

Correspondence – National Council on Crime and Delinquency

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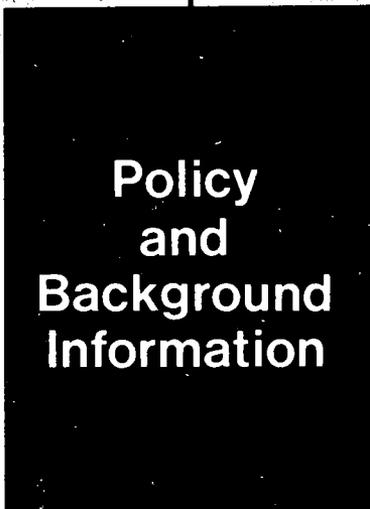
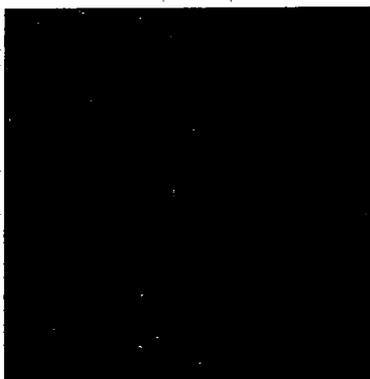
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An American Archipelago...
THE UNITED STATES BUREAU OF PRISONS



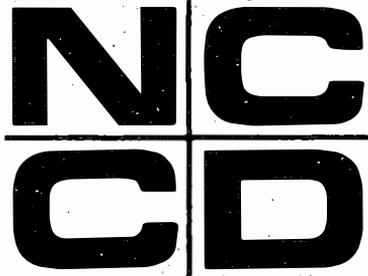
**A halt to
institutional
construction
in favor of
Community
Treatment**



**Policy
and
Background
Information**



**Equitable
Compensation
of
Inmate
Labor**

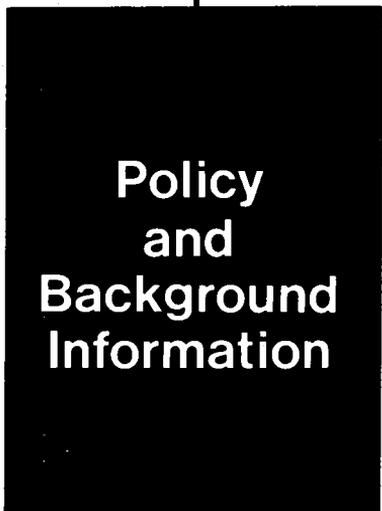
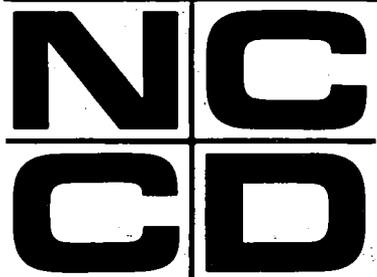
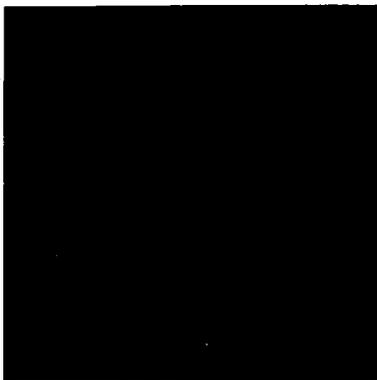


**Policy
and
Background
Information**



**Phasing - out
the
United States
Bureau of
Prisons**

**and its replacement
by a Federal
Correction Agency**



**Policy
and
Background
Information**



Narcotics Law Violations

A Policy Statement

**COUNCIL OF JUDGES
OF THE
NATIONAL COUNCIL ON CRIME AND DELINQUENCY**

August 7, 1974

Mr. Milton G. Rector, President
National Council on Crime and Delinquency
Continental Plaza
411 Hackensack Avenue
Hackensack, N. Jersey 07601

Dear Milt:

Thank you for your letter of August 2. I appreciate your effort to prepare a position paper on criminal justice and look forward to reading it.

I am enclosing our issue analysis paper on crime which I believe will be of interest to you. I hope you will contact my Appointments Secretary, Mrs. Mary Beasley, to arrange a time for us to meet when you are in Atlanta.

Sincerely,

Jimmy Carter

JC/scg

Enclosure



NATIONAL COUNCIL ON CRIME AND DELINQUENCY

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Executive Vice President, Professional Services

August 2, 1974

The Honorable Jimmy Carter
Chairman, 1974 Campaign
Democratic National Committee
P.O. Box 1524
Atlanta, Georgia 30301

Dear Governor Carter:

I can't tell you how pleased we were to receive your letter and to know of your interest in having issues of concern to the NCCD seriously addressed by the 1974 Campaign Committee of the National Democratic Party.

Prior to each presidential campaign and election we make it a practice to submit recommendations to the Platform Committee of each major political party. They usually are received in a hurried and perfunctory manner, and to date have received little or no serious attention.

We, therefore, welcome your invitation and shall prepare for consideration of your committee a statement with documentation of what the NCCD Board and staff consider to be key national, state, and local issues concerning juvenile and criminal justice.

NCCD's Board of Directors will meet in Atlanta October 21 and 22, and I could absent myself to confer with you personally during that period.

Because those dates may be too late for the 1974 campaign preparation, and because service to the country's major political parties is of priority concern to the NCCD I shall be pleased to make a special trip to Atlanta at an earlier date to meet with you if you wish.

With best personal regards.

Cordially,

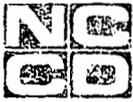
Milton G. Rector
President

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* Executive Committee Member

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Executive Vice President, Professional Services

August 2, 1974

The Honorable Jimmy Carter
Chairman, 1974 Campaign
Democratic National Committee
P.O. Box 1524
Atlanta, Georgia 30301

Dear Governor Carter:

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Cordially,

Milton G. Rector
President

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September 4, 1974

The Honorable Jimmy Carter
1974 Campaign Chairman
Democratic National Committee
P.O. Box 1524
Atlanta, Georgia 30301

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Dear Governor Carter:

With reference to our recent correspondence relating to NCCD policy positions which might interest the Platform Committee of the Democratic National Committee, I am forwarding a summary description of NCCD priorities and supporting publications.

On the issues of Nondangerous Offenders, Juvenile Status Offenders, Sentencing of Narcotic Offenders, and Victimless Crimes I would recommend our positions over those of the National Advisory Commission on Criminal Justice Standards and Goals.

Where the current federal administration is most remiss is in its silence as to the applicability of the National Advisory Commission's recommendations to the federal government. Federal legislation and policies to date are the opposite of Commission recommendations. Our policy regarding the need to phase out the U.S. Bureau of Prisons for a new federal leadership role and William Nagel's enclosed speech, "An American Archipelago," highlight the total lack of federal criminal justice planning.

I personally believe that the planning policy merits top priority. State and local criminal justice planning commissions should become statutory bodies to address total system planning. They could then move from current limitations of high staff turnover and grant management for the federal funds which are too minute to have lasting impact for change on existing, fragmented systems. They could also then link

* Executive Committee Member

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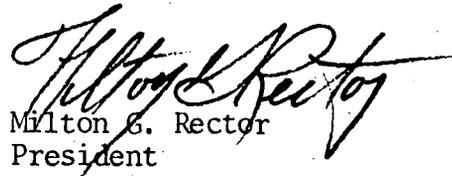
Page Two
The Honorable Jimmy Carter
September 4, 1974

criminal justice with total state planning for human resource services which will do more to reduce crime ultimately than the criminal justice system can do unilaterally.

Inclusion of a majority of lay citizens with no biases in independent sectors of criminal justice is essential, in our thinking, for the policy commissions concerned with criminal justice planning.

With best personal regards.

Cordially,

A handwritten signature in cursive script, appearing to read "Milton G. Rector".

Milton G. Rector
President

MGR:gw

Encs.



The Nondangerous Offender Should Not Be Imprisoned

A Policy Statement

BOARD OF DIRECTORS, NATIONAL COUNCIL ON CRIME AND DELINQUENCY



Reprint from
CRIME AND DELINQUENCY
Vol. 19, NO. 4, October 1973

MAJOR NCCD PRIORITIES

YOUTH SERVICE BUREAUS ... An NCCD Policy

Recognizing the dehumanizing process of routine institutionalization in inadequate and understaffed facilities, NCCD promotes the Youth Service Bureau concept as an aid to delinquency prevention. This program diverts children and youth on the verge of trouble from the juvenile justice system. It brings them to social and health agencies which can help them with their problems. They are not branded with a delinquency label and real improvement is possible.

NCCD has promoted this concept, and more than 500 bureaus are now functioning throughout the United States. Greater emphasis has been given to the program since establishment of the NCCD National Center for Youth Development in Tucson in 1973. There, a major area of work is devoted to the promotion and development of youth service bureaus. NCCD has also been responsible for writing and publishing the definitive book on the subject, The Youth Service Bureau: A Key to Delinquency Prevention.

REPEAL OF VICTIMLESS CRIME LAWS ... An NCCD Policy

To decrease the pressures on all parts of the criminal justice system, and particularly the courts since they are perhaps the most overloaded, NCCD seeks diversion of victimless crime offenders such as drunks and addicts from the criminal justice system. Adopted in 1970, this NCCD policy has been responsible for legislative action in several states and administrative action in a number of cities. A growing number of legislators, crime control officials, and citizen leaders are endorsing

measures identical or similar to the NCCD policy. Success in this effort will reduce arrests by one third, allow reasonable time for court trials, and empty many jails.

Oregon, for example, has adopted a new criminal code containing NCCD's sentencing policies. Victimless crimes have been removed from that code.

MONITORING FEDERAL FUNDS ... An NCCD Policy

Monitoring federal funds so that they are spent in significant efforts to upgrade criminal justice is essential. NCCD seeks to channel government funds into productive programs for controlling crime instead of those honored by tradition but of dubious value. In the correctional field NCCD has undertaken intensive efforts to develop and conduct demonstration projects and provide technical assistance to literally hundreds of correctional programs. Special efforts are made to promote the use of a range of community treatment programs instead of incarceration. Both from experience and experiment, NCCD has learned that treating the offender outside the institution reduces the correctional cost to the public, since community treatment is about one-eighth the cost of imprisonment. Most importantly, this type of program provides better rehabilitation results without increased danger to the public.

INSTITUTIONAL CONSTRUCTION ... An NCCD Policy

NCCD strongly urges that no further prison construction be undertaken until alternatives are fully utilized. In spite of some concern and

outright opposition, the policy is sound and is working. It has served as an important backstop for a number of official and non-official bodies concerned with the building of new prisons and jails while community treatment was only given lip service. It is no exaggeration that this NCCD policy has helped block more than \$100,000,000 of projected steel and concrete. And it has strengthened efforts to put money and manpower into alternatives to imprisonment.

PHASING-OUT THE FEDERAL BUREAU OF PRISONS ... An NCCD Policy

NCCD urges the disestablishment of the Bureau of Prisons and its replacement by a Federal Correction Agency whose function would be to provide technical assistance, program guidelines, and research designs to state and local government. LEAA funds should be used to upgrade state and local probation systems for the rehabilitation of all offenders - federal as well as state - in the local communities. Pre-trial detention centers should be operated by each state for federal as well as state violators. NCCD opposes the Bureau of Prisons' plan to construct a large number of detention and correctional institutions at a cost of several hundred million dollars in the next decade. The funds should be allocated to the states to help them develop maximum use of community correction.

NON-DANGEROUS OFFENDERS SHOULD NOT BE IMPRISONED ...

An NCCD Policy

Since prisons have failed in their assigned tasks of rehabilitating offenders, deterring crime, and protecting society, NCCD believes the

imprisonment of non-dangerous offenders should be virtually abandoned. NCCD calls for greater use of alternatives to prisons, such as the diversion from the criminal justice system before trial, probation and suspended sentences, deferred conviction on consent, fines, restitution, and boarding homes.

NCCD believes that an offender should be classified as dangerous if he 1) inflicted or attempted to inflict serious bodily harm or; 2) seriously endangered the life or safety of another and; 3) he was previously convicted of one or more felonies not related to the crime for which he was convicted.

However, before sending the offender to prison the court must also find, through a competent diagnostic investigation, that the offender is suffering from a severe mental or emotional disorder indicating a propensity toward continuing dangerous criminal activity. Under this definition, racketeers deeply involved in organized crime would be classified as dangerous.

STRENGTHENING CRIMINAL JUSTICE SYSTEM . . . An NCCD Policy

This policy calls for the strengthening of criminal justice planning and greater coordination of all law enforcement and justice agencies at the federal, state and local level.

Two major steps are proposed in the policy:

Creation of a National Planning Commission to coordinate the federal government's diverse criminal justice activities and work closely with state and local agencies.

Establishment of state criminal justice planning agencies (SPA's) on

a permanent basis and expansion of their responsibilities to do comprehensive planning for all crime programs.

One example of the lack of coordination and planning in the federal system is the Federal Bureau of Prisons' program to build 29 new institutions costing \$474 million, plus \$25 million in improvements by 1981 without taking into account the growing trend toward community based non-institutional correctional services.

COMPENSATION OF INMATE LABOR ... An NCCD Policy

Inmates' pay for employment in prison is too low to be regarded as wages. The average prison laborer receives 10¢ to 65¢ a day. Few institutions pay inmates for a day's work what the federal minimum wage law requires for an hour's work. Thus, there is no incentive; indeed, since it is only a token, it is a daily rebuke to the inmate, reminding him of society's power to exploit him at will.

NCCD believes this counterproductive system must change, and inmates should receive equitable payment for work performed. This will enable him to provide some support of his family, continue payments on his social security, provide restitution, make some payment for room and board, and save money to assist himself upon his return to society.

NCCD urges the introduction of federal and state legislation requiring that an inmate employed at productive work in a federal, state or local institution shall be paid no less than the minimum wage operative nationally or in his state.

REMOVAL OF JUVENILE STATUS OFFENDERS . . . An NCCD Policy

Children who commit acts that would not be considered crimes if committed by adults (ungovernability, truancy, incorrigibility, etc.) should not be subject to juvenile judicial intervention.

All children, whether labeled delinquent, dependent, or neglected, must not, as a matter of social policy, be incarcerated unless the court can deem them to be "dangerous offenders."

The utilization of training schools and other traditional correctional institutions for children has resulted in the mere warehousing and sadistic abuse of the helpless. If treatment is to be effective, a non-coercive setting, outside the traditional institution, will maximize the chance of success.

SENTENCING DANGEROUS OFFENDERS . . . An NCCD Policy

Maximum security institutions, as currently populated and operated, are archaic and destructive. They offer to the public no protection that could not be better provided by NCCD's Model Sentencing Act.

Only a small percentage of the inmates in a typical prison can be classified as dangerous under the criteria of the Model Sentencing Act. Many of the remainder, all non-dangerous, have been sentenced to long terms and are, in fact, confined for long periods because the parole systems are typically hampered by mandatory minimum terms of parole eligibility.

The Model Sentencing Act establishes, in statutory form, the idea of individualized disposition of offenders and outlines procedures to:

- (a) provide judges with improved resources for identifying the dangerous offender;
- (b) permit long-term control of the dangerous offender;
- (c) diversify the disposition of the non-dangerous offender;
- (d) sentence youthful offenders.

The Act strengthens individualized sentencing of the long-term offender who must be either a racketeer or a dangerously disturbed person. At the same time, it also establishes a large category of non-dangerous offenders for whom probation or some other non-institutional sentence is most suitable. Each sentence should be tailored to the needs of both society and the defendant. Defendants, either confined for a short or long term, should be given some therapeutic treatment. The setting, intensity and duration of such treatment will vary according to the individual case.

DRUG ADDICTION: A MEDICAL PROBLEM ... An NCCD Policy

Drug addiction is a medical, not a law enforcement problem. The addict is a sick person and medical help should be made available, instead of prosecution as a criminal. So also should those narcotics pushers who are users because their addiction compels them to sell drugs in order to continue their own supply.

Legal maintenance doses of addictive drugs and other carefully controlled medical treatment should also be made available which will drastically reduce both the great number of street crimes they now

commit and their reliance on the organized crime market.

There exists today a vicious circle in the enforcement of the narcotics laws. The illegality of narcotics supports organized crime. Control of drug manufacture and distribution by organized crime promotes police and official corruption. Corruption makes effective law enforcement impossible.

The problem can only be solved when this vicious crime circle is broken.

INTRODUCTION -

NCJD's Staff urges the Board to adopt two definitive statements of principle that were implicit in the Board's previous policies concerning "Crimes Without Victims" and "The Nondangerous Offender Should Not Be Imprisoned".

In the Board's statement concerning "Crimes Without Victims" it is clear that the policy specifically refers to children as well as adults. Therefore, children, who commit acts that would not be considered crimes if committed by adults, should not be subject to juvenile judicial intervention. More explicitly, the Board is urged to adopt a clear and concise statement that status offenses (acts committed by children that would not be crimes if committed by adults, i.e. ungovernable, truancy, incorrigible, runaways) should be removed from the jurisdiction of the juvenile court in keeping with Board policy.

We also urge that the Board's policy position "The Nondangerous Offender Should Not Be Imprisoned" be applied to children subject to juvenile court jurisdiction. An explicit statement should be adopted that all children who are subject to the juvenile court's jurisdiction should not, as a matter of social policy, be incarcerated unless they can be deemed "dangerous." The necessity and rationale for both these statements can be best understood in the context of the reforms that have shaped the

philosophy of the juvenile court movement.

HISTORY OF THE JUVENILE COURT MOVEMENT -

This movement for the creation of a juvenile court emerged in the 1830's as a reaction to the barbarous and cruel treatment of children who had been subjected to the jurisdiction of the criminal law. Before the emergence of the juvenile court movement, all persons capable of mature reasoning were held accountable for their criminal actions. The exception to this rule was that children under seven years of age were deemed incapable of criminal intent because of their diminished capacity to reason. Thus, they could not be designated as criminals. Children (age seven to fourteen) were presumed to have a diminished capacity to reason, and were thus incapable of being punished for their criminal acts. If the state could successfully rebut the presumption, the child was subject to criminal court jurisdiction, and treated like an adult criminal offender. Children were arrested, tried, sentenced, and punished as adult offenders. The history of the criminal law process is replete with examples of children who were hung, tortured and imprisoned. The brutal treatment of children, under the criminal justice system, resulted in a search by reformers for a new system to control juvenile behavior. The intent of the reformers was to devise a system for children that would be effective in eliminating the harshness of the criminal law process. Further, it would be humanistic in its attempt to "treat" the child, and return him

to society as a productive and moral citizen.

The reformers were influenced by a variety of emerging theories, especially those offered by the social scientists. The presumption that underpinned their theories was that delinquency was caused by hereditary factors, social conditions, and the child's physical and psychological environment. Since children, if reached early, are amply malleable, the social scientists argued, the children could be diverted from a life of crime and immorality through the utilization of treatment and rehabilitation models. Thus, the reformers demanded early state intervention in children's lives in order to mold them into disciplined and moral adults. The legal precept to so intervene in family life was incorporated in the term "parens patriae", meaning that the state would assume the role of parent and the child would be protected from the dangers of moral decay, parental laxity and urban vice. Armed with this legal theory, the reformers urged the creation of a new juvenile system in which the social scientists would protect children from the brutality of the criminal justice system and humanistically alter juvenile behavior. This new system represented a major departure in Anglo-American jurisprudence : the juvenile court. By the 1890's the reformers had agreed upon a theory of reformation for deviant juvenile behavior that would be implemented through the creation and utilization of a juvenile court system in each state. The reformers' position could be outlined as follows:

- 1) Juvenile offenders would be completely segregated from adult offenders.
- 2) Children would be removed from the immoral social environments attributed to urban slums, and isolated in reformatories where they could learn discipline, morality, and the work ethic.
- 3) Since removal of the children to reformatories was not considered to be punishment but "treatment" and "rehabilitation", there would be no need for due process or other legal protections.
- 4) No specific sentences would be imposed because treatment could not be administered or completed within defined periods of time. Commitments for indeterminate periods would be best in order to maximize the opportunity for individual rehabilitation and treatment.
- 5) Military ambience, physical exercise, labor, and supervision, would be essential in order to protect incarcerated children from idleness and indulgence.
- 6) Reformatories would be constructed in rural America, far from the evil influences of urban life. Programs for incarcerated children, stressing elementary education, agricultural training and religious training, would be developed. Emphasis would be placed on thrift, industry, prudence, "realistic ambition", and "life adjustment".

The juvenile reform movement to protect children from the horrors of the criminal justice system had its effect upon the legal system. Prior to the development of juvenile reformatories and institutions, criminal courts had become increasingly reluctant to convict children because of the brutal treatment they were afforded. After the creation of juvenile reformatories, courts became less reluctant to convict children. The reformatory, it was perceived, was a palatable alternative to prison because of its supposed utilization of treatment modalities. The reformers were not only dedicated to saving delinquent children, but also in saving all children from the supposed moral decay of urban life.

The distinction between delinquent and dependent children became increasingly blurred. To the reformers city life was fraught with danger. Rural life was morally purifying. The reformers sought to impose their values upon the children of immigrant families in order to cleanse them and discipline them, and ultimately to alter their character. Their theory was that the urban environment was sick, undisciplined, and morally decaying. Only through removal of juveniles from the "sick" environment into a "treatment" setting in reformatories would the child be cleansed of such evil influences. Thus deviant behavior of children (not only delinquency, but incorrigibility, runaways, etc.) was a product of urban environment and biology. The juvenile court (a social clinic, not a criminal court) would

save the children by substituting the healthy environment of the reformatory for the sick environment of urban slums.

The intention was that juvenile courts would insulate children from the stigma of criminality and permit state intervention before a child became a serious offender. This would be accomplished through accurate diagnosis of children's physical, social, and psychological problems by sensitive judges and diagnostically trained probationary staff. The juvenile court would design, for such child, an individualized treatment program according to the "child's needs". Treatment programs would cover the full panoply of dispositions ranging from an official scolding, probation and supervision, to removal of the child from his home in order to abate the negative influences of his economic and social status.

In summary, the juvenile court philosophy was based on the following presumptions:

- 1) Children (delinquent, dependent and neglected) are products of unhealthy urban environments, the principal factor of which is inadequate parental care.
- 2) All children can be effectively dealt with through a unified juvenile court system.
- 3) The juvenile court should function as a social clinic, designed to meet the child's individual needs, which will in turn protect the community, and thereby serve the best in-

terests of society.

- 4) Utilizing the *parens patriae* theory, the juvenile court would provide each child with the same care, supervision, and discipline, that would be provided by a good parent.
- 5) Children would not be stigmatized as criminals. Reformatories were not prisons but treatment centers where the social scientists could "cure" the evils of urban slum life.

The juvenile court, as envisioned and implemented by the reformers, soon became subject to much criticism. The criticism was aimed at the utilization of reformatories, and the dangers inherent in removing children from their homes and committing them to institutions for long periods of time. The critics of the juvenile court system could be called constitutionalists. They argued that the incarceration of children for "delinquency" in institutions could not be distinguished from the incarceration of adult offenders in prisons. In incarcerating children through the juvenile court process, argued the constitutionalists, the juvenile court performed as a *de facto* criminal court. The children, however, were afforded no measure of procedural or substantive due process protections.

The constitutionalists further argued (but in vain until the early 1960's) that, if an adult offender is granted due process protections before the state could intervene in his life and restrict his liberty, then certainly a child, with his diminished

capacity and vulnerability, needs greater protection from government intervention - not less, as the juvenile court proponents claimed.

It was to these ends that the NCCD promulgated (in 1957) Guides For Juvenile Court Judges; The Standard Juvenile Court Act 1959 (preceding the Gault decision in requiring that counsel be appointed in juvenile courts); and in 1962, Procedure and Evidence in the Juvenile Court. In the late 1950's and early 1960's the NCCD recommended constitutional protections for children which became a reality by judicial decision during the subsequent decade. The NCCD was indeed at the cutting edge of the constitutionalists' reform surge aimed at bringing the rule of law into the juvenile court.

Aided by the disillusionment of practical experience and reinforced by the constitutionalists' arguments, New York, Illinois, and California, substantively altered their juvenile court statutes in order to provide children with legal protection. In 1967 the President's Commission on Law Enforcement and Administration of Justice added its weight to the constitutionalists' demands for change by concluding its report that, although juvenile justice personnel (judges, social workers, probation personnel, etc.) still characterized the system in terms of compassionate treatment of children, "the system was motivated by the same purpose that characterized the adult criminal system - retribution, condemnation, deterrence, and incapacitation".

In 1967 the United States Supreme Court in In Re Gault, revised juvenile court procedure along constitutionalist lines. The Court imposed notice requirements, the privilege against self incrimination, the right to cross-examination and confrontation, and the right to counsel at the adjudicatory stage of the proceedings when the child's liberty was at stake. That victory was enhanced in 1970 by the In Re Winship decision in which the United States Supreme Court recognized the de facto criminal court qualities of the juvenile court. The decision held that delinquency could only be determined upon proof that the child had in fact committed the act beyond a reasonable doubt,- thus imposing criminal law standards upon the adjudication process in juvenile courts. But the hopes of the constitutionalists to completely restructure the court by establishing due process protections for children has been limited by three factors:

- A: The impact of the Gault and Winship decisions has been limited by some juvenile court personnel who either ignored the decisions by obtaining "waivers" of right to counsel from the accused children and their parents.
- B: The United States Supreme Court in 1971 placed restrictions on the procedural due process in McKeiver v Pennsylvania by holding that a jury trial was not a requisite of due process and that the juvenile justice system be given time to develop a synthesis of both worlds: the legal requirements posited by the constitutionalists and the "treatment and

rehabilitation" modality posited by the juvenile court proponents.

C: The courts have excluded from their consideration both intake and disposition functions of the juvenile court. The juvenile court proponents, though having expanded their influence and emphasis upon the treatment and rehabilitative nature of the juvenile court, have failed to eliminate or supplant criminal law precepts and procedures. The legal reforms of the late 1960's (in which the NCCD played a leadership role) generated some changes, but failed to achieve a total restructuring of the court along constitutional lines.

FUTURE REFORMS - WHAT CAN BE EXPECTED -

It is important to consider where the movement for restructuring and reform of the juvenile justice system is likely to center. For NCCD, in order to continue its leadership role, such sensitivity is essential. There are four areas of possible reform during the next ten years:

- A. Limitation and redefining of the juvenile courts' jurisdiction.
- B: Changes in intake and pre-judicial stages of the juvenile court process.
- C: Reform of dispositional procedures and utilization treatment modalities.
- D: Consolidation of changes previously won, especially in the area of procedural and substantive due process.

The Staff is of the opinion that the Board can provide, through an explicit statement of principle, the limiting of the juvenile courts' jurisdiction over status offenses. In addition, incarceration be limited to solely dangerous juveniles, and that for nondangerous juveniles less drastic sanctions be applied.

STATUS OFFENSES

The early juvenile reformers had, from the very beginning of their attack upon the utilization of criminal law procedures for juvenile offenders, pressed for expanding the jurisdiction of the juvenile court. Jurisdiction of the juvenile court now covers, in almost every state, criminal offenders, neglected, abandoned and abused children, and a catchall group of disobedient, incorrigible, misbehaving, quarrelsome, and ungovernable children. In some states these behavior problems have been consolidated and subsumed under titles such as "Persons in Need of Supervision" (PINS), or "Children in need of Supervision" (CINS), or "Youth in Need of Supervision (YINS).

The constitutionalists, in the past decade, have launched a concerted effort, arguing that under a rule of substantive due process called the "void-for-vagueness" doctrine, the PINS category is unconstitutional. This doctrine requires that a law fails to provide for due process when it is so vague that it does not provide those people, who must obey the law, with a clear understanding of the behavior that is deemed unlawful.

This "void-for-vagueness" doctrine has had little initial success. In New York the "wayward minors" statute, which granted dispositional jurisdiction over minors, who were found to be "morally depraved", was declared unconstitutionally vague. A three judge federal court struck down part of California's ungovernability statute which gave the juvenile court jurisdiction over any child "who from any cause is in danger of leading an idle, dissolute, lewd, or immoral life". It was so vague, said the court, that "men of common intelligence would necessarily have to guess its meaning and differ on its application."

Aside from the wayward minor statutes, the adult criminal law analogs to status offense jurisdiction provisions are the vagrancy ordinances. The United States Supreme Court has recently reformed the entire area of vagrancy law by striking down prototypical ordinances as vague because they fail to give fair warning of what behavior is prohibited. The Court declared that the vagrancy ordinances fail to provide guide lines to police and prosecutors and courts, thus opening the door to administrative abuse because they sweep up and punish many constitutionally-protected behaviors. If we are correct, developments in adult criminal law may lead the way to alteration of juvenile laws. The fate of these analog ordinances suggests that the scope of the substantive jurisdictional provisions of the juvenile court may be substantively restricted in the near future. The ungovernability jurisdiction of the juvenile court may vanish, leaving the criminal offender/dependent child dichotomy of the earliest juvenile court statutes.

We are not alone in this conclusion. Although the struggle to remove status offenses has mainly been the occupation of litigation by attorneys, the Institute of Judicial Administration - American Bar Association, Juvenile Justice Standards Project is giving serious consideration to adopting a standard calling for removal of status offenses from the juvenile courts' jurisdiction.

DISPOSITIONAL SANCTIONS -

The second direction of future reform is in the area of dispositional sanctions.

The philosophy of the juvenile court proponents has centered on the concepts of treatment and rehabilitation. The rationale for dispensing with formal legal procedures and for open-ended jurisdictional definitions and broad discretionary powers has been the perceived need to custom-tailor treatment models to children's individual needs. Yet, at the crucial dispositional stage of the juvenile court process, the gap between rhetoric and reality has been widest. The juvenile court proponents call for scientific scrutiny of masses of sociological, psychological and physiological data and deft construction of treatment plans drawing upon a wide range of alternatives. But the rational scientific approach fails when measured against the practice. It, for example, has been determined that about 90% of all children violate the law. Incidents of law violation are higher or at least as high among middle and upper income children as among

lower income children. Yet over 90% of the children placed in institutions are poor.

In New York the juvenile court proponents developed the PINS' classification and proposed that intermediate facilities be constructed and prohibited commitment of PINS children to state training schools. The money for development of intermediate treatment facilities was not made available when the Family Court Act was passed, and "temporary placement" of PINS children in training schools, with delinquent children, was authorized. Last year, by judicial order, PINS children were forbidden to be "committed" to institutions that housed delinquents. The practical effect was that the sign in front of the training school, stating it was for delinquent children, was removed and a new sign "FOR PINS CHILDREN ONLY" took its place. The intermediate treatment facilities have been shunted aside and nearly forgotten. New York's experience is not unique. When coupled with the doctrine now surfacing in the adult law of incarceration (that only dangerous offenders need be incarcerated), it suggests a future development in juvenile court dispositions demanding strict limitations on the utilization of incarceration. The utilization of training schools for children (in reality, prisons for children), and prisons for adults in the name of treatment, has resulted in the mere warehousing and, in some cases, sadistic abuse of the helpless inmates. Children charged with the

status offenses have all too often been subjected to imprisonment by the juvenile courts. It has been determined that of the eighty-five thousand children, who enter and leave correctional institutions each year, approximately one-half have been committed for acts which would not be crimes if committed by adults. Of the several hundred thousand children held in secure detention each year, pending a court hearing, at least one-half are accused of status offenses. The State of California in 1972 charged 60% of all children arrested with status offenses. It has been further demonstrated that non-delinquent children, especially girls, are held in secure detention for longer periods than children charged with delinquency.

If treatment is to be effective, a non-coercive setting, outside traditional prisons, will maximize the chance for success. There is evidence demonstrating that, by centering the responsibility for status offenders in the juvenile court has impeded efforts to develop services for these children by more appropriate community agencies.

Thus, the Board is urged to specifically state that all children, whether labeled delinquent, dependent or neglected, not be incarcerated unless the court can deem them to be "dangerous offenders".

RECOMMENDATION

It is recommended that the Executive Committee of the NCCD issue

a statement of principle that removes status offenses from the jurisdiction of the juvenile court and prohibits incarceration of children by the juvenile court unless the child is deemed to be a "dangerous" offender. This statement would be consistent with the establishment of NCCD's National Center on Youth Development and the increasing allocation of NCCD's resources to identifying and influencing the development of services in the community for status offenders and delinquent children.

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