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# Jurisdiction Intake and Socialized Justice

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# JURISDICTION, INTAKE AND SOCIALIZED JUSTICE

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The process of applying norms and standards through socialized justice now generally extends to the delinquency, neglect and dependency of children as well as, in part, to jurisdiction over adult offenses and to some aspects of domestic relations jurisdiction. The recent growth of the youth authority idea extends it still further. With the report of a committee of the American Bar Association[1] recommending to the White House Conference reorganization and revision of divorce procedures, we may expect extensions of socialized justice to areas not yet too affected by it and legislation to this end. It is therefore appropriate to examine the ideological and normative conflict in certain presently established areas of socialized justice. Moreover, the Standard Juvenile Court Act[2] is again undergoing revision and certain provisions of the new youth acts have not been accepted without dissent. Thus, in drafting new bills to revise the present procedures in divorce, separation, custody and collateral matters, the experience gained in the operation of juvenile, family, and domestic relations courts will prove to be valuable.

An important difficulty with respect to the operations of juvenile and family courts (as for all institutions) is directly related to the conflict of those norms which ultimately determine operation.[3] Within the juvenile court structure, we find embedded norms carried over from legal operations as well as norms introduced from the social service and inductive disciplines. Within the juvenile court, as well as between the court and the social agencies, conflict results from the juxtaposition

1 See Reginald Heber Smith, Paul W. Alexander, *et al.* (as members of an American Bar Association Committee), *Report to National Conference on Family Life,* March 1948 (White House Conference). The recommendations on divorce, new jurisdiction, etc., adopted by the Conference May 7, 1948.

2 The Standard Juvenile Court Act of the National Probation Association, 1943.

3 This paper is an elaboration of certain normative factors described in a more general treatment of the juvenile court; see Frederick W. Killian, "The Juvenile Court as an Institution," *Annals of the American Academy of Political and Social Science,* January 1949, which is documented for recent status of the court.

of two norms or conceptions of process, each of which is basic to the organization of the court as a "socialized" tribunal, namely: *jurisdiction* and *intake*. Each norm tends to symbolize the conditions and limitations for the application of the court's function—as symbols of function, they reflect its very nature. Each includes certain aspects of the other; each also symbolizes disparate conceptions of institutional procedure and organization. It is the purpose of this paper to discuss certain implications of these two conceptions and to suggest, theoretically at least, a method for accommodation of the normative conflict resulting from their inclusion in a court of combined operations—social and legal.

No insuperable difficulty arises in the functional analysis of the norms and standards of social work and social service. These fields have both developed, if slightly later, almost contemporaneously with the inductive fields known as the social sciences; in fact, they are or are becoming the applications thereof. With law, however, both structure and terminology present initial blocks to its analysis as a means of social control.

The intake process is easier to identify than the process of determining jurisdiction. Like jurisdiction, intake possesses abstract significance and may be analyzed as a norm of procedure in the social work area. But, unlike jurisdiction and certain other abstract terms, it may be emblematic—as a sign, it may be placed over the door of the intake worker in a social agency. Thus it possesses the advantage of concreteness and often involves a special functionary. On the other hand, assuming an attempt to place the sign *jurisdiction* over some door in a court house, one would find no appropriate *place*. The lack of sense in attempting the latter is to be found in *the nature of the judicial process*.[4] The sense in *intake*, as a sign, is to be found in the nature of the social work process and, in addition, intake itself is a process (a division or specialty of *treatment*) by which may be determined the appropriateness of the agency's defined function in relation to a particular client. The decision to reject or accept the client is not arbitrary, as sometimes thought, but is formed by abstracting certain factors in the client's situation and matching them against a definition of the agency function; this is done by reference to a refined abstraction of function, the *unit of attention*.[5] The process, it must be emphasized, depends

4 See, generally, Benjamin N. Cardozo, *Nature of the Judicial Process*, New Haven, Yale University Press, 1921; Roscoe Pound, *Interpretation of Legal History*, New York, The Macmillan Company, 1923, and *Social Control Through Law*, New Haven, Yale University Press, 1942.

5 See Florence Sytz, "The Unit of Attention in the Case Work Process," *The Family (Journal of Social Case Work)*, 27:4, June 1946.

on an initial client-worker interview in a face to face situation. Intake, then, is a process related to the public security, also served by *jurisdiction.*

Leaving intake for the moment, the term jurisdiction calls for functional identification. Unlike intake, which is strictly a process or a concept of process, legally speaking, jurisdiction may be regarded as if it were a fact. It is determined judicially, largely through the pleadings.[6] It is for the court (not a jury) to determine if the pleadings reveal what is termed and allowed by law as a *cause of action* and, if it so determines, the court rules that it possesses jurisdiction[7] to hear and determine. Thus, the *assumption of jurisdiction* (power) is a continuing part of the judicial process but intake is an initial stage of the social work process. The judicial process operates to a conclusion (remedy) from valid causes of action which are abstractions of particularized behaviors carefully defined which, sociologically speaking, disturb equilibrium of interaction which must be restored. These behavior disturbances give rise to the idea of public security for the preservation of which the judicial process, specifically specifying the remedy, has become sanctioned as a substitute for a too wide range of self-help. The *causes of action* are structures which, over a long time, have been abstracted from behavioral situations which experience has shown have tended to produce interaction imbalance; thus they have become norms determining and limiting the proper application of the judicial process. Here, the alleged disturbing behavior of a person must be matched against some legally available cause of action before a plaintiff may be granted his judicial remedy. The court insists that the plaintiff, in criminal cases the state (note the survival of the self-help element), establish a case. To do this the plaintiff must not only offer proof of the defendant's alleged behavior but must select his norm or standard of remedy (cause of action) and bring the defendant's behavior (criminal or civil) within it in conformity with a process of proof (judicially supervised) called the law of evidence. This signifies, of course, an impersonal process where the judgment which restores equilibrium is extracted indirectly from a situation in which proven behavior is set off against an *ideal*[8] type of behavior (i.e., not socially

6 Social workers do not speak of "having intake" as judges of "having jurisdiction."

7 As used here, *power* to act—for wider implications, see Black's Law Dictionary (3rd ed.). For present purposes, it is not essential to elaborate *jurisdiction* in its manifold aspects.

8 For discussion of the sociological significance of the *ideal* type, see A. M. Hender-

approved, but an ideal of disapproved behavior formulated out of experience in terms of the possibilities at hand for control purposes). Thus we note a similarity: both intake and jurisdiction involve behavior set off against behavior—in law, actual current behavior against an *ideal* of behavior expressed usually as a taboo;[9] in social work, the behavior of a client set off against behavior which the agency is equipped to deal with by definition and experience.

Thus the norms of procedure symbolized by intake and jurisdiction are directed (sociologically) to ultimately identical ends or goals using similar postulates, the primacy of the individual and the restoration of social equilibrium. However, the distinction between them lies in those situations in which each can function effectively. Difficulties and conflicts arise in juvenile and family courts because social agency functions are confused in operation with judicial functions. Within a pure social agency intake implements the defined agency function. But in an authoritarian (legal) agency, jurisdiction with all its implications of legality, and often of legalism, determines the limits of intake policy so that where, as in a juvenile or family court, the judge operates with a social staff, conflict of norms tends to follow.

The conflict in certain areas of combined legal and social operations is not unique in the law today. The time has long since arrived when the exigencies of life have outgrown the conceptual and doctrinal framework of the law as classically known and understood, and this has been reflected in an expansion of jural postulates to provide for remedies which the jurists have been unable to justify within the boundaries of the classical remedial stereotypes. This phenomenon has been expounded by Dean Pound who describes the expansion of jural postulates underlying legal remedy in our own time.[10] After specifying five jural postulates of civilized society, each of which has been recognized as a component part of civilized systems of law—mainly the Roman and Anglo-American systems—he describes in outline the emergence, during the last century, of three other jural postulates, one of which is directly pertinent to this discussion and which may be paraphrased as follows: that there is now a public interest in the risk of unfortunate individuals, thought to constitute a responsibility necessary to be borne by society as a whole. This proposition would seem to be a juridical recogni-

son and Talcott Parsons (eds.), *Max Weber: The Theory of Social and Economic Organization*, New York, Oxford University Press, 1947.

9 For a concentrated collection of short statements on remedy at the common law see Walter Wheeler Cook, *Readings on the Forms of Action at Common Law*, Chicago, Callaghan and Company, 1940.

10 Roscoe Pound, *Social Control*, pp. 112-118.

tion that the law, at least in all fields, can no longer operate exclusively within the older definition of self-help and of process. Of course, this idea has been emerging for some time and indeed has materialized or been incarnated in the form of legal aid clinics, public defender laws, as well as in the incidents of socialized justice and of administrative law where *behavior circumstance* and legal remedy are no longer the exclusive touchstones for the application of the judicial process, but where, rather, an emphasis is placed on individualized rather than on generalized behavior. It is not the purpose of this paper to discuss whether or not all the extensions of this principle have been valid, but rather to show some of their normative effects, particularly in the operation of juvenile courts. Having described certain implications inherent in two norms of procedure, jurisdiction and intake, it is necessary to indicate some of the concrete effects of their juxtaposition and then to suggest certain prerequisites for accommodation.

It has been said that the essential similarity between jurisdiction and intake lies in the fact that each of them may be referred to the more generalized concept *the public security.*[11] Does either epitomize the public security more basically than the other? Will intake eventually become the dominant process in socialized justice or will it continue, as it now tends to be, supplementary and complementary to jurisdiction?

The purpose for which the juvenile court was designed was to extricate the child from the four corners of a system of stereotyped legal remedy formulated through and applied by the criminal law in which, by judicial pronouncement related to *behavior circumstance,*[12] offenders were clothed with criminal status. In this process which has in general been the classical approach to the question of deviant behavior, lasting until quite recently, it must also be apparent that all premises which led to legal status by reason of adjudication based on some form of deviant behavior—behavior in the sense of cause and effect—were formulated as assumptions. In other words, the major premises with reference to man—his aims, goals, and operations—grew out of a limited empiricism which led to the formulation of jural concepts concerning the nature of law and its appropriate applica-

11 Roscoe Pound, "The Juvenile Court and the Law," *Cooperation in Crime Control* (Yearbook, New York, National Probation Association), 1944—discusses this concept as determining the organization of the court.

12 *Behavior circumstance* as distinguished from *treatment consequence* is discussed by Jerome Hall, "Criminology and a Modern Penal Code," *Journal of Criminal Law and Criminology,* 27:1, May-June 1936; the implications of these terms in practice are discussed by Paul W. Tappan, *Delinquent Girls in Court,* New York, Columbia University Press, 1947; the only fully objective, scientific treatment of a socialized court in operation (vastly underestimated and misunderstood by the reviewers).

tion to human behavior. The institutionalization (and thus the differentiation) of the law around major premises formulated as an incident of its own process, elliptically and empirically, was satisfied by jurisdiction which was also connected with theories of predictive value as embodied in ideas of the natural law as an idealization of time and place formulated within a relatively uncomplicated society and, indeed, before any strictly secular concept of society had been explicitly propounded. In the Middle Ages, for instance, though law and religion had become partially differentiated, nevertheless, a unity of both law and religion was effected within a synthesis universally accepted in Western Civilization and the law long had supplementary services from that quarter. The best single example of this synthesis was the *Summa Theologica* of St. Thomas. Here was a formula for the application of remedy from premises of individualization quite different from those we now understand to be included in any concept of individuation.[13] At that time the possibilities of complexity in human behavior and culture had not been projected; behavior therefore could be idealized in terms of comparatively simple theoretical entities (in terms, for instance, of *will* and other faculties regarded as entities). However, since the rejection of the faculty psychology and since the growth of the concepts *socialization* and *individuation* to explain human behavior with which came, first, less interdependence of law and legal process on complementary and supplementary institutions and, later, the development of newer separate areas for the support of the individual, the older jural postulates with reference to behavior and to the consequences of behavior were found to be insufficient and the jurists have been faced either with the necessity of recasting the older postulates by extension within the law, or of reaching out to seize postulates from the inductive disciplines.[14] In practice, both methods have been pursued, but even the former has been influenced by the wealth of materials in the inductive disciplines. One of the importations from the new disciplines grew out of a dawning consciousness that *behavior circumstance* with respect to children meant something different than when applied to adults. This was manifested at first as a general expression of awareness that criminal courts were inappropriate forums for the handling of children's cases. Almost prematurely, at least in view of the absence of perfected procedures

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13 James W. H. Bossard examines the origin of 'the individual', sociologically, in *Social Change and Social Problems*, New York, Harper and Brothers, 2nd ed., 1938, Chap. VI.

14 See Huntington Cairns, *Law and the Social Sciences*, New York, Harcourt Brace and Company, 1935.

and practices, the juvenile court came into being depending on a practice of probation, in turn based on the idea of a charity-motivated *amicus curiae*. Its procedures were unspecific, its operations undefined.

After the establishment of the juvenile court, it was discovered that the concept *jurisdiction*, as understood in the classical legal dispensation, had lost a good deal of its implementation. For one thing, unlike the definition of a criminal act, which is still specific, the definition of delinquency has tended to become vague and to depend more and more upon the moral predilections of the judge. It is apparent that even this change alone has thrust upon the judge a responsibility far wider in the hearing and determining of cases than that which has been imposed upon criminal judges at least since the formative days of the English criminal law. This vagueness in definition has meant that the question of jurisdiction has almost become one to be settled by each judge—by each judge in relation to each offender, with no stated guide for action, and restrained only by operation of due process, the necessity for a fair trial, and ultimately by judicial review. These processes too are difficult of application due to the lack of specificity of the basic normative operations in the juvenile courts. It has also tended to confuse jurisdiction with intake so that the judge is tempted to use what are, properly speaking, intake norms to compensate for the lack of jurisdictional implementation; but when an offense committed by a child is so serious that the age of the offender must be regarded as less important than the consequence of his act (*behavior circumstance*—as an incident in disturbing the social equilibrium) the juvenile court judge tends to revert to the more precise enunciation of remedy embodied in the classical criminal law; and, indeed, this is often sanctioned by statutory provisions for transfer of jurisdiction to criminal courts in such cases.[15] In the vast majority of cases, however, the question of the offense (i.e., *behavior circumstance*) is not actually as serious as that of the predicament of the child before the judge, and it is precisely here (*treatment consequence*) that a wide latitude for abuse is apparent.[16]

It has sometimes been said that the introduction of social techniques into the juvenile court process has been responsible for this dilemma but it would appear, on the contrary, that the trouble has resulted because the social techniques have not been applied on a sufficiently high professional plane and consequently

15 Sec. 6, Standard Juvenile Court Act, as a generally typical provision.
16 For elaboration, see Tappan, *op. cit.*

could not substitute for the loss of jurisdictional implementation. Therefore, the juvenile court judge has had to assume the additional responsibility mentioned, which is not essential in a criminal court, for which he is not trained and which is part of the prognosis function. It is true, of course, that the judge's conscience might be salved by reason of the fact that the juvenile court law eliminates the necessity for pronouncing criminal status—often the judge passes over the process of adjudication completely and treats the case as *unofficial.* Too often, it is unrecognized by the judge himself, and certainly by the public, that the damage which can be done to a person by *free adjudication,* here exercised in a social vacuum and without sufficiently defined areas of protection, may far exceed that which is done by application of a legal rule which is protectively precise both in form and in content.

Thus one of the current normative conflicts in the court concerns the question whether or not there must be a finding of delinquency in a juvenile court before any further proceedings may be taken. This question has been answered in the affirmative and strenuously insisted upon in the Children's Court of New York City as well as in the Boston Juvenile Court. Unfortunately, most arguments with reference to this question have engendered a good deal of heat and have ended only in arbitrary insistence upon that position propounded. This is largely because the problem has not been properly formulated, for it is not at all a question of whether the court should pronounce a child delinquent or dismiss the case upon the hearing of the petition; it is rather a question of what cases of what children the juvenile court (as a court) should hear. But the position maintained by the Boston and New York courts emerges from a framework of scholasticism and is essentially equivalent to the proposition concerning how many angels can dance on the point of a needle—the distinction being that it merely appears to be a more reasonable one from the modern point of view. True, jurisdiction, being a classical concept of the Anglo-American law, involves proof of an act before pronouncement of a status. But it cannot be argued that delinquency from the legal point of view is more or less than status. True, it is a status which carries less disability than that of criminality, but the difference is one of degree, not of kind. It may well be that for some children delinquency may carry more stigma than crime for some adults. It must also be said that in our social system and institutional life no other method exists for pronouncing status legally than through the medium of jurisdiction. Restating the question, it is

not whether we shall dispose of either of the concepts, *jurisdiction* or *intake,* but to what type of cases the concepts may appropriately be applied. The answer to this question must depend upon an analysis of comparative means of social control for, as we have come to think, the law is not an exclusive means of social control. Perhaps, with reference to the child, as well as in other areas of life, the application of some newer forms of control than law would outweigh the advantages insisted upon by the legalists—namely that all deviant behavior be totally encompassed within the framework of jurisdiction. If we had no other areas for dealing with children than the juvenile court, which indeed was largely the case at the time when our first juvenile court law was adopted (1899),[17] any argument for considering other controls would have less validity. One of these other methods has been partly developed within the juvenile court itself and is known as probation, now translating into social case work—here too conflict as to whether probation is case work or an independent technique is noticed, resulting also from scholastic and semantic confusion of the issue.

Contrary to public opinion, the development of probation was an institutional necessity and not merely, as most people think, the interjection into the situation of some person who could function as a friend to the child. Since the juvenile court judge's discretion in the disposition of cases became widened and ceased strictly to conform to the definitions in the criminal law, it soon became essential to provide some form of predictive technique. This has been accomplished to some extent by probation—an institutionalized area. It has been accomplished for the most part quite poorly; in some places very well indeed.[18] Considering the courts where probation has been well performed, conflict between judicial function and social work function has tended to become pronounced particularly if the judge is a legalist.

All this leads to another question: namely, within the juvenile court, shall we make the social work or the judicial process dominant? At least this is the usual way in which the question is put; it is submitted that this question is related to the question just discussed with reference to a finding of delinquency. It is a question of the same type and it is a scholastic formulation. Again, re-stated, we now have two processes for dealing with deviant behavior—the judicial process and the social work

17 See Alice Scott Nutt, "The Responsibility of the Juvenile Court and the Public Welfare Agency in the Child Welfare Program," *Redirecting the Delinquent,* New York, National Probation and Parole Association Yearbook, 1947.

18 See Thorsten Sellin, "Adult Offenders," *Social Work Year Book,* New York, Russell Sage Foundation, 1947, pp. 33-35.

process. It is not an arbitrary question, which shall be dominant. That question arises solely out of the illusion caused by juxtaposition and lack of the comparative method in analysis. It is obvious, of course, that, in the juvenile court, legal status can be determined only by the judge or, if he abdicates, by the social worker. From incident to incident either may be dominant and it is also true that there may be a juggling of dominance, depending upon the personnel of the court. This method is entirely unsatisfactory and the fact that some courts work pretty well along these lines constitutes no ultimate solution to the problem. The question, rather, is what behavior of what children can best be handled within social work areas, and what in judicial areas. That each must bow to the other (as separate areas of control) under certain prescribed conditions formulated out of observation and testing seems simple enough as a sociological proposition.

In thinking of the future of our juvenile courts, we are confronted with the problem of how to combine two operations—those determined by jurisdiction and those determined by intake. In a court of combined operations, where probation or social work is performed by a staff which is part of the court, the judge is usually designated as head of the court. If the staff is untrained and largely unmotivated by professional ideals and the judge is not interested in a professional staff, jurisdiction is apt to dominate, with the results described, and dispositions will tend to follow the judge's personalizations, predilections and ideas concerning the meaning of offenses, thus constituting a system which is essentially a dispensation of secular indulgences.[19] And so in a court where the staff is composed of professionals or where the staff serving the court is part of an independent, professionalized probation organization, conflict of norms usually develops unless the judge is willing and able to distinguish between legal and social work functions—not too often the case. Much can be said for either "system" but neither can be expected to work unless the functional components of the institution are relatively defined and this has not yet been satisfactorily accomplished.

The Standard Juvenile Court Act, and some statutes,[20] provide for a system which, it might be said, is the beginning of wisdom in this respect—the provision for referees—but so far, the provision is neither sufficiently elaborated nor specific. A concrete example of this provision in operation is to be found at

19 Tappan, *op. cit.*

20 For instance, Ohio Code Annotated, Sec. 1639-21.

the Toledo Court where all cases are heard initially by referees operating under statutory provision with a right of re-hearing before the judge, if demanded. Actually, very few such re-hearings are demanded but, nevertheless, the system there has for ten years revolved around the administration of a judge who understands and, indeed, is an expert on the subject. The election of a new judge, unfavorably disposed toward the system of initial hearings by referees through social techniques—a Pharaoh who knew not Joseph—could quickly reduce the system to impotence. Implicit in this analysis, of course, is the proposition that the work of a judge in a juvenile court is a specialty and that little opportunity exists for learning it except through experience.[21] Nor can we be hopeful that, in the near future, social workers and judges will enjoy the results of a common taught experience—such as law and social work taught as social policy.

This being the case, what is the prognosis for a court of combined operations using social and legal functions without either incessant friction or ending in the atrophy of function by one of the essential component functionaries?

To achieve operating facility in courts of combined operations, one expedient has been used with some success—the conference method. This is a social work technique more often than not difficult for any judge to comprehend and always at least initially difficult for any judge to apprehend. However, where the judge is favorably disposed to the professional staff, it has produced valuable insights and procedures. But as a solvent for the problem it is still merely an expedient; as a method within a proper definition of function, it is invaluable. It cannot take the place of functional definition but its results if studied will offer valuable guides for a new policy design for juvenile court structure and operations.

For adequate solution of the problem, we are again forced back upon the concepts analyzed at the outset. Being disparate concepts of function, related only by ultimate purpose, each must be protected within a prescribed area of operation, legally defined. It is the function of law to pass on behavior circumstance, to protect the person, to insist on the application of due process, and to enunciate status. It is not the function of the judge, acting within the legal ideology and as an incident in the exercise of the judicial process to determine, supervise or to interfere with treatment—i.e., to operate as part of the social work process. But, where the social work process looks to a directive entailing

21 Paul W. Alexander, "Of Juvenile Court Justice and Judges," *Redirecting the Delinquent*, New York, National Probation Association Yearbook, 1947 (ed. Marjorie Bell. The author is judge of the Toledo court.)

status determination, then that is within the scope of a properly defined and functionally separate but related exercise of the judicial process and the interjection of the judge is appropriate and essential.

To achieve this separation of function, the judge (as is not now the case) should be restrained by explicit provisions in statutes establishing juvenile courts from exercising other than jurisdiction; incidents of casework or treatment should be defined and the function delegated in specific terms to an appropriate functionary or agency. So far, this is merely logical deduction from premises abstracted from the meaning content of jurisdiction and of intake, each symbolizing disparate but equally necessary functions. So far, in juvenile courts, this has not been satisfactorily provided for by tight definitions of the processes to be used in the respective areas of operation.

Such a definition must follow an idea common to both the law and to social work—a common denominator of goals, purposes and interests to be served. It has been suggested that this common denominator is found in the concept *public security,* for the protection of which, each in its own manner, the norms of process, jurisdiction and intake, may operate. This means analyzing social work and law as two means of social control operating with respect to behavior, each within its limits *as* a means of social control. Therefore, the conditions of the proper operation of each—abstracted from an operational analysis of each—must be specified by statute. It is obvious that this argument leads to an attentuation of those operations now assumed to be within the province of our juvenile courts and if the premises of this paper, initially stated, are correct, the conclusion is not more than a logical deduction. The question of *how* this shall be achieved is one that requires separate attention for it involves a discussion of several other norms such as, for instance, *course of conduct,* and this is not within the scope or purview of this paper which is meant as a preface toward a revised policy design for the juvenile court in the making of which will be needed the results of many ideas and experiences. As part of the preface, however, it may yet be in order to summarize the theoretical conclusions of this analysis as propositions to be regarded in the formulation of such policy design:

*In application of socialized justice*

1. The respective areas of jurisdiction and of intake should be explicitly delineated.
2. The definitions of behavior types (*behavior circumstance*

and *treatment consequence*) involving the application of jurisdiction and of intake should be sufficiently detailed for application.

3. The essential areas of treatment should be explicitly sanctioned by legal recognition.

4. The types of procedures for referral or removal from treatment areas to judicial areas should be specified, generally, on the basis of experience.

5. The protective aspects of jurisdiction should be specified and procedures for the exercise of protective jurisdiction should be made specific in relation to intake.