

I. Intake

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Three out of every four contacts between juveniles and law enforcement agencies in the United States never reach the courtroom. Half are disposed of by the police without a court referral.¹ Of the remaining half—about 1,112,500 cases in 1972²—59 percent are disposed of nonjudicially, by intake workers in the juvenile court system.³ These statistics illustrate the importance of police and intake activities and suggest the degree of discretion exercised by persons performing those functions. Intake workers make many of the decisions affecting youths who come to juvenile court:⁴ they screen out referrals inappropriate for court attention and give counselling services without adjudication to conserve judicial energy and to avoid marking youths with the stigma of a court record.⁵

This portion of *Juvenile Justice in Arizona* concentrates on ways in which referring agencies and intake workers do or can exercise their discretion consistently, so as to afford children entering juvenile court

1. Note, *Juvenile Delinquents: The Police, State Courts, and Individualized Justice*, 79 HARV. L. REV. 775, 776 (1966). See also text & note 8 *infra*.

2. OFFICE OF HUMAN DEVELOPMENT, OFFICE OF THE SECRETARY, OFFICE OF YOUTH DEVELOPMENT, DEP'T OF HEALTH, EDUCATION, AND WELFARE, *JUVENILE COURT STATISTICS 2* (1972) [hereinafter cited as *JUVENILE COURT STATISTICS*].

Juvenile courts may handle more cases than felony courts. One study made in 1968 estimated that felony courts handled approximately 325,000 to 350,000 cases a year, while juvenile courts handled 700,000. Skoler, *Counsel in Juvenile Court Proceedings—A Total Criminal Justice Perspective*, 8 J. FAMILY L. 243, 244 (1968).

3. *JUVENILE COURT STATISTICS*, *supra* note 2, at 4. That is, 59 percent of the time, intake workers decided for some reason that the child involved in an alleged offense did not warrant the time of the judge. The child was dismissed without a formal adjudication of his complicity in the alleged offense.

4. For general studies of intake services in juvenile courts, see Ralston, *Intake: Informal Disposition or Adversary Proceeding?*, 17 CRIME & DELIN. 160 (1971); Sheridan, *Juvenile Court Intake*, 2 J. FAMILY L. 139 (1962); Waalkes, *Juvenile Court Intake—A Unique and Valuable Tool*, 10 CRIME & DELIN. 117 (1964); Wallace & Brennan, *Intake and the Family Court*, 12 BUFFALO L. REV. 442 (1963).

5. Ferster & Courtless, *The Intake Process in the Affluent County Juvenile Court*, 22 HASTINGS L.J. 1127 (1971).

the due process and equal protection the law demands.⁶ Although discretion presents one focus for legal study of intake processes, other issues emerge as well. Among these are probable cause to arrest a juvenile, the presence of counsel and his role in intake, confessions and *Miranda* warnings in intake interviews, and the functions of the intake interview.

A. REFERRALS TO JUVENILE COURT

Most juvenile incidents that never reach court are handled entirely by police. Through the use of counseling, informal records of contacts with juveniles, direct intervention with families, and by ignoring many incidents, police eliminate from the juvenile justice system about half of the juveniles with whom they have contact.⁷ Police discretion in juvenile matters is a national phenomenon. The *FBI Uniform Crime Reports for 1972* estimated that in 4,269 police jurisdictions surveyed, representing a population of 103,000,000, 45 percent of juveniles taken into custody were released after unofficial disposition of the case by the police department.⁸ When the number of juveniles who have contact with police but are not taken into custody is included, the percentage of police-juvenile contacts handled informally is of course even higher. One official estimated that in Maricopa County only one-third of police contacts with juveniles are recorded in any written form. And only part of these reports ever come to the attention of juvenile court; the rest remain in the police files.⁹ The varied practices of agencies referring children to juvenile court contribute to a disparity in referral rates among the 14 counties of Arizona. Among Maricopa, Pima, and

6. It is hornbook law that agency action which is capricious or arbitrary may be set aside by the courts. Gifford, *Decisions, Decisional Referents, and Administrative Justice*, 37 LAW & CONTEMP. PROB. 3, 26 (1972). See generally Gellhorn, *Administrative Prescription and Imposition of Penalties*, 1970 WASH. U.L.Q. 265; Rabin, *Agency Criminal Referrals in the Federal System: An Empirical Study of Prosecutorial Discretion*, 24 STAN L. REV. 1036 (1972); Sofaer, *Judicial Control of Informal Discretionary Adjudication and Enforcement*, 72 COLUM. L. REV. 1293 (1972); Comment, *Judicial Review of Agency Determinations, An Aspect—Procedural Due Process*, 9 SAN DIEGO L. REV. 364 (1972); Wright, Book Review, 81 YALE L.J. 575 (1972). Compare K. DAVIS, *DISCRETIONARY JUSTICE* (1969), with Berger, *Administrative Arbitrariness: A Synthesis*, 78 YALE L.J. 965 (1969).

7. See text note 1 *supra*; testimony of Dr. Rosemary Sarri, Co-Director, National Assessment of Juvenile Conditions, University of Michigan, Ann Arbor, Mich., in *Hearings on Street Crime in America (Corrections Approaches) Before the House Select Comm. on Crime*, 93d Cong., 1st Sess., pt. 2, at 818 (1973).

8. FEDERAL BUREAU OF INVESTIGATION, UNITED STATES DEPT OF JUSTICE, *CRIME IN THE UNITED STATES 1972 (UNIFORM CRIME REPORTS)* 116. One study has reported the existence in police agencies of definite though inexplicit patterns of decisionmaking in juvenile cases. Gandy, *The Exercise of Discretion by the Police as a Decision-Making Process in the Disposition of Juvenile Offenders*, 8 OSGOOD HALL L.J. 329 (1970). Seventy of 75 police officers interviewed for the study sometimes decided to handle juveniles informally even when there was an apparent violation of the law. *Id.* at 329.

9. Interview with Sgt. E.D. Malumphy, Juvenile Detail, City of Phoenix Police Dept., in Phoenix, Feb. 1, 1974.

Cochise counties, the three jurisdictions included in this study, the 1972 rates per 100 juveniles ranged from 14.4 in Cochise to 10.0 in Pima.¹⁰

The options given officers in juvenile affairs generally can be traced to the *parens patriae* doctrine, which led to the establishment of juvenile courts as separate institutions in the late nineteenth century. The Supreme Court of Arizona has noted that:

The philosophy which inspired creation of the juvenile court, and statutes implementing it, is that the state recognizes that in the majority of cases involving anti-social behavior (including criminal offenses) on the part of youthful offenders, there is both a responsibility and an opportunity for the state, through special treatment in a non-criminal proceeding, to redirect and rehabilitate these young people.¹¹

In general, this philosophy is echoed by police agencies in Arizona.¹² It is important to examine actual police procedures, however, since beneficent intent cannot neutralize the harmful effects of police discretion irrationally or arbitrarily applied.¹³

1. *Arizona Police Practices*

A police officer has several choices when confronted with a juvenile offender. He may, for instance, elect to do nothing at all about

10. BUREAU OF PREVENTIVE SERVICES, ARIZONA STATE DEP'T OF CORRECTIONS, 1972 ARIZONA YOUTH ATLAS, JUVENILE DELINQUENCY TRENDS 11. The referral rate in Maricopa County was 12.0. These three were among the highest referral rates in the state. Apache County had the lowest referral rate (1.1), a fact that may be attributable in part to that county's large number of reservation Indians, who are beyond the jurisdiction of state juvenile authorities. *Id.* The referral rate also varies widely from county to county according to sex. *Id.* at 13.

11. *State v. Shaw*, 93 Ariz. 40, 46, 378 P.2d 487, 491 (1963).

12. Interview with Officer E.J. Slechta, Arizona Dep't of Public Safety (Arizona Highway Patrol), in Tucson, Nov. 7, 1973; interview with Sgt. Dan Newman, City of Tucson Police Dep't, in Tucson, Nov. 9, 1973.

13. See THE PRESIDENT'S COMM'N ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, TASK FORCE ON JUVENILE DELINQUENCY, TASK FORCE REPORT: JUVENILE DELINQUENCY AND YOUTH CRIME 10 (1967) [hereinafter cited as TASK FORCE REPORT: JUVENILE DELINQUENCY].

Possible arbitrary use of discretion causes some commentators to advocate the statutory elimination of "status offenses"—offenses which are inapplicable to adults but which can lead to adjudication for a child. They suggest that offenses such as truancy, *e.g.*, ARIZ. REV. STAT. ANN. § 8-201(12) (1974); curfew violations, *e.g.*, TUCSON, ARIZ., CITY CODE §§ 1(8), 11(34) (1964); tobacco offenses, *e.g.*, ARIZ. REV. STAT. ANN. § 13-844 (1956); running away, *e.g.*, *id.* §§ 8-201(12), -223(A)(2) (1974); and health, welfare and morals charges, *e.g.*, *id.* § 8-201(12), be eliminated or severely restricted by statute, since they are a constant source of inconsistent law enforcement by police agencies. According to personnel at the Pima County Juvenile Court Center, police often file charges against a juvenile for a status offense because they suspect, but cannot prove, another offense. The director of court services for the Pima County Juvenile Court Center suggests that status offenses were originally legislated simply because adults are more powerful politically than children. He is in favor of eliminating such offenses, because, as noted above, they are susceptible of arbitrary enforcement by the police. Interview with Ray DelPo, Director of Court Services, Pima County Juvenile Court Center, in Tucson, Oct. 29, 1973.

his contact with a child; he may decide not to refer the matter to court, and merely file a "juvenile contact card" in the police records.¹⁴ A decision not to inform the court of a contact with a child means that the juvenile's name will not enter the court files, and therefore that the child will not have a juvenile record. Taking a child to the juvenile court, on the other hand, means that a record will be made, and it also may force the juvenile to spend a night in detention, should no one be available to whom he or she can be released.

If the policeman decides that referral to juvenile court is warranted, he may refer the child by one of two methods. One method, called a "paper referral,"¹⁵ involves forwarding the police report detailing the alleged offense to juvenile court.¹⁶ The youth and his parents are told by the policeman to call the court after 72 hours to schedule an interview with a court intake officer.¹⁷ The juvenile is not taken physically to the court. The second option open to police officers is to transport the child physically to the juvenile court center, where he is released to the custody of the court. In Pima County this is denominated a "physical referral," and in Maricopa County a "detention referral." Once at the court center, the child is detained until he can be interviewed by an intake officer and released to a responsible party.¹⁸

The four police agencies which deliver children to the Pima County Juvenile Court Center¹⁹ have slightly different policies regard-

14. In Maricopa County, these cards are not relayed to juvenile court. In Pima County "field investigation cards" are forwarded, but only those relating to children already on probation are filed by juvenile court. The rest are discarded.

15. "Non-detention referral" and "cite-in" are synonyms used in Maricopa County.

16. Both the Tucson Police Department and the Pima County Sheriff's Office permit field officers to refer an incident involving a juvenile to department juvenile details for investigation, instead of making a court referral decision immediately. By deferring this decision, the officer elects not to take the child to court in person. Thus, any future referral stemming from the incident will be a paper referral. The option to defer a decision may increase the number of paper referrals at the expense of physical referrals, and may also increase the number of children referred on paper who otherwise would not be referred at all.

17. The delay allows time for processing of the report by the court.

18. See section II, "Detention," *infra*, at 264-94, for a discussion of preadjudicatory detention practices and facilities.

19. The Tucson Police Department, the Pima County Sheriff's Office, the Arizona Department of Public Safety (Arizona Highway Patrol), and the Police Department of the Town of South Tucson. More agencies deal with the Maricopa County Juvenile Court Center; in 1972, children were referred to the center by 19 agencies. Because of the large number of agencies, and because the largest referring agency, the Phoenix Police Department, does not set uniform policies for juvenile arrests, it is impossible to generalize about treatment of juveniles by Maricopa County law enforcement agencies.

There are many small towns scattered throughout Cochise County, and the police of each town have their own policies toward juvenile court referrals. This is due partly to the individual practices of the juvenile probation officer assigned to that town. In Wilcox and Bisbee, police often handle juvenile matters without notifying juvenile court; this rarely occurs in Douglas. Interview with Ron Hunter, Cochise County Juvenile Probation Officer, in Bisbee, Ariz., Feb. 25, 1974; interview with Sgt. E.D. Malumphy, *supra* note 9.

ing the situations which merit referral.²⁰ Common to their decision-making processes, however, are factors such as the gravity of the suspected offense,²¹ the availability of adequate supervision at home,²² the child's attitude at the time of the stop,²³ the arresting officer's knowledge of the child's past offenses,²⁴ and—somewhat surprisingly—the relative proximity of the child's home and juvenile court.²⁵ Consideration of these factors confers on an officer wide latitude in choosing a response to situations involving juveniles. Legal classifications, such as misdemeanor or felony, are not used as absolute guidelines when a decision is made.²⁶ Rather, police officers are instructed to use common sense,²⁷ an admirable goal, but one which lends itself to inconsistent results.²⁸

2. Discretion and Probable Cause

The grounds on which a police officer may arrest a juvenile are set out by statute. A child may be taken into temporary custody when, *inter alia*, there are "reasonable grounds" to believe that he or she has committed a delinquent act or is incorrigible.²⁹ In *Juvenile Action No. J-24818-2*,³⁰ the Arizona supreme court held that the equal protection clause of the fourteenth amendment requires the same standard of

20. For a general national study of factors influencing both pre- and post-arrest police discretion in juvenile cases, see Note, *supra* note 1.

21. Interviews with Officer Art Acevedo, South Tucson Police Dep't, in South Tucson, Ariz., Nov. 3 & 9, 1973; interview with Sgt. James H. Huser, Pima County Sheriff's Dep't, in Tucson, Nov. 14, 1973; interview with Sgt. Dan Newman, *supra* note 12; interview with Officer E.J. Slechta, *supra* note 12.

22. *Id.* For example, if the parents are fighting, the officer may feel that the arrival of the juvenile would exacerbate the situation. Interview with Officer E.J. Slechta, *supra* note 12.

23. See note 21 *supra*.

24. *Id.*

25. *Id.*

Runaways present a special problem. For instance, in 1972, the 7,053 referrals to the Pima County Juvenile Court Center included 1,648 runaways—23 percent. PIMA COUNTY JUVENILE COURT CENTER, PIMA COUNTY JUVENILE COURT STATISTICS 1, 3 (1972).

26. Instructor's outline of lectures given by Sgt. Dan Newman, Tucson Police Academy, in Tucson, June 1973.

27. *Id.*

28. See generally Bond, Book Review, 15 ARIZ. L. REV. 1031 (1973).

29. ARIZ. REV. STAT. ANN. § 8-223(A)(2) (1974). The existence of this standard has not meant that all children taken by the police to juvenile court are detained there. In 1972, 21.4 percent of the children taken to Maricopa County Juvenile Court Center by the Phoenix Police Department were not detained. MARICOPA COUNTY JUVENILE COURT CENTER, END OF YEAR REPORT FOR 1972 1. Assuming that the statutory standard of reasonable grounds was met in these cases, the discrepancy arises because of inconsistency between the *Rules of Procedure for the Juvenile Courts [Juvenile Rules]*, which permit detention only in certain situations, and the statute which permits transportation to juvenile court based on "reasonable grounds." Compare ARIZ. R.P. JUV. CT. 3, with ARIZ. REV. STAT. ANN. § 8-223(A) (1974). If police were required to follow the *Juvenile Rules* in making detention decisions, needless physical referrals to juvenile court might be eliminated.

30. 110 Ariz. 98, 515 P.2d 600 (1973).

probable cause³¹ in juvenile as in adult arrests.³² If this standard is consistently applied, it should provide an effective brake to arbitrary use of discretion by the police. The juvenile's attitude and known prior offenses may be relevant to a decision to investigate a situation for possible action, and indeed may have a role in determining probable cause,³³ but attitude and notoriety should not at once suggest a decision to refer to juvenile court.³⁴ The proper standard is probable cause, which should encompass more than prior history and attitude. Further, the distance to a detention facility is irrelevant to deciding whether the situation of a child warrants his transportation to juvenile court. It may inevitably be a subjective factor, but reliance on such tenuous grounds should be discouraged. Failure to comply with probable cause standards may mean exclusion of evidence gained by the stop³⁵ and perhaps exclusion of "tainted" evidence gained by juvenile court personnel who interview a child after an invalid juvenile court referral.³⁶

The probable cause requirement acts as a check on police discretion, however, only when an individual is detained long enough for the stop to constitute temporary custody within the meaning of the statute.³⁷ Problems of unchecked discretion are also present when an officer finds its unnecessary to take a child physically to juvenile court, using a paper referral instead. There appears to be no statutory requirement of probable cause for such a referral. Even if an inquisitorial stop resulting in a paper referral does not last long enough to be an arrest subject to probable cause standards,³⁸ convincing arguments exist that a consequent paper referral must meet the probable cause standards of section 8-223(A). Although a physical referral, tanta-

31. For recent Arizona cases defining probable cause in an adult context, see *State ex rel. Flournoy v. Wren*, 108 Ariz. 356, 498 P.2d 444 (1972); *State v. Dessureault*, 104 Ariz. 380, 453 P.2d 951 (1969), *rehearing denied*, 104 Ariz. 380, 454 P.2d 981 (1969), *cert. denied*, 397 U.S. 965 (1969). See also "Informant's Statement as Basis for Stop and Frisk," 15 ARIZ. L. REV. 593, 677; "Proper Grounds for Investigative Stops," 15 ARIZ. L. REV. 593, 708 (1974). For a discussion of juvenile arrest which concludes that the standard to be met should depend on the possible consequences of the arrest to the child, see Ferster & Courtless, *The Beginning of Juvenile Justice, Police Practices, and the Juvenile Offender*, 22 VAND. L. REV. 567, 583 (1969).

32. *In re Juvenile Action No. J-24818-2*, 110 Ariz. 98, 103, 515 P.2d 600, 605 (1973).

33. See *Beck v. Ohio*, 379 U.S. 89, 97 (1964); *State v. Chong*, 473 P.2d 567, 571 (Hawaii 1970). But cf. *Spinelli v. United States*, 393 U.S. 410, 414 (1969).

34. See Cook, *Probable Cause to Arrest*, 24 VAND. L. REV. 317, 330-31 (1971); Note, *The Role of Reputation in Establishing Probable Cause for Arrest and Search*, 1969 WASH. U.L.Q. 339.

35. *In re Juvenile Action No. J-24818-2*, 110 Ariz. 98, 515 P.2d 600 (1973).

36. See *Wong Sun v. United States*, 371 U.S. 471, 487-488 (1963); *In re Juvenile Action No. J-24818-2*, 110 Ariz. 98, 103, 515 P.2d 600, 605 (1973).

37. ARIZ. REV. STAT. ANN. § 8-223(A) (1974).

38. See *In re Juvenile Action No. J-24818-2*, 110 Ariz. 98, 102, 515 P.2d 600, 604 (1973).

mount to arrest, entails detention of the child, which a paper referral does not, a paper referral serves many of the functions of an arrest. It brings the child to the attention of juvenile court and initiates the judicial process by which a child may be adjudicated incorrigible or delinquent.³⁹ Even if the child escapes adjudication, a juvenile record will be opened in his name, and the child and his parents may be requested to come to juvenile court for an interview. While the interview is nominally voluntary, such a request is likely to be received with deference. If the child admits the alleged act, preadjudicatory restrictions may be imposed as a result of the juvenile court interview. Except for the detention itself, these are the same consequences which flow from a physical referral. Because the consequences are much the same, the decision of a policeman to submit a paper referral rather than take a child to juvenile court should not be based on a standard of suspicion less than probable cause. If the standard were different, the arresting officer might be tempted to refer doubtful cases to juvenile court by a paper referral when a physical referral would fail. If the arresting officer can find no probable cause, the child should not be referred to court.

Problems like these can be ameliorated by setting written standards for police referrals to juvenile court. The legitimate role of informal police methods of dealing with criminal activity must be recognized.⁴⁰ At the same time, the use of such methods should be structured and controlled,⁴¹ and police administrators should give high priority to the formulation of administrative rules governing the exercise of discretion.⁴² It should be possible for juvenile court personnel, in consultation with referring police agencies, to work out common policies on referral problems which at present are seen as divisive issues.⁴³ For instance, police practices for physical referrals and juvenile court detention practices could be unified. The same is true of police and juve-

39. In 1973, 3,393 paper referrals and 4,491 physical referrals were made in Pima County. Report to the Hon. Jack D.H. Hays, Chief Justice, Supreme Court of Arizona, by the Hon. Ben C. Birdsall, Presiding Judge, Pima County Superior Court, on the Investigation of the Pima County Juvenile Court Center, Feb. 5, 1974, Exhibit C [hereinafter cited as Birdsall Report]. This report is set out in App. A, *infra*, at 414.

40. See A.B.A. PROJECT ON STANDARDS FOR CRIMINAL JUSTICE, STANDARDS RELATING TO THE URBAN POLICE FUNCTION § 3.1, explanatory note, at 88 (Approved Draft, 1973) [hereinafter cited as ABA POLICE STANDARDS].

41. *Id.* § 4.2, explanatory note, at 121; Kadish, *Legal Norm and Discretion in the Police and Sentencing Process*, 75 HARV. L. REV. 904 (1962).

42. ABA POLICE STANDARDS, *supra* note 40, § 4.3, explanatory note, at 125.

43. Several police spokesmen noted problems in communication between juvenile court and police agencies. One police official attributed the problems to basic differences in viewpoint and goals. Interview with Sgt. E.D. Malumphy, *supra* note 9. Another police official expressed the view that officers could not tell which referrals would be rejected and which accepted by juvenile court. Interview with Sgt. James H. Huser, *supra* note 21. Juvenile court officials complain of the unsuitable referrals made by po-

nile court practices involving paper referrals. Juvenile court authorities and police agencies could together prescribe specific areas of conduct, such as some kinds of status offenses,⁴⁴ for which referral is unwarranted. Conversely, situations could be identified for which referral would normally mean the filing of a petition. By informing police officers of these standards, inappropriate referrals to juvenile court by the police can be reduced, easing the caseload of intake workers, reducing the exasperation and frustration on both sides which accompany such referrals, and possibly reducing the number of juveniles referred to court.⁴⁵

3. *Nonpolice Referrals*

Police departments are not the only agencies referring children to court. Schools⁴⁶ and other agencies also refer a small number of children.⁴⁷ Although it has been suggested that juvenile court is a dumping ground for agencies and parents with problem children who have exhausted their options and patience,⁴⁸ such referrals are not as frequent as might be expected. For instance, the disruptive behavior of some dependent children in the custody of the Arizona State Department of Economic Security [D.E.S.]⁴⁹ could *prima facie* be interpreted as incorrigible or delinquent and therefore grounds for juvenile court jurisdiction. Referrals from D.E.S. to juvenile court are rare, however, because D.E.S. caseworkers are reluctant to view juvenile court as a "helping agency"⁵⁰ and prefer to deal with the children's behavior

lice agencies. Interview with Sally Plager, Supervisor, Intake Services Unit, Pima County Juvenile Court Center, in Tucson, Nov. 19, 1973.

44. See text & note 100 *infra*.

45. This is consistent with the recommendations of the NATIONAL ADVISORY COMM'N ON CRIMINAL JUSTICE STANDARDS AND GOALS, CORRECTIONS, Standard 8.1, at 264 (1973); it is also the opinion of THE PRESIDENT'S COMM'N ON LAW ENFORCEMENT & THE ADMINISTRATION OF JUSTICE, TASK FORCE ON THE POLICE, TASK FORCE REPORT: THE POLICE 18-25 (1967).

46. The amount of interaction of schools with juvenile court varies widely. In Tucson, it is usually minimal. The schools apparently do not regard juvenile court as a resource in dealing with behavior problems. In the junior high schools, this may be because the School Resource Officers assigned to each school by the City of Tucson Police Department attend to many behavior problems which might otherwise be referred to court. Of course, such reasoning would not apply to senior high schools where because of personnel shortages there are no School Resource Officers. Interviews with school officials, in Tucson, Feb.-Mar. 1974.

47. In Pima County in 1972, 91.5 percent of the referrals to juvenile court came from the four police agencies operating in the Tucson area. The remainder was referred by other sources, including referrals from within the court of children already on probation, parent referrals, and referrals from police agencies outside the Tucson area. The percentage referred by schools and social agencies is thus less than 8.5.

48. Interview with Ray DelPo, *supra* note 13.

49. In general, a dependent child is one who has no suitable home, or a child under 8 years of age who has committed an act which would lead to a finding of delinquency or incorrigibility in an older child. ARIZ. REV. STAT. ANN. § 8-201(10) (1974). Dependent children are often placed in the custody of the Department of Economic Security. See *id.* § 8-241(A)(1).

50. Interview with Mrs. Irma Fisher, Director, Pima County Family and Child Wel-

themselves. Further, when D.E.S. exhausts its options and does wish to refer a child to juvenile court, the official involvement of D.E.S. with the child makes it difficult to persuade juvenile court officials to take action despite extreme behavior which in another child would surely result in the filing of a petition.⁵¹ The child therefore retains dependent status rather than being adjudged incorrigible or delinquent.⁵² To remedy this anomaly, the two agencies should cooperate in setting procedures for referral to juvenile court of dependent children. For example, rather than continuing the recent pattern of sudden unannounced referrals of dependent children, a conference might be called between caseworkers in the two agencies to decide which agency could better handle a problem child.

B. JUVENILE COURT INTAKE

In Arizona, intake workers make most of the decisions concerning a child between the initial referral to juvenile court and the ultimate dispositional hearing, if one is held. By informal adjustment (dismissal) of the case, or by recommending a disposition in court, they dictate the result of almost every new referral to the court.⁵³ If a hearing is held, the judge usually accedes to the recommendation made by the intake officer. A great many court cases, of course, are uncontested.⁵⁴ Even when cases are contested, intake workers normally do not expect reversal of their court recommendations.⁵⁵

fare Services, Arizona State Dep't of Economic Security, in Tucson, Nov. 16, 1973. Ironically, great emphasis recently has been placed on changing the orientation of Pima County Juvenile Court to community-based therapeutic treatment, a stance typical of a helping agency. See, e.g., Arizona Daily Star, Feb. 9, 1974, § D, at 10, col. 1 (editorial); *id.*, Apr. 3, 1973, § B, at 1, col. 2; *id.*, Feb. 28, 1973, § A, at 14, col. 1.

51. Interview with Mrs. Irma Fisher, *supra* note 50.

52. The tendency to distinguish dependency from delinquency or incorrigibility more in theory than in practice is also reflected in the Arizona statutes, which define as a dependent child one under the age of 8 who has committed an act which in an older child would lead to a finding of incorrigibility or delinquency. ARIZ. REV. STAT. ANN. § 8-201(10)(c) (1974). Logically, it is not clear why an age difference should determine whether a child's behavior is delinquent or incorrigible, or whether he is a dependent child, and in practice treatment for dependent and delinquent children exhibiting the same symptoms tends to be similar, regardless of the difference in nomenclature. Often, if a child under the age of 8 (dependent child) is so disturbed that he commits delinquent acts, he will be sent to a residential treatment center, which is the final disposition for delinquents over 8 as well. Conversely, delinquent children exhibiting few current behavior problems are often placed at home or in a foster home, which is the usual placement for a dependent child as well.

53. If a child is already on probation for a past offense, new referrals on the child are routed from intake to the child's probation officer, who makes all decisions regarding the new offense. On the role of intake workers in juvenile court systems generally, see Nejelski, *Diversion of Juvenile Offenders in the Criminal Justice System*, in LAW ENFORCEMENT ASSISTANCE ADMIN., DEP'T OF JUSTICE, CRIMINAL JUSTICE MONOGRAPH: NEW APPROACHES TO DIVERSION AND TREATMENT OF JUVENILE OFFENDERS 83, 85 (1973).

54. See section IV, "Adjudication," *infra*, at 341.

55. One result of intake workers' confidence that the court will agree with them is that often the child is introduced to his new, permanent probation officer by his intake

1. *The Intake Process*

As noted above, children may be referred to juvenile court either on paper or physically. In Pima County, a paper referral usually results in a form letter being sent to the parents of the youth, requesting them to call the court within 72 hours to arrange an interview, at which an intake officer will speak to the parents and child about the alleged offense and decide on a course of action.⁵⁶

In Maricopa County, shortage of personnel dictates a major divergence from the Pima County practice. Before formal letters go to the parents, referrals from the police are screened by supervisory personnel or by the county attorney's office. Misdemeanor referrals are routed to the supervisor of one of the intake units, status offense referrals⁵⁷ go to the supervisor of a special juvenile offenses unit, and felony referrals for children over 14 years old are sent to the county attorney for a decision on whether to follow up. Of the misdemeanor paper referrals, which total about 800 monthly, approximately half are not scheduled for any sort of further court action.⁵⁸ Typically, offenses such as trespassing and disturbing the peace will be merely noted for the record. For other minor offenses, such as petty shoplifting where there is no prior record, a letter may be sent to the parents of the child, advising them of the referral, and stating that no further action will be taken by the court. In a small number of cases, such as malicious mischief involving property, a different letter is sent, stating that the juvenile authorities plan no further action, but that restitution of the stolen or damaged property is desirable. A copy of this letter is also sent to the owner of the mishandled property.⁵⁹ For felonies attrib-

worker before the hearing commences, in order to begin familiarizing the child with his new worker as soon as possible. Subjectively, such informality seems typical of intake processes. *But cf. In re Juvenile Action No. J-24818-2*, 110 Ariz. 98; 101, 515 P.2d 600, 603 (1973). See generally Ferster & Courtless, *Pre-Dispositional Data, Role of Counsel and Decisions in a Juvenile Court*, 7 LAW & SOC. REV. 195 (1972); Krasnow, *Social Investigation Reports in the Juvenile Court*, 12 CRIME & DELIN. 151 (1966); Note, *Employment of Social Investigation Reports in Criminal and Juvenile Proceedings*, 58 COLUM. L. REV. 702 (1958).

56. In Pima County, referrals are given a preliminary screening; occasionally, because of the inappropriateness of the referral, no letter will be sent. Interview with Sally Plager, Supervisor, Intake Services Unit, Pima County Juvenile Court Center, in Tucson, Mar. 18, 1974.

57. See note 13 *supra*, for a discussion of status offense referrals.

58. Interview with Raymond J. Krane, Deputy Director, Intake Division, Maricopa County Juvenile Court Center, in Phoenix, Jan. 23, 1974. From 1968 to 1972 the percentage of referrals recorded with no further action declined from 52.9 percent to 40.2 percent in response to an effort to take action on as many referrals as possible. MARICOPA COUNTY JUVENILE COURT CENTER, *SOME MEASURES OF CHANGE 1968-1972* 6 (1973).

59. In December 1973, there were 233 paper referrals assigned to staff interviews in Maricopa County, while 361 referrals were disposed of summarily. Of the latter, 112 were noted for the record only, 228 were noted for the record and also had a letter sent to the parents of the child, and 21 were noted and had a letter sent to the parents and

uted to children over 14 years old, referrals go to the county attorney, who decides whether to prosecute. He files petitions on some felonies at once, marks others for discretionary judgment by the intake staff, and notes on others that he believes that the case against the juvenile is too weak to warrant the filing of a petition. If a case falls in the latter two categories, a certain amount of discretion rests with the intake staff. Normally, all felonies marked for discretionary decision of the intake staff are referred to intake workers for followup interviews. Decisions on whether or not to request an adjudicatory hearing are postponed until after that interview.⁶⁰ In cases considered weak by the county attorney, the intake supervisor's subjective judgment also plays a role. Realizing that it is likely that no case can be proved against the juvenile, he may send a letter requesting an interview anyway. Generally, the parents and child comply with this request. If they object, since the interview is voluntary, the court does not attempt to force their attendance at such a conference.

Physical referrals necessitate a different procedure in both Maricopa and Pima counties. An intake officer, one of whom is on duty 24 hours a day, receives the child and interviews him and his parents as soon as possible. If it is impossible to locate the parents or another responsible party, the minor is detained at the juvenile center.⁶¹ All intake officers' decisions whether to detain involve many of the factors which enter other intake decisions.⁶²

Although intake workers possess great discretion, the county attorney places certain restrictions on them. In Pima County, intake workers must refer acts which would be felonies if committed by an adult to the county attorney for a decision on suitability for juvenile or adult court.⁶³ As noted above, Maricopa County dictates that felonious acts committed by children over 14 must go to the county attorney.⁶⁴ Aside from these restrictions, however, the intake worker has sole discretion. He may adjust the case, provided the child confesses; he may adjust and refer the child to a diversionary program or an outside agency; or he may send the child to court.⁶⁵

to the owner of the damaged property. MARICOPA COUNTY PROBATION OFFICERS' MONTHLY REPORT, SUPERVISOR'S SUMMARY, Cuddeby (Dec. 1973).

60. An example of an offense falling within this category which is often informally adjusted at the time of the initial interview is possession of a small amount of marijuana. Interview with David Cuddeby, Supervisor, Intake Services, Maricopa County Juvenile Court Center, in Phoenix, Jan. 31, 1974.

61. See section II, "Detention," *infra* at 264-92, for a discussion of detention practices.

62. *Id.*

63. For a treatment of removal of juveniles to adult court, see section III, "Jurisdiction and Waiver," *infra*, at 293-324.

64. See text following note 56 *supra*.

65. See text & notes 66-71 *infra*.

Usually, an intake worker determines at the time of an initial interview whether court attention is necessary, but in both Pima and Maricopa counties, intake workers retain a limited number of cases for several months before a final dispositional decision is reached.⁶⁶ As with other decisions, no formal criteria exist to guide a decision of this type.⁶⁷ During this period, although the child is not officially on probation, the worker may attempt casework, including preadjudicatory restrictions on the child's behavior, in an effort to avoid future court referrals. If a child conforms to the expectations of his intake worker during this preadjudicatory period, the charges may be dropped. If the child does not conform, the worker may send the case to court for adjudication.⁶⁸ Although such cases represent only a small percentage of cases assigned to intake, in those cases the scope of administrative discretion is obviously broad.

Cochise County probation workers, who combine intake and other probation functions, employ several preadjudicatory options which Maricopa and Pima counties have not adopted. The Cochise County worker may use a consent decree⁶⁹ or a prepetition hearing as informal dispositional devices. The consent decree is an informal contract signed by the child and parents. The terms of the decree, enumerating specific "contractual" responsibilities on the part of parent and child, are drawn up in conference with the family.⁷⁰ No contact is planned between probation officer and family after the initiation of a consent

66. In Maricopa County, "continued voluntary service," or CVS, is often used to avoid a petition in cases of alleged incorrigibility. Children in this category may be given casework services without adjudication for as long as 6 months.

In Pima County, proposed local rules of procedure for the juvenile court require that a petition be filed within 30 days of the receipt of a complaint, thus limiting the time span of preadjudicatory casework. A hearing must be held within 30 days after a petition is filed. PIMA COUNTY [ARIZ.] LOCAL R.P. JUV. CT. 4, 5. As this issue went to press, the Pima County Rules were formally adopted.

67. For a discussion of discretion in intake procedures, see text & notes 79-100 *infra*.

68. A recent investigation of Pima County Juvenile Court recommended adjustment or formal hearing of cases within "a much shorter time" than the 6 months currently permitted before the adoption of the Pima County local juvenile court rules. Birdsall Report, App. A, *infra*, at 414.

The dangers present in preadjudicatory restrictions are largely absent in a diversionary program established in Pima County, the voluntary intensive probation (VIP) program. If an intake worker diverts a child to this program, which constitutes a separate unit within the juvenile court, the charges which brought the child to juvenile court are dropped and cannot be reinstated. Thus, the worker has no sanction for failure to cooperate. The VIP worker does not communicate with the intake worker, nor does he keep notes of any sort on his casework with the child. The only danger remaining is that referral to the program may not be really voluntary for a child, given a choice between court adjudication and a VIP referral. This danger is minimized because a child may freely drop out of the VIP program once charges against him have been dropped with no fear of reprisal.

69. The TASK FORCE REPORT: JUVENILE DELINQUENCY, *supra* note 13, at 21, has approved the use of consent decrees, especially in incorrigibility situations, if procedural safeguards are present.

70. See section VI, "Probation," *infra*, at 374.

decree, although the probation officer is available should problems arise. If a child refuses to sign a decree, other options remain: adjustment, court referral, referral to another agency, or a prepetition hearing. A prepetition hearing involves placing restrictions on a child without a formal delinquency proceeding. Before the hearing, the probation officer briefs the referee, who is a volunteer local lawyer. During the hearing, the referee discusses the referral problems with parent and child; afterwards, he will decide, usually in accord with the recommendation of the probation officer, the length of time for which the petition should be withheld from the court. If the juvenile commits no offenses within this period, the petition is withdrawn. If a second nontrivial complaint is filed before the expiration of the informal "probation," both the first and the second offenses are referred to the court in a delinquency or incorrigibility petition.⁷¹

Once an intake worker has definitely decided to take a child to court, the worker sets a hearing date. In Pima County, he writes two reports to the court before the hearing: an adjudicatory report and a dispositional recommendation. The adjudicatory report contains information related to the allegations of the petition filed by the county attorney;⁷² the dispositional report contains the worker's recommendations for the disposition of the child, should he be found delinquent or incorrigible, supported by reasons drawn from the child's social history and confession, if the worker had elicited one during the intake interview. Because they are submitted together, it is possible for the judge to read and be influenced by the dispositional report, which can contain material inadmissible in court, before the adjudicatory hearing. Submitting the dispositional report only after the adjudicatory hearing would eliminate this possibility. It is not clear to what extent the Pima County practice of writing and submitting adjudicatory and dispositional reports in the same dossier is followed in Maricopa County. It appears that the dispositional report, while prepared in advance, is not given to the judge until after the adjudicatory phase of the hearing.⁷³

71. Interview with Ron Hunter, *supra* note 19.

72. It is the position of the Pima County Attorney that ARIZ. REV. STAT. ANN. § 8-233(A)(2) (1974) directs that juvenile court petitions of delinquency be drafted and filed by the county attorney's office. Birdsall Report, App. A, *infra*, at 414. See PIMA COUNTY [ARIZ.] LOCAL R.P. JUV. CT. 3 (see note 66 *supra*). The same view prevails in Maricopa County. A slightly different view is held in Cochise County, where the juvenile probation officer files the complaint, although it is still prepared by the county attorney. Interview with Ron Hunter, *supra* note 19. Mr. Hunter stated that to his knowledge the county attorney plays no part in deciding whether to file the petition.

73. In seven advisory hearings observed Jan. 31, 1974, the hearing was continued to the dispositional stage in three. Each time, the intake worker handed the referee the dispositional report after the adjudicatory phase was complete.

In Cochise County, no dispositional report is filed. Before the adjudicatory hearing, the judge receives a social history, the relevant police report, and a list of the prior contacts of the probation officer with the juvenile.⁷⁴ Unfortunately, the social history and list of prior contacts may impeach the child's credibility in court.⁷⁵ A dispositional recommendation is usually given orally.⁷⁶

In Pima County, occasionally the county attorney feels that filing a case in court is warranted, while the intake worker disagrees. In that event, the worker has several options. Since it is his responsibility to set a hearing date, he may simply postpone doing so, in the hope that intervening circumstances will encourage the county attorney to change his mind, or in the hope that forgetfulness will intervene.⁷⁷ Or, once the child has been adjudged delinquent or incorrigible, the intake worker may request a dismissal of supervision by the court. This allows termination of active probation supervision, thus nullifying the decision of the county attorney that the child needs supervision.⁷⁸

It is clear that discretionary decisions can greatly influence the result of a child's referral to court. Identifying and rationalizing the exercise of discretion in this system is of particular significance in Arizona because the proportion of children handled nonjudicially in the state is greater than the national average.⁷⁹ In Maricopa County in 1972, intake workers filed with the court 3,173 petitions requesting judicial findings of delinquency or incorrigibility, while 17,643 referrals were informally diverted by intake workers prior to the formal court procedure.⁸⁰ Thus, in 85 percent of the cases, no formal adjudicatory hearing was required. It has been suggested that "[t]he most glaring fea-

74. Interview with Ron Hunter, *supra* note 19.

75. See Note, *Inferential Impeachment: The Presence of Parole Officers at Subsequent Juvenile Adjudications*, 55 MARQ. L. REV. 349 (1972).

76. Interview with Ron Hunter, *supra* note 19.

77. Interview with Legh R. Burke, Juvenile Intake Officer, Pima County Juvenile Court Center, in Tucson, Nov. 2, 1973.

78. Interview with Sally Plager, *supra* note 43.

79. In Maricopa County in 1972, of 17,643 juvenile referrals informally diverted, 8,499 juvenile referrals were adjusted during the intake interview stage of the proceedings; intake supervisors disposed of the rest during preliminary screening. MARICOPA COUNTY JUVENILE COURT CENTER, END OF YEAR REPORT FOR 1972. 3,173 cases were sent to court. *Id.* The 1972 Pima County figures show that 2,139 petitions were filed while 3,587 referrals were handled nonjudicially. Birdsall Report, Exhibit C, App. A, *infra*, at 429. In Cochise County in 1973, 1,694 cases were adjusted, while 272 cases went to court. STATISTICAL REPORT FOR COCHISE COUNTY JUVENILE COURT—1973 ACCUMULATIVE. Nationally, the proportion of cases handled nonjudicially has grown in recent years. In 1957, 54 percent of juvenile court referrals were handled judicially and 46 percent nonjudicially. In 1972, 41 percent were handled judicially and 59 percent were disposed of nonjudicially. JUVENILE COURT STATISTICS, *supra* note 2, at 12. The report suggests that this change may have resulted from a decrease in the number of serious cases requiring judicial attention, or it may be the result of an increase in diversionary programs.

80. MARICOPA COUNTY JUVENILE COURT CENTER, END OF YEAR REPORT FOR 1972 1, 2.

ture of . . . juvenile codes is their ambiguity and deliberate grants of unlimited discretion. This permits gross inconsistency in the administration of justice."⁸¹ But emphasis on flexibility need not diminish interest in due process and in equal application of the law.⁸² Few would disagree with the fitness of most intake decisions in Arizona. Concepts of due process and equal protection, however, provide safeguards for those infrequent situations when intake decisions provoke resistance.

2. *Grounds for Discretion*

Court rules direct the primary decision of the intake worker—whether to send a child to court. The Arizona *Rules of Procedure for the Juvenile Court* [*Juvenile Rules*] require that the juvenile probation officer make a record of the complaint and investigate the matter. He or she must determine whether the alleged facts, if true, are sufficient to bring the child within the juvenile court's jurisdiction, and whether the charges appear serious enough on their face to warrant some form of court action. If the facts are insufficient to meet these criteria, the complaint may be adjusted (dismissed) regardless of whether the youth has admitted the offense.⁸³ Thus, the rules of procedure give wide discretion to the intake officer in deciding whether to initiate court action. Intake supervisors use this authority when they conduct preliminary screenings of paper referrals for "seriousness" before assigning them to an interviewer.⁸⁴ However, at the interview stage itself, this authority is not exercised. Rather, a separate rule granting discretion is used, which permits adjustment of a case if the total circumstances indicate that court action is unnecessary. However, the child must acknowledge responsibility for his delinquent act prior to adjustment.⁸⁵ Therefore, at the interview level, whenever a child denies the allegations of a complaint, a petition is filed to adjudicate the fact of delinquency or incorrigibility.

81. Testimony of Dr. Rosemary Sarri, *supra* note 7, at 817.

82. See *In re Juvenile Action No. J-24818-2*, 110 Ariz. 98, 101, 515 P.2d 600, 603 (1973).

83. ARIZ. R.P. Juv. Ct. 2(b).

84. In Cochise County, where, because of a small population, the juvenile probation officers are often already familiar with a child referred to juvenile court, a decision to adjust is sometimes made before an interview has begun. Interview with Ron Hunter, *supra* note 19.

85. *Id.* Rule 2(c). The reason for requiring confession is elusive. The court may have felt that contrition is prerequisite to dismissal. Most model codes contain a similar requirement. "[I]n all cases handled non-judicially, the intake worker must first make certain that the fact of delinquency or neglect is not disputed . . ." NATIONAL COUNCIL ON CRIME AND DELINQUENCY, GUIDES FOR JUVENILE COURT JUDGES 40 (1957). The NATIONAL COUNCIL ON CRIME AND DELINQUENCY, STANDARD JUVENILE COURT ACT art. III, § 12 (1959) [hereinafter cited as STANDARD JUVENILE COURT ACT], provides that the court "may make whatever informal adjustment is practicable without a petition,

In short, adjustment and denial at the intake interview are in practice mutually exclusive. For this reason, great pressure is placed on the child to confess. Conceivably, an innocent child may confess to avoid the formal hearing if the intake worker assures him that dismissal will be the result of a confession. A confession, of course, will be noted in the child's record and may be the basis in a later court referral for an administrative decision to send the child to court. Thus, every precaution should be used to avoid false confessions. In order to reduce the pressure to confess, intake workers as well as their supervisors should be allowed to use their present authority to dismiss, regardless of confession, based on their investigation of the seriousness of the offense.

3. *Alternatives for Controlling Discretion*

The numerous model juvenile statutes formulated in recent years have approached the problem of discretion in varying ways. The *Standard Juvenile Court Act* of 1959 espoused wide discretion by intake personnel.⁸⁶ By 1967, however, the President's Task Force on Juvenile Delinquency was directing attention to abuses of discretion in juvenile court. Undisciplined discretion, the Task Force found, makes difficult the consistency expected of a judicial system.⁸⁷ In particular, there is danger of abuse in the intake stage of juvenile court proceedings, where decisions determining the result of a juvenile court referral are often made. Further, because there has been no judicial determination of delinquency or incorrigibility, the restrictions which intake officers sometimes place on children are imposed without judi-

provided that the facts appear to establish prima facie jurisdiction and are admitted. . . ." The NATIONAL COUNCIL ON CRIME AND DELINQUENCY, MODEL RULES FOR JUVENILE COURTS (1969) [hereinafter cited as MODEL RULES FOR JUVENILE COURTS], specifies in art. II, rule 4 that if the parties controvert the allegations and wish the facts to be determined by the court at a hearing, no effort will be made to arrive at informal adjustment. The TASK FORCE REPORT: JUVENILE DELINQUENCY, *supra* note 13, also emphasizes the need for an intake decision of whether the child has committed the act alleged. *Id.* at 16.

However, two recent attempts to codify juvenile court procedures specify otherwise. *The Legislative Guide for Drafting Family and Juvenile Court Acts* provides merely that "the intake officer shall conduct a preliminary inquiry to determine whether the best interests of the child or of the public require that a petition be filed." SOCIAL AND REHABILITATION SERVICE, CHILDREN'S BUREAU, DEP'T OF HEALTH, EDUCATION, AND WELFARE, LEGISLATIVE GUIDE FOR DRAFTING FAMILY AND JUVENILE COURT ACTS § 13(A) (Children's Bureau Publication No. 472—1969). The October 1973 draft of a model juvenile court statute suggests that if the facts of the petition are denied or if attempts at informal disposition are impractical, the complaint must be dismissed or a petition filed without delay. NATIONAL COUNCIL ON CRIME AND DELINQUENCY, MODEL JUVENILE COURT RULES § 8(2) (Tent. Draft October 1973) [hereinafter cited as MODEL JUVENILE COURT RULES]. These proposed rules do not mandate filing a petition solely because the factual basis of the petition is denied. See also *In re Gault*, 387 U.S. 1, 51 (1967) (questioning the therapeutic value of a confession).

86. STANDARD JUVENILE COURT ACT, *supra* note 84, art. III, § 12.

87. TASK FORCE REPORT: JUVENILE DELINQUENCY, *supra* note 13, at 10.

cial sanctions. The authors of the *Task Force Report* felt that non-judicial dispositions should be made as early as possible, that workers should be alert to coercive possibilities,⁸⁸ and in particular that such dispositions should be based on written guides and criteria.⁸⁹ Devices for bridling intake worker discretion in other model codes have included restriction on the options available at intake, such as time limits for informal adjustment efforts⁹⁰ and the requirement that *Miranda* warnings be given.⁹¹ Although they would impose restrictions on intake workers, the standard acts have directed minimal attention to suggesting how decisions within the intake process are to be made.⁹² One study of intake processes has found some workers unable to identify accurately the factors entering their decisions,⁹³ possibly because the lack of standards for decisions in statutes and rules has permitted workers to evade analysis of the problem.

In Pima County, four of the six intake workers interviewed indicated that the "attitude" of the child or parent was an important factor in deciding what course of action to take. Five indicated that home environment played a part.⁹⁴ One juvenile probation officer in Cochise County felt that the two most important factors influencing his decision were whether the parent could control the child and whether the child could handle himself responsibly. He suggested that he tried, but was not always able, to ignore the attitude of the child during an interview, an attempt premised on the belief that the behavior of children during interviews bears little relationship to their behavior elsewhere. A youth's angry or defiant attitude, the officer speculated, might lead him to believe that the child was able to take care of himself, and thus not as much in need of probation services as a more passive child.⁹⁵

88. *Id.* at 17.

89. *Id.* at 21.

90. *E.g.*, YOUTH DEVELOPMENT AND DELINQUENCY PREVENTION ADMINISTRATION, SOCIAL AND REHABILITATION SERVICE, DEP'T OF HEALTH, EDUCATION, AND WELFARE, LEGISLATIVE GUIDE FOR DRAFTING STATE-LOCAL PROGRAMS ON JUVENILE DELINQUENCY § 16(c) (1972); STANDARD JUVENILE COURT ACT, *supra* note 84, art. III, § 12; MODEL JUVENILE COURT RULES, *supra* note 84, § 8(2).

91. MODEL RULES FOR JUVENILE COURTS, *supra* note 84, Rules 3, 4; LEGISLATIVE GUIDE FOR DRAFTING FAMILY AND JUVENILE COURT ACTS, *supra* note 84.

92. An official investigation of Pima County Juvenile Court, ordered by the Supreme Court of Arizona, has concluded that local court rules to guide adjustments are needed. Birdsall Report, App. A, *infra*, at 414. See note 68 *supra*.

93. Ferster & Courtless, *supra* note 5, at 1136-38. Empirical studies, however, have identified as elements in intake decisions such considerations as the sex of the juvenile, race, socio-economic variables, the demeanor of the juvenile, and the seriousness and frequency of prior offenses. Chused, *The Juvenile Court Process: A Study of Three New Jersey Counties*, 26 RUTGERS L. REV. 488, 506 (1972); Note, *Juvenile Delinquency "Referrals" and their Effect on Dispositions*, 1 AM. J. CRIM. L. 296 (1972); Erickson, Book Review, 64 J. CRIM. L. & CRIMINOLOGY 362 (1973).

94. Interviews with intake staff, Pima County Juvenile Court Center, in Tucson, Nov. 1973.

95. Interview with Ron Hunter, *supra* note 19.

The melange of unarticulated biases, hypotheses, and suppositions present in intake decisions, as suggested by the list above, may benefit from discipline applied to the decisionmaking process. A simple requirement that intake workers list the factors for and against an informal disposition, for example, might result in better reasoned, less reflexive decisions. Additionally, elements which ought or ought not enter intake decisions as a matter of staff policy could be specifically enumerated. This might help achieve an intake policy consistent with in an intake department.

Intake decisions involving incorrigibility, rather than delinquency, would particularly benefit by discipline. Although in Pima County the county attorney must review all delinquency petitions for legal sufficiency,⁹⁶ this is not true for petitions alleging incorrigibility, which must be filed by an intake officer.⁹⁷ While legal review of delinquency petitions may brake the discretion of an intake worker, he or she alone makes the decision whether to refer an allegedly incorrigible child to court for adjudication. The Arizona statute defines an incorrigible child as one who

refuses to obey the reasonable and proper orders or direction of his parent, guardian, or custodian, and who is beyond the control of such person, or any child who is habitually absent from school, or who habitually so deports himself as to injure or endanger the morals or health of himself or others.⁹⁸

It has been argued that standards such as these may be unconstitutionally vague;⁹⁹ even if not, their breadth invites selective and unequal application of the law. For this reason, and because of the stigma of juvenile court referral, some authorities recommend tightening the statutory definition of incorrigibility, or, alternatively, removing incorrigibility entirely from the jurisdiction of juvenile court.¹⁰⁰ The latter

96. See text & note 72 *supra*.

97. ARIZ. REV. STAT. ANN. § 8-205(1) (1974). The current interpretation of this statute is that anyone, including parents, may sign a petition, but that only an intake officer has authority to file it. As with many other issues concerning juvenile court procedure, the issue has never been raised in court; if a parent insisted on contesting an intake worker's decision, very likely great weight would be given to a recommendation backed by the expertise of the intake staff. As of late 1974, Pima County has required that the county attorney find incorrigibility petitions as well as delinquency petitions to be legally sufficient. PIMA COUNTY [ARIZ.] LOCAL R.P. JUV. CT. 3. See note 66 *supra*.

98. ARIZ. REV. STAT. ANN. § 8-201(12) (1974).

99. See Note, *Parents Patriae and Statutory Vagueness in the Juvenile Court*, 82 YALE L.J. 745 (1973).

100. Testimony of Joseph R. Rowan, Executive Director, John Howard Assoc., Chicago, Ill., in *Hearings Before the House Select Comm. on Crime*, 93d Cong., 1st Sess. 795. See also MODEL JUVENILE COURT RULES, *supra* note 84.

The director of the Family and Community Services Unit of the Maricopa County Juvenile Court suggests that the incorrigible child is a community problem, not a problem best handled by juvenile court. If incorrigibility were removed from the jurisdiction of juvenile court, the phenomenon would surface elsewhere, because incorrigibility re-

course of action might simply mean that children who evince behavior problems would be treated by other agencies and would not be stigmatized as incorrigible.¹⁰¹

C. INTAKE AND DUE PROCESS

Some writers see a conflict between the "social casework" methods employed under the *parens patriae* philosophy governing juvenile court and a formalistic approach recognizing the obligations of due process.¹⁰² Skillful social investigation is essential in the preadjudicatory stage of juvenile proceedings.¹⁰³ It can, however, be buttressed by a framework of legal rights. A court which truly fulfills its role as *parens patriae* will insist on protecting children in its care with all the procedural refinements of the law.¹⁰⁴ Children need not be protected from the disabilities of a formal court system by relaxation of due process standards.¹⁰⁵

1. Probable Cause

One part of the intake worker's job is to decide which children should go to court. This task may in effect involve a determination of probable cause.¹⁰⁶ In Maricopa County in 1972, 312 children re-

errals come largely from distraught parents themselves who are actively seeking help, and because the juvenile court is not the only agency equipped to deal with family problems. Interview with Larry Johnson, Director, Family and Community Services Unit, Maricopa County Juvenile Court Center, in Phoenix, Jan. 23, 1974.

101. The recent establishment of diversionary programs such as the Adolescent Offenses Unit and the Youth Services Bureaus may account for a decline in incorrigibility referrals in Maricopa County from 7,021 in 1969 to 6,540 in 1972, despite a general population increase. SOME MEASURES OF CHANGE 1968-1972, *supra* note 58, at 2, 3; 1972 ARIZONA YOUTH ATLAS, *supra* note 10, at 34. Pima County, however, where Youth Services Bureaus and incourt diversionary programs have also been established, shows no such decline. 1972 ARIZONA YOUTH ATLAS, *supra* note 10, at 50. *But see* PIMA COUNTY JUVENILE COURT CENTER, EVALUATION REPORT, VOLUNTARY INTENSIVE PROBATION PROGRAM, 1969-1972 (1972).

102. See, e.g., Brennan & Khinduka, *Role Expectations of Social Workers and Lawyers in the Juvenile Court*, 17 CRIME AND DELIN. 191 (1971); Franklin & Gibbons, *New Directions for Juvenile Courts*, 19 CRIME AND DELIN. 508 (1973).

103. Without inquiring into the facts of a particular alleged offense, for example, an intake worker could discover whether there has been a pattern of disruptive behavior evinced by a child and the degree of control the parents retain over their child. Assuming a provable offense serious enough to warrant the time of the court, such information can form the basis for deciding whether court attention is appropriate. Social casework methods help screen out a portion of the large numbers of youths referred to juvenile court. Such screening is a necessity because of the limited resources of the court.

104. See *Conover v. Montemuro*, 304 F. Supp. 259 (E.D. Pa. 1969), 328 F. Supp. 994 (E.D. Pa. 1971), *remanded* 477 F.2d 1073 (3d Cir. 1973); *Freeman v. Wilcox*, 119 Ga. App. 325, 167 S.E.2d 163 (1969).

105. Interview with Ray DelPo, *supra* note 13. Mr. DelPo, who favors a more strictly adversary process in juvenile court, notes that the juveniles with whom the court usually deals are not bewildered infants suddenly entangled in an adult world; most referrals to juvenile court are teenagers competent to operate within a formal court system.

106. The right to a probable cause hearing in juvenile court has aroused little scholarly interest. The cases on the subject have been contradictory. One view, as exempli-

ferred to intake workers were not taken to court because the facts of the allegations against them were not proved to the satisfaction of the intake officer.¹⁰⁷ As noted by the intake supervisor of the Pima County Juvenile Court Center, the intake staff makes legal conclusions with respect to the elements of a particular charge.¹⁰⁸ Although intake workers deny that they have a role in determining probable cause,¹⁰⁹ legal judgments are implicit in a decision that there are grounds to send a child to court. Social casework methods may help the intake worker decide when a court referral will be rehabilitative, but only after he finds legal grounds to refer to court. Since intake workers usually have no formal legal training,¹¹⁰ perhaps the county attorney's office should determine the legal sufficiency of each referral before the intake staff interviews the child. At present, the county attorney reviews only certain felony referrals.¹¹¹ Under the suggested arrangement, responsibility for legal decisions would rest with the county attorney, while responsibility for screening by casework would rest with the intake staff. Failing such an arrangement, intake workers could be trained by the county attorney in recognizing the elements of various offenses.

2. *Miranda Warnings and Confessions*

The United States Supreme Court excluded preadjudication procedures as unnecessary to its decision in *In re Gault*,¹¹² but the appli-

fied by *Brown v. Fauntleroy*, 442 F.2d 838 (D.C. Cir. 1971), requires a prepetition probable cause or preliminary hearing. *Accord*, *Sullivan v. Murphy*, 478 F.2d 938, 974 (D.C. Cir. 1973). *Contra*, *M.A.P. v. Ryan*, 285 A.2d 310 (D.C. Ct. App. 1971) (*Brown* not followed because of intervening statutory reform).

In re D.M.D., 54 Wis. 2d 313, 195 N.W.2d 594 (1972), held that the fourth and fourteenth amendments do not require judicial determination of probable cause prior to a petition. *Accord*, *Williams v. Sanders*, 80 N.M. 619, 459 P.2d 145 (1969); *In re T.R.S.*, 1 Cal. App. 3d 178, 81 Cal. Rptr. 574 (Ct. App. 1969). *See generally* Casenote, 4 *RUTGERS CAMDEN L.J.* 171 (1972).

107. END OF YEAR REPORT FOR 1972, *supra* note 80, at 2.

108. Interview with Sally Plager, *supra* note 43. This remark has been corroborated by observation of 30 intake interviews over a period of approximately 2 months. In four of these interviews, the interviewing employee made judgments as to legal elements of the charge against the youth before him. One offense concerned an abandoned motorcycle which two boys had taken home. Although the charges nominally were dropped for "lack of evidence," the interviewing officer later noted that he reached his decision because even if the facts were true he was not sure that any offense had taken place. A second incident involved judging the merits of a case against a girl who had allegedly accompanied another who had stolen a bracelet from a store. A third involved judging the sufficiency of a charge against a juvenile who had allegedly broken hunting regulations, while the fourth required a definition of battery.

109. Interview with Legh R. Burke, Juvenile Intake Officer, Pima County Juvenile Court Center, in Tucson, Nov. 2, 1973.

110. In Pima County, three of the six intake workers questioned had college degrees. In Cochise County, where the intake function is shared by all the juvenile probation officers, again three of the six officers had college degrees. In Maricopa County, 16 of 18 intake officers have college degrees. *See also* ARIZ. REV. STAT. ANN. § 8-203(c) (1974).

111. *See* text & notes 64-65 *supra*.

112. 387 U.S. 1, 13, 31 (1967).

cability of *Gault* to the intake phase has been the subject of much comment.¹¹³ Broadly, *Gault* stated that procedural safeguards are needed whenever a decision is made which could result in commitment to an institution.¹¹⁴ Since Arizona permits such a disposition for a child adjudicated delinquent or incorrigible,¹¹⁵ and because Arizona allows intake workers to decide whether a child goes to court, often on the basis of information gained in the intake interview, *Gault* seems to mandate inclusion of intake procedures within its holding. Further, intake workers sometimes attempt to avoid court referral by placing restrictions on children without adjudication. Although *Gault* spoke only of institutional punishment, its rationale extends to preadjudication restrictions as well. Curtailment of liberty may be achieved outside an institution as well as inside.

Among the safeguards discussed in *Gault*, extension of the right to counsel to intake procedures is particularly important.¹¹⁶ As stated in *Gault*,

[t]he juvenile needs the assistance of counsel to cope with problems of law, to make skilled inquiry into the facts, to insist upon regularity of the proceedings, and to ascertain whether he has a defense and to prepare and submit it. The child requires the guiding hand of counsel at every step in the proceedings against him.¹¹⁷

In Arizona, the right to counsel is provided by statute in all proceedings upon request of a parent, guardian, or the child.¹¹⁸ One Pima County juvenile court employee has noted that, in case of a conflict

113. See, e.g., Chused, *supra* note 93; Ferster & Courtless, *supra* note 5; Ferster, Courtless & Snethen, *Separating Official and Unofficial Delinquents: Juvenile Court Intake*, 55 I.A. L. REV. 864, 887 (1970); Frey & Bubany, *Pre-Adjudication Review of the Social Record in Juvenile Court: A Low-Visibility Obstacle to a Fair Process*, 12 J. FAMILY L. 391 (1972-73); Popkin, Lippert & Keiter, *Another Look at the Role of Due Process in Juvenile Court*, 6 FAMILY L.Q. 233 (1972); Skoler, *Counsel in Juvenile Court Proceedings—A Total Criminal Justice Perspective*, 8 J. FAMILY L. 243 (1968); Comment, *Miranda Warnings to Juveniles in New Jersey: The Worst of Both Worlds Revisited*, 26 RUTGERS L. REV. 358 (1973); Casenote, 3 SETON HALL L. REV. 482 (1972).

114. See *In re Whittington*, 391 U.S. 341, 344 (1968), citing *In re Gault*, 387 U.S. 1, 41 (1967).

115. ARIZ. REV. STAT. ANN. § 8-241(A)(2)(e) (1974).

116. See Skoler, *supra* note 113, at 260. The LEGISLATIVE GUIDE FOR DRAFTING FAMILY AND JUVENILE COURT ACTS, *supra* note 84, § 25, requires counsel at all stages of the proceedings. The *Model Rules for Juvenile Courts* (1969) specify that a child must be informed of his right to counsel, preferably in writing, at the beginning of an intake interview, because the presentation of the complaint will often be seen by the child or parent as an accusation by a person in authority, and because noncooperation with the intake officer may lead to the filing of a petition. MODEL RULES FOR JUVENILE COURTS, *supra* note 84, rule 3 & comment. Earlier model juvenile court statutes had provided counsel only at adjudicatory hearings. STANDARD JUVENILE COURT ACT, *supra* note 84, art. IV. § 9; CHILDREN'S BUREAU, WELFARE ADMINISTRATION, DEP'T OF HEALTH, EDUCATION, AND WELFARE, STANDARDS FOR JUVENILE AND FAMILY COURTS 57 (Children's Bureau Publication No. 437-1966). For discussions of the role of lawyers in intake, see Ferster & Courtless, *supra* note 55; Platt & Friedman, *The Limits of Advocacy: Occupational Hazards in Juvenile Court*, 116 U. PA. L. REV. 1156 (1968).

117. *In re Gault*, 387 U.S. 1, 36 (1967).

118. ARIZ. REV. STAT. ANN. § 8-225(A) (1974).

between a parent who rejects or refuses to pay for counsel and a child requesting counsel, counsel is provided at intake on the theory that every child is "indigent."¹¹⁹ However, presence of attorneys at intake interviews is quite rare.¹²⁰ One intake worker estimated that between 10 and 20 percent of juveniles are represented by counsel at intake; other staff members indicated that counsel is seldom present at intake.¹²¹ Of 110 intake interview records reviewed at random, only one indicated that an attorney was requested.¹²²

The exercise of the right to silence by juveniles in intake procedures in Arizona is also intermittent. Few intake workers tell children of their right to silence. In theory, at least, *Miranda* rights should have already been given by the police; it also has been suggested that if *Miranda* warnings are not given, statements by the child to the intake worker cannot be used in a proceeding against the child.¹²³ Relying on both theories, inconsistent though they may be, intake workers often extract confessions from children.¹²⁴ The practice of several intake workers in Pima County is to ask the juvenile if he wants "to talk about it." This is normally said in a conversational tone of voice and seem likely to be understood as an opening conversational gambit rather than as an invitation to exercise a right to silence.¹²⁵ Another Pima County intake worker tells the child that he has the rights which the detaining police officer has explained, and then adds "I am here to help you, and I can't help you if you don't tell the truth, so will you tell me what

119. Interview with Sally Plager, *supra* note 43.

120. In Maricopa County the right to an attorney is fully explained at the advisory hearing, at which the child is asked for his plea, but the advisory hearing does not take place until after the intake interview. Again, few attorneys are present at the initial interview. See section II, "Detention," *infra*, at 277-79, for a full description of the advisory hearing.

121. Interviews with intake staff, Pima County Juvenile Court Center, in Tucson, Nov. 1973. Out of 30 intake interviews observed, one was attended by an attorney. This was a case in which a juvenile referred to the court for a suspected pickpocket offense may also have been implicated in a homicide, as the intake worker discovered shortly before the scheduled meeting. The intake worker arranged for the presence of the public defender at the interview, even though the child had not yet asked for counsel. Informality worked to the advantage of the juvenile, for theoretically a formal court appointment of an attorney was necessary.

122. Case file survey of children referred to Pima County Juvenile Court in 1972, Pima County Juvenile Court Center, in Tucson. It was not clear from the file whether the attorney was present at the intake interview or merely at the adjudicatory hearing.

123. Interview with Raymond J. Krane, *supra* note 58; interview with Sally Plager, *supra* note 43. This reasoning is based on court rules. First, Arizona specifies that no extrajudicial statement shall be admitted in evidence over objection unless, in effect, the person offering the statement can demonstrate that *Miranda* rights were given. ARIZ. R.P. Juv. Cr. 18. According to Ms. Plager and Mr. Krane, the current practice of the county attorney in Pima and Maricopa Counties is not to request such information in court from intake workers, thus eliminating any need for intake workers to give *Miranda* warnings. Further, the usefulness of confessions outside the adjudicatory hearing may impel intake workers actively to ignore the warnings. Nor does the county attorney in Cochis County ask for such information. Interview with Ron Hunter, *supra* note 19.

124. See text & note 85 *supra*.

125. Interviews between intake workers and juveniles observed at Pima County Juvenile Court Center, in Tucson, Oct. 29, 1973.

happened?"¹²⁶ A public defender at the Pima County Juvenile Court Center speculates that the switch from the company of a uniformed policeman to an intake worker in mufti, sitting behind a desk, who expresses a sympathetic interest in the child's situation, may also subtly invite confession.¹²⁷ Although there is some doubt that juveniles can understand their rights even when they are punctiliously recited,¹²⁸ they certainly cannot understand them if they are not aware of them. Intake workers should be especially careful to explain these rights. Yet the opposite is true—attempts seem to be made to slight their importance.¹²⁹

Regardless of whether confessions elicited by intake workers may be used in an adversary hearing, they are surely used in deciding whether or not to refer a child to court. The intake worker is certain of the child's guilt if a confession has been offered and also can confidently assume that the child, once in court, will repeat his intake confession and thus be adjudicated delinquent or incorrigible. The ease of such an uncontested adjudication based indirectly on an intake confession undoubtedly influences the number of cases going to the courtroom. Even if a child fails to repeat his intake confession when in court, the fact remains that the intake officer decided to refer him to court based on his intake confession; furthermore, should the juvenile testify, the non-*Miranda* confession might still be used to impeach his denial.¹³⁰ This use of an intake confession contradicts the opinion of many intake workers that a child's confession in an intake interview cannot be harmful to the child. Intake confessions can also be harmful to a child when they are used to recommend a disposition, after an adjudication of delinquency or incorrigibility.¹³¹

Even if no adjudication or disposition is based on a child's confession, preadjudication restrictions may be imposed on the child as a result of the confession. One example is the "condition of trust," when the intake officer adjusts an offense informally, or at least uses his in-

126. Interviews between intake workers and juveniles observed at Pima County Juvenile Court Center, in Tucson, Nov. 1973.

127. Interview with Karen Zizmor, Assistant Public Defender, Pima County Juvenile Court Center, in Tucson, Nov. 8, 1973.

128. Ferguson & Douglas, *A Study of Juvenile Waiver*, 7 SAN DIEGO L. REV. 39 (1970). The study concluded that 86 of the 90 juveniles studied freely waived their *Miranda* rights, but that 81 of these 86 had not fully understood them. *Id.* at 53.

129. It is possible for intake officers to explain rights to children. At one exceptional interview in Pima County, see note 121 *supra*, when an attorney was present and serious charges pending, the intake officer took pains to explain the meaning and import of *Miranda* rights. Before the interview the worker had said, "On this one I'll give him his warnings."

130. *Harris v. New York*, 401 U.S. 222 (1971).

131. *In re Gault*, 387 U.S. 1, 44, 56 n.98 (1967), apparently permits such a use of material inadmissible for adjudicatory purposes.

fluence to encourage the county attorney not to prosecute in exchange for a promise by the child not to be referred again to juvenile court. If the child is referred again, prosecution for the new offense is promised.¹³² Obviously, this would be impossible had the child not confessed to the first offense. Similarly, in Pima and Maricopa counties the intake official may simply decide to hold the case open for a time to see whether further difficulties occur, before he makes a final disposition of the case.¹³³ The use of these methods means that the child risks referral to court for his earlier offense if the intake worker disapproves of his later activities. The child must therefore tailor his activities to please the intake worker. In effect, the child is on probation without having been adjudicated in need of such supervision. Cochise County probation officers also have preadjudicatory options which may restrict a child's liberty.¹³⁴

Finally, although in both Maricopa and Pima counties *Miranda* warnings generally are not given in intake interviews,¹³⁵ workers sometimes ignore this policy; when very grave charges are brought, they sometimes give a full and detailed explanation of *Miranda* rights to a child,¹³⁶ apparently in the belief that especially serious offenses require especially careful treatment. This inconsistency means that the statements of some children are admissible in court, while the similar statements of other children are not. One child accused of an offense may in effect be warned of the adversary nature of the intake interview, while a child accused of a different offense is not warned. Clearly, consistent repetition of *Miranda* rights at the outset of each interview would eliminate this discrepancy.¹³⁷

D. CONCLUSIONS AND RECOMMENDATIONS

The informality endemic in juvenile courts before *Gault* still lingers in the intake process. Because intake workers usually decide the result of a child's referral to juvenile court, post-*Gault* incorporation of basic due process concepts into court procedures in juvenile cases will not transform the court's informal nature unless these concepts are extended to intake decisions as well.

132. Interview between intake worker and juvenile observed at Pima County Juvenile Court Center, in Tucson, Nov. 11, 1973.

133. See text & notes 66-68 *supra*.

134. See text and notes 69-71 *supra*.

135. Interview with Raymond J. Krane, *supra* note 58; interview with Sally Plager, *supra* note 43.

136. One probation officer in Cochise County sometimes gives *Miranda* warnings and sometimes does not. He believes, however, that he should give them consistently, since the information elicited is sometimes used against the child in the dispositional hearing. Interview with Ron Hunter, *supra* note 19.

137. Invariable silence as to *Miranda* rights would erase the inconsistency problem but would not warn the juvenile of the adversary form of the interview.

First, juvenile court must use its central role in the juvenile justice system to help develop and coordinate common referral standards for the agencies referring children to the court. Second, concrete standards must be developed for intake decisions. In view of the deleterious consequences to the child of confessing to an intake worker, workers should be permitted to adjust cases within these standards without first requiring a confession. Third, prepetition treatment of children should be regulated. Finally, because an intake interview can be an adversary proceeding, *Miranda* warnings should be recited and clearly explained before every interview begins. Adoption of these policies will reinforce *Gault's* invigorating effect on juvenile courts.