

MAINE STATE LEGISLATURE

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INTRODUCTION

Unfortunately, we do not know the causes or cures of juvenile delinquency. One theory is that the delinquent child is ill and requires treatment. However, providing such treatment has been found to have little effect on the rate of recidivism. Thus, in the Cambridge-Somerville project, one of the best known and most comprehensive experiments in controlling delinquent behavior, the subjects were assigned an adult counselor who sought to provide the juvenile with friendship, understanding and a good example. This study found there was no significant difference between the delinquent behavior of juveniles who received this "treatment" and a control group who did not.¹

Another study found that the recidivism rate of juvenile parolees was between 43 and 73%.² An educational experiment in Columbus, Ohio, showed that there was no significant difference in self-perception between juveniles placed in an experimental school program designed to increase their self-concept and juveniles placed in a control group who received

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For a further discussion of this study, see McCord, W., and McCord, J., Origins of Crime: A New Evaluation of the Cambridge - Somerville Youth Study, (Montclair, N.J. 1959); Powers, E., and Witmer, H., An Experiment in the Prevention of Delinquency, (New York 1951).

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Arbuckle, D., and Litwack, L., "A Study of Recidivism Among Juvenile Delinquents", 24 FED. PROB. 44 (1960).

no special attention.³

In light of the supposed failure of this treatment concept, some persons have developed a new theory. Basically, this theory is that if a youth is not labeled as deviant then he may "grow out" of his misbehavior. The theory is based on the assumption that members of the community not only define certain acts as deviant, but they also stigmatize persons who commit these acts.⁴ Because societal responses may change after the person has been labeled deviant, the person may come to see himself as being outside of the community and hence become even more deviant.⁵

But few studies have found any correlation between labeling and subsequent acts of delinquent behavior.⁶ The Williams

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Reckless, W., and Dinitz, S., The Prevention of Juvenile Delinquency, (Columbus, Ohio, 1972).

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Mahoney, A., "The Effect of Labelling Upon Youths in the Juvenile Justice System: A Review of the Evidence", 8 LAW AND SOC. REV. 583, 584 (1974).

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An excellent early discussion of this phenomenon may be found in Lemert, E., Social Pathology, (New York, 1951).

The rationale for this theory, to some extent, is that most youths commit acts of delinquent behavior. One recent study found that 88% of all children between the ages of 13 and 16 admitted to having committed at least one delinquent act although only 4% of this group were the subject of a police report. (But this investigation included admission of relatively petty acts of misconduct.) Williams, J. and Gold, M., "From Delinquent Behavior to Official Delinquency", 20 SOC. PROB. 209 (1972).

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For example, one commentator states that although this theory sounds plausible, the empirical accuracy of the claim is uncertain. Gibbons, D., and Jones, D., The Study of Deviance, (Englewood Cliffs, N.J. 1975).

and Gold study⁷ may provide slight support for this theory, but it is methodologically weak.⁸ Yet a study by McEachern indicated that while official labeling might not be related to subsequent delinquency, contact with treatment agents might be.⁹

Despite a lack of evidence, the labeling theory does present certain problems. For example, if it were taken to its extremes, it would imply that the best treatment for all youths is no treatment. Yet most labeling theorists hesitate to go this far.¹⁰ Certainly there are some children with specific problems who have been helped by programs offered within juvenile justice systems. Presumably everybody knows instances of delinquent children who become productive citizens, and who credit this change to diversionary or treatment programs.

But, since there is no conclusive evidence that juveniles

⁷ Williams, J., and Gold, M., supra. note 5.

⁸ That study involved a comparison of the offenses committed by youths who had previously been apprehended to those youths who had committed four previous unapprehended offenses. However, no attempt was made to control the seriousness of the offenses.

⁹ McEachern, A., "The Juvenile Probation System", 11 AM. BEH. SCIENTIST 1 (1968).

¹⁰ Mahoney, supra. note 4, at 585.

are helped by any one particular complex of services,¹¹ the question becomes one of determining if there is any value in trying to provide juveniles with services at all, and if so, with what services.

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For an excellent summary of the deficiencies of the existing evidence, see Lundman, R., McFarline, P., and Scarpitte, R., "Delinquency Prevention: A Description and Assessment of Projects Reported in the Professional Literature," CRIME AND DEL. 297 (1976). This survey found that of 6,500 attempts to prevent delinquency since 1965, only 3% of the projects had produced an easily available public report. Moreover, only 25 reports contained usable information on the nature and results of the prevention effort. Nine of these reports involved such flawed research design that their results were not conclusive. Seven more were conducted without the use of a control group. The small number of reports with reliable research design reported no difference in the delinquency rate of the experimental and control group.

GOAL 1 - REDUCE THE NUMBER OF CHILDREN WHO TRUANT FROM SCHOOL.

GOAL 2 - REDUCE THE NUMBER OF CHILDREN WHO DROP-OUT OF SCHOOL.

General Discussion

Unfortunately, very little is known about the causes and effects of truancy and dropping out from school.¹² There is some evidence that a correlation exists between children who have trouble in school and children who commit delinquent acts. Thus, a study of 316 status offenders in New York indicated that 224 of these children were truant.¹³ Moreover, these children read at a level which was two to three years below the average for their grade.¹⁴

Another study found that 46% of all male children from white collar families who had low grades were delinquent.¹⁵ Similarly, 38% of such children from blue collar families were delinquent.¹⁶

¹² President's Science Advisory Committee, Youth: Transition to Adulthood, 66 (1973).

¹³ Judicial Conference of the State of New York, The PINS Child: A Plethora of Problems, 40 (1973). The PINS child, or person in need of supervision, is equivalent to the status offender. The study also indicated that 79 of these children had been medically suspended and 49 of them were awaiting assignment to special classes. Id. at 40-43.

¹⁴ Id. at 43.

¹⁵ Polk, K., Frease, D., and Richmond, F., "Social Class School Experience and Delinquency", 12 CRIM. 84, 92 (1974).

¹⁶ Id.

However, other studies indicate no significant correlation between academic experience and delinquency.¹⁷

Even if no correlation between truancy or dropping out and delinquency exists, the mere fact that the child is not attending school may be sufficient cause to take action. The mere failure to attend school may be a symptom of greater problems of the child which require attention.¹⁸

Aside from this argument, the state may have an interest in compelling school attendance.¹⁹

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Senna, Rathus and Siegel, "Delinquent Behavior and Academic Investment among Suburban Youths", 9 ADOLESCENCE 481 (1974).

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Children's Defense Fund, Children Out of School in America, 19 (1974).

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Thus, John Stuart Mill recognized that it was the obligation of each generation to educate the next generation to make it as good or better than itself. Mill, J.S., On Liberty, 207 (Washington Square Press, 1963).

Thus, compulsory education was based on the need to create a happier and more useful citizenry and to provide each child with an equality of opportunity. Kleinfield, A., "The Balance of Power among Infants, their Parents and the State", 5 FAM. L. Q. 64, 91-92 (1975). However, although Massachusetts made education compulsory in 1647, in the remainder of the country, such laws were not effective until this century. Id. at 92.

And it has been argued that the child himself has the right to an education that will prepare him adequately for adult life. See Brown v. Board of Education, 347 U.S. 483 (1954) which raised at least aspects of this right to a constitutional level. But this right may extend only to that education which is required for the child to function as an adult in a particular society. Thus, in Wisconsin v. Yoder, 406 U.S. 205 (1972), the Supreme Court held that Amish parents could be compelled only to send their children to school through the eighth grade.

cf. Force 2

Normally, it is the duty of the parent to provide his child with an education.²⁰ However, because the child is not in a position to enforce this right, the state will enforce it for him. This is an argument often cited in support of compulsory education laws.²¹

Of course it may be argued that children should not be required to attend school. Proponents of this proposal argue that without compulsion, children and their parents would have the ability to choose the program they consider best.²² And there is evidence that most children would attend school without such compulsion.²³

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All states but Mississippi require that a child attend school. Sugarman, S. and Kirp, D., "Rethinking Collective Responsibility for Education", 39 LAW AND CONT. PROB. 144, 198 (1975). Thus, the state may fine or jail parents who fail to send their children to school. Id. However, such punishment is rarely imposed and seldom involves more than a modest fine. Id.

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Of course, it must be remembered that the child can sometimes exercise actual influence in the family although he may lack the ability to legally enforce his rights.

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Sugarman, supra. note 20, at 218.

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Id. at 219. However, it should be recalled that without the requirement for compulsory education, schools could feel less pressure to provide children who may be troublesome with an education. Thus the most needy could be ignored. One need only read the report on Children Out of School, supra. note 18, to realize that schools are already reluctant to provide these troublesome children with an education. Currently, the schools attempt to shift the blame to the children by labeling them truants or dropouts. However, if no such requirement existed, it would be even easier for the schools to ignore the needs of the child.

Methods for Attaining Goals 1 and 2

A. Decrease the age until which children are required to attend school.

Rationale: By reducing the total number of children in school, the number of children who truant or dropout would decrease.²⁴

Statutes: Children between the ages of 7 and 17 must attend school. (Statutes, p. 27).

Regulations: None found.

Discussion: At some point it is assumed that children acquire sufficient ability to choose for themselves whether or not they want to attend school.²⁵

Traditionally, a child has been considered an adult when his growth and learning are formally finished and his place in society established.²⁶ Adolescence has emerged as covering the time

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Available data supports this rationale. In 1974 the highest percentage of children not enrolled in school in Maine were older than 14. See Appendix 1.

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Thus, the child is legally recognized as having the capacity to make an intelligent choice. Rowan v. Post Office Department, 397 U.S. 728 (1970).

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Skolnick, A., "The Limits of Childhood: Concepts of Child Development and Social Context", 39 LAW AND CONT. PROB. 38, 74 (1975). Another authority defines adulthood as having the capacity to provide "at least some forms of nurture" to others. President's Science Advisory Committee, supra, note 12, at 97-98.

between when a child physically matures and when he attains full adult abilities.²⁷ Thus persons between the ages of 14 and 24 may be characterized by great diversities in their physical and psychological status and academic achievement.²⁸

Definitions of when children have psychologically matured are much more difficult to establish. Currently sixteen is viewed as the first acceptable age to leave school.²⁹ The rationale for this cut-off point seems to be that children between the ages of fourteen and seventeen are dependent on their families for many of their needs.³⁰ In fact, less than one-third of all persons under seventeen are in the full-time labor market.³¹

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Skolnick, supra. note 26, at 63. There is still a debate among psychologists whether adolescence is a universal or limited phenomenon. Id.

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President's Science Advisory Committee, supra. note 12, at 91-95.

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Id. at 64. In fact, 97% of males between the ages of 14 and 16 were still in school in 1971. Id. at 65.

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Id. The median age for marriage is greater than twenty. Id. at 98.

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Id. at 98.

Obviously, the state can establish within reason any maximum age for compulsory education.³² Some argue that the age should be drastically lowered.³³ Others favor allowing the child more alternatives for combining education with work.³⁴ Still others believe that children can have a fair opportunity to become productive adults only if schooling is required for a large portion of the child's adolescence.³⁵

The Commission members should decide how much schooling they believe is necessary for children within the state of Maine. (Note that such a decision does not determine the age during which the child will come under the jurisdiction of the juvenile court.)

³² Stanton v. Stanton, 421 U.S. 7 (1975). However, the age must be the same regardless of the sex of the child.

³³ National Commission on the Reform of Secondary Education, The Reform of Secondary Education, 137-39 (1973) advocates reducing the age to fourteen.

³⁴ See, President's Science Advisory Committee, supra. note 12.

³⁵ For example, the Gallup polls indicate that 61% of a surveyed sample of people want schooling required even beyond the age of sixteen and only 28% thought age sixteen would suffice. The Gallup Polls of Attitudes Toward Education, 1969-1973 (S. Elam ed. 1973).

B. Children who are employed should/should not be required to attend school.

Rationale: This will reduce the number of children who are unlawfully absent from school by giving them a legal exemption.

Statutes: Although the law established requirements which a child must meet in order to receive a work permit, there are also many exceptions which will also allow a child to join the work force (Statutes, 32-36).

Regulations: None found.

Discussion: Historically, laws prohibiting child labor were designed to protect children from the harsh conditions existing in factories and to allow them to attend school. Many of these laws were passed during the Depression when it was recognized that adults should have access to the limited employment opportunities available.³⁶

Today, twenty states and the District of Columbia allow children to be exempt from compulsory education if they are

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For a general discussion, see Bremner, R., Children and Youth in America, Vol. 2 (1973).

employed.³⁷ Yet, many children still work part-time while attending school.³⁸ Moreover, there is no known correlation between part-time employment and the child's performance in school.³⁹ However, there is some evidence that children respond favorably to earning money,⁴⁰ and that this response may be reflected in their school performance.

It must also be remembered that the number of educated persons entering the labor market is increasing.⁴¹ Presumably this will cause persons without a high school education to have a more difficult time gaining and keeping a satisfactory job.

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Alabama, Arizona, California, Colorado, Connecticut, District of Columbia, Florida, Hawaii, Illinois, Iowa, Maine, Maryland, Massachusetts, Missouri, New Mexico, New York, Oregon, Pennsylvania, Texas, Washington, West Virginia. The provisions in some of these states include employment for wages with the permission of school authorities, non-wage earning employment with school authority permission, wage earning employment with parental consent, completion of eighth grade and "must work", granting work permits for wages, work-study programs, and regular employment.

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President's Science Advisory Committee, supra. note 12 at 65. Thus, 25% of all males between the ages of 14 and 16 work part-time. Id.

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Id. at 66.

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Id. at 70.

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Id. at 73.

Although few commentators are willing to allow children to leave school at an early age merely to be employed, many suggest combining programs of work and school in an effort to integrate these areas. Such programs will be discussed more fully later. For the present, the Commission must establish only whether they wish to increase or decrease the opportunities for a child to leave school for full-time employment.

C. Increase/decrease punishment of children who truant or dropout.

Rationale: Increased punishment may act as a deterrent to unlawful absences.

Statutes: Currently an attendance officer investigates all reported instances of truancy and may, with the permission of the school committee, take the child to court.

(Statutes, 28-30). The court may make any disposition of the child except commitment to the Maine Youth Center. (Statutes 100-134).

Regulations: None found.

Discussion: Most states do punish children for repeated absences and some sentence them to a correctional institution.³² Yet, it has been suggested that compulsory education laws are often enforced only against white middle class children.³³

But punishment of repeated absences usually will not address the problems of the child. Thus a child may not be attending school because the school is not meeting his needs.³⁴ Removing that child from school usually does not address those needs.³⁵

Two states have adopted innovative programs for truant children. New York

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See Appendices 2 and 3.

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Children Out of School, supra. note 7, at 65.

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Id. at 68. At least one other commentator has speculated that the reasons children leave school include lack of interest, failing grades, inability to relate to teachers or peers and negative attitudes toward school. Thornburg, H., "Attitudinal Determinants in Holding Dropouts in School", 68 J. OF ED. RESEARCH, 181 (Jan. 1975). Yet presumably many of these reasons could be remedied by providing additional services to the child.

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The child who absents himself from school may even consider any mandatory removal in a favorable perspective.

NY provides special day school for truants.³⁶

California deals with its truancy problem by providing for action by a school attendance review board before truancy matters reach the juvenile courts. All children who habitually refuse to obey the reasonable and proper orders of the school authorities or who are habitually truant from school are first referred to this attendance board.³⁷ Juvenile courts have jurisdiction only after this attendance board determines that the available public or private services are inappropriate to correct a child's behavior or habitual truancy or that a child has failed to respond to services provided.³⁸

A truant is defined in California as a pupil who is absent from school "without

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N.Y. Educ. Code Sections 3214(2)(1974). Connecticut also allows truant children to be placed in a vocational education program, but only if they are mentally or emotionally disabled to the extent that they cannot benefit from regular school attendance.

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Conn. Rev. Stat. Sections 17-53, Sections 17-68(c)(1969).
Cal. Welf. & Inst'ns Code, Section 601.1(a)(1974).

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Cal. Welf. & Inst'ns Code, Section 601.1(b)(1974).

valid excuse" more than three days or who is tardy by more than 30 minutes on each of more than three days.³⁹ Such a pupil is reported to the attendance supervisor of the school district.⁴⁰

If a pupil is reported truant three or more times, he is considered a habitual truant.⁴¹ A habitual truant is referred to the school attendance review board.

The school attendance board is designed to provide:

intensive guidance and coordinated community services...to meet the special needs of pupils with school attendance problems or school behavior problems.⁴²

Thus, the board is given authority to determine whether available services are sufficient to meet and correct the needs of a truant youth.⁴³ If the board finds that available services are inadequate

³⁹ Cal. Educ. Code, Section 12401 (1969).

⁴⁰ Id.

⁴¹ Cal. Educ. Code, Section 12403 (1969).

⁴² Cal. Educ. Code, Section 12500(a) (1974).

⁴³ Cal. Educ. Code, Section 12500(b) (1974).

to deal with such child's needs, it may propose and promote alternative solutions which attempt to provide for the maximum utilization of community resources prior to the involvement of the judicial system.⁴⁴

Provisions are made for the establishment of such attendance review boards in each county.⁴⁵ These boards include representatives of parents, the county probation department, the county welfare department and the superintendent of schools.⁴⁶

They may compel action by parents. Thus, if a parent fails to respond to the directives of an attendance board, his child may be referred to the probation department or the county welfare department as a neglected child.⁴⁷ Furthermore, the board may file a criminal complaint against a parent for failure to send his child

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Id.

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Cal. Educ. Code, Section 12501(a) (1974).

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Id.

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Cal. Welf. & Inst'ns Code, Section 601.2 (1974).

to school.⁴⁸

Courts may also order parents to deliver their child at the beginning of the school day to the school.⁴⁹ However, the parents may, within three days after the judgment, post a bond for \$200 guaranteeing that the child will go to school.⁵⁰

Obviously, the Commissioners must decide the extent to which they want to use a deterrent to reduce school absenteeism; what kind of a deterrent they want to use and how and by whom will such a deterrent be exercised.

D. Increase/decrease the punishment of parents or guardians when a child is a truant or dropout.

Rationale: Since parents have the primary responsibility to insure that their children attend school, perhaps they need an incentive to carry out this duty.

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Id. Any parent who fails to make his child attend school is guilty of a misdemeanor and may be fined \$25 or five days imprisonment for the first offense and \$25 to \$250 and/or 5 to 25 days for subsequent offenses. Cal. Educ. Code, Section 12454 (1969).

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Cal. Educ. Code, Section 12410 (1969).

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Cal. Educ. Code, Section 12411 (1959). Of course, if the conditions of the bond are violated, then the bond is forfeited. Cal. Educ. Code, Section 12412 (1959).

Statute: The parent or guardian may be fined no more than \$25 or imprisoned for no more than thirty days. (Statutes 10 and 28).

Regulations: None found.

Discussion: Most states provide that the parent may be subject to a fine or imprisonment for failing to send his child to school.⁵¹

In twenty-one states plus the District of Columbia, Guam and the Virgin Islands, the failure to educate a child may be the basis of a neglect action which may cause removal of the child from his home.⁵²

But these laws are rarely enforced.⁵³

Moreover, these laws usually do not succeed in compelling parents to send their children to school. California, however, allows courts to require that parents deliver a child to school at the beginning of the school day.⁵⁴ Furthermore, such

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See Appendix 2.

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Alabama, Arkansas, District of Columbia, Florida, Hawaii, Idaho, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Missouri, New Jersey, New York, North Dakota, Oregon, Pennsylvania, South Carolina, Tennessee, Virginia, Washington, Wyoming, Guam, Virgin Islands.

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Sugarman, supra. note at 198.

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See, "Goals of Maine: Juvenile Justice System, Report on Task I" at page 61.

laws do not address the needs of either the child or his parents. Yet the use of a legal sanction may be sufficient to compel some parents to require the child to attend school. But there is no evidence on the actual effectiveness of these laws.

E. Increase/decrease the provision and variety of programs and services within schools.

Rationale: If we assume that children may be absent from school because they are not benefiting from the programs offered by the school, then increased programs may allow them to remain in school.

Statutes: Currently, programs are offered in vocational education and special education for handicapped children. (Statutes, 12-24). If a particular program is not offered, the child may seek admission to another school. (Statutes 10-12). Children receive limited physical, nutritional, and mental health services through the school. (Statutes 17-20). Some bilingual education is provided. (Statutes, 20).

Regulations: Provisions exist for allowing children to receive many special education services within the regular classroom when possible. (Regulations 10-24). Special vocational education programs exist which focus on the needs of the child who has dropped out of school or who has been truant. (Regulations 24-43). Regulations also provide for hearing and vision screening, school lunches, limited guidance services, and some bilingual education. (Regulations 5-10).

Discussion: Presumably many children leave school because programs are not offered which meet their needs.

Thus many studies have indicated that gifted and talented children may need special programs to prevent underachievement and the accompanying rebelliousness, disorder and exhibitionism which may occur.⁵⁵

However, the problem may be somewhat different where handicapped children are

concerned. Thus, at least one study has indicated that the advantageous effects of special education classes for mildly handicapped children may be offset by the stigma of "differentness" which is attached to the child enrolled in such a class.⁵⁶ However, the same study indicated that a child who has a specific learning disorder may benefit from placement designed to remedy this disorder.⁵⁷ Moreover, teachers are more likely to place a child who is disruptive in a special education program than to place a child who is withdrawn but might more urgently need special services.⁵⁸

It is argued that the provision of special education services is often prohibitively expensive. However, studies

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Kirp, D., Buss, W., and Kuriloff, P., "Legal Reform of Special Education: Empirical Studies and Procedural Proposals", 62 CALIF. L. REV. 40, 44 (1974). There is also the problem that a child may be permanently misclassified as needing special education. Id. at 43-45.

See, Children Out of School, supra. note 18, at 108-11.

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Kirp, supra. note 56, at 44-45.

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Kirp, supra. note 56, at 152.

have indicated that if the service provided is preventive, it will eventually save the state money.⁵⁹

F. Increase the provision of programs and services to children outside the school system.

Rationale: If the child chooses not to attend school, he should not be denied the benefits of an education.

Statutes: Currently, the child is eligible to attend vocational schools and industrial schools. If he attends summer school, he is required to pay tuition. (Statutes, 12-16). Apprenticeship programs and programs in adult education are also available. (Statutes, 40-43).

Regulations: Vocational education programs designed to meet the needs of children who leave school exist. (Regulations, 30-43). However, priority for enrollment in adult education classes shall go to persons who are 18 years of age or older. (Educational Adm. Letter, No. 40, 2, Oct. 6, 1975). Children over 16 1/2 years may also receive credit for outward bound courses. (Educational Adm. Letter, No. 3, Jan. 3, 1974).

Discussion: If the basic purpose of the educational system is to allow children to become useful adult citizens, then programs which allow children to continue their education must have merit. However, if these programs encourage children to leave school, then the merit should be balanced against their deficiencies. Unfortunately, very little specific substantive information about these programs is available.

One commentator recommended that children may benefit from integrating education and work programs.⁶⁰ Magnet schools, free schools, specialized schools and programs offered through community colleges may be offered to a child.⁶¹ However, care must be taken to insure that these programs actually do meet the needs of children who could benefit from the programs.

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President's Science Advisory Committee, supra. note 12. See also Stein, D., Smith, S. and Doolittle, F., "How Children Used to Work", 39 LAW AND CONT. PROB. 93, 115-17 (1975).

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National Task Force for High School Reform, The Adolescent, Other Citizens, and Their High Schools, 66-69 (New York, 1975). For example, California allows a principal of a high school to recommend up to 15% of the eleventh and twelfth grade students in his school for advanced placement in a community college. Id. at 68. However, presumably the principal will not recommend troublesome children to such programs.

G. Reduce the number of children who are "forced out"⁶²
of school.

Rationale: Forcing a child out of school presumably sanctions and may encourage subsequent truancy or withdrawal from the school.

Statutes: Children may be excluded from school because they present a danger to the health of other students. (Statutes, 36-38).

A child may be suspended for no more than 10 days for infractions of the rules.

(Please note that this is a recent enactment to the law discussed at Regulations, 27). And note that such ten day suspension may be repetitive. The school committee may expel a child who is "obstinately disobedient". (Statutes, 38-40).

Regulations: Before a child can be expelled, he must be afforded certain constitutionally mandated rights.

Discussion: Schools certainly have an interest in maintaining order and discipline within the classroom.⁶³ But a survey of the

⁶² Suspended or excluded.

⁶³ For example, the Gallup polls indicate that adults view discipline as the number one problem of schools in their community. The Gallup Polls of Attitudes Toward Education 1969-1973, at 2 (S. Elam ed. 1973).

Children's Defense Fund indicated that most children are not forced out of school for creating major problems of discipline.⁶⁴ In fact, one study suggested that suspension is often the result of arbitrary and discriminatory acts on the part of the school administrators.⁶⁵

Suspension and expulsion also deny children help in solving any of the problems which originally led to the misbehavior.⁶⁶ Moreover, such action may result in the child's being labelled a troublemaker.⁶⁷

Several methods for reducing the number of children suspended or expelled from school have been suggested. One

⁶⁴ Children Out of School, *supra*. note 18, at 120. Thus 63.4% of all suspensions were not for offenses not considered dangerous. *Id.* Most of the students in a Portland Senior High School were suspended for absenteeism. See, "Goals of Maine's Juvenile Justice System, Report on Task I" at Appendix X.

⁶⁵ Children Out of School, *supra*. note 18, at 134.

⁶⁶ Comptom, R., "Diagnostic Procedures and Classifications of Learning Disabilities", June 1973, who found that 90.4% of children who misbehaved in school had learning disabilities. See, also, Kirp, *supra*. note 56, at 152.

⁶⁷ Children Out of School, *supra*. note 7, at 137.

commentator has suggested that the schools should be required to establish and follow carefully written codes of conduct.⁶⁸ Such codes would limit the ability of the school official to act arbitrarily.

Alternatives to suspension and expulsion can be developed to allow teachers to maintain discipline in the schools. For example, a "time out" room could be used to temporarily remove a child from his classroom. Other alternative measures can include school counseling, psychiatric check-ups, conferences with the child and

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National Task Force for High School Reform, supra. note at 45-51. This Task Force adopted the following criteria for school rules:

- The rules must be known to students. If the act for which the student is to be punished is obviously destructive or disruptive, no rule is necessary.
- The rules must have a proper educational purpose connected to learning itself. (When schools enforce rules relating to societal norms of hair styles, lengths of skirts or other clothing standards, problems arise.)
- The rules must be reasonably clear in meaning. (The statement "Students may not wear provocative symbols" is unacceptable to the court because "provocative is not defined.)
- The rules must be narrow to avoid trespassing on some protected right. (If a rule states that literature shall be distributed only before school, at noon, and after school, the rule is constitutionally sound. If the rule forbids distribution of literature produced off campus, it is unconstitutional.

his parents and placement in alternative classes.

Before a child can be forced to leave school, he must constitutionally receive notice of the charges and an opportunity to be heard. (Regulations 26-30). Moreover, the child must be informed of the measures necessary in order to gain readmission to school.

- GOAL 3 - DECREASE THE NUMBER OF CHILDREN ABOUT WHOM DELINQUENCY AND "STATUS OFFENDER" PETITIONS ARE FILED IN JUVENILE COURTS.
- GOAL 4 - INCREASE THE CLIENTELE AND GEOGRAPHICAL DISTRIBUTION OF DELINQUENCY PREVENTION PROGRAMS IN LOCAL COMMUNITIES.
- GOAL 5 - INCREASE THE NUMBER OF CHILDREN NEEDING COUNSELING OR OTHER INTERVENTION SERVICES WHO ARE SERVED IN THEIR OWN COMMUNITIES RATHER THAN REFERRED TO JUVENILE COURTS.

General Discussion

Basically these goals seek to provide a child with prevention services before he is referred to the juvenile court. As was established in the Introduction to this material, most children commit acts which could be considered delinquent, although very few children are actually referred to a juvenile court. We don't know precisely why certain children become delinquents. However, there is some evidence that only certain classes of children are actually referred to the juvenile court.

Thus the decision to refer a child may be based on community tolerance for delinquent acts.⁶⁹ The decision of the

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If members of the community are concerned about the rate of delinquency, they are likely to respond by arresting and processing more children. See, for example, Parker, H., "Juvenile Court Actions and Public Response", in Becoming Delinquent, (Garabedian and Gibbons, ed. 1970); and Lentz, W., "Social Status and Attitudes Toward Delinquency Control", 2J OF RES. IN CRIME AND DEL., 147 (1966).

police may also be affected by many variables including the seriousness of the offense.⁷⁰ Other researchers have suggested that the demeanor of the child may play a role.⁷¹ Another commentator has stated that police reactions depend on the instant offense, age, sex, prior record, appearance and demeanor, and family status of the child.⁷²

Prevention programs should be designed to provide services for the child before he is apprehended by the police. Although there is little evidence that these programs will have a substantive effect in reducing the rate of delinquency, they may have a more significant effect in reducing the number of children who are apprehended by the police. Thus, it is probable that the police will be less likely to come into contact with a child who is participating in a prevention program. Moreover, the police might view the prevention program as a sufficient reason not to apprehend the child.

However, if participation in the prevention program may create a negative label or stigma on the child, then the program may actually increase the probability that the child will

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See Black, D., "Production of Crime Rates", 3S AM. SOC. REV., 733 (1970).

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Werthman, C. and Pliavin, I., "Gang Members and the Police", in The Police, (Bordua ed. 1967).

72

Stratton, J., "Crisis Intervention Counseling and Police Diversion from the Juvenile Justice System: A Review of the Literature", 25 JUV. JUST. 44, 48 (May 1974). Thus truculence, sullenness, posture and gestures may make a child appear uncooperative and cause him to be taken into custody. Id.

be apprehended.⁷³ Presumably any non-voluntary program may permit such stigma to attach to the child. Yet, if the program is voluntary, there is little guarantee that children who most need the services offered will receive them.

Conversely, if participation in the program may prevent a child from receiving the more negative label of delinquent, then the program may actually be of benefit to the child.⁷⁴ Unfortunately, we do not know whether prevention programs will actually help reduce the rate of delinquency. However, because many persons believe that there may be a positive effect it is necessary to carefully study the programs.

General Methods to Reach the Objectives

A. Establish more/fewer youth service bureaus.⁷⁵

Rationale: Such bureaus may provide a child with services in a community setting apart from the juvenile justice system.

Statutes: None provided.

Regulations: None provided.

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For a more thorough discussion of these issues, see the Introduction.

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Thus, the negative labeling of the child may cause others to view him in a negative manner which will lead to subsequent instances of negative labeling. Mahoney, A., "The Effect of Labeling Upon Youths in the Juvenile Justice System: A Review of the Evidence", 8 LAW AND SOC. REV. 583, 584-86 (1974).

75

See Appendix 4.

Discussion: A youth service agency is a community-based facility which operates independently of the formal juvenile justice system or the traditional child welfare system and which is designed to deliver appropriate services to youths.⁷⁶ Although some suggest that such a bureau increases the provision of services to children, there are also persons who question their effectiveness. Some say that they may merely increase the intervention of the state into the lives of the children without any subsequent benefit to the child.⁷⁷ It is suggested that they allow other agencies to avoid direct confrontation with a child's problems.⁷⁸

B. Increase/decrease the provision of mental health services to children through community mental health centers.

Rationale: Such services may meet the specific psychological needs of certain children and

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See, "Goals of Maine's Juvenile Justice System, Report on Task I", pages 64-77.

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Id. page 75.

⁷⁸

Howlett, F., "Is the YSB All It's Cracked Up to Be?", 19 CRIME AND DEL. 485, 489 (1973).

prevent them from committing or being apprehended for certain delinquent acts.

Statutes: Only limited mental health services are currently available to the child. (Statutes, 124-131).

Regulations: The only significant regulations which were found involve the placement of emotionally handicapped children requiring special education in a residential center. (Regulations, 101-103).⁷⁹

Discussion: Basically the information concerning the provision of mental health services to children is similar to that for the provision of other services to children. Although it is not known whether providing children with mental health services will actually reduce the rate of delinquency, it is known that children currently receive only limited services.⁸⁰ At least one commentator has estimated that at least twelve percent of all children

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A plan for the provision of such services does exist. Task force on the Mental Health of Children, Comprehensive Plan for Mental Health Services to Children, I (1974).

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Report of the Joint Commission on Mental Health of Children, "Crisis in Child Mental Health: Challenge for the 1970's", 1970.

between the ages of five and nineteen have mental health problems which require some kind of professional attention.⁸¹ But most of these children are not receiving such treatment.

It has been argued that the community mental health centers are best able to provide children with these centers. For example, they can easily provide crisis intervention services immediately to help a child solve his problem.⁸²

These centers can also provide day care programs which include counseling or tutoring after school while the child remains with his family.⁸³

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Berlin, I., "Children in the Seventies: Developmental Findings and Recommendations from the Joint Commission on Mental Health of Children", in Advocacy for Child Mental Health, 11 (Berlin ed. 1975).

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There is evidence that such intervention has proven to be the single most effective support for maintaining chronically mentally ill adults within the community. Safirstein, "A System of Secondary Prevention in a Psychiatric Aftercare Clinic of a General Hospital", in Diseases of the Nervous System, 122-25 (1969). But see, Flomenhaft, D., "Outcome of Treatment for Adolescents", 9 ADOL. 57 (1974) which found no difference between children treated on an inpatient and an emergency outpatient basis.

83

See, Schneider, Levinson and Weiss, "Community Services in an Adolescent Program", 9 ADOL. 177 (1974). This article discusses a reorganization of the Illinois State Psychiatric Institute to provide a wide range of services to all children. Whereas prior to the reorganization, emergency cases and children with low intelligence or severe acting-out behavior were discouraged from admittance, after the reorganization, eighty percent of the admissions were emergencies and the average IQ was between 70 and 90.

Other authors suggest that another important program may be family counseling services. Some commentators indicate that the problems of many children are caused by a failure of the parent-child relationship.⁸⁴ Community mental health centers have been cited to be well suited for providing both the child and his parents with short-term therapy designed to improve their relationship.⁸⁵

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Phillips, E. and Johnston, M., "Theoretical and Clinical Aspects of Short-Term Parent-Child Psychotherapy", in Children and Their Parents in Brief Therapy, 22 (Barten and Barten ed. 1973). Further evidence indicates that the relationships between parent and child may deteriorate when the child has a mental health problem. Thus the family may undergo additional stress as it attempts to conceal the mental health problems of the child. See, Bryant, C., "The Concealment of Stigma and Deviancy as a Family Function", in Deviancy and the Family (Bryant and Wells ed. 1973). Id.

In that study, short term therapy was offered to parents and children provided that the mental health problems were not deeply rooted. The assumption was that the parent had failed to structure his relationship with the child in a meaningful manner. But another study indicated that a community mental health center needs the services of persons trained in both child development and interpersonal relationships if the family therapy is to be successful.

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Berlin, I., "Some Modes for Reversing the Myth of Child Treatment in Community Mental Health Centers", 14 J. OF CHILD PSYCHIATRY 76, 90 (1975).

For a discussion of a similar program using behavior modification, see Stuart, R., "Behavior Contracting Within the Families of Delinquents", in Behavior Therapy with Delinquents, 334 (Stumphauzer, ed. 1973).

In fact, the original design of community mental health centers included the provision of services to children. However, nationally, very few children are treated by them.⁸⁶ In fact, only six percent of these centers provide direct mental health services to schools.⁸⁷ In light of this record, the probability that the centers will actually provide services to children must certainly be questioned.

Furthermore, one must ask whether services will be provided to the children who most need them.

C. Increase the provision of social welfare services to adolescents who may show signs of deviant behavior.

Rationale: If additional services may prevent an adolescent from becoming a delinquent, then the social services perhaps offered through the Department of Human Services should be substantially expanded to meet

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Rafferty, F., "Community Mental Health Centers and the Criteria of Quantity and Universality of Services for Children", 14 J OF CHILD PSYCHIATRY 5, 14 (1975).

⁸⁷

Berlin, supra. note 85.

the needs of adolescent children.

Statutes: Although the Department of Human Services does exercise general supervision over the health of children in the state, most of its services affect juvenile offenders only indirectly. (Statutes, 132-134).

Regulations: Most of the services seek to provide children with a permanent legal family. (Regulations, 103-33). This includes providing services to children, including delinquents, who need protection. Although a wide range of services is available, the emphasis is on providing services to younger children whose problems have not been previously recognized. (Regulations, 126).

Discussion: Traditionally, departments of social services have been most concerned with the care of younger children. In fact, many have not taken jurisdiction over the care of older children.⁸⁸ Although providing

See, Sherman, D., Phillips, M., Haring, B., and Shyne, A., Service to Children in Their Own Homes, 33 (1973) which found that only six percent of the children in a sample receiving social welfare services in their own homes were between the ages of 14 and 16 and only two percent were between 16 and 18. Since most children who are adjudicated delinquents are above the age of 14, this could imply that the same act of deviant behavior would receive treatment by a different agency depending on the age of the child.

for younger children is certainly a necessary service, many recent federal programs provide an expanded role for human service departments in caring for older children.⁸⁹

The Commissioners must decide whether an expanded role is indicated for the Department of Human Services in Maine; what kind of expansion is necessary and what resources are available for it.

D. Allow children above a certain age to contract for services without parental knowledge or consent.

Rationale: Children who need these services should be allowed to obtain them independent of the desires of their parents.

Statutes: Children may be admitted to the state mental institutions upon their request with the consent of their parents. (Statutes, 127).

Regulations: Only in severe situations may the child currently request the assistance of the Department of Human Services. (Regulations, 109).

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For example, the Juvenile Justice and Prevention Act provides that diversionary services should be available to the child through an agency outside of the juvenile justice system. 42 U.S.C. Sections 5601 et. seq. (Supp. 1976). Obviously, the Department of Human Services is such an agency.

Discussion: Traditionally, parents have been responsible for providing their child with the care and protection which he needs. Thus, the consent of the parent has been needed before a child can receive most medical services.⁹⁰ However, particularly when the child has sufficient understanding to make an informed decision, there has been a movement toward allowing a child to give his consent without the approval of his parents.

Thus, many states have enacted statutes which allow the minor to give his consent to medical care without the knowledge of the parent.⁹¹ Thus, a recent Louisiana statute allows a minor who is or believes himself to be afflicted with any disease to effectively consent to medical care.⁹²

The right of the child may also rest on the fact that parents may not endanger

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Note, "The Minor's Right to Consent to Medical Treatment: A Corollary of the Constitutional Right to Privacy", 48 SO. CALIF. L. REV. 1417 (1975).

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For example, all but five states now allow the child to give his consent for the treatment of venereal disease and drug abuse. Katz, Schroeder and Sidman, "Emancipating Our Children - Coming of Legal Age in America", 7 FAMILY L.Q. 211, fn. 150 at 238 (1973).

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La. Rev. Stat. Ann. Section 40:1095 (Supp. 1975).

their child even when the treatment in question is not essential to the child's life.⁹³ Although it is certainly reasonable that parents cannot act to protect the family at the expense of a minor child, the degree of danger to the child which may be necessary in order to sustain this interference by the state is unclear. Moreover, most of these cases currently deal only with medical treatment.

The right of a minor to consent to treatment may also be constitutionally mandated. Thus, the right to avoid imminent psychological harm may be protected by the Constitution.⁹⁴ Since children also have certain constitutional rights, they may have the right to consent to treatment.⁹⁵

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Prince v. Massachusetts, 321 U.S. 158 (1944).

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See, Roe v. Wade, 410 U.S. 113 (1973).

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Note, Constitutional Right of Privacy, supra. note 90. See also Planned Parenthood of Central Missouri v. Danforth, --U.S.--, 44 L.W. 5197 (1976). In that case, the court held that the state may not impose a provision requiring all unmarried minors to obtain parental consent for an abortion. The court stated that these minors had some rights and that: Constitutional rights do not mature and come into being magically only when one attains the state-defined age of majority. Id. at 5204.

Once it is assumed that children do have the right to give their consent to certain forms of treatment, one must decide the limits of this right.⁹⁶ Moreover, one must decide who shall be responsible for the payment of these services.⁹⁷ In the usual case, a minor is not going to have sufficient funds to pay for these services. It is unclear whether the parents should be forced to pay for services to which they have not consented. Thus, the state may be forced to provide these services.

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Some requirement of parental consent may be constitutionally permissible. Bellotti v. Baird, --U.S.--, 44 L.W. 5221 (1976). This case suggested that with a mature minor exception to parental consent might be feasible.

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In Singleton v. Wulff, --U.S.--, 44 L.W. 5213 (1976) the court abstained from deciding whether Medicaid could pay for abortions which were not medically indicated.

APPENDIX 1

U. S. Census Data
Children Not Enrolled by State

State	Ages	School-Age Population	Enrolled	Not Enrolled	Institutional Population Not Enrolled	Not Enrolled (Adjusted)	Percent Not Enrolled
Maine	6*	20,458	18,733	1,725	22	1,703	8.3
	7-15	183,485	176,357	7,128	215	6,913	3.8
	16&17	38,977	35,108	3,869	162	3,707	9.5
	TOTAL*	222,462	211,465	10,997	377	10,620	4.8

U. S. Census Data
Children Not Enrolled by State and by White/Non-white

White						
State	Ages	School-Age Population	Not Enrolled	Institutional Population Not Enrolled	Not Enrolled (Adjusted)	Percent Not Enrolled
Maine	6*	20,347	1,715	21	1,694	8.3
	7-15	182,444	7,045	209	6,836	3.7
	16&17	38,769	3,839	162	3,677	9.5
	TOTAL*	221,213	10,884	371	10,513	4.8
Non-White						
Maine	6*	111	10	1	9	8.1
	7-15	1,041	83	6	77	7.4
	16&17	208	30	-	30	14.4
	TOTAL*	1,249	113	6	107	8.6

U. S. Census Data
Children Not Enrolled by State and by Urban/Rural

Urban						
State	Ages	School-Age Population	Not Enrolled	Institutional Population Not Enrolled	Not Enrolled (Adjusted)	Percent Not Enrolled
Maine	6*	10,036	689	11	678	6.8
	7-15	87,596	3,267	103	3,164	3.6
	16&17	19,219	2,116	80	2,036	10.6
	TOTAL*	106,815	5,383	183	5,200	4.9
Rural						
Maine	6*	10,422	1,036	11	1,025	9.8
	7-15	95,889	3,861	112	3,749	3.9
	16&17	19,758	1,753	82	1,671	8.5
	TOTAL*	115,647	5,614	194	5,420	4.7

*Data on 6-year-olds is shown but not counted in state total.

Sources: Children's Defense Funds, Children Out of School in America (Cambridge, 1974) and U.S. Bureau of the Census, Census Population: 1970, Detailed Characteristics, Final Report PC(1)-D Series, Tables 146 and 154.

APPENDIX 2

Truancy Statutes

Truancy Statutes*

State	Definition of Truancy	Definition if Habitual Truancy	Who May Be Held Liable: Parent and/ or Child	Consequence	
				Parent Misdemeanor, Fine, Imprisonment	Child Can Be Institutionalized
Alabama	None	None	Both	M	Yes
Alaska	None	None	Both	F;I	No
Arizona	None	None	Both	M	Yes
Arkansas	None	None	Both	M	Yes
California	Absent or tardy more than 3 days in one year	Report of truancy 3 or more times	Both	M	Yes
Colorado	None	None	Both	I	Yes
Connecticut	None	None	Both	F	Yes
Delaware	None	None	Both	F;I	Yes
D.C.	None	None	Both	M	Yes
Florida	None	None	Both	M	Yes
Georgia	None	None	Both	M	Yes
Hawaii	None	None	Parent	F;I	No
Idaho	None	Repeated violations by pupil of, or failure of parents to make heed and follow the regulations concerning attendance	Both	M	Yes
Illinois	None	None	Both	M	Yes
Indiana	None	None	Both	M	Yes
Iowa	Failure to attend school regularly	None	Both	F	Yes
Kansas	Failure to enroll, or inexcusably absent 3 consecutive days or 5 or more days in any semester	None	Child	-	Yes
Kentucky	Absent for 3 days or tardy on more than 3 days (tardy is being absent for less than half a day)	Being reported as a truant more than 3 times	Both	F;I	Yes
Louisiana	None	None	Both	F;I	Yes
Maine**	-	-	-	-	-
Maryland	None	None	Both	M	Yes
Massachusetts	None	None	Both	F	Yes
Michigan	None	None	Both	M	Yes
Minnesota	None	None	Both	M	Yes
Mississippi	None	None	Child	None	Yes
Missouri	None	None	Both	M	Yes
Montana	None	None	Both	F;I	Yes
Nebraska	None	None	Both	M	Yes
Nevada	Absent without valid excuse for any part of a day	Deemed truant 3 or more times within a school year	Both	M	Yes
New Hampshire	None	None	Both	F	Yes
New Jersey	None	None	Both	F	Yes
New Mexico	None	None	Both	M	Yes
New York	None	None	Both	M	Yes
North Carolina	None	None	Parents	M	No
North Dakota	None	None	Both	M	Yes
Ohio	None	None	Both	F	Yes
Oklahoma	None	None	Both	M	Yes
Oregon	8 one-half day absences in any 4 weeks	None	Both	F;I	Yes
Pennsylvania	None	None	Both	M	Yes
Rhode Island	None	None	Both	M	Yes
South Carolina	None	None	Both	F;I	Yes
South Dakota	None	None	Both	M	Yes
Tennessee	None	None	Both	M	Yes
Texas	None	None	Both	F	Yes
Utah	None	None	Both	M	Yes
Vermont	None	None	Both	F	Yes
Virginia	None	None	Both	M	Yes
Washington	None	None	Parents	F	No
West Virginia	None	None	Both	M	Yes
Wisconsin	None	None	Both	F;I	Yes
Wyoming	None	5 or more absences in any one school year	Both	M	Yes

* Source: Children's Defense Fund, Children Out of School in America (Cambridge, 1974).

** See, "Goals of Maine's Juvenile Justice System - Report on Task I", prepared by Arthur Bolton Associates.

APPENDIX 3*

Jurisdictional Basis for Behavior Proscribed Only for Children

* The material in this chart is based on unpublished data gathered in October, 1974 by Kristine McCarthy and Aidan Gough of Santa Clara University School of Law for the Institute of Judicial Administration/American Bar Association's Juvenile Justice Standards Project.

Jurisdiction	CHARACTERIZATION										BEHAVIOR ENCOMPASSED									
	Delinquent Child	Incorrigible Child	CINS	PINS	Unruly Child	Wayward Child	Other	No Title	Prohib. against Housing with Delin.	Beyond Control	Unmanageable (Uncontrollable)	Incorrigible	Runaway	Wayward	Truant	Habitually Disobedient	Children's Offense	Ride, Disolute Life	Danger to Self or Others	Other
Alabama	X									X	X							X		X
Alaska			X					X	X	X			X	X	X			X	X	
Arizona	X	X								X			X	X	X					X
Arkansas	X												X		X	X				
California	X									X	X							X		X
Colorado			X							X			X		X				X	
Connecticut	X									X			X		X				X	X
Delaware	X									X			X	X	X	X			X	X
D. of C.			X							X					X	X	X			X
Florida		X								X		X	X		X	X			X	X
Georgia	X			X						X	X	X	X		X	X	X		X	X
Hawaii								X		X									X	
Idaho							X								X					X
Illinois						X*				X					X					X
Indiana	X									X	X	X	X		X	X	X		X	X
Iowa	X									X			X		X				X	
Kansas					X								X		X	X			X	
Kentucky							X		X				X	X	X					
Louisiana		X					X		X	X			X		X	X	X		X	X
Maine**																				
Maryland		X								X	X				X	X	X		X	X
Massachusetts						X														X
Michigan							X						X		X	X		X		X
Minnesota	X									X			X	X	X					X
Mississippi	X									X	X	X	X	X	X	X			X	X
Missouri							X													X
Montana	X					X				X	X		X	X	X	X			X	X
Nebraska			X							X			X	X	X	X				X
Nevada	X	X								X			X		X	X		X	X	X
New Hampshire	X									X			X		X					X
New Jersey	X					X***		X		X	X				X	X	X	X	X	X
New Mexico		X								X	X				X	X	X			X
New York			X							X	X	X			X	X				
North Carolina						X	X	X				X			X	X				X
North Dakota				X						X					X	X	X		X	X
Ohio					X					X	X	X	X		X	X	X		X	X
Oklahoma		X								X					X					X
Oregon							X		X				X							X
Pennsylvania	X									X						X				
Rhode Island					X								X		X	X				X
South Carolina	X									X	X	X	X		X	X			X	X
South Dakota		X								X			X		X					X
Tennessee			X							X					X	X	X			X
Texas						X							X		X					X
Utah						X				X					X					X
Vermont		X			X					X	X				X	X				
Virginia						X				X	X	X			X	X				X
Washington						X			X	X			X					X		X
West Virginia	X									X	X	X	X		X	X			X	X
Wisconsin		X				X				X					X					X
Wyoming	X									X	X	X								X
Guam																				
Virgin Islands							X		X										X	X

*MINS

**Considered in text

***Juvenile in need of supervision

APPENDIX 4*

* This Appendix is excerpted from "Goals of
Maine's Juvenile Justice System - Report on
Task I".

ii. Youth Service Bureaus

Of all the recommendations made by the President's Crime Commission in 1967, perhaps none generated more hope or received more widespread theoretical support than the concept of diverting large numbers of youthful offenders outside of the formal juvenile justice system to community-based youth-serving agencies (or YSA's) designed to deliver delinquency prevention and rehabilitation resources more effectively than juvenile courts had been

able to do so.²³⁵ Yet, in 1972, a national study was able to identify fewer than 170 programs which appeared to be "significantly related" to the commission's concept.²³⁶ An Institute of Judicial Administration/American Bar Association survey suggested even that number is over optimistic.²³⁷ One can only conclude that what was heralded as one of the most innovative recommendations of the President's Commission has not, as yet, become a national

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President's Commission on Law Enforcement and the Administration of Justice, The Challenge of Crime in a Free Society, 83 (1967) (hereinafter Crime Commission Report).

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Department of California Youth Authority, National Study of Youth Service Bureaus 34 (1972) (hereinafter National Study).

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Juvenile Justice Standards Project, Youth Service Agencies (unpublished draft, October, 1974). This section of our paper relies heavily on this study.

alternative to the established juvenile justice process.²³⁸

What are the 'character and purpose' which signal a "youth service agency"? Several fundamental elements can be identified, although they in turn raise new definitional questions. For example, as to character, most agree a youth service agency should be community-based and outside of the formal juvenile justice system.

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There is definitional confusion in the formal titles which have been attached to the concept of providing community-based services to youthful law violators. For example, in 1967, the President's Commission on Law Enforcement and the Administration of Justice recommended an establishment of "Youth Services Bureaus" (Crime Commission Report at 83); in 1969 the Joint Commission on Mental Health of Children proposed "Neighborhood Child Development Systems" (Joint Commission on Mental Health of Children, Crisis in Child Mental Health: Challenge for the 1970's, 11 (1969)); in 1971, the White House Conference on Youth endorsed "Child Advocacy Councils" (White House Conference on Children, Report to the President, 391 (1971)); in 1973, the International Association of Chiefs of Police called for "Multi-Service Center for Youth" (Kobetz, R. and Bosarge, B., Juvenile Justice Administration, 487 (1973)); and in 1974 the Youth Development and Delinquency Prevention Administration of the U.S. Department of Health, Education and Welfare funded a pilot project on "Comprehensive Youth Service Delivery Systems" (ABA Commission on Correctional Facilities and Services, Source Book in Pretrial Criminal Justice Intervention Techniques and Action Programs, 124 (1974)).

But the term "community" has been used loosely to describe anything ranging from a large urban area to a small neighborhood. Moreover, determining whether a program is "inside" or "outside" of the formal system can be very difficult particularly if, as is true in many jurisdictions, the program is staffed by a coalition of personnel loaned by formal institutions.²³⁹ Still, the identification of these two essential characteristics does serve to create some meaningful parameters. For example, a program in which intake workers refer juveniles directly to a probation department is clearly "within" the existing system and not community-based.

As to the fundamental elements of purpose, similar definitional problems arise. It seems clear that a youth service agency must mesh the principles of delinquency prevention and diversion. But diversion is itself a rather ambiguous term which has been used to describe various ideas that have little more in common than that they propose to alter current criminal justice practices. Sometimes the term is used

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Cressy, D. and McDermott, R., Diversion from the Juvenile Justice System, 5-8 (National Assessment of Juvenile Corrections, University of Michigan, 1973).

in reference to procedures which avoid the formal criminal process altogether. In this context, attempts to decriminalize certain activities and thereby narrow the jurisdiction of the juvenile court may properly be termed diversion, as may the decisions of officers not to formally arrest a juvenile suspected of an offense. The very concept of a juvenile court system is itself one manifestation of yet another concept of diversion in that it was established to divert juvenile offenders from the adult criminal justice system. In this context, diversion entails not a bypassing of the formal criminal process altogether, but rather a re-routing from one formal system to another. Finally, the term diversion is sometimes used in reference to any disposition of a juvenile offender which avoids confinement in a formal correctional institution. In this context, diversion represents an early exit from the existing system by either formal or informal procedure. It may be accomplished by the police through release or station adjustment, by the prosecutor, through a refusal to press charges, or through a juvenile judge's decision to dismiss the case, acquit the juvenile,

find an alternative to institutionalization or suspend the sentence.

With such a panoply of practices called diversion, it is apparent that we must carefully define our understanding of the term if the conception of the youth service agency as a diversion alternative is to have any meaning. One suggested operational definition is that found in the Report of the Corrections Task Force of the National Commission on Criminal Justice Standards and Goals:

[D]iversion refers to formally acknowledged . . . efforts to utilize alternatives to . . . the justice system. To qualify as diversion, such efforts must be undertaken prior to adjudication and after a legally proscribed action has occurred Diversion implies halting of suspending formal criminal or juvenile justice proceedings against a person who has violated a statute in favor of processing through a non-criminal disposition.²⁴⁰

It follows that a youth agency must receive direct and formally acknowledged referrals from the police and from the juvenile court.

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National Commission on Criminal Justice Standards and Goals, Corrections Task Force Report, 50 (1973).

As to delinquency prevention, it must be acknowledged that this goal is shared by a broad spectrum of youth-oriented programs. For this reason, reliance upon the strategy of prevention does not serve to distinguish a youth service agency from those other organizations. But by identifying the approach to prevention which is taken, a meaningful distinction may be drawn. As outlined by the President's Commission Report:

These [youth] service agencies would act as central co-ordinators of all community services for young people and would also provide services lacking in the community or neighborhood. . . .²⁴¹

It is then the combination of the provision of direct services and the co-ordination of existing services which serves to identify a youth service agency. This fundamental approach, when coupled with the requirement of providing diversion for some juveniles from the formal juvenile justice system, serves to exclude a great number of community youth oriented programs (YMCA, Boy Scouts, Teen Centers) which are not youth service agencies as that term is used here.

²⁴¹

Crime Commission Report, 1 at 83.

In summary, a youth service agency is a community-based agency which exists independently of the formal juvenile justice system or the traditional child welfare system and which is designed to deliver appropriate beneficial services to diverted and non-diverted youths both by co-ordinating existing resources and by developing resources which are lacking. While this conception explains the focus of this discussion, it is important to note that it does not dispel all the definitional confusion. For one thing, the goals of prevention and diversion need not necessarily conflict. Even if one believes the primary goal of a Youth Services Bureau should be to serve as a diversion program, for example, the best way to achieve that goal may be to involve non-diverted youth in the program. For one thing, such a mix may be the only way to avoid the stigma associated with the formal juvenile justice system, for without the mix, the Youth Services Bureau may well develop the reputation of being a program for delinquents. Similarly, a mix may be the best "treatment" a Youth Services Bureau can provide to offenders.²⁴²

But on the other hand, such a mix means Youth Service Bureau money and resources are re-allocated in part from diverted youth to members of the generally larger group of community youth who have not been charged with delinquent acts. Thus a prevention focus may help a diversion strategy in some respects, yet conflict sharply with it in others--particularly financial.

A second area of potential conflict exists between the goals of co-ordination and direct service provision. There is the very real danger that without a focus on co-ordination, the youth service movement will result merely in the creation of "just one more community agency following popular or fashionable trends in youth work, muddying the waters a little more and falling into obscurity".²⁴³ Yet, designing youth service agencies primarily to co-ordinate services will similarly achieve little where--as is often the case--existing services for youth are inadequate.

The confusion surrounding the definition of a Youth Service Agency is merely one reflection of a more basic confusion about what such agencies should do. Diversion, in theory, is based

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Lemert, E., Instead of Court, NIMIT Center for Students of Crime and Delinquency 93 (1971).

on policy analysis that juvenile justice processing is frequently detrimental to some youth, and such youth, who otherwise would receive such processing, should be "diverted" to youth services programs. Under such an analysis, the concept of diversion is intended to represent the probability that a youth entering the juvenile justice system will be discharged from the system prior to some particular event: commonly, court adjudication. Such diversion is seen as beneficial because it permits the state to provide services through a youth services program without labeling the youth a delinquent or tainting the youth's identity with a stigmatizing judicial experience. This ideal has been labeled as "true" diversion.

If 'true' diversion occurs, the juvenile is safely out of the official realm of the juvenile justice system and he is immune from incurring the delinquent label or any of its variations -- pre-delinquent, delinquent tendencies, bad guy, hard core, unreachable. Further, when he walks out the door from the person diverting him, he is technically free to tell the diverter to go to hell. We found very little 'true' diversion in the communities studied.²⁴⁴

Several critiques have been leveled at diversion. Questions have been raised about fairness and the absence of due process protections in the administrative discretion upon which diversion rests.²⁴⁵ There is concern that focusing on diversion is a reactive process which diverts energy from primary delinquency prevention.

If...diversion becomes merely a bureaucratic means of diverting attention from needed changes in the environment of youth, it will do great injustice.²⁴⁶

Popular criticism of diversion revolves around crimes committed by diverted youth, mismanagement of funds and the problems generated in trying to mesh new clients into traditional social services.²⁴⁷

Finally, there is the concern that diversion is becoming a mechanism for increasing unwarranted

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Justine Wise Polier, "Myths and Realities in the Search for Juvenile Justice" HARV. ED. REV. Vol. 44, No. 1 (February, 1974).

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Cressy and McDermott, *supra*, note 244 at 62.

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Becker, A., "Problems of Broad Diversion Program Implementation", unpublished paper prepared for the Center for Criminal Justice, Harvard Law School, Cambridge, Massachusetts, 1974, pg. 30.

state intervention into more and more young lives. Some scholars argue that diversion does not so much "save" youth from the consequences of court processing as "increase" the rate of service intervention into their lives. It has been suggested that diversion statistics may be bloated by thousands of youth "scooped up" into the juvenile justice system who previously were dismissed. Such figures may serve to mask the fact that those youth who traditionally were processed through to correctional institutions are still processed through without any benefit from all the diversion efforts.²⁴⁸

Up to this time there has been no systematic analysis of diversion which has truly factored out such issues as who and how many really benefit. While data is compiled on police and court referrals to youth service programs, very little is actually known about the degree to which diversion is actually practiced in the juvenile justice system.

About half of the people we interviewed indicated a need for more and varied diversion programs for delinquent and "status offender" children in Maine. Most of those who spoke about

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Green, Youth Service Agencies, supra.

diversion felt there was a need for well-trained family workers, street workers and counselors to work with a child in his community before he became involved with the juvenile court in any way. Many people suggested that diversion services should be provided by already-existing human services agencies, rather than by some new service-delivery agency. Others felt that there is a need to establish an identifiable Youth Aid Bureau in each county.

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Many of the suggestions made by Commission members reflected the standards for treating non-criminal misbehavior outlined by Aidan Gough in "Tentative Draft of Standards and Commentary, Standards Relating to Non-Criminal Misbehavior" (unpublished paper, prepared October, 1974). Mr. Gough suggested that:

- There shall be established neighborhood assistance bureaus which shall be available to provide voluntary counseling and casework services to children. The Neighborhood Assistance Bureau shall not itself be a center of specialized expertise, but shall rather serve as an effective channel to and connection with resources which can provide specialized aid. The goal and purpose of the Neighborhood Assistance Bureau shall be to render casework and supportive help to the variety of problems within its service area on a voluntary basis, and in such way as to maximize the informality, responsiveness and intimacy of service.