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A SYSTEMS ANALYSIS OF
THE INFORMAL JUVENILE COURT

By

Jeremiah F. Johnson


B.A., University of Montana, 1966

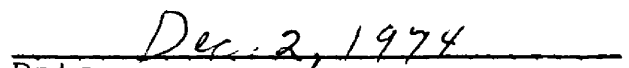
Presented in partial fulfillment of the requirements
for the degree of:

Masters of Arts
University of Montana
1974

Approved by:


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CHAPTER I

INTRODUCTION

PURPOSE

The system under study in this paper is the informal juvenile court system in the State of Montana. The primary emphasis will be on the informal system although some attention will be given to the formal juvenile court as it relates to the informal system. The informal juvenile court system comes into operation when a youth is processed either by a peace officer, juvenile probation officer or a district juvenile judge without the issuing of a formal petition alleging delinquency. Although a great number of cases are informally processed by peace officers and a few by district juvenile judges, this study concentrates on probation officers because it is believed they are the focal person handling offenders within the informal process.

THE IMPORTANCE OF INFORMALITY IN TREATMENT OF JUVENILES

The informal juvenile court system is being examined because of the apparent benefits it offers to the entire juvenile court system. When a police officer decides to cite a youth, or once a complaint of some type is filed,

generally a probation officer is called upon to decide the course of action. At his discretion the matter can be handled informally or it can be referred to the judge or county attorney for formal processing on a petition alleging delinquency. The decision made becomes very important for the youth involved. It is generally construed that the earlier a community detects delinquent and potential criminal behavior, and provides some method to change this behavior, the better it can protect itself. Although in some cases counseling is acceptable, if an offense is against the person or property a victim often wants and demands punishment. Not only may the offender's behavior be changed, but such punishment may deter potential offenders when they see what happens to their friend. But, such punishment and detection, especially when it affects youthful offenders at an early age, does not always result in this expected protection of the community.

As a juvenile advances into the juvenile court system it can be found that the further he advances the higher the risk becomes of the community identifying him as a delinquent. And, in many cases this labeling process not only comes from the community but also from the youth himself. When the community labels the youth as a delinquent this often reinforces in the youth the concept that he is a delinquent and if he responds by acting that way a vicious cycle begins and continues until either the youth

grows out of it, someone or something in the youth's life alters the behavior pattern, and/or the behavior pattern is altered through professional counseling provided by the community, the courts, or the institutions.¹

HISTORICAL BACKGROUND

Early Developments

Near the middle of the 19th century a movement emerged in the United States to protect young offenders from criminal proceedings. The original movement begun in England many years before when the chancery courts came into existence after the reign of Henry VIII. These courts were created to replace the ecclesiastical courts which had previously handled what are known today as dependent and neglect cases. At first the chancery or equity courts never assumed jurisdiction over children when they violated the criminal laws. They dealt only with cases where the

¹Numerous theories exist that classify delinquents and their behavior, each giving various reasons why the youth behaved the way he did. Two basic juvenile delinquency or criminology textbooks that discuss causation are Juvenile Delinquency by Ruth S. Cavan, and Criminology by Robert G. Caldwell. One of the best works that discusses many of the various causation theories is Delinquent Behavior by John M. Martin and Joseph P. Fitzpatrick.

Labeling theories can be found in most juvenile delinquency texts. A good presentation of the labeling concept can be found in Stanton Wheeler and Leonard S. Cottrell, Jr., Juvenile Delinquency - Its Prevention and Control.

Since it is not the intent of this paper to discuss causation theory, it is recommended by the author that the reader review these references in order to gain an insight as to why delinquency exists.

welfare or property of the child was at stake. The idea of the chancery court was transferred to the United States together with the English legal system and soon included protection for children in danger of personal and/or property injury.²

Other factors contributing to the philosophy of the juvenile court included the common law interpretation that a child under the age of seven could not be held responsible for committing a criminal act and the doctrine of parens patriae, which held the sovereign to be the father of those under legal disability within his territory, was adopted. The King, through his chancellors, assumed the general responsibility for protecting all infants in the realm. It was pointed out, states Eldefenso in Wellesley v. Wellesley that the King as pater patriae (father of his country) possessed an obligation to oversee the welfare of the children in his kingdom because of neglect, abuse, or abandonment of any child by his parents or guardians.³ The King, through his court of chancery, could then provide the proper care and protection for the child.⁴ This doctrine of parens

²William T. Downs, Michigan Juvenile Court: Law and Practice, (Ann Arbor: Institute of Continuing Legal Education, 1963) p. 39.

³Edward Eldefenso, Law Enforcement and the Youthful Offender: Juvenile Procedures, (New York: John Wiley and Sons, Inc., 1967) p. 159.

⁴The President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Juvenile Delinquency and Youth Crime, (Washington, D.C., 1967) p. 2.

patriae, as William Downs states, is "the constitutional justification for the authority of the legislature to enact legislation which created the juvenile court." Downs goes on to state that this is not to be confused with the authority of the court itself for "the court does not derive its authority from any broad general principle of 'parens patriae'. The court derives its authority from the legislation which created it."⁵

Problems arising because of the unrest of the 19th century were confronted by such men as Judge Peter Thatcher of Boston, John Augustus, the "Father of Probation", and Judge Benjamin Barr Lindsey of Colorado along with numerous other people across the United States who became known as the "Reformers". Problems arose with the trend toward urban development as the industrial revolution spread. Masses of people migrated to the United States and settled in the cities. Slums, unsavory housing, vice, crime and the disruption of the family followed. Labor exploited children and the school was only available for a few. Courts and institutions were faced with overcrowding. There was little or no segregation of men, women or children offenders until at least 1861 when it existed in a limited form in Chicago.⁶

⁵Downs, p.p. 23-24.

⁶Ted Rubin and Jack F. Smith, The Future of the Juvenile Court, (Washington, D.C.: Joint Commission on Correctional Manpower and Training, 1968) p. 1; The President's Commission on Law Enforcement and Administration of Justice, Juvenile Delinquency, p.p. 2-3.

England had recognized the need for special handling of juvenile offenders, separating them from adults by passing the Juvenile Offenders Act of 1847.⁷ Prior to its passage juveniles were treated the same as adults in criminal proceedings. The "reformers" brought about change, providing the germ for the creation of the modern day juvenile court.

Massachusetts established a reform school for juvenile offenders as early as 1847. In 1869 Massachusetts law provided for "the presence in court of a 'state agent' or 'his deputy' whenever application is made for the commitment of any child to any reformatory maintained by the commonwealth."⁸ In 1860 laws were introduced to provide for separate hearings of juveniles under sixteen before a probate judge. Glueck states that here was the germ of the modern elaborate procedure for social investigations by requiring that an agent for the juvenile "shall have an opportunity to investigate the case, attend the trial and protect the interest of, or otherwise provide for the child."⁹

The first juvenile court created by statute began on July 1, 1899, in Cook County in Chicago, Illinois. The

⁷Eldefenso, p. 158.

⁸Sheldon and Eleanor T. Glueck, "Historical and Legislative Background of the Juvenile Court", in Sheldon Glueck, (ed.) The Problem of Delinquency, (Boston: The Riverside Press, 1959) p. 256.

⁹Ibid.

statute creating it was very comprehensive for it dealt with jurisdiction over the treatment of dependent, neglected, and delinquent children. The important point that the law set forth was that the delinquent child should be treated the same as the neglected or dependent child. Thus, it took into consideration that the issues before it required understanding, guidance, and protection rather than criminal responsibility, guilt, and punishment.¹⁰ The rationale was that a formal setting would be destructive to the goal of getting at the root of the child's problems. The child needed help, not punishment; therefore, there was no need for the traditional criminal procedural safeguards. The President's Commission on Law Enforcement and Administration of Justice expounded on this particular approach in their task force report when referring to the formalities of criminal procedure:

They formal proceedings were destructive for several reasons. First, the formal process -- charges, jury, trials, representation by counsel, evidentiary restrictions, motions and countermotions, the privilege against self-incrimination -- was inescapably identified with the criminal law, the atmosphere and presuppositions of which it was the objective of the juvenile court movement to eliminate in dealing with child offenders. Second, adversary procedures for determining whether a person committed a criminal act with a criminal state of mind were not useful for ascertaining the full picture of the child's behavior, including not only the conduct that brought him to court but the whole pattern

¹⁰Eldefenso, p. 161.

of his prior behavior and relationships. Third, criminal procedures would put the child on one side and the court on the other, creating a tone of combat and contentiousness that would destroy the sought after cooperation of the child in the common effort to help him.¹¹

The basic idea was that erring children should be protected and rehabilitated rather than subjected to the harshness of the criminal system. The offender was to be treated as an individual in need of better supervision until he reached a reasonable age, usually eighteen, when he would assume this responsibility on his own. As time passed, the scope of the philosophy came to include the fact that no child could be accused of a crime, nor could any child suffer any conviction of a criminal nature while below a certain age. The child could be accused of a delinquent act or adjudicated a delinquent but he could not be classified as a criminal.

Before it could be decided if the court should assume jurisdiction and supervision over the child, it became necessary for the nature and extent of the individual child's maturity or immaturity to be determined by the court. This demanded that each child be looked upon as an individual and be evaluated according to his assets and liabilities. Emphasis was placed upon a treatment plan that would be in the best interests of the individual child who had contact

¹¹The President's Commission on Law Enforcement and Administration of Justice, Juvenile Delinquency, p. 28.

with the court. Presently there are 2,700 courts that hear children's cases in the United States. Every state, including the district of Columbia has followed the basic idea of the juvenile court philosophy formalized in the Illinois code in 1899.¹²

Montana Background

Montana's concern over juveniles started as early as 1893 with the passage of legislation for a reform school for both males and females between the ages of eight and twenty-one. This act stipulated that when any offender between those ages was found guilty of any crime, including vagrancy or incorrigibility, but excluding murder or manslaughter, he could be placed in the state reform school by order of the court rather than be placed in jail. If the individual was incorrigible or unmanageable at the state reform school he could be returned to the court that passed sentence for further action, which usually meant placement in jail.¹³

Other indications of a court movement in Montana arose in 1895 with the stipulation entered that the district court judge could hear such matters in his chambers.

¹²The President's Commission on Law Enforcement and Administration of Justice, Juvenile Delinquency, p. 12.

¹³Legislative Assembly, Laws, Resolutions and Memorials of the State of Montana, 3rd Sess., (Butte: Inter-mountain Publisher, 1893) p.p. 183-189.

The court further provided that each boy or girl committed to the state reform school should remain there until he or she reached the age of twenty-one, or until paroled or legally discharged. In some cases a girl could be released at eighteen if "she deported and conducted herself in such a manner as to make it reasonably probable that she had reformed and is a proper person to be discharged."¹⁴

By 1907 the legislature prohibited children under sixteen from being confined with adults, created the office of probation, recognized the need for the state to assume jurisdiction over dependent-neglected children, and granted the court the power to place a delinquent on probation or in a foster home.¹⁵

Finally in 1911 the Montana juvenile court was officially established. The majority of the earlier laws were retained and the juvenile court judges chosen to act in this capacity were district court judges. The major stipulations of the act were:

1. Any child seventeen or under was to be handled in juvenile court.

¹⁴D.S. Wade and F. W. Cole and B. P. Carpenter, Code Comm., Codes and Statutes of Montana, Vol. II, (Anaconda: Standard Publishing Co., 1895) p. 1186.

¹⁵E. C. Day, Code Comm., Revised Codes of Montana, 1907, Vol. II, (Helena: State Publishing Co., 1908) p.p. 908-915.

2. Delinquents were not to be incarcerated in a common jail.
3. Juvenile hearings were to be closed hearings.
4. The judge could appoint a juvenile improvement committee to assist him.
5. The probation officer became a paid officer of the court but his duties still consisted of investigating offenses rather than supervision of delinquents.¹⁶

The original purpose or objectives of this act, carried over to the present, is stated in Section 10-601 of the Revised Codes of Montana:

This act shall be liberally construed to the end that its purpose may be carried out, to wit: That the care, custody, education, and discipline of the child shall approximate, as nearly as may be, that which should be given the child by its parents, and that, as far as practicable, any delinquent child shall be treated, not as a criminal, but as misdirected and misguided, and needing aid, encouragement, help and assistance.

And that, as far as practicable, in proper cases, that the parents or guardians of such child may be compelled to perform their moral and legal duty in the interest of the child.

The principle is hereby recognized that children under the jurisdiction of the court are wards of the state, subject to the discipline and entitled to the protection of the state, which may intervene to safeguard them from neglect or injury and to enforce the legal obligation due to them and from them.¹⁷

¹⁶Legislative Assembly, Laws, Resolutions and Memorials of the State of Montana, 12th Sess., (Helena: Independent Publishing Co., 1911) p.p. 320-339.

¹⁷Revised Codes of Montana 1947, (1968), C. 6, Sec. 10-601, p. 576.

In 1919 the maximum age limit was raised from seventeen to eighteen and the judge was granted specific power to place a child in jail only if he felt it necessary.¹⁸ In 1921 the probation officer's duties were redefined and separation of juveniles from adults was again mentioned. The probation officer was now to fully examine any complaint against a juvenile under the ages of eighteen excluding those offenses not punishable by death or life imprisonment. This examination included the offense, child's surroundings, exact age, habits, school record, home conditions, and the habits and character of the parents or guardian. Once the report was completed it was to be presented in writing to the judge. The probation officer was also to attend all hearings as the judge directed.¹⁹

By 1943 the juvenile codes were completely rewritten giving the court the power to grant permission to file a formal petition but allowing for an informal or preliminary inquiry to determine if the interests of the public or the child required further action. If the court desired that some informal adjustment take place prior to filing a for-

¹⁸Legislative Assembly, Laws, Resolutions and Memorials of the State of Montana, 16th Sess., (Helena: State Publishing Co., 1919) p. 470.

¹⁹I. W. Choate, Code Commission, Revised Codes of Montana 1921, Vol. IV, (San Francisco: Brancroft and Whitney Co., 1921) p. 422.

mal petition, the probation officer was notified and given the authority to conduct a preliminary inquiry and to supervise the youth without a formal declaration of delinquency. The judge could use his own discretion in placing a child found to be delinquent on probation, committing the child to a public or private institution, or ordering further care and treatment that the court felt would be in the child's best interest.²⁰

By 1967 the legislature had added the provision that any child adjudicated a delinquent could be committed to the Department of Institutions.²¹ And finally by 1969, Sections 10-604, 10-605, 10-609, 10-618, 10-620 and 10-622 were repealed. Several new sections replaced them better clarifying points of law. For example, Section 10-605.1 specifically clarified the nature of the preliminary inquiry by providing that any child brought before the court on a delinquency charge could appear before the court or the juvenile probation officer for the purpose of making a preliminary inquiry to determine whether further action should be taken. The matter could be handled at this level by an informal adjustment including the placement of the child on probation. If a petition was deemed necessary then the county attorney

²⁰Revised Codes of Montana 1947, C. 6, Sec. 10-611, p.p. 801-802.

²¹Legislative Assembly, Laws, Resolutions and Memorials of the State of Montana, 40th Sess., (Helena: State Publishing Co., 1967) p.p. 134-236.

had to prepare and sign it.²² Section 10-608.1 revised the procedure for taking a child into custody and detaining him, providing that any peace officer, if circumstances warranted it, could take a child into custody and detain him. But the court or probation officer must be notified as soon as practicable and the officer could release the child to a parent or guardian upon receiving written promise from them to bring the child before the court.²³ Section 10-611(3) gave the court an additional alternative disposition where a child was found to be delinquent. The judge could notify the director of the Department of Institutions if he felt a youth, who must be sixteen or older, was suitable for placement at the Youth Forest Camp. The child could be committed to the Department of Institutions for a period not to exceed thirty days for evaluation purposes to determine suitability for placement in the camp. If he proved suitable and there was space at the camp, the judge could commit the juvenile directly to the camp.²⁴

Objectives of the Montana Juvenile Court system were extended to include the following:

1. That juveniles sixteen years of age or older,

²²Revised Codes of Montana 1947, (1973), C. 6, Secs. 10-605.1 and 10-629, p.p. 139, 589.

²³Revised Codes of Montana 1947, (1973), C. 6, Sec. 10-608.1.

²⁴Revised Codes of Montana 1947, (1973), C. 6, Sec. 10-611(3), p. 141.

accused of committing or attempting to commit murder, manslaughter, arson in the first or second degree, assault in the first or second degree, robbery, burglary, and carrying a deadly weapon with intent to assault, or who commits rape may be proceeded against the same as an adult.²⁵

2. That any juvenile charged with delinquency on a written petition shall have the right to demand a jury trial and the right to be represented by counsel.²⁶

3. That any juvenile found to be a delinquent has the right to appeal the decision.²⁷

4. That juveniles shall be protected from public release of their names in delinquency matters.²⁸

Personal experience in working with the people involved in the Montana juvenile court system evidences existence of the following unstated objectives as well:

1. To keep as many youth as possible out of the formal court system.

2. To provide rehabilitative services through the court such as counseling, foster care, psychological help,

²⁵Revised Codes of Montana 1947, (1973), C. 6, Sec. 10-603, p.p. 137, 138.

²⁶Revised Codes of Montana 1947, (1973), C. 6, Sec. 10-604.1, p.p. 138, 139.

²⁷Revised Codes of Montana 1947, (1973), C. 6, Sec. 10-630, p. 145.

²⁸Revised Codes of Montana 1947, (1968), C. 6, Sec. 10-633, p. 590.

etc. for juveniles and their families if necessary before resorting to the formal juvenile court system.

3. To develop community awareness of the juvenile system without releasing names of juveniles.

4. To develop alternative methods of dealing with juveniles prior to use of the formal court.

5. To develop the use of community resources to which the court can refer juveniles for help outside the court.

6. To de-emphasize the word "delinquent" when dealing with outside groups.

7. To get communities to work with youth to eliminate, or at least curb, delinquent behavior and thus keep youth from entering the system.

8. To teach the juvenile how to help himself.

The twofold purpose of the stated objectives set by law provides for a system which will treat juveniles as parents should "normally" treat them, but at the same time provides for treatment within a legal framework which considers the youth's rights as well as the community's protection. Discipline can be exercised in the strongest sense in that the possibility exists of removing a youth from his parents and the community if the parents either do not or are not able to exercise proper control. But it is the unstated objectives that provide a framework for carrying out the original intent of the philosophy of the juvenile court founders. Through

this framework an informal system is developed that helps, encourages, and disciplines youth without attaching to them the stigma of being labeled delinquent. Since unstated objectives are, by definition, implied rather than written it should be noted that many more than those listed here do exist. These are the most observable.

METHODOLOGY

Data

Data used in this study were gathered through research, preparation and distribution of a questionnaire, and numerous telephone and personal discussions with people highly knowledgeable in the field. The author's personal expertise gained from studying and working in the field proved invaluable in interpreting the data collected and in explaining its relevance to this paper.

Library Research - Several Montana and United States Supreme Court decisions as well as the Montana Code were thoroughly researched with the intent of emphasizing how they relate to the operation of the juvenile justice system. Many books and studies were also read to gain a better understanding of the numerous theories that classify delinquents and their behavior and to afford a means of developing the history of the juvenile courts.

Questionnaire - In 1971 a questionnaire was devised and sent out to 26 full time and 17 part time probation officers in an effort to determine their roles in relation to the

informal juvenile court system. The questionnaire was intended to assist the researcher in identifying the formal role of the juvenile probation officers for comparison to that role prescribed by law.

Seven major categories of the questionnaire related role requirements to arrest, detention, preliminary inquiry, probation, informal court, formal court, and generalized duties. The design of the questionnaire was such that the respondents were able to reply: Always____, Frequently____, Rarely____, or Never____ to nearly all questions. "Always" indicated that the respondent was always involved in that particular type of behavior, while "Never" indicated he did not deal with that type of behavior. The responses were rank ordered to indicate what behavior pattern existed in each judicial district. In the actual analysis of the data only the State totals were used so no one judicial district could be identified as to its procedures.

In all categories except "generalized duties", the "Always" and "Frequently" responses were combined and the "Rarely" and "Never" responses were combined to make two rank ordered divisions. Data were further analyzed to determine what percent of juvenile probation officers were involved in certain behavior. Responses in the "generalized duties" category were not included in this breakdown in order to show specific responses to programs the officers were developing.

Eighteen full time probation officers and 14 part time probation officers responded constituting 74 percent response. Sixteen of the 18 judicial districts were represented by these officers. The total juvenile population (individuals ranging in age from 10 to 17) residing in the 16 judicial districts represented approximately 90 percent of the juvenile population in the State of Montana.²⁹ The 1970 delinquent population for the State of Montana, according to the Governor's Crime Control statistics, was 6,062 and the 1970 delinquent population for the 16 judicial districts responding approximated 5,556 or approximately 92 percent of the total delinquent population in the State at that time.³⁰

Contacts - Numerous telephone contacts and personal discussions were had with various individuals within and without the juvenile justice system to gain insight into the workings of the system. Some of the individuals who furnished a considerable amount of information were: Mr. Jack Vaughn, former Chief Probation Officer of the 4th Judicial District; Mr. Steve Nelsen, Juvenile Programs Coordinator for the Board of Crime Control; Mr. Loren Harrison, a former researcher for the Board of Crime Control; and Mr. Terry Wallace, an attorney in Missoula, Montana who shows a deep and sincere interest in youth. This list only includes some

²⁹United States Department of Commerce, 1970 Census of Population; Montana, Vol. 1, Part 28, p.p. 28-35.

³⁰Information provided by the Governor's Crime Control Commission's 1970 statewide juvenile court statistics.

of the individuals who contributed the most information to the author. There were numerous other individuals and agencies who also helped, including the staff of the 4th Judicial District Juvenile Probation Department and other juvenile probation officers working in the State of Montana.

Personal Knowledge and Experience - While attending the University of Montana in 1966, the author began working as a volunteer in the Juvenile Probation Department of the 4th Judicial District in Missoula, Montana. This work developed into a full time paid position in 1968, and has continued as such to the present time. During this period a considerable amount of knowledge and experience has been gained through indoctrination into the juvenile justice system by association with probation officers, judges, peace officers, county attorneys, and other individuals both within and without the entire criminal justice system.

Procedure

A systems analysis approach was taken to provide the author with a solid format to break down the informal juvenile court subsystem into various components and elements in order to observe their functions and purpose. The specific objectives of the author, the systems model used in this study, and the theory of systems analysis are discussed fully in the following chapter.

LIMITATIONS OF THE PAPER

The theory provided a solid format to break down the informal subsystem into various components and elements in order to observe their functions and purpose. However, throughout the paper it could be seen that in almost every section, especially in those sections that pertained to procurement, maintenance, and adaption resources, there was insufficient data available on a statewide basis to thoroughly analyze the system. This was not a fault of the theory but of the lack of documented knowledge of the system on a statewide basis.

The study does not include a complete analysis of both the informal and formal juvenile court as the intent of the paper was to elicit the benefits of informality within the system. The formal process was included to the degree it related to the operation of the informal system.

The study does not incorporate police or peace officer involvement although it is recognized as an important part of the juvenile justice system, because such inclusion would entail a much larger study which would be beyond the scope of this paper.

The questionnaire was designed for probation officers only and was not submitted to county attorneys, judges, or anyone else but known fulltime or parttime probation officers in the State of Montana.

Even though these limitations existed throughout the paper it can be seen that the open system approach has at least provided a foundation for observing and understanding the informal juvenile court system in Montana and its relationship to the formal juvenile court system.

CHAPTER II

SYSTEMS ANALYSIS

SPECIFIC OBJECTIVES

The systems analysis model developed in The Social Psychology of Organizations by Daniel Katz and Robert L. Kahn will be used throughout this paper as an organizational framework to classify, describe and observe the various components and elements of the informal juvenile court system. This model, if successful, will show that an open system approach, which will be described later, is very useful in analyzing the informal juvenile court system. The objectives of using systems analysis in observing the Montana juvenile court system are:

1. To identify the informal processes of the Montana juvenile court.
2. To determine if the informal process is effective or ineffective.
3. To determine if the goals set down by the court have been accomplished.
4. To point out the weak points as well as the strong points of the informal process.
5. To determine how important the informal process is in relation to the entire juvenile court process.

6. To make recommendations for juvenile court operation in Montana.

THE SYSTEMS MODEL

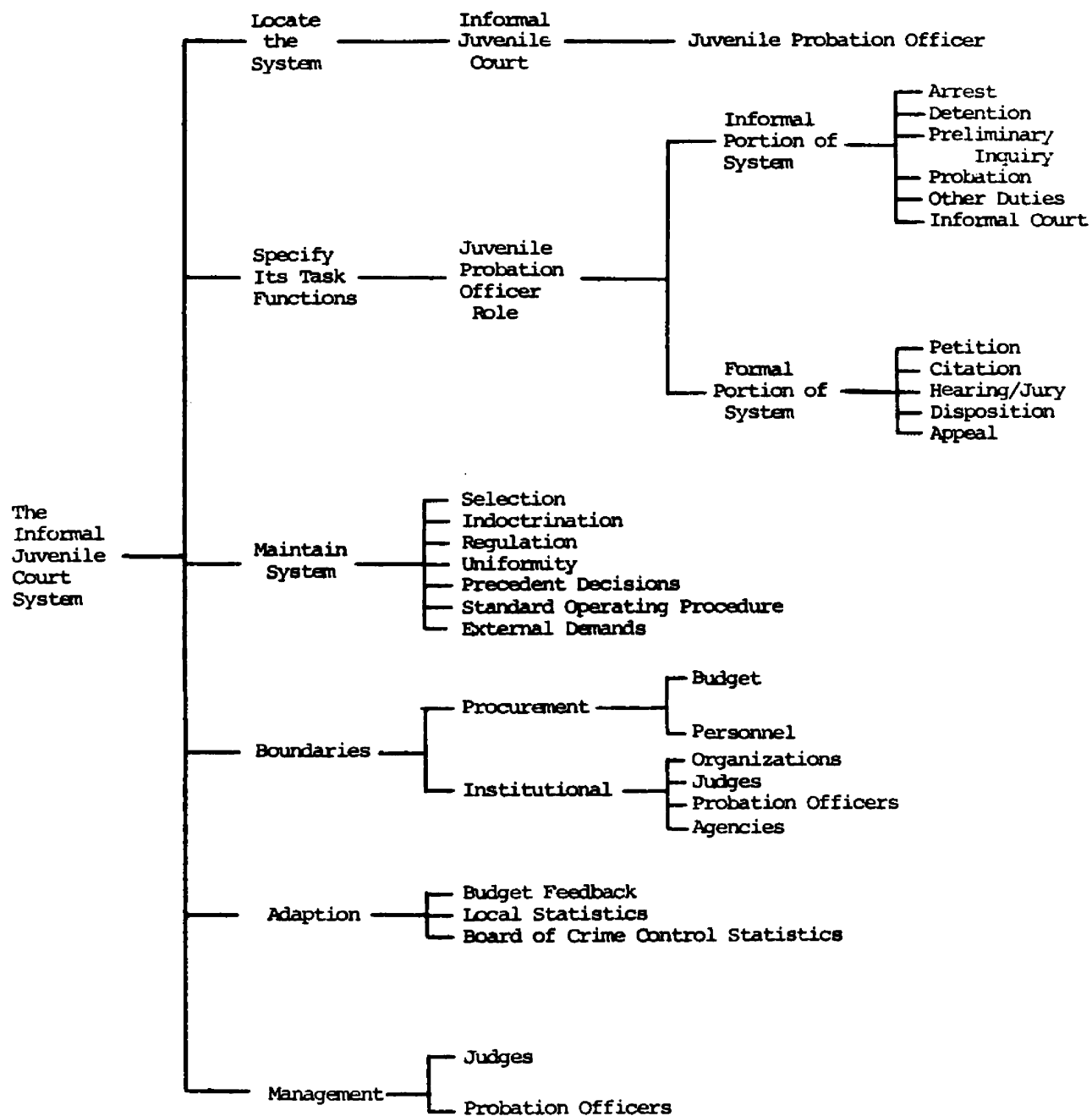
The systems model of the juvenile court is illustrated in the following two charts. Chart I illustrates the systems model which was used throughout this paper. This chart depicts a breakdown of the informal court system which consists of six subsystems and various components and elements which contribute to the makeup of the informal juvenile court. Chart II, The Montana Juvenile Offender Procedure Chart, is a flowchart of the offender's movement through the entire juvenile justice system beginning with the initial complaint and going through the informal court, formal court, institutionalization, and parole to aftercare authorities. Chart II relates to Chart I in the section entitled Specifying Its Task Functions by providing a more intensive procedural flow of all the options and alternatives available to an offender going through the entire system.³¹

WHAT IS SYSTEMS ANALYSIS?

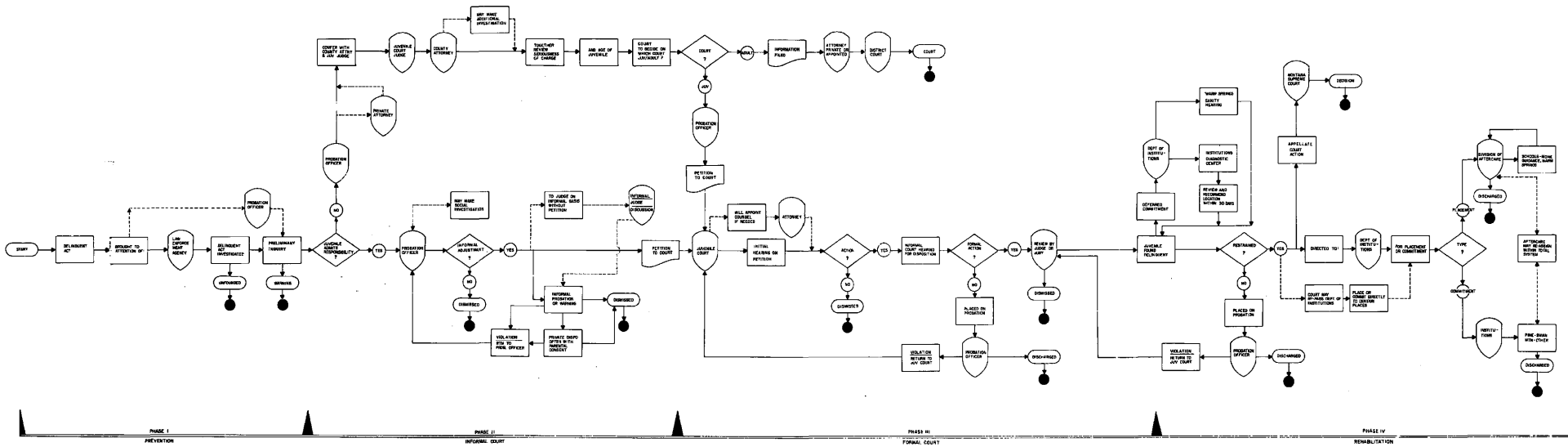
Systems analysis is a theory which concerns itself with recurrent cycles of input, throughput, and output which can be identified and traced by: 1) locating the system, 2) specifying the task functions, 3) identifying how it

³¹The Montana Juvenile Offender Procedure Chart was provided by the Montana Board of Crime Control.

CHART I



MONTANA JUVENILE OFFENDER PROCEDURE CHART



maintains its working structure, 4) identifying its boundaries at the procurement level as well as at the institutional level, 5) identifying how it adapts, and 6) identifying how it is managed. This includes being able to observe the roles and role conflicts of individuals within the system.³²

Locating the system consists of identifying by name or otherwise the system to be studied. Identifying task functions proves to be more complicated because a close look has to be made to observe what created the need for the original task. When an organization attempts to seek a solution to an environmental problem it must determine how to meet the needs of the population involved. This generates task demands which create a production system to meet the task demands. From this flows some type of role or role structure and an authority structure to hold the role together. Role structure is "a set of recurring activities required of an individual occupying a particular position in an organization."³³

To study role behavior the social system or subsystem must be identified and the recurring events which fit together must be located by determining the role expectations

³²Daniel Katz and Robert L. Kahn, The Social Psychology of Organizations, (New York: John Wiley and Sons, Inc., 1966) p.p. 453-456.

³³Ibid., p. 78.

of any given office.³⁴ The study of role behavior is not complete unless the role conflicts are observed. Every role has some degree of conflict to it and the conflict may determine what the ultimate outcome of role behavior will be. Katz and Kahn define role conflict as "The simultaneous occurrence of two (or more) role sendings in which compliance with one would make more difficult compliance with the other."³⁵ They break down role conflict as follows:

1. Intrasender Conflict. Incompatible expectations held by a given member of a role set.
2. Intersender Conflict. Incompatible expectations held by two or more members of a role set.
3. Interrole Conflict. Incompatibilities between two or more roles held by the same focal person.
4. Person-role Conflict. Incompatibilities between the requirements of a role and the needs or values of the person holding it.
5. Role Overload. A more complex form of conflict involving legitimate role expectations held by a focal person but the person finds he cannot complete all of the task demands in the proper quality and in a given set of time. This results in a person-role conflict where the individual may not be able to meet the pressure or he may attempt to comply only with those demands which rank as to priority.³⁶

³⁴Ibid., p. 174. ³⁵Ibid., p. 184.

³⁶Ibid., p.p. 184-186.

How a system maintains its working structure relates to maintaining stability and predictability within the organization. Katz and Kahn find:

....many specific mechanisms are developed in the interests of presenting a steady state in the system. Selection procedures are employed to screen out applicants who do not seem likely to adapt to the system. Socialization or indoctrination practices are utilized to help fit new members into the organizational mold. System rewards are provided for membership and seniority in the system. Regulatory mechanisms are developed to give some automatic corrections to departures from the norm of organizational functioning. Rules are elaborated and provisions made for their policing. Decisions are made on the basis of precedent. Uniformity becomes the ideal, and standard operating procedures are worked out for human relations as well as for production requirements.³⁷

Since the maintenance structure maintains things as they are, change is hard to implement for other subsystems in the organization. This creates frustration within this subsystem and if change does occur it is often from some external demands which imply altering the organizational task.³⁸ Therefore, the maintenance structure tends to compromise its goals with the task requirements and the psychological wants of the focal people. The compromise that takes place normally consists of either imposing external rewards, especially money, to make the job more satisfying, or of introducing some minor reform within the job itself. This usually results in, according to Katz and Kahn, some interaction among the people within the organization where they make decisions of their

³⁷ Ibid., p.p. 87-88.

³⁸ Ibid., p.p. 79-81, 87.

own, cooperate among themselves, and seek gratification for their needs.³⁹

Organizational boundaries limit the operation of the system so in discussing the concept of organizational boundaries one must deal with the procurement subsystem and the institutional subsystem. The procurement subsystem concentrates on transactional exchanges with the environment, being responsible for obtaining input of materials to be converted into a product, and input of personnel to get the job done. Input of materials includes physical structures such as office space, budgets for financing the operation, and other resources while the input of personnel includes control of salaries, fringe benefits, prestige and education to motivate the people to get the job done.⁴⁰ The institutional subsystem relates to the larger society and is concerned with gaining support of its products or policies as well as legitimizing what the organization is doing.⁴¹

The survival of the organization relates to identifying how the system adapts, but unlike the maintenance subsystem, the adaption subsystem faces outward and attempts to achieve environmental constancy by controlling the external world as much as possible. Katz and Kahn state that when change is necessary it is:

³⁹ Ibid., p.p. 80, 81. ⁴⁰ Ibid., p.p. 81, 82, 89.

⁴¹ Ibid., p.p. 82, 96-99, 456.

....dependent upon the degree of openness in wanting to change and the extent of the needed modification. Sometimes the modification requires changing both people and organizational structure, and sometimes just people, or certain of their specific behavior, and that form of change is likely to be adopted in preference to a solution which involves changing both specific behavior and generalized institutional practices. Thus, if an organization is confronted with the alternative of changing some preferences in its clientele or changing some of its own structure and personnel, it will take the former path. If, however, it must change outside structures and personal habits, as against a limited internal change in practice, it is more likely to seek the latter solution.⁴²

Under the systems analysis theory the managerial subsystem is the administrative arm of the entire concept, cutting across all of the earlier stated subsystems, and is responsible for coordinating all of these subsystems, resolving conflicts erupting between hierarchial levels and coordinating external requirements with needs and resources of the organization.⁴³

WHY SYSTEMS ANALYSIS?

The open-system theory will be used to observe the informal juvenile court process because it furnishes a framework which is useful in examining this particular social system from a social-psychological point of view. In their book, The Social Psychology of Organizations, Katz and Kahn explain why open-system theory helps one to observe the entire system:

Open-system theory with its entropy assumption emphasizes the close relationship between a structure and

⁴² Ibid., p. 93.

⁴³ Ibid., p. 94.

its supporting environment, in that without continued inputs the structure would soon run down. Thus one critical basis for identifying social systems is through their relationships with energetic sources for their maintenance and human effort and motivation is the major maintenance source of almost all social structures. Hence, though the theoretical approach deals with relationships, these relationships embrace human beings. If we are concerned with the specifics of the maintenance function in terms of human behavior we are at the social-psychological level. In open-system theory, the carriers of the system cannot be ignored because they furnish the sustaining input. On the other hand, another major relationship encompassed by a system is the processing of production inputs to yield some outcome to be utilized by some outside group or system. The hospital meets the health needs of the community or the industrial enterprizes turn out goods or furnish services. These functions of given systems can again be identified through the input, through-put, and output cycle, but they may not be primarily psychological if we deal only with production inputs and exports into the environment, i.e., so many tons of raw materials and so many finished products. The moment, however, that we deal with the organization of the people in the system concerning the through-put we are again at a social-psychological point of view.

Finally, open-system theory permits an integration of the so-called macro approach of the sociologist and micro approach of the psychologist to the study of social phenomena.⁴⁴

Hopefully this observation of the informal juvenile court through systems analysis will identify the behind-the-scenes function of informality and thus support the benefits it offers to the entire juvenile court system.

⁴⁴Ibid., p. 9.

CHAPTER III

APPLICATION OF THE SYSTEMS MODEL TO THE MONTANA INFORMAL JUVENILE COURT SYSTEM

The reader should keep in mind the previous introduction of the labeling concept and the early philosophy of the juvenile court presented in Chapter I when now looking at the application of the systems model to the Montana Juvenile Court System. The six stages of the systems analysis theory described in the previous chapter were applied to the Montana Juvenile Court System with the following results.

LOCATING THE SYSTEM

The system under study in this paper is the informal juvenile court system in the State of Montana. The primary emphasis will be on the informal system at the time the offender is referred to the juvenile probation officer for disposition until he is referred to the district juvenile judge on a formal petition alleging delinquency. Although there are other individuals involved in the informal process, such as law enforcement officers, and at times the district juvenile judge even when a formal petition is not filed, this study concentrates on probation officers as the focal persons and discusses the other individuals and their roles as they interrelate to the role of the probation officer.

THE TASK FUNCTIONS OF THE JUVENILE COURT

The task functions of the informal juvenile court system, not specifically set out but implied by the written juvenile code in Montana, are essential to maintaining the practical and beneficial operation of the Montana juvenile court system. As noted in the introductory material, the basic intent of the founders of juvenile courts was to provide a means of handling juvenile offenders differently than adult offenders, the premise being that treatment would be more effective than punishment in providing the protection demanded by the community.

Informal Treatment

Arrest - To enter the system the offender is usually charged with a violation of law and taken into custody. Under Montana law the individual who primarily exercises arrest powers is the peace officer. Section 10-607, R. C. M., 1947 states that a peace officer is the individual required to cite an offender into informal hearings before the court.⁴⁵ And, Section 10-608, R. C. M., 1947 gives the officer authority to bring anyone before the court who has failed to appear when required, or who the judge feels would not appear.⁴⁶

⁴⁵ Revised Codes of Montana 1947, (1973), C. 6, Sec. 10-607, p. 140.

⁴⁶ Revised Codes of Montana 1947, (1968), C. 6, Sec. 10-608, p. 581.

But, the most important section of the code, Section 10-608.1, R. C. M., 1947 states:

(1) Whenever any peace officer believes on reasonable grounds that any child is violating any law or ordinance or engaging in other conduct that would be grounds for finding the child a delinquent, or when the surroundings are such as to endanger his health, morals, or welfare unless immediate action is taken, then the peace officer shall take the child into custody in the same manner as for the arrest of an adult.

(2) Whenever the peace officer believes on reasonable grounds that the child can be released to a parent, guardian or other person who has had custody of the child, then the peace officer may release the child to that person or persons upon receiving a written promise from him or them to bring the child before the juvenile court or the juvenile probation officer at a time and place specified in the written promise.

(3) Whenever the peace officer believes, on reasonable grounds, that the child must be held in custody until his appearance in juvenile court, then the peace officer must deliver the child to the juvenile court or the probation officer without undue delay. If it is necessary to hold the child pending appearance before the juvenile court then the child must be held in some place that has been approved by the juvenile court and completely separated from adult offenders.

(4) Whenever any peace officer has apprehended a child as herein above provided, he shall, as soon as practicable, notify the juvenile court or probation officer of such fact with a report of his reasons for the apprehension.⁴⁷

The role of the peace officer is instrumental in indicating how a juvenile will be handled. Some of the Montana districts encompassing larger cities provide peace officers who work exclusively with youth. These individuals are more

⁴⁷Revised Codes of Montana 1947, (1973), C. 6, Sec. 10-608.1, p. 140.

highly trained to deal with youth problems and quite often handle situations much differently than officers who have occasional contacts with youth. In the more rural areas peace officers tend to know almost all of the youth in the community. Such familiarity enables officers to work with the youth and families more successfully. But whether in the large city or the rural area, the initial contact made by the arresting officer can dictate future action taken by the offender, as well as the court.

A role conflict sometimes arises because the peace officer is not the only individual who can exercise arrest powers under Montana law. Section 10-623 gives this same authority to juvenile probation officers.⁴⁸ The questionnaire was designed to determine to what degree probation officers exercised this authority. The data was interpreted that probation officers do not believe they should be making arrests but 24 out of 32 do make arrests primarily in situations involving children in need of supervision (CHINS), misdemeanor, felony, and traffic offenses. Out of 5,556 juveniles taken into custody in 1970, 228 were arrested by a probation officer. Out of the 228 arrests made by probation officers, 156 were made by part-time probation officers whose primary duty or role was that of a peace officer rather than probation officer while 41 were made by other part-time probation offi-

⁴⁸Revised Codes of Montana 1947, (1973), C. 6, Sec. 10-623, p. 144.

cers for a total of 197. To the question "Do you feel that a juvenile probation officer should be making arrests?" 3 of 32 respondents answered "rarely", and 10 answered "Never". Five of 7 respondents who were also peace officers checked either "always" or "frequently", and only one fulltime probation officer checked "always". Eighty-one percent of the total responding indicated they felt their primary role should not be making arrests.

Should the juvenile probation officer have arrest powers? The officer can be placed in a definite role conflict when he is arresting on one hand and required to counsel on the other. It is recommended that the probation officer have arrest power only if the juvenile violates his probation or a lawful order of the court. This would solve the problem and place the arrest power with the probation officer in specific cases only. Any other arrest would be left up to the peace officer who has that duty as part of his overall role. The alternative to this would be to continue to leave arrest powers with the probation officer and let each officer resolve his own individual roal conflicts.

Detention - Once a peace officer arrests a juvenile he can release him to his parents, a guardian, or other person upon written promise that the child will be brought before the court or a juvenile probation officer at a set time. Or, the peace officer can hold the child in custody. If he chooses to hold him, he must immediately notify the juvenile

court or juvenile probation officer and submit a report of his reasons for the apprehension. Although data gathered from the questionnaire used as part of this study revealed that in 14 of the 16 judicial districts represented detention procedure required a written report stating the reasons for detaining a juvenile, responses from five of these judicial districts indicated that a report is rarely or never submitted. Twenty-three of the respondents felt arresting officers should notify the parents of an arrested juvenile. Sixteen respondents indicated they contacted parents within one hour after detention and 13 indicated contact was made as soon as possible. Where responses indicated a parent was not contacted, the reason most often given was inability to locate the parents. The survey also showed that releases of juveniles held in detention are arranged, 1) most often by a probation officer, 2) by the peace officer under the direction of a probation officer or the judge, or 3) by the judge.

A role conflict arises when the law under Section 10-626 of the Revised Codes of Montana, 1947, is practiced because under that law any child under the age of eighteen who must be detained may be placed in custody by order of the court or of the chief probation officer.⁴⁹ When they act in this capacity they are drawn between two goals, i.e.

⁴⁹Revised Codes of Montana 1947, (1973), C. 6, Sec. 10-626, p. 145.

making every effort to obtain the release of the child, a goal emphasized both by the labeling concept and the code, or, protecting the public. This conflict has raised the question of when do the rights of the public to protection begin infringing on the rights of the juvenile. Montana's 1971 juvenile delinquency statistics provided by the Board of Crime Control show that 5,639 youth went through the juvenile court system. Of these 1,040 spent 3,437 days in jail. Should they have been given the right to post bail? Only approximately 230 were brought before a juvenile judge on a formal written petition alleging delinquency. The others appeared on an informal basis.⁵⁰

When the decision is made to detain a juvenile offender, the code provides that the peace officer must use a facility approved by the juvenile court judge. In addition, juveniles must be separated by sexes and must not be placed with adults.⁵¹ Yet, a survey of Montana jails, conducted by Robert Logan in 1971, indicated that one-fifth of the jails in Montana do not have separate facilities available for detaining juveniles. In one-fourth of the jails surveyed juveniles charged with felonies were placed in the same cell with juveniles detained for such offenses as liquor viola-

⁵⁰Information provided by the Montana Board of Crime Control, from their 1971 statewide juvenile court statistics.

⁵¹Revised Codes of Montana 1947, (1973), C. 6, Sec. 10-626, p. 145.

tions, runaways, or ungovernables.⁵² In over half of the jails reporting on the survey it was found that juveniles were placed in jail over the weekend to deter delinquent acts, and dependent-neglected children were even detained in one-fourth of the jails.⁵³ Mr. Logan concluded, with regard to segregation of prisoners:

At present the majority of Montana jails are not adequate to properly segregate inmates. In many jails the simplest form of segregation--male from female and juvenile from adult--creates a serious problem due to lack of space. Many jails use the same cell for juveniles and women. In the event there is a need to incarcerate a juvenile, an adult female, and an adult male, someone must be transferred to another facility.⁵⁴

The President's Task Force Report also made the point that juveniles are often wrongfully held, noting there were approximately 8,400 juveniles in the nation held for such offenses as curfew violation, truancy, traffic violation, disturbing the peace, and minor liquor law violation.⁵⁵

Making a decision to detain or release a juvenile creates problems especially when the parents cannot be located and there is no alternative place to hold the child.

⁵²Robert Logan, State of Montana Jail Survey, (Helena: The Governor's Crime Control Commission, 1972) p. 11.

⁵³Ibid., p. 12. ⁵⁴Ibid., p. 108.

⁵⁵The President's Commission on Law Enforcement and Administration of Justice, Juvenile Delinquency, p. 37.

The usual alternatives available to the probation officer are: 1) using a written release form signed by the parent which promises that they will bring the child before the court at a future date; 2) releasing the youth to a friend or relative; 3) placing the youth in a temporary foster home if one is available; or, 4) holding the youth in custody. Bail is not one of the alternatives as it is not specified in Montana juvenile law. Article II, Section 15 of the Montana Constitution states that "the rights of persons under 18 years of age shall include, but not be limited to, all the fundamental rights of this Article unless specifically precluded by laws which enhance the protection of such persons."⁵⁶ This particular article gives the youth the same basic rights as adults unless the right is specifically denied. Section 21 of Article II provides for a right to bail so there may be a possibility that in Montana a youth is entitled to bail under the new Constitution. Prior to the new constitution taking effect bail existed at the discretion of the district juvenile judge and statistics are not available as to how often it was allowed.⁵⁷ Some states, such as Colorado, provide that "nothing in this Section shall be construed as denying a child the right

⁵⁶Montana, Constitution, Article III, Sec. 15.

⁵⁷Montana, Constitution, Article II, Sec. 21.

to bail."⁵⁸ Colorado further provides for a detention hearing within forty-eight hours, excluding Saturdays, Sundays, and court holidays.⁵⁹ One of the main problems regarding bail for juveniles is that the United States Supreme Court has not determined its merits at a constitutional level. Sanford Fox states in his book, Juvenile Courts in a Nutshell:

Courts and statutes are divided on the question of whether, in addition to the right to release from custody upon the promise of his parents to bring him to court, the child has a right to release on bail... where it has been found that the constitution requires a due process probable cause hearing for children before they may be held in pre-trial detention, the court stopped short of also finding that there is a constitutional right to bail by viewing the statutory provisions relating to release as an acceptable equivalent of bail.⁶⁰

At the present time there is no set procedure in Montana's written juvenile code that states a juvenile is entitled even to a pre-trial detention hearing. This decision is up to the judge when he sets down what policy is to be followed in the handling of youth, and it varies from judicial district to judicial district. When the President's Task Force looked at this problem they arrived at four main considerations: 1) strict detention procedures should be enacted restricting both the authority to detain and the circum-

⁵⁸Colorado Revised Statutes 1963, (1968), C. 22, Sec. 22-2-3, p. 167.

⁵⁹Ibid.

⁶⁰Sanford J. Fox, The Law of Juvenile Courts in a Nutshell, (Minnesota: West Publishing Co., 1971) p. 146.

stances under which detention is permitted, with state legislatures limiting the authority to detain to the probation officer rather than the police; 2) Detention should be used only when it is necessary to protect the community or the youth, or to keep the youth in the jurisdiction; 3) The law should require a detention hearing within 48 hours of the initial detention; and, 4) the judge, after a detention hearing, should require release of any youth who was placed in detention by the probation officer without proper authority.⁶¹ These recommendations may be a guide to eliminating some of the unnecessary detention of youth but the problem may still exist of what to do with the youth whose parents cannot be found in areas where there is no acceptable foster home or alternative placement available until the case comes before the court.

Necessary alternatives to incarceration are very important in Montana and it is important to deal with this issue because of the lack of shelter homes, detention homes, foster homes, etc. The main holding area for a juvenile in need of detention is the county jail. This drastically limits the judge's ability to place a juvenile who has committed a serious crime. It creates even more conflict with

See especially Baldwin v. Lewis, 300 F. Supp. 1220 (E.D. Wis. 1969): In re Castro, 243 Cal. App. 2d 402, 52 Cal. Rptr. 469.

⁶¹The President's Commission on Law Enforcement and Administration of Justice, Juvenile Delinquency, p.p. 36,37.

the runaway who does not want to return home but has no other place to go because of lack of funding or personnel to find the necessary alternative homes. Unless the public as a whole determines that these are their problems it will be difficult to provide the necessary funds, personnel, and programs to work with delinquent children and it greatly hampers the efficiency of the juvenile court system.

It is recommended that, in all fairness to juveniles detention should be restricted according to the guidelines offered by the President's Task Force as noted above. In addition, Montana should require that a detailed written report be filled out, stating the reasons for detention and this report should be submitted to the judge in every case. The use of detention as "jail therapy" should also be eliminated unless a district juvenile judge orders it. From the data collected the use of bail was evidenced in only one judicial district. If the juvenile is going to be detained in spite of the above procedures making it appear that the juvenile system is paralleling the adult criminal system, at least in the detention process, then it is recommended that the right to bail be considered also.

A drastic increase in funds is needed to make available other alternative placements. Without it, if the above recommendations are not followed, the only alternative is to continue jailing juveniles. With the inadequate facilities available in Montana, this is hardly an acceptable alternative.

Preliminary Inquiry - Once the offender is processed through arrest and detention the next step is an appearance before the juvenile probation officer at what is designated a preliminary inquiry. Section 10-605.1 (1), R. C. M., 1947 provides:

Whenever any person informs the court that a child is a delinquent as defined in this act the court shall cause, by citation or otherwise, the child to be brought before the court or the juvenile probation officer for the purposes of making a preliminary inquiry to determine whether the interests of the child or the public require that further action be taken, the matter may be handled by an informal adjustment including the placing of the child on probation, or the court may order the county attorney to file a petition charging the child with being a juvenile delinquent.⁶²

The intent of the preliminary hearing is to assist the judge in processing cases without the filing of a petition. The probation officer's role is very important in this hearing since he is the one individual involved in most of the preliminary hearings. This hearing can be handled by either the judge or the probation officer and in most instances the matter is handled informally at an early level.

The questionnaire data revealed that 26 of the juvenile probation officers responding conduct the preliminary inquiry and 21 spend approximately 30 percent of their time doing this type of work. Twenty-five stated the usual length of time between arrest and appearance at the hearing is 1 to 7 days. At least one parent is required at all hearings,

⁶²Revised Codes of Montana 1947, (1973), C. 6, Sec. 10-605.1(1), p. 139.

and 5 of the respondents indicated an attorney always represents the juvenile. If the juvenile denies the allegations against him, 22 of the probation officers indicated they do not determine his guilt but refer the case to the district juvenile judge for processing.

At his discretion, the probation officer can dispose of the case by: 1) warning the youth; 2) grounding the youth to home for a specified length of time; 3) leaving the disposition up to the parent if it appears the parent is handling the situation well; 4) continuing or holding the case open either for further investigation or counseling in an attempt to encourage the youth to take the responsibility for his behavior in an effort to change it; 5) referring the youth to another agency for assistance; 6) returning the youth to his home jurisdiction; 7) placing the youth in foster care; 8) detaining the youth in jail for week-ends or some other specified length of time; 9) placing the youth on informal probation and requesting restitution if possible; 10) placing the youth on work detail; or, 11) referring the case to the county attorney for filing of a formal petition.

One of the problems at the preliminary inquiry stage is that there is no set procedure to guide the probation officer, and accordingly the process varies from one district to another. It is recommended that some minimal procedural guidelines be established such as: 1) Advising the youth of his rights under Miranda and Gault; 2) Advising the

youth that he has a right to have any decision reviewed by the district juvenile judge; 3) assuring that at least one parent is present at the inquiry; and 4) establishing some means of providing an attorney at this level if the juvenile so desires.

Probation - When the disposition decided upon is probation, rules are furnished the youth advising him of the conditions of probation and when to report to the juvenile officer. Probation rules vary throughout the state but normally include: 1) the individual must not disobey any federal, state, county or city laws or ordinances or any rules set down by a parent or probation officer; 2) the individual must follow some curfew; 3) he may not be permitted to leave the state or jurisdiction without permission of the probation officer; 4) he must be in school on a full time basis; 5) he must have a job if one is available; 6) he may be limited regarding who he may associate with; 7) he may have driving restrictions; 8) he may have to report to the probation officer at certain specified times; or, 9) he may have to go to or be involved in mental health evaluations.

Questionnaire data revealed that when probation was used contact was normally made with the juvenile once a week and the length of probation varied from 30 days to an indefinite term. Nineteen of the respondents indicated they rarely or never set indefinite periods while thirteen

stated they rarely or never use short-term probation. Probation was used by all respondents to some degree, with 11 officers indicating they used it in 30 to 60 percent of all cases handled and 13 officers indicating they used it in 60-100 percent of all cases handled. Yet, the Governor's Crime Control Juvenile Court statistics for 1971 indicated that 210 juveniles or 21 percent of all juveniles processed for 1971 were placed on probation.⁶³ This discrepancy is not clearly understood but it is assumed that perhaps the probation officers responding did not understand the question.

Probation is presently used at both the preliminary inquiry stage described earlier and at the formal court stage. Its use at the preliminary inquiry stage is to give the probation officer some leverage in following up on cases at an informal level in order to avoid the filing of a formal petition alleging delinquency. Hopefully the juvenile involved can be guided away from delinquent behavior during the informal process. An alternative to this approach would be to have a petition filed against the youth or let the judge conduct all preliminary inquiries and set probation. This could drastically effect the way probation officer now handle cases and it would increase the load on the juvenile judge, bringing about the possibility of more formal petitions

⁶³Information provided by the Governor's Crime Control 1971 Statewide Juvenile Court Statistics.

being filed against the juvenile. Another alternative would be for the probation officer to continue to conduct the preliminary inquiry but with the consent of all the necessary parties when probation is used. This is basically the situation now because if the juvenile does not like the terms of probation set by the probation officer he can appeal to the judge. However, this procedure is not uniform across the state and the consent decree may not even be in writing in some jurisdictions. It should also be noted that there is no formal procedure for advising the juvenile that he can protest the preliminary inquiry. The Juvenile Justice Advisory Council to the Governor of Montana has recommended that when the consent decree is used at these informal hearings the following procedure should be followed:

Any probation or detention imposed under this section against any youth must conform to the following procedures:

- a) Every consent adjustment shall be reduced to writing, signed by the youth and his parents or the person handling legal custody of the youth;
- b) Approval by the youth court judge shall be required where the complaint alleges commission of a felony or where the youth has been detained.⁶⁴

This recommendation would provide that the youth could only agree to probation at the informal level if both he and his legal guardian sign the consent decree. In felony cases

⁶⁴Revised Codes of Montana 1947 (1974), C. 12, Sec. 10-1210, p. 147.

the judge would give administrative review and in any case the youth could request a review by the county attorney or judge according to the recommendations set forth under the new Montana Youth Act.

Generalized duties - Section 10-623, Revised Codes of Montana, 1947 further provides:

The chief probation officer, under the direction of the judge, shall have charge of the work of the probation department. The probation department shall make such investigation as the juvenile court may direct, keep a written record of such investigations, and submit the same to the judge or deal with the same as the judge may direct. The department shall furnish to any delinquent child placed on probation or any parent or guardian of such child a written statement of the conditions of probation, and shall keep informed concerning the conduct and condition of each person under its supervision, and shall report thereon to the judge as he may direct. Each probation officer shall use all suitable methods to aid persons on probation and bring about improvements in their conduct and condition. The probation department shall keep full records of its work, and shall keep accurate and complete accounts of money collected from persons under its supervision, and shall give receipts therefore and shall make reports thereupon as the judge may direct. Probation officers, for the purpose of this act, shall have the powers of police officers.

All information obtained in the discharge of official duty by any officer or other employee of the juvenile court shall be privileged and shall not be disclosed to anyone other than the judge and others entitled under this Act to receive such information, unless and until otherwise ordered by the judge.⁶⁵

Questionnaire data also indicated that 10 probation officers are involved in completing presentence investigations for the adult court, 5 probation officers complete social investigations on divorce cases, 25 officers make referrals to

⁶⁵Revised Codes of Montana 1947, (1973), C. 6, Sec. 10-623, p. 144.

other agencies, 11 officers were involved in handling some 40 attempted suicide cases, and 12 officers were involved in offender work programs. In some instances these duties are incompatible with other duties of the officer, and as in presentence investigations of adults, some duties are specifically under the authority of the adult probation officer. Although role conflicts vary among districts, in some areas the role overload is so heavy elimination of certain duties proves to be the practical way of dealing with the situation. Priorities vary throughout the state depending upon the probation officer's background and the duties emphasized by the judge.

Work in the juvenile probation departments requires assistance from foster care coordinators, secretaries, work study students, college students working on practicums, and volunteers. The chief probation officer is normally the individual who screens all applicants.

Foster care coordinators work at maintaining court operated foster homes by training and counseling foster parents and counseling youth in foster care. They also are responsible for licensing and maintaining the court operated foster homes, administering the foster care program, coordinating foster care with other agencies, and developing community awareness for foster care. This individual is very important in making homes available to the court on both a long and short term basis, thus providing the court

with an alternative placement for many youth. Foster care does not eliminate the need for jails or institutions, but aids the court in helping troubled youth gain a better perspective on life so, hopefully, they can eventually adjust at home and in the community.

Secretaries act as receptionists, typists, and file clerks. As such, they receive incoming telephone calls and people, set up appointments, absorb complaints until they can be transferred to a probation officer, and type and file all correspondence, claims, federal grants, foster care reports, petitions, citations, court orders, and other miscellaneous items. Additionally, as file clerks, they must process and file tickets, notices to appear, offense reports from all law enforcement agencies, and statistical reports on each juvenile processed through the system. All personnel records are maintained by secretaries.

Work study students and students working on their practicums are used in only three judicial districts. Coming from numerous disciplines, these individuals function as an assistant to the probation officer. They process and followup cases after detention, do psychological testing, counseling and research, and even provide assistance in foster care. The work-study program provides the juvenile probation officer valuable assistance while at the same time needy students are given an opportunity to work approximately fifteen hours a week without jeopardizing their

education. The federal government funds seventy-five percent of the program and local sources provide the other twenty-five percent.

Generally volunteers work in the same capacity as work-study students but do not receive any money for their services although in some instances they may receive college credit. Recently however, a volunteer position has been created which provides for payment of wages funded through the University Year In Action Division of the Volunteer In Service to America program. Most volunteers work for the personal satisfaction of helping someone in trouble however.

Informal Court - The informal court procedure follows when a juvenile's delinquent behavior pattern continues even after the juvenile probation officer has placed him under some supervision and attempted to work with him. In such cases, usually the probation officer contacts the judge and requests a hearing before the court without yet issuing a formal petition alleging delinquency. The judge then normally makes an informal disposition. At this point he can not declare the juvenile a delinquent as this requires preparing and filing a formal petition, nor can he commit him to an institution as this requires formal adjudication.

Questionnaire data indicated that when the informal court procedure was used, 20 of the officers stated that an attorney was not involved and that the individual presenting the case before the judge was the county attorney, juvenile

probation officer, or the parents, most often it being the probation officer. Most of the respondents felt this informal hearing before the judge, usually in his chambers, was helpful to the juvenile because they do not then have to be declared delinquent.

When a youth is placed on probation in the informal court proceeding, the normal practice is to attempt to involve the parents as well as the probation officer in the supervision of the youth. Failure to comply with the judge's conditions generally means additional probation time or formal processing.

Formal Treatment

Once a juvenile has been processed through the informal phase of the juvenile court, and fails to respond positively, the primary method of providing the protection demanded by the community is processing the youth through the formal portion of the juvenile court. The juvenile probation officer functions in many areas of the formal court process. As discussed in the Gault decision, in some instances the end result of handling an offender in the formal court process directly affects the role the probation officer must take in the informal system.⁶⁶

⁶⁶In re Gault, 387 U.S. 1, (1967); The United States Supreme Court, in reversing Gault, noted that the probation officer in the Arizona system not only arrested juveniles, filed petitions, and supervised detention homes, but he also acted as counsel for the juvenile.

Petition - Formal court procedure begins with the issuing of a petition alleging delinquency. Section 10-602, R. C. M., 1947 defines delinquency as:

- (a) a child who has violated any ordinance of any city;
- (b) a child who has violated any law of the state, provided, however, a child over the age of sixteen (16) years who commits or attempts to commit murder, manslaughter, rape when committed under the circumstances specified in subdivisions 3 and 4 of Section 94-401, R.C.M. 1947, arson in the first and second degree, assault in the second degree, assault in the first degree, robbery, first or second degree, burglary while having in his possession a deadly weapon, and carrying a deadly weapon or weapons with intent to assault, shall not be proceeded against as a juvenile delinquent but shall be prosecuted in the criminal courts in accordance with the provisions of the criminal laws of this state governing the offenses above listed.
- (c) a child who by reason of being wayward or habitually disobedient is uncontrolled by his parent, guardian, or custodian.
- (d) a child who is habitually truant from school or home.
- (e) a child who habitually so deports himself as to injure or endanger the morals or the health of himself or others.
- (f) a child who unlawfully, negligently, dangerously, or willfully operates a motor vehicle on the highways of the state or on the roads and streets of any county or city so as to endanger life or property, and a child who operates a motor vehicle on such highways, roads or streets while intoxicated or under the influence of intoxicating liquor, or any other driving infractions that show the child to be lacking parental supervision or a disrespect for the traffic laws of this state.⁶⁷

In Montana the county attorney who is required to assist the probation officer in investigating all complaints and who is to prosecute all persons charged with violating the provisions of the juvenile court act, is required by law to prepare, sign and file the petition when a juvenile is

⁶⁷Revised Codes of Montana 1947, (1968), C. 6, Sec. 10-602, p. 577.

formally charged with acts of delinquency.⁶⁸

Citation - When a petition is filed the facts which bring the child under the juvenile court act must be stated including the names and addresses of the parents and any other information necessary to properly inform the court of the matter.⁶⁹ After the petition has been filed and after such investigation as the court may direct, the court then issues a citation briefly reciting the substance of the petition, unless the parties involved appear voluntarily. Those individuals who have the custody and control of the child are also required to appear personally with the child before the court. If the person in control of the child is someone other than the parent or guardian, then the parent or guardian is to be notified of the case if he or she lives in the county where the hearing is taking place. Citations may also be served on anyone else who the judge feels should be in the court.⁷⁰ The citation must be served personally at least 24 hours prior to the time fixed by the court for its return, and if it cannot be served personally, the judge may order service by registered mail or by publication. It may be served by any able person under the direction of the

⁶⁸Revised Codes of Montana 1947, (1968), C. 6, Sec. 10-629, p. 589.

⁶⁹Revised Codes of Montana 1947, (1973), C. 6, Sec. 10-605, p. 139.

⁷⁰Revised Codes of Montana 1947, (1968), C. 6, Sec. 10-606, p. 580.

court, but generally should be handled by a peace officer like a warrant for arrest.⁷¹ If those cited fail to appear they may be proceeded against for contempt of court.⁷²

Hearing - The hearing itself is conducted in a very informal manner either in chambers or in the courtroom depending on the judge. When the hearing is conducted in the formal sense, it is assumed the juvenile has been notified of his rights prior to any decision being made by the court. Those rights, as stated in Section 10-604.1, R.C.M. 1947, are:

The juvenile in any case to be heard on a written petition charging delinquency shall have the right to demand a jury trial and shall have the right to be represented by counsel. The rights are deemed waived if not exercised.⁷³

The hearing is held to determine whether the youth should be adjudicated a delinquent.

Disposition - In the event the judge determines the juvenile to be a delinquent, a number of options are open as to disposition of the case: 1) place the child on probation or under supervision of the court for such time as the judge sees fit; 2) commit the child to a public or private

⁷¹Revised Codes of Montana 1947, (1968), C. 6, Sec. 10-607, p. 580.

⁷²Revised Codes of Montana 1947, (1968), C. 6, Sec. 10-608, p. 581.

⁷³Revised Codes of Montana 1947, (1973), C. 6, Sec. 10-604.1, p. 138.

institution or to the Department of Institutions, or to foster care; 3) commit a child sixteen (16) years of age or older to the Department of Institutions for evaluation to determine if the youth is suitable for placement at the Youth Forest Camp. If so, and there is space available, the judge may order the youth placed there; 4) commit the child to a reception and evaluation center not to exceed 45 days; or 5) order any further care and treatment he feels would be in the best interests of the child.⁷⁴

The judge generally spends a considerable amount of time counseling and trying to determine what the youth's attitude is and whether the court can work with that attitude without ordering institutionalization because of the offenses presented against the youth. Probation officers contribute substantially to the judge's needs by submitting reports to the court which include a social history and recommendations. The judge makes no decision until he feels he has adequately weighed input from the youth, his parents or guardian, an attorney (when there is one involved in the case), and the probation officer. This combination legal/social approach aids in altering delinquent behavior, but in some cases, if the response of the youth remains negative, alternatives narrow and the possibility of commitment to an institution increases significantly. Too, the availability of resources at the community level and the interest individuals show in

⁷⁴Revised Codes of Montana 1947, (1973), C. 6, Sec. 10-611, p.p. 141, 142; and (1968), C. 6, Sec. 10-611.1, p. 583.

extending help to troubled youths affects the judge's decision, especially as to whether institutionalization is necessary.

Appeal - If the youth involved is not satisfied with the decision rendered by the judge, he is entitled to an appeal. Section 10-630, R. C. M., 1947, provides in part:

an appeal in the case of a delinquent child shall not suspend the order of the court, nor shall it discharge the delinquent child from the custody of that court or of the person, institution, or agency to whose care such delinquent child shall have been committed, unless that court shall so order.⁷⁵

The Supreme Court, on appeal, may make whatever modifications of the District Court Order they deem necessary in the interest of justice.

IDENTIFYING HOW THE SYSTEM MAINTAINS ITS WORKING STRUCTURE

The maintenance resource concentrates on keeping people in the system in order to preserve a steady state. Katz and Kahn list six main sections under the maintenance resource: 1) selection of employees; 2) indoctrination of employees; 3) regulation of employees; 4) uniformity; 5) precedent decisions; and, 6) standard operating procedures.⁷⁶

⁷⁵Revised Codes of Montana 1947, (1968), C. 6, Sec. 10-630, p.p. 589, 590.

⁷⁶Katz and Kahn, p.p. 87-89.

The attempt here is to observe how the juvenile probation officer's role fits into this portion of the system.

Selection of Employees - Each of the judicial districts has its own procedure for selecting employees. Montana law provides that in the selection of probation officers the judge may appoint a discreet person of good moral character with preference given to people who possess either a B.A. degree in the field of behavioral science or a B.A. degree in some other field with three years experience.⁷⁷ In practice, however, several judicial districts have not always followed these guidelines.

The selection process varies throughout the state but it is normally based on newspaper or word of mouth advertising. Once the individual submits a resume' it may be screened by either the district judge or the chief probation officer, or both. If the chief probation officer does the initial screening, he checks the backgrounds of all prospective applicants. This includes looking into their educational and work background, making contact with law enforcement agencies to determine if the applicant has a prior juvenile or criminal record, and determining if the applicant would be able to complete the duties of the position. The chief probation officer determines this through the background

⁷⁷ Revised Codes of Montana 1947, (1973), C. 6, Sec. 10-622, p. 143.

investigation and personal interviews. Then applications are narrowed down and submitted to the district judge for his review. The chief probation officer may recommend a particular applicant but the judge makes the final determination. This process, though it varies from area to area, appears to be adequate for the amount of employment done in Montana. The more formalized process, including an intensive testing program, used in other more populated states does not seem to be necessary.

Dave Hopkins, a recent law student, conducted a brief study of twenty-five states to determine who appoints and fixes salaries of juvenile probation officers. Nineteen of the twenty-five either had the judge or the juvenile court appoint probation officers.⁷⁸ In four of the remaining six

⁷⁸Code of Alabama 1958, (1959), C. 7, Sec. 13§ 360, p.p. 826, 827; Arizona Revised Statutes (1974), C. 2, Sec. 8-203, p. 1010; Arkansas Statutes Annotated 1947, (1964), C. 1, Sec. 45-218, p. 312; Colorado Revised Statutes 1963, (1964) C. 22, Sec. 22-8-8, p. 778; Connecticut General Statutes Annotated (1960), C. 301, Sec. 17-57, p. 78; Delaware Code Annotated (1971), C. 11, Sec. 10-1131, p. 93; Annotated Laws of Massachusetts (1968), C. 276, Sec. 276-83A, p. 355; Annotated Missouri Statutes (1962), C. 211, Sec. 211.351, p.p. 236-237; Revised Statutes of Nebraska 1943 (1965), C. 29, Sec. 29-2210, p. 470; Nevada Revised Statutes (1973), C. 62, Sec. 62-110, p. 2001; New Jersey Statutes Annotated (1971), C. 168, Sec. 2A:168-5, p. 374; New Mexico Statutes Annotated (1973), C. 13, Sec. 13-14-7, p.p. 108-109; North Dakota Century Code Annotated, (1947), C. 27-20, Sec. 27-20-05, p. 151; Ohio Revised Codes (1968), C. 2151, Sec. 2151-13, p. 543; Code of Laws of South Carolina 1962 (1962), C. 7, Sec. 15-1130, p. 177; South Dakota Compiled Laws 1967 (1969), C. 26-7, Sec. 26-7-3, p. 153; Tennessee Code Annotated 1953 (1974), C. 10, Sec. 55-10-73, p.p. 169-170; Revised Codes of Washington Annotated (1962), C. 13.04, Sec. 13.04.040, p. 158.

states the judge also made the appointment but it was based upon the recommendation or approval of either the county commissioners,⁷⁹ the juvenile justice commission,⁸⁰ the state Department of Juvenile Services,⁸¹ or the Welfare Department.⁸² In another state the appointment was made by the Department of Welfare⁸³ while in another it was made by the Governor upon the recommendation of either the probate judge or judges in each county.⁸⁴ The study was not intended to determine how juvenile probation officers are selected but to determine who appointed them. Some states select juvenile probation officers from various state merit examinations or civil service examinations which may include some psychological testing and oral interviews.⁸⁵ Where testing is used it must conform to the Civil Rights Act of 1964.

Ted Rubin discusses the issue briefly in his book, A Comparative Study: Three Juvenile Courts, when he discussed his

⁷⁹Oklahoma Statutes Annotated (1974), C. 5, Sec. 10, § 1505, p. 63.

⁸⁰West's Annotated California Codes: Welfare and Institutions Code, (1972), C. 2, Sec. 575, p. 84.

⁸¹Annotated Codes of Maryland 1957, (1972), Sec. 52A, §14, p. 557.

⁸²Code of Virginia 1950 (1960), C. 8, Sec. 16.1-203, p.p. 70,71.

⁸³West Virginia Code (1966), C. 49, Sec. 49-5-17, p. 275.

⁸⁴Michigan Statutes Annotated (1968), Sec. 16.101, p. 11.

⁸⁵Ted Rubin, Three Juvenile Courts: A Comparative Study, (Denver: The Institute for Court Management, 1972) p.p. 151-169.

recommendation regarding Utah's selection procedure:

The written tests given by the Division should really fit the qualifications sought for probation officer, or, for example, court clerk. The U.S. Supreme Court decision in Griggs v. Duke Power Co. held the civil rights act of 1964 precluded the use of testing as a condition of employment unless the test demonstrated a reasonable measure of job performance; tests must be predictive of success on the job, and must not discriminate against minority groups.⁸⁶

Since the Montana system is not a large system like that in California or New York or some other states, it is recommended that no change be made in the present selection process. If change is indicated later, more data should be obtained from each judicial district to determine their procedure, and then this data should be compared to the Civil Rights Act of 1964 and data from other states to learn more about a more sophisticated selection process before instituting any change.

Indoctrination - Once someone is selected for the probation officer's job the next step is indoctrinating that person into the juvenile court system. There is no formal training process for probation officers in Montana on a statewide basis. The training a new officer receives is in-service but occasionally he may go to a school sponsored by the Montana Law Enforcement Academy in Bozeman, Montana.

There are four options available for indoctrinating new employees and extending training of experienced employees:

1) leave the system unchanged; 2) provide a formalized

⁸⁶Ibid., p.p. 421, 422.

training program in the district or combine some districts; 3) provide a formalized training program through the Montana Law Enforcement Academy which would include a combination of information for new employees as well as experienced employees; or 4) provide a formalized training program through the Montana Correctional Association or the Juvenile Probation Officers Association with the financial assistance of the Board of Crime Control.

Alternative number one is poor because learning and keeping current in the field is important to maintaining the system. Alternative number two would have to be sufficiently structured and some type of financial assistance would be needed in order to devise a curriculum and provide transportation and instructors. Classroom space and teaching materials would be needed also. The best financial resource would be the Board of Crime Control since they spent approximately \$14,000.00 on education and training programs in 1973.⁸⁷ Option number three would be good in that the Montana Law Enforcement Academy has been used periodically in the past for juvenile probation officer training, but to be effective the training should be handled as an annual ongoing program. Perhaps experienced probation officers could contribute special techniques and procedures developed over time. Since it is unknown whether

⁸⁷Information provided by Steve P. Nelsen, Juvenile Programs Coordinator, Board of Crime Control.

the Law Enforcement Academy could accomodate such a program, option number four is better. It is similar to number three the main difference being that either the Montana Correctional Association or the Juvenile Probation Officers Association would contract with the Board of Crime Control to obtain financial assistance. Both options three and four would improve over two because they would incorporate a larger representation of probation officers on a statewide basis.

Regulation of Employees - Once the individual is in the system his behavior is regulated in several different ways if he is going to stay in the system. The most common form of regulation is the legal compliance to the role established by law and the judge. Montana law describes what role the probation officer is required to fill and the judge of each judicial district sees that the role expectations are met. The role may vary some depending upon district procedure but basically it is the same across the state. There have been approximately three judicial districts where the probation officer has been eliminated from the system either through a change of judges or because of not fullfilling his role expectations. This situation has caused concern among probation officers which has led to discussion of tenure or job security.

Tenure is a provision that prohibits the firing or dismissal of a probation officer without cause. It further

may provide for a hearing to determine if the dismissal was just. If it was made without proper evidence of just cause the probation officer must be reinstated. A problem tenure brings is that it may keep an individual in the system who is just doing enough to get by. Also it would create difficulties in situations of personality conflicts between new judges and probation officers already hired. It may provide some job security but if the judge is determined to dismiss an employee he can create situations making it difficult for the employee to stay. It is recommended that tenure in its true sense not be included in any legislation but that some form of hearing should be permitted so the officer can be treated fairly and given a chance to perform his duties under a new judge, at least for a trial period.

Fringe benefits including retirement, vacation, insurance, sick leave, leave of absence, and holidays are rewards used to keep individuals in the system. Under county government, probation officers receive:

1) Public Employee Retirement System. This particular retirement program provides that anyone who is a member of P.E.R.S. may retire at a minimum age of 55 with ten years of creditable service and an actuarial reduction in benefits.⁸⁸ At 60 years of age and ten years creditable service an

⁸⁸Revised Codes of Montana 1947, (1968), C. 20, Secs. 68-2001 and 68-2003, p.p. 131, 132.

employee can retire with full benefits and at that time he can withdraw 100 percent of his contributions including accrued interest with ten or more years of service.⁸⁹ The regular retirement benefit provides the employee with "1/65 of his final compensation multiplied by the number of years of his creditable service".⁹⁰ Other benefits under this program are disability retirement and death benefits available to:

(1) a member who has not reached seventy (70) years of age but has become disabled for duty-related reasons, as defined in subsections (3) and (4) of this section, is eligible for disability retirement.

(2) a member who is not eligible for service or early retirement but has completed ten (10) years of creditable service and has become disabled while in active service for other than duty-related reasons, as defined in subsections (3) and (4) of this section, is eligible for disability retirement.

(3) 'Disabled' means unable to perform his duties by reason of physical or mental incapacity.

(4) 'Duty-related' means as a result of an injury or disease arising out of or in the course of his employment with an employee.⁹¹

The death benefits provide the beneficiary with a lump sum refund of the member's accumulated contributions plus

⁸⁹Revised Codes of Montana 1947, (1968), C. 20, Sec. 68-2001, p. 131.

⁹⁰Revised Codes of Montana 1947, (1968), C. 20, Sec. 68-2003 (2), p. 132.

⁹¹Revised Codes of Montana 1947, (1968), C. 20, Sec. 68-2101 (1-4), p.p. 131, 132.

interest or a monthly life annuity after ten years of service.⁹² The employee must contribute 5.75 percent of his salary to the P.E.R.S. and the employer supplements this with 4.6 percent of the employee's salary until June 30, 1975, when the employer's contribution increases to 4.9 percent.⁹³ One of the main exclusions the P.E.R.S. provides under this retirement plan is that persons who are members of another state or federal retirement program are not eligible to collect benefits under P.E.R.S. There are ten other exclusions pertaining to employees which are discussed in Section 68-1602, R.C.M. 1947.⁹⁴ A criticism of this retirement program is that members who quit with less than ten years service are unable to collect interest on the money withdrawn.

2) Annual Vacation Leave. Every full time employee of the county receives the following vacation benefits after he has been continuously employed for a minimum of one year:

Vacation leave credits shall be earned in accordance with the following schedule:

- (a) From one (1) full pay period through ten (10) years of employment at the rate of fifteen (15) working days for each year of service;
- (b) After ten (10) years through fifteen (15) years of employment at the rate of eighteen (18) working days for each year of service;

⁹²Revised Codes of Montana 1947, (1968), C. 20, Sec. 68-2302 (1-2), p. 137.

⁹³Revised Codes of Montana 1947, (1973), C. 20, Secs. 68-1902 and 68-2504, p.p. 129, 140.

⁹⁴Revised Codes of Montana 1947, (1973), C. 20, Sec. 68-1602 (8), p. 121.

(c) After fifteen (15) years through twenty (20) years of employment at the rate of twenty-one (21) working days for each year of service;

(d) After twenty (20) years of employment at the rate of twenty-four (24) working days for each year of service. Vacation leave may not exceed thirty working days.⁹⁵

3) Insurance. The insurance rate varies throughout the state. It is assumed that all full time probation officers are under some group insurance plan but there are no data available to confirm this.

4) Sick Leave. Reference is given to sick leave in Volume 4, Part 1, Section 59-1005 of the Revised Codes of Montana, 1947 which states:

absence from employment by reason of illness shall not be chargeable against unused vacation leave credits unless approved by the employee.⁹⁶

An individual who is employed for 90 days or more is entitled to sick leave at the rate of one working day per month for every full month's pay period. There are no restrictions on the number of days accumulated but no sick days can accrue for someone who is on a continuous leave of absence exceeding 15 calendar days. Upon termination of employment an employee receives an amount equal to one-fourth of the pay attributed to his accumulated sick leave. This reim-

⁹⁵Revised Codes of Montana 1947, (1973), C. 10, Secs. 59-1001 and 59-1002, p.p. 13, 14.

⁹⁶Revised Codes of Montana 1947, (1973), C. 10, Sec. 59-1005, p. 14.

bursement is computed on the employee's salary or wage at the time the sick leave was earned.⁹⁷

5) Leave of Absence. Under Montana law "vacation leave shall not accrue during a leave of absence without pay the duration of which exceeds fifteen (15) days."⁹⁸ It is unknown how often a leave of absence is used but in some instances it has been used to continue further schooling for the probation officer.

6) Social Security. Both the county and the employee pay 5.5 percent of earnings as provided for under the Montana Code.⁹⁹

7) Paid Holidays. There are eleven paid holidays allotted to county employees including: New Year's Day (January 1), Lincoln's Birthday (February 12), Washington's Birthday (third Monday in February), Memorial Day (last Monday in May), Independence Day (July 4), Labor Day (first Monday in September), Columbus Day (second Monday in October), Veterans Day (fourth Monday in October), Thanksgiving Day (fourth Thursday in November), Christmas Day (December 25), and the State General Election Holiday.¹⁰⁰ However the pro-

⁹⁷Revised Codes of Montana 1947, (1973), C. 10, Sec. 59-1008, p.p. 15,16.

⁹⁸Revised Codes of Montana 1947, (1968), C. 10, Sec. 59-1004, p. 78.

⁹⁹Revised Codes of Montana 1947, (1968), C. 10, Sec. 59-1101, p.p. 79-88.

¹⁰⁰Revised Codes of Montana 1947, (1973), C. 1, Sec. 19-107, p.p. 7, 8.

bation officer is on call on a 24-hour basis requiring him to work at times after normal working hours, evenings, weekends, and holidays.

Salary is another reward used to keep an individual in the system. Revised Codes of Montana 1947, Section 10-622, provides in part: (as of 1973)

In every judicial district of the state of Montana the judge thereof having jurisdiction of juvenile matters may appoint one (1) discreet person of good moral character, who shall be known as the chief probation officer of such district.....Such officer shall receive for his services such sum as shall be specified by the Court upon appointment, provided that the judge of the district court may employ him on a yearly salary not to exceed eleven thousand dollars (\$11,000.00).....the judge having jurisdiction of juvenile matters may also appoint such additional persons.....to serve as deputy probation officers as the judge deems necessary; their salaries to be fixed by the judge at the time of appointment, provided that such salaries shall not exceed ninety (90) percent of the salary of the Chief Probation Officer.

The maximum set by law does not necessarily mean that it will be the salary decided upon. Twelve of the eighteen judicial districts pay the maximum for chief probation officers. Six judicial districts employ sixteen deputies of which twelve receive the maximum. The other four chief probation officers receive between \$9,000.00 and \$9,800.00 and the other twelve deputies receive between \$7,000.00 and \$9,500.00 per year. Salary increases vary from district to district. A definite morale problem has been created because of the need to go to the legislature every few years in order to seek a salary

¹⁰¹ Revised Codes of Montana 1947, (1973), C. 6, Sec. 10-622, p. 143.

increase. Many of the younger officers tend to leave the system within 5 to 7 years because of this problem. Several probation officers have worked to alleviate this problem coming up with the following legislative proposals:

1) At one point in 1970 the probation officers proposed that they receive a certain percent of the district judge's salary. This proposal was defeated before it ever got to the legislature because of judicial opposition.

2) House Bill 339 in 1973 was presented to the Montana Legislative Session, reading in part as follows:

In judicial districts which include one (1) or more counties of the first class, the maximum salary shall be the average salary received by the elementary school principals in the counties of the first class contained within the district. Provided, however, that the juvenile probation officer has a Master's Degree in a subject under subsection (2) above, and holds comparable qualifications of the average elementary school principal. The determination of the average salary shall be made by certification from the county superintendent in the school district or districts which include the largest portion of county or counties of the first class, before March 1 each year, or in sufficient time to allow adequate budgetary consideration by the county commissioners.¹⁰²

This bill was defeated, many probation officers and judges felt, because it discriminated against all probation officers who did not reside in first class counties.

3) As had been done in the past, in 1973 several juvenile probation officers lobbied for an increase in the maximum set by the legislature, which was from time to time successful. However in the 1974 legislative session exten-

¹⁰²43rd Legislative Assembly, H.B. 339, (Helena, 1973).

sive research and drafting was put into a proposal which was introduced in the 1974 Legislative Session as Senate Bill 683. The purpose of the bill was to amend Section 10-622 of the Revised Codes of Montana 1947, as follows:

Preference in appointments shall be given to a person, or persons, who possess a Bachelor's Degree from an accredited college or university in the Behavioral Sciences, and, or experience in work of a nature related to the duties of the probation department as set forth in Section 10-623. Such officers shall receive for his services such sum as shall be specified by the court upon appointment, provided that the judge of the district court may employ him on a yearly salary according to the minimum scale as follows:

- (1) Chief Probation Officer
 - a. Chief I -- three (3) years experience in the field of probation, or a Bachelor's Degree in Behavioral Sciences, or a Master's Degree in Behavioral Sciences -- thirteen thousand (\$13,000.00) dollars.
 - b. Chief II -- five (5) years experience in the field of probation, or a Bachelor's Degree in Behavioral Sciences and three (3) years experience in the field of probation, or a Master's Degree in Behavioral Sciences and two (2) years experience in the field of probation -- fifteen thousand (\$15,000.00) dollars.
 - c. Chief III -- seven (7) years experience in the field of probation, or a Bachelor's Degree in Behavioral Sciences and five (5) years experience in the field of probation, or a Master's Degree in Behavioral Sciences and four (4) years experience in the field of probation -- seventeen thousand (\$17,000.00) dollars.
 - d. Chief IV -- nine (9) years experience in the field of probation, or a Bachelor's Degree in Behavioral Sciences and seven (7) years experience in the field of probation, or a Master's Degree in Behavioral Sciences and six (6) years experience in the field of probation -- nineteen thousand (\$19,000.00) dollars.

The judge having jurisdiction of juvenile matters may also appoint such additional persons giving preference to persons having the qualifications suggested for appointment as the chief probation officer to serve as deputy probation officers as the judge deems necessary; their salaries shall not exceed ninety (90) percent of the salary of the Chief Probation Officer and according to the minimum scale as follows:

- (2) Deputy Probation Officers
 - a. Deputy I -- three (3) years experience in the field of probation, or a Bachelor's Degree in Behavioral Sciences, or a Master's Degree in Behavioral Sciences -- Eleven thousand (\$11,000.00) dollars.
 - b. Deputy II -- five (5) years experience in the field of probation, or a Bachelor's Degree in Behavioral Sciences and three (3) years experience in the field of probation, or a Master's Degree in Behavioral Sciences and two (2) years experience in the field of probation -- Thirteen thousand (\$13,000.00) dollars.
 - c. Deputy III -- seven (7) years experience in the field of probation or a Bachelor's Degree in Behavioral Sciences and five (5) years experience in the field of probation, or a Master's Degree in Behavioral Sciences and four (4) years experience in the field of probation -- Fifteen thousand (\$15,000.00) dollars.
 - d. Deputy IV -- nine (9) years experience in the field of probation, or a Bachelor's Degree in Behavioral Sciences and seven (7) years experience in the field of probation, or a Master's Degree in the Behavioral Sciences and six (6) years experience in the field of probation -- seventeen thousand one hundred (\$17,100.00) dollars.

An advance to the next level for Chief Probation Officer or Deputy Probation Officer not only requires the above qualifications but also the approval of the judge having jurisdiction of juvenile matters. Salaries on each level shall be supplemented by the standard cost of living increase as established by law. The salary of such officer shall be apportioned among and paid by each of said counties in which said officer shall be appointed to act, in proportion to the services received in such counties for the year then current, except that where such officials are appointed for one

(1) county, their salaries shall be paid by that county.¹⁰³

This bill was also defeated with no explanation given except that some legislators were opposed to a cost of living increase and others interpreted the bill as giving all probation officers \$19,000.00 per year.

(4) Senate Bill 682 was also introduced in the 1974 legislative session to amend Section 10-622 of the Revised Codes of Montana 1947, as follows:

Such officer shall receive for his services such sum as shall be specified by the court upon appointment provided that the judge of the district court allow increments for additional educational and professional experience and annual increase in cost of living.¹⁰⁴

This bill was amended in committee and revised to show a change in the maximum limit of salary from \$11,000.00 to \$12,500.00. This bill was passed because the district judge has inherent powers to regulate salaries of court personnel, including juvenile probation officers, so long as the salary is reasonable. What are inherent powers? Jim R. Carrigan defines inherent powers in his essay on "Inherent Powers of the Courts" as:

Inherent powers consist of all powers reasonably required to enable a court to perform efficiently its judicial functions, to protect its dignity, independence and integrity, and to make its lawful actions effective. These powers are inherent in the sense that they exist because the court exists; the court is, therefore it has the powers reasonably required to act as an efficient court. Inherent judicial powers derive not from legislative grant or specific con-

¹⁰³43rd Legislative Assembly, S.B. 683, (Helena, 1974).

¹⁰⁴43rd Legislative Assembly, S.B. 682, (Helena, 1974).

stitutional provision, but from the fact it is a court which has been created, and to be a court requires certain incidental powers in the nature of things.¹⁰⁵

Should inherent powers apply to the regulation of salaries? Montana has not had any known case law regarding the setting of salaries for juvenile probation officers but some other states have had cases on this issue. In Re Salaries for Probation Officers of Bergan County tested a New Jersey statute granting judges the authority to appoint probation officers and to fix their salaries. The New Jersey Supreme Court upheld the constitutionality of the statute against a separation of powers argument and stated:

It may be conceded that the appointment of probation officers and the fixing of their salaries are not, at least in the purest sense, judicial acts. But the doctrine of the separation of powers was never intended to create, and certainly never did create, utterly exclusive spheres of competence. The compartmentalization of governmental powers among the executive, legislative, and judicial branches has never been watertight. It is simply impossible for a judge to do nothing but judge; a legislator to do nothing but legislate; a governor to do nothing but execute the law. The proper exercise of each of these three great powers of government necessarily includes some ancillary inherent capacity to do things which are normally done by the other departments....in appointing probation officers and in fixing their salaries the county judges act as legislative agents. Such legislative delegation to judicial officers is sanctioned by long usage and although the judiciary is not required to accept such

¹⁰⁵ Jim R. Carrigan, "Inherent Powers of the Courts", in Kenneth Cruce Smith, ed., Juvenile Justice, (Reno, Nevada: The National Council of Juvenile Court Judges, May, 1973) p. 40.

delegation should it appear incongruous or unduly burdensome, no such objection exists here.¹⁰⁶

An additional source regarding this issue was the case of Noble County Council v. State where the Supreme Court of Indiana held:

The court has inherent and constitutional authority to employ necessary personnel with which to perform its inherent and constitutional functions and to fix the salary of such personnel, within reasonable standards and to require appropriation and payment therefor.... these mandates necessarily carry with them the right to quarters appropriate to the office and personnel adequate to perform the functions thereof. The right to appoint a necessary staff of personnel necessarily carried with it the right to have such appointees paid a salary commensurate with the responsibilities. The right cannot be made amendable to and/or denied by a county council or the legislature itself.¹⁰⁷

However, in the case of Leahey v. Farrell a Pennsylvania decision upheld the power of the legislature to regulate, within reasonable limits, the salaries of court personnel. Holding that the power did not rest inherently and exclusively in the district courts, the Supreme Court stated:

A court must first comply with reasonable fiscal regulations of the legislature. Should the legislature, or the county salary board act arbitrarily or capriciously and fail or neglect to provide a sufficient number of court employees or for the payment of inadequate salaries to them, whereby the efficient admini-

¹⁰⁶In re Salaries, 278 A. 2d 417, 418, 419 (1971).

¹⁰⁷Noble County Council v. State, 243 Ind. 172, 125 N.E. 2d 709, 713 (1955); similar conclusions as cited above were found in the cases of State Ex Rel Weinstein v. St. Louis County, 451 S.W. 2d. 99 (1970); Commonwealth Ex Rel Carroll v. Tate, 274 A. 2d 193 (1971); Smith v. Miller, 153 Colo. 35, 384 P. 2d 738 (1963); Judges for Third Judicial Cir. v. County of Wayne, 172 N.W. 2d 436, 442 (Mich. 1969); and Com'rs' Ct. v. Martin, 471 S.W. 2d 100 (Texas Civ. App. 1971).

stration of justice is impaired or destroyed, the court possesses the inherent power to supply the deficiency.¹⁰⁸

Taken to its extreme, if juvenile probation officers disagree strongly with the judge on the setting of a particular salary the format for unionization and possible strikes could be set. This would hamper greatly the working relationship between the two which is vital to a successful operation. The most recent change in the salaries of juvenile probation was made with the passage of the Montana Youth Act in the 1974 legislative session, but this amendment still maintains the words "preference shall be given" which does not make qualifications mandatory. Also the new code contains the same provision of the maximum set by law, and even though this maximum increased the format continues to place the probation officers in the position of returning every other year to seek additional changes in the law regarding salaries. Perhaps the legislature does not want to give up the authority to regulate salaries of juvenile probation officers. If this is true, then probation officers have no alternative but to return to the legislature every other year to seek necessary changes in the maximum limit. It is recommended that further studies be conducted to determine an equitable salary range for probation officers which would be commensurate with qualifications and experience.

¹⁰⁸Leahey v. Farrel, 66 A. 2d 577, 580 (1949).

Psychological rewards are also used to keep an individual in the system. These rewards include such things as approval from leadership, peer acceptance, self-determination and internalization of values. There is no data available to determine the feedback from the district juvenile judge as to his approval or disapproval of the probation officer's performance. It is presumed that some feedback is given in each judicial district either by the judge or chief probation officer but without supporting data it is difficult to make any further statements or recommendations regarding this reward.

Peer acceptance reveals itself informally within probation departments, at schools and seminars, and during Association meetings. Here again, however, no data are available on a statewide basis to support any conclusions.

Self-determination and self-expression can give a probation officer a high degree of job satisfaction if he is permitted to make or be involved in most of the day-to-day job decisions. The officer is rewarded by learning his job and gaining experience enabling him to make decisions that will affect him and the people involved with him. If the officer is not allowed to make some decisions, low morale results. Here too no data are available on a statewide basis.

Internalization of the court value system into the value system of the individual produces a dedicated person

who has accepted fully the court's value system. It is known that such rewards do exist but there are no data to document any evidence.

Uniformity - No uniform method of processing offenders exists except as described earlier. Notices to appear, social history forms, budgets and other forms all vary from district to district. Although in a general sense the code provides for uniformity in a probation officer's role, there is no uniform method of implementing it. It is recommended that the judge and probation officer in each district determine their expected role requirements, but that forms be systemized on a statewide basis to assure uniform processing of juveniles. This would leave the performance of role with the judge and probation officer yet set down some guidelines to follow that could accomplish some uniformity without infringing upon the authority of the Judge.

Precedent Decisions and Standard Operating Procedures - What are the alternatives available in external demands upon the system that affect change in the laws and operating procedure? Public pressure, the legislature, the Supreme Court, and the Montana Constitution are the primary external sources affecting the system.

Public pressure can definitely change operating procedures. When the public becomes aroused regarding a particular way something is being handled in any part of the

system, they can protest to the executive branch of both state and local government, to the legislative branch in order to change particular laws, and to the judicial branch for processing the contested issue. Any one of these protests, especially if there is enough public criticism, can change policy within the system. Public pressure, in part, created the juvenile court system as explained in the introduction. If the public does not take an interest in the system, change is difficult to bring about.

The legislative group has a tremendous amount of power and is able to restructure the entire juvenile court system if it so desires. The laws enacted affect every part of the system. When change does come about, it is normally due to the introduction of legislation supported by groups of individuals desiring change. Such issues include pay raises for probation officers, or could even be an entire change in the structure of the code. The legislature must determine if the proposals will meet the needs of the state. Article II, Section 15 of the Montana Constitution provides "The rights of persons under 18 years of age shall include, but not be limited to, all the fundamental rights of this Article unless specifically precluded by laws which enhance the protection of such."¹⁰⁹ Both the Montana Supreme Court and the United States Supreme Court have handed down decisions

¹⁰⁹ Montana Constitution, Article 2, Section 15.

in recent years which have had a definite impact on applicable laws and operating procedures in an effort to protect these fundamental rights.

On May 15, 1967, the United States Supreme Court in hearing the case of Gerald Gault, a 15-year-old boy who was committed to a juvenile correctional institution in Arizona for making an obscene telephone call, held that several procedural rights had been violated. Justice Abe Fortas, when discussing the right to counsel, observed:

Appellant's charge that the juvenile court proceedings were fatally defective because the court did not advise Gerald or his parents of their right to counsel, and proceeded with the hearing, the adjudication of delinquency and the order of commitment in the absence of counsel for the child and his parents or an express waiver of the right thereto. The Supreme Court of Arizona pointed....to a provision of the juvenile code which it characterized as requiring 'that the probation officer shall look after the interest of neglected, delinquent and dependent children' including representing their interests in court...We do not agree. Probation officers, in the Arizona scheme, are also arresting officers. They initiate proceedings and file petitions which they verify, as here, alleging the delinquency of the child; and they testify, as here, against the child. And here the probation officer was also superintendent of the detention home. The probation officer cannot act as counsel for the child. His role in the adjudicatory hearing, by statute and by fact, is as arresting officer and witness against the child.¹¹⁰

Montana law provides for a formal petition which is to contain a brief recitation of the facts relating why the offender is before the court. The actual decision to initiate formal proceedings against a juvenile is normally made by

¹¹⁰In Re Gault, 387 U.S. 1 (1967).

the juvenile probation officer and the county attorney. When formal proceedings are instigated the juvenile is, or has been, advised of his rights but in most instances they do not ask for or receive a defense attorney. It is interesting to note that 24 out of 31 respondents to the questionnaire indicated either "always" or "frequently" that a defense attorney should be involved.

The petition is a very important formal document alleging delinquency against a juvenile and should be legally sufficient to stand up in court yet in some instances the preparation consisted of a generalized statement of the facts alleging delinquency rather than setting forth the alleged conduct with particularity, as required in Gault.¹¹¹ Since the probation officer is not an attorney he should not be required to prepare petitions or to prosecute juveniles in a formal hearing. It is recommended that the county attorney be assigned and compelled to perform his legal duty in this particular portion of the system. The alternative to this would be to have the probation officer continue to prosecute cases until Montana finds its Gerald Gault who will surely take this matter to the higher courts.

The question of "standard of proof" has also been raised with regard to juvenile proceedings. Should evidence introduced against the juvenile be based on a preponderance of evidence as in civil cases or beyond a reasonable doubt as

¹¹¹Ibid.

in criminal cases? Noah Weinstein outlined this problem well in his text, Supreme Court Decisions and Juvenile Justice, where he discussed the Winship case of March, 1970, and stated:

The United States Supreme Court (five members per Brennan, J.) held that:

1. Due process protected an accused in a criminal prosecution against conviction except upon proof beyond a reasonable doubt.
2. Although the Fourteenth Amendment did not require that a juvenile delinquency hearing conform with all the requirements of a criminal trial, nevertheless, the due process clause required application during the juvenile hearing of essentials of due process; and,
3. Thus, juveniles, like adults, were constitutionally entitled to proof beyond a reasonable doubt during the adjudicatory stage when the juvenile was charged with an act which would constitute a crime if committed by an adult.¹¹²

This particular decision indicates that, where a juvenile was charged with an offense that would constitute a crime if committed by an adult, in a delinquency hearing the evidence used must prove guilt beyond a reasonable doubt. Although this decision may have quite an impact on the Montana formal court procedure, the main emphasis of this paper is on the informal handling of offenders, therefore this problem was not researched in detail.

¹¹²Noah Weinstein, Supreme Court Decisions and Juvenile Justice, (Reno, Nevada: National Council of Juvenile Court Judges, 1973), p. 8; also see, In re Winship, 397 U.S. 358 (1970).

The transfer hearing provision is probably one of the most important sections in juvenile law because it authorizes the placement of certain types of cases into the adult system which is theoretically opposed to the labeling concept. In Montana, Section 10-603(c), Revised Codes of Montana 1947, provides:

When the juvenile court has jurisdiction of any child sixteen (16) years of age, or over, who is accused of committing or the attempt to committ murder, manslaughter, arson in the first degree, robbery, burglary, and carrying a deadly weapon with intent to assault, or who commits rape under the circumstances specified in subdivisions 3 and 4 of Section 94-4101, R.C.M. 1947, then the county attorney may request the juvenile court to be permitted to file an information against the juvenile in district court, or, when the facts warrant, the juvenile judge may order the county attorney to proceed against the juvenile in district court on an information.

Before making such order the juvenile judge must hear the matter by an informal preliminary hearing to determine first, if there is probable cause to believe the juvenile has committed the felony, and second, to determine whether under the circumstances it appears necessary for the best interests of the state that the juvenile be held to answer the information in district court.¹¹³

When adult court is being considered should there be more basic protection for the juvenile? At what point does the community receive protection from the youth being considered in a transfer hearing? What should the lower age limit be in a transfer hearing? If the youth is charged with a felony and transferred to the adult system will he be given

¹¹³ Revised Codes of Montana 1947 (1973), C. 6, Sec. 10-603, p.p. 137, 138.

treatment or punishment? Is he entitled to treatment, or deserving of punishment? In the Kent decision the juvenile court judge of the District of Columbia waived jurisdiction and transferred the case to the Federal District Court for the District of Columbia so Kent could be tried as an adult. Kent was found guilty of the charges in an adult court, but three years later, in 1966, his case was overturned in the United States Supreme Court on the basis that the juvenile court judge failed to hold a waiver hearing, he failed to set forth any findings and reasons for the waiver, and Kent's counsel was denied access to social records and other reports which were considered in making the waiver.¹¹⁴ The Supreme Court held, based on the due process and assistance of counsel clauses of the Constitution, a juvenile is entitled to a hearing and to a statement of reasons as a condition to a valid waiver order by the juvenile court. The statement of reasons should be sufficient to demonstrate that a full investigation has been made and that the question has received the careful consideration of the juvenile court. The statement must set forth the basis for the waiver order with sufficient particularity so as to permit meaningful appellate review. The Court further stated that the juvenile's counsel is entitled to see the social records or other probation reports and to subject them, within reasonable limits, to examination, criticism, and refutation. The opinion

¹¹⁴Kent v. United States, 383 U.S. 541 (1966).

also contained an appendix or policy decision which set forth the criteria and the factors which the judge should consider in deciding whether the juvenile court's jurisdiction should be waived. These factors are:

- 1) Is the offense serious? Does the protection of the community require a waiver?
- 2) Was the alleged offense committed in an aggressive, violent, premeditated or willful manner?
- 3) Was the act committed against a person or was it committed against property? The court should attach greater weight if the act was committed against a person especially if personal injury resulted.
- 4) Is there sufficient evidence against the juvenile upon which a grand jury might be expected to return an indictment?
- 5) If the juvenile associated with adults in the commission of the crime, is it better to dispose of the entire case in the adult criminal court?
- 6) Is the juvenile sophisticated and mature and thus able to stand trial in the adult criminal court? To answer this question, the juvenile's home, environmental situation, emotional attitude and pattern of living must be scrutinized.
- 7) Scrutinize the juvenile's past record.
- 8) Is it likely that the juvenile can be rehabilitated through the use of facilities available to the juvenile court?¹¹⁵

Montana's transfer hearing was last challenged on June 24, 1973, in the case of Lujan v. The State of Montana. Defense counsel cited three errors in support of Lujan's claim that the transfer hearing was faulty. These were improper admission of evidence, denial of due process rights by not

¹¹⁵Kent v. United States, 383 U.S. 541, 566, 567 (1966).

permitting counsel to make a presentation, and not making a proper determination that the transfer was in the best interest of the state. Defense counsel failed to prove Lujan was denied any of those rights enumerated in Kent or in his appeal, so the Montana Supreme Court upheld the District Court's transfer order. In discussing the appendix of Kent, the Montana Supreme Court found:

The record does not bear out Lujan's claim that his counsel was denied the opportunity to make a presentation in his behalf for the reasons heretofore stated. Nor was the judge required to apply the considerations set forth in the policy statement of the District of Columbia Juvenile Court, quoted in the appendix to that decision. The policy statement at most is no more than a rule of that court concerning the standards that particular court would apply in determining waiver and transfer under the District of Columbia's Juvenile Court Act. A Montana Juvenile Court is in no way bound to apply the same standards under the Montana Juvenile Court Act.¹¹⁶

Even though the Montana Supreme Court arrived at the above conclusion it is still important to look at some of the issues discussed in the appendix of Kent and to relate them to the questions asked earlier. When a youth is under consideration for being transferred to an adult court he should be given the same considerations given adults because if transferred he will be treated as an adult. If this assumption is correct then the juvenile should be afforded the same rights as an adult at the very early stages of the proceeding which includes the fundamental process as des-

¹¹⁶Lujan v. State of Montana, 30 St. Rep. 146, 150 (1973).

cribed in Kent. It is important that all levels of the youth's maturity, seriousness of the offense, prospects of rehabilitation, etc. be provided for in the youth's best interest. It is also very important that the community receive adequate protection from the juvenile charged with any of the felonies previously described. For violent crimes perhaps the age limit should be lowered. A youth under 16 can be placed at an institution only until he reaches 21 years of age, and if he has committed murder, it is difficult to rationalize, from the community standpoint, that the community is protected especially under the likelihood the juvenile may be capable of committing other murders. Should the juvenile in these cases be treated as an individual who is "misdirected and misguided, and needing aid, encouragement, help and assistance"? Is he entitled to treatment? In *Kent v. The United States*, the United States Supreme Court held that Morris Kent's psychotic behavior should have been handled as a mentally ill commitment, and handled in the civil courts on that basis rather than transferred.¹¹⁷ Donna E. Renn discusses the issue of treatment in her article "The Right to Treatment and the Juvenile", which is quoted in part below:

The purpose of juvenile law having been clearly and consistently established by both the legislature and the courts as therapy, the right to treatment would

¹¹⁷Sanford J. Fox, The Law of Juvenile Courts in a Nutshell, (Minnesota: West Publishing Co., 1971) p. 232.

seem to follow logically. If care is not given, the juvenile may petition the courts to insist upon either care or release. The District of Columbia court was the first to adopt this reasoning.

In White v. Reid the court found a 'fundamental legal and practical difference in purpose and technique' between adult and juvenile institutions -- namely, punishment for adults, care for juveniles. Basing its decision on constitutional grounds, it ordered that White, a juvenile confined in an adult correctional institution be transferred to a juvenile institution.¹¹⁸

Although neither of these decisions have any bearing on Montana's present juvenile code it may be an issue that will eventually surface not only on the right to treatment in the transfer case, but on the right to treatment in the entire juvenile justice system.¹¹⁹

Montana law provides that any juvenile formally charged with being delinquent has the right to demand a jury trial.¹²⁰ Although at least three districts reported using a jury trial in the past ten years, it is unknown how many actual cases were heard before the jury. McKeiver and Terry v. The State of Pennsylvania challenged that state's authority to conduct a juvenile delinquency hearing without a jury trial. The defendants alleged their rights were violated under the 6th amendment. Each youth was charged with delinquency, McKeiver with robbery, larceny and receiving stolen goods, and Terry with assault and battery

¹¹⁸Donna E. Renn, "The Right to Treatment and the Juvenile", Crime and Delinquency, Vol. 19, (October, 1973) p.p. 481-482; see also White v. Reid, 125 F. Supp. 647 (1954).

¹¹⁹Ibid., p.p. 482-483.

¹²⁰Revised Codes of Montana 1947, (1973), C. 6, Sec. 10-604.1, p.p. 138, 139.

on a police officer and conspiracy. The United States Supreme Court ruled that since juvenile court proceedings are not criminal proceedings within the meaning of the 6th amendment, it must be concluded:

trial by jury in the juvenile court's adjudicative state is not a constitutional requirement....the use of a jury trial would bring with it into that system the traditional delay, the formality, and the clamor of the adversary system and possibly, the public trial which is felt not to be in the best interests of the child.¹²¹

The court also criticized two issues brought out in the Gault decision of 1967 involving the 5th amendment guarantee against self-incrimination which had been imposed upon the state criminal trial in Malloy v. Hogan¹²² and the 6th amendment rights of confrontation and cross-examination of witnesses found in Pointer v. Texas¹²³ and Douglas v. Alabama.¹²⁴ Justice Blackmun stated:

The Court did not automatically and preemptorily apply those rights to the juvenile proceeding. A reading of Gault reveals the opposite. The same separate approach to the standard of proof issue is evident from the carefully separated application of the standard, first to the criminal trial, and then to the juvenile proceeding displayed in Winship.¹²⁵

Although these last two issues have not been challenged as

¹²¹McKeiver v. Pennsylvania, 403 U.S. 528, 550 (1971).

¹²²Malloy v. Hogan, 378 U.S. 1 (1964).

¹²³Pointer v. Texas, 380 U.S. 400 (1965).

¹²⁴Douglas v. Alabama, 380 U.S. 415 (1965).

¹²⁵McKeiver v. Pennsylvania, 403 U.S. 528, 541 (1971).

yet in the United States Supreme Court, there is some indication that these two portions of the Gault decision may be reversed by the present Supreme Court.

There are no real alternatives when it comes to the use of Gault, Winship, Kent and similar decisions. In Kent there is the alternative to continue to use the present procedure but the question still would arise whether the juvenile received fair treatment if he must face the adult system. It would be more logical to accept the fact that punishment is desirable in transfer cases and give the juvenile the same rights as the adult if he is going into that system. It also follows that if the court is going to be caught in between the parens patriae concept and the adult criminal concept, then it should take the responsibility of determining where the juvenile can receive the fairest treatment before making the transfer. Juvenile judges are definitely concerned with the issues of cases, but should they not be incorporated as written provisions into Montana law to assure that these safeguards of justice are administered? It is recommended that Gault, Winship, and Kent including the Kent appendix be incorporated into law.

IDENTIFYING THE SYSTEMS BOUNDARIES

This section of the systems model will center on two components of the model, the procurement component and the institutional component.

Procurement Component - Procurement concerns itself with obtaining materials to be converted into a product and obtaining personnel to get the job done. The input of materials includes the physical structure such as office space, budgets for financing the operation, and other resources needed to develop workable programs. Input of personnel includes control of salaries, fringe benefits, prestige and education to motivate the people to get the job done.¹²⁶

Incorporating this concept into the juvenile court system proves difficult because the court does not deal in a finished product in the sense of a new car or new home. Its product is a perfected human being, i.e. probation officers work to make offenders comply with the law and in so doing try to create better persons.

This particular section is very difficult to analyze on a statewide basis due to lack of data. The breakdown of information used here and in the remaining portion of this paper is dependent upon limited data. Information relied upon was supplied by the questionnaire study carried out in 1971. Also conversations with other individuals working as full time probation officers or representing the Board of Crime Control, as well as personal knowledge gained from working within the system, supplied data for this section.

¹²⁶Katz and Kahn, p.p. 81, 82, 89.

In order for a system to function properly it must procure money to run the operation, office space to work out of, equipment for the offices, cars for travel within and between districts, and special programs to assist at some point in bringing about some sort of change in the offender's life. Then personnel to get the job done and to provide rewards necessary to keep the people within the system must be procured. This includes probation officers, volunteers, students involved in various programs, and a proper secretarial staff paid for out of the probation department's budget. Satellite offices are usually furnished but not paid for out of the budget. Since each probation officer travels considerably he is provided with a car. Travel expense therefore must also be budgeted.

Budgets must also include program development to varying degrees in the different districts. This portion of the budget includes such items as individual and group foster care programs, private and public institutions, medical and dental examinations, work-study programs, youth offense work programs, specialized counseling programs, and officer education programs. And, of course, these programs are inter-related to the personnel portion of the budget since the personnel carry out the objectives of the particular programs. Philosophy varies from district to district, so the same program may not be used statewide.

Money for resource development and referral programs must also be procured. Resource development is involved with the development of community resources, both new and old, as well as the development of new programs within the juvenile court system. Funds for such things as foster care programs, jobs for youth, and so forth are normally found by matching local funds with federal funds made available from various sources. Such federal agencies as the Board of Crime Control, Title I Funding for School Related Programs, and the Youth Development Bureau not only provide funds but assist with incorporating new program ideas into local areas. Resource referral consists of utilizing local mental health centers, neighborhood youth centers, legal aid, social rehabilitation departments, health departments and any other community resources available. Here again it is the personnel involved in the system who determine the degree of such usage.

An estimated statewide budget for operating the informal juvenile court system in fiscal year 1972-73 would include but not be limited to the items listed in Table I.

TABLE I
 INFORMAL JUVENILE COURT SYSTEM
 ESTIMATED STATEWIDE BUDGET
 1972-1973

Personnel:

Probation Officers	\$361,559.00
Secretaries	38,600.00
Matrons	20,000.00
Work Study Students	4,000.00
Sub-total	424,159.00
Fringe Benefits (15%)	63,620.00
Total	\$487,779.00

Maintenance and Operation:

Supplies	8,128.00
Telephone	13,768.00
Mileage	75,444.00
Private Institutions	10,000.00
Individual Foster Care	40,000.00
Youth Guidance and/or Detention Homes	20,000.00
Psychological Evaluations (Private)	20,000.00
Medical Evaluations	2,000.00
Prevention	8,000.00
Education and Training	5,000.00
Rent	3,000.00
Miscellaneous (Postage, radio repair, dues, etc.)	3,000.00
Total	\$208,394.00

TOTAL PERSONNEL, MAINTENANCE, AND OPERATION - \$696,173.00

This budget was arrived at by estimating each line category and checking those figures with the Board of Crime Control and in some instances actual budgets of probation departments for the fiscal year 1972-1973. Some of the programs available around the state which were paid for out of probation funds were: private institutional care, individual foster care, youth guidance (group foster homes), detention homes, private psychological evaluations, medical evaluations,

prevention, education and training and personnel programs such as work study.

Some additional resource programs available without charge to the probation department are tutoring, work programs, alcohol and drug programs, big brother programs and big sister programs, job placement programs, mental health programs, school counselor programs, ministerial programs, fraternal group programs, welfare programs, and specialized counseling programs, to name a few. One directory of such referral programs on a statewide basis indicated that there were at least 274 programs available.¹²⁷

The primary physical necessity is office space on a basis of at least one office per full time probation officer with a secretary or receptionist also provided. In 1971 there were 26 full time and 17 part time probation officers in the 56 counties of Montana comprising 18 judicial districts. For these 43 officers only 28 offices were available. Others worked either out of sheriff's offices or their own homes.

By 1973 there were 36 offices in 16 judicial districts available to 39 full time probation officers. There were an additional 25 sheriff's offices available, 10 of which were used by sheriff's or deputy sheriff's who were also part time probation officers. The other 15 sheriff's

¹²⁷Richard O. Shields; Health, Welfare and Recreation Agencies in Montana 1970, (Bozeman, Montana: MSU, 1970).

offices were loaned to the probation officer on court days only in order to conduct business in each county of a particular district. There were five additional part time probation officers who worked out of their homes. The ideal number of one office per worker is only short by four offices not counting offices for secretaries. At least six additional offices would be needed in addition to the four to provide for secretarial help.

The alternative to this problem or need is to continue to have two probation officers in one office in those districts that have insufficient space. At this time office space for secretaries is not as great a problem as it seems for there are only seven full time and five part time secretaries in the state. It is a problem that affects the probation officer since in at least seven judicial districts there is no secretarial help at all. In order to solve this particular problem the probation officer has the following options: 1) Put up with the existing conditions and make no changes. 2) Borrow office space whenever it is available. 3) Contact the county commissioners and explain the situation and make plans with them for office space in the future. 4) Ask the judge to meet with the county commissioners to request and/or plan for future office space. Or, 5) Ask the judge to order the Commissioners to furnish the necessary office space.

It is recommended that probation officers utilize options three and four in order to accomplish their goal. This would help to develop better relations by including all three departments in the planning stages.

It is unknown to what extent each office is adequately furnished with such equipment as desks, chairs, telephones, supplies, etc. The estimated 1972-73 statewide budget allowed \$8,182.00 for supplies, \$13,768.00 for telephone, \$3,000.00 for rent, and \$3,000.00 for miscellaneous necessities.

Another resource needed at the procurement stage of physical necessities is money for travel. The present reimbursement rate by law for probation officers is actual expenses both for mileage and per diem. This is not what the probation officer receives. In most districts throughout the state the probation officer receives twelve cents per mile plus a per diem rate which varies from one district to another. In at least two judicial districts the probation officer is furnished with a county-owned car in lieu of the mileage reimbursement rate. In the past, district judges were under a similar rate of actual expenses also. Most other state and county employees are under the twelve cents per mile rate with varying per diem rates. In 1972 the legislature put the twelve cents per mile limit on district judges as well as other state and county employees. Since this happened both probation officers and court reporters have been

set under a similar reimbursement scale. This has created some problems with the increase in gas and maintenance costs. The options available to the probation officer are: 1) Stay at the twelve cents per mile rate. 2) Change to county owned cars so the increased costs will fall on the county rather than on the individual probation officer. 3) Introduce legislation to change the entire state law which would increase the rates allowed for everyone. 4) Introduce legislation to change the district judges' mileage back to actual expenses, giving both the probation officers and court reporters a better chance of receiving actual expenses. It is recommended that option two be exercised. Option three would be the best alternative for everyone involved but it is highly improbable that the legislature would increase the present mileage rate. Alternative one becomes difficult to accept when the increased expenses are coming out of the individual probation officer's pocket. The cost should properly be passed on to the county. Alternative four would be good for the judges, probation officers, and court reporters only, which would tend to create hard feelings between them and other government employees.

Personnel needs are also emphasized in the procurement portion of the resource subsystem. Probation officers are the primary people involved in the informal juvenile system. By 1973, sixteen chief probation officers, twenty-three deputy probation officers, including foster care

coordinators, fifteen part time probation officers, ten work-study students, seventeen fieldwork practicum students, eleven action volunteer students, four criminology intern students, three law school intern students, seven full time secretaries and five part time secretaries, and fifty-seven volunteers provided the personnel needs of the system.

The full time and part time probation officers had the following backgrounds:

Ten full time officers had previous law enforcement experience. Twenty-five full time officers had a B.A. Degree from an accredited college or university and three of these people were working on a Masters Degree while another two already had their Masters Degree. Three other full time officers were working on their B.A. Degree. One full time officer was an ex-military man. Nine of the fifteen part time probation officers were full time sheriffs or deputy sheriffs. Four part time officers were school teachers and one was a painter. One part time officer did not indicate his past experience on the questionnaire.

Prior to 1971 one of the main problems of the system was sufficient procurement of manpower and needs across the state have steadily increased. This problem is being met by utilizing both county and Board of Crime Control resources but it still remains a problem. In two judicial districts there is no full time probation officer and five districts need at least a minimum of one additional full time probation

officer because of the increase in population of the district or because of the immense size of the area to be covered. Only two judicial districts have access to foster care coordinators and the other districts must rely on their own follow-up or request assistance from the State Department of Social and Rehabilitative Services. For a successful statewide foster care program, one full time foster care coordinator should be provided in each district. This would mean hiring sixteen new people. The only alternative is to require the probation officer's role to include these duties. Presently the individual handling foster care works under the following options: 1) under Section 71-210, Revised Codes of Montana 1947, turns the administration and supervision of the juvenile over to the Department of Social and Rehabilitative Services through a formal court process; 2) under Sections 71-706 and/or 10-501, Revised Codes of Montana 1947, files a dependent/neglect petition to gain foster care for the juvenile without declaring him a delinquent; 3) sets up an administrative procedure with the Department of Social and Rehabilitative Services to assist the court through a combination of state and county poor funds to pay for the foster homes while the probation officer licenses and supervises the home according to S.R.S. standards. This procedure can be used on the basis of a voluntary parental consent form and carries with it the added benefit of providing medical assistance to the youth

while he is in foster care; 4) makes arrangements for payment of foster care out of the county general fund; 5) seeks grant funds by writing and submitting requests to either the Board of Crime Control or the Youth Development Bureau, and 6) uses voluntary foster homes with or without supervision. The paperwork involved in exercising the above options alone supports the need for hiring a full time foster care coordinator for each district. To provide the necessary foster care the six options above are used interchangeably. When option four is used, paperwork is decreased considerably and backgrounds on potential foster parents need not be checked out in the same manner as stipulated by S.R.S. standards. Instead potential foster parents would have to meet court standards. Due to lack of funds voluntary foster homes with or without supervision are relied upon most often. The projected 1972-73 budget provided only \$40,000.00 for individual foster care on a statewide basis. But the funds were sufficient only to serve seven of the judicial districts. The other districts use either S.R.S. or the voluntary foster home programs, or provide no foster care at all. Option one is least used since the court faces the possibility of losing the juvenile case to the S.R.S. There is much to be done to build a good foster care program in the state of Montana, and here too hiring foster care coordinators would help substantially.

The procurement portion of the system offers certain benefits to attract personnel and bring them into the system. The maintenance subsystem works to keep the individual in the system in order to preserve a steady state. Beginning salary, fringe benefits, a chance to learn the system, and personal recognition are the primary attractions to bring personnel into the system. Since the Montana system presently functions under a manpower shortage some sources of additional funding should be explored and the judge and/or probation officer should negotiate for an increase in staff. Some sources of funding to be explored are: 1) Revenue Sharing. These funds are new to the individual states. They may provide an initial source of income to obtain funding with the option that the county will eventually pick up the entire cost. 2) Emergency Manpower -- this is another source of federal assistance sometime available depending upon changes in federal funding policies. Funds are usually available for a one-year period and preference is given to hiring veterans. 3) Board of Crime Control. This agency channels approximately \$80,000.00 per year into manpower programs. A basic manpower grant which allots approximately \$10,000.00 per program on a decreasing three year basis provides initial funding which allows counties a three year period to plan for meeting new manpower needs rather than dumping the entire cost on the counties in one year. Also the Crime Control agency offers

funding to hire college graduates who received aid under LEEP programs while still in school. 4) The only other known source of funding is 100 percent county funding, but it is limited by mill levies. It is recommended that more effort be exerted to obtain funds from Crime Control sources. It is unknown if the Board of Crime Control will fund foster care coordinator programs but perhaps a grant could be submitted for a probation officer who could fullfill these duties. Since probation officers presently do this type of work additional training would not be necessary. As explained earlier there are seven judicial districts functioning without secretarial help. Since this requires the probation officer to do his own secretarial work, thus taking him away from more important duties, either the judges in the various counties should order that a secretary be hired, or the judge and probation officer should at least negotiate with the county commissioners to attempt getting a secretary hired. Only four judicial districts use matrons. One of these districts has a detention home which hires matrons. The estimated personnel budget of this home was included in the estimate for statewide matron services noted in the Table presented earlier. It is assumed that the matron is required to assist the probation officers in transporting female juvenile offenders and in this role she is very important to the system. In the other fourteen districts no one travels with the probation officer and female offenders.

Students working through work-study funding or volunteering their services, perhaps in exchange for college credit, provide a great deal of supplemental manpower to the system. They work in such areas as counseling, foster care, social history investigations, intake, etc. and thus are sufficiently exposed to the system to learn a great deal about it. Such a training program not only helps the system to obtain its needed manpower, but develops well-qualified individuals who may be hired into the system at a later date. A skilled student can contribute greatly in helping the court to meet its objectives. It is recommended that the program be extended to include more if not all of the judicial districts. The 25-75 percent matched funding could substantially assist districts handicapped by limited manpower because of lack of financial resources to hire additional personnel.

Legal and Criminology intern programs are also another source of manpower available to the juvenile system. The legal intern program not only provides the probation office with much needed manpower but it provides a learning experience for the prospective attorney alerting him to problems inherent in the juvenile court system. Also the probation officer learns more about formal legal decisions and how to use them in his work. The criminology student brings with him ideas on law enforcement and corrections. Thus individuals oriented in law, crime, and treatment come

together to provide manpower for the system. Under the federally funded Action program students from various other fields of study also come into the system. There are two Action programs available in Montana, the University Year In Action program and the Justice Volunteers to Action program. They allow for a student to be involved with the juvenile probation department as an assistant to the probation officer for one full year. It is recommended that any effort necessary be exerted to maintain the existence of these programs involving students, whether they be the funded or volunteer programs. The non-funded volunteer programs bring fifty-seven individuals into the system who assist the court in various ways including counseling, being Big Brothers or Big Sisters for fatherless or motherless children, finding foster care, and so forth. Questionnaire data indicated only nine judicial districts utilize volunteer programs while eight judicial districts rely fully on hired full and part time employees. It is recommended that these eight districts become a target area for implementing new programs.

Once a system has physical equipment and sufficient manpower, provisions must then be made to supply adequate programs through which an offender's behavior hopefully will be changed. In Montana, money budgeted for probation departments provide programs at the Yellowstone Boys Ranch and the Intermountain Deaconess Home. According to the questionnaire data only two judicial districts utilize either of

these facilities. The Florence Crittendon Home for Unwed Mothers is also available in Montana but it is not supported by probation department funds.

As noted earlier, some foster care programs are also available in Montana and paid for, at least in part, with probation department monies. As noted earlier, much work needs to be done to provide substantially more sources in this area. Probation Department funds are used to support the District Youth Guidance Home and the Group Foster Home Plan but data from the questionnaire indicates such support is very low. Most group homes in the state are funded by approximately \$200,000.00 provided annually from a combination of state and federal funds channeled through the Department of Institutions and Board of Crime Control. Each district in the state that does have a Youth Guidance Home does have an incorporated Board of Directors who concentrate on finding community matching funds for these group homes.

Another program, the Detention Home Concept, is available in one district. Two other districts use either a "mini-group home" or an individual foster home as an alternative to detention, but these are not provided and paid for out of the county general fund.

Psychological evaluation and counseling programs involve using private as well as public referrals. Private referrals are paid for either out of the Clerk of Court's

budget or the probation department's budget. Federal funds have provided money also but their availability will be decreasing over the next ten years requiring the counties to provide for a substantial increase in cost. The University of Montana, Warm Springs State Hospital, Pine Hills School, and Mountain View School also presently provide such services to a limited degree with the only cost to the county being for transportation.

One district reported budgeting money for prevention programs. Other juvenile delinquency prevention programs are funded through the Youth Development Bureau in Helena. This agency awards federal grants to various county, city or school governments but is prevented from funding court operated programs as the monies passed into the other governmental budgets are intended to assist the juvenile justice system in reduction of delinquent youth. The Youth Development Bureau's budget for 1972-73 was approximately \$300,000. This bureau assists the courts in other ways by organizing groups to develop youth guidance homes and by providing assistance in search of funds for court operated programs. ¹²⁸

Each juvenile probation department in the state is involved in developing and using prevention programs which consist of "other agency referrals". One judicial district

¹²⁸Information provided by Shirley Miller and Charles McCarthy of the Youth Development Bureau, Helena, Montana.

uses an intensive group counseling program and has had excellent results on the effectiveness of this program. The other agency referral services assist the probation officer in accomplishing one of his objectives, i.e. diverting youth out of the juvenile court system before the need for formal court handling arises. Every agency in the state that has contact with juveniles is available and it is recommended that every juvenile probation officer familiarize himself with what services are available from these agencies and learn how to refer youth to them. The Health, Welfare and Recreation Agencies in Montana 1970 directory lists and describes approximately 275 such agencies.¹²⁹ The Montana Social Service Health and Recreational Directory 1974 lists approximately 600 agencies providing services on a statewide basis.¹³⁰ Some county and district probation officers have compiled their own directories, one of which is the Health and Welfare Resource Guide for Missoula, Montana, 1973.¹³¹ It is recommended that an attempt be made to compile more directories listing county and district services available.

¹²⁹Richard O. Shields, Health, Welfare and Recreation Agencies in Montana 1970, (Bozeman, Montana: Montana State University, 1970).

¹³⁰John W. Bauer, Montana Social Service Health and Recreational Directory 1974, (Bozeman, Montana: Montana State University, 1974).

¹³¹Morton L. Arkava, Jean Atthowe, and Ann Bertsche, Health and Welfare Resource Guide for Missoula, Montana 1973, (Missoula, Montana: The Department of Social Work, University of Montana, 1973).

It is not known if the paid and non-paid programs available to the juvenile court system are the answer to juvenile delinquency but the court does utilize these programs in order to divert youth out of the system as well as to provide services for youth experiencing different problems. It is assumed that a number of these youth do not return to the juvenile court system but there is no data available to substantiate this assumption. It is recommended that either the Board of Crime Control or the individual districts establish some method of data collection to determine the effectiveness of these programs in an effort to create interest in the development of preventive programs which would facilitate the delivery of services to needy youth.

Institutional Component - In the systems analysis theory, the institutional component is concerned with gaining support for policies as well as legitimizing what the organization is doing.¹³² On the surface it is very difficult to identify any institutional subsystem in the juvenile court system in Montana. No Board of Directors or Public Relations firm exists to "sell" the court. There are, however, many Montana groups involved in gaining support for the court. Section 10-628, Revised Codes of Montana 1947, provides for a juvenile court committee appointed by a judge

¹³²Katz and Kahn, p.p. 82, 96-99.

"to meet and confer with him on all matters pertaining to the juvenile department of the court, and shall act as a supervisory committee of detention homes, and in the selection of foster homes."¹³³ Only a few districts in Montana actually have such a committee and their degree of activity is unknown. Questionnaire responses indicated the feeling is that the committee generally exists in name only. However in two districts responses indicated the committee does take a very active role.

Other organizations that partially fulfill the concept of the institutional subsystem on a statewide basis include the Judges Association, the Montana Correctional Association, the Juvenile Probation Officers Association, and the Montana Advisory Council on Children and Youth. Each of these groups meet periodically and deal with particular problems of the court, seeking support of juvenile court policies. However none of these organizations carry the power of a Board of Directors or a Board of Trustees.

The Board of Crime Control and the Youth Development Bureau assist in gaining support by funding delinquency programs and making statewide releases on awarded programs. The Youth Development Bureau is new in Montana and attempts to provide assistance on program development.

¹³³Revised Codes of Montana 1947, (1973), C. 6, Sec. 10-628, p. 145.

No formalized policy has been established for formal dispensation of information. Therefore individual probation officers, by word of mouth, probably do more to gain support for court policies as well as trying to legitimize to the public what the court is doing than any other institutional component. Seventeen officers responding to the questionnaire indicated they go to at least five public meetings per month where court policies are discussed. Ten officers indicated they go to from five to ten meetings per month, and three officers indicated they go to from ten to fifteen meetings per month. These meetings are usually public speaking engagements at night. During regular working hours probation officers also discuss court policy with other professionals with whom they come in contact.

The biggest problem in this area is the lack of coordination existing between all of the groups involved in selling the court policies or legitimizing what the juvenile system supports. This results in a lack of interest in what is happening within the system. As a result legislators often attempt to make decisions concerning the system without really knowing what a particular phase is about. Personnel within the system must often operate in the dark because of this lack of coordination and failure to dispense formalized policy.

Because there is no formally established institutional component it is difficult to make recommendations

concerning external support of the system. Organized support from the Associations mentioned above guided toward concrete objectives of "selling" court programs would be one alternative to the word-of-mouth support now existing.

ADAPTION

The concept of adaption is concerned with gaining knowledge about the system with regard to budget, programs and statistics in order to determine the effectiveness of each. Sections 10-620 and 10-631, Revised Codes of Montana 1947, provide for the payment of salaries and further state:

The County Commissioners of all countries are hereby authorized, empowered, and required to provide the necessary funds and to make all needful appropriations to carry out the provisions of this Act.¹³⁴

Feedback as to budget appropriations comes from the individual counties and information available is limited to how much money is spent in each line item category. No data are available on a district basis unless individual probation officers keep track of their funds for the district they serve. This failure to keep such information on a district basis causes problems in administering all the funds allotted to the probation department and in gaining additional funds from such agencies as the Board of Crime Control and the Youth Development Bureau. It is recommended that legislation be enacted providing for district-wide budget feedback, as well as county feedback, in order to facilitate administrative procedures.

¹³⁴Revised Codes of Montana 1947, (1968), C. 6, Sections 10-620 and 10-631, p.p. 587 and 590.

There is no real program feedback in Montana because there is no organized program designed to interpret the effectiveness of programs. One district in the state has used a limited evaluation program pertaining to foster care which broke down the foster care program into various categories such as placements in foster homes, length of stay, what happened to the youth both during and after foster care, cost, and how many homes were recruited, lost and/or maintained during the evaluation period. There may be other districts that have similar breakdowns but there is insufficient data available to determine this. It is recommended that some type of evaluative feedback be incorporated on all funded programs in the state which should include some follow up on youth involved in the program in order to determine if each program is beneficial or a waste of money. The collection of this data would help in obtaining funds, in determining if the programs being used are working, and in planning for future action.

There are statistics available on a county and district level to determine the number of juveniles passing through the system. Most judicial districts are provided with a data form that the Board of Crime Control supplies that gives a breakdown of basic information on every juvenile that passes through the informal and formal court system. This form gives some feedback on flows and some social history background. Access to such records at the county

and district levels, as well as from the Board of Crime Control, is limited for the protection of juveniles passing through the system. A copy of the juvenile statistical analysis card presently used is included in Appendix B of this paper. It is recommended that this card be revised to include the following changes:

(1) Section J should be amended as follows:

J. Referred by:

- | | |
|--------------------------|---------------------|
| 1. Sheriff | 6. Social Agency |
| 2. Police | 7. County Attorney |
| 3. Fish and Game | 8. Parents |
| 4. Other Law Enforcement | 9. Other Court |
| 5. School | 10. Other (specify) |

This particular breakdown identifies more precisely what law enforcement agencies are referring youth into the court. The present breakdown provides only the designation "law enforcement" for the first four categories. It is important to identify particular referral sources.

(2) Section K should be amended as follows:

K. Reason referred:

1. Offense (Code No.).
2. Voluntary referral without committing an offense.
3. Number of additional charges and/or offenses presently involved with the one listed above (No code number needed).

This breakdown provides for the use of a specific coded offense number but it also includes a new section for a voluntary referral by a youth seeking help. The youth in this category should not have to be coded into an offense breakdown if he or she is voluntarily seeking assistance

rather than being brought in for breaking the law. Adding category three allows for collecting data on the total number of offenses committed by the juvenile. A separate code number is not needed when one individual commits several offenses. Only the most serious offense committed would be listed in category one. In category three the number one would be inserted in the box provided on the form to show that the individual actually committed two offenses, one coded and the other listed in box number three. If three offenses had been committed then a number two would be inserted in the box in category three, etc.

(3) Section L should be amended as follows:

L. Prior Delinquency

1. Yes 2. No

3. List the total number of prior delinquent offenses not previously reported.

4. List the total number of prior delinquent offenses.

In the present form the probation officer is asked to list if the youth has had prior delinquency and if he has, then he is to place a number in the box signifying the total number of offenses. This is misleading as the form was intended to show the total number of prior delinquent offenses not previously listed rather than the total number of offenses previously reported. This change provides for both options.

(4) Section R should be amended as follows:

R. Diagnostic Services:

1. Have you received any services in the following categories:

- a. Mental evaluation or counseling
 Yes No
- b. Medical check-up
 Yes No
2. When?
- a. Mental Year _____
- b. Medical Year _____
3. Are you still receiving these services?
 Yes No
4. Have you ever been referred to or went voluntarily
 to another social service agency such as welfare,
 vocational rehabilitation, etc.?
 Yes No
5. When? Year _____
6. Check if there is going to be a referral to any
 mental, medical or other social agency.
 Yes No
7. List agency _____

This proposed amendment would completely revise Section R of the present form. The present form provides three basic categories as follows:

- A. Mental
1. Available
 2. Not available
 3. Not indicated
- B. Medical
1. Available
 2. Not available
 3. Not indicated

C. Social

1. Available
2. Not available
3. Not indicated

This present form does not provide any useful information and in most of the state statistics the response was that as high as 98 percent of the information requested in this section was not indicated. This is due, in part, to this being a useless section because no explanation or proper breakdown is apparent. If this category is to be used at all the proposed changes will make the section more useful.

(5) Section T should be amended as follows:

T. Employment and school status:

	<u>Out of School</u>			<u>In School</u>
	<u>Drop-out</u>	<u>Suspended</u>	<u>Expelled</u>	
Not employed	1	2	3	4
Employed - full time	5	6	7	8
- part time	9	10	11	12
Inapplicable (preschool)	13			

This section would greatly clarify the out of school category as the present form does not indicate whether the youth is a dropout, suspended student, or expelled student. The proposed section would definitely identify the dropout, suspended student, and expelled student and provide information to the courts and schools as to the number of offenders in each category being processed through the court.

lies in the \$5,000 to \$10,000 income range but it does not take into consideration the number of individual members in the family.¹³⁵

(8) This section is also proposed to coincide with the above proposed section.

Family status:

1. Public Assistance
2. Low Income
3. Middle Income
4. High Income

Projected estimates of the middle income and high income brackets would be needed to determine categories three and four if this section were to be effective, as well as the total number of members in the family.

None of the three adaption elements provide any predictability of future trends nor do they tell where money or programs may be needed. The changes recommended above would assist in more effectual collection of pertinent data. Additionally it is recommended that the Board of Crime Control either contract with another agency or firm, or look into the possibility themselves, of determining a method of analyzing information on budgets, programs, and statistics.

THE MANAGERIAL SUBSYSTEM

The managerial subsystem is the administrative arm of the entire system. It cuts across all the earlier described subsystems and is responsible for coordinating all

¹³⁵Missoula -Mineral Community Action Programs Agency, (Missoula, Montana).

other subsystems. It attempts to resolve conflicts erupting between hierarchial levels and to coordinate the external requirements with the needs and resources of the organization.¹³⁶

The two primary managers in the juvenile court system are the district juvenile judge and the chief probation officer. Together, or individually, they select employees, indoctrinate them into the system, provide the regulating methods to keep them in the system, etc. In the hierarchial system the judge is at the top but because of his work overload a considerable amount of his responsibility is delegated to the chief probation officer in many districts. Generally the duties involved in procurement of physical as well as personnel necessities are handled by the chief probation officer in his managerial role. Also he may do most of the preliminary work of writing the budget and presenting it to the county commissioners although in most districts the judge makes the actual presentation. Both the judge and probation officer are primary persons involved in "selling" the program to the public, county commissioners, and legislature. Whenever the adaptive subsystem forecasts change they gather the necessary data and the judge makes the final decision regarding the recommended change. Both work to

¹³⁶Katz and Kahn, p. 94.

settle disputes between agencies often acting as arbitrators. Too, each or both are responsible for coordinating the external requirements with the needs and resources of the organization. In one sense the judge is the Board of Directors because he is the ultimate authority in the juvenile court system. He not only makes all policy decisions but executes the decisions or delegates this authority to the chief probation officer. It is the coordination of efforts between the judge and the juvenile probation officer that keeps the present system operating in each of the eighteen judicial districts, and the willingness of these people in each district to associate with those in other districts on an informal basis helps the system to develop into a better functioning organization at a multi-district or statewide level.

CHAPTER IV

SUMMARY

The intent of this paper was to use the systems model as an organizational framework to classify, describe, and observe the various components and elements of the informal juvenile court system because of the apparent benefits it offers to the entire juvenile court system. More specifically this involved identifying the informal processes of the Montana juvenile court, determining if the goals set down by the court have been accomplished, determining if the informal process is effective or ineffective, pointing out the weaknesses and strengths of the informal process, determining how important the informal process is in relation to the entire juvenile court process, and making recommendations for juvenile court operation in Montana.

The model provided a basis for locating the system, specifying its task functions, and identifying the boundaries, the maintenance subsystem, the adaption subsystem, and the managerial subsystem. This not only involved identifying the system under study as the informal juvenile court system but allowed for studying the roles and procedures a probation officer is involved with in both the informal and formal court systems, pointing out how the system is maintained from

within through the selection, indoctrination, and regulation of employees, and finally how the system is changed from without by the external demands of the public, legislature and courts. These groups brought about change in the system which ultimately affected the roles of the people within the system. The in-depth analysis included looking at the procurement of resources such as office space, budgets, manpower, etc., and even dealt with the concept of the necessity to "sell" the policies of the court to the public, this being primarily accomplished through the efforts of organizations, judges, agencies, and the probation officers themselves.

The number of youth referred through the juvenile court system in 1970, 1971 and 1972 are listed below, as well as the total number of offenses these youth committed, the total number handled informally, and the total number of youth handled formally and the total number of youth placed in public and private institutions. Because of the possibility of error due to limited reporting procedures, this information should only be used as an indicator of the number of youth flowing into the juvenile court system.

TABLE II

Total Number of Male/Female Youth Between 0-18 Years of Age Referred Through the Juvenile Court System

Year	No. of Youth Referred	No. of Offenses Committed	No. Handled Informally	No. Handled Formally	No. Placed in Institutions
1970	6,083	Unk.	5,782	301	131
1971	5,639	9,695	5,409	230	105
1972	5,979	8,340	5,652	327	131

It can be seen that a greater number of youth were handled informally. Although it is unknown how many of these youth later went into the adult criminal justice system, it seems that informal handling did result in keeping youth out of the formal juvenile court.¹³⁷

The purpose of the Juvenile Court of Montana, as described in Section 10-601, R. C. M., 1947 is:

This act shall be liberally construed, to the end that its purpose may be carried out, to wit: that the care, custody, education, and discipline of the child shall approximate, as nearly as may be, that which should be given the child by its parents, and that, as far as practicable, any delinquent child shall be treated, not as a criminal, but as misdirected and misguided, and needing aid, encouragement, help and assistance.

And that, as far as practicable, in proper cases, that the parents or guardians of such child may be compelled to perform their moral and legal duty in the interest of the child.

The principle is hereby recognized that children under the jurisdiction of the court are wards of the state, subject to the discipline and entitled to the protection of the state, which may intervene to safeguard them from neglect or injury and to enforce the legal obligation due to them and from them.¹³⁸

This purpose was consistent with the overall philosophy of the "Reformers" who, early in history, were concerned that juveniles were not receiving adequate treatment in adult courts and therefore needed some protection and treatment in a court where the youth would not be labeled as a

¹³⁷Information provided by the Montana Board of Crime Control's 1970, 1971 and 1972 statewide juvenile court statistics.

¹³⁸Revised Codes of Montana 1947, (1968), C. 6, Sec. 10-601, p. 576.

criminal. The system that developed in Montana in order to accomplish this purpose primarily emphasized keeping the offender out of the formal court system because of a definite concern of the effect labeling has upon an individual.

The systems analysis illustrated that to support this operational informality the system attempts to provide rehabilitative services through the court such as counseling, foster care, psychological help, and so forth. The system also attempts to develop community awareness and develop community resources into which troubled youth can be channeled in an effort to eliminate, or at least curb, delinquent behavior. It is only when a youth, after being processed through the informal phase of the juvenile court, continues to behave in a delinquent manner, that he is processed formally. If the measurement of success due to informality were based on the total number of commitments compared to the total number of youth referrals, then it could be assumed that the informal system is very effective. However the study revealed the existence of some ancillary problems.

First of all it was noted that the arrest authority of a probation officer could interfere with other related duties unless it was limited to probation violations and lawful orders of the court.

Several problems existed because of detention. Out of 5,639 youth referred into the system in 1971, 1,040 spent

3,437 days in jail.¹³⁹ This is a problem because of the inadequate facilities available in Montana. Strict detention procedures should be enacted restricting both the authority to detain and the circumstances under which detention is permitted. The state legislature should limit the authority to detain to the probation officer rather than the police. Detention should be used only when it is necessary to protect the community or the youth, or if necessary to keep the youth in the jurisdiction. The law should require a detention hearing within 48 hours of initial detention and the judge should require the release of any youth placed in detention without proper authority.¹⁴⁰

Often preliminary inquiry procedures violated a youth's basic rights. To protect these, each youth should be advised of his rights under Miranda and Gault. He should be informed of his right to have any decision reviewed by the district juvenile judge, and precautions should be taken to assure the presence of at least one parent or guardian at the preliminary inquiry. In addition, some means of providing an attorney, if the juvenile so desires, should be implemented.

¹³⁹Information provided by the Montana Board of Crime Control from their 1971 statewide juvenile court statistics.

¹⁴⁰The President's Commission on Law Enforcement and Administration of Justice, Juvenile Delinquency, p.p. 36, 37.

Problems in the area of probation included that the probation officer placed the youth on probation as well as the judge. Although this may appear to cause a conflict, it does not have to, if the probation officer enters into an informal consent decree with the youth and his parents. Use of such a decree gives the probation officer the authority to enter into an agreement with the youth and his parents without formally processing the youth on a petition alleging delinquency.

Finally, scarce resources create a myriad of problems. Inadequate counseling staff, foster care facilities and foster parents, physical facilities, and administrative assistance cause ineffective operation. There is not enough travel pay allotted nor manpower available to facilitate truly effective operation.

Even though these problems exist, however, it can be concluded that the informal juvenile court system is very important in meeting the purpose set down by the Montana legislature. Without this informality a youth could not escape the labeling stigma arising from being exposed to the formal court. With such informality more alternatives for handling delinquent and/or troubled youth are available. They can be helped, through counseling and psychological evaluations, to find themselves, and then to help themselves. This conclusion is not meant to degrade the effectiveness of the formal court and the institutions. But, for the good of all, every effort should be made to proceed informally.

APPENDIX I

The following appendix is the questionnaire submitted to the juvenile probation officers of the State of Montana in the year 1971. Part of the data collected as a result of distributing this questionnaire was used in Chapter III of this paper.

I. ARREST STAGE

1. Have you ever had to make an arrest of a juvenile?

Yes 24 No 8

2. If yes, for what type of offense did you make the arrest? (Check as many boxes as required to answer)

13 Child in need of supervision (Offenses for which an adult cannot be charged, such as runaways, ungovernable, curfew, etc.)

17 Misdemeanor

14 Felony

12 Traffic

8 Fish and Game

3. Have you assisted local law enforcement in making an arrest of a juvenile?

Always 9 Frequently 7 Rarely 11 Never 6

4. Do you ever make arrests without the assistance of a local law enforcement officer?

Always 4 Frequently 3 Rarely 15 Never 8

5. How many arrests did you make this year?

Fill in the blank 104

6. How many arrests did you make in the year 1969-1970?

Fill in the blank 228

7. Do you feel that a juvenile probation officer should be making arrests? Check as many as needed.

Always 3 Frequently 3 Rarely 16 Never 10

II. DETENTION STAGE

8. Does the arresting officer detain juveniles without the permission of the court?

Always 1 Frequently 4 Rarely 14 Never 12

9. Does the arresting officer fill out a written report stating the reasons for holding the juvenile?

Always 21 Frequently 5 Rarely 3 Never 2

10. Is the arresting officer required to fill out such a report in your area?

Always 28 Frequently 0 Rarely 3 Never 0

11. How soon are the parents or guardian notified when a juvenile is placed in detention?

16 one hour after detention

3 two-five hours after detention

1 five-ten hours after detention

13 other-specify _____

12. Who normally notifies the parent or guardian when a juvenile is placed in detention?

23 arresting officer

1 intake officer (or jailer)

0 other-specify _____

13. What are the most common reasons given to you for not being able to notify a parent or guardian after a child has been placed in detention? Check as many as needed.

10 no telephone

3 parents or guardian not at home

20 not able to locate parents

7 parents too drunk to come to station

2 none of the above

6 other-specify _____

14. Is the juvenile permitted a phone call to his parents or guardian when arrested and detained?

Always 25 Frequently 3 Rarely 4 Never 0

15. Does the arresting officer notify the parents instead of permitting the juvenile to call?

Always 12 Frequently 15 Rarely 2 Never 2

16. Rate the importance of those factors listed below in deciding why a juvenile should be placed in detention. (1 = most important; 5 = least important)

2.2 attitude of offender

1.4 seriousness of charge

2.9 prior record

2.5 Other-specify _____

17. Does the arresting officer notify you after placing a juvenile in detention?

Always 29 Frequently 3 Rarely 0 Never 0

18. Do you feel it is the responsibility of the arresting officer or the probation officer to notify the parents immediately after the juvenile is placed in detention?

24 arresting officer

9 probation officer

2 other-specify _____

19. Who makes the releases on a juvenile placed in detention?

1 jailer 10 district juvenile judge

0 police 7 sheriff

1 county attorney 4 juvenile officer

19 juvenile probation officer

20. Has a law enforcement officer ever refused to release a juvenile in detention upon your order?

Always 0 Frequently 0 Rarely 0 Never 32

21. If the answer to the above question is always, what was the reason? Check as many as needed.

 involved in serious felony

 poor attitude of offender

 destruction of jail property

 other- specify _____

III. PRELIMINARY INQUIRY STAGE

22. What per cent of your time is spent in preliminary inquiry work? (Court Referee)

 10 15% or less

 11 15%-30%

 7 30%-60%

 4 60% or more

23. Many informal adjustments consist of the following: warnings, left up to parents, essays, grounding, detention, probation, foster home, special classes, work party, big brothers, use of YMCA, restitution, out of state placement, referrals to other agencies youth counselors, volunteers.

Can you add any other informal adjustment used in your area?

Specify: Group therapy; take driver's license

24. What is the process or document used in your area to notify the juvenile and the court that an offense has been committed?

 14 Notice to appear

 3 Summons

 10 Citation

 1 No formal document at all

 8 Other-specify _____

25. Approximately how soon is the juvenile required to appear before the court (probation officer) after he is charged with a delinquent offense?
- 4 immediately
- 25 one to seven days
- 1 seven to fourteen days
- 2 fourteen days or more
26. Is at least one parent required to accompany the juvenile when he appears at the preliminary inquiry?
- Always 29 Frequently 3 Rarely 0 Never 0
27. Is an attorney involved at the preliminary inquiry stage?
- Always 5 Frequently 9 Rarely 15 Never 0
28. Does the juvenile probation officer normally conduct a preliminary inquiry in your judicial district?
- Always 16 Frequently 10 Rarely 5 Never 1
29. If the answer to the above question is never, who conducts the preliminary inquiry?
- 2 County Attorney 2 District Juvenile Judge
- 0 Other-specify _____
30. Have you dismissed any cases for improper arrest or improper procedural technique?
- Always 0 Frequently 1 Rarely 19 Never 11
31. Approximately how many times have you dismissed a case?
- State number for 1970 74
32. If the juvenile denies the allegations against him do you (as juvenile probation officer) make the judgment of his guilt or innocence at the preliminary inquiry stage?
- Always 0 Frequently 8 Rarely 4 Never 18

33. If the answer to the above question is never, who is the case referred to?
- 1 County Attorney
- 17 District Juvenile Judge
- 1 Dismissed
- 3 Other-specify _____
34. Do you only handle cases in which the juvenile admits his guilt in the offense?
- Always 12 Frequently 6 Rarely 5 Never 5
35. Do you use the county attorney as a legal advisor at the preliminary inquiry?
- Always 11 Frequently 16 Rarely 12 Never 7
36. Do you use the District Juvenile Judge as a legal advisor at the preliminary inquiry?
- Always 4 Frequently 9 Rarely 12 Never 7
37. Do you handle any serious vandalisms, burglaries, larcenies, rapes, or drug violations at the preliminary inquiry?
- Always 12 Frequently 8 Rarely 7 Never 5
38. Of the above mentioned offenses what serious violations don't you handle? Check as many as needed.
- 5 vandalisms 7 larcenies 8 drugs
- 8 burglaries 15 rapes
39. Rate the importance of those factors listed below when you make a decision what to do with an offender. (1=most important, 4=least important)
- 1.86 offense 3.03 family
- 2.42 prior record 2.35 attitude

IV. PROBATION STAGE

40. Approximately how often is probation used in your judicial district?

2 15% or less of those cases handled

5 15%-30% of those cases handled

11 30%-60% of those cases handled

2 60%-90% of those cases handled

11 90%-100% of those cases handled

41. Do you normally contact a youth on probation:

2 once every other month 9 once a month

22 once every week

42. Do you use short term probations of 30 days or less?

Always 0 Frequently 18 Rarely 10 Never 3

43. Do you use long term probations at the preliminary inquiry state?

Always 3 Frequently 12 Rarely 11 Never 6

44. Do you use indefinite periods of probation?

Always 2 Frequently 11 Rarely 10 Never 9

45. Do you furnish the probationer with a written copy of the rules of probation?

Always 23 Frequently 5 Rarely 3 Never 1

46. How strict are you in enforcing the rules of probation?

Very strict 7 Strict 11 Moderate 13 Lenient 1

47. What does a violation of the rules of probation mean?

20 referral to the district juvenile judge; 20 additional probation; 10 detention; 11 other restriction; 2 nothing at all.

48. Do you record probation violations?
Always 21 Frequently 6 Rarely 4 Never 0
49. Do you record probation contacts?
Always 15 Frequently 11 Rarely 3 Never 2
50. Do you locate jobs for your probationers?
Always 1 Frequently 18 Rarely 10 Never 2
51. Do you involve your probationer in school recreation?
Always 3 Frequently 15 Rarely 12 Never 0
52. Do you involve your probationer in community recreation?
Always 3 Frequently 12 Rarely 14 Never 2
53. Have you ever used volunteers for probationers?
Always 0 Frequently 6 Rarely 15 Never 10
54. What is your case load of probationers?
State the number 25 \bar{X}
55. Have you ever used a counselor program where you have had a (1 to 1) or (1 to 2) ratio with a client?
Always 7 Frequently 12 Rarely 6 Never 6
- V. INFORMAL COURT STAGE - (handled by judge without petition)
56. Do you use the informal court proceedings in your area?
(The juvenile and parents appear before the District Juvenile Judge without formal petition or citation)
Yes 21 No 9
57. How many cases handled in your district appear before a District Juvenile Judge on an informal basis?
State the number 500
58. Approximately how many cases per year are handled in your judicial district on an informal basis?
State the number 3,555

59. Is an attorney involved in the informal court hearing?
 Always 4 Frequently 5 Rarely 17 Never 3
60. Do you feel the use of an informal court hearing is useful for the juvenile?
 Always 9 Frequently 16 Rarely 3 Never 2
61. Who presents the informal case before the District Juvenile Judge?
12 County Attorney
20 Juvenile Probation Officer
3 Parents
1 Other-specify _____
62. Is the informal hearing before the District Juvenile Judge handled....
22 in his chambers
10 in the court room
1 other-specify _____
63. What is the normal disposition used by the Judge at the informal proceeding? Check as many as needed.
19 warning and continued
25 restitution made if needed
4 suspended commitment
24 probation
6 commitment
2 other-specify _____
64. Who supervises the juvenile after the informal hearing?
3 parents 27 parents and juvenile officer
0 No one 3 other-specify _____

65. What would be the most likely result if the juvenile violates the terms set down at the informal stage?

6 warning

5 additional probation

8 return before the district Juvenile Judge
w/o petition

16 file formal petition declaring the juvenile
delinquent

0 other-specify _____

VI. FORMAL COURT STAGE - Those cases normally handled by a Juvenile Judge with a petition.

66. Who normally makes the decision to initiate proceedings against a juvenile?

21 juvenile probation officer 16 county attorney

7 District Juvenile Judge 0 Other - specify

67. Who normally prepares the petition against the juvenile in your area?

9 juvenile probation officer 24 county attorney

0 District Juvenile Judge 0 Other - specify

68. Who normally serves the citation to the juvenile and parents for the formal court hearing?

21 sheriff or police 14 juvenile probation
officer

0 Other - specify _____

69. Is the juvenile notified of his right to counsel at the formal court proceedings?

Always 32 Frequently 0 Rarely 0 Never 0

70. Is a defense attorney present at the formal juvenile delinquency proceedings?

Always 9 Frequently 11 Rarely 12 Never 0

71. Do you feel it is necessary that the juvenile should have an attorney at the formal proceedings?
Always 14 Frequently 10 Rarely 7 Never 0
72. Do you feel an attorney should be involved in any juvenile proceeding -- if so, at what stage?
1 Never 5 Preliminary Inquiry
1 Informal Court 26 Formal Court
73. Does the District Juvenile Judge issue the Miranda warning to the juvenile at the time of the formal court hearing?
Always 26 Frequently 1 Rarely 1 Never 1
74. Where is the formal court hearing normally conducted?
8 private chambers
25 courtroom
0 other- specify _____
75. Is the formal proceeding conducted in an informal manner?
Always 7 Frequently 13 Rarely 3 Never 9
76. Is the formal proceeding similar to a criminal hearing with rules of evidence, etc.?
Always 15 Frequently 9 Rarely 6 Never 1
77. Have you had a jury trial for a juvenile delinquent in your judicial district in the last ten years?
3 Yes 28 No
78. On those cases going into juvenile court on a formal petition, is probation used as a disposition?
Always 2 Frequently 27 Rarely 1 Never 0
79. On those formal cases petitioned into juvenile court, is a referral for mental evaluation used?
Always 1 Frequently 18 Rarely 7 Never 4

80. Is a suspended commitment used in the formal court process?

Always 1 Frequently 18 Rarely 8 Never 2

81. Is a private placement used in the formal court process such as foster care, private school, etc.?

Always 0 Frequently 20 Rarely 9 Never 0

82. Is a commitment to department of institutions or any state institution used in the formal court process?

Always 3 Frequently 14 Rarely 12 Never 0

83. Are any juvenile cases referred to adult court for criminal prosecution in your area?

Always 1 Frequently 0 Rarely 20 Never 8

84. Approximately how many cases per year are handled in your judicial district on a formal basis with petition?

State the number 593 (for state)

85. What is the average number of commitments per year in your judicial district?

State the number 225 (for state)

86. Have your commitments been higher or lower for 1969-1970?

3 Higher 17 Lower 8 The same

87. Have your commitments been higher or lower for 1970-1971?

5 Higher 15 Lower 7 The same

VII. GENERAL INFORMATION STAGE

88. Do you use tutors in your area?

Always 0 Frequently 5 Rarely 4 Never 12

89. Do you handle suicide attempts?

Always 6 Frequently 5 Rarely 15 Never 4

90. How many suicide attempts have you handled? (Please fill in the number - leave blank if you did not handle any)

Formally 4 Informally 36

91. Is foster care used in your area?

Always 0 Frequently 20 Rarely 11 Never 0

92. Approximately how many juvenile offenders are placed in foster care? (Please use one figure if more than one officer fills in questionnaire in any one judicial district)

State the number 155

93. What is the payment per month for foster care?

State the amount \$80.00

94. Do you feel foster care is a good alternative to commitment?

Good 18 Average 7 Fair 4 Poor 1

95. What is the average number of public meetings per month you attend?

 17 5 or less 10 5 - 10 3 10 - 15

 0 15 or more

96. Approximately what percent of your time is spent traveling?

 13 15% or less 16 15 - 30% 3 30 - 60%

 0 60% or more

97. What percent of your time is spent in administration?

 10 10% or less 11 10 - 20% 4 20 - 40%

 7 40% or more

98. How many days per year are spent in:

Institutes 41 Seminars 141 Schools 156

Other 11

99. Do you have an in-service program in your area?
14 Yes 19 No
100. Have you participated in any training program within the last year?
22 Yes 10 No
101. Do you attend Montana Law Enforcement Academy for training?
18 Yes 14 No
102. Do you have other duties besides a juvenile probation officer?
8 Sheriff or deputy sheriff 2 teacher
7 Businessman 0 Judge 2 Other-specify:
Painter, student
-
103. What is the average amount of time spent per week in writing reports, answering letters, etc.?
8 2 hours or less 11 2 - 6 hours
7 6 - 12 hours 6 12 hours or more
104. Does the attitude of the juvenile count when working with the offender?
 Always 21 Frequently 9 Rarely 0 Never 0
105. Do you have group foster homes available in your area?
12 Yes 18 No
106. Do you intend on having a group home in your area within the next year?
11 Yes 15 No
107. Do you use work programs in your area?
 Always 1 Frequently 11 Rarely 11 Never 8

108. What type of offenses do you use work programs for?
Check as many as needed.

12 illegal possession 11 traffic
17 vandalism/mal. dest. 8 misdemeanor
4 felonies 6 fish & game
0 other-specify _____

109. How do you normally get restitution when a vandalism
or malicious destruction of property case occurs?

19 juvenile judge orders it
10 demand it from juvenile and parents
18 request it from juvenile and parents
2 notify injured party to file
1 civil suit
0 don't handle restitutions
0 other-specify _____

110. Do you use other alternatives such as boarding schools
or private schools instead of a referral to district
juvenile courts?

Always 0 Frequently 6 Rarely 14 Never 12

111. Do you refer any cases to Yellowstone Boys' Ranch?

Always 0 Frequently 4 Rarely 17 Never 11

112. Approximately how many cases are referred to Yellow-
stone Boys' Ranch per year?

State the number 23

113. If you do not use Yellowstone Boys' Ranch, why?

13 too much money
7 not satisfied with the program
0 never heard of it
9 other-specify _____

114. Do you have an alcohol treatment program in your area?
Always 10 Frequently 1 Rarely 8 Never 11
115. If the answer to the above question is always, do you use it?
Always 4 Frequently 3 Rarely 4 Never 4
116. Do you have other drug treatment programs in your area?
15 Yes 17 No
117. Do you use them?
Always 5 Frequently 6 Rarely 4 Never 4
118. If the answer to the above question is never, why don't you use them?
Specify Refer to Mental Health
119. Do you have a Big Brother or Big Sister program in your area?
6 Yes 25 No
120. If the answer to the above question is yes, do you use the Big Brother/Big Sister program?
Always 2 Frequently 3 Rarely 2 Never 0
121. Approximately how many referrals have you made to the Big Brother/Big Sister program?
State the number 41
122. Do you have an Office of Economic Opportunity Youth Job Program for low income families in your area?
20 Yes 11 No
123. If yes, do you make any referrals to such a program?
Always 4 Frequently 15 Rarely 2 Never 3
124. Do you make referrals to mental health clinics, psychologists, etc. for examination?
Always 3 Frequently 22 Rarely 3 Never 4

125. Do you use the school counselor in your area as a resource person to work with juvenile offenders?
Always 3 Frequently 19 Rarely 8 Never 3
126. Do you use anyone in the ministerial association as a resource?
Always 1 Frequently 13 Rarely 16 Never 2
127. Do you use any individual business groups or social clubs in your area as a resource?
Always 0 Frequently 8 Rarely 14 Never 9
128. Have you developed any programs in your area that you feel are beneficial to your client and the community?
15 Yes 9 No
129. If the answer to the above question is yes, could you name the programs?
Mini-foster Homes, Group Therapy
130. Has anyone else developed good workable programs?
13 Yes 16 No
131. If the answer to the above question is yes, could you name the people and the programs?
Drop-in Center
132. What type of investigations do you make for the court? Check as many as needed.
25 juvenile presentence investigations
10 adult presentence investigations
5 social investigations in divorce cases
20 social investigations in general
133. Approximately how many truancy cases do you handle?
state the number 343

134. Is there a truant officer in your area other than yourself?
16 Yes 15 No
135. Do you feel that the school should hire a truant officer to handle truancy?
20 Yes 10 No
136. Is your primary job that of a truant officer?
1 Yes 31 No
137. Have you ever started proceedings with the county attorney RE: R. C. M., 1947, Section 10-617 providing for penalty for improper and negligent training of children?
17 Yes 14 No
138. If yes, how many times have you used this section of the code?
 State the number 56
139. Do you refer many cases of dependent neglect to the Welfare Department?
 Always 10 Frequently 16 Rarely 3 Never 2
140. Do you get cooperation from the Welfare Department on dependent-neglect cases?
 Always 18 Frequently 9 Rarely 2 Never 1

APPENDIX II

The enclosed appendix is a sample of the juvenile statistical analysis card used on every delinquent referral to the probation officer and juvenile court. Discussion regarding this form can be found in Chapter III.

(Mail Reports To)
JUVENILE STATISTICAL ANALYSIS
JUVENILE DELINQUENCY PREVENTION AND CONTROL PLANNING
 1336 HELENA AVENUE, HELENA, MONTANA 59601

NO 40459
 NO 40459

PART A—(not for statistical analysis)

A. NAME: _____
 (Last) (First) (Middle)

B. ADDRESS: _____
 CITY PHONE

PART B—(Data for analysis)

C. JUDICIAL DIST. Number:

D. COUNTY: (Code)

E. DATE OF BIRTH:
 (mo.) (day) (year)

F. AGE AT TIME OF REFERRAL:

G. SEX: 1. Male 2. Female

H. RACE: 1. White 2. Indian 3. Negro 4. Spanish 5. Other

I. DATE OF REFERRAL:
 (mo.) (day) (year)

J. REFERRED BY:
 1. Law Enforcement Agency 4. County Attorney
 2. School 5. Parents
 3. Social Agency 6. Other Court
 7. Other (Specify)

K. REASON REFERRED:
 1. Offense (Code)
 2. (Number of additional charges and/or offenses presently involved with the one listed above) (Not code No.)

L. PRIOR DELINQUENCY: (excluding traffic)
 1. Yes 2. No
 3. Total number of prior delinquent offenses: (Not previously reported)

M. CARE PENDING DISPOSITIONS:
 1. No detention or shelter care (Over night or longer)
 2. Jail or Police Department Detention
 3. Detention Home
 4. Foster Home
 5. Other (specify)

N. NUMBER OF DAYS DETAINED:

O. MANNER HANDLED:
 1. Informal w/o petition 2. Formal w/petition

P. DISPOSITION: (Code)

Q. DATE OF DISPOSITION:
 (mo.) (day) (year)

R. DIAGNOSTIC SERVICES:

ed

a. Mental

b. Medical

c. So

S.

T. EMPLOYMENT AND SCHOOL STATUS:

Not employed	Out of School	In School
Employed	1	5
Full time	2	6
Part time	3	7
Inapplicable (pre-school)	4	

T-1. BROTHERS AND SISTERS LIVING AT HOME
 No. Older
 No. Younger

U. SCHOOL ATTAINMENT & ADJUSTMENT:

a. Grade placement in relation to age:
 1. Below Normal 2. Normal 3. Accelerated

b. Serious or persistent school misbehavior:
 1. Yes 2. No

V. MARITAL STATUS OF NATURAL PARENTS:
 1. Parents married and living together
 2. Both dead 5. Divorced or legally separated
 3. Father dead 6. Father deserted mother
 4. Mother dead 7. Mother deserted father
 8. Other (specify)

W. LIVING ARRANGEMENT OF CHILD:
 In own home:
 1. With both parents 6. In home of relative
 2. With mother and stepfather 7. In foster family home
 3. With father and stepmother 8. In institution
 4. With mother only 9. In independent living arrangements
 5. With father only
 10. Other (specify)

X. FAMILY INCOME (ANNUAL)
 1. Receiving public assistance at time of referral
 2. Under \$3,000
 3. \$3,000 to \$4,999 5. \$10,000 and over
 4. \$5,000 to \$9,999 6. Unknown

Y. RELIGIOUS DENOMINATION (Code)
 1. Very active 3. Non-participating
 2. Moderately active

Z. LENGTH OF RESIDENCE (of child) IN COUNTY:
 1. Not currently resident of County
 2. Under one year
 3. Under five years
 4. Five years or more

LOCATION OF RESIDENCE
 1. Rural
 2. Urban—(within city limits)

FOR COMMENTS AND ADDITIONAL INFORMATION USE BACK SIDE OF SECOND SHEET.

(Mail Reports To)
JUVENILE STATISTICAL ANALYSIS
JUVENILE DELINQUENCY PREVENTION AND CONTROL PLANNING
 1336 HELENA AVENUE, HELENA, MONTANA 59601

No 40459
 No 40459

PART A—(not for statistical analysis)

A. NAME: _____ (Last) _____ (First) _____ (Middle)

B. ADDRESS: _____ **CITY:** _____ **PHONE:** _____

PART B—(Data for analysis)

C. JUDICIAL DIST. Number:

D. COUNTY: (Code)

E. DATE OF BIRTH:
 (mo.) (day) (year)

F. AGE AT TIME OF REFERRAL:

G. SEX: 1. Male 2. Female

H. RACE: 1. White 2. Indian 3. Negro 4. Spanish 5. Other

I. DATE OF REFERRAL:
 (mo.) (day) (year)

J. REFERRED BY:
 1. Law Enforcement Agency 4. County Attorney
 2. School 5. Parents
 3. Social Agency 6. Other Court
 7. Other (Specify)

K. REASON REFERRED:
 1. Offense (Code)
 2. (Number of additional charges and/or offenses presently involved with the one listed above) (Not code No.)

L. PRIOR DELINQUENCY: (excluding traffic)
 1. Yes 2. No
 3. Total number of prior delinquent offenses: (Not previously reported)

M. CARE PENDING DISPOSITIONS:
 1. No detention or shelter care (Over night or longer)
 2. Jail or Police Department Detention
 3. Detention Home
 4. Foster Home
 5. Other (specify)

N. NUMBER OF DAYS DETAINED:

O. MANNER HANDLED:
 1. Informal w/o petition 2. Formal w/petition

P. DISPOSITION: (Code)

Q. DATE OF DISPOSITION:
 (mo.) (day) (year)

R. DIAGNOSTIC SERVICES:
 Need for Diagnostic Services

Indicated and provided	Indicated but not available	Not Indicated
------------------------	-----------------------------	---------------

 a. Me
 b. Me
 c. Soc:

S.

T. EMPLOYMENT AND SCHOOL STATUS:

	Out of School	In School
Not employed	1	5
Employed		
Full time	2	6
Part time	3	7
Inapplicable (pre-school)	4	

T-1. BROTHERS AND SISTERS LIVING AT HOME
 No. Older
 No. Younger

U. SCHOOL ATTAINMENT & ADJUSTMENT:
 a. Grade placement in relation to age:
 1. Below Normal 2. Normal 3. Accelerated
 b. Serious or persistent school misbehavior:
 1. Yes 2. No

V. MARITAL STATUS OF NATURAL PARENTS:
 1. Parents married and living together
 2. Both dead 5. Divorced or legally separated
 3. Father dead 6. Father deserted mother
 4. Mother dead 7. Mother deserted father
 8. Other (specify)

W. LIVING ARRANGEMENT OF CHILD:
 In own home:
 1. With both parents 6. In home of relative
 2. With mother and stepfather 7. In foster family home
 3. With father and stepmother 8. In institution
 4. With mother only 9. In independent living arrangements
 5. With father only
 10. Other (specify)

X. FAMILY INCOME (ANNUAL)
 1. Receiving public assistance at time of referral
 2. Under \$3,000
 3. \$3,000 to \$4,999 5. \$10,000 and over
 4. \$5,000 to \$9,999 6. Unknown

Y. RELIGIOUS DENOMINATION (Code)
 1. Very active 3. Non-participating
 2. Moderately active

Z. LENGTH OF RESIDENCE (of child) IN COUNTY:
 1. Not currently resident of County
 2. Under one year
 3. Under five years
 4. Five years or more

LOCATION OF RESIDENCE
 1. Rural
 2. Urban—(within city limits)

FOR COMMENTS AND ADDITIONAL INFORMATION USE BACK SIDE OF SECOND SHEET.

CODE FOR COUNTY

01 Beaverhead	22 Jefferson	43 Roosevelt
02 Big Horn	23 Judith Basin	44 Rosebud
03 Blaine	24 Lake	45 Sanders
04 Broadwater	25 Lewis & Clark	46 Sheridan
05 Carbon	26 Liberty	47 Silver Bow
06 Carter	27 Lincoln	48 Stillwater
07 Cascade	28 Madison	49 Sweet Grass
08 Chouteau	29 McCone	50 Teton
09 Custer	30 Meagher	51 Toole
10 Daniels	31 Mineral	52 Treasure
11 Dawson	32 Missoula	53 Valley
12 Deer Lodge	33 Musselshell	54 Wheatland
13 Fallon	34 Park	55 Wibaux
14 Fergus	35 Petroleum	56 Yellowstone
15 Flathead	36 Phillips	57 Blackfeet Res.
16 Gallatin	37 Pondera	58 Crow Res.
17 Garfield	38 Powder River	59 Flathead Res.
18 Glacier	39 Powell	60 Fort Belknap Res.
19 Golden Valley	40 Prairie	61 Fort Peck Res.
20 Granite	41 Ravalli	62 Northern Cheyenne Res
21 Hill	42 Richland	63 Rocky Boy's Res.

CODE FOR RELIGIONS

00 Unknown	08 Church of God	18 Mennonite
01 None, Atheist or Agnostic	09 Congregational	19 Methodist
02 Uncommitted, religious beliefs but no parti- cular faith	10 Episcopal	20 Misson Covenant
03 Assembly of God	11 Evangelical	21 Nazarene
04 Baptist	12 Friend (Quaker)	22 Pentecostal
05 Catholic	13 Hebrew (Jewish)	23 Presbyterian
06 Christian	14 Hutterite	24 Protestant, Unspecified
07 Church of Christ- Scientist (Christian Science)	15 Jehovah Witness	25 Salvation Army
	16 Church of Jesus Christ of Latter Day Saints (LDS, Mormon)	26 Seventh Day Adventist
	17 Lutheran	27 United Brethren
		28 Other (Specify)

CODE FOR DISPOSITION

- 00 Waived to criminal court
- 01 Complaint unsubstantiated
-- dismissed.

COMPLAINT SUBSTANTIATED

- 11 Warned, adjusted and
counselled
- 12 Held open, continued or
pending
- 13 Informal probation
- 14 Referred to other agency
or return runaway
- 15 Temporary custody (in-
cluding group or foster
home placement)
- 16 Other -- Specify _____

TRANSFER OF LEGAL CUSTODY

- 21 Public institution for
delinquency or other
public institution
 - 22 Public agency (including
court and formal proba-
tion)
 - 23 Private agency or
individual
 - 24 Deferred or suspended
committment
 - 25 Other -- Specify _____
-

REMARKS:

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A SYSTEMS ANALYSIS OF
THE INFORMAL JUVENILE COURT

By

Jeremiah F. Johnson

B.A., University of Montana, 1966

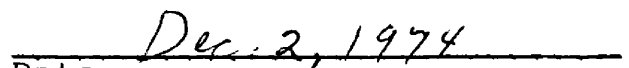
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CHAPTER I

INTRODUCTION

PURPOSE

The system under study in this paper is the informal juvenile court system in the State of Montana. The primary emphasis will be on the informal system although some attention will be given to the formal juvenile court as it relates to the informal system. The informal juvenile court system comes into operation when a youth is processed either by a peace officer, juvenile probation officer or a district juvenile judge without the issuing of a formal petition alleging delinquency. Although a great number of cases are informally processed by peace officers and a few by district juvenile judges, this study concentrates on probation officers because it is believed they are the focal person handling offenders within the informal process.

THE IMPORTANCE OF INFORMALITY IN TREATMENT OF JUVENILES

The informal juvenile court system is being examined because of the apparent benefits it offers to the entire juvenile court system. When a police officer decides to cite a youth, or once a complaint of some type is filed,

generally a probation officer is called upon to decide the course of action. At his discretion the matter can be handled informally or it can be referred to the judge or county attorney for formal processing on a petition alleging delinquency. The decision made becomes very important for the youth involved. It is generally construed that the earlier a community detects delinquent and potential criminal behavior, and provides some method to change this behavior, the better it can protect itself. Although in some cases counseling is acceptable, if an offense is against the person or property a victim often wants and demands punishment. Not only may the offender's behavior be changed, but such punishment may deter potential offenders when they see what happens to their friend. But, such punishment and detection, especially when it affects youthful offenders at an early age, does not always result in this expected protection of the community.

As a juvenile advances into the juvenile court system it can be found that the further he advances the higher the risk becomes of the community identifying him as a delinquent. And, in many cases this labeling process not only comes from the community but also from the youth himself. When the community labels the youth as a delinquent this often reinforces in the youth the concept that he is a delinquent and if he responds by acting that way a vicious cycle begins and continues until either the youth

grows out of it, someone or something in the youth's life alters the behavior pattern, and/or the behavior pattern is altered through professional counseling provided by the community, the courts, or the institutions.¹

HISTORICAL BACKGROUND

Early Developments

Near the middle of the 19th century a movement emerged in the United States to protect young offenders from criminal proceedings. The original movement begun in England many years before when the chancery courts came into existence after the reign of Henry VIII. These courts were created to replace the ecclesiastical courts which had previously handled what are known today as dependent and neglect cases. At first the chancery or equity courts never assumed jurisdiction over children when they violated the criminal laws. They dealt only with cases where the

¹Numerous theories exist that classify delinquents and their behavior, each giving various reasons why the youth behaved the way he did. Two basic juvenile delinquency or criminology textbooks that discuss causation are Juvenile Delinquency by Ruth S. Cavan, and Criminology by Robert G. Caldwell. One of the best works that discusses many of the various causation theories is Delinquent Behavior by John M. Martin and Joseph P. Fitzpatrick.

Labeling theories can be found in most juvenile delinquency texts. A good presentation of the labeling concept can be found in Stanton Wheeler and Leonard S. Cottrell, Jr., Juvenile Delinquency - Its Prevention and Control.

Since it is not the intent of this paper to discuss causation theory, it is recommended by the author that the reader review these references in order to gain an insight as to why delinquency exists.

welfare or property of the child was at stake. The idea of the chancery court was transferred to the United States together with the English legal system and soon included protection for children in danger of personal and/or property injury.²

Other factors contributing to the philosophy of the juvenile court included the common law interpretation that a child under the age of seven could not be held responsible for committing a criminal act and the doctrine of parens patriae, which held the sovereign to be the father of those under legal disability within his territory, was adopted. The King, through his chancellors, assumed the general responsibility for protecting all infants in the realm. It was pointed out, states Eldefenso in Wellesley v. Wellesley that the King as pater patriae (father of his country) possessed an obligation to oversee the welfare of the children in his kingdom because of neglect, abuse, or abandonment of any child by his parents or guardians.³ The King, through his court of chancery, could then provide the proper care and protection for the child.⁴ This doctrine of parens

²William T. Downs, Michigan Juvenile Court: Law and Practice, (Ann Arbor: Institute of Continuing Legal Education, 1963) p. 39.

³Edward Eldefenso, Law Enforcement and the Youthful Offender: Juvenile Procedures, (New York: John Wiley and Sons, Inc., 1967) p. 159.

⁴The President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Juvenile Delinquency and Youth Crime, (Washington, D.C., 1967) p. 2.

patriae, as William Downs states, is "the constitutional justification for the authority of the legislature to enact legislation which created the juvenile court." Downs goes on to state that this is not to be confused with the authority of the court itself for "the court does not derive its authority from any broad general principle of 'parens patriae'. The court derives its authority from the legislation which created it."⁵

Problems arising because of the unrest of the 19th century were confronted by such men as Judge Peter Thatcher of Boston, John Augustus, the "Father of Probation", and Judge Benjamin Barr Lindsey of Colorado along with numerous other people across the United States who became known as the "Reformers". Problems arose with the trend toward urban development as the industrial revolution spread. Masses of people migrated to the United States and settled in the cities. Slums, unsavory housing, vice, crime and the disruption of the family followed. Labor exploited children and the school was only available for a few. Courts and institutions were faced with overcrowding. There was little or no segregation of men, women or children offenders until at least 1861 when it existed in a limited form in Chicago.⁶

⁵Downs, p.p. 23-24.

⁶Ted Rubin and Jack F. Smith, The Future of the Juvenile Court, (Washington, D.C.: Joint Commission on Correctional Manpower and Training, 1968) p. 1; The President's Commission on Law Enforcement and Administration of Justice, Juvenile Delinquency, p.p. 2-3.

England had recognized the need for special handling of juvenile offenders, separating them from adults by passing the Juvenile Offenders Act of 1847.⁷ Prior to its passage juveniles were treated the same as adults in criminal proceedings. The "reformers" brought about change, providing the germ for the creation of the modern day juvenile court.

Massachusetts established a reform school for juvenile offenders as early as 1847. In 1869 Massachusetts law provided for "the presence in court of a 'state agent' or 'his deputy' whenever application is made for the commitment of any child to any reformatory maintained by the commonwealth."⁸ In 1860 laws were introduced to provide for separate hearings of juveniles under sixteen before a probate judge. Glueck states that here was the germ of the modern elaborate procedure for social investigations by requiring that an agent for the juvenile "shall have an opportunity to investigate the case, attend the trial and protect the interest of, or otherwise provide for the child."⁹

The first juvenile court created by statute began on July 1, 1899, in Cook County in Chicago, Illinois. The

⁷Eldefenso, p. 158.

⁸Sheldon and Eleanor T. Glueck, "Historical and Legislative Background of the Juvenile Court", in Sheldon Glueck, (ed.) The Problem of Delinquency, (Boston: The Riverside Press, 1959) p. 256.

⁹Ibid.

statute creating it was very comprehensive for it dealt with jurisdiction over the treatment of dependent, neglected, and delinquent children. The important point that the law set forth was that the delinquent child should be treated the same as the neglected or dependent child. Thus, it took into consideration that the issues before it required understanding, guidance, and protection rather than criminal responsibility, guilt, and punishment.¹⁰ The rationale was that a formal setting would be destructive to the goal of getting at the root of the child's problems. The child needed help, not punishment; therefore, there was no need for the traditional criminal procedural safeguards. The President's Commission on Law Enforcement and Administration of Justice expounded on this particular approach in their task force report when referring to the formalities of criminal procedure:

They formal proceedings were destructive for several reasons. First, the formal process -- charges, jury, trials, representation by counsel, evidentiary restrictions, motions and countermotions, the privilege against self-incrimination -- was inescapably identified with the criminal law, the atmosphere and presuppositions of which it was the objective of the juvenile court movement to eliminate in dealing with child offenders. Second, adversary procedures for determining whether a person committed a criminal act with a criminal state of mind were not useful for ascertaining the full picture of the child's behavior, including not only the conduct that brought him to court but the whole pattern

¹⁰Eldefenso, p. 161.

of his prior behavior and relationships. Third, criminal procedures would put the child on one side and the court on the other, creating a tone of combat and contentiousness that would destroy the sought after cooperation of the child in the common effort to help him.¹¹

The basic idea was that erring children should be protected and rehabilitated rather than subjected to the harshness of the criminal system. The offender was to be treated as an individual in need of better supervision until he reached a reasonable age, usually eighteen, when he would assume this responsibility on his own. As time passed, the scope of the philosophy came to include the fact that no child could be accused of a crime, nor could any child suffer any conviction of a criminal nature while below a certain age. The child could be accused of a delinquent act or adjudicated a delinquent but he could not be classified as a criminal.

Before it could be decided if the court should assume jurisdiction and supervision over the child, it became necessary for the nature and extent of the individual child's maturity or immaturity to be determined by the court. This demanded that each child be looked upon as an individual and be evaluated according to his assets and liabilities. Emphasis was placed upon a treatment plan that would be in the best interests of the individual child who had contact

¹¹The President's Commission on Law Enforcement and Administration of Justice, Juvenile Delinquency, p. 28.

with the court. Presently there are 2,700 courts that hear children's cases in the United States. Every state, including the district of Columbia has followed the basic idea of the juvenile court philosophy formalized in the Illinois code in 1899.¹²

Montana Background

Montana's concern over juveniles started as early as 1893 with the passage of legislation for a reform school for both males and females between the ages of eight and twenty-one. This act stipulated that when any offender between those ages was found guilty of any crime, including vagrancy or incorrigibility, but excluding murder or manslaughter, he could be placed in the state reform school by order of the court rather than be placed in jail. If the individual was incorrigible or unmanageable at the state reform school he could be returned to the court that passed sentence for further action, which usually meant placement in jail.¹³

Other indications of a court movement in Montana arose in 1895 with the stipulation entered that the district court judge could hear such matters in his chambers.

¹²The President's Commission on Law Enforcement and Administration of Justice, Juvenile Delinquency, p. 12.

¹³Legislative Assembly, Laws, Resolutions and Memorials of the State of Montana, 3rd Sess., (Butte: Inter-mountain Publisher, 1893) p.p. 183-189.

The court further provided that each boy or girl committed to the state reform school should remain there until he or she reached the age of twenty-one, or until paroled or legally discharged. In some cases a girl could be released at eighteen if "she deported and conducted herself in such a manner as to make it reasonably probable that she had reformed and is a proper person to be discharged."¹⁴

By 1907 the legislature prohibited children under sixteen from being confined with adults, created the office of probation, recognized the need for the state to assume jurisdiction over dependent-neglected children, and granted the court the power to place a delinquent on probation or in a foster home.¹⁵

Finally in 1911 the Montana juvenile court was officially established. The majority of the earlier laws were retained and the juvenile court judges chosen to act in this capacity were district court judges. The major stipulations of the act were:

1. Any child seventeen or under was to be handled in juvenile court.

¹⁴D.S. Wade and F. W. Cole and B. P. Carpenter, Code Comm., Codes and Statutes of Montana, Vol. II, (Anaconda: Standard Publishing Co., 1895) p. 1186.

¹⁵E. C. Day, Code Comm., Revised Codes of Montana, 1907, Vol. II, (Helena: State Publishing Co., 1908) p.p. 908-915.

2. Delinquents were not to be incarcerated in a common jail.
3. Juvenile hearings were to be closed hearings.
4. The judge could appoint a juvenile improvement committee to assist him.
5. The probation officer became a paid officer of the court but his duties still consisted of investigating offenses rather than supervision of delinquents.¹⁶

The original purpose or objectives of this act, carried over to the present, is stated in Section 10-601 of the Revised Codes of Montana:

This act shall be liberally construed to the end that its purpose may be carried out, to wit: That the care, custody, education, and discipline of the child shall approximate, as nearly as may be, that which should be given the child by its parents, and that, as far as practicable, any delinquent child shall be treated, not as a criminal, but as misdirected and misguided, and needing aid, encouragement, help and assistance.

And that, as far as practicable, in proper cases, that the parents or guardians of such child may be compelled to perform their moral and legal duty in the interest of the child.

The principle is hereby recognized that children under the jurisdiction of the court are wards of the state, subject to the discipline and entitled to the protection of the state, which may intervene to safeguard them from neglect or injury and to enforce the legal obligation due to them and from them.¹⁷

¹⁶Legislative Assembly, Laws, Resolutions and Memorials of the State of Montana, 12th Sess., (Helena: Independent Publishing Co., 1911) p.p. 320-339.

¹⁷Revised Codes of Montana 1947, (1968), C. 6, Sec. 10-601, p. 576.

In 1919 the maximum age limit was raised from seventeen to eighteen and the judge was granted specific power to place a child in jail only if he felt it necessary.¹⁸ In 1921 the probation officer's duties were redefined and separation of juveniles from adults was again mentioned. The probation officer was now to fully examine any complaint against a juvenile under the ages of eighteen excluding those offenses not punishable by death or life imprisonment. This examination included the offense, child's surroundings, exact age, habits, school record, home conditions, and the habits and character of the parents or guardian. Once the report was completed it was to be presented in writing to the judge. The probation officer was also to attend all hearings as the judge directed.¹⁹

By 1943 the juvenile codes were completely rewritten giving the court the power to grant permission to file a formal petition but allowing for an informal or preliminary inquiry to determine if the interests of the public or the child required further action. If the court desired that some informal adjustment take place prior to filing a for-

¹⁸Legislative Assembly, Laws, Resolutions and Memorials of the State of Montana, 16th Sess., (Helena: State Publishing Co., 1919) p. 470.

¹⁹I. W. Choate, Code Commission, Revised Codes of Montana 1921, Vol. IV, (San Francisco: Brancroft and Whitney Co., 1921) p. 422.

mal petition, the probation officer was notified and given the authority to conduct a preliminary inquiry and to supervise the youth without a formal declaration of delinquency. The judge could use his own discretion in placing a child found to be delinquent on probation, committing the child to a public or private institution, or ordering further care and treatment that the court felt would be in the child's best interest.²⁰

By 1967 the legislature had added the provision that any child adjudicated a delinquent could be committed to the Department of Institutions.²¹ And finally by 1969, Sections 10-604, 10-605, 10-609, 10-618, 10-620 and 10-622 were repealed. Several new sections replaced them better clarifying points of law. For example, Section 10-605.1 specifically clarified the nature of the preliminary inquiry by providing that any child brought before the court on a delinquency charge could appear before the court or the juvenile probation officer for the purpose of making a preliminary inquiry to determine whether further action should be taken. The matter could be handled at this level by an informal adjustment including the placement of the child on probation. If a petition was deemed necessary then the county attorney

²⁰Revised Codes of Montana 1947, C. 6, Sec. 10-611, p.p. 801-802.

²¹Legislative Assembly, Laws, Resolutions and Memorials of the State of Montana, 40th Sess., (Helena: State Publishing Co., 1967) p.p. 134-236.

had to prepare and sign it.²² Section 10-608.1 revised the procedure for taking a child into custody and detaining him, providing that any peace officer, if circumstances warranted it, could take a child into custody and detain him. But the court or probation officer must be notified as soon as practicable and the officer could release the child to a parent or guardian upon receiving written promise from them to bring the child before the court.²³ Section 10-611(3) gave the court an additional alternative disposition where a child was found to be delinquent. The judge could notify the director of the Department of Institutions if he felt a youth, who must be sixteen or older, was suitable for placement at the Youth Forest Camp. The child could be committed to the Department of Institutions for a period not to exceed thirty days for evaluation purposes to determine suitability for placement in the camp. If he proved suitable and there was space at the camp, the judge could commit the juvenile directly to the camp.²⁴

Objectives of the Montana Juvenile Court system were extended to include the following:

1. That juveniles sixteen years of age or older,

²²Revised Codes of Montana 1947, (1973), C. 6, Secs. 10-605.1 and 10-629, p.p. 139, 589.

²³Revised Codes of Montana 1947, (1973), C. 6, Sec. 10-608.1.

²⁴Revised Codes of Montana 1947, (1973), C. 6, Sec. 10-611(3), p. 141.

accused of committing or attempting to commit murder, manslaughter, arson in the first or second degree, assault in the first or second degree, robbery, burglary, and carrying a deadly weapon with intent to assault, or who commits rape may be proceeded against the same as an adult.²⁵

2. That any juvenile charged with delinquency on a written petition shall have the right to demand a jury trial and the right to be represented by counsel.²⁶

3. That any juvenile found to be a delinquent has the right to appeal the decision.²⁷

4. That juveniles shall be protected from public release of their names in delinquency matters.²⁸

Personal experience in working with the people involved in the Montana juvenile court system evidences existence of the following unstated objectives as well:

1. To keep as many youth as possible out of the formal court system.

2. To provide rehabilitative services through the court such as counseling, foster care, psychological help,

²⁵Revised Codes of Montana 1947, (1973), C. 6, Sec. 10-603, p.p. 137, 138.

²⁶Revised Codes of Montana 1947, (1973), C. 6, Sec. 10-604.1, p.p. 138, 139.

²⁷Revised Codes of Montana 1947, (1973), C. 6, Sec. 10-630, p. 145.

²⁸Revised Codes of Montana 1947, (1968), C. 6, Sec. 10-633, p. 590.

etc. for juveniles and their families if necessary before resorting to the formal juvenile court system.

3. To develop community awareness of the juvenile system without releasing names of juveniles.

4. To develop alternative methods of dealing with juveniles prior to use of the formal court.

5. To develop the use of community resources to which the court can refer juveniles for help outside the court.

6. To de-emphasize the word "delinquent" when dealing with outside groups.

7. To get communities to work with youth to eliminate, or at least curb, delinquent behavior and thus keep youth from entering the system.

8. To teach the juvenile how to help himself.

The twofold purpose of the stated objectives set by law provides for a system which will treat juveniles as parents should "normally" treat them, but at the same time provides for treatment within a legal framework which considers the youth's rights as well as the community's protection. Discipline can be exercised in the strongest sense in that the possibility exists of removing a youth from his parents and the community if the parents either do not or are not able to exercise proper control. But it is the unstated objectives that provide a framework for carrying out the original intent of the philosophy of the juvenile court founders. Through

this framework an informal system is developed that helps, encourages, and disciplines youth without attaching to them the stigma of being labeled delinquent. Since unstated objectives are, by definition, implied rather than written it should be noted that many more than those listed here do exist. These are the most observable.

METHODOLOGY

Data

Data used in this study were gathered through research, preparation and distribution of a questionnaire, and numerous telephone and personal discussions with people highly knowledgeable in the field. The author's personal expertise gained from studying and working in the field proved invaluable in interpreting the data collected and in explaining its relevance to this paper.

Library Research - Several Montana and United States Supreme Court decisions as well as the Montana Code were thoroughly researched with the intent of emphasizing how they relate to the operation of the juvenile justice system. Many books and studies were also read to gain a better understanding of the numerous theories that classify delinquents and their behavior and to afford a means of developing the history of the juvenile courts.

Questionnaire - In 1971 a questionnaire was devised and sent out to 26 full time and 17 part time probation officers in an effort to determine their roles in relation to the

informal juvenile court system. The questionnaire was intended to assist the researcher in identifying the formal role of the juvenile probation officers for comparison to that role prescribed by law.

Seven major categories of the questionnaire related role requirements to arrest, detention, preliminary inquiry, probation, informal court, formal court, and generalized duties. The design of the questionnaire was such that the respondents were able to reply: Always____, Frequently____, Rarely____, or Never____ to nearly all questions. "Always" indicated that the respondent was always involved in that particular type of behavior, while "Never" indicated he did not deal with that type of behavior. The responses were rank ordered to indicate what behavior pattern existed in each judicial district. In the actual analysis of the data only the State totals were used so no one judicial district could be identified as to its procedures.

In all categories except "generalized duties", the "Always" and "Frequently" responses were combined and the "Rarely" and "Never" responses were combined to make two rank ordered divisions. Data were further analyzed to determine what percent of juvenile probation officers were involved in certain behavior. Responses in the "generalized duties" category were not included in this breakdown in order to show specific responses to programs the officers were developing.

Eighteen full time probation officers and 14 part time probation officers responded constituting 74 percent response. Sixteen of the 18 judicial districts were represented by these officers. The total juvenile population (individuals ranging in age from 10 to 17) residing in the 16 judicial districts represented approximately 90 percent of the juvenile population in the State of Montana.²⁹ The 1970 delinquent population for the State of Montana, according to the Governor's Crime Control statistics, was 6,062 and the 1970 delinquent population for the 16 judicial districts responding approximated 5,556 or approximately 92 percent of the total delinquent population in the State at that time.³⁰

Contacts - Numerous telephone contacts and personal discussions were had with various individuals within and without the juvenile justice system to gain insight into the workings of the system. Some of the individuals who furnished a considerable amount of information were: Mr. Jack Vaughn, former Chief Probation Officer of the 4th Judicial District; Mr. Steve Nelsen, Juvenile Programs Coordinator for the Board of Crime Control; Mr. Loren Harrison, a former researcher for the Board of Crime Control; and Mr. Terry Wallace, an attorney in Missoula, Montana who shows a deep and sincere interest in youth. This list only includes some

²⁹United States Department of Commerce, 1970 Census of Population; Montana, Vol. 1, Part 28, p.p. 28-35.

³⁰Information provided by the Governor's Crime Control Commission's 1970 statewide juvenile court statistics.

of the individuals who contributed the most information to the author. There were numerous other individuals and agencies who also helped, including the staff of the 4th Judicial District Juvenile Probation Department and other juvenile probation officers working in the State of Montana.

Personal Knowledge and Experience - While attending the University of Montana in 1966, the author began working as a volunteer in the Juvenile Probation Department of the 4th Judicial District in Missoula, Montana. This work developed into a full time paid position in 1968, and has continued as such to the present time. During this period a considerable amount of knowledge and experience has been gained through indoctrination into the juvenile justice system by association with probation officers, judges, peace officers, county attorneys, and other individuals both within and without the entire criminal justice system.

Procedure

A systems analysis approach was taken to provide the author with a solid format to break down the informal juvenile court subsystem into various components and elements in order to observe their functions and purpose. The specific objectives of the author, the systems model used in this study, and the theory of systems analysis are discussed fully in the following chapter.

LIMITATIONS OF THE PAPER

The theory provided a solid format to break down the informal subsystem into various components and elements in order to observe their functions and purpose. However, throughout the paper it could be seen that in almost every section, especially in those sections that pertained to procurement, maintenance, and adaption resources, there was insufficient data available on a statewide basis to thoroughly analyze the system. This was not a fault of the theory but of the lack of documented knowledge of the system on a statewide basis.

The study does not include a complete analysis of both the informal and formal juvenile court as the intent of the paper was to elicit the benefits of informality within the system. The formal process was included to the degree it related to the operation of the informal system.

The study does not incorporate police or peace officer involvement although it is recognized as an important part of the juvenile justice system, because such inclusion would entail a much larger study which would be beyond the scope of this paper.

The questionnaire was designed for probation officers only and was not submitted to county attorneys, judges, or anyone else but known fulltime or parttime probation officers in the State of Montana.

Even though these limitations existed throughout the paper it can be seen that the open system approach has at least provided a foundation for observing and understanding the informal juvenile court system in Montana and its relationship to the formal juvenile court system.

CHAPTER II

SYSTEMS ANALYSIS

SPECIFIC OBJECTIVES

The systems analysis model developed in The Social Psychology of Organizations by Daniel Katz and Robert L. Kahn will be used throughout this paper as an organizational framework to classify, describe and observe the various components and elements of the informal juvenile court system. This model, if successful, will show that an open system approach, which will be described later, is very useful in analyzing the informal juvenile court system. The objectives of using systems analysis in observing the Montana juvenile court system are:

1. To identify the informal processes of the Montana juvenile court.
2. To determine if the informal process is effective or ineffective.
3. To determine if the goals set down by the court have been accomplished.
4. To point out the weak points as well as the strong points of the informal process.
5. To determine how important the informal process is in relation to the entire juvenile court process.

6. To make recommendations for juvenile court operation in Montana.

THE SYSTEMS MODEL

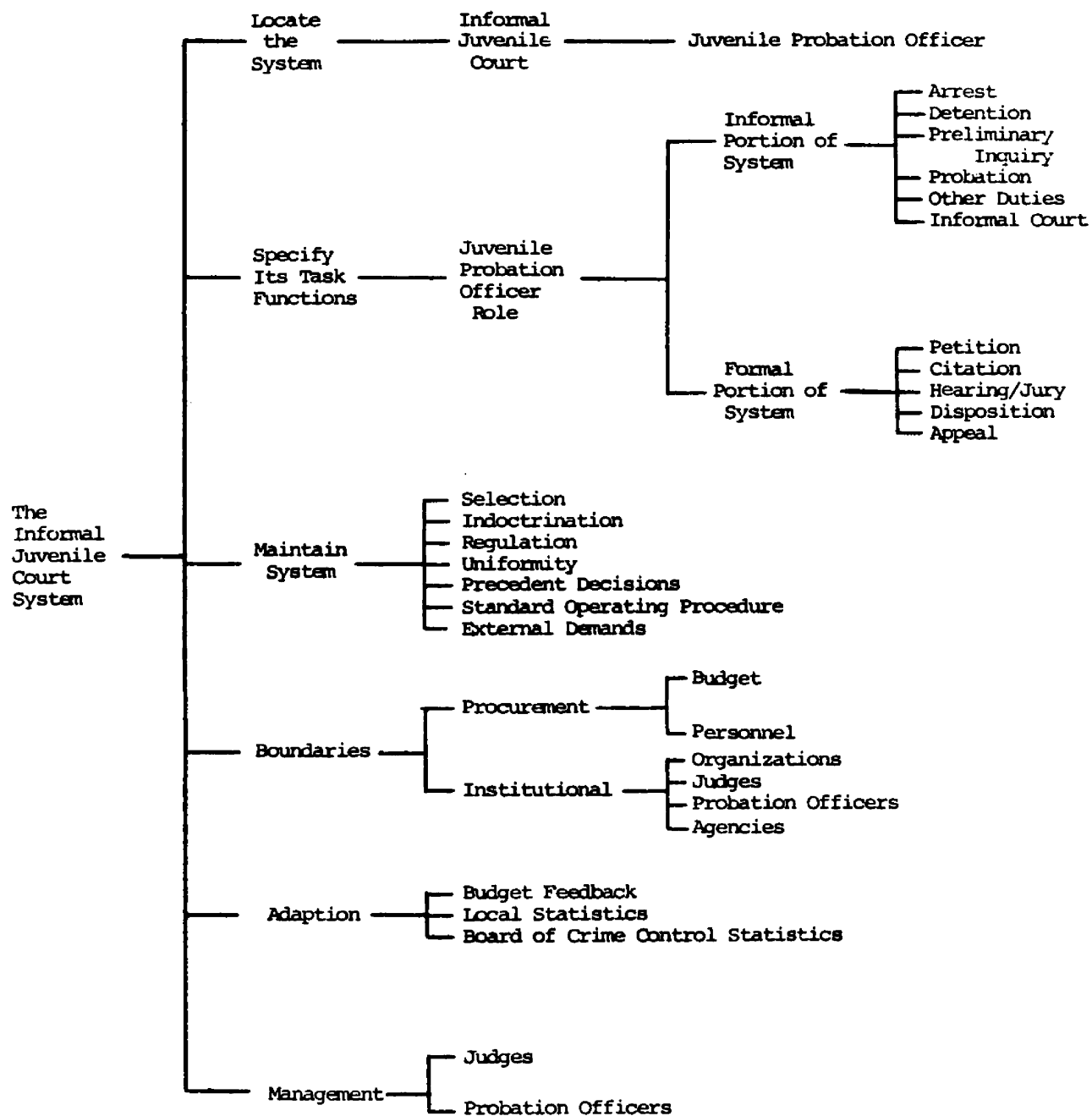
The systems model of the juvenile court is illustrated in the following two charts. Chart I illustrates the systems model which was used throughout this paper. This chart depicts a breakdown of the informal court system which consists of six subsystems and various components and elements which contribute to the makeup of the informal juvenile court. Chart II, The Montana Juvenile Offender Procedure Chart, is a flowchart of the offender's movement through the entire juvenile justice system beginning with the initial complaint and going through the informal court, formal court, institutionalization, and parole to aftercare authorities. Chart II relates to Chart I in the section entitled Specifying Its Task Functions by providing a more intensive procedural flow of all the options and alternatives available to an offender going through the entire system.³¹

WHAT IS SYSTEMS ANALYSIS?

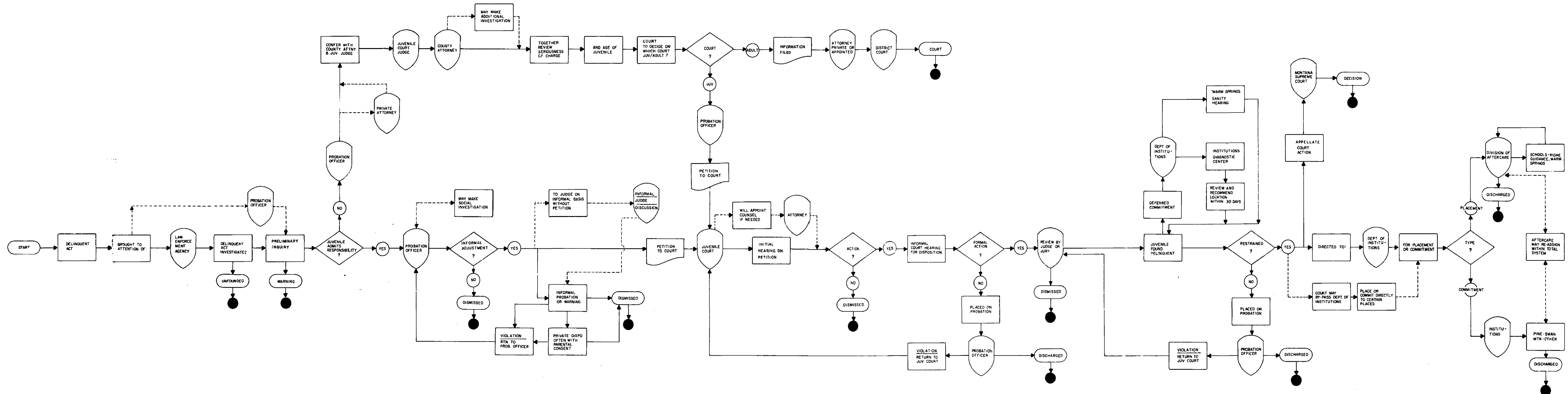
Systems analysis is a theory which concerns itself with recurrent cycles of input, throughput, and output which can be identified and traced by: 1) locating the system, 2) specifying the task functions, 3) identifying how it

³¹The Montana Juvenile Offender Procedure Chart was provided by the Montana Board of Crime Control.

CHART I



MONTANA JUVENILE OFFENDER PROCEDURE CHART



PHASE I
PREVENTION

PHASE II
INFORMAL COURT

PHASE III
FORMAL COURT

PHASE IV
REHABILITATION



maintains its working structure, 4) identifying its boundaries at the procurement level as well as at the institutional level, 5) identifying how it adapts, and 6) identifying how it is managed. This includes being able to observe the roles and role conflicts of individuals within the system.³²

Locating the system consists of identifying by name or otherwise the system to be studied. Identifying task functions proves to be more complicated because a close look has to be made to observe what created the need for the original task. When an organization attempts to seek a solution to an environmental problem it must determine how to meet the needs of the population involved. This generates task demands which create a production system to meet the task demands. From this flows some type of role or role structure and an authority structure to hold the role together. Role structure is "a set of recurring activities required of an individual occupying a particular position in an organization."³³

To study role behavior the social system or subsystem must be identified and the recurring events which fit together must be located by determining the role expectations

³²Daniel Katz and Robert L. Kahn, The Social Psychology of Organizations, (New York: John Wiley and Sons, Inc., 1966) p.p. 453-456.

³³Ibid., p. 78.

of any given office.³⁴ The study of role behavior is not complete unless the role conflicts are observed. Every role has some degree of conflict to it and the conflict may determine what the ultimate outcome of role behavior will be. Katz and Kahn define role conflict as "The simultaneous occurrence of two (or more) role sendings in which compliance with one would make more difficult compliance with the other."³⁵ They break down role conflict as follows:

1. Intrasender Conflict. Incompatible expectations held by a given member of a role set.

2. Intersender Conflict. Incompatible expectations held by two or more members of a role set.

3. Interrole Conflict. Incompatibilities between two or more roles held by the same focal person.

4. Person-role Conflict. Incompatibilities between the requirements of a role and the needs or values of the person holding it.

5. Role Overload. A more complex form of conflict involving legitimate role expectations held by a focal person but the person finds he cannot complete all of the task demands in the proper quality and in a given set of time. This results in a person-role conflict where the individual may not be able to meet the pressure or he may attempt to comply only with those demands which rank as to priority.³⁶

³⁴Ibid., p. 174. ³⁵Ibid., p. 184.

³⁶Ibid., p.p. 184-186.

How a system maintains its working structure relates to maintaining stability and predictability within the organization. Katz and Kahn find:

....many specific mechanisms are developed in the interests of presenting a steady state in the system. Selection procedures are employed to screen out applicants who do not seem likely to adapt to the system. Socialization or indoctrination practices are utilized to help fit new members into the organizational mold. System rewards are provided for membership and seniority in the system. Regulatory mechanisms are developed to give some automatic corrections to departures from the norm of organizational functioning. Rules are elaborated and provisions made for their policing. Decisions are made on the basis of precedent. Uniformity becomes the ideal, and standard operating procedures are worked out for human relations as well as for production requirements.³⁷

Since the maintenance structure maintains things as they are, change is hard to implement for other subsystems in the organization. This creates frustration within this subsystem and if change does occur it is often from some external demands which imply altering the organizational task.³⁸ Therefore, the maintenance structure tends to compromise its goals with the task requirements and the psychological wants of the focal people. The compromise that takes place normally consists of either imposing external rewards, especially money, to make the job more satisfying, or of introducing some minor reform within the job itself. This usually results in, according to Katz and Kahn, some interaction among the people within the organization where they make decisions of their

³⁷ Ibid., p.p. 87-88.

³⁸ Ibid., p.p. 79-81, 87.

own, cooperate among themselves, and seek gratification for their needs.³⁹

Organizational boundaries limit the operation of the system so in discussing the concept of organizational boundaries one must deal with the procurement subsystem and the institutional subsystem. The procurement subsystem concentrates on transactional exchanges with the environment, being responsible for obtaining input of materials to be converted into a product, and input of personnel to get the job done. Input of materials includes physical structures such as office space, budgets for financing the operation, and other resources while the input of personnel includes control of salaries, fringe benefits, prestige and education to motivate the people to get the job done.⁴⁰ The institutional subsystem relates to the larger society and is concerned with gaining support of its products or policies as well as legitimizing what the organization is doing.⁴¹

The survival of the organization relates to identifying how the system adapts, but unlike the maintenance subsystem, the adaption subsystem faces outward and attempts to achieve environmental constancy by controlling the external world as much as possible. Katz and Kahn state that when change is necessary it is:

³⁹ Ibid., p.p. 80, 81. ⁴⁰ Ibid., p.p. 81, 82, 89.

⁴¹ Ibid., p.p. 82, 96-99, 456.

....dependent upon the degree of openness in wanting to change and the extent of the needed modification. Sometimes the modification requires changing both people and organizational structure, and sometimes just people, or certain of their specific behavior, and that form of change is likely to be adopted in preference to a solution which involves changing both specific behavior and generalized institutional practices. Thus, if an organization is confronted with the alternative of changing some preferences in its clientele or changing some of its own structure and personnel, it will take the former path. If, however, it must change outside structures and personal habits, as against a limited internal change in practice, it is more likely to seek the latter solution.⁴²

Under the systems analysis theory the managerial subsystem is the administrative arm of the entire concept, cutting across all of the earlier stated subsystems, and is responsible for coordinating all of these subsystems, resolving conflicts erupting between hierarchial levels and coordinating external requirements with needs and resources of the organization.⁴³

WHY SYSTEMS ANALYSIS?

The open-system theory will be used to observe the informal juvenile court process because it furnishes a framework which is useful in examining this particular social system from a social-psychological point of view. In their book, The Social Psychology of Organizations, Katz and Kahn explain why open-system theory helps one to observe the entire system:

Open-system theory with its entropy assumption emphasizes the close relationship between a structure and

⁴² Ibid., p. 93.

⁴³ Ibid., p. 94.

its supporting environment, in that without continued inputs the structure would soon run down. Thus one critical basis for identifying social systems is through their relationships with energetic sources for their maintenance and human effort and motivation is the major maintenance source of almost all social structures. Hence, though the theoretical approach deals with relationships, these relationships embrace human beings. If we are concerned with the specifics of the maintenance function in terms of human behavior we are at the social-psychological level. In open-system theory, the carriers of the system cannot be ignored because they furnish the sustaining input. On the other hand, another major relationship encompassed by a system is the processing of production inputs to yield some outcome to be utilized by some outside group or system. The hospital meets the health needs of the community or the industrial enterprizes turn out goods or furnish services. These functions of given systems can again be identified through the input, through-put, and output cycle, but they may not be primarily psychological if we deal only with production inputs and exports into the environment, i.e., so many tons of raw materials and so many finished products. The moment, however, that we deal with the organization of the people in the system concerning the through-put we are again at a social-psychological point of view.

Finally, open-system theory permits an integration of the so-called macro approach of the sociologist and micro approach of the psychologist to the study of social phenomena.⁴⁴

Hopefully this observation of the informal juvenile court through systems analysis will identify the behind-the-scenes function of informality and thus support the benefits it offers to the entire juvenile court system.

⁴⁴Ibid., p. 9.

CHAPTER III

APPLICATION OF THE SYSTEMS MODEL TO THE MONTANA INFORMAL JUVENILE COURT SYSTEM

The reader should keep in mind the previous introduction of the labeling concept and the early philosophy of the juvenile court presented in Chapter I when now looking at the application of the systems model to the Montana Juvenile Court System. The six stages of the systems analysis theory described in the previous chapter were applied to the Montana Juvenile Court System with the following results.

LOCATING THE SYSTEM

The system under study in this paper is the informal juvenile court system in the State of Montana. The primary emphasis will be on the informal system at the time the offender is referred to the juvenile probation officer for disposition until he is referred to the district juvenile judge on a formal petition alleging delinquency. Although there are other individuals involved in the informal process, such as law enforcement officers, and at times the district juvenile judge even when a formal petition is not filed, this study concentrates on probation officers as the focal persons and discusses the other individuals and their roles as they interrelate to the role of the probation officer.

THE TASK FUNCTIONS OF THE JUVENILE COURT

The task functions of the informal juvenile court system, not specifically set out but implied by the written juvenile code in Montana, are essential to maintaining the practical and beneficial operation of the Montana juvenile court system. As noted in the introductory material, the basic intent of the founders of juvenile courts was to provide a means of handling juvenile offenders differently than adult offenders, the premise being that treatment would be more effective than punishment in providing the protection demanded by the community.

Informal Treatment

Arrest - To enter the system the offender is usually charged with a violation of law and taken into custody. Under Montana law the individual who primarily exercises arrest powers is the peace officer. Section 10-607, R. C. M., 1947 states that a peace officer is the individual required to cite an offender into informal hearings before the court.⁴⁵ And, Section 10-608, R. C. M., 1947 gives the officer authority to bring anyone before the court who has failed to appear when required, or who the judge feels would not appear.⁴⁶

⁴⁵ Revised Codes of Montana 1947, (1973), C. 6, Sec. 10-607, p. 140.

⁴⁶ Revised Codes of Montana 1947, (1968), C. 6, Sec. 10-608, p. 581.

But, the most important section of the code, Section 10-608.1, R. C. M., 1947 states:

(1) Whenever any peace officer believes on reasonable grounds that any child is violating any law or ordinance or engaging in other conduct that would be grounds for finding the child a delinquent, or when the surroundings are such as to endanger his health, morals, or welfare unless immediate action is taken, then the peace officer shall take the child into custody in the same manner as for the arrest of an adult.

(2) Whenever the peace officer believes on reasonable grounds that the child can be released to a parent, guardian or other person who has had custody of the child, then the peace officer may release the child to that person or persons upon receiving a written promise from him or them to bring the child before the juvenile court or the juvenile probation officer at a time and place specified in the written promise.

(3) Whenever the peace officer believes, on reasonable grounds, that the child must be held in custody until his appearance in juvenile court, then the peace officer must deliver the child to the juvenile court or the probation officer without undue delay. If it is necessary to hold the child pending appearance before the juvenile court then the child must be held in some place that has been approved by the juvenile court and completely separated from adult offenders.

(4) Whenever any peace officer has apprehended a child as herein above provided, he shall, as soon as practicable, notify the juvenile court or probation officer of such fact with a report of his reasons for the apprehension.⁴⁷

The role of the peace officer is instrumental in indicating how a juvenile will be handled. Some of the Montana districts encompassing larger cities provide peace officers who work exclusively with youth. These individuals are more

⁴⁷Revised Codes of Montana 1947, (1973), C. 6, Sec. 10-608.1, p. 140.

highly trained to deal with youth problems and quite often handle situations much differently than officers who have occasional contacts with youth. In the more rural areas peace officers tend to know almost all of the youth in the community. Such familiarity enables officers to work with the youth and families more successfully. But whether in the large city or the rural area, the initial contact made by the arresting officer can dictate future action taken by the offender, as well as the court.

A role conflict sometimes arises because the peace officer is not the only individual who can exercise arrest powers under Montana law. Section 10-623 gives this same authority to juvenile probation officers.⁴⁸ The questionnaire was designed to determine to what degree probation officers exercised this authority. The data was interpreted that probation officers do not believe they should be making arrests but 24 out of 32 do make arrests primarily in situations involving children in need of supervision (CHINS), misdemeanor, felony, and traffic offenses. Out of 5,556 juveniles taken into custody in 1970, 228 were arrested by a probation officer. Out of the 228 arrests made by probation officers, 156 were made by part-time probation officers whose primary duty or role was that of a peace officer rather than probation officer while 41 were made by other part-time probation offi-

⁴⁸Revised Codes of Montana 1947, (1973), C. 6, Sec. 10-623, p. 144.

cers for a total of 197. To the question "Do you feel that a juvenile probation officer should be making arrests?" 3 of 32 respondents answered "rarely", and 10 answered "Never". Five of 7 respondents who were also peace officers checked either "always" or "frequently", and only one fulltime probation officer checked "always". Eighty-one percent of the total responding indicated they felt their primary role should not be making arrests.

Should the juvenile probation officer have arrest powers? The officer can be placed in a definite role conflict when he is arresting on one hand and required to counsel on the other. It is recommended that the probation officer have arrest power only if the juvenile violates his probation or a lawful order of the court. This would solve the problem and place the arrest power with the probation officer in specific cases only. Any other arrest would be left up to the peace officer who has that duty as part of his overall role. The alternative to this would be to continue to leave arrest powers with the probation officer and let each officer resolve his own individual roal conflicts.

Detention - Once a peace officer arrests a juvenile he can release him to his parents, a guardian, or other person upon written promise that the child will be brought before the court or a juvenile probation officer at a set time. Or, the peace officer can hold the child in custody. If he chooses to hold him, he must immediately notify the juvenile

court or juvenile probation officer and submit a report of his reasons for the apprehension. Although data gathered from the questionnaire used as part of this study revealed that in 14 of the 16 judicial districts represented detention procedure required a written report stating the reasons for detaining a juvenile, responses from five of these judicial districts indicated that a report is rarely or never submitted. Twenty-three of the respondents felt arresting officers should notify the parents of an arrested juvenile. Sixteen respondents indicated they contacted parents within one hour after detention and 13 indicated contact was made as soon as possible. Where responses indicated a parent was not contacted, the reason most often given was inability to locate the parents. The survey also showed that releases of juveniles held in detention are arranged, 1) most often by a probation officer, 2) by the peace officer under the direction of a probation officer or the judge, or 3) by the judge.

A role conflict arises when the law under Section 10-626 of the Revised Codes of Montana, 1947, is practiced because under that law any child under the age of eighteen who must be detained may be placed in custody by order of the court or of the chief probation officer.⁴⁹ When they act in this capacity they are drawn between two goals, i.e.

⁴⁹Revised Codes of Montana 1947, (1973), C. 6, Sec. 10-626, p. 145.

making every effort to obtain the release of the child, a goal emphasized both by the labeling concept and the code, or, protecting the public. This conflict has raised the question of when do the rights of the public to protection begin infringing on the rights of the juvenile. Montana's 1971 juvenile delinquency statistics provided by the Board of Crime Control show that 5,639 youth went through the juvenile court system. Of these 1,040 spent 3,437 days in jail. Should they have been given the right to post bail? Only approximately 230 were brought before a juvenile judge on a formal written petition alleging delinquency. The others appeared on an informal basis.⁵⁰

When the decision is made to detain a juvenile offender, the code provides that the peace officer must use a facility approved by the juvenile court judge. In addition, juveniles must be separated by sexes and must not be placed with adults.⁵¹ Yet, a survey of Montana jails, conducted by Robert Logan in 1971, indicated that one-fifth of the jails in Montana do not have separate facilities available for detaining juveniles. In one-fourth of the jails surveyed juveniles charged with felonies were placed in the same cell with juveniles detained for such offenses as liquor viola-

⁵⁰Information provided by the Montana Board of Crime Control, from their 1971 statewide juvenile court statistics.

⁵¹Revised Codes of Montana 1947, (1973), C. 6, Sec. 10-626, p. 145.

tions, runaways, or ungovernables.⁵² In over half of the jails reporting on the survey it was found that juveniles were placed in jail over the weekend to deter delinquent acts, and dependent-neglected children were even detained in one-fourth of the jails.⁵³ Mr. Logan concluded, with regard to segregation of prisoners:

At present the majority of Montana jails are not adequate to properly segregate inmates. In many jails the simplest form of segregation--male from female and juvenile from adult--creates a serious problem due to lack of space. Many jails use the same cell for juveniles and women. In the event there is a need to incarcerate a juvenile, an adult female, and an adult male, someone must be transferred to another facility.⁵⁴

The President's Task Force Report also made the point that juveniles are often wrongfully held, noting there were approximately 8,400 juveniles in the nation held for such offenses as curfew violation, truancy, traffic violation, disturbing the peace, and minor liquor law violation.⁵⁵

Making a decision to detain or release a juvenile creates problems especially when the parents cannot be located and there is no alternative place to hold the child.

⁵²Robert Logan, State of Montana Jail Survey, (Helena: The Governor's Crime Control Commission, 1972) p. 11.

⁵³Ibid., p. 12. ⁵⁴Ibid., p. 108.

⁵⁵The President's Commission on Law Enforcement and Administration of Justice, Juvenile Delinquency, p. 37.

The usual alternatives available to the probation officer are: 1) using a written release form signed by the parent which promises that they will bring the child before the court at a future date; 2) releasing the youth to a friend or relative; 3) placing the youth in a temporary foster home if one is available; or, 4) holding the youth in custody. Bail is not one of the alternatives as it is not specified in Montana juvenile law. Article II, Section 15 of the Montana Constitution states that "the rights of persons under 18 years of age shall include, but not be limited to, all the fundamental rights of this Article unless specifically precluded by laws which enhance the protection of such persons."⁵⁶ This particular article gives the youth the same basic rights as adults unless the right is specifically denied. Section 21 of Article II provides for a right to bail so there may be a possibility that in Montana a youth is entitled to bail under the new Constitution. Prior to the new constitution taking effect bail existed at the discretion of the district juvenile judge and statistics are not available as to how often it was allowed.⁵⁷ Some states, such as Colorado, provide that "nothing in this Section shall be construed as denying a child the right

⁵⁶Montana, Constitution, Article III, Sec. 15.

⁵⁷Montana, Constitution, Article II, Sec. 21.

to bail."⁵⁸ Colorado further provides for a detention hearing within forty-eight hours, excluding Saturdays, Sundays, and court holidays.⁵⁹ One of the main problems regarding bail for juveniles is that the United States Supreme Court has not determined its merits at a constitutional level. Sanford Fox states in his book, Juvenile Courts in a Nutshell:

Courts and statutes are divided on the question of whether, in addition to the right to release from custody upon the promise of his parents to bring him to court, the child has a right to release on bail... where it has been found that the constitution requires a due process probable cause hearing for children before they may be held in pre-trial detention, the court stopped short of also finding that there is a constitutional right to bail by viewing the statutory provisions relating to release as an acceptable equivalent of bail.⁶⁰

At the present time there is no set procedure in Montana's written juvenile code that states a juvenile is entitled even to a pre-trial detention hearing. This decision is up to the judge when he sets down what policy is to be followed in the handling of youth, and it varies from judicial district to judicial district. When the President's Task Force looked at this problem they arrived at four main considerations: 1) strict detention procedures should be enacted restricting both the authority to detain and the circum-

⁵⁸Colorado Revised Statutes 1963, (1968), C. 22, Sec. 22-2-3, p. 167.

⁵⁹Ibid.

⁶⁰Sanford J. Fox, The Law of Juvenile Courts in a Nutshell, (Minnesota: West Publishing Co., 1971) p. 146.

stances under which detention is permitted, with state legislatures limiting the authority to detain to the probation officer rather than the police; 2) Detention should be used only when it is necessary to protect the community or the youth, or to keep the youth in the jurisdiction; 3) The law should require a detention hearing within 48 hours of the initial detention; and, 4) the judge, after a detention hearing, should require release of any youth who was placed in detention by the probation officer without proper authority.⁶¹ These recommendations may be a guide to eliminating some of the unnecessary detention of youth but the problem may still exist of what to do with the youth whose parents cannot be found in areas where there is no acceptable foster home or alternative placement available until the case comes before the court.

Necessary alternatives to incarceration are very important in Montana and it is important to deal with this issue because of the lack of shelter homes, detention homes, foster homes, etc. The main holding area for a juvenile in need of detention is the county jail. This drastically limits the judge's ability to place a juvenile who has committed a serious crime. It creates even more conflict with

See especially Baldwin v. Lewis, 300 F. Supp. 1220 (E.D. Wis. 1969): In re Castro, 243 Cal. App. 2d 402, 52 Cal. Rptr. 469.

⁶¹The President's Commission on Law Enforcement and Administration of Justice, Juvenile Delinquency, p.p. 36,37.

the runaway who does not want to return home but has no other place to go because of lack of funding or personnel to find the necessary alternative homes. Unless the public as a whole determines that these are their problems it will be difficult to provide the necessary funds, personnel, and programs to work with delinquent children and it greatly hampers the efficiency of the juvenile court system.

It is recommended that, in all fairness to juveniles detention should be restricted according to the guidelines offered by the President's Task Force as noted above. In addition, Montana should require that a detailed written report be filled out, stating the reasons for detention and this report should be submitted to the judge in every case. The use of detention as "jail therapy" should also be eliminated unless a district juvenile judge orders it. From the data collected the use of bail was evidenced in only one judicial district. If the juvenile is going to be detained in spite of the above procedures making it appear that the juvenile system is paralleling the adult criminal system, at least in the detention process, then it is recommended that the right to bail be considered also.

A drastic increase in funds is needed to make available other alternative placements. Without it, if the above recommendations are not followed, the only alternative is to continue jailing juveniles. With the inadequate facilities available in Montana, this is hardly an acceptable alternative.

Preliminary Inquiry - Once the offender is processed through arrest and detention the next step is an appearance before the juvenile probation officer at what is designated a preliminary inquiry. Section 10-605.1 (1), R. C. M., 1947 provides:

Whenever any person informs the court that a child is a delinquent as defined in this act the court shall cause, by citation or otherwise, the child to be brought before the court or the juvenile probation officer for the purposes of making a preliminary inquiry to determine whether the interests of the child or the public require that further action be taken, the matter may be handled by an informal adjustment including the placing of the child on probation, or the court may order the county attorney to file a petition charging the child with being a juvenile delinquent.⁶²

The intent of the preliminary hearing is to assist the judge in processing cases without the filing of a petition. The probation officer's role is very important in this hearing since he is the one individual involved in most of the preliminary hearings. This hearing can be handled by either the judge or the probation officer and in most instances the matter is handled informally at an early level.

The questionnaire data revealed that 26 of the juvenile probation officers responding conduct the preliminary inquiry and 21 spend approximately 30 percent of their time doing this type of work. Twenty-five stated the usual length of time between arrest and appearance at the hearing is 1 to 7 days. At least one parent is required at all hearings,

⁶²Revised Codes of Montana 1947, (1973), C. 6, Sec. 10-605.1(1), p. 139.

and 5 of the respondents indicated an attorney always represents the juvenile. If the juvenile denies the allegations against him, 22 of the probation officers indicated they do not determine his guilt but refer the case to the district juvenile judge for processing.

At his discretion, the probation officer can dispose of the case by: 1) warning the youth; 2) grounding the youth to home for a specified length of time; 3) leaving the disposition up to the parent if it appears the parent is handling the situation well; 4) continuing or holding the case open either for further investigation or counseling in an attempt to encourage the youth to take the responsibility for his behavior in an effort to change it; 5) referring the youth to another agency for assistance; 6) returning the youth to his home jurisdiction; 7) placing the youth in foster care; 8) detaining the youth in jail for week-ends or some other specified length of time; 9) placing the youth on informal probation and requesting restitution if possible; 10) placing the youth on work detail; or, 11) referring the case to the county attorney for filing of a formal petition.

One of the problems at the preliminary inquiry stage is that there is no set procedure to guide the probation officer, and accordingly the process varies from one district to another. It is recommended that some minimal procedural guidelines be established such as: 1) Advising the youth of his rights under Miranda and Gault; 2) Advising the

youth that he has a right to have any decision reviewed by the district juvenile judge; 3) assuring that at least one parent is present at the inquiry; and 4) establishing some means of providing an attorney at this level if the juvenile so desires.

Probation - When the disposition decided upon is probation, rules are furnished the youth advising him of the conditions of probation and when to report to the juvenile officer. Probation rules vary throughout the state but normally include: 1) the individual must not disobey any federal, state, county or city laws or ordinances or any rules set down by a parent or probation officer; 2) the individual must follow some curfew; 3) he may not be permitted to leave the state or jurisdiction without permission of the probation officer; 4) he must be in school on a full time basis; 5) he must have a job if one is available; 6) he may be limited regarding who he may associate with; 7) he may have driving restrictions; 8) he may have to report to the probation officer at certain specified times; or, 9) he may have to go to or be involved in mental health evaluations.

Questionnaire data revealed that when probation was used contact was normally made with the juvenile once a week and the length of probation varied from 30 days to an indefinite term. Nineteen of the respondents indicated they rarely or never set indefinite periods while thirteen

stated they rarely or never use short-term probation. Probation was used by all respondents to some degree, with 11 officers indicating they used it in 30 to 60 percent of all cases handled and 13 officers indicating they used it in 60-100 percent of all cases handled. Yet, the Governor's Crime Control Juvenile Court statistics for 1971 indicated that 210 juveniles or 21 percent of all juveniles processed for 1971 were placed on probation.⁶³ This discrepancy is not clearly understood but it is assumed that perhaps the probation officers responding did not understand the question.

Probation is presently used at both the preliminary inquiry stage described earlier and at the formal court stage. Its use at the preliminary inquiry stage is to give the probation officer some leverage in following up on cases at an informal level in order to avoid the filing of a formal petition alleging delinquency. Hopefully the juvenile involved can be guided away from delinquent behavior during the informal process. An alternative to this approach would be to have a petition filed against the youth or let the judge conduct all preliminary inquiries and set probation. This could drastically effect the way probation officer now handle cases and it would increase the load on the juvenile judge, bringing about the possibility of more formal petitions

⁶³Information provided by the Governor's Crime Control 1971 Statewide Juvenile Court Statistics.

being filed against the juvenile. Another alternative would be for the probation officer to continue to conduct the preliminary inquiry but with the consent of all the necessary parties when probation is used. This is basically the situation now because if the juvenile does not like the terms of probation set by the probation officer he can appeal to the judge. However, this procedure is not uniform across the state and the consent decree may not even be in writing in some jurisdictions. It should also be noted that there is no formal procedure for advising the juvenile that he can protest the preliminary inquiry. The Juvenile Justice Advisory Council to the Governor of Montana has recommended that when the consent decree is used at these informal hearings the following procedure should be followed:

Any probation or detention imposed under this section against any youth must conform to the following procedures:

a) Every consent adjustment shall be reduced to writing, signed by the youth and his parents or the person handling legal custody of the youth;

b) Approval by the youth court judge shall be required where the complaint alleges commission of a felony or where the youth has been detained.⁶⁴

This recommendation would provide that the youth could only agree to probation at the informal level if both he and his legal guardian sign the consent decree. In felony cases

⁶⁴Revised Codes of Montana 1947 (1974), C. 12, Sec. 10-1210, p. 147.

the judge would give administrative review and in any case the youth could request a review by the county attorney or judge according to the recommendations set forth under the new Montana Youth Act.

Generalized duties - Section 10-623, Revised Codes of Montana, 1947 further provides:

The chief probation officer, under the direction of the judge, shall have charge of the work of the probation department. The probation department shall make such investigation as the juvenile court may direct, keep a written record of such investigations, and submit the same to the judge or deal with the same as the judge may direct. The department shall furnish to any delinquent child placed on probation or any parent or guardian of such child a written statement of the conditions of probation, and shall keep informed concerning the conduct and condition of each person under its supervision, and shall report thereon to the judge as he may direct. Each probation officer shall use all suitable methods to aid persons on probation and bring about improvements in their conduct and condition. The probation department shall keep full records of its work, and shall keep accurate and complete accounts of money collected from persons under its supervision, and shall give receipts therefore and shall make reports thereupon as the judge may direct. Probation officers, for the purpose of this act, shall have the powers of police officers.

All information obtained in the discharge of official duty by any officer or other employee of the juvenile court shall be privileged and shall not be disclosed to anyone other than the judge and others entitled under this Act to receive such information, unless and until otherwise ordered by the judge.⁶⁵

Questionnaire data also indicated that 10 probation officers are involved in completing presentence investigations for the adult court, 5 probation officers complete social investigations on divorce cases, 25 officers make referrals to

⁶⁵Revised Codes of Montana 1947, (1973), C. 6, Sec. 10-623, p. 144.

other agencies, 11 officers were involved in handling some 40 attempted suicide cases, and 12 officers were involved in offender work programs. In some instances these duties are incompatible with other duties of the officer, and as in presentence investigations of adults, some duties are specifically under the authority of the adult probation officer. Although role conflicts vary among districts, in some areas the role overload is so heavy elimination of certain duties proves to be the practical way of dealing with the situation. Priorities vary throughout the state depending upon the probation officer's background and the duties emphasized by the judge.

Work in the juvenile probation departments requires assistance from foster care coordinators, secretaries, work study students, college students working on practicums, and volunteers. The chief probation officer is normally the individual who screens all applicants.

Foster care coordinators work at maintaining court operated foster homes by training and counseling foster parents and counseling youth in foster care. They also are responsible for licensing and maintaining the court operated foster homes, administering the foster care program, coordinating foster care with other agencies, and developing community awareness for foster care. This individual is very important in making homes available to the court on both a long and short term basis, thus providing the court

with an alternative placement for many youth. Foster care does not eliminate the need for jails or institutions, but aids the court in helping troubled youth gain a better perspective on life so, hopefully, they can eventually adjust at home and in the community.

Secretaries act as receptionists, typists, and file clerks. As such, they receive incoming telephone calls and people, set up appointments, absorb complaints until they can be transferred to a probation officer, and type and file all correspondence, claims, federal grants, foster care reports, petitions, citations, court orders, and other miscellaneous items. Additionally, as file clerks, they must process and file tickets, notices to appear, offense reports from all law enforcement agencies, and statistical reports on each juvenile processed through the system. All personnel records are maintained by secretaries.

Work study students and students working on their practicums are used in only three judicial districts. Coming from numerous disciplines, these individuals function as an assistant to the probation officer. They process and followup cases after detention, do psychological testing, counseling and research, and even provide assistance in foster care. The work-study program provides the juvenile probation officer valuable assistance while at the same time needy students are given an opportunity to work approximately fifteen hours a week without jeopardizing their

education. The federal government funds seventy-five percent of the program and local sources provide the other twenty-five percent.

Generally volunteers work in the same capacity as work-study students but do not receive any money for their services although in some instances they may receive college credit. Recently however, a volunteer position has been created which provides for payment of wages funded through the University Year In Action Division of the Volunteer In Service to America program. Most volunteers work for the personal satisfaction of helping someone in trouble however.

Informal Court - The informal court procedure follows when a juvenile's delinquent behavior pattern continues even after the juvenile probation officer has placed him under some supervision and attempted to work with him. In such cases, usually the probation officer contacts the judge and requests a hearing before the court without yet issuing a formal petition alleging delinquency. The judge then normally makes an informal disposition. At this point he can not declare the juvenile a delinquent as this requires preparing and filing a formal petition, nor can he commit him to an institution as this requires formal adjudication.

Questionnaire data indicated that when the informal court procedure was used, 20 of the officers stated that an attorney was not involved and that the individual presenting the case before the judge was the county attorney, juvenile

probation officer, or the parents, most often it being the probation officer. Most of the respondents felt this informal hearing before the judge, usually in his chambers, was helpful to the juvenile because they do not then have to be declared delinquent.

When a youth is placed on probation in the informal court proceeding, the normal practice is to attempt to involve the parents as well as the probation officer in the supervision of the youth. Failure to comply with the judge's conditions generally means additional probation time or formal processing.

Formal Treatment

Once a juvenile has been processed through the informal phase of the juvenile court, and fails to respond positively, the primary method of providing the protection demanded by the community is processing the youth through the formal portion of the juvenile court. The juvenile probation officer functions in many areas of the formal court process. As discussed in the Gault decision, in some instances the end result of handling an offender in the formal court process directly affects the role the probation officer must take in the informal system.⁶⁶

⁶⁶In re Gault, 387 U.S. 1, (1967); The United States Supreme Court, in reversing Gault, noted that the probation officer in the Arizona system not only arrested juveniles, filed petitions, and supervised detention homes, but he also acted as counsel for the juvenile.

Petition - Formal court procedure begins with the issuing of a petition alleging delinquency. Section 10-602, R. C. M., 1947 defines delinquency as:

- (a) a child who has violated any ordinance of any city;
- (b) a child who has violated any law of the state, provided, however, a child over the age of sixteen (16) years who commits or attempts to commit murder, manslaughter, rape when committed under the circumstances specified in subdivisions 3 and 4 of Section 94-401, R.C.M. 1947, arson in the first and second degree, assault in the second degree, assault in the first degree, robbery, first or second degree, burglary while having in his possession a deadly weapon, and carrying a deadly weapon or weapons with intent to assault, shall not be proceeded against as a juvenile delinquent but shall be prosecuted in the criminal courts in accordance with the provisions of the criminal laws of this state governing the offenses above listed.
- (c) a child who by reason of being wayward or habitually disobedient is uncontrolled by his parent, guardian, or custodian.
- (d) a child who is habitually truant from school or home.
- (e) a child who habitually so deports himself as to injure or endanger the morals or the health of himself or others.
- (f) a child who unlawfully, negligently, dangerously, or willfully operates a motor vehicle on the highways of the state or on the roads and streets of any county or city so as to endanger life or property, and a child who operates a motor vehicle on such highways, roads or streets while intoxicated or under the influence of intoxicating liquor, or any other driving infractions that show the child to be lacking parental supervision or a disrespect for the traffic laws of this state.⁶⁷

In Montana the county attorney who is required to assist the probation officer in investigating all complaints and who is to prosecute all persons charged with violating the provisions of the juvenile court act, is required by law to prepare, sign and file the petition when a juvenile is

⁶⁷Revised Codes of Montana 1947, (1968), C. 6, Sec. 10-602, p. 577.

formally charged with acts of delinquency.⁶⁸

Citation - When a petition is filed the facts which bring the child under the juvenile court act must be stated including the names and addresses of the parents and any other information necessary to properly inform the court of the matter.⁶⁹ After the petition has been filed and after such investigation as the court may direct, the court then issues a citation briefly reciting the substance of the petition, unless the parties involved appear voluntarily. Those individuals who have the custody and control of the child are also required to appear personally with the child before the court. If the person in control of the child is someone other than the parent or guardian, then the parent or guardian is to be notified of the case if he or she lives in the county where the hearing is taking place. Citations may also be served on anyone else who the judge feels should be in the court.⁷⁰ The citation must be served personally at least 24 hours prior to the time fixed by the court for its return, and if it cannot be served personally, the judge may order service by registered mail or by publication. It may be served by any able person under the direction of the

⁶⁸Revised Codes of Montana 1947, (1968), C. 6, Sec. 10-629, p. 589.

⁶⁹Revised Codes of Montana 1947, (1973), C. 6, Sec. 10-605, p. 139.

⁷⁰Revised Codes of Montana 1947, (1968), C. 6, Sec. 10-606, p. 580.

court, but generally should be handled by a peace officer like a warrant for arrest.⁷¹ If those cited fail to appear they may be proceeded against for contempt of court.⁷²

Hearing - The hearing itself is conducted in a very informal manner either in chambers or in the courtroom depending on the judge. When the hearing is conducted in the formal sense, it is assumed the juvenile has been notified of his rights prior to any decision being made by the court. Those rights, as stated in Section 10-604.1, R.C.M. 1947, are:

The juvenile in any case to be heard on a written petition charging delinquency shall have the right to demand a jury trial and shall have the right to be represented by counsel. The rights are deemed waived if not exercised.⁷³

The hearing is held to determine whether the youth should be adjudicated a delinquent.

Disposition - In the event the judge determines the juvenile to be a delinquent, a number of options are open as to disposition of the case: 1) place the child on probation or under supervision of the court for such time as the judge sees fit; 2) commit the child to a public or private

⁷¹Revised Codes of Montana 1947, (1968), C. 6, Sec. 10-607, p. 580.

⁷²Revised Codes of Montana 1947, (1968), C. 6, Sec. 10-608, p. 581.

⁷³Revised Codes of Montana 1947, (1973), C. 6, Sec. 10-604.1, p. 138.

institution or to the Department of Institutions, or to foster care; 3) commit a child sixteen (16) years of age or older to the Department of Institutions for evaluation to determine if the youth is suitable for placement at the Youth Forest Camp. If so, and there is space available, the judge may order the youth placed there; 4) commit the child to a reception and evaluation center not to exceed 45 days; or 5) order any further care and treatment he feels would be in the best interests of the child.⁷⁴

The judge generally spends a considerable amount of time counseling and trying to determine what the youth's attitude is and whether the court can work with that attitude without ordering institutionalization because of the offenses presented against the youth. Probation officers contribute substantially to the judge's needs by submitting reports to the court which include a social history and recommendations. The judge makes no decision until he feels he has adequately weighed input from the youth, his parents or guardian, an attorney (when there is one involved in the case), and the probation officer. This combination legal/social approach aids in altering delinquent behavior, but in some cases, if the response of the youth remains negative, alternatives narrow and the possibility of commitment to an institution increases significantly. Too, the availability of resources at the community level and the interest individuals show in

⁷⁴Revised Codes of Montana 1947, (1973), C. 6, Sec. 10-611, p.p. 141, 142; and (1968), C. 6, Sec. 10-611.1, p. 583.

extending help to troubled youths affects the judge's decision, especially as to whether institutionalization is necessary.

Appeal - If the youth involved is not satisfied with the decision rendered by the judge, he is entitled to an appeal. Section 10-630, R. C. M., 1947, provides in part:

an appeal in the case of a delinquent child shall not suspend the order of the court, nor shall it discharge the delinquent child from the custody of that court or of the person, institution, or agency to whose care such delinquent child shall have been committed, unless that court shall so order.⁷⁵

The Supreme Court, on appeal, may make whatever modifications of the District Court Order they deem necessary in the interest of justice.

IDENTIFYING HOW THE SYSTEM MAINTAINS ITS WORKING STRUCTURE

The maintenance resource concentrates on keeping people in the system in order to preserve a steady state. Katz and Kahn list six main sections under the maintenance resource: 1) selection of employees; 2) indoctrination of employees; 3) regulation of employees; 4) uniformity; 5) precedent decisions; and, 6) standard operating procedures.⁷⁶

⁷⁵Revised Codes of Montana 1947, (1968), C. 6, Sec. 10-630, p.p. 589, 590.

⁷⁶Katz and Kahn, p.p. 87-89.

The attempt here is to observe how the juvenile probation officer's role fits into this portion of the system.

Selection of Employees - Each of the judicial districts has its own procedure for selecting employees. Montana law provides that in the selection of probation officers the judge may appoint a discreet person of good moral character with preference given to people who possess either a B.A. degree in the field of behavioral science or a B.A. degree in some other field with three years experience.⁷⁷ In practice, however, several judicial districts have not always followed these guidelines.

The selection process varies throughout the state but it is normally based on newspaper or word of mouth advertising. Once the individual submits a resume' it may be screened by either the district judge or the chief probation officer, or both. If the chief probation officer does the initial screening, he checks the backgrounds of all prospective applicants. This includes looking into their educational and work background, making contact with law enforcement agencies to determine if the applicant has a prior juvenile or criminal record, and determining if the applicant would be able to complete the duties of the position. The chief probation officer determines this through the background

⁷⁷ Revised Codes of Montana 1947, (1973), C. 6, Sec. 10-622, p. 143.

investigation and personal interviews. Then applications are narrowed down and submitted to the district judge for his review. The chief probation officer may recommend a particular applicant but the judge makes the final determination. This process, though it varies from area to area, appears to be adequate for the amount of employment done in Montana. The more formalized process, including an intensive testing program, used in other more populated states does not seem to be necessary.

Dave Hopkins, a recent law student, conducted a brief study of twenty-five states to determine who appoints and fixes salaries of juvenile probation officers. Nineteen of the twenty-five either had the judge or the juvenile court appoint probation officers.⁷⁸ In four of the remaining six

⁷⁸Code of Alabama 1958, (1959), C. 7, Sec. 13§ 360, p.p. 826, 827; Arizona Revised Statutes (1974), C. 2, Sec. 8-203, p. 1010; Arkansas Statutes Annotated 1947, (1964), C. 1, Sec. 45-218, p. 312; Colorado Revised Statutes 1963, (1964) C. 22, Sec. 22-8-8, p. 778; Connecticut General Statutes Annotated (1960), C. 301, Sec. 17-57, p. 78; Delaware Code Annotated (1971), C. 11, Sec. 10-1131, p. 93; Annotated Laws of Massachusetts (1968), C. 276, Sec. 276-83A, p. 355; Annotated Missouri Statutes (1962), C. 211, Sec. 211.351, p.p. 236-237; Revised Statutes of Nebraska 1943 (1965), C. 29, Sec. 29-2210, p. 470; Nevada Revised Statutes (1973), C. 62, Sec. 62-110, p. 2001; New Jersey Statutes Annotated (1971), C. 168, Sec. 2A:168-5, p. 374; New Mexico Statutes Annotated (1973), C. 13, Sec. 13-14-7, p.p. 108-109; North Dakota Century Code Annotated, (1947), C. 27-20, Sec. 27-20-05, p. 151; Ohio Revised Codes (1968), C. 2151, Sec. 2151-13, p. 543; Code of Laws of South Carolina 1962 (1962), C. 7, Sec. 15-1130, p. 177; South Dakota Compiled Laws 1967 (1969), C. 26-7, Sec. 26-7-3, p. 153; Tennessee Code Annotated 1953 (1974), C. 10, Sec. 55-10-73, p.p. 169-170; Revised Codes of Washington Annotated (1962), C. 13.04, Sec. 13.04.040, p. 158.

states the judge also made the appointment but it was based upon the recommendation or approval of either the county commissioners,⁷⁹ the juvenile justice commission,⁸⁰ the state Department of Juvenile Services,⁸¹ or the Welfare Department.⁸² In another state the appointment was made by the Department of Welfare⁸³ while in another it was made by the Governor upon the recommendation of either the probate judge or judges in each county.⁸⁴ The study was not intended to determine how juvenile probation officers are selected but to determine who appointed them. Some states select juvenile probation officers from various state merit examinations or civil service examinations which may include some psychological testing and oral interviews.⁸⁵ Where testing is used it must conform to the Civil Rights Act of 1964.

Ted Rubin discusses the issue briefly in his book, A Comparative Study: Three Juvenile Courts, when he discussed his

⁷⁹Oklahoma Statutes Annotated (1974), C. 5, Sec. 10, § 1505, p. 63.

⁸⁰West's Annotated California Codes: Welfare and Institutions Code, (1972), C. 2, Sec. 575, p. 84.

⁸¹Annotated Codes of Maryland 1957, (1972), Sec. 52A, §14, p. 557.

⁸²Code of Virginia 1950 (1960), C. 8, Sec. 16.1-203, p.p. 70,71.

⁸³West Virginia Code (1966), C. 49, Sec. 49-5-17, p. 275.

⁸⁴Michigan Statutes Annotated (1968), Sec. 16.101, p. 11.

⁸⁵Ted Rubin, Three Juvenile Courts: A Comparative Study, (Denver: The Institute for Court Management, 1972) p.p. 151-169.

recommendation regarding Utah's selection procedure:

The written tests given by the Division should really fit the qualifications sought for probation officer, or, for example, court clerk. The U.S. Supreme Court decision in Griggs v. Duke Power Co. held the civil rights act of 1964 precluded the use of testing as a condition of employment unless the test demonstrated a reasonable measure of job performance; tests must be predictive of success on the job, and must not discriminate against minority groups.⁸⁶

Since the Montana system is not a large system like that in California or New York or some other states, it is recommended that no change be made in the present selection process. If change is indicated later, more data should be obtained from each judicial district to determine their procedure, and then this data should be compared to the Civil Rights Act of 1964 and data from other states to learn more about a more sophisticated selection process before instituting any change.

Indoctrination - Once someone is selected for the probation officer's job the next step is indoctrinating that person into the juvenile court system. There is no formal training process for probation officers in Montana on a statewide basis. The training a new officer receives is in-service but occasionally he may go to a school sponsored by the Montana Law Enforcement Academy in Bozeman, Montana.

There are four options available for indoctrinating new employees and extending training of experienced employees:

1) leave the system unchanged; 2) provide a formalized

⁸⁶Ibid., p.p. 421, 422.

training program in the district or combine some districts; 3) provide a formalized training program through the Montana Law Enforcement Academy which would include a combination of information for new employees as well as experienced employees; or 4) provide a formalized training program through the Montana Correctional Association or the Juvenile Probation Officers Association with the financial assistance of the Board of Crime Control.

Alternative number one is poor because learning and keeping current in the field is important to maintaining the system. Alternative number two would have to be sufficiently structured and some type of financial assistance would be needed in order to devise a curriculum and provide transportation and instructors. Classroom space and teaching materials would be needed also. The best financial resource would be the Board of Crime Control since they spent approximately \$14,000.00 on education and training programs in 1973.⁸⁷ Option number three would be good in that the Montana Law Enforcement Academy has been used periodically in the past for juvenile probation officer training, but to be effective the training should be handled as an annual ongoing program. Perhaps experienced probation officers could contribute special techniques and procedures developed over time. Since it is unknown whether

⁸⁷Information provided by Steve P. Nelsen, Juvenile Programs Coordinator, Board of Crime Control.

the Law Enforcement Academy could accomodate such a program, option number four is better. It is similar to number three the main difference being that either the Montana Correctional Association or the Juvenile Probation Officers Association would contract with the Board of Crime Control to obtain financial assistance. Both options three and four would improve over two because they would incorporate a larger representation of probation officers on a statewide basis.

Regulation of Employees - Once the individual is in the system his behavior is regulated in several different ways if he is going to stay in the system. The most common form of regulation is the legal compliance to the role established by law and the judge. Montana law describes what role the probation officer is required to fill and the judge of each judicial district sees that the role expectations are met. The role may vary some depending upon district procedure but basically it is the same across the state. There have been approximately three judicial districts where the probation officer has been eliminated from the system either through a change of judges or because of not fullfilling his role expectations. This situation has caused concern among probation officers which has led to discussion of tenure or job security.

Tenure is a provision that prohibits the firing or dismissal of a probation officer without cause. It further

may provide for a hearing to determine if the dismissal was just. If it was made without proper evidence of just cause the probation officer must be reinstated. A problem tenure brings is that it may keep an individual in the system who is just doing enough to get by. Also it would create difficulties in situations of personality conflicts between new judges and probation officers already hired. It may provide some job security but if the judge is determined to dismiss an employee he can create situations making it difficult for the employee to stay. It is recommended that tenure in its true sense not be included in any legislation but that some form of hearing should be permitted so the officer can be treated fairly and given a chance to perform his duties under a new judge, at least for a trial period.

Fringe benefits including retirement, vacation, insurance, sick leave, leave of absence, and holidays are rewards used to keep individuals in the system. Under county government, probation officers receive:

1) Public Employee Retirement System. This particular retirement program provides that anyone who is a member of P.E.R.S. may retire at a minimum age of 55 with ten years of creditable service and an actuarial reduction in benefits.⁸⁸ At 60 years of age and ten years creditable service an

⁸⁸Revised Codes of Montana 1947, (1968), C. 20, Secs. 68-2001 and 68-2003, p.p. 131, 132.

employee can retire with full benefits and at that time he can withdraw 100 percent of his contributions including accrued interest with ten or more years of service.⁸⁹ The regular retirement benefit provides the employee with "1/65 of his final compensation multiplied by the number of years of his creditable service".⁹⁰ Other benefits under this program are disability retirement and death benefits available to:

(1) a member who has not reached seventy (70) years of age but has become disabled for duty-related reasons, as defined in subsections (3) and (4) of this section, is eligible for disability retirement.

(2) a member who is not eligible for service or early retirement but has completed ten (10) years of creditable service and has become disabled while in active service for other than duty-related reasons, as defined in subsections (3) and (4) of this section, is eligible for disability retirement.

(3) 'Disabled' means unable to perform his duties by reason of physical or mental incapacity.

(4) 'Duty-related' means as a result of an injury or disease arising out of or in the course of his employment with an employee.⁹¹

The death benefits provide the beneficiary with a lump sum refund of the member's accumulated contributions plus

⁸⁹Revised Codes of Montana 1947, (1968), C. 20, Sec. 68-2001, p. 131.

⁹⁰Revised Codes of Montana 1947, (1968), C. 20, Sec. 68-2003 (2), p. 132.

⁹¹Revised Codes of Montana 1947, (1968), C. 20, Sec. 68-2101 (1-4), p.p. 131, 132.

interest or a monthly life annuity after ten years of service.⁹² The employee must contribute 5.75 percent of his salary to the P.E.R.S. and the employer supplements this with 4.6 percent of the employee's salary until June 30, 1975, when the employer's contribution increases to 4.9 percent.⁹³ One of the main exclusions the P.E.R.S. provides under this retirement plan is that persons who are members of another state or federal retirement program are not eligible to collect benefits under P.E.R.S. There are ten other exclusions pertaining to employees which are discussed in Section 68-1602, R.C.M. 1947.⁹⁴ A criticism of this retirement program is that members who quit with less than ten years service are unable to collect interest on the money withdrawn.

2) Annual Vacation Leave. Every full time employee of the county receives the following vacation benefits after he has been continuously employed for a minimum of one year:

Vacation leave credits shall be earned in accordance with the following schedule:

- (a) From one (1) full pay period through ten (10) years of employment at the rate of fifteen (15) working days for each year of service;
- (b) After ten (10) years through fifteen (15) years of employment at the rate of eighteen (18) working days for each year of service;

⁹²Revised Codes of Montana 1947, (1968), C. 20, Sec. 68-2302(1-2), p. 137.

⁹³Revised Codes of Montana 1947, (1973), C. 20, Secs. 68-1902 and 68-2504, p.p. 129, 140.

⁹⁴Revised Codes of Montana 1947, (1973), C. 20, Sec. 68-1602(8), p. 121.

(c) After fifteen (15) years through twenty (20) years of employment at the rate of twenty-one (21) working days for each year of service;

(d) After twenty (20) years of employment at the rate of twenty-four (24) working days for each year of service. Vacation leave may not exceed thirty working days.⁹⁵

3) Insurance. The insurance rate varies throughout the state. It is assumed that all full time probation officers are under some group insurance plan but there are no data available to confirm this.

4) Sick Leave. Reference is given to sick leave in Volume 4, Part 1, Section 59-1005 of the Revised Codes of Montana, 1947 which states:

absence from employment by reason of illness shall not be chargeable against unused vacation leave credits unless approved by the employee.⁹⁶

An individual who is employed for 90 days or more is entitled to sick leave at the rate of one working day per month for every full month's pay period. There are no restrictions on the number of days accumulated but no sick days can accrue for someone who is on a continuous leave of absence exceeding 15 calendar days. Upon termination of employment an employee receives an amount equal to one-fourth of the pay attributed to his accumulated sick leave. This reim-

⁹⁵Revised Codes of Montana 1947, (1973), C. 10, Secs. 59-1001 and 59-1002, p.p. 13, 14.

⁹⁶Revised Codes of Montana 1947, (1973), C. 10, Sec. 59-1005, p. 14.

bursement is computed on the employee's salary or wage at the time the sick leave was earned.⁹⁷

5) Leave of Absence. Under Montana law "vacation leave shall not accrue during a leave of absence without pay the duration of which exceeds fifteen (15) days."⁹⁸ It is unknown how often a leave of absence is used but in some instances it has been used to continue further schooling for the probation officer.

6) Social Security. Both the county and the employee pay 5.5 percent of earnings as provided for under the Montana Code.⁹⁹

7) Paid Holidays. There are eleven paid holidays allotted to county employees including: New Year's Day (January 1), Lincoln's Birthday (February 12), Washington's Birthday (third Monday in February), Memorial Day (last Monday in May), Independence Day (July 4), Labor Day (first Monday in September), Columbus Day (second Monday in October), Veterans Day (fourth Monday in October), Thanksgiving Day (fourth Thursday in November), Christmas Day (December 25), and the State General Election Holiday.¹⁰⁰ However the pro-

⁹⁷Revised Codes of Montana 1947, (1973), C. 10, Sec. 59-1008, p.p. 15,16.

⁹⁸Revised Codes of Montana 1947, (1968), C. 10, Sec. 59-1004, p. 78.

⁹⁹Revised Codes of Montana 1947, (1968), C. 10, Sec. 59-1101, p.p. 79-88.

¹⁰⁰Revised Codes of Montana 1947, (1973), C. 1, Sec. 19-107, p.p. 7, 8.

bation officer is on call on a 24-hour basis requiring him to work at times after normal working hours, evenings, weekends, and holidays.

Salary is another reward used to keep an individual in the system. Revised Codes of Montana 1947, Section 10-622, provides in part: (as of 1973)

In every judicial district of the state of Montana the judge thereof having jurisdiction of juvenile matters may appoint one (1) discreet person of good moral character, who shall be known as the chief probation officer of such district.....Such officer shall receive for his services such sum as shall be specified by the Court upon appointment, provided that the judge of the district court may employ him on a yearly salary not to exceed eleven thousand dollars (\$11,000.00).....the judge having jurisdiction of juvenile matters may also appoint such additional persons.....to serve as deputy probation officers as the judge deems necessary; their salaries to be fixed by the judge at the time of appointment, provided that such salaries shall not exceed ninety (90) percent of the salary of the Chief Probation Officer.

The maximum set by law does not necessarily mean that it will be the salary decided upon. Twelve of the eighteen judicial districts pay the maximum for chief probation officers. Six judicial districts employ sixteen deputies of which twelve receive the maximum. The other four chief probation officers receive between \$9,000.00 and \$9,800.00 and the other twelve deputies receive between \$7,000.00 and \$9,500.00 per year. Salary increases vary from district to district. A definite morale problem has been created because of the need to go to the legislature every few years in order to seek a salary

¹⁰¹ Revised Codes of Montana 1947, (1973), C. 6, Sec. 10-622, p. 143.

increase. Many of the younger officers tend to leave the system within 5 to 7 years because of this problem. Several probation officers have worked to alleviate this problem coming up with the following legislative proposals:

1) At one point in 1970 the probation officers proposed that they receive a certain percent of the district judge's salary. This proposal was defeated before it ever got to the legislature because of judicial opposition.

2) House Bill 339 in 1973 was presented to the Montana Legislative Session, reading in part as follows:

In judicial districts which include one (1) or more counties of the first class, the maximum salary shall be the average salary received by the elementary school principals in the counties of the first class contained within the district. Provided, however, that the juvenile probation officer has a Master's Degree in a subject under subsection (2) above, and holds comparable qualifications of the average elementary school principal. The determination of the average salary shall be made by certification from the county superintendent in the school district or districts which include the largest portion of county or counties of the first class, before March 1 each year, or in sufficient time to allow adequate budgetary consideration by the county commissioners.¹⁰²

This bill was defeated, many probation officers and judges felt, because it discriminated against all probation officers who did not reside in first class counties.

3) As had been done in the past, in 1973 several juvenile probation officers lobbied for an increase in the maximum set by the legislature, which was from time to time successful. However in the 1974 legislative session exten-

¹⁰²43rd Legislative Assembly, H.B. 339, (Helena, 1973).

sive research and drafting was put into a proposal which was introduced in the 1974 Legislative Session as Senate Bill 683. The purpose of the bill was to amend Section 10-622 of the Revised Codes of Montana 1947, as follows:

Preference in appointments shall be given to a person, or persons, who possess a Bachelor's Degree from an accredited college or university in the Behavioral Sciences, and, or experience in work of a nature related to the duties of the probation department as set forth in Section 10-623. Such officers shall receive for his services such sum as shall be specified by the court upon appointment, provided that the judge of the district court may employ him on a yearly salary according to the minimum scale as follows:

- (1) Chief Probation Officer
 - a. Chief I -- three (3) years experience in the field of probation, or a Bachelor's Degree in Behavioral Sciences, or a Master's Degree in Behavioral Sciences -- thirteen thousand (\$13,000.00) dollars.
 - b. Chief II -- five (5) years experience in the field of probation, or a Bachelor's Degree in Behavioral Sciences and three (3) years experience in the field of probation, or a Master's Degree in Behavioral Sciences and two (2) years experience in the field of probation -- fifteen thousand (\$15,000.00) dollars.
 - c. Chief III -- seven (7) years experience in the field of probation, or a Bachelor's Degree in Behavioral Sciences and five (5) years experience in the field of probation, or a Master's Degree in Behavioral Sciences and four (4) years experience in the field of probation -- seventeen thousand (\$17,000.00) dollars.
 - d. Chief IV -- nine (9) years experience in the field of probation, or a Bachelor's Degree in Behavioral Sciences and seven (7) years experience in the field of probation, or a Master's Degree in Behavioral Sciences and six (6) years experience in the field of probation -- nineteen thousand (\$19,000.00) dollars.

The judge having jurisdiction of juvenile matters may also appoint such additional persons giving preference to persons having the qualifications suggested for appointment as the chief probation officer to serve as deputy probation officers as the judge deems necessary; their salaries shall not exceed ninety (90) percent of the salary of the Chief Probation Officer and according to the minimum scale as follows:

- (2) Deputy Probation Officers
 - a. Deputy I -- three (3) years experience in the field of probation, or a Bachelor's Degree in Behavioral Sciences, or a Master's Degree in Behavioral Sciences -- Eleven thousand (\$11,000.00) dollars.
 - b. Deputy II -- five (5) years experience in the field of probation, or a Bachelor's Degree in Behavioral Sciences and three (3) years experience in the field of probation, or a Master's Degree in Behavioral Sciences and two (2) years experience in the field of probation -- Thirteen thousand (\$13,000.00) dollars.
 - c. Deputy III -- seven (7) years experience in the field of probation or a Bachelor's Degree in Behavioral Sciences and five (5) years experience in the field of probation, or a Master's Degree in Behavioral Sciences and four (4) years experience in the field of probation -- Fifteen thousand (\$15,000.00) dollars.
 - d. Deputy IV -- nine (9) years experience in the field of probation, or a Bachelor's Degree in Behavioral Sciences and seven (7) years experience in the field of probation, or a Master's Degree in the Behavioral Sciences and six (6) years experience in the field of probation -- seventeen thousand one hundred (\$17,100.00) dollars.

An advance to the next level for Chief Probation Officer or Deputy Probation Officer not only requires the above qualifications but also the approval of the judge having jurisdiction of juvenile matters. Salaries on each level shall be supplemented by the standard cost of living increase as established by law. The salary of such officer shall be apportioned among and paid by each of said counties in which said officer shall be appointed to act, in proportion to the services received in such counties for the year then current, except that where such officials are appointed for one

(1) county, their salaries shall be paid by that county.¹⁰³

This bill was also defeated with no explanation given except that some legislators were opposed to a cost of living increase and others interpreted the bill as giving all probation officers \$19,000.00 per year.

(4) Senate Bill 682 was also introduced in the 1974 legislative session to amend Section 10-622 of the Revised Codes of Montana 1947, as follows:

Such officer shall receive for his services such sum as shall be specified by the court upon appointment provided that the judge of the district court allow increments for additional educational and professional experience and annual increase in cost of living.¹⁰⁴

This bill was amended in committee and revised to show a change in the maximum limit of salary from \$11,000.00 to \$12,500.00. This bill was passed because the district judge has inherent powers to regulate salaries of court personnel, including juvenile probation officers, so long as the salary is reasonable. What are inherent powers? Jim R. Carrigan defines inherent powers in his essay on "Inherent Powers of the Courts" as:

Inherent powers consist of all powers reasonably required to enable a court to perform efficiently its judicial functions, to protect its dignity, independence and integrity, and to make its lawful actions effective. These powers are inherent in the sense that they exist because the court exists; the court is, therefore it has the powers reasonably required to act as an efficient court. Inherent judicial powers derive not from legislative grant or specific con-

¹⁰³43rd Legislative Assembly, S.B. 683, (Helena, 1974).

¹⁰⁴43rd Legislative Assembly, S.B. 682, (Helena, 1974).

stitutional provision, but from the fact it is a court which has been created, and to be a court requires certain incidental powers in the nature of things.¹⁰⁵

Should inherent powers apply to the regulation of salaries? Montana has not had any known case law regarding the setting of salaries for juvenile probation officers but some other states have had cases on this issue. In Re Salaries for Probation Officers of Bergan County tested a New Jersey statute granting judges the authority to appoint probation officers and to fix their salaries. The New Jersey Supreme Court upheld the constitutionality of the statute against a separation of powers argument and stated:

It may be conceded that the appointment of probation officers and the fixing of their salaries are not, at least in the purest sense, judicial acts. But the doctrine of the separation of powers was never intended to create, and certainly never did create, utterly exclusive spheres of competence. The compartmentalization of governmental powers among the executive, legislative, and judicial branches has never been watertight. It is simply impossible for a judge to do nothing but judge; a legislator to do nothing but legislate; a governor to do nothing but execute the law. The proper exercise of each of these three great powers of government necessarily includes some ancillary inherent capacity to do things which are normally done by the other departments....in appointing probation officers and in fixing their salaries the county judges act as legislative agents. Such legislative delegation to judicial officers is sanctioned by long usage and although the judiciary is not required to accept such

¹⁰⁵ Jim R. Carrigan, "Inherent Powers of the Courts", in Kenneth Cruce Smith, ed., Juvenile Justice, (Reno, Nevada: The National Council of Juvenile Court Judges, May, 1973) p. 40.

delegation should it appear incongruous or unduly burdensome, no such objection exists here.¹⁰⁶

An additional source regarding this issue was the case of Noble County Council v. State where the Supreme Court of Indiana held:

The court has inherent and constitutional authority to employ necessary personnel with which to perform its inherent and constitutional functions and to fix the salary of such personnel, within reasonable standards and to require appropriation and payment therefor.... these mandates necessarily carry with them the right to quarters appropriate to the office and personnel adequate to perform the functions thereof. The right to appoint a necessary staff of personnel necessarily carried with it the right to have such appointees paid a salary commensurate with the responsibilities. The right cannot be made amendable to and/or denied by a county council or the legislature itself.¹⁰⁷

However, in the case of Leahey v. Farrell a Pennsylvania decision upheld the power of the legislature to regulate, within reasonable limits, the salaries of court personnel. Holding that the power did not rest inherently and exclusively in the district courts, the Supreme Court stated:

A court must first comply with reasonable fiscal regulations of the legislature. Should the legislature, or the county salary board act arbitrarily or capriciously and fail or neglect to provide a sufficient number of court employees or for the payment of inadequate salaries to them, whereby the efficient admini-

¹⁰⁶In re Salaries, 278 A. 2d 417, 418, 419 (1971).

¹⁰⁷Noble County Council v. State, 243 Ind. 172, 125 N.E. 2d 709, 713 (1955); similar conclusions as cited above were found in the cases of State Ex Rel Weinstein v. St. Louis County, 451 S.W. 2d. 99 (1970); Commonwealth Ex Rel Carroll v. Tate, 274 A. 2d 193 (1971); Smith v. Miller, 153 Colo. 35, 384 P. 2d 738 (1963); Judges for Third Judicial Cir. v. County of Wayne, 172 N.W. 2d 436, 442 (Mich. 1969); and Com'rs' Ct. v. Martin, 471 S.W. 2d 100 (Texas Civ. App. 1971).

stration of justice is impaired or destroyed, the court possesses the inherent power to supply the deficiency.¹⁰⁸

Taken to its extreme, if juvenile probation officers disagree strongly with the judge on the setting of a particular salary the format for unionization and possible strikes could be set. This would hamper greatly the working relationship between the two which is vital to a successful operation. The most recent change in the salaries of juvenile probation was made with the passage of the Montana Youth Act in the 1974 legislative session, but this amendment still maintains the words "preference shall be given" which does not make qualifications mandatory. Also the new code contains the same provision of the maximum set by law, and even though this maximum increased the format continues to place the probation officers in the position of returning every other year to seek additional changes in the law regarding salaries. Perhaps the legislature does not want to give up the authority to regulate salaries of juvenile probation officers. If this is true, then probation officers have no alternative but to return to the legislature every other year to seek necessary changes in the maximum limit. It is recommended that further studies be conducted to determine an equitable salary range for probation officers which would be commensurate with qualifications and experience.

¹⁰⁸Leahey v. Farrel, 66 A. 2d 577, 580 (1949).

Psychological rewards are also used to keep an individual in the system. These rewards include such things as approval from leadership, peer acceptance, self-determination and internalization of values. There is no data available to determine the feedback from the district juvenile judge as to his approval or disapproval of the probation officer's performance. It is presumed that some feedback is given in each judicial district either by the judge or chief probation officer but without supporting data it is difficult to make any further statements or recommendations regarding this reward.

Peer acceptance reveals itself informally within probation departments, at schools and seminars, and during Association meetings. Here again, however, no data are available on a statewide basis to support any conclusions.

Self-determination and self-expression can give a probation officer a high degree of job satisfaction if he is permitted to make or be involved in most of the day-to-day job decisions. The officer is rewarded by learning his job and gaining experience enabling him to make decisions that will affect him and the people involved with him. If the officer is not allowed to make some decisions, low morale results. Here too no data are available on a statewide basis.

Internalization of the court value system into the value system of the individual produces a dedicated person

who has accepted fully the court's value system. It is known that such rewards do exist but there are no data to document any evidence.

Uniformity - No uniform method of processing offenders exists except as described earlier. Notices to appear, social history forms, budgets and other forms all vary from district to district. Although in a general sense the code provides for uniformity in a probation officer's role, there is no uniform method of implementing it. It is recommended that the judge and probation officer in each district determine their expected role requirements, but that forms be systemized on a statewide basis to assure uniform processing of juveniles. This would leave the performance of role with the judge and probation officer yet set down some guidelines to follow that could accomplish some uniformity without infringing upon the authority of the Judge.

Precedent Decisions and Standard Operating Procedures - What are the alternatives available in external demands upon the system that affect change in the laws and operating procedure? Public pressure, the legislature, the Supreme Court, and the Montana Constitution are the primary external sources affecting the system.

Public pressure can definitely change operating procedures. When the public becomes aroused regarding a particular way something is being handled in any part of the

system, they can protest to the executive branch of both state and local government, to the legislative branch in order to change particular laws, and to the judicial branch for processing the contested issue. Any one of these protests, especially if there is enough public criticism, can change policy within the system. Public pressure, in part, created the juvenile court system as explained in the introduction. If the public does not take an interest in the system, change is difficult to bring about.

The legislative group has a tremendous amount of power and is able to restructure the entire juvenile court system if it so desires. The laws enacted affect every part of the system. When change does come about, it is normally due to the introduction of legislation supported by groups of individuals desiring change. Such issues include pay raises for probation officers, or could even be an entire change in the structure of the code. The legislature must determine if the proposals will meet the needs of the state. Article II, Section 15 of the Montana Constitution provides "The rights of persons under 18 years of age shall include, but not be limited to, all the fundamental rights of this Article unless specifically precluded by laws which enhance the protection of such."¹⁰⁹ Both the Montana Supreme Court and the United States Supreme Court have handed down decisions

¹⁰⁹ Montana Constitution, Article 2, Section 15.

in recent years which have had a definite impact on applicable laws and operating procedures in an effort to protect these fundamental rights.

On May 15, 1967, the United States Supreme Court in hearing the case of Gerald Gault, a 15-year-old boy who was committed to a juvenile correctional institution in Arizona for making an obscene telephone call, held that several procedural rights had been violated. Justice Abe Fortas, when discussing the right to counsel, observed:

Appellant's charge that the juvenile court proceedings were fatally defective because the court did not advise Gerald or his parents of their right to counsel, and proceeded with the hearing, the adjudication of delinquency and the order of commitment in the absence of counsel for the child and his parents or an express waiver of the right thereto. The Supreme Court of Arizona pointed....to a provision of the juvenile code which it characterized as requiring 'that the probation officer shall look after the interest of neglected, delinquent and dependent children' including representing their interests in court...We do not agree. Probation officers, in the Arizona scheme, are also arresting officers. They initiate proceedings and file petitions which they verify, as here, alleging the delinquency of the child; and they testify, as here, against the child. And here the probation officer was also superintendent of the detention home. The probation officer cannot act as counsel for the child. His role in the adjudicatory hearing, by statute and by fact, is as arresting officer and witness against the child.¹¹⁰

Montana law provides for a formal petition which is to contain a brief recitation of the facts relating why the offender is before the court. The actual decision to initiate formal proceedings against a juvenile is normally made by

¹¹⁰In Re Gault, 387 U.S. 1 (1967).

the juvenile probation officer and the county attorney. When formal proceedings are instigated the juvenile is, or has been, advised of his rights but in most instances they do not ask for or receive a defense attorney. It is interesting to note that 24 out of 31 respondents to the questionnaire indicated either "always" or "frequently" that a defense attorney should be involved.

The petition is a very important formal document alleging delinquency against a juvenile and should be legally sufficient to stand up in court yet in some instances the preparation consisted of a generalized statement of the facts alleging delinquency rather than setting forth the alleged conduct with particularity, as required in Gault.¹¹¹ Since the probation officer is not an attorney he should not be required to prepare petitions or to prosecute juveniles in a formal hearing. It is recommended that the county attorney be assigned and compelled to perform his legal duty in this particular portion of the system. The alternative to this would be to have the probation officer continue to prosecute cases until Montana finds its Gerald Gault who will surely take this matter to the higher courts.

The question of "standard of proof" has also been raised with regard to juvenile proceedings. Should evidence introduced against the juvenile be based on a preponderance of evidence as in civil cases or beyond a reasonable doubt as

¹¹¹Ibid.

in criminal cases? Noah Weinstein outlined this problem well in his text, Supreme Court Decisions and Juvenile Justice, where he discussed the Winship case of March, 1970, and stated:

The United States Supreme Court (five members per Brennan, J.) held that:

1. Due process protected an accused in a criminal prosecution against conviction except upon proof beyond a reasonable doubt.
2. Although the Fourteenth Amendment did not require that a juvenile delinquency hearing conform with all the requirements of a criminal trial, nevertheless, the due process clause required application during the juvenile hearing of essentials of due process; and,
3. Thus, juveniles, like adults, were constitutionally entitled to proof beyond a reasonable doubt during the adjudicatory stage when the juvenile was charged with an act which would constitute a crime if committed by an adult.¹¹²

This particular decision indicates that, where a juvenile was charged with an offense that would constitute a crime if committed by an adult, in a delinquency hearing the evidence used must prove guilt beyond a reasonable doubt. Although this decision may have quite an impact on the Montana formal court procedure, the main emphasis of this paper is on the informal handling of offenders, therefore this problem was not researched in detail.

¹¹²Noah Weinstein, Supreme Court Decisions and Juvenile Justice, (Reno, Nevada: National Council of Juvenile Court Judges, 1973), p. 8; also see, In re Winship, 397 U.S. 358 (1970).

The transfer hearing provision is probably one of the most important sections in juvenile law because it authorizes the placement of certain types of cases into the adult system which is theoretically opposed to the labeling concept. In Montana, Section 10-603(c), Revised Codes of Montana 1947, provides:

When the juvenile court has jurisdiction of any child sixteen (16) years of age, or over, who is accused of committing or the attempt to committ murder, manslaughter, arson in the first degree, robbery, burglary, and carrying a deadly weapon with intent to assault, or who commits rape under the circumstances specified in subdivisions 3 and 4 of Section 94-4101, R.C.M. 1947, then the county attorney may request the juvenile court to be permitted to file an information against the juvenile in district court, or, when the facts warrant, the juvenile judge may order the county attorney to proceed against the juvenile in district court on an information.

Before making such order the juvenile judge must hear the matter by an informal preliminary hearing to determine first, if there is probable cause to believe the juvenile has committed the felony, and second, to determine whether under the circumstances it appears necessary for the best interests of the state that the juvenile be held to answer the information in district court.¹¹³

When adult court is being considered should there be more basic protection for the juvenile? At what point does the community receive protection from the youth being considered in a transfer hearing? What should the lower age limit be in a transfer hearing? If the youth is charged with a felony and transferred to the adult system will he be given

¹¹³ Revised Codes of Montana 1947 (1973), C. 6, Sec. 10-603, p.p. 137, 138.

treatment or punishment? Is he entitled to treatment, or deserving of punishment? In the Kent decision the juvenile court judge of the District of Columbia waived jurisdiction and transferred the case to the Federal District Court for the District of Columbia so Kent could be tried as an adult. Kent was found guilty of the charges in an adult court, but three years later, in 1966, his case was overturned in the United States Supreme Court on the basis that the juvenile court judge failed to hold a waiver hearing, he failed to set forth any findings and reasons for the waiver, and Kent's counsel was denied access to social records and other reports which were considered in making the waiver.¹¹⁴ The Supreme Court held, based on the due process and assistance of counsel clauses of the Constitution, a juvenile is entitled to a hearing and to a statement of reasons as a condition to a valid waiver order by the juvenile court. The statement of reasons should be sufficient to demonstrate that a full investigation has been made and that the question has received the careful consideration of the juvenile court. The statement must set forth the basis for the waiver order with sufficient particularity so as to permit meaningful appellate review. The Court further stated that the juvenile's counsel is entitled to see the social records or other probation reports and to subject them, within reasonable limits, to examination, criticism, and refutation. The opinion

¹¹⁴Kent v. United States, 383 U.S. 541 (1966).

also contained an appendix or policy decision which set forth the criteria and the factors which the judge should consider in deciding whether the juvenile court's jurisdiction should be waived. These factors are:

- 1) Is the offense serious? Does the protection of the community require a waiver?
- 2) Was the alleged offense committed in an aggressive, violent, premeditated or willful manner?
- 3) Was the act committed against a person or was it committed against property? The court should attach greater weight if the act was committed against a person especially if personal injury resulted.
- 4) Is there sufficient evidence against the juvenile upon which a grand jury might be expected to return an indictment?
- 5) If the juvenile associated with adults in the commission of the crime, is it better to dispose of the entire case in the adult criminal court?
- 6) Is the juvenile sophisticated and mature and thus able to stand trial in the adult criminal court? To answer this question, the juvenile's home, environmental situation, emotional attitude and pattern of living must be scrutinized.
- 7) Scrutinize the juvenile's past record.
- 8) Is it likely that the juvenile can be rehabilitated through the use of facilities available to the juvenile court?¹¹⁵

Montana's transfer hearing was last challenged on June 24, 1973, in the case of Lujan v. The State of Montana. Defense counsel cited three errors in support of Lujan's claim that the transfer hearing was faulty. These were improper admission of evidence, denial of due process rights by not

¹¹⁵ Kent v. United States, 383 U.S. 541, 566, 567 (1966).

permitting counsel to make a presentation, and not making a proper determination that the transfer was in the best interest of the state. Defense counsel failed to prove Lujan was denied any of those rights enumerated in Kent or in his appeal, so the Montana Supreme Court upheld the District Court's transfer order. In discussing the appendix of Kent, the Montana Supreme Court found:

The record does not bear out Lujan's claim that his counsel was denied the opportunity to make a presentation in his behalf for the reasons heretofore stated. Nor was the judge required to apply the considerations set forth in the policy statement of the District of Columbia Juvenile Court, quoted in the appendix to that decision. The policy statement at most is no more than a rule of that court concerning the standards that particular court would apply in determining waiver and transfer under the District of Columbia's Juvenile Court Act. A Montana Juvenile Court is in no way bound to apply the same standards under the Montana Juvenile Court Act.¹¹⁶

Even though the Montana Supreme Court arrived at the above conclusion it is still important to look at some of the issues discussed in the appendix of Kent and to relate them to the questions asked earlier. When a youth is under consideration for being transferred to an adult court he should be given the same considerations given adults because if transferred he will be treated as an adult. If this assumption is correct then the juvenile should be afforded the same rights as an adult at the very early stages of the proceeding which includes the fundamental process as des-

¹¹⁶Lujan v. State of Montana, 30 St. Rep. 146, 150 (1973).

cribed in Kent. It is important that all levels of the youth's maturity, seriousness of the offense, prospects of rehabilitation, etc. be provided for in the youth's best interest. It is also very important that the community receive adequate protection from the juvenile charged with any of the felonies previously described. For violent crimes perhaps the age limit should be lowered. A youth under 16 can be placed at an institution only until he reaches 21 years of age, and if he has committed murder, it is difficult to rationalize, from the community standpoint, that the community is protected especially under the likelihood the juvenile may be capable of committing other murders. Should the juvenile in these cases be treated as an individual who is "misdirected and misguided, and needing aid, encouragement, help and assistance"? Is he entitled to treatment? In *Kent v. The United States*, the United States Supreme Court held that Morris Kent's psychotic behavior should have been handled as a mentally ill commitment, and handled in the civil courts on that basis rather than transferred.¹¹⁷ Donna E. Renn discusses the issue of treatment in her article "The Right to Treatment and the Juvenile", which is quoted in part below:

The purpose of juvenile law having been clearly and consistently established by both the legislature and the courts as therapy, the right to treatment would

¹¹⁷Sanford J. Fox, The Law of Juvenile Courts in a Nutshell, (Minnesota: West Publishing Co., 1971) p. 232.

seem to follow logically. If care is not given, the juvenile may petition the courts to insist upon either care or release. The District of Columbia court was the first to adopt this reasoning.

In White v. Reid the court found a 'fundamental legal and practical difference in purpose and technique' between adult and juvenile institutions -- namely, punishment for adults, care for juveniles. Basing its decision on constitutional grounds, it ordered that White, a juvenile confined in an adult correctional institution be transferred to a juvenile institution.¹¹⁸

Although neither of these decisions have any bearing on Montana's present juvenile code it may be an issue that will eventually surface not only on the right to treatment in the transfer case, but on the right to treatment in the entire juvenile justice system.¹¹⁹

Montana law provides that any juvenile formally charged with being delinquent has the right to demand a jury trial.¹²⁰ Although at least three districts reported using a jury trial in the past ten years, it is unknown how many actual cases were heard before the jury. McKeiver and Terry v. The State of Pennsylvania challenged that state's authority to conduct a juvenile delinquency hearing without a jury trial. The defendants alleged their rights were violated under the 6th amendment. Each youth was charged with delinquency, McKeiver with robbery, larceny and receiving stolen goods, and Terry with assault and battery

¹¹⁸Donna E. Renn, "The Right to Treatment and the Juvenile", Crime and Delinquency, Vol. 19, (October, 1973) p.p. 481-482; see also White v. Reid, 125 F. Supp. 647 (1954).

¹¹⁹Ibid., p.p. 482-483.

¹²⁰Revised Codes of Montana 1947, (1973), C. 6, Sec. 10-604.1, p.p. 138, 139.

on a police officer and conspiracy. The United States Supreme Court ruled that since juvenile court proceedings are not criminal proceedings within the meaning of the 6th amendment, it must be concluded:

trial by jury in the juvenile court's adjudicative state is not a constitutional requirement....the use of a jury trial would bring with it into that system the traditional delay, the formality, and the clamor of the adversary system and possibly, the public trial which is felt not to be in the best interests of the child.¹²¹

The court also criticized two issues brought out in the Gault decision of 1967 involving the 5th amendment guarantee against self-incrimination which had been imposed upon the state criminal trial in Malloy v. Hogan¹²² and the 6th amendment rights of confrontation and cross-examination of witnesses found in Pointer v. Texas¹²³ and Douglas v. Alabama.¹²⁴ Justice Blackmun stated:

The Court did not automatically and preemptorily apply those rights to the juvenile proceeding. A reading of Gault reveals the opposite. The same separate approach to the standard of proof issue is evident from the carefully separated application of the standard, first to the criminal trial, and then to the juvenile proceeding displayed in Winship.¹²⁵

Although these last two issues have not been challenged as

¹²¹McKeiver v. Pennsylvania, 403 U.S. 528, 550 (1971).

¹²²Malloy v. Hogan, 378 U.S. 1 (1964).

¹²³Pointer v. Texas, 380 U.S. 400 (1965).

¹²⁴Douglas v. Alabama, 380 U.S. 415 (1965).

¹²⁵McKeiver v. Pennsylvania, 403 U.S. 528, 541 (1971).

yet in the United States Supreme Court, there is some indication that these two portions of the Gault decision may be reversed by the present Supreme Court.

There are no real alternatives when it comes to the use of Gault, Winship, Kent and similar decisions. In Kent there is the alternative to continue to use the present procedure but the question still would arise whether the juvenile received fair treatment if he must face the adult system. It would be more logical to accept the fact that punishment is desirable in transfer cases and give the juvenile the same rights as the adult if he is going into that system. It also follows that if the court is going to be caught in between the parens patriae concept and the adult criminal concept, then it should take the responsibility of determining where the juvenile can receive the fairest treatment before making the transfer. Juvenile judges are definitely concerned with the issues of cases, but should they not be incorporated as written provisions into Montana law to assure that these safeguards of justice are administered? It is recommended that Gault, Winship, and Kent including the Kent appendix be incorporated into law.

IDENTIFYING THE SYSTEMS BOUNDARIES

This section of the systems model will center on two components of the model, the procurement component and the institutional component.

Procurement Component - Procurement concerns itself with obtaining materials to be converted into a product and obtaining personnel to get the job done. The input of materials includes the physical structure such as office space, budgets for financing the operation, and other resources needed to develop workable programs. Input of personnel includes control of salaries, fringe benefits, prestige and education to motivate the people to get the job done.¹²⁶

Incorporating this concept into the juvenile court system proves difficult because the court does not deal in a finished product in the sense of a new car or new home. Its product is a perfected human being, i.e. probation officers work to make offenders comply with the law and in so doing try to create better persons.

This particular section is very difficult to analyze on a statewide basis due to lack of data. The breakdown of information used here and in the remaining portion of this paper is dependent upon limited data. Information relied upon was supplied by the questionnaire study carried out in 1971. Also conversations with other individuals working as full time probation officers or representing the Board of Crime Control, as well as personal knowledge gained from working within the system, supplied data for this section.

¹²⁶Katz and Kahn, p.p. 81, 82, 89.

In order for a system to function properly it must procure money to run the operation, office space to work out of, equipment for the offices, cars for travel within and between districts, and special programs to assist at some point in bringing about some sort of change in the offender's life. Then personnel to get the job done and to provide rewards necessary to keep the people within the system must be procured. This includes probation officers, volunteers, students involved in various programs, and a proper secretarial staff paid for out of the probation department's budget. Satellite offices are usually furnished but not paid for out of the budget. Since each probation officer travels considerably he is provided with a car. Travel expense therefore must also be budgeted.

Budgets must also include program development to varying degrees in the different districts. This portion of the budget includes such items as individual and group foster care programs, private and public institutions, medical and dental examinations, work-study programs, youth offense work programs, specialized counseling programs, and officer education programs. And, of course, these programs are inter-related to the personnel portion of the budget since the personnel carry out the objectives of the particular programs. Philosophy varies from district to district, so the same program may not be used statewide.

Money for resource development and referral programs must also be procured. Resource development is involved with the development of community resources, both new and old, as well as the development of new programs within the juvenile court system. Funds for such things as foster care programs, jobs for youth, and so forth are normally found by matching local funds with federal funds made available from various sources. Such federal agencies as the Board of Crime Control, Title I Funding for School Related Programs, and the Youth Development Bureau not only provide funds but assist with incorporating new program ideas into local areas. Resource referral consists of utilizing local mental health centers, neighborhood youth centers, legal aid, social rehabilitation departments, health departments and any other community resources available. Here again it is the personnel involved in the system who determine the degree of such usage.

An estimated statewide budget for operating the informal juvenile court system in fiscal year 1972-73 would include but not be limited to the items listed in Table I.

TABLE I
 INFORMAL JUVENILE COURT SYSTEM
 ESTIMATED STATEWIDE BUDGET
 1972-1973

Personnel:

Probation Officers	\$361,559.00
Secretaries	38,600.00
Matrons	20,000.00
Work Study Students	4,000.00
Sub-total	424,159.00
Fringe Benefits (15%)	63,620.00
Total	\$487,779.00

Maintenance and Operation:

Supplies	8,128.00
Telephone	13,768.00
Mileage	75,444.00
Private Institutions	10,000.00
Individual Foster Care	40,000.00
Youth Guidance and/or Detention Homes	20,000.00
Psychological Evaluations (Private)	20,000.00
Medical Evaluations	2,000.00
Prevention	8,000.00
Education and Training	5,000.00
Rent	3,000.00
Miscellaneous (Postage, radio repair, dues, etc.)	3,000.00
Total	\$208,394.00

TOTAL PERSONNEL, MAINTENANCE, AND OPERATION - \$696,173.00

This budget was arrived at by estimating each line category and checking those figures with the Board of Crime Control and in some instances actual budgets of probation departments for the fiscal year 1972-1973. Some of the programs available around the state which were paid for out of probation funds were: private institutional care, individual foster care, youth guidance (group foster homes), detention homes, private psychological evaluations, medical evaluations,

prevention, education and training and personnel programs such as work study.

Some additional resource programs available without charge to the probation department are tutoring, work programs, alcohol and drug programs, big brother programs and big sister programs, job placement programs, mental health programs, school counselor programs, ministerial programs, fraternal group programs, welfare programs, and specialized counseling programs, to name a few. One directory of such referral programs on a statewide basis indicated that there were at least 274 programs available.¹²⁷

The primary physical necessity is office space on a basis of at least one office per full time probation officer with a secretary or receptionist also provided. In 1971 there were 26 full time and 17 part time probation officers in the 56 counties of Montana comprising 18 judicial districts. For these 43 officers only 28 offices were available. Others worked either out of sheriff's offices or their own homes.

By 1973 there were 36 offices in 16 judicial districts available to 39 full time probation officers. There were an additional 25 sheriff's offices available, 10 of which were used by sheriff's or deputy sheriff's who were also part time probation officers. The other 15 sheriff's

¹²⁷Richard O. Shields; Health, Welfare and Recreation Agencies in Montana 1970, (Bozeman, Montana: MSU, 1970).

offices were loaned to the probation officer on court days only in order to conduct business in each county of a particular district. There were five additional part time probation officers who worked out of their homes. The ideal number of one office per worker is only short by four offices not counting offices for secretaries. At least six additional offices would be needed in addition to the four to provide for secretarial help.

The alternative to this problem or need is to continue to have two probation officers in one office in those districts that have insufficient space. At this time office space for secretaries is not as great a problem as it seems for there are only seven full time and five part time secretaries in the state. It is a problem that affects the probation officer since in at least seven judicial districts there is no secretarial help at all. In order to solve this particular problem the probation officer has the following options: 1) Put up with the existing conditions and make no changes. 2) Borrow office space whenever it is available. 3) Contact the county commissioners and explain the situation and make plans with them for office space in the future. 4) Ask the judge to meet with the county commissioners to request and/or plan for future office space. Or, 5) Ask the judge to order the Commissioners to furnish the necessary office space.

It is recommended that probation officers utilize options three and four in order to accomplish their goal. This would help to develop better relations by including all three departments in the planning stages.

It is unknown to what extent each office is adequately furnished with such equipment as desks, chairs, telephones, supplies, etc. The estimated 1972-73 statewide budget allowed \$8,182.00 for supplies, \$13,768.00 for telephone, \$3,000.00 for rent, and \$3,000.00 for miscellaneous necessities.

Another resource needed at the procurement stage of physical necessities is money for travel. The present reimbursement rate by law for probation officers is actual expenses both for mileage and per diem. This is not what the probation officer receives. In most districts throughout the state the probation officer receives twelve cents per mile plus a per diem rate which varies from one district to another. In at least two judicial districts the probation officer is furnished with a county-owned car in lieu of the mileage reimbursement rate. In the past, district judges were under a similar rate of actual expenses also. Most other state and county employees are under the twelve cents per mile rate with varying per diem rates. In 1972 the legislature put the twelve cents per mile limit on district judges as well as other state and county employees. Since this happened both probation officers and court reporters have been

set under a similar reimbursement scale. This has created some problems with the increase in gas and maintenance costs. The options available to the probation officer are: 1) Stay at the twelve cents per mile rate. 2) Change to county owned cars so the increased costs will fall on the county rather than on the individual probation officer. 3) Introduce legislation to change the entire state law which would increase the rates allowed for everyone. 4) Introduce legislation to change the district judges' mileage back to actual expenses, giving both the probation officers and court reporters a better chance of receiving actual expenses. It is recommended that option two be exercised. Option three would be the best alternative for everyone involved but it is highly improbable that the legislature would increase the present mileage rate. Alternative one becomes difficult to accept when the increased expenses are coming out of the individual probation officer's pocket. The cost should properly be passed on to the county. Alternative four would be good for the judges, probation officers, and court reporters only, which would tend to create hard feelings between them and other government employees.

Personnel needs are also emphasized in the procurement portion of the resource subsystem. Probation officers are the primary people involved in the informal juvenile system. By 1973, sixteen chief probation officers, twenty-three deputy probation officers, including foster care

coordinators, fifteen part time probation officers, ten work-study students, seventeen fieldwork practicum students, eleven action volunteer students, four criminology intern students, three law school intern students, seven full time secretaries and five part time secretaries, and fifty-seven volunteers provided the personnel needs of the system.

The full time and part time probation officers had the following backgrounds:

Ten full time officers had previous law enforcement experience. Twenty-five full time officers had a B.A. Degree from an accredited college or university and three of these people were working on a Masters Degree while another two already had their Masters Degree. Three other full time officers were working on their B.A. Degree. One full time officer was an ex-military man. Nine of the fifteen part time probation officers were full time sheriffs or deputy sheriffs. Four part time officers were school teachers and one was a painter. One part time officer did not indicate his past experience on the questionnaire.

Prior to 1971 one of the main problems of the system was sufficient procurement of manpower and needs across the state have steadily increased. This problem is being met by utilizing both county and Board of Crime Control resources but it still remains a problem. In two judicial districts there is no full time probation officer and five districts need at least a minimum of one additional full time probation

officer because of the increase in population of the district or because of the immense size of the area to be covered. Only two judicial districts have access to foster care coordinators and the other districts must rely on their own follow-up or request assistance from the State Department of Social and Rehabilitative Services. For a successful statewide foster care program, one full time foster care coordinator should be provided in each district. This would mean hiring sixteen new people. The only alternative is to require the probation officer's role to include these duties. Presently the individual handling foster care works under the following options: 1) under Section 71-210, Revised Codes of Montana 1947, turns the administration and supervision of the juvenile over to the Department of Social and Rehabilitative Services through a formal court process; 2) under Sections 71-706 and/or 10-501, Revised Codes of Montana 1947, files a dependent/neglect petition to gain foster care for the juvenile without declaring him a delinquent; 3) sets up an administrative procedure with the Department of Social and Rehabilitative Services to assist the court through a combination of state and county poor funds to pay for the foster homes while the probation officer licenses and supervises the home according to S.R.S. standards. This procedure can be used on the basis of a voluntary parental consent form and carries with it the added benefit of providing medical assistance to the youth

while he is in foster care; 4) makes arrangements for payment of foster care out of the county general fund; 5) seeks grant funds by writing and submitting requests to either the Board of Crime Control or the Youth Development Bureau, and 6) uses voluntary foster homes with or without supervision. The paperwork involved in exercising the above options alone supports the need for hiring a full time foster care coordinator for each district. To provide the necessary foster care the six options above are used interchangeably. When option four is used, paperwork is decreased considerably and backgrounds on potential foster parents need not be checked out in the same manner as stipulated by S.R.S. standards. Instead potential foster parents would have to meet court standards. Due to lack of funds voluntary foster homes with or without supervision are relied upon most often. The projected 1972-73 budget provided only \$40,000.00 for individual foster care on a statewide basis. But the funds were sufficient only to serve seven of the judicial districts. The other districts use either S.R.S. or the voluntary foster home programs, or provide no foster care at all. Option one is least used since the court faces the possibility of losing the juvenile case to the S.R.S. There is much to be done to build a good foster care program in the state of Montana, and here too hiring foster care coordinators would help substantially.

The procurement portion of the system offers certain benefits to attract personnel and bring them into the system. The maintenance subsystem works to keep the individual in the system in order to preserve a steady state. Beginning salary, fringe benefits, a chance to learn the system, and personal recognition are the primary attractions to bring personnel into the system. Since the Montana system presently functions under a manpower shortage some sources of additional funding should be explored and the judge and/or probation officer should negotiate for an increase in staff. Some sources of funding to be explored are: 1) Revenue Sharing. These funds are new to the individual states. They may provide an initial source of income to obtain funding with the option that the county will eventually pick up the entire cost. 2) Emergency Manpower -- this is another source of federal assistance sometime available depending upon changes in federal funding policies. Funds are usually available for a one-year period and preference is given to hiring veterans. 3) Board of Crime Control. This agency channels approximately \$80,000.00 per year into manpower programs. A basic manpower grant which allots approximately \$10,000.00 per program on a decreasing three year basis provides initial funding which allows counties a three year period to plan for meeting new manpower needs rather than dumping the entire cost on the counties in one year. Also the Crime Control agency offers

funding to hire college graduates who received aid under LEEP programs while still in school. 4) The only other known source of funding is 100 percent county funding, but it is limited by mill levies. It is recommended that more effort be exerted to obtain funds from Crime Control sources. It is unknown if the Board of Crime Control will fund foster care coordinator programs but perhaps a grant could be submitted for a probation officer who could fullfill these duties. Since probation officers presently do this type of work additional training would not be necessary. As explained earlier there are seven judicial districts functioning without secretarial help. Since this requires the probation officer to do his own secretarial work, thus taking him away from more important duties, either the judges in the various counties should order that a secretary be hired, or the judge and probation officer should at least negotiate with the county commissioners to attempt getting a secretary hired. Only four judicial districts use matrons. One of these districts has a detention home which hires matrons. The estimated personnel budget of this home was included in the estimate for statewide matron services noted in the Table presented earlier. It is assumed that the matron is required to assist the probation officers in transporting female juvenile offenders and in this role she is very important to the system. In the other fourteen districts no one travels with the probation officer and female offenders.

Students working through work-study funding or volunteering their services, perhaps in exchange for college credit, provide a great deal of supplemental manpower to the system. They work in such areas as counseling, foster care, social history investigations, intake, etc. and thus are sufficiently exposed to the system to learn a great deal about it. Such a training program not only helps the system to obtain its needed manpower, but develops well-qualified individuals who may be hired into the system at a later date. A skilled student can contribute greatly in helping the court to meet its objectives. It is recommended that the program be extended to include more if not all of the judicial districts. The 25-75 percent matched funding could substantially assist districts handicapped by limited manpower because of lack of financial resources to hire additional personnel.

Legal and Criminology intern programs are also another source of manpower available to the juvenile system. The legal intern program not only provides the probation office with much needed manpower but it provides a learning experience for the prospective attorney alerting him to problems inherent in the juvenile court system. Also the probation officer learns more about formal legal decisions and how to use them in his work. The criminology student brings with him ideas on law enforcement and corrections. Thus individuals oriented in law, crime, and treatment come

together to provide manpower for the system. Under the federally funded Action program students from various other fields of study also come into the system. There are two Action programs available in Montana, the University Year In Action program and the Justice Volunteers to Action program. They allow for a student to be involved with the juvenile probation department as an assistant to the probation officer for one full year. It is recommended that any effort necessary be exerted to maintain the existence of these programs involving students, whether they be the funded or volunteer programs. The non-funded volunteer programs bring fifty-seven individuals into the system who assist the court in various ways including counseling, being Big Brothers or Big Sisters for fatherless or motherless children, finding foster care, and so forth. Questionnaire data indicated only nine judicial districts utilize volunteer programs while eight judicial districts rely fully on hired full and part time employees. It is recommended that these eight districts become a target area for implementing new programs.

Once a system has physical equipment and sufficient manpower, provisions must then be made to supply adequate programs through which an offender's behavior hopefully will be changed. In Montana, money budgeted for probation departments provide programs at the Yellowstone Boys Ranch and the Intermountain Deaconess Home. According to the questionnaire data only two judicial districts utilize either of

these facilities. The Florence Crittendon Home for Unwed Mothers is also available in Montana but it is not supported by probation department funds.

As noted earlier, some foster care programs are also available in Montana and paid for, at least in part, with probation department monies. As noted earlier, much work needs to be done to provide substantially more sources in this area. Probation Department funds are used to support the District Youth Guidance Home and the Group Foster Home Plan but data from the questionnaire indicates such support is very low. Most group homes in the state are funded by approximately \$200,000.00 provided annually from a combination of state and federal funds channeled through the Department of Institutions and Board of Crime Control. Each district in the state that does have a Youth Guidance Home does have an incorporated Board of Directors who concentrate on finding community matching funds for these group homes.

Another program, the Detention Home Concept, is available in one district. Two other districts use either a "mini-group home" or an individual foster home as an alternative to detention, but these are not provided and paid for out of the county general fund.

Psychological evaluation and counseling programs involve using private as well as public referrals. Private referrals are paid for either out of the Clerk of Court's

budget or the probation department's budget. Federal funds have provided money also but their availability will be decreasing over the next ten years requiring the counties to provide for a substantial increase in cost. The University of Montana, Warm Springs State Hospital, Pine Hills School, and Mountain View School also presently provide such services to a limited degree with the only cost to the county being for transportation.

One district reported budgeting money for prevention programs. Other juvenile delinquency prevention programs are funded through the Youth Development Bureau in Helena. This agency awards federal grants to various county, city or school governments but is prevented from funding court operated programs as the monies passed into the other governmental budgets are intended to assist the juvenile justice system in reduction of delinquent youth. The Youth Development Bureau's budget for 1972-73 was approximately \$300,000. This bureau assists the courts in other ways by organizing groups to develop youth guidance homes and by providing assistance in search of funds for court operated programs. ¹²⁸

Each juvenile probation department in the state is involved in developing and using prevention programs which consist of "other agency referrals". One judicial district

¹²⁸Information provided by Shirley Miller and Charles McCarthy of the Youth Development Bureau, Helena, Montana.

uses an intensive group counseling program and has had excellent results on the effectiveness of this program. The other agency referral services assist the probation officer in accomplishing one of his objectives, i.e. diverting youth out of the juvenile court system before the need for formal court handling arises. Every agency in the state that has contact with juveniles is available and it is recommended that every juvenile probation officer familiarize himself with what services are available from these agencies and learn how to refer youth to them. The Health, Welfare and Recreation Agencies in Montana 1970 directory lists and describes approximately 275 such agencies.¹²⁹ The Montana Social Service Health and Recreational Directory 1974 lists approximately 600 agencies providing services on a statewide basis.¹³⁰ Some county and district probation officers have compiled their own directories, one of which is the Health and Welfare Resource Guide for Missoula, Montana, 1973.¹³¹ It is recommended that an attempt be made to compile more directories listing county and district services available.

¹²⁹Richard O. Shields, Health, Welfare and Recreation Agencies in Montana 1970, (Bozeman, Montana: Montana State University, 1970).

¹³⁰John W. Bauer, Montana Social Service Health and Recreational Directory 1974, (Bozeman, Montana: Montana State University, 1974).

¹³¹Morton L. Arkava, Jean Atthowe, and Ann Bertsche, Health and Welfare Resource Guide for Missoula, Montana 1973, (Missoula, Montana: The Department of Social Work, University of Montana, 1973).

It is not known if the paid and non-paid programs available to the juvenile court system are the answer to juvenile delinquency but the court does utilize these programs in order to divert youth out of the system as well as to provide services for youth experiencing different problems. It is assumed that a number of these youth do not return to the juvenile court system but there is no data available to substantiate this assumption. It is recommended that either the Board of Crime Control or the individual districts establish some method of data collection to determine the effectiveness of these programs in an effort to create interest in the development of preventive programs which would facilitate the delivery of services to needy youth.

Institutional Component - In the systems analysis theory, the institutional component is concerned with gaining support for policies as well as legitimizing what the organization is doing.¹³² On the surface it is very difficult to identify any institutional subsystem in the juvenile court system in Montana. No Board of Directors or Public Relations firm exists to "sell" the court. There are, however, many Montana groups involved in gaining support for the court. Section 10-628, Revised Codes of Montana 1947, provides for a juvenile court committee appointed by a judge

¹³²Katz and Kahn, p.p. 82, 96-99.

"to meet and confer with him on all matters pertaining to the juvenile department of the court, and shall act as a supervisory committee of detention homes, and in the selection of foster homes."¹³³ Only a few districts in Montana actually have such a committee and their degree of activity is unknown. Questionnaire responses indicated the feeling is that the committee generally exists in name only. However in two districts responses indicated the committee does take a very active role.

Other organizations that partially fulfill the concept of the institutional subsystem on a statewide basis include the Judges Association, the Montana Correctional Association, the Juvenile Probation Officers Association, and the Montana Advisory Council on Children and Youth. Each of these groups meet periodically and deal with particular problems of the court, seeking support of juvenile court policies. However none of these organizations carry the power of a Board of Directors or a Board of Trustees.

The Board of Crime Control and the Youth Development Bureau assist in gaining support by funding delinquency programs and making statewide releases on awarded programs. The Youth Development Bureau is new in Montana and attempts to provide assistance on program development.

¹³³Revised Codes of Montana 1947, (1973), C. 6, Sec. 10-628, p. 145.

No formalized policy has been established for formal dispensation of information. Therefore individual probation officers, by word of mouth, probably do more to gain support for court policies as well as trying to legitimize to the public what the court is doing than any other institutional component. Seventeen officers responding to the questionnaire indicated they go to at least five public meetings per month where court policies are discussed. Ten officers indicated they go to from five to ten meetings per month, and three officers indicated they go to from ten to fifteen meetings per month. These meetings are usually public speaking engagements at night. During regular working hours probation officers also discuss court policy with other professionals with whom they come in contact.

The biggest problem in this area is the lack of coordination existing between all of the groups involved in selling the court policies or legitimizing what the juvenile system supports. This results in a lack of interest in what is happening within the system. As a result legislators often attempt to make decisions concerning the system without really knowing what a particular phase is about. Personnel within the system must often operate in the dark because of this lack of coordination and failure to dispense formalized policy.

Because there is no formally established institutional component it is difficult to make recommendations

concerning external support of the system. Organized support from the Associations mentioned above guided toward concrete objectives of "selling" court programs would be one alternative to the word-of-mouth support now existing.

ADAPTION

The concept of adaption is concerned with gaining knowledge about the system with regard to budget, programs and statistics in order to determine the effectiveness of each. Sections 10-620 and 10-631, Revised Codes of Montana 1947, provide for the payment of salaries and further state:

The County Commissioners of all countries are hereby authorized, empowered, and required to provide the necessary funds and to make all needful appropriations to carry out the provisions of this Act.¹³⁴

Feedback as to budget appropriations comes from the individual counties and information available is limited to how much money is spent in each line item category. No data are available on a district basis unless individual probation officers keep track of their funds for the district they serve. This failure to keep such information on a district basis causes problems in administering all the funds allotted to the probation department and in gaining additional funds from such agencies as the Board of Crime Control and the Youth Development Bureau. It is recommended that legislation be enacted providing for district-wide budget feedback, as well as county feedback, in order to facilitate administrative procedures.

¹³⁴Revised Codes of Montana 1947, (1968), C. 6, Sections 10-620 and 10-631, p.p. 587 and 590.

There is no real program feedback in Montana because there is no organized program designed to interpret the effectiveness of programs. One district in the state has used a limited evaluation program pertaining to foster care which broke down the foster care program into various categories such as placements in foster homes, length of stay, what happened to the youth both during and after foster care, cost, and how many homes were recruited, lost and/or maintained during the evaluation period. There may be other districts that have similar breakdowns but there is insufficient data available to determine this. It is recommended that some type of evaluative feedback be incorporated on all funded programs in the state which should include some follow up on youth involved in the program in order to determine if each program is beneficial or a waste of money. The collection of this data would help in obtaining funds, in determining if the programs being used are working, and in planning for future action.

There are statistics available on a county and district level to determine the number of juveniles passing through the system. Most judicial districts are provided with a data form that the Board of Crime Control supplies that gives a breakdown of basic information on every juvenile that passes through the informal and formal court system. This form gives some feedback on flows and some social history background. Access to such records at the county

and district levels, as well as from the Board of Crime Control, is limited for the protection of juveniles passing through the system. A copy of the juvenile statistical analysis card presently used is included in Appendix B of this paper. It is recommended that this card be revised to include the following changes:

(1) Section J should be amended as follows:

J. Referred by:

- | | |
|--------------------------|---------------------|
| 1. Sheriff | 6. Social Agency |
| 2. Police | 7. County Attorney |
| 3. Fish and Game | 8. Parents |
| 4. Other Law Enforcement | 9. Other Court |
| 5. School | 10. Other (specify) |

This particular breakdown identifies more precisely what law enforcement agencies are referring youth into the court. The present breakdown provides only the designation "law enforcement" for the first four categories. It is important to identify particular referral sources.

(2) Section K should be amended as follows:

K. Reason referred:

1. Offense (Code No.).
2. Voluntary referral without committing an offense.
3. Number of additional charges and/or offenses presently involved with the one listed above (No code number needed).

This breakdown provides for the use of a specific coded offense number but it also includes a new section for a voluntary referral by a youth seeking help. The youth in this category should not have to be coded into an offense breakdown if he or she is voluntarily seeking assistance

rather than being brought in for breaking the law. Adding category three allows for collecting data on the total number of offenses committed by the juvenile. A separate code number is not needed when one individual commits several offenses. Only the most serious offense committed would be listed in category one. In category three the number one would be inserted in the box provided on the form to show that the individual actually committed two offenses, one coded and the other listed in box number three. If three offenses had been committed then a number two would be inserted in the box in category three, etc.

(3) Section L should be amended as follows:

L. Prior Delinquency

1. Yes 2. No

3. List the total number of prior delinquent offenses not previously reported.

4. List the total number of prior delinquent offenses.

In the present form the probation officer is asked to list if the youth has had prior delinquency and if he has, then he is to place a number in the box signifying the total number of offenses. This is misleading as the form was intended to show the total number of prior delinquent offenses not previously listed rather than the total number of offenses previously reported. This change provides for both options.

(4) Section R should be amended as follows:

R. Diagnostic Services:

1. Have you received any services in the following categories:

- a. Mental evaluation or counseling
 Yes No
- b. Medical check-up
 Yes No
2. When?
 a. Mental Year _____
 b. Medical Year _____
3. Are you still receiving these services?
 Yes No
4. Have you ever been referred to or went voluntarily
 to another social service agency such as welfare,
 vocational rehabilitation, etc.?
 Yes No
5. When? Year _____
6. Check if there is going to be a referral to any
 mental, medical or other social agency.
 Yes No
7. List agency _____

This proposed amendment would completely revise Section R of
 the present form. The present form provides three basic
 categories as follows:

- A. Mental
1. Available
 2. Not available
 3. Not indicated
- B. Medical
1. Available
 2. Not available
 3. Not indicated

C. Social

1. Available
2. Not available
3. Not indicated

This present form does not provide any useful information and in most of the state statistics the response was that as high as 98 percent of the information requested in this section was not indicated. This is due, in part, to this being a useless section because no explanation or proper breakdown is apparent. If this category is to be used at all the proposed changes will make the section more useful.

(5) Section T should be amended as follows:

T. Employment and school status:

	<u>Out of School</u>			<u>In School</u>
	<u>Drop-out</u>	<u>Suspended</u>	<u>Expelled</u>	
Not employed	1	2	3	4
Employed - full time	5	6	7	8
- part time	9	10	11	12
Inapplicable (preschool)	13			

This section would greatly clarify the out of school category as the present form does not indicate whether the youth is a dropout, suspended student, or expelled student. The proposed section would definitely identify the dropout, suspended student, and expelled student and provide information to the courts and schools as to the number of offenders in each category being processed through the court.

lies in the \$5,000 to \$10,000 income range but it does not take into consideration the number of individual members in the family.¹³⁵

(8) This section is also proposed to coincide with the above proposed section.

Family status:

1. Public Assistance
2. Low Income
3. Middle Income
4. High Income

Projected estimates of the middle income and high income brackets would be needed to determine categories three and four if this section were to be effective, as well as the total number of members in the family.

None of the three adaption elements provide any predictability of future trends nor do they tell where money or programs may be needed. The changes recommended above would assist in more effectual collection of pertinent data. Additionally it is recommended that the Board of Crime Control either contract with another agency or firm, or look into the possibility themselves, of determining a method of analyzing information on budgets, programs, and statistics.

THE MANAGERIAL SUBSYSTEM

The managerial subsystem is the administrative arm of the entire system. It cuts across all the earlier described subsystems and is responsible for coordinating all

¹³⁵Missoula -Mineral Community Action Programs Agency, (Missoula, Montana).

other subsystems. It attempts to resolve conflicts erupting between hierarchial levels and to coordinate the external requirements with the needs and resources of the organization.¹³⁶

The two primary managers in the juvenile court system are the district juvenile judge and the chief probation officer. Together, or individually, they select employees, indoctrinate them into the system, provide the regulating methods to keep them in the system, etc. In the hierarchial system the judge is at the top but because of his work overload a considerable amount of his responsibility is delegated to the chief probation officer in many districts. Generally the duties involved in procurement of physical as well as personnel necessities are handled by the chief probation officer in his managerial role. Also he may do most of the preliminary work of writing the budget and presenting it to the county commissioners although in most districts the judge makes the actual presentation. Both the judge and probation officer are primary persons involved in "selling" the program to the public, county commissioners, and legislature. Whenever the adaptive subsystem forecasts change they gather the necessary data and the judge makes the final decision regarding the recommended change. Both work to

¹³⁶Katz and Kahn, p. 94.

settle disputes between agencies often acting as arbitrators. Too, each or both are responsible for coordinating the external requirements with the needs and resources of the organization. In one sense the judge is the Board of Directors because he is the ultimate authority in the juvenile court system. He not only makes all policy decisions but executes the decisions or delegates this authority to the chief probation officer. It is the coordination of efforts between the judge and the juvenile probation officer that keeps the present system operating in each of the eighteen judicial districts, and the willingness of these people in each district to associate with those in other districts on an informal basis helps the system to develop into a better functioning organization at a multi-district or statewide level.

CHAPTER IV

SUMMARY

The intent of this paper was to use the systems model as an organizational framework to classify, describe, and observe the various components and elements of the informal juvenile court system because of the apparent benefits it offers to the entire juvenile court system. More specifically this involved identifying the informal processes of the Montana juvenile court, determining if the goals set down by the court have been accomplished, determining if the informal process is effective or ineffective, pointing out the weaknesses and strengths of the informal process, determining how important the informal process is in relation to the entire juvenile court process, and making recommendations for juvenile court operation in Montana.

The model provided a basis for locating the system, specifying its task functions, and identifying the boundaries, the maintenance subsystem, the adaption subsystem, and the managerial subsystem. This not only involved identifying the system under study as the informal juvenile court system but allowed for studying the roles and procedures a probation officer is involved with in both the informal and formal court systems, pointing out how the system is maintained from

within through the selection, indoctrination, and regulation of employees, and finally how the system is changed from without by the external demands of the public, legislature and courts. These groups brought about change in the system which ultimately affected the roles of the people within the system. The in-depth analysis included looking at the procurement of resources such as office space, budgets, manpower, etc., and even dealt with the concept of the necessity to "sell" the policies of the court to the public, this being primarily accomplished through the efforts of organizations, judges, agencies, and the probation officers themselves.

The number of youth referred through the juvenile court system in 1970, 1971 and 1972 are listed below, as well as the total number of offenses these youth committed, the total number handled informally, and the total number of youth handled formally and the total number of youth placed in public and private institutions. Because of the possibility of error due to limited reporting procedures, this information should only be used as an indicator of the number of youth flowing into the juvenile court system.

TABLE II

Total Number of Male/Female Youth Between 0-18 Years of Age Referred Through the Juvenile Court System

Year	No. of Youth Referred	No. of Offenses Committed	No. Handled Informally	No. Handled Formally	No. Placed in Institutions
1970	6,083	Unk.	5,782	301	131
1971	5,639	9,695	5,409	230	105
1972	5,979	8,340	5,652	327	131

It can be seen that a greater number of youth were handled informally. Although it is unknown how many of these youth later went into the adult criminal justice system, it seems that informal handling did result in keeping youth out of the formal juvenile court.¹³⁷

The purpose of the Juvenile Court of Montana, as described in Section 10-601, R. C. M., 1947 is:

This act shall be liberally construed, to the end that its purpose may be carried out, to wit: that the care, custody, education, and discipline of the child shall approximate, as nearly as may be, that which should be given the child by its parents, and that, as far as practicable, any delinquent child shall be treated, not as a criminal, but as misdirected and misguided, and needing aid, encouragement, help and assistance.

And that, as far as practicable, in proper cases, that the parents or guardians of such child may be compelled to perform their moral and legal duty in the interest of the child.

The principle is hereby recognized that children under the jurisdiction of the court are wards of the state, subject to the discipline and entitled to the protection of the state, which may intervene to safeguard them from neglect or injury and to enforce the legal obligation due to them and from them.¹³⁸

This purpose was consistent with the overall philosophy of the "Reformers" who, early in history, were concerned that juveniles were not receiving adequate treatment in adult courts and therefore needed some protection and treatment in a court where the youth would not be labeled as a

¹³⁷Information provided by the Montana Board of Crime Control's 1970, 1971 and 1972 statewide juvenile court statistics.

¹³⁸Revised Codes of Montana 1947, (1968), C. 6, Sec. 10-601, p. 576.

criminal. The system that developed in Montana in order to accomplish this purpose primarily emphasized keeping the offender out of the formal court system because of a definite concern of the effect labeling has upon an individual.

The systems analysis illustrated that to support this operational informality the system attempts to provide rehabilitative services through the court such as counseling, foster care, psychological help, and so forth. The system also attempts to develop community awareness and develop community resources into which troubled youth can be channeled in an effort to eliminate, or at least curb, delinquent behavior. It is only when a youth, after being processed through the informal phase of the juvenile court, continues to behave in a delinquent manner, that he is processed formally. If the measurement of success due to informality were based on the total number of commitments compared to the total number of youth referrals, then it could be assumed that the informal system is very effective. However the study revealed the existence of some ancillary problems.

First of all it was noted that the arrest authority of a probation officer could interfere with other related duties unless it was limited to probation violations and lawful orders of the court.

Several problems existed because of detention. Out of 5,639 youth referred into the system in 1971, 1,040 spent

3,437 days in jail.¹³⁹ This is a problem because of the inadequate facilities available in Montana. Strict detention procedures should be enacted restricting both the authority to detain and the circumstances under which detention is permitted. The state legislature should limit the authority to detain to the probation officer rather than the police. Detention should be used only when it is necessary to protect the community or the youth, or if necessary to keep the youth in the jurisdiction. The law should require a detention hearing within 48 hours of initial detention and the judge should require the release of any youth placed in detention without proper authority.¹⁴⁰

Often preliminary inquiry procedures violated a youth's basic rights. To protect these, each youth should be advised of his rights under Miranda and Gault. He should be informed of his right to have any decision reviewed by the district juvenile judge, and precautions should be taken to assure the presence of at least one parent or guardian at the preliminary inquiry. In addition, some means of providing an attorney, if the juvenile so desires, should be implemented.

¹³⁹Information provided by the Montana Board of Crime Control from their 1971 statewide juvenile court statistics.

¹⁴⁰The President's Commission on Law Enforcement and Administration of Justice, Juvenile Delinquency, p.p. 36, 37.

Problems in the area of probation included that the probation officer placed the youth on probation as well as the judge. Although this may appear to cause a conflict, it does not have to, if the probation officer enters into an informal consent decree with the youth and his parents. Use of such a decree gives the probation officer the authority to enter into an agreement with the youth and his parents without formally processing the youth on a petition alleging delinquency.

Finally, scarce resources create a myriad of problems. Inadequate counseling staff, foster care facilities and foster parents, physical facilities, and administrative assistance cause ineffective operation. There is not enough travel pay allotted nor manpower available to facilitate truly effective operation.

Even though these problems exist, however, it can be concluded that the informal juvenile court system is very important in meeting the purpose set down by the Montana legislature. Without this informality a youth could not escape the labeling stigma arising from being exposed to the formal court. With such informality more alternatives for handling delinquent and/or troubled youth are available. They can be helped, through counseling and psychological evaluations, to find themselves, and then to help themselves. This conclusion is not meant to degrade the effectiveness of the formal court and the institutions. But, for the good of all, every effort should be made to proceed informally.

APPENDIX I

The following appendix is the questionnaire submitted to the juvenile probation officers of the State of Montana in the year 1971. Part of the data collected as a result of distributing this questionnaire was used in Chapter III of this paper.

I. ARREST STAGE

1. Have you ever had to make an arrest of a juvenile?

Yes 24 No 8

2. If yes, for what type of offense did you make the arrest? (Check as many boxes as required to answer)

13 Child in need of supervision (Offenses for which an adult cannot be charged, such as runaways, ungovernable, curfew, etc.)

17 Misdemeanor

14 Felony

12 Traffic

8 Fish and Game

3. Have you assisted local law enforcement in making an arrest of a juvenile?

Always 9 Frequently 7 Rarely 11 Never 6

4. Do you ever make arrests without the assistance of a local law enforcement officer?

Always 4 Frequently 3 Rarely 15 Never 8

5. How many arrests did you make this year?

Fill in the blank 104

6. How many arrests did you make in the year 1969-1970?

Fill in the blank 228

7. Do you feel that a juvenile probation officer should be making arrests? Check as many as needed.

Always 3 Frequently 3 Rarely 16 Never 10

II. DETENTION STAGE

8. Does the arresting officer detain juveniles without the permission of the court?

Always 1 Frequently 4 Rarely 14 Never 12

9. Does the arresting officer fill out a written report stating the reasons for holding the juvenile?

Always 21 Frequently 5 Rarely 3 Never 2

10. Is the arresting officer required to fill out such a report in your area?

Always 28 Frequently 0 Rarely 3 Never 0

11. How soon are the parents or guardian notified when a juvenile is placed in detention?

16 one hour after detention

3 two-five hours after detention

1 five-ten hours after detention

13 other-specify _____

12. Who normally notifies the parent or guardian when a juvenile is placed in detention?

23 arresting officer

1 intake officer (or jailer)

0 other-specify _____

13. What are the most common reasons given to you for not being able to notify a parent or guardian after a child has been placed in detention? Check as many as needed.

10 no telephone

3 parents or guardian not at home

20 not able to locate parents

7 parents too drunk to come to station

2 none of the above

6 other-specify _____

14. Is the juvenile permitted a phone call to his parents or guardian when arrested and detained?

Always 25 Frequently 3 Rarely 4 Never 0

15. Does the arresting officer notify the parents instead of permitting the juvenile to call?

Always 12 Frequently 15 Rarely 2 Never 2

16. Rate the importance of those factors listed below in deciding why a juvenile should be placed in detention. (1 = most important; 5 = least important)

2.2 attitude of offender

1.4 seriousness of charge

2.9 prior record

2.5 Other-specify _____

17. Does the arresting officer notify you after placing a juvenile in detention?

Always 29 Frequently 3 Rarely 0 Never 0

18. Do you feel it is the responsibility of the arresting officer or the probation officer to notify the parents immediately after the juvenile is placed in detention?

24 arresting officer

9 probation officer

2 other-specify _____

19. Who makes the releases on a juvenile placed in detention?

1 jailer 10 district juvenile judge

0 police 7 sheriff

1 county attorney 4 juvenile officer

19 juvenile probation officer

20. Has a law enforcement officer ever refused to release a juvenile in detention upon your order?

Always 0 Frequently 0 Rarely 0 Never 32

21. If the answer to the above question is always, what was the reason? Check as many as needed.

 involved in serious felony

 poor attitude of offender

 destruction of jail property

 other- specify _____

III. PRELIMINARY INQUIRY STAGE

22. What per cent of your time is spent in preliminary inquiry work? (Court Referee)

 10 15% or less

 11 15%-30%

 7 30%-60%

 4 60% or more

23. Many informal adjustments consist of the following: warnings, left up to parents, essays, grounding, detention, probation, foster home, special classes, work party, big brothers, use of YMCA, restitution, out of state placement, referrals to other agencies youth counselors, volunteers.

Can you add any other informal adjustment used in your area?

Specify: Group therapy; take driver's license

24. What is the process or document used in your area to notify the juvenile and the court that an offense has been committed?

 14 Notice to appear

 3 Summons

 10 Citation

 1 No formal document at all

 8 Other-specify _____

25. Approximately how soon is the juvenile required to appear before the court (probation officer) after he is charged with a delinquent offense?
- 4 immediately
- 25 one to seven days
- 1 seven to fourteen days
- 2 fourteen days or more
26. Is at least one parent required to accompany the juvenile when he appears at the preliminary inquiry?
- Always 29 Frequently 3 Rarely 0 Never 0
27. Is an attorney involved at the preliminary inquiry stage?
- Always 5 Frequently 9 Rarely 15 Never 0
28. Does the juvenile probation officer normally conduct a preliminary inquiry in your judicial district?
- Always 16 Frequently 10 Rarely 5 Never 1
29. If the answer to the above question is never, who conducts the preliminary inquiry?
- 2 County Attorney 2 District Juvenile Judge
- 0 Other-specify _____
30. Have you dismissed any cases for improper arrest or improper procedural technique?
- Always 0 Frequently 1 Rarely 19 Never 11
31. Approximately how many times have you dismissed a case?
- State number for 1970 74
32. If the juvenile denies the allegations against him do you (as juvenile probation officer) make the judgment of his guilt or innocence at the preliminary inquiry stage?
- Always 0 Frequently 8 Rarely 4 Never 18

33. If the answer to the above question is never, who is the case referred to?
- 1 County Attorney
- 17 District Juvenile Judge
- 1 Dismissed
- 3 Other-specify _____
34. Do you only handle cases in which the juvenile admits his guilt in the offense?
- Always 12 Frequently 6 Rarely 5 Never 5
35. Do you use the county attorney as a legal advisor at the preliminary inquiry?
- Always 11 Frequently 16 Rarely 12 Never 7
36. Do you use the District Juvenile Judge as a legal advisor at the preliminary inquiry?
- Always 4 Frequently 9 Rarely 12 Never 7
37. Do you handle any serious vandalisms, burglaries, larcenies, rapes, or drug violations at the preliminary inquiry?
- Always 12 Frequently 8 Rarely 7 Never 5
38. Of the above mentioned offenses what serious violations don't you handle? Check as many as needed.
- 5 vandalisms 7 larcenies 8 drugs
- 8 burglaries 15 rapes
39. Rate the importance of those factors listed below when you make a decision what to do with an offender. (1=most important, 4=least important)
- 1.86 offense 3.03 family
- 2.42 prior record 2.35 attitude

IV. PROBATION STAGE

40. Approximately how often is probation used in your judicial district?

2 15% or less of those cases handled

5 15%-30% of those cases handled

11 30%-60% of those cases handled

2 60%-90% of those cases handled

11 90%-100% of those cases handled

41. Do you normally contact a youth on probation:

2 once every other month 9 once a month

22 once every week

42. Do you use short term probations of 30 days or less?

Always 0 Frequently 18 Rarely 10 Never 3

43. Do you use long term probations at the preliminary inquiry state?

Always 3 Frequently 12 Rarely 11 Never 6

44. Do you use indefinite periods of probation?

Always 2 Frequently 11 Rarely 10 Never 9

45. Do you furnish the probationer with a written copy of the rules of probation?

Always 23 Frequently 5 Rarely 3 Never 1

46. How strict are you in enforcing the rules of probation?

Very strict 7 Strict 11 Moderate 13 Lenient 1

47. What does a violation of the rules of probation mean?

20 referral to the district juvenile judge; 20 additional probation; 10 detention; 11 other restriction; 2 nothing at all.

48. Do you record probation violations?
Always 21 Frequently 6 Rarely 4 Never 0
49. Do you record probation contacts?
Always 15 Frequently 11 Rarely 3 Never 2
50. Do you locate jobs for your probationers?
Always 1 Frequently 18 Rarely 10 Never 2
51. Do you involve your probationer in school recreation?
Always 3 Frequently 15 Rarely 12 Never 0
52. Do you involve your probationer in community recreation?
Always 3 Frequently 12 Rarely 14 Never 2
53. Have you ever used volunteers for probationers?
Always 0 Frequently 6 Rarely 15 Never 10
54. What is your case load of probationers?
State the number 25 \bar{X}
55. Have you ever used a counselor program where you have had a (1 to 1) or (1 to 2) ratio with a client?
Always 7 Frequently 12 Rarely 6 Never 6
- V. INFORMAL COURT STAGE - (handled by judge without petition)
56. Do you use the informal court proceedings in your area?
(The juvenile and parents appear before the District Juvenile Judge without formal petition or citation)
Yes 21 No 9
57. How many cases handled in your district appear before a District Juvenile Judge on an informal basis?
State the number 500
58. Approximately how many cases per year are handled in your judicial district on an informal basis?
State the number 3,555

59. Is an attorney involved in the informal court hearing?
 Always 4 Frequently 5 Rarely 17 Never 3
60. Do you feel the use of an informal court hearing is useful for the juvenile?
 Always 9 Frequently 16 Rarely 3 Never 2
61. Who presents the informal case before the District Juvenile Judge?
12 County Attorney
20 Juvenile Probation Officer
3 Parents
1 Other-specify _____
62. Is the informal hearing before the District Juvenile Judge handled....
22 in his chambers
10 in the court room
1 other-specify _____
63. What is the normal disposition used by the Judge at the informal proceeding? Check as many as needed.
19 warning and continued
25 restitution made if needed
4 suspended commitment
24 probation
6 commitment
2 other-specify _____
64. Who supervises the juvenile after the informal hearing?
3 parents 27 parents and juvenile officer
0 No one 3 other-specify _____

65. What would be the most likely result if the juvenile violates the terms set down at the informal stage?

6 warning

5 additional probation

8 return before the district Juvenile Judge
w/o petition

16 file formal petition declaring the juvenile
delinquent

0 other-specify _____

VI. FORMAL COURT STAGE - Those cases normally handled by a Juvenile Judge with a petition.

66. Who normally makes the decision to initiate proceedings against a juvenile?

21 juvenile probation officer 16 county attorney

7 District Juvenile Judge 0 Other - specify

67. Who normally prepares the petition against the juvenile in your area?

9 juvenile probation officer 24 county attorney

0 District Juvenile Judge 0 Other - specify

68. Who normally serves the citation to the juvenile and parents for the formal court hearing?

21 sheriff or police 14 juvenile probation
officer

0 Other - specify _____

69. Is the juvenile notified of his right to counsel at the formal court proceedings?

Always 32 Frequently 0 Rarely 0 Never 0

70. Is a defense attorney present at the formal juvenile delinquency proceedings?

Always 9 Frequently 11 Rarely 12 Never 0

71. Do you feel it is necessary that the juvenile should have an attorney at the formal proceedings?
Always 14 Frequently 10 Rarely 7 Never 0
72. Do you feel an attorney should be involved in any juvenile proceeding -- if so, at what stage?
1 Never 5 Preliminary Inquiry
1 Informal Court 26 Formal Court
73. Does the District Juvenile Judge issue the Miranda warning to the juvenile at the time of the formal court hearing?
Always 26 Frequently 1 Rarely 1 Never 1
74. Where is the formal court hearing normally conducted?
8 private chambers
25 courtroom
0 other- specify _____
75. Is the formal proceeding conducted in an informal manner?
Always 7 Frequently 13 Rarely 3 Never 9
76. Is the formal proceeding similar to a criminal hearing with rules of evidence, etc.?
Always 15 Frequently 9 Rarely 6 Never 1
77. Have you had a jury trial for a juvenile delinquent in your judicial district in the last ten years?
3 Yes 28 No
78. On those cases going into juvenile court on a formal petition, is probation used as a disposition?
Always 2 Frequently 27 Rarely 1 Never 0
79. On those formal cases petitioned into juvenile court, is a referral for mental evaluation used?
Always 1 Frequently 18 Rarely 7 Never 4

80. Is a suspended commitment used in the formal court process?

Always 1 Frequently 18 Rarely 8 Never 2

81. Is a private placement used in the formal court process such as foster care, private school, etc.?

Always 0 Frequently 20 Rarely 9 Never 0

82. Is a commitment to department of institutions or any state institution used in the formal court process?

Always 3 Frequently 14 Rarely 12 Never 0

83. Are any juvenile cases referred to adult court for criminal prosecution in your area?

Always 1 Frequently 0 Rarely 20 Never 8

84. Approximately how many cases per year are handled in your judicial district on a formal basis with petition?

State the number 593 (for state)

85. What is the average number of commitments per year in your judicial district?

State the number 225 (for state)

86. Have your commitments been higher or lower for 1969-1970?

3 Higher 17 Lower 8 The same

87. Have your commitments been higher or lower for 1970-1971?

5 Higher 15 Lower 7 The same

VII. GENERAL INFORMATION STAGE

88. Do you use tutors in your area?

Always 0 Frequently 5 Rarely 4 Never 12

89. Do you handle suicide attempts?

Always 6 Frequently 5 Rarely 15 Never 4

90. How many suicide attempts have you handled? (Please fill in the number - leave blank if you did not handle any)

Formally 4 Informally 36

91. Is foster care used in your area?

Always 0 Frequently 20 Rarely 11 Never 0

92. Approximately how many juvenile offenders are placed in foster care? (Please use one figure if more than one officer fills in questionnaire in any one judicial district)

State the number 155

93. What is the payment per month for foster care?

State the amount \$80.00

94. Do you feel foster care is a good alternative to commitment?

Good 18 Average 7 Fair 4 Poor 1

95. What is the average number of public meetings per month you attend?

17 5 or less 10 5 - 10 3 10 - 15

0 15 or more

96. Approximately what percent of your time is spent traveling?

13 15% or less 16 15 - 30% 3 30 - 60%

0 60% or more

97. What percent of your time is spent in administration?

10 10% or less 11 10 - 20% 4 20 - 40%

7 40% or more

98. How many days per year are spent in:

Institutes 41 Seminars 141 Schools 156

Other 11

99. Do you have an in-service program in your area?
14 Yes 19 No
100. Have you participated in any training program within the last year?
22 Yes 10 No
101. Do you attend Montana Law Enforcement Academy for training?
18 Yes 14 No
102. Do you have other duties besides a juvenile probation officer?
8 Sheriff or deputy sheriff 2 teacher
7 Businessman 0 Judge 2 Other-specify:
Painter, student
-
103. What is the average amount of time spent per week in writing reports, answering letters, etc.?
8 2 hours or less 11 2 - 6 hours
7 6 - 12 hours 6 12 hours or more
104. Does the attitude of the juvenile count when working with the offender?
Always 21 Frequently 9 Rarely 0 Never 0
105. Do you have group foster homes available in your area?
12 Yes 18 No
106. Do you intend on having a group home in your area within the next year?
11 Yes 15 No
107. Do you use work programs in your area?
Always 1 Frequently 11 Rarely 11 Never 8

108. What type of offenses do you use work programs for?
Check as many as needed.

12 illegal possession 11 traffic
17 vandalism/mal. dest. 8 misdemeanor
4 felonies 6 fish & game
0 other-specify _____

109. How do you normally get restitution when a vandalism or malicious destruction of property case occurs?

19 juvenile judge orders it
10 demand it from juvenile and parents
18 request it from juvenile and parents
2 notify injured party to file
1 civil suit
0 don't handle restitutions
0 other-specify _____

110. Do you use other alternatives such as boarding schools or private schools instead of a referral to district juvenile courts?

Always 0 Frequently 6 Rarely 14 Never 12

111. Do you refer any cases to Yellowstone Boys' Ranch?

Always 0 Frequently 4 Rarely 17 Never 11

112. Approximately how many cases are referred to Yellowstone Boys' Ranch per year?

State the number 23

113. If you do not use Yellowstone Boys' Ranch, why?

13 too much money
7 not satisfied with the program
0 never heard of it
9 other-specify _____

114. Do you have an alcohol treatment program in your area?
Always 10 Frequently 1 Rarely 8 Never 11
115. If the answer to the above question is always, do you use it?
Always 4 Frequently 3 Rarely 4 Never 4
116. Do you have other drug treatment programs in your area?
15 Yes 17 No
117. Do you use them?
Always 5 Frequently 6 Rarely 4 Never 4
118. If the answer to the above question is never, why don't you use them?
Specify Refer to Mental Health
119. Do you have a Big Brother or Big Sister program in your area?
6 Yes 25 No
120. If the answer to the above question is yes, do you use the Big Brother/Big Sister program?
Always 2 Frequently 3 Rarely 2 Never 0
121. Approximately how many referrals have you made to the Big Brother/Big Sister program?
State the number 41
122. Do you have an Office of Economic Opportunity Youth Job Program for low income families in your area?
20 Yes 11 No
123. If yes, do you make any referrals to such a program?
Always 4 Frequently 15 Rarely 2 Never 3
124. Do you make referrals to mental health clinics, psychologists, etc. for examination?
Always 3 Frequently 22 Rarely 3 Never 4

125. Do you use the school counselor in your area as a resource person to work with juvenile offenders?
Always 3 Frequently 19 Rarely 8 Never 3
126. Do you use anyone in the ministerial association as a resource?
Always 1 Frequently 13 Rarely 16 Never 2
127. Do you use any individual business groups or social clubs in your area as a resource?
Always 0 Frequently 8 Rarely 14 Never 9
128. Have you developed any programs in your area that you feel are beneficial to your client and the community?
15 Yes 9 No
129. If the answer to the above question is yes, could you name the programs?
Mini-foster Homes, Group Therapy
130. Has anyone else developed good workable programs?
13 Yes 16 No
131. If the answer to the above question is yes, could you name the people and the programs?
Drop-in Center
132. What type of investigations do you make for the court? Check as many as needed.
25 juvenile presentence investigations
10 adult presentence investigations
5 social investigations in divorce cases
20 social investigations in general
133. Approximately how many truancy cases do you handle?
state the number 343

134. Is there a truant officer in your area other than yourself?
16 Yes 15 No
135. Do you feel that the school should hire a truant officer to handle truancy?
20 Yes 10 No
136. Is your primary job that of a truant officer?
1 Yes 31 No
137. Have you ever started proceedings with the county attorney RE: R. C. M., 1947, Section 10-617 providing for penalty for improper and negligent training of children?
17 Yes 14 No
138. If yes, how many times have you used this section of the code?
 State the number 56
139. Do you refer many cases of dependent neglect to the Welfare Department?
 Always 10 Frequently 16 Rarely 3 Never 2
140. Do you get cooperation from the Welfare Department on dependent-neglect cases?
 Always 18 Frequently 9 Rarely 2 Never 1

APPENDIX II

The enclosed appendix is a sample of the juvenile statistical analysis card used on every delinquent referral to the probation officer and juvenile court. Discussion regarding this form can be found in Chapter III.

(Mail Reports To)
JUVENILE STATISTICAL ANALYSIS
JUVENILE DELINQUENCY PREVENTION AND CONTROL PLANNING
 1336 HELENA AVENUE, HELENA, MONTANA 59601

NO 40459
 NO 40459

PART A—(not for statistical analysis)

A. NAME: _____
 (Last) (First) (Middle)

B. ADDRESS: _____ **CITY** _____ **PHONE** _____

PART B—(Data for analysis)

C. JUDICIAL DIST. Number:

D. COUNTY: (Code)

E. DATE OF BIRTH:
 (mo.) (day) (year)

F. AGE AT TIME OF REFERRAL:

G. SEX: 1. Male 2. Female

H. RACE: 1. White 2. Indian 3. Negro 4. Spanish 5. Other

I. DATE OF REFERRAL:
 (mo.) (day) (year)

J. REFERRED BY:

1. Law Enforcement Agency	4. County Attorney
2. School	5. Parents
3. Social Agency	6. Other Court
7. Other (Specify)	<input type="text"/>

K. REASON REFERRED:

1. Offense (Code)

2. (Number of additional charges and/or offenses presently involved with the one listed above) (Not code No.)

L. PRIOR DELINQUENCY: (excluding traffic)

1. Yes 2. No

3. Total number of prior delinquent offenses: (Not previously reported)

M. CARE PENDING DISPOSITIONS:

1. No detention or shelter care (Over night or longer)
 2. Jail or Police Department Detention
 3. Detention Home
 4. Foster Home
 5. Other (specify)

N. NUMBER OF DAYS DETAINED:

O. MANNER HANDLED:

1. Informal w/o petition 2. Formal w/petition

P. DISPOSITION: (Code)

Q. DATE OF DISPOSITION:
 (mo.) (day) (year)

R. DIAGNOSTIC SERVICES:

- a. Mental
- b. Medical
- c. So

ed

S.

T. EMPLOYMENT AND SCHOOL STATUS:

Not employed	Out of School	In School
Employed	1	5
Full time	2	6
Part time	3	7
Inapplicable (pre-school)	4	

T-1. BROTHERS AND SISTERS LIVING AT HOME

No. Older

No. Younger

U. SCHOOL ATTAINMENT & ADJUSTMENT:

- a. Grade placement in relation to age:
1. Below Normal 2. Normal 3. Accelerated
- b. Serious or persistent school misbehavior:
1. Yes 2. No

V. MARITAL STATUS OF NATURAL PARENTS:

1. Parents married and living together
 2. Both dead 5. Divorced or legally separated
 3. Father dead 6. Father deserted mother
 4. Mother dead 7. Mother deserted father
 8. Other (specify)

W. LIVING ARRANGEMENT OF CHILD:

- In own home:
1. With both parents 6. In home of relative
 2. With mother and stepfather 7. In foster family home
 3. With father and stepmother 8. In institution
 4. With mother only 9. In independent living arrangements
 5. With father only
 10. Other (specify)

X. FAMILY INCOME (ANNUAL)

1. Receiving public assistance at time of referral
 2. Under \$3,000
 3. \$3,000 to \$4,999 5. \$10,000 and over
 4. \$5,000 to \$9,999 6. Unknown

Y. RELIGIOUS DENOMINATION (Code)

1. Very active 3. Non-participating
 2. Moderately active

Z. LENGTH OF RESIDENCE (of child) IN COUNTY:

1. Not currently resident of County
 2. Under one year
 3. Under five years
 4. Five years or more

LOCATION OF RESIDENCE

1. Rural
 2. Urban—(within city limits)

FOR COMMENTS AND ADDITIONAL INFORMATION USE BACK SIDE OF SECOND SHEET.

CODE FOR COUNTY

01 Beaverhead	22 Jefferson	43 Roosevelt
02 Big Horn	23 Judith Basin	44 Rosebud
03 Blaine	24 Lake	45 Sanders
04 Broadwater	25 Lewis & Clark	46 Sheridan
05 Carbon	26 Liberty	47 Silver Bow
06 Carter	27 Lincoln	48 Stillwater
07 Cascade	28 Madison	49 Sweet Grass
08 Chouteau	29 McCone	50 Teton
09 Custer	30 Meagher	51 Toole
10 Daniels	31 Mineral	52 Treasure
11 Dawson	32 Missoula	53 Valley
12 Deer Lodge	33 Musselshell	54 Wheatland
13 Fallon	34 Park	55 Wibaux
14 Fergus	35 Petroleum	56 Yellowstone
15 Flathead	36 Phillips	57 Blackfeet Res.
16 Gallatin	37 Pondera	58 Crow Res.
17 Garfield	38 Powder River	59 Flathead Res.
18 Glacier	39 Powell	60 Fort Belknap Res.
19 Golden Valley	40 Prairie	61 Fort Peck Res.
20 Granite	41 Ravalli	62 Northern Cheyenne Res
21 Hill	42 Richland	63 Rocky Boy's Res.

CODE FOR RELIGIONS

00 Unknown	08 Church of God	18 Mennonite
01 None, Atheist or Agnostic	09 Congregational	19 Methodist
02 Uncommitted, religious beliefs but no parti- cular faith	10 Episcopal	20 Misson Covenant
03 Assembly of God	11 Evangelical	21 Nazarene
04 Baptist	12 Friend (Quaker)	22 Pentecostal
05 Catholic	13 Hebrew (Jewish)	23 Presbyterian
06 Christian	14 Hutterite	24 Protestant, Unspecified
07 Church of Christ- Scientist (Christian Science)	15 Jehovah Witness	25 Salvation Army
	16 Church of Jesus Christ of Latter Day Saints (LDS, Mormon)	26 Seventh Day Adventist
	17 Lutheran	27 United Brethren
		28 Other (Specify)

CODE FOR DISPOSITION

- 00 Waived to criminal court
- 01 Complaint unsubstantiated
-- dismissed.

COMPLAINT SUBSTANTIATED

- 11 Warned, adjusted and
counselled
- 12 Held open, continued or
pending
- 13 Informal probation
- 14 Referred to other agency
or return runaway
- 15 Temporary custody (in-
cluding group or foster
home placement)
- 16 Other -- Specify _____

TRANSFER OF LEGAL CUSTODY

- 21 Public institution for
delinquency or other
public institution
 - 22 Public agency (including
court and formal proba-
tion)
 - 23 Private agency or
individual
 - 24 Deferred or suspended
commitment
 - 25 Other -- Specify _____
-

REMARKS:

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A SYSTEMS ANALYSIS OF
THE INFORMAL JUVENILE COURT

By

Jeremiah F. Johnson


B.A., University of Montana, 1966

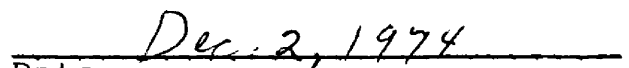
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CHAPTER I

INTRODUCTION

PURPOSE

The system under study in this paper is the informal juvenile court system in the State of Montana. The primary emphasis will be on the informal system although some attention will be given to the formal juvenile court as it relates to the informal system. The informal juvenile court system comes into operation when a youth is processed either by a peace officer, juvenile probation officer or a district juvenile judge without the issuing of a formal petition alleging delinquency. Although a great number of cases are informally processed by peace officers and a few by district juvenile judges, this study concentrates on probation officers because it is believed they are the focal person handling offenders within the informal process.

THE IMPORTANCE OF INFORMALITY IN TREATMENT OF JUVENILES

The informal juvenile court system is being examined because of the apparent benefits it offers to the entire juvenile court system. When a police officer decides to cite a youth, or once a complaint of some type is filed,

generally a probation officer is called upon to decide the course of action. At his discretion the matter can be handled informally or it can be referred to the judge or county attorney for formal processing on a petition alleging delinquency. The decision made becomes very important for the youth involved. It is generally construed that the earlier a community detects delinquent and potential criminal behavior, and provides some method to change this behavior, the better it can protect itself. Although in some cases counseling is acceptable, if an offense is against the person or property a victim often wants and demands punishment. Not only may the offender's behavior be changed, but such punishment may deter potential offenders when they see what happens to their friend. But, such punishment and detection, especially when it affects youthful offenders at an early age, does not always result in this expected protection of the community.

As a juvenile advances into the juvenile court system it can be found that the further he advances the higher the risk becomes of the community identifying him as a delinquent. And, in many cases this labeling process not only comes from the community but also from the youth himself. When the community labels the youth as a delinquent this often reinforces in the youth the concept that he is a delinquent and if he responds by acting that way a vicious cycle begins and continues until either the youth

grows out of it, someone or something in the youth's life alters the behavior pattern, and/or the behavior pattern is altered through professional counseling provided by the community, the courts, or the institutions.¹

HISTORICAL BACKGROUND

Early Developments

Near the middle of the 19th century a movement emerged in the United States to protect young offenders from criminal proceedings. The original movement begun in England many years before when the chancery courts came into existence after the reign of Henry VIII. These courts were created to replace the ecclesiastical courts which had previously handled what are known today as dependent and neglect cases. At first the chancery or equity courts never assumed jurisdiction over children when they violated the criminal laws. They dealt only with cases where the

¹Numerous theories exist that classify delinquents and their behavior, each giving various reasons why the youth behaved the way he did. Two basic juvenile delinquency or criminology textbooks that discuss causation are Juvenile Delinquency by Ruth S. Cavan, and Criminology by Robert G. Caldwell. One of the best works that discusses many of the various causation theories is Delinquent Behavior by John M. Martin and Joseph P. Fitzpatrick.

Labeling theories can be found in most juvenile delinquency texts. A good presentation of the labeling concept can be found in Stanton Wheeler and Leonard S. Cottrell, Jr., Juvenile Delinquency - Its Prevention and Control.

Since it is not the intent of this paper to discuss causation theory, it is recommended by the author that the reader review these references in order to gain an insight as to why delinquency exists.

welfare or property of the child was at stake. The idea of the chancery court was transferred to the United States together with the English legal system and soon included protection for children in danger of personal and/or property injury.²

Other factors contributing to the philosophy of the juvenile court included the common law interpretation that a child under the age of seven could not be held responsible for committing a criminal act and the doctrine of parens patriae, which held the sovereign to be the father of those under legal disability within his territory, was adopted. The King, through his chancellors, assumed the general responsibility for protecting all infants in the realm. It was pointed out, states Eldefenso in Wellesley v. Wellesley that the King as pater patriae (father of his country) possessed an obligation to oversee the welfare of the children in his kingdom because of neglect, abuse, or abandonment of any child by his parents or guardians.³ The King, through his court of chancery, could then provide the proper care and protection for the child.⁴ This doctrine of parens

²William T. Downs, Michigan Juvenile Court: Law and Practice, (Ann Arbor: Institute of Continuing Legal Education, 1963) p. 39.

³Edward Eldefenso, Law Enforcement and the Youthful Offender: Juvenile Procedures, (New York: John Wiley and Sons, Inc., 1967) p. 159.

⁴The President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Juvenile Delinquency and Youth Crime, (Washington, D.C., 1967) p. 2.

patriae, as William Downs states, is "the constitutional justification for the authority of the legislature to enact legislation which created the juvenile court." Downs goes on to state that this is not to be confused with the authority of the court itself for "the court does not derive its authority from any broad general principle of 'parens patriae'. The court derives its authority from the legislation which created it."⁵

Problems arising because of the unrest of the 19th century were confronted by such men as Judge Peter Thatcher of Boston, John Augustus, the "Father of Probation", and Judge Benjamin Barr Lindsey of Colorado along with numerous other people across the United States who became known as the "Reformers". Problems arose with the trend toward urban development as the industrial revolution spread. Masses of people migrated to the United States and settled in the cities. Slums, unsavory housing, vice, crime and the disruption of the family followed. Labor exploited children and the school was only available for a few. Courts and institutions were faced with overcrowding. There was little or no segregation of men, women or children offenders until at least 1861 when it existed in a limited form in Chicago.⁶

⁵Downs, p.p. 23-24.

⁶Ted Rubin and Jack F. Smith, The Future of the Juvenile Court, (Washington, D.C.: Joint Commission on Correctional Manpower and Training, 1968) p. 1; The President's Commission on Law Enforcement and Administration of Justice, Juvenile Delinquency, p.p. 2-3.

England had recognized the need for special handling of juvenile offenders, separating them from adults by passing the Juvenile Offenders Act of 1847.⁷ Prior to its passage juveniles were treated the same as adults in criminal proceedings. The "reformers" brought about change, providing the germ for the creation of the modern day juvenile court.

Massachusetts established a reform school for juvenile offenders as early as 1847. In 1869 Massachusetts law provided for "the presence in court of a 'state agent' or 'his deputy' whenever application is made for the commitment of any child to any reformatory maintained by the commonwealth."⁸ In 1860 laws were introduced to provide for separate hearings of juveniles under sixteen before a probate judge. Glueck states that here was the germ of the modern elaborate procedure for social investigations by requiring that an agent for the juvenile "shall have an opportunity to investigate the case, attend the trial and protect the interest of, or otherwise provide for the child."⁹

The first juvenile court created by statute began on July 1, 1899, in Cook County in Chicago, Illinois. The

⁷Eldefenso, p. 158.

⁸Sheldon and Eleanor T. Glueck, "Historical and Legislative Background of the Juvenile Court", in Sheldon Glueck, (ed.) The Problem of Delinquency, (Boston: The Riverside Press, 1959) p. 256.

⁹Ibid.

statute creating it was very comprehensive for it dealt with jurisdiction over the treatment of dependent, neglected, and delinquent children. The important point that the law set forth was that the delinquent child should be treated the same as the neglected or dependent child. Thus, it took into consideration that the issues before it required understanding, guidance, and protection rather than criminal responsibility, guilt, and punishment.¹⁰ The rationale was that a formal setting would be destructive to the goal of getting at the root of the child's problems. The child needed help, not punishment; therefore, there was no need for the traditional criminal procedural safeguards. The President's Commission on Law Enforcement and Administration of Justice expounded on this particular approach in their task force report when referring to the formalities of criminal procedure:

They formal proceedings were destructive for several reasons. First, the formal process -- charges, jury, trials, representation by counsel, evidentiary restrictions, motions and countermotions, the privilege against self-incrimination -- was inescapably identified with the criminal law, the atmosphere and presuppositions of which it was the objective of the juvenile court movement to eliminate in dealing with child offenders. Second, adversary procedures for determining whether a person committed a criminal act with a criminal state of mind were not useful for ascertaining the full picture of the child's behavior, including not only the conduct that brought him to court but the whole pattern

¹⁰Eldefenso, p. 161.

of his prior behavior and relationships. Third, criminal procedures would put the child on one side and the court on the other, creating a tone of combat and contentiousness that would destroy the sought after cooperation of the child in the common effort to help him.¹¹

The basic idea was that erring children should be protected and rehabilitated rather than subjected to the harshness of the criminal system. The offender was to be treated as an individual in need of better supervision until he reached a reasonable age, usually eighteen, when he would assume this responsibility on his own. As time passed, the scope of the philosophy came to include the fact that no child could be accused of a crime, nor could any child suffer any conviction of a criminal nature while below a certain age. The child could be accused of a delinquent act or adjudicated a delinquent but he could not be classified as a criminal.

Before it could be decided if the court should assume jurisdiction and supervision over the child, it became necessary for the nature and extent of the individual child's maturity or immaturity to be determined by the court. This demanded that each child be looked upon as an individual and be evaluated according to his assets and liabilities. Emphasis was placed upon a treatment plan that would be in the best interests of the individual child who had contact

¹¹The President's Commission on Law Enforcement and Administration of Justice, Juvenile Delinquency, p. 28.

with the court. Presently there are 2,700 courts that hear children's cases in the United States. Every state, including the district of Columbia has followed the basic idea of the juvenile court philosophy formalized in the Illinois code in 1899.¹²

Montana Background

Montana's concern over juveniles started as early as 1893 with the passage of legislation for a reform school for both males and females between the ages of eight and twenty-one. This act stipulated that when any offender between those ages was found guilty of any crime, including vagrancy or incorrigibility, but excluding murder or manslaughter, he could be placed in the state reform school by order of the court rather than be placed in jail. If the individual was incorrigible or unmanageable at the state reform school he could be returned to the court that passed sentence for further action, which usually meant placement in jail.¹³

Other indications of a court movement in Montana arose in 1895 with the stipulation entered that the district court judge could hear such matters in his chambers.

¹²The President's Commission on Law Enforcement and Administration of Justice, Juvenile Delinquency, p. 12.

¹³Legislative Assembly, Laws, Resolutions and Memorials of the State of Montana, 3rd Sess., (Butte: Inter-mountain Publisher, 1893) p.p. 183-189.

The court further provided that each boy or girl committed to the state reform school should remain there until he or she reached the age of twenty-one, or until paroled or legally discharged. In some cases a girl could be released at eighteen if "she deported and conducted herself in such a manner as to make it reasonably probable that she had reformed and is a proper person to be discharged."¹⁴

By 1907 the legislature prohibited children under sixteen from being confined with adults, created the office of probation, recognized the need for the state to assume jurisdiction over dependent-neglected children, and granted the court the power to place a delinquent on probation or in a foster home.¹⁵

Finally in 1911 the Montana juvenile court was officially established. The majority of the earlier laws were retained and the juvenile court judges chosen to act in this capacity were district court judges. The major stipulations of the act were:

1. Any child seventeen or under was to be handled in juvenile court.

¹⁴D.S. Wade and F. W. Cole and B. P. Carpenter, Code Comm., Codes and Statutes of Montana, Vol. II, (Anaconda: Standard Publishing Co., 1895) p. 1186.

¹⁵E. C. Day, Code Comm., Revised Codes of Montana, 1907, Vol. II, (Helena: State Publishing Co., 1908) p.p. 908-915.

2. Delinquents were not to be incarcerated in a common jail.
3. Juvenile hearings were to be closed hearings.
4. The judge could appoint a juvenile improvement committee to assist him.
5. The probation officer became a paid officer of the court but his duties still consisted of investigating offenses rather than supervision of delinquents.¹⁶

The original purpose or objectives of this act, carried over to the present, is stated in Section 10-601 of the Revised Codes of Montana:

This act shall be liberally construed to the end that its purpose may be carried out, to wit: That the care, custody, education, and discipline of the child shall approximate, as nearly as may be, that which should be given the child by its parents, and that, as far as practicable, any delinquent child shall be treated, not as a criminal, but as misdirected and misguided, and needing aid, encouragement, help and assistance.

And that, as far as practicable, in proper cases, that the parents or guardians of such child may be compelled to perform their moral and legal duty in the interest of the child.

The principle is hereby recognized that children under the jurisdiction of the court are wards of the state, subject to the discipline and entitled to the protection of the state, which may intervene to safeguard them from neglect or injury and to enforce the legal obligation due to them and from them.¹⁷

¹⁶Legislative Assembly, Laws, Resolutions and Memorials of the State of Montana, 12th Sess., (Helena: Independent Publishing Co., 1911) p.p. 320-339.

¹⁷Revised Codes of Montana 1947, (1968), C. 6, Sec. 10-601, p. 576.

In 1919 the maximum age limit was raised from seventeen to eighteen and the judge was granted specific power to place a child in jail only if he felt it necessary.¹⁸ In 1921 the probation officer's duties were redefined and separation of juveniles from adults was again mentioned. The probation officer was now to fully examine any complaint against a juvenile under the ages of eighteen excluding those offenses not punishable by death or life imprisonment. This examination included the offense, child's surroundings, exact age, habits, school record, home conditions, and the habits and character of the parents or guardian. Once the report was completed it was to be presented in writing to the judge. The probation officer was also to attend all hearings as the judge directed.¹⁹

By 1943 the juvenile codes were completely rewritten giving the court the power to grant permission to file a formal petition but allowing for an informal or preliminary inquiry to determine if the interests of the public or the child required further action. If the court desired that some informal adjustment take place prior to filing a for-

¹⁸Legislative Assembly, Laws, Resolutions and Memorials of the State of Montana, 16th Sess., (Helena: State Publishing Co., 1919) p. 470.

¹⁹I. W. Choate, Code Commission, Revised Codes of Montana 1921, Vol. IV, (San Francisco: Brancroft and Whitney Co., 1921) p. 422.

mal petition, the probation officer was notified and given the authority to conduct a preliminary inquiry and to supervise the youth without a formal declaration of delinquency. The judge could use his own discretion in placing a child found to be delinquent on probation, committing the child to a public or private institution, or ordering further care and treatment that the court felt would be in the child's best interest.²⁰

By 1967 the legislature had added the provision that any child adjudicated a delinquent could be committed to the Department of Institutions.²¹ And finally by 1969, Sections 10-604, 10-605, 10-609, 10-618, 10-620 and 10-622 were repealed. Several new sections replaced them better clarifying points of law. For example, Section 10-605.1 specifically clarified the nature of the preliminary inquiry by providing that any child brought before the court on a delinquency charge could appear before the court or the juvenile probation officer for the purpose of making a preliminary inquiry to determine whether further action should be taken. The matter could be handled at this level by an informal adjustment including the placement of the child on probation. If a petition was deemed necessary then the county attorney

²⁰Revised Codes of Montana 1947, C. 6, Sec. 10-611, p.p. 801-802.

²¹Legislative Assembly, Laws, Resolutions and Memorials of the State of Montana, 40th Sess., (Helena: State Publishing Co., 1967) p.p. 134-236.

had to prepare and sign it.²² Section 10-608.1 revised the procedure for taking a child into custody and detaining him, providing that any peace officer, if circumstances warranted it, could take a child into custody and detain him. But the court or probation officer must be notified as soon as practicable and the officer could release the child to a parent or guardian upon receiving written promise from them to bring the child before the court.²³ Section 10-611(3) gave the court an additional alternative disposition where a child was found to be delinquent. The judge could notify the director of the Department of Institutions if he felt a youth, who must be sixteen or older, was suitable for placement at the Youth Forest Camp. The child could be committed to the Department of Institutions for a period not to exceed thirty days for evaluation purposes to determine suitability for placement in the camp. If he proved suitable and there was space at the camp, the judge could commit the juvenile directly to the camp.²⁴

Objectives of the Montana Juvenile Court system were extended to include the following:

1. That juveniles sixteen years of age or older,

²²Revised Codes of Montana 1947, (1973), C. 6, Secs. 10-605.1 and 10-629, p.p. 139, 589.

²³Revised Codes of Montana 1947, (1973), C. 6, Sec. 10-608.1.

²⁴Revised Codes of Montana 1947, (1973), C. 6, Sec. 10-611(3), p. 141.

accused of committing or attempting to commit murder, manslaughter, arson in the first or second degree, assault in the first or second degree, robbery, burglary, and carrying a deadly weapon with intent to assault, or who commits rape may be proceeded against the same as an adult.²⁵

2. That any juvenile charged with delinquency on a written petition shall have the right to demand a jury trial and the right to be represented by counsel.²⁶

3. That any juvenile found to be a delinquent has the right to appeal the decision.²⁷

4. That juveniles shall be protected from public release of their names in delinquency matters.²⁸

Personal experience in working with the people involved in the Montana juvenile court system evidences existence of the following unstated objectives as well:

1. To keep as many youth as possible out of the formal court system.

2. To provide rehabilitative services through the court such as counseling, foster care, psychological help,

²⁵Revised Codes of Montana 1947, (1973), C. 6, Sec. 10-603, p.p. 137, 138.

²⁶Revised Codes of Montana 1947, (1973), C. 6, Sec. 10-604.1, p.p. 138, 139.

²⁷Revised Codes of Montana 1947, (1973), C. 6, Sec. 10-630, p. 145.

²⁸Revised Codes of Montana 1947, (1968), C. 6, Sec. 10-633, p. 590.

etc. for juveniles and their families if necessary before resorting to the formal juvenile court system.

3. To develop community awareness of the juvenile system without releasing names of juveniles.

4. To develop alternative methods of dealing with juveniles prior to use of the formal court.

5. To develop the use of community resources to which the court can refer juveniles for help outside the court.

6. To de-emphasize the word "delinquent" when dealing with outside groups.

7. To get communities to work with youth to eliminate, or at least curb, delinquent behavior and thus keep youth from entering the system.

8. To teach the juvenile how to help himself.

The twofold purpose of the stated objectives set by law provides for a system which will treat juveniles as parents should "normally" treat them, but at the same time provides for treatment within a legal framework which considers the youth's rights as well as the community's protection. Discipline can be exercised in the strongest sense in that the possibility exists of removing a youth from his parents and the community if the parents either do not or are not able to exercise proper control. But it is the unstated objectives that provide a framework for carrying out the original intent of the philosophy of the juvenile court founders. Through

this framework an informal system is developed that helps, encourages, and disciplines youth without attaching to them the stigma of being labeled delinquent. Since unstated objectives are, by definition, implied rather than written it should be noted that many more than those listed here do exist. These are the most observable.

METHODOLOGY

Data

Data used in this study were gathered through research, preparation and distribution of a questionnaire, and numerous telephone and personal discussions with people highly knowledgeable in the field. The author's personal expertise gained from studying and working in the field proved invaluable in interpreting the data collected and in explaining its relevance to this paper.

Library Research - Several Montana and United States Supreme Court decisions as well as the Montana Code were thoroughly researched with the intent of emphasizing how they relate to the operation of the juvenile justice system. Many books and studies were also read to gain a better understanding of the numerous theories that classify delinquents and their behavior and to afford a means of developing the history of the juvenile courts.

Questionnaire - In 1971 a questionnaire was devised and sent out to 26 full time and 17 part time probation officers in an effort to determine their roles in relation to the

informal juvenile court system. The questionnaire was intended to assist the researcher in identifying the formal role of the juvenile probation officers for comparison to that role prescribed by law.

Seven major categories of the questionnaire related role requirements to arrest, detention, preliminary inquiry, probation, informal court, formal court, and generalized duties. The design of the questionnaire was such that the respondents were able to reply: Always____, Frequently____, Rarely____, or Never____ to nearly all questions. "Always" indicated that the respondent was always involved in that particular type of behavior, while "Never" indicated he did not deal with that type of behavior. The responses were rank ordered to indicate what behavior pattern existed in each judicial district. In the actual analysis of the data only the State totals were used so no one judicial district could be identified as to its procedures.

In all categories except "generalized duties", the "Always" and "Frequently" responses were combined and the "Rarely" and "Never" responses were combined to make two rank ordered divisions. Data were further analyzed to determine what percent of juvenile probation officers were involved in certain behavior. Responses in the "generalized duties" category were not included in this breakdown in order to show specific responses to programs the officers were developing.

Eighteen full time probation officers and 14 part time probation officers responded constituting 74 percent response. Sixteen of the 18 judicial districts were represented by these officers. The total juvenile population (individuals ranging in age from 10 to 17) residing in the 16 judicial districts represented approximately 90 percent of the juvenile population in the State of Montana.²⁹ The 1970 delinquent population for the State of Montana, according to the Governor's Crime Control statistics, was 6,062 and the 1970 delinquent population for the 16 judicial districts responding approximated 5,556 or approximately 92 percent of the total delinquent population in the State at that time.³⁰

Contacts - Numerous telephone contacts and personal discussions were had with various individuals within and without the juvenile justice system to gain insight into the workings of the system. Some of the individuals who furnished a considerable amount of information were: Mr. Jack Vaughn, former Chief Probation Officer of the 4th Judicial District; Mr. Steve Nelsen, Juvenile Programs Coordinator for the Board of Crime Control; Mr. Loren Harrison, a former researcher for the Board of Crime Control; and Mr. Terry Wallace, an attorney in Missoula, Montana who shows a deep and sincere interest in youth. This list only includes some

²⁹United States Department of Commerce, 1970 Census of Population; Montana, Vol. 1, Part 28, p.p. 28-35.

³⁰Information provided by the Governor's Crime Control Commission's 1970 statewide juvenile court statistics.

of the individuals who contributed the most information to the author. There were numerous other individuals and agencies who also helped, including the staff of the 4th Judicial District Juvenile Probation Department and other juvenile probation officers working in the State of Montana.

Personal Knowledge and Experience - While attending the University of Montana in 1966, the author began working as a volunteer in the Juvenile Probation Department of the 4th Judicial District in Missoula, Montana. This work developed into a full time paid position in 1968, and has continued as such to the present time. During this period a considerable amount of knowledge and experience has been gained through indoctrination into the juvenile justice system by association with probation officers, judges, peace officers, county attorneys, and other individuals both within and without the entire criminal justice system.

Procedure

A systems analysis approach was taken to provide the author with a solid format to break down the informal juvenile court subsystem into various components and elements in order to observe their functions and purpose. The specific objectives of the author, the systems model used in this study, and the theory of systems analysis are discussed fully in the following chapter.

LIMITATIONS OF THE PAPER

The theory provided a solid format to break down the informal subsystem into various components and elements in order to observe their functions and purpose. However, throughout the paper it could be seen that in almost every section, especially in those sections that pertained to procurement, maintenance, and adaption resources, there was insufficient data available on a statewide basis to thoroughly analyze the system. This was not a fault of the theory but of the lack of documented knowledge of the system on a statewide basis.

The study does not include a complete analysis of both the informal and formal juvenile court as the intent of the paper was to elicit the benefits of informality within the system. The formal process was included to the degree it related to the operation of the informal system.

The study does not incorporate police or peace officer involvement although it is recognized as an important part of the juvenile justice system, because such inclusion would entail a much larger study which would be beyond the scope of this paper.

The questionnaire was designed for probation officers only and was not submitted to county attorneys, judges, or anyone else but known fulltime or parttime probation officers in the State of Montana.

Even though these limitations existed throughout the paper it can be seen that the open system approach has at least provided a foundation for observing and understanding the informal juvenile court system in Montana and its relationship to the formal juvenile court system.

CHAPTER II

SYSTEMS ANALYSIS

SPECIFIC OBJECTIVES

The systems analysis model developed in The Social Psychology of Organizations by Daniel Katz and Robert L. Kahn will be used throughout this paper as an organizational framework to classify, describe and observe the various components and elements of the informal juvenile court system. This model, if successful, will show that an open system approach, which will be described later, is very useful in analyzing the informal juvenile court system. The objectives of using systems analysis in observing the Montana juvenile court system are:

1. To identify the informal processes of the Montana juvenile court.
2. To determine if the informal process is effective or ineffective.
3. To determine if the goals set down by the court have been accomplished.
4. To point out the weak points as well as the strong points of the informal process.
5. To determine how important the informal process is in relation to the entire juvenile court process.

6. To make recommendations for juvenile court operation in Montana.

THE SYSTEMS MODEL

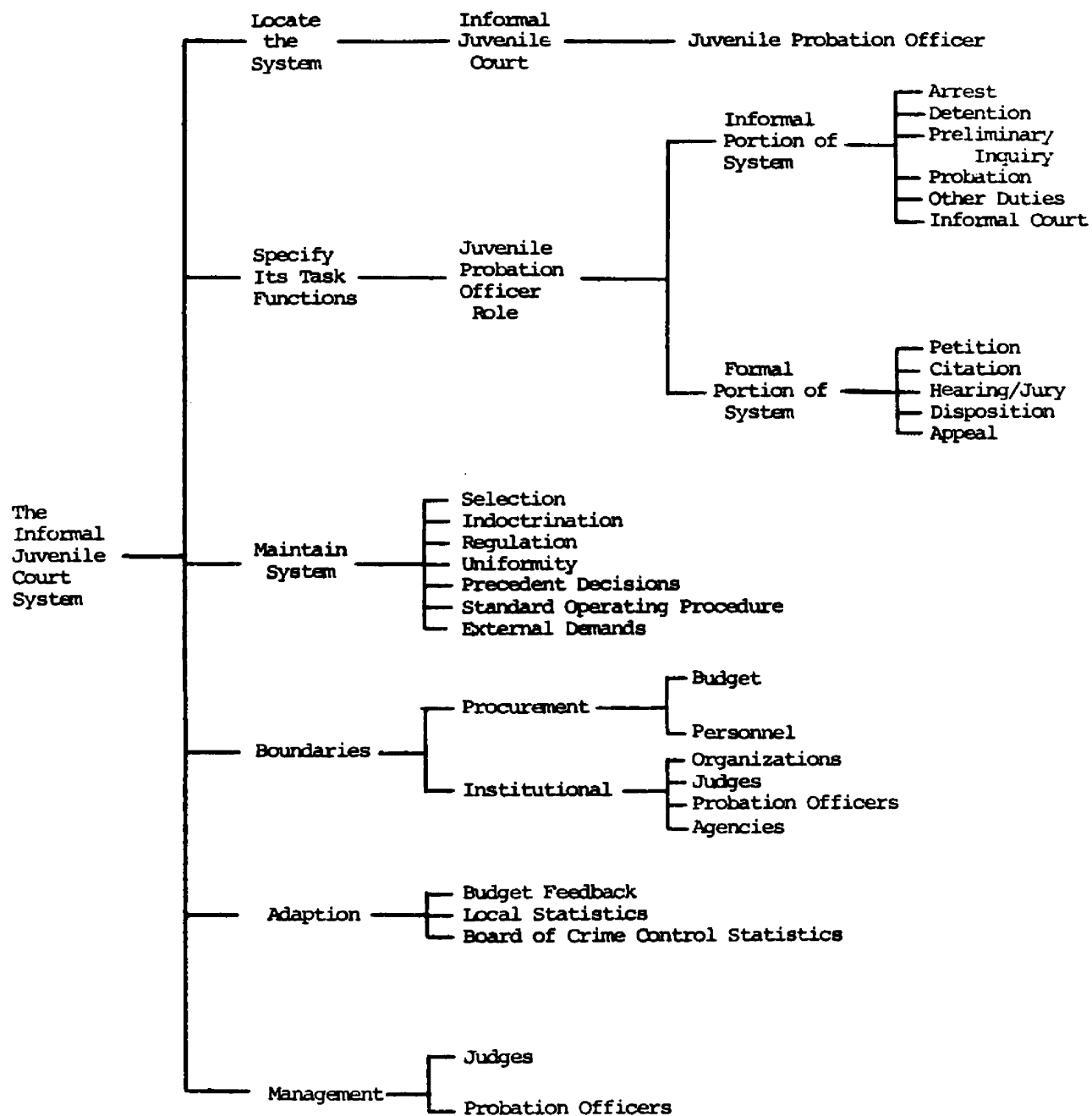
The systems model of the juvenile court is illustrated in the following two charts. Chart I illustrates the systems model which was used throughout this paper. This chart depicts a breakdown of the informal court system which consists of six subsystems and various components and elements which contribute to the makeup of the informal juvenile court. Chart II, The Montana Juvenile Offender Procedure Chart, is a flowchart of the offender's movement through the entire juvenile justice system beginning with the initial complaint and going through the informal court, formal court, institutionalization, and parole to aftercare authorities. Chart II relates to Chart I in the section entitled Specifying Its Task Functions by providing a more intensive procedural flow of all the options and alternatives available to an offender going through the entire system.³¹

WHAT IS SYSTEMS ANALYSIS?

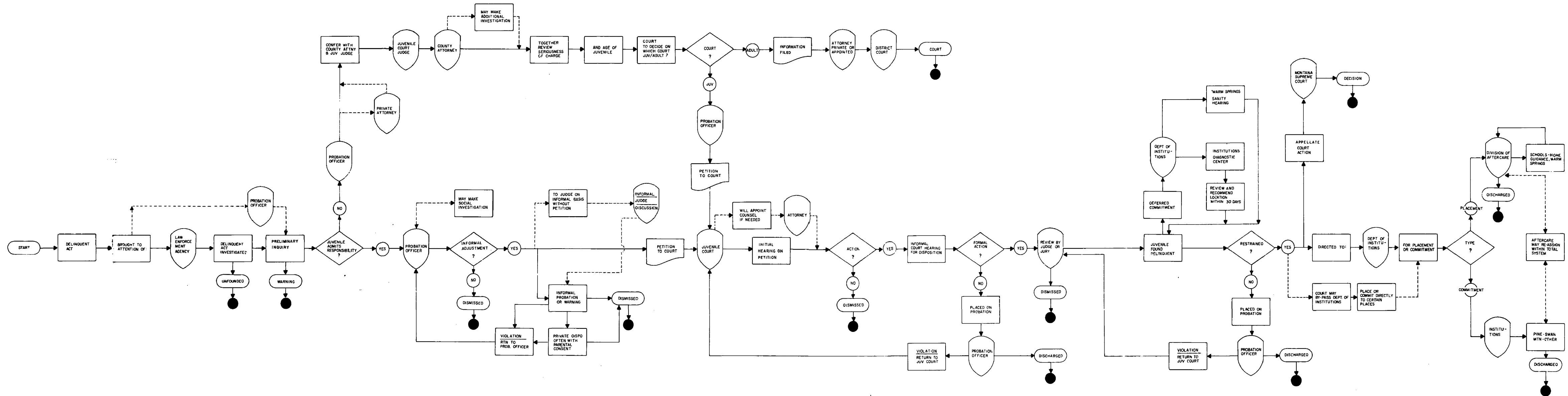
Systems analysis is a theory which concerns itself with recurrent cycles of input, throughput, and output which can be identified and traced by: 1) locating the system, 2) specifying the task functions, 3) identifying how it

³¹The Montana Juvenile Offender Procedure Chart was provided by the Montana Board of Crime Control.

CHART I



MONTANA JUVENILE OFFENDER PROCEDURE CHART



PHASE I
PREVENTION

PHASE II
INFORMAL COURT

PHASE III
FORMAL COURT

PHASE IV
REHABILITATION



maintains its working structure, 4) identifying its boundaries at the procurement level as well as at the institutional level, 5) identifying how it adapts, and 6) identifying how it is managed. This includes being able to observe the roles and role conflicts of individuals within the system.³²

Locating the system consists of identifying by name or otherwise the system to be studied. Identifying task functions proves to be more complicated because a close look has to be made to observe what created the need for the original task. When an organization attempts to seek a solution to an environmental problem it must determine how to meet the needs of the population involved. This generates task demands which create a production system to meet the task demands. From this flows some type of role or role structure and an authority structure to hold the role together. Role structure is "a set of recurring activities required of an individual occupying a particular position in an organization."³³

To study role behavior the social system or subsystem must be identified and the recurring events which fit together must be located by determining the role expectations

³²Daniel Katz and Robert L. Kahn, The Social Psychology of Organizations, (New York: John Wiley and Sons, Inc., 1966) p.p. 453-456.

³³Ibid., p. 78.

of any given office.³⁴ The study of role behavior is not complete unless the role conflicts are observed. Every role has some degree of conflict to it and the conflict may determine what the ultimate outcome of role behavior will be. Katz and Kahn define role conflict as "The simultaneous occurrence of two (or more) role sendings in which compliance with one would make more difficult compliance with the other."³⁵ They break down role conflict as follows:

1. Intrasender Conflict. Incompatible expectations held by a given member of a role set.
2. Intersender Conflict. Incompatible expectations held by two or more members of a role set.
3. Interrole Conflict. Incompatibilities between two or more roles held by the same focal person.
4. Person-role Conflict. Incompatibilities between the requirements of a role and the needs or values of the person holding it.
5. Role Overload. A more complex form of conflict involving legitimate role expectations held by a focal person but the person finds he cannot complete all of the task demands in the proper quality and in a given set of time. This results in a person-role conflict where the individual may not be able to meet the pressure or he may attempt to comply only with those demands which rank as to priority.³⁶

³⁴Ibid., p. 174. ³⁵Ibid., p. 184.

³⁶Ibid., p.p. 184-186.

How a system maintains its working structure relates to maintaining stability and predictability within the organization. Katz and Kahn find:

....many specific mechanisms are developed in the interests of presenting a steady state in the system. Selection procedures are employed to screen out applicants who do not seem likely to adapt to the system. Socialization or indoctrination practices are utilized to help fit new members into the organizational mold. System rewards are provided for membership and seniority in the system. Regulatory mechanisms are developed to give some automatic corrections to departures from the norm of organizational functioning. Rules are elaborated and provisions made for their policing. Decisions are made on the basis of precedent. Uniformity becomes the ideal, and standard operating procedures are worked out for human relations as well as for production requirements.³⁷

Since the maintenance structure maintains things as they are, change is hard to implement for other subsystems in the organization. This creates frustration within this subsystem and if change does occur it is often from some external demands which imply altering the organizational task.³⁸ Therefore, the maintenance structure tends to compromise its goals with the task requirements and the psychological wants of the focal people. The compromise that takes place normally consists of either imposing external rewards, especially money, to make the job more satisfying, or of introducing some minor reform within the job itself. This usually results in, according to Katz and Kahn, some interaction among the people within the organization where they make decisions of their

³⁷ Ibid., p.p. 87-88.

³⁸ Ibid., p.p. 79-81, 87.

own, cooperate among themselves, and seek gratification for their needs.³⁹

Organizational boundaries limit the operation of the system so in discussing the concept of organizational boundaries one must deal with the procurement subsystem and the institutional subsystem. The procurement subsystem concentrates on transactional exchanges with the environment, being responsible for obtaining input of materials to be converted into a product, and input of personnel to get the job done. Input of materials includes physical structures such as office space, budgets for financing the operation, and other resources while the input of personnel includes control of salaries, fringe benefits, prestige and education to motivate the people to get the job done.⁴⁰ The institutional subsystem relates to the larger society and is concerned with gaining support of its products or policies as well as legitimizing what the organization is doing.⁴¹

The survival of the organization relates to identifying how the system adapts, but unlike the maintenance subsystem, the adaption subsystem faces outward and attempts to achieve environmental constancy by controlling the external world as much as possible. Katz and Kahn state that when change is necessary it is:

³⁹ Ibid., p.p. 80, 81. ⁴⁰ Ibid., p.p. 81, 82, 89.

⁴¹ Ibid., p.p. 82, 96-99, 456.

....dependent upon the degree of openness in wanting to change and the extent of the needed modification. Sometimes the modification requires changing both people and organizational structure, and sometimes just people, or certain of their specific behavior, and that form of change is likely to be adopted in preference to a solution which involves changing both specific behavior and generalized institutional practices. Thus, if an organization is confronted with the alternative of changing some preferences in its clientele or changing some of its own structure and personnel, it will take the former path. If, however, it must change outside structures and personal habits, as against a limited internal change in practice, it is more likely to seek the latter solution.⁴²

Under the systems analysis theory the managerial subsystem is the administrative arm of the entire concept, cutting across all of the earlier stated subsystems, and is responsible for coordinating all of these subsystems, resolving conflicts erupting between hierarchial levels and coordinating external requirements with needs and resources of the organization.⁴³

WHY SYSTEMS ANALYSIS?

The open-system theory will be used to observe the informal juvenile court process because it furnishes a framework which is useful in examining this particular social system from a social-psychological point of view. In their book, The Social Psychology of Organizations, Katz and Kahn explain why open-system theory helps one to observe the entire system:

Open-system theory with its entropy assumption emphasizes the close relationship between a structure and

⁴² Ibid., p. 93.

⁴³ Ibid., p. 94.

its supporting environment, in that without continued inputs the structure would soon run down. Thus one critical basis for identifying social systems is through their relationships with energetic sources for their maintenance and human effort and motivation is the major maintenance source of almost all social structures. Hence, though the theoretical approach deals with relationships, these relationships embrace human beings. If we are concerned with the specifics of the maintenance function in terms of human behavior we are at the social-psychological level. In open-system theory, the carriers of the system cannot be ignored because they furnish the sustaining input. On the other hand, another major relationship encompassed by a system is the processing of production inputs to yield some outcome to be utilized by some outside group or system. The hospital meets the health needs of the community or the industrial enterprizes turn out goods or furnish services. These functions of given systems can again be identified through the input, through-put, and output cycle, but they may not be primarily psychological if we deal only with production inputs and exports into the environment, i.e., so many tons of raw materials and so many finished products. The moment, however, that we deal with the organization of the people in the system concerning the through-put we are again at a social-psychological point of view.

Finally, open-system theory permits an integration of the so-called macro approach of the sociologist and micro approach of the psychologist to the study of social phenomena.⁴⁴

Hopefully this observation of the informal juvenile court through systems analysis will identify the behind-the-scenes function of informality and thus support the benefits it offers to the entire juvenile court system.

⁴⁴Ibid., p. 9.

CHAPTER III

APPLICATION OF THE SYSTEMS MODEL TO THE MONTANA INFORMAL JUVENILE COURT SYSTEM

The reader should keep in mind the previous introduction of the labeling concept and the early philosophy of the juvenile court presented in Chapter I when now looking at the application of the systems model to the Montana Juvenile Court System. The six stages of the systems analysis theory described in the previous chapter were applied to the Montana Juvenile Court System with the following results.

LOCATING THE SYSTEM

The system under study in this paper is the informal juvenile court system in the State of Montana. The primary emphasis will be on the informal system at the time the offender is referred to the juvenile probation officer for disposition until he is referred to the district juvenile judge on a formal petition alleging delinquency. Although there are other individuals involved in the informal process, such as law enforcement officers, and at times the district juvenile judge even when a formal petition is not filed, this study concentrates on probation officers as the focal persons and discusses the other individuals and their roles as they interrelate to the role of the probation officer.

THE TASK FUNCTIONS OF THE JUVENILE COURT

The task functions of the informal juvenile court system, not specifically set out but implied by the written juvenile code in Montana, are essential to maintaining the practical and beneficial operation of the Montana juvenile court system. As noted in the introductory material, the basic intent of the founders of juvenile courts was to provide a means of handling juvenile offenders differently than adult offenders, the premise being that treatment would be more effective than punishment in providing the protection demanded by the community.

Informal Treatment

Arrest - To enter the system the offender is usually charged with a violation of law and taken into custody. Under Montana law the individual who primarily exercises arrest powers is the peace officer. Section 10-607, R. C. M., 1947 states that a peace officer is the individual required to cite an offender into informal hearings before the court.⁴⁵ And, Section 10-608, R. C. M., 1947 gives the officer authority to bring anyone before the court who has failed to appear when required, or who the judge feels would not appear.⁴⁶

⁴⁵ Revised Codes of Montana 1947, (1973), C. 6, Sec. 10-607, p. 140.

⁴⁶ Revised Codes of Montana 1947, (1968), C. 6, Sec. 10-608, p. 581.

But, the most important section of the code, Section 10-608.1, R. C. M., 1947 states:

(1) Whenever any peace officer believes on reasonable grounds that any child is violating any law or ordinance or engaging in other conduct that would be grounds for finding the child a delinquent, or when the surroundings are such as to endanger his health, morals, or welfare unless immediate action is taken, then the peace officer shall take the child into custody in the same manner as for the arrest of an adult.

(2) Whenever the peace officer believes on reasonable grounds that the child can be released to a parent, guardian or other person who has had custody of the child, then the peace officer may release the child to that person or persons upon receiving a written promise from him or them to bring the child before the juvenile court or the juvenile probation officer at a time and place specified in the written promise.

(3) Whenever the peace officer believes, on reasonable grounds, that the child must be held in custody until his appearance in juvenile court, then the peace officer must deliver the child to the juvenile court or the probation officer without undue delay. If it is necessary to hold the child pending appearance before the juvenile court then the child must be held in some place that has been approved by the juvenile court and completely separated from adult offenders.

(4) Whenever any peace officer has apprehended a child as herein above provided, he shall, as soon as practicable, notify the juvenile court or probation officer of such fact with a report of his reasons for the apprehension.⁴⁷

The role of the peace officer is instrumental in indicating how a juvenile will be handled. Some of the Montana districts encompassing larger cities provide peace officers who work exclusively with youth. These individuals are more

⁴⁷Revised Codes of Montana 1947, (1973), C. 6, Sec. 10-608.1, p. 140.

highly trained to deal with youth problems and quite often handle situations much differently than officers who have occasional contacts with youth. In the more rural areas peace officers tend to know almost all of the youth in the community. Such familiarity enables officers to work with the youth and families more successfully. But whether in the large city or the rural area, the initial contact made by the arresting officer can dictate future action taken by the offender, as well as the court.

A role conflict sometimes arises because the peace officer is not the only individual who can exercise arrest powers under Montana law. Section 10-623 gives this same authority to juvenile probation officers.⁴⁸ The questionnaire was designed to determine to what degree probation officers exercised this authority. The data was interpreted that probation officers do not believe they should be making arrests but 24 out of 32 do make arrests primarily in situations involving children in need of supervision (CHINS), misdemeanor, felony, and traffic offenses. Out of 5,556 juveniles taken into custody in 1970, 228 were arrested by a probation officer. Out of the 228 arrests made by probation officers, 156 were made by part-time probation officers whose primary duty or role was that of a peace officer rather than probation officer while 41 were made by other part-time probation offi-

⁴⁸Revised Codes of Montana 1947, (1973), C. 6, Sec. 10-623, p. 144.

cers for a total of 197. To the question "Do you feel that a juvenile probation officer should be making arrests?" 3 of 32 respondents answered "rarely", and 10 answered "Never". Five of 7 respondents who were also peace officers checked either "always" or "frequently", and only one fulltime probation officer checked "always". Eighty-one percent of the total responding indicated they felt their primary role should not be making arrests.

Should the juvenile probation officer have arrest powers? The officer can be placed in a definite role conflict when he is arresting on one hand and required to counsel on the other. It is recommended that the probation officer have arrest power only if the juvenile violates his probation or a lawful order of the court. This would solve the problem and place the arrest power with the probation officer in specific cases only. Any other arrest would be left up to the peace officer who has that duty as part of his overall role. The alternative to this would be to continue to leave arrest powers with the probation officer and let each officer resolve his own individual roal conflicts.

Detention - Once a peace officer arrests a juvenile he can release him to his parents, a guardian, or other person upon written promise that the child will be brought before the court or a juvenile probation officer at a set time. Or, the peace officer can hold the child in custody. If he chooses to hold him, he must immediately notify the juvenile

court or juvenile probation officer and submit a report of his reasons for the apprehension. Although data gathered from the questionnaire used as part of this study revealed that in 14 of the 16 judicial districts represented detention procedure required a written report stating the reasons for detaining a juvenile, responses from five of these judicial districts indicated that a report is rarely or never submitted. Twenty-three of the respondents felt arresting officers should notify the parents of an arrested juvenile. Sixteen respondents indicated they contacted parents within one hour after detention and 13 indicated contact was made as soon as possible. Where responses indicated a parent was not contacted, the reason most often given was inability to locate the parents. The survey also showed that releases of juveniles held in detention are arranged, 1) most often by a probation officer, 2) by the peace officer under the direction of a probation officer or the judge, or 3) by the judge.

A role conflict arises when the law under Section 10-626 of the Revised Codes of Montana, 1947, is practiced because under that law any child under the age of eighteen who must be detained may be placed in custody by order of the court or of the chief probation officer.⁴⁹ When they act in this capacity they are drawn between two goals, i.e.

⁴⁹Revised Codes of Montana 1947, (1973), C. 6, Sec. 10-626, p. 145.

making every effort to obtain the release of the child, a goal emphasized both by the labeling concept and the code, or, protecting the public. This conflict has raised the question of when do the rights of the public to protection begin infringing on the rights of the juvenile. Montana's 1971 juvenile delinquency statistics provided by the Board of Crime Control show that 5,639 youth went through the juvenile court system. Of these 1,040 spent 3,437 days in jail. Should they have been given the right to post bail? Only approximately 230 were brought before a juvenile judge on a formal written petition alleging delinquency. The others appeared on an informal basis.⁵⁰

When the decision is made to detain a juvenile offender, the code provides that the peace officer must use a facility approved by the juvenile court judge. In addition, juveniles must be separated by sexes and must not be placed with adults.⁵¹ Yet, a survey of Montana jails, conducted by Robert Logan in 1971, indicated that one-fifth of the jails in Montana do not have separate facilities available for detaining juveniles. In one-fourth of the jails surveyed juveniles charged with felonies were placed in the same cell with juveniles detained for such offenses as liquor viola-

⁵⁰Information provided by the Montana Board of Crime Control, from their 1971 statewide juvenile court statistics.

⁵¹Revised Codes of Montana 1947, (1973), C. 6, Sec. 10-626, p. 145.

tions, runaways, or ungovernables.⁵² In over half of the jails reporting on the survey it was found that juveniles were placed in jail over the weekend to deter delinquent acts, and dependent-neglected children were even detained in one-fourth of the jails.⁵³ Mr. Logan concluded, with regard to segregation of prisoners:

At present the majority of Montana jails are not adequate to properly segregate inmates. In many jails the simplest form of segregation--male from female and juvenile from adult--creates a serious problem due to lack of space. Many jails use the same cell for juveniles and women. In the event there is a need to incarcerate a juvenile, an adult female, and an adult male, someone must be transferred to another facility.⁵⁴

The President's Task Force Report also made the point that juveniles are often wrongfully held, noting there were approximately 8,400 juveniles in the nation held for such offenses as curfew violation, truancy, traffic violation, disturbing the peace, and minor liquor law violation.⁵⁵

Making a decision to detain or release a juvenile creates problems especially when the parents cannot be located and there is no alternative place to hold the child.

⁵²Robert Logan, State of Montana Jail Survey, (Helena: The Governor's Crime Control Commission, 1972) p. 11.

⁵³Ibid., p. 12. ⁵⁴Ibid., p. 108.

⁵⁵The President's Commission on Law Enforcement and Administration of Justice, Juvenile Delinquency, p. 37.

The usual alternatives available to the probation officer are: 1) using a written release form signed by the parent which promises that they will bring the child before the court at a future date; 2) releasing the youth to a friend or relative; 3) placing the youth in a temporary foster home if one is available; or, 4) holding the youth in custody. Bail is not one of the alternatives as it is not specified in Montana juvenile law. Article II, Section 15 of the Montana Constitution states that "the rights of persons under 18 years of age shall include, but not be limited to, all the fundamental rights of this Article unless specifically precluded by laws which enhance the protection of such persons."⁵⁶ This particular article gives the youth the same basic rights as adults unless the right is specifically denied. Section 21 of Article II provides for a right to bail so there may be a possibility that in Montana a youth is entitled to bail under the new Constitution. Prior to the new constitution taking effect bail existed at the discretion of the district juvenile judge and statistics are not available as to how often it was allowed.⁵⁷ Some states, such as Colorado, provide that "nothing in this Section shall be construed as denying a child the right

⁵⁶Montana, Constitution, Article III, Sec. 15.

⁵⁷Montana, Constitution, Article II, Sec. 21.

to bail."⁵⁸ Colorado further provides for a detention hearing within forty-eight hours, excluding Saturdays, Sundays, and court holidays.⁵⁹ One of the main problems regarding bail for juveniles is that the United States Supreme Court has not determined its merits at a constitutional level. Sanford Fox states in his book, Juvenile Courts in a Nutshell:

Courts and statutes are divided on the question of whether, in addition to the right to release from custody upon the promise of his parents to bring him to court, the child has a right to release on bail... where it has been found that the constitution requires a due process probable cause hearing for children before they may be held in pre-trial detention, the court stopped short of also finding that there is a constitutional right to bail by viewing the statutory provisions relating to release as an acceptable equivalent of bail.⁶⁰

At the present time there is no set procedure in Montana's written juvenile code that states a juvenile is entitled even to a pre-trial detention hearing. This decision is up to the judge when he sets down what policy is to be followed in the handling of youth, and it varies from judicial district to judicial district. When the President's Task Force looked at this problem they arrived at four main considerations: 1) strict detention procedures should be enacted restricting both the authority to detain and the circum-

⁵⁸Colorado Revised Statutes 1963, (1968), C. 22, Sec. 22-2-3, p. 167.

⁵⁹Ibid.

⁶⁰Sanford J. Fox, The Law of Juvenile Courts in a Nutshell, (Minnesota: West Publishing Co., 1971) p. 146.

stances under which detention is permitted, with state legislatures limiting the authority to detain to the probation officer rather than the police; 2) Detention should be used only when it is necessary to protect the community or the youth, or to keep the youth in the jurisdiction; 3) The law should require a detention hearing within 48 hours of the initial detention; and, 4) the judge, after a detention hearing, should require release of any youth who was placed in detention by the probation officer without proper authority.⁶¹ These recommendations may be a guide to eliminating some of the unnecessary detention of youth but the problem may still exist of what to do with the youth whose parents cannot be found in areas where there is no acceptable foster home or alternative placement available until the case comes before the court.

Necessary alternatives to incarceration are very important in Montana and it is important to deal with this issue because of the lack of shelter homes, detention homes, foster homes, etc. The main holding area for a juvenile in need of detention is the county jail. This drastically limits the judge's ability to place a juvenile who has committed a serious crime. It creates even more conflict with

See especially Baldwin v. Lewis, 300 F. Supp. 1220 (E.D. Wis. 1969): In re Castro, 243 Cal. App. 2d 402, 52 Cal. Rptr. 469.

⁶¹The President's Commission on Law Enforcement and Administration of Justice, Juvenile Delinquency, p.p. 36,37.

the runaway who does not want to return home but has no other place to go because of lack of funding or personnel to find the necessary alternative homes. Unless the public as a whole determines that these are their problems it will be difficult to provide the necessary funds, personnel, and programs to work with delinquent children and it greatly hampers the efficiency of the juvenile court system.

It is recommended that, in all fairness to juveniles detention should be restricted according to the guidelines offered by the President's Task Force as noted above. In addition, Montana should require that a detailed written report be filled out, stating the reasons for detention and this report should be submitted to the judge in every case. The use of detention as "jail therapy" should also be eliminated unless a district juvenile judge orders it. From the data collected the use of bail was evidenced in only one judicial district. If the juvenile is going to be detained in spite of the above procedures making it appear that the juvenile system is paralleling the adult criminal system, at least in the detention process, then it is recommended that the right to bail be considered also.

A drastic increase in funds is needed to make available other alternative placements. Without it, if the above recommendations are not followed, the only alternative is to continue jailing juveniles. With the inadequate facilities available in Montana, this is hardly an acceptable alternative.

Preliminary Inquiry - Once the offender is processed through arrest and detention the next step is an appearance before the juvenile probation officer at what is designated a preliminary inquiry. Section 10-605.1 (1), R. C. M., 1947 provides:

Whenever any person informs the court that a child is a delinquent as defined in this act the court shall cause, by citation or otherwise, the child to be brought before the court or the juvenile probation officer for the purposes of making a preliminary inquiry to determine whether the interests of the child or the public require that further action be taken, the matter may be handled by an informal adjustment including the placing of the child on probation, or the court may order the county attorney to file a petition charging the child with being a juvenile delinquent.⁶²

The intent of the preliminary hearing is to assist the judge in processing cases without the filing of a petition. The probation officer's role is very important in this hearing since he is the one individual involved in most of the preliminary hearings. This hearing can be handled by either the judge or the probation officer and in most instances the matter is handled informally at an early level.

The questionnaire data revealed that 26 of the juvenile probation officers responding conduct the preliminary inquiry and 21 spend approximately 30 percent of their time doing this type of work. Twenty-five stated the usual length of time between arrest and appearance at the hearing is 1 to 7 days. At least one parent is required at all hearings,

⁶²Revised Codes of Montana 1947, (1973), C. 6, Sec. 10-605.1(1), p. 139.

and 5 of the respondents indicated an attorney always represents the juvenile. If the juvenile denies the allegations against him, 22 of the probation officers indicated they do not determine his guilt but refer the case to the district juvenile judge for processing.

At his discretion, the probation officer can dispose of the case by: 1) warning the youth; 2) grounding the youth to home for a specified length of time; 3) leaving the disposition up to the parent if it appears the parent is handling the situation well; 4) continuing or holding the case open either for further investigation or counseling in an attempt to encourage the youth to take the responsibility for his behavior in an effort to change it; 5) referring the youth to another agency for assistance; 6) returning the youth to his home jurisdiction; 7) placing the youth in foster care; 8) detaining the youth in jail for week-ends or some other specified length of time; 9) placing the youth on informal probation and requesting restitution if possible; 10) placing the youth on work detail; or, 11) referring the case to the county attorney for filing of a formal petition.

One of the problems at the preliminary inquiry stage is that there is no set procedure to guide the probation officer, and accordingly the process varies from one district to another. It is recommended that some minimal procedural guidelines be established such as: 1) Advising the youth of his rights under Miranda and Gault; 2) Advising the

youth that he has a right to have any decision reviewed by the district juvenile judge; 3) assuring that at least one parent is present at the inquiry; and 4) establishing some means of providing an attorney at this level if the juvenile so desires.

Probation - When the disposition decided upon is probation, rules are furnished the youth advising him of the conditions of probation and when to report to the juvenile officer. Probation rules vary throughout the state but normally include: 1) the individual must not disobey any federal, state, county or city laws or ordinances or any rules set down by a parent or probation officer; 2) the individual must follow some curfew; 3) he may not be permitted to leave the state or jurisdiction without permission of the probation officer; 4) he must be in school on a full time basis; 5) he must have a job if one is available; 6) he may be limited regarding who he may associate with; 7) he may have driving restrictions; 8) he may have to report to the probation officer at certain specified times; or, 9) he may have to go to or be involved in mental health evaluations.

Questionnaire data revealed that when probation was used contact was normally made with the juvenile once a week and the length of probation varied from 30 days to an indefinite term. Nineteen of the respondents indicated they rarely or never set indefinite periods while thirteen

stated they rarely or never use short-term probation. Probation was used by all respondents to some degree, with 11 officers indicating they used it in 30 to 60 percent of all cases handled and 13 officers indicating they used it in 60-100 percent of all cases handled. Yet, the Governor's Crime Control Juvenile Court statistics for 1971 indicated that 210 juveniles or 21 percent of all juveniles processed for 1971 were placed on probation.⁶³ This discrepancy is not clearly understood but it is assumed that perhaps the probation officers responding did not understand the question.

Probation is presently used at both the preliminary inquiry stage described earlier and at the formal court stage. Its use at the preliminary inquiry stage is to give the probation officer some leverage in following up on cases at an informal level in order to avoid the filing of a formal petition alleging delinquency. Hopefully the juvenile involved can be guided away from delinquent behavior during the informal process. An alternative to this approach would be to have a petition filed against the youth or let the judge conduct all preliminary inquiries and set probation. This could drastically effect the way probation officer now handle cases and it would increase the load on the juvenile judge, bringing about the possibility of more formal petitions

⁶³Information provided by the Governor's Crime Control 1971 Statewide Juvenile Court Statistics.

being filed against the juvenile. Another alternative would be for the probation officer to continue to conduct the preliminary inquiry but with the consent of all the necessary parties when probation is used. This is basically the situation now because if the juvenile does not like the terms of probation set by the probation officer he can appeal to the judge. However, this procedure is not uniform across the state and the consent decree may not even be in writing in some jurisdictions. It should also be noted that there is no formal procedure for advising the juvenile that he can protest the preliminary inquiry. The Juvenile Justice Advisory Council to the Governor of Montana has recommended that when the consent decree is used at these informal hearings the following procedure should be followed:

Any probation or detention imposed under this section against any youth must conform to the following procedures:

a) Every consent adjustment shall be reduced to writing, signed by the youth and his parents or the person handling legal custody of the youth;

b) Approval by the youth court judge shall be required where the complaint alleges commission of a felony or where the youth has been detained.⁶⁴

This recommendation would provide that the youth could only agree to probation at the informal level if both he and his legal guardian sign the consent decree. In felony cases

⁶⁴Revised Codes of Montana 1947 (1974), C. 12, Sec. 10-1210, p. 147.

the judge would give administrative review and in any case the youth could request a review by the county attorney or judge according to the recommendations set forth under the new Montana Youth Act.

Generalized duties - Section 10-623, Revised Codes of Montana, 1947 further provides:

The chief probation officer, under the direction of the judge, shall have charge of the work of the probation department. The probation department shall make such investigation as the juvenile court may direct, keep a written record of such investigations, and submit the same to the judge or deal with the same as the judge may direct. The department shall furnish to any delinquent child placed on probation or any parent or guardian of such child a written statement of the conditions of probation, and shall keep informed concerning the conduct and condition of each person under its supervision, and shall report thereon to the judge as he may direct. Each probation officer shall use all suitable methods to aid persons on probation and bring about improvements in their conduct and condition. The probation department shall keep full records of its work, and shall keep accurate and complete accounts of money collected from persons under its supervision, and shall give receipts therefore and shall make reports thereupon as the judge may direct. Probation officers, for the purpose of this act, shall have the powers of police officers.

All information obtained in the discharge of official duty by any officer or other employee of the juvenile court shall be privileged and shall not be disclosed to anyone other than the judge and others entitled under this Act to receive such information, unless and until otherwise ordered by the judge.⁶⁵

Questionnaire data also indicated that 10 probation officers are involved in completing presentence investigations for the adult court, 5 probation officers complete social investigations on divorce cases, 25 officers make referrals to

⁶⁵Revised Codes of Montana 1947, (1973), C. 6, Sec. 10-623, p. 144.

other agencies, 11 officers were involved in handling some 40 attempted suicide cases, and 12 officers were involved in offender work programs. In some instances these duties are incompatible with other duties of the officer, and as in presentence investigations of adults, some duties are specifically under the authority of the adult probation officer. Although role conflicts vary among districts, in some areas the role overload is so heavy elimination of certain duties proves to be the practical way of dealing with the situation. Priorities vary throughout the state depending upon the probation officer's background and the duties emphasized by the judge.

Work in the juvenile probation departments requires assistance from foster care coordinators, secretaries, work study students, college students working on practicums, and volunteers. The chief probation officer is normally the individual who screens all applicants.

Foster care coordinators work at maintaining court operated foster homes by training and counseling foster parents and counseling youth in foster care. They also are responsible for licensing and maintaining the court operated foster homes, administering the foster care program, coordinating foster care with other agencies, and developing community awareness for foster care. This individual is very important in making homes available to the court on both a long and short term basis, thus providing the court

with an alternative placement for many youth. Foster care does not eliminate the need for jails or institutions, but aids the court in helping troubled youth gain a better perspective on life so, hopefully, they can eventually adjust at home and in the community.

Secretaries act as receptionists, typists, and file clerks. As such, they receive incoming telephone calls and people, set up appointments, absorb complaints until they can be transferred to a probation officer, and type and file all correspondence, claims, federal grants, foster care reports, petitions, citations, court orders, and other miscellaneous items. Additionally, as file clerks, they must process and file tickets, notices to appear, offense reports from all law enforcement agencies, and statistical reports on each juvenile processed through the system. All personnel records are maintained by secretaries.

Work study students and students working on their practicums are used in only three judicial districts. Coming from numerous disciplines, these individuals function as an assistant to the probation officer. They process and followup cases after detention, do psychological testing, counseling and research, and even provide assistance in foster care. The work-study program provides the juvenile probation officer valuable assistance while at the same time needy students are given an opportunity to work approximately fifteen hours a week without jeopardizing their

education. The federal government funds seventy-five percent of the program and local sources provide the other twenty-five percent.

Generally volunteers work in the same capacity as work-study students but do not receive any money for their services although in some instances they may receive college credit. Recently however, a volunteer position has been created which provides for payment of wages funded through the University Year In Action Division of the Volunteer In Service to America program. Most volunteers work for the personal satisfaction of helping someone in trouble however.

Informal Court - The informal court procedure follows when a juvenile's delinquent behavior pattern continues even after the juvenile probation officer has placed him under some supervision and attempted to work with him. In such cases, usually the probation officer contacts the judge and requests a hearing before the court without yet issuing a formal petition alleging delinquency. The judge then normally makes an informal disposition. At this point he can not declare the juvenile a delinquent as this requires preparing and filing a formal petition, nor can he commit him to an institution as this requires formal adjudication.

Questionnaire data indicated that when the informal court procedure was used, 20 of the officers stated that an attorney was not involved and that the individual presenting the case before the judge was the county attorney, juvenile

probation officer, or the parents, most often it being the probation officer. Most of the respondents felt this informal hearing before the judge, usually in his chambers, was helpful to the juvenile because they do not then have to be declared delinquent.

When a youth is placed on probation in the informal court proceeding, the normal practice is to attempt to involve the parents as well as the probation officer in the supervision of the youth. Failure to comply with the judge's conditions generally means additional probation time or formal processing.

Formal Treatment

Once a juvenile has been processed through the informal phase of the juvenile court, and fails to respond positively, the primary method of providing the protection demanded by the community is processing the youth through the formal portion of the juvenile court. The juvenile probation officer functions in many areas of the formal court process. As discussed in the Gault decision, in some instances the end result of handling an offender in the formal court process directly affects the role the probation officer must take in the informal system.⁶⁶

⁶⁶In re Gault, 387 U.S. 1, (1967); The United States Supreme Court, in reversing Gault, noted that the probation officer in the Arizona system not only arrested juveniles, filed petitions, and supervised detention homes, but he also acted as counsel for the juvenile.

Petition - Formal court procedure begins with the issuing of a petition alleging delinquency. Section 10-602, R. C. M., 1947 defines delinquency as:

- (a) a child who has violated any ordinance of any city;
- (b) a child who has violated any law of the state, provided, however, a child over the age of sixteen (16) years who commits or attempts to commit murder, manslaughter, rape when committed under the circumstances specified in subdivisions 3 and 4 of Section 94-401, R.C.M. 1947, arson in the first and second degree, assault in the second degree, assault in the first degree, robbery, first or second degree, burglary while having in his possession a deadly weapon, and carrying a deadly weapon or weapons with intent to assault, shall not be proceeded against as a juvenile delinquent but shall be prosecuted in the criminal courts in accordance with the provisions of the criminal laws of this state governing the offenses above listed.
- (c) a child who by reason of being wayward or habitually disobedient is uncontrolled by his parent, guardian, or custodian.
- (d) a child who is habitually truant from school or home.
- (e) a child who habitually so deports himself as to injure or endanger the morals or the health of himself or others.
- (f) a child who unlawfully, negligently, dangerously, or willfully operates a motor vehicle on the highways of the state or on the roads and streets of any county or city so as to endanger life or property, and a child who operates a motor vehicle on such highways, roads or streets while intoxicated or under the influence of intoxicating liquor, or any other driving infractions that show the child to be lacking parental supervision or a disrespect for the traffic laws of this state.⁶⁷

In Montana the county attorney who is required to assist the probation officer in investigating all complaints and who is to prosecute all persons charged with violating the provisions of the juvenile court act, is required by law to prepare, sign and file the petition when a juvenile is

⁶⁷Revised Codes of Montana 1947, (1968), C. 6, Sec. 10-602, p. 577.

formally charged with acts of delinquency.⁶⁸

Citation - When a petition is filed the facts which bring the child under the juvenile court act must be stated including the names and addresses of the parents and any other information necessary to properly inform the court of the matter.⁶⁹ After the petition has been filed and after such investigation as the court may direct, the court then issues a citation briefly reciting the substance of the petition, unless the parties involved appear voluntarily. Those individuals who have the custody and control of the child are also required to appear personally with the child before the court. If the person in control of the child is someone other than the parent or guardian, then the parent or guardian is to be notified of the case if he or she lives in the county where the hearing is taking place. Citations may also be served on anyone else who the judge feels should be in the court.⁷⁰ The citation must be served personally at least 24 hours prior to the time fixed by the court for its return, and if it cannot be served personally, the judge may order service by registered mail or by publication. It may be served by any able person under the direction of the

⁶⁸Revised Codes of Montana 1947, (1968), C. 6, Sec. 10-629, p. 589.

⁶⁹Revised Codes of Montana 1947, (1973), C. 6, Sec. 10-605, p. 139.

⁷⁰Revised Codes of Montana 1947, (1968), C. 6, Sec. 10-606, p. 580.

court, but generally should be handled by a peace officer like a warrant for arrest.⁷¹ If those cited fail to appear they may be proceeded against for contempt of court.⁷²

Hearing - The hearing itself is conducted in a very informal manner either in chambers or in the courtroom depending on the judge. When the hearing is conducted in the formal sense, it is assumed the juvenile has been notified of his rights prior to any decision being made by the court. Those rights, as stated in Section 10-604.1, R.C.M. 1947, are:

The juvenile in any case to be heard on a written petition charging delinquency shall have the right to demand a jury trial and shall have the right to be represented by counsel. The rights are deemed waived if not exercised.⁷³

The hearing is held to determine whether the youth should be adjudicated a delinquent.

Disposition - In the event the judge determines the juvenile to be a delinquent, a number of options are open as to disposition of the case: 1) place the child on probation or under supervision of the court for such time as the judge sees fit; 2) commit the child to a public or private

⁷¹Revised Codes of Montana 1947, (1968), C. 6, Sec. 10-607, p. 580.

⁷²Revised Codes of Montana 1947, (1968), C. 6, Sec. 10-608, p. 581.

⁷³Revised Codes of Montana 1947, (1973), C. 6, Sec. 10-604.1, p. 138.

institution or to the Department of Institutions, or to foster care; 3) commit a child sixteen (16) years of age or older to the Department of Institutions for evaluation to determine if the youth is suitable for placement at the Youth Forest Camp. If so, and there is space available, the judge may order the youth placed there; 4) commit the child to a reception and evaluation center not to exceed 45 days; or 5) order any further care and treatment he feels would be in the best interests of the child.⁷⁴

The judge generally spends a considerable amount of time counseling and trying to determine what the youth's attitude is and whether the court can work with that attitude without ordering institutionalization because of the offenses presented against the youth. Probation officers contribute substantially to the judge's needs by submitting reports to the court which include a social history and recommendations. The judge makes no decision until he feels he has adequately weighed input from the youth, his parents or guardian, an attorney (when there is one involved in the case), and the probation officer. This combination legal/social approach aids in altering delinquent behavior, but in some cases, if the response of the youth remains negative, alternatives narrow and the possibility of commitment to an institution increases significantly. Too, the availability of resources at the community level and the interest individuals show in

⁷⁴Revised Codes of Montana 1947, (1973), C. 6, Sec. 10-611, p.p. 141, 142; and (1968), C. 6, Sec. 10-611.1, p. 583.

extending help to troubled youths affects the judge's decision, especially as to whether institutionalization is necessary.

Appeal - If the youth involved is not satisfied with the decision rendered by the judge, he is entitled to an appeal. Section 10-630, R. C. M., 1947, provides in part:

an appeal in the case of a delinquent child shall not suspend the order of the court, nor shall it discharge the delinquent child from the custody of that court or of the person, institution, or agency to whose care such delinquent child shall have been committed, unless that court shall so order.⁷⁵

The Supreme Court, on appeal, may make whatever modifications of the District Court Order they deem necessary in the interest of justice.

IDENTIFYING HOW THE SYSTEM MAINTAINS ITS WORKING STRUCTURE

The maintenance resource concentrates on keeping people in the system in order to preserve a steady state. Katz and Kahn list six main sections under the maintenance resource: 1) selection of employees; 2) indoctrination of employees; 3) regulation of employees; 4) uniformity; 5) precedent decisions; and, 6) standard operating procedures.⁷⁶

⁷⁵Revised Codes of Montana 1947, (1968), C. 6, Sec. 10-630, p.p. 589, 590.

⁷⁶Katz and Kahn, p.p. 87-89.

The attempt here is to observe how the juvenile probation officer's role fits into this portion of the system.

Selection of Employees - Each of the judicial districts has its own procedure for selecting employees. Montana law provides that in the selection of probation officers the judge may appoint a discreet person of good moral character with preference given to people who possess either a B.A. degree in the field of behavioral science or a B.A. degree in some other field with three years experience.⁷⁷ In practice, however, several judicial districts have not always followed these guidelines.

The selection process varies throughout the state but it is normally based on newspaper or word of mouth advertising. Once the individual submits a resume' it may be screened by either the district judge or the chief probation officer, or both. If the chief probation officer does the initial screening, he checks the backgrounds of all prospective applicants. This includes looking into their educational and work background, making contact with law enforcement agencies to determine if the applicant has a prior juvenile or criminal record, and determining if the applicant would be able to complete the duties of the position. The chief probation officer determines this through the background

⁷⁷ Revised Codes of Montana 1947, (1973), C. 6, Sec. 10-622, p. 143.

investigation and personal interviews. Then applications are narrowed down and submitted to the district judge for his review. The chief probation officer may recommend a particular applicant but the judge makes the final determination. This process, though it varies from area to area, appears to be adequate for the amount of employment done in Montana. The more formalized process, including an intensive testing program, used in other more populated states does not seem to be necessary.

Dave Hopkins, a recent law student, conducted a brief study of twenty-five states to determine who appoints and fixes salaries of juvenile probation officers. Nineteen of the twenty-five either had the judge or the juvenile court appoint probation officers.⁷⁸ In four of the remaining six

⁷⁸Code of Alabama 1958, (1959), C. 7, Sec. 13§ 360, p.p. 826, 827; Arizona Revised Statutes (1974), C. 2, Sec. 8-203, p. 1010; Arkansas Statutes Annotated 1947, (1964), C. 1, Sec. 45-218, p. 312; Colorado Revised Statutes 1963, (1964) C. 22, Sec. 22-8-8, p. 778; Connecticut General Statutes Annotated (1960), C. 301, Sec. 17-57, p. 78; Delaware Code Annotated (1971), C. 11, Sec. 10-1131, p. 93; Annotated Laws of Massachusetts (1968), C. 276, Sec. 276-83A, p. 355; Annotated Missouri Statutes (1962), C. 211, Sec. 211.351, p.p. 236-237; Revised Statutes of Nebraska 1943 (1965), C. 29, Sec. 29-2210, p. 470; Nevada Revised Statutes (1973), C. 62, Sec. 62-110, p. 2001; New Jersey Statutes Annotated (1971), C. 168, Sec. 2A:168-5, p. 374; New Mexico Statutes Annotated (1973), C. 13, Sec. 13-14-7, p.p. 108-109; North Dakota Century Code Annotated, (1947), C. 27-20, Sec. 27-20-05, p. 151; Ohio Revised Codes (1968), C. 2151, Sec. 2151-13, p. 543; Code of Laws of South Carolina 1962 (1962), C. 7, Sec. 15-1130, p. 177; South Dakota Compiled Laws 1967 (1969), C. 26-7, Sec. 26-7-3, p. 153; Tennessee Code Annotated 1953 (1974), C. 10, Sec. 55-10-73, p.p. 169-170; Revised Codes of Washington Annotated (1962), C. 13.04, Sec. 13.04.040, p. 158.

states the judge also made the appointment but it was based upon the recommendation or approval of either the county commissioners,⁷⁹ the juvenile justice commission,⁸⁰ the state Department of Juvenile Services,⁸¹ or the Welfare Department.⁸² In another state the appointment was made by the Department of Welfare⁸³ while in another it was made by the Governor upon the recommendation of either the probate judge or judges in each county.⁸⁴ The study was not intended to determine how juvenile probation officers are selected but to determine who appointed them. Some states select juvenile probation officers from various state merit examinations or civil service examinations which may include some psychological testing and oral interviews.⁸⁵ Where testing is used it must conform to the Civil Rights Act of 1964.

Ted Rubin discusses the issue briefly in his book, A Comparative Study: Three Juvenile Courts, when he discussed his

⁷⁹Oklahoma Statutes Annotated (1974), C. 5, Sec. 10, § 1505, p. 63.

⁸⁰West's Annotated California Codes: Welfare and Institutions Code, (1972), C. 2, Sec. 575, p. 84.

⁸¹Annotated Codes of Maryland 1957, (1972), Sec. 52A, §14, p. 557.

⁸²Code of Virginia 1950 (1960), C. 8, Sec. 16.1-203, p.p. 70,71.

⁸³West Virginia Code (1966), C. 49, Sec. 49-5-17, p. 275.

⁸⁴Michigan Statutes Annotated (1968), Sec. 16.101, p. 11.

⁸⁵Ted Rubin, Three Juvenile Courts: A Comparative Study, (Denver: The Institute for Court Management, 1972) p.p. 151-169.

recommendation regarding Utah's selection procedure:

The written tests given by the Division should really fit the qualifications sought for probation officer, or, for example, court clerk. The U.S. Supreme Court decision in Griggs v. Duke Power Co. held the civil rights act of 1964 precluded the use of testing as a condition of employment unless the test demonstrated a reasonable measure of job performance; tests must be predictive of success on the job, and must not discriminate against minority groups.⁸⁶

Since the Montana system is not a large system like that in California or New York or some other states, it is recommended that no change be made in the present selection process. If change is indicated later, more data should be obtained from each judicial district to determine their procedure, and then this data should be compared to the Civil Rights Act of 1964 and data from other states to learn more about a more sophisticated selection process before instituting any change.

Indoctrination - Once someone is selected for the probation officer's job the next step is indoctrinating that person into the juvenile court system. There is no formal training process for probation officers in Montana on a statewide basis. The training a new officer receives is in-service but occasionally he may go to a school sponsored by the Montana Law Enforcement Academy in Bozeman, Montana.

There are four options available for indoctrinating new employees and extending training of experienced employees:

1) leave the system unchanged; 2) provide a formalized

⁸⁶Ibid., p.p. 421, 422.

training program in the district or combine some districts; 3) provide a formalized training program through the Montana Law Enforcement Academy which would include a combination of information for new employees as well as experienced employees; or 4) provide a formalized training program through the Montana Correctional Association or the Juvenile Probation Officers Association with the financial assistance of the Board of Crime Control.

Alternative number one is poor because learning and keeping current in the field is important to maintaining the system. Alternative number two would have to be sufficiently structured and some type of financial assistance would be needed in order to devise a curriculum and provide transportation and instructors. Classroom space and teaching materials would be needed also. The best financial resource would be the Board of Crime Control since they spent approximately \$14,000.00 on education and training programs in 1973.⁸⁷ Option number three would be good in that the Montana Law Enforcement Academy has been used periodically in the past for juvenile probation officer training, but to be effective the training should be handled as an annual ongoing program. Perhaps experienced probation officers could contribute special techniques and procedures developed over time. Since it is unknown whether

⁸⁷Information provided by Steve P. Nelsen, Juvenile Programs Coordinator, Board of Crime Control.

the Law Enforcement Academy could accomodate such a program, option number four is better. It is similar to number three the main difference being that either the Montana Correctional Association or the Juvenile Probation Officers Association would contract with the Board of Crime Control to obtain financial assistance. Both options three and four would improve over two because they would incorporate a larger representation of probation officers on a statewide basis.

Regulation of Employees - Once the individual is in the system his behavior is regulated in several different ways if he is going to stay in the system. The most common form of regulation is the legal compliance to the role established by law and the judge. Montana law describes what role the probation officer is required to fill and the judge of each judicial district sees that the role expectations are met. The role may vary some depending upon district procedure but basically it is the same across the state. There have been approximately three judicial districts where the probation officer has been eliminated from the system either through a change of judges or because of not fullfilling his role expectations. This situation has caused concern among probation officers which has led to discussion of tenure or job security.

Tenure is a provision that prohibits the firing or dismissal of a probation officer without cause. It further

may provide for a hearing to determine if the dismissal was just. If it was made without proper evidence of just cause the probation officer must be reinstated. A problem tenure brings is that it may keep an individual in the system who is just doing enough to get by. Also it would create difficulties in situations of personality conflicts between new judges and probation officers already hired. It may provide some job security but if the judge is determined to dismiss an employee he can create situations making it difficult for the employee to stay. It is recommended that tenure in its true sense not be included in any legislation but that some form of hearing should be permitted so the officer can be treated fairly and given a chance to perform his duties under a new judge, at least for a trial period.

Fringe benefits including retirement, vacation, insurance, sick leave, leave of absence, and holidays are rewards used to keep individuals in the system. Under county government, probation officers receive:

1) Public Employee Retirement System. This particular retirement program provides that anyone who is a member of P.E.R.S. may retire at a minimum age of 55 with ten years of creditable service and an actuarial reduction in benefits.⁸⁸ At 60 years of age and ten years creditable service an

⁸⁸Revised Codes of Montana 1947, (1968), C. 20, Secs. 68-2001 and 68-2003, p.p. 131, 132.

employee can retire with full benefits and at that time he can withdraw 100 percent of his contributions including accrued interest with ten or more years of service.⁸⁹ The regular retirement benefit provides the employee with "1/65 of his final compensation multiplied by the number of years of his creditable service".⁹⁰ Other benefits under this program are disability retirement and death benefits available to:

(1) a member who has not reached seventy (70) years of age but has become disabled for duty-related reasons, as defined in subsections (3) and (4) of this section, is eligible for disability retirement.

(2) a member who is not eligible for service or early retirement but has completed ten (10) years of creditable service and has become disabled while in active service for other than duty-related reasons, as defined in subsections (3) and (4) of this section, is eligible for disability retirement.

(3) 'Disabled' means unable to perform his duties by reason of physical or mental incapacity.

(4) 'Duty-related' means as a result of an injury or disease arising out of or in the course of his employment with an employee.⁹¹

The death benefits provide the beneficiary with a lump sum refund of the member's accumulated contributions plus

⁸⁹Revised Codes of Montana 1947, (1968), C. 20, Sec. 68-2001, p. 131.

⁹⁰Revised Codes of Montana 1947, (1968), C. 20, Sec. 68-2003 (2), p. 132.

⁹¹Revised Codes of Montana 1947, (1968), C. 20, Sec. 68-2101 (1-4), p.p. 131, 132.

interest or a monthly life annuity after ten years of service.⁹² The employee must contribute 5.75 percent of his salary to the P.E.R.S. and the employer supplements this with 4.6 percent of the employee's salary until June 30, 1975, when the employer's contribution increases to 4.9 percent.⁹³ One of the main exclusions the P.E.R.S. provides under this retirement plan is that persons who are members of another state or federal retirement program are not eligible to collect benefits under P.E.R.S. There are ten other exclusions pertaining to employees which are discussed in Section 68-1602, R.C.M. 1947.⁹⁴ A criticism of this retirement program is that members who quit with less than ten years service are unable to collect interest on the money withdrawn.

2) Annual Vacation Leave. Every full time employee of the county receives the following vacation benefits after he has been continuously employed for a minimum of one year:

Vacation leave credits shall be earned in accordance with the following schedule:

- (a) From one (1) full pay period through ten (10) years of employment at the rate of fifteen (15) working days for each year of service;
- (b) After ten (10) years through fifteen (15) years of employment at the rate of eighteen (18) working days for each year of service;

⁹²Revised Codes of Montana 1947, (1968), C. 20, Sec. 68-2302 (1-2), p. 137.

⁹³Revised Codes of Montana 1947, (1973), C. 20, Secs. 68-1902 and 68-2504, p.p. 129, 140.

⁹⁴Revised Codes of Montana 1947, (1973), C. 20, Sec. 68-1602 (8), p. 121.

(c) After fifteen (15) years through twenty (20) years of employment at the rate of twenty-one (21) working days for each year of service;

(d) After twenty (20) years of employment at the rate of twenty-four (24) working days for each year of service. Vacation leave may not exceed thirty working days.⁹⁵

3) Insurance. The insurance rate varies throughout the state. It is assumed that all full time probation officers are under some group insurance plan but there are no data available to confirm this.

4) Sick Leave. Reference is given to sick leave in Volume 4, Part 1, Section 59-1005 of the Revised Codes of Montana, 1947 which states:

absence from employment by reason of illness shall not be chargeable against unused vacation leave credits unless approved by the employee.⁹⁶

An individual who is employed for 90 days or more is entitled to sick leave at the rate of one working day per month for every full month's pay period. There are no restrictions on the number of days accumulated but no sick days can accrue for someone who is on a continuous leave of absence exceeding 15 calendar days. Upon termination of employment an employee receives an amount equal to one-fourth of the pay attributed to his accumulated sick leave. This reim-

⁹⁵Revised Codes of Montana 1947, (1973), C. 10, Secs. 59-1001 and 59-1002, p.p. 13, 14.

⁹⁶Revised Codes of Montana 1947, (1973), C. 10, Sec. 59-1005, p. 14.

bursement is computed on the employee's salary or wage at the time the sick leave was earned.⁹⁷

5) Leave of Absence. Under Montana law "vacation leave shall not accrue during a leave of absence without pay the duration of which exceeds fifteen (15) days."⁹⁸ It is unknown how often a leave of absence is used but in some instances it has been used to continue further schooling for the probation officer.

6) Social Security. Both the county and the employee pay 5.5 percent of earnings as provided for under the Montana Code.⁹⁹

7) Paid Holidays. There are eleven paid holidays allotted to county employees including: New Year's Day (January 1), Lincoln's Birthday (February 12), Washington's Birthday (third Monday in February), Memorial Day (last Monday in May), Independence Day (July 4), Labor Day (first Monday in September), Columbus Day (second Monday in October), Veterans Day (fourth Monday in October), Thanksgiving Day (fourth Thursday in November), Christmas Day (December 25), and the State General Election Holiday.¹⁰⁰ However the pro-

⁹⁷Revised Codes of Montana 1947, (1973), C. 10, Sec. 59-1008, p.p. 15,16.

⁹⁸Revised Codes of Montana 1947, (1968), C. 10, Sec. 59-1004, p. 78.

⁹⁹Revised Codes of Montana 1947, (1968), C. 10, Sec. 59-1101, p.p. 79-88.

¹⁰⁰Revised Codes of Montana 1947, (1973), C. 1, Sec. 19-107, p.p. 7, 8.

bation officer is on call on a 24-hour basis requiring him to work at times after normal working hours, evenings, weekends, and holidays.

Salary is another reward used to keep an individual in the system. Revised Codes of Montana 1947, Section 10-622, provides in part: (as of 1973)

In every judicial district of the state of Montana the judge thereof having jurisdiction of juvenile matters may appoint one (1) discreet person of good moral character, who shall be known as the chief probation officer of such district.....Such officer shall receive for his services such sum as shall be specified by the Court upon appointment, provided that the judge of the district court may employ him on a yearly salary not to exceed eleven thousand dollars (\$11,000.00).....the judge having jurisdiction of juvenile matters may also appoint such additional persons.....to serve as deputy probation officers as the judge deems necessary; their salaries to be fixed by the judge at the time of appointment, provided that such salaries shall not exceed ninety (90) percent of the salary of the Chief Probation Officer.

The maximum set by law does not necessarily mean that it will be the salary decided upon. Twelve of the eighteen judicial districts pay the maximum for chief probation officers. Six judicial districts employ sixteen deputies of which twelve receive the maximum. The other four chief probation officers receive between \$9,000.00 and \$9,800.00 and the other twelve deputies receive between \$7,000.00 and \$9,500.00 per year. Salary increases vary from district to district. A definite morale problem has been created because of the need to go to the legislature every few years in order to seek a salary

¹⁰¹ Revised Codes of Montana 1947, (1973), C. 6, Sec. 10-622, p. 143.

increase. Many of the younger officers tend to leave the system within 5 to 7 years because of this problem. Several probation officers have worked to alleviate this problem coming up with the following legislative proposals:

1) At one point in 1970 the probation officers proposed that they receive a certain percent of the district judge's salary. This proposal was defeated before it ever got to the legislature because of judicial opposition.

2) House Bill 339 in 1973 was presented to the Montana Legislative Session, reading in part as follows:

In judicial districts which include one (1) or more counties of the first class, the maximum salary shall be the average salary received by the elementary school principals in the counties of the first class contained within the district. Provided, however, that the juvenile probation officer has a Master's Degree in a subject under subsection (2) above, and holds comparable qualifications of the average elementary school principal. The determination of the average salary shall be made by certification from the county superintendent in the school district or districts which include the largest portion of county or counties of the first class, before March 1 each year, or in sufficient time to allow adequate budgetary consideration by the county commissioners.¹⁰²

This bill was defeated, many probation officers and judges felt, because it discriminated against all probation officers who did not reside in first class counties.

3) As had been done in the past, in 1973 several juvenile probation officers lobbied for an increase in the maximum set by the legislature, which was from time to time successful. However in the 1974 legislative session exten-

¹⁰²43rd Legislative Assembly, H.B. 339, (Helena, 1973).

sive research and drafting was put into a proposal which was introduced in the 1974 Legislative Session as Senate Bill 683. The purpose of the bill was to amend Section 10-622 of the Revised Codes of Montana 1947, as follows:

Preference in appointments shall be given to a person, or persons, who possess a Bachelor's Degree from an accredited college or university in the Behavioral Sciences, and, or experience in work of a nature related to the duties of the probation department as set forth in Section 10-623. Such officers shall receive for his services such sum as shall be specified by the court upon appointment, provided that the judge of the district court may employ him on a yearly salary according to the minimum scale as follows:

- (1) Chief Probation Officer
 - a. Chief I -- three (3) years experience in the field of probation, or a Bachelor's Degree in Behavioral Sciences, or a Master's Degree in Behavioral Sciences -- thirteen thousand (\$13,000.00) dollars.
 - b. Chief II -- five (5) years experience in the field of probation, or a Bachelor's Degree in Behavioral Sciences and three (3) years experience in the field of probation, or a Master's Degree in Behavioral Sciences and two (2) years experience in the field of probation -- fifteen thousand (\$15,000.00) dollars.
 - c. Chief III -- seven (7) years experience in the field of probation, or a Bachelor's Degree in Behavioral Sciences and five (5) years experience in the field of probation, or a Master's Degree in Behavioral Sciences and four (4) years experience in the field of probation -- seventeen thousand (\$17,000.00) dollars.
 - d. Chief IV -- nine (9) years experience in the field of probation, or a Bachelor's Degree in Behavioral Sciences and seven (7) years experience in the field of probation, or a Master's Degree in Behavioral Sciences and six (6) years experience in the field of probation -- nineteen thousand (\$19,000.00) dollars.

The judge having jurisdiction of juvenile matters may also appoint such additional persons giving preference to persons having the qualifications suggested for appointment as the chief probation officer to serve as deputy probation officers as the judge deems necessary; their salaries shall not exceed ninety (90) percent of the salary of the Chief Probation Officer and according to the minimum scale as follows:

- (2) Deputy Probation Officers
 - a. Deputy I -- three (3) years experience in the field of probation, or a Bachelor's Degree in Behavioral Sciences, or a Master's Degree in Behavioral Sciences -- Eleven thousand (\$11,000.00) dollars.
 - b. Deputy II -- five (5) years experience in the field of probation, or a Bachelor's Degree in Behavioral Sciences and three (3) years experience in the field of probation, or a Master's Degree in Behavioral Sciences and two (2) years experience in the field of probation -- Thirteen thousand (\$13,000.00) dollars.
 - c. Deputy III -- seven (7) years experience in the field of probation or a Bachelor's Degree in Behavioral Sciences and five (5) years experience in the field of probation, or a Master's Degree in Behavioral Sciences and four (4) years experience in the field of probation -- Fifteen thousand (\$15,000.00) dollars.
 - d. Deputy IV -- nine (9) years experience in the field of probation, or a Bachelor's Degree in Behavioral Sciences and seven (7) years experience in the field of probation, or a Master's Degree in the Behavioral Sciences and six (6) years experience in the field of probation -- seventeen thousand one hundred (\$17,100.00) dollars.

An advance to the next level for Chief Probation Officer or Deputy Probation Officer not only requires the above qualifications but also the approval of the judge having jurisdiction of juvenile matters. Salaries on each level shall be supplemented by the standard cost of living increase as established by law. The salary of such officer shall be apportioned among and paid by each of said counties in which said officer shall be appointed to act, in proportion to the services received in such counties for the year then current, except that where such officials are appointed for one

(1) county, their salaries shall be paid by that county.¹⁰³

This bill was also defeated with no explanation given except that some legislators were opposed to a cost of living increase and others interpreted the bill as giving all probation officers \$19,000.00 per year.

(4) Senate Bill 682 was also introduced in the 1974 legislative session to amend Section 10-622 of the Revised Codes of Montana 1947, as follows:

Such officer shall receive for his services such sum as shall be specified by the court upon appointment provided that the judge of the district court allow increments for additional educational and professional experience and annual increase in cost of living.¹⁰⁴

This bill was amended in committee and revised to show a change in the maximum limit of salary from \$11,000.00 to \$12,500.00. This bill was passed because the district judge has inherent powers to regulate salaries of court personnel, including juvenile probation officers, so long as the salary is reasonable. What are inherent powers? Jim R. Carrigan defines inherent powers in his essay on "Inherent Powers of the Courts" as:

Inherent powers consist of all powers reasonably required to enable a court to perform efficiently its judicial functions, to protect its dignity, independence and integrity, and to make its lawful actions effective. These powers are inherent in the sense that they exist because the court exists; the court is, therefore it has the powers reasonably required to act as an efficient court. Inherent judicial powers derive not from legislative grant or specific con-

¹⁰³43rd Legislative Assembly, S.B. 683, (Helena, 1974).

¹⁰⁴43rd Legislative Assembly, S.B. 682, (Helena, 1974).

stitutional provision, but from the fact it is a court which has been created, and to be a court requires certain incidental powers in the nature of things.¹⁰⁵

Should inherent powers apply to the regulation of salaries? Montana has not had any known case law regarding the setting of salaries for juvenile probation officers but some other states have had cases on this issue. In Re Salaries for Probation Officers of Bergan County tested a New Jersey statute granting judges the authority to appoint probation officers and to fix their salaries. The New Jersey Supreme Court upheld the constitutionality of the statute against a separation of powers argument and stated:

It may be conceded that the appointment of probation officers and the fixing of their salaries are not, at least in the purest sense, judicial acts. But the doctrine of the separation of powers was never intended to create, and certainly never did create, utterly exclusive spheres of competence. The compartmentalization of governmental powers among the executive, legislative, and judicial branches has never been watertight. It is simply impossible for a judge to do nothing but judge; a legislator to do nothing but legislate; a governor to do nothing but execute the law. The proper exercise of each of these three great powers of government necessarily includes some ancillary inherent capacity to do things which are normally done by the other departments....in appointing probation officers and in fixing their salaries the county judges act as legislative agents. Such legislative delegation to judicial officers is sanctioned by long usage and although the judiciary is not required to accept such

¹⁰⁵ Jim R. Carrigan, "Inherent Powers of the Courts", in Kenneth Cruce Smith, ed., Juvenile Justice, (Reno, Nevada: The National Council of Juvenile Court Judges, May, 1973) p. 40.

delegation should it appear incongruous or unduly burdensome, no such objection exists here.¹⁰⁶

An additional source regarding this issue was the case of Noble County Council v. State where the Supreme Court of Indiana held:

The court has inherent and constitutional authority to employ necessary personnel with which to perform its inherent and constitutional functions and to fix the salary of such personnel, within reasonable standards and to require appropriation and payment therefor.... these mandates necessarily carry with them the right to quarters appropriate to the office and personnel adequate to perform the functions thereof. The right to appoint a necessary staff of personnel necessarily carried with it the right to have such appointees paid a salary commensurate with the responsibilities. The right cannot be made amendable to and/or denied by a county council or the legislature itself.¹⁰⁷

However, in the case of Leahey v. Farrell a Pennsylvania decision upheld the power of the legislature to regulate, within reasonable limits, the salaries of court personnel. Holding that the power did not rest inherently and exclusively in the district courts, the Supreme Court stated:

A court must first comply with reasonable fiscal regulations of the legislature. Should the legislature, or the county salary board act arbitrarily or capriciously and fail or neglect to provide a sufficient number of court employees or for the payment of inadequate salaries to them, whereby the efficient admini-

¹⁰⁶In re Salaries, 278 A. 2d 417, 418, 419 (1971).

¹⁰⁷Noble County Council v. State, 243 Ind. 172, 125 N.E. 2d 709, 713 (1955); similar conclusions as cited above were found in the cases of State Ex Rel Weinstein v. St. Louis County, 451 S.W. 2d. 99 (1970); Commonwealth Ex Rel Carroll v. Tate, 274 A. 2d 193 (1971); Smith v. Miller, 153 Colo. 35, 384 P. 2d 738 (1963); Judges for Third Judicial Cir. v. County of Wayne, 172 N.W. 2d 436, 442 (Mich. 1969); and Com'rs' Ct. v. Martin, 471 S.W. 2d 100 (Texas Civ. App. 1971).

stration of justice is impaired or destroyed, the court possesses the inherent power to supply the deficiency.¹⁰⁸

Taken to its extreme, if juvenile probation officers disagree strongly with the judge on the setting of a particular salary the format for unionization and possible strikes could be set. This would hamper greatly the working relationship between the two which is vital to a successful operation. The most recent change in the salaries of juvenile probation was made with the passage of the Montana Youth Act in the 1974 legislative session, but this amendment still maintains the words "preference shall be given" which does not make qualifications mandatory. Also the new code contains the same provision of the maximum set by law, and even though this maximum increased the format continues to place the probation officers in the position of returning every other year to seek additional changes in the law regarding salaries. Perhaps the legislature does not want to give up the authority to regulate salaries of juvenile probation officers. If this is true, then probation officers have no alternative but to return to the legislature every other year to seek necessary changes in the maximum limit. It is recommended that further studies be conducted to determine an equitable salary range for probation officers which would be commensurate with qualifications and experience.

¹⁰⁸Leahey v. Farrel, 66 A. 2d 577, 580 (1949).

Psychological rewards are also used to keep an individual in the system. These rewards include such things as approval from leadership, peer acceptance, self-determination and internalization of values. There is no data available to determine the feedback from the district juvenile judge as to his approval or disapproval of the probation officer's performance. It is presumed that some feedback is given in each judicial district either by the judge or chief probation officer but without supporting data it is difficult to make any further statements or recommendations regarding this reward.

Peer acceptance reveals itself informally within probation departments, at schools and seminars, and during Association meetings. Here again, however, no data are available on a statewide basis to support any conclusions.

Self-determination and self-expression can give a probation officer a high degree of job satisfaction if he is permitted to make or be involved in most of the day-to-day job decisions. The officer is rewarded by learning his job and gaining experience enabling him to make decisions that will affect him and the people involved with him. If the officer is not allowed to make some decisions, low morale results. Here too no data are available on a statewide basis.

Internalization of the court value system into the value system of the individual produces a dedicated person

who has accepted fully the court's value system. It is known that such rewards do exist but there are no data to document any evidence.

Uniformity - No uniform method of processing offenders exists except as described earlier. Notices to appear, social history forms, budgets and other forms all vary from district to district. Although in a general sense the code provides for uniformity in a probation officer's role, there is no uniform method of implementing it. It is recommended that the judge and probation officer in each district determine their expected role requirements, but that forms be systemized on a statewide basis to assure uniform processing of juveniles. This would leave the performance of role with the judge and probation officer yet set down some guidelines to follow that could accomplish some uniformity without infringing upon the authority of the Judge.

Precedent Decisions and Standard Operating Procedures - What are the alternatives available in external demands upon the system that affect change in the laws and operating procedure? Public pressure, the legislature, the Supreme Court, and the Montana Constitution are the primary external sources affecting the system.

Public pressure can definitely change operating procedures. When the public becomes aroused regarding a particular way something is being handled in any part of the

system, they can protest to the executive branch of both state and local government, to the legislative branch in order to change particular laws, and to the judicial branch for processing the contested issue. Any one of these protests, especially if there is enough public criticism, can change policy within the system. Public pressure, in part, created the juvenile court system as explained in the introduction. If the public does not take an interest in the system, change is difficult to bring about.

The legislative group has a tremendous amount of power and is able to restructure the entire juvenile court system if it so desires. The laws enacted affect every part of the system. When change does come about, it is normally due to the introduction of legislation supported by groups of individuals desiring change. Such issues include pay raises for probation officers, or could even be an entire change in the structure of the code. The legislature must determine if the proposals will meet the needs of the state. Article II, Section 15 of the Montana Constitution provides "The rights of persons under 18 years of age shall include, but not be limited to, all the fundamental rights of this Article unless specifically precluded by laws which enhance the protection of such."¹⁰⁹ Both the Montana Supreme Court and the United States Supreme Court have handed down decisions

¹⁰⁹ Montana Constitution, Article 2, Section 15.

in recent years which have had a definite impact on applicable laws and operating procedures in an effort to protect these fundamental rights.

On May 15, 1967, the United States Supreme Court in hearing the case of Gerald Gault, a 15-year-old boy who was committed to a juvenile correctional institution in Arizona for making an obscene telephone call, held that several procedural rights had been violated. Justice Abe Fortas, when discussing the right to counsel, observed:

Appellant's charge that the juvenile court proceedings were fatally defective because the court did not advise Gerald or his parents of their right to counsel, and proceeded with the hearing, the adjudication of delinquency and the order of commitment in the absence of counsel for the child and his parents or an express waiver of the right thereto. The Supreme Court of Arizona pointed....to a provision of the juvenile code which it characterized as requiring 'that the probation officer shall look after the interest of neglected, delinquent and dependent children' including representing their interests in court...We do not agree. Probation officers, in the Arizona scheme, are also arresting officers. They initiate proceedings and file petitions which they verify, as here, alleging the delinquency of the child; and they testify, as here, against the child. And here the probation officer was also superintendent of the detention home. The probation officer cannot act as counsel for the child. His role in the adjudicatory hearing, by statute and by fact, is as arresting officer and witness against the child.¹¹⁰

Montana law provides for a formal petition which is to contain a brief recitation of the facts relating why the offender is before the court. The actual decision to initiate formal proceedings against a juvenile is normally made by

¹¹⁰In Re Gault, 387 U.S. 1 (1967).

the juvenile probation officer and the county attorney. When formal proceedings are instigated the juvenile is, or has been, advised of his rights but in most instances they do not ask for or receive a defense attorney. It is interesting to note that 24 out of 31 respondents to the questionnaire indicated either "always" or "frequently" that a defense attorney should be involved.

The petition is a very important formal document alleging delinquency against a juvenile and should be legally sufficient to stand up in court yet in some instances the preparation consisted of a generalized statement of the facts alleging delinquency rather than setting forth the alleged conduct with particularity, as required in Gault.¹¹¹ Since the probation officer is not an attorney he should not be required to prepare petitions or to prosecute juveniles in a formal hearing. It is recommended that the county attorney be assigned and compelled to perform his legal duty in this particular portion of the system. The alternative to this would be to have the probation officer continue to prosecute cases until Montana finds its Gerald Gault who will surely take this matter to the higher courts.

The question of "standard of proof" has also been raised with regard to juvenile proceedings. Should evidence introduced against the juvenile be based on a preponderance of evidence as in civil cases or beyond a reasonable doubt as

¹¹¹Ibid.

in criminal cases? Noah Weinstein outlined this problem well in his text, Supreme Court Decisions and Juvenile Justice, where he discussed the Winship case of March, 1970, and stated:

The United States Supreme Court (five members per Brennan, J.) held that:

1. Due process protected an accused in a criminal prosecution against conviction except upon proof beyond a reasonable doubt.
2. Although the Fourteenth Amendment did not require that a juvenile delinquency hearing conform with all the requirements of a criminal trial, nevertheless, the due process clause required application during the juvenile hearing of essentials of due process; and,
3. Thus, juveniles, like adults, were constitutionally entitled to proof beyond a reasonable doubt during the adjudicatory stage when the juvenile was charged with an act which would constitute a crime if committed by an adult.¹¹²

This particular decision indicates that, where a juvenile was charged with an offense that would constitute a crime if committed by an adult, in a delinquency hearing the evidence used must prove guilt beyond a reasonable doubt. Although this decision may have quite an impact on the Montana formal court procedure, the main emphasis of this paper is on the informal handling of offenders, therefore this problem was not researched in detail.

¹¹²Noah Weinstein, Supreme Court Decisions and Juvenile Justice, (Reno, Nevada: National Council of Juvenile Court Judges, 1973), p. 8; also see, In re Winship, 397 U.S. 358 (1970).

The transfer hearing provision is probably one of the most important sections in juvenile law because it authorizes the placement of certain types of cases into the adult system which is theoretically opposed to the labeling concept. In Montana, Section 10-603(c), Revised Codes of Montana 1947, provides:

When the juvenile court has jurisdiction of any child sixteen (16) years of age, or over, who is accused of committing or the attempt to committ murder, manslaughter, arson in the first degree, robbery, burglary, and carrying a deadly weapon with intent to assault, or who commits rape under the circumstances specified in subdivisions 3 and 4 of Section 94-4101, R.C.M. 1947, then the county attorney may request the juvenile court to be permitted to file an information against the juvenile in district court, or, when the facts warrant, the juvenile judge may order the county attorney to proceed against the juvenile in district court on an information.

Before making such order the juvenile judge must hear the matter by an informal preliminary hearing to determine first, if there is probable cause to believe the juvenile has committed the felony, and second, to determine whether under the circumstances it appears necessary for the best interests of the state that the juvenile be held to answer the information in district court.¹¹³

When adult court is being considered should there be more basic protection for the juvenile? At what point does the community receive protection from the youth being considered in a transfer hearing? What should the lower age limit be in a transfer hearing? If the youth is charged with a felony and transferred to the adult system will he be given

¹¹³ Revised Codes of Montana 1947 (1973), C. 6, Sec. 10-603, p.p. 137, 138.

treatment or punishment? Is he entitled to treatment, or deserving of punishment? In the Kent decision the juvenile court judge of the District of Columbia waived jurisdiction and transferred the case to the Federal District Court for the District of Columbia so Kent could be tried as an adult. Kent was found guilty of the charges in an adult court, but three years later, in 1966, his case was overturned in the United States Supreme Court on the basis that the juvenile court judge failed to hold a waiver hearing, he failed to set forth any findings and reasons for the waiver, and Kent's counsel was denied access to social records and other reports which were considered in making the waiver.¹¹⁴ The Supreme Court held, based on the due process and assistance of counsel clauses of the Constitution, a juvenile is entitled to a hearing and to a statement of reasons as a condition to a valid waiver order by the juvenile court. The statement of reasons should be sufficient to demonstrate that a full investigation has been made and that the question has received the careful consideration of the juvenile court. The statement must set forth the basis for the waiver order with sufficient particularity so as to permit meaningful appellate review. The Court further stated that the juvenile's counsel is entitled to see the social records or other probation reports and to subject them, within reasonable limits, to examination, criticism, and refutation. The opinion

¹¹⁴Kent v. United States, 383 U.S. 541 (1966).

also contained an appendix or policy decision which set forth the criteria and the factors which the judge should consider in deciding whether the juvenile court's jurisdiction should be waived. These factors are:

- 1) Is the offense serious? Does the protection of the community require a waiver?
- 2) Was the alleged offense committed in an aggressive, violent, premeditated or willful manner?
- 3) Was the act committed against a person or was it committed against property? The court should attach greater weight if the act was committed against a person especially if personal injury resulted.
- 4) Is there sufficient evidence against the juvenile upon which a grand jury might be expected to return an indictment?
- 5) If the juvenile associated with adults in the commission of the crime, is it better to dispose of the entire case in the adult criminal court?
- 6) Is the juvenile sophisticated and mature and thus able to stand trial in the adult criminal court? To answer this question, the juvenile's home, environmental situation, emotional attitude and pattern of living must be scrutinized.
- 7) Scrutinize the juvenile's past record.
- 8) Is it likely that the juvenile can be rehabilitated through the use of facilities available to the juvenile court?¹¹⁵

Montana's transfer hearing was last challenged on June 24, 1973, in the case of Lujan v. The State of Montana. Defense counsel cited three errors in support of Lujan's claim that the transfer hearing was faulty. These were improper admission of evidence, denial of due process rights by not

¹¹⁵Kent v. United States, 383 U.S. 541, 566, 567 (1966).

permitting counsel to make a presentation, and not making a proper determination that the transfer was in the best interest of the state. Defense counsel failed to prove Lujan was denied any of those rights enumerated in Kent or in his appeal, so the Montana Supreme Court upheld the District Court's transfer order. In discussing the appendix of Kent, the Montana Supreme Court found:

The record does not bear out Lujan's claim that his counsel was denied the opportunity to make a presentation in his behalf for the reasons heretofore stated. Nor was the judge required to apply the considerations set forth in the policy statement of the District of Columbia Juvenile Court, quoted in the appendix to that decision. The policy statement at most is no more than a rule of that court concerning the standards that particular court would apply in determining waiver and transfer under the District of Columbia's Juvenile Court Act. A Montana Juvenile Court is in no way bound to apply the same standards under the Montana Juvenile Court Act.¹¹⁶

Even though the Montana Supreme Court arrived at the above conclusion it is still important to look at some of the issues discussed in the appendix of Kent and to relate them to the questions asked earlier. When a youth is under consideration for being transferred to an adult court he should be given the same considerations given adults because if transferred he will be treated as an adult. If this assumption is correct then the juvenile should be afforded the same rights as an adult at the very early stages of the proceeding which includes the fundamental process as des-

¹¹⁶Lujan v. State of Montana, 30 St. Rep. 146, 150 (1973).

cribed in Kent. It is important that all levels of the youth's maturity, seriousness of the offense, prospects of rehabilitation, etc. be provided for in the youth's best interest. It is also very important that the community receive adequate protection from the juvenile charged with any of the felonies previously described. For violent crimes perhaps the age limit should be lowered. A youth under 16 can be placed at an institution only until he reaches 21 years of age, and if he has committed murder, it is difficult to rationalize, from the community standpoint, that the community is protected especially under the likelihood the juvenile may be capable of committing other murders. Should the juvenile in these cases be treated as an individual who is "misdirected and misguided, and needing aid, encouragement, help and assistance"? Is he entitled to treatment? In *Kent v. The United States*, the United States Supreme Court held that Morris Kent's psychotic behavior should have been handled as a mentally ill commitment, and handled in the civil courts on that basis rather than transferred.¹¹⁷ Donna E. Renn discusses the issue of treatment in her article "The Right to Treatment and the Juvenile", which is quoted in part below:

The purpose of juvenile law having been clearly and consistently established by both the legislature and the courts as therapy, the right to treatment would

¹¹⁷Sanford J. Fox, The Law of Juvenile Courts in a Nutshell, (Minnesota: West Publishing Co., 1971) p. 232.

seem to follow logically. If care is not given, the juvenile may petition the courts to insist upon either care or release. The District of Columbia court was the first to adopt this reasoning.

In White v. Reid the court found a 'fundamental legal and practical difference in purpose and technique' between adult and juvenile institutions -- namely, punishment for adults, care for juveniles. Basing its decision on constitutional grounds, it ordered that White, a juvenile confined in an adult correctional institution be transferred to a juvenile institution.¹¹⁸

Although neither of these decisions have any bearing on Montana's present juvenile code it may be an issue that will eventually surface not only on the right to treatment in the transfer case, but on the right to treatment in the entire juvenile justice system.¹¹⁹

Montana law provides that any juvenile formally charged with being delinquent has the right to demand a jury trial.¹²⁰ Although at least three districts reported using a jury trial in the past ten years, it is unknown how many actual cases were heard before the jury. McKeiver and Terry v. The State of Pennsylvania challenged that state's authority to conduct a juvenile delinquency hearing without a jury trial. The defendants alleged their rights were violated under the 6th amendment. Each youth was charged with delinquency, McKeiver with robbery, larceny and receiving stolen goods, and Terry with assault and battery

¹¹⁸Donna E. Renn, "The Right to Treatment and the Juvenile", Crime and Delinquency, Vol. 19, (October, 1973) p.p. 481-482; see also White v. Reid, 125 F. Supp. 647 (1954).

¹¹⁹Ibid., p.p. 482-483.

¹²⁰Revised Codes of Montana 1947, (1973), C. 6, Sec. 10-604.1, p.p. 138, 139.

on a police officer and conspiracy. The United States Supreme Court ruled that since juvenile court proceedings are not criminal proceedings within the meaning of the 6th amendment, it must be concluded:

trial by jury in the juvenile court's adjudicative state is not a constitutional requirement....the use of a jury trial would bring with it into that system the traditional delay, the formality, and the clamor of the adversary system and possibly, the public trial which is felt not to be in the best interests of the child.¹²¹

The court also criticized two issues brought out in the Gault decision of 1967 involving the 5th amendment guarantee against self-incrimination which had been imposed upon the state criminal trial in Malloy v. Hogan¹²² and the 6th amendment rights of confrontation and cross-examination of witnesses found in Pointer v. Texas¹²³ and Douglas v. Alabama.¹²⁴ Justice Blackmun stated:

The Court did not automatically and preemptorily apply those rights to the juvenile proceeding. A reading of Gault reveals the opposite. The same separate approach to the standard of proof issue is evident from the carefully separated application of the standard, first to the criminal trial, and then to the juvenile proceeding displayed in Winship.¹²⁵

Although these last two issues have not been challenged as

¹²¹McKeiver v. Pennsylvania, 403 U.S. 528, 550 (1971).

¹²²Malloy v. Hogan, 378 U.S. 1 (1964).

¹²³Pointer v. Texas, 380 U.S. 400 (1965).

¹²⁴Douglas v. Alabama, 380 U.S. 415 (1965).

¹²⁵McKeiver v. Pennsylvania, 403 U.S. 528, 541 (1971).

yet in the United States Supreme Court, there is some indication that these two portions of the Gault decision may be reversed by the present Supreme Court.

There are no real alternatives when it comes to the use of Gault, Winship, Kent and similar decisions. In Kent there is the alternative to continue to use the present procedure but the question still would arise whether the juvenile received fair treatment if he must face the adult system. It would be more logical to accept the fact that punishment is desirable in transfer cases and give the juvenile the same rights as the adult if he is going into that system. It also follows that if the court is going to be caught in between the parens patriae concept and the adult criminal concept, then it should take the responsibility of determining where the juvenile can receive the fairest treatment before making the transfer. Juvenile judges are definitely concerned with the issues of cases, but should they not be incorporated as written provisions into Montana law to assure that these safeguards of justice are administered? It is recommended that Gault, Winship, and Kent including the Kent appendix be incorporated into law.

IDENTIFYING THE SYSTEMS BOUNDARIES

This section of the systems model will center on two components of the model, the procurement component and the institutional component.

Procurement Component - Procurement concerns itself with obtaining materials to be converted into a product and obtaining personnel to get the job done. The input of materials includes the physical structure such as office space, budgets for financing the operation, and other resources needed to develop workable programs. Input of personnel includes control of salaries, fringe benefits, prestige and education to motivate the people to get the job done.¹²⁶

Incorporating this concept into the juvenile court system proves difficult because the court does not deal in a finished product in the sense of a new car or new home. Its product is a perfected human being, i.e. probation officers work to make offenders comply with the law and in so doing try to create better persons.

This particular section is very difficult to analyze on a statewide basis due to lack of data. The breakdown of information used here and in the remaining portion of this paper is dependent upon limited data. Information relied upon was supplied by the questionnaire study carried out in 1971. Also conversations with other individuals working as full time probation officers or representing the Board of Crime Control, as well as personal knowledge gained from working within the system, supplied data for this section.

¹²⁶Katz and Kahn, p.p. 81, 82, 89.

In order for a system to function properly it must procure money to run the operation, office space to work out of, equipment for the offices, cars for travel within and between districts, and special programs to assist at some point in bringing about some sort of change in the offender's life. Then personnel to get the job done and to provide rewards necessary to keep the people within the system must be procured. This includes probation officers, volunteers, students involved in various programs, and a proper secretarial staff paid for out of the probation department's budget. Satellite offices are usually furnished but not paid for out of the budget. Since each probation officer travels considerably he is provided with a car. Travel expense therefore must also be budgeted.

Budgets must also include program development to varying degrees in the different districts. This portion of the budget includes such items as individual and group foster care programs, private and public institutions, medical and dental examinations, work-study programs, youth offense work programs, specialized counseling programs, and officer education programs. And, of course, these programs are inter-related to the personnel portion of the budget since the personnel carry out the objectives of the particular programs. Philosophy varies from district to district, so the same program may not be used statewide.

Money for resource development and referral programs must also be procured. Resource development is involved with the development of community resources, both new and old, as well as the development of new programs within the juvenile court system. Funds for such things as foster care programs, jobs for youth, and so forth are normally found by matching local funds with federal funds made available from various sources. Such federal agencies as the Board of Crime Control, Title I Funding for School Related Programs, and the Youth Development Bureau not only provide funds but assist with incorporating new program ideas into local areas. Resource referral consists of utilizing local mental health centers, neighborhood youth centers, legal aid, social rehabilitation departments, health departments and any other community resources available. Here again it is the personnel involved in the system who determine the degree of such usage.

An estimated statewide budget for operating the informal juvenile court system in fiscal year 1972-73 would include but not be limited to the items listed in Table I.

TABLE I
 INFORMAL JUVENILE COURT SYSTEM
 ESTIMATED STATEWIDE BUDGET
 1972-1973

Personnel:

Probation Officers	\$361,559.00
Secretaries	38,600.00
Matrons	20,000.00
Work Study Students	4,000.00
Sub-total	424,159.00
Fringe Benefits (15%)	63,620.00
Total	\$487,779.00

Maintenance and Operation:

Supplies	8,128.00
Telephone	13,768.00
Mileage	75,444.00
Private Institutions	10,000.00
Individual Foster Care	40,000.00
Youth Guidance and/or Detention Homes	20,000.00
Psychological Evaluations (Private)	20,000.00
Medical Evaluations	2,000.00
Prevention	8,000.00
Education and Training	5,000.00
Rent	3,000.00
Miscellaneous (Postage, radio repair, dues, etc.)	3,000.00
Total	\$208,394.00

TOTAL PERSONNEL, MAINTENANCE, AND OPERATION - \$696,173.00

This budget was arrived at by estimating each line category and checking those figures with the Board of Crime Control and in some instances actual budgets of probation departments for the fiscal year 1972-1973. Some of the programs available around the state which were paid for out of probation funds were: private institutional care, individual foster care, youth guidance (group foster homes), detention homes, private psychological evaluations, medical evaluations,

prevention, education and training and personnel programs such as work study.

Some additional resource programs available without charge to the probation department are tutoring, work programs, alcohol and drug programs, big brother programs and big sister programs, job placement programs, mental health programs, school counselor programs, ministerial programs, fraternal group programs, welfare programs, and specialized counseling programs, to name a few. One directory of such referral programs on a statewide basis indicated that there were at least 274 programs available.¹²⁷

The primary physical necessity is office space on a basis of at least one office per full time probation officer with a secretary or receptionist also provided. In 1971 there were 26 full time and 17 part time probation officers in the 56 counties of Montana comprising 18 judicial districts. For these 43 officers only 28 offices were available. Others worked either out of sheriff's offices or their own homes.

By 1973 there were 36 offices in 16 judicial districts available to 39 full time probation officers. There were an additional 25 sheriff's offices available, 10 of which were used by sheriff's or deputy sheriff's who were also part time probation officers. The other 15 sheriff's

¹²⁷Richard O. Shields; Health, Welfare and Recreation Agencies in Montana 1970, (Bozeman, Montana: MSU, 1970).

offices were loaned to the probation officer on court days only in order to conduct business in each county of a particular district. There were five additional part time probation officers who worked out of their homes. The ideal number of one office per worker is only short by four offices not counting offices for secretaries. At least six additional offices would be needed in addition to the four to provide for secretarial help.

The alternative to this problem or need is to continue to have two probation officers in one office in those districts that have insufficient space. At this time office space for secretaries is not as great a problem as it seems for there are only seven full time and five part time secretaries in the state. It is a problem that affects the probation officer since in at least seven judicial districts there is no secretarial help at all. In order to solve this particular problem the probation officer has the following options: 1) Put up with the existing conditions and make no changes. 2) Borrow office space whenever it is available. 3) Contact the county commissioners and explain the situation and make plans with them for office space in the future. 4) Ask the judge to meet with the county commissioners to request and/or plan for future office space. Or, 5) Ask the judge to order the Commissioners to furnish the necessary office space.

It is recommended that probation officers utilize options three and four in order to accomplish their goal. This would help to develop better relations by including all three departments in the planning stages.

It is unknown to what extent each office is adequately furnished with such equipment as desks, chairs, telephones, supplies, etc. The estimated 1972-73 statewide budget allowed \$8,182.00 for supplies, \$13,768.00 for telephone, \$3,000.00 for rent, and \$3,000.00 for miscellaneous necessities.

Another resource needed at the procurement stage of physical necessities is money for travel. The present reimbursement rate by law for probation officers is actual expenses both for mileage and per diem. This is not what the probation officer receives. In most districts throughout the state the probation officer receives twelve cents per mile plus a per diem rate which varies from one district to another. In at least two judicial districts the probation officer is furnished with a county-owned car in lieu of the mileage reimbursement rate. In the past, district judges were under a similar rate of actual expenses also. Most other state and county employees are under the twelve cents per mile rate with varying per diem rates. In 1972 the legislature put the twelve cents per mile limit on district judges as well as other state and county employees. Since this happened both probation officers and court reporters have been

set under a similar reimbursement scale. This has created some problems with the increase in gas and maintenance costs. The options available to the probation officer are: 1) Stay at the twelve cents per mile rate. 2) Change to county owned cars so the increased costs will fall on the county rather than on the individual probation officer. 3) Introduce legislation to change the entire state law which would increase the rates allowed for everyone. 4) Introduce legislation to change the district judges' mileage back to actual expenses, giving both the probation officers and court reporters a better chance of receiving actual expenses. It is recommended that option two be exercised. Option three would be the best alternative for everyone involved but it is highly improbable that the legislature would increase the present mileage rate. Alternative one becomes difficult to accept when the increased expenses are coming out of the individual probation officer's pocket. The cost should properly be passed on to the county. Alternative four would be good for the judges, probation officers, and court reporters only, which would tend to create hard feelings between them and other government employees.

Personnel needs are also emphasized in the procurement portion of the resource subsystem. Probation officers are the primary people involved in the informal juvenile system. By 1973, sixteen chief probation officers, twenty-three deputy probation officers, including foster care

coordinators, fifteen part time probation officers, ten work-study students, seventeen fieldwork practicum students, eleven action volunteer students, four criminology intern students, three law school intern students, seven full time secretaries and five part time secretaries, and fifty-seven volunteers provided the personnel needs of the system.

The full time and part time probation officers had the following backgrounds:

Ten full time officers had previous law enforcement experience. Twenty-five full time officers had a B.A. Degree from an accredited college or university and three of these people were working on a Masters Degree while another two already had their Masters Degree. Three other full time officers were working on their B.A. Degree. One full time officer was an ex-military man. Nine of the fifteen part time probation officers were full time sheriffs or deputy sheriffs. Four part time officers were school teachers and one was a painter. One part time officer did not indicate his past experience on the questionnaire.

Prior to 1971 one of the main problems of the system was sufficient procurement of manpower and needs across the state have steadily increased. This problem is being met by utilizing both county and Board of Crime Control resources but it still remains a problem. In two judicial districts there is no full time probation officer and five districts need at least a minimum of one additional full time probation

officer because of the increase in population of the district or because of the immense size of the area to be covered. Only two judicial districts have access to foster care coordinators and the other districts must rely on their own follow-up or request assistance from the State Department of Social and Rehabilitative Services. For a successful statewide foster care program, one full time foster care coordinator should be provided in each district. This would mean hiring sixteen new people. The only alternative is to require the probation officer's role to include these duties. Presently the individual handling foster care works under the following options: 1) under Section 71-210, Revised Codes of Montana 1947, turns the administration and supervision of the juvenile over to the Department of Social and Rehabilitative Services through a formal court process; 2) under Sections 71-706 and/or 10-501, Revised Codes of Montana 1947, files a dependent/neglect petition to gain foster care for the juvenile without declaring him a delinquent; 3) sets up an administrative procedure with the Department of Social and Rehabilitative Services to assist the court through a combination of state and county poor funds to pay for the foster homes while the probation officer licenses and supervises the home according to S.R.S. standards. This procedure can be used on the basis of a voluntary parental consent form and carries with it the added benefit of providing medical assistance to the youth

while he is in foster care; 4) makes arrangements for payment of foster care out of the county general fund; 5) seeks grant funds by writing and submitting requests to either the Board of Crime Control or the Youth Development Bureau, and 6) uses voluntary foster homes with or without supervision. The paperwork involved in exercising the above options alone supports the need for hiring a full time foster care coordinator for each district. To provide the necessary foster care the six options above are used interchangeably. When option four is used, paperwork is decreased considerably and backgrounds on potential foster parents need not be checked out in the same manner as stipulated by S.R.S. standards. Instead potential foster parents would have to meet court standards. Due to lack of funds voluntary foster homes with or without supervision are relied upon most often. The projected 1972-73 budget provided only \$40,000.00 for individual foster care on a statewide basis. But the funds were sufficient only to serve seven of the judicial districts. The other districts use either S.R.S. or the voluntary foster home programs, or provide no foster care at all. Option one is least used since the court faces the possibility of losing the juvenile case to the S.R.S. There is much to be done to build a good foster care program in the state of Montana, and here too hiring foster care coordinators would help substantially.

The procurement portion of the system offers certain benefits to attract personnel and bring them into the system. The maintenance subsystem works to keep the individual in the system in order to preserve a steady state. Beginning salary, fringe benefits, a chance to learn the system, and personal recognition are the primary attractions to bring personnel into the system. Since the Montana system presently functions under a manpower shortage some sources of additional funding should be explored and the judge and/or probation officer should negotiate for an increase in staff. Some sources of funding to be explored are: 1) Revenue Sharing. These funds are new to the individual states. They may provide an initial source of income to obtain funding with the option that the county will eventually pick up the entire cost. 2) Emergency Manpower -- this is another source of federal assistance sometime available depending upon changes in federal funding policies. Funds are usually available for a one-year period and preference is given to hiring veterans. 3) Board of Crime Control. This agency channels approximately \$80,000.00 per year into manpower programs. A basic manpower grant which allots approximately \$10,000.00 per program on a decreasing three year basis provides initial funding which allows counties a three year period to plan for meeting new manpower needs rather than dumping the entire cost on the counties in one year. Also the Crime Control agency offers

funding to hire college graduates who received aid under LEEP programs while still in school. 4) The only other known source of funding is 100 percent county funding, but it is limited by mill levies. It is recommended that more effort be exerted to obtain funds from Crime Control sources. It is unknown if the Board of Crime Control will fund foster care coordinator programs but perhaps a grant could be submitted for a probation officer who could fullfill these duties. Since probation officers presently do this type of work additional training would not be necessary. As explained earlier there are seven judicial districts functioning without secretarial help. Since this requires the probation officer to do his own secretarial work, thus taking him away from more important duties, either the judges in the various counties should order that a secretary be hired, or the judge and probation officer should at least negotiate with the county commissioners to attempt getting a secretary hired. Only four judicial districts use matrons. One of these districts has a detention home which hires matrons. The estimated personnel budget of this home was included in the estimate for statewide matron services noted in the Table presented earlier. It is assumed that the matron is required to assist the probation officers in transporting female juvenile offenders and in this role she is very important to the system. In the other fourteen districts no one travels with the probation officer and female offenders.

Students working through work-study funding or volunteering their services, perhaps in exchange for college credit, provide a great deal of supplemental manpower to the system. They work in such areas as counseling, foster care, social history investigations, intake, etc. and thus are sufficiently exposed to the system to learn a great deal about it. Such a training program not only helps the system to obtain its needed manpower, but develops well-qualified individuals who may be hired into the system at a later date. A skilled student can contribute greatly in helping the court to meet its objectives. It is recommended that the program be extended to include more if not all of the judicial districts. The 25-75 percent matched funding could substantially assist districts handicapped by limited manpower because of lack of financial resources to hire additional personnel.

Legal and Criminology intern programs are also another source of manpower available to the juvenile system. The legal intern program not only provides the probation office with much needed manpower but it provides a learning experience for the prospective attorney alerting him to problems inherent in the juvenile court system. Also the probation officer learns more about formal legal decisions and how to use them in his work. The criminology student brings with him ideas on law enforcement and corrections. Thus individuals oriented in law, crime, and treatment come

together to provide manpower for the system. Under the federally funded Action program students from various other fields of study also come into the system. There are two Action programs available in Montana, the University Year In Action program and the Justice Volunteers to Action program. They allow for a student to be involved with the juvenile probation department as an assistant to the probation officer for one full year. It is recommended that any effort necessary be exerted to maintain the existence of these programs involving students, whether they be the funded or volunteer programs. The non-funded volunteer programs bring fifty-seven individuals into the system who assist the court in various ways including counseling, being Big Brothers or Big Sisters for fatherless or motherless children, finding foster care, and so forth. Questionnaire data indicated only nine judicial districts utilize volunteer programs while eight judicial districts rely fully on hired full and part time employees. It is recommended that these eight districts become a target area for implementing new programs.

Once a system has physical equipment and sufficient manpower, provisions must then be made to supply adequate programs through which an offender's behavior hopefully will be changed. In Montana, money budgeted for probation departments provide programs at the Yellowstone Boys Ranch and the Intermountain Deaconess Home. According to the questionnaire data only two judicial districts utilize either of

these facilities. The Florence Crittendon Home for Unwed Mothers is also available in Montana but it is not supported by probation department funds.

As noted earlier, some foster care programs are also available in Montana and paid for, at least in part, with probation department monies. As noted earlier, much work needs to be done to provide substantially more sources in this area. Probation Department funds are used to support the District Youth Guidance Home and the Group Foster Home Plan but data from the questionnaire indicates such support is very low. Most group homes in the state are funded by approximately \$200,000.00 provided annually from a combination of state and federal funds channeled through the Department of Institutions and Board of Crime Control. Each district in the state that does have a Youth Guidance Home does have an incorporated Board of Directors who concentrate on finding community matching funds for these group homes.

Another program, the Detention Home Concept, is available in one district. Two other districts use either a "mini-group home" or an individual foster home as an alternative to detention, but these are not provided and paid for out of the county general fund.

Psychological evaluation and counseling programs involve using private as well as public referrals. Private referrals are paid for either out of the Clerk of Court's

budget or the probation department's budget. Federal funds have provided money also but their availability will be decreasing over the next ten years requiring the counties to provide for a substantial increase in cost. The University of Montana, Warm Springs State Hospital, Pine Hills School, and Mountain View School also presently provide such services to a limited degree with the only cost to the county being for transportation.

One district reported budgeting money for prevention programs. Other juvenile delinquency prevention programs are funded through the Youth Development Bureau in Helena. This agency awards federal grants to various county, city or school governments but is prevented from funding court operated programs as the monies passed into the other governmental budgets are intended to assist the juvenile justice system in reduction of delinquent youth. The Youth Development Bureau's budget for 1972-73 was approximately \$300,000. This bureau assists the courts in other ways by organizing groups to develop youth guidance homes and by providing assistance in search of funds for court operated programs. ¹²⁸

Each juvenile probation department in the state is involved in developing and using prevention programs which consist of "other agency referrals". One judicial district

¹²⁸Information provided by Shirley Miller and Charles McCarthy of the Youth Development Bureau, Helena, Montana.

uses an intensive group counseling program and has had excellent results on the effectiveness of this program. The other agency referral services assist the probation officer in accomplishing one of his objectives, i.e. diverting youth out of the juvenile court system before the need for formal court handling arises. Every agency in the state that has contact with juveniles is available and it is recommended that every juvenile probation officer familiarize himself with what services are available from these agencies and learn how to refer youth to them. The Health, Welfare and Recreation Agencies in Montana 1970 directory lists and describes approximately 275 such agencies.¹²⁹ The Montana Social Service Health and Recreational Directory 1974 lists approximately 600 agencies providing services on a statewide basis.¹³⁰ Some county and district probation officers have compiled their own directories, one of which is the Health and Welfare Resource Guide for Missoula, Montana, 1973.¹³¹ It is recommended that an attempt be made to compile more directories listing county and district services available.

¹²⁹Richard O. Shields, Health, Welfare and Recreation Agencies in Montana 1970, (Bozeman, Montana: Montana State University, 1970).

¹³⁰John W. Bauer, Montana Social Service Health and Recreational Directory 1974, (Bozeman, Montana: Montana State University, 1974).

¹³¹Morton L. Arkava, Jean Atthowe, and Ann Bertsche, Health and Welfare Resource Guide for Missoula, Montana 1973, (Missoula, Montana: The Department of Social Work, University of Montana, 1973).

It is not known if the paid and non-paid programs available to the juvenile court system are the answer to juvenile delinquency but the court does utilize these programs in order to divert youth out of the system as well as to provide services for youth experiencing different problems. It is assumed that a number of these youth do not return to the juvenile court system but there is no data available to substantiate this assumption. It is recommended that either the Board of Crime Control or the individual districts establish some method of data collection to determine the effectiveness of these programs in an effort to create interest in the development of preventive programs which would facilitate the delivery of services to needy youth.

Institutional Component - In the systems analysis theory, the institutional component is concerned with gaining support for policies as well as legitimizing what the organization is doing.¹³² On the surface it is very difficult to identify any institutional subsystem in the juvenile court system in Montana. No Board of Directors or Public Relations firm exists to "sell" the court. There are, however, many Montana groups involved in gaining support for the court. Section 10-628, Revised Codes of Montana 1947, provides for a juvenile court committee appointed by a judge

¹³²Katz and Kahn, p.p. 82, 96-99.

"to meet and confer with him on all matters pertaining to the juvenile department of the court, and shall act as a supervisory committee of detention homes, and in the selection of foster homes."¹³³ Only a few districts in Montana actually have such a committee and their degree of activity is unknown. Questionnaire responses indicated the feeling is that the committee generally exists in name only. However in two districts responses indicated the committee does take a very active role.

Other organizations that partially fulfill the concept of the institutional subsystem on a statewide basis include the Judges Association, the Montana Correctional Association, the Juvenile Probation Officers Association, and the Montana Advisory Council on Children and Youth. Each of these groups meet periodically and deal with particular problems of the court, seeking support of juvenile court policies. However none of these organizations carry the power of a Board of Directors or a Board of Trustees.

The Board of Crime Control and the Youth Development Bureau assist in gaining support by funding delinquency programs and making statewide releases on awarded programs. The Youth Development Bureau is new in Montana and attempts to provide assistance on program development.

¹³³Revised Codes of Montana 1947, (1973), C. 6, Sec. 10-628, p. 145.

No formalized policy has been established for formal dispensation of information. Therefore individual probation officers, by word of mouth, probably do more to gain support for court policies as well as trying to legitimize to the public what the court is doing than any other institutional component. Seventeen officers responding to the questionnaire indicated they go to at least five public meetings per month where court policies are discussed. Ten officers indicated they go to from five to ten meetings per month, and three officers indicated they go to from ten to fifteen meetings per month. These meetings are usually public speaking engagements at night. During regular working hours probation officers also discuss court policy with other professionals with whom they come in contact.

The biggest problem in this area is the lack of coordination existing between all of the groups involved in selling the court policies or legitimizing what the juvenile system supports. This results in a lack of interest in what is happening within the system. As a result legislators often attempt to make decisions concerning the system without really knowing what a particular phase is about. Personnel within the system must often operate in the dark because of this lack of coordination and failure to dispense formalized policy.

Because there is no formally established institutional component it is difficult to make recommendations

concerning external support of the system. Organized support from the Associations mentioned above guided toward concrete objectives of "selling" court programs would be one alternative to the word-of-mouth support now existing.

ADAPTION

The concept of adaption is concerned with gaining knowledge about the system with regard to budget, programs and statistics in order to determine the effectiveness of each. Sections 10-620 and 10-631, Revised Codes of Montana 1947, provide for the payment of salaries and further state:

The County Commissioners of all countries are hereby authorized, empowered, and required to provide the necessary funds and to make all needful appropriations to carry out the provisions of this Act.¹³⁴

Feedback as to budget appropriations comes from the individual counties and information available is limited to how much money is spent in each line item category. No data are available on a district basis unless individual probation officers keep track of their funds for the district they serve. This failure to keep such information on a district basis causes problems in administering all the funds allotted to the probation department and in gaining additional funds from such agencies as the Board of Crime Control and the Youth Development Bureau. It is recommended that legislation be enacted providing for district-wide budget feedback, as well as county feedback, in order to facilitate administrative procedures.

¹³⁴Revised Codes of Montana 1947, (1968), C. 6, Sections 10-620 and 10-631, p.p. 587 and 590.

There is no real program feedback in Montana because there is no organized program designed to interpret the effectiveness of programs. One district in the state has used a limited evaluation program pertaining to foster care which broke down the foster care program into various categories such as placements in foster homes, length of stay, what happened to the youth both during and after foster care, cost, and how many homes were recruited, lost and/or maintained during the evaluation period. There may be other districts that have similar breakdowns but there is insufficient data available to determine this. It is recommended that some type of evaluative feedback be incorporated on all funded programs in the state which should include some follow up on youth involved in the program in order to determine if each program is beneficial or a waste of money. The collection of this data would help in obtaining funds, in determining if the programs being used are working, and in planning for future action.

There are statistics available on a county and district level to determine the number of juveniles passing through the system. Most judicial districts are provided with a data form that the Board of Crime Control supplies that gives a breakdown of basic information on every juvenile that passes through the informal and formal court system. This form gives some feedback on flows and some social history background. Access to such records at the county

and district levels, as well as from the Board of Crime Control, is limited for the protection of juveniles passing through the system. A copy of the juvenile statistical analysis card presently used is included in Appendix B of this paper. It is recommended that this card be revised to include the following changes:

(1) Section J should be amended as follows:

J. Referred by:

- | | |
|--------------------------|---------------------|
| 1. Sheriff | 6. Social Agency |
| 2. Police | 7. County Attorney |
| 3. Fish and Game | 8. Parents |
| 4. Other Law Enforcement | 9. Other Court |
| 5. School | 10. Other (specify) |

This particular breakdown identifies more precisely what law enforcement agencies are referring youth into the court. The present breakdown provides only the designation "law enforcement" for the first four categories. It is important to identify particular referral sources.

(2) Section K should be amended as follows:

K. Reason referred:

1. Offense (Code No.).
2. Voluntary referral without committing an offense.
3. Number of additional charges and/or offenses presently involved with the one listed above (No code number needed).

This breakdown provides for the use of a specific coded offense number but it also includes a new section for a voluntary referral by a youth seeking help. The youth in this category should not have to be coded into an offense breakdown if he or she is voluntarily seeking assistance

rather than being brought in for breaking the law. Adding category three allows for collecting data on the total number of offenses committed by the juvenile. A separate code number is not needed when one individual commits several offenses. Only the most serious offense committed would be listed in category one. In category three the number one would be inserted in the box provided on the form to show that the individual actually committed two offenses, one coded and the other listed in box number three. If three offenses had been committed then a number two would be inserted in the box in category three, etc.

(3) Section L should be amended as follows:

L. Prior Delinquency

1. Yes 2. No

3. List the total number of prior delinquent offenses not previously reported.

4. List the total number of prior delinquent offenses.

In the present form the probation officer is asked to list if the youth has had prior delinquency and if he has, then he is to place a number in the box signifying the total number of offenses. This is misleading as the form was intended to show the total number of prior delinquent offenses not previously listed rather than the total number of offenses previously reported. This change provides for both options.

(4) Section R should be amended as follows:

R. Diagnostic Services:

1. Have you received any services in the following categories:

C. Social

1. Available
2. Not available
3. Not indicated

This present form does not provide any useful information and in most of the state statistics the response was that as high as 98 percent of the information requested in this section was not indicated. This is due, in part, to this being a useless section because no explanation or proper breakdown is apparent. If this category is to be used at all the proposed changes will make the section more useful.

(5) Section T should be amended as follows:

T. Employment and school status:

	<u>Out of School</u>			<u>In School</u>
	<u>Drop-out</u>	<u>Suspended</u>	<u>Expelled</u>	
Not employed	1	2	3	4
Employed - full time	5	6	7	8
- part time	9	10	11	12
Inapplicable (preschool)	13			

This section would greatly clarify the out of school category as the present form does not indicate whether the youth is a dropout, suspended student, or expelled student. The proposed section would definitely identify the dropout, suspended student, and expelled student and provide information to the courts and schools as to the number of offenders in each category being processed through the court.

lies in the \$5,000 to \$10,000 income range but it does not take into consideration the number of individual members in the family.¹³⁵

(8) This section is also proposed to coincide with the above proposed section.

Family status:

1. Public Assistance
2. Low Income
3. Middle Income
4. High Income

Projected estimates of the middle income and high income brackets would be needed to determine categories three and four if this section were to be effective, as well as the total number of members in the family.

None of the three adaption elements provide any predictability of future trends nor do they tell where money or programs may be needed. The changes recommended above would assist in more effectual collection of pertinent data. Additionally it is recommended that the Board of Crime Control either contract with another agency or firm, or look into the possibility themselves, of determining a method of analyzing information on budgets, programs, and statistics.

THE MANAGERIAL SUBSYSTEM

The managerial subsystem is the administrative arm of the entire system. It cuts across all the earlier described subsystems and is responsible for coordinating all

¹³⁵Missoula -Mineral Community Action Programs Agency, (Missoula, Montana).

other subsystems. It attempts to resolve conflicts erupting between hierarchial levels and to coordinate the external requirements with the needs and resources of the organization.¹³⁶

The two primary managers in the juvenile court system are the district juvenile judge and the chief probation officer. Together, or individually, they select employees, indoctrinate them into the system, provide the regulating methods to keep them in the system, etc. In the hierarchial system the judge is at the top but because of his work overload a considerable amount of his responsibility is delegated to the chief probation officer in many districts. Generally the duties involved in procurement of physical as well as personnel necessities are handled by the chief probation officer in his managerial role. Also he may do most of the preliminary work of writing the budget and presenting it to the county commissioners although in most districts the judge makes the actual presentation. Both the judge and probation officer are primary persons involved in "selling" the program to the public, county commissioners, and legislature. Whenever the adaptive subsystem forecasts change they gather the necessary data and the judge makes the final decision regarding the recommended change. Both work to

¹³⁶Katz and Kahn, p. 94.

settle disputes between agencies often acting as arbitrators. Too, each or both are responsible for coordinating the external requirements with the needs and resources of the organization. In one sense the judge is the Board of Directors because he is the ultimate authority in the juvenile court system. He not only makes all policy decisions but executes the decisions or delegates this authority to the chief probation officer. It is the coordination of efforts between the judge and the juvenile probation officer that keeps the present system operating in each of the eighteen judicial districts, and the willingness of these people in each district to associate with those in other districts on an informal basis helps the system to develop into a better functioning organization at a multi-district or statewide level.

CHAPTER IV

SUMMARY

The intent of this paper was to use the systems model as an organizational framework to classify, describe, and observe the various components and elements of the informal juvenile court system because of the apparent benefits it offers to the entire juvenile court system. More specifically this involved identifying the informal processes of the Montana juvenile court, determining if the goals set down by the court have been accomplished, determining if the informal process is effective or ineffective, pointing out the weaknesses and strengths of the informal process, determining how important the informal process is in relation to the entire juvenile court process, and making recommendations for juvenile court operation in Montana.

The model provided a basis for locating the system, specifying its task functions, and identifying the boundaries, the maintenance subsystem, the adaption subsystem, and the managerial subsystem. This not only involved identifying the system under study as the informal juvenile court system but allowed for studying the roles and procedures a probation officer is involved with in both the informal and formal court systems, pointing out how the system is maintained from

within through the selection, indoctrination, and regulation of employees, and finally how the system is changed from without by the external demands of the public, legislature and courts. These groups brought about change in the system which ultimately affected the roles of the people within the system. The in-depth analysis included looking at the procurement of resources such as office space, budgets, manpower, etc., and even dealt with the concept of the necessity to "sell" the policies of the court to the public, this being primarily accomplished through the efforts of organizations, judges, agencies, and the probation officers themselves.

The number of youth referred through the juvenile court system in 1970, 1971 and 1972 are listed below, as well as the total number of offenses these youth committed, the total number handled informally, and the total number of youth handled formally and the total number of youth placed in public and private institutions. Because of the possibility of error due to limited reporting procedures, this information should only be used as an indicator of the number of youth flowing into the juvenile court system.

TABLE II

Total Number of Male/Female Youth Between 0-18 Years of Age Referred Through the Juvenile Court System

Year	No. of Youth Referred	No. of Offenses Committed	No. Handled Informally	No. Handled Formally	No. Placed in Institutions
1970	6,083	Unk.	5,782	301	131
1971	5,639	9,695	5,409	230	105
1972	5,979	8,340	5,652	327	131

It can be seen that a greater number of youth were handled informally. Although it is unknown how many of these youth later went into the adult criminal justice system, it seems that informal handling did result in keeping youth out of the formal juvenile court.¹³⁷

The purpose of the Juvenile Court of Montana, as described in Section 10-601, R. C. M., 1947 is:

This act shall be liberally construed, to the end that its purpose may be carried out, to wit: that the care, custody, education, and discipline of the child shall approximate, as nearly as may be, that which should be given the child by its parents, and that, as far as practicable, any delinquent child shall be treated, not as a criminal, but as misdirected and misguided, and needing aid, encouragement, help and assistance.

And that, as far as practicable, in proper cases, that the parents or guardians of such child may be compelled to perform their moral and legal duty in the interest of the child.

The principle is hereby recognized that children under the jurisdiction of the court are wards of the state, subject to the discipline and entitled to the protection of the state, which may intervene to safeguard them from neglect or injury and to enforce the legal obligation due to them and from them.¹³⁸

This purpose was consistent with the overall philosophy of the "Reformers" who, early in history, were concerned that juveniles were not receiving adequate treatment in adult courts and therefore needed some protection and treatment in a court where the youth would not be labeled as a

¹³⁷Information provided by the Montana Board of Crime Control's 1970, 1971 and 1972 statewide juvenile court statistics.

¹³⁸Revised Codes of Montana 1947, (1968), C. 6, Sec. 10-601, p. 576.

criminal. The system that developed in Montana in order to accomplish this purpose primarily emphasized keeping the offender out of the formal court system because of a definite concern of the effect labeling has upon an individual.

The systems analysis illustrated that to support this operational informality the system attempts to provide rehabilitative services through the court such as counseling, foster care, psychological help, and so forth. The system also attempts to develop community awareness and develop community resources into which troubled youth can be channeled in an effort to eliminate, or at least curb, delinquent behavior. It is only when a youth, after being processed through the informal phase of the juvenile court, continues to behave in a delinquent manner, that he is processed formally. If the measurement of success due to informality were based on the total number of commitments compared to the total number of youth referrals, then it could be assumed that the informal system is very effective. However the study revealed the existence of some ancillary problems.

First of all it was noted that the arrest authority of a probation officer could interfere with other related duties unless it was limited to probation violations and lawful orders of the court.

Several problems existed because of detention. Out of 5,639 youth referred into the system in 1971, 1,040 spent

3,437 days in jail.¹³⁹ This is a problem because of the inadequate facilities available in Montana. Strict detention procedures should be enacted restricting both the authority to detain and the circumstances under which detention is permitted. The state legislature should limit the authority to detain to the probation officer rather than the police. Detention should be used only when it is necessary to protect the community or the youth, or if necessary to keep the youth in the jurisdiction. The law should require a detention hearing within 48 hours of initial detention and the judge should require the release of any youth placed in detention without proper authority.¹⁴⁰

Often preliminary inquiry procedures violated a youth's basic rights. To protect these, each youth should be advised of his rights under Miranda and Gault. He should be informed of his right to have any decision reviewed by the district juvenile judge, and precautions should be taken to assure the presence of at least one parent or guardian at the preliminary inquiry. In addition, some means of providing an attorney, if the juvenile so desires, should be implemented.

¹³⁹Information provided by the Montana Board of Crime Control from their 1971 statewide juvenile court statistics.

¹⁴⁰The President's Commission on Law Enforcement and Administration of Justice, Juvenile Delinquency, p.p. 36, 37.

Problems in the area of probation included that the probation officer placed the youth on probation as well as the judge. Although this may appear to cause a conflict, it does not have to, if the probation officer enters into an informal consent decree with the youth and his parents. Use of such a decree gives the probation officer the authority to enter into an agreement with the youth and his parents without formally processing the youth on a petition alleging delinquency.

Finally, scarce resources create a myriad of problems. Inadequate counseling staff, foster care facilities and foster parents, physical facilities, and administrative assistance cause ineffective operation. There is not enough travel pay allotted nor manpower available to facilitate truly effective operation.

Even though these problems exist, however, it can be concluded that the informal juvenile court system is very important in meeting the purpose set down by the Montana legislature. Without this informality a youth could not escape the labeling stigma arising from being exposed to the formal court. With such informality more alternatives for handling delinquent and/or troubled youth are available. They can be helped, through counseling and psychological evaluations, to find themselves, and then to help themselves. This conclusion is not meant to degrade the effectiveness of the formal court and the institutions. But, for the good of all, every effort should be made to proceed informally.

APPENDIX I

The following appendix is the questionnaire submitted to the juvenile probation officers of the State of Montana in the year 1971. Part of the data collected as a result of distributing this questionnaire was used in Chapter III of this paper.

I. ARREST STAGE

1. Have you ever had to make an arrest of a juvenile?

Yes 24 No 8

2. If yes, for what type of offense did you make the arrest? (Check as many boxes as required to answer)

13 Child in need of supervision (Offenses for which an adult cannot be charged, such as runaways, ungovernable, curfew, etc.)

17 Misdemeanor

14 Felony

12 Traffic

8 Fish and Game

3. Have you assisted local law enforcement in making an arrest of a juvenile?

Always 9 Frequently 7 Rarely 11 Never 6

4. Do you ever make arrests without the assistance of a local law enforcement officer?

Always 4 Frequently 3 Rarely 15 Never 8

5. How many arrests did you make this year?

Fill in the blank 104

6. How many arrests did you make in the year 1969-1970?

Fill in the blank 228

7. Do you feel that a juvenile probation officer should be making arrests? Check as many as needed.

Always 3 Frequently 3 Rarely 16 Never 10

II. DETENTION STAGE

8. Does the arresting officer detain juveniles without the permission of the court?

Always 1 Frequently 4 Rarely 14 Never 12

9. Does the arresting officer fill out a written report stating the reasons for holding the juvenile?

Always 21 Frequently 5 Rarely 3 Never 2

10. Is the arresting officer required to fill out such a report in your area?

Always 28 Frequently 0 Rarely 3 Never 0

11. How soon are the parents or guardian notified when a juvenile is placed in detention?

16 one hour after detention

3 two-five hours after detention

1 five-ten hours after detention

13 other-specify _____

12. Who normally notifies the parent or guardian when a juvenile is placed in detention?

23 arresting officer

1 intake officer (or jailer)

0 other-specify _____

13. What are the most common reasons given to you for not being able to notify a parent or guardian after a child has been placed in detention? Check as many as needed.

10 no telephone

3 parents or guardian not at home

20 not able to locate parents

7 parents too drunk to come to station

2 none of the above

6 other-specify _____

14. Is the juvenile permitted a phone call to his parents or guardian when arrested and detained?

Always 25 Frequently 3 Rarely 4 Never 0

15. Does the arresting officer notify the parents instead of permitting the juvenile to call?

Always 12 Frequently 15 Rarely 2 Never 2

16. Rate the importance of those factors listed below in deciding why a juvenile should be placed in detention. (1 = most important; 5 = least important)

2.2 attitude of offender

1.4 seriousness of charge

2.9 prior record

2.5 Other-specify _____

17. Does the arresting officer notify you after placing a juvenile in detention?

Always 29 Frequently 3 Rarely 0 Never 0

18. Do you feel it is the responsibility of the arresting officer or the probation officer to notify the parents immediately after the juvenile is placed in detention?

24 arresting officer

9 probation officer

2 other-specify _____

19. Who makes the releases on a juvenile placed in detention?

1 jailer 10 district juvenile judge

0 police 7 sheriff

1 county attorney 4 juvenile officer

19 juvenile probation officer

20. Has a law enforcement officer ever refused to release a juvenile in detention upon your order?

Always 0 Frequently 0 Rarely 0 Never 32

21. If the answer to the above question is always, what was the reason? Check as many as needed.

 involved in serious felony

 poor attitude of offender

 destruction of jail property

 other- specify _____

III. PRELIMINARY INQUIRY STAGE

22. What per cent of your time is spent in preliminary inquiry work? (Court Referee)

 10 15% or less

 11 15%-30%

 7 30%-60%

 4 60% or more

23. Many informal adjustments consist of the following: warnings, left up to parents, essays, grounding, detention, probation, foster home, special classes, work party, big brothers, use of YMCA, restitution, out of state placement, referrals to other agencies youth counselors, volunteers.

Can you add any other informal adjustment used in your area?

Specify: Group therapy; take driver's license

24. What is the process or document used in your area to notify the juvenile and the court that an offense has been committed?

 14 Notice to appear

 3 Summons

 10 Citation

 1 No formal document at all

 8 Other-specify _____

25. Approximately how soon is the juvenile required to appear before the court (probation officer) after he is charged with a delinquent offense?
- 4 immediately
- 25 one to seven days
- 1 seven to fourteen days
- 2 fourteen days or more
26. Is at least one parent required to accompany the juvenile when he appears at the preliminary inquiry?
- Always 29 Frequently 3 Rarely 0 Never 0
27. Is an attorney involved at the preliminary inquiry stage?
- Always 5 Frequently 9 Rarely 15 Never 0
28. Does the juvenile probation officer normally conduct a preliminary inquiry in your judicial district?
- Always 16 Frequently 10 Rarely 5 Never 1
29. If the answer to the above question is never, who conducts the preliminary inquiry?
- 2 County Attorney 2 District Juvenile Judge
- 0 Other-specify _____
30. Have you dismissed any cases for improper arrest or improper procedural technique?
- Always 0 Frequently 1 Rarely 19 Never 11
31. Approximately how many times have you dismissed a case?
- State number for 1970 74
32. If the juvenile denies the allegations against him do you (as juvenile probation officer) make the judgment of his guilt or innocence at the preliminary inquiry stage?
- Always 0 Frequently 8 Rarely 4 Never 18

33. If the answer to the above question is never, who is the case referred to?
- 1 County Attorney
- 17 District Juvenile Judge
- 1 Dismissed
- 3 Other-specify _____
34. Do you only handle cases in which the juvenile admits his guilt in the offense?
- Always 12 Frequently 6 Rarely 5 Never 5
35. Do you use the county attorney as a legal advisor at the preliminary inquiry?
- Always 11 Frequently 16 Rarely 12 Never 7
36. Do you use the District Juvenile Judge as a legal advisor at the preliminary inquiry?
- Always 4 Frequently 9 Rarely 12 Never 7
37. Do you handle any serious vandalisms, burglaries, larcenies, rapes, or drug violations at the preliminary inquiry?
- Always 12 Frequently 8 Rarely 7 Never 5
38. Of the above mentioned offenses what serious violations don't you handle? Check as many as needed.
- 5 vandalisms 7 larcenies 8 drugs
- 8 burglaries 15 rapes
39. Rate the importance of those factors listed below when you make a decision what to do with an offender. (1=most important, 4=least important)
- 1.86 offense 3.03 family
- 2.42 prior record 2.35 attitude

IV. PROBATION STAGE

40. Approximately how often is probation used in your judicial district?

2 15% or less of those cases handled

5 15%-30% of those cases handled

11 30%-60% of those cases handled

2 60%-90% of those cases handled

11 90%-100% of those cases handled

41. Do you normally contact a youth on probation:

2 once every other month 9 once a month

22 once every week

42. Do you use short term probations of 30 days or less?

Always 0 Frequently 18 Rarely 10 Never 3

43. Do you use long term probations at the preliminary inquiry state?

Always 3 Frequently 12 Rarely 11 Never 6

44. Do you use indefinite periods of probation?

Always 2 Frequently 11 Rarely 10 Never 9

45. Do you furnish the probationer with a written copy of the rules of probation?

Always 23 Frequently 5 Rarely 3 Never 1

46. How strict are you in enforcing the rules of probation?

Very strict 7 Strict 11 Moderate 13 Lenient 1

47. What does a violation of the rules of probation mean?

20 referral to the district juvenile judge; 20 additional probation; 10 detention; 11 other restriction; 2 nothing at all.

48. Do you record probation violations?
Always 21 Frequently 6 Rarely 4 Never 0
49. Do you record probation contacts?
Always 15 Frequently 11 Rarely 3 Never 2
50. Do you locate jobs for your probationers?
Always 1 Frequently 18 Rarely 10 Never 2
51. Do you involve your probationer in school recreation?
Always 3 Frequently 15 Rarely 12 Never 0
52. Do you involve your probationer in community recreation?
Always 3 Frequently 12 Rarely 14 Never 2
53. Have you ever used volunteers for probationers?
Always 0 Frequently 6 Rarely 15 Never 10
54. What is your case load of probationers?
State the number 25 \bar{X}
55. Have you ever used a counselor program where you have had a (1 to 1) or (1 to 2) ratio with a client?
Always 7 Frequently 12 Rarely 6 Never 6
- V. INFORMAL COURT STAGE - (handled by judge without petition)
56. Do you use the informal court proceedings in your area?
(The juvenile and parents appear before the District Juvenile Judge without formal petition or citation)
Yes 21 No 9
57. How many cases handled in your district appear before a District Juvenile Judge on an informal basis?
State the number 500
58. Approximately how many cases per year are handled in your judicial district on an informal basis?
State the number 3,555

59. Is an attorney involved in the informal court hearing?
 Always 4 Frequently 5 Rarely 17 Never 3
60. Do you feel the use of an informal court hearing is useful for the juvenile?
 Always 9 Frequently 16 Rarely 3 Never 2
61. Who presents the informal case before the District Juvenile Judge?
12 County Attorney
20 Juvenile Probation Officer
3 Parents
1 Other-specify _____
62. Is the informal hearing before the District Juvenile Judge handled....
22 in his chambers
10 in the court room
1 other-specify _____
63. What is the normal disposition used by the Judge at the informal proceeding? Check as many as needed.
19 warning and continued
25 restitution made if needed
4 suspended commitment
24 probation
6 commitment
2 other-specify _____
64. Who supervises the juvenile after the informal hearing?
3 parents 27 parents and juvenile officer
0 No one 3 other-specify _____

65. What would be the most likely result if the juvenile violates the terms set down at the informal stage?

6 warning

5 additional probation

8 return before the district Juvenile Judge
w/o petition

16 file formal petition declaring the juvenile
delinquent

0 other-specify _____

VI. FORMAL COURT STAGE - Those cases normally handled by a Juvenile Judge with a petition.

66. Who normally makes the decision to initiate proceedings against a juvenile?

21 juvenile probation officer 16 county attorney

7 District Juvenile Judge 0 Other - specify

67. Who normally prepares the petition against the juvenile in your area?

9 juvenile probation officer 24 county attorney

0 District Juvenile Judge 0 Other - specify

68. Who normally serves the citation to the juvenile and parents for the formal court hearing?

21 sheriff or police 14 juvenile probation
officer

0 Other - specify _____

69. Is the juvenile notified of his right to counsel at the formal court proceedings?

Always 32 Frequently 0 Rarely 0 Never 0

70. Is a defense attorney present at the formal juvenile delinquency proceedings?

Always 9 Frequently 11 Rarely 12 Never 0

71. Do you feel it is necessary that the juvenile should have an attorney at the formal proceedings?
 Always 14 Frequently 10 Rarely 7 Never 0
72. Do you feel an attorney should be involved in any juvenile proceeding -- if so, at what stage?
1 Never 5 Preliminary Inquiry
1 Informal Court 26 Formal Court
73. Does the District Juvenile Judge issue the Miranda warning to the juvenile at the time of the formal court hearing?
 Always 26 Frequently 1 Rarely 1 Never 1
74. Where is the formal court hearing normally conducted?
8 private chambers
25 courtroom
0 other- specify _____
75. Is the formal proceeding conducted in an informal manner?
 Always 7 Frequently 13 Rarely 3 Never 9
76. Is the formal proceeding similar to a criminal hearing with rules of evidence, etc.?
 Always 15 Frequently 9 Rarely 6 Never 1
77. Have you had a jury trial for a juvenile delinquent in your judicial district in the last ten years?
3 Yes 28 No
78. On those cases going into juvenile court on a formal petition, is probation used as a disposition?
 Always 2 Frequently 27 Rarely 1 Never 0
79. On those formal cases petitioned into juvenile court, is a referral for mental evaluation used?
 Always 1 Frequently 18 Rarely 7 Never 4

80. Is a suspended commitment used in the formal court process?

Always 1 Frequently 18 Rarely 8 Never 2

81. Is a private placement used in the formal court process such as foster care, private school, etc.?

Always 0 Frequently 20 Rarely 9 Never 0

82. Is a commitment to department of institutions or any state institution used in the formal court process?

Always 3 Frequently 14 Rarely 12 Never 0

83. Are any juvenile cases referred to adult court for criminal prosecution in your area?

Always 1 Frequently 0 Rarely 20 Never 8

84. Approximately how many cases per year are handled in your judicial district on a formal basis with petition?

State the number 593 (for state)

85. What is the average number of commitments per year in your judicial district?

State the number 225 (for state)

86. Have your commitments been higher or lower for 1969-1970?

 3 Higher 17 Lower 8 The same

87. Have your commitments been higher or lower for 1970-1971?

 5 Higher 15 Lower 7 The same

VII. GENERAL INFORMATION STAGE

88. Do you use tutors in your area?

Always 0 Frequently 5 Rarely 4 Never 12

89. Do you handle suicide attempts?

Always 6 Frequently 5 Rarely 15 Never 4

90. How many suicide attempts have you handled? (Please fill in the number - leave blank if you did not handle any)

Formally 4 Informally 36

91. Is foster care used in your area?

Always 0 Frequently 20 Rarely 11 Never 0

92. Approximately how many juvenile offenders are placed in foster care? (Please use one figure if more than one officer fills in questionnaire in any one judicial district)

State the number 155

93. What is the payment per month for foster care?

State the amount \$80.00

94. Do you feel foster care is a good alternative to commitment?

Good 18 Average 7 Fair 4 Poor 1

95. What is the average number of public meetings per month you attend?

 17 5 or less 10 5 - 10 3 10 - 15

 0 15 or more

96. Approximately what percent of your time is spent traveling?

 13 15% or less 16 15 - 30% 3 30 - 60%

 0 60% or more

97. What percent of your time is spent in administration?

 10 10% or less 11 10 - 20% 4 20 - 40%

 7 40% or more

98. How many days per year are spent in:

Institutes 41 Seminars 141 Schools 156

Other 11

99. Do you have an in-service program in your area?
14 Yes 19 No
100. Have you participated in any training program within the last year?
22 Yes 10 No
101. Do you attend Montana Law Enforcement Academy for training?
18 Yes 14 No
102. Do you have other duties besides a juvenile probation officer?
8 Sheriff or deputy sheriff 2 teacher
7 Businessman 0 Judge 2 Other-specify:
Painter, student
-
103. What is the average amount of time spent per week in writing reports, answering letters, etc.?
8 2 hours or less 11 2 - 6 hours
7 6 - 12 hours 6 12 hours or more
104. Does the attitude of the juvenile count when working with the offender?
 Always 21 Frequently 9 Rarely 0 Never 0
105. Do you have group foster homes available in your area?
12 Yes 18 No
106. Do you intend on having a group home in your area within the next year?
11 Yes 15 No
107. Do you use work programs in your area?
 Always 1 Frequently 11 Rarely 11 Never 8

108. What type of offenses do you use work programs for?
Check as many as needed.

12 illegal possession 11 traffic
17 vandalism/mal. dest. 8 misdemeanor
4 felonies 6 fish & game
0 other-specify _____

109. How do you normally get restitution when a vandalism
or malicious destruction of property case occurs?

19 juvenile judge orders it
10 demand it from juvenile and parents
18 request it from juvenile and parents
2 notify injured party to file
1 civil suit
0 don't handle restitutions
0 other-specify _____

110. Do you use other alternatives such as boarding schools
or private schools instead of a referral to district
juvenile courts?

Always 0 Frequently 6 Rarely 14 Never 12

111. Do you refer any cases to Yellowstone Boys' Ranch?

Always 0 Frequently 4 Rarely 17 Never 11

112. Approximately how many cases are referred to Yellow-
stone Boys' Ranch per year?

State the number 23

113. If you do not use Yellowstone Boys' Ranch, why?

13 too much money
7 not satisfied with the program
0 never heard of it
9 other-specify _____

114. Do you have an alcohol treatment program in your area?
Always 10 Frequently 1 Rarely 8 Never 11
115. If the answer to the above question is always, do you use it?
Always 4 Frequently 3 Rarely 4 Never 4
116. Do you have other drug treatment programs in your area?
15 Yes 17 No
117. Do you use them?
Always 5 Frequently 6 Rarely 4 Never 4
118. If the answer to the above question is never, why don't you use them?
Specify Refer to Mental Health
119. Do you have a Big Brother or Big Sister program in your area?
6 Yes 25 No
120. If the answer to the above question is yes, do you use the Big Brother/Big Sister program?
Always 2 Frequently 3 Rarely 2 Never 0
121. Approximately how many referrals have you made to the Big Brother/Big Sister program?
State the number 41
122. Do you have an Office of Economic Opportunity Youth Job Program for low income families in your area?
20 Yes 11 No
123. If yes, do you make any referrals to such a program?
Always 4 Frequently 15 Rarely 2 Never 3
124. Do you make referrals to mental health clinics, psychologists, etc. for examination?
Always 3 Frequently 22 Rarely 3 Never 4

125. Do you use the school counselor in your area as a resource person to work with juvenile offenders?
Always 3 Frequently 19 Rarely 8 Never 3
126. Do you use anyone in the ministerial association as a resource?
Always 1 Frequently 13 Rarely 16 Never 2
127. Do you use any individual business groups or social clubs in your area as a resource?
Always 0 Frequently 8 Rarely 14 Never 9
128. Have you developed any programs in your area that you feel are beneficial to your client and the community?
15 Yes 9 No
129. If the answer to the above question is yes, could you name the programs?
Mini-foster Homes, Group Therapy
130. Has anyone else developed good workable programs?
13 Yes 16 No
131. If the answer to the above question is yes, could you name the people and the programs?
Drop-in Center
132. What type of investigations do you make for the court? Check as many as needed.
25 juvenile presentence investigations
10 adult presentence investigations
5 social investigations in divorce cases
20 social investigations in general
133. Approximately how many truancy cases do you handle?
state the number 343

134. Is there a truant officer in your area other than yourself?
16 Yes 15 No
135. Do you feel that the school should hire a truant officer to handle truancy?
20 Yes 10 No
136. Is your primary job that of a truant officer?
1 Yes 31 No
137. Have you ever started proceedings with the county attorney RE: R. C. M., 1947, Section 10-617 providing for penalty for improper and negligent training of children?
17 Yes 14 No
138. If yes, how many times have you used this section of the code?
 State the number 56
139. Do you refer many cases of dependent neglect to the Welfare Department?
 Always 10 Frequently 16 Rarely 3 Never 2
140. Do you get cooperation from the Welfare Department on dependent-neglect cases?
 Always 18 Frequently 9 Rarely 2 Never 1

APPENDIX II

The enclosed appendix is a sample of the juvenile statistical analysis card used on every delinquent referral to the probation officer and juvenile court. Discussion regarding this form can be found in Chapter III.

(Mail Reports To)
JUVENILE STATISTICAL ANALYSIS
JUVENILE DELINQUENCY PREVENTION AND CONTROL PLANNING
1336 HELENA AVENUE, HELENA, MONTANA 59601

NO 40459
NO 40459

PART A—(not for statistical analysis)

A. NAME: (Last) (First) (Middle)
B. ADDRESS: CITY PHONE

PART B—(Data for analysis)

C. JUDICIAL DIST. Number: []

D. COUNTY: (Code) []

E. DATE OF BIRTH: (mo.) (day) (year) []

F. AGE AT TIME OF REFERRAL: []

G. SEX: 1. Male 2. Female []

H. RACE: 1. White 2. Indian 3. Negro 4. Spanish 5. Other []

I. DATE OF REFERRAL: (mo.) (day) (year) []

J. REFERRED BY:
1. Law Enforcement Agency 2. School 3. Social Agency 4. County Attorney 5. Parents 6. Other Court 7. Other (Specify) []

K. REASON REFERRED:
1. Offense (Code) []
2. (Number of additional charges and/or offenses presently involved with the one listed above) (Not code No.) []

L. PRIOR DELINQUENCY: (excluding traffic)
1. Yes 2. No []
3. Total number of prior delinquent offenses: (Not previously reported) []

M. CARE PENDING DISPOSITIONS:
1. No detention or shelter care (Over night or longer) 2. Jail or Police Department Detention 3. Detention Home 4. Foster Home 5. Other (specify) []

N. NUMBER OF DAYS DETAINED: []

O. MANNER HANDLED:
1. Informal w/o petition 2. Formal w/petition []

P. DISPOSITION: (Code) []

Q. DATE OF DISPOSITION: (mo.) (day) (year) []

R. DIAGNOSTIC SERVICES:

- a. Mental []
- b. Medical []
- c. So []

S. []

T. EMPLOYMENT AND SCHOOL STATUS:
Not employed Out of School In School
Employed 1 5
Full time 2 6
Part time 3 7
Inapplicable (pre-school) 4

T-1. BROTHERS AND SISTERS LIVING AT HOME
No. Older []
No. Younger []

U. SCHOOL ATTAINMENT & ADJUSTMENT:
a. Grade placement in relation to age: 1. Below Normal 2. Normal 3. Accelerated []
b. Serious or persistent school misbehavior: 1. Yes 2. No []

V. MARITAL STATUS OF NATURAL PARENTS:
1. Parents married and living together 2. Both dead 3. Father dead 4. Mother dead 5. Divorced or legally separated 6. Father deserted mother 7. Mother deserted father 8. Other (specify) []

W. LIVING ARRANGEMENT OF CHILD:
In own home:
1. With both parents 2. With mother and stepfather 3. With father and stepmother 4. With mother only 5. With father only 6. In home of relative 7. In foster family home 8. In institution 9. In independent living arrangements 10. Other (specify) []

X. FAMILY INCOME (ANNUAL) []
1. Receiving public assistance at time of referral 2. Under \$3,000 3. \$3,000 to \$4,999 4. \$5,000 to \$9,999 5. \$10,000 and over 6. Unknown

Y. RELIGIOUS DENOMINATION (Code) []
1. Very active 2. Moderately active 3. Non-participating []

Z. LENGTH OF RESIDENCE (of child) IN COUNTY: []
1. Not currently resident of County 2. Under one year 3. Under five years 4. Five years or more

LOCATION OF RESIDENCE
1. Rural 2. Urban—(within city limits)

FOR COMMENTS AND ADDITIONAL INFORMATION USE BACK SIDE OF SECOND SHEET.

CODE FOR COUNTY

01 Beaverhead	22 Jefferson	43 Roosevelt
02 Big Horn	23 Judith Basin	44 Rosebud
03 Blaine	24 Lake	45 Sanders
04 Broadwater	25 Lewis & Clark	46 Sheridan
05 Carbon	26 Liberty	47 Silver Bow
06 Carter	27 Lincoln	48 Stillwater
07 Cascade	28 Madison	49 Sweet Grass
08 Chouteau	29 McCone	50 Teton
09 Custer	30 Meagher	51 Toole
10 Daniels	31 Mineral	52 Treasure
11 Dawson	32 Missoula	53 Valley
12 Deer Lodge	33 Musselshell	54 Wheatland
13 Fallon	34 Park	55 Wibaux
14 Fergus	35 Petroleum	56 Yellowstone
15 Flathead	36 Phillips	57 Blackfeet Res.
16 Gallatin	37 Pondera	58 Crow Res.
17 Garfield	38 Powder River	59 Flathead Res.
18 Glacier	39 Powell	60 Fort Belknap Res.
19 Golden Valley	40 Prairie	61 Fort Peck Res.
20 Granite	41 Ravalli	62 Northern Cheyenne Res
21 Hill	42 Richland	63 Rocky Boy's Res.

CODE FOR RELIGIONS

00 Unknown	08 Church of God	18 Mennonite
01 None, Atheist or Agnostic	09 Congregational	19 Methodist
02 Uncommitted, religious beliefs but no parti- cular faith	10 Episcopal	20 Misson Covenant
03 Assembly of God	11 Evangelical	21 Nazarene
04 Baptist	12 Friend (Quaker)	22 Pentecostal
05 Catholic	13 Hebrew (Jewish)	23 Presbyterian
06 Christian	14 Hutterite	24 Protestant, Unspecified
07 Church of Christ- Scientist (Christian Science)	15 Jehovah Witness	25 Salvation Army
	16 Church of Jesus Christ of Latter Day Saints (LDS, Mormon)	26 Seventh Day Adventist
	17 Lutheran	27 United Brethren
		28 Other (Specify)

CODE FOR DISPOSITION

- 00 Waived to criminal court
- 01 Complaint unsubstantiated
-- dismissed.

COMPLAINT SUBSTANTIATED

- 11 Warned, adjusted and
counselled
- 12 Held open, continued or
pending
- 13 Informal probation
- 14 Referred to other agency
or return runaway
- 15 Temporary custody (in-
cluding group or foster
home placement)
- 16 Other -- Specify _____

TRANSFER OF LEGAL CUSTODY

- 21 Public institution for
delinquency or other
public institution
 - 22 Public agency (including
court and formal proba-
tion)
 - 23 Private agency or
individual
 - 24 Deferred or suspended
commitment
 - 25 Other -- Specify _____
-

REMARKS:

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