INFORMAL DISPOSITION OF DELINQUENCY CASES: SURVEY AND COMPARISON OF COURT DELEGATION OF DECISION-MAKING*

In the St. Louis County Juvenile Court,[1] approximately sixty per cent of the delinquency cases referred to the court are disposed of informally or unofficially, without the filing of a petition, formal hearing by the judge, and making an official court record.[2] Other studies indicate that in nearly all

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* The survey of the St. Louis County Juvenile Court which provides the basis for illustration of current practices was completed in December 1964. A debt is owed to Honorable Michael J. Carroll, former Judge of the Juvenile Court, and the personnel of the court who cooperated in the survey. Information was obtained from interviews with the following persons: Ralph L. Smith, Director of Court Services; Mrs. Gay Landau, Intake Department Supervisor; Clyde Bowers, Deputy Juvenile Officer, Intake Department; Mrs. Doris Ward, Deputy Juvenile Officer, Intake Department; and Stephen R. Best, Research Director. Undocumented statements of fact may be presumed to be based on one or more of these interviews.

1. The term "court" used in this note includes the entire County court service and is not restricted to formal action by the judge. This usage reflects the fact that in St. Louis County, the judge delegates broad duties to juvenile officers, a practice that is sanctioned by the general statutory language of Mo. REV. STAT. § 211.401 (1959). Difficulty in interpreting the term "court" arises only with those statutes whose purpose appears to call for the personal act of the judge. *E.g.,* Mo. REV. STAT. § 211.141(2) (1959) (child can be detained in custody only on court order specifying reasons for detention); see Weinstein, *The Juvenile Court Concept in Missouri: Its Historical Development—The Need for New Legislation,* 1957 WASH. U.L.Q. 17, 33 n.64. In judicial circuits having more than one judge, the juvenile court is the juvenile division of the circuit court of the county. Mo. REV. STAT. § 211.021(3) (1959). In his article, Judge Weinstein, the present judge of the St. Louis County Juvenile Court, commented on the need to adopt the present juvenile court act, then before the 1957 legislative session, which was subsequently adopted. Mo. Laws 1957 at 642; see Weinstein & Robins, *The Juvenile Courts in Missouri: 1957-59—A Survey of Current Development and Future Requirements,* 1959 WASH. U.L.Q. 373.

It should be noted that informal handling procedures tend to reflect the administrative policies and attitudes of the judge. Therefore, while the practices currently employed by the St. Louis County Juvenile Court may differ slightly from those described in the note as a result of the recent change in judges, this does not detract from the purpose of the note, which is to portray in detail the informal disposition practices of a representative juvenile court system.

2. In this note, the term "referral" will signify any instance in which information is given the court concerning an allegedly delinquent child. The court does not consider a referral official until an application for service is made (see note 13 *infra*), in which case there is a recorded disposition. As a result, the court statistics do not include a significant number of youths whose contact with the court is terminated at the preliminary inquiry. Of the 5663 referrals to the court in 1964, 3630 were screened as delinquencies and 1227 as traffic offenses. Nearly all traffic offenses are disposed of informally. 1964 ST. LOUIS COUNTY JUVENILE COURT ANN. REP. 34-35 [hereinafter cited

major metropolitan areas similar informal procedures have been developed.[3] These developments result from enactment of juvenile codes which permit the judge to delegate decision-making functions to administrative personnel.

This note describes the informal disposition practices in St. Louis County[4] and surveys existing procedures for informal disposition in other states. The final part is an assessment of the problems inherent in a system of unofficial disposition of delinquency cases.

I. INFORMAL DISPOSITION OF DELINQUENCY CASES: ST. LOUIS COUNTY

Authority to dispose informally of delinquency cases has been delegated by the juvenile court judge at two levels: the numerous minor complaints are informally handled by the Intake Department,[5] while more serious offenses not requiring direct judicial control are processed by the juvenile officer for the County, the Director of Court Services.[6]

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as 1964 REPORT]. Informal and formal dispositions for the years 1963 and 1964 are compared in the following table:

		Total		Formal		Informal	
		No.	% of increase	No.	% of total	No.	% of total
DELINQUENCY	1963	2449		988	40.3%	1461	59.7%
	1964	3467	41.7%	1135	32.9%	2332	67.3%
TRAFFIC	1963	875		30	3.5%	845	96.5%
	1964	1305	49.2%	26	2.0%	1279	98.0%
TOTAL	1963	3324		1018	30.5%	2306	69.5%
	1964	4772	43.6%	1161	24.4%	3611	75.9%

Although this note will consider only delinquency and traffic cases, it should be noted that the court also has responsibility for the protection and care of neglected children and for special proceedings such as adoption and guardianship. Mo. REV. STAT. § 211.031 (1959). For discussion of the latter, see Lewis & Tockman, *The Status of the Missouri Law in the Troubled Area of Child Custody,* 27 Mo. L. REV. 406 (1962); Speca, *Some Aspects of Jurisdiction in Neglect Cases under Missouri Juvenile Court Law,* 23 U. KAN. CITY L. REV. 257 (1955).

In St. Louis County, the judge will not determine jurisdiction and disposition unless a formal petition, the form of which is set out in Mo. REV. STAT. § 211.091 (1959), is filed, even though he is authorized to hold hearings without the filing of a petition, Mo. REV. STAT. § 211.081 (1959).

3. *E.g.,* SUSSMAN, LAW OF JUVENILE DELINQUENCY 29-30 (rev. ed. 1959) [hereinafter cited as SUSSMAN]; Tappan, *Unofficial Delinquency,* 29 NEB. L. REV. 547, 551-54 (1950).

4. St. Louis County, which contains 97 municipalities, is politically distinct from the City of St. Louis. Therefore, the informal disposition procedures used by the St. Louis City Juvenile Court may be different as a result of many factors.

5. The Intake Department was established in 1961. It consists of a supervisor and five deputy juvenile officers who prepare cases for disposition and act as caseworkers when necessary.

6. The discretion and authority to file a petition rests in the Juvenile Officer. Mo. REV. STAT. § 211.081 (1959). A petition filed by any other person does not confer juris-

A. *Intake Department Procedures*

The Intake Department[7] evaluates the facts of each case to decide the course the case should take. Through its preliminary inquiry the Department determines whether the court has jurisdiction[8] and whether it is more probable than not that the allegations giving it jurisdiction are true.[9] If it finds "probable cause," the Department makes a screening decision in which it determines whether a petition for formal court hearing will be filed or the case will be disposed of informally without a petition.[10]

1. *The Preliminary Inquiry*

The court has exclusive original jurisdiction in proceedings involving a child (defined as "a person under seventeen years of age"[11]) within the county alleged to be in need of care and treatment because his behavior, environment or associations are injurious to his own or others' welfare or who is alleged to have violated a state law or municipal ordinance.[12] If the Intake Department finds the case is one over which the court does not have jurisdiction, it will not make an *application for service*.[13]

If Intake decides that the court has jurisdiction, it must determine

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diction. See State v. Taylor, 323 S.W.2d. 534 (Mo. Ct. App. 1959) (neglect proceeding begun by Prosecutor). The power to delegate decision making to the Director is inferred from the language: "The juvenile officer shall, under the direction of the juvenile court: . . . (4) Perform such other duties and exercise such powers as the judge of the juvenile court may direct." Mo. Rev. Stat. § 211.401 (1959).

7. Intake has been defined as "the process of examining and evaluating the circumstances of each case referred to the juvenile court. . . . [and] includes determining the answers to such questions as whether the referral be dismissed or rejected, referred to another agency, handled informally or formally, or, in some courts, waived to the criminal court." Wisconsin Board of Juvenile Court Judges & State Department of Public Welfare, Handbook for Juvenile Court Services 35 (1959). See generally Sussman 29-30; Sheridan, *Juvenile Court Intake*, 2 J. Family L. 139 (1962).

8. Mo. Rev. Stat. § 211.031 (1959).

9. Whenever any person informs the court in person and in writing that a child appears to be within the purview of applicable provisions of section 211.031 [jurisdiction], the court shall make or cause to be made a preliminary inquiry to determine the facts . . . . Mo. Rev. Stat. § 211.081 (1959).

10. Apparently the screening decision is based on Mo. Rev. Stat. § 211.081 (1959) which provides that the court is to determine

> whether or not the interests of the public or of the child require that further action be taken. On the basis of this inquiry the juvenile court may make such informal adjustment as is practicable without a petition or may authorize the filing of a petition by the juvenile officer.

11. Mo. Rev. Stat. § 211.021(2) (1959).

12. Mo. Rev. Stat. § 211.031 (1959).

13. Prepared by a clerk at the behest of the worker in charge, the application for service is the request in writing for court action. A case will not be sent for screening until this application for service is made.

whether the referral is supported by evidence sufficient to show "probable cause." Mere accusations are not sufficient: the Intake Department terminates court contact with the child unless it concludes that the evidence supports the complaint. However, discretion is employed in an attempt to adjust the disposition to accomplish the greatest benefit for the child. For example, if the case is of the type usually handled informally—the minor offenses[14]—the Department will be less inclined to find the complaint unfounded. There are two types of referrals processed by the Intake Department: police referral and referral by a private individual.

a. police referral. To assure efficient and speedy processing and utilization of uniform criteria for further handling, police reports, which comprise the bulk of all referrals,[15] are processed by a single intake worker. This worker

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14. Since the categories of "neglect" and "delinquency" have been eliminated from the statute defining the court's jurisdiction (note 12 *supra* and accompanying text), it is not clear whether the provision conferring jurisdiction over a child whose "behavior, environment or associations . . . are injurious to his welfare or to the welfare of others" refers to neglect or delinquency. The St. Louis County Juvenile Court apparently treats as delinquency cases only those in which the child is alleged to have a violated a specific law other than traffic. Although the court would have jurisdiction in any event, the lack of a clear statutory distinction poses the problem in some cases concerning the nature of the petition to be filed. Landau, *The Intake Process,* in 1964 REPORT 13.

15. In 1964, police reports accounted for 91.2% of the delinquency referrals and 99.6% of the traffic referrals. 1964 REPORT 34. A large number of juvenile offenders arrested by law enforcement officers are not referred to the juvenile court with the result that the police perform an important "screening" function. Often the decision by an individual policeman is influenced by factors which have little relation to the behavior or the child involved. Efforts have been made, however, in some circuits, including St. Louis and St. Louis County, to formulate a policy concerning the types of cases to be referred and those to be released by police officers. The St. Louis Metropolitan Police-Juvenile Officers Association, created in 1960, has facilitated liaison between police departments and the juvenile court. If relations between the police and the community are good and the police are able to work at an informal level with the child, more juvenile arrests are handled informally at the police level. When the decision is made to refer a case to the court, the court is to be notified "immediately." Mo. REV. STAT. § 211.411(2) (1959). See generally Weinstein & Robins, *supra* note 1, at 379, 385-86.

A study of police arrest practices with juveniles in four different cities and interviews with policemen in Pittsburgh, Pa. lists this summary of criteria on which the police appear to base their choice of referring or informally handling.

> 1. *The Police Officer's impression of the family situation* . . . . is one of the most, if not the most, important criterion determining police handling of a case. . . . The fact that an offender comes from a broken home is considered evidence for the need of court intervention.
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> 2. *The attitude and personality of the boy*. . . . Defiance of the police . . . . [or] maliciousness in a child is considered by the police to indicate need for official court supervision.
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> 3. *The degree of criminal sophistication shown in the offense*. . . .
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> 4. *Juvenile offenders apprehended in a group will generally be treated on an all-or-none basis*. . . .
>
> 5. *The policeman's attitude toward specific offenses*. . . .
>
> 6. *Publicity given to juvenile delinquency either in the neighborhood or else-*

is responsible for deciding whether sufficient information exists to warrant an *application for service.* If the report is unclear or inadequate to demonstrate jurisdiction or evidence sufficiency, efforts are made to obtain further information from the referring source or the child's parents.[16] If the intake worker then concludes that no offense has been committed or the court has no jurisdiction, he cannot initiate an application for service. However, if the worker is in doubt, he consults the Supervisor of Intake before making a final decision.

After the police report is checked for adequacy and completeness, it is given to the clerical department for preparation of the application for service, then forwarded to the Intake Supervisor for screening. When the decision is made that the court has sufficient information to proceed, the next step is to determine the child's present standing with the court. If the child is "active" (under court supervision), the application for service will be directed to the deputy juvenile supervisory officer responsible for the child's welfare. This officer takes control of the matter and with the supervisor decides whether to place the new matter on the formal docket for a hearing or to handle it informally.[17] When the child is not "active," the application will normally be forwarded for screening—the second function of Intake in preparing a case for disposition. If an offense has been

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where. An increase in the "visibility" of delinquency, or a decrease in community tolerance level . . . . might operate to bring into court an offense of even a very insignificant nature.

7. *Various practical problems of policing.* The fact that no witness fees are paid policemen in juvenile court . . . . distance to the court and to the Detention Home and the availability of police personnel for the trip. . . .

8. *The necessity for maintaining respect for police authority in the community* [in the case of] a juvenile who publicly causes damage to the dignity of the police, or who is defiant . . . .

9. *Pressure by political groups or other special interest groups. . . .*

10. *The impact of past experiences with juvenile cases. . . .*

11. *The policeman's attitude toward the juvenile court . . . .* The policeman . . . may fail to report cases to the court since, in his opinion, nothing will be gained by such official referral.

12. *Apprehension about criticism by the court.* Cases . . . may be reported because of fear that the offense might subsequently come to the attention of the court and result in embarrassment to the police officer.

Goldman, Police Criteria for Referral to Juvenile Court, in The Disposition of Cases of Juvenile Arrests by Urban Police, Youth Development Center, Syracuse University, 1960.

16. A checklist has been compiled to guide the worker in determining the adequacy and completeness of police reports. Among the factors included are: name and address of the violator; date, time and location of violation; details of questioning, if any; how the matter came to the police's attention and if there is a complainant, his name, address and telephone number; and details of participation, particularly if there are companions.

17. A special situation arises when there are companion cases. Since companion cases are usually screened for handling together, the screening department will have the final decision, but the supervisory officer's recommendations are considered.

committed, an application for service is always made; the police department will seldom send in a report unless an offense has been committed.

b. private referrals. Private citizens may refer cases to the court through telephone calls, by mail or in person. Because private referrals are often unfounded, the intake worker must initially decide whether to encourage the citizen to press his complaint or to refer him to a public or private agency. If the referent is insistent or the information discloses that the case should be considered by the court, the worker will request a personal interview.

A telephone call is not an official referral since official complaints must be written,[18] but it serves as the basic contact between an interested citizen and the court.[19] If the complaint appears to be genuine, the worker explains that the court cannot act without a signed statement and asks the caller to come to the court for further discussion and to sign an *application for court inquiry.*[20] If the referent refuses to appear, the worker asks that a

18. Mo. Rev. Stat. § 211.081 (1959).

19. Two people handle the calls in order to free one worker for interviews. Between 150 and 200 calls are handled each week but only a small proportion are delinquency referrals.

20. The following mimeographed form is used in the St. Louis County Juvenile Court:

ST. LOUIS COUNTY JUVENILE COURT
APPLICATION FOR COURT INQUIRY

Application is hereby made by the undersigned for an inquiry by the Court into the facts and circumstances of certain minor child(ren), to-wit:

Name of child(ren)	Age	Place to be found	Name of persons having present custody

as provided by the Juvenile Code of Missouri, Sec. 211.031* Rev. Statutes of Mo., 1957, because (be specific):

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On the basis of the information stated above your informant respectfully requests the Court to cause a preliminary inquiry to be made so that such facts and circumstances surrounding the care of the above named child(ren) may be known and a determination made as to whether or not the interests of the child(ren), or of the public, require further action by the Court.

____
Person or Agency

____
Address

____
Telephone Number

* See other side for provisions of this section.

letter of explanation be sent. Should the referent refuse to make a written request for inquiry, the worker generally will not pursue the matter, but if he thinks the situation merits further action, he will contact the supervisor. The written request may be obtained through the Director of Court Services who has the authority on his own motion to file an application to investigate, but rarely is the situation in a delinquency case so urgent as to warrant this action. Generally the police will be asked to make an inquiry and if necessary to file a report which will be sufficient written notice.

The mail, a substantial source of referrals, is processed by the Supervisor of the Intake Department.[21] Since the letters are frequently inadequate to indicate whether action should be taken, further inquiry through telephone calls or interview is made by this worker. Every letter referral is investigated before a decision is made whether an application for service should be made, but the amount of investigation is within the discretion of the worker and depends on the thoroughness of the letter and his opinion of the gravity of the situation.

The follow-up interview of a private referral is ninety minutes to two hours in length and is the chief source of information upon which the intake decision is based.[22] The interview is an "on-going" process[23] during which the interviewer observes the demeanor and reactions of the interviewee in order to glean and evaluate the pertinent information. The interviewer's discretion governs the amount of encouragement given to file the request for court inquiry. Once the request is made, however, the intake worker must conduct a further investigation to determine jurisdiction, "probable cause," and whether an application for service should be made and the case sent for screening.

The interviewer's objectivity is particularly important if the persons interviewed are the parents of a child alleged to be incorrigible and who has not previously come to the attention of the police or the court. Frequently, the interview discloses that at least one of the parents is inadequate or emotionally disturbed and the child is reacting to the family situation. The effort of the worker in such a case is to encourage the parents to seek help from community agencies or from private psychiatrists if they can afford them,

21. Approximately twenty-five referrals are received by mail each week, not all of which concern delinquency.

22. Each week about twelve "walk-in" interviews are conducted without appointment as a result of a referral made in person, but they are normally neglect cases. The interviews are conducted by the two intake workers who handle the telephone referrals.

23. The "on-going" aspect of the interview seeks to add to the pertinent data an evaluation of the complainant, the child, and ultimately, the final disposition. For this a *complete* exploration of the circumstances is essential and is best accomplished by general questions which encourage full disclosure.

since the court is not a welfare agency. If the parents agree, the worker makes the first appointment with the agency for the parents and dismisses the case. If the efforts in directing the parents toward community help fail and the parents insist that court action be taken, they may make an incorrigibility charge by filling out and signing the request for court inquiry listing the complaints. An application for service is made, and the case is sent for screening.

c. detention and release. A referral from either police or private sources may result in the child being brought in for detention. This forces the court to make the immediate decision whether to retain custody, because by statute the child cannot be detained, except under exigent circumstances, and then no longer than twenty-four hours, without a written court order specifying the reasons for detention.[24] Because the court desires to release the child if feasible, in several recurring situations this action is taken by the intake worker.

The first situation is where the child has residence in another county or state and has committed no offense in St. Louis County. The worker will ascertain who has legal custody of the child and arrange with this person for the child's return. The child is usually a runaway and the court's only interest is to see him returned home.[25] If there is reason to suspect that the child is known to juvenile authorities at his place of residence, an attempt is made to contact his probation officer since the officer may want to know of the plans for or assist in the child's return. Unless there is justification to hold the child—the child is a runaway from an institution, a parole violator, or the federal government has placed a hold order on him—the case is dismissed by the Intake Department and the child is released. The court's responsibility ends when the child is placed on transportation home.

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24. Mo. Rev. Stat. § 211.141(2) (1959).

25. When the child is a resident of the city of St. Louis, the court will dismiss at Intake if the child is presently active with the City Court and the City Court wishes to proceed under its own authority.

The process of returning juveniles from other states is governed by the procedure under the Interstate Compact on Juveniles which twenty-eight states, including Missouri, have adopted. Mo. Rev. Stat. §§ 210.570-.600 (1959); see Martin, *Interstate Compact on Juveniles: Its Progress and Problems, 1955-1960*, 7 Crime & Delinquency 121 (1961).

26. The offenses that are considered to be more serious—burglaries, sex offenses or car theft—are more likely to result in detention. These cases generally receive formal court hearing and detention is used to insure the child's presence at the hearing. See Weinstein & Robins, *supra* note 1, at 387-88. Another important factor in whether the child is detained or not is the availability of special detention facilities, *id.* at 386, and foster homes, where the child may be placed, subject to court supervision, Mo. Rev. Stat. § 211.151(2) (1959).

The more common release situation involves a resident of St. Louis County. Preparations are made to release the child promptly if a formal hearing is deemed unnecessary and there is no reason to suspect that he is a danger to himself or others.[26] To determine whether post-release action is advisable, the intake worker normally will confer with the child as soon as possible to gather evaluative and diagnostic information about the child, his family and environment. The recording of this interview, the police report and information from other sources, such as schools or clinics, if available, provide the basis for the decision whether the referral should be processed and a preliminary inquiry held.

In cases of serious behavioral problems or poor family relationships, the main concern is still to get the child home, but corrective counseling measures are undertaken as an emergency procedure.[27] The intake worker holds an informal conference with the parents when they pick up the child, informing them of the child's problems and their responsibilities under the law. If the parents themselves are the cause of the problem, they are encouraged to correct the situation themselves or to seek professional help.

> *Case # 1*: A fifteen-year-old youth, who had run away from home following a beating by his father, had been in detention for twenty hours. The intake worker's interview with the boy disclosed that his parents were experiencing marital problems. Since a release *might* have been harmful to the child, the parents were interviewed by the intake worker to determine the advisability of releasing or detaining the child. Although the parents were reluctant to admit that they had caused their son to run away, after discussion and an indication by the caseworker of the child's attitude, the father acknowledged the marital problems and that he had been unduly harsh with the child. Both parents expressed a desire to take the child home and try to resolve their problems.

At this point, the basic function of the interview was accomplished. The worker could send the child home since the parents' response to the interview assured at least a temporary resolution of the crisis. The interview continued, however, in an effort to correct the situation permanently.

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27. The casework counseling or "social work" services are those not directly related to the judicial function which encompasses, other than disposing of cases, such things as pre-hearing investigations and probation counseling. However, until the community has provided adequate agency services for diagnosis and treatment, the court will attempt to perform these services as best it can as a "stop-gap" measure. See Gary, *The Juvenile Court's Administrative Responsibilities*, 7 CRIME & DELINQUENCY 337, 342 (1961); Stark, *The Prospect for Correction*, 6 CRIME & DELINQUENCY 337, 339 (1960). For citation of authorities representing the opposing views concerning the use of "social casework" methods, see Dembitz, *Ferment and Experiment in New York: Juvenile Cases in the New Family Court*, 48 CORNELL L.Q. 499, 514 n.68 (1963).

> The parents were referred to a private welfare agency—the Family and Childrens Service. They promised to seek help and report to the court if any further trouble occurred. The child was brought down from detention and reunited with his parents in the presence of the worker who explained to the child the plans made and informed all the parties of their reciprocal duties under the law. The conference was terminated and the parents and child were told that they would be informed whether further action would be taken. The report of the forty-minute interview, comprising about two typed pages, was forwarded with a copy of the police report for screening. The report contained the worker's impression of the child, parents, family background, and the referral and would serve as a basis for the screening decision whether formal or informal handling would be needed.[28]

The intake worker's decision that the child should be detained involves the judge because a detention order must be executed by him.[29] Moreover, if the worker is doubtful whether the child should be released, a hearing is convened that involves the judge, intake supervisor and intake worker. A decision to detain has the additional effect of a finding of jurisdiction and will probably influence the screening decision towards a formal hearing.

When the child is detained, the intake worker through daily one-hour interviews seeks to elicit information necessary for preparation of the case record for formal hearing. The interpretation of the child's needs by this intake worker, who is a psychologist (the other intake workers are social workers), is an important factor in the judge's decision as to disposition.

2. *The Screening Decision*

Screening is a process of evaluating the results of the preliminary inquiry to decide whether a petition should be filed or the case should be handled informally. This function is performed by the Supervisor of the Intake Department who first reviews the initial findings to insure that the court has authority to proceed. If it is decided that a formal hearing is warranted, a

28. The usual approach is to try to have the parents correct the situation themselves (this is in accord with the purpose of the Code, Mo. Rev. Stat. § 211.011 (1959)), but when there is a strained family relationship, professional help is usually advised. Public welfare agencies may be recommended, but the waiting lists make them unsatisfactory if private help can be afforded. The cost of private agencies is usually reasonable since most are community supported. Further action is usually not taken if the parents and the child comply with the intake worker's advice.

29. Mo. Rev. Stat. § 211.141 (2),(3) (1959). Detention will usually result in only those cases involving offenses that ordinarily might be screened for a formal hearing or concerning a child already under supervision.

Often the child should not have been brought to detention because the evidence did not warrant court intervention. However, some police departments think that locking a child up for the night will prevent further misbehavior or is a good means of punishing the child. Neither reason is sufficient to hold a child but since the worker is not present at night, the decision for release cannot be made until morning.

petition upon which binding jurisdiction is based will be filed;[30] if not, the case technically must be dismissed. The dismissal often is subject to conditions imposed by the Intake Department, or conditions may be imposed by the Director in an informal court hearing. In either case jurisdiction is assumed on the basis of the preliminary inquiry.

The factor most influential in the screening decision is the nature and seriousness of the child's conduct, although other factors may also be important. If the child has committed what by adult standards would be a serious felony or a lesser offense accompanied by a record of recalcitrance, the screening usually results in formal hearing before the judge. In such cases, formal handling by the judge, who has the power to take custody of the child from the parents, enables the court to exercise *continuing* jurisdiction over the child.[31]

Offenses classed as misdemeanors by adult standards will generally be screened for informal court handling by the Director of Court Services, particularly if it is the child's first offense: all traffic violations not combined with a more serious offense, minor peace disturbances, minor assaults, disorderly conduct, consumption of alcoholic beverages, and some shoplifting cases. If the child has committed an offense not a crime by adult standards or has come to the court's attention for the first time, or if circumstances—especially a poor home situation—indicate a symptomatic problem and a need for direction through personal counseling, the intake staff may be assigned the case for informal handling; such cases include runaways, some truancies,[32] minor forms of molestation, exposure of person, illicit sexual behavior, trespassing, curfew violations, vandalisms, some shoplifting, discharge of firearms, minor theft or arson, and incorrigibility

30. When a petition is filed for a formal hearing, the case is docketed and the parents are summoned to bring the child before the court. The information compiled by the Intake Department through the referrals and investigations is presented to the judge. The first court hearing before the judge is a jurisdictional hearing to determine if the court should take further action.

If the child is over fourteen years of age and the offense is a felony by adult standards (and some traffic cases), the judge may find that the child should be prosecuted under the criminal law. Mo. Rev. Stat. § 211.071 (1959). When jurisdiction is assumed, the case is usually adjourned and a deputy juvenile officer is assigned to make a social study of the case. If not, the case is dismissed, either with warning or other adjustment. The social study is a complete report on the child, his parents and friends, school record, attitude, and reports from welfare agencies. The study is forwarded to the judge who has three basic alternatives: (1) dismissal if the social study indicates that the parents can handle the situation themselves; (2) assignment to a deputy officer for supervision until the officer thinks supervision is no longer needed; or (3) commitment of the child to an institution, for which another hearing is required.

31. Mo. Rev. Stat. §211.041 (1959).

32. About fifty per cent of the truancies for the school year of 1964-1965 were screened for jurisdictional hearing by the judge.

charges. If the case is very minor or the information indicates the child was not directly involved, the offense was committed unintentionally, or proper steps have been taken to prevent re-occurrence, the Supervisor of Intake may dismiss the case by a warning letter to the parents.[33]

Factors other than the nature of the offense which may alter the choice are: the sophistication of the offense, the presence of companions, the degree of involvement, the child's reaction to being apprehended, his denial or admission of guilt, his version of the incident, the circumstances attendant on his apprehension, the referring police department, the age, sex, environment and past record of the offender, the availability of information, and the subsequent attitude and actions of the child and his parents.[34] Age has little influence unless the child is very young or nearly seventeen years of age. Very young delinquent children are most effectively handled informally or privately; those close to or who reach seventeen after the offense occurs may be handled in an informal court hearing.[35]

The screening decision also attempts to take into account judicial administrative necessity in cases such as traffic, truancy, runaway and symptomatic behavior problems. These categories of offenses are felt to be handled most efficiently by systematized informal procedure, enabling the judge to devote his energies to cases needing special attention. The screening decision is not reviewed by the Intake Department Supervisor before the decision for handling is made. After screening, the case is assigned to an intake worker who decides the disposition. Nevertheless, a check of the correctness of the choice is made by dispositionary personnel[36] who can (and often do) refuse to handle the case when it comes up on the docket because the screening decision is deemed improper. When this occurs, the case is sent back for re-screening with a recommendation and any further information uncovered in the disposition process.

3. *Official Intake Dismissal*

The Intake Department has authority only to screen the case for informal or formal hearing, or to dismiss. Often its dismissal is conditional. When the child or parents refuse to comply with the informal decision, the case can,

33. The factors listed are guides only and will change depending on other circumstances, such as the case loads of the judge, Director, or workers concerned.

34. Companion cases are all handled alike in screening if possible. See generally Sheridan, *supra* note 7.

35. The judge might not take jurisdiction over a seventeen-year-old child for an offense when he might over a younger child.

36. Various people "dispose" of cases depending on the level at which the action is taken: informal handlers may dismiss the case when referred, the Supervisor of Intake may dismiss by letter, or the Director, the informal Court handler, can dismiss or have the case re-screened.

and frequently will, be re-screened for a formal hearing before the judge. A petition is then filed and the child incurs an official record. Therefore, compliance with the decision of the worker in charge of disposition is usually advantageous to the child and parents. The two types of official Intake disposition available are "letter dismissal" and "informal handling."

a. letter dismissal. Letter dismissals are made by the Supervisor of Intake for the very minor offense, especially when a re-occurrence is unlikely. The letter has two functions in addition to informing the parents of the offense and indicating that further action is not *presently* contemplated: to explain their responsibility to correct and guide their child's behavior, indicating that the court will act if repetition occurs; and to encourage them to contact the court as further problems arise. After the letter is sent, the case is officially closed unless the parents request help.

b. "informal handling." "Informal handling" is the term used for casework services given to children and their parents when it is felt that the behavior is symptomatic: that the basis of the child's actions is problems deeper than the severity of the offense would indicate.[37] This service consists of an exploratory interview of between one and two hours which is primarily oriented to determine what, if any, casework service the family needs. The child and parents are then counseled on the recommended treatment and a contact with a community or private agency is frequently a condition of dismissal.

The individual worker handling the matter has the responsibility to prepare the case for disposition. No docketing of cases is required, but the interviews are held as soon as possible. A letter is sent to the parents requesting them to bring the child to the court at an appointed date and time.[38] Should the parents fail to respond, a registered letter is sent, stating when the hearing has been rescheduled and that a second failure to

37. Some serious cases are handled by the social caseworker if Intake believes the actions are symptomatic. Help is given in the minor cases because the judge might refuse to take jurisdiction.

38. Both parents are asked to come to the hearing, but the appearance of only one is sufficient. Parents usually respond to the first letter, which is set out below:

Dear

The St. Louis County Juvenile Court has received a report describing a situation involving your child.

It is the duty and responsibility of this department under the law to investigate and study each matter brought to our attention by written complaint, and to make some appropriate disposition of these matters.

We would like to see you and   in this office on
at   to discuss the previously mentioned report with me. I shall appreciate your cooperation in appearing here as directed, and in aiding me to secure such information as will help in making proper disposition of this matter.

Sincerely,
Deputy Juvenile Officer
Intake Department

appear will cause a formal petition to be filed and the parents summoned.[39] Another failure by the parents to come is handled by having the police visit the home to explain the situation. If the parents then do not cooperate, the case will be returned for re-screening. Every effort is made to handle the case informally, but the Intake Department lacks power to compel compliance with its request to appear. The threat of a formal petition is usually sufficient, however. If the parents are unable to appear for good reasons, the intake worker may conduct the interview at the parents' home.

When the parents appear with their child, the interview is conducted in the worker's office at the court building. After interviewing both the child and the parent(s), the worker may either dismiss or recommend a re-screening for a formal hearing. Factors influencing this choice include the amount of available evidence, whether there was an admission or denial in the child's version of the incident, both the parents' and child's attitude toward the behavior, any information gathered during the interview, and most important, the worker's evaluation of the situation. Dismissal may be merely with warnings, or it may be conditioned on some further action by the child. The conditional dismissal is always used in cases of truancy if the child is under sixteen years of age; the child is told that his file will be held open until he reaches his sixteenth birthday. A check is made with the principal of the school after between thirty to sixty days to insure compliance, after which it is the duty of the school principal to contact the court if any further truancy occurs.[40] The conditional dismissal is also used in the

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39. The following is the form of the second letter:

Re:
Referred:
By:

Dear

You received a notice to appear at the Children's Welfare Center on ______________ for a hearing on a matter concerning your child.

You failed to appear for this hearing at the appointed time. We realize these appearances involve certain inconveniences, however, your child's behavior has made this hearing necessary.

We will reschedule this hearing for ______________ at ______________.
You will be expected to put aside all other things and make your appearance here with your child. Failure to appear on this second notice may result in the filing of a formal petition before the Court.

Very truly yours,

Deputy Juvenile Officer
Intake Department

40. The court's interest in the child's school attendance ends on his sixteenth birthday, after which the truancy laws are inapplicable. Mo. Laws 1963, at 273-77.

situations in which referrals for help are made to other agencies,[41] but no checks other than to affirm the initial contact are made.

Approximately eighty-five cases per month are conditionally dismissed; more could be screened for this type of disposition if more personnel were available.[42] The following case is typical.

> *Case # 2*: A truant child was called into the worker's office and asked why he thought he was there in the hope that he might volunteer information omitted from the report. After the background was established, the interview continued in a direct but informal manner. The process of "feeling out" the problems of the child was accomplished through questioning him about how he got along in school, his grades and the explanation for his truancy.
>
> Since this was his first referral to the court and he was apparently performing his schoolwork satisfactorily, no symptomatic problems appeared to be present. Had the boy been truant for what seemed to be an unexplainable or symptomatic reason, the inquiry would have continued until the child had a chance to explain his needs. The boy was counseled on his responsibility under the law and told that no further action would be taken as long as he attended school faithfully. The father, who had brought the child, was then interviewed and advised of his responsibility to see that the child attended school. The case was then closed pending the child's compliance with the instructions.

The interview lasted only thirty-five to forty minutes, which was shorter than usual because of the worker's evaluation that the incident was a single lark rather than a symptomatic problem. The case was informally handled, however, because of the family's poor past record with the court, and because truancy usually indicates a deeper problem. A full report of the hearing (normally consisting of two to three pages) was then compiled, including pertinent information, the worker's impressions, recommendations, and disposition used. This report is an informal record on which to base further action should the worker's recommendations not be followed.

B. *The Director of Court Services and the Informal Court*

When a case is screened for informal court handling, it must be sent to the intake worker who prepares the docket. These cases are kept in chronological order if possible, but are subject to change by the Director of Court Services, who acts as judge in the informal court. After the case is

41. The usual referral is to the Child Welfare Service. Delinquency referrals are handled by two full-time intake workers and a part-time worker. Two other intake workers handle a total of forty neglect cases informally per month.

42. A 100% increase in truancy referrals in 1963 caused much of this strain on the Intake Department's ability to handle informal dispositions. One intake worker handled 296 cases during the one year period.

docketed, the same process is used as in informal handling by Intake.[43] Intake sends letters informing the parents to bring the children in for hearings, which are usually held two-and-one-half days each week and number from seventy-five to eighty cases per week. Each case takes approximately ten to fifteen minutes; only one child and the parents are heard at a time, even where there are companion cases. A hearing is held even though only one parent is present.

The cases are usually of the type that can be handled in a summary manner as opposed to those handled by the Intake Department,[44] but the same restriction concerning the lack of power to bind the child or parents applies to the decision of the Director. The only compulsion available to force the child and parents to appear is the threat of filing a formal petition, but in practice most persons comply since they are unaware that the orders are not binding.

The range of dispositions available to the Director is greater than that of the Intake Department due to the statutory authorization[45] given the judge to delegate some of his authority to the juvenile officer. The Director has been delegated the power to suspend or revoke drivers' licenses, but is limited in actions directly concerning the child to dismissal or re-screening. The dismissal without condition is used when the evidence is insufficient or conflicting, or when there is no property damage and the cause of the problem has been corrected.

> *Case # 3*: A thirteen-year-old boy was taken into custody for driv- a go-cart on a busy highway. At the hearing held before the Director, the child stated that he had driven the cart across the highway to get to a private parking lot where he could drive the cart safely. The boy's father, who had refused to come on the first notice but had responded to a threat of a subpoena and formal hearing, verified the child's story, which he gave as his reason for ignoring the request to come to the court. Because of the verified story and the fact that the cart had been subsequently sold, the Director dismissed the case without condition after a short lecture on the danger of driving go-carts across the highway. The hearing lasted about ten minutes.

If there has been property damage and the problem underlying the offense persists, the Director will insist upon restitution *by the child* for the property

43. School letters are sent out to get more information on the child, and the case is usually not docketed until replies to these letters have been received.

44. Although the cases observed and recorded herein may appear of a less serious nature, it should be noted that the Director hears a wide range of cases from trivial to serious. For a discussion of the types of offenses, see Smith, *Informal Court Services*, in 1964 REPORT 16-17.

45. MO. REV. STAT. § 211.401 (1959).

damage, and "repayment to society" through public service or "reconstruction of moral values." In addition, the child is lectured on the legal standards which are required of him as a juvenile.

The cooperation of the parents is encouraged to see that the child does extra duties so he can earn the necessary money for restitution, rather than paying for it themselves. They are also asked to see that the child complies with the repayment to society by fulfilling the Director's request. These conditions range from going to six o'clock mass each morning for one month and thinking about the offense committed, to doing community service each Saturday for several weeks or going to Traffic School.[46] When these conditions have been fulfilled, the parents and child are asked to write the Director a letter telling him that the conditions have been fulfilled. No check is made on the truthfulness of the letter, but since the parents usually desire to cooperate, it is believed that the great majority of the conditions are fulfilled. Where the parents have already imposed similar conditions on the child prior to the hearing, no further action is taken.

> *Case # 4*: An eleven-year-old boy had taken several small pieces of scrap wood from the yard of a house under construction. The boy and his parents were called into the Director's office and seated before his desk. After the door was closed, the Director introduced himself and explained that he was handling the case. After an inquiry to insure that the persons were the parents and the child named in the *application*, the police report was read. The child admitted the trespass and taking but added that he had been there several times before and gathered the same type of wood with the permission of the builders. The wood taken had been left in a pile with other rubbish as in the past, and according to the police report had little if any value. The police report also indicated that the owner was really not concerned with the wood, but only wanted to be certain that various acts of vandalism were discontinued and that the children in the neighborhood knew that they were not allowed on the property. The parents added that they had been to see the house owner and offered to pay for the wood, but that he refused to discuss the incident other than to say that he was tired of having children around his property. Since the parents indicated that they had lectured the boy not to trespass on anyone's property again, the Director only briefly explained the law to the boy and dismissed without condition.

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46. No instance has been been found in which an objection was made, for example, that a condition requiring attendance at church services is unconstitutional even though this would seem to be a possibility. The threat of a formal hearing is apparently sufficient to induce acquiescence. For a case holding that imposition of such a sanction by the judge as a condition of probation was unconstitutional, see Jones v. Commonwealth, 185 Va. 335, 343, 38 S.E.2d 444, 447 (1964).

Case # 5: An eleven-year-old boy broke a window with an air B.B. gun. The mother accompanied the child, who confessed that he had been shooting in the air and hit the show window in a hardware store across the street. The child also admitted that he had taken the gun outside without permission and was not allowed to use the gun in the city. The mother was then asked what she had done about the incident. She said she had gotten rid of the gun and had talked to the store owner about the damage. He had estimated that he could get a new window for about fifty dollars, but that the insurance would cover the damage. Since the report indicated that the B.B. gun had only chipped the glass, which had already been chipped at least five or six times in the same manner, the Director recommended that the child pay only a proportional part of the damage. The sum set was ten dollars, which the boy was expected to earn and pay to the owner. The case was conditionally dismissed pending compliance with this recommendation.

The range of dispositions by the Director is as broad as the range of offenses heard: straight dismissal to re-screening for a formal hearing, but the majority of the cases are conditionally dismissed pending some form of action as described above.

The method used by the Director is more formal than the aproach used in "informal handling." The court is held in the Director's office, but is strict and directly to the point, as if in a courtroom. No smoking is permitted and parents are not allowed to interrupt the questioning procedure. In the usual case the report is read to the child and he is asked if this is substantially what occurred. If there is an admission the Director asks why the child did this act and if he thought it was right when he did it. He then proceeds to explain the seriousness of the breakdown in the child's character and explains that it is not only a breach of the state statute, but also of moral and religious law. The moral and religious approach is used substantially to encourage the child to re-evaluate his conduct. The Director then sets the standards and conditions he expects the child to meet, and after receiving the parents' assurance that the court order will be carried out, the case is dismissed.

Case # 6: The child, a sixteen-year-old boy, and his parents were called to a hearing in the Director's office. The offense charged in the police report was the shoplifting by two boys of two paperback books from a local store. The child was reluctant to admit the theft, indicating that his only act was to take the books from the shelf and place them in the bag which his companion later carried out of the store. Considerable time (about five minutes) was taken to inquire whether the theft was planned, either before entering or while in the store, or whether the child believed his companion intended to pay for the books. After stern questioning by the Director, the child admitted that

the idea of the theft was conceived in the store and that neither boy had intended to pay for the books. After the admission of guilt and the circumstances of the taking, the Director lectured the child on his responsibility for the theft because of the planned taking and then asked why the child wanted to steal the books. The child admitted he had no apparent reason since he had the money to buy the books if he had really wanted them. The Director then questioned the breakdown in the child's attitude toward society and the law. In order to give the child the time to think about the duty owed to himself, his parents and society, the Director asked the parents' help in seeing that the child attended six o'clock mass for the next month. Since the books had been confiscated by the arresting officer and returned to the store, no restitution was necessary. Prior to the time the Director asked the parents for their help, the child was made to speak and act in his own behalf. The hearing was ended on the child's and parents' promise to comply with the Director's recommendations. The parties were informed that the dismissal was conditional, pending fulfillment of the recommendations. The entire handling took about fifteen minutes.

Case # 7: The next case on the docket involved the sixteen-year-old companion of the child in case # 6. After the police report was again read, this child readily admitted the theft. He could not give a reason for the theft, since he also had enough money to pay for the books if they were really desired. Because the two boys' stories were substantially similar, little additional questioning was necessary. The child was lectured about his responsibility under the law and the Director recommended that the child attend church on Sundays, join the church youth fellowship, and attend its meetings regularly. Again the parents were asked to help and they agreed. The case was conditionally dismissed pending the fulfillment of the recommendations by the parents and the child. The hearing lasted about ten minutes (a subsequent companion hearing usually is slightly shorter than the regular hearing).

If the case is too serious for dismissal, it is re-screened.

Case # 8: A fourteen-year-old boy was found trespassing on a roof adjacent to a building that had been burglarized. The report read to the child contained evidence that the goods stolen from the store and burglary tools were piled in the same corner in which the boy was hiding. The explanation given was that he had been walking down the alley at 12:30 a.m. when his friends, whom he could identify only by their nicknames, called to him from the roof and asked him to come up and see what they had found. When he got to the roof, the police came and began shooting at his friends who ran away while he hid on the roof. After listening to the story, the Director asked the child whether he was a lookout for the burglary, which he denied. The Director, feeling that the case had been improperly screened due to the evidence surrounding the trespass, and the late hour of the occurrence, ended

the hearing and informed the child and his mother that they would hear further from the court as he felt the case warranted the judge's handling. The hearing took about ten minutes.

If there is a denial and the evidence in the police report is clear, the case is held open pending the parents' and child's clarification of the facts with the referring police department. If there is a denial and the evidence is unclear, the case is usually dismissed without condition.

A record is kept of each case handled, noting the disposition and condition, to insure that the parents fulfill their obligation to report and because each police department is notified of the disposition of each case it refers. The record also serves as a basis for screening further referrals on the child should another offense be committed. Because of the short time the Director sees the child and parents, he cannot always choose the best disposition, but where prior dispositions have failed, they can be used as a guide for future action.

II. INFORMAL DISPOSITION: STATUTORY AUTHORIZATION AND CURRENT PRACTICES

The practice of informal disposition in St. Louis County has been detailed in Part I of this note. As an aid to discussion of the general problem of informal disposition, a comparison of the statutory authorization and use of the practice in other jurisdictions is outlined below. Included in the discussion are the pertinent provisions of the sixth and most recent edition of the Standard Juvenile Court Act.[47] Earlier editions of the Standard Act have served as a basis for a great number of the state statutes and the num-

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47. Prepared by the Committee on the Standard Juvenile Court Act of the National Probation and Parole Association (now National Council on Crime and Delinquency) in cooperation with the National Council of Juvenile Court Judges and the United States Children's Bureau, published in 5 NATIONAL PROBATION & PAROLE A.J. 321 (1959). The Standard Juvenile Court Act was first published in 1925 and revised editions have been issued in 1928, 1933, 1943, and 1949. For discussion of the act see Paxman, *Evolution of the Standard Juvenile Court Act*, 5 NATIONAL PROBATION & PAROLE A.J. 392 (1959). A review of the sections applicable to the process of intake appear in Sheridan, *Juvenile Court Intake*, 2 J. FAMILY L. 139 (1962).

The Standard Family Court Act, prepared by the Committee on the Standard Family Court Act of the National Probation and Parole Association in cooperation with the National Council of Juvenile Court Judges and the United States Children's Bureau, is published in 5 NATIONAL PROBATION & PAROLE A.J. 97 (1959). This first edition of the Family Court Act is intended to serve as a guide—as has the model legislation concerning juvenile courts—for the family court movement first begun in 1914. *Id.* at 100. The act is intended to supplement the already existent juvenile court laws. The discussion of the Juvenile Court Act is equally applicable to the provisions of the Family Court Act, the language and section numbers of which are identical unless noted otherwise.

ber of revisions account in part for the differences of practice among the states. The latest edition of the Act will undoubtedly influence future juvenile codes.[48]

In this note, "informal disposition" refers to decision-making and adjustment at various levels short of filing of a formal petition and formal hearing before the judge:[49] by apprehending officer or agencies, by the intake or probation staff at the preliminary inquiry or after screening, or by a court official in an informal hearing. In the state statutes the procedure for some kind of informal disposition may be (1) specifically provided, (2) allowed by implication from broad statutory language, or (3) neither specifically nor generally authorized. The power to dispose of referrals infomally may be limited by specifically granted powers or modified by unique practices in individual courts but in all states the judge of the juvenile court has control over its exercise.

A. *Station Adjustment*

The case load of the juvenile court depends mainly on the practices of law enforcement agencies, which are responsible for nearly all delinquency referrals to the juvenile court.[50] Statistics concerning control of juveniles by the police are not available but it is certain that a significant number of juvenile matters coming to the attention of law enforcement agencies never reach the juvenile court. An officer may decide not to take a child into custody, merely dismissing him with a warning. In communities in which there are special police screening officers, there may be a dismissal with or

48. For example, Utah has recently adopted a new juvenile court law based chiefly on the Standard Juvenile Court Act, together with selected provisions of the California, Oregon and prior Utah laws. 48 J. AM. JUD. SOC'Y 240 (1965). The enactment of the new Juvenile Court Act, UTAH CODE ANN. §§ 55-10-63 to -123 (Supp. 1965), which establishes a separate state juvenile system, was motivated by the decision of the Utah Supreme Court in *In re* Woodward, 14 Utah 2d 336, 384 P.2d 110 (1963), which held that the removal of court judges by the Welfare Department under the previous law was an unconstitutional violation of the principle of separation of powers.

49. This definition is similar to that which appears in *In re* Douglas, 82 Ohio L. Abs. 170, 172, 164 N.E.2d 475, 476 (Juv. Ct. 1959). The Ohio court noted that even though the statutes do not define the mechanism of informal proceedings, a well-defined informal procedure had developed. Informal procedure is distinguished from formal procedure because in the former "no written pleadings are filed and the case is not docketed or recorded, but memoranda are made and kept in the social files of the court." An "unofficial case" was defined as any case not within the definition of an "official case" which is " 'one which comes to the attention of the court through the filing of a written complaint which is not withdrawn before action is taken by the court on such complaint.' "

50. Molloy, *Juvenile Court—A Labyrinth of Confusion for the Lawyer*, 4 ARIZ. L. REV. 1, 4 (1962); see Note, 10 STAN. L. REV. 471, 477-80 (1958).

without a warning.[51] The police may attempt to regulate the child's conduct by a kind of probation called "station adjustment" in which officers make periodic checks on the child's behavior. The court is virtually powerless to control police practices which will depend on various factors, among the most significant of which are the individual police officer's impression of the child, community pressures, and the enforcement agency's confidence in the machinery of the juvenile court.[52]

B. *Intake Department Disposition*

All juvenile courts have an officer or department which performs the function of "intake", *i.e.*, processing of referrals to decide the course of action in each case.[53] The authority for the gathering of data for the intake decision is derived in most states from statutory provisions providing that the court shall make a preliminary inquiry to determine whether the interest of the public or of the child require that further action be taken.[54] A few states prescribe that whenever possible the preliminary

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51. See, *e.g.*, NEW JERSEY LAW ENFORCEMENT COUNCIL, STUDY AND SURVEY OF MUNICIPAL POLICE DEPARTMENTS OF THE STATE OF NEW JERSEY 77-83 (1958).

52. Note 15 *supra*; Handler, *The Juvenile Court and the Adversary System: Problems of Function and Form*, 1965 WIS. L. REV. 7, 18-19 n.52. One court has commended the "admirable policy" of a metropolitan police department conducting investigations of juveniles in custody "to determine the possibility of avoiding the making of a record and thus releasing the child." Harper v. Strange, 158 F.2d 408, 409 (D.C. Cir. 1946).

53. Standard Juvenile Court Act § 12, comment (1959); see SUSSMAN 29; Sheridan, *supra* note 47, at 139. There is a wide divergence in practice; the size of the court and community referral practices affect the length of time and exactness with which the process is carried on.

54. MO. REV. STAT. § 211.081 (1959). Other either identical or closely similar provisions are: ALASKA STAT. § 47.10.020 (1962); ARIZ REV. STAT. ANN. § 8-222 (1956); D.C. CODE ANN. § 11-908 (1961); GA. CODE ANN. § 24-2411 (1959); HAWAII REV. LAWS § 333-5 (1955); IDAHO CODE ANN. § 16-1807 (Supp. 1965); IND. ANN. STAT. § 9-3208 (Supp. 1965); IOWA CODE ANN. § 232.5 (1949) ("such investigation as he [probation officer or county attorney] may deem necessary"); KAN. GEN. STAT. ANN. § 38-816 (Supp. 1961); KY. REV. STAT. ANN. § 208.070 (1955); LA. REV. STAT. ANN. § 86(a) (1957); MICH. STAT. ANN. § 27.3178(598.11) (Supp. 1963); MISS. CODE § 86(a) (1957); MICH. STAT. ANN. § 27.3178(598.11) (Cum. Supp. 1963); MISS. CODE ANN. § 7185-05 (1942); MONT. REV. CODE ANN. § 10-605 (1947); N.M. STAT. ANN. § 13-8-25 (Supp. 1963); N.D. CENT. CODE § 27-16-11 (1960); OKLA. STAT. ANN. tit. 20, § 801 (1962); ORE. REV. STAT. § 419.482(2) (1963); R.I. GEN. LAWS ANN. § 14-1-10 (1956); S.C. CODE ANN. § 15-1281.17 (1962); TEX. REV. CIV. STAT. art. 2338-1, § 7 (1964); UTAH CODE ANN. § 55-10-83(2) (Supp. 1965); WIS. STAT. ANN. § 48.19 (1957); WYO. STAT. ANN. § 14-108(a) (1957); STANDARD JUVENILE COURT ACT § 12 (1959).

The Wisconsin Supreme Court has ruled that the word "shall" in the statute entitles the judge in his discretion to treat his own consideration of information presented to him as a sufficient preliminary investigation under WIS. STAT. ANN. § 48.19 (1957).

inquiry will include an investigation of the child's previous history, home and environment in addition to the facts and circumstances of the child's alleged misconduct or condition.[55] The preliminary inquiry is conducted in most cases by the social work staff, often called the probation department, which is generally composed of a chief juvenile or probation officer and deputy officers to whom the judge delegates broad authority subject to his supervision.[56] Authority is often delegated to the probation officer to investigate immediately the circumstances and facts surrounding the referrals to the court[57] or to make such investigations as the court directs before the hearing of the case.[58] This officer also has the responsibility to compile a social report concerning children who are to receive a formal hearing; the report includes the information gathered at the preliminary inquiry.[59]

State *ex rel.* Rickli v. County Court, 21 Wis. 2d 89, 94, 123 N.W.2d 908, 910-11 (1963). The Virginia provision, VA. CODE ANN. § 16.1-164 (1950), does not state that the purpose of the investigation is to decide whether the child's or the public interest requires further court action.

55. IND. ANN. STAT. § 9-3208 (Supp. 1965); KAN. GEN. STAT. ANN. § 38-816 (Supp. 1961); N.D. CENT. CODE § 27-16-11 (1960); R.I. GEN. LAWS ANN. § 14-1-10 (1956) ("To avoid duplication of effort . . . the report of any public agency, or of any private social agency licensed by the department of social welfare, may be accepted by the court as sufficient evidence for the filing of a petition."); VA. CODE ANN. § 16.1-164 (1950); D.C. CODE ANN. § 11-908 (1961).

56. STANDARD JUVENILE COURT ACT § 6(1) (1959) empowers the judge to appoint a chief administrative officer with the title of "director of the juvenile court" and administrative "assistants." The comment to the section indicates that these titles are preferable to the term "probation officer" often found in juvenile court statutes.

57. IOWA CODE ANN. § 232.5 (1949); KAN. GEN. STAT. ANN. § 38-816(b) (Supp. 1961); NEB. REV. STAT. § 43-205.03 (Supp. 1963); NEV. REV. STAT. tit. 5, § 62.130 (1963); N.M. STAT. ANN. § 13-8-24 (Supp. 1963); TENN. CODE ANN. § 37-255 (Supp. 1964); VT. STAT. ANN. tit. 33, § 606 (1959) (special commissioner to make report within 15 days); W. VA. CODE ANN. § 4904(65) (1961).

58. ARK. STAT. ANN. § 45-218 (1964); COLO. REV. STAT. ANN. § 22-8-8 (1953); CONN. GEN. STAT. REV. § 17-66 (1958); IDAHO CODE ANN. § 16-1843 (Supp. 1965); IND. ANN. STAT. § 9-3119 (1956); N.C. GEN. STAT. § 110-33 (1960); PA. STAT. ANN. tit. 11, § 259 (1965); S.D. CODE tit. 43, § 43.0324 (Supp. 1960); WASH. REV. CODE ANN. § 13.04.040 (1962).

59. The inquiry in the juvenile court is of a bifurcated nature: jurisdictional—whether the facts bring the child under the court's authority; and dispositional—what is to be done with the child within the jurisdiction of the court. The basis for assuming jurisdiction is the information compiled by the intake department in the preliminary inquiry and screening process. Once jurisdiction is assumed, the decision concerning disposition made by the judge is based upon his evaluation of the social report prepared by the probation or juvenile officer.

STANDARD JUVENILE COURT ACT § 23 (1959) makes it clear that the social study is distinct from the preliminary investigation and should consider in detail the financial and environmental condition of the child and the family. However, the earlier editions

At the preliminary inquiry, the juvenile officer must decide: (1) whether the juvenile and his conduct are within the court's jurisdiction, (2) whether there is sufficient evidence to support the allegations of the complaint, and (3) assuming a "prima facie" or admitted case (as is true with most referrals), whether to informally dispose of the case without a formal hearing or to initiate formal proceedings by filing a petition.[60]

1. *Jurisdiction and Evidence Sufficiency*

The court may not legally take action without jurisdiction but statutory definitions are so broadly drawn that any child within the statutory age limit is potentially within the court's jurisdiction. All the codes contain clauses that, if literally construed, would require only some law violation for "delinquency" jurisdiction;[61] indeed, most of the cases referred to the court are admitted offenses and apparently this is usually sufficient grounds for jurisdiction.[62] Many codes contain additional provisions similar to that of the Standard Act conferring jurisdiction on the court of a child "whose environment is injurious to his welfare, or whose behavior is injurious to his own or others' welfare."[63] Such provisions are felt to be consistent with the protective rather than punitive treatment philosophy of the juvenile court since they require merely a "course of conduct" demonstrating a need for

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of the Act and state statutes modeled after them indicate that the preliminary inquiry includes a complete social study at the point of intake. See statutes cited note 55 *supra;* Sheridan, *supra* note 47, at 145.

60. Rosenheim & Skoler, *The Lawyer's Role at Intake and Detention Stages of Juvenile Court Proceedings,* 11 CRIME & DELINQUENCY 167, 169 (1965); Sheridan, *supra* note 47, at 148-52.

61. Although jurisdiction based on anti-social behavior is generally categorized under "delinquency," there is a tendency to avoid use of the term as "unnecessary, sometimes impracticable, and often harmful." STANDARD JUVENILE COURT ACT § 8, comment (1959). The last three editions of the Standard Act and about one third of the state statutes avoid entirely the use of the word "delinquent." See generally Dembitz, *Ferment and Experiment in New York: Juvenile Cases in the New York Family Court,* 48 CORNELL L.Q. 499, 502-08 (1963). California substitutes the term "ward of the court" for "delinquent." CAL. WELFARE & INST'NS CODE § 602. The drafters of the New York Family Court Act attempted to limit an adjudication of delinquency to commission of specified offenses by labelling those children who are "ungovernable or habitually disobedient" as "persons in need of supervision." N.Y. FAMILY CT. ACT §§ 756, 758. The distinction, if any, between the court's power over either appears to be in treatment after adjudication: "delinquents" are "committed" and "PINS" are "placed." Dembitz, *supra* at 507 n.38; Schepses, *A Note on Labels,* 11 CRIME & DELINQUENCY 162, 165-66 (1965). These authors suggest the uselessness of dealing with labels; any term used to describe a child with behavioral problems, although innocuous when invented, will eventually assume a derogatory connotation. Schepses argues further that it is the offense, not the label attached to the child, which ultimately stigmatizes him.

62. Handler, *supra* note 52, at 19; Rosenheim & Skoler, *supra* note 60, at 172.

63. STANDARD JUVENILE COURT ACT § 8(2)(b) (1959). For a summary of the wide range of jurisdiction provisions, see SUSSMAN 21-22.

corrective action, a technical violation of the law being only evidence of such a need.[64]

The addition of a prediction of the child's future behavior to a showing of the commission of an isolated act may be consistent with the non-criminal character of the juvenile court proceedings but it leaves the court with an indefinite standard for determining jurisdiction. As a result, the intake fact-finder is vested with considerable discretion to assert jurisdiction over juveniles who have been arrested for acts which if committed by adults would not be punishable.[65] Two countervailing tendencies result: a willingness to proceed with doubtful authority when the intake worker thinks the child is in need of the court's services,[66] and a reluctance to assume jurisdiction of serious violations simply because a workable plan for rehabilitation cannot be devised, particularly when the child is approaching the age at which juvenile court jurisdiction ends.[67]

2. *Selection of Disposition*

If the preliminary investigation discloses that the child is not within the jurisdiction of the court or that the evidence against him is insufficient, court action should not be taken and the child should be returned to the referral source. If it is decided that the court should take action, the court worker to whom the power is delegated may choose either of two basic dispositions: (1) formal hearing, which requires the filing of a formal petition, or (2) informal adjustment through referral to another agency or by the court's own social staff.

a. formal petition. Many states allow only the probation officer or other official to file a petition,[68] but others also confer the privilege on any reputa-

64. See Pirsig, *Juvenile Delinquency and Crime: Achievements of the 1959 Minnesota Legislature*, 44 MINN. L. REV. 363, 379-80 (1960). Obviously the nature of the act is the most important factor, but it is urged that it should not be controlling. Deciding whether the act evidences a tendency toward future anti-social behavior often involves the difficult task of determining whether the conduct of the child is symptomatic of deeper problems, *i.e.*, he is merely "acting out" his frustrations. Sheridan, *supra* note 47, at 149-50.

65. Handler, *supra* note 52, at 15. The author states that many juveniles are held on petitions for acts that merely fail to live up to the personal moral codes of government officials.

66. SUSSMAN 23; Waalkes, *Juvenile Court Intake—a Unique and Valuable Tool*, 10 CRIME & DELINQUENCY 117, 120-21 (1964).

67. Waalkes, *supra* note 66. This practice has occurred, at least in the past, in the St. Louis County Juvenile Court.

68. *E.g.*, CAL. WELFARE & INST'NS CODE § 650. The probation officer may decide to file the petition on his own initiative (§ 652), or after investigating an application by any person (§ 653). The probation officer's decision not to file a petition within three weeks after an application to commence proceedings is reviewable if application for re-

ble person, subject, however, to the approval of the court.[69] The power to deny a petition in delinquency cases is to avoid petty and specious complaints from cluttering the court docket.[70] Some statutes apparently provide that no person may be prevented from filing a petition, but the court may refuse to take action upon it.

b. unofficial probation. In many states the court has authority to "make such informal adjustment as is practicable" without filing of a petition.[71] Even in those states without an express provision for informal adjustment, there is a widespread practice of adjusting numerous "behavior" referrals

view is made within a month after the original application. CAL. WELFARE & INST'NS CODE § 655.

69. The most typical provision is that the court shall authorize a petition after a person has given information to the court that a child is within the court's jurisdiction. *E.g.*, MICH. STAT. ANN. § 27.3178(598.11) (Supp. 1963). One member of the revision committee of the Standard Juvenile Court Act objected to giving an official of the court final authority to decide whether a petition would be filed. He believed that it should be the prerogative of the police, the agencies or any reputable person who have first-hand knowledge of the child and his background. STANDARD JUVENILE COURT ACT § 12, comment (1959).

70. Sheridan, *supra* note 47, at 142. Such authority is analogous to prosecutor's discretion in criminal cases. *Id.* at 141-42 & n.11.

71. IDAHO CODE ANN. § 16-1807 (Supp. 1965); KY. REV. STAT. § 208.070 (1955); LA. REV. STAT. ANN. § 13.1574 (1950); MD. CODE ANN. art. 26, § 86 (1957); MISS. CODE ANN. § 7185-05 (1942); MONT. REV. CODE ANN. § 10-605 (1947); MO. REV. STAT. § 211.081 (1959); OKLA. STAT. ANN. tit. 20, § 801 (1962); ORE. REV. STAT. § 419.482 (1963); S.C. CODE ANN. §§ 15-1281.17, -1291.15, -1301.15, -1311.15, -1321.28 (1962); UTAH CODE ANN. § 55-10-83 (Supp. 1965); VA. CODE ANN. § 16.1-164 (1960); STANDARD JUVENILE COURT ACT § 12 (1959). In Brown, *Virginia Juvenile Court Law of 1950*, 8 WASH. & LEE L. REV. 17, 23-24 (1950), the author comments on the Juvenile and Domestic Relations Court Law:

> The court now has stated authority to proceed informally and "make such adjustment as is practicable without a petition." Frequently complaints involve youthful transgressions which, at the time the complaint is made, stand out as those which may be "closed with a warning." A telephoned summons to the parents, a brief hearing and a conclusion that parental disciplines and control are adequate and that a warning is sufficient, are typical of informal hearings. Should the child be exonerated, he may be told so by the court. Should his problem be serious, then receipt of a petition may follow. Generally the result is to head off the development of serious child situations and to save time in the mechanics of handling a petition, summons, and notice to parents living within the state but at times outside of the court's jurisdictional area.

Two states provide that the preliminary investigation is to determine whether formal action should be taken "or whether the matter can be adjusted without a formal hearing." GA. CODE ANN. § 24-2411 (1959): HAWAII REV. LAWS § 333-5 (1955). ALASKA STAT. § 47.10.020 (1962) stipulates that after the report of the preliminary inquiry is filed, "the court may informally adjust or dispose of the matter without a hearing" or authorize the filing of a petition. In Nebraska, the probation officer to whom a child taken into custody is referred is to choose a disposition "which least restricts the minor's freedom of movement, provided such alternative is compatible with the best interests of the minor and the community." NEB. REV. STAT. § 43-205.02 (1960).

by an informal conference with the parents and the child, without a formal hearing before either a judge or referee.[72] However, the informal adjustment often takes the form of a type of "unofficial probation" in which an officer of the court dismisses the case upon receiving assurances from the parents and child that certain conditions will be met, attempting to insure compliance through supervision and the threat of initiating formal proceedings. There is little statutory authority for this practice but it appears to be used frequently despite the absence of legal sanction.[73] In many states, the juvenile commisioner of probation officer apparently derives his power to provide casework services from a broad provision similar to that in Missouri by which the Director is obligated to "perform such other duties and exercise such other powers as the judge of the juvenile court may direct."[74]

Unofficial probation has been criticized because it provides the opportunity for authoritarian court action when there may be questionable grounds for jurisdiction, since the fear of the alternative of formal proceedings will deter

72. See Burns, *Welfare and Social Progress in the Prevention and Treatment of juvenile Delinquency,* 5 CLEV.-MAR. L. REV. 35, 40-41 (1965); Prettyman, *Three Modern Problems in Criminal Law,* 18 WASH. & LEE L. REV. 187, 190 (1961).

In Waalkes, *supra* note 66, at 123, the author estimates "that a good intake department can screen out as many as 50 per cent of all cases referred to the court." For example, the Intake staff of the probation department of the Pima County Juvenile Court in Arizona "in accord with a custom which has developed throughout this country" adjusted 44 per cent of the cases referred to it in 1960. Molloy, *supra* note 50, at 4-5. In California in 1956 petitions were filed on only 55.3 percent of all delinquency referrals; nearly 40 per cent were either dismissed or referred to other agencies. Note, 10 STAN. L. REV. 471, 489 (1958).

73. For example, the North Dakota juvenile court utilizes its broad discretion in administration to permit "disposition with unofficial handling by the juvenile commissioner" in instances in which the actions of the child pose a relatively minor threat to the community. Newman, *Thoughts on the Social and Legal Nature of Deviancy and Delinquency,* 13 N. DAK. L. REV. 45, 47 (1955). The practice is also in widespread use in Washington. Hinkle, *The Juvenile Court Law of Washington: Its History and Basic Considerations for its Revision,* 32 WASH. L. REV. 376, 384 (1957).

74. MO. REV. STAT. § 211.401(4) (1959); *accord,* ALA. CODE tit. 13, § 360 (1958); ARIZ. REV. STAT. ANN. § 8-204 (1956); COLO. REV. STAT. ANN. §§ 22-8-8, 56-3-9 (Supp. 1960); DEL. CODE ANN. tit. 10, § 931 (Supp. 1962); FLA. STAT. ANN. § 39.17 (1961); GA. CODE ANN. § 24-2407 (1959); KAN. GEN. STAT. ANN. §38-814 (Supp. 1961); KY. REV. STAT. ANN. § 208.330 (Supp. 1964); LA. REV. STAT. ANN. 13.1587 (Supp. 1964); MD. ANN. CODE art. 26, § 57 (1957); MASS. GEN. LAWS ANN. ch 119, § 57 (1957); MICH. STAT. ANN. § 27.3178(598.7) (1962); MINN. STAT. § 260.311 (Supp. 1964); MISS. CODE ANN. § 7185-21 (1953); NEB. REV. STAT. § 43-207 (1960); NEV. REV. STAT. §§ 62.120, .123 (1957); N.M. STAT. ANN. § 13-8-13 (Supp. 1963); N.C. GEN. STAT. § 110-33 (1960); OHIO REV. CODE ANN. § 2151.14 (Page 1954); OKLA. STAT. ANN. tit. 20, § 799 (1962); ORE. REV. STAT. § 419.608 (1963); PA. STAT. ANN. tit. 11, § 259 (1939); TENN. CODE ANN. § 37-255 (Supp. 1964); WASH. REV. CODE ANN. § 13.04.040 (1962); W. VA. CODE ANN. § 4904(65) (1961).

any challenge to conditions imposed.[75] Revisers of juvenile codes have sought to overcome this criticism by attempting to limit unofficial probation to cases which could be dealt with officially, *i.e.,* cases in which the preliminary investigation has uncovered facts sufficient for potential jurisdiction.[76] In addition, the draftsman of the Standard Act have intended that informal adjustment through continuing casework service not be presented to the parents and child as an alternative to filing of a petition.[77] In Wisconsin, informal disposition is presented as an alternative to the filing of a petition; if the child's parents object to the conditions imposed—for example, they believe their child did not commit the alleged acts—they have the right to file a petition and make a record for appeal.[78] The intent of the Standard Act is apparently that once the decision is made to dispose of the case through casework service and consent is obtained, the

75. See Dembitz, *supra* note 61; at 514 n.68.

76. See STANDARD JUVENILE COURT ACT § 12, comment (1959); WIS. STAT. ANN. § 48.19 (1957), Revision Committee Note, 1955. In California the probation officer may undertake a program of supervision in lieu of filing a petition with the consent of the minor's parents or guardian only after he concludes "that a minor is within the jurisdiction of the juvenile court or will probably soon be within such jurisdiction." CAL. WELFARE & INST'NS CODE § 654. This section replaces the former § 721 (and the similar § 638) that gave the probation officer authority in cases in which he decided the filing of a petition was "not immediately warranted," to continue his investigation with the consent of the parents or guardian for a definite period of time during which he was to "supervise the minor or minors involved and render such assistance [to the parents and the child] . . . as may be necessary." The program of supervision could be ended by the revocation of consent by the parents or by the filing of a petition by the probation officer. When the parents withdrew their consent, the probation officer could approve the filing, or himself file, a petition if conditions warranted.

The motivation for repeal of sections 721 and 638 were the abuses which had crept into the practice of informal probation as disclosed by the GOVERNOR'S STUDY COMMISSION ON JUVENILE JUSTICE, ADMINISTRATION OF JUVENILE JUSTICE IN CALIFORNIA (1960). The study cited as the inherent dangers in its use: its employment in cases where the evidence was insufficient for adjudication of wardship; improper supervision due to overburdened facilities; and intervention when the delinquent could be more effectively helped by other agencies. Although informal probation was found to be used extensively, there was no consistent application—it was extended to all types of youths, those committing serious as well as minor offenses—nor real judicial control. *Id.* at 46. In practice, informal probation had become a device for control rather than rehabilitation due to the inadequate casework services provided: "in a 180-day period, the average minor on informal probation may be seen on only six occasions in most departments and less frequently in others." Furthermore, the study indicated that despite the statutory requirement for parental authorization for informal probation and the additional provision allowing revocation at any time, nearly half of the counties neither secured nor required consent and even among those which procured the consent the agreement did not include the right of the parents to revoke supervision. *Id.* at 47.

77. STANDARD JUVENILE COURT ACT § 12, comment (1959).

78. WIS. STAT. ANN. § 48.19 (1957), Revision Committee Note, 1955.

opportunity to file a petition is foreclosed, but the parents and child may withdraw from the service at any time.[79]

A few states have made no provision for informal disposition at the petition stage but instead have authorized an informal handling by the judge or referee after filing of a petition, sometimes referred to as a "deferred hearing." In these states, notably Wyoming and Minnesota, the court is authorized to continue the formal hearing for a specified period without an adjudication of delinquency and to place the child on probation.[80] A continuance by the court is preferred to unofficial probation since it provides the same benefits to the child while more adequately safeguarding his rights.[81] Nevertheless the practice of having all cases in which there is potential jurisdiction heard by the judge involves a practical problem overlooked by those who advocate a formal hearing in every case—the lack of a sufficient number of judges.[82]

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79. In accord with STANDARD JUVENILE COURT ACT § 12(1) (1959), in Wisconsin informal probation is limited to a period of three months.

80. MINN. STAT. ANN. § 260.185(3) (Supp. 1964); WYO. STAT. ANN. § 14-108 (1957). The deferred hearing procedure is different than the deferred prosecution of juveniles sometimes referred to as the "Brooklyn Plan" which has been used by the United States Attorney General's Office since 1946. First tried in the federal court of Brooklyn, N.Y. in 1935, this procedure of voluntary probationary supervision administered by the Attorney General is similar to the practice of "unofficial probation" described in notes 73-79 *supra* and accompanying text. See Meyer, *The "Brooklyn Plan" of Deferred Prosecution for Juvenile Offenders,* 37 J. CRIM. L. & CRIMINOLOGY 478 (1947); Wunnicke, *The 1951 Juvenile Court Law of Wyoming,* 8 WYO. L.J. 173, 192 (1954); Scaccia, *Federal Commitment Practices and Procedures for Juvenile Offenders,* 15 SYR. L. REV. 669, 678 (1964).

81. MINN. STAT. ANN. § 260.185(3) (Supp. 1964), Interim Commission Comment, 1959. This procedure seeks to avoid "improper" socialization of the judicial system by keeping the judicial function distinct from administration of social services. Implicit in this approach is the idea that "if the child's conduct or circumstances are sufficiently serious to warrant intervention by legal authority, then the child's rights should be protected by regularized procedure." Wunnicke, *supra* note 80, at 189. Of course, the judge as well as the probation officer will exercise a considerable discretion in a formal hearing based on his impression of the child and his interpretation of the facts. However, advocates of more direct participation by the judge feel that not only will the solemnity of the court appearance make a greater impression on the child and be more likely to forestall future serious conduct but that the legally trained judge will be a more objective arbiter than a juvenile officer.

82. Unofficial probation as a "safety value" for relieving the press of business has resulted in part from recognition of this insufficiency. Much of the commentary on juvenile court is based on the doubtful assumption that the juvenile courts are manned by fully adequate benches of specialist judges and fails to take sufficient account of the heavy work load of metropolitan juvenile courts and the lack of experience and ability of some juvenile judges. There is a danger that an overworked or incompetent judge will be incapable of making an independent appraisal of each case and will be inclined to "rubber-stamp" the findings and recommendations of the probation officer. As a result,

C. *Traffic Hearing Officers*

Violations of the law involving youth and the automobile constitute the largest single juvenile law enforcement problem and result in the largest group of referrals to the juvenile court.[83] The burden created by traffic referrals and the feeling that licensed drivers should be handled uniformly has caused disapproval of investing the juvenile court with jurisdiction of juvenile traffic offenders.[84] Nevertheless, most juvenile courts have jurisdiction of these cases; in fact, the lastest draft of the Standard Act explicitly provides for the juvenile court's jurisdiction of such cases, requiring only the issuance of a traffic citation to be invoked.[85] Nevertheless, a reluctance to treat typical traffic offenders as delinquents[86] has brought about the adoption of special procedures to deal with them. In states without a special statutory procedure, the judge may delegate the hearing of traffic cases to a juvenile officer.[87] California has provided for the appointment by the judge of a special traffic hearing officer who has the same powers as a judge or referee in disposing of traffic cases subject only to the limitation that his orders are reviewable by the judge.[88] Several other states have specific provisions delimiting the dispositions available when a child is found to be a traffic offender:[89] dismissal with reprimand and counseling;[90] requiring the

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the officer will be in a position to exercise control of the disposition by "tailoring" his report to what experience has taught him are the tendencies of the judge. Handler, *supra* note 52, at 17.

83. See note 2 *supra*.

84. Weinstein & Robins, *The Juvenile Court in Missouri: 1957-59—A Survey of Current Development and Future Requirements*, 1959 WASH. U.L.Q. 373, 400; see Pirsig, *supra* note 64, at 381.

85. STANDARD JUVENILE COURT ACT § 12(2) (1959). Several state statutes also dispense with the necessity of filing a petition. CAL. WELFARE & INST'NS CODE § 563; MINN. STAT. ANN. § 260.193(2) (Supp. 1964); VA. CODE ANN. § 16.1-164 (1960).

86. It should be noted that an investigation and petition are not *required* by the Standard Act but if the traffic violation involves "a moral, social, or legal problem, the matter can be handled by investigation, petition, and hearing before the judge." Paxman, *supra* note 47, at 399. "It is no more correct to call most of these [traffic] violators delinquents than to call the adult traffic offender a criminal." REPORT OF COMMISSION ON JUVENILE DELINQUENCY, ADULT CRIME AND CORRECTIONS, ANTI-SOCIAL BEHAVIOR AND ITS CONTROL IN MINNESOTA 10 (1957). However, the automobile can tempt minors to car theft, larceny, liquor violations and other delinquent acts. *Id.* at 10-14.

87. For example, in Missouri most of the traffic cases coming to the juvenile court are handled informally by the Director of Court Services. Weinstein & Robins, *supra* note 84, at 400; see note 2 *supra*.

88. CAL. WELFARE & INST'NS CODE §§ 561-68.

89. CAL. WELFARE & INST'NS CODE § 561; KAN. GEN. STAT. ANN. § 38-826(c) (Supp. 1961); LA. REV. STAT. ANN. § 13.1580.1 (Supp. 1964); OHIO REV. CODE ANN.

child to attend traffic safety or driver improvement school; suspension or restriction of driving privileges;[91] continuance of hearing upon condition;[92] release with supervision by the probation officer;[93] payment of fine;[94] or transfer to another court.[95]

D. *Referees*

In order to give the judge more time for difficult cases and to secure prompt action, approximately half the states provide for hearing of some cases by a person other than the juvenile court judge.[96] Most common

§ 2151.021 (Page Supp. 1964); ORE. REV. STAT. § 419.541 (1963); VA. CODE ANN. § 16.1-178 (Supp. 1964).

The Wisconsin Children's Code does not prescribe a special procedure but contains a specific provision for alternative dispositions by either the juvenile or civil court: moving traffic violations—restriction, suspension or revocation of driver's license on the first violation and revocation on any subsequent violation; violation of § 346.93 (intoxicants in vehicle with minor) whether or not a moving violation, suspension but not revocation on the first violation and either suspension or revocation on any subsequent violation. In addition, the juvenile court may require attendance at traffic safety school or adjudicate the child delinquent. WIS. STAT. ANN. § 48.36 (Supp. 1965).

90. CAL. WELFARE & INST'NS CODE § 564(1); MINN. STAT. ANN. § 260.193(5)(a) (Supp. 1964).

91. CAL. WELFARE & INST'NS CODE § 546(3)(a) (suspension limited to 30 days); KAN. GEN. STAT. ANN. § 38-826(c)(2) (Supp. 1961); LA. REV. STAT. ANN. § 13.1580.1 (1)-(3) (Supp. 1964); OHIO REV. CODE ANN. § 2135.35(F) (Page Supp. 1964); ORE. REV. STAT. § 419.541 (1963) (one year maximum). In Minnesota, the court may also recommend to the commissioner of highways that the license be cancelled when the "child is found to have committed two moving highway traffic violations or to have contributed to a highway accident involving death, injury, or physical damage in excess of $100." MINN. STAT. ANN. § 260.193(5)(e) (Supp. 1964).

92. MINN. STAT. ANN. § 260.193(5)(b) (Supp. 1964).

93. CAL. WELFARE & INST'NS CODE § 564 (3)(d); LA. REV. STAT. ANN. § 13.1580.1 (B)(8) (Supp. 1964).

94. CAL. WELFARE § INST'NS CODE § 564(3)(c) (maximum $25); KAN. GEN. STAT. ANN. § 38-826(c)(1) (Supp. 1961) ($5 for each violation); LA. REV. STAT. ANN. § 13.1580.1(B)(7) (Supp. 1964) (maximum $200); OHIO REV. CODE ANN. § 2151.35(c) (Page Supp. 1964) (maximum $50); VA. CODE ANN. § 16.1-178(9) (Supp. 1964) (maximum $50).

95. ORE. REV. STAT. § 419.533 (1963).

96. ALA. CODE tit. 13, § 357 (1958); ALASKA STAT. § 22.15.120 (1962); ARIZ. REV. STAT. ANN. § 8-230 (1956); CAL. WELFARE & INST'NS CODE §§ 553-69; DEL. CODE ANN. tit. 10, § 925 (Supp. 1964); GA. CODE ANN. § 24-2404 (1959); HAWAII REV. LAWS § 333-3 (1955); IDAHO CODE ANN. § 16-1843 (Supp. 1965); IND. ANN. STAT. § 9-3116 (Supp. 1965); KAN. GEN. STAT. ANN. § 38-804 (Supp. 1961); LA. REV. STAT. ANN. § 13:1580.1 (Supp. 1964); MICH. STAT. ANN. § 27.3178 (598.10) (1962); MINN. STAT. § 260.031 (Supp. 1964); MISS. CODE ANN. § 7185-14 (Supp. 1964); NEB. REV. STAT. § 43-236.01 (Supp. 1963); NEV. REV. STAT. § 62.090 (1963); N.J. STAT. ANN. § 2A:4-12 (1952); N.Y. FAMILY CT. ACT § 734; N.D. CENT. CODE § 27-16-02 (1960); OHIO REV. CODE ANN. § 2151.16 (Page 1954); OKLA. STAT. ANN. tit. 20, § 793 (1962); ORE. REV. STAT. § 419.581 (1963); TEX. REV. CIV. STAT. art. 2338-2a (1964); UTAH. CODE ANN. § 55-10-75 (Supp. 1965); VA. CODE ANN. § 16.1-144 (1960); WASH. REV. CODE ANN. § 13.04.056 (Supp. 1964); STANDARD JUVENILE COURT ACT § 7 (1959).

is the provision for appointment by the judge of a referee or commissioner to hear the case or class of cases assigned to him and to make and forward to the judge a written statement of his findings and recommendations.[97] In some instances, the findings of the referee are final unless the parents or guardians request review by the court,[98] but most of the states require confirmation by the judge before the recommendations become the decree of the court.[99] Generally the appointed officer is authorized to hear cases within the scope of the court's authority as permitted by the judge, but several states have limited the power of the judge to appoint referees in some special circumstances. The restrictions may be to (1) specific types of cases, such as traffic;[100] (2) specific centers of population, that is, cities of a certain size or specified clases of countries;[101] (3) limits on disposition, commitment or permanent changes in custody;[102] and (4) cases in which no jury trial is demanded.[103]

The qualifications which a referee should possess are infrequently specified but the Standard Act provides that the judge shall appoint suitable persons trained in the law.[104] The Standard Act, to insure the child is afforded due process, emphasizes that the referee is an auxiliary of the judge and that the

97. CAL. WELFARE & INST'NS CODE §§ 554-557, 561; DEL. CODE. ANN. tit. 10, § 925 (Supp. 1964); VA. CODE ANN. §§ 16.1-208(3) (1960), 16.1-144 (Supp. 1964); WIS. STAT. ANN. §§ 48.08, .19 (1957).

98. CAL. WELFARE & INST'NS CODE § 556; DEL. CODE ANN. tit. 10, § 925 (Supp. 1964).

99. *E.g.*, ALA. CODE tit. 13, § 357(1958); GA. CODE ANN. § 24-2404 (1959); MICH. STAT. ANN. § 27.3178(598.10) (1962); OHIO REV. CODE ANN. § 2151.16 (Page 1954); UTAH CODE ANN. § 55-10-11 (1963); STANDARD JUVENILE COURT ACT § 7 (1959).

100. *E.g.*, CAL. WELFARE & INST'NS CODE § 561; LA. REV. STAT. § 13:1580.1 (Supp. 1964).

101. IND. ANN. STAT. § 9-3116 (Supp. 1965) (cities of 50,000); TEX. REV. CIV. STAT. art. 2338-2a (1964) (counties of 806,700); VA. CODE ANN. § 16.1-144 (1960) (cities of 200,000).

102. MISS. CODE ANN. § 7185-14 (Supp. 1964) (no commitment); N.D. CENT. CODE § 27-16-02 (1960) (no permanent change).

103. TEX. REV. CIV. STAT. art. 2338-2a (1964).

104. STANDARD JUVENILE COURT ACT § 7 (1959).

> Referees are valuable in special types of cases; in busy courts they give the judge more time for difficult cases; they secure more prompt action where jurisdiction covers a wide area.
>
> . . . . The judge may direct that cases like the following be reserved to him: cases in which a child is likely to be removed from the custody of his parents; cases in which the parties are likely to demand a hearing before the judge; delinquency cases involving death or serious violence; cases in which the parties are represented by attorneys . . . [and] cases in which questions of law are involved. STANDARD JUVENILE COURT ACT § 7, comment (1959).

Several members of the committee were opposed to the provision for referees and would have stressed instead the value of having a sufficient number of judges and a good intake department in screening and preparing cases.

hearing before the judge is a basic right of anyone who desires it. The judge may direct any case or class of cases to be heard by the referee in the same manner as before the judge, but any party may request a hearing before the judge in the first instance. To insure the availability of review of the referee's decision, the referee's findings and recommendations are transmitted promptly to the judge on completion of the hearing, a written notice of which must be given to the parents or guardians.[105] The request for review, which may be a de novo hearing if requested, must be filed within three days of the notice.

III. CONCLUSION

Born out of reaction to the harsh treatment afforded juveniles through application of the criminal law, the juvenile court system in this country is founded on the concept of *parens patriae*. The court assumes the role of a "wise and kindly" parent in an attempt to rehabilitate rather than punish. The basic premise that underlies the juvenile court is "individualized treatment"; the court attempts to formulate a program of rehabilitation tailored to the juvenile's precise emotional and environmental needs.[106] This program includes a counseling relationship with a social worker enabling the child to release the emotions that are symptoms of his environmental and personality defects in place of expressing them in anti-social conduct. The purpose of giving to the court the character of a social service institution is to insulate the child from the by-products of exposure to a criminal court: (1) the social stigma of a court record that may obstruct his future attempts to obtain a job, enter the armed services, attend school and develop healthy friendships; and (2) the traumatic effect that results from dealing with the child in an authoritarian court setting.

Although the concept of the juvenile court is now firmly rooted in the judicial system, it has not fulfilled the expectations of its proponents. The

105. The draftsmen stated that:

The right of hearing before the judge, when demanded, must be respected. The written notice is required in order to assure the parties of the adequacy of the hearing and of their rights. Without this and other provisions clearly establishing due process of law, the court rightly becomes an object of criticism for its disregard of the rights of individuals before it. STANDARD JUVENILE COURT ACT § 7, comment (1959).

106. Among the numerous discussions of the history and evolution of the juvenile court and its philosophy are: Beemsterboer, *The Juvenile Court—Benevolence in the Star Chamber*, 50 J. CRIM. L., C. & P.S. 464 (1960); Dunham, *The Juvenile Court: Contradictory Orientations in Processing Offenders*, 23 L. & CONTEMP. PROB. 508 (1958); Eastman & Cousins, *Juvenile Court and Welfare Agency: Their Division of Function*, 38 A.B.A.J. 575-76 (1952); Ketcham, *The Unfulfilled Promise of the Juvenile Court*, 7 CRIME & DELINQUENCY 97-100 (1961); Long, *Headaches of a Judge—A Challenge to the Bar*, 27 WASH. L. REV. 130, 133 (1952).

clearest indicator of this is that the incidence of anti-social behavior among adolescents has continued to increase at a rapid rate. However, not all the increase indicates the court's failure. In part the increase is attributable to social forces such as increasing population with a trend toward urbanization, the upheaval from the social and civil rights movements, and the gradual disintegration of the family as the central social unit in American society. Second, the philosophy of individualized treatment is inherently inefficient. This is because the casework technique requires a large amount of a limited resource—the social worker's time—to treat effectively all juveniles referred to the court, and the tendency of social workers is to define their jurisdiction broadly, requiring them to deal with a large percentage of the referrals. These combine greatly to tax the resources of the present juvenile courts, with the result that the court's rehabilitative goals are not met and it becomes vulnerable to the charge that its basic premises are unsound and unworkable.

The critics and reformers of the juvenile court may be classified in two major categories: the "revisionists"[107] and the "internalists." The "revisionists" are the group that rejects the present juvenile court system in favor of the procedure that exists in the administration of the criminal law. The "internalists" seek to allay the current of criticism by improving the system within the structure of its traditional premises. Within each of the categories, the positions taken vary considerably in terms of the direction of change and the thoroughness of analysis that the proposal reflects.

Criticism of the court has concentrated on the discretion vested in the court's administrative officers to dispose of juvenile cases informally or unofficially. Informal disposition developed as the means of implementing the juvenile court's individualized treatment philosophy: (1) it provides an informal atmosphere which facilitates the casework relationship; (2) it insulates the child from the adverse effects of an authoritarian court setting, the stigma of a court record and possible exposure to essentially punitive institutional treatment, while it enables the juvenile officer, by assuming a non-judgmental attitude, to establish a rapport with the child essential to rehabilitation; and (3) it permits treatment of the child immediately after his misconduct which is the time he is most receptive.[108] There is no suitable

107. This characterization of the current critics and reformers is attributable to Professor Joel Handler. Handler, *supra* note 52, at 8.

108. Of course, the problem of the extent to which some system of informal disposition is made necessary by the impossibility of the judge hearing all the cases referred to the court is a serious problem, but is considered only incidentally here. If this were the sole justification for the device, the simple answer would be to secure an adequate number of judges, a problem obviously beyond the scope of this note. Instead, the purpose is to

alternative to some form of informal disposition which will accomplish all the ultimate policy objectives of individualized treatment. By informal disposition, the social worker intercepts incoming referrals and, in appropriate cases diverts the child through a course that completely avoids the judge and process of adjudication. If this machinery were scrapped or subjected to close judicial scrutiny, the incoming child would, by definition, have contact with the judge, a result wholly inimical to the casework method. This method requires a receptivity to the counseling services which is diminished when the child is exposed to the court and the adjudicatory process.

A. *The "Revisionists"*

The criticism of informal disposition by the "revisionists" takes three forms: uninformed, "constitutionalist," and "separatist." In the first group are found many newspapers, some law enforcement officers, and well-meaning layman who accuse the court of "coddling" juvenile offenders. Alarmed by the rising juvenile crime rate, they find the juvenile court the most likely scapegoat, failing to take account of other possible reasons for juvenile misbehavior. They mirror the common misconception that getting "tough" with juveniles (meaning, of course, adjudication and commitment) is the simple solution to the problem of juvenile delinquency.[109]

The second group emphasizes the juvenile court's denial of the minimum constitutional safeguards afforded in criminal adversary proceedings.[110] They argue that, notwithstanding the basic premise that the child is being rehabilitated rather than prosecuted, any affirmative action by the court represents an infringement of the child's liberty by an exercise of governmental power. Therefore, the court's jurisdiction should be limited to clearly defined anti-social behavior, thereby eliminating the practice of informal disposition. The "constitutionalists" advocate adversary procedures at a formal hearing in which the court may either dismiss the child or adjudicate him delinquent.

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provide a basis for assessing the theoretical justification for the practice of informal disposition as a substitute for hearing by the judge and to present the arguments concerning whether, in some cases, it is a preferable means of disposition. If the conclusion is reached that informal disposition is justifiable only as a means of lessening the judge's work load, then a proper inquiry might be whether the very existence of the informal disposition accommodation may not itself be a significant impediment to securing the necessary increase in judges.

109. See SUSSMAN 80; Silverman, *Lawyers and Social Workers in Juvenile Proceedings*, 6 CRIME & DELINQUENCY 262, 263 (1960).

110. This is the group to whom Handler referred when using the term "revisionists." For a discussion of constitutional problems as applied to the juvenile court, see Antieau, *Constitutional Rights in Juveniles Courts*, 46 CORNELL L.Q. 387 (1961); Paulsen, *Fairness to the Juvenile Offender*, 41 MINN. L. REV. 547 (1957).

The third and most thoughtful group of revisionists challenge the basic premise of a "socialized" juvenile court.[111] The "separatists" argue that: (1) it is inherently incompatible for a court to attempt to act as a court and at the same time as a social service institution; (2) the view of the court as a panacea for all juvenile problems makes the court an obstacle to the reform movement which produced it by discouraging the development of other community agencies for prevention and treatment; (3) a system based upon discretionary exercise of power in time evolves practices which are essentially arbitrary; (4) the assumption that the interest of the public is always identifiable with that of the child may result in the court not adequately protecting the community; and (5) it is improper to subject juveniles to the supervision of the court, albeit for non-punitive social counseling, based on a prediction of future anti-social behavior rather than a clear violation of the law. Because it cannot be accurately predicted that a child who has not committed a technical law violation will not be rehabilitated by the natural forces of his environment, they argue the possibility that the result of casework may be the opposite of that intended.

B. *The "Internalists"*

The proponents of the present juvenile court either have dismissed the criticism of its procedures as based on a lack of understanding of the court's purposes or have sought to meet the criticism by innovations in the present court's procedures.

As indicated by the study of the St. Louis County Juvenile Court in Part I of this note, a court may attempt to insure proper treatment of the child through use of information sheets, check lists and forms. Arbitary action by court personnel is sought to be minimized by a system of checks by dispositionary personnel. The prerequisite of such a program of "self-imposed administrative due process" is a competent and well-trained staff effectively supervised by an able judge.[112] The revisionists argue that self-imposed checks on exercise of discretion will fail not only because the system is inherently defective but because the court has not attracted the best personnel.

111. Allen, *The Juvenile Court and the Limits of Juvenile Justice*, in *Juvenile Delinquency Symposium*, 11 WAYNE L. REV. 676 (1965); Grygier, *The Concept of the "State of Delinquency" and its Consequences for Treatment of Young Offenders*, in *id.* at 672; Paulsen, *The Juvenile Court and the Whole of the Law*, in *id.* at 597. The problem of using the law as a vehicle for administering social services is fully discussed in Allen, *The Borderland of the Criminal Law: Problems of "Socializing" Criminal Justice*, 32 SOC. SERVICE REV. 107 (1958).

112. See Remington, *Due Process in Juvenile Proceedings*, in *Juvenile Delinquency Symposium*, 11 WAYNE L. REV. 688 (1965).

Draftsmen of juvenile codes, recognizing that the courts are becoming less receptive to the argument that a child is necessarily afforded due process in the juvenile court without application of specific constitutional safeguards,[113] have granted to juveniles the more important rights guaranteed adults in criminal proceedings. However, many have realized that exercise of these rights will have real significance only at the formal hearing and will not affect the controversial practice of informal disposition. As a result, they have sought to conform the practice to due process requirements by attempting to limit informal disposition to only those cases in which a petition could be filed. Several innovations in procedure also have been grafted to the system to provide an "official" treatment without an adjudication of delinquency in cases which might ordinarily be handled informally, for example, the deferred hearing or continuance, special proceedings for traffic offenders and hearing by referees. These procedures appear to encroach on the basic premise of "individualized treatment" and represent a step toward "judicializing" the court. Limitation of jurisdiction thwarts the aim of "helping" as many children as possible and hearing by a judicial officer even without an eventual court record inhibits the counseling relationship. Although the "internalists" appear to have retreated from the socialized approach, it is doubtful whether some of the reforms are anything more than verbalizations to camouflage continued use of informal disposition practices.

There is no clear cut answer to the question whether the practices of informal disposition of delinquency cases should be modified. Since the practice is essential to the premises of the traditional juvenile court concept, the answer involves the fundamental question whether the court is to function as a court or a social service institution. Answering this question depends in part on assumptions and theories in the difficult art of modification of human behavior, *i.e.*, whether informal dispositions are more effective treatment and control measures than are formal hearings before the juvenile court judge.

Whether the system of informal disposition is necessary or desirable, it exists and will continue to exist, absent a radical departure from the prevailing juvenile court philosophy. So long as it exists the question is raised

113. For a review of these decisions see United States v. Morales, 233 F. Supp. 161 (D. Mont. 1964). The idea that the child in the juvenile court is entitled to *less* protection than an adult has apparently developed from a misinterpretation of court decisions. This view is sought to be justified by reference to the unique nature of childhood during which time a minor is not entitled to the same privileges and freedoms as adults, *i.e.*, childhood is a time of confinement and training. Since the court's intervention in the life of the child under the *parens patriae* doctrine ostensibly approximates the treatment which should be given by his parents, the child is in no position to complain about the conduct of the proceedings. SUSSMAN 16.

whether it conforms to the basic requirements of due process to which all exercise of governmental power must conform. Perhaps, as suggested by Professor Joel Handler, the answer lies in an accommodation of the concept of "individualized treatment" and the criminal adversary proceeding.[114] The final solution must be preceded by some understanding of the practices in considerable detail. It is that, plus a beginning toward analysis of these practices, which this note has sought to provide.

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114. Handler, *supra* note 52, at 39-50. The author seeks to overcome the deficiency in vesting the fact-finding function in one person by using adversary procedures. On the premise that there are not, and will not be, an adequate number of well-trained judges and attorneys to implement a program of adversary procedures at the formal hearing, he proposes that adversary-like procedures supplant the "nonadversary, solicitous" procedure at the administrative level. Three types of officers would man the system—investigative, defense, and hearing—with the judge acting in an appellate capacity.