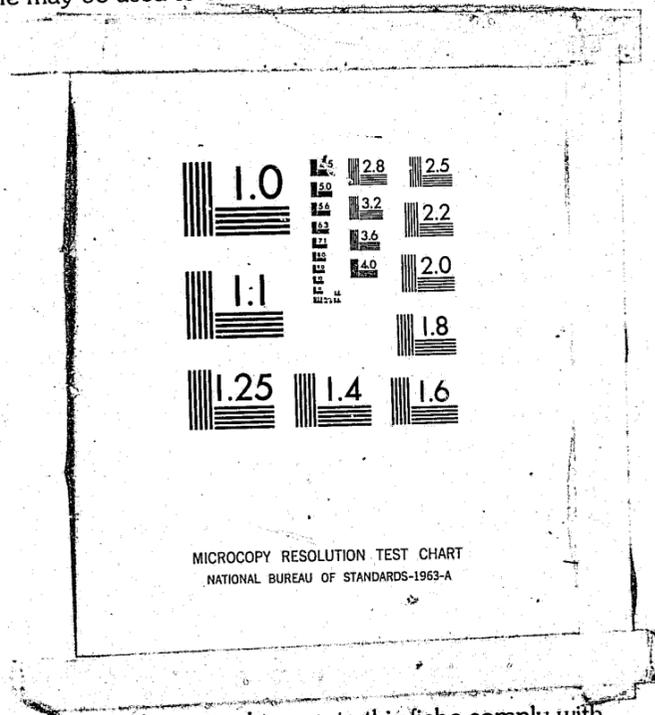


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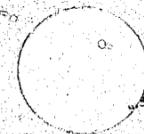
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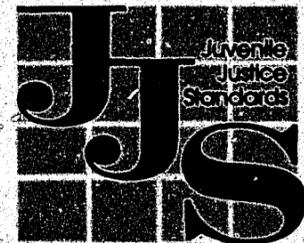
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# Juvenile Justice Standards Symposium

*A Summary*



**Publications in the Juvenile Justice Standards Series**

**A Comparative Analysis of Juvenile Justice Standards and the JJDP Act (four volumes)**

*Volume I*

- Delinquency Prevention
- Diversion

*Volume II*

- Deinstitutionalization of Status Offenders and Nonoffenders
- Separation of Juveniles From Incarcerated Adults

*Volume III*

- Reducing Detention and Commitments
- Community-Based Alternatives to Incarceration

*Volume IV*

- Advocacy for Services
- Due Process/Procedural Safeguards

**Standards for the Administration of Juvenile Justice**

Report of the National Advisory Committee for Juvenile Justice and Delinquency Prevention

**Juvenile Justice Standards Symposium: A Summary**

U.S. Department of Justice  
National Institute of Justice

76911

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November 1981.

**A Search for Guidelines**



*Juvenile laws must be molded to break the cycle of crime . . .  
Professionalizing the [juvenile justice] system through standardization  
can effectively achieve this goal.*

That quotation from Patrick F. Healy, Executive Director of the National District Attorneys Association, appeared in his preface to the final report of the Juvenile Justice Standards Symposium, which was held November 30 through December 2, 1978.\*

Codes of standards--or model codes--are a familiar byproduct of our federal system of government. Professional associations issue standard

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regulations and then urge the 50 States and other jurisdictions to adopt them. Interstate groups may work toward adoption of uniform State laws. As the Nation became increasingly concerned with crime and delinquency in the late 1960's and early 1970's, students and practitioners of juvenile justice and delinquency prevention began giving attention to the wide variety of forms\*\* the juvenile justice system had taken in the various jurisdictions in the eight decades since the first State--Illinois--began to set up a court system for children which was separate from that for adults.

\*\*A quick summary of this diversity is provided by Office of Juvenile Justice and Delinquency Prevention, Juvenile Justice: Before and After the Onset of Delinquency, United States Discussion Paper for the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (1980), pp. 20-23.

The oldest of the three standards-issuing bodies considered here, the Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, began its work in 1971. The National Advisory Committee on Criminal Justice Standards and Goals set up a Task Force on Juvenile Justice and Delinquency Prevention (known herein as "the Task Force") which began work in 1975. The Juvenile Justice and Delinquency Prevention (JJDP) Act of 1974 not only charged a third body with developing juvenile justice standards but provided the resources to support the efforts of the others.

The JJDP Act established not only the Office of Juvenile Justice and Delinquency Prevention (OJJDP) but also the National Advisory Committee for Juvenile Justice and Delinquency Prevention (NAC). The Act directed the NAC to prepare and recommend standards for the administration of juvenile justice and further directed OJJDP's National Institute for Juvenile Justice and

Delinquency Prevention (NIJJDP) to review existing standards under the NAC's direction. The NAC's "final" report was published in 1980 under the title Standards for the Administration of Juvenile Justice, but the 1980 Amendments to the JJDP Act direct the NAC to continue making refinements in its standards.

Further, OJJDP funding (through NIJJDP) supported the work both of the IJA/ABA and the Task Force.

...[D]uplication in some topic areas of the three sets of standards...was, to some extent, unavoidable....Many of the reporters, drafting committee personnel, and consultants who worked on the IJA/ABA Standards also contributed to the other two sets of standards. In fact, some of the IJA/ABA Standards were adopted by the other standards-setting groups without substantial changes. Some of the standards overlap and there are conflicts between several of the standards, although there is only one conflict between the

basic principles of the IJA/ABA Standards and the basic principles of the other two standard [sic] projects, specifically, the recommendation of the IJA/ABA project that status offenses be removed from the jurisdiction of the juvenile court.\*

For more incisive comparison of the three sets of standards, NIJJDP funded a Juvenile Justice Standards Symposium through a grant to the National District Attorneys Association, which was joined in the project by the National Council of Juvenile and Family Court Judges, National Legal Aid and Defenders Association, and Judicial Administration Division of the American Bar Association.

\*Final Report of the Juvenile Justice Standards Symposium Project, cited above, p. 1. There is, however, one additional important point of difference. Unlike the NAC and the Task Force, the IJA/ABA avoided making explicit recommendations regarding delinquency prevention programming or planning, rejecting such efforts as futuristic.

The four participating organizations frequently look at juvenile justice from quite different points of view. "The involvement of these four national organizations in a structured situation [was] intended to provide an articulate, reasoned analysis...from different perspectives from within the juvenile justice system by professionals familiar with current juvenile court practices and procedures." \*\*

After identifying critical issues addressed by all three sets of standards, the Symposium engaged a consultant on each of the 16 issues--4 consultants from each of the participating organizations--to prepare position papers on their assigned topics. At a 3-day Symposium, the position papers were presented together with discussion, comments, and rebuttals. It was an important step toward dispelling the notion that the various sets of standards were, somehow,

\*\*U.S. Department of Justice, Law Enforcement Assistance Administration, grant project summary 78-JN-AX-0026.



rival rather than alternative, even complementary, vehicles toward similar goals. Before and since, other useful sets of standards have been promulgated from other professional groups expressing their own, sometimes quite specialized, principles and approaches to achieving a better juvenile justice system.\*

\*See Charles A. Lauer and James C. Howell in Foreword to Robert W. McCulloh, A Comparative Analysis of Juvenile Justice Standards and the JJDP Act (1981), p. v in each of four volumes. A more detailed listing appeared in Wilfred W. Nuernberger and Richard Van Duizend, "Development of Standards for Juvenile Justice: An Overview," Juvenile Justice 28,1 (February 1977):3.

The full texts of the abstracts and summaries, position papers, and transcripts of discussions at the Symposium (NCJ 76912) are available free in microfiche only from the National Criminal Justice Reference Service. The 11 fiche contain 992 pages. Specify NCJ number and send a self-addressed mailing label to

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Recently the previously cited Comparative Analysis of Juvenile Justice Standards and the JJDP Act has been published for NIJJDP in four volumes. Its eight papers are listed, together with other juvenile justice standards publications available from NCJRS or from the U.S. Government Printing Office, on the inside front cover of this booklet.

Before reviewing brief summaries of the 16 topic areas as discussed at the 1978 Symposium, the reader may find valuable a quote from the Con-

clusion section of the Symposium Project's Final Report:\*

...although the three sets of standards contain differences in the resolution of the issues raised in the sixteen topic areas considered by the Project, the differences can, and undoubtedly will, be resolved by the individual states and jurisdictions through their legislative bodies and administrative decision-makers to meet their own particular needs. While specific approaches vary, the underlying principles are not greatly dissimilar.

This is illustrated by a consideration of the ten underlying principles found in the IJA/ABA Juvenile Justice Standards [see Barbara D. Flicker, IJA/ABA Summary and

\*The IJA/ABA Summary and Analysis, quoted in the excerpt, was published as a Tentative Draft and is forthcoming in a revised Final Draft form.

Analysis (1977), p. 22]. All three sets of standards support the following principles inherent in the IJA/ABA Standards, with the exception of principle No. 4 [which only IJA/ABA, among the three, has explicitly called for in its standards].\*\*

1. Proportionality in sanctions for juvenile offenders based on the seriousness of the offense committed, and not merely the court's view of the juvenile's needs, should replace vague and subjective criteria.
2. Sentences or dispositions should be determinate.

\*\*The Commentary to NAC Standard 3.112 acknowledges this principle as a long-term goal; the standard itself was adopted as an intermediate step leading to complete removal of court jurisdiction over noncriminal misbehavior.

3. The least restrictive alternative should be the choice of decision makers for intervention in the lives of juveniles and their families.

4. Noncriminal misbehavior (status offenses, PINS) should be removed from juvenile court jurisdiction.

5. Visibility and accountability of decision making should replace closed proceedings and unrestrained official discretion.

6. There should be a right to counsel for all affected interests at all crucial stages of the proceeding.

7. Juveniles should have the right to decide on actions affecting their lives and freedom, unless they are

found incapable of making reasoned decisions.

8. The role of parents in juvenile proceedings should be redefined with particular attention to possible conflicts between the interests of parent and child.

9. Limitations should be imposed on detention, treatment, or other intervention prior to adjudication and disposition.

10. Strict criteria should be established for waiver of juvenile court jurisdiction to regulate transfer of juveniles to adult criminal court.

## Sampling the Symposium

Along with the full texts and transcripts of the Standards Symposium, the microfiche edition contains abstracts of the Symposium's position papers and summaries of the discussion which followed each of them. Those summaries, prepared by Richard Van Duizend, J.D., former Director of the NIJJDP Standards Program, "assimilated the flavor of the Symposium well," in the words of an NDAA official who reviewed Van Duizend's work.

Unlike the Van Duizend abstracts and summaries, however, the following thumbnail portrayals of the papers and discussion can, in their limited space, give only a sample of the flavor of discourse--not the balanced presentation of the longer works.

### COURT ORGANIZATION:

specialized courts vs. courts of general jurisdiction

22 pages (47 including transcript)

NCJ 76913

Hon. Robert J. Cattle, Jr., Judge, County Division, Seward, Neb.; Chairperson, National Conference of Special Court Judges, Juvenile Justice Standards Committee

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Judge Cattle questions the wisdom of tampering, through adoption of standards, with the "unseemly but functional" variety of juvenile court structures and jurisdictional boundaries that have developed to meet the differing political, financial, and philosophical considerations of each State.

In discussion, one speaker pointed out that more judges than professors worked on the IJA/ABA standards and another suggested there is significant public dissatisfaction with the juvenile court.

### SCOPE OF COURT SERVICES:

whether the court should be responsible for probation and detention

29 pages (64 including transcript)

NCJ 76914

Brent D. Hege, Staff Attorney, Youth Law Center of Polk County, Inc., Des Moines, Iowa

Because of their greater attention to due process protections, Mr. Hege favors the IJA/ABA standards requiring that the executive branch rather than the juvenile court provide probation, detention, and posttrial detention services.

There was sharp disagreement among discussion panelists on many points, but general agreement that, while constitutional issues may be involved, the question of executive or judicial control is a policy matter centering on which branch can best marshal the necessary resources.

### JURISDICTION OVER NONCRIMINAL MISBEHAVIOR (status offenses)

21 pages (62 including transcript)

NCJ 76915

Patricia Connell, Staff Attorney, National Center for Youth Law, St. Louis, Mo.

"No doubt some young people and their families will go without needed assistance if juvenile court jurisdiction over noncriminal behavior is eliminated. However, the problems of dealing with the resulting unmet service needs should be no more difficult than assuring that the innumerable and often inherent problems accompanying jurisdiction do not continue."

Discussion revealed wide disagreement on the question of the provision of services on a voluntary basis versus services ordered by a court or agreed to under the threat of incar-

ceration. One speaker expressed the view that it will always be necessary to protect children from results of their own immaturity and that, at least in some cases, coercive intervention is the only effective protection.

### JURISDICTION OVER ABUSE AND NEGLECT

27 pages (72 including transcript)

NCJ 76916

Hon. Eugene A. Moore, Judge of Probate, Pontiac, Mich., and (then) Vice President, National Council of Juvenile and Family Court Judges

Judge Moore concludes that the greatest contribution of the present standards is the recommendation that the court should have jurisdiction over agencies with the "legal responsibility to provide needed services." However, he suggests that all the standards need to be re-drafted to broaden the definition of abuse or neglect deemed sufficient to warrant court intervention.

A formal rebuttal paper was submitted by Gabe Kaimowitz, Senior Attorney, Michigan Legal Services, Detroit.

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Mr. Kaimowitz argues that "positive changes" are unlikely in the redrafting process asked by Judge Moore and argues that the present IJA/ABA standards at least would strictly limit intervention to cases in which it would "do more good than harm."

Discussion centered on (1) the strictness or looseness of the definition of neglect and (2) whether the juvenile court should have authority to order executive agencies to provide specific services. There also was disagreement over whether poverty is directly related to abuse and neglect or whether poor people are merely more likely to be reported.

**PRETRIAL DETENTION:**  
delinquency cases only  
18 pages (59 including transcript)  
NCJ 76917

Jane Sufian, Staff Attorney, Juvenile Rights Division, Legal Aid Society, Brooklyn, N.Y.

"Severe limits on juvenile detention practice are not an abandonment of a separate juvenile justice system. Such an approach proceeds from a belief that the best way to help children is to utilize the full panorama of due process...

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It should now be beyond cavil that locking children up does not help them."

Discussion centered on whether preventive detention was proper as a way to prevent property crimes. Other discussion considered whether use of money bail is proper in juvenile cases and whether shorter periods between arrest and adjudication and development of noncustodial alternatives would reduce the problem of detention.

**WAIVER OF JURISDICTION**  
(to adult court)  
27 pages (66 including transcript)  
NCJ 76918

Helen Szabo, Deputy Attorney General, State of New Jersey

The NAC and Task Force standards "...attempt to siphon off those offenders who are youthful only in years rather than in terms of criminal activity, thereby preserving the juvenile court's jurisdiction where it may be most effective." The stricter criteria for retaining juvenile court jurisdiction for serious juvenile offenders recommended by the IJA/ABA reflects the view that it is "the obligation of the juvenile justice system to devise appropriate

dispositional alternatives for such individuals."

In discussion, the general agreement that rehabilitation was the proper business of juvenile court led to disagreement over the extent to which amenability to rehabilitation should govern a juvenile court's decision to retain, rather than waive, jurisdiction.

**INTAKE AND DIVERSION**  
21 pages (50 including transcript)  
NCJ 76919

Kenneth Siegel, Chief of Policy and Program Development, Genesee County Prosecutor's Office, Flint, Mich.

Disposing of a juvenile case at intake through nonjudicial diversion may be less stigmatizing than court action but still involves infringement of liberty. Mr. Siegel argues for prosecutor monitoring of diversion and for establishing an unwaivable right to counsel at intake for juveniles.

The two issues sparking most discussion were placing the intake function in the executive branch and prohibiting a child from waiving counsel. A speaker suggested the question of

intake control hung on the question of who should be vested with discretion: "Clearly all of us are very much in favor of it when we exercise it, but somewhat dubious of it when it is exercised by others."

**JURY TRIAL AND PUBLIC TRIAL**  
52 pages (79 including transcript)  
NCJ 76920

Hon. Edward J. McLaughlin, Administrative Judge, Onondaga County Family Court, Syracuse, N.Y.

"The philosophical differences between the standards are most apparent on the issue of whether...a child...should be entitled to a jury trial. The IJA/ABA standards, recognizing the child as a person..., assert the right...The Task Force and NAC..., clinging to the traditional understanding of the juvenile court system, say that a jury trial is not appropriate...."

In discussion, one former judge noted that the "right to a public and jury trial is a balancing mechanism. It's a pressure reduction valve, for the purpose of protecting against the arbitrary and the over-reaching and seemingly biased all-powerful judge."

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**ADJUDICATION:**

focus on plea negotiations  
19 pages (40 including transcript)  
NCJ 76921

Charles Z. Smith, Professor of Law,  
University of Washington; member,  
IJA/ABA Joint Commission

Both the Task Force and the NAC recommend eliminating plea bargaining from delinquency proceedings. The IJA/ABA concedes the existence of such bargaining in juvenile proceedings, offers standards to regulate it--and then offers as "alternate standards" measures for prohibiting it.

Discussion centered on whether there should be plea bargaining; if so, what the role of the judge should be; and whether it should cover disposition or only the charge. Some saw plea bargaining as a necessary evil. Others were concerned that it would provide the prosecutor with the power to coerce confessions from juveniles who did not commit the offense to which they pleaded. Careful judicial scrutiny of any plea bargaining was urged as the only solution.

**ROLE OF THE PROSECUTOR**

24 pages (42 including transcript)  
NCJ 76922

Elizabeth Bridges, Assistant District  
Attorney, Harris County, Houston,  
Texas

All of the standards "have for the most part formulated criteria which would create an able prosecutorial staff." While Ms. Bridges objected to some of the limitations on prosecutors' authority regarding plea bargaining and final decisions in filing petitions, she endorsed an adversarial system that will protect the rights of juveniles and the community.

The role of the prosecutor in plea bargaining was a major topic of the discussion. Ms. Bridges felt that the waiver decision was a proper subject for plea bargaining. She said prosecutors should not press for pleas from respondents who say they are innocent and should alert the court when a child's parents are trying to force him or her to plead.

**PROPORTIONALITY AND  
DETERMINATE SENTENCING**

24 pages (85 including transcript)  
NCJ 76923

Hon. Lindsay G. Arthur, Juvenile Court  
Judge, Minneapolis, Minn.; past Presi-  
dent of the National Council of Juvenile  
and Family Court Judges

Juvenile courts traditionally have focused on individuals, but the proposed standards all call for sentencing based primarily on the seriousness of the offense and the juvenile's past criminal history rather than on the likelihood of rehabilitating the offender.

Speakers in the discussion argued hotly for or against Judge Arthur's critique of more structured decisionmaking. Proponents of the standards said that the maximum sentences were only maximums and still left considerable room for judicial discretion and for consideration of rehabilitation in selecting the appropriate program.

**RIGHT TO COUNSEL**

in delinquency proceedings  
21 pages (59 including transcript)  
NCJ 76924

Hon. William S. Fort, Senior Judge,  
Oregon Court of Appeals; member, IJA/ABA  
Joint Commission

Although *In re Gault* established an accused child's right to counsel, the standards differ on whether a child should be able to waive that right. On a second issue, whether counsel should act as advocate, guardian ad litem, or "simply amicus curiae," the standards all support an advocacy role.

Discussion centered on the role and competency of counsel in delinquency proceedings, and Judge Fort reiterated that until there is clear understanding of the lawyer's role in juvenile court, it will be impossible to determine the lawyer's competency.

**TERMINATION OF PARENTAL RIGHTS**

27 pages (61 including transcript)  
NCJ 76925

Hon. Orm W. Ketcham, Senior Staff Attorney, National Center for State Courts, Williamsburg, Va.

"Court-ordered termination can be either voluntary, as when a parent consents to place a child for adoption, or involuntary....[P]aramount concern of the court should be the child's need to receive the consistent love and care of an adult in an environment conducive to successful character development...."

Discussion was dominated by responses to NAC and IJA/ABA provisions permitting a child to veto a proposed termination and to Judge Ketcham's suggestion of an interlocutory termination decree.

**RIGHTS OF MINORS IN NONDELINQUENCY SETTINGS**

25 pages (83 including transcript)  
NCJ 76926

Gabe Kaimowitz, Senior Attorney, Michigan Legal Services, Detroit

"Were children to be declared persons, the benefits of the United States Constitution automatically would attach...." Acknowledging minors as legal persons would not mean they must be treated as adults in all instances. "If we recognize that they do have rights, they should be as free to reject as to accept" treatment or placement.

In discussion, a speaker characterized Mr. Kaimowitz's paper as "open[ing] windows in perspective." Another said that, although he found the proposals "extreme and not always persuasive,...they do tend to dramatize the issues and I think they will lead to significant debates."

**INTERIM STATUS:**

abuse and neglect and noncriminal behavior  
18 pages (44 including transcript)  
NCJ 76927

Robert E. Rounds, Assistant District Attorney, San Diego County, Calif.

"The crucial question remains: what is the minimum degree of mistreatment of children in which the court process should become involved?"

...The standards propose less frequent governmental involvement. To the extent that this represents a shift in focus from the needs of the child to the rights of the parents, it creates serious questions...."

Clarifying his views in response to questions during discussion, Mr. Rounds said the threshold for intervention should be in terms of possible harm to the child--that doctors, police, and neighbors should not be hamstrung in protecting a child. "Get the child out of the home where the situation demands it in the layman's view, then apply a judicial standard later." There was much disagreement.

**RECORDS AND CONFIDENTIALITY**

34 pages (64 including transcript)  
NCJ 76928

Hon. James J. Delaney, Juvenile Court Judge, Brighton, Colo.

The real danger to privacy occurs after a youth turns 18. Judge Delaney endorses the NAC standard calling for destruction of all police, court, and correctional records when a juvenile reaches majority unless preservation of the records is ordered by the juvenile court.

Several panelists in discussion suggested exceptions or reasons why records should not be destroyed. One cited the importance of records for research and evaluation purposes. Discussion also touched on whether there really is a problem with maintaining confidentiality of juvenile records; Judge Delaney replied that most States recognize the principle and need no new strict standard.

## Symposium Coordination

James P. Manak, National District Attorneys Association, Project Director

Barbara Allen-Hagen, National Institute for Juvenile Justice and Delinquency Prevention, Project Monitor

Anne Thompson, Prosecutor, Mercer County, N.J., for the National District Attorneys Association

Hon. Wilfred W. Nuernburger, Juvenile Court Judge, Lincoln, Neb., for the American Bar Association Judicial Administration Division

Thomas Vereb, Association Legal Officer, National Center for Juvenile Justice, for the National Council of Juvenile and Family Court Judges

Michael J. Dale, Assistant Director, National Center for Youth Law, for the National Legal Aid and Defender Association

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