NEBRASKA		X		
NEVADA	X		X	
NEW HAMPSHIRE	X			
NEW JERSEY	X			
NEW MEXICO	X			
NEW YORK			X	X
NORTH CAROLINA	X			X
NORTH DAKOTA	X			
OHIO	X			
OKLAHOMA	X		X	
OREGON	X			
PENNSYLVANIA	X		X	
RHODE ISLAND	X		X	
SOUTH CAROLINA	X			X
SOUTH DAKOTA	X			

TABLE 3. (Continued)

State, D.C., Federal	Referral Mechanisms: Judicial Waiver	Concurrent Jurisdiction	Excluded Offenses	Lower Age of Jurisdiction
TENNESSEE	X			
TEXAS	X			X
UTAH	X	X		
VERMONT	X	X	X	a
VIRGINIA	X			
WASHINGTON	X			
WEST VIRGINIA	X			
WISCONSIN	X			
WYOMING	X	X		
FEDERAL	X			
TOTALS	49	8	14	11

a. The general practice in Vermont is to refer virtually all criminal charges against 16 to 18 year olds to criminal court. As a consequence, Vermont is sometimes classified as a lower age of jurisdiction state.

Judicial Waiver

By far, the most frequently found statutory mechanism for referring under-18 year old offenders to criminal courts is the judicial waiver. It vests discretion in juvenile court judges to decide, on a case-by-case basis, whether such juveniles remain under juvenile jurisdiction or whether they should be transferred to criminal courts to be tried as adults.

The statutory criteria for transfer, i.e., the factors or conditions that juvenile courts must find (or, in some states, at least consider) have been the subject of considerable debate. The catalyst was the now-famous 1966 case of Kent vs. U.S.[4] It was, at that time, one of the few juvenile court cases in this century to be certified by the U.S. Supreme Court for judicial review. In reversing that judicial waiver, the Supreme Court recognized the importance of a hearing prior to transfer and enunciated eight factors that should have been considered by the juvenile court prior to ordering Morris Kent to criminal court. These factors, mainly related to the seriousness and circumstances of the offense charged, the juvenile's

propensity for criminal behavior, and the prospects for public protection, have generally framed the issues and the language used by legislatures as they struggle to differentiate between children and adults on some basis other than age. Tables 4 and 5 list the criteria which must be met or considered before judicial waivers can be ordered.

TABLE 4. NATIONAL OVERVIEW OF AGE AND OFFENSE CRITERIA FOR APPLYING JUDICIAL WAIVER PROVISIONS IN 1981 (BY STATE, D.C., AND FEDERAL CODES.

State, D.C., Federal	Minimum Age Criteria	Offense Criteria
ALABAMA	14	All felonies. Other offenses while under commitment to youth-serving agencies.
ALASKA	Under 20	All crimes.
ARIZONA	None	All crimes.
CALIFORNIA	16	All offenses.[a]
COLORADO	14	All felonies.
CONNECTICUT	14	Class A felonies.[b]
DELAWARE	14	All offenses.[a]
DISTRICT OF COLUMBIA	15	All felonies.
FLORIDA	14	All offenses.[a]
GEORGIA	13 (15)	Capital (all crimes).[a]
HAWAII	16	All felonies.[a]
IDAHO	14	All crimes.
ILLINOIS	13	All crimes.
INDIANA	14	All offenses.[a]
IOWA	14	All public offenses.
KANSAS	16	All crimes.
KENTUCKY	16	Class A or Capital felonies.
LOUISIANA	15	Armed Robbery/Aggravated Burglary/ Aggravated Kidnapping
MAINE	Under 18	Class A, B, or C crimes.
MARYLAND	15	All crimes.
MASSACHUSETTS	14	All crimes.
MICHIGAN	15	All felonies.
MINNESOTA	14	All offenses.[c]
MISSISSIPPI	13	All offenses.

TABLE 4. (Continued)

State, D.C., Federal	Minimum Age Criteria	Offense Criteria
MISSOURI	14	All offenses.
MONTANA	16	Ten serious felonies.
NEVADA	16	All felonies.
NEW HAMPSHIRE	Under 18	All felonies.
NEW JERSEY	14	Three serious felonies, or aggressive, willful, or violent offenses.
NEW MEXICO	15	Eight serious felonies.
NORTH CAROLINA	14	All felonies.[e]
NORTH DAKOTA	14	All offenses.
OHIO	15	All felonies.
OKLAHOMA	None	All felonies.
OREGON	16	All offenses.
PENNSYLVANIA	14	All felonies requiring at least three years confinement.
RHODE ISLAND	16	All indictable offenses.
SOUTH CAROLINA	14 (16)	Two priors for any of nine serious offenses (all crimes).[d]
SOUTH DAKOTA	None	All offenses.
TENNESSEE	Over 14 (16)	Four serious felonies (all crimes)
TEXAS	15	All felonies.
UTAH	14	All felonies.
VERMONT	10	Eleven serious felonies.[e]
VIRGINIA	15	"Penitentiary" offenses.[a]
WASHINGTON	16 (17)	Class A felonies (six other offenses).
WEST VIRGINIA	None	Specified felonies.[f]
WISCONSIN	16	All crimes.
WYOMING	None	All offenses.
FEDERAL	16	Felonies punishable by at least ten years imprisonment.

a. Presumptive or mandatory transfers are provided by statute for certain offenses or circumstances. For details, consult the pertinent statutory summary in Volume 2 of this study.

TABLE 4. (Continued)

b. Class B felonies may also be waived if prior record of Class A or B felony cases against juvenile.

c. Prima facie case for reference can be established based on severity of current offense and prior record.

d. Offenders under 17 (apparently no minimum age) may be waived if charged with murder or criminal sexual assault.

e. Consult Vermont statutory summary, Volume 2, for discussion of applicability of judicial waiver to 14 to 16 year old offenders.

f. Because of the complexity of its six judicial waiver provisions, consult West Virginia statutory summary, Volume 2.

Because the language of the statutes is so diverse, a national overview table must be based on general categorizations. Table 5 is one such example: the categories used were developed by relying on the informed judgment of The Academy's staff.

The following categories form the Table 5 columns and are comprised by amalgamating parochial terminology as described below. For more specific information, readers are advised to refer to the relevant statutory summaries in Volume 2:

Terms	Also Includes These Terms
• Probable Cause	Prima facie case; prosecutive merit; court believes the child or juvenile committed the alleged act; case is sufficient to result in an indictable offense.
• Nonamenability	Amenability or nonamenability to treatment or rehabilitation in juvenile or juvenile court facilities, programs or services, or with juvenile justice personnel or resources; or that such resources are not available, adequate or accessible to juvenile courts or within the juvenile system.
• Public Safety	Necessary for public safety or protection of the community, or because the case requires confinement beyond the period of juvenile's minority.

Terms	Also Includes These Terms
• Nature of Crime	Circumstances or type of crime involved in the current charge; whether weapon or dangerous instrument was used; whether offense was against persons or property (with greater weight given to judicial waiver in cases involving offenses against persons); whether offenses charged were serious, aggressive, dangerous, violent, willful, or premeditated.
• Prior Record	Past record; record of delinquency, prior adjudication for prior acts of specific offenses or classes of offenses.
• Past Efforts	Success or failure of previous attempts to treat or rehabilitate child or juvenile; or juvenile's responses to such previous efforts.
• Codefendants are Adults	The desirability of disposing of several cases arising from the same event in a single court.
• Physical or Mental Condition	Physical, mental, or psychological examination required; not mentally retarded, defective, deficient or criminally insane; not committable to facilities for such persons.
• Best Interests	Interests of the community or the public; best interests of the child or juvenile; interests of justice, public interests will be best served by placing the child or juvenile under constraint as an adult or beyond period of minority.
• Criminal Sophistication	Pattern of living or behavior; lifestyle, maturity, or demeanor.
• Environmental Factors	Home environment; family situation; school record; social history; background.
○ Criminal Resources	Criminal or adult court or justice system or facilities more appropriate or more likely to rehabilitate or correct.

Terms	Also Includes These Terms
• Age	Age at time of offense or the factor of age beyond statutory minimum age criterion for judicial waiver.

TABLE 5. NATIONAL OVERVIEW OF STATUTORY CRITERIA FOR APPLYING JUDICIAL WAIVER PROVISIONS IN 1981 (BY STATE, D.C., AND FEDERAL CODES).

Criteria for Use of Judicial Waivers

State, D.C., Federal	Probable Cause	Nonamenability	Public Safety	Nature of Crime	Prior Record	Past Efforts	Codefendants are Adults	Physical or Mental Condition	Best Interests	Criminal Sophistication	Environmental Factors	Criminal Resources	Age
ALABAMA				X	X	X	X	X	X				
ALASKA [a]	X	X											
ARIZONA		X	X				X						
CALIFORNIA		X		X	X	X			X				
COLORADO	X	X	X	X	X			X	X				
CONNECTICUT	X	X									X		
DELAWARE		X	X	X	X	X						X	
DISTRICT OF COLUMBIA		X		X	X	X	X	X			X		X
FLORIDA	X		X	X	X			X	X			X	
GEORGIA	X	X					X						
HAWAII		X	X	X	X	X	X		X			X	
IDAHO		X		X	X				X				
ILLINOIS	X	X	X	X	X								X
INDIANA	X	X	X	X	X								
IOWA	X	X		X	X	X		X			X		
KANSAS		X		X	X			X	X				
KENTUCKY	X		X	X	X			X	X				
LOUISIANA	X	X			X				X				X
MAINE	X	X	X	X	X			X	X		X		

TABLE 5. (Continued)

Criteria for Use of Judicial Waivers

State, D.C., Federal	Probable Cause	Nonamenability	Public Safety	Nature of Crime	Prior Record	Past Efforts	Codefendants are Adults	Physical or Mental Condition	Best Interests	Criminal Sophistication	Environmental Factors	Criminal Resources	Age
MARYLAND	X	X	X	X	X		X						
MASSACHUSETTS		X	X	X	X	X				X			
MICHIGAN	X	X		X	X			X	X				
MINNESOTA	X	X		X	X			X	X				
MISSISSIPPI	X	X	X	X	X				X		X		
MISSOURI		X		X	X				X				
MONTANA	X		X	X									
NEVADA [a]													
NEW HAMPSHIRE	X	X	X	X	X								
NEW JERSEY	X	X	X						X				
NEW MEXICO	X	X					X	X					
NORTH CAROLINA	X							X					
NORTH DAKOTA	X	X		X			X	X					
OHIO	X	X	X		X	X	X			X			X
OKLAHOMA	X	X	X	X	X	X	X		X	X			
OREGON		X						X					
PENNSYLVANIA	X	X		X	X	X	X	X	X				X
RHODE ISLAND [a]					X								
SOUTH CAROLINA [b]													
SOUTH DAKOTA	X	X		X	X			X				X	
TENNESSEE	X			X	X	X	X	X					
TEXAS	X	X	X	X	X				X				
UTAH	X	X	X	X	X			X	X	X		X	
VERMONT	X	X	X	X	X	X	X	X	X				
VIRGINIA		X		X	X	X	X						

TABLE 5. (Continued)

Criteria for Use of Judicial Waivers

State, D.C., Federal	Probable Cause	Nonamenability	Public Safety	Nature of Crime	Prior Record	Past Efforts	Codefendants are Adults	Physical or Mental Condition	Best Interests	Criminal Sophistication	Environmental Factors	Criminal Resources	Age
WASHINGTON[a]								X					
WEST VIRGINIA	X			X			X	X	X	X			
WISCONSIN	X	X		X	X		X		X			X	
WYOMING	X						X						
FEDERAL		X		X	X	X	X	X	X	X			X

a. Case law has determined that *Kent* factors must be applied in deciding on the use of judicial waivers.

b. Code is silent as to factors to be considered.

Interest has been expressed by youth advocates and public officials in several unrelated but significant provisions related to the application of judicial waiver statutes. In response, The Academy has prepared Table 6 to reflect the states where these provisions can be found. As in all of these national tables, readers are advised to consult Volume 2 for details, including statutory citations.

TABLE 6. NATIONAL OVERVIEW OF MISCELLANEOUS PROVISIONS RELATED TO JUDICIAL WAIVER PROVISIONS IN 1981 (BY STATE, D.C., AND FEDERAL CODES)

State, D.C., Federal	Juvenile May Request Transfer	Reverse Waiver Possible	Once-Waived Always-Waived
ARKANSAS	X[a]		
COLORADO		X[b]	
DELAWARE		X	
DISTRICT OF COLUMBIA		X[b]	X
FLORIDA	X	c	X
GEORGIA		X	
IDAHO	X	c	
ILLINOIS	X		
IOWA	X		
KANSAS			X
KENTUCKY		X	
LOUISIANA	X		
MAINE			X
MARYLAND		X	X
MINNESOTA	X		
MISSISSIPPI		X	X
MISSOURI	X		
NEBRASKA		X	
NEVADA		X[d]	
NEW HAMPSHIRE			X
NEW JERSEY	X		
NEW YORK		X	
NORTH CAROLINA	X		
NORTH DAKOTA	X		
OHIO	X		
OKLAHOMA		X	X
OREGON	X		X
PENNSYLVANIA	X	X	
RHODE ISLAND			X
TENNESSEE		X[e]	

TABLE 6. (Continued)

State, D.C., Federal	Juvenile May Request Transfer	Reverse Waiver Possible	Once-Waived Always-Waived
UTAH			X
VERMONT		X	
VIRGINIA	X	X	
WEST VIRGINIA		X[c]	
WISCONSIN	X		
WYOMING		X	
FEDERAL	X		

a. Concurrent jurisdiction state.
b. May be transferred for purpose of disposition only.
c. Florida, Idaho, and West Virginia allow criminal courts to sentence youth, under certain circumstances, according to the juvenile court dispositions statute.
d. Adults between the ages of 18 and 21 may be transferred to juvenile court under certain circumstances.
e. May reject transfers from criminal court.

Concurrent Jurisdiction

Table 7 lists the age and offense factors which must be considered by prosecutors in concurrent jurisdiction states before they can directly file cases against minors in criminal courts. It must also be noted that, while there are eight states which have enacted concurrent jurisdiction provisions applicable to serious criminal offenses, Nebraska is the only state which has no <u>other</u> transfer mechanism. However, Arkansas, technically a state with both a judicial waiver and a concurrent jurisdiction statute for juveniles (charged with felonies), operates in a manner similar to Nebraska, permitting prosecutors to determine the proper forum.

TABLE 7. NATIONAL OVERVIEW OF AGE AND OFFENSE CRITERIA FOR APPLYING CONCURRENT JURISDICTION PROVISIONS IN 1981 (BY STATE, D.C., AND FEDERAL CODES).

State, D.C., Federal	Minimum Age Criteria	Offense Criteria
ARKANSAS	15[a]	All felonies.
COLORADO	14 (16)	Class 1 (All) felonies.
FLORIDA	None (16)	Death or Life (Public interests)
GEORGIA	12	Death or Life cases.
NEBRASKA	None	All offenses.
UTAH	16	Eight serious felonies.
VERMONT	16	All offenses.
WYOMING	None	All offenses.

a. Because of the complexity of this provision, consult Arkansas statutory summary in Volume 2 of this Report.

Seven of the eight states listed in Table 7 provide neither statutory guidance nor retraints in the exercise of prosecutorial discretion (beyond age and offense criteria): prosecutors simply file criminal or delinquency charges in pertinent cases as they determine to be in the public interest. In contrast, the Nebraska legislature has designated nine criteria to be used by county attorneys in determining the proper judicial forum for each case:

- the type of treatment such minor would most likely be amenable to;
- whether there is evidence that the alleged offense included violence or was committed in an aggressive and premeditated manner;
- the motivation for the commission of the offense;
- the age of the minor and the ages and circumstances of any other involved in the offense;
- the previous history of the minor, including whether he had been convicted of any previous offenses or adjudicated in juvenile court and, if so, whether such offenses were crimes against the person or relating to property, and previous history of anti-social behavior, if any, including patterns of physical violence;

- the sophistication and maturity of the child as determined by consideration of his home, school activities, emotional attitude and desire to be treated as an adult, pattern of living, and whether he has had previous contact with law enforcement agencies and courts and the nature thereof;
- whether there are facilities particularly available to the juvenile court for the treatment and rehabilitation of the minor;
- whether the best interest of the minor and the security of the public may require that the minor continue in custody or under supervision for a period extending beyond his majority and, if so, the available alternatives best suited to this purpose; and
- such other matters as he deems relevant to his decision.

Excluded Offenses

An increasingly popular means for ensuring criminal court jurisdiction over juvenile offenders, especially in cases involving serious crimes, has been the enactment of excluded offense provisions. The effect of such amendments is to exercise legislative judgment to the exclusion of either judicial or prosecutorial discretion. Thirteen states used this mechanism in 1981. Some states, e.g., Delaware and Pennsylvania, have had excluded offense provisions for a number of decades. Other states, such as Vermont, amended its statutes as late as 1981. Table 8 indicates the statutory criteria for imposing excluded offense provisions.

TABLE 8. NATIONAL OVERVIEW OF AGE AND OFFENSE CRITERIA FOR APPLYING EXCLUDED OFFENSE PROVISIONS IN 1981 (BY STATE, D.C., AND FEDERAL CODES).

TABLE 8. (Continued)

State, D.C., Federal	Minimum Age Criteria	Offense Criteria
DELAWARE	None	Murder 1, Rape, Kidnapping
DISTRICT OF COLUMBIA	16	Murder, Forcible Rape, Burglary 1, Armed Robbery, Assault with Intent to Commit any of these offenses.
IDAHO	14	Murder 1 and 2, Attempted Murder, Robbery, Forcible Rape, Mayhem, or Assault or Battery with Intent to commit any of these offenses.
INDIANA	16	Murder, Kidnapping, Rape, Robbery committed while armed with deadly weapon or if injury occurs.
KANSAS	16	While confined, commits (or attempts) certain crimes against state property or personnel, or escapes.
LOUISIANA	15 (16)	Murder 1 or 2, Manslaughter, Aggravated Rape (Armed Robbery, Aggravated Burglary, Kidnapping).
MARYLAND	14 (16)	Murder, Rape, Sexual Offense 1 (Robbery or Attempted Robbery with Dangerous or Deadly Weapon).
MISSISSIPPI	13	Capital Offenses or Offenses Punishable by Life Imprisonment.
NEVADA	None	Murder or Attempted Murder.
NEW YORK	13 (14)	Murder (Murder 1 or 2 or Attempted, Kidnapping 1 or Attempted, Manslaughter 1, Arson 1 or 2, Assault 1, Sodomy 1, Robbery 1 or 2, Burglary 1 or 2, Aggravated Sexual Abuse.
OKLAHOMA	16	Murder, Kidnapping for Extortion, Robbery with Dangerous Weapon, Rape 1 or 2, Use of Weapon in Felony, Arson 1, Burglary with Explosives, Shooting with Intent to Kill, Manslaughter 1, Nonconsensual Sodomy.
PENNSYLVANIA	None	Murder
RHODE ISLAND	16	Two Prior Delinquency Adjudications for Indictable Offenses.
VERMONT	14	Eleven specified felonies

SENTENCES/DISPOSITIONS

This study focuses on six crimes, collectively identified as "dangerous offenses." The term "dangerous offenses" encompasses murder, nonnegligent manslaughter, rape, aggravated assault, robbery, and burglary, and was adopted for reasons that require explanation.

Over the past decade, researchers and writers have become more precise in the use of terminology. For example, "violent offenses" has become the term of choice when discussions relate only to nonnegligent homicide, rape, aggravated assault, and robbery; "serious offenses" is a phrase now generally understood to be coterminous with UCR Part I offenses (includes burglary, larceny-theft, motor vehicle theft, and arson).[5] Because this study includes an examination of burglary, along with the four violent offenses, its scope is broader than "violent" but narrower than "serious;" hence, the use of "dangerous offenses." —

In searching state and federal codes, it immediately became clear that no uniform classification scheme would emerge. Instead, it would be necessary to create a taxonomy consistent with the research design, and then apply it to state and federal laws. Examples might be useful. In states where "premeditated homicide or "gross sexual imposition" were used in the statutes, in place of more traditional terms, i.e., murder or rape, respectively, they were reclassified to conform to other states' terminology. Only felony classifications are listed; in some cases that meant four or five levels of robbery or burglary that comprise each category of crime in a particular jurisdiction. All classes of these six crimes which fell into misdemeanor levels were excluded.

In no state was there only one class of crime for each of the six dangerous offenses under investigation. The number of crimes which had to be considered ranged from eight to Montana to a high of 31 in Tennessee.

Another curiosity in state and federal laws has to do with the relative seriousness of these six dangerous offenses. Four states impose (at maximum-sentence levels possible) the same penalties for rape as they do for murder. In Hawaii, Murder, Rape 1, and Robbery 1 are all Class A felonies punishable up to 20 year maximum terms. Table 9 reflects the numbers of felony classes comprising each of the six dangerous offenses.

TABLE 9. NATIONAL OVERVIEW OF NUMBER OF FELONY CLASSES COMPRISING DANGEROUS OFFENSES IN 1981 (BY STATE, D.C., AND FEDERAL CODES).

State, D.C., Federal	Total	Dangerous Offenses					
		Murder	Nonnegligent Manslaughter	Rape	Aggravated Assault	Robbery	Burglary
ALABAMA	15	2	1	5	2	3	2
ALASKA	12	2	1	3	2	2	2
ARIZONA	15	2	1	2	3	3	4
ARKANSAS	17	3	1	3	6	2	2
CALIFORNIA	17	2	1	3	9	1	1
COLORADO	18	2	1	5	2	4	4
CONNECTICUT	25	3	4	5	6	2	5
DELAWARE	13	2	1	3	2	2	3
DISTRICT OF COLUMBIA	14	3	1	1	6	1	2
FLORIDA	16	3	3	3	1	3	3
GEORGIA	9	1	1	1	2	3	1
HAWAII	11	1	1	3	2	2	2
IDAHO	15	2	1	1	7	1	3
ILLINOIS	10	1	1	1	3	2	2
INDIANA	14	1	1	4	2	3	3
IOWA	16	2	1	3	6	2	2
KANSAS	13	2	1	1	5	2	2
KENTUCKY	15	2	2	4	2	2	3
LOUISIANA	14	2	1	4	2	3	2
MAINE	12	2	2	2	1	2	3
MARYLAND	21	2	1	5	3	2	8
MASSACHUSETTS	28	2	1	3	16	4	2
MICHIGAN	25	2	3	3	10	4	3
MINNESOTA	16	3	1	4	3	2	3
MISSISSIPPI	24	2	8	2	2	3	7
MISSOURI	17	3	1	6	3	2	2
MONTANA	8	1	1	2	1	1	2
NEBRASKA	9	2	1	2	2	1	1
NEVADA	11	2	1	2	4	1	1
NEW HAMPSHIRE	12	3	1	2	2	2	2
NEW JERSEY	16	1	2	4	5	2	2
NEW MEXICO	15	2	1	3	3	3	3

TABLE 9. (Continued)

State, D.C., Federal	Total	Dangerous Offenses: Murder	Nonnegligent Manslaughter	Rape	Aggravated Assault	Robbery	Burglary
NEW YORK	18	2	2	5	3	3	3
NORTH CAROLINA	23	2	1	4	7	3	6
NORTH DAKOTA	12	1	1	3	2	3	2
OHIO	15	2	1	5	2	2	3
OKLAHOMA	14	2	1	2	3	3	3
OREGON	18	3	2	6	3	2	2
PENNSYLVANIA	14	3	1	2	2	4	2
RHODE ISLAND	20	2	1	2	10	2	3
SOUTH CAROLINA	21	4	2	3	4	5	3
SOUTH DAKOTA	12	3	1	2	1	2	3
TENNESSEE	31	2	1	2	11	4	11
TEXAS	12	2	1	2	3	2	2
UTAH	15	2	1	2	5	2	3
VERMONT	17	5	1	2	5	2	2
VIRGINIA	12	3	1	1	2	1	4
WASHINGTON	13	2	1	3	3	2	2
WEST VIRGINIA	17	2	1	2	4	4	4
WISCONSIN	19	2	1	3	8	2	3
WYOMING	18	2	1	7	4	2	2
FEDERAL	27	3	1	1	10	9	3

In addition to normal penalties imposed by statute, extra sentences of confinement or death can be ordered if the court (or jury) finds certain factors to have been present. Table 10 lists these "enhancement" features and their effects upon sentencing.

TABLE 10. NATIONAL OVERVIEW OF ENHANCEMENT STATUTES AFFECTING CRIMINAL SENTENCING IN 1981 (BY STATE, D.C., AND FEDERAL CODES).

State, D.C., Federal	Enhancement Features, Where Applicable: With Aggravation [a]	With Weapons	Against Certain Victims[b]	Habitual Offenders	Other
ALABAMA		Not less than 20 years (Class A or B); 10 years (Class C or D)	Death or Life without parole	Increased 1 or 2 classes	
ALASKA				2 to 10 years	
ARIZONA	Increased by 1 to 3 classes, depending on offense	Increased by 1 to 3 classes, depending on offense		Sentence range multiplied, depending on offense	
ARKANSAS	Usually increased to Class Y offense	Confinement increased, depending on offense		Mandatory determinate sentences	
CALIFORNIA			Increased sentences for assaults against officials	Increased sentences, depending on offense	Crimes against common carriers carry 2 years to death
COLORADO		Increased by 1 class, depending on offense	Increased by 1 class, depending on offense	Not less than 25 years nor more than life	For Robbery or Burglary for controlled substances, or Rape by 2 or more assaulters, increased penalties by 1 class

TABLE 10. (Continued)

State, D.C., Federal	Enhancement Features, Where Applicable: With Aggravation[a]	With Weapons	Against Certain Victims[b]	Habitual Offenders	Other
CONNECTICUT	Increased depending on class of offense	Increased by 1 class, depending on offense		Additional penalties, depending on offense	
DELAWARE				Increased sentences, depending on offense	
DISTRICT OF COLUMBIA		5 years to life for crimes of violence	Assaults against police/ fire officers carry not more than 5 years	Increased sentences, depending on prior offenses	
FLORIDA		Burglary or Robbery increased 1 class		Increased 1 class	
GEORGIA		Armed Robbery carries 5 years to death	Assault on peace officers carries 10 year minimum sentence		
HAWAII				Increased sentence	
IDAHO			Assault on corrections or law enforcement officers carries not more than 5 to 25 years, respectively		Burglary with explosives carries not more than 25 years
ILLINOIS	Increased sentence, depending on offense	Armed Robbery, and use of Category 1 weapons are Class X felony	Heinous Battery in Class X felony	Increased to Class X felony	Home Invasion is Class X felony

TABLE 10. (Continued)

State, D.C., Federal	Enhancement Features, Where Applicable: With Aggravation[a]	With Weapons	Against Certain Victims[b]	Habitual Offenders	Other
INDIANA	Increased minimum period of confinement	Increased 1 class	For serious injuries, Aggravated Assault and Burglary increased 1 class	5 to 30 years	
IOWA		Forcible felonies carry 5 years	For serious injury, Aggravated Assault increased 1 class	3 to 6 years	
KANSAS		Aggravated Robbery and Burglary increase 1 class	Aggravated Assault on law enforcement officers increased 1 or 2 classes, depending on offense	Minimum sentence is multiplied 2 or 3 times, depending on number of prior offenses	
KENTUCKY			For serious injury, Rape 1 increased 1 class	10 years to life, depending on offense	
LOUISIANA	Aggravated Rape carries life at hard labor; Aggravated Battery carries up to 10 years; Aggravated Burglary Carries 1 to 30 years	Armed Robbery carries 5 to 99 years		Increased by one-third of longest possible sentence to life, depending on number of prior offenses	
MAINE	Robbery with force increased 1 class	Increased 1 or 2 classes, depending on offense	For bodily injury, Burglary increased 1 class		

TABLE 10. (Continued)

State, D.C., Federal	Enhancement Features, Where Applicable: With Aggravation[a]	With Weapons	Against Certain Victims[b]	Habitual Offenders	Other
MARYLAND		Maximum sentence for Robbery doubled		25 years to mandatory life sentence, depending on prior offenses	Burglary with explosives carries not more than 40 years
MASSACHUSETTS		Assault carries 2½ to 20 years, depending on offense. Armed Robbery carries up to life	Assault on persons 65 and older carries 2½ to 10 years, depending on offense	Mandatory maximum sentence	
MICHIGAN		Carries any term of years or life for specified offenses		Mandatory confinement of at least 5 years	Death due to explosives carries any term of years or life
MINNESOTA	Sentence for Aggravated Robbery doubled	Sentence for Burglary of dwelling with a dangerous weapon doubled		Second or subsequent conviction carries a minimum of 3 years	Sentence for Burglary with explosives or tools or of banking institution doubled

TABLE 10. (Continued)

State, D.C., Federal	Enhancement Features, Where Applicable: With Aggravation[a]	With Weapons	Against Certain Victims[b]	Habitual Offenders	Other
MISSISSIPPI		Robbery with deadly weapon carries 3 years to life. Burglary of inhabited dwelling with a weapon carries not more than 25 years	Aggravated assault of law enforcement officer carries not more than 30 years and/or $5,000	Third felony conviction requires maximum possible sentence for current felony	
MISSOURI		Rape or sexual assault in which deadly weapon or dangerous instrument displayed increased 1 class. Assault 1 with deadly weapon or dangerous instrument increased 1 class	Rape or sexual assault in which physical injury occurs increased 1 class	Prior, persistent, or dangerous offender may receive approximately twice the normal sentence for Class B, C, and D felonies	
MONTANA	Aggravated Burglary carries up to 40 years	Incarceration must be ordered where weapon was used in commission of certain crimes		Persistent felony offender may receive additional penalties of 5 to 100 years and/or up to $50,000 fines	
NEBRASKA				Third-time habitual offender must receive 10 to 60 years in confinement	

TABLE 10. (Continued)

State, D.C., Federal	Enhancement Features, Where Applicable: With Aggravation[a]	With Weapons	Against Certain Victims[b]	Habitual Offenders	Other
NEVADA		Battery with weapon carries 2 to 10 years and/or $10,000. Assault with weapon carries 1 to 6 years and/or $5,000	Sexual Assault with Bodily Harm carries life with either no parole or parole in 10 years. Battery on Officer carries 1 to 6 years and/or $5,000	Habitual offender may receive 10 years to life, depending on prior offenses	
NEW HAMPSHIRE	Aggravated Felonious Sexual Assault increased 1 class. Extended terms may be ordered for extreme cruelty	Burglary or Robbery, if armed with deadly weapon, increased 1 class	Robbery resulting in death or serious injury increased 1 class	Extended terms may be ordered after two prior imprisonments or for career criminals	Extended terms may be ordered for dangerous offenders due to gravely abnormal mental conditions
NEW JERSEY	Aggravated Manslaughter, Aggravated Sexual Assault, and Aggravated Criminal Sexual Contact increased 1 degree	Aggravated Assault, Burglary or Robbery with weapon increased 1 degree. Use or possession of firearm in crime carries mandatory one-third to one-half sentence in confinement, or 18 months to 3 years, whichever is greater, depending on degree	Assault on law officer causing bodily injury increased 1 degree	Persistent offenders, professional criminals, and offenders who are convicted twice of crimes with firearm must receive extended terms depending on degree of current offense	

TABLE 10. (Continued)

State, D.C., Federal	Enhancement Features, Where Applicable: With Aggravation[a]	With Weapons	Against Certain Victims[b]	Habitual Offenders	Other
NEW MEXICO	Aggravated Burglary, Aggravated Battery, and Assault with Intent to commit violent felony increased 1 class. May increase any basic sentence by one-third	Burglary and Robbery with deadly weapon increased 1 class. Robbery with deadly weapon increased 2 classes for second conviction	Sentence increased when victim, 60 years or older, is intentionally injured, depending on offense	1 to 4 years	
NEW YORK	Aggravated Sexual Abuse increased 2 classes	Class B armed felonies carry minimum sentence of one-third to one-half maximum sentence	Aggravated Assault on police officer increased 1 class		
NORTH CAROLINA	Malicious castration is Class D felony	Assault with deadly weapon is Class F or G felony, depending on victim and injury. Robbery with firearm increased 1 class	Assault with deadly weapon on handicapped person or law enforcement officer is Class F to I felony, depending on offense	Habitual felon must be sentenced as Class C felony to at least 14 years, 7 years of which must be in prison	Burglary with explosives is Class E felony. Train robbery is increased 2 classes
NORTH DAKOTA		Robbery using a dangerous weapon increased 2 classes. Robbery with or pretending to have a dangerous weapon increased 1 class. Burglary armed with a weapon increased 1 class	Burglary, Robbery, and Gross Sexual Imposition resulting in bodily injury increased 1 class		Dangerous special offender must serve 10 years to life, depending on offense

TABLE 10. (Continued)

State, D.C., Federal	Enhancement Features, Where Applicable: With Aggravation [a]	With Weapons	Against Certain Victims [b]	Habitual Offenders	Other
NORTH DAKOTA (Continued)		Armed offender must serve 2 to 4 years, depending on offense			
OHIO	Aggravated Burglary and Aggravated Robbery increased 1 class. Felonious Assault increased 2 classes			Court may order increased minimum sentence for repeat offender	
OKLAHOMA		Assault, Battery with Dangerous Weapon carries up to 10 years. Robbery with dangerous weapon carries 5 years to life		Second felony conviction doubles sentence. Third felony conviction carries not less than 20 years	Burglary with explosives carries not less than 20 nor more than 50 years
OREGON		Assault with a weapon increased 1 class. Burglary and Robbery with weapon increased 2 classes			Dangerous offender convicted of Class A felony may receive up to 30 years

TABLE 10. (Continued)

State, D.C., Federal	Enhancement Features, Where Applicable: With Aggravation [a]	With Weapons	Against Certain Victims [b]	Habitual Offenders	Other
PENNSYLVANIA			Robbery resulting in serious injury or threat of serious injury increased 2 classes. Robbery with threat of injury increased 1 class		
RHODE ISLAND		Felony Assault carries up to 10 years. Assault with weapon in dwelling and Robbery carries 10 years to life	Assault of school teacher, law or correctional officer carries up to 3 years and/or $1,500. Assault of person age 60 or over carries up to 5 years and/or $1,000	Third time felony conviction carries up to 25 additional years	Breaking and Entering with Incendiary Instruments carries up to 10 years
SOUTH CAROLINA		Assault with Concealed Weapon carries additional 3 to 12 months and/or $200. Resisting Arrest with Deadly Weapon carries 2 to 10 years. Armed Robbery carries 10 to 25 years, at least 7 years in confinement		Third conviction for certain felonies carries life	

TABLE 10. (Continued)

State, D.C., Federal	With Aggravation[a]	With Weapons	Against Certain Victims[b]	Habitual Offenders	Other
	Enhancement Features, Where Applicable				
SOUTH DAKOTA				Two or more felony convictions increased 1 class. Four or more felony convictions carries Class 1 sentence (life and/or $25,000)	
TENNESSEE	Aggravated Rape carries life or not less than 20 years	Assault with deadly weapon while in disguise carries 10 to 21 years. Robbery with deadly weapon carries 10 years to death, depending on offense. Burglary of any class (3) with firearm carries twice minimum sentence for Burglary 1.		Third felony conviction carries life sentence	
UTAH	Aggravated Robbery and Aggravated Sexual Assault increased 1 class. Aggravated Burglary increased 2 classes. Aggravated Assault by a prisoner serving Felony 1 sentence carries death or life	One year must be added and up to 5 years may be added, depending on offense		Carries additional 5 years to life	

TABLE 10. (Continued)

State, D.C., Federal	With Aggravation[a]	With Weapons	Against Certain Victims[b]	Habitual Offenders	Other
	Enhancement Features, Where Applicable				
VERMONT	Aggravated Sexual Assault carries not more than 25 years and/or $15,000	Armed Robbery carries 1 to 20 years, depending on circumstances	Aggravated Assault of law enforcement officer 30 days to 10 years, depending on circumstances and prior offenses	Fourth felony conviction carries life sentence	Aggravated Assault by nonconsensual administration of drugs carries not more than 5 years and/or $5,000
VIRGINIA		Armed Burglary increased 1 class			Injury by acid or explosive is Class 6 felony
WASHINGTON				Second felony conviction carries 10 years to life, depending on prior offenses	
WEST VIRGINIA		Robbery or Attempted Robbery by violence or with deadly weapon carries 10 to 25 years, depending on offense		Second or third felony conviction carries 5 years to life, depending on prior offenses	Attempt to Kill or Injure by Poison carries 3 to 18 years

TABLE 10. (Continued)

State, D.C., Federal	Enhancement Features, Where Applicable: With Aggravation[a]	With Weapons	Against Certain Victims[b]	Habitual Offenders	Other
WISCONSIN	Burglary with Battery increased 1 class	Armed Burglary or Armed Robbery increased 1 class. Use of dangerous weapon may carry 3 to 5 years		Habitual criminal may receive increased sentence of up to 10 years, depending on initial sentence and prior offenses	
WYOMING		Aggravated assault with weapon carries up to 14 years and/or $1,000. Burglary or Robbery with weapon carries 5 to 50 years	Child abuse with weapon carries up to 5 years	Third felony conviction carries 10 to 50 years to life, depending on circumstances and prior offenses	
FEDERAL		Assault with deadly or dangerous weapons against certain officers or employees, or foreign officials or guests, carries up to 10 years and/or $10,000. Robbery with dangerous weapon carries up to 25 years and/or $10,000, depending on circumstances. Use of firearm carries one to 25 years, depending on prior offenses		Dangerous Special Offenders carries up to 25 years	

TABLE 10. (Continued)

a. Most states have classes or degrees of crimes which apply increasing penalties for increasingly heinous elements. Only those crimes in which the word "aggravated" is used in the titles are included in this column.

b. Because rape and other sex crimes assume victimization, they are not included in this column.

Juvenile Court Dispositions

State and federal statutes provide for a variety of dispositional options to juvenile court judges. The dangerous offense categories, with which this study is concerned, are treated generally as acts of delinquency. In addition to the judicial waiver provisions, juvenile courts may order the following dispositions listed in Table 11. For greater details, consult Volume 2 of this Report.

TABLE 11. NATIONAL OVERVIEW OF JUVENILE COURT DISPOSITIONAL OPTIONS IN 1981 (BY STATE, D.C., AND FEDERAL CODES)

	Dispositions Options											
	Nonconfinement						Confinement					
State, D.C., Federal	Probation	Restitution	Fine	Community Service	Local Private Agencies	Other Public Agencies	Private Facilities	Detention Homes	Local Public Facilities	Adult Corrections Facilities	State Juvenile Facilities	Other
ALABAMA	X		X		X	X		X	X		X	
ALASKA	X	X									X	X
ARIZONA	X	X	X	X	X			X			X	
ARKANSAS	X	X	X	X	X	X		X	X		X	
CALIFORNIA	X	X	X	X	X		X	X	X		X	X

TABLE 11. (Continued)

State, D.C., Federal	Dispositions Options: Nonconfinement						Confinement					
	Probation	Restitution	Fine	Community Service	Local Private Agencies	Other Public Agencies	Private Facilities	Detention Homes	Local Public Facilities	Adult Corrections Facilities	State Juvenile Facilities	Other[a]
COLORADO	X	X	X		X		X	X		X	X	X
CONNECTICUT	X	X		X	X	X		X			X	
DELAWARE	X	X	X		X		X		X		X	
DISTRICT OF COLUMBIA	X				X	X					X	X
FLORIDA	X	X		X	X						X	
GEORGIA	X	X			X		X	X	X		X	
HAWAII	X	X	X	X	X	X	X				X	
IDAHO	X	X			X						X	X
ILLINOIS	X	X			X	X		X	X		X	
INDIANA	X	X			X		X	X	X	X	X	X
IOWA	X	X		X	X	X	X	X			X	X
KANSAS	X	X				X	X				X	X
KENTUCKY	X	X			X	X	X	X	X		X	
LOUISIANA	X				X	X	X				X	X
MAINE	X	X	X	X		X	X				X	
MARYLAND	X			X	X	X	X			X	X	
MASSACHUSETTS	X	X	X								X	X
MICHIGAN	X	X			X	X	X	X			X	X
MINNESOTA	X	X	X				X				X	
MISSISSIPPI	X	X	X		X	X					X	
MISSOURI	X	X		X	X	X		X			X	
MONTANA	X				X		X	X	X		X	
NEBRASKA	X	X			X		X				X	
NEVADA	X	X		X	X	X					X	X
NEW HAMPSHIRE	X	X	X				X			X	X	X

TABLE 11. (Continued)

State, D.C., Federal	Dispositions Options: Nonconfinement						Confinement					
	Probation	Restitution	Fine	Community Service	Local Private Agencies	Other Public Agencies	Private Facilities	Detention Homes	Local Public Facilities	Adult Corrections Facilities	State Juvenile Facilities	Other[a]
NEW JERSEY	X				X		X				X	
NEW MEXICO	X		X			X			X			
NEW YORK	X	X	X	X	X	X	X		X	X		
NORTH CAROLINA	X	X	X	X	X	X		X	X		X	
NORTH DAKOTA	X					X					X	
OHIO	X	X	X		X			X			X	
OKLAHOMA	X	X			X					X	X	X
OREGON	X	X				X	X	X	X	X	X	X
PENNSYLVANIA	X	X	X		X	X	X	X	X		X	
RHODE ISLAND	X	X			X	X	X	X	X			
SOUTH CAROLINA	X	X		X	X	X	X	X			X	
SOUTH DAKOTA	X	X	X			X			X			X
TENNESSEE	X								X		X	
TEXAS	X	X[b]									X	X
UTAH	X	X	X	X	X	X	X	X	X		X	
VERMONT	X									c	X	
VIRGINIA	X	X	X		X							X
WASHINGTON[d]	X	X	X	X				X	X		X	
WEST VIRGINIA	X					X	X				X	
WISCONSIN	X	X				X					X	X
WYOMING	X	X	X	X		X			X		X	X
FEDERAL	X											X[e]

a. Other consists of such options as a warning, wilderness programs, jails, hospitals, emancipation, unspecified counseling or treatment or special care. Many states also provide for "other dispositions" or suspended dispositions.

TABLE 11. (Continued)

b. Payments may not extend past child's eighteenth birthday.
c. In 1978, Vermont's only delinquency institution was closed, currently only secure detention facility is seven-bed facility.
d. Washington has an elaborate system of classifying offenders based on type of offense with disposition options limited for each class. Also, all offenders must pay restitution unless they can't afford to pay or if confinement of over 15 weeks ordered.
e. Commit to U.S. Attorney General.

Special Sentencing/Dispositional Provisions

There are a number of ways in which state legislatures constrain or extend the authority of both adult or juvenile court judges to sentence criminals or dispose of delinquency cases, respectively. While the statutes are directed toward one court system or the other, the intent is essentially the same. The legislative intent is either to restrict sentencing or dispositional powers to certain penalties, usually confinement, or to grant discretion to the judges to assign penalties on the merits of individual cases.

In Volume 2, a highly innovative table appears in each statutory summary (TABLE xx-2) which compares adult sentencing statutes with laws affecting juvenile court dispositions. Each of these tables is divided into three parts:

- Confinement
- Community-Based Alternatives
- Miscellaneous Provisions

Between ten and 20 provisions, complete with statutory citations, are listed there. However, because of the variety and complexity of the statutory language used throughout the country, a national overview of all the information contained in Table 2 of the state statutory summaries cannot be practically presented. Instead, Table 12 presents those pieces of information that appear to have the greatest value to prospective readers, based on interviews and conversations around the country. For information regarding the following topics, readers are advised to consult the specific statutory summaries in Volume 2 that are of interest to them:

Adult Courts

Confinement

- Whether sentences must be fixed or indeterminate, and and under what circumstances;
- Whether civil commitments are permitted; and
- Whether enhanced confinement sentences are allowed or required, and under what circumstances.

Community-Based Alternatives

- Whether offenders, convicted of dangerous offenses, are eligible for:
  - probation
  - fines
  - restitution
  - community service.

Miscellaneous Provisions

- Whether courts may suspend, revoke, or modify sentences;
- Whether juries may recommend or impose sentences;
- Whether courts may reverse waive under-aged adult offenders to juvenile courts; and
- Whether juvenile court records may be used in sentencing.

Juvenile Courts

Confinement

- Whether dispositions must be determinate or indeterminate, and under what circumstances;
- Whether confinement is required for certain offenders, and under what circumstances; and
- Whether out-of-state placements are authorized in dispositions statutes.

Community-Based Alternatives

- Whether offenders, adjudicated (delinquent) of dangerous offenses, are eligible for:
  - probation
  - fines
  - restitution
  - community service.

Miscellaneous Provisions

- Whether courts may suspend, revoke, or modify orders of disposition;
- Whether juries are permitted;
- Whether courts may waive juveniles to criminal courts; and
- Whether juvenile court records are public or confidential, and whether they can be used when ordering dispositions.

Table 12 focuses on the specific sentencing powers of criminal courts, namely, whether youth (under-18 year old adult offenders) may be:

- sentenced to death;
- confined in juvenile corrections facilities;

- segregated when confined in adult facilities (mandatory);
- sentenced pursuant to youthful offender legislation; and/or
- sentenced after reference to records of prior contacts with juvenile courts.

TABLE 12. NATIONAL OVERVIEW OF CRIMINAL STATUTES AFFECTING YOUTH IN ADULT COURTS IN 1981 (BY STATE, D.C., AND FEDERAL CODES)

State, D.C., Federal	Miscellaneous Provisions: Death Penalty	Juvenile Confinement	Adult Facility Segregation	Youthful Offender Classification	Juvenile Record Access
ALABAMA	X			X	X
ALASKA			X		
ARIZONA	X		X		X
ARKANSAS	X	X		X	
CALIFORNIA	X	X		X	
COLORADO	X	X			
CONNECTICUT	X			X	X
DELAWARE	X		X		X
DISTRICT OF COLUMBIA		X	X	X	X
FLORIDA	X	X		X	
GEORGIA	X	X		X	X
HAWAII		X		X	X
IDAHO	X	X			X
ILLINOIS	X	X			X
INDIANA	X	X			X
IOWA					X[a]
KANSAS					X
KENTUCKY	X	X			X
LOUISIANA	X				X
MAINE					X
MARYLAND	X				X
MASSACHUSETTS	X	X			X
MICHIGAN				X	X[b]
MINNESOTA					X
MISSISSIPPI	X				X[c]

TABLE 12. (Continued)

State, D.C., Federal	Miscellaneous Provisions: Death Penalty	Juvenile Confinement	Adult Facility Segregation	Youthful Offender Classification	Juvenile Record Access
MISSOURI	X		X		X[d]
MONTANA	X				X
NEBRASKA	X				X
NEVADA	X				X
NEW HAMPSHIRE	X				X
NEW JERSEY	X	X		X	X
NEW MEXICO	X	X		X	X
NEW YORK		X		X	X
NORTH CAROLINA	X			X	X[e]
NORTH DAKOTA		X		X	X
OHIO	X				X
OKLAHOMA	X				X
OREGON					X
PENNSYLVANIA	X				X
RHODE ISLAND		X			
SOUTH CAROLINA	X			X	X[b]
SOUTH DAKOTA	X	X			X
TENNESSEE	X[e]	X			X
TEXAS	X				
UTAH	X				
VERMONT	X		X		X
VIRGINIA	X	X		X	X
WASHINGTON	X				X
WEST VIRGINIA		X			X
WISCONSIN					X
WYOMING	X				
FEDERAL	X			X	X

a. May be used only after felony conviction.
b. May be used with permission of juvenile court.
c. May only use relative to acts committed after sixteenth birthday.
d. May only be used for specified crimes.
e. Death penalty for robbery declared unconstitutional.

AUTHORITY OF CORRECTIONS AGENCIES

The authority of corrections agencies is distinct from that of courts, even though jurisdiction is obtained through court orders and even where the corrections agencies are operated by the courts themselves. In Table 13, responsibility for institutional and community corrections services is identified. It should be noted that Volume 2 statutory summaries also identify operational responsibility for such other public facilities as institutions for the criminally insane and certain local, nondetention facilities. For greater detail, consult statutory summary Tables XX-3.

TABLE 13. NATIONAL OVERVIEW OF OPERATIONAL RESPONSIBILITY FOR CORRECTIONS SERVICES IN 1981 (BY STATE, D.C., AND FEDERAL CODES).

State, D.C., Federal	Responsible Agencies or Units of Government: State Institutions	Detention Facilities	Probation	Parole
ALABAMA				
Adult	Bd. Corrections	Sheriffs	Bd. Pardons/ Parole (BPP)	BPP
Juvenile	Dept. Youth Services	Courts	Courts	Courts
ALASKA				
Adult	Dept. Health & Social Services, Division of Corrections (DHSS/DOC)	Cities	DHSS/DOC	DHSS/Board of Parole (BOP)
Juvenile	DHSS/DOC/ Youth Services Unit (YSU)	DHSS/DOC/YSU	DHSS/DOC/YSU	DHSS/DOC/YSU
ARIZONA				
Adult	Dept. Corrections (DOC)	Sheriffs	Courts	DOC
Juvenile	DOC	Counties	Courts	DOC

TABLE 13. (Continued)

State, D.C., Federal	Responsible Agencies or Units of Government: State Institutions	Detention Facilities	Probation	Parole
ARKANSAS				
Adult	Dept. Corrections (DOC)	Sheriffs	DOC	DOC
Juvenile	DOC/Div. of Youth Services, Youth Services Board (DYS/YSB)	Courts	Courts	DOC/DYS/YSB
CALIFORNIA				
Adult	Dept. Corrections (DOC)	Counties	Counties	DOC, Parole and Community Services Division
Juvenile	Dept. Youth Authority (DYA)	Counties	Counties	DYA
COLORADO				
Adult	Dept. Corrections (DOC)	Sheriffs	Courts	DOC/Div. of Adult Services
Juvenile	Dept. Institutions (DOI)	DOI	Courts	DOI
CONNECTICUT				
Adult	Dept. Corrections (DOC)	DOC	Courts	DOC
Juvenile	Dept. Children & Youth Services (DCYS)	DCYS	Courts	DCYS
DELAWARE				
Adult	Dept. Corrections	--	DOC	DOC
Juvenile	Dept. Health & Social Services (DHSS)	DHSS	Courts	DHSS

TABLE 13. (Continued)

State, D.C., Federal	State Institutions	Detention Facilities	Probation	Parole
	Responsible Agencies or Units of Government			
DISTRICT OF COLUMBIA				
Adult	Dept. Corrections (DOC)	DOC	Court	Board of Parole (BOP)
Juvenile	Dept. of Human Resources, Youth Services Administration, Bureau of Youth Services (DHR/YSA/BYS)	Court	Superior Court, Director Social Services	DHR/YSA/BYS
FLORIDA				
Adult	Dept. Corrections	Counties	Parole & Probation Commission (PPC)	PPC
Juvenile	Dept. Health & Rehabilitation Services (DHRS)	DHRS	DHRS	DHRS
GEORGIA				
Adult	Dept. Offender Rehabilitation (DOR)	Sheriffs	Counties[a], DOR	Board of Pardons & Paroles (BPP)
Juvenile	Dept. Human Resources (DHR)	Counties[b], DHR	Courts, DHR	DHR
HAWAII				
Adult	Dept. Social Services & Housing (DSSH)	DSSH, Other Local Instituturons	Courts	Paroling Authority
Juvenile	DSSH	Courts	Courts	DSSH
IDAHO				
Adult	Board of Corrections (BOC)	Counties	BOC	BOC

TABLE 13. (Continued)

State, D.C., Federal	State Institutions	Detention Facilities	Probation	Parole
	Responsible Agencies or Units of Government			
IDAHO (Continued)				
Juvenile	Board of Health & Welfare (BHW)	Counties	Courts, BHW	BHW
ILLINOIS				
Adult	Dept. Corrections (DOC)	Counties	Courts	Prisoner Review Board (PRB)
Juvenile	DOC	Counties, DOC	Courts	PRB
INDIANA				
Adult	Dept. Corrections (DOC)	Sheriffs	Courts	DOC/Parole Board (PB)
Juvenile	DOC/Indiana Youth Authority (IYA)	Courts	Courts	Executive Director, IYA
IOWA				
Adult	Dept. Social Services (DSS), Div. of Corrections	Counties	Judicial District's Dept. of Correctional Services	Board of Parole (BOP)
Juvenile	DSS/Div. of Child & Family Services (DCFS)	Counties	Courts	DCFS
KANSAS				
Adult	Dept. Corrections (DOC)	Counties/Cities	Courts	DOC/Adult Parole Authority (ApA)
Juvenile	Dept. Social & Rehabilitation Services (DSRS), Div. of Mental Health & Retardation	Courts, Boards of Directors	Courts	Courts, DSRS, Boards of Parole
KENTUCKY				
Adult	Dept. Justice, Bureau of Corrections DJ/BC	Counties	DJ/BC	DJ/BC

TABLE 13. (Continued)

State, D.C., Federal	Responsible Agencies or Units of Government: State Institutions	Detention Facilities	Probation	Parole
KENTUCKY (Continued)				
Juvenile	Dept. Human Resources (DHR)	Fiscal Courts, DHR	Courts, DHR	DHR
LOUISIANA Adult	Dept. Corrections, (DOC)	Cities	DOC/Division of Probation & Parole Services (DOC/DPPS)	DOC/DPPS
Juvenile	DOC/Training Institutes	Multi-parish detention homes	Courts, Dept. Health & Human Resources, Division of Youth Services (DHHR/DYS)	Courts, DHHR/DYS
MAINE Adult	Dept. Corrections (DOC)	Counties	DOC	DOC
Juvenile	DOC (Superintendent)	Counties	DOC	DOC
MARYLAND Adult	Dept. Public Safety & Correction (DPSC), Div. of Corrections	Counties, Baltimore City, Regions	DPSC/Div. of Parole & Probation (DPP)	DPSC/DPP
Juvenile	Dept. Health & Mental Hygiene, Juvenile Services Administration (DHMH/JSA)	DHMH/JSA	DHMH/JSA	DHMH/JSA
MASSACHUSETTS Adult	Dept. Corrections (DOC)	Sheriffs	Courts	DOC/Parole Board (PB)
Juvenile	Dept. Youth Services (DYS)	DYS	Courts	DYS

TABLE 13. (Continued)

State, D.C., Federal	Responsible Agencies or Units of Government: State Institutions	Detention Facilities	Probation	Parole
MICHIGAN Adult	Dept. Corrections (DOC)	Sheriffs	DOC/Bureau of Probation	DOC/Bureau of Pardons & Paroles (BPP)
Juvenile	Dept. Social Services (DSS)	Courts	Courts	DSS/Youth Parole & Review Board (YPRB)
MINNESOTA Adult	Commissioner of Dept. Corrections (DOC)	Counties	Courts, DOC	DOC
Juvenile	DOC	Counties	Counties	DOC
MISSISSIPPI Adult	Dept. Corrections (DOC)	Counties	DOC	DOC/Parole Board (PB)
Juvenile	Dept. Youth Services (DYS)	Counties	DYS	DYS
MISSOURI Adult	Dept. Corrections & Human Resources (DCHR), Div. of Adult Institutions	Counties, City-County Combinations	DCHR/Board of Probation & Parole (BPP)	DCHR/BPP
Juvenile	Dept. Social Services (DSS), Div. of Youth Services (DYS)	Counties, Juvenile Court Association	Court	DSS/DYS
MONTANA Adult	Dept. of Institutions (DOI)	Counties, Cities	DOI	DOI
Juvenile	DOI	Counties	Courts	DOI

TABLE 13. (Continued)

State, D.C., Federal	Responsible Agencies or Units of Government			
	State Institutions	Detention Facilities	Probation	Parole
NEBRASKA				
Adult	Dept. of Correctional Services (DCS)	Counties, Cities, Joint Jails	State Office of Probation Administration	DCS
Juvenile	DCS, Div. of Juv. Services (DJS)	Counties	Courts	DCS/DJS
NEVADA				
Adult	Dept. of Prisons	Sheriffs	Dept. of Parole & Probation (DPP)	DPP
Juvenile	Dept. of Human Services (DHS) Youth Services Division	Courts	Courts	DHS/Youth Parole Bureau (YPB)
NEW HAMPSHIRE				
Adult	Governor with Board of Trustees	Counties	Courts, State Board of Probation	State Board of Parole (BOP)
Juvenile	Youth Development Center, Board of Trustees (YDC)	YDC	Courts, State Board of Probation	YDC
NEW JERSEY				
Adult	Dept. Correction (DOC), Adult Corrections Inst. Division	Counties, Board of Chosen Free-holders	Courts	DOC
Juvenile	DOC/Juvenile Services Division (JSD)	Counties	Counties, Courts	DOC/JSD

TABLE 13. (Continued)

State, D.C., Federal	Responsible Agencies or Units of Government			
	State Institutions	Detention Facilities	Probation	Parole
NEW MEXICO				
Adult	Corrections Dept. (CD), Adult Institutions Division (AID)	Sheriffs	CD/AID	CD/PB
Juvenile	CD/Div. of Juvenile Facilities	Counties	Courts	Juvenile Parole Board (JPB), in conjunction w/state agencies
NEW YORK				
Adult	Dept. Correctional Services	Counties, Cities, Towns	Division of Probation (DOP)	Division of Parole
Juvenile	Div. for Youth (DFY)	DFY, Social Service Districts, Counties, City of New York	Counties, DOP	DFY
NORTH CAROLINA				
Adult	Dept. Corrections (DOC)	Counties	DOC	Parole Commission (DOC/PC)
Juvenile	Dept. of Human Resources, Div. of Youth Services (DHR/DYS)	Counties, DHR/DYS	Administrative Office of the Court (AOC)	AOC
NORTH DAKOTA				
Adult	Director of Institutions (DOI)	Counties, Cities	Board of Pardons	DOI/Parole Board (PB), (Board of Pardons)
Juvenile	DOI	Courts, Counties	Courts, Directors of County Welfare, State Youth Authority (SYA)	Courts, DOI, SYA

TABLE 13. (Continued)

State, D.C., Federal	Responsible Agencies or Units of Government: State Institutions	Detention Facilities	Probation	Parole
OHIO				
Adult	Dept. of Rehabilitation Correction (DRC)	Counties	County Dept. of Probation or DRC/Adult Parole Authority (APA)	DRC/APA
Juvenile	Dept. Youth Services (DYS)	Courts, Districts	Courts, County Departments of Probation	DYS
OKLAHOMA				
Adult	Dept. Correction (DOC)	Sheriffs	DOC	DOC
Juvenile	Dept. Human Services (DHS)	Counties, DHS	Counties, DHS	Counties, DHS
OREGON				
Adult	Dept. of Human Resources (DHR), Corrections Division	Sheriffs	Courts	Board of Parole (BOP)
Juvenile	DHR/Children Services Div. (CSD)	Counties	Courts	DHR/CSD
PENNSYLVANIA				
Adult	Governor's Office, Bur. of Correction	Counties	Courts, Board of Probation & Parole (BPP)	Courts, BPP
Juvenile	Dept. Public Welfare (DPW)	County Board of Managers	Courts	Courts
RHODE ISLAND				
Adult	Dept. Corrections (DOC)	--	DOC	DOC
Juvenile	Dept. for Children & Famiies (DCF)	DCF	DCF	DCF

TABLE 13. (Continued)

State, D.C., Federal	Responsible Agencies or Units of Government: State Institutions	Detention Facilities	Probation	Parole
SOUTH CAROLINA				
Adult	Dept. Corrections (DOC)	Sheriffs, County Administrators	Parole & Community Corrections Board (PCCB)	PCCB
Juvenile	Dept. Youth Services (DYS)	County Administrators	DYS	DYS
SOUTH DAKOTA				
Adult	Board of Charities and Corrections (BCC)	Townships, Municipalities, or Counties	Courts	Board of Pardons & Paroles (BPP), BCC
Juvenile	BCC	Counties	Courts	BCC
TENNESSEE				
Adult	Dept. Corrections (DOC)	Counties	DOC	Board of Paroles (BOP)
Juvenile	DOC	Counties	Courts, DOC/ Division of Juvenile Probation	DOC
TEXAS				
Adult	Dept. Corrections	Commissioners Court, Municipalities	Adult Probation Commission	Board of Pardons & Paroles (BPP)
Juvenile	Texas Youth Commission (TYC)	Courts, Counties	Juvenile Probation Dept., Adult Probation Dept. by contract with county	TYC

TABLE 13. (Continued)

State, D.C., Federal	Responsible Agencies or Units of Government: State Institutions	Detention Facilities	Probation	Parole
UTAH				
Adult	Dept. Social Services (DSS), Division of Corrections (DOC)	Cities, Counties	DSS/DOC, Adult Probation & Parole Section (APPS)	DSS/DOC/APPS
Juvenile	DSS, Youth Corr. Agency (YCA)	Counties	Courts	DSS/YCA
VERMONT				
Adult	Dept. Corrections (DOC)	DOC	DOC	DOC
Juvenile	DOC [c]	DOC[c]	DOC [c]	DOC [c]
VIRGINIA				
Adult	Dept. Corrections (DOC), Division of Institutional Services (DIS)	Counties	Courts	DOC
Juvenile	DOC/DIS	Cities, Counties	Courts, DOC	Courts, Local Welfare Agencies
WASHINGTON				
Adult	Dept. Corrections (DOC)	Counties	DOC	DOC
Juvenile	Dept. Social & Health Services (DSHS)	Courts	Courts	DSHS
WEST VIRGINIA				
Adult	Commissioner of Corrections (DOC)	Counties, Cities	DOC, Criminal Courts	DOC
Juvenile	DOC	Counties	Courts, Dept. of Welfare (DOW)	DOW, DOC

TABLE 13. (Continued)

State, D.C., Federal	Responsible Agencies or Units of Government: State Institutions	Detention Facilities	Probation	Parole
WISCONSIN				
Adult	Dept. Health & Social Services (DHSS)	Municipalities, Counties	DHSS	DHSS
Juvenile	DHSS	Courts, Counties	Courts, DHSS	DHSS
WYOMING				
Adult	Board of Charities & Reform (BOCR)	Courts, Counties	Board of Parole (BOP)	BOP
Juvenile	BOCR	Courts, Counties	BOP	BOP
FEDERAL				
Adult	Bureau of Prisons (BOP)	BOP	Courts	U.S. Parole Commission (USPC)
Juvenile	BOP	--	Courts	USPC

a. Effective July 1, 1984, county probation became part of the state system.

b. Effective July 1, 1981, county detention facilities were to become part of the state system. As of early 1984, it had not occurred.

c. Vermont's juvenile corrections program is administered by the Department of Social and Rehabilitation Services.

Table 14 reflects the public agencies responsible for terminating criminal and juvenile justice jurisdiction. This table does not take all idiosyncratic circumstances into account, such as final discharge at the time of institutional release, generally referred to as "maxing out." It assumes that final discharges will occur at the time of release from probation or parole status.

TABLE 14. NATIONAL OVERVIEW OF AGENCIES RESPONSIBLE FOR DETERMINING TERMINATION OF PROBATION/PAROLE STATUS IN 1981 (BY STATE, D.C., AND FEDERAL CODES).

States, D.C., Federal	Responsible Agencies: Probation, Adult	Probation, Juvenile	Parole, Adult	Parole, Juvenile
ALABAMA	Courts	Courts	BPP	Courts
ALASKA	Courts	Courts	BOP	Courts, DHSS
ARIZONA	Courts	Courts	BPP	DOC
ARKANSAS	Courts	Courts	BPP	DOC/DYS/YSB
CALIFORNIA	Courts	Courts	Board of Prison Terms	Youth Offender Parole Board
COLORADO	Courts	Courts	Board of Parole	Juvenile Parole Board
CONNECTICUT	Courts	Courts	Board of Parole	DCYS
DELAWARE	Courts	Courts	Board of Parole	DHSS
DISTRICT OF COLUMBIA	Courts	Courts (Director of Social Services)	BOP	DHR/YSA/BYS
FLORIDA	Courts	Courts	PPC	DHRS
GEORGIA	Courts	Courts	BPP	DHR
HAWAII	Courts	Courts	Paroling Authority	DSSH/Dir. of Social Services
IDAHO	Courts	Courts	Commission of Pardons & Paroles	BHW
ILLINOIS	Courts	Courts	PRB	PRB
INDIANA	Courts	Courts	DOC/PB	IYA

TABLE 14. (Continued)

States, D.C., Federal	Responsible Agencies: Probation, Adult	Probation, Juvenile	Parole, Adult	Parole, Juvenile
IOWA	Courts	Courts	BOP	DSS/DCFS
KANSAS	Courts	Courts	DOC/APA	DSRS
KENTUCKY	Courts	Courts	Parole Board	DHR
LOUISIANA	Courts	Courts	Board of Parole	Courts
MAINE	Courts	Courts	Parole Board	Supt.,Maine Youth Center
MARYLAND	Courts	Courts	Parole Commission	DHMR/JSA
MASSACHUSETTS	Courts	Courts	DOC/PB	DYS
MICHIGAN	Courts	Courts	DOC/BPP	DSS/YPRB
MINNESOTA	Courts	Courts	DOC	DOC
MISSISSIPPI	Courts	Courts	DOC/PB	Supt. Training School
MISSOURI	Courts	Courts	DCHR/BPP	DSS, DYS
MONTANA	Courts	Courts	Board of Pardons	DOI
NEBRASKA	Courts	Courts	Board of Parole	DCS
NEVADA	Courts	Courts	Board of Parole Commissioners	Courts, Superintendent of Institution, on recommendation of YPB
NEW HAMPSHIRE	Courts	Courts	BOP	YDC/Bd. Trustees
NEW JERSEY	Courts	Courts	Board of Parole (BOP)	BOP

TABLE 14. (Continued)

States, D.C., Federal	Responsible Agencies: Probation		Parole	
	Adult	Juvenile	Adult	Juvenile
NEW MEXICO	Courts	Probation Services or agency providing supervision	CD/PB	JPB
NEW YORK	Courts	Courts	Board of Parole	DFY
NORTH CAROLINA	Courts	Courts	DOC/PC	DHR/DYS
NORTH DAKOTA	Courts	Courts	DOI/PB	Director of Institutions; SYA
OHIO	Courts	Courts	DRC/APA	DYS
OKLAHOMA	Courts	Courts	Governor, upon recommendation of Pardon & Parole Board	DHS
OREGON	Courts	Courts	BOP	DHR/CSD
PENNSYLVANIA	Courts, BPP	Courts	BPP	DPW
RHODE ISLAND	Courts	Courts	Parole Board	DCF
SOUTH CAROLINA	Courts	Courts	PCCB	Board of Juvenile Parole
SOUTH DAKOTA	Courts	Courts	BPP	BCC
TENNESSEE	Courts	Courts, DOC	BOP	DOC
TEXAS	Courts	Courts	BPP, Governor	TYC
UTAH	Courts	Courts	Board of Pardons	DSS, YCA

TABLE 14. (Continued)

States, D.C., Federal	Responsible Agencies: Probation		Parole	
	Adult	Juvenile	Adult	Juvenile
VERMONT	Courts	Courts	Parole Board	DOC [a]
VIRGINIA	Courts	Courts	Parole Board	DOC, Courts
WASHINGTON	Courts	Courts	Board of Prison Terms & Parole	DSHS
WEST VIRGINIA	Courts	Courts	Board of Parole	DOC
WISCONSIN	Courts	Courts	DHSS	Courts, DHSS
WYOMING	Courts	Courts	BOP	BOCR
FEDERAL	Courts	Courts	USPC	USPC

a. Vermont's juvenile corrections program is administered by the Department of Social and Rehabilitation Services.

FOOTNOTES

1. Donna Hamparian, Linda K. Estep, Susan M. Muntean, Ramon R. Priestino, Robert G. Swisher, Paul L. Wallace, Joseph L. White, Youth in Adult Courts: Between Two Worlds, (Academy for Contemporary Problems, Columbus, OH, 1982).
2. Thomas Schornhorst, "The Waiver of Juvenile Court Jurisdiction: Kent Revisited." Indiana Law Journal, vol. 43 (1968), p. 583.
3. Hamparian, et al., supra.
4. U.S. v. Kent, 383 U.S. 541 (1966).
5. Uniform Crime Reports, compiled by the Federal Bureau of Investigation.

CHAPTER 3

CASE STUDY OVERVIEW

In a comprehensive study of this nature, statutory and statistical information can best be understood in the context of the environment from which it emerges. That is to say, public opinions and attitudes of public officials are critical determinants of the application of the laws and procedures which are, in turn, reflected in the statistics. Put in yet another way, judges, prosecutors, and other key people in a community have a lot to say about how juvenile offenders are to be handled. The public mood will often cause them to change policies and practices, also impacting on the way they interpret their public responsibilities.

What is the public mood in America? Does it vary much from one jurisdiction to another? Is it a highly visible point of public debate, or have the issues been, by and large, resolved by the spate of legislative amendments which were passed in the last five or six years? The Academy sought to answer these questions by interviewing key informants in selected sites throughout the country. The intent was to create, in a journalistic style, a series of case studies which, when taken together, would reflect a national cross-section of informed opinions about (1) how "satisfactorily" dangerous juvenile offenders were being handled, and (2) how such juveniles might better be handled in the future.

While not a scientific sampling, in any sense, informants were selected because they were knowledgeable and represented a broad spectrum of opinions. The guiding principle in case study site and respondent selection is to obtain a diverse enough range of impressions to portray some idea of varying social milieux, laws, practices, bureaucratic behavior, and social advocacy. If successful, readers should come to conclusions about how the problem is viewed in the nation as a whole. Certain selection criteria were used to choose nine sites:

- <u>Criminal Activity</u> - Sites with disparate numbers and rates of dangerous criminal activity, defined as murder, non-negligent manslaughter, rape, aggravated assault, robbery, and burglary.

- <u>Geography</u> - No more than one site from each federal region.

- <u>Population</u> - Sites that are reflective of major population centers, medium-sized communities, and less populated states.

- <u>Data Accessibility</u> - Case studies were planned to occur in conjunction with on-site statistical data collection activities.

- <u>Referral Procedures</u> - Site selection was also determined by dividing the states into four jurisdictional categories, to ensure representation of different kinds of transfer mechanisms, namely, (1) age of general criminal jurisdiction at 18 and judicial waiver the only possible transfer mechanism; (2) age of general criminal jurisdiction at 16, plus at least one other possible transfer mechanism; (3) age of general criminal jurisdiction at 17, plus at least one other possible transfer mechanism, and (4) age of general criminal jurisdiction at 18 and two or more possible transfer mechanisms.

- <u>Special Characteristics</u> - Such factors as the presence of reverse waiver statutes, Washington's juvenile sentencing matrix, and Vermont's lack of a state juvenile corrections facility were also taken into consideration.

Using these criteria, then, the following nine sites were selected. In each case, the overriding consideration was the permission by local and state officials for The Academy to access data, and that such data would, in fact, be retrievable.

- Los Angeles County, California
- Dade County (Miami), Florida
- Marion County (Indianapolis), Indiana
- Orleans Parish (New Orleans), Louisiana
- Baltimore City, Maryland
- State of Montana
- Erie County (Buffalo), New York
- State of Vermont
- King County (Seattle), Washington

The case studies were designed to identify and analyze the various "camps" of opinion with regard to the handling of dangerous juvenile offenders. We wanted to know if key actors in the justice system and the political process supported current policies and practices, whether there was any impetus for change, and what types of changes could be anticipated.

In all, about 200 people were interviewed. All of them had been determined by Academy contacts as individuals who, because of their activities or official positions, had become identified with the issue of handling youth in the criminal justice system. Interviews were conducted in the Winter and Spring of 1983 with judges and court personnel, prosecutors and public defenders, legislators and legislative staff, corrections administrators, justice system advocates and researchers, and law enforcement personnel. A standard interview format was utilized, which directed each interviewee to respond to the relative advantages and disadvantages of handling dangerous juvenile offenders as adults. Additional questions were asked concerning both proposed and needed changes in state codes, dispositions outcomes for youth tried as adults, and trends and influences affecting this general issue. Interviewees were encouraged

to supplement their comments with reports or other, relevant documents.

From these interview responses, full case study reports were prepared. They appear in a companion volume to this Executive Summary. Readers interested in reviewing the full case studies for any or all of the nine sites should consult Comparative Dispositions Study: Practices in Nine Jurisdictions, Appendix B. Readers will also find in that volume a case study summary for each site, presented as part of the site-specific Profile.

Presented below are the conclusions which appear in those case studies and case study summaries. The conclusions drawn from the on-site interviews were developed by The Academy staff, for which The Academy is solely responsible.

LOS ANGELES COUNTY, CALIFORNIA

The presence of dangerous juvenile crime was a visible and controversial issue in Los Angeles County. More so than other sites, the general attitudes reflected by respondents were characterized by frustration and dissatisfaction with the options that were available or being considered with respect to the handling of dangerous juvenile offenders. The scope of the problem and the obstacles to effectively address dangerous juvenile crime seemed, at times, almost to make respondents feel there were no practical solutions. Resource constraints, the diverse nature of the population, socioeconomic factors, and a lack of confidence that successful intervention was possible appeared to underlay many of the interviews conducted.

Impetus for Change

There was, among respondents, widespread recognition that there were a substantial number of juvenile offenders that possessed a level of criminal maturity and sophistication that made them unfit for the juvenile system, as it was currently functioning. Although the adult system was frequently suggested as the most appropriate placement option, it was regarded as a less than perfect solution to the problem. The major rationales for considering the criminal court as a more appropriate way of handling dangerous juvenile offenders were the potentially longer sentences, the possibility of utilizing juvenile facilities for under-18 year old offenders, and as a response to public attitudes that were demanding tougher treatment.

The most controversial issue with respect to the handling of dangerous juvenile offenders related to the degree of judicial and prosecutorial

discretion that should exist. The issue encompassed both the court in which a case should be heard and the sentences meted out. Strong feelings were expressed supporting the maximizing of discretionary decision-making and for an opposing view, that discretion should be minimal.

There was widespread support voiced that information concerning dangerous juvenile offenders should be maintained and available, even when juveniles enter the adult justice system. The availability of such information was considered important, not only in making sentencing decisions for under-18 year old offenders, but also for their handling in the corrections system and to better ensure public safety.

A relatively large segment of the individuals interviewed were of the opinion that neither the juvenile or criminal court had the ability to control the behavior of dangerous juvenile offenders, given the corrections options available. The absence of specially designed programs and strategies for dealing with dangerous juvenile crime was the suggestion most often mentioned as being needed to achieve impact. In general, it was felt that some type of middle system that would specifically deal with older, more sophisticated juveniles and young adults was offered as the most promising solution.

And finally, there was considerable evidence that the issue of dangerous juvenile crime was increasingly becoming a public issue. Public attitudes were exerting pressure on public officials to increase community safety. As a result, especially given resource constraints, it was felt that a trend was emerging to refer more juveniles to criminal court, and use incarceration as much as possible.

Obstacles to Change

The dissatisfaction which characterized the Los Angeles County interviews led respondents to express their frustration at the possibility that practical solutions to the dangerous juvenile problem may simply not exist. The high visibility and enormity of the juvenile crime problem in Los Angeles are frequently perceived by local justice system professionals as obstacles against which neither the juvenile or criminal justice systems nor the political process can prevail.

California is well-known for its pioneering efforts in tax reduction schemes, including the Proposition 13 movement of several years ago whose repercussions are still being felt in terms of drastically diminished local revenue. As a result, special programming has been reduced, and in some cases eliminated, and staff strengths have been cut. Many interviewees in Los Angeles County were convinced that changes in the juvenile and adult justice systems were effectively precluded by these budgetary restraints.

Finally, there appears to be a serious schism within the community of justice system professionals between those who advocate a punishment/

incapacitation approach to handling dangerous juvenile offenders and those who support the treatment/rehabilitation focus. No change is likely to occur in Los Angeles County until this conflict has been resolved.

DADE COUNTY, (MIAMI) FLORIDA

In the past decade, two major pieces of state legislation have affected the handling of dangerous juvenile offenders in Florida, both in evidence during our Dade County interviews. First, the state now has two legal mechanisms for referring juveniles to adult court. Along with judicial waiver, which has been in existence for many years, legislation now permits state attorneys (prosecutors) to file charges against certain juveniles directly in criminal court, or to seek indictments for that purpose. This concurrent jurisdiction mechanism, as it is generally known around the country, is often called the "direct-file" provision in Florida. Second, a youthful offender program was established within the (adult) Florida Department of Corrections. This program is intended to provide special services to younger offenders (up to age 26) who are committed to the Department. For a full description of both provisions, see the Statutory Summary section of the Profile.

The potential use of both provisions in a single case seems somewhat contradictory and difficult to understand. If a juvenile is too dangerous to remain in the juvenile system, why should he be eligible for lighter sentences in the adult system? What does seem clear, though, is that the State of Florida has taken a strong policy position favoring the handling of dangerous juvenile offenders in the adult system.

Impetus For Change

Despite these changes, however, one major impression resulting from the Dade County interviews was that most respondents remained committed to an even wider range of options for the handling of these types of offenders. Several common viewpoints emerged. For example, the most intense responses were received in connection with discussions about the use of the direct-file provision. Frequent criticisms were heard about its perceived overuse and the reliance by prosecutors on the single criterion of instant offense to determine a proper forum. Many respondents felt that many of these problems could be eliminated by the establishment of explicit guidelines for constraining prosecutorial discretion.

It was also generally felt that public opinion had affected the number of juveniles being tried in adult courts. There seemed to be a connection between the "get tough" public attitudes extant in Dade County and expressions by justice system professionals that not all juvenile offenders

are amenable to rehabilitation. Based on that assessment, it appears to be a short step to the conclusion that juveniles charged with serious crimes should be treated as adults.

A third point frequently mentioned concerned the need for more sharing of information between the juvenile and criminal justice systems. What this really meant was that juvenile court records of delinquency should be more extensively utilized by the adult court and by corrections agencies. The desired effect was to be found in more appropriate sentencing decisions, but also to provide corrections authorities with better background information on offenders committed to their care.

Many Dade County interviewees viewed the then-current situation as providing an opportunity to re-examine the role of the juvenile court. They argued that the juvenile court should limit its focus to younger, less sophisticated juveniles, stressing early intervention and more individualized treatment. The implications of this viewpoint, of course, were that criminal courts were more appropriate institutions for dealing with older, more sophisticated juvenile offenders. The major attractiveness of this arrangement was based, in large measure, on the ability of criminal courts to order long sentences. In most of these discussions regarding both systems, respondents called for more treatment options, more facilities, and more resources.

Obstacles to Change

Although there were numerous disagreements among the respondents and objections to certain current practices, the intensity of concern did not appear to be particularly high. The attitudes expressed might best be characterized as a willingness to suspend judgment until the full effects of these legislative amendments and concomitant practices could be evaluated. Further, justice system professionals discerned no strong public sentiment for changing the policies then in place. Some respondents speculated that the passage of the direct-file provision had blunted most of the public outcry for better laws. As a consequence, the consensus appeared to be that the current set of laws, processes and procedures was not likely to change in the foreseeable future.

MARION COUNTY, (INDIANAPOLIS) INDIANA

The people interviewed in Marion County expressed an extremely high consensus for referring dangerous (older, more sophisticated) juvenile offenders to adult courts. Such offenders should be treated as adults and juvenile court records should be available to adult-court sentencing judges. Yet, the amount of discretion which should be accorded judges and

prosecutors in selecting the proper cases for referral to adult court remained a point of discussion. In reviewing the interviews, it seems fair to conclude that, despite all of the statutory amendments passed over the last several years in Indiana, the role of prosecutors in judicial waiver hearings has not been fully resolved to the satisfaction of key actors in the system.

Impetus for Change

While the majority of persons interviewed in Marion County agreed that it was appropriate to try more sophisticated juvenile offenders in adult courts, they just as clearly preferred that, when confinement was deemed necessary, it occurred in the juvenile corrections system. This desire to refer "up" for trials and "down" for confinement suggests a belief that something special occurs in adult trials; that juveniles so tried can better understand the gravity of their crimes, -- a message perhaps more difficult to convey from a court that handles everything from truancy to homicide. Trials in adult courts, with sentencing to juvenile facilities, appeared to satisfy both the expressed desire for emphasizing the perceived seriousness of the behavior, as well as the desire for humane and rehabilitative corrections services.

There was division of opinion over the issue of discretion. Some respondents maintained that discretion was essential to justice, since law can never be written with such precision that all possible circumstances of its application can be anticipated. On the other hand, other respondents believed the current arrangement was problematic because the prosecutor's office was too susceptable to pressure from the public and the media. They also questioned whether the exclusive authority to determine whether or not a judicial waiver should be requested placed too strong a bargaining chip in the hands of the prosecutor when negotiating a guilty plea. Some wanted guidelines developed to structure this discretion.

A second major concern surfaced in our interviews: the need for a secure juvenile facility for dangerous, sophisticated offenders. The consensus seemed to be that adult courts should be able to sentence youth to a special, secure facility operated within the juvenile justice system. In Indiana, that would mean a facility operated by the Indiana Youth Authority within the Department of Corrections. From the interviews, it was unclear whether respondents believed that juvenile court judges should be able to commit juvenile to such a facility, or whether it should remain strictly a placement option for adult courts.

Obstacles to Change

The opponents of the current practices of judicial waiver and/or excluded offenses saw no compelling advantage, however, in placing even

dangerous juveniles in adult court. The juvenile court was more oriented to rehabilitation, they believed, and had greater dispositional flexibility. They contended that little, if anything, had been gained by having juveniles tried in adult courts. Yet, because of numerous changes in the law over the past several years, they appeared to have recognized the unlikelihood that present legislation will be repealed any time soon: the major energy for change had been spent and no substantial changes in current law were anticipated.

There also appeared to be little hope that a costly alternative, i.e., construction of a secure youth facility, would be approved by the legislature. So, between the lack of an impetus for change and the history of the legislature to reject costly solutions, no one believed a juvenile facility, no matter how desirable, would be constructed anytime in the near future.

ORLEANS PARISH, (NEW ORLEANS) LOUISIANA

Public officials and private sector respondents who were interviewed in connection with this case study reflected a high consensus with respect to the manner in which dangerous juvenile offenders should be handled. Respondents tended to strongly agree that:

- public safety had become a clearly enunciated goal for both the criminal and juvenile justice systems;
- the theory of deterrence was generally perceived as a form of political rhetoric, unrelated to the behavior of serious juvenile offenders, although two respondents believed in its applicability;
- both the adult and juvenile corrections systems lacked effective services to deal with serious offenders, particularly offenders between the ages of 17 and 21;
- more due process and less discretion were viewed with great favor, generally within the context of the juvenile court;
- rehabilitation is not occurring with much frequency in either system, although the juvenile justice system was viewed as having more options; and
- strong opposition existed to commingling juveniles with adults in jails, prisons, and other such places of adult confinement.

There appeared to be little disagreement as to the propriety of adult court trials for juveniles charged with dangerous criminal conduct, at least within the context of the then-current Louisiana referral statutes. Respondents tended toward arguments reflecting a "just deserts" approach (rejecting theories of deterrence as a basis for public policy and procedures), and a belief that due process and more predictable outcomes were better ensured in the adult judicial process.

For the most part, the need for defining individuals as adults or as juveniles did not seem to bother most respondents: their major concerns were focused on segregating dangerous 15-to-21 year olds from both the juvenile and adult corrections populations. Major disagreements revolved around whether government should punish, whether it could rehabilitate and how it could best ensure that older, more sophisticated juvenile offenders would neither victimize nor become victimized by other institutional inmates.

Impetus for Change

Somewhat in contradiction, however, was a pronounced acknowledgment among respondents that the corrections options available, both state and local, left much to be desired. Particularly scarce were effective programs for handling 15-to-21 year olds with serious criminal records.

A lot of hope was expressed for the ultimate success of a growing number of LTI facilities (training institutes operated by the Louisiana Department of Corrections), specifically designed to intensively diagnose and treat harder-to-handle young offenders. This LTI program had a somewhat ambiguous status, in that it was a fairly new direction for DOC, in terms of both capital planning and resource allocation; that the planned statewide network had not (at that time) been fully established; and that these juvenile facilities were also intended to serve as "feeders" back into the juvenile justice system.

Obstacles to Change

What became evident was that respondents in Orleans Parish really did not see themselves as bereft of resources; rather, they saw New Orleans as an atypical Louisiana community, with needs that superceded generally perceived beliefs about the adequacy of public responses to problems. New Orleans is extraordinary in almost every way within the state, -- economically, racially, politically, socially -- and with relatively serious crime problems. Its inability to satisfactorily cope with its problems became reflected in often highly unusual solutions, such as expanding local jail bed space by creating a tent city, and being subjected to federal court orders on occupancy quotas in both detention and confinement institutions. What also became painfully obvious was that

their problems were not so much legal as they were historic. Louisiana's traditional ways of dealing with criminal punishment have been judicially rejected over the past decade, exposing antiquated facilities and an inadequate labor pool on which to rebuild a modern system. The costs of change have been very high. Yet, progressive forces within the state, despite the gravitational pull of the past, have made remarkable strides in forging a political consensus and in the initiation of the LTI network.

BALTIMORE CITY, MARYLAND

The dominant theme emerging from the Baltimore City case study was the existence of a mood that alternative approaches to the current handling of dangerous juvenile offenders was imperative. The responses to questions produced the picture of an emotional and politically volatile issue. The Baltimore City case study reveals that attitudes, assumptions, and opinions are being actively reexamined, either voluntarily or because change is presumed inevitable.

Impetus for Change

More than any other factor serving as a catalyst for change is a general perception on the part of interviewees that public fear of crime is welling up and some form of change is going to be demanded. At the same time, professionals recognize that only a small percentage of offenders are responsible for most of the dangerous and violent crimes committed by juveniles. This situation appears to be leading to a growing awareness by even persons hesitant to create or expand secure institutions that, if something is not done, the public, particularly in this politically dominant city, is likely to force the issue. Were that situation to occur, the entire juvenile offender population could be affected, as opposed to simply impacting that acknowledged minority of juveniles responsible for dangerous crimes. In effect, a failure by the professionals to propose changes that purport to control dangerous crime could result in a massive reordering of the juvenile justice system of Maryland.

Another frequently mentioned factor contributing to the impetus for change is that the state Juvenile Services Administration (JSA) is currently unable to effectively handle dangerous juvenile offenders. The most often mentioned issues concerned the JSA's reluctance to incarcerate, and the relatively short average duration of incarceration when it was utilized. This philosophical stance, it was felt, ignored certain realities, in terms of both the treatment needs of dangerous juvenile offenders and public safety. The perceived hesitancy of the JSA to deal with dangerous juvenile offenders was cited by some respondents as the

reason for the increased use of judicial waiver and also for legislative expansion of the offenses for which juveniles can be excluded from juvenile court jurisdiction.

The recommendations voiced most frequently by respondents focused on providing:

- a secure correctional facility for dangerous juvenile offenders;
- special programming and treatment for dangerous juvenile offenders; and
- all information available to the appropriate agencies or courts concerning juveniles identified as dangerous.

It generally appeared (for most respondents) that the judicial forum, whether it be juvenile or criminal, was not nearly as critical an issue as was the place of confinement and the treatment programs available.

Obstacles to Change

The movement for change in the handling of dangerous juvenile offenders was impeded by two major factors. Lobbyists were increasingly confronted by a kind of "holding pattern," which appeared to exist among the officials who controlled the purse strings. There was little optimism that the more costly options, such as a new secure facility, would be funded soon. Public officials felt they must utilize the system's present resources, despite their perceptions of the intensity of public opinion or even what they believed needed to be done. Since most expressions of desired outcomes fell into that category, the likelihood of satisfactory resolution appeared to be remote.

The second reason that change was not occurring resulted from positions taken by a contingent of advocates who believed that changes proposed would jeopardize what they view as progress achieved during the past 15 to 20 years. These individuals are actively attempting to "hold the line" also, but their interests are programmatic, not financial. They expressed an underlying mistrust and lack of confidence in the political process. They suggested that "political opportunism" and expedience would cause the sacrifice of principle and justice without regard for juvenile offenders.

The arena for resolving these issues will be the state legislature: the inability of the professional community to reach consensus about the issue of the dangerous juvenile offender will result in its eventual resolution through the political process. Based on recent history, the controversy surrounding dangerous juvenile offenders will not disappear in the near future.

MONTANA

The most obvious observation that emerges from the Montana Case Study was the extent to which dangerous juvenile crime is a non-issue. In many instances respondents had not formed well-defined opinions about dangerous juvenile offenders, apparently due to the limited occurrence of dangerous offenses. To the extent that opinions existed, there tended to be only minimal evidence of controversy or strong differences of opinion.

Impetus for Change

In general, the absence of effective treatment services for dangerous juvenile offenders represented the biggest area of concern voiced by respondents. In addition to the need for better treatment opportunities, there were two other areas frequently mentioned as important issues:

- maximizing use of juvenile records in trying, sentencing, and treating dangerous juvenile offenders in both the juvenile and adult systems; and
- refining court procedures concerning the handling of dangerous juvenile offenders.

The primary interest in information and record usage focused on improving accessibility and availability. Criminal courts must submit special requests to access juvenile court and corrections records; thus, the juvenile record is not automatically available for criminal court sentencing decisions. Given that any kind of criminal court access to juvenile records is a fairly recent development (and thus only limited precedents exist for using it), the special requirements for accessing means that this mechanism is infrequently utilized. The result is that a pattern or history of dangerous criminal (delinquency) activity is often not considered in criminal court sentencing. One related aspect of this information usage issue is that some respondents felt that a greater availability of information would be valuable in devising individualized treatment approaches. However, in view of the limited resources in the entire state, it is possible that the additional background information would not reasonably lead to more treatment-oriented sentences.

The most controversial issue arising during the Montana case study concerned the level of discretion and influence possessed by judges. A number of respondents felt that the amount of judicial discretion and influence exercised by judges not only resulted in unfair treatment of offenders, but also in the necessity that other justice agencies assume an accommodating posture in order to minimize conflict with the courts. The existing court system operation was perceived as one based on personal relationships, tradition, and judicial preferences. Thus, the operation of

a particular court is very much subject to change whenever a new judge is elected. These respondents felt strongly that more explicit procedures should be developed to constrain judicial discretion and influence. It should be noted that a contrary argument was voiced in terms of the value of maintaining substantial judicial discretion, the primary reason being the need for individualized assessment of offenders.

As a general rule, respondents perceived little difference in whether dangerous juvenile offenders were handled in criminal court or in juvenile court. The most significant difference was seen in the dispositions available. Since most respondents felt rehabilitation opportunities were substantially better in the juvenile corrections system, there was strong support for trying dangerous juvenile offenders in juvenile court and for sending them to juvenile facilties and programs.

Obstacles to Change

In terms of changing the manner in which dangerous juvenile offenders were currently handled, evidence suggests there was little, if any, interest in either the general community or among professionals, for making any significant change. Yet, the general sentiment that the juvenile corrections system was seriously underfunded suggested that some legislative changes, at least in budgetary areas, were desirable.

ERIE COUNTY, (BUFFALO) NEW YORK

Among those individuals interviewed, a general level of satisfaction was evidenced with the manner in which dangerous juvenile offenders are handled in Erie County. Although respondents suggested a number of improvements in handling dangerous juvenile offenders, there appeared to be extensive support for the overall framework utilized, in both a legal and operational sense. Changes in state legislation that occurred in 1978 appeared to have been a major factor contributing to this satisfaction. That legislation specified a number of excluded offenses, established statutory processes for "reverse waiver," and set forth guidelines with respect to corrections placements for "juvenile offenders," It would seem that, with the addition of this legislation, the long-standing precedent of defining criminal jurisdiction at age 16 has engendered a broad base of community and professional support.

Impetus for Change

A number of respondents addressed both matters of philosophy and

mechanics of the existing system. It should be recognized that these comments did not so much represent points of disagreement as much as dissimilar reasons for supporting the existing system. The three areas that emerged as the primary areas of concern included:

- increasing the availability of background information about dangerous juvenile offenders;
- utilizing the criminal courts to try dangerous juvenile offenders; and
- using the juvenile corrections system for rehabilitating dangerous juvenile offenders.

Increasing the availability of background information represented the most prominent (and potentially controversial) issue. The concerns focused on the need for comprehensive offender background information for prosecutors (to use in plea bargaining) and corrections officials (in determining appropriate programming). The practice of "sealing files" in instances where dangerous offenses are involved was also criticized.

In both a philosophical and operational sense, respondents believed that the criminal court was a much more appropriate judicial forum for handling dangerous juvenile offenders. The major reason for this preference was that the juvenile court was just not prepared to deal with dangerous offenders. Among the more frequently mentioned arguments cited were the:

- philosophical intent of the juvenile court in protecting and helping youth, with secondary concern about public safety;
- broad issues involving juveniles and their families (abuse, neglect, contributing, delinquency, etc.) with which the court is involved doesn't allow adequate attention in cases involving dangerous crimes;
- less than adequate legal counsel available to juveniles; and
- tendency of the juvenile court to be much less harsh in dealing with juvenile offenders, allowing them to remain in the community after having committed many offenses.

Because of these limitations, and a range of perceived attributes of the criminal court, a large majority of respondents believed the criminal court was the logical alternative to juvenile court handling of dangerous juvenile offenders.

The final area of concern emerging from Erie County was a generally held belief that dangerous juvenile offenders should be placed within the juvenile corrections system. There was a broad-based expression of opinion that juveniles not be mixed with adults in detention or corrections

facilities. In addition, respondents felt that rehabilitation should be a primary goal; however, that goal should be balanced with concern for public safety.

Obstacles to Change

In reviewing the findings of the Erie County case study, it is important to note that the state of New York has a long tradition of considering individuals who are 16 or older as adults for purposes of criminal prosecution. This distinction is so ingrained that the vast majority of respondents could only discuss "juveniles" as individuals under 16 years of age. The term "juvenile offender" is a legal term describing an under-16 year old charged with one or more excluded offenses. "Juvenile delinquent" is the term used in juvenile (family) court to define under-16 year olds under its jurisdiction.

As a result, the whole character of the problem is remarkably different in New York than in most other parts of the country. Given the shifts in jurisdiction over dangerous young offenders to adult courts, coupled with the general belief that 16 year olds are adults, it appears that juvenile courts here have been effectively removed from the kinds of cases most juvenile courts routinely handle in other jurisdictions. Because of the high levels of satisfaction with this arrangement, changes appear unlikely. At the same time, it should be noted that attitudes of officials in New York City may be more critical to decisions made in Albany, than are the ones that are reported in this case study.

VERMONT

The Vermont case study reveals a state in which everything remains on a "human scale." Crime and congestion are encountered less often than in other study sites covered in this report. Public opinions can generally be characterized as tolerant except when shocking events, no matter how isolated, occur. Once those feelings subside, Vermonters appear to again turn to progressive but small, low-cost alternatives that retain the human-scale problem-solving approach. Comprehensive or strategic planning efforts are not in evidence, perhaps as a result of this view of the world. All aspects of Vermont's approach to crime and justice seem to be conditioned on an awareness that serious and dangerous criminals don't appear very often. At the same time, it is equally evident that values are changing and are reflected in attitudes regarding the substantial statutory amendments in 1981, in the need for juvenile confinement, and in the need for public safety.

In 1981, the state legislature, in a special session lasting less than

a week, drastically amended the statutory provisions related to the transfer and referral of juvenile offenders. The new laws made possible, for the first time in the state's history, the judicial waiver of juveniles (ten years of age or older) to adult court. It also excluded certain 14 and 15 year olds from juvenile court jurisdiction. These amendments were reported to be the legislature's response to a specific incident involving two defendants, one under and one over the age of 16, known locally as the Essex Junction murder. This case caused extraordinary public outcry, since the younger offender could not be tried as an adult under the then-current Vermont laws. Because Vermont had closed its only delinquency facility (Weeks School) in 1978, it meant that no instate juvenile institution was available to receive the younger Essex Junction offender. The result was the action of the special legislative session.

At the same time, the legislature expanded juvenile court jurisdiction over 16 and 17 year old offenders, allowing state's attorneys (prosecutors) at their discretion to file delinquency charges for most offenses. This meant that the distinctions between "juveniles" and "adults" became even more blurred with respect to 16 and 18 year old offenders.

The passage of these laws provoked a high level of public debate. Many people felt the new waiver and excluded offense laws were unnecessary and harsh, an overreaction to an isolated tragedy. Other respondents felt that the new laws would be used so infrequently that their existence was irrelevant to the practical operation of the justice system.

The one prominently divisive issue that seemed to remain for resolution, at the time of our visits, involved the need for a secure juvenile facility. Opinions were fairly unanimous that some type of facility was needed but divided on questions of size, program, and security level. In general, respondents argued for different numbers of beds, within the range of eight to 75; one respondent called for the reopening of Weeks School (before it closed, it housed 100 boys). Program and security aspects were linked. Respondents spoke of the need for "structured confinement," "job training and basic literacy," and "treatment for really difficult kids." Some of them saw the proposed Essex Junction facility as a critical answer to Vermont's detention and/or confinement needs; others feared that more kids than necessary would be confined if the facility were even as large as 30 beds. What seemed clear was that a facility would be constructed, probably opening in 1984.

Obstacles to Change

Several potential obstacles to change appeared evident during the interviews. One rather curious viewpoint, expressed by several respondents, was a general unwillingness, among justice system professionals, to approach the Vermont General Assembly to amend, or even to ratify, existing departures from state statutes. The impression conveyed was that it was better to live with outmoded or consciously

violated state laws than to give the legislature the opportunity to add amendments of its own. For example, legislation pertaining to Weeks School and to juvenile corrections authority in the Department of Corrections still appears in the state code, even though the School was closed in 1978 and juvenile corrections authority was administratively transferred to the Department of Social and Rehabilitation Services during that same year.

Finances are also a problem in Vermont. Despite the generally recognized need for more diagnostic, probation, mental health, and institutional services, there appears to be little movement toward any new or expanded services other than the Essex Junction facility. The state is content to purchase out-of-state confinement for special juvenile cases and for all adults sentenced to more than five years, rather than expand or supplement its present institutional network. In addition, its youthful offender programs in state adult institutions and halfway houses, while viewed favorably, were not likely to attract substantially increased funding.

What may be more significant, in the long run, however, may be the lack of clear consensus, among professionals and the general public, as to the best way to handle serious and dangerous juvenile offenders. Perhaps because the "rehabilitation ethic" has been so historically strong in Vermont, the very fact that such conflicts exist reveals the presence of essentially new values being introduced either by in-migration of new residents or by philosophical currents of opinion being voiced in other parts of the country. Whatever the reasons, the lack of consensus concerning public responses to juvenile crime will tend to retard the adoption of proposed changes in services.

KING COUNTY, (SEATTLE) WASHINGTON

The state of Washington undertook a substantial reform of its juvenile justice system in 1978. The legislative amendments replaced the old system of broad discretion and indeterminate sentencing with a set of procedures that emphasized predictability and accountability, through the introduction of presumptive prosecution and sentencing standards. Coupled with changes in the criminal justice system to take effect July 1, 1984, it will produce what one respondent characterized "the only justice system in the United States that will actually fit together."

These changes affected participants at all levels of the King County justice system. Through this process of legislative change, it seemed that the "key actors" had reached a consensus on the approach they wish to take with juveniles as well as with adults. The majority of respondents appeared to be hopeful about the juvenile system and its ability to successfully handle dangerous juvenile offenders.

Impetus for Change

Two important elements seemed to permeate responses in King County which, at some levels, seem contradictory:

- the level of security in juvenile facilities; and
- the principle of accountability.

The presence of limited security options in juvenile facilities directly related to how respondents evaluated the juvenile justice system's ability to handle dangerous juvenile offenders. Most respondents felt that no juvenile facilities were currently adequate to handle the dangerous juvenile offender. They stated, that although sanctions were more predictable (and more desirable) in the juvenile system, the lack of secure facilities made such penalties almost meaningless. Respondents expressed concern that public safety issues were being ignored in favor of then-current juvenile rehabilitation theories.

The issue of security in juvenile facilities was being scrutinized at almost every level in the juvenile justice system. Many respondents felt that at least part of the state juvenile corrections network soon would be changed to more secure facilities.

Accountability issues were also stressed by almost every respondent, in either one of two respects. Some of them stressed the need to have well established measures for assessing juvenile offender accountability. Respondents felt it was important that the system get across the message that:

- his offenses are his problem;
- he can't "luck out" and get a "good" judge - sanctions are certain; and
- sanctions increase in severity for repeat offenders.

The other side of the accountability issue dealt with ensuring uniform justice for juvenile offenders. Opinions suggested that sanctions should not be based on theories of rehabilitation but, instead, on certain punishment for specified crimes. One complaint about the system's operation was the use of "manifest injustice" to lengthen sentences for "rehabilitative" or "treatment" purposes.

At the time of the case study interviews, the State of Washington was about to implement a new set of legislative amendments, changing adult sentencing procedures from indeterminate to determinate terms. Part of the motivation for the change, according to some respondents, stemmed from the general satisfaction with the juvenile justice model for delinquency dispositions. The impending changes were mentioned by several respondents, and always within the context of increasing "system accountability."

There was one important qualification mentioned by most of the respondents: burglary was not, in their opinion, a "dangerous offense," even though they recognized its potential "dangerousness." Since burglars represented the overwhelming majority of cases classified by The Academy as "dangerous" in King County, respondents asserted that their answers would be different when including burglary with (or excluding it from) the more generalized category. Many persons felt that only a small percentage of the cases in King County dealt with truly "dangerous juvenile offenders." One respondent commented, "It (dangerous juvenile crime) truly is not a problem here, in the proportion that it exists in some other major American cities." This assessment supports the feeling, which was held by the majority of respondents, that the current system, with a few minor changes, was adequate to handle what few dangerous juvenile offenders came into the system.

Among individuals interviewed, a large majority evidenced a high level of satisfaction with the "just deserts" model and felt that, for the most part, dangerous juvenile offenders were being correctly handled. Although respondents suggested a number of improvements, the justice model had support from a diverse group of actors in the criminal and juvenile justice systems. Many interviewees felt that, because indeterminate sentencing existed in the adult system (ended in July, 1984), the juvenile justice system worked better.

Obstacles to Change

Yet, reasons for supporting the juvenile justice system sprang from a complex array of philosophies and strategies for dealing with the problem. The most controversial issues remaining unresolved in King County seemed to focus on the discretionary powers exercised by judges and prosecutors. Some respondents questioned whether the new system represented real change or if past disproportionate dispositions for similar offenses would continue to occur. None of these issues seemed to have had enough support to foretell significant changes in the justice system in the near future.

CASE STUDY OVERVIEW CONCLUSIONS

The nine case studies summarized above reflect, to be sure, many parochial and regional differences. Yet, despite the disparaties, certain commonalities arose in most of these sites. It might be safe to attribute some of the similarities to the pervasiveness of network television news programs. The American "character" may also play a part, as might the "networking" of criminal justice professionals throughout the country. Whatever the reasons, the similarities reflect extremely important

findings, particularly in terms of forecasting short-term changes. Some of the most salient issues are noted below.

Adult Court/Juvenile Corrections

In most sites, the issue of adult court jurisdiction over young offenders has dissipated during the past five years since our last investigation. Persons who advocated that juveniles who commit serious crimes be treated as adults were generally satisfied that the then-current (1983) laws met their concerns; most people who opposed the practice reluctantly acknowledged that certain juveniles should be tried in criminal courts either because of strong public opinion or because of the lack of satisfactory results in prior juvenile court cases. Except for the Baltimore City and Vermont sites, it can be concluded that the issue ahs died down to a point where no significant changes in law or practice were expected over the next few years. Since almost all 16 and 17 year olds in Vermont are routinely referred to adult courts anyway, and serious crimes by ten to 16 year olds are so infrequent, the issue will not lead to legislative changes, but will continue to be debated as it relates to public policies affecting children. Litte support surfaced anywhere for lowering general criminal jurisdiction below current age levels.

If our observations are correct, the implications for juvenile courts are very significant. Should this legislative trend persist (reflecting both public and professional attitudes), juvenile court judges in most states could expect to lose part or all of their jurisdiction over juveniles charged with serious crimes. Whether through the increased use of presumptive waiver hearings, expanded lists of excluded offenses, or shifts in discretion away from judges and in favor of prosecutors, the outcomes would be the same: fewer of these cases will be heard in juvenile courts. The result will be that juvenile courts would probably become less identified as juvenile justice agencies and more attuned to child welfare and protective services. In such an environment, older, more sophisticated juveniles would become systematically absorbed into criminal court dockets. Juveniles courts would probably retain jurisdiction over younger, less sophisticated delinquents. Yet, there appeared to be very little movement toward re-examining the role of the juvenile court except in Dade County. The long-term effects on the character of juvenile courts by these changes didn't concern our respondents very much.

The point here is that the <u>age</u> factor is breaking down as the critical determinant of court jurisdiction: <u>severity of offense</u> has now assumed a much more relevant position as a point of reference. While the <u>Kent</u> factors will undoubtedly continue to guide judicial waiver decisions, state legislators and even prosecutors are looking at the instant offense first, and then at age. Given the absence of a concerted effort to restore juvenile court jurisdiction over these types of offenders, the expansion of adult court jurisdiction can reasonably be expected to continue, so long

as legislatures must respond to public demands for more effective law enforcement.

At the same time, opinions everywhere clearly showed a resistance to sentencing convicted youth to adult corrections facilities. Even though prisons and reformatories were perceived as having the capacity to control criminal behavior, they were also viewed as brutalizing schools of crime. The major problem that most people expressed, with respect to juvenile facilities, was related to security. In Maryland and Washington, the lack of institutional security was equated with an inability to exact any accountability from the cognizant juvenile corrections agencies. Respondents in Indiana and Maryland called for construction of secure youth facilities that would segregate older and more sophisticated adolescents away from both the juvenile and adult populations within the existing systems. Louisiana and Vermont, for different reasons and in different ways, had already embarked on paths that would create such institutions as somewhat distinct facilities for dangerous young offenders.

For most respondents, rehabilitation of juvenile offenders was still an articulated goal, one viewed as compatible with secure confinement. For other persons interviewed, those who favored punishment as the basis for confinement, rehabilitation was also considered desirable, if possible. Based on this somewhat uneasy alliance between these historically contending forces, juvenile corrections agencies can probably look forward to demands for greater bed capacity in the late eighties and nineties, for more institutional security levels, for longer average stays, and for greater accountability in the areas of escapes, programs, and decisions regarding institutional releases.

Discretion and Due Process

Judicial and/or prosecutorial discretion was mentioned in all nine sites as a troubling aspect of the overlapping jurisdictions of the two court systems. The issue was framed differently, however, since laws were so different in the nine states examined. For example, prosecutorial discretion was considered to be a problem in Los Angeles County, Dade County and Marion County, and in Vermont with regard to 16 and 17 year-old defendants; in Montana and Orleans Parish, comments were directed toward the use of judicial discretion.

Most of the comments received were to the effect that current laws permitted too much discretion which led, in turn, to too much uncertainty. The solutions most frequently suggested would expand due process guarantees in juvenile court while reducing opportunities for either judges or prosecutors to be able to decide the judicial forum. This desire for certainty was generally tied to calls for legislative amendments as the only sure way of handling the problem.

Two points merit further comment. The first one is that the use of discretion has always been at the heart of the juvenile court movement. The parens patriae founding philosophy of juvenile courts is predicated on the actions of wise judges, dispensing justice according to the needs of the children before them. The extent to which the use of such discretion was rejected in the case study sites, -- and it was fairly widespread -- may suggest a general dissatisfaction with the outcomes stemming from juvenile court decisions. If such is the case, support for juveniles courts in the juvenile justice area, reflected in the MIJJIT study just five years before, has seriously eroded.

The second point pertains to the relationship between the authority to exercise official discretion and the existence of due process safeguards. Many of our respondents offered an interesting argument: a greater application of due process in juvenile court hearings would result in fewer instances of misused discretion. On the surface, the relationship seems quite plausible; yet, one actually has very little to do with the other. It is, of course, possible that public trials, the use of juries, and a uniform adoption of a "reasonable doubt" evidentiary test would limit the misuse of judicial discretion. However, since most of the objections relate to decisions regarding judicial waiver or dispositions after judgment, it is hard to find the connection. The relationship of the expanded use of due process to the limited use of prosecutorial discretion is even more remote. This misconception might be attributable to semantics were it not for the fact that similar statements were heard in all sites.

What is clearer is that most respondents were willing to trust legislators to specify the conditions under which juveniles could be tried as adults; they were less confident that judges and prosecutors would exercise consistent good judgment.

Use of Juvenile Records

Perhaps the one issue around which the greatest consensus formed related to the use of juvenile court records. Juvenile and criminal justice officials, legislators, and other respondents often agreed that juvenile court records should be used by both criminal court judges (for sentencing purposes) and corrections officials.

Many respondents, - the largest group among those persons supporting this position - wanted to ensure that chronic or serious delinquents not be viewed as first-time offenders when convicted (for the first time) in adult court. Since probation is normally the sentence for the first-time offenders, respondents felt that adult court judges should know the types of offenders they were being asked to sentence. In this way, "first-time offenders" with serious delinquency records would more frequently be confined. Other, equally supportive respondents felt that both judges and

corrections officers should be concerned with rehabilitation as well as punishment. It would be essential, they argued, that these officials know what had been tried during and after previous court appearances. The "need to know" outweighed, apparently, concerns for maintaining the confidentiality of juvenile court proceedings.

In point of fact, however, it was difficult to ascertain how often juvenile court records were actually used by criminal justice officials. In Montana, for example, special procedures were required to access juvenile records. Expungement or sealing of juvenile court records, as was noted in Erie County, also lessened record accessibility.

Prosecutors appeared to use juvenile records fairly extensively, particularly in charging decisions. A number of judges indicated that presentence investigations, conducted by their probation departments, frequently contained references to juvenile records. Nevertheless, it was clear that practices varied among judges and jurisdictions.

What is significant is that the existence of permissive legislation does not necessarily guarantee that juvenile records will be used in criminal proceedings. Also significant was the absence of any substantial resistance to the idea of using juvenile court records in adult courts. When asked about the effect of upgrading, in effect, delinquencies to the equivalence of criminal acts, most people saw no problem, so long as judgment had already been rendered.

Lack of Resources

One outstanding observation, applicable to all sites, was the belief that existing corrections options were inadequate. A fairly universal complaint related to the lack of money to either fund special programs for serious juvenile offenders or to build secure juvenile facilities. More often than not, there was little hope that conditions would improve. What appeared to be less likely was the prospect of increased funding for corrections programs. Despite the public demand for more and longer confinement, for more intensive services, and for more accountability, respondents questioned the will of their state legislatures to be fiscally responsive. In California, deterioration of programs and services was directly attributed to tax-reducing referenda; in Indiana and Maryland, legislative rejection of high-cost solutions was cited as the reason why secure juvenile facilities, while needed, would not be constructed. Only in Louisiana and Vermont did there appear to be a willingness to appropriate construction funds; in the latter case, against the advice of many juvenile justice professionals. However, local reactions were mixed. In Los Angeles County, feelings ranged from dispair and rage to a determination to do more with less. In Maryland and Vermont, there were expressions of reluctance to even approach the legislatures there, lest they make matters worse. In Orleans Parish and in communities

in Vermont, there were generally expressed beliefs that neither the juvenile nor the adult system was likely to have effective options, despite the apparent willingness of the state legislatures to appropriate funds for new institutional programs.

By and large, respondents reflected little optimism that juvenile corrections agencies would be adequately funded to deal with more difficult cases, although their preferences clearly favored this course of action. The adult court/juvenile corrections model, so often advocated, requires two conditions for effectiveness: the power of adult courts to somehow get young offenders into juvenile programs, and the ability of the juvenile corrections system to reliably deal with an older, more sophisticated juvenile population. The first one can easily be accomplished through legislative amendments. The second one, for most states, requires investments substantially beyond their current appropriation levels. Very few people expected to see it happen.

CHAPTER 4

STATISTICAL DATA
OVERVIEW

This chapter presents a brief overview of statistical information in nine sites, the same sites discussed in the previous chapter. The division of the materials into two chapters reflects a conscious effort to distinguish between qualitative and quantitative findings. Chapter 3 is based on interviews with samplings of key informants at each site. Chapter 4 exhibits data obtained from local records of all applicable juvenile and criminal cases within an approximate three-year period.

The data displayed in Chapter 4 are relatively brief and succinct. More comprehensive treatment may be found in a companion volume entitled Comparative Dispositions Study: Practices in Nine Jurisdictions. Readers will find there a Profile pertaining to each site, the last section of which is comprised of a discussion of the findings, and accompanying tables. These Profile tables are, in turn, summaries of cross-tabulations and raw data that are available from either The Academy or NIJJDP.

As a result of the successive attempts to compress large data sets into increasingly smaller displays, and to offer cross-jurisdictional comparisons as well, misperceptions about the findings become more likely. Therefore, readers are cautioned to read this chapter with care, to review the Profiles in the Practices in Nine Jurisdictions volume, and if necessary, to resolve unanswered questions with the authors.

Presented below are a series of discussions and tables that summarize the findings in all nine sites. For the most part, the sequence is identical to that found in each Profile. In some cases, such as TABLE 15 and FIGURE 1, additional displays are necessary in order to make the data more comprehensible; in other instances, special tables resulted from statutory differences among the nine jurisdictions.

WHAT ARE THE DATA CHARACTERISTICS?

TABLE 15 is a handy reference to explain the remaining tables in this chapter. It establishes not only the time parameters of the study, but also clearly shows both the sources and eccentricities of every data set from each site. Readers should refer back to TABLE 15 from time to time, in order to avoid erroneous conclusions. For example, many Los Angeles County and Baltimore City court statistics appear to be somewhat comparable. However, the former set is for one year while the latter set is for 18 months.

As can be seen from TABLE 15, significant variations exist with respect to time periods, access points, and data sources. The effect of these differences is that certain comparisons, such as the relative incidence of crimes among sites, for example, becomes more complicated. Because some months of the year have historically higher crime rates than others, it may be misleading to assume that one year's data from Los Angeles County may be appropriately compared with two-thirds of the crimes in Baltimore City's 18-month data sets.

At the same time, these differences, while important, do not prevent the presentation of a national profile, if the data parameters are clearly understood. The data sets are large and include all cases relevant to the study parameters for at least one year and, in seven of the nine sites, two years. Therefore, the discrepancies may not be as relevant to a descriptive analysis as they might affect a more sophisticated method of presentation.

In order to better understand the interrelatedness of the remaining discussions and corresponding tables, a diagram showing the sequence of the described critical events appears in FIGURE 1 below. Because of the manner in which the data were collected, court related information became known as Phase I data and the remainder of the data -- those related to corrections experiences of the offenders and to court reentry of original cohort members -- became known as Phase II. Within that rubric, aggregated data variables were grouped according to critical events in the juvenile justice and criminal justice process. FIGURE 1 shows the sequence of data presented in TABLES 16 through 24. Readers can clearly see how confined and nonconfined (not guilty, probation, other dispositions) are also tracked from the judgment stage to court reentry for subsequent felony reactivity.

Six of the nine sites provided data to match the sequence depicted in FIGURE 1. In addition, the study design called for the collection of Phase II data in six sites, instead of the original nine sites. One site, i.e., Vermont, provided no probation/parole experience data but did furnish court reentry followup for the entire original cohort. The two other sites for which no Phase II data appear are Los Angeles County, CA, and the State of Montana.

TABLE 15. NATIONAL OVERVIEW: STATISTICAL DATA SET CHARACTERISTICS (BY SITE, SOURCE, TIME PERIOD, AND SPECIAL FEATURES).

Data Site	Data Sources and Time Periods		Special Features
	Courts	Corrections	
Los Angeles County, CA	Office of the District Attorney and County Data Processing Dept. (Adult, Youth) Superior Court - Juvenile Division and County Data Processing Department (Juvenile) January 1, 1981 to January 1, 1982	CA Dept. of Corrections (Adult, Youth) CA Youth Authority (Youth, Juvenile) January 1, 1981 to January 1, 1983	• One year of court data, based on filing date, due to incomplete automated records prior to 1981. • Not a CDS-II site. • Local corrections data not collected.
Dade County (Miami) FL	State's Attorney's Office (Adult, Youth) Dept. of Youth and Rehabilitative Services and Circuit Court - Juvenile Division (Juvenile) January 1, 1980 to January 1, 1982	FL Dept. of Corrections (Adult, Youth) Dept. of Youth and Rehabilitative Services (Juvenile) January 1, 1980 to January 1, 1983	• Local corrections data not collected. • Reactivity data for Juveniles in Juvenile Court (JJC) who received confinement or probation dispositions limited to their period of supervision.
Marion County (Indianapolis) IN	Office of the Prosecuting Attorney January 1, 1980 to January 1, 1982	IN Dept. of Corrections, County Jail, IN State Farm, and Marion Superior Court - Criminal Division (Adult, Youth) January 1, 1980 to January 1, 1983	

TABLE 15. (Continued)

Data Site	Data Sources and Time Periods: Courts	Corrections	Special Features
Orleans Parish (New Orleans) LA	Office of the District Attorney	LA Dept. of Corrections (Adult, Youth) LA Dept. of Corrections and Dept. of Health and Human Services - Division of Youth Services (Juvenile)	• Study-applicable case for Adults and Youth in Adult Court with multiple dangerous cases in 1980 and 1981 selected by most serious, dangerous case. • Local corrections data for JJCs not collected. • Lower age of jurisdiction cases not included in re-activity data search.
	January 1, 1980 to January 1, 1982	January 1, 1980 to January 1, 1983	
Baltimore City, MD	State's Attorney's Office and Clerk of Courts Office (Adult, Youth) State's Attorney's Office (Juvenile)	Criminal History Office-Division of Corrections, Baltimore Jail, and MD Division of Parole and Probation (Adult, Youth) Juvenile Services Administration (Juvenile)	• Only 18 months of court data due to incomplete centralized criminal court records for the first six months of 1980. • Significant percentages of JJC corrections data were not located in state agency records.
	July 1, 1980 to January 1, 1982	July 1, 1980 to January 1, 1983	

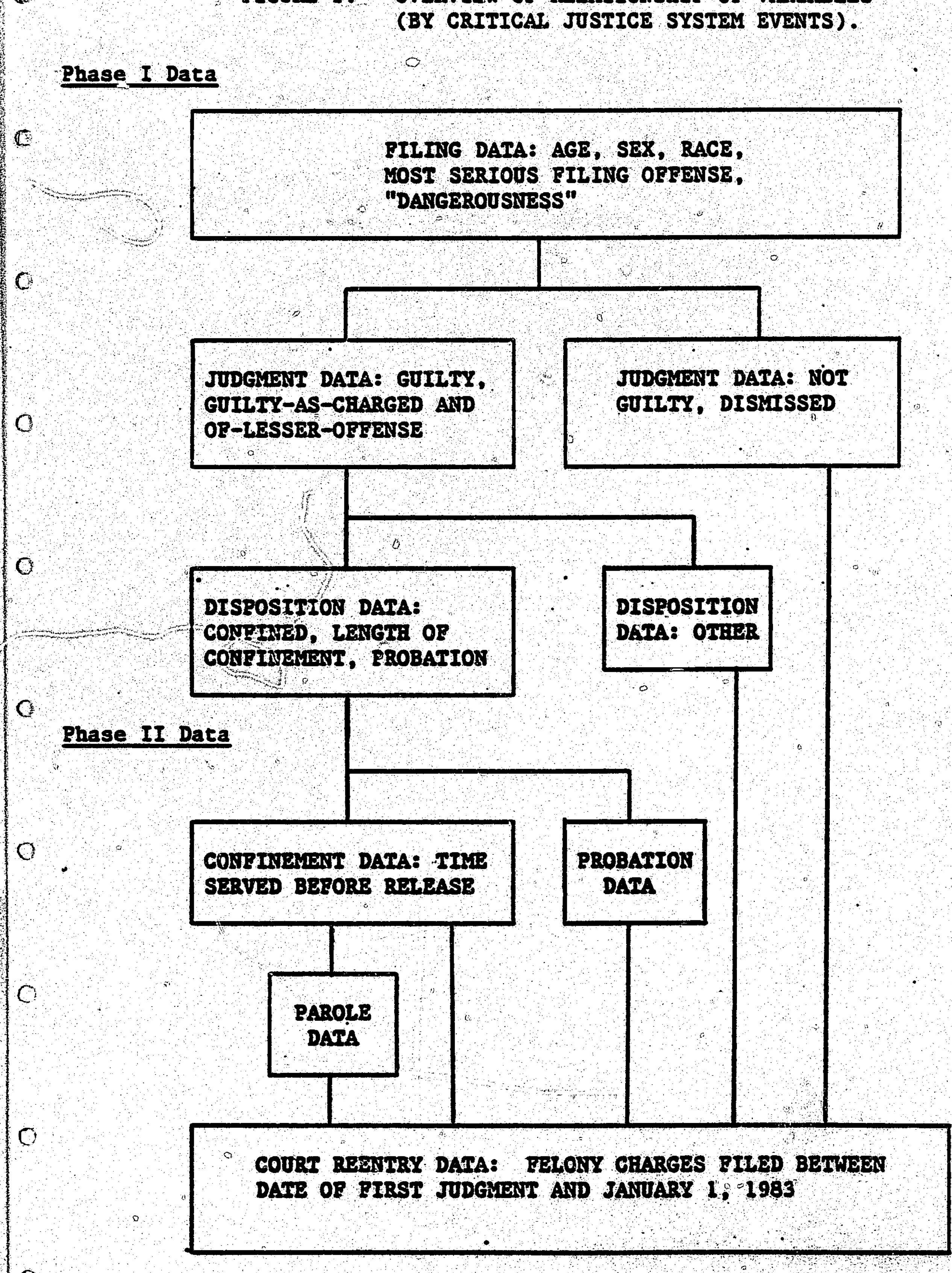
TABLE 15. (Continued)

Data Site	Data Sources and Time Periods		Special Features
	Courts	Corrections	
State of Montana	Office of the Supreme Court Administrator, County District Courts, and State Identification Bureau (Adult, Youth) Juvenile Justice Bureau - Board of Crime Control (Juvenile) January 1, 1980 to January 1, 1982	MT Dept. of Institutions (Adult, Youth) Juvenile Justice Bureau - Board of Crime Control (Juvenile) January 1, 1980 to January 1, 1983	• Not a CDS-II site. • Local corrections data not collected.
Erie County (Buffalo) NY	Office of the Clerk - County Supreme Court and County District Attorney's Office (Adult, Youth) Office of the Clerk - County Family Court (Juvenile) January 1, 1980 to January 1, 1982	NY Dept. of Correctional Services, County Correctional Facility, and County Probation Dept. (Adult, Youth) Division for Youth (Youth, Juvenile) County Dept. of Probation (Juvenile) January 1, 1980 to January 1, 1983	• Lower age of jurisdiction cases not included in reactivity data search. • Reactivity data sought in both juvenile and criminal courts for all applicable JJCs and YACs.

TABLE 15. (Continued)

Data Site	Data Sources and Time Periods		Special Features
	Courts	Corrections	
State of Vermont	Office of the Court Administrator - Supreme Court of Vermont and County District Courts	Dept. of Corrections (Adult, Youth) Dept. of Social and Rehabilitation Services (Juvenile)	• Court filing dates in fiscal years 1980 and 1981 used for CDS-I time period. • Reverse waiver decisions in criminal court expunged from court records. • Reactivity data sought in both juvenile and criminal courts for all JJCs and YACs.
	July 1, 1980 to July 1, 1982	July 1, 1980 to July 1, 1983	• Local corrections data not collected.
King County (Seattle) WA	Office of the Prosecuting Attorney	Dept. of Corrections and Board of Prison Terms and Parole (Adult, Youth) Dept. of Health and Rehabilitative Services and County Dept. of Youth Services (Juvenile)	• Local corrections data not collected.
	January 1, 1980 to January 1, 1982	January 1, 1980 to January 1, 1983	

FIGURE 1. OVERVIEW OF RELATIONSHIP OF VARIABLES (BY CRITICAL JUSTICE SYSTEM EVENTS).



What Persons Are Represented in This Study?

The site-specific data below provide a rich set of information about handling dangerous young offenders in those jurisdictions. Data reflect the critical events in both the juvenile and criminal justice systems, arranged according to the three cohorts, as follows:

- Juveniles in Juvenile Court (JJC)
- Youth in Adult Court (YAC)
- Young Adults in Adult Court (AAC)

The distinctions are based on age as well as jurisdiction. Youth in Adult Court are defined as "adults" under the age of 18 at the time of filing. Young Adults are defined as adults between the ages of 18 and 26 at the time of filing. In order to be eligible, individuals in each cohort had to have been charged with at least one of six "dangerous offenses." Because state criminal codes contained many crimes that qualified for inclusion under our definitions, these crimes were collapsed into the following six categories defined by The Academy as dangerous offenses:

1. Murder
2. Nonnegligent Manslaughter
3. Rape
4. Aggravated Assault
5. Robbery
6. Burglary

Subject to the variations noted in Table 15, cases were included if criminal charges were judged in the period of January 1, 1980 to January 1, 1982. A case was considered judged if a final court determination was entered on the most serious offense. Phase II data, i.e., corrections experiences and court reentry, resulted from tracking cohort members from the date of their first judgments to January 1, 1983.

Sex, age, and race data on each case are available, in cross-tabulated format, according to the following variables:

- Most Serious Filing Offense
- Most Serious Judgment
- Most Serious Guilty Judgment Offense
- Most Serious Sentence Type
- Longest Minimum Confinement Length
- Longest Maximum Confinement Length
- Guilty Judgment Outcome
- Case Result (Judgment and Sentence Type)
- Felony Reactivity

TABLE 16 reflects the total number of persons found to be applicable to the Comparative Dispositions Study criteria and upon which the subsequent tabular displays are generated. Every case within the applicable time periods, to the extent made possible by the retrieval techniques employed, are included. The KEY at the end of TABLE 16 identifies the cohort members by referral mechanism. In this way, readers can see the frequency with which each referral mechanism is utilized. Thus, it can be seen that California, Montana, and Washington rely entirely on the judicial waiver mechanism; Louisiana and New York have both established lower ages of criminal responsibility and, in addition, employ another referral mechanism; Florida, Indiana, Maryland, and Vermont use two or more referral mechanisms while maintaining age 18 as the age of general criminal responsibility. TABLE 16 includes 100 percent of the initial cohort members. Subsequent tables in this series (TABLES 19 through 20) also reflect both numbers and percentages, the latter calculated as a percentage of the number of offenders reported in TABLE 16.

When viewed from the perspective of comparing the courts which handled persons charged with dangerous offenses, TABLE 16 shows that five sites (Los Angeles County, Marion County, Orleans Parish, Erie County, and the State of Vermont) adjudicated more individuals than did the corresponding juvenile courts. This finding is, of course, not surprising, given the presence of 18-to-26 year olds among the adult court population. What is surprising is that the Dade County, Baltimore City, State of Montana, and King County juvenile courts actually handled more cases of dangerous offenders than did their respective criminal courts for the same period. The juvenile courts in those jurisdictions were clearly carrying larger caseloads of serious juvenile offenders than would normally be expected.

Although the existence of lower-age-of-jurisdiction statutes in Louisiana and New York, and the fairly consistent application of Vermont's concurrent jurisdiction statute to 16 and 17 year old offenders, tend to explain why these jurisdictions show more dangerous cases in their criminal courts, differences in available referral mechanisms cannot explain all the variations among jurisdictions. In part, local traditions, judicial attitudes and prosecutorial policies must be presumed to affect these statistical outcomes.

TABLE 16. NATIONAL OVERVIEW: HOW MANY PERSONS ARE REPRESENTED IN THE STUDY?

Data Type By Site	JUVENILES IN JUVENILE COURT		YOUTH IN ADULT COURT (UNDER 18 YRS.)		YOUNG ADULTS IN ADULT COURT (18-26 YEARS)		TOTAL PERSONS IN STUDY
	Number	Percent	Number	Percent	Number	Percent	By Data Type
Los Angeles County, CA	1,760	100.0	235[a]	100.0	5,901	100.0	7,896
Dade County (Miami) FL	3,157	100.0	230[a] 19[b]	92.4 7.6	1,285	100.0	4,691
Marion County (Indianapolis) IN	1,237	100.0	98[a] 3[c]	97.0 3.0	1,588	100.0	2,926
Orleans Parish (New Orleans) LA	683	100.0	6[a] 33[c] 237[d]	2.2 12.0 85.9	1,794	100.0	2,753
Baltimore City, MD	1,734	100.0	80[a] 255[c]	23.9 76.1	1,335	100.0	3,404
State of Montana	863	100.0	3[a]	100.0	535	100.0	1,401
Erie County (Buffalo) NY	10	100.0	3[c] 73[d]	4.0 96.0	393	100.0	479
State of Vermont	269	100.0	2[c] 237[b] 6[e]	.8 96.7 2.4	723	100.0	1,237
King County (Seattle) WA	2,410	100.0	34[a]	100.0	1,268	100.0	3,712
TOTALS	12,123		1,554		14,822		28,499

KEY: a. Judicial Waiver
b. Concurrent Jurisdiction
c. Excluded Offenses
d. Lower Age of Jurisdiction
e. Referral Mechanism Missing

TABLE 17 is, in some ways, an extention of TABLE 16. It reflects the number and percentage of cases initially referred to either the juvenile or criminal courts in these jurisdictions, based on the state-specific laws in effect at the time, as well as the cases transferred by these courts to the other court system for trial. As can be seen in TABLE 17, states permitting judicial waivers report "waivers" from juvenile to criminal courts; states providing for either prosecutorial discretion in filing decisions, or that exclude certain crimes from juvenile court jurisdiction, normally provide for "reverse waiver" from criminal to juvenile courts. As mentioned earlier, these cases will no longer appear as part of the JJC or YAC cohorts in which they initially appeared.

Eight of the nine sites had some form of judicial waiver statute in effect during the study period. The "age" and "offense" limitations of these statues vary considerably and, therefore, limit the utility of comparing waiver rates among sites. However, it can be reported that the use of this referral mechanism did not appear to be extensive in any of the sites studied: the highest rate found was 8.6 percent in Marion County; all the juvenile courts in Montana, when combined, waived one percent of the all the juveniles charged with dangerous offenses. Orleans Parish reported only one judicial waiver in two years; however, it must be remembered that this jurisdiction, in addition to trying all 17 year olds as adults, excluded certain crimes from juvenile court jurisdiction.

Only two sites reported "reverse waivers" to juvenile courts: Marion County and Baltimore City. Both sent approximately five percent of the eligible cases to be heard in juvenile court. Criminal courts in Vermont reported that the practice occurs but, because of state policy to expunge such records, no figures were available.

Which Group Was Most Dangerous?

The Sellin-Wolfgang Index of Delinquency Seriousness Scores is one of two widely used scales for measuring the the delinquency of a population.[1] The Index grew out of research designed to assess the <u>seriousness of an individual delinquency event</u> and thus required consideration of the complexity, multiple components, and aggravating factors of which any delinquency event could be composed. The original severity scaling of 141 offenses had been generated by several panels of raters composed of university students, police officers, and juvenile court judges and was used to evaluate a delinquency event by assigning severity scores to all components of the event, including multiple offenses or victims, extent of physical harm, extent of theft loss, and any other aggravating factors which might be present. The aggregate scores were then used to rank the hypothetical events. Among the tabular presentations included in the original Sellin-Wolfgang work was a listing of <u>average seriousness scores</u> for crimes classified by the FBI's <u>Uniform Crime Reports</u> as Index Offenses. Over the past twenty years, this set of seriousness scores has been generally accepted as a useful, standardized, analytical tool in criminological and criminal justice research.

The Sellin-Wolfgang scale is not the only offense severity index which has been developed, however. One of the most recent efforts, for example, the National Survey of Crime Severity, was developed from a 1977 series of interviews conducted as a supplement to the National Crime Survey.[2] This set of severity scores was compiled from ratings assigned to a large number of very specific items describing criminal offenses and their consequences.

Notwithstanding the relative advantages of the NCS severity scores (the scores were based on more current responses; the survey was nationwide in scope; and the criminal offense categories to which severity scores were assigned were quite detailed and explicit), it was concluded that the Sellin-Wolfgang Index would be more appropriate for this study. This decision was based primarily on the nature of the available data. Court and corrections agency data concerning the offenses with which members of our study cohorts were charged were available only in terms of <u>criminal code title</u>; i.e., details about the circumstances surrounding the offenses were not known. Therefore, the Sellin-Wolfgang scale, which generally classifies offenses in terms of UCR categories seemed more compatible with the data for this study.

The three cohorts were analyzed in terms of the <u>most dangerous filing offense</u> in each individual case, using the Sellin-Wolfgang Severity Index. Under this scale, the following values were assigned to the six crime categories:

TABLE 17. NATIONAL OVERVIEW: HOW MANY PERSONS WERE TRANSFERRED BETWEEN COURTS?

Data Site	JUVENILES IN JUVENILE COURT Total	Retained	Waived	YOUTH IN ADULT COURT Total	Retained	Reverse Waived
Los Angeles County, CA	1,903	1,760	143	235	235	N/A
Dade County (Miami) FL	3,339	3,157	182	249	249	0
Marion County (Indianapolis) IN	1,354	1,237	117	105	101	4
Orleans Parish (New Orleans) LA	684	683	1	276	276	N/A
Baltimore City, MD	1,872	1,734	138	352	335	17
State of Montana	872	863	9	3	3	N/A
Erie County (Buffalo) NY	10	10	N/A	76	76	0
State of Vermont	269	269	0	245	245	0[a]
King County (Seattle) WA	2,441	2,410	31	34	34	N/A
TOTALS	12,744	12,123	621	1,575	1,554	21

N/A = Not Applicable due to absence of such statute in state code.

a. Records expunged.

Dangerous Offense Categories	Severity Index Values
1. Murder	26.0
2. Nonnegligent Manslaughter	26.0
3. Rape	18.0
4. Aggravated Assault	5.4
5. Robbery	5.0
6. Burglary	2.4

State laws predetermine jurisdiction of under-18 year old offenders. Therefore, the JJC cohort and the YAC cohort are not comprised of truly comparable offenders, in terms of either age or types of filing offenses. It is therefore critical that the pertinent state laws are understood before judgments can be made as to the relative seriousness of the offenses handled by the juvenile and criminal courts in each of the nine jurisdictions. For example, juveniles as young as age 10 may be waived to criminal courts in Vermont; in California, the age is 15. In New York, the normal age of criminal responsibility is 16; in Louisiana, it is 17; in the rest of the sites, the age is 18.

The obvious anomalies are discussed in the individual Statutory Summaries and Profiles, and will not be repeated. The important point here is that cases involving the six crimes listed above, filed against older juveniles (to age 18) are, by and large, to be found in the JJC cohorts in the juvenile courts, a finding which should not surprise most readers. At the same time, greater proportions of homicide and rape cases against under-18 year olds are tried in criminal courts. As a result, the mean scores, based on the Sellin-Wolfgang Index, as well as the median scores, tend to demonstrate that the most serious juveniles are, in fact, tried as adults. Phrased in another way, most dangerous offense cases against juveniles are heard in juvenile courts, but stem from robbery and burglary charges; only about 11 percent of dangerous offense cases filed against under-18 year olds are filed in criminal courts, but tend to stem more from "violent" crimes. (See Profiles in Practices in Nine Jurisdictions.)

TABLE 18 reflects the seriousness of the offenses with which individuals in each cohort were charged (based on the most dangerous filing charge in each case) and the value attributable to each of them. Mean and median values were then created for each cohort. It must be remembered that this ranking is based on the aggregation of many, slightly dissimilar felonies into six categories, without regard to weighting each crime in each category for such factors as use of a weapon, age of the victim, etc. In addition, the unavailability of prior records of delinquency and criminal judgments means that the levels of dangerousness portrayed reflects general frequencies of such offenses in the two court systems: it does not reflect the actual dangerousness of the specific charges in individual cases nor does it necessarily reflect the actual dangerousness of individual offenders. Nevertheless, the ranking is useful to suggest that, while many differences exist between these three groups of offenders, juvenile courts and criminal courts handle cases that are more comparable

than the statutes might suggest.

TABLE 18 then, reflects the number of cases involving the six categories of dangerous offenses filed in the two court systems over a 24 month period. In addition to number, the mean and median are also displayed. When weighted for levels of dangerousness that each category represents, a method for accommodating the disparate frequencies among them can be achieved.[3]

In terms of raw numbers, the data reflect that more cases involving dangerous offenders were actually handled in adult courts than were handled in juvenile courts against all offenders up to the age of 26. Yet, it can be seen that more juveniles were charged with these six dangerous offenses than were youth in almost every jurisdiction -- in almost eight times as many cases. When ranking the three cohorts in terms of the number and seriousness of the offenses handled by the two respective courts, the following patterns emerge with the highest number and mean appearing first:

Rankings

Number	Seriousness
1. AAC	1. YAC
2. JJC	2. AAC
3. YAC	3. JJC

TABLE 18. NATIONAL OVERVIEW: WHICH GROUP WAS MOST DANGEROUS?

Data Sites	JJC Number		YAC Number		AAC Number	
	Mean	Median	Mean	Median	Mean	Median
Los Angeles County, CA	1,760		235		5,901	
	5.18	5.00	10.70	5.00	6.18	5.00
Dade County (Miami) FL	3,157		249		1,285	
	3.60	2.40	6.50	5.00	7.20	5.00
Marion County (Indianapolis) IN	1,237		101		1,588	
	3.47	2.40	6.39	5.00	5.93	5.00
Orleans Parish (New Orleans) LA	683		276		1,794	
	4.40	5.00	7.20	5.00	5.40	5.00
Baltimore City, MD	1,734		335		1,335	
	5.00	5.00	7.42	5.00	7.06	5.00
State of Montana	863		3		535	
	2.91	2.40	8.47	5.00	4.75	2.40
Erie County (Buffalo) NY	10		76		393	
	8.70	5.00/5.40	5.48	5.00	6.63	5.00
State of Vermont	269		245		723	
	3.10	2.40	3.16	2.40	3.66	2.40
King County (Seattle) WA	2,410		34		1,268	
	3.31	2.40	6.34	5.00	4.43	2.40
TOTAL OFFENSES	12,123		1,554		14,822	
AVERAGE MEAN	4.41		6.85		5.69	

Which Group Was Found Guilty Most Often?

From a research standpoint, the issue of "guilt" or "innocence" does not lend itself, in any realistic sense, to a dichotomous analysis. "Guilt" often includes groups of guilty-as-charged and guilty-of-lesser-offense offenders, even if distinctions between pleas and convictions are ignored. "Not guilty" cases often include filed-but-not-tried , dismissed, and tried-and-found-not-guilty cases.

TABLE 19 displays the numbers of original cohort members judged delinquent or guilty in the cases which resulted in their inclusion in the study. Those judgments may or may not have resulted from being "guilty-as-charged" for their most serious offense. Many offenders were charged with multiple counts: they may have been found not guilty of the most serious charge but found guilty of a lesser offense. TABLE 20 offers more detail with respect to this phenomenon.

As can be seen, most criminal courts tend to find YACs guilty about as often as AACs. In terms of somewhat significant differences, Los Angeles County and King County found disproportionately fewer YACs guilty while Dade, Marion, and Erie Counties found more YACS guilty than AACs. Montana had too few YACs (3) to allow any conclusions. A comparison of juveniles with YACs yields a very similar pattern. Three jurisdictions (Los Angeles County, Baltimore City, and the State of Vermont) found fewer JJCs delinquent than criminal courts found YACs guilty; two jurisdictions (Orleans Parish and King County) found more JJCs delinquent than criminal courts found YACs guilty; and the remaining four sites were either strikingly similar or had too few offenders to permit comparison.

Perhaps the most useful way to to view the numbers of TABLE 19 is to recognize that, in all seven sites where sufficiently sized groupings allowed realistic comparisons, adjudication/conviction rates varied by less than 20 percent. Given this outcome, as well as the ones noted above, it would be very hard to argue that either court system, juvenile or criminal, consistently finds young offenders (charged with dangerous crimes) guilty more often.

FIGURE 2 offers a graphic comparison of judgments among cohorts in each jurisdiction and among cohorts in all nine jurisdictions. Judgments are further broken down for each jurisdiction, based on the most serious filing offenses with which the guilty offenders were charged. While it must be reiterated that some of the bars represent very few offenders (refer to TABLE 19), it does reflect, nevertheless, disparate patterns concerning conviction rates among jurisdictions. On the other hand, YAC and AAC conviction rates appear to be somewhat more consistent within jurisdictions, at least for certain offenses.

TABLE 20 reflects these guilty findings, further broken down by guilty-as-charged and guilty-of-lesser-offense charges. The JJC cohort was found to be guilty (or delinquent) less often than were YAC and AAC individuals and, when so adjudicated, the JJC guilty judgments were also less frequently based on filing charges. In other words, the percents displayed on TABLE 20 reflect the same proportions shown on TABLE 19, (excluding cases where judgment charges or outcomes were unknown). Overall, the three groups can be ranked as follows, in terms of the ratios of cases in which the offenders were found guilty and found guilty-as-charged with the highest percentages appearing first:

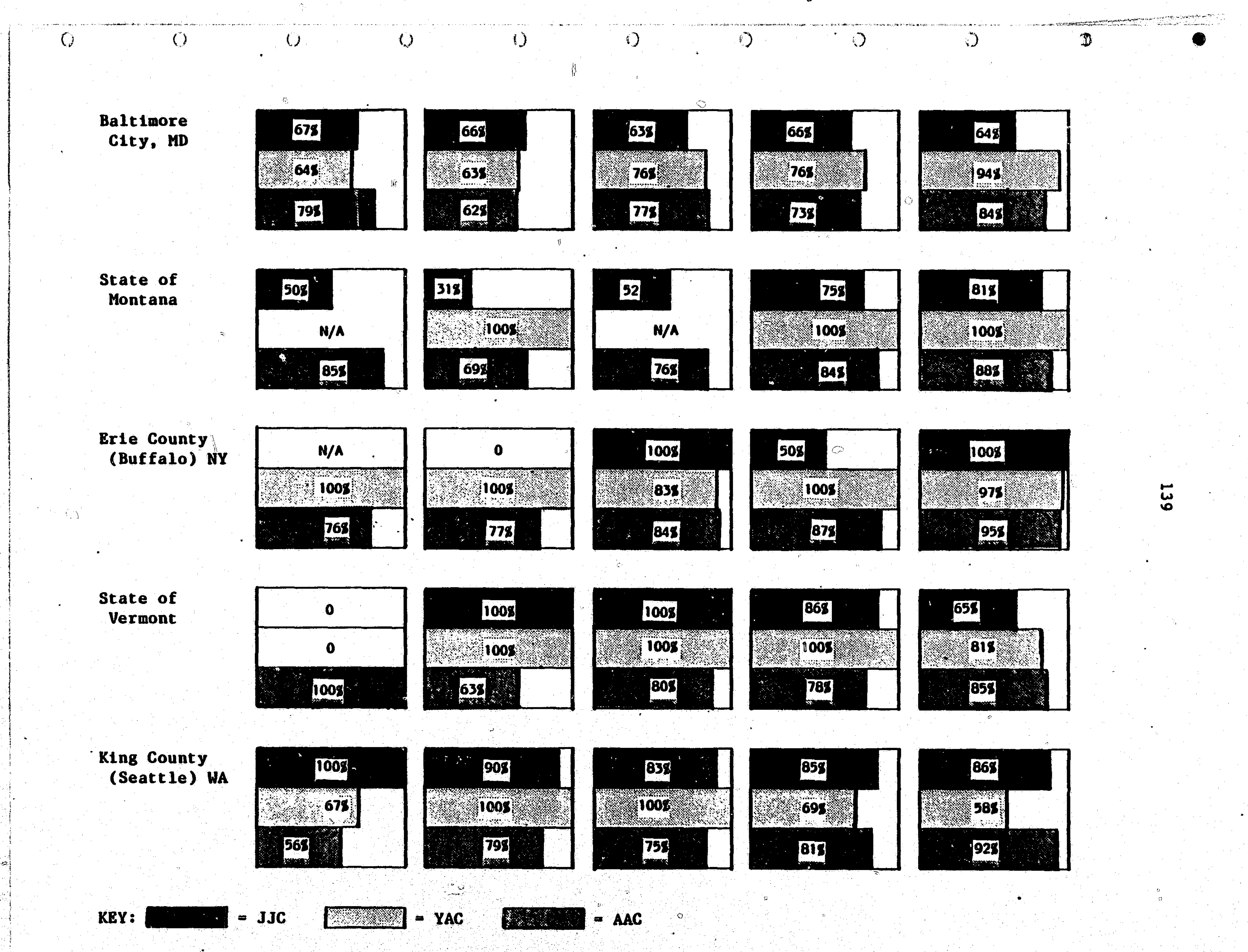
Rankings

Guilty	Guilty as Charged
1. YAC	1. YAC
2. AAC	2. AAC
3. JJC	3. JJC

TABLE 19. NATIONAL OVERVIEW: HOW MANY PERSONS WERE JUDGED DELINQUENT OR GUILTY?

Data Site	JUVENILES IN JUVENILE COURT		YOUTH IN ADULT COURT		YOUNG ADULTS IN ADULT COURT	
	Number	Percent	Number	Percent	Number	Percent
Los Angeles County, CA	1,200	68.2	180	76.6	5,121	86.8
Dade County (Miami) FL	1,961	62.1	154	61.8	639	49.7
Marion County (Indianapolis) IN	1,054	85.2	88	87.1	1,269	79.9
Orleans Parish (New Orleans) LA	490	71.7	149	54.0	948	52.8
Baltimore City, MD	1,129	65.1	254	75.8	1,000	74.9
State of Montana	675	78.2	3	100.0	451	84.3
Erie County (Buffalo) NY	5	50.0	74[a]	97.4	346[a]	88.0
State of Vermont	180	66.9	202	82.4	602	83.3
King County (Seattle) WA	2,076	86.1	23	67.6	1,095	86.4
TOTALS	8,770		1,127		11,471	
AVERAGE PERCENTAGES		70.4		78.1		76.2

a. Includes Youthful Offender judgments.



Baltimore City, MD
67% 64% 79%
66% 63% 62%
63% 76% 77%
66% 76% 73%
64% 94% 84%
State of Montana
50% N/A 85%
31% 100% 69%
52 N/A 76%
75% 100% 84%
81% 100% 88%
Erie County (Buffalo) NY
N/A 100% 76%
0 100% 77%
100% 83% 84%
50% 100% 87%
100% 97% 95%
State of Vermont
0 0 100%
100% 100% 63%
100% 100% 80%
86% 100% 78%
65% 81% 85%
King County (Seattle) WA
100% 67% 56%
90% 100% 79%
83% 100% 75%
85% 69% 81%
86% 58% 92%
KEY: = JJC = YAC = AAC

FIGURE 2. NATIONAL OVERVIEW: WHO WAS GUILTY MOST OFTEN?

Data Site	Offense Categories				
	Murder/ Manslaughter	Rape	Aggravated Assault	Robbery	Burglary
Los Angeles County, CA	41% 85% 82%	56% 65% 81%	59% 69% 83%	67% 84% 87%	81% 72% 90%
Dade County (Miami) FL	71% 75% 65%	48% 75% 58%	54% 65% 32%	59% 62% 54%	64% 53% 45%
Marion County (Indianapolis) IN	60% 100% 65%	54% 100% 70%	81% 0 76%	78% 87% 72%	88% 87% 89%
Orleans Parish (New Orleans) LA	77% 43% 51%	54% 21% 37%	60% 21% 31%	75% 53% 54%	74% 72% 62%

TABLE 20. NATIONAL OVERVIEW: WHICH GROUP WAS FOUND GUILTY AS CHARGED MOST OFTEN?

DATA SITE	JJC DELINQUENT[a]		YAC GUILTY[a]		AAC GUILTY[a]	
	AS CHARGED[b]	LESSER OFFENSE[b]	AS CHARGED	LESSER OFFENSE	AS CHARGED	LESSER OFFENSE
Los Angeles County, CA (percent)	1196 (68.0)	4 (0.2)	147 (62.6)	31 (13.2)	4155 (70.4)	671 (11.4)
Dade County (Miami) FL (percent)	1274 (40.4)	682 (21.6)	134[c] (53.8)	2 (0.8)	597[c] (46.5)	14 (1.1)
Marion County (Indianapolis) IN (percent)	948 (76.6)	100 (8.1)	73 (72.3)	15 (14.9)	986 (62.1)	283 (17.8)
Orleans Parish (New Orleans) LA (percent)	442 (64.7)	45 (6.6)	123 (44.6)	26 (9.4)	741 (41.3)	206 (11.5)
Baltimore City, MD (percent)	1079 (62.2)	49 (2.8)	186 (55.5)	48 (14.3)	727 (54.4)	222 (16.7)
State of Montana (percent)	591 (68.5)	23 (2.6)	3 (100.0)	0	424 (79.3)	26 (4.9)
Erie County (Buffalo) NY (percent)	3 (30.0)	2 (20.0)	63 (82.9)	11 (14.5)	279 (71.0)	67 (17.0)
State of Vermont (percent)	142 (52.8)	36 (13.3)	113 (46.1)	89 (36.3)	336 (46.5)	265 (36.6)
King County (Seattle) WA (percent)	1736 (72.0)	339 (14.1)	21 (61.8)	2 (5.9)	988 (77.9)	100 (7.9)
TOTALS	7411	1280	863	224	9233	1854
AVERAGE PERCENTAGES	(59.5)	(9.9)	(64.4)	(12.1)	(61.0)	(13.9)

a. Excludes guilty judgments where judgment charges or outcomes are unknown.
b. Based on offenses which, if committed by adults, would have been classified as dangerous offenses.
c. Excludes offenders classified as "Youthful Offenders."

Which Group Was Confined Most Often?

Obviously, the power to order confinement for long periods of time is regarded, by many juvenile justice experts, as the most significant distinction between the two court systems. It frequently plays an important part in judicial, prosecutorial, and even legislative decisions about which cases against juveniles should be heard in adult courts.

TABLE 21 indicates the number and percentages of offenders who were confined after having been found delinquent or guilty. Again, the percents listed there delineate portions of the original cohorts listed on TABLE 16.

While findings of guilt between JJCs and YACs are somewhat mixed, such is clearly not the case when it comes to comparing dispositions and sentences. Criminal courts clearly use incarceration as a principal form of punishment for crimes of this magnitude, regardless of the age of the offenders. In Los Angeles County and Dade Counties, approximately nine out of ten convicted offenders were confined; in Erie County, the ratio was about four to one. The lowest rates of ordered criminal court confinements were found in Montana and Vermont, both states with relatively small populations and correlative crime rates. Except for 16-to-18 year olds in Vermont adult courts, all criminal courts sentenced at least half of all convicted offenders to be confined.

Juvenile Courts dispose of delinquency cases in quite different ways. In two jurisdictions, Erie County (five adjudications) and the State of Vermont (180 adjudications), no one was ordered to confinement. In five other jurisdictions, juvenile courts ordered confinements in a third of the cases or less. There were two exceptions to this pattern: Los Angeles County, where almost 90 percent of the adjudicated juvenile offenders were confined; and in King County, where juvenile courts dispose of cases according to a sentencing matrix. At the same time, it should be noted that Dade County heard more dangerous juvenile offender cases than any other juvenile court in the study and adjudicated nearly 2,000 of them delinquent, but had the lowest confinement rate among the seven sites reporting juvenile confinements. An overall ranking would place the three cohorts in the following order with the highest average percent of confinement sentences appearing first:

Ranking

1. YAC
2. AAC
3. JJC

TABLE 21. NATIONAL OVERVIEW: WHICH GROUP WAS CONFINED MOST OFTEN?

DATA SITE	JJC Delinquent	JJC Confined	YAC Guilty	YAC Confined	AAC Guilty	AAC Confined
Los Angeles County, CA (percent)	1200	1065 (88.8)	180	167 (92.8)	5121	4304 (84.0)
Dade County (Miami) FL (percent)	1961	180 (9.2)	154	143 (92.9)	639	581 (90.9)
Marion County (Indianapolis) IN (percent)	1054	173 (16.4)	88	69 (78.4)	1269	764 (60.2)
Orleans Parish (New Orleans) LA (percent)	490	166 (33.9)	149	91 (61.1)	948	629 (66.4)
Baltimore City, MD (percent)	1129	371 (32.9)	254	173 (68.1)	1000	687 (68.7)
State of Montana (percent)	675	154 (22.8)	3	2 (66.7)	451	248 (55.0)
Erie County (Buffalo) NY (percent)	5	0	74	57 (77.0)	346	303 (87.6)
State of Vermont (percent)	180	0	202	88 (43.6)	602	302 (50.2)
King County (Seattle) WA (percent)	2076	1124 (54.1)	23	22 (95.7)	1095	837 (76.4)
TOTALS AVERAGE PERCENTAGES	8770	3233 (28.7)	1127	812 (75.1)	11471	8655 (71.0)

In FIGURE 3, this comparison is more graphically depicted. Sentences of confinement are reflected there according to the most-serious original filing charges. That is, if a defendant was charged with rape and robbery, and found guilty of only robbery and sentenced to three years confinement, the sentence length would be indicated under confinements for rape.

As can be seen, juveniles are generally ordered to confinement more frequently for homicide in those jurisdictions which heard those types of cases. It should also be obvious that, while clear patterns do not emerge across sites for juvenile court confinements, certain juvenile courts are more prone to use confinement as a dispositional alternative than are other courts.

In criminal courts, while confinement sentences are generally high for all dangerous offenses, they tend to drop off in most jurisdictions for cases involving aggravated assault and burglary. Allowing for the relative differences in confinement rates between the two court systems, it still appears clear that criminal courts are much more likely to confine dangerous offenders than are juvenile courts, with the notable exceptions of Los Angeles and King Counties.

FIGURE 4 carries the sequencing of confinement sentencing to the next logical step. It depicts the lengths of confinement ordered for each of the three subcohorts who were ordered to confinement. The "bars" are divided, in most cases, into three segments: up to three years; three to ten years; and ten years or longer. These sentence-length aggregations were selected in an effort to better compare juvenile court authority (to confine) with that of criminal courts. Since most juveniles charged with dangerous offenses are 15 to 18 years of age, few juvenile courts can realistically expect even indeterminate confinements to last beyond three years. Under the most extreme circumstances, these confinements would not extend beyond ten years.

In four instances (Dade County, Marion County, Baltimore City, and the State of Montana) state laws require that juvenile court commitments to state facilities be ordered for "indeterminate" periods (or until a specific maximum age limit). Los Angeles County was the only site to report that juveniles were sentenced to confinement for periods of ten years or longer.

It should be noted that none of the more than 12,000 criminal defendants were sentenced to death, but some were sentenced to life imprisonment: 18 in Baltimore City, one of whom was in the YAC cohort; 11 in Erie County, all of whom were AACs. It should also be noted that many of these criminal court sentences are mandated and fixed by state penal codes. Even so, FIGURE 4 does suggest that many YACs -- over 40 percent in four jurisdictions -- received maximum sentences of confinement which did not exceed three years: terms within the power of the juvenile courts to impose. On the other hand, it should also be noted that, in two of those sites, no juveniles were confined.

FIGURE 3. NATIONAL OVERVIEW: WHO WAS CONFINED MOST OFTEN?

Data Site	Murder/ Manslaughter	Rape	Aggravated Assault	Robbery	Burglary
Los Angeles County, CA	91% 92% 89%	93% 100% 86%	90% 93% 83%	89% 95% 84%	88% 69% 83%
Dade County (Miami) FL	40% 92% 95%	11% 78% 98%	8% 100% 91%	15% 96% 94%	7% 86% 78%
Marion County (Indianapolis) IN	67% 75% 84%	7% 86% 88%	9% N/A 71%	26% 88% 74%	15% 70% 46%
Orleans Parish (New Orleans) LA	60% 92% 76%	29% 100% 80%	26% 33% 51%	53% 74% 77%	23% 49% 62%

Baltimore City, MD	JJC	100%	16%	35%	33%	33%
	YAC	79%	60%	72%	66%	77%
	AAC	91%	70%	67%	70%	60%
State of Montana	JJC	0	25%	15%	33%	23%
	YAC	N/A	100%	N/A	0	100%
	AAC	73%	44%	66%	52%	53%
Erie County (Buffalo) NY	JJC	N/A	N/A	0	0	0
	YAC	100%	100%	100%	79%	66%
	AAC	100%	87%	90%	90%	83%
State of Vermont	JJC	N/A	0	0	0	0
	YAC	N/A	57%	39%	50%	43%
	AAC	67%	41%	58%	83%	47%
King County (Seattle) WA	JJC	100%	71%	61%	77%	50%
	YAC	100%	100%	100%	100%	86%
	AAC	73%	61%	78%	88%	75%

KEY: ■ = JJC ■ = YAC ■ = AAC

FIGURE 4. NATIONAL OVERVIEW: WHO RECEIVED THE LONGEST CONFINEMENT SENTENCES?

Data Site | Length of Ordered Sentence, By Percent | Cohort

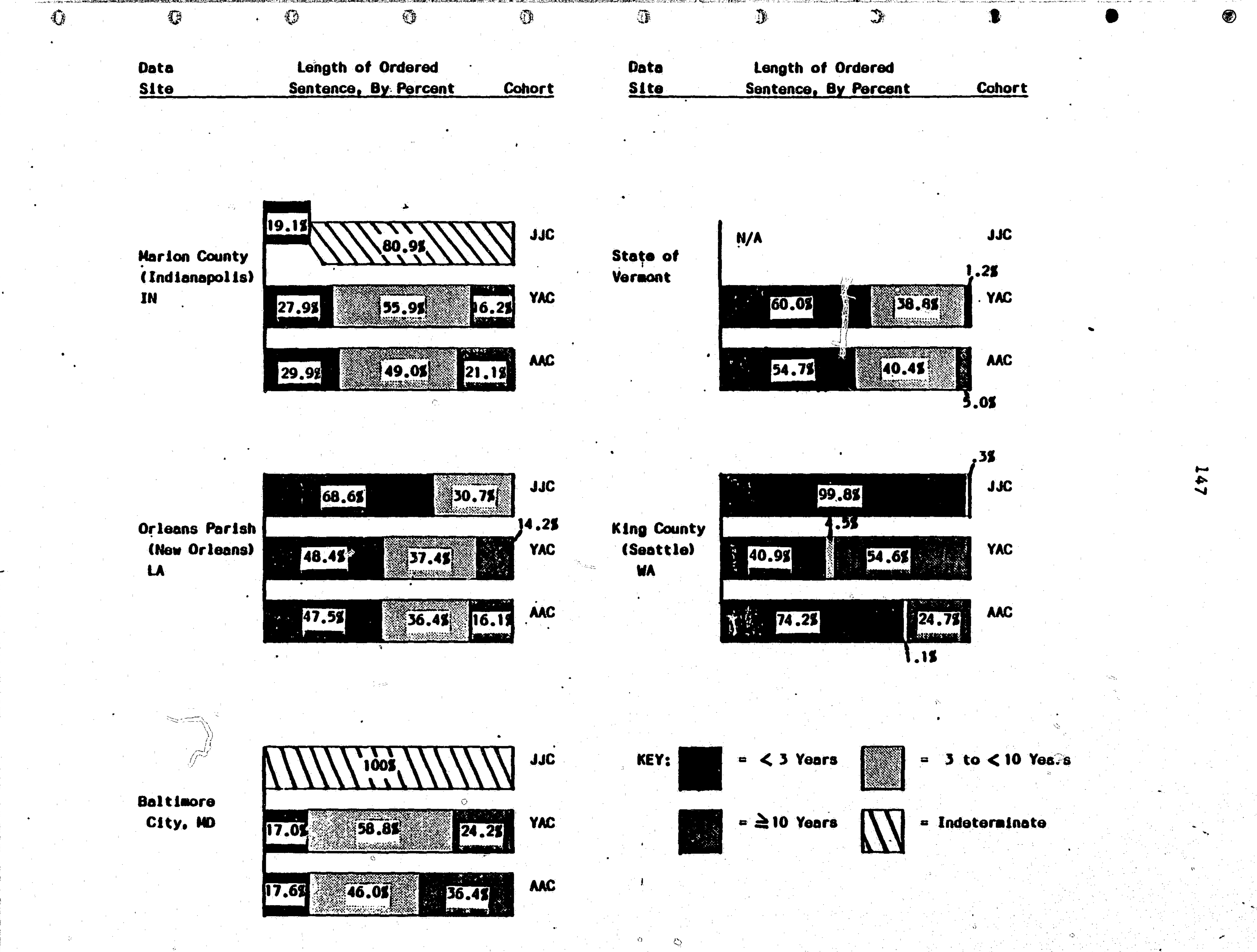
Los Angeles County, CA
3.0%
26.2% 70.9% JJC
23.7% 54.4% 21.8% YAC
61.3% 35.2% AAC
3.5%

Dade County (Miami) FL
12.6% .5%
86.9% JJC
32.6% 50.7% 16.7% YAC
38.2% 37.2% 24.6% AAC

Data Site | Length of Ordered Sentence, By Percent | Cohort

State of Montana
33.1% 66.9% JJC
100% YAC
59.5% 23.6% 16.9% AAC

Erie County (Buffalo) NY
N/A JJC
7%
50.9% 42.1% YAC
39.5% 48.7% AAC
11.8%



Data Site
Length of Ordered Sentence, By Percent
Cohort
Marion County (Indianapolis) IN
19.1%
80.9%
27.9%
55.9%
16.2%
29.9%
49.0%
21.1%
JJC
YAC
AAC
State of Vermont
N/A
1.2%
60.0%
38.8%
54.7%
40.4%
5.0%
Orleans Parish (New Orleans) LA
68.6%
30.7%
14.2%
48.4%
37.4%
47.5%
36.4%
16.1%
King County (Seattle) WA
.3%
99.8%
4.5%
40.9%
54.6%
74.2%
24.7%
.1%
Baltimore City, MD
100%
17.0%
58.8%
24.2%
17.6%
46.0%
36.4%
KEY:
= < 3 Years
= 3 to < 10 Years
= ≥ 10 Years
= Indeterminate

Which Group Spent the Longest Time In Confinement?

The lengths of confinement ordered by the courts and the lengths of confinement served by offenders rarely coincide. Whether affected by statute, administrative rules, or paroling decisions, most knowledgeable observers can usually determine, at the time of disposition or sentence, for what proportion of the potential sentence an offender is likely to be confined.

In this study, a full understanding of this phenomenon was not possible, since substantial numbers of cohort offenders were still confined as of January 1, 1983 (or July 1, 1983, depending on the variations of time lines in each jurisdiction). Nevertheless, TABLE 22 offers the available data for the JJC, YAC, and AAC cohorts. Based on individuals who were released from confinement before the end of the study period, the three cohorts experienced slightly different lengths of confinement: 9.4 months for JJCs; 10.9 for YACs; and 11.3 for AACs. While the differences appear to be relatively insignificant, it must be remembered that most of the confined cohort members were still confined. Because the study was designed to follow offenders against whom charges had been filed between January 1, 1980 and January 1, 1982, through their corrections experiences until January 1, 1983, it may be assumed that all individuals still confined at the end of the study had been confined a minimum of one year, and conceivably up to three years.

What is more significant in comparing the cohorts, however, are the percentages of individuals released and, correspondingly, the persons not released. Thus, it might be seen that in Los Angeles County, for example, the average months of confinement are almost identical for the JJCs and the YACs; yet, 97.4 percent of the YACs were still in confinement. Keeping in mind the similarity of their confinement statistics, the three cohorts appear below in ranked orders of longest average months served before release and greatest percentage of offenders still confined.

Rankings

Most Time Served	Still in Confinement
1. AAC	1. AAC
2. YAC	2. YAC
3. JJC	3. JJC

TABLE 22. NATIONAL OVERVIEW: WHICH GROUP SPENT THE LONGEST TIME IN CONFINEMENT?

	JJC		YAC		AAC	
DATA SITES	Number	Average Months	Number	Average Months	Number	Average Months
Los Angeles County, CA (percent released)	29 (15.6)	12.6	1 (2.6)	12.0	479 (36.3)	10.3
Dade County (Miami) FL (percent released)	14 (87.5)	10.6	22 (17.7)	15.5	43 (12.0)	17.1
Marion County (Indianapolis) IN (percent released)	86 (85.1)	8.7	16 (31.4)	13.1	79 (13.7)	15.0
Orleans Parish (New Orleans) LA (percent released)	93 (64.6)	14.4	4 (33.3)	13.5	48 (28.7)	14.2
Baltimore City, MD (percent released)	87 (93.5)	4.1	31 (23.5)	10.2	82 (16.4)	11.4
State of Montana (percent released)	19 (90.5)	5.0	0	N/A	40 (41.2)	10.1
Erie County (Buffalo) NY (percent released)	0	N/A	30 (65.2)	7.7	120 (53.3)	8.5
State of Vermont (percent released)	0	N/A	46 (66.7)	4.6	170 (65.4)	4.1
King County (Seattle) WA (percent released)	65[a] (82.3)	10.7[a]	b	b	b	b
TOTALS	393	9.4	150	10.9	1061	11.3
PERCENT RELEASED	(74.2)		(34.3)		(33.4)	

a. Does not include 880 juveniles confined in local facilities for whom data are not available. However, Washington statutes limit such confinements to 30 days.

b. Data not available on tapes furnished by the corrections agency.

Which Group Came Back to Court Most Often?

The study design called for the data to be collected in such a way that cases involving court filings (for felony offenses) after the date of the first 1980-1981 judgment would be included for JJCs and YACs in seven sites. In other words, individuals under age 18 against whom includable charges were filed in 1980 or 1981, making them eligible for the study, were tracked from the date of judgment until January 1, 1983, to determine the incidence and frequency of cases involving additional court filings. The study design further required that all original JJC and YAC cohort members be tracked, which included individuals who were placed on probation or other nonconfinement status, as well as individuals found not guilty or whose cases were dismissed. These subsequent cases involving felony filings are designated "reactivity" in the remainder of the study.

Persons not confined were "at risk" (on the streets) for a period of at least 12 months and possibly as long as 36 months: confined offenders were only "at risk" during their periods of post-confinement release. Because institutional releases and final releases could have occurred at any time during the study, some individuals ordered to confinement and released could have been at risk on parole for periods of less than one month to over two years. Persons on probation, or whose cases resulted in judgments other than sentences of confinement (including not guilties and dismissed) were at risk for periods of at least 12 months. Persons still in confinement as of January 1, 1983, were not tracked for reactivity.

TABLE 23 reflects the relative numbers of persons in the JJC and YAC cohorts who were referred to their respective courts, for new felony offenses, subsequent to their FY 1981 or 1982 filings. It should be remembered that these reactivity data reflect only new felony filings: cases in lower courts for misdemeanors and in out-of-state courts were beyond the parameters of the study. For the same reason, reactivity of AAC individuals was not collected.

TABLE 23 reveals that, of the original 9,500 juveniles comprising the seven-site JJC cohort, 2,429 of them reappeared in juvenile court, as a result of new felony filings, during the study period. This amounts to a rate of approximately 26 percent. The YAC rate (240 out of 1,006) amounted to approximately 24 percent. Based on available data, YACs were reactive almost as frequently as were JJCs, despite their significantly higher rate of confinement and despite the fact that twice as many juveniles had been released (were "at risk") by January 1, 1983. In other words, the comparable reactivity rates must be viewed with an understanding that the opportunities for reactivity were significantly higher among the juveniles.

It should be borne in mind, however, that certain anomalies in the data make the reactivity outcomes somewhat incomparable. First, the JJC cohort is restricted by both the maximum age limits of the juvenile court and by the minimum age limits of criminal court jurisdiction which, as we have seen, are never exactly the same. Second, because of certain anomolies in state law, a transferred juvenile could be tried in criminal

court for one offense and could then be tried as a juvenile for a subsequent offense of lesser gravity. The reverse could also be true, depending on state laws: a youth could be reverse waived to juvenile court and later be tried for a new offense in juvenile court.

TABLE 23. NATIONAL OVERVIEW: HOW MANY PERSONS CAME BACK TO COURT?

Data Site	JUVENILES IN JUVENILE COURT			YOUTH IN ADULT COURT		
	Total	Number	Percent[a]	Total	Number	Percent[a]
Dade County (Miami) FL	3,157	621	19.7	249	117	47.0
Marion County (Indianapolis) IN	1,237	307	24.8	101	22	21.8
Orleans Parish (New Orleans)LA	683	88	12.9	39	0	0
Baltimore City, MD	1,734	583	33.6	335	44	13.1
Erie County (Buffalo) NY	10	0	0	3	1	33.3
State of Vermont	269	36	13.4	245	42	17.1
King County (Seattle) WA	2,410	794	32.9	34	14	41.2
TOTALS	9,500	2,429		1,006	240	
AVERAGE PERCENTAGES	25.6		19.6	23.9		24.8

a. Percent of original cohort.

TABLE 24, although somewhat saturated with information, is of critical importance to a full understanding of offender outcomes. As was seen on TABLE 23, large numbers of both JJCs and YACs were reactive. The outcomes reported are all the more disturbing when the time "at risk" was as short as a few days or months for offenders who had been confined and released, and could not have been longer than three years for anyone in the study. The linking of court judgments and corrections events to reactivity outcomes is at least one important way to view the appropriateness of the application of these public policies and practices. Because this study confines itself to examining only "deep-end" offenders, i.e. persons charged with dangerous crimes, certain questions can be fairly asked. Does confinement "correct" better than probation? Is probation an appropriate sentence for dangerous offenders? Does the juvenile system make better decisions about delinquency and dispositions than the adult system makes about guilt and punishment? Presumably, if one system does a better job than the other, it would show up in such ways as reactivity.

TABLE 24 reveals reactivity for <u>all original cohort members</u>, broken down according to judgments and dispositions in the juvenile and in the adult systems, for all juveniles (JJCs) and youth (YACS). Corrections experiences, to the extent permitted by collapsing so much varied data into a single table are also reflected. Readers are referred to the column headings across the top of TABLE 24. All original cohort members are reflected in the seven categories. Three caveats are offered: "Probation - Revoked" is used to indicate persons reconfined while on probation, and "Probation - Not Revoked includes both probationers and persons who successfully completed probation before becoming reactive; "Other Dispositions" contains commitments to mental institutions, fines, and other such dispositions beyond confinement and probation; "Unknown" includes aggregated numbers of persons for whom judgment, sentence, or parole information furnished by local data sources were inadequate to categorize certain offenders at some stage of constructing the tables. In other words, large amounts of information are displayed in the preceding tables about individuals shown on TABLE 24 to be "Unknown." Nevertheless, all members of the original JJC and YAC cohorts were tracked for the periods from the initial judgments to January 1, 1983.

As can be seen in TABLE 24, significantly more YACs were reactive on probation (or after having been discharged from probation) than were JJCs in the same category. However, it is obvious that three sites actually accounted for almost all the reactivity reported in that column. At the same time, a considerably higher proportion of YACs were reactive after having been found not guilty than were JJCs. However, the YAC subgroupings in this column are relatively small.

FIGURE 5 graphically depicts the relationship of reactivity rates between juvenile and criminal courts and among the seven sites. When viewed from the perspective of most serious filing offenses in the cases originally filed in juvenile courts, little variation appears. Reactivity ranged from about an average of 15 percent for rape to about 20 percent for burglary. It, therefore, does not appear that "filing" offenses can

reasonably be used to predict recidivism. While it is true that many of these offenders might appear in criminal courts or in out-of-state courts and, therefore, not show up as reactive in this study, it is also true that all offense subcohorts, other than "Confined" would experience the same degree of risk in that respect.

Reactivity variations by offense are much more prominent among YACs; however, the cohort sizes are considerably smaller. YAC reactivity varied from seven percent for rape to about 35 percent for robbery. While not conclusive, it may simply be the case that robbers and burglars tend to recidivate sooner than other types of dangerous offenders, an hypothesis that could not be demonstated, given the short followup period after judgment.

TABLE 24. NATIONAL OVERVIEW: WHICH GROUP CAME BACK TO COURT MORE OFTEN?

Felony Reactivity to January 1, 1983, by Categories Based on Original Judgments, Dispositions, and Corrections Experiences

Offense Categories by Cohort	Reactive/ Cohort	GUILTY: Confined: Released	GUILTY: Confined: Not Released	GUILTY: Probation: Revoked	GUILTY: Probation: Not Revoked	Other Dispositions	Not Guilty, Dismissed	Unknown
Dade County (Miami) FL								
JJC	621/3,157	1/12	0/2	N/A	19/290	247/1,565	17/74	337/1,1214
(percent)	(19.7)	(8.3)			(6.6)	(15.8)	(23.0)	(27.8)
YAC	117/249	14/23	40/102*	N/A	5/14	2/5	18/24	38/81
(percent)	(47.0)	(60.9)	(39.2)		(35.7)	(40.0)	(75.0)	(46.9)
Marion County (Indianapolis) IN								
JJC	307/1,237	19/92	5/15*	11/56	127/517	17/76	3/9	125/472
(percent)	(24.8)	(20.7)	(33.3)	(19.6)	(24.6)	(22.4)	(33.3)	(26.5)
YAC	22/101	5/13	0/35	1/1	0/8	N/A	2/5	14/39
(percent)	(21.8)	(38.5)		(100.0)			(40.0)	(35.9)
Orleans Parish (New Orleans) LA								
JJC	88/683	10/94	1/51	0/51	25/235	10/68	2/17	40/167
(percent)	(12.9)	(10.6)	(2.0)		(10.6)	(14.7)	(11.8)	(24.0)
YAC	0/39	0/1	0/1	N/A	N/A	0/2	N/A	0/35
(percent)								

TABLE 24. (Continued)

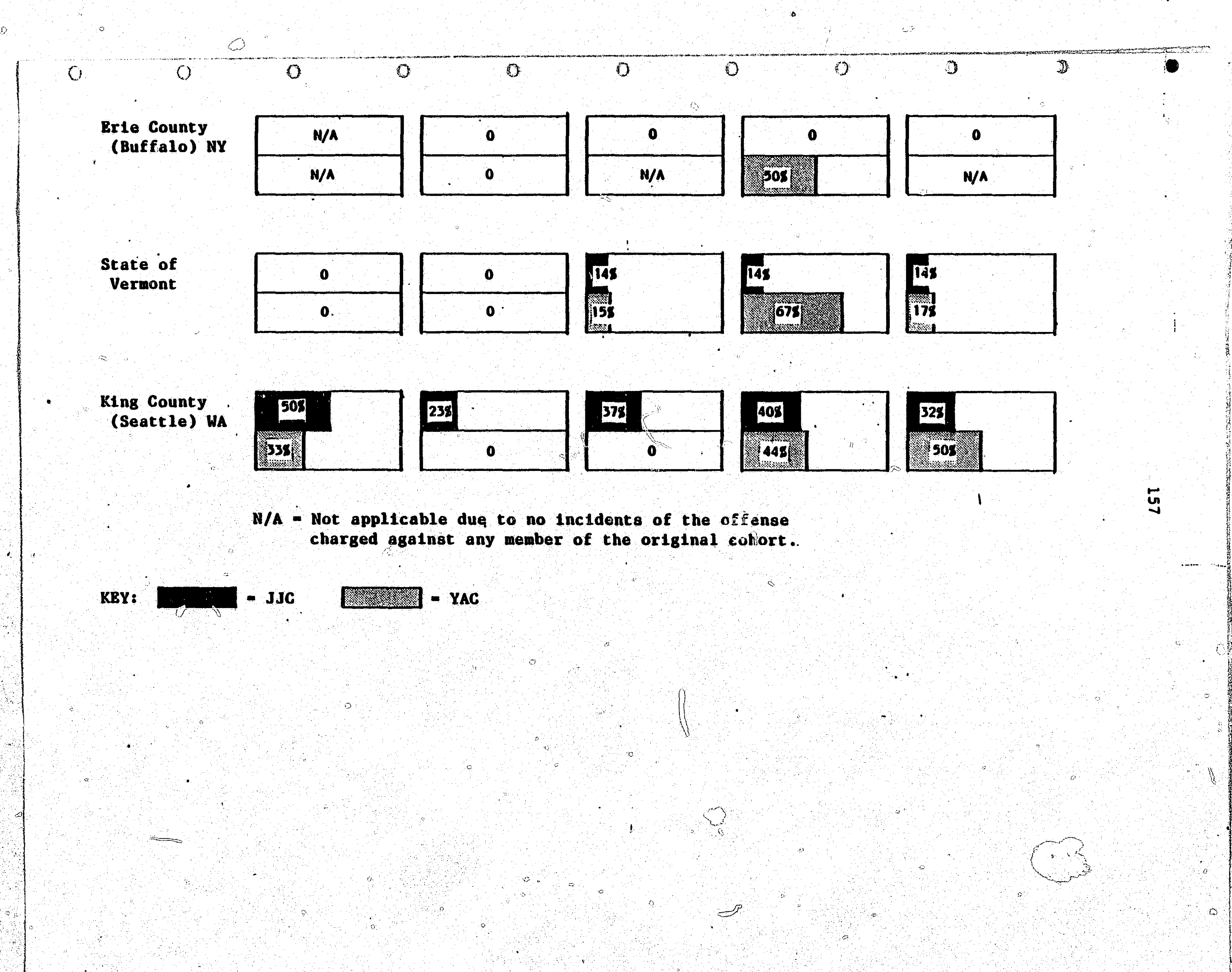
Baltimore City, MD								
JJC	583/1,734	45/141	1/6*	61/116	92/243	107/349	17/38	260/841
(percent)	(33.6)	(31.9)	(16.7)	(52.6)	(37.9)	(30.7)	(44.7)	(30.9
YAC	44/335	1/30	0/101	15/21	1/52	0/1	3/18	24/112
(percent)	(13.1)	(3.3)		(71.4)	(1.9)		(16.7)	(21.4
Erie County (Buffalo) NY								
JJC	0/10	N/A	N/A	N/A	0/5	N/A	N/A	0/5
(percent)								
YAC	1/3	1/1	0/2	N/A	N/A	N/A	N/A	N/A
(percent)	(33.3)	(100.0)						
State of Vermont								
JJC	36/269	N/A	N/A	N/A	23/130	N/A	0/1	13/138
(percent)	(13.4)				(17.7)			(9.4
YAC	42/245	14/46	5/23*	N/A	13/93	N/A	1/5	9/78
(percent)	(17.1)	(30.4)	(21.7)		(14.0)		(20.0)	(11.5
King County (Seattle) WA								
JJC	794/2,410	345/947	3/14*	11/11	92/447	10/55	6/19	327/917
(percent)	(32.9)	(36.4)	(21.4)	(100.0)	(20.6)	(18.2)	(31.6)	(35.7
YAC	14/34	N/A	0/7	N/A	N/A	1/1	1/2	12/24
(percent)	(41.2)					(100.0)	(50.0)	(50.0
TOTAL JJC	2,429/9,500	420/1,286	10/88	83/234	378/1,867	391/2,113	45/158	1,102/3,754
(AV. PERCENT)	(25.5)	(32.7)	(11.4)	(35.5)	(20.2)	(18.5)	(28.5)	(29.4
TOTAL YAC	240/1,006	35/114	45/271	16/22	19/167	3/9	25/54	97/369
(AV. PERCENT)	(23.9)	(30.7)	(16.6)	(72.7)	(11.4)	(33.3)	(46.3)	(26.3

* Offense committed while in confinement or case judged while in confinement for initial offense.

KEY TO RATIOS: REACTIVE INDIVIDUALS/ORIGINAL COHORT MEMBERS

FIGURE 5. NATIONAL OVERVIEW: WHO WAS REACTIVE MOST OFTEN?

Data Site	Offense Categories: Murder/ Manslaughter	Rape	Aggravated Assault	Robbery	Burglary
Dade County (Miami) FL	7% 31%	14% 25%	15% 55%	21% 51%	20% 42%
Marion County (Indianapolis) IN	0 0	29% 14%	20% 0	27% 21%	25% 28%
Orleans Parish (New Orleans) LA	8% 0	15% 0	10% 0	12% 0	15% 0
Baltimore City, MD	33% 23%	25% 9%	29% 17%	34% 14%	37% 0



Erie County (Buffalo) NY
N/A
N/A
0
0
0
N/A
0
50%
0
N/A
State of Vermont
0
0.
0
0
14%
15%
14%
67%
14%
17%
King County (Seattle) WA
50%
33%
23%
0
37%
0
40%
44%
32%
50%
N/A = Not applicable due to no incidents of the offense charged against any member of the original cohort.
KEY:
= JJC
= YAC

FOOTNOTES

1. Sellin, Thorsten, and Wolfgang, Marvin, The Measurement of Delinquency, (New York: John Wiley & Sons, 1964).

2. Bureau of Justice Statistics, "The Severity of Crime," Bulletin (Washington, D.C.: U.S. Department of Justice, Bureau of Justice Statistics, January 1984).

3. Sellin, Thorsten, and Wolfgang, Marvin, The Measurement of Delinquency, (New York: John Wiley & Sons, 1964), Table 77, page 317.

CHAPTER 5

CONCLUSIONS AND RECOMMENDATIONS

This final chapter consists of two major sections. The first section presents a recapitulation and assessment of the information appearing in the first four chapters. Impatient readers are thus able to obtain a quick picture of the entire 3,000 page, four volume report in the next ten or so pages. This portion is followed by a series of recommendations that appear to the authors to be consistent with the study findings. The observations and their implications for public policy, as expressed in this chapter, are those of the authors and should not necessarily be attributed to either the U.S. Office of Juvenile Justice and Delinquency Prevention or to the members of The Academy's Advisory Committee.

CONCLUSIONS

Readers familiar with an earlier report, Major Issues in Juvenile Justice Information and Training: Youth in Adult Courts, (Project MIJJIT: YAC Report), will recognize that the formats of these two documents are quite similar. The reasons should be evident. Not only were both projects directed by the same person but essentially the same subject matter constitutes the basis for both of them. The YAC study focused on the the phenomenon of referring juveniles to adult courts for criminal prosecution. It reviewed laws then in effect (1978) and their evolution, and reported on local attitudes concerning both the theory and practice of such practices. It also presented the first truly national study of the incidence of youth in adult courts, providing statistical data from every county in every state in the country.

The instant report was a natural outgrowth of the YAC study. It carried the research to the next logical step, i.e., comparing the outcomes of cases involving juveniles charged with serious, criminal-type offenses in the juvenile justice system with similar cases against young defendants in the criminal justice system. Once the phenomenon had been established in the YAC study, it then became important to understand more clearly the relative levels of accountability exerted by the two very different systems. The information appearing in this report should, therefore, be viewed as an extension of the knowledge gained in the first study, rather than as a duplication.

To be sure, many aspects are very similar. For example, statutory summaries appear for every state in the union. At the same time, the summaries have not only been updated from 1978 to 1982 (to 1984 in many instances) but the scope of coverage has been greatly expanded as well. For readers familiar with the YAC study, the interrelationship will prove useful. For readers not aware of that earlier work, much could be gained

by obtaining it as a means of bringing the entire issue into sharper focus.

One final note about this report and the information appearing below. It should be remembered that this study was designed to provide basic information about the topic, i.e., laws, attitudes, and statistical data. The intent was to unearth large amounts of hard-to-get information to the end that administrators and policy makers could make more-informed decisions. For this reason, the focus and style of the study is largely descriptive, somewhat akin to an encyclopedic format. The raw statistical data, from which both Chapter 4 (above) and the Profiles (Practices in Nine Jurisdictions volume) were drawn, permit many forms of analysis beyond the types of presentations appearing below. While beyond the parameters of this study, it is our hope that a data base as rich and as difficult to obtain as this one will be used again and again for secondary analyses. It will probably be some time before a similar data set becomes available from any other source.

Synopsis of the Literature

The literature found in Chapter 1 attempts to build on the foundation of the Literature Review in the YAC report. That task proved to be somewhat difficult, given the comprehensiveness of the earlier review. As a result, it was determined that this review should focus on a much narrower perspective, examining the conditions, over the past decade, that have contributed to changing public policies regarding the handling of dangerous juvenile offenders. The issues examined center around the public fear of crime; perceived disconsonance between the control of dangerous behavior and the goals of juvenile justice; and certain aspects of recidivism as they appear in the literature.

The current literature clearly reflects the growing fear on the part of Americans with regard to serious crime. Numerous indicators suggest that citizens are even changing their habits and life styles to make themselves less vulnerable to becoming victimized. While crime and the threat of it are quite real, some studies suggest that the perception of it might be exaggerated. For example, one 1980 survey found that expressed fears exceeded the risks reasonably faced by the people interviewed. This sense of impending victimization has been linked to greater advocacy for the use of the death penalty, for expanded police powers, for mandatory sentencing, and for a more effective judicial branch of government.

While these attitudes were equally directed toward criminals and the justice system that is charged with the social control function, public opinions about the role of juvenile justice reveal a signicant level of ambivalence. Most people remain committed to juvenile rehabilitation, as a social value, while advocating for tougher laws and greater opportunities for confining lawbreakers. It seems apparent that such a paradox would

lead to numerous policy changes, many of which would lead to inconsistent law enforcement and inequitable sanctions. The transfer of juveniles to adult criminal courts, in many jurisdictions, appears to suffer from these deficiencies. It is, of course, one way to offer the public a means by which it can believe that crime will be controlled. At the same time, by removing such offenders to the adult system, the juvenile justice system is spared the constant attacks upon its effectiveness that have become common media fare in recent years.

However, this is not the only option currently being explored. Juvenile court advocates and prosecutors alike have joined forces, for different reasons, to enhance the power of juvenile courts to order more severe penalties. The effect of such changes as mandatory confinement and proportionality (with adult court sentencing structures) is to retain juvenile court jurisdiction over these "deep-end" delinquents.

Much of the debate, then, consists of disputations over the relative merits of treating such offenders as adults or as very dangerous juveniles. Both sides present arguments that are couched in terms of improving the enforcement of laws while reducing the public fear of crime.

Collateral issues also become tied to the basic jurisdictional question, namely, the future of the juvenile court, due process for juveniles, the use of juvenile records in adult proceedings, the impact of correctional confinement, and institutional overcrowding. Once the fundamental jurisdictional position is adopted, however, perspectives on these subissues become predictable. What is remarkable in its absence is the lack of recent articles by authors offering arguments for parens patriae, sociological defenses for deviance, or advocacy for indefinite confinement.

As a final focus, the question of recidivism was examined. It began by exploring the elusiveness of a definition. Both social scientists and justice system officials have great difficulty in unequivacally defining the term, despite its importance and routine usage. The reason becomes clearer when faced with opportunities for application. One must either define recidivism according to certain behavior patterns or according to specific events. The former are practically impossible to measure, particularly when applied to large cohorts of individuals. The latter, beginning even as early as the point of arrest, necessarily excludes much behavior that is, by any reasonable measure, recidivistic.

Yet, despite these very serious obstacles, a great number of recidivism studies do exist. As a general rule, they focus on the "failure" rates of specific groups of offenders, e.g., probationers, delinquents, minority groups, violent offenders, or participants in certain corrections programs. The conclusions of most of these studies, when taken as a whole, suggest that, whatever the documented rate of recidivism, the actual rate is higher than either criminal justice professionals or the general public find acceptable. The linkage between recidivism and public fear leads inexorably to a demand for incapacitation and, correlatively,

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2 OF 3

for an answer to the question of which system, adult or juvenile, best achieves that result.

Studies that explore attitudes of selected key informants suggest that a general disenchantment with juvenile courts seems to prevail. That feeling appears to be appeased when serious juvenile offenders are referred to criminal courts. The public wants "something" to be done with these offenders, something that is at once retributive and deterrent, while preserving the traditional character of juvenile courts for less-serious, miscreant youth.

Synopsis of the Overview of State Statutes

Chapter 2 is, itself, a summarization of a much larger work, to be found in the companion volume entitled Statutes Related to Handling Dangerous Juveniles. Again, it would be useful to refer to the YAC report for a better appreciation of the materials contained herein. In doing so, readers can trace the legislative amendments that occurred since 1978.

The general jurisdiction of juvenile and criminal courts has remained remarkably stable since 1978. The major exception was Vermont, where laws creating judicial waiver and reverse waiver, and amendments to the concurrent jurisdiction law were all passed in 1981. As a result, Vermont can now be more clearly classified as a state in which criminal jurisdiction normally attaches at age 18, instead of the 16 year designation found in the YAC report. In practice, however, Vermont functions about the same as before, wherein virtually all 16 and 17 year old offenders are tried as adults.

The national tally still reflects three states (Connecticut, New York, and North Carolina) which still attach general criminal jurisdiction at age 16. Eight states (Georgia, Illinois, Louisiana, Massachusetts, Michigan, Missouri, South Carolina, and Texas) still use age 17. Thirty-eight jurisdictions, including the District of Columbia and the Federal Code, use age 18. Wyoming is the only state in the Union to use age 19.

Thirty-six states, as well as the two federal jurisdictions, impose no minimum age for imposing juvenile court jurisdiction in cases of delinquency; the remaining states do have minimum age requirements, ranging from a low of six in North Carolina to a high of 14 in California. Perhaps more interesting is the fact that 13 states impose no minimum age for criminal court jurisdiction. In these jurisdictions, of course, filings against very young criminal defendants are restrained by criteria relative to type of offense, the exercise of prosecutorial discretion, or the imposition of the once-waived, always-waived rule. This is also true in states that do have minimum age requirements (between 13 and 16) for

criminal court referral. In fact, it would be fair to say that the most difficult task in presenting a national profile of state laws relative to this topic is the assessment of statutory anomolies, irregularities, and dissimilarities, so that a uniform picture can be presented with limited distortion.

The fact that 39 states do impose some limit on the youthfulness of defendants should not be surprising: this position is consistent with the philosophy of parens patriae expressed in juvenile codes in all states. What is remarkable is that, in 13 states, juveniles can be (and have been) as young as six and seven years of age. While the incidence, according to our research, appears to occur very infrequently, the fact that it can happen at all warrants further investigation.

The organization of court systems also varies considerably around the country, and even among counties within specific states. In 13 states, juvenile jurisdiction is placed in different courts, depending on the city or county in which a juvenile is charged. Typically, in those states, lower courts hear juvenile cases in the larger counties; in less populous counties, the courts with the highest level of original jurisdiction are often the only courts in existence.

Eleven states assign juvenile jurisdiction uniformly, i.e., probate, district, or juvenile, while reserving criminal jurisdiction for circuit or superior courts. The remaining 28 states use a single-court structure for handling all cases, including juvenile.

Whatever the structure, it should be borne in mind that every state code segregates juvenile hearings, either through separate courts, divisions of courts, or special sessions. Therefore, it could be said that every jurisdiction in the country has a juvenile court system.

At the same time, a uniform system of juvenile court judges does not exist in America. In many states, and this is particularly true in states with large numbers of sparsely populated counties, all cases -- civil, criminal, probate, and juvenile -- are heard by the same judges.

In addition to questions about how different philosophies find their way into court decisions under these conditions, it would also appear that, barring the presence of delimiting state laws, the same judges could order judicial waivers and subsequently preside at the criminal trials stemming from the waivers. The problem here is that the guarantee of an impartial trier of fact in the criminal case may have been compromised when the decision was made to try the juvenile as an adult. If the same judge were to preside at both hearings, there would certainly be reason to question the impartiality of the presiding judge in the criminal trial. While the incidence of this particular aspect of the transfer process is not known, it is a matter that certainly warrants further examination.

The Academy has consistently applied a four-part classification scheme for describing laws providing for the trial of youth as adults. These categories are judicial waiver, concurrent jurisdiction, excluded offenses, and lower age of jurisdiction. Each of these terms is defined in Chapter 2.

At present, 49 of the 52 jurisdictions provide for judicial waiver: the three exceptions are Arkansas, Nebraska, and New York. Eight jurisdictions permit prosecutors to select the proper court in some cases involving certain crimes (concurrent jurisdiction). The only "pure" concurrent jurisdiction state is Nebraska, where juveniles may be charged as adults in all criminal matters -- misdemeanor as well as felony. There are 14 states in which legislatures have excluded certain serious offenses from juvenile court jurisdiction. The number of states which utilize an age of general criminal jurisdiction below 18 remains at 11 or has dropped from 12 to 11, depending on how Vermont is counted.

In comparing the 1978 YAC tallies with the instant ones, it appears that one state, Vermont, has accounted for an increase in the number of judicial-waiver and a decrease in lower-age-of-jurisdiction statutes. In addition, Vermont, along with the District of Columbia, Idaho, and Oklahoma, has enacted an excluded offense law. Several of the other ten states have also expanded their "laundry lists" of crimes over which criminal jurisdiction has been extended. In considering the implications of these changes, it seems fair to conclude that state legislators are not radically changing the correlative jurisdictions of their two court systems, but they do tend to gradually increase criminal jurisdiction in ways that are consistent with public demands that something be done about very dangerous juvenile offenders.

A number of collateral areas of law were examined; namely, the right of juveniles to request waiver, reverse waiver from criminal to juvenile courts, and the once-waived, always-waived rule. We found that juveniles may ask to be tried as adults in 16 states as well as the federal courts. In some states, such as Florida, the juvenile court must grant the waiver request, whether or not it approves of the decision. With respect to the second issue, 14 states permit criminal courts to reverse waive youth to juvenile courts. In some cases -- New York, for example -- youth (under age 16) may be reverse waived at any stage of the proceeding. In other states, such as Arkansas and the District of Columbia, reverse waivers can only occur after conviction for the purpose of invoking a juvenile justice disposition. Florida, Idaho, and West Virginia have apparently found it more expedient to simply allow criminal court judges to sentence youth according to the juvenile code's dispositions section. This procedure not only keeps juveniles out of adult jails and prisons but it also avoids the need for a second hearing in juvenile court. In all, 19 states permit some variation of a reverse-waiver procedure.

The once-waived, always-waived rule also represents a certain efficiency imposed by the legislature. Under this statute, once a juvenile has been sent, by whatever mechanism, to criminal court, subsequent

charges must be filed in criminal court, regardless of the age of the juvenile at the time of the second offense. These statutes may be found in 11 state codes, usually phrased in terms of transfer of conviction. That is to say, in some states, the act of transfer to criminal court is sufficient to invoke the once-waived, always-waived rule; in other states, a conviction must first be obtained before the statute applies.

Since this study was only intended to compare juveniles and youth charged with dangerous felonies, i.e., murder, nonnegligent manslaughter, rape, aggravated assault, robbery, and burglary, it became necessary to devise decision-rules for each state examined. For example, some states have five and six classes of crimes that fell within our criteria for a single crime: Massachusetts has 16 classes of aggravated assault felonies; Tennessee has 11 classes of felony burglary. The effect of finding that 138 separate crimes were germane to the study not only made the legal research more complex but, more significant, the statistical data retrieval process had to be expanded to encompass all those separate offenses which were applicable in the nine data collection sites.

Many of these gradations could, themselves, be classified into larger categories: committed with a weapon, with aggravation, against certain victims, or when committed by habitual offenders. These so-called enhancement features are displayed, by state, in Chapter 2 (TABLE 10), and represent a unique and useful approach for comparing state criminal sentencing statutes.

The sentencing powers of criminal courts quite naturally become a focal point for public policy debates relative to law and order. Therefore, it seemed prudent to investigate such powers as they exist in both the juvenile and criminal justice systems. In this regard, readers will find TABLE 12 in Chapter 2 to be most illuminating. It reflects, for example, the 38 states that permit the death penalty; the 21 states which permit criminally convicted youth to be sent to juvenile corrections agencies and institutions; the six states which require segregation of youth when they are confined in adult facilities; the 17 states which now have enacted youthful offender statutes; and the 43 states which permit the use of juvenile records in criminal sentencing procedures.

One innovative feature of this report may be found in the statutory summaries volume referenced earlier. In each jurisdictional summary, a table has been prepared that permits readers to compare the sentencing powers of criminal court judges with the dispositional powers of juvenile court judges. While much too complex to compare in this brief synopsis, readers are urged to review this material for at least those states which hold the greatest interest for them.

Another feature, mentioned earlier, is the expansion of corrections laws over what appeared in the YAC study. Tables appear in both Chapter 2, above, and in the statutory summaries that describe, in great detail, the investiture of specific authority for the operation of state and local facilities, probation, and parole. Also included, in tabular form, are the

agencies or officials responsible for terminating both probation and parole statuses. All this information, of course, is divided into adult and juvenile agencies, which facilitates interstate, as well as intrastate, comparisons. Readers can see, for example, how differently adult and juvenile places of detention are operated. We believe that many knowledgeable justice experts might nevertheless be surprised to learn that juvenile detention is a state function in ten states, or that juvenile parole (aftercare) is a local function in three other states. Information of this type, at the national level, is difficult to acquire but, once obtained, has many uses.

Synopsis of Case Study Overview

Nine case studies were undertaken during the course of this project, coinciding with the sites used for statistical data retrieval. The sites selected appear below:

- Los Angeles County, California
- Dade County (Miami), Florida
- Marion County (Indianapolis), Indiana
- Orleans Parish (New Orleans), Louisiana
- Baltimore City, Maryland
- State of Montana
- Erie County (Buffalo), New York
- State of Vermont
- King County (Seattle), Washington

The case studies were designed to identify and analyze the various "camps" of opinion with regard to the handling of dangerous juvenile offenders. We wanted to know if key actors in the justice system and the political process supported current policies and practices, whether there was any impetus for change, and what types of changes could be anticipated.

When all of the nine site studies were analyzed, several significant observations became possible. Perhaps one of the most important ones had to do with potential amendments to the then-current legislation. The furor of legislative activity, noted five years before in the YAC study, had dissipated considerably. The change appeared attributible to two main causes. Advocates for change were either satisfied with the changes that had occurred since 1978 or they were convinced that further efforts to amend their state laws would be futile.

In some ways, these two viewpoints, while very different, both suggest that the spate of legislative changes over the past five or six years had, indeed, satisfied the public demand for change. The character of current laws might well be regarded as reflective of the times: enough public outcry was answered that further legislative response became unnecessary.

While impossible to prove, it might also be that legislatures were forced to turn their attention to the results of their earlier sentencing decisions which could not easily be recanted. As more severe sentencing laws began to inevitably affect corrections facility populations, legislatures shifted their attention from encouraging incapacitation to providing adequate bedspace. Debates naturally turned from sentencing policies to construction policies. The loftier discussions of punishment and deterrence gave way to more mundane considerations related to budgeting and capital planning. It was unquestionable that institutional crowding would result from laws that favored increased confinement.

The second major conclusion to be drawn from assessing the case studies is that juvenile courts in many states have lost jurisdiction, for the foreseeable future, over youth charged with serious crimes. In addition to the increases in excluded offenses and the expanded application of judicial waiver statutes, it is likely that a few states will continue to broaden opportunities for invoking criminal jurisdiction, further reducing juvenile court jurisdiction. Absent a groundswell for restoring juvenile court authority over these types of cases -- and none was discerned in our interviews -- the long-term implications could be quite significant. One possibility, should the trend continue, is that juvenile courts will have very little role in cases involving criminal-type offenses by young people, these courts being relegated to handling status offense and child protection matters.

The point here is that <u>age</u> is rapidly breaking down as the critical determinant of jurisdiction, and is being replaced with standards related to the <u>severity of the offense</u>. However, the outcomes of such policies are being strongly resisted, <u>not</u> because people are particularly concerned when juveniles are <u>tried</u> as adults but, rather, because people are disturbed when young offenders are <u>confined</u> as adults. There is a fairly universal rejection of the idea that 14 year-old offenders should be placed in prisons alongside older criminals.

Resolution of this perplexing issue is likely to mean that, for at least the rest of this century, juvenile corrections agencies will be under increasing pressure to provide more bedspace, longer stays, higher security levels, and greater accountability for housing dangerous juveniles. This may occur in several ways. For example, more states may enact laws to permit criminal courts to either sentence young offenders to juvenile facilities or to reverse waive them to juvenile courts for sentencing. Juvenile courts may be given authority to confine juveniles beyond the age of 21, as is the case in most states today. Whatever the means, the objective will be to ensure that, whenever possible, juveniles will not be incarcerated in adult prisons and jails.

Other observations also emerged from the case-study interviews. An important one had to do with the matter of discretion. In both the YAC study and in this one, key informants tended to decry the use of both prosecutorial and judicial discretion, particularly as it affected the basic question of determining juvenile and criminal jurisdiction. A strong

ethic favoring uniformity and predictability appeared to prevail in all the study sites. This was one of the few areas where there appeared to be a general call for more legislative action; for laws that would reduce the exercise of personal judgments presently accorded to prosecutors and judges in both the adult and juvenile systems.

Yet, the greatest consensus among respondents, quite unexpected by the authors, centered on the use of juvenile records in criminal courts. As noted earlier, 43 states now permit the use of juvenile records in criminal cases, usually restricted to the sentencing phase. Seven of the nine sites studied had such provisions.

Respondents supported the use of juvenile records in this fashion (whether or not permitted by local laws) for one of two reasons. They either believed that juveniles with long delinquency records should not be allowed to present themselves as "first-time offenders" in criminal courts at the time of their initial criminal court appearances or, from quite a different perspective, that sentencing judges needed to know what had been unsuccessfully tried in prior efforts to rehabilitate the defendants before them. Whatever their persuasion, respondents generally saw no problem in equating juvenile court delinquency adjudications with criminal court convictions, in terms of establishing a "prior record."

As might be expected, almost everyone interviewed noted the lack of adequate resources to properly meet expectations -- the public's and their own -- for effective justice. By and large, respondents reflected little optimism that sufficient funds would be forthcoming from either the federal government or their state legislatures at any time in the near future.

Synopsis of Statistical Data Overview

Admittedly, the reduction of so much complex data into a format as compact as Chapter 4 may lead to some unwarranted conclusions. Yet, because of its size, many readers will only be interested in the ultimate conclusions to be derived from such a protracted and intricate study. The use of a section like this one, therefore, provides that audience with a few summary statements, the utility of which will hopefully outweigh the risk of distortion. Readers should be reminded that this study (note exceptions listed in TABLE 15) covered all judgments for a 24 month period (1980 and 1981) against all offenders under the age of 26, in nine selected sites -- six counties, a city, and two states. In order to be included, offenders had to have been charged, in either juvenile or criminal courts, with one of six "dangerous" offenses, i.e., murder, nonnegligent manslaughter, rape, aggravated assault, robbery, and/or burglary. Corrections experiences and court reappearances for felony charges (reactivity) were tracked until January 1, 1983, periods of between 12 and 36 months, depending on the dates of initial offender judgments.

Overall, the adult courts handled about two-and-a-half times as many cases as did the juvenile courts, when the two adult court cohorts (YACs and AACs) were combined. When comparing only the under-18 year old cohorts (JJCs and YACs), the balance dramatically shifts in favor of juvenile courts: juvenile courts handled over 88 percent of all cases brought against this age group in either court system.

During the study period, juvenile courts waived about five percent of the dangerous offense cases filed with them. Although not the identical cases, juvenile court waivers accounted for about 44 percent of the YAC cohort. Thus, it can be seen how a small proportion of the juvenile court workload can translate into a significant share of the criminal courts' caseload of under-18 year old defendants. During this same period, criminal courts "reverse waived" 21 of its 1575 YAC cases to juvenile courts. The impact on both courts was relatively insignificant.

While the numbers of under-18 year olds handled by the adult courts (YACs) only amounted to a small percentage, the levels of dangerousness of these cases exceeded the average seriousness of the cases heard in juvenile courts. In other words, proportionately larger numbers of homicide and rape cases were tried in criminal courts; larger proportions of robbery and burglary cases were heard in juvenile courts. However, it should not be concluded that violent offenders did not appear in juvenile courts or that under-18 year old burglars were not often seen in criminal courts. Except in instances where state laws automatically exclude certain cases from juvenile court jurisdiction, all six types of cases were generally found in all nine sites' juvenile and criminal courts.

Adult courts were more likely to find offenders guilty, but the differences were not overwhelming (76.9 percent to 70.4 percent). The same finding applied when broken down by guilty-as-charged and guilty-of-lesser offenses, which came as a bit of a surprise. It was anticipated that most, if not all, juvenile court delinquency adjudications would be for the most serious offense charged in each case. On the other hand, it was expected that large numbers of criminal convictions would result from plea bargaining, thus increasing the numbers in the guilty-of-lesser-offense category. Obviously, the significance of being found guilty as charged, as opposed to being guilty of a lesser offense, has much more significant implications for sentencing in criminal courts than in juvenile courts, where all such adjudications are designated as delinquencies. In fact, around 80 to 85 percent in both courts were found guilty as charged.

The reasons for these outcomes, while not documented and not entirely clear, might nevertheless warrant some speculation. Over the past decade, juvenile court judges have been increasingly guided, in their conduct of delinquency hearings, by considerations of due process and by state and local rules of criminal procedure. It may be that, in the selected sites, specific proof of charges must meet higher standards than the ones generally associated with juvenile court proceedings. If true, it would account for both the rates which were relatively comparable to the adult court rates described above, i.e., rates of guilt and guilty-as-charged.

In looking at the adult court rates (and the disparities between YAC and AAC judgments), one explanation may be that prosecutors, being less willing to prosecute cases involving under-18 year olds in adult courts, are more disposed to take bargained pleas, even in cases involving very serious charges, thus avoiding the trials. It may also be that younger defendants engender greater sympathy from judges and juries, thus creating situations where youth are found guilty, but of lesser charges.

Nowhere in the study are the differences between juvenile and criminal court behavior more evident than in the policies and practices related to confinement. Adult courts were more than twice as likely to incarcerate convicted defendants than were the juvenile courts. The one exception to this general pattern was found in Los Angeles County where juvenile court judges confined dangerous juvenile offenders in around nine out of ten cases, a rate comparable to confinement rates for the Los Angeles County criminal court. The next highest rate of juvenile (JJC) confinement was found in King County with 54.1 percent. In all of the remaining seven sites, juvenile courts ordered confinement less than 35 percent of the time. In two sites (Erie County and the state of Vermont), no delinquent was confined in the two-year period of the study. In contrast, no adult court confined fewer than 50 percent of its convicted dangerous offenders: in four sites, confinement rates exceeded 75 percent.

In addition to the incidence of confinement, the matter of length of confinement was also explored. In this way, the "severity" of confinement sentences could be comparatively examined. For example, it was shown in Chapter 4 that, of all the juvenile courts in the study, Los Angeles County was the only one that confined dangerous juvenile offenders with the same frequency as its adult court counterpart, with King County juvenile court having the next highest rate and proportion to criminal court confinement sentences. However, in FIGURE 4, it is possible to see how those confinement sentences were distributed, in terms of sentence lengths ordered. Using the earlier Los Angeles County example, almost 80 percent of the JJCs and YACs received comparable terms in both the one-to-three year and the three-to-ten year categories. For about 20 percent of the YAC cohort, sentences were considerably longer than juvenile court dispositions. It is therefore possible to observe that the Los Angeles juvenile court not only ordered confinement as frequently as did the Los Angeles criminal court for YACS, but the terms ordered were also roughly comparable in at least 80 percent of the cases. It should also be noted that both of these practices in the Los Angeles County juvenile court set it apart from practices in all the other juvenile courts investigated.

At the same time, while the rate of confinement in King County juvenile court was about 70 percent of that evidenced by the King County criminal court, the percentage of juvenile court confinements ordered were still higher than all other juvenile courts except for Los Angeles County. Yet, the terms of the King County juvenile court confinement dispositions, (usually made in accordance with its statutory sentencing matrix) were substantially less than both the King County criminal court and at least two other juvenile courts (Los Angeles County and Orleans Parish).

The use of indeterminate sentencing in four juvenile court sites makes a full comparison impractical. Even so, it can be seen that, with the above exceptions noted, juvenile courts order confinement less often and for shorter terms than do the criminal courts.

A comparison of just the adult court cohorts is also interesting. In six of the nine sites, sentencing judges order comparable terms for convicted offenders, apparently without regard to age. In Los Angeles and King Counties, and in the State of Montana, YACs, i.e. youth under the age of 18, were sentenced much more frequently to longer terms than were the AAC cohorts in those sites. It must be remembered that Montana only had two YACs confined and does not, for that reason, serve as a realistic point of comparison. The other two sites, on the other hand, did confine relatively large numbers of YACs. The conclusion that must be drawn in those two sites is that age does not serve as a consideration for lessening sentencing severity. To the contrary, younger offenders were ordered to longer confinement sentences than were their older (18 to 26 year old) counterparts.

The means of reflecting the lengths of time actually served became a serious concern to the authors of this report. Two-thirds of the youth and young adults were still confined at the end of the study period, as were about a fourth of the confined juveniles. Questions relating to creating means and various proportionalities had to be resolved. It was obvious that the normal method for determining length of time served would be misleading, either because so many members were still confined or because only the "better" prisoners had been released. It was finally decided that the most realistic approach would be to determine how many persons had been released within each cohort and to compare those outcomes (See TABLE 22).

The result was that one glaring comparison emerged: almost three-fourths of the JJCs had been released from confinement, after having served an average of 9.4 months, while only about one-third of the YACs and AACs had been released, after having served an average 11.3 months. While both of these findings indicate longer adult confinement, they mask the true significance of the relative outcomes. Considering the extremely large proportions of YACs and AACs still in confinement, a five-year followup study would surely not continue to show a two-month average length of confinement difference between JJCs and YACs. It is even unlikely that YACs and AACs would be released at rates as comparable as those percentages reflected in TABLE 22, based on previous studies and the lengths of sentences ordered for the cohorts in this study. What is more likely is that the differences would be measurable in years, not months. At this point, however, the most we can do is to report our findings reflected in TABLE 22.

Our research into "reactivity" presented similar problems. Proportionately more juveniles were "on the streets" for longer periods during the study than were either YACs or AACs. Some probations were revoked while others were either successfully terminated, continued without serious intervening incidents or were not revoked, despite new charges.

The reactivity of persons originally found not guilty or dismissed was considered to be an important aspect of this issue. Of course, from a strictly legal standpoint, these cohort members could not be "reactive" without an initial finding of culpability. They were nevertheless considered reactive within the context of this study, because of their reappearances in court, charged with new felony counts.

An examination of individual sites suggests that three juvenile courts (Marion County, Baltimore City, and King County) all had reactivity rates in excess of 20 percent. All three of these jurisdictions begin general criminal jurisdiction at age 18 and, therefore, are more likely to see reactive juveniles. Erie County and Orleans Parish (with age 16 and age 17, respectively, as the onset of general criminal jurisdiction), and Vermont (which, for all practical purposes, uses 16 as the age of criminal court referral), are all understandably less likely to deal with large numbers of recidivists in their respective juvenile courts.

What is probably one of the most intriguing statistics in this portion of the research comes as a result of comparing reactivity outcomes in two particularly populous sites, both of which employ 18 as the operative age of criminal jurisdiction. Both Dade and King County juvenile courts heard large numbers of dangerous offense cases and, in both counties, the relative levels of "dangerousness" of the juvenile cohorts were roughly the same. In the one case, Dade County found 62 percent of its JJC cohort delinquent and ordered nine percent of them to confinement. In the case of King County, the juvenile court found 86 percent of its cohort delinquent and ordered 54 percent of them to confinement. The point of this discussion becomes apparent when these figures are compared with the rates of juvenile reactivity in the two sites.

As TABLE 24 indicates, 19.7 percent of the Dade County cohort returned to juvenile court on new felony charges; 41.2 percent of the King County cohort returned to juvenile court for the same reason. In effect, one group was found delinquent almost one-and-a-half times more frequently and was confined over eight times more often; yet, they were reactive twice as often as were the Dade County juveniles. While it should be borne in mind that numerous differences exist between the two communities, the respective state laws, and juvenile court philosophies, these statistics do not suggest that either high rates of delinquency judgments or high rates of confinement deter future felony-type acts of delinquency.

It should also be noted that, within Dade County itself, substantial differences were found when comparing the outcomes of JJCs and YACs. While each cohort was judged guilty about as often as the other, YACs were sentenced to confinement by the criminal court about ten times more often as were juveniles; yet, the rate of YAC reactivity was two-and-a-half times greater than the rate of JJC reactivity.

When all eligible JJCs and YACs were compared, across the seven sites, for reactivity, their respective averaged rates did not vary by more than

two percentage points. In other words, about equal percentages of JJCs and YACs came back to court, charged with new felonies. At first, the comparison of these two rates appears to be anything but remarkable. Further consideration, however, suggests a different conclusion.

That consideration centers on the assumption that certain cohort members were more able to recidivate than were other ones. We must assume that the following persons were all allowed to stay in the community:

- persons found not guilty or whose cases were dismissed;
- offenders placed on probation; and
- offenders receiving other dispositions.

We must also assume that confined individuals did not have access to the community until released to parole or discharged from jurisdiction. Given the acceptability of these assumptions, it is easy to see that the three groups referenced above shared a greater opportunity for committing new felonies. They were, in the terminology of the field, "at risk" of committing new offenses. In a similar vein, the confined populations are regarded as "incapacitated," i.e., unable to commit new criminal acts, at least within the the general population. If only the "at-risk" JJC and YAC populations are compared, a more realistic picture can be portrayed: it compares the persons who had the "chance" to be reactive.

TABLE 25, on the following page, presents both the outcomes discussed above, i.e., cohort reactivity as well as reactivity among only the at-risk subcohorts. As can be seen in the Reactivity section of TABLE 25, both JJC and YAC percentages of reactivity increase when limited only to the at-risk populations. The differences in rates shift, however, from one slightly favoring juveniles (JJCs) to one greatly favoring youth in adult courts (YACs). When the number of reactive persons are compared to the number of persons at risk, YACs are reactive about one-and-a-half times more frequently than JJCs.

Several points must be borne in mind when reviewing this comparison. Juveniles whose reactivity charges were filed in criminal courts were only accounted for in two of the seven sites, where such tracking was possible. On the other hand, YACs reverse waived to juvenile courts were not tracked in criminal courts for reactivity, either: they became part of the juvenile data sets. The second point is that most of the reactivity attributable to confined offenders (See TABLE 24) actually reflected judgments entered for prior offenses after confinements had commenced for the offenses identified in the study. A final point is that where offenders were known to have been confined, but their exact status could not be determined as of January 1, 1983, they were considered in TABLE 25 as part of the Total Eligible Persons Confined group.

TABLE 25. NATIONAL OVERVIEW: WHICH AT-RISK POPULATION WAS MORE REACTIVE?

Population Descriptions	JJC	YAC
Total Eligible Persons Investigated for Reactivity (percent)	9,500 (100.0)	1,006 (100.0)
Total Eligible Persons Confined (percent)	2,014 (21.2)	512 (50.9)
Total Persons At Risk During Study Period (percent)	7,486 (78.8)	494 (49.1)
Reactivity		
Total Reactive Persons During Study Period (percent)	2,429 (25.6)	240 (23.9)
Total Reactive Persons Out of Total Persons At Risk During Study Period (percent)	2,429 (32.4)	240 (48.9)

When reduced to its most compact form, it should now be much easier to see that the major differences between the two systems are most visible in three specific areas:

- Convicted youth in adult courts are confined two-and-a-half times more often than are juveniles.

- Confined youth (YACs) will serve considerably more time in confinement than will juveniles.

- At-risk youth (YACS) are reactive one-and-a-half times more often than are juveniles.

The conclusions which may be drawn from these findings fly somewhat in the face of popularly held notions about both the differences in policies and practices between the two systems, as well as their effects on outcomes. In fact, some of the working assumptions inherent in this study have not been substantiated. Stated in more concrete terms, the following statements appear to be reasonable summations of what we "did not find":

- Juveniles charged with dangerous offenses are not waived to adult courts with much frequency. Juvenile courts retain the large preponderance of such cases, many of which could be considered violent crimes.

- Persons under the age of 18 who are charged with dangerous offenses are just as likely to be judged delinquent/guilty in either court system. They are also just as likely to be found guilty "as charged" in either system.

Some policy implications of the above outcomes are clearer than others. If, for example, policy makers want to increase the likelihood that juveniles who commit dangerous crimes will be confined, there appear to be two ways of structuring the law:

- Require juvenile courts to order confinement in certain cases, perhaps using a formula-approach similar to the one found in King County; or

- Increase the opportunities for prosecutors to file cases against dangerous juvenile offenders directly in criminal courts.

If, on the other hand, the objective is to remove from juvenile court jurisdiction only those dangerous juveniles who appear to have little promise for rehabilitation, and to retain the remainder to be handled as juveniles, then, clearly, the most realistic way to accomplish that objective is through the use of judicial waiver. In other words, if some criteria other than age and/or offense is to be employed, juvenile court judges would appear to be the most likely officials in whom to vest the discretion to make those decisions.

Using a somewhat different example, if the objective is to ensure that under-18 year olds who commit dangerous crimes never spend their terms of confinement in institutions which house either less-dangerous juveniles or more-predatory adults, there appear to be a number of options. It is clear, from the case-study research, that all of these choices would not be possible in all jurisdictions. Current corrections system capacities, capital improvements prospects, even the historical context of how a state has provided for corrections services in the past, will affect the number of choices that could be realistically considered. Nevertheless, there are a number of options available. It might also be added that any one of them could be an improvement over current practices in most jurisdictions, where

dangerous juvenile offenders are either commingled with other delinquents or with older adult offenders:

- Commit dangerous juveniles to "special" juvenile corrections facilities, where intake is restricted to only these types of offenders; or

- Sentence all convicted youth to "special" adult corrections facilities, where intake is restricted to only these types of offenders; or

- Grant sentencing powers to criminal courts to commit all convicted youth to "special" juvenile corrections facilities, where intake is restricted to only dangerous juvenile offenders, irrespective of which court system generated the admissions; or

- Grant dispositional powers to juvenile courts to commit all dangerous juvenile offenders to "special" adult corrections facilities, where intake is restricted to only dangerous juvenile offenders, irrespective of which court system generated the admissions; or

- Create an entirely new intermediate corrections program, which is specially designed to handle dangerous juvenile offenders.

Some other conclusions are, at once, less clear and more disturbing. Why, for example, are youth who are tried, convicted, and confined as adults more reactive than juveniles who are processed through the juvenile system? Are the differential impacts of the systems themselves responsible for the differences in reactivity rates?

As we attempted to respond to these self-imposed questions, it became clear that people's values predetermined their answers. If an unconscious bias tended to favor retaining such offenders in the juvenile system, the answer would most likely attribute at least a good part of such outcomes to the brutalizing effects of adult corrections institutions. If the bias favored treating all dangerous offenders in the same fashion, regardless of age, the difference would be attributed to the fact that the most dangerous under-18 year olds were handled as adults; therefore, it should not be surprising that they recidivate more quickly and more often.

The fact is that, while both positions are grounded in solid philosphical premises, neither position justifies the conclusion that either the juvenile or the adult system creates recidivism. Too many factors intervene in the individual lives of cohort members to extrapolate a cause-and-effect relationship from the results of the cross-tabulations presented in TABLES 24 and 25. It may be that no one can ever be certain

about whether recidivism is enhanced by confinement in general, or by confinement in adult institutions, in particular.

Viewed in another way, the issue of which side is right may be somewhat beside the point. If more YACs are reactive than JJCs during periods in which they are at risk, we can deal with the policy implications of that finding in the same way we dealt with earlier findings: by offering the options which reasonably present themselves. The policy choices might be presented as follows:

- Ensure that more dangerous juveniles are handled by the juvenile system; or

- Ensure that more dangerous youth, when convicted by criminal courts, are confined for longer periods of time, at least exceeding the two-to-three year periods experienced by YACs in this study.

When presented in this way, the logical policy choices may both be unacceptable. Is there a third alternative? The answer to that question seems to take us to a reiteration of earlier suggestions, having to do with possible crossovers from adult courts to juvenile corrections, or to a separate system expressly designed for older and more aggressive juveniles.

RECOMMENDATIONS

In an earlier referenced report, entitled Major Issues in Juvenile Justice Information and Training: Youth in Adult Courts (PROJECT MIJJIT), we offered two sets of recommendations which, for the most part, are still valid despite the passage of some five years. Those recommendations will not be presented here as fully as they were offered then, but it does seem to be a good idea to at least advise readers as to their contents. As in the earlier document, they will be divided into recommendations for public policy and recommendations for future research. Whenever appropriate, new recommendations will be offered, which will be clearly distinguishable from the ones made five years ago.

Recommendations For Public Policy

There are essentially three "arenas" or foci for formulating public policies relative to the handling of dangerous juvenile offenders. Legislators create the most fundamental kinds of policies through the legislative process; judges and prosecutors establish practices for their respective jurisdictions which, themselves, become public policies; and corrections administrators, including parole board members, form the third arena. This approach lends itself well to a presentation of policy recommendations relating to the justice system.

The Legislative Process

Four previous recommendations were offered in this area. The following statements offer short synopses of the information presented in the MIJJIT study.

- Before appropriate functions and procedures can be either evaluated or modified, goals and objectives must be established. It seems to be such a simple point but it bears repeating. Legislators have "tinkered" so much with their criminal laws that the goals aren't always as clear as as they were at the time of the last code revision.

  What emerges is an intense desire to stop crime through the passage of laws. Since the evidence of a cause-and-effect relationship is "slim to none," legislators would be well advised to think, instead, of how persons who enter the system should be handled.

- The best mechanism for discriminating between those juveniles who should be tried as adults and those who should be tried as juveniles appears to be judicial waiver. States that rely on waiver, either exclusively or more frequently than other referral mechanisms also available, tend to show patterns of less legislative turmoil over the past decade. In addition, a call for a national minimum age of 15 (before judicial waivers could be imposed) was made in the earlier report.

- Although state laws vary enormously, with respect to the onset of general criminal jurisdiction (from 16 to 19 years of age), the study concluded that efforts to create a uniform national age would be fruitless. That conclusion would still appear to be justified.

- In the earlier report, it was suggested that some promise for resolving the dilemma (presented by the presence of dangerous juvenile offenders) might be found by exploring new applications for youthful offender legislation. This approach would still appear to make good sense. However, new recommendations as to the use of a separate, intermediate system (discussed below) might have a much greater appeal in certain jurisdictions.

As a parenthetical note, readers should be apprised of the fact that, in the last five years, state legislatures have been increasingly reluctant to amend statutes related to this issue. Despite the changes reported in Chapter 2, above, and the discussion presented earlier in this chapter, it does appear that most current (1984) laws affecting the handling of dangerous juvenile offenders are likely to stay with us for a while. There is evidence that Bills are being introduced, but they do not seem to be passing with the same persistency that marked the era of the midseventies. The current topic of most concern, i.e., provision of corrections bedspace, will be discussed below.

The Judicial Process

In the earlier report, five judicial-process recommendations emerged, and appear below. However, current research leads us to add a few more thoughts regarding these topics.

- In states with small populations, as well as rural counties throughout the country, it is not uncommon for the same judge to hear both juvenile and criminal cases. Under most circumstances, this practice finds its justification in its obvious efficiencies, despite clear signs that it negatively affects what is generally regarded as the uniqueness of the juvenile court system. However, if it results in the same

judges trying cases they previously handled in their other capacities, then the practice cannot be justified, no matter how cost-effective. In other words, the same judge should not waive a juvenile to criminal court, only to have that same case before him as a criminal matter. The previous call for proscriptive legislation still appears to be the best means of ensuring that the practice will be ended, to the extent that it currently exists.

- Courts should not be allowed to move for judicial waiver sua sponte; rather it should be left to the prosecutor or defense counsel to make such requests. The proposed practice then leaves judges freer to make impartial rulings. Juveniles should be allowed to request that they be waived, but it should not be obligatory that such requests be granted. Again, current research would appear to support both of these recommendations.

- The question of appeal resulted in the most complicated set of recommendations in the earlier report. In essence, it called for

  -- the right of juveniles to timely appeals from decisions waiving them to criminal courts;

  -- the denial of the right of prosecutors to appeal denied motions for judicial waivers; and

  -- the tolling of juvenile court jurisdiction, if need be, to allow time for appellate review of waiver decisions, before the merits of the case would be tried in criminal courts.

Questions were raised as to whether the previous research supported these recommendations. In candor, it must be stated that, while the case study research uncovered the issue -- that juveniles are effectively denied timely appellate review of judicial waiver orders -- the recommendations resulted from staff analysis of the several aspects of the problem. In our judgment, the reasoning presented in the MIJJIT study is still valid, after additional consideration.

- Juvenile court records should not be used in criminal court proceedings. To do so would "elevate" the quality of an adjudication in a delinquency hearing to the same level as a criminal conviction.

This issue provided a number of surprises during the current research. In the statutory review, it was reported that 43 states now permit the use of prior delinquency records in criminal court proceedings. In some state

codes, specific language limits the use of such records in some manner, usually by allowing its introduction only for the purpose of sentencing. The frequency with which this practice is now legislatively provided is sufficiently widespread to justify the statement that American laws permit the practice. This condition signals a significant change in both legislative and judicial attitudes over the past decade.

In the case study portion of the research, some 200 interviewees were asked about the use of juvenile records in criminal courts. As reported in Chapter 3, this subject was important above all others to key informants in a number of our sites. Invariably, most people interviewed expressed interest in assuring that juvenile records could, indeed, be used in this fashion. In response to specific questions that placed the matter of using delinquency records in criminal proceedings within the context of due process and essential fairness, little concern was expressed. So long as judges restricted their use of these records to sentencing after judgment, the general consensus was that due process considerations were irrelevant. Accepting that position, there still appears to be a need for a national standard or model legislation, by which legislators might be guided in seeing to it that juvenile records could only be used for the limited purposes cited above.

- The future of juvenile courts was called into question in the MIJJIT study because of the possible effects of two, somewhat contradictory phenomena, namely,

  -- increasing removal of juvenile delinquency jurisdiction from juvenile courts; and

  -- increasing reliance on criminal law and rules of criminal procedure in juvenile court proceedings.

The report called on juvenile courts to reassert themselves as the proper forum for dealing with serious offenders or risk being considered redundant. In order to survive, juvenile courts would have to not only demonstrate to the public that they could credibly handle dangerous juveniles but that they could do so in ways that are superior to the practices of adult, criminal courts. That challenge appears to be still in evidence. At the same time, with the abatement of legislative activity regarding this issue, the future of the juvenile seems no longer to be in question, at least for the forseeable future.

The Corrections Process

Only two corrections areas were addressed in the previous study. In most respects, the recommendations still represent our current viewpoints. Yet, current research allows to carry some of these recommendations a step further.

- For purposes of detaining juveniles, the guiding principle should be that juveniles ought to be considered as juveniles for as long as possible. The practice of transferring waived juveniles to jails, where they commingled with an older, adult population, should be discouraged. Current research suggests no reason to depart from this recommendation.

- For purposes of confining youth convicted in criminal courts, states should provide separate facilities, in either the juvenile or adult corrections system, for the purpose of segregating dangerous young offenders from both other juvenile offenders or older, adult offenders. Where such facilities are placed within the juvenile corrections system, criminal courts should have access to them.

These recommendations are consistent with the conclusions reached earlier in this chapter. However, they fail to incorporate the possiblity of a separate youth court and/or corrections system. This recommendation had considerable support in several case study sites, particularly in Baltimore City, where a youth court existed until about 20 years ago. The idea of trifurcating either the court or the corrections system holds the promise of modifying current servies in some rather fundamental ways. In speculating on those changes, it becomes obvious from all we have learned that the most profound improvements would occur in the corrections system. In fact, the creation of a youth court without the creation of correlative youth institutions and programs would result in a distinction without much difference from what we currently see. The key is to dedicate resources to the specific task of correcting the most volatile and, yet, most promising people who are likely to enter the system.

Recommendations for Future Research

As in the section above, recommendations to be made now are, in most respects, similar to the ones made five years ago. When dealing with a topic as narrow as this one, it would be unusual to see any other result. The few differences that do appear are more likely to occur because the information was less focused then, rather than because of any startling new insights.

One of the major recommendations for future research topics made in the MIJJIT study related to the handling of <u>dangerous juvenile offenders</u> -- how best to deal with jurisdictional issues, definitional problems, and above all, how to construct a socially responsive, legislatively viable, and administratively feasible public policy. To a great extent, most of these questions have been addressed, much to the credit of NIJJDP. In addition to the work contained in this four-volume report, NIJJDP initiated and funded the Violent Offender projects, and also responded to a number of other applications directed to this subject. Over the past five years, a considerable amount of information has been amassed. As a result, there appears to be greater agreement among policy makers, researchers, and administrators as to the nature of the phenomenon, its size and character, and even some promising programmatic approaches.

From our viewpoint, while research in this area will always be needed, many of the studies undertaken over the past five years have probably resolved a large number of then-outstanding questions. It would be extremely useful, for example, to periodically update the citations to be found in Volume 2 of this report (<u>Statutes Related to Handling Dangerous Juveniles</u>), but it would be wasteful to commission a comparable study again. In other words, a new stage of research is needed.

Toward what will this new stage of research be directed? People from around the country could easily provide many suggestions, and such views should be solicited. On the basis of the findings reported in this study, it occurs to us that certain aspects of dangerous offender research will require much attention over the next few years. A few of these potential areas appear below:

- We know quite a bit about the identity of persons who commit serious and violent crimes. In fact, our knowledge is being wasted. For example, if we know that most of these crimes are committed by persons who are between the ages of 15 and 26, shouldn't we be looking at ways to make our social institutions conform to the problem, instead of the other way around? What we have done, instead, is to channel these offenders into two court processes and two corrections systems which are both, for distinctly different reasons, wholly unsuited to deal with them. It is time we begin

to look for new organizations, and for new structures within them, that mirror this phenomenon about which we have learned so much.

• Certain portions of our legal and case study research suggest that the federal government could provide a great service to states by finding ways to standardize particularly troubling aspects of state juvenile codes. Of course, the passage of such laws is not within the purview of the federal government; at the same time, suggested model legislation is often appreciated and not always available, when legislators are faced with the task of responding to constituents or of proposing their own legislation. Issues related to detention and confinement practices; use of juvenile records; the relationship of forensic medicine, vocational training, and community networks to the handling of dangerous juveniles; and construction policy development are all important aspects of juvenile offender legislation in the nineties. The federal government could greatly assist state governments by creating a framework in which these issues might be addressed. A number of these points will also be discussed as individual research topics. The point here is that there are a number of statutory areas that could be made more uniform if state legislators had the benefit of research into model legislation.

• Variance in communities' responses to crime, and particularly juvenile crime has not been satisfactorily explained. Often, similarities in sociological, economic, and other contextual factors are remarkably similar; yet, both the laws and practices in these jurisdictions — particularly those that affect confinement and referral practices — considerably differ. One factor that bears further scrutiny is, for lack of a better descriptive term, the public's fear of crime. What conditions accentuate that fear and what can government do to ameliorate the public's anguish? It appears to us that research of this type is long overdue.

• Greater involvement of prosecutors in the juvenile courts has obviously affected the handling of juvenile offenders of all types. On the basis of our research, it is clear that prosecutors are much more concerned about cases involving dangerous juvenile offenders than they are about the run-of-the-mill cases of lesser delinquents. As a result, many prosecutors have developed internal policies to guide the work of their

assistants who are assigned to juvenile courts. As a rule, policies generally cover such topics as plea bargains, when to file in criminal court, requests for detention and/or judicial waiver, and even when to object to releases from confinement, long after the cases are over. What are these policies? Since it is apparent that delinquency proceedings are going to continue to be regarded as adverse party hearings, instead of the _parens patriae_ approach of a quarter century ago, what can be done to "institutionalize" the policies under which prosecutors operate? Again, the use of standardized policies will be a matter to be resolved by each prosecutor for his or her office. It is still true, however, that research into this matter would benefit many prosecutors in their attempts to create appropriate policies that balance the youth of the offender against the protection of the community.

• As more states legislatively (or informally) allow juvenile records to be used outside the juvenile court setting, several important questions arise. How does such usage affect outcomes? To what extent are current laws utilized or ignored? In what ways do current laws and rules of court differ in permitting the use of juvenile records outside of the juvenile court? Would model legislation assist states in sorting out the many possible uses of juvenile records and in deciding those circumstances in which the use should be sanctioned? We believe that much could be gained by research in this area.

• The existence of youthful offender statutes in a number of jurisdictions has given rise to several unusual problems. The premise on which these laws were passed is that younger, first-time criminal offenders are more promising candidates for rehabilitation; therefore, they should be given the chance to progress to socially acceptable behavior as quickly as possible. In most cases, this policy becomes translated into two or three particular practices in the criminal courts. For example, in many (but not all) jurisdictions having such legislation, youthful offenders are "judged" to be youthful offenders but are not "convicted"; they are "ordered" to probation or to other community-based programs, instead of being sentenced to confinement; they sometimes can look forward to the prospect of an expunged record. At the same time, other jurisdictions do convict youthful offenders and sentence them to confinement, sometimes in facilities operated by the juvenile corrections agency and sometimes in adult facilities. In one state, New York, 13-to-15 year

old juveniles who commit very serious crimes are automatically excluded from juvenile court jurisdiction and must be tried as adults (excluded offenses). It is obvious that, over the past decade or two, a hodge-podge of youthful offender laws and practices have grown to a point where they appear to have lost the original objective.

The resultant problems have been felt most severely by corrections administrators. Decisions to provide separate services or to commingle them indiscriminately with nonyouthful offenders often flow from budgetary constraints, in the absence of legislative direction. The fundamental question, i.e., who should be considered as youthful offenders, should be answered in ways that give meaning and purpose to the definition. Once the population is articulately identified, corrections options should be established in conformance with the objectives established in the statutes. Since little research has focused on youthful offenders from this perspective, we believe that a great deal would be gained from such an endeavor.

- Court reorganization continues to occur in many states throughout the country, spurred by the desire to increase efficiency within the judiciary. These efforts almost invariably result in the introduction of a rotating judicial bench: judges periodically are shifted from one type of caseload (criminal, civil, probate, or juvenile) to another. To be sure, such rotations are cost-effective. Yet, one of the effects of this practice is that specialized juvenile court judges are slowly and silently disappearing. They are being replaced by temporarily assigned general trial judges, who will often serve as juvenile court judges for periods of less than a year. In some ways, positive effects have been felt in the juvenile arenas. For example, the introduction of due process safeguards has probably been expeditied. On the other hand, dispositions in juvenile courts have probably become less oriented toward offender needs and more geared to either probation or confinement options. These observations, of course, are not documented and could be quite inaccurate. We do not know the effects of the loss of specialized juvenile court judges, except to note that the phenomenon is occurring. What does it mean, in terms of juvenile justice, to lose the expertise of a child-oriented judiciary which has grown up in America over the last century? Research focued on this question should prove to be quite revealing.

- Between 20 and 25 states now permit the use of juries in juvenile courts. Despite the 1971 U.S. Supreme Court decision in McKeiver v. Pennsylvania, which held that the right to a jury was not an essential due process requirement in juvenile court hearings, larger numbers of states appear to be convinced that juvenile court juries (or at least access to them) are necessary. Yet, our research, in states where such juries are possible, failed to find any significant use of juries in juvenile courts. Is it true that juries, where available, are infrequently impaneled? What are the effects of juries, where utilized? Since the phenomenon is fairly recent, we know little about changes which it may have brought about.

- The absence of the right to bail in juvenile cases continues to raise questions about constitutional issues, public safety, and the use of public resources. Despite the Gault decision concerning due process, many juveniles are currently being detained when, if bail were a possibility, they would be released. The most critical issue, for many observers, is the matter of public safety.

  Is the public jeopardized when bail is permitted in juvenile cases? It should be easy enough to find out. Since there are enough jurisdictions that do permit bail, sites exist for useful research into the question. If bail presents very little increased risk, it could save detention facilities considerable funds. If, on the other hand, releasing delinquents does increase juvenile crime, then the cost savings become less relevant. The question is worth pursuing.

During the course of the research in the current study, The Academy amassed a wealth of data. The retrieval process required extraordinary time, effort, and expense, and yielded data on some 30,000 offenders from a number of our largest cities and counties, as well as from less populated areas. Much secondary data analysis is possible and should be undertaken. At the same time, a more useful endeavor might be to track the cohorts from these selected sites for longer time periods than what the current study permitted. By using the various identifiers in our data base, individuals -- particularly offenders ordered to confinement -- could be tracked more realistically by extending the period in which they remain "at risk." We believe that this data base offers unique opportunities for determining recidvism within and across sites. Both the investment in its retrieval and the value of having such a base line suggests to us that it would be a shame if its use were restricted to the Comparative Dispositions Study.

In addition, certain sites raised interesting research questions, as comparisons were made among jurisdictions. For example, the very low confinement rates found in Dade County juvenile court, coupled with its comparatively low reactivity rates, suggests that the juvenile court there may be approaching the matter of juvenile corrections in a way that is not only different from other jurisdictions but in a way that would benefit other jurisdictions. What is Dade County doing that accounts for its quite exceptional performance?

The State of Vermont has not had a facility in which to confine delinquent juveniles for seven years. Instead, it has reportedly relied on community-based and out-of-state alternatives. While our research revealed that none of Vermont's dangerous juvenile offenders were confined during the entire two-year study period, the state will be opening a newly constructed delinquency facility soon. How will the presence of this new facility affect future juvenile court and state agency decisions affecting confinement? What types of juveniles will be housed in the new facility, as compared with the juveniles who have been sent out of state over the past seven years?

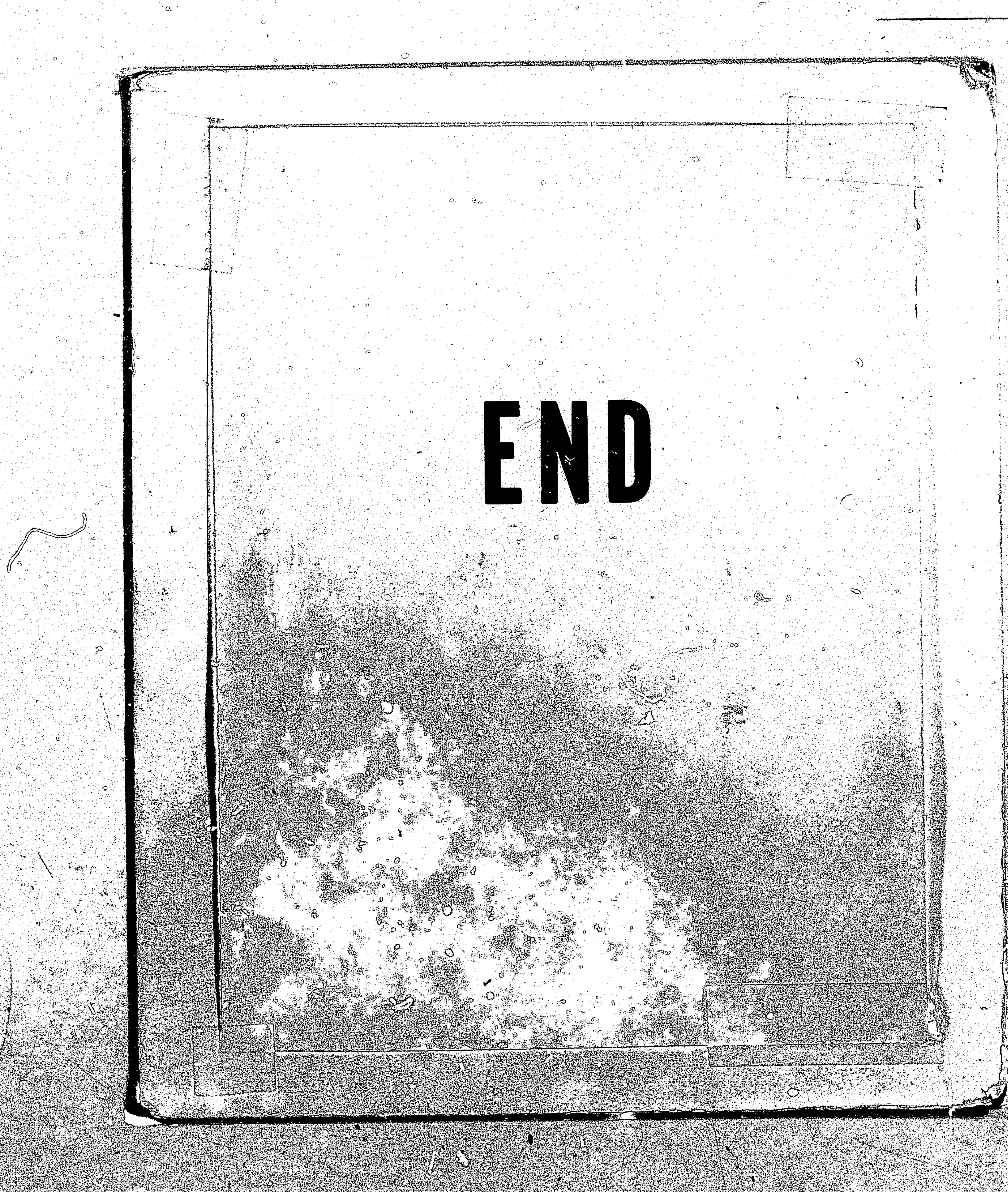
The State of Washington has been using its "charging" and "sentencing" matrices for about as long as Vermont has been without a facility. As a result, confinement of dangerous juveniles occurred in over half the cases. Yet, reactivity was also relatively high: one-third of them returned to juvenile court, charged with new felonies. What accounts for this outcome? Does the use of a matrix (based on age, offense, and prior record) actually select the "right" cases for confinement?

Similar questions emerged from an examination of data obtained in the other six sites as well, such as the abnormally high rate of confinement in Los Angeles County juvenile court, the absence of reactivity on the part of Orleans County YACs, the high rate of delinquency judgments in Marion County, and the relative absence of juvenile crime in Erie County. In all of these instances, the current data base would serve to make the future research findings more significant.

The current research has taught us a great deal about the handling of dangerous juvenile offenders throughout the country. It has also taught us a great deal about both the condition and usefulness of current record-keeping practices in all types of justice agencies -- courts and court clerks, prosecutors, and corrections agencies. In most instances, these systems, however arranged and whether manual or electronic, are set up to do little more than process case records from one step in the sequence of court and corrections events to the next one. As such, they seem to work well enough. However, anything other than the day-to-day activities related to case record processing resulted in data retrieval impediments of monumental proportions. Despite the best efforts of the staff members with whom we worked in the nine sites, thousands of hours were required in even the most sophisticated systems to retrieve the needed data. We believe that better programs are available than the ones currently in use and, if used, would not only improve daily operations but

would substantially enhance those agencies' abilities to access their considerable data bases for research and for eccentric reporting needs. It is incredible that, after the millions of dollars spent for automation and records improvement, relatively simple data requests cause such abnormal demands on personnel. The reasons clearly relate to the thought processes which control how these programs are selected or developed.

The idea of pouring more money into the automation of juvenile justice records is certainly not a palatable one. Even so, the persistent conversion of manual records means that valuable research data will be more inaccessible in the future. Unless steps are taken to develop acceptable computer programs for justice agencies, which allow them to efficiently carry out both day-to-day and extraordinary data retrieval tasks, these data may be, for all practical purposes, lost forever. In a society where public policy and budget decisions are increasingly linked to statistical evidence of need or activity, the entire field may be creating impediments to its own progress. So, there seems to be little choice but to improve data access. In so doing, it would seem prudent to involve the research community in the basic programming functions.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