



House of Representatives
STATE OF WASHINGTON
OLYMPIA

RESPONDING TO THE YOUTHFUL OFFENDER; AN
OVERVIEW AND CRITIQUE OF THE JUVENILE
JUSTICE AND CORRECTION SYSTEM

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OFFICE OF PROGRAM RESEARCH
HOUSE OF REPRESENTATIVES
STATE OF WASHINGTON

June 11, 1976

The Honorable Ron Hanna, Chairman
House Corrections Subcommittee
Social and Health Services Committee
House Office Building, Room 304
Olympia, Wa. 98504

Dear Representative Hanna:

As part of the interim studies assigned to the House Social and Health Services Committee, I have prepared this working paper on the juvenile corrections system.

This paper assesses society's response to juvenile delinquency and juvenile crime, and proposes a restructuring of those institutions involved in such efforts. The ideas developed in this paper reflect the basic assumption that the problem of juvenile delinquency can best be dealt with at the community level.

I hope that this paper will be of assistance to the Social and Health Services Committee and to legislators interested in the general areas of youth development.

Sincerely,

Bob Naon

Bob Naon, Counsel
House Judiciary Committee

BN:sg

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I. INTRODUCTION

The response of society to anti-social behavior committed by juveniles is shaped by two trends of thought. First, its actions are designed ostensibly to help the child and prevent him from becoming an adult criminal.¹ Second, growing attention² to the frequency and seriousness of delinquent crime justifies society's need to hold a youthful offender responsible for his actions.³ The problem is to reconcile the interest of society in being safe and secure in life and property with the interest of the society and the child in having that child become a productive citizen.

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- 1 The juvenile justice system founds its overall approach on the assumption that tendencies to criminal activities are more easily and effectively removed if they can be treated while the offender is still a juvenile. One community relations officer put it in these terms: "We can give up on the adults. Their attitudes are already fixed and we aren't going to change them. The hope for the future rests with the youth...we can reach the kids, but we can't reach the adults." Lee Brown, "Evaluation of Police Community Relations Programs", in Gary Adams (ed), Juvenile Justice Management 354 (1973). See also Management and Behavioral Science Center, Planning and Designing for Juvenile Justice 41 (1972). The emphasis on the application of various degrees of accountability within the juvenile justice system rather than upon actual criminal responsibility is a main manifestation of this philosophy. Alan Coffey, Juvenile Justice as a System 37 (1975).
 - 2 The National Advisory Commission on Criminal Justice Standards and Goals found that juveniles under 18 are responsible for 51 percent of the total arrests for property crimes, 23 percent of violent crimes, and 45 percent of all serious crime. Cited in Dale Foreman, Codifying the Juvenile Court Revolution in Washington State (paper submitted in partial fulfillment of the requirements for the Juris Doctor degree at Harvard Law School 14 (1975)). In Washington in 1973, there were 577 juvenile arrests for violent offenses and 12,930 arrests for property offenses. State of Washington Comprehensive Plan Supplement for Juvenile Justice and Delinquency Prevention 10 (1976).
 - 3 See, e.g., "Skyrocketing Juvenile Crime: Are stiffer Penalties the Answer", New York Times, February 26, 1975, p. 37, column 1. The article reviews proposals in five states to increase penalties and/or to transfer to adult court juveniles aged 15 or over who have committed certain violent crimes. Geoffrey Revelle, a Seattle deputy prosecuting attorney, has said, "There should be some changes in the law, mostly to provide more protection for society." (Cited in Foreman, supra note 3, at 8.) "I don't think you're doing a kid a favor by letting him off easy the first or second time he comes in," observed Pontiac, Michigan Chief of Police, William Hanger. "Something should happen to that kid that creates a healthy respect and/or fear."

This paper proposes that the response of Washington citizens toward youth be changed to better reflect these interests. The changes suggested are based upon the assumption that in the final instance, delinquency is a community problem which must be met by the community and removed from the traditional juvenile justice system.

II. CRITIQUE OF CURRENT SYSTEM

The most serious charges against current juvenile justice systems are that (a) it is inadequate because it is not accountable to the citizens of this state; (b) juveniles processed by the system for delinquent offenses are not being held accountable for their actions; and (c) it is unable to provide those kinds of services needed by youth. These three charges will be discussed below.

A. The System Is Not Accountable To The Citizens:

Commentators have termed the criminal justice system a "non-system" because of its lack of accountability. "Its only allegiance," asserts Marvin Wolfgang, "is to itself. It has no moral conscience, no need to report to its immediate neighbors, let alone external agents." ⁴ The Washington State Department of Social and Health Services reports that little is known regarding the effectiveness of or duplications ⁵ or gaps in service in the state juvenile justice system. Individual counties, like the state, are sometimes unable to provide even the most basic information regarding ⁶ involvement of youth in their juvenile justice systems.

4 "Making the Criminal Justice System Accountable", Crime and Delinquency 15 (1972). See also Advisory Commission on Intergovernmental Relations, State Local Relations in the Criminal Justice System 54 (1971).

5 Washington State Department of Social and Health Services, 1977 Plan for Law and Justice - Part I Submission 82 (March 1976).

6 Conversation with Dan Harris, a planner in the Washington State Law and Justice Planning Office. According to Harris, for instance, Kittitas County "can't tell you any information". Problems exist such as the one presented by Lincoln County. Having no juvenile detention facilities of its own, youth from that county are transferred to Spokane and Grant Counties. These juveniles, then, are reflected in the statistics of three counties, none of which have clear responsibility.

The system's non-accountability to the public may be largely attributable to "the organizational quandry in which its institutions and services operate".⁷

There is no single centralized agency operating on the state level or on the county level with sufficient overall authority to coordinate the fragmented services offered by private and public agencies.⁸ This negatively affects the offender to the extent that no one agency is finally accountable for his development. "We have not yet established the principle that...an agency which has rendered incomplete or unsuccessful service has some obligation for assuring continuity...when its own contact ends."⁹

The juvenile justice system should be made accountable to the citizens of this state. The lack of accountability and the absence of data upon which to make decisions can result in a wasteful and an arbitrary allocation of resources.¹⁰ "To do things and not know the payoff may be as wasteful as spending money without knowing how it is spent and perhaps equally unethical."¹¹ The various components of the system should be

7 Advisory Commission, supra note 4, at 229.

8 While the administration of juvenile correctional institutions has moved from the local to the state level, most delinquency prevention agencies intended to help children with delinquent "tendancies" are private and administered on the local level. See Robert Vinter, Juvenile Corrections in the States: Residential Programs and Deinstitutionalization 66 (1975); Malcolm Klein, "Issues in Police Diversion of Juvenile Offenders: A Guide for Discussion", in Gary Adams (ed), Juvenile Justice Management 387 (1973).

9 Alfred Kahn, Planning Community Services for Children in Trouble (1963) cited in Elaine Duxbury, Evaluation of Youth Service Bureaus 18 (1973). Further consequences of this absence of accountability and follow-through is discussed in Klein, supra note 8, at 401. In the fragmented, uncoordinated juvenile justice system, it is often the rule that an offender must be fitted to a service rather than the other way around. Carl Shafer, "The Role of Police and Correctional Personnel in Community Planning", in Gary Adams (ed), Juvenile Justice Management 254 (1973).

10 See, e.g., Paul Nejelski and Judith Lapook, "Monitoring the Juvenile Justice System: How Can You Tell Where You're Going If You Don't Know Where You Are", 12 American Criminal Law Review 9, 14-15 (1974).

11 Leslie Wilkins, Social Deviance 192 (1975). See also Louis Mortillaro and James Carmony, "Service Accountability Model for the Juvenile Justice System", 26 Juvenile Justice 35 (May 1975); Stanton Wheeler and Leonard Cottrell, Juvenile Delinquency: Its Prevention and Control 44 (1966). It has been alleged that it is not so much the lack of community alternatives that results in a high juvenile detention rate as poor utilization of what already exists. Management and Behavioral Science Center, Planning and Designing for Juvenile Justice 56-7 (1972)

integrated to a substantial extent. A "relay system" should be established such that "when the stick is passed to the next runner, he has a responsibility to report back to his passer how well he ran and what happened to the stick." There needs to be, finally, a single centralized agency to coordinate services on each county or region level and one agency to operate throughout the state to ensure a level of coherence and integration. Without the existence of such coordination and cooperation, the prospects of significantly reducing juvenile delinquency will not be maximized.

B. The System Does Not Hold Youthful Offenders Accountable:

The existing juvenile justice system is inadequate because many youths referred to it for delinquent offenses are not being held accountable for their behavior. This is inconsistent with the notion that, whatever else, a juvenile offender should have the gravity of his offense impressed upon him. This can be attributed to two main reasons.

First, the juvenile court system is to some extent a reflection of an ambiguous mandate which is designed to make it both a legal pillar and a social agency. The

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- 12 Wolfgang, supra note 4 at 21. See also Planning and Designing, supra note 11 at 26.
- 13 See, e.g., Wallace Mandell, "Making Correction a Community Agency", 17 Crime and Delinquency 281, 285 (1971); Planning and Designing, supra note 11 at 14; Edwin Schur, Radical Nonintervention 134 (1973).
- 14 See National Advisory Committee on Criminal Justice Standards and Goals, Task Force on Corrections 259 (1973); Wheeler, supra note 11 at 50. According to one study, without improved planning, juvenile justice seems likely to deteriorate. Planning and Designing, supra note 11, at 13.
- 15 James Wilson, "Lock 'Em Up and Other Thoughts on Crime", New York Times Sunday Magazine, March 9, 1975 p. 11. The National Advisory Committee on Criminal Justice Standards and Goals presents the argument that "society must act in some visible way against behavior that is defined as illegal. Action is a necessity; treatment is not--not necessarily". Task Force on Corrections 76 (1973).
- 16 La Mar Empey and Steven Lubeck, "Delinquency Prevention Strategies", in Gary Adams (ed), Juvenile Justice Management 290 (1973).

implicit ambiguity of its role limits its effectiveness in both of its capacities. According to one commentator, it generally has deprived the criminal law of its usefulness as "an instrument of moral education because it does not formally express condemnation of anti-social behavior".¹⁷

Second, it is widely held that juvenile courts are understaffed, underbudgeted and overworked. They are forced to bureaucratize their operations such that youth are routinely subjected to informal dispositions based on the needs of the court to get the case out of the way and to get on to other cases.¹⁸ Such dispositions or "informal adjustments" are handled by probation counselors and, many times, consist of no more than a quick rebuke and a warning.

According to statistics released by the Washington State Law and Justice Planning Office, of 45,862 cases referred to juvenile courts in 1974, petitions for formal court action were filed in only 9,578 instances.¹⁹ Many counties report that the remainder of cases, most informally adjusted, received scant attention. Yakima County, for example, informally adjusted 84 percent of 4,067 referrals to the juvenile court. A full 70 percent of the informally adjusted cases were "released with no further action".²⁰ This situation, apparently shared by many

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- 17 Ludwig, "Considerations Basic to Reform of Juvenile Offenders", 29 St. John's Law Review 226 (1955).
 - 18 See, e.g., Law Enforcement Assistance Administration, Diversion of Youth From the Juvenile Justice System 5 (April 1976).
 - 19 State of Washington Comprehensive Plan Supplement for Juvenile Justice and Delinquency Prevention 26 (1976).
 - 20 Yakima County Law and Justice Planning Office, 1977 Juvenile Justice Plan for Yakima County 44 (1976).

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jurisdictions, is aggravated by the fact that a significant number of violent felony cases are adjusted informally while, at the same time, many nonviolent felonies and misdemeanors are disposed of officially by the court.²² Violent offenders as a class, it would seem, should have their actions officially adjudicated by the court before the court's attentions are turned to less serious offenders.

C. The System Is Unable To Help Offenders:

The early hopes of expectations that juvenile courts would drastically reduce youthful crime have been largely unmet.²³ The notion that juvenile courts provide much treatment is questionable.²⁴ Indeed, social scientists have yet to conclude

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- 21 In 1974, for example, seven percent of Spokane County's juvenile court referrals were disposed of officially by the court while 93 percent were disposed of administratively. Spokane Region XII Submission I Juvenile Justice Plan for 1977 (1976). In Pierce County, 70.8 percent of all referrals were "informally adjusted". Law and Justice Planning Office, The Juvenile Justice System in Pierce County, An Update (1975). In Skagit County, 37.2 percent of all cases were informally adjusted and sent back to parents while 33.7 percent of the cases remained "open" without being officially acted upon. Northwest Washington Region, Whatcom, Skagit, Island, San Juan Comprehensive Law and Justice Plan (1976).
- 22 In Spokane, for example, 527 of 642 violent felony cases were disposed of administratively in 1974 while 130 of 2801 nonviolent felonies and misdemeanors were officially adjudicated. Id. In Cowlitz County, 43 percent of those youth alleged to have committed larceny over \$75 were given formal probation compared to only 33 percent of those found to have committed strong armed robbery. Cowlitz-Wahkiakum Regional Comprehensive Plan for Juvenile Justice (1976).
- 23 In 1957, the juvenile court referral rate nation-wide was 19.8 per 1,000 children 10 through 17 years of age; by 1972 the rate had jumped to 33.6. Law Enforcement Assistance Administration, Diversion of Youth From the Juvenile Justice System I (April 1976). From 1973 to 1974 total referrals to the Washington juvenile court system increased from 48,129 to 50,459. Conversation with Dan Harris, Law and Justice Planning Office Planner.
- 24 See, e.g., President's Commission on Law Enforcement and Administration of Justice, Task Force on Juvenile Delinquency 7 (1967).

that any single kind of treatment traditionally associated with the court is effective in rehabilitating delinquents. Attention in this section will be given to those kinds of help which juveniles are given as a result of their interaction with the juvenile court.

Probation, the formal disposition received in some form by most youthful offenders, is likely to be ineffective. It is most difficult, first of all, for the professional counselor to function in the dual role of helper and representative of a punitive control system. Since most juveniles perceive these counselors only in their latter capacity, their ability to help is severely restricted. Secondly, to the extent that probation is rooted in the therapy dominated casework tradition, it is likely to fall short of its rehabilitative goal. Commitment of additional resources in this kind of activity would not likely improve its effectiveness.

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- 25 See, e.g., Robert Martinson, "What Works? Questions and Answers About Prison Reform", Public Interest 22.49 (Spring 1974). According to Martinson, "The history of correction is a graveyard of abandoned fads." "California Research at the Crossroads", 22 Crime and Delinquency 180, 181 (1976). See also Levin, "Policy Evaluation and Recidivism", 6 Law and Society Review 17 (1971); Jerome Miller, "The Politics of Change" in Yitzak Bakal (ed.) Closing Corrections Institutions 4 (1973). Hearings Before the Subcommittee to Investigate Juvenile Delinquency of the Senate Judiciary Committee, 92d Cong 2nd Sess., 93d Cong 1st Sess. 542 (statement of Patrick Murphy). Ted Palmer, however, found that 39 studies reviewed by Martinson showed positive or partly positive results with favorable results somewhat more likely for juveniles and in connection with community based programs. "Martinson Revisited", Journal of Research in Crime and Delinquency 133 (July 1975).
- 26 Note, "Ungovernability; The Unjustifiable Jurisdiction", 83 Yale L. J. 1383, 1400 (1974).
- 27 Don Gibbons, Changing the Lawbreaker 224-5 (1965).
- 28 See, e.g., La Mar Empey, "Contemporary Programs for Adjudicated Juvenile Offenders", in Gary Adams (ed), Juvenile Justice Management 449 (1973).
- 29 Edwin Schur, Radical Nonintervention 58 (1973).
- 30 The outcome of one study was that youth in reduced probation caseloads performed no better than those in regular caseloads. See Keith Griffiths (ed), A Review of Accumulated Research in the California Youth Authority 46 (1974).

Compared to probation, commitment to a secure institution is at the opposite end of the treatment continuum. The current consensus of this kind of intervention is also very negative.³¹ Senator Birch Bayh, for example, alleges that once a juvenile is sent to an institution, his "chances of rehabilitation are pretty well gone".³² Commentators in the field of corrections offer possible reasons for this failure. The institution, like the probation officer, serves several functions such as its custodial and rehabilitative duties which interfere with and confound the operation of one another. In light of this conflict, according to Donald Cressey, "Correctional workers are called upon to play a game that they cannot win."³³ The impact of institutionalization upon the youthful offender can, further, be quite harmful insofar as it might reinforce a negative self-image and remove him from potentially constructive influences.³⁴ Although research done in

31 Id. at 26.

32 Hearing before the Subcommittee to Investigate Juvenile Delinquency of the Senate Judiciary Committee, 92d Cong 2d Sess., 93d Cong 1st Sess. 215. See also id. at 61 (testimony of Jerome Miller); National Advisory Committee on Criminal Justice Standards and Goals, Corrections 75 (1973); Robert Balch, "The Medical Model of Delinquency", 21 Crime and Delinquency 123 (1975).

33 Joint Commission on Correctional Manpower and Training 31-4 (1968). See also Theodore Ferdinand, "Some Inherent Limitations in Rehabilitating Juvenile Delinquents in Training Schools", 31 Federal Probation 30, 34-5 (1967); I. Ira Goldenberg, "Alternative Models for the Rehabilitation of the Youthful Offender", in Yitzhak Bakal (ed), Closing Correctional Institutions 54 (1973).

34 See, e.g., Barbara Favout (ed), Massachusetts Department of Youth Services Report 3 (1975).

California has been used to stand for the proposition that some types of institu-
tionalization have a positive impact on certain kinds of offenders,³⁵ residential
institutions for most delinquents appear to be marked by high rates of "potential
failure".³⁶

Traditional programs identified with the juvenile justice system, in summary,
have been shown to be ineffective in the prevention or reduction of juvenile delin-
quency.³⁷ Clearly, what is necessary are new approaches to the delinquency problem.

III. WHERE POSSIBLE, JUVENILES SHOULD BE REMOVED FROM FORMAL JUSTICE SYSTEM

Any reorganization of the juvenile justice system which would ensure account-
ability as previously discussed and maximize opportunities for delinquency prevention
and reduction should be based on the principle that a child's problem can best be
resolved at the least complicated and least official level possible. Dr. Hubert
Locke, testifying before a United States Senate subcommittee, declared that once
a child gets into the criminal justice process, "at least as it works today, we can
all but write him off".³⁸ In this section, it is argued that involvement with the

35 Keith Griffiths, supra note 30, at 4-5. The process of classification has been criticized in Gibbons, "Differential Treatment of Delinquents and Interpersonal Maturity Levels Theory", 44 The Social Service Review 25 (1970).

36 Lerman, "Evaluative Studies of Institutions for Delinquents", in Lerman (ed), Delinquency and Social Policy 317 (1970).

37 In a recent analysis, the Kennedy Center for Research on Education and Human Development concluded that recreation, individual and group counseling, social casework, and the use of detached workers were similarly ineffective. Cited in Law Enforcement Assistance Administration, Diversion of Youth from the Juvenile Justice System (April 1976).

38 Hearings before the Subcommittee to Investigate Juvenile Delinquency of the U. S. Senate Judiciary Committee, 92d Cong. 2d Sess., 93d Cong. 1st Sess. 240.

juvenile system justice system frequently worsens a juvenile's conduct. This result is a consequence of a negative labeling process inherent in the system and of the reaction of youth to the system's arbitrary elements. To avoid compounding a juvenile's problem, delinquency to the extent possible should be handled outside the existing court centered justice system.

A. Labeling:

It is argued that a personal role-orientation as a deviant grows out of the experience of being tagged as a deviant by a social audience. Regardless of the state's motive for processing a child through the juvenile justice system, the child interprets it as punishment. He may, consistent with this perception, see

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- 39 According to Marvin Wolfgang, "the irony of it all is not that we fail to reform but that we cause the return to criminality by the way we treat, handle, and process individuals". "Making the Criminal Justice System Accountable", 18 Crime and Delinquency 15, 17 (January 1972). Furthermore, there is evidence that the more a juvenile is engulfed in the justice system, the greater are his chances of subsequent arrest. National Advisory Committee on Criminal Justice Standards and Goals, Task Force on Community Crime Prevention 58 (1973). Deviants may be, of course, subject to closer surveillance than non-deviants so that any subsequent misbehavior is more likely to be noticed. Robert Balch, "The Medical Model of Delinquency", 21 Crime and Delinquency 116, 121 (1975).
- 40 See, e.g., Edwin Lemert, Human Deviance, Social Problems and Social Control (1972); Robert Culbertson, "The Effect of Institutionalization of the Delinquent Inmate's Self-Concept", Journal of Criminal Law and Criminology 93 (March 1975); Edwin Schur, Labeling Deviant Behavior (1971).
- 41 See, e.g., Allen, Borderland of Criminal Justice 18 (1964). "Whether probation officer, counselor, or psychotherapist, the mere association with the juvenile court may engender...a combination of suspicion and fear." Alan Coffey, Juvenile Justice as a System 119 (1974). See also Donald Cressey and Robert McDermott, Diversion from the Juvenile Justice System 59 (1973).

his public identity as "spoiled" and perform accordingly.⁴² Such stigma attaches no matter what the basis of the court's intervention is⁴³ and intensifies along with the magnitude of the "treatment".⁴⁴

Although empirical attempts to support the labeling hypothesis have been inconclusive,⁴⁵ there appears to be sufficient substantiation⁴⁶ to provide some basis for keeping youth out of court unless absolutely necessary. This substantiation shows that the informal procedures and confidentiality of the court "do not necessarily guard against degradation ceremonies".⁴⁷ The negative affects of labeling should be avoided by developing a less stigmatizing means of dealing with youthful offenders.

42 See, e.g., William Sheridan, "Juveniles Who Commit Noncriminal Acts: Why Treat in a Correctional System?" 31 Federal Probation 26, 27 (1967); Frank Orlando, "Classification in Juvenile Court: The Delinquent Child and the Child in Need of Supervision", 25 Juvenile Justice 13, 20 (1974); Note, "Ungovernability: The Unjustifiable Jurisdiction", 83 Yale L. J. 1383, 1401 (1974). According to Orlando, moreover, the label attached to a child results in a degree of public liability by virtue of being excluded from participation in certain groups and events. Orlando at 20. See also Sheridan at 28; Elaine Duxbury, Evaluation of Youth Service Bureaus 14 (1973); Lloyd Ohlin, "A Situational Approach to Delinquency Prevention", in Gary Adams (ed), Juvenile Justice Management 303 (1973).

43 See, e.g., Orlando, supra note 42 at 19; Note, supra note 42, at 1401 n.116.

44 Hearings, supra note 38 at 420 (testimony of Robert Cain).

45 See, e.g., Orlando, supra note 42 at 21; Malcolm Klein, "Issues in Police Diversion of Juvenile Offenders: A Guide for Discussion", in Gary Adams (ed), Juvenile Justice Management 403-05 (1973).

46 See, e.g., Orlando, supra note 42 at 21; Balch, supra note 39 at 125.

47 Anthony Platt, The Child Savers 159 (1969).

B. Impact Of Arbitrary Selections:

David Matza alludes to the "sense of injustice" experienced by many adolescents when treated with "condescension, inconsistency, hypocrisy, favoritism, or whimsey".⁴⁸ Since "common sense tells us that children who have no respect for the law are more likely to get in trouble than children who believe in the basic goodness of our legal system",⁴⁹ it is important to question whether the juvenile justice system does function so as to elicit bad will from its "clients".

There is, within the juvenile justice system, a selective reduction of youth who penetrate upward to the next highest and more serious stage of formal contact with juvenile authorities. This selective reduction, however, rather than resting upon clear-cut criteria, many times must depend on an official's professional training, experience and judgment.⁵⁰ As we know, in fact, very little about juvenile misbehavior, "professional judgment turns out to be...a euphamism for a not-so-educational guess".⁵¹ The system must be briefly reviewed in order to determine whether selective reduction is, as critics charge, based upon extra-legal factors and idiosyncratic choice.⁵²

48 Delinquency and Drift 136 (1964). See also Edwin Schur, Radical Nonintervention 162 (1973).

49 Balch, supra note 39 at 122.

50 Id. at 129.

51 Id. at 130. See also National Advisory Committee on Criminal Justice Standards and Goals, Task Force on Corrections 251 (1973).

52 See, e.g., National Advisory Committee on Criminal Justice Standards and Goals, Task Force on Community Crime Prevention 58 (1973); Duxbury, supra note 42, at 156.

1. Police:

Police departments have long been "diverting" the vast majority of "delinquents" they encounter. Such diversion may take place before the point of arrest or after arrest. The decision to arrest, according to some studies, is often based on factors unrelated to preserving the public safety. One study, for example, revealed that roughly 90 percent of those decisions observed by the authors were decided on the basis of a child's demeanor and not on the nature and seriousness of his offense. The presence and preference of a complainant figured highly in

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- 53 Over 25,000 delinquent youth were handled by the Washington State juvenile courts in 1974 while it is estimated that law enforcement handled three or four times this amount. Department of Social and Health Services, 1977 Plan for Law and Justice--Part I Submission 80 (March 1976). FBI statistics for 1973 indicate that the 4,144 reporting agencies counseled and released 45.2 percent of arrested juveniles while sending 49.5 percent to juvenile court intake. Law Enforcement Assistance Administration, Diversion of Youth from the Juvenile Justice System 18 (April 1976). See also Cressey, supra note 41, at 2; Corrections, supra note 51, at 249. One comparative study of police departments concluded that department "professionalism" results in greater severity in the disposition of possible delinquency cases. James Wilson, "The Police and the Delinquent in Two Cities", in Stanton Wheeler (ed), Controlling Delinquents 9-30 (1968).
- 54 See, e.g., Cressey, supra note 41 at 2.
- 55 A 1969 study of 48 Los Angeles police departments revealed that the percentage of juvenile offenders diverted from the juvenile justice system after arrest ranged from 2 to 82 percent. Cited in Klein, supra note 45, at 379.
- 56 Studies emphasizing offense seriousness in police decisions include Nathan Goldman, The Differential Selection of Juvenile Offenders for Court Appearance (1963); Robert Terry, "Discrimination in the Handling of Juvenile Offenders by Social Control Agencies", 4 Journal of Research in Crime and Delinquency 218-30 (1967); Donald Black, "Production of Crime Rates", 35 American Sociological Review 733-48 (1970).
- 57 Irving Piliavin and Scott Briar, "Police Encounters with Juveniles", American Journal of Sociology 206-14 (1964). The authors state that such discretion is simply an extension of the juvenile court philosophy, which holds that in making legal decisions regarding juveniles, more weight should be given to the juvenile's character and life situation than to his actual offending behavior. Id. at 213-14.

58 another study while several others stressed the importance of race. 59 Like the initial arrest decision, determination of whether to divert to a juvenile to a social agency after arrest has been shown to depend, at least partly, on the child's attitude. This factor, at least, was mentioned most often by police responding to a questionnaire as a consideration in determining whether to refer a juvenile to a 60 juvenile court or to a youth service bureau.

2. Intake:

The intake procedure within the juvenile court is intended to sift out cases not requiring judicial action and this determination is generally the responsibility 61 of the court counselor. He is directed by RCW 13.04.230 to prepare an investigative report which is made available to the child, parents and defense attorney. He may file a complaint, do nothing, or fashion an informal adjustment if he obtains the consent of a parent or guardian as required by court rules. The court has

58 Cited in Community Crime, supra note 52, at 58.

59 See, e.g., Terence Thornberry, "Race, Socioeconomic Status and Sentencing in the Juvenile Justice Systems", 64 Journal of Criminal Law and Criminology 90-98 (1973); Theodore Ferdinand and Elmer Luchterhand, "Inner-City Youths, the Police, the Juvenile Court, and Justice", 17 Social Problems 510-27 (1970).

60 Eighty-three and one-half percent of the police representatives indicated this factor. Other factors indicated by a majority of the sample are "attitude" of parents (checked by 75.3 percent of the respondents); prior record (71.2 percent); seriousness of offense (69.8 percent); need for counseling (63.0 percent); and, age (50.6 percent). King County Division of Youth Affairs, King County Youth Service Bureau System, Second Year Evaluation (July 1975). See also California Youth Authority, The Evaluation of Juvenile Diversion Programs 36 (1975); Klein, supra note 45, at 396.

61 Thirty-four states, Washington among them, statutorily sanction the disposition of children without court processing. Mark Levin and Rosemary Sarri, Juvenile Delinquency: Comparative Analysis of Legal Codes in the U. S. 52 (1974).

authority to review and pass upon the suitability of these adjustments by virtue
of RCW 13.04.056,⁶² but many times does not do so.

The flexibility afforded intake officers in determining which youth shall be
taken before the court may easily be abused.⁶³ Although these officers are, in
fact, officers of the court, their academic and professional training tends to be
much more oriented toward social work than law. One commentator states:

"The degree and direction in which juvenile offenders are diverted is influenced by the individual intake officer's conception of justice and his philosophy and theory of corrections, as well as by his knowledge of community resources, by his relationships with other professional welfare workers within and without his department, by his personal assumptions, attitudes, biases, and prejudices, by the size of his caseload and the workload of his department."

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Studies have, in fact, empirically demonstrated the significance of extra-legal
factors in diversion decisions at this level in the juvenile justice system.⁶⁵

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- 62 In King County, by court rule, the prosecutor must review all adjusted felonies. Dale Foreman, Codifying the Juvenile Court Revolution in Washington State 27 (paper submitted in partial fulfillment of the requirements for the JD degree at Harvard Law School, April 12, 1975).
- 63 Orlando, supra note 42, at 17.
- 64 Cressey, supra note 41, at 12. See also Sheridan, supra note 42, at 30.
- 65 One empirical study found that the relative importance of seriousness of offense was greatest when the offender was male, had a prior offense record, was black, came from a lower social class background, was in an unstable family setting, had one or more co-defendants, and when the age at the first and most recent offense was between 16-17. Charles Thomas, Juvenile Court Intake: An Analysis of Discretionary Decision Making 413, 425-6 (1975). In a report on a juvenile court in a northern United States metropolitan area, it is observed that this court provided assemblyline handling of offenders rather than individualized treatment and that court workers arrive at dispositional decisions regarding juveniles in terms of judgments of moral character, so that "bad kids" receive harsh dispositions while those thought to be misguided youngsters are dealt with more leniently. This commentary suggests that judgments of moral character are frequently both in error and class-linked, such that working class youths are most likely to be identified as "hard core" delinquents. Robert Emerson, Judging Delinquents (1969).

3. Judge:

The judge enters the juvenile justice system at a relatively late state. Often, as described above, the case has been adjusted without his involvement. His responsibilities after once entering, however, require active participation through a formal hearing process. At the preliminary hearing, first of all, the judge may approve informal adjustments, may have the case proceed to a fact-finding hearing with or without striking a bargain, or may have the case proceed to a decline hearing where, pursuant to RCW 13.04.115 through .120, the court may decide to decline the case and turn it over to the superior court where the youth will be tried as an adult. At the fact-finding hearing, the judge may enter a finding of not guilty, a finding of delinquency, dependency or incorrigibility, or may defer findings. Finally, at the dispositional hearing, having first entered a finding of delinquency, dependency, or incorrigibility, the judge may place a juvenile on probation,⁶⁶ commit a delinquent⁶⁷ or incorrigible to the department of institutions, or suspend a commitment.

The judge, in making his dispositions, is guided by no specified standards but is expected to fashion a suitable disposition from the reports and recommendations he receives. According to David Matza, his use of personal and social characteristics as relevant criteria for deciding upon a disposition has led to a situation where "hardly anyone, and least of all the recipients of judgment...is sure at all what

66 Probation is supposed to be a regular supervisory contact with the offender. There are three major variants: (i) remain with the parents and report monthly; (ii) in custody of the probation officer; and, (iii) referral to a special supervision program for serious problem offenders pursuant to RCW 13.06.010, et., seq. Cited in Dale Foreman, Codifying the Juvenile Court Revolution in Washington State 31 (paper submitted in partial fulfillment of requirements for JD degree at Harvard Law School, April 12, 1975).

67 County institutions and "appropriate" private agencies authorized to care for children are alternative dispositions provided for by RCW 13.04.095.

combinations of the widely inclusive relevant criteria yield what sorts of specific disposition".⁶⁸ Assessments made by the judge may, in fact, border on stereotyping. One study, for instance, examined the processing of 1200 cases in a juvenile court in a large eastern county. This research indicated that judicial sorting of delinquents into those who receive probation, institutional commitment, or some other disposition revolved around assessments of delinquency risk, and therefore, the most socially disadvantaged, delinquent, and psychologically atypical boys were sent to training schools.⁶⁹ The judge, however, will justify his decisions on the basis of experience or "theory" and consider them to be in the best interests of all concerned. Such stereotypes tend to be self-confirming: Children from "broken homes" are likely to be committed to institutions because they are believed to be delinquency prone;⁷⁰ yet these very commitments, in turn, serve to reinforce that belief. The juvenile is aware of those factors which sometimes influence a judge's decision. According to Edwin Schur, the alleged delinquent often tries to influence his disposition by being alert to and trying to exploit the relationship between the image he presents and the probably outcome of his case.⁷¹ Public defenders, in addition to judges,

68 Delinquency and Drift 115 (1964).

69 Frank Scarpetti and Richard Stephenson, "Juvenile Court Dispositions", 17 Crime and Delinquency 142, 150 (April 1971). Other commentators have observed that probation officer assessments of delinquency risk loom large in the dispositional decisions of judges. See, e.g., Seymour Gross, "The Prehearing Juvenile Report", 4 Journal of Research in Crime and Delinquency 212-17 (1967); Yona Cohn, "Criteria for the Probation Officer's Recommendation to the Juvenile Court", 9 Crime and Delinquency 262-75 (1963).

70 Edwin Schur, Radical Nonintervention 121 (1973). "Since juvenile court judges generally make their judgments based on social, delinquency and psychological characteristics usually associated with delinquency risk, court dispositions almost inevitably reflect and reinforce delinquency matters associated with the paucity of family resources." Hearings, supra note 38, at 73 (testimony of Larry Dye).

71 Radical Nonintervention 124 (1973).

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 may be influenced by a "correct" portrayal. Oftentimes, as described above, formal adjudications may, when compared to the outcomes of other cases, appear to be inconsistent with the seriousness of the allegations made against a juvenile. Status offenses, for instance, are sometimes treated with greater concern than actual criminal acts.
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The findings presented in this section probably indicate that the administration of juvenile justice is likely to be uneven, as its administration will vary according to the belief of the individuals involved throughout the justice system. This may cause resentment on the part of juvenile offenders toward the system and, like labeling, is a reason why most youthful offenders should not have contact with the formal process.

IV. STRATEGY SUGGESTED BY CAUSES OF DELINQUENCY

This paper has in earlier sections indicated why the juvenile court's role in the task of responding to socially troubled youth might be limited. As it functions today, the court is at best ineffective in dealing with youth and may actually be harmful to them; to the extent that it persists in attempting to fill a social welfare agency role, it jeopardizes its ability to function as a legal entity. This section will deal with the positive reasons underlying the argument that much of what is now the juvenile justice system should be made more a direct responsibility of local communities.

72 "The public defender does not waste his time or credit on 'bad kids' because a serious effort on their behalf would only jeopardize his chances with more 'worthy' defendants." Anthony Platt, The Child Savers 168-9 (1969). According to Platt, the defender's attitude toward his client is based "primarily upon the demeanor of his client's parents". Id.

73 See, e.g., Note, "Ungovernability: The Unjustifiable Jurisdiction", 83 Yale L. J. 1383, 1398-9 (1974). The court, according to the author of this article, typically responds according to the parent's wishes. Id. at 1396.

The Department of Health, Education and Welfare's Office of Youth Development noted in 1972 that our social institutions are programmed in such a way as to deny large numbers of young people socially acceptable responsibility, and personally graftifying roles. ⁷⁴ One study concluded:

"Youth who are cut off from on-going legitimate achievement of a sense of satisfaction, those who face barriers to legitimate identity and opportunity must either deal with continual anticipation of failure or free themselves to some degree from the constraint of conventional approaches to conventional goals."

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Youth avoid participating in patterned delinquent activities because they have been provided with ready access to socially acceptable, responsible, and personally gratifying social roles. Failure to obtain conventional goals neutralizes their moral force and in many instances, causes the juvenile to develop a highly negative self-image and low self-esteem. ⁷⁶

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- 74 Cited in Keith Griffiths and Gareth Ferdun (eds), A Review of Accumulated Research in the California Youth Authority 91 (1974). See also Frank Orlando, "Classification in the Juvenile Court", Juvenile Justice 13, 14 (1974).
- 75 Doug Knight, Organizing for Youth Development and Delinquency Prevention Development Studies Report No. 9, Youth Development/Delinquency Prevention Project 13 (1974). A recent survey of 600 randomly selected California Youth Authority workers revealed that "a solid majority" believed that delinquents are more conventional in outlook than once believed, but perhaps need new involvements and roles to develop a stake in conventional behavior. Keith Griffiths, A Review of Accumulated Research in the California Youth Authority 91-2 (1974). Those polled also believed that more youth should be diverted from the juvenile justice system because of its potential for harm. Id. at 91. See also Talcott Parsons, Social Structure and Personality 171-2 (1964). Cross cultural and anthropological data have indicated that adolescence becomes a problem only in those cultures which actively engage in developing specific practices aimed at excluding the adolescent from full societal participation. Id. Ira Goldenberg, "Alternative Models for the Rehabilitation of the Youthful Offender", Yitzhak Bakal (ed), Closing Correctional Institutions 52 (1973).
- 76 "First and foremost" a delinquent "is usually a basically inadequate and insecure individual.... His means of compensating for these feelings is his aggressive and acting-out behavior. By playing the role of the 'big, tough, strong guy' he is able to cover up for his deep-seated feelings of weakness and insecurity." Hearings before the Subcommittee to Investigate Juvenile Delinquency of the Committee on the Judiciary, U.S. Senate, 92d Cong. 2d Sess; 93d Cong. 1st Sess., 71 (statement of Arnold Schuchter).

Preventing and treating delinquency in any successful and comprehensive sense is difficult, then, within the context of the existing juvenile justice system because delinquency is caused by factors over which it has no control. The prevention and reduction of delinquency, rather, rests "on the identification, assessment, and alterations of those features of (community) institutional functioning that impede and obstruct a favorable course of youth development for all youths."⁷⁷

Positive change can best be achieved by restructuring community institutions and involving youth in them to the point where youth alienation is decreased and juveniles are provided with socially acceptable and meaningful roles.⁷⁸ Societal institutions must, in the first instance, interact with juveniles in ways not prone to cause harm. Research makes it safe to assume, for example, that some of the reasons for delinquency may be related to the child's educational experience.⁷⁹ Studies have indicated, for example, that many delinquents may have begun their

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- 77 Youth Development and Delinquency Prevention Administration, "National Strategy for Youth Development and Delinquency Prevention", in Gary Adams (ed) Juvenile Justice Management 268 (1973). See also National Advisory Committee on Criminal Justice Standards and Goals, Community Crime Prevention 223-4 (1973). Commentators have observed how some institutions sometimes operate to disengage youth from law-abiding behavior. Knight, supra note 74, at 12. Individuals are driven to delinquency because their attachment to conformance goals have been weakened and neutralized by malfunctioning institutions. Edwin Schur, Radical Nonintervention 159 (1973). See also Gresham Sykes and David Matza, "Techniques of Neutralization: A Theory of Delinquency", 22 American Sociological Review 664 (1957); David Matza, Delinquency and Drift (1964); Lamar Empey and Steven Lubeck, "Delinquency Prevention Strategies" in Gary Adams (ed), Juvenile Justice Management 278 (1973).
- 78 Robert Foster, "Youth Service Systems: New Criteria", in Yitzhak Bakal (ed), Closing Correctional Institutions 37 (1973).
- 79 August Mauser, "Learning Disabilities and Delinquent Youth", 14 Academic Therapy 54 (1974); Lamar Empey and Steven Lubeck, "Delinquency Prevention Strategies", in Gary Adams (ed), Juvenile Justice Management 277 (1973); Harold Cohen, "Case II: Model Project", 3 Research in Psychotherapy 42-53 (1968).

downhill ride in society because of learning disabilities. Yet a learning disability in and of itself does not cause delinquency. An intervening variable, the teacher's negative reaction to the juvenile's problem can effectively remove him from the school's socializing influence. It is probably no coincidence, for example, that both the learning disabled and juvenile delinquent populations evidence a negative self-concept and a low frustration tolerance.

The juvenile court has often been seen as a dumping ground for the school, the family and welfare agencies. By failing to adequately respond to juvenile problems on the local level, these community entities may thereby be causing higher rates of delinquency. The next sections will briefly discuss how juvenile problems might be addressed on the community level so as to possibly improve the apparently deteriorating situation.

80 "Experts Now Link a Learning Disorder to Delinquency", New York Times (February 13, 1972). William Mulligan "A Study of Dyslexia and Delinquency", 4 Academic Therapy 177, 183-4 (1969).

81 Mauser, supra note 79. Similarly, associations found to exist between delinquency and such factors as poverty and family conditions may be tied together by a similar process of delinquency causation.

82 See, e.g., Robert Emerson, Judging Delinquents (1969).

83 "It is easy to see," states Robert Balch, "why the medical model (of delinquency) is so appealing to school administrators. If truancy, underachievement and delinquency can be attributed to the emotional and intellectual difficulties of individual students, then schools are absolved of any blame for the troublesome behavior of their pupils." "The Medical Model of Delinquency", 21 Crime and Delinquency 116, 126 (1975).

V. ALTERNATIVES TO FORMAL JUSTICE SYSTEM

According to Edwin Lemert:

"If the problem domain of the juvenile court is to be made smaller and more specialized, other definitions of youth problems need to be developed. This can be accomplished by reorganizing existing agency resources or by enacting new types of organization, or both. In both instances, the organizational principle or objective will be that of bypassing the juvenile court process."

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Implementation of a strategy of diversion from the juvenile justice system through which communities might provide a stake in legal conformity for greater numbers of youth can be accomplished by expanding upon existing community-based diversion programs and creating them where they do not exist. It is important that the nature of these programs be reviewed in order to better contemplate the contours of the new juvenile services program.

The President's Commission on Law Enforcement and Administration of Justice defined diversion as "a process of referring youth to an existing treatment program or prevention program in lieu of further juvenile justice system processing at any point between apprehension and adjudication". A review of the available professional literature shows, however, a preponderant preference for diverting youngsters at the point of police intake. To most persons, diversion means referral to pro-

84 Instead of Court: Diversion in Juvenile Justice 4-6, 18 (1971). See also Alan Coffey, Juvenile Justice as a System 144-5 (1974).

85 Cited in Law Enforcement Assistance Administration, Diversion of Youth from the Juvenile Justice System (April 1976).

86 Malcolm Klein, "Issues in Police Diversion of Juvenile Offenders: A Guide for Discussion", in Gary Adams (ed), Juvenile Justice Management 380 (1973). Arguments in favor of police diversion include the fact that lack of diversion would quickly overload the courts; the belief among police generally that one offense still leaves room for reformation, and the opinion of many that insertion into the courts is insertion into an ineffective deterrence and rehabilitation system which produces the possibility of stigmatizing youngsters. Id at 385. Furthermore, there is evidence that the farther a juvenile becomes engulfed in the juvenile justice system, the greater are his chances of subsequent arrest. Task Force Report: Juvenile Delinquency and Youth Crime, cited in Elaine Duxbury, Evaluation of Youth Services Bureaus 14 (1973).

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grams outside the justice system and involves doing something with the offender. 88
Diverted youth "should be provided with positive life experiences directed at
opening up legitimate roles for them in American society...toward enhancing positive
self-images on the part of juveniles". 89

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Although they have been advocated for many years, most diversion programs operat-

87 See, e.g., Rosemary Sarri, "Diversion--Within or Without the Juvenile Justice System", Soundings on Youth 11-12 (March-April 1975); Delbert Elliott, "Diversion--A Study of Alternative Processing Practices" 14 (1974).

88 See, e.g., Diversion, supra note 85 at 8.

89 Id. at 10-11. Polk and Kobrin have enumerated five conditions that must be met by any program which purports to provide "access to legitimacy":

First, such access starts from the assumption that young people, including the troublesome, have positive resources to contribute to the community. This assumption is quite different than the classical rehabilitation programs, which begin with the premise that the youth has a problem which must be identified and corrected.

Secondly, the program proceeds immediately to place the young person in an active role where something valuable is contributed, rather than in a passive role where some service is provided.

Third, it is located within a legitimate institution, i.e., the school, a crucial factor in the formation of legitimate identities.

Fourth, the experience can be organized quite easily so that a mix of "good" and "bad" youth is possible.

Fifth, the activity constitutes diversion, both in the sense that it is not connected with the court process and in that legal coercion is not present, i.e., the program is purely voluntary.

Kenneth Polk and Solomon Kobrin, Delinquency Prevention through Youth Development 21-22 (1972).

90 In the 1930's Elliot Ness urged that police officers be trained to make referrals to proper social agencies for guidance instead of apprehending young delinquents as offenders. Cited in Gary Adams, "Crime Prevention: An Evolutionary Analysis", Gary Adams (ed), Juvenile Justice Management 322 (1973).

ing now are informal and are not mandated by statute. They are, rather, "the result of ambiguities in existing legislation as well as the broad administration discretion of officials administering criminal justice".⁹¹ "Clear-cut policies" must be established that would result in automatic referral of certain types of juvenile offenders which would not be subject to administrative whim.⁹² This step will result in help for the juveniles involved⁹³ and a redistribution of authority which will enhance the operation of the court.⁹⁴

There are many specific forms a community diversion program might take. The 1966 study of the President's Commission on Law Enforcement and Administration of Justice, recognizing the problems facing juvenile courts of America, suggested the creation of youth service bureaus, which it envisioned as "central coordinators of all community services for young people...(which) would also provide services lacking in the community or neighborhood, especially ones designed for less serious delinquent youth".⁹⁵ Youth service bureaus have since developed with a wide range

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- 91 Alan Coffey, Juvenile Justice as a System 54 (1974). Voluntary diversion to private agencies has long been one reason, for example, why middle class children have had relatively low official delinquency rates. Edwin Schur, Radical Nonintervention 57 (1973).
- 92 See, e.g., National Advisory Committee on Criminal Justice Standards and Goals, Corrections 253 (1973).
- 93 "The avoidance of...labels and commitments by diversion from the juvenile justice system reduces the likelihood of mutual rejection and alienation between young people and the representatives of the adult world. In this way, for most of the youth group the often escalating and reciprocal processes of individual and group estrangement are not activated and accentuated." Youth Development and Delinquency Prevention Administration, "National Strategy for Youth Development and Delinquency Prevention", in Gary Adams (ed), Juvenile Justice Management 268 (1973); National Advisory Committee on Criminal Justice Standards and Goals, Task Force on Community Crime Reduction 58 (1973); National Advisory Committee on Criminal Justice Standards and Goals, Task Force on Corrections, 77 (1973).
- 94 Greater diversion can lead to advantages for the police, the prosecution, for the courts because of the additional time and energy freed up for "...greater emphasis on official handling of the more serious and intractable offenders". Malcolm Klein, "Issues in Police Diversion of Juvenile Offenders: A Guide for Discussion", in Gary Adams (ed), Juvenile Justice Management 388 (1973).
- 95 The Challenge of Crime in a Free Society 83 (1967).

of strategies.

King County and the City of Seattle have recently evaluated the effectiveness of several diversion programs operating in their jurisdictions. A brief description of their programs follows:

(1) There are scattered throughout King County a total of 14 conference committees. These committees are court-sponsored community organizations designed to remedy minor delinquencies and to help a child and his family find a solution to their problems. The committees, by drawing upon the talents of community members and upon institutional representatives, are apparently able to help juveniles to the extent that they no longer feel compelled to commit delinquent acts. In an evaluation of the Kent Conference Committee, it was found that 89.4 percent of its clients had no contact with the juvenile court following contact with the committee.

(2) The King County Youth Service Bureau System consists of nine bureaus, each located in a different King County community, serving a diverse client population of non-delinquent and delinquent youth--as well as their parents--in

96 According to the National Advisory Committee on Criminal Justice Standards and Goals, Youth Service Bureaus have at least five goals: (1) diversion of juveniles from the justice system; (2) provision of services for youth; (3) coordination of both individual cases and programs for young people; and (4) involvement of youth on decision-making, and the development of individual responsibility. Community Crime Prevention 57 (1973). See also Sherwood Norman, The Youth Service Bureau: A Key to Delinquency Prevention 8 (1972). One potential role for youth services bureaus is to challenge the fallacy that what is wrong with a delinquent is caused solely by the youth or his family and recognize that part of the problem may rest with an inappropriate response of the community and its institutions to the situation", Community Crime Prevention at 62.

97 Alice O'Donnell, Evaluation of the Kent Juvenile Court Conference Committee - January 1, 1975, 7 (1975).

the examination and solution of youth problems and needs. In a study of data

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reported for 2,273 clients, it was found that 85.9 percent of all services

reported were provided directly by the YSB's and did not involve referrals to

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other agencies or services. From a total of 448 terminated cases, research

findings determined that a low rate of recidivism existed among youth involved with

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the bureaus.

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- 98 The individual bureaus differ considerably in emphasis, style, and content of service delivery, and are involved in a broad range of activities. "The agencies work to coordinate and modify services for youth in their communities, to maximize the efficient delivery of services, and to identify and correct service 'gaps' within their respective communities." King County Division of Youth Affairs, King County Youth Service Bureau System Second Year Evaluation 2 (1975). Most bureaus, which provide group information or education services, are involved in development of community resources, in-house counseling, offering services in the area of alternative living situations for youth, and providing structured activity/recreational groups for young people. Id. at 35-38.
- 99 The primary sources of referral to the bureaus are the police, parents, and schools. These sources, together, account for 61.7 percent of the recorded referrals. Smaller proportions came from the courts and other social agencies. Id. at 40. The "typical" youth bureau client was a white male, 16 years old, who was living with both parents and attending school regularly at the time of intake. Almost half of all YSB clients reported problems with parents and/or siblings at the time of YSB intake. Problems with school adjustments and legal problems are the next most frequently reported problems.
- 100 The most frequently reported services are short-term individual counseling, employment-related services, offense counseling, crisis intervention, short-term family counseling and placement in alternative living situations.
- 101 The proportion ranged from 0.2% to 12.7%, depending on the measure of recidivism used. Id. at 56. Over three-fourths of the police contacted are either "very satisfied" or "somewhat satisfied" with services received by individuals referred to YSB's as were three-fourths of the school personnel contacted. Areas of concern included quality of interagency relationships (communication, follow-up, feedback); YSB's limited "legal leverage" due to the non-mandatory nature of the program; style of service delivery; service "gaps"; disappointment with service effectiveness; and questions concerning staff competency. Id. at 72.

(3) The Seattle Youth Service Bureau--Accountability System has also been the focus of a recent evaluation. The three bureaus of this system each have an accountability board made up of community members. The board hears delinquency complaints and determines the type of community obligation and/or amount of monetary restitution or service to be carried out by juvenile offenders. Each bureau, in addition, provides education, employment and counseling services, and provides linkages with other community services. The evaluation studied 205 cases heard by accountability boards--66 percent of which were for shoplifting offenses. It concluded that there exists a significant rate of recidivism for juveniles involved in proceedings before the boards.

Diversion projects, at least those reviewed in King County and Seattle, appear to be working to respond to and help misdemeanants and felons who otherwise would be processed through the juvenile court system. The programs, however, differ in significant ways. The Seattle bureaus, for instance, receive a good many of their referrals from the juvenile courts. As suggested above, a bureau's clientele might be better defined by statute so that diversion occurs at the point of police intake. A second way the programs differ is the distinction between the King County Bureaus and the Seattle Bureaus in terms of their reluctance to refer a youth to a juvenile

102 Kenneth Mathews and Arlene Geist, Seattle Youth Service Bureau--Accountability System--Two-Year Evaluation and Crime Input Analysis (February 1976).

103 Id. at 14.

104 Id. at 41.

105 This consequence of diversion has also been felt in other jurisdictions. See, e.g., California Youth Authority, The Evaluation of Juvenile Diversion Programs 45 (1973). Fifty-seven percent of 74 projects reported that far fewer youth were being processed by the juvenile justice system as a result of program operations.

106 See page 24, supra.

court. The policy of the Seattle Bureaus to do so may be a function of their emphasis
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on accountability and of the serious nature of the offenses with which they deal.

VI. REDEFINING JURISDICTION OF JUVENILE COURT

The jurisdiction of the juvenile court should be limited to only the most serious lawbreakers. The courts' efforts should be directed towards juvenile crime and not toward juvenile delinquency. "It is the violent, often senseless crime that is turning society against young people and for which society will pay a high price when these juveniles reach adulthood and continue their violent ways." 108 As reviewed earlier, a court cannot undertake both to protect the citizenry against lawlessness and to reform the lawbreaker. 109 A rational response to the situation is a reallocation of duties:

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- 107 The President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Juvenile Delinquency and Youth Crime (1967) noted that "it may be necessary to the youth services bureau with authority to refer to court within a brief time--not more than 60 and preferably not more than 30 days--those with whom it cannot deal effectively". Critics of this policy point out that this would merely be an extension of control over the youth by community institutions, without providing the legal safeguards that are currently emerging in the justice system itself. See, e.g., Nora Klapmuts, "Children's Rights--The Legal Rights of Minors in Conflict with Law or Social Custom". Crime and Delinquency Literature 973 (September 1972). One commentator, however, views the so-called "non-coercive" situation differently to the extent that, he feels, even if a juvenile refuses to cooperate with a diversion program, it puts the police "one up" over him. Malcolm Klein, "Issues in Police Diversion", in Gary Adams, Juvenile Justice Management 381 (1973).
- 108 Hearings before the Subcommittee to Investigate Juvenile Delinquency of the Committee on the Judiciary, U.S. Senate 92d Cong. 2d Sess., 93d Cong. 1st Sess. 779. (Statement of Mayor Robert A. Pastrick)
- 109 See pages 4-5. See also J. Lawrence Schultz, "The Cycle of Juvenile Court History", 19 Crime and Delinquency 457, 473-4 (1973); Spence Coxe, "Lawyers in Juvenile Court", 13 Crime and Delinquency 488 (October 1967).

the community, by attempting to alleviate its causes, must cope with the existence of delinquency; the court must protect the public from serious offenders by removing them from the community.

There is a persuasive argument supporting the position that most sporadic offenders and first offenders should not be referred to a juvenile court. Studies have shown that ninety percent of all youth have engaged in behavior which could have led to involvement with the juvenile court. Most delinquency, however, appears to be self-correcting: most delinquents do not become adult criminals. "Delinquency, however we define it, is a passing phase in the lives of many adolescents" and is subject to "spontaneous remission". Marvin Wolfgang found, for instance, that although over one-third of nearly 10,000 Philadelphia boys born after 1945 were picked up by the

110 President's Commission on Law Enforcement and Administration of Justice, The Challenge of Crime in a Free Society, 55 (1967). When self-reported information on lawbreaking behavior is obtained from middle as well as lower class juveniles, the assumed relationship between being lower class and violating the law is reduced considerably. Many delinquent acts committed by middle class juveniles, further, are serious. LaMar T. Empey, "Contemporary Programs for Adjudicated Juvenile Offenders", in Gary Adams (ed), Juvenile Justice Management 430 (1973). One study maintains, however, that the majority of undetected offenders confess to relatively petty acts of misconduct. Gwynn Nettler, Explaining Crime 74-6 (1974).

111 Empey, supra, note 110, at 452.

112 R. Balch, "The Medical Model of Delinquency", 21 Crime and Delinquency 116, 124 (1975). See also National Advisory Committee on Criminal Justice Standards and Goals, Task Force on Corrections 255 (1973). David Matza notes that theories touching on delinquency "rarely consider the phenomenon of 'maturing' out". D. Matza, Delinquency and Drift 26 (1964). See also Alan Coffey, Juvenile Justice as a System 53 (1974).

police for something more serious than a traffic offense, nearly half seemed to stop spontaneously from engaging in criminal conduct immediately thereafter.¹¹³ Six per- cent, however, of these 10,000 committed five or more offenses before they were eighteen and accounted for over half of all recorded delinquencies and about two-thirds of all violent crimes committed by the group.¹¹⁴

Wolfgang argues that it may be more effective to leave first offenders alone and concentrate on delinquents with three or more official police contacts.¹¹⁵ At any rate, a decision to refer a first offender into the juvenile justice system should not be taken--except for certain offenses--unless no alternatives exist.¹¹⁶ The existence of community services such as the King County Conference Committees or the Seattle Accountability Boards would constitute effective alternatives.

The court should be restricted in terms of its involvement with so-called juvenile status offenders engaged in non-criminal conduct.¹¹⁷ The development of offenses to

113 Marvin Wolfgang, "Crime in a Birth Cohort," in The Aldine Crime and Justice Annual, 1973, ed. Sheldon Messinger 110-12 (1973) cited in James Wilson, Thinking About Crime 199-200 (1975).

114 Id.

115 See Marvin Wolfgang, Youth and Violence 27-50 (1970) cited in National Advisory Committee on Criminal Justice Standards and Goals, Task Force on Corrections 242 (1973). See also Dale Fureman, Codifying the Juvenile Court Revolution in Washington State 45 (unpublished study 1975); James Q. Wilson, "Lock 'Em Up and Other Thoughts on Crime," New York Times Sunday Magazine, March 9, 1975, p. 11.

116 Alan Coffey, Juvenile Justice as a System 78 (1974).

117 All 50 states and the District of Columbia still retain status offenses within the domain of the court. John Dineen, Juvenile Court Organization and Status Offenses: A Statutory Profile 34 (1974). States, however, use different labels to denote the same behavior. 39 states categorize juvenile lawbreakers as delinquent. In the 12 remaining states, the statutes use what are intended to be less stigmatizing names--"offenders", "wards of the courts", or simply "children". Mark Lewin and Rosemary Sarri, Juvenile Delinquency: Comparative Analysis of Legal Codes in the U.S. 11 (1974). Juvenile court legislation provides, in addition, for neglect and dependency proceedings which are essentially actions against the parents or guardians, and are initiated because of some act of misfeasance, malfeasance, or non-feasance on the part of the parent with respect to the welfare of the child. Since the categories of neglected and dependent children do not involve children who commit anti-social acts, they will not be covered by this paper.

encompass these juveniles rests on the assumption that youths who engage in certain non-criminal misbehavior need and could benefit from court involvement, especially where the status offender was not labeled a "delinquent", and where additional services were provided.¹¹⁸ Youth engaging in such conduct were made subject to jurisdiction of the juvenile court insofar as such activities were supposed to be indicative of delinquent tendencies.¹¹⁹ In essence, the status offense shares many attributes of the so-called victimless crime--typically, a party not directly harmed by any specific act steps forward "in the interest of" or "on behalf of" a youth as the result of an action lacking any real public consensus on legal prescription.¹²⁰ The sizable number of cases¹²¹ involving status offenders before the juvenile court are often triggered by animosity between parent and child.¹²² They involve, in addition, some youths who are, in fact, in statutory terms either "neglected" or "delinquent".¹²³

118 Note, "Ungovernability: the Unjustifiable Jurisdiction", 83 Yale LJ 1383, 1384 (1974).

119 Robert Balch, "The Medical Model of Delinquency", 21 Crime and Delinquency 116, 126 (1975).

120 Edwin Schur, Radical Nonintervention 145 (1973).

121 Figures in California show that arrests for major offenses equivalent to adult felony arrests accounted for only 17 percent of all juvenile arrests. Arrests for offenses generally comparable at the adult level with misdemeanors accounted for 20 percent. The remaining 63 percent was made up of arrests of youth, who were "in need of supervision". National Advisory Committee on Criminal Justice Standards and Goals, Task Force on Corrections 75 (1973).

122 Note, "Ungovernability: The Unjustifiable Jurisdiction", 83 Yale LJ 1383, 1394 (1974); Stuart Stiller and Carol Elder, "PINS--A Concept in Need of Supervision", 12 Am.Crim.L.Rev. 33, 53 (1974).

123 Note, "Ungovernability. The Unjustifiable Jurisdiction", 83 Yale LJ 1383, 1386 (1974). A high percentage of neglect cases may be processed as un-governable for reasons that judges do not want to face delays and formalities inherent in a neglect proceeding and because of reluctance in some cases to accuse an adult. Id. at 1392-3. Delinquents may be processed as incorrigibles in order to obtain dispositional power over a youth with the comparative ease afforded by that proceeding. Id. at 1394-5.

There exists no compelling reason to involve the juvenile court in the lives of most status offenders. There is little or no empirical evidence to support the connection between hard core delinquency and the usual non-delinquent conduct: running away, curfew violation, teenage drinking, premature sexual experimentation or alienation for parent.¹²⁴ This should be balanced against the negative impact which court interaction might have on a child--whether he be called a delinquent or a "child in need of supervision". The National Crime Commission's Task Force Report on Juvenile Delinquency, for example, states that stigma remains "unavoidable as long as any sort of official action is taken".¹²⁵ "Can we risk," asks Robert Balch, "labeling children 'predelinquent' when many, perhaps most, of them will never get in serious trouble with the law?...Compulsory treatment, like imprisonment, involves the deprivation of liberty and, from the patient's point of view, there may be no difference at all."¹²⁶

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- 124 Patricia Weld, "The Changing World of Juvenile Law: New Vistas for the Non-Delinquent Child--Alternatives to Formal Juvenile Court Adjudication", 40 Penn. Bar Assoc. Quart. 37, 38 (1968). Only in truancy is there some evidence that it may be a precursor to delinquency and even here experts are in disagreement. Id.; See also Note, "Ungovernability, The Unjustifiable Jurisdiction", 83 Yale L. J. 1383, 1406 n. 139 (1974) For a statement to the effect that "status offenses are an indication of serious trouble" and appropriate for court disposition, see Lindsay Arthur, "Status Offenders Need Help, Too", 26 Juvenile Justice 3 (1975).
- 125 Task Force Report on Juvenile Delinquency 27 (1967). See also Frank Orlando, "Classification in Juvenile Court: The Delinquent Child and the Child in Need of Supervision", 25 Juvenile Justice 13, 22-23 (1974); Note, "Ungovernability, The Unjustifiable Jurisdiction", 83 Yale L.J. 1383, 1407 (1974). Stuart Stiller, "PINS: A Concept in Need of Supervision", 12 Am. Crim. L. Rev. 33, 40 (1974).
- 126 Robert Balch, "The Medical Model of Delinquency", 21 Crime and Delinquency 116, 127-8 (1975). The ungovernability category, further, affords less protection against the intrusion of the judge's personal predilections than do legal proceedings that consider narrow issues. Note, "Ungovernability, The Unjustifiable Jurisdiction", 83 Yale L.J. 1383, 1463 (1974).

Many reports have suggested that the jurisdiction of the juvenile court over status offenses should be greatly restricted. The Department of Health, Education and Welfare's Drafting Guide, for example, has eliminated all jurisdiction over such offenses.¹²⁷ The President's Crime Commission recommended that the court's power over non-criminal conduct should be restricted to neglect cases alone because "wide-ranging jurisdiction...has often become an anachronism serving to facilitate gratuitous coercive intrusions into the lives of children and families".¹²⁸ According to the Task Force on Juvenile Delinquency:

Abandoning the possibility of coercive power over a child who is acting in a seriously self-destructive way would mean losing the opportunity of reclamation in a few cases...But in declining to relinquish power...we must bluntly ask what our present power achieves and must acknowledge in answer that in at least some cases, it may do as much harm as good.

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Such cases, often aggravated by court intervention, can be resolved more effectively

127 Cited in John Dineen, Juvenile Court Organization and Status Offenses: A Statutory Profile 34 (1974).

128 President's Commission on Law Enforcement and Administration of Justice, The Challenge of Crime in a Free Society 87 (1967). See also sources listed in LaMar Empey, "Delinquency Prevention Strategies", in Gary Adams (ed) Juvenile Justice Management 291 (1973); President's Commission on Law Enforcement and Administration of Justice, Task Force Report on Juvenile Delinquency and Youth Crime 27 (1967); Sol Robin, "Current Problems in Criminal Law", University of Illinois Law Forum 512-523 (1960); Note, "Ungovernability: The Unjustifiable Jurisdiction", 83 Yale LJ 1383, 1405 (1974); Hearings Before the Sub. to Investigate Juvenile Delinquency of the Comm. on the Judiciary U.S. Senate 92d Cong. 2d Sess.. 93d Cong. 1st Sess. 449. (Statement of Flora Rothman.) Milton Rector, President of the National Council on Crime and Delinquency, predicts that "within five years, most states will adopt laws that exclude status offenders from the purview of the juvenile court. What this means is that the court will be allowed to concentrate on criminal offenders and communities will be developing more and better programs to deal with ungovernable and disturbed kids." San Francisco Chronicle, third section, p. 37, (May 10, 1976).

129 President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Juvenile Delinquency and Youth Crime 26-7 (1967). See also Police, The Gault Case: Its Practical Impact on the Philosophy and Objectives of the Juvenile Court, 1 Family Law Q. 47, 50 (1967).

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by outside social service agencies in the community. Only specified community agencies, further, should be permitted to "petition" the court and then only in precisely defined matters where the legislature has so specified.

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VII. COMMUNITY ALTERNATIVES TO INCARCERATION

The agenda for reform in the area of youth services, as described above, includes the idea that as many cases as possible be prevented from entering the juvenile justice system. A second matter of concern is that, subsequent to a court appearance, as many cases as possible be dealt with by a variety of community-based alternatives rather than being "processed into the traditional system and, perhaps, ultimately being committed to large congregate institutions."

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- 130 See, e.g., National Advisory Committee on Criminal Justice Standards and Goals, Corrections 80 (1973); Frank Orlando, "Classification of Juvenile Court: The Delinquent Child and the Child in Need of Supervision", 25 Juvenile Justice 13, 24 (1974). See also William Sheridan, "Juveniles Who Commit Non-Criminal Acts: Why Treat in a Correctional System?" 31 Federal Probation 26, 28 (1967); Note, "Ungovernability--The Unjustifiable Jurisdiction", 83 Yale LJ 1383, 1405-06 (1974); Patricia Wald, "The Changing World of Juvenile Law--New Vistas for the Non-Delinquent Child--Alternatives to Formal Juvenile Court Adjudication", 40 Penn. Bar Assoc. Quart 37, 43 (1968).
- 131 Stuart Stiller, "PINS--A Concept in Need of Supervision", 12 Am. Crim. L. Rev. 33, 59 (1974). This would free families to seek guidance before calling on a court and would prevent parents from using juvenile courts as a disciplinary weapon. See also William Sheridan, "Juveniles Who Commit Non-Criminal Acts: Why Treat in a Correctional System?" 31 Federal Probation 26, 29 (1967).
- 132 John Martin, "The Creation of a New Network of Services for Troublesome Youth", in Yitzhak Bakal, Closing Correctional Institutions 11 (1973). See also President's Commission on Law Enforcement and Administration of Justice, The Challenge of Crime in a Free Society (1967); National Advisory Commission on Criminal Justice Standards and Goals, Corrections, 12, 237 (1973); Senator Birch Bayh, U.S. Senate Committee on the Judiciary, Subcommittee to Investigate Juvenile Delinquency, 92d Cong., First Sess., May 3-18, 1971 cited in Robert Vinter, Juvenile Corrections in the States: Residential Programs and De-institutionalization 30 (1975); Alan Coffey, Juvenile Justice as a System 105 (1974); Council of State Governments, Status Offenders; A Working Definition (1975).

Proponents of community based programs urge that the alternatives to incarceration be broad and diversified enough to encompass a whole range of juvenile offenders. 133
The tendency for the public to look to the police, the courts, and corrections tends to overlook "the fact that the most effective social control occurs only when young people are linked to, and have a stake in" community institutions. 134 Community facilities such as group homes are designed to provide for maximum interaction between a youth and the surrounding community. 135

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- 133 Hearings before the Subcommittee to Investigate Juvenile Delinquency of the Committee on the Judiciary, U.S. Senate 92d Cong. 2d Sess., 93d Cong. 1st Sess. 606 (testimony of William Aull).
- 134 LaMar Empey, "Delinquency Prevention Strategies", in Gary Adams (ed), Juvenile Justice Management 284 (1973). The author suggests a "dualistic strategy": "individuals achieve greater psychological strength the more their energies go into collaborative activity; social institutions bind the community through collaborative activity the more they are shaped to absorb community members' energies." Semour Rubenfield, "Juvenile Delinquency and Social Policy", 31 Federal Probation 33, 35 (1967). People in the communities with whom the juvenile has day to day contact may best be able to provide the most constructive help. Robert Balch, "The Medical Model of Delinquency", 21 Crime and Delinquency 11, 123 (1975). See also Hearings, supra, note 133 at 497 (testimony of Judge Justine Porter).
- 135 See, e.g., Rosemary Sarri and Elaine Salo, Evaluation in Juvenile Corrections 6 (paper presented at American Correctional Association Convention, Louisville, Kentucky, August 18, 1975). Such programs have been referred to as "halfway in houses". See Advisory Commission on Intergovernmental Relations, State-Local Relations in the Criminal Justice System 240-1 (August 1971). See also Hearings, supra note 133 at 672 (testimony of Richard Velde), at 283 (testimony of Bill Ryan); LaMar Empey, "Contemporary Programs for Adjudicated Juvenile Offenders", in Gary Adams (ed), Juvenile Justice Management 439, 461 (1973); Wallace Mandell, "Making Corrections a Community Agency", 17 Crime and Delinquency 282 (1971); Robert Vinter, George Downs, and John Hall, Juvenile Corrections in the States: Residential Programs and Deinstitutionalization 48 (1975).

Community based corrections is an appropriate alternative for most serious juvenile offenders. Such programs have, in fact, been able to handle serious offenders while achieving a deterrent effect. ¹³⁷ Seventy-eight percent of state administrators polled by Corrections Magazine agreed that "most adjudicated delinquents don't belong in an institution at all," and 54 percent agreed that "community-based programs are ¹³⁸ intrinsically better than the most effective institutions". In Massachusetts, maximum security is imposed on approximately 85 juveniles at one time with encouraging overall results. ¹³⁹

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- 136 Rosemary Sarri and Elaine Salo, Evaluation in Juvenile Corrections, 11-12 (paper presented at American Correctional Association August 18, 1975). There has been a growing realization that secure-type commitments for most offenders can be avoided without significant loss of public protection. See, e.g., National Advisory Committee on Criminal Justice, Standards and Goals, Corrections 223 (1973); Heman Stark, "Alternatives to Institutionalization", 13 Crime and Delinquency 323 (1967). Community-based residential facilities have been found to incur no greater costs in terms of disruption and disorderly conduct by youth even though they allow more flexibility of movement and freedom. Rosemary Sarri and Elaine Salo, Evaluation in Juvenile Corrections 11 (paper presented at American Correctional Association August 18, 1975).
- 137 "Indeed, the deterrent effect of proper control within the community, coupled with realistic opportunities for the offender to make an adjustment there, may be expected to be considerable." National Advisory Committee on Criminal Justice Standards and Goals, Corrections 224 (1973).
- 138 Corrections Magazine 5 (May/June 1975). Only 30 percent were judged not appropriate for assignment to community corrections. See also Hearings, supra note 133 (testimony of Richard Pryor to the effect that "even the hard core 10 percent of juvenile delinquents" could benefit from a deinstitutionalized form of treatment).
- 139 Barbara Favout (ed), Massachusetts Department of Youth Services 1975 Report 13 (1975). The Massachusetts system has emphasized development of residential treatment programs, group home programs, specialized boarding school programs and the like. Some 650 youths are being serviced in such programs and preliminary statistical evidence shows that recidivism among a representative sample of male youth in community programs is some 25 percent below the rates of institutionalized children. Id. at 1.

Evaluation of community based programs has indicated that they are usually at least as effective in reducing recidivism as incarceration in institutions. Several projects have been carried on in various parts of the country in which randomly selected groups of juveniles ordered committed by courts to institutions have, instead, been provided various sorts of treatment within the community. Their later adjustments have then been compared with those of central groups of juveniles who actually did go to institutions and were later paroled. Some proponents of community-based "treatment" offer these comparisons as evidence that youth kept in the community do better than those sent to institutions. The results, moreover, are said to be probably achieved

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- 140 Robert Vinter, George Downs, and John Hall, Juvenile Corrections in the States: Residential Programs and Deinstitutionalization 46 (1975); President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Corrections 38 (1967); LaMar T. Empey, "Contemporary Programs for Adjudicated Juvenile Offenders", in Gary Adams (ed), Juvenile Justice Management 487 (1973): Hearing, supra note 133, at 232 (testimony of Jule Sugarman).
- 141 Palmer, for example, notes that there were at least seven-hundred fifty fewer arrests per California Youth Authority career for every 1,000 juveniles participating in the Community Treatment Project as against 1,000 "controls." Ted Palmer, "Martinson Revisited", 12 Journal of Research in Crime and Delinquency 145-7 (1975). For description of other community based programs see L. T. Empey and J. Rabow, "The Provo Experiment in Delinquency Rehabilitation", 26 American Sociological Review 679-696 (1961); Lloyd McCorkle, Albert Elias and F. Lovell Bixby, The Highfields Story: An Experimental Treatment Project for Youthful Offenders (1958); Albert Elias and Saul Pilnick, "The Essexfield Group Rehabilitation Project for Youthful Offenders", Correction in the Community (1964). For a critique of these studies see Robert Martinson, "What Works?" Questions and Answers About Prison Reform", Public Interest 22 (Spring 1974); Levin, "Policy Evaluation and Recidivism", 6 Law and Society Review 17 (1971). It has been noted by several commentators, however, that recidivism by itself may be an unrealistic indicator of a program's success. LaMar Empey, for example, notes that the unpublished data from the Silverlake study indicate that those involved reduced their overall involvement in delinquency after participation. Cited in Lamar Empey, "Contemporary Programs for Adjudicated Juvenile Offenders", in Gary Adams (ed), Juvenile Justice Management 481 (1973). One study points out that juveniles living in community residential facilities responded far more favorably to educational help offered them than did those juveniles incarcerated in traditional institutions. See Rosemary Sarri and Elaine Salo, Evaluation in Juvenile Corrections 13 (paper presented at American Correctional Association Convention, Louisville, Kentucky, August 18, 1975).

at "much less expense to society and at far less pain to the offender than incarceration".¹⁴² Cost savings may be facilitated by placement of juveniles in private agencies

142 LaMar Empey, "Contemporary Programs for Adjudicated Juvenile Offenders", in Gary Adams (ed), Juvenile Justice Management 487 (1973). Many commentators have emphasized the cost-benefit analysis. See, e.g., Robert Vinter et al., Juvenile Corrections in the States: Residential Programs and Deinstitutionalization 46-47 (1975); National Advisory Committee on Criminal Justice Standards and Goals, Task Force on Corrections 262 (1973); Advisory Commission on Intergovernmental Relations, State-Local Relations in the Criminal Justice System 55 (1971); "Nature and Extent of Juvenile Delinquency", in Gary Adams (ed), Juvenile Justice Management 15 (1973); Hearings, supra note 133, at 290 (testimony of Bill Ryan), at 604 (statement of Birch Bayh), at 250 (testimony of John Gilligan). A Wisconsin Policy paper explained that community-based programs are spared costs of custodial staff and need not duplicate existing educational, vocational training, and health facilities found in the community. Wisconsin Department of Health and Social Services, Executive Budget Policy Papers (1973). One commentator noted that in Massachusetts it cost the state approximately \$10,000 a year to keep one child in an institution. "For this money, we could buy each child a complete wardrobe at Brooks Brothers, give him a \$20 a week allowance and send him to a private school, paying room and board and tuition. In the summer, we could send him to Europe and put \$1,000 in a bank account for him each year, and we could still save the taxpayers over \$1,300." Hearings, supra note 133, at 48 (testimony of Frances Sargent).

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rather than in a public facility. One projection indicated that, collectively, a group of 41 states could have reduced their institutional expenditures by \$110,351,500

143 Paul Nejelski, "Monitoring the Juvenile Justice System: How Can You Tell Where You're Going, If You Don't Know Where You Are?" 12 American Criminal Law Review 9, 11 (1974). Cost differentials may be derived from the sometimes lower salaries in private agencies, their ability to achieve optional population levels by drawing upon several assignment sources, and the absence of starting-up costs. Robert Vinter, George Downs, John Hall, Juvenile Corrections in the States: Residential Programs and Deinstitutionalization 69-70 (1975). The Department of Social and Health Services lists comparative costs of certain public and private facilities as follows:

Average Cost of Service Per Day
Per Child - As of 12-75

Group Homes

87	Voluntary child care	\$14.30
6	State	\$21.50

Foster Care Homes

7,755	Pre- and post-institutional care	\$ 5.10
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Institutions

45	Voluntary child care	\$16.39
7	State correctional	\$49.00
	(1 Diagnosis)	
	(6 Treatment)	

Department of Social and Health Services, 1977 Law and Justice Plan; 81 (1976).

while increasing their community-based expenditures by only \$59,834,400 by attaining
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a 50 percent level of deinstitutionalization.

The desirability of community-based juvenile programs to serve as alternatives to institutionalization and incarceration for youth formally diverted from the juvenile justice system as well as for those who have been formally adjudicated by a court is clear. The existence of such facilities, however, does not nearly approach the need
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for them. Both group homes and foster homes are inadequately funded by the Department of Social and Health Services. The reimbursement system for group homes, for
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instance, is designed to reimburse at only about 2/3 of the total actual cost. By restricting the ability of the state to incarcerate juveniles, it might be possible to
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finance more community programs at no additional cost. Such a strategy would provide necessary services to a greater number of youth than are currently being helped. The services, importantly, would be offered on the level that might make a difference.

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- 144 Robert Vinter, George Downs, John Hall, Juvenile Corrections in the States: Residential Programs and Deinstitutionalization 61 (1975). The study noted that the potential economies of deinstitutionalization cannot be reached when it is reduced at modest levels, when community programs expand the total size of state correctional services and costly institutional facilities must also be maintained, or when it is approached primarily through the relatively more expensive state-run programs. Id. at 59. The 43 reporting states together spent slightly less than \$30 million to operate their community programs during fiscal 1974--about one-tenth spent on institutions, camps, and ranches. The offender year cost averages for community-based programs averaged less than half of that for institutions. Id. at 68-9.
- 145 The need is apparent in the statements filed by the criminal justice planning regions. See, e.g., Law and Justice Planning Office, 1977 Juvenile Justice Plan for Yakima County 29 (1976); Law and Justice Planning Office, Spokane Region XII Submission I 52 (1976).
- 146 Law and Justice Planning Office, 1977 Juvenile Justice Plan for Yakima County 40 (1976). According to this report, many small group home do not have the resources to cover the additional costs.
- 147 LaMar Empey, "Contemporary Programs for Adjudicated Juvenile Offenders: Problems of Theory, Practice and Research", in Gary Adams (ed), Juvenile Justice Management 479 (1973).

VIII. MODEL FOR CHANGE

Incorporated into any system dealing with delinquency and crime are the following elements: (1) the system must be accountable for its activities; (2) juvenile offenders should be accountable for their actions; (3) system elements should have a clear sense of purpose. The current juvenile justice system is lacking in these areas which provide, in turn, the main directions for the revised system proposed below. Integrated throughout is the assumption that any hope for success in the area of delinquency prevention and treatment rests in the community and except for reasons for public safety, no juvenile offender should be removed from the community. A discussion of the proposed system, setting out its main features, is as follows:

- (1) A juvenile planning center should be established on a county or region basis. A county or region planning board, with the advice of a citizens advisory group, ¹⁴⁸ should be made responsible for drafting a yearly plan dealing with juvenile services. Interinstitutional cooperation and continuity of services should be encouraged through a careful selection of board members.
- (2) The community should be the exclusive receiving center for all delinquent youth except for violent offenders. It should be empowered to directly refer to the court any youth fifteen and above who, although a first referral, is believed to have engaged in repetitive criminal acts. The

148 "The willingness and ability of any community to accept juveniles back, to aid in their reintegration and resocialization, to live literally side by side with offenders in open community-based facilities depends in large measure, on the extent to which the community is involved in the planning process." Management and Behavioral Science Center, Planning and Designing for Juvenile Justice 15 (1972). Carl Shafer, "The Role of Police and Correctional Personnel in Community Planning." In Gary Adams (ed) Juvenile Justice Management 254 (1973). Advisory Commission on Intergovernmental Relations, State Local Relations in the Criminal Justice System 13 (1971). "A System Approach to Comprehensive Criminal Justice Planning," 17 Crime and Delinquency 345, 352 (1971).

community should be permitted to keep second or third referrals but should be required to send all subsequent referrals to the juvenile court. All juveniles referred to the community shall be accorded ¹⁴⁹ full due process safeguards.

- (3) Property offenders should be required to make restitution in such manner as the community determines. Failure to carry out the restitution should result in referral to the juvenile court.
- (4) The jurisdiction of the court over all status offenses except truancy should be removed. Only the community should be permitted to refer a child to the court on the ground of truancy. The court should be permitted to commit a youth to the state only in the case of a violent felony or in the case of a property offender who had been found guilty of felonies on at least two prior occasions and had experienced at least two placements in the community as the result of his prior actions. Commitment length should be based on a point ¹⁵⁰ system which reflects the seriousness of the elements in the offense.
- (5) A state board consisting of appropriate state personnel as well as one member from each of the counties or regions should be established. Each ¹⁵¹ year, every county or region would submit a funding proposal to the board.

149 Law Enforcement Assistance Administration, Diversion of Youth from the Juvenile Justice System 29 (1976).

150 See, Center of Criminological Research, Constructing an Index of Delinquency (October 1963). "Such measures would not constitute a "get tough" policy so much as a "deal evenly" one. Edwin Schur, Radical Nonintervention 169 (1973).

151 The proposal might include a list of goals, alternate solutions, outcomes of past programs.

- (6) The county or region should be directed to have competition from entities wishing to provide services for the system. Purchase of services is likely to predominate over the county itself providing services.

"There is no one best system of juvenile justice for all communities at one time or for one community over an extended period of time." Hopefully, planning on the local level can avoid red tape to the point it can quickly adapt to a new situation in an area where the state of knowledge makes finely tuned tactics impossible. According to a study done recently by the Cascadia Diagnostic Center, the average boy admitted to committing 45 felonies and 101 misdemeanors. Planning and "carry through" on the local level may, someday, have an impact on such statistics.

IX. CONCLUSION

The system proposed in this paper, if nothing else, is offered as a means by which the juvenile justice and corrections system may be "rationalized." Implementation of a

152 See, e.g., Robert Vinter, Juvenile Corrections in the States: Residential Programs and Deinstitutionalization 42, 44 (1975). Hearings before the Subcommittee to Investigate Juvenile Delinquency of the Committee on the Judiciary, U.S. Senate, 92d Cong. 2d Sess; 93d Cong. 1st Sess. 80 (testimony of Joseph Leavey). Peter Goldmark stated that: "I am one of those who believe that government does not act very well in a retail situation. By 'retail situation', I mean I do not think we in government put people on and off welfare rolls very well. I do not think we control rents in individual apartments very well. I think the job of government is to set the broad directions. Government, when it is contracting out to some of the private agencies you described earlier, Mr. Chairman, can be very effective as a 'pry' and as a force for raising the level of quality; and, in fact, that is the role that Jerry Miller's department has been playing in the youth services in Massachusetts." Id. at 57.

153 Management and Behavioral Science Center, Planning and Designing for Juvenile Justice 5 (1972).

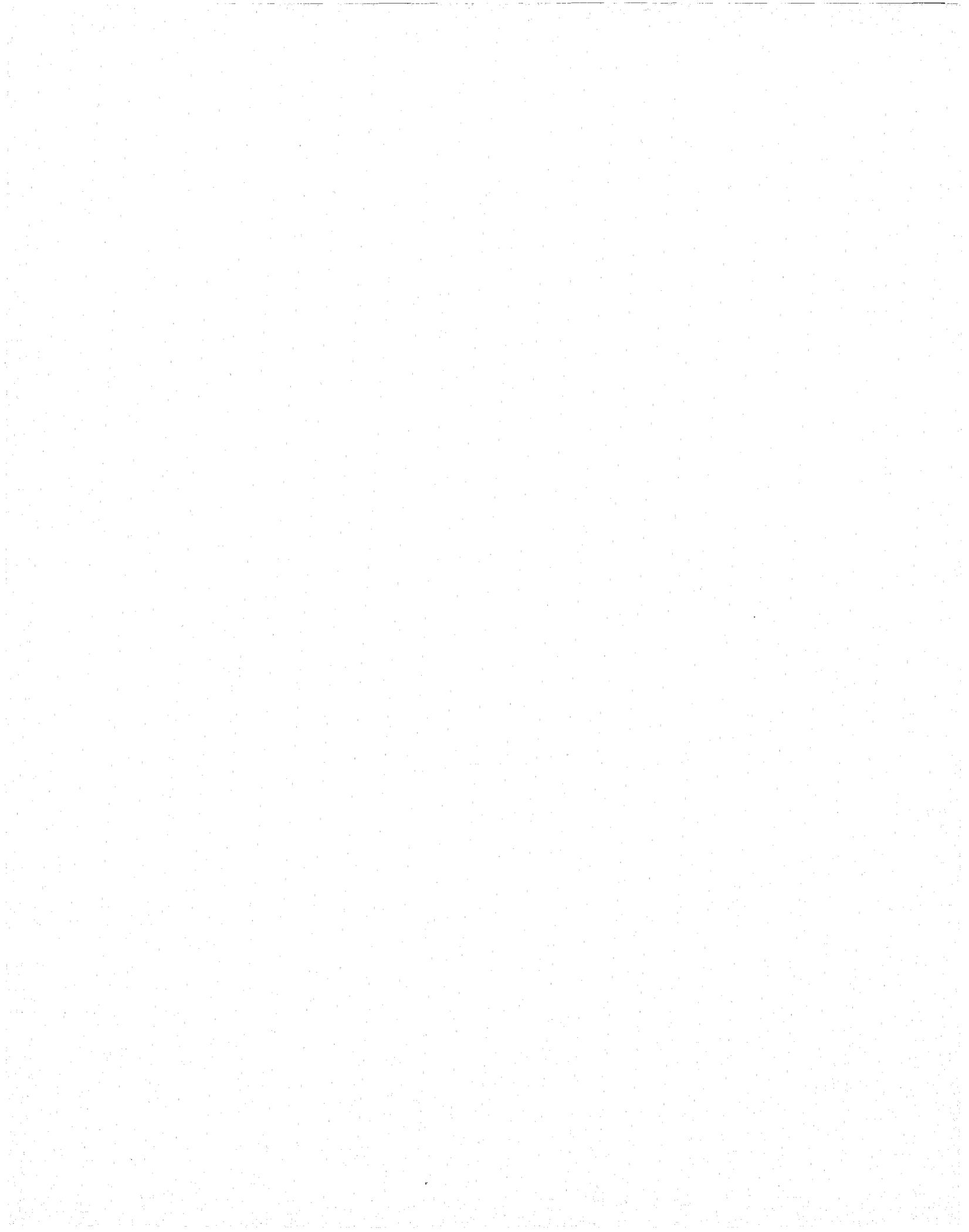
154 Population Profile Study 35 (January 1976).

general framework similar to the one described herein would allow the public to comprehend the entire process and to focus upon the extent to which each of its elements are meeting their assigned responsibilities.

This paper will not claim that adoption of a community oriented system will, in fact, reduce juvenile crime. It may, however, do so. The experience of the Seattle Youth Service Bureau Accountability System, as described earlier, is cause for hope. The evaluation of Community Resources Consolidated, a comprehensive clearing center for delinquent youth in Kitsap County, is also very encouraging. The program provides initial diagnostic services, the development of treatment plans, and the implementation of the treatment plans through referral to other community agencies and purchasing those services not normally available. Evaluation of this program shows a significant reduction in the number of felonies and misdemeanors committed by juveniles after receiving community services. The system proposed, therefore, may very well be more effective than the current system. The "theoretical assumptions" are being borne out in actual practice.

The assumptions, finally, upon which the program for change is based, may to a greater or lesser extent be incorporated into the existing system. A greater commitment might, for example, be made by the state to community corrections without necessarily changing the entire system to the degree suggested. To the extent these assumptions and premises are translated into action, it is felt that the system of juvenile justice and corrections will be improved.

155 Kitsap County Community Resources Consolidated Evaluation Report, July 1, 1973 to December 31, 1974 91 (1976).



END