Canada. Joint Federal-Provincial Review Group
on Young Persons in Conflict with the Law

REPORT

OF THE FEDERAL-PROVINCIAL

JOINT REVIEW

ON

YOUNG PERSONS IN CONFLICT

WITH THE LAW

OTTAWA

AUGUST 8TH, 1974.

FOREWORD

The following is a report of the Federal/ Provincial Joint Review Group established at the December 1973 Conference of Corrections Ministers to review the existing programs, services and resources as well as the legislation in relation to young persons in conflict with the law. The magnitude, diversity and complexity of the subject matter has not permitted a thorough, detailed and complete examination of all aspects of the subject matter. In this respect a great proportion of the time and effort was spent on the examination of the issues, alternatives and their implications in relation to legislation. Although information was made available on the existing provincial services and resources it was not possible within the time frame to analyse these in terms of the extent to which these services identify and meet the needs of young persons.

The report presents a general overview of the situation that exists in Canada at the present time, a very brief identification of young persons in conflict with the law and their needs, a general philosophical statement, some overall objectives that bear consideration, some of the more important principles related to dealing with young persons in conflict with the law that should be reflected in legislation and in the delivery of services to them, some implications related to these principles, reasons for involvement of the federal government in relation to financial arrangements for

the delivery of services to young persons in conflict with the law and general conclusions or highlights that have come out of the discussions of the members of the Joint Review

It must be recognized that the information that is contained in the Report is a reflection of the opinions of the individual members of the Joint Review and is not to be taken as an expression of any federal or provincial governments policies or positions in relation to any of the subject matters that are contained in this report. It is equally important to recognize that there has not been full discussion on every point that has been articulated in the Report nor is it to be concluded that there is consensus on all the points that have been enunciated. Nevertheless, where a consensus was reached, it has been so indicated.

I wish to express my sincere thanks and appreciation to all the members of the Working Group and other advisors for their active participation and their good will in this formidable task.

A.T. Wakabayashi,
Chairman

Ottawa

August 8th, 1974

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INTRODUCTION

This Report is a summary of the deliberations and findings of the Federal/Provincial Joint Review Concerning Young Persons in Conflict with the Law. As much pertinent information as was practicable and possible has been included in the Report. In view of the limited time available for the Joint Review and the limitations imposed by under-developed information systems, an extensive and in some cases, adequate examination of issues and existing services was precluded.

This Report should be considered along with other studies and discussions that have preceded it. There is the Report of the Committee on Juvenile Delinquency in Canada tabled in Parliament in 1966; the Federal/Provincial Conference on Juvenile Delinquency held at Ottawa during 1968; the CELDIC Report, "ONE MILLION CHILDREN", 1970, The Report of the Canadian Committee on Corrections 1969 (Ouimet Report); the Report of the Secretary of State on Youth, 1971 "It's your Turn"; Bill C-192, an Act Respecting Young Offenders, tabled in Parliament in 1970; the LeDain Commission Report on the non-medical use of drugs; a recent consultative study on youth services for crime prevention sponsored by the Ministry of the Solicitor General in 1973; the work of the Law Reform Commission of Canada; the Federal/Provincial Joint Working Party on Social Services established as part of the Joint Review of Social Security, and the mahy relevant provincial and independent studies and briefs on the subject.

Terms of Reference

1. Cabinet authorization was given to the Ministry of the Solicitor General and the Department of National Health and Welfare to carry out a Joint Review in consultation with the provincial governments on the programs, services and financial arrangements dealing with young persons in conflict with the law and, in particular, to identify the financial implications of any proposed legislation to replace the Juvenile Delinquents Act. Provincial departments of corrections and social welfare were invited to consider participation in the Review and to nominate provincial liaison officers to discuss an introductory paper with federal officials prior to the Federal/Provincial Ministers of Corrections Conference held during December 1973.

2. The Conference of Ministers agreed to a Federal/Provincial mechanism, under the chairmanship of Mr. A.T. Wakabayashi, Assistant Deputy Solicitor General, to identify the young persons and their needs, to determine the alternative approaches that can be taken in relation to the programs, services and financial arrangements concerning young persons in conflict with the law and the interface with other social systems. In addition, the Federal Minister of National Health and Welfare and the Solicitor General of Canada were requested by the Ministers from Ontario and New Brunswick to resolve the problem raised by them that care and after-care services to young persons provided by corrections services, or by any other agency other than a child welfare authority, are excluded from cost sharing under the Canada Assistance Plan. Both Federal Ministers agreed to consider

an interim solution after ascertaining the general direction that would likely evolve from the proposed joint review of programs, services and funding arrangements dealing with young persons in conflict with the law.

3. The review was given a time frame until March 31st, 1974, and was to be carried out in conjunction with the consideration of legislation to replace the Juvenile Delinquents Act.

4. Following the Conference of Ministers of Corrections in December, it was realized that the time frame would not allow the Joint Review to study the children in conflict who entered the child welfare stream directly as a result of behavioural problems and the scope of the Review was narrowed in this regard to include only the children who were diverted or committed to child welfare from the juvenile process.*

5. Furthermore, it was found that sufficient quantitative and qualitative data necessary to identify the young persons and their needs was not available. It was decided, however, to proceed with those statistics which were readily

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* "Juvenile process" is the term used to define the process dealing with young persons in conflict with the law beginning at the point it is perceived that a young person is alleged to have contravened the law and until his final discharge wherein he is dealt with at various decision points, e.g. police discretion, which have the effect of intervening in his life and may result in the provision of various services appropriate to benefit the health, education, welfare, rehabilitation social or other needs of the young person in relation to the interests of society.

available or could be made readily available within the time frame. At the request of the Joint Review, Statistics Canada and the Statistics Coordination Section of the Ministry of the Solicitor General began compiling relevant data, synthesizing this data and preparing reports accordingly. The available data was limited in that it dealt with only those young persons formally processed by the court and did not identify the young persons who were diverted from the juvenile process prior to adjudication.

6. The first general meeting of the Joint Review was held at Ottawa on January 21st and 22nd, 1974. Officials representing the Ministry of the Solicitor General, the Department of National Health and Welfare, and provincial and territorial departments of corrections and social services were present, with the exception of welfare representation from New Brunswick and the Yukon. The objectives of the meeting were to identify the significant issues and develop a work plan for the purpose of carrying out the review. To facilitate this, the federal group tabled material which included a tentative work plan, a philosophical basis for the consideration of issues, a model for the analysis of issues, an outline for qualitative and quantitative descriptions of provincial systems, and twelve discussion papers (listed below) outlining the suggested scope of the study, and the subjects to be included:

1. Legal responsibility of children and young persons.

2. Kinds of behaviour that require legal intervention.

3. Prevention.

4. Diversion.

5. Due process.

6. Dispositions.

7. Jurisdiction of court re: disposition.

8. Spectrum of services and programs.

9. Court resources.

10. Parents' rights and obligations.

11. Special problems.

12. Funding arrangements.

7. During the course of the meeting, various provincial members expressed concern that the objectives of the study could not be accomplished within the time frame. Consequently, the work plan was altered and a consensus was reached on defining the scope of the study to include areas of concern which represented a consensus of the expressed priorities of the provincial and territorial members. This list of priorities excluded "special problems" and "prevention" from the scope of the study. Prevention was identified as an especially important area, but because it is so complex and interrelated with other social systems, it was recognized that this subject would require separate study. It was also decided that the philosophical basis and operational principles and objectives should be derived from the Joint Review's discussion of the substantive issues.

8. Following the general meeting, two regional meetings were held in Montreal, on February 11th and 12th, 1974 (Ontario, Quebec and the Atlantic provinces) and in Victoria on February 14th and 15th,1974 (the four western provinces and the two territories). The agreed-upon objectives of these meetings were to adjust and/or confirm the parameters of the study, attempt to develop the range of alternatives and outline the broad implications of those alternatives. Subsequent to this, each province and territory was to consider the respective, specific implications of the alternatives and bring a report of these findings to a general meeting in Ottawa, March 11th to 15th, 1974. It was also agreed that working papers prepared by the Ministry of the Solicitor General's Committee on Legislation would be presented to those meetings for consideration and reaction.

9. The two-day regional meetings focused primarily on legislative issues.

10. The final general meeting of the first phase of the Joint Review was held in Ottawa, March 11th to 15th. Provincial and territorial members presented written and/or verbal presentations which included some description of present systems, proposals for change, responses to the papers of the Committee on Legislation and specific implications, including cost estimates, arising from the range of viable alternatives derived from the list of areas of concern. These presentations varied in extent, format and content.

11. The meeting discussed as many items as possible and in some instances reached consensus on some of the issues, principles, alternatives and their implications. Despite the efforts put forward, the members realized that, due to the limitation of time and the significance of provincial and regional differences in relation to governing legislation, services, resources and administration, an adequate examination of all relevant issues could not be completed.

12. It was concluded by the majority of members of the Joint Review:

1. That the time frame of the Joint Review was too short to permit an in-depth examination of what was identified to date.
2. That any irrevocable decisions taken as a result of this review could be interpreted as a lack of consultation.
3. That since the whole field is interrelated, no issue or issues can be separated from the totality for the purpose of an effective study.
4. That the Joint Review has proved to be a positive, cooperative mechanism that was achieving its purpose and should be allowed to complete its task.

13. Following this meeting, the federal members of the group drafted a report which was considered by a sub-committee of provincial officials on March 24th prior to being

distributed to the total working group for final editing. The final draft of the Report was submitted to the appropriate federal and provincial Ministers on April 8th, 1974.

14. The Report identified that progress had been made on many issues, but that some areas had received limited study, most notably the needs of young persons and the services to meet these needs. A recommendation was put forward to extend the Review to June 30th, 1974 to continue the original terms of reference and to focus primarily on programs, services and long-term financial arrangements.

15. This recommendation was subsequently approved by all the participating federal and provincial departments.

16. In designing the work plan for the next phase of the Joint Review, it was realized that although the extension would be valuable, it did not make up for the disadvantages of the initial shorter time frame. In effect, the Joint Review constituted two three-month studies rather than a six-month study, thus removing the prospect for a long term, integrated, comprehensive work plan.

17. The next general meeting of the Joint Review was held in Winnipeg, April 23rd to 25th. This meeting concerned itself with the definition of a continuing work plan. This included the creation of a format for provincial members to prepare inventories to identify the needs of the young persons in question and to describe and analyze the existing service systems and their components. The meeting also established two sub-committees to deal with the philosophy, objectives and

operational principles of the juvenile process, including legislation, programs and services, and the existing provincial and territorial service systems and components, to include funding arrangements, alternative funding models, gaps in service and areas for improvement, the general direction of the field and the cost implications of proposed changes in legislation and services. It was agreed that provincial members would forward their descriptions of present and planned services to the federal members of the group by June 7th, 1974, in order that they would be available to the sub-committee examining services.

18. The meeting also discussed the relationship between the Joint Review and the Ministry of the Solicitor General's Committee on Legislation. In this regard, it was recommended that any preferred position paper or proposals for a model legislation drafted by that Committee would be presented for the reaction of the Joint Review members prior to being made available for official provincial reactions and public reaction. In this respect, a sub-committee consisting of five provincial members of the Joint Review Group met with the Committee on Legislation on June 2nd and 3rd as part of this process.

19. The sub-committee on Philosophy, Objectives and Operational Principles met in Edmonton, on May 23rd, and 24th, 1974. Discussions focused on a resource document which had been presented at the Winnipeg meeting and clarified many of the substantive issues, developed some service principles, but

did not permit the creation of a statement of overall philosophy in relation to any proposed legislation. Following this meeting, the federal members redrafted the resource document to include the discussions of the sub-committee and distributed this to the sub-committee on services.

20. The sub-committee on services met on June 13th and 14th at Ottawa. Discussions focused on identifying the service implications of some of the principles contained in the philosophy resource paper and focused on a discussion paper on funding which had been prepared by federal members of the group.

21. Following this meeting, the federal members incorporated the philosophy resource paper, the funding paper, the discussions of the two sub-committees, the March Report and the provincial inventories into a draft outline of the Working Group's Report. This draft was presented to the final meeting of the Joint Review on June 26th to 28th at Ottawa.

22. Discussion at the final meeting related to the proposed contents of the Joint Review Group's final report, the matters requiring further study in the future, the conclusions or highlights which had been derived by the review, and the funding concerns and mechanisms which might be established to permit a continuing review of the field beyond the scope of the Review. It was agreed that a sub-committee would meet at Quebec City on July 31st to August 2nd to review the draft prepared by the federal members.

23. The meeting at Quebec City reviewed the draft of the report and agreed on the contents of this final report being sent to ministers.

PART II

IDENTIFICATION AND NEEDS OF YOUNG PERSONS IN CONFLICT WITH THE LAW

In keeping with the terms of reference established for the study, the Joint Review concerned itself with all young persons who are identified as being in conflict with the law. This group includes all young persons who have been adjudicated to be delinquent, as well as those who have been alleged to have committed an offence against federal, provincial or municipal laws. The group under study also includes all young persons who have been diverted from the juvenile process by virtue of acts of police discretion, by a pre-court intake screening mechanism, or by the judiciary following an appearance in court. This latter group represents the young persons who are referred to diversion resources, including the home, the variety of available community agencies and other relevant provincial services, such as are provided by the respective child welfare authorities.

The study has identified three essential groups within the population of all young persons who are alleged to have committed an offence. First, there are those young persons who, due to the nature of their involvement and their personal circumstances, are not deemed to require the provision of services or an appearance in court. They are ordinarily diverted from the juvenile process at the point of contact with the police and are presumably returned to their place of residence.

The second group represents those young persons who are deemed to be in need of services. If the nature of the offence and the young person's needs do not warrant the level of intervention represented by the court process including adjudication and disposition, these young persons are referred either directly to, or by the relevant provincial authority, to an appropriate community resource. These resources may be administered privately, by the child welfare authority, or by another provincial authority.

It should be stressed that the Joint Review Group was agreed that the forms of diversion contemplated in the above two situations could only occur when the young person in question admits to the facts of the alleged offence, agrees to the form of diversion proposed and there is a "prima facie" case which suggests the commission of that offence. In general, when the young person disputes the contention and where there is presumably sufficient evidence to support a charge,the group was agreed that the young person should be brought before the court.

The third group under study includes those who are alleged to have committed an offence and the nature of the alleged offence warrants an appearance in juvenile court. In these instances, the young persons are charged and brought to court. It is this latter group who have been the subject of the statistical descriptions found in the remaining portions of this section of the report.

Any discussion of the numbers of young persons who come within the parameters of the respective provincial and territorial systems dealing with young persons at any given time, must necessarily relate to the available statistics which are collected within individual provinces and territories and submitted to Statistics Canada. Data selected from these statistics does reveal some of the characteristics of young persons in conflict with the law and to some extent, assists in the interpretation of trends which depict the manner in which the Juvenile Delinquents Act has been applied, as well as the distribution of resources which have been established to deal with the young persons.

This portion of the Report will concern itself with some facts and interpretations that have been derived from the data and reports presented to the Joint Review members by the Statistics Division of the Ministry of the Solicitor General. This statistical package was in turn derived from statistical information made available by Statistics Canada.

Limitations of Available Information

Without reiterating all of the difficulties and limitations of available data outlined in the 1965 Report of the Department of Justice, "Juvenile Delinquency in Canada", it is unfortunately still appropriate in 1974 to voice the Report's observation that: "It is extremely difficult to get a clear statistical picture of the nature and extent of juvenile delinquency in Canada."

This situation is largely due to the differential nature of policies and practices within the provinces with respect to maximum ages of responsibility, judicial procedures, informal practices and the statistical programs used to record this variety of transactions. In addition, the statistics relate exclusively to young persons who have been apprehended and brought to court. We are also precluded from knowing the extent to which young persons have been diverted from the juvenile process by virtue of acts of discretion on the part of the police, pre-court intake screening mechanisms, or the judiciary, and from examining the quality of these decisions, the nature of the diversion resources and the effects of diversion. The only information available in this regard was furnished by one of the members of the Joint Review (whose province has a maximum age of under 18 years) which indicates on the basis of an internal review, that approximately 39% of all young persons apprehended in that province were diverted from the juvenile process prior to adjudication.

It is also difficult to interpret valid generalizations from the data which is available, due to the fact that some statistical tables do not include data from various provinces during specific years, while in other instances, some provinces have reported data within a report format which is particular to those provinces alone. As an example of the magnitude of the problems thus encountered,

we note the following comment contained in the 1972 Statistics Canada Publication - Training Schools (CAT 85-208)

> "These studies are quantitative in nature, and no qualitative conclusions should necessarily be drawn from them. Further, with regard to all the information in this report, differences between provinces in legislation and practice make comparisons difficult. Age limits of trainees, type of sentence, reason for committal, the right of some schools to refuse admittance while operating at capacity, and the use of probation or foster homes as alternative resources to the training school, all may vary within provinces. Further variations are found within a province between some schools operated by the government and those privately organized that are run under government supervision."

Juvenile Delinquents in Canada 1968-1972

For the purposes of definition, the Juvenile Delinquents Act defines a juvenile delinquent to be "any child who violates any provision of the Criminal Code or of any dominion or provincial statute, or of any by-law or ordinance of any municipality or who is guilty of any sexual immorality or any similar form of vice, or who is liable by reason of any other act to be committed to an industrial school or juvenile reformatory under the provision of any dominion or provincial statute. The commission by a child of any of these acts constitutes an offence to be known as delinquency".

For the purpose of comprehending the available data, it should also be understood that the following maximum ages of juvenile responsibility were in place:

Under Age 16	-	P.E.I. - N.S. - N.B. - Ont. - Sask. - Yukon - N.W.T. - Alta (boys)
Under Age 17	-	Nfld.
Under Age 18	-	P.Q. - Man. - B.C.* - Alta (girls)

The following facts have been isolated from the data to assist in the definition of a global perspective regarding the numbers of juvenile delinquents in Canada, the variety and extent of delinquency and to a limited extent, the nature of the dispositions applied by the courts. For comparative purposes, data for the years 1968-1972 have been presented for consideration.

- Of all juveniles charged with offences in 1968, those charged under the Criminal Code (plus other federal statutes) represented 85.9% (27,912), against provincial statutes - 10% (3,258), and against municipal by-laws - 4.1% (1,332). In 1972, the number of juveniles charged with Criminal Code offences (plus other federal statutes) had decreased to 79% (37,589), while provincial statutes rose to 18.9% (8,968) and municipal by-laws were 2.1% (1,010).

- Although more children are charged with Criminal Code offences, the number of children charged with provincial offences is increasing, particularly in terms of offences against Liquor Control Acts.

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* The maximum age in practice in British Columbia has been under 17 since January 1972.

- The following data is specific to the age group 7 - 13 inclusive:
  (a) charged with Criminal Code offences (plus other federal statutes), 1968 - 8,721 1972 - 10,250.
  (b) charged with provincial statutes, 1968 - 336, 1972 - 711.
  (c) charged with municipal by-laws 1968 - 116, 1972 - 150.
  (d) total of children aged 7 - 13 inclusive charged with all offences in 1968 - 9,173, 1972 - 11,111.

During the period 1968-1972, the available data lends itself to the following comparison:

- From 1968-1972, there was an increase of 46.4% in the number of cases brought to juvenile court, from 32,502 to 47,567. The number of children adjudicated as delinquent during the same period shows an increase of approximately 11.1%, from 26,651 to 29,701.

In consideration of the delinquencies referred to as status offences, and the frequency of dispositions applied, the following information has been derived:

- The reported cases of "sexual immorality" shows an increase particularly with young persons aged 16 and 17 years. During 1968, 74% (179) of these young persons who were adjudicated delinquent were placed on probation. From 1970 to 1972, however, 62% (303) in 1970, 66% (243) in 1971 and 59% (240) in 1972 were not adjudicated as being delinquent.

- Adjudications for "incorrigibility" have decreased generally for all ages except 16 and 17. Until 1972, approximately 1/3 of the young persons so adjudicated were sent to training schools and 1/3 were placed on probation. In 1972, however, 63% (408) of those adjudicated were placed on probation. The totals for the five years in question reveal that of the 5,032 young persons brought to court for "incorrigibility", 3,443 were so adjudicated, 1,433 were not adjudicated and 156 were dealt with informally by the courts.

In terms of the general application of dispositions, it might be noted that from 1968 until 1973, there has been a small increase in the use of reprimands, fines and suspension of final disposition.

Committal to Training Schools

With regard to committal to training schools and bearing in mind the limitations of the statistical sample, the following facts have been derived from the available data:

- Of all children adjudicated delinquent, the percentage of children placed on probation or sent to training schools is decreasing:
  1968 - 55% placed on probation, 8% to training schools
  1972 - 42% placed on probation, 6% to training schools
- On admission to training schools in Canada during 1972, 86.2% were considered to be students, 2.2% were employed and 11.3% were unemployed. In this regard, the largest group of children in training schools had achieved grade 6 to grade 8 level education prior to their admittance.

- In further qualifying the nature of available data regarding training schools, it might be noted that some provinces include children in transit or on remand awaiting trial in their training school statistics.

- 97.1% of children released from training school during 1972 were reported subject to some manner of formal supervision following their release from training school. Since proportionately more girls than boys were reported released without supervision, and since more girls than boys were not released until the expiration of age limit, one might question whether this situation suggests a lack of appropriate counselling and supervisory resources in the community for girls.

It was revealed that, in one province, the population of institutionalized young persons included approximately five times more males than females. It was also suggested that the illegal behaviour of the males was more overtly criminal in nature than that of the females, whose principal delinquency was sexual immorality. The members of the Joint Review generally agreed that this situation was duplicated in the other provinces.

Needs of Young Persons in Conflict with the Law

In discussing the question of the needs of young persons in conflict with the law, the Joint Review members concluded that it could not do justice to the magnitude of the perceived task within the time provided. It was suggested that a study of needs would require analysis and synthesis of prior research, as well as a sophisticated study of children within

the provincial and territorial systems. In the absence of sufficient data, time and resources to conduct such a study, the Joint Review members decided to mutually interpret the needs of the young persons on the basis of the needs perceived by the components of the various service systems. This proved to be an unmanageable task and as a result, it was determined that the Review was not able to satisfactorily come to an adequate examination of needs.

The Joint Review endorses the following statement contained in the CELDIC Report.

> "We believe that society's overriding obligation should be to the child: the help and training required to overcome his problems must be provided. We believe that an artificial separation between the Welfare and Justice systems may often prevent the mobilization of a community's resources, and may mean that the juvenile offender's appearance in court will be a wasted or a destructive experience. There are occasions when a court appearance may be helpful in setting limits for a child or his parents or for providing opportunities for intervention in a crisis. When this takes place, it should be because the court provides the treatment of choice rather than its being left to default or chance."

The Joint Review members further agreed that the definition of needs is a matter of great importance and should be regarded as a high priority in terms of the development of appropriate research studies. In particular, it would be most helpful to determine the similarities and differences which exist between those children who are the subject of intervention by the state in the absence of an offence against the law, as opposed to the group of young persons who are in conflict with the law.

PART III

A - OVERVIEW OF PROVINCIAL SERVICE SYSTEMS

In protecting the rights of individuals and society as a whole, the state assumes a responsibility to intervene in the lives of individual persons in a variety of ways in order to achieve the goals of rehabilitation and social control. Within the broad spectrum of measures of intervention, the state employs specific measures in dealing with young people and their families.

The process that has been established for dealing with young persons in conflict with the law represents a kind of state intervention that finds its origin in the alleged commission of an illegal act. The state also intervenes in the lives of children in dealing with a number of other problems which are not characterized by an alleged illegal act. The first process is generated by means of the application of the Federal Juvenile Delinquents Act* in the provinces and territories. The second process is undertaken in response to the various provincial and territorial child welfare legislation.

In some jurisdictions, the two processes are mutually exclusive and the process for dealing with young persons in conflict with the law is undertaken by means of

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* Newfoundland is the only province that does not apply the Juvenile Delinquents Act, since it was not proclaimed there. The complimentary legislation in Newfoundland is the Provincial Child Welfare Act.

mechanisms and actors that are distinct from the process that deals with all other children who are subject to the state's intervention. Within other jurisdictions, the two processes are conducted in such a manner that many of the mechanisms and actors have roles which are common to both processes.

In keeping with the terms of reference established for this review, the Joint Review has concerned itself with the group of young persons who are alleged to have committed an offence. In focusing on this group of young persons, it has been necessary, however, to relate to the broader process which deals with children under auspices of child welfare legislation. This was necessary because of the interrelatedness of the processes and the fact that unmet needs may be dealt with in either process, as well as the relationships which exist between the various provincial and territorial systems that are characterized in some areas by the use of specific resources to serve the young, of both processes.

The services and resources which have been established to deal with the children and young persons who are subject to the state's intervention in both instances, are provided by the provinces and territories. In this regard, there are a number of organizational models within the various jurisdictions that assume responsibility for the children and young persons and provide for the development and operation of the services and resources that are established to meet the needs of the young and their families.

These organizational models can be distinguished on the basis of the respective provincial and territorial departments which assume responsibility for the delivery of services. Separate and apart from any differences in the respective philosophies or perspectives on the definition of the client groups' needs, the organizational models reflect provincial and territorial determination and existing funding arrangements. It should also be noted that the discussion of organizational models reflects current circumstances only and does not relate to transfers of administrative responsibilities which have been undertaken in the past or may be planned for the future.

During the review process, the Joint Review discussed the systems which are in place in the provinces and territories for dealing with young persons in conflict with the law. It has been suggested that these systems present distinguishable variations in terms of their evolution, sophistication, priorization of resources and availability of funding, as well as distinctions in the needs and numbers of their client groups served. In general terms, the group has identified three organizational formats which may be defined within a national perspective.

One of these organizational models is characterized by the child welfare authority assuming predominant responsibility for the development and operation of the majority of components of the service delivery system. A second model to be found in

other provinces is characterized by the Criminal Justice authority assuming the same responsibility. It should be stressed that these models have been identified as generic constructs and there is no single jurisdiction wherein either the child welfare or Criminal Justice authority exercises exclusive responsibilities in the field. The third "model" is characterized by a blending of jurisdictional responsibilities, wherein the child welfare authority, Criminal Justice authority and, in many instances, other appropriate provincial and territorial departments, share in these responsibilities.

The next part of the report describes and analyses the components of the service delivery systems provided within the juvenile process from the perspective of a national overview. In this manner, each component is discussed in terms of the availability of service, any gaps or areas for improvement that have been identified, as well as the interface and linkages which relate each component to other parts of the juvenile process, as well as to the service components which are provided in accordance with child welfare legislation.

B - OVERVIEW OF COMPONENTS OF SERVICE SYSTEMS

Police and Diversion (Intake and Screening Practices)

Police generally have the initial contact with the alleged young offender on the basis of detection of an offence or referral of a complaint. Diversionary practices

vary in their degree of formality and from one jurisdiction to another. Following investigation, decisions are made concerning whether or not charges will be proceeded with.

Depending on the jurisdiction, representatives of the child welfare authority or criminal justice authority may or may not be involved at this stage of the process. Young persons who are not proceeded against are presumably returned home and in some jurisdictions, social services personnel may be advised and voluntary service offered. In other jurisdictions, police officers may visit the family for an informal session with the child and his family. Some jurisdictions are considering specialized training for their police officers who would have primary responsibility for dealing with youth. In other areas, a greater use of volunteers for diversion purposes is contemplated. In one jurisdiction, if charges are not laid, a child may be referred to a child welfare agency. Counselling and assessment services may be provided by a variety of services, including probation officers, child welfare agencies and mental health clinics. In other areas, intake and screening proceedings, which may result in diversion, are primarily the responsibility of the probation services in those jurisdictions. The provincial legislation delegates this responsibility specifically to probation officers and to crown attorneys. In practice, probation officers receive the police referrals and do the screening, but are required to consult with crown attorneys in serious cases. The police may

also play an unofficial role in intake screening by the exercise of their discretion, not infrequently by way of recommendations in their investigation reports, which are forwarded to probation officers, that charges not be laid. In another jurisdiction, a committee made up of police and social service personnel screens each case where charges are laid, to determine whether or not the case will be taken to court. There is no specific legislation regulating this procedure.

In summary, it can be said that there are intake and screening procedures in one form or another and in varying degrees, in almost all jurisdictions in Canada.

Reception and Detention*

Detention facilities, where young persons can be held when absolutely necessary in a secure setting, but apart from adult prisoners, are available in almost all jurisdictions.

Reception centres, as the term is used here, are settings (foster home, group home, or larger residences) where a young person may be maintained because domicile in his home is either impossible or undesirable.

In a number of jurisdictions, these resources are often part of other programs. The available facilities are used for maintaining a young person while awaiting a court appearance, adjudication, disposition or placement, or for all of these purposes.

* Definitions for reception and detention are found on page 68.

It appears that the provinces with greater financial resources tend to have more facilities while the other provinces have either limited or no facilities at their disposal. In one province, young persons are detained for short periods of time in special sections of regional/provincial jails where they are separated from adults kept in custody. In those provincial jails, the separated areas where juveniles are detained are basically celled areas which are usually supervised by separate personnel from those who supervise adult inmates. In another province, reception and detention facilities include security facilities ranging from minimum to maximum designation. Hotel rooms and private homes are used for emergency situations and, in a number of areas, use is made of county or district jails in the same instances. In the same province, assessment of children in observation/detention facilities may be arranged through a contractual or voluntary arrangement with appropriate agencies or specialists. In this province, the reception and detention facilities are administered under the same auspices that are responsible for court administration. In another province, reception and detention centres are administered by the social service department. Resources for this service include foster homes, receiving homes and institutions. The information provided revealed that a number of provinces have identified inadequacies in reception and detention resources.

Legal Aid

According to the information available, it appears generally that legal services are available in varying degrees to young persons in conflict with the law. Some

provinces indicated that, although legal services to young persons are available through a legal aid system, the system itself does not provide for equal distribution of services throughout the provinces as well as the fact that there are no services available in remote areas and therefore they need to be developed. Other provinces indicated that legal aid programs are not fully developed and that current program planning and research has demonstrated the need for some changes in this area.

Courts

According to the material made available, it would appear that the vast majority of cases concerning juvenile delinquents are heard in those courts which also have jurisdiction over child welfare and family matters. It should be noted that many of these courts and the personnel who serve them also have jurisdiction over adult criminal matters, provincial laws and municipal by-laws.

Predisposition and Pre-Transfer Assessments

Assessment services in Canada are provided through a wide variety of resources; probation officers, departments of social services, mental health clinics, private and government supported psychiatrists, psychologists, etc. As well, service systems with which the young person may have had previous experience, are often called into this process (e.g. school social services). Furthermore, this can be done while the young person is living in his own home, or residing in either an open or closed setting which also provides assessment services. In one province, there is a plan to decentralize a present

post-dispositional assessment capacity into regional assessment resources which would provide predispositional assessment services.

It is difficult to derive general conclusions about the nature and extent of assessment resources and, specifically, little information is available regarding evaluations of the adequacy of present assessment services and resources.

Probation Services

Probation services operate under the auspices of a number of departments, depending on the individual jurisdiction, including the Departments of social services, corrections, health and social services, and the correctional branch of a department of Justice.

The role of the probation officer is varied. In some provinces, the probation officer may have a special caseload of young persons, but in other instances, may supervise adult probationers, as well as parolees on behalf of the National Parole Board. In one province, on the limited occasions when a representative of the correctional or child welfare authority is not present at court, the judge may place children on probation to the R.C.M.P. or interested community representatives. Another province describes how probation staff provides liaison services for children placed in remand facilities or the training school and provides follow-up services when required. In this province, the probation staff also provides direct casework services to young persons appearing before the court, including counselling, referrals, legal and social education, as well as undertaking

supervision of persons placed on probation by the courts. Another province emphasizes the coordinating role which probation has within regional social service centres. One province described how it anticipated the development of more specialized services to young persons in conflict with the law as well as better coordination among existing agencies.

Non-Residential Services

The information provided reveals a wide range of non-residential services available to young persons in conflict with the law. The services that were described include psychiatric services, attendance centres, recreational services, educational and vocational services, employment services, health services, social services, school social services, drug and other projects, etc.

One province described a form of coordination between a Justice department and the Department of Social Services involving the interchange of services on an ongoing basis. It was stressed that the interface must be an ongoing process in order to provide a continuous high level of service.

The information available does not, in many instances, describe the mechanisms that are enacted to provide a coordination of available non-residential services, in order to reduce the possibility of duplication and competition for resources.

Foster Homes

One repeated observation contained in the available information is that there are insufficient numbers of

foster homes available to meet the needs of the socially acting out child. In addition, some provinces indicated they are developing specialized foster homes programs to meet this need. The most frequent problem encountered in this respect involves the difficulty in finding resources and also developing the skill to deal with the demands created by the client group. In this regard, it was observed that foster homes are an appropriate resource in terms of meeting some needs, but that acting out behaviour problems often constitute such a difficult prospect for management that this type of resource is insufficient to deal with such severe difficulties.

Group Homes

Group homes are becoming a commonly accepted resource. In some provinces, these types of facilities serve both emotionally disturbed and delinquent children on an integrated basis. In another province, the information stressed that the group home resource cares for young persons where the peer group relationships are more important to the needs of the young person than the parent/child relationship, which is emphasized in the foster home setting. Still another province described the usage of a group home as a half-way house for young persons wherein they are helped towards gradual social re-integration into the community. Group homes are operated in the different provinces under different jurisdictions, including privately administered facilities.

Residential Services

Because of the dissimilarity in the variety of information received and the different definitions for residential services that have been provided within the information, it is difficult to generalize within specific categories.

There is great variety in the range of services and availability of such services within the provinces. Some provinces reported almost no such residential facilities being available for young persons in conflict with the law, while other provinces presented a fairly substantial number and variety of resources.

One province revealed that there are no psychiatric residential treatment and/or residential centres. There is a training school within the province, however, and the decision to admit a young person to the training school is the responsibility of the director of child welfare and corrections, upon receiving the recommendations of the probation officer and consultation with the district supervisor.

Another province indicated that there is only one child care institution which, however, does not provide services to young persons in conflict with the law. The majority of provinces have training schools or access to such services in another province. One province has a wide diversity of resources, including seven child care institutions administered by the social services department and access to residential treatment centres which serve troubled teenagers who are unable to live independently or with their families. This

province also utilizes provincial mental health services, including eight regional child care centres located within the large population centres. In addition, this province has access to clinics and special units provided within a number of psychiatric hospitals for in-patient and/or out-patient treatment for young persons. The training schools operated in this province are under the auspices of the department of correctional services and committal to the training school system does not necessarily require a finding of delinquency by the judge.

Several provinces do not have training schools as part of their service delivery system for young persons in conflict with the law. One of these provinces operates four child care institutions, two of which are described as multi-purpose institutions. One institution is for acting-out adolescent girls who cannot function in the open community and another accommodates teenage boys who are primarily in conflict with the law,and boys requiring short term detention, including those from out-of-province awaiting repatriation. It is this province's intention to establish receiving units in each regional district in order to avoid the need to remove the child from his home area. In this regard, there are presently insufficient numbers of specialized homes throughout the province. Also, detention services for the more difficult juveniles are presently not adequate and future plans include the creation of more juvenile facilities.

This province also utilizes a private non-profit society which receives funding on a fee-for-service basis. Although there are short term psychiatric facilities in a number of cities which provide services to all members of the community irrespective of age, there are no special residential psychiatric facilities available for young persons at the present time.

One province which does not have training schools outlines the variety of residential treatment centres made available throughout the province for young persons presenting behavioural problems whose principal need is a substitute home. This province emphasizes working with the family and retaining youngsters in their own community and outlines in detail fourteen facilities for young persons which might be termed residential treatment centres. The province intends to regionalize resources for children, with the effect of reducing the size of, or eliminating the large centralized resources. The information also reveals the need for more integration and coordination between various departments and groups to ensure services are presented to those who need them and that these services are available within the individual communities.

There are also four separate facilities within the province which provides psychiatric services on a residential basis for young persons. They offer specialized programs relating to such difficulties as neurological impairment, chronic learning disorders, severe emotional disturbance, psychotic disorders, autism, personality disorders and chronic brain disorders.

The province's resources vary from therapeutic foster homes to a residential centre which provides a special educational resource to promote usable skills, in order that the young persons may return to a regular or specialized school setting in the community. In addition, there are residential assessment centres which are relatively small, multi-functional units serving in some instances as centres for counselling by community resources, and as short term residential treatment resources.

From the view point of presenting contrasts, the several examples cited reveal a wide range and variety of services that are or are not available within a province to meet the needs of young persons in conflict with the law. The nature and extent of available resources reflects the range of alternatives that are used to best relate the young person's needs to the service that is available. It is again noted that the tremendous complexity and diversity of services, service organization and jurisdictional auspices within the provinces renders it difficult to present an overall perspective in this area, as is evident from the foregoing description.

P A R T I V

PHILOSOPHY, OBJECTIVES AND PRINCIPLES

The following represents a concise statement of principles which are elaborated on later in the report, particularly in PART V.

A - PHILOSOPHICAL BASE FOR DEALING WITH YOUNG PERSONS IN CONFLICT WITH THE LAW

1. Young persons, including young persons in conflict with the law, must be viewed as members of society with special rights, privileges and responsibilities and special needs because of their state of dependency and level of development (consensus).
2. The long-term interests of society and of the individual members of society in relation to young persons can best be served by responding to the needs of the young persons in an ever-changing society (consensus).
3. When a young person is found to have committed an offence, he should be treated, not as an offender, but as a young person who may be in need of assistance (consensus).
4. A young person has basic human rights and fundamental freedoms and a right to assistance for the preservation of these freedoms (consensus).

   (This principle was accepted by the Group to be a broad statement which includes reference to the specific rights that are identified for safeguarding by means of the various proposed procedures and provisions that are discussed in this report. The Group also concluded that the question of the totality of rights that accrue

to young persons is a matter requiring more extensive examination than could be afforded by the Joint Review.

5. Young persons are deemed to have a measure of responsibility in respect of their actions when they contravene the legislation, but consistent with the best interests of society, it is recognized that young persons are not made to suffer the full consequences of their acts in the same manner as adults and the state's response to young persons should be individualistic, based on a determination of the young person's needs.

6. In the state's response to an offence, the determination of the balance between the needs of the young person and society's right to protection must reflect the young person's diminished responsibility and the predominant importance of meeting the young person's assessed needs.

7. Society has a right to intervene in a young person's life to provide protection for all of its members, including the young person.

8. When society intervenes in the lives of young persons on a compulsory basis, it has an obligation to respond to the needs of young persons through appropriate and adequate services.

9. A young person should live with his family and in his own community unless it is found that his parents are unable and/or unwilling to care for him, or the young person is found to be dangerous to himself or others.

(this principle recognizes that the family is the basic

unit in our society and is of fundamental importance in the development of young persons.)

10. The policies and practices of the juvenile process should be such as to maintain credibility and to command the understanding and support of the public and the young persons by being consistent with its stated philosophy and concepts of fairness and justice (consensus).

B - OBJECTIVES OF THE JUVENILE PROCESS

The Joint Review has identified the following objectives of the juvenile process. The juvenile process should:

(a) in meeting the needs of children, thereby play a role in the reduction of crime and delinquency;

(b) promote the development and well-being of young persons in conflict with the law;

(c) work with young persons in conflict with the law in such a way as to enable them to live in the community under their own controls;

(d) preserve the unity of the family whenever desirable;

(e) serve the best interests of the young persons in conflict with the law;

(f) preserve the well-being of the community;

C - PRINCIPLES REGARDING FUNDAMENTAL FAIRNESS AND BASIC PROCEDURAL SAFEGUARDS

1. There should be guarantees of basic legalistic safeguards for proper protection of the individual's rights at all stages of the juvenile process.
   - This principle raises a central issue. At least one member of the Joint Review Group felt that a concentration on protection of legal rights could conflict with and constrict good practice, and that a balance had to be struck between due process and reliance on the goodwill, competence and effectiveness of the process. Others felt that there may be some conflict, but that this was justifiable, as protection of the legal rights of young persons must be paramount in view of the fact that the process is intervening on a compulsory basis and the agents of the process sometimes cannot carry out their good intentions and occasionally do not act in goodwill.
2. Laws, regulations, and procedures, on the one hand, have limitations as do good practice, adequate staff training and standards of service, on the other; neither can provide a substitute for the other, and both are required to ensure fundamental fairness (consensus).
3. When the juvenile process intervenes in the life of a young person, it should do so with the least possible invasion of privacy and with no more interference with the freedom of individuals than is necessary to achieve its objectives (consensus).

4. A young person and his parents should have a right to sufficient notice of hearing and of charges to allow understanding and participation (consensus).

5. (a) A young person should be informed of his rights at all stages of the intervention.

or

(b) The obligation to inform a young person of his rights begins when a formal statement is to be taken.

- One member of the Joint Review Group felt that if (a) were adopted, it would restrict police discretion to an unnecessary extent.

6. Accused young persons should be brought before the court as soon as possible after the laying of an information, and should be brought forward for adjudication as quickly as possible within the limits imposed by a fair hearing (consensus).

- More specific principles in this regard are outlined in the section on "Secure Custody" below. This principle must also be examined in respect to the limitation period which allows for charges to be heard in court up to six months after the laying of an information. The concern here is that it could well be an unfair burden for a young person to have an alleged offence hanging over his head for a long period of time.

7. A young person and/or his parents have a right to be heard at all stages of the process, including a right to be heard and to be represented in decision-making (consensus).

8. No criminal record or quasi-criminal record should result from the involvement of a young person in the juvenile process.
   - It was felt that more discussion was needed with wider representation to make specific proposals regarding the use of police records.

9. A young person and/or his parents should have the right to appeal decisions of the court or service system, before or after disposition, particularly those decisions regarding constraints on freedom (consensus).

D - PRINCIPLES REGARDING SERVICES

The following principles have been identified by the Joint Review Group as proposals regarding the development, operation and evaluation of services and resources to be provided within the scope of the juvenile process.

(a) Planning and Organization

1. The planning, organization and operation of services must be based on the assessed needs of young persons in conflict with the law (consensus).
   - This raises the very important questions of how the needs of young persons in conflict with the law can be identified in such a way as to aid in setting priorities for the appropriate allocation of resources, and how classification systems can be developed to define the needs in broad categories.

2. A sufficiently broad range of services and resources must be available to meet the individual assessed needs of young persons in conflict with the law (consensus).
3. The spectrum of services available to young persons in conflict with the law should be coordinated in order to provide optimal use of resources, while removing unnecessary duplication and competition for resources (consensus).
4. The juvenile process should make optimal use of the services provided by private and voluntary agencies (consensus).
   - This suggests that private and voluntary services must be supported and must be included in planning. It was felt that the private sector represents a valuable pressure group and responsible critic, whose effects could be lost if it became too closely linked with governments, or if its funds are derived from governments in a manner which could threaten their independence.
5. The juvenile process must exercise a role in the prevention of illegal behaviour by young persons, by relating to the policies and resources of other social systems that bear responsibility for the well-being of all young persons.
6. Commencing at the point of entry and at any stage thereafter in the juvenile process when appropriate, young persons in conflict with the law should be diverted from the juvenile process to relevant, appropriate services.

7. The services, including court services, should be more directly accessible in both time and place to better meet the needs of the young person and his family (consensus).

8. Society has a responsibility to provide support services to assist parents in fulfilling their responsibility to the young person which would include helping parents with their own problems, so that they could better fulfill their responsibilities to the young person (consensus).

9. There should be continuing evaluation and review of programs and services to ensure that they are meeting their objectives (consensus).

10. In those areas of Canada where it is not practicable to develop specialized programs and facilities for limited numbers, and where limited staff and funding potential exist, such resources could be developed on a regional basis (consensus).

    - One concern raised by this principle is that it might take young persons a great distance from their home community.

11. The present lack of funding or personnel resources in some regions should not restrict the federal legislation from necessitating the provision of needed services where these limitations do not now exist. In this regard, the federal legislation should provide transitional clauses and resource development assistance in order to assist in the development of necessary resources (consensus).

12. Procedures should be established to make the service system accountable for its actions and major decisions (consensus).

This would introduce an important element of accountability and relationship between the service system and the young persons and their parents. However, this would probably require the development of clear standards of service which could be used to measure the performance of the service system.

13. Assessment should be available and undertaken in the screening process* if consented to by the young person and his family (consensus).

14. (a) If he so wishes, a young person must be provided with legal counsel when he is detained, when his case is being heard, when he is being recommitted or when there are serious restrictions on his liberty.

- The issue is raised here defining under what circumstances a young person must be represented specifically by legal counsel and where perhaps under other circumstances, it might be sufficient for him to be represented by someone other than legal counsel. This needs further consideration in terms of the protection of rights and the provision of resources, and should be examined in conjunction with the following alternative principle.

(b) The state has an obligation to provide legal counsel to the young person and/or his parents when their

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* The screening process is dealt with at page 88 under the heading of "Diversion".

means do not permit them to engage one.

15. The juvenile process should strive to provide services for all young persons within its jurisdiction, and transfers to adult court should not be used as a replacement for the development of adequate facilities within the process (consensus).

- This implies the need for a greater range of resources, including custodial resources, which are not presently available in some areas.

16. The predisposition report should be mandatory in all cases, and should include sufficient information to justify the nature and extent of intervention applied by the court in its disposition (consensus).

17. A wide range of resources should be available for investigation and formulation of an assessment and recommendations to the court (consensus).

18. All proceedings in juvenile court should be recorded and transcripts should be made available upon request to the parties involved,including the young person and/or his representative (consensus).

- It was noted that this principle bears significant resource implications.

19. Following disposition, there should be mandatory periodic reviews of the young person's needs and life situation, his progress and the adequacy of the treatment program in meeting his needs (consensus).

- In terms of resources required to fulfill this principle, the following mechanisms were suggested:
  (i) an administrative process through an independent review body;
  (ii) a judicial process;
  (iii) a combination of these two in order to ensure accountability and the provision of appeal to the courts.

(b) Guidelines for Services

20. The provision of services should be based on the young person's individual assessed needs (consensus).

21. Services should relate to the young person's maturation, which includes learning to live in a society based on the family unit.

22. Parents should be involved in the service whenever possible, since they may sometimes represent a part of the problem and be a factor in the potential solution (consensus).

23. Services to young persons in conflict with the law should be provided in a community setting whenever possible and conversely, young persons should be placed in institutions only when their needs can best be met and their interests best served by such a program.

24. Young persons should be placed in closed institutions only when the public interest or their own protection requires that they be removed from the community.
    - At least one member of the Joint Review Group felt that principle 23 was too limiting and might interfere with the juvenile process' responsibility to protect society.

25. The primary objectives of an institutional program should be to teach a young person to live in a community rather than to adjust to institutional life, and to repatriate the young person to the community as soon as possible (consensus).

(c) Standards and Quality of Service

The members concluded that the following area was a complicated one, involving questions relatedtto provincial autonomy and agreed it requires more study than the Joint Review Group was able to give to it.

26. Young persons in conflict with the law should have a right to the same quality of services in every part of Canada (consensus).
    - This principle could have implications for funding models.

27. Standards for delivery of services should be established for all programs, personnel, processes and facilities serving young persons in conflict with the law (consensus).

28. Standards should be developed to evaluate the adequacy and effectiveness of treatment programs (consensus).

(d) Standards Regarding Resources and Adequacy of Treatment

Discussions of the Joint Review led to a recommendation that federal funding should not be based on administrative structures but on standards of service. Such standards have not been defined much less developed.

Standards that represent the most desirable practices in providing services for young persons can provide goals for the continuous improvement of these services and stimulate improvement, as they offer a base for examining present practice and the premises from which it has been developed, as well as for evaluating the effectiveness of services.

These same standards can be used in the planning process and in establishing criteria upon which funding requirements could be based.

As equality before the law for all Canadian children is an objective of the juvenile process, children served by this system have a right to an equal quality of service. We believe that this equality could be enabled through the development of standards for the evaluation, review and funding criteria of services within the juvenile process. These standards could be developed by the provincial governments in consultation with the Department of National

Health and Welfare and the Ministry of the Solicitor General of Canada. Once these standards have been established, a plan for regular review would need to be developed to maintain these standards and federal funding based on such standards would ensure regular reviews of these programs.

The initial accreditation process for federal funding and the regular review could be carried out by an accreditation body of federal and provincial representatives or by an independent body jointly appointed by the federal and provincial governments.

P A R T V

AREAS OF CONCERN - PRINCIPLES, ALTERNATIVES AND IMPLICATIONS

A - AGE

The question of the minimum and maximum age limits to be defined in federal legislation relates directly to the group of young persons who will be subject to the application of federal legislation and as a result, to the provision of services within the juvenile process. The Review Group has discussed whether the legislation should stipulate uniform minimum and maximum ages of jurisdiction for all provinces and territories, what these ages should be and to what age limit should the provision of services be extended past the maximum intake age. This latter question leads to the extent to which the delivery of services within the juvenile process would be provided to those young persons who enter at a time when they are approaching the maximum age of jurisdiction.

The age limits that are established will qualify the numbers of young persons who will be dealt with by the various systems that provide services to young persons and will thus have a direct impact on the variety and extent of services, resources and financial arrangements for the systems that have to be developed and maintained.

This section will indicate the principles that the Joint Review Group has identified and point out those principles which represent the consensus of opinion of the Group. Many of the principles and proposed alternatives that

have been discussed also bear implications for the delivery of services and these will be indicated where they have been identified.

(i) Uniform Ages

Principle 1

There should be uniform minimum and maximum ages (consensus).

The major implication of this principle is obvious in that the age group of young persons who would be dealt with within the jurisdiction of the federal legislation would be uniform within each province and territory. This would in turn provide a basis for equality before the law for a group that has become increasingly mobile throughout the country. This principle also bears significant implications in some provinces for child welfare services.

(ii) Minimum Age

Proposed Alternatives

1. Age 12
2. Age 14

Depending upon which minimum age is chosen, all children beneath that age would be excluded from provisions of federal legislation and would remain within the jurisdiction of the various provincial and territorial statutes, including Child Welfare Acts. The specific minimum age selected will define the minimum age of criminal responsibility, beneath which children would not be held accountable under federal legislation for their behaviour. This matter also relates

to the physiological, emotional and intellectual development of children, as well as their ability to form a delinquent intent and to comprehend the process that would be put in place to deal with them.

The Group unanimously agreed that, if under age 12 is chosen, transitional time would not be required to implement this age because of the effect of present practices and the availability of appropriate resources.

Should under age 14 be chosen, however, some members stated that transitional time would be required to implement the legislation because of the necessity to provide additional services and resources. If the age is under 14, then provision of appropriate safeguards should be made so that, upon request of the child welfare authority or the Attorney General, children of ages 12 and 13 could be dealt with by the juvenile court.

Specific Implications

One member of the Joint Review Group noted that in his province, the child welfare authority would be required to create special resources to deal with those youngsters under age 14 who present difficult management problems, since such resources are presently not adequate.

Another member noted that since facilities and resources in his province are currently shared between children who are deemed as being in need of protection, as

well as those who have been adjudicated delinquent, there would be no new effect in terms of the development of specialized resources within his province.

One member revealed that a minimum age of 14 would result in the reduction of the total juvenile probation caseload in his province from 2,800 to 2,300.

In some provinces, the cost implications of a minimum age of under 14 years would be minimal, while in other provinces, the costs incurred would be substantial.

(iii) Maximum Age

At the present time, 7 of the provinces and territories have selected a maximum age of under 16 years, 2 have under 17 and 2 have under 18. One province has under age 16 for males and under age 18 for females.

The maximum age that will be legislated will limit the jurisdiction of the juvenile court and beyond that age, all persons would be dealt with as adults before the law. It was also agreed that a factor to be considered in determining the maximum age is the societal perception of an individual as an adult and responsible citizen.

The maximum age question is also related to the question of maximum age of service jurisdiction and to the possible transfer of young persons to adult court and adult resources, as well as the possible transfer of young adults to the juvenile court. These matters will be discussed in succeeding portions of this Report.

Proposed Alternatives

1. Under age 16
2. Under age 17
3. Under age 18

Although a majority of members favour the maximum age of under 18 years, it was further agreed that for those provinces which do not now have a maximum of 18 years, a change to that limit would necessitate changes in programs and resources and would bear very significant financial implications. Some of the members expressed the opinion that an increased maximum age would be dependent on federal participation in sharing the costs occasioned thereby.

Assuming a change in the maximum age in some provinces, the alternatives of 3 and 5 years were suggested as transitional periods of time to permit implementation of the legislation.

Specific Implications

The following implications were derived from those provinces and territories that do not presently employ a maximum age of under 18 years.

- One member, whose province has a maximum age of under 16 years, notes that the addition of 16 and 17 year olds would involve the development of services, methods and techniques for an age group which was foreign to their experience.
- Another member noted that an increase to under 18 years would create the need to develop different programs in the training schools settings. Since one of the primary programs at the present time is an educational program similar to that in the public school, if young persons are committed to training schools

who by law are not required to attend school, then it will be necessary to develop other types of programs which will prepare them for living in the community.

- A member whose province presently has a maximum age of under 16 years also pointed to the need for special resources, including specialized foster homes, and group homes, residential facilities and closed detention centres. He also noted that provincial legislation would likely be changed to include 16-18 year olds under child welfare legislation and costs incurred by the province during initial phases of the new programs would escalate. In addition, reference is made to the new methods and procedures which would have to be developed to process offences relating to municipal and provincial statutes, including Highway Traffic Act violations. It was this member's conclusion that it would be impossible to cost out the proposed maximum age pending the resolution of some basic questions related to cost sharing by the federal government and specific aspects of any new legislation.
- Another member, in whose province the maximum is under 17 years, noted that there is a tendency to design juvenile programs for the median age of 15 which tends to make the 17 year old too mature or sophisticated to profit from these programs. He concluded that a major development in programs for older juveniles will become a priority if the maximum age is increased to under age 18.

Two provinces calculated the additional cost that would be incurred by them if their present maximum age of under 16 years was raised to under 18 years. In one of the provinces, it was noted that the training school population could be increased by as many as 1,566 new trainees. Based on the assumption that new admissions will spend an average of one year in the training

schools, there would be additional expenses incurred, with net additional operating costs being approximately $19,730,000 and capital expenditures totalling approximately $67,500,000. It is also estimated that in this province, the child welfare authority would incur additional costs of approximately $8,000,000 if the maximum age was increased to under 18 years.

A second province indicated that a change in age could necessitate the creation of a new institution, with capital cost ranging from $1,500,000 to $2,000,000. This province also looked to a number of variables in terms of future numbers of 16 and 17 year olds requiring service and estimated additional costs to range from a low of approximately $120,000 to a high of approximately $430,000.

In both instances, the estimated costs were based on assumptions which were not analyzed by the Joint Review Group.

(iv) Maximum Age of Service Jurisdiction

The maximum age of service jurisdiction establishes the maximum age to which a young person might remain under the jurisdiction of the juvenile process following adjudication.

The issue of extended service jurisdiction has been discussed to some extent in terms of the implications to programs and resources. One of the factors that has a bearing on this matter is the number of young persons who would enter the juvenile process at a time when they are approaching the maximum age of intake. This in turn relates to the maximum intake age that would be established in legislation and would have particular immediate

impact on those provinces who are presently employing a maximum intake age which is lower than the age that will be legislated.

The Group also considered the assumption that those young persons who are of adult age before the law, yet have the social, emotional or intellectual characteristics of young persons, should be dealt with by the services and resources provided by the juvenile process. In this regard, and in the converse situation where some young persons might be deemed to require services provided by the adult process, it is apparent that the question of extended service jurisdiction cannot be considered in isolation from the question of transfers between the juvenile and adult jurisdictions. These matters were examined by the Joint Review Group and are discussed in a subsequent portion of this Report.

Principle 1

There should be an extension of service jurisdiction beyond the maximum intake age, sufficient to allow all young persons entering the juvenile process to receive extensive and adequate services within that process (consensus).

General Implications

1. If the maximum age is under 18 years and the legislation provides for three years of extended service, this will necessitate the development of new techniques, skills and services by the components of the juvenile process.

2. There will be pressure on those provincial child welfare systems which terminate wardship at age 18 and do not extend services past that age.
3. If there is no provision for extended service past the age of 18, there will be pressure on the juvenile court to transfer young persons who are approaching the maximum age of intake to adult court.

Principle 2

The maximum age of service jurisdiction should extend beyond the maximum intake age by the same length of time as the maximum commitment. If the federal legislation does not provide for a maximum commitment, federal and provincial laws and regulations should ensure the provision of services to the age of 21 years.

General Implications

The same implications that are noted with regard to principle no. 1.

Alternative

That services be extended for two years past the maximum intake age, with provision for a third year if the service agency can demonstrate just cause to the juvenile court (consensus).

Specific Implications

The members of the Group were virtually unanimously agreed that the necessary provision of services and

resources to meet the needs of extended jurisdiction past the maximum intake age, would create profound effects in the provinces and territories. Few of the members could speculate as to the number of young persons that would be involved or the costs that would be incurred, but there was a general recognition that the group in question would require different programs than those presently available and would more specifically, constitute a demand for custodial services and an increase in the resources that are provided by the respective child welfare authorities. The impact of extended service past a maximum intake age of under 18 years would, of course, have the greatest effect in those provinces which presently have a maximum intake age of under 16 years.

B - OFFENCES

The parameters of the federal legislation must be defined in relation to the kinds of offences that are to be dealt with and whether there is to be a specific offence for each act as opposed to a general offence for all acts.

Principle 1

Federal legislation should only relate to Criminal Code offences and federal statutes and exclude provincial statutes and municipal by-laws (consensus).

The implications arising out of the federal legislation dealing solely with Criminal Code offences and federal statutes are that the provinces will now deal with young persons in conflict with provincial statutes and municipal by-laws and consequently may require amendments of provincial laws so as to deal with these young persons either in adult court, child welfare court, or by other means. Insofar as service and resource implications are concerned, no information was readily available for the purposes of this report in order to measure the effects involved. However, it was the general consensus that there will be very little effect on existing services and resources in view of the small number of juveniles statistically that will have to be dealt with by provincial statutes and municipal by-laws.

Principle 2

Federal legislation should clearly define what constitutes an offence and should provide for specific offences as opposed to a general offence of delinquency as presently exists in the Juvenile Delinquents Act.

A concern expressed about this principle is the tendency that it would have in making the proceedings more adversarial in nature. It is argued that there would be a lessening of informality as presently exists and this would result in the creation of an unhealthy atmosphere.

Despite this possibility, it has been suggested that the justification for this principle is that the protection of the rights of children against state intervention outweighs the benefits that could accrue from the therapeutic informal type of proceedings.

Principle 3

Conduct or behaviour that does not constitute an offence for an adult should not constitute an offence for a child.

This principle has implications which are philosophical and legal in nature and relates to the question of equality before the law for all persons in Canada in relation to their conduct or behaviour.

Principle 4

Provinces should determine how young persons will be dealt with if they have committed offences against provincial statutes or municipal by-laws (consensus).

There are at least two alternative ways in which the provinces could implement this principle, to wit:

(a) the provinces could introduce legislation to provide for their own procedures and dispositions, and/or

(b) the provinces might provide for the use of the procedures and dispositions of the federal legislation.

With regards to paragraph (b), there would be flexibility to deal with young persons in conflict with provincial and/or municipal laws either by proceeding in adult court, by referring young persons to child welfare and/or thirdly, by providing that specific offences be dealt with by a special code for the juveniles in the province.

The implications of the provinces introducing legislation to provide for their own procedures and dispositions are that the respective provincial laws would have to be amended or implemented to reflect the necessary changes that are required. On a services and resource basis, whatever appropriate services and resources are necessary will have to be put into place. No information is presently available to ascertain the costs or effects on any of the services if the above is implemented.

Principle 5

Provincial legislation dealing with provincial and municipal offences should provide only for specific offences and not a general offence of delinquency (consensus).

The same reasoning as has been suggested in principle 2 in relation to federal legislation applies here.

Principle 6

The juvenile process should intervene in the lives of young persons through the court process only on

the basis of an offence which constitutes a serious or persistent threat to society or to the young person. Discussions in relation to this principle and any implications did not result in reaching a consensus with respect thereto.

Principle 7

Only conduct which cannot best be dealt with through other legal or social means should be dealt with by the juvenile process. No consensus emerged as a result of the discussions on this proposal. Nevertheless, some implications identified included the following:

1. To what extent is it the role of the juvenile process to protect society, that is, is it enough to protect society only from serious threats or also from offensive acts which present less serious threats. This is part of the question of defining the balance between protecting society and meeting the needs of the young person and by having the community from which the person comes deal with that person as well as reconciling the offender with the offended.
2. Can a court appearance provide a sanction which in itself might serve as a corrective experience in terms of being an adequate warning to young persons coming into conflict with the law for the first time for a minor offence or can this better be accomplished by referral to a service which will deal with the young person on an informal basis.

3. The costs of putting in place of diversion mechanisms both in terms of personnel and plant.

Principle 8

The commission of an offence by a young person should not be the sole criterion for determining that the young person is in need of protection under provincial social legislation.

This principle draws attention to possible misuse of the juvenile process and is pertinent in relation to diversion.

C - COMPLAINT - INVESTIGATION BY POLICE

The activities of the police at the time of the receipt of a complaint against a young person up to his possible appearance in court are of considerable importance in any consideration of the role of the police in view of the profound impact on the life situation of the young person who comes into contact with them. The question of what the role of the police should be and what restrictions, if any, should be imposed on their practices and the exercise of their discretion are areas that need careful consideration.

Principle 1

The police should continue to perform a diversionary function and in those instances when the police exercise discretion in not bringing a young person into court, their actions and rationale in this regard should be reported and recorded (consensus).

One implication of this principle is the necessity to set up information systems which would reflect the consistent reporting and recording of the actions and rationale of the police in regards to their diversion practices. No discussion was possible in relation to costs, personnel and equipment in this regard.

Principle 2

Guidelines be established to assist in defining the nature of the practices and discretion of the police.

One implication that has been identified is whether or not the guidelines should be written into the federal legislation or left to the provincial authority responsible for the police.

Principle 3

Guidelines should be established for the distribution of the reports of police investigations of alleged offences by young persons and that the child and/or his parents should be informed before the report is distributed.

A significant implication is the regulation of police practices in relation to reports and whether or not this should be dealt with in federal legislation or left to the responsible provincial authority to regulate same if at all. The question of restricting the mobility of the police with

respect to their law enforcement role has to be examined carefully.

Principle 4

Police should be permitted to take fingerprints or photographs of young persons only for the purpose of evidence in court and only in relation to indictable offences. All such records should be destroyed after the court hearing.

One important implication is that the police may be restricted in carrying out their law enforcement function if they are permitted to utilize fingerprints or photographs for one purpose only.

With respect to principles 1 to 4, the Joint Review felt that further discussion was needed with representatives from the police and provincial Attorneys General in regard to these matters before any final decisions are taken.

D - RECEPTION AND DETENTION

A number of concerns, principles and alternatives were discussed with regard to detaining young persons apprehended for an alleged offence as opposed to permitting them to return to their residence prior to their first appearance in court or during the subsequent consideration of their case by the court.

Definitions

For the purpose of this study, reception or "open temporary care" has essentially the same functions as detention but is reserved for young persons placed voluntarily or authoritatively, who require temporary care in physically unrestricting facilities.

For the purpose of this study, detention is defined as the temporary care of young persons who require secure custody in physically restricted, that is "closed" residential facilities, between apprehension and the adjudication hearing, between adjudication and disposition including the assessment process, and following disposition while the young person is awaiting transfer to a service program or another jurisdiction.

(i) General Principles

Concern was expressed that some young persons are unnecessarily separated from their homes and communities or unnecessarily deprived of their liberty through placement insecure custody. It was recognized that many young persons apprehended for alleged offences are not security risks and can either be returned home or cared for in open facilities. Some are not easy to handle and require skilled care facilities. The lack of screening or "open" care or the lack of coordination with detention facilities results in the over use and misuses of detention.

It was emphasized that detention care is for young persons who present a real security risk or who are a menace to themselves or others. The Group believed that a

positive detention program must be prepared to serve disturbed, aggressive young persons and to screen out those who can remain safely in the community. The detention program must ensure secure custody which fosters growth and minimizes the damaging effects of confinement.

The following principles were expressed.

Principle 1

No young person should be held in secure custody unless he is assessed to be a severe and continuing danger to himself and others. Detention in a closed facility should only be undertaken as a last resort.

Principle 2

Young persons should not be detained or held or unnecessarily separated from their home and community to meet the conveniences of the police, the court or the service system. Other methods should be used to ensure the young person's presence at interviews or court appearances.

Some members believed that principle no. 1 was too limited and no. 2 required elaboration. Therefore, principle no. 3 was suggested as an alternative to both 1 and 2.

Principle 3

It was suggested as an alternative that the legislation or regulations should define the criteria for the use of detention by police and service authorities similar to those proposed by the Department of Justice Committee on Juvenile Delinquency which are as follows:

(a) children who are almost certain to run away during the period when the court is studying the case or between disposition and transfer to an institution or another jurisdiction (consensus);

(b) children who are almost certain to commit an offence dangerous to themselves or to the community before the court disposition or between disposition and transfer to an institution or another jurisdiction (consensus); and

(c) children who must be held for another jurisdiction, for example, parole violators, runaways from institutions to which they were committed by a court, or certain material witnesses (consensus).

Principle 4

The legislation should define detention as opposed to "open" temporary care and in making this distinction, should make provision for the protection of the young person when he is being held in either type of facility (consensus).

Principle 5

There should be minimum standards for secure detention and open temporary care facilities which should include a full range of services and programs adequate and appropriate to the individual needs of the young persons served and related to their varying lengths of stay (consensus).

Principle 6

Skilled temporary care in open facilities should be made available as an alternative to secure detention (consensus).

A broad range of types of detention and open temporary care reception facilities must be created and made available ranging from foster homes or group homes to very secure facilities which will take into account the needs of the age range served and any changes in this age range. These facilities should be well integrated and coordinated.

Some members suggested that in remote and sparcely populated areas where there is a limited incidence of need that such measures as subsidized standby facilities, or rented facilities combined with the use of personal supervision could be used.

(ii) Pre-Court Reception and Detention (Prior to the Young Person's First Appearance in Court Following Apprehension)

Principle 7

There should be access to secure detention and to skilled temporary care in open facilities should be made available on a 24-hour basis (consensus).

Principle 8

The legislation should provide that a competent official or agency should be available on a 24-hour basis with the authority to screen cases, to make intake and placement decisions, and to release a young person from any detention facility prior to that young person's appearance in court including to the supervision of an appropriate person (consensus).

Principle 9

That the person referred to in the legislation should be a person authorized by the judge of the juvenile court.

or

Principle 10

That the person referred to in the legislation should be authorized by the appropriate service agency in order that the agency might decide where the young person will be maintained prior to the court hearing.

Principle 11

The legislation should provide that this person should be required to show cause to the court for the detaining of any young person in either custodial detention or a temporary open care facility.

Principles 9, 10 and 11 raise the central issue of whether and to what degree an administrator should have the power to restrict the liberty of, or separate young persons from their homes without automatic and mandatory court review, or whether this should be done only with the authority of the court. Some members felt that the courts were society's agents responsible for confinement decisions and that administrators responsible for making or carrying out decisions prior to court consideration should be directly responsible to the court.

Some members believed that only the court should be empowered to deprive young persons of the degree of liberty entailed in confinement in detention. Some members also

believed that detention facilities themselves should be a direct responsibility of the court and that the court should be recognized as the agency accountable for the use or misuse of detention.

Other members believed that court is not the agency best equipped to administer residential services and that when possible even detention should be administered as part of a larger system of services and residential facilities. This would not preclude court control of detention intake and discharge services, which was considered by some to be a necessity for the protection of individual rights.

One member felt that a reliance on the court would lead to an overly legalistic system which might not be concerned with the social needs of the individual.

It was pointed out that the "show cause" provision along with screening would protect the young person from the possible punitive use of detention by police or service authorities, through the placement of young persons in detention and their subsequent release without a charge having been laid.

Principle 12

A young person should not be held in secure custody for more than a limited period of time before he is brought to court. The time limit should be specified in the legislation (consensus).

(a) This should be done within twenty-four hours, or

(b) In exceptional cases, when the judge is not immediately available, it should be done within a maximum of three or four days;

(c) Some members further considered that there should be a provision in legislation which would allow the detention of the young person for a longer period and it would be mandatory to show cause for doing so.

(iii) Reception and Detention

Principle 13

Following a court appearance, the court should be responsible for determining whether a young person should return to his residence or should be held in either an open or closed setting,

or

Principle 14

The court should determine only whether the young person should return to his residence or should be placed in the custody of the service agency which would then decide on either an open or closed setting,

or

Principle 15

The juvenile court judge should be authorized to determine the facility in which a young person will be maintained during the period of remand, if he decides the young person should not return to his normal place of residence,

or

Principle 16

When the judge determines a young person should be held in a detention facility during the period of remand, the young person should be held in a facility which is provided for the use of the juvenile court.

These alternatives reflect the differences between those who support the possibility of administrative confinement and those who support court authority regarding restrictions of liberty (refer to the discussion of principles 9, 10 and 11).

Concern was expressed that young persons should be protected during remand from unnecessary detention or separation from their homes, or from lingering in detention and reception facilities following disposition while awaiting transfer to a service program or jurisdiction.

It was agreed that detention, reception and observation facilities cannot adequately meet the needs for long-term care and in attempting to do so are often disabled from carrying out their appropriate function.

The view was expressed that for the young person who is not a serious danger to himself or to society, detention should not be regarded as an access to diagnostic resources or for case study. This process is often complicated by the removal from the young person's normal or an open environment. Young persons should not be required to remain in secure custody solely in order to be studied.

It was agreed that time limits should be set for holding young persons prior to adjudication, disposition or while awaiting transfer to the designated service resource.

While it was recognized that the recommended measures would put pressure, and in some instances, necessitate expansion of service resources, it was felt that such vulnerable young persons should not be harmed by the lack of resources or the ineffectiveness of or delays in the service system.

Principle 17

A young person should only be detained in a secure custody setting during remand if it is determined he is a danger to himself or others (consensus).

Principle 18

Legislation should define the circumstances wherein an order of remand may be issued.

Principle 19

During remand, a young person should be entitled to at least all of the protections that are afforded to an adult under the provisions of the Criminal Code (consensus).

Principle 20

Remand should not assume the status of a sanction in itself (consensus).

Principle 21

During the remand stage, the use of either secure or open custody should be as brief as possible (consensus).

Principle 22

If a young person is remanded to secure custody, he should appear before the court at least every seven days. This is intended to include all stages of the process from initial placement to discharge following disposition (consensus).

Principle 23

If a young person is not returned to his residence or transferred to the appropriate service program following disposition he should appear before the court at least every seven days (consensus).

Principle 24

Provision should be made for direct application to the court in writing by the young person or his representative (consensus).

Principle 25

Young persons should not be held in detention prior to adjudication for longer than 30 days without just cause.

Principle 26

Following disposition young persons should not be held longer than 28 days awaiting transfer to the service resource designated by the disposition. Following the expiration of this time period, he should appear before the court for an alternative disposition including absolute discharge.

(iv) Bail and Detention

The consensus of the group in this matter was that the opportunity to bail should be an alternative available to the young person, but that this presumably would not be used extensively since its effect would ordinarily fall on the parents rather than on the young person in question.

Principle 27

The principle relating to this issue was a statement that young persons should be afforded at least the same rights which are made available to adults who find themselves in similar circumstances (consensus).

(v) The Use of Reception and Detention Facilities and Adult Detention Facilities

Principle 28

When accused young persons are held in secure custody, they should be separated from adults (consensus).

(a) They should be held in a facility set aside for the exclusive containment of young persons

or

(b) They should be held in separate facilities from adults, but if held in an adult facility, they must be held separate and apart from adults with an appropriate range of services and the provision of separate staffing.

The majority of the Joint Review members supported (a) because they believed that (b) was more open to abuse. They also believed there could be a greater "stigma" attached to young persons if they are detained in what the

community identified as an adult criminal facility and the young person was more likely to begin to develop a self concept of himself as a "criminal" even when young persons are held and served separately from adults in combined facilities. It was pointed out that for many young persons initial detention would be their first contact with the justice process following apprehension and that entirely separate facilities would best support the principles of diversion. It was indicated that detention facilities were also used for "unmanageable" young persons, placed under child welfare legislation, who had not committed any offence.

While recognizing the cost factor of developing entirely separate facilities in less densely populated areas, it was believed that this problem could be met through the integration of secure custody facilities with other reception and care facilities exclusively used for young persons.

Those supporting alternative (b) did not believe that the "stigma" or self-image problems outlined above would necessarily be created and that the creation of combined "open" and "secure" reception facilities might create problems in services for young persons. In relation to the cost factor, it was pointed out that in some provinces, combined juvenile and adult facilities were either already in use, were newly constructed, or were presently under construction.

(vi) Transfer of Young Persons to Adult Detention

The possible provision, in the new legislation, for the transfer of young persons to adult detention facilities was only briefly discussed and requires further study.

The present Juvenile Delinquents Act prohibits the confinement of juveniles in any jail or other place in which adults may be or are being imprisoned and directs that juveniles shall be detained at a detention home used exclusively for children. It provides penalties for violations, including fines, imprisonment, or both.

It provides an exception for children over 14 years of age who, in the opinion of the judge, cannot safely be confined in any place other than a jail or lock-up.

Discussions have indicated that the prohibition is being abused and little enforced and that the exception has provided easier if more questionable solutions to inadequate facilities and services through the transfer of the more difficult juveniles and at times, juveniles without behavioural problems, to an adult jail rather than the development of more adequate programs and facilities for juveniles.

It would appear that legislative endorsement of transfers to adult detention or the direct detention of young persons in adult facilities even on an exception basis was not favoured.

(vii) Resource Implications of Principles

The implementation of the above principles, including the prohibition of the use of adult detention facilities for young persons or their transfer to them, will require the development and coordination or integration of reception and detention facilities particularly in sparsely populated areas and smaller towns and cities. Some provinces may need transitional time and funding for both operational and capital costs.

E - RIGHT TO REPRESENTATION

In relation to this matter, the discussions centered generally on what the rights of a young person and his parents are to be represented and by whom they are represented when the young person comes into contact with the juvenile process at the various stages beginning with his initial contact with the police.

Principle 1

A consensus was expressed that a young person should have the same rights to be represented in general as an adult.

Principle 2

A young person has the right to be represented at every stage of the process from his detention or apprehension through to the disposition by the court.

There was general agreement with this principle but there was some feeling that it might restrict police discretion to an unnecessary extent if taken to an extreme. However, some members thought that this was a right which was guaranteed by the Canadian Bill of Rights. This is probably an extension of the first principle in these rights, if guaranteed to adults, should at the least be extended to young persons. The implication is extending it further beyond what an adult has the right to at the present time. A study of the rights of adults in this area would be useful to later resolution of any extension of those rights when a young person is involved.

Principle 3

A young person has the right to retain legal counsel and his rights must be protected (consensus).

The implication here is with respect to the practices of the police and whether they are honouring the spirit of the Canadian Bill of Rights. One implication would be that the federal legislation which specifies the advising of the young person of his rights in relation to legal counsel and other rights by the police or other authority on immediate contact with the young person.

Principle 4

A young person has the right to be represented separately from his parents and the wishes of his parents when they are in conflict (consensus).

It was realized that a young person may not have the capacity to appoint his own representative in terms of his inability to enter into a contract or hire an agent. The question of whether or not the rights of parents should be superseded so as to give the young person his specific right is one that bears further examination insofar as its consequences are concerned with respect to the basic unit of our society, the family and the authority in responsibility of the parent towards their children. Therefore, the avenue available to the young person to be represented separately should be opened to him but possibly subject to the intervention or control of the judge in the circumstances of each case. Federal legislation would have to spell this out and as one of the criteria possibly recognize that the interests of the child or young person are sometimes different than those of the parents and there is a need for the young person to be represented separately from his parents.

Principle 5

(a) If he so wishes, a young person must be provided with legal counsel when he is detained, when his case is being heard, when he is being committed or where there are serious restrictions on his liberty. This raises the issue of defining under what circumstances a young person must be represented specifically by legal counsel and where under other circumstances, it might be sufficient for him to be represented by someone other than legal counsel.

This principle must be examined in conjunction with the following principle.

(b) The state has an obligation to provide legal counsel to the young person and/or his parents when their means do not permit them to engage one. This in effect is a legal aid provision and may be a restatement, in part, of what was expressed in (a) above.

Some of the implications with respect to the above proposal are as follows:

1. The mandatory provision of legal representation at all stages of the process would be unrealistic in view of the staffing provisions required in certain provinces due to the lack of sufficient numbers of lawyers. This could slow down the hearing process and increase costs without the assurance that there would be the anticipated improvement.
2. The interface with the other matters that are being dealt with in family and juvenile court would have to be examined in some areas.
3. It is quite probable that the legal profession will not be able to cope with the increased demand to provide such a comprehensive service if every time a young person is apprehended by the police, legal counsel is required to be made available. The expectation is that many

additional lawyers will have to be added to the system and the costs incurred by such a process would be drastically increased.

4. If there is to be a guarantee of legal counsel being provided throughout the entire process, additional staff and financial assistance will have to be made available. No statistics can be produced at this time to indicate the implications to the service system that are involved.

Principle 6

A young person should have the right to be represented by whom he so wishes, be it his parents, guardian, friend, probation officer, or other person, without the presence of legal counsel, except in cases where the court determines that legal counsel is needed to protect the young person's legal rights.

The implication here is the permitting of different categories of persons who are not cognizant of the hearing process and thereby causing more problems than are intended to be resolved. On the other hand, it permits a child to have assistance of the kind that he desires, thereby permitting him to exercise his freedom of choice.

Principle 7

If the court appoints someone to represent a young person, this representative should not be a court

official. There would be an exception in that duty counsel or a law guardian specifically charged with that kind of function might be available to the court for that purpose.

At least one member expressed a concern that the probation officer might be a suitable representative. Others felt that the probation officer or any other official so closely related to the court and service system might have a conflict of interest which would interfere with him adequately representing the young person. Another implication would be the necessity to set up a support service which would have available to every court duty counsel for that purpose, or a law guardian available to serve the needs and interests of the young persons brought before the court in this category. Another implication is the role of legal counsel acting for young persons and the entire matter of what the purpose of legal counsel should be in regards to acting in the best interests of the young person. This may create some conflict with respect to the traditional role of legal counsel in an adversary due process proceeding. Also, the training and role of the judge in relation to what he should or should not permit counsel to do in relation to this traditional adversary process. In addition, the role of the probation officer in acting or representing a young person at various stages of the process still remains to be considered and looked at. Is the probation officer to be advised in all cases where a young person is detained and is the probation officer entitled to be present to represent the young person and to provide him assistance in the absence of legal counsel or other person.

F - DIVERSION

In their discussions on the subject of diversion, the Joint Review Group restricted itself in relation to this part to the mechanisms or processes that have as their objective the directing away from the formal court process a young person who has come into contact with the authorities, primarily the police, and the referring of this young person to a service or resource which could respond to his needs. It should be noted that the term "diversion" may be seen in a broader perspective to include diversion practices at the court level by the judge and post-disposition processes. Within the context discussed, diversionary practices by police and other authorities as well as the existence of community and/or governmental services and resources to which the young person may be diverted were found to require careful consideration, particularly in relation to the criteria on which the decisions to divert are made, as well as the persons that perform in the diversionary process.

Principle 1

Commencing at the point of entry and at any stage thereafter in the juvenile process and when it is appropriate, young persons in conflict with the law should be diverted away from the juvenile process and to the relevant appropriate services.

This principle suggests the need to consider at least three matters:

1. Whether or not guidelines should exist to determine the basis and the appropriateness of diverting the young person.
2. Whether or not there exists appropriate relevant services to which the young person can be diverted.
3. Who should be responsible for making the decision to divert.
4. The effectiveness of the diversionary process and the services employed.

The Group came to the conclusion that having appropriate services and procedures available in the community is necessary for diverting young persons from the juvenile process to ensure that the young persons involved will be best served in accordance with their requirements.

Principle 2

There was consensus by members that there should be some form of pre-court (non-judicial) screening mechanism. At least two matters would need to be dealt with by this mechanism, namely:

1. Whether there was sufficient evidence on which the proceedings could be carried on, and having decided that
2. Whether it is appropriate to divert the young person to an appropriate relevant service.

A pre-court screening mechanism on a formal basis would have several implications on the present diversionary mechanisms that exist to varying degrees and in varying forms in the provinces at the police level where screening is being done at the present time, at the pre-court level where it is being done by probation officers, by social workers in some areas and by the court in some instances. At the present time, it is difficult to measure the impact or the effect that a formal pre-court screening mechanism would have in view of the lack of accurate or adequate statistical information. It has been suggested that if guidelines were to be established in relation to police diversionary practices, the alleged discrimination that now occurs would be lessened. The development of guidelines would require police involvement. Identified as a matter which requires attention is the whole question of voluntary agreements and their enforcement as part of the sanction of the pre-court screening process. One suggested implication in relation to voluntary agreements is the difficulty that would arise if the agreement cannot be enforced, then the system of voluntary agreements and informal disposition could be criticized by the public. Staff and staff accountability, office quarters and costs in the setting-up of a formal pre-court screening or intake mechanism would have to be measured in relation to what presently exists. Those persons interested in decriminalizing a wider range of deviant behaviour will welcome this type of formal pre-screening mechanism although others will probably argue that the role

and the authority of the court is being reduced. If compulsory diversion mechanisms are to be set-up, it is evident that there will be effects on services which presently exist. It appears that police forces would be required to train personnel for the purpose of dealing specifically with youth, additional social services personnel would be essential to ensure that young persons diverted received appropriate services and most, probably, judges would require specialized training to enable them to have a better understanding of the process and the young offender. Some form of authority would be required to develop procedures in relation to formal diversion mechanisms. A formal screening mechanism or intake authority might very well constitute an additional procedure over and above existing services and the matter of duplication would bear examination. In those areas where probation officers are playing a lead role in screening on an informal basis, a formal mechanism may require certain changes to reflect what is required. The matter of raising the age that has been previously discussed would have to be considered in relation to the numbers that would be passing through the screening authority in relation to the workload that would result.

Principle 3

The concept of a pre-court screening mechanism should be recognized in federal legislation in order to ensure a minimum standard of protection of legal rights of young persons. A consensus was reached on this principle.

It was pointed out that if the federal legislation provides that there shall be a pre-court screening mechanism, some provinces will be required to set-up such a mechanism, some provinces will be required to set-up such a mechanism and this will involve time and financial assistance. With respect to the matter of time, transitional provisions should be incorporated into the legislation. The question of financial assistance would have to be considered in relation to other considerations involving funding. The formalizing of a pre-screening process has to be set-up in such a way so that the interrelationships that exist between the various participants in the total process are considered in terms of the legal basis on which the process takes place and the accountability of the persons in the process. In these terms, a formal screening authority or intake procedure of a conciliatory nature that attempts to settle disputes out of the court system in order to arrive at an acceptable arrangement amongst the parties must take into account the rights of the various parties, the effects of the process and the follow-up required. With respect to the question of uniformity across Canada and the approach that is taken in relation to pre-court screening mechanisms, it is important that the federal legislation deal with the question of setting-up procedures by the provinces and provide for a consistent kind of reporting. Another question is in relation to the cases that should be diverted whether or not they should only be serious cases. The role of the community has to be taken

into account in relation to not only serious cases but all cases.

In view of the impact upon communities of the increased emphasis upon normalization services for mentally retarded, rehabilitation clients, disturbedchildren, disabled children, parole and probation clients, etc., the group expressed concern that a process of uncoordinated placement of many responsibilities on local communities would operate to the detriment of the well-being of such communities. Residents of communities should be afforded a measure of participation in planning realistic expectations for community therapy.

A further problem in moving in the direction of a more formalized screening process or intake mechanism is to establish what services the young person is to be diverted to and what happens to him from that point on. One important point that was brought forward in the discussions was the impact that a formal diversion mechanism would have on existing service systems. With regard to the participation of the community, there is the matter of family problems and family services in relation thereto as well as the relationships with the health and educational fields.

Principle 4

There was a consensus that screening should be available in all areas of Canada.

The major implication of this principle is whether or not this is within the realm of possibility to implement in view of the dramatic geographic and demographic limitations that exist in this nation.

Principle 5

There was consensus that assessment services should be available at this stage and should be undertaken in the screening process if this was consented to by the young person and his family.

The matter of services that require to be put into place that are not now presently existent needs to be examined in detail.

Principle 6

The administration, form, procedures and details of the screening mechanism should be left to the provinces (consensus).

One negative implication is the lack of uniformity that will exist from province to province in the administrative aspect of the mechanism. Counter to this is the positive implication of flexibility for the provinces in their administration.

Principle 7

If a young person is to be diverted to a specific service, this should be done on a purely consent basis without any threat of further legal action regarding the alleged offence (consensus).

One implication would be that the right to proceed on the complaint would be forfeited.

Principle 8

Once a young person has been diverted, the court should not be able to take any further action on the basis of that alleged offence (consensus).

With respect to this principle or the previous one, the question of having a time limit after a diversion has taken place could be implemented during which time the state could change its mind and proceed with charges.

Principle 9

The information gathered by the pre-court screening mechanism should be strictly confidential and should not be made available to the court without prejudice (consensus).

The implications of this statement need further examination. There is general agreement that this information could be made available to the court after adjudication, with the consent of the young person and/or his parents.

G - JUDICIAL PROCESS OF SCREENING

The question of whether or not there should be a judicial process of screening either as the only form of screening or in addition to a pre-court non-judicial form of screening dealt with previously is one that bears consideration.

Principle 1

When a case has been adjourned for the purposes of diversion, the judge involved in a diversionary process should thereafter not be able to deal with the same case (consensus).

This could have significant resource implications, especially in areas which are served by only one judge.

Principle 2

If there is to be a form of judicial screening two alternatives can be considered:

(a) Present section of the Juvenile Delinquents Act which provides for an adjournment sine die to be made by the court or Section 23 of Bill C-192 which provided for formal type of procedure or the court adjourned for a fixed period of time to see if a proper disposal could be made outside the court process.

(b) In relation to the above, it was put forward as an alternative principle that when a judge adjourns a case for a period of time in order to dispose of it outside the court process (as in Section 23 in Bill C-192) the period of time should not exceed two months and this should not be subject to an extension.

This has the implication of limiting the present provisions of the Juvenile Delinquents Act relating to adjournment sine die.

Principle 3

The judge should be able to waive hearing of a case without the young person admitting guilt.

With respect to the foregoing principles, the Ministry of the Solicitor General's Committee on Legislation should address themselves to any legal implications that may exist.

H - HEARING PROCESS

Central to this subject matter is the issue of whether or not provisions must be made to guarantee the basic requirements of due process and fairness in substantive and procedural matters. Increasing concern in recent years with respect to the protection of human rights of individuals is reflected positively in the Canadian Bill of Rights and illustrates that certain safeguards must exist when society intervenes in the lives of individuals. Following principles reflect their response to the area of concern.

Principle 1

1. There should be a specific finding of guilt or innocence on a specific charge (consensus).
2. Adjudication should be consistent with fundamental fairness and due process (consensus).
3. The same rules of evidence as apply in adult court, should apply in juvenile court (consensus).
4. Provisions should be made for a "Night Court or Weekend Court", in any community large enough to warrant it (consensus).

5. Should there be any difficulty in communicating with a young person and/or his family due to language difficulties (English, French, Indian, or languages foreign to Canada) an interpreter should be made available (consensus).
6. Proceedings under the federal legislation should be held in camera (consensus).
7. Notwithstanding the above, the press should be admitted to hearings, but there should be no publicity of proceedings in the juvenile process which would indicate the identity of young persons.
   - It is apparent that the press could provide the role of a public scrutineer, but this function as well as the nature of the restrictions to be placed on the press were deemed sufficiently important to require further examination.
8. All proceedings should be recorded, and transcripts should be made available to the parties involved upon request, including the young person and/or his representative (consensus).

This could have significant resource implications.

With respect to the foregoing principles, the Ministry of the Solicitor General's Committee on Legislation should address itself to an examination of the legal implications involved.

I - APPEALS

This whole area should be examined by the Committee on Legislation.

J - PARENTS

The subject of parents' rights and obligations and the role of the parents in our complex society with respect to their involvement in the juvenile justice process intervening in the lives of their children and the services and responsibility of the parents was identified as an area which required examination. Two principles on which there was consensus were identified:

1. Society has a responsibility to provide support services to assist a parent in fulfilling his responsibility to his child, which would include helping parents with their own problems, so that they could better fulfill their responsibility to their child (consensus).
2. When a parent is still unable and/or unwilling to fulfill his responsibilities, society must assume parental responsibility in order to ensure that both society's and the young person's interests are protected (consensus).

The Joint Review Group concluded that they cannot deal with the matter within the time limits of the review and the matter was set aside, on the basis that if there was time, this area would be looked at. As it turned out, no time was available and the matter has not been looked at by the Group.

K - NOTIFICATION OF PARENTS

This whole area concerns itself with the requirement to have parents notified in a manner which they can understand by the appropriate authority when their children become involved in the juvenile process.

Principle 1

The appropriate authorities at each stage of the juvenile process should be obliged to inform the parents of what is happening concerning their child and the information should be conveyed in a manner that the parents can understand (consensus).

An implication that has been suggested during the discussions is the extra workload that will be imposed on the administrative authorities responsible for serving the notices. No information is available with respect to measurement of these effects.

Principle 2

Notwithstanding principle 1, young persons of sixteen years of age and over should have the right to not have their parents informed unless a formal charge is laid.

Alternatively, some members of the Review believed that, at the request of the young persons over 16 years of age, and on an exception basis, the court should be allowed to waive notice to the parents.

In particular, this relates to situations where the young person does not wish to have his parents notified because of his life situation; when he is no longer living at home or in certain specific situations where he would not want them notified such as in drug cases where he is submitting himself on a voluntary basis for treatment and the rights of the parents to be notified in such situations. The entire question of the rights of the parents and those of the young person in relation to each other needs to be considered.

L - TRANSFERS TO ADULT COURT OR WAIVER OF JURISDICTION

The present Juvenile Delinquents Act provides for the transfer of some young persons under the present juvenile age to adult courts for ciminal prosecution. The Act gives the juvenile court exclusive original jurisdiction over all offences committed by persons under the juvenile age, but adds the provision making it possible for the juvenile court to waive jurisdiction in favour of the adult criminal court in the case of an indictable offence when the alleged offender is over the age of 14 years. Section 9 of the present Act is in part as follows:

> "(1) Where the act complained of is, under the provisions of the Criminal Code or otherwise, an indictable offence, and the accused child is apparently or actually over the age of fourteen years, the court may, in its discretion, order the child to be proceeded against by indictment in the ordinary courts in accordance with the provisions of the Criminal Code in that behalf; but such course shall in no case be followed unless the court is of the opinion that the good of the child and the interest of the community demand it.
>
> (2) The court may, in its discretion, at any time before any proceeding has been initiated against the child in the ordinary criminal courts, rescind an order so made."

Discussions of the Group have indicated that, with few exceptions, young persons transferred under this section have been older young persons alleged to

have committed serious offences, that have attracted public attention and concern, notably those punishable by life imprisonment or other serious sentences. Some members were concerned that too often the demands of the community take precedence over the good of the child.

Some members expressed the view that a full diagnostic study of the needs, problems, and personality of the young person was required in order to determine the interests of the community, let alone the interests of the person.

They pointed out that in their experience many young persons committed for serious offences were much less "dangerous" than other young persons who had committed a series of offences over extended periods of time, and who have been unable to make use of effective services provided by the juvenile process. They believed that the individualization of the young person and therefore the "assessed needs and life situation of the young person", including the nature of past treatment efforts and the young person's response to those efforts, should be the chief criteria in the consideration of possible transfers to the adult court since such individualization provided the most effective basis for both community protection and individual rehabilitation.

Some members also expressed the view that in consideration of the criteria related to the relative powers of disposition of the juvenile court and the adult court that the length of disposition available to each court in relation to the needs of the young person for rehabilitation and control should be the chief determining factor. They believed that transfer provisions should

not be allowed to be used as an "out" clause in regard to the development of effective facilities and services. They believed that the juvenile process should, as far as possible, develop the resources necessary to handle the most difficult juveniles. This matter will have a direct relationship to the "maximum age of service jurisdiction" question discussed earlier.

The following principles resulted from the deliberations of the group.

Principle 1

It is recognized that since some young persons commit serious offences or a series of serious offences and are dangerous and require degrees of control beyond the capacity of the juvenile process, transfers to adult court may be necessary to protect the community and young person.

Some members questioned that there should be any transfers and believed transfers should be examined in the light of the philosophy of the juvenile justice process which proclaims that it will deal with persons under a certain age as young persons, not as adults and not as offenders or criminals and then creates procedures to transfer many young persons to adult court where they will be dealt with as adults under the Criminal Code, as not being consistent with its stated philosophy. It was pointed out that most transfers to adult court are related to the most serious offenders. However, some members of the Group believe that it is the young person who is charged with the most serious offences who is most in need of the protection of the juvenile process.

With respect to criteria for transfers, four main elements should be considered in determining whether a young person should be transferred to adult court:

(i) the age of the young person;

(ii) the assessed needs and life situation of the young person;

(iii) the seriousness of the offence;

(iv) the powers of disposition of the juvenile court and the adult court and the resources available to each court to provide the necessary controls and rehabilitative measures to meet the needs of the young person.

Principle 2

Under no circumstances should transfers be allowed for young persons under an age specified in legislation and there should be a uniform age throughout Canada.

Based on a maximum age of under 18 years, the two alternatives recommended in this regard are:

(i) 16 years of age, or

(ii) 17 years of age.

Principle 3

There should be a mandatory pre-transfer report based on a full assessment of the young person and the resources available. (consensus)

It was believed that serious consideration must be given to the proposition that the invasion of privacy inherent in such an assessment before guilt has been established is outweighed by the protection provided by the juvenile court

and the wide differential between the penalties imposed by the adult court in comparison to the dispositions of the juvenile court. The Group concluded that this matter requires further consideration.

Principle 4

A criterion for transfers could be that the range of dispositions available to the juvenile court judge would be inappropriate to meet the young person's needs. (consensus)

Principle 5

Written reasons should be given by the court when it undertakes the transfer of a young person. (consensus)

Principle 6

The juvenile process should strive to provide services for all young persons within its jurisdiction, and transfers to adult court should not be used as a replacement for the development of adequate facilities within the juvenile justice process. (consensus)

Principle 7

The decision to waive a young person to adult court should be made on the basis of his age, the seriousness of the offence, his physiological, emotional and intellectual development, his life situation and the proven fact that his needs can best be met by the adult court and the services available to it. (consensus)

Principle 8

Transfers to adult court should be undertaken only if the adult program is clearly superior in meeting the assessed needs and best interests of the young person involved. (consensus)

Principle 9

The transfer process should be carried out with regard for due process of law. (consensus)

Principle 10

A young person should have the right to apply for a transfer to adult court, but the final decision should be that of the judge. (consensus)

The possibility of a young person desiring trial by jury should be examined as a possible reason for his application for transfer being approved. However, as the juvenile process moves towards the adoption of more due process features, the legal protections afforded through jury trial may become less important, particularly when the differential between the dispositions available to the adult court and the juvenile court are considered.

It was also suggested that some young persons may wish to apply for transfer because they identify themselves as adults and others out of a belief that the dispositions of adult court in relation to the alleged offence will be less demanding than those of the juvenile court.

Principle 11

The Crown should not be able to apply for transfer without permission of the provincial Attorney General (consensus).

The intent of this principle is to ensure that the application for transfer by the Crown should be on an exception basis and that the decision should be reviewed at the highest possible level.

This raised the question of whether it should be the Attorney General himself, his Deputy or Chief Prosecutor, or some other official, as well as whether this permission should be given in writing.

Principle 12

It should be mandatory that young persons be represented by legal counsel in a transfer hearing, unless the young person does not wish to be, and then, only with the judge's consent (consensus).

Principle 13

The same judge who considered the transfer, should not hear the case if it is retained within the juvenile court and he should not hear the case if it is transferred to adult court (consensus).

Principle 14

If the young person is waived to adult court, the pre-transfer assessment made in juvenile court should not be available to the adult court before adjudication by that court has been completed (consensus).

Resource Implications

The principles related to the mandatory provision of counsel and the mandatory change of judges following a pre-transfer investigation and study would have resource implications and might create difficulties in areas that are normally served by one judge. However, it was pointed out that the number of transfers were small; estimated at less than two hundred per year and that the principle involved more than justified the expense and inconvenience.

Mandatory pre-transfer assessment and reports will create some need for extended resources. The main resource implications are related to the principles of either no transfers or the other limitations on transfers outlined in the principles presented. It was agreed that specialized resources would need to be developed for some older and more aggressive young persons. This will create cost and program development problems particularly for the less populous provinces where the small number of young persons would preclude the development of an adequate program and would not justify the expense. One solution suggested was the development of inter-provincial or regional facilities. While this might necessitate the young persons being moved long distances from their home communities, this is already the case within some provinces in relation to highly specialized facilities.

Transitional time would be needed to implement the necessary program changes particularly as they relate to proposed changes in the age groups served.

Juvenile Court Commitments to Adult Institutions
Adult Court Commitments to Juvenile Services

It is believed that in those instances where the resources available through the juvenile process were not appropriate to a young person's need and adult institutions were required, the following principle would enable the provision of adult services and retain the other protections and benefits provided by the juvenile court and, therefore, should be considered.

Concern was expressed that this provision might in fact mean that the protections afforded in transfer proceedings would be by-passed and thus, this area should be given further study.

Principle 15

The juvenile court should have the authority to commit a child to an adult institution where appropriate, and that the young person remain within the jurisdiction of the juvenile court.

Some members of the Review Group were also concerned that young persons transferred to the adult court and sentenced to institutional care, primarily because the length of disposition available to the juvenile court was inadequate, should have an opportunity to spend their juvenile years in juvenile institutions.

Principle 15 and the following principle were both recommended for further examination, since they bear many legal and resource implications. Both principles were identified as being controversial, with some members in strong disagreement.

Principle 16

Once a child has been transferred to adult court, the adult court judge should have the authority to commit the young person to a juvenile facility until the maximum age of service.

Time Limits on Dispositions Following Transfer to Adult Court Regarding Very Serious Offences

Concern was expressed that young persons transferred to adult court and sentenced for very serious offences should not only have the opportunity outlined above, but also should be offered protection from the severity of the longer term sentences possible for adults. The following principle was suggested for further consideration and study:

Principle 17

That, in the case of very serious offences, the adult court should have the power to sentence a young person to a maximum of ten (10) years, and that he remain within a juvenile facility until the maximum age of service and then be transferred to an adult facility for the balance of his sentence. This would require an amendment to the Criminal Code.

Transfer of Young Adults to the Juvenile Court

It was recognized that the setting of the maximum age is arbitrary, and that some teenage young adults appearing before the adult courts have the same level of maturity and intelligence and the same type of life situation and role in society as young persons appearing before the juvenile court and could benefit from the same services to the maximum age of service jurisdiction. However, they believed that legal, procedural and administrative difficulties precluded the feasibility of this alternative and did not recommend that it be considered.

M - PREDISPOSITION STUDIES - ASSESSMENTS AND REPORTS

The adjudication hearing decides whether or not the young person committed an offence, and thereby, whether a basis for authoritative intervention by the state in the life of the young person, including the deprivation of liberty, exists under law.

In the majority of cases, the information disclosed in the adjudication proceedings is not sufficient to make a sound decision about the way to deal with the young person.

The following principle was endorsed "that court dispositions should be based on a thorough knowledge of the needs, the life situation and the views of the young person and the available service resources". It, therefore, follows that the court's dispositional or service planning, following

adjudication, demands a case evaluation in the form of a pre-dispositional study and report that will provide an individualized assessment of the young person's circumstances and a realistic appraisal of the capabilities of the service resources available to the young person through the dispositions of the court.

The judge can order a probation case study and report. If the resources are available, the court may supplement it by ordering a psychological, psychiatric or other assessment to be included in the probation officer's report, or to be presented separately. If necessary, the judge may have the young person placed in detention or an open facility pending the study or for observation.

The members discussed the desirable contents of a predisposition report. These included the young person's social, emotional, mental and physical developments; his relationships to his environment including his family, school, employment, and peer group; various positive and negative community influences; the nature of services rendered to the young person in the past and the young person's response to these services; the young person's attitude about his offence, and his and his family's views about his life situation and plans for change.

Some members believed that the report should go beyond the securing of facts, attitudes and clinical assessments about the child and include an evaluation and interpretation of these in relation to the situation faced by the young person and the community, and recommend working plans for dealing with the young person's problems in relation to the available service and care resources.

Concern was expressed that facilities were often not available, particularly in less populated areas, to provide intensive psychological and psychiatric appraisal of young persons when the need for such appraisal became apparent through either initial predispositional study or by the nature of the offence itself.

Some courts have developed forensic clinics attached to the court, or a clinical team out-posted from a community mental health centre. Others use clinicians from specialized facilities, e.g., a provincial psychiatric hospital and others, community mental health clinics. Members stressed the need to have clinicians available who had specialized training in child and adolescent behaviour and a knowledge of community treatment facilities.

It was agreed that further study was needed to examine the interface between the resources and service systems required to provide adequate assessments.

The timing of the initiation of the predisposition study was discussed briefly but not resolved or clearly defined. Some members believed that the study represented an unwarranted invasion of privacy if undertaken before the adjudication process was completed, even if all information was withheld from the court until after adjudication. Other members believed that the study could be initiated earlier if the young person intended to admit the offence.

The question of who should be responsible for the carrying out or directing of the study and the weighing of information, formulations and recommendations

from all sources in relation to the needs of the young person and the resources available to serve him, for presentation to the court was discussed.

Some members believed that this should be the responsibility of the probation officer.

Other members expressed the view that with the increasing knowledge base and specialization in diagnostic and treatment services in many areas, the most competent probation officer will not likely possess the expertise necessary to carry out this function or have sufficient current knowledge to match the young person requiring services with the appropriate service facility at a given point in time. They believed that this will be particularly true in large jurisdictions served by complex networks of services. They suggested a dispositional planning structure in which a panel of experts would carry out or coordinate the assessment and develop the basic or alternative treatment plans. The panel might be drawn from probation officers, social workers, vocational counsellors, educators, psychiatrists, psychologists, and child care experts.

With regard to the above, the following alternatives were presented:

(a) That the probation officer should be the person responsible to conduct the investigation, including contributions from other services, and to submit the predisposition report.

(b) That a formal panel made up of experts in behavioural sciences might conduct the investigation, review and evaluate reports from predisposition investigations and make recommendations to the court concerning the dispositions.

Some members stated that the legislation should not define the contents of the predisposition report since this might set disabling limits on the nature and extent of the study assessment and report. Others believed Bill C-192 provided an adequate definition.

The following alternatives were presented:

(a) That the legislation should not define the contents of the report.

or

(b) That the definition contained in Section 35(1) of Bill C-192 sufficiently defines the process. (This states that when the judge deems it advisable or is required by law to consider a predisposition report, he shall direct a probation officer to investigate the personal and family history and environment of the young person, and submit a written report of his findings to the judge.)

In relation to the discussions described above and comments that will follow, the following principles were enunciated:

Principle 1

Dispositions should be based on the thorough knowledge of the needs, the life situation and views of the young person and the available service resources (consensus).

Principle 2

The predisposition report should be mandatory in all cases, but may vary in depth as the circumstances of the case warrant, and should include sufficient information to justify the nature and extent of intervention applied by the court in its disposition (consensus).

It was believed that if the various screening processes proved effective, that almost every case adjudicated by the court will be sufficiently serious to warrant such a report.

Principle 3

One purpose of the report should be to acquaint the judge with the life situation of the young person, and to point out the positives as well as the negatives in the life situation of the young person himself (consensus).

Members emphasized that the total life situation of the young persons should be considered and that too often dispositional planning placed an undue emphasis on negative problem factors rather than building on the young person's strengths and those in his life situation.

Principle 4

A wide range of resources should be available to the judge to draw upon throughout the investigation to enable the formulation of the appropriate assessment and recommendations. (consensus)

Principle 5

That the child himself should have a right to take part and to be heard within the assessment process as well as during both the adjudication and disposition process (consensus).

It is recognized that new structures or methods may be needed to be developed to improve the participation of the young person and his family in all stages of the juvenile service process and particularly, at the assessment and disposition stages.

Some members reported that many youngsters did not understand the juvenile process and interpreted many phases as related to the offence rather than to rehabilitation.

The life experiences of many of the young persons involved in the juvenile process have led them to mistrust adults and authority. They resent adults treating them as subjects for adjudication and disposition and making decisions about them either in their absence or without giving them an opportunity to present their views concerning the problems or their suggestions towards solutions. They emphasized that if the young person does not clearly understand the problem and does not feel that he has participated in the development of a plan for the resolution of the problem, it is unlikely that he will feel a sense of responsibility for making the treatment plan work.

Principle 6

The predisposition report should be made available to the young person and his parents. It should be withheld only on an exceptional basis by the judge when he believes that the contents of the report would be severely damaging to the young person and/or his parents. In such cases, the entire report should be made available to the young person's counsel and the judge should give a verbal summary to the young person and his parents of those parts of the report which would not be damaging.

Principle 7

The young person, his parents or counsel, should have the right to challenge the contents of the report, to cross-examine those persons involved in the preparation of the report and to present separate assessments, including expert assessments, to the court and separate recommendations concerning disposition (consensus).

Principles 6 and 7 are largely self-explanatory. The Review Group believed that they provided important elements regarding the participation of the young person and his family in the process, the protection of their rights to proper dispositions based on accurate information and sound judgements. They would also assist the court in the dispositional process through the presentation of alternatives from sources independent of the juvenile service process.

It was recognized that the dynamics of human behaviour are not completely understood, that present knowledge concerning the rehabilitation of young persons with serious behaviour problems is limited and that diagnostic skills are generally in advance of treatment abilities. Particularly in difficult cases, the interpretation of the facts, the diagnosis and recommendations of competent experts can vary. It was believed that it was crucial to the young person and the court that the young person and/or his family should be enabled to present alternatives for consideration.

Principle 8

Predisposition reports should remain confidential but the provinces should regulate access to them within the service system (consensus).

More discussion was required to define who should have access to the report, how this should be done, and under what circumstances.

Principle 9

A predisposition report prepared for juvenile court should not be submitted to adult court after the young person has attained adult status (consensus).

There was agreement that the predisposition report should be viewed as the property of the juvenile court and not of the young person or the service system.

The value of the contents of the report to the adult pre-sentence report and dispositional process was discussed and the availability of the information contained in the juvenile report to the adult process with the consent of the young person, was mentioned. It was decided that further study is required, in this regard, particularly where a subpoena has been issued to bring forward juvenile documents to adult court.

Resource Implications

While some provinces have indicated that they could implement a provision for mandatory predispositional reports or that this is presently being done, several other provinces have stated that this would require the addition and training of a significant number of staff and would be very difficult to implement in some remote regions.

It will be difficult and costly to develop a wide range of assessment resources in areas where these resources are scarce. The need to develop highly trained and qualified personnel will add to the costs and difficulties as will the need to make their services available to all areas within the provinces.

The mandatory consideration of more extensive assessments may make necessary additions in judicial personnel. Judges may also need to increase their knowledge in the behavioural sciences in order to make full use of the material that will be made available to them, in considering difficult dispositions and in considering alternative studies and recommendations.

N - DISPOSITIONS

The section of this report on Predispositional Studies - Assessments and Reports has outlined the discussions of the Joint Review concerning the issues and principles regarding the predispositional planning process. This process should take place following the establishment of the right of society to intervene in the life of the young person through the adjudication of the offence, and before the court makes its dispositional order defining the nature and extent of that intervention. These issues and principles are directly related to and should be considered with those concerning dispositions.

Section IV of the Report which includes the Philosophical Basis, the Service Principles, and the Objectives of the juvenile process presents the principles and objectives that the members of the Joint Review believe should define the philosophical intent and the objectives of the dispositions of the court. In the following statement of principles, some of the principles that were previously articulated are repeated here for ease of reference.

Principle 1

Once a young person is found to have committed an offence, he should be treated, not as an offender, but as a young person who should be provided with the treatment, supervision, care and controls necessary to meet his needs as assessed in relation to his life situation (consensus).

Principle 2

Dispositions should be based on the thorough knowledge of the needs, the life situation and views of the young person and the available service resources (consensus).

Principle 3

Society has an obligation to respond to the needs of young persons through appropriate and adequate services when it intervenes in their lives on a compulsory basis (consensus).

Principle 4

A young person should live with his own family and in his own community unless it is found that his parents are unable and/or unwilling to care for him or the young person is found to be dangerous to himself or others, or that his needs can best be met in other ways (consensus).

Some of the stated objectives of the juvenile process were to promote the development and well-being of young persons in conflict with the law, to work with young persons in conflict with the law in such a way as to enable them to live in the community under their own controls, to preserve the unity of the family whenever desirable, to serve the best interests of the young people in conflict with the law and to protect the community as required.

In order to achieve these objectives, the members of the Group agreed that:

Principle 5

A wide spectrum of community and care services should be available to the young persons committed by the court (consensus).

It was recognized that this could best be achieved when services to young persons committed by the court are not segregated for this particular "target group" but rather that these services are planned, funded and coordinated as part of the entire service delivery system in the community.

This would also require that a flexible range of dispositions be available to the court.

The present Juvenile Delinquents Act provides a variety of dispositions: a judge may suspend final disposition; adjourn for a definite or indefinite period; impose a fine; commit a child to the care or custody of a probation officer or any other suitable person; order supervision by a probation officer of the child in his home; place the child in a suitable family home, foster home and subject him to the friendly supervision of a probation officer; impose such further or other conditions as may be deemed advisable; commit the child to the charge of a child welfare authority; or commit the child to an industrial or training school.

The Act also provides that a child is subject to the continued jurisdiction of the juvenile court until he reaches 21 and furthermore, that a child is liable, at any time, to be brought back to the juvenile court.

Members of the Group discussed further dispositions that might be added including absolute discharge; restitution, and community service orders; and dispositions that would enable the use of leisure control or attendance centres programs and special group programs such as "outward bound". Definitive conclusions were not reached.

In addition to the principles already presented, the Group's study of disposition was largely focused on the time period of dispositions and the alternative roles and powers of the court and the service administrators and the setting of limits on its powers. Members of the Joint Review Group presented the alternative that they felt would contribute most to achieving the objectives of the juvenile process.

All members of the Joint Review agreed that in addition to mandatory predisposition reports, the new legislation should require that:

Principle 6

The judge should give written reasons for disposition (consensus).

They believed this would provide the rationale for the disposition and the services that the young person could expect to receive and therefore, facilitate the young person's understanding of the reasons for the disposition. It would provide a record for appeal purposes, for post-dispositional reviews and when appropriate a basis for an application for review by the young person or his family. It would protect the young person from subjective or impulsive dispositions by the court. It was recognized that the implementation of this provision would require additional judicial personnel.

Time Periods of Disposition

The following alternative principles were presented.

Principle 7

The general power (or extent) of initial disposition and subsequent disposition should be limited to a definite maximum time period (consensus).

Principle 8

That specific dispositions should be indefinite with a maximum time limit.

Principle 9

That the maximum time limit should be any period up to two years.

Principle 10

That the limit of the initial disposition should be two years with a possible extension for a maximum of one year following an application to the court by the service agency based on the proof of the need for such an extension (consensus).

The members of the Review Group rejected the concepts embodied in the provision of the Juvenile Delinquents Act which refers to age 21. It was recognized that it was not possible to predict with any degree of precision, the length of time required by rehabilitation programs or how young persons would respond to them. They also agreed that some young persons would require further care and treatment, following the expiration of the maximum time period. However, they believed that any rehabilitation program with an authoritative base including elements of compulsion and particularly those that were offence

related should have maximum time limits after which compulsion could not be applied. There should be review at the point of discharge to ensure that any appropriate referrals for service on a voluntary basis are made. Some members believed that indefinite commitments disabled children and parents from planning, and that time limits assisted the young persons in setting goals for themselves and were beneficial to the treatment process.

Roles and Powers of the Courts and the Service Administration

The following alternative principles were presented.

Principle 11

(a) A flexible range of dispositions should be available to the court,

or

(b) A limited range of dispositions should be available to the court, and the service agency to which a young person is committed should have the authority to decide the nature and extent of its intervention.

Principle 11(a) would allow the judge to make specific dispositions to specific facilities and services and to give specific direction to these services. Principle 11 (b) would limit the court's power of disposition to some specific measures, i.e. absolute discharge, fines, restitutions, and to "general areas of service", for example, (a) community based

treatment (probation), (b) community based "open" residential care and services, (c) closed institutional care. Within each "general area" the service authority would be responsible for the choice of the particular service or residential facility.

or

Principle 12

That the juvenile court judge should have the power to make each disposition including the power to specify committal to the type of placement resource and to place conditions of probation.

This principle is similar to principle 11(a). Its intent is to provide the authority necessary for types of service facilities or agencies that may not be part of a more general service component to accept young persons into service and to provide the service agency and the young persons with guidelines. It is intended to facilitate probation placements in group homes and to enable the use of attendance centres.

or

Principle 13

That the judge should assign the responsibility for rehabilitation to the service authority and should set limits on the power of the service authority to limit the freedom of movement and the liberty of action to the young person committed.

The effect of the alternative presented in principle 13 would be the assignment of the responsibility for the choice of services and facilities to the service authority but would reserve for the judge the power of disposition to the"general" area of "closed" institutions. The service authority would then be responsible for the choice of the particular "closed" institution.

Principle 14

The effective operation of rehabilitation programs and residential programs in particular demands that the court commitment be made to the responsible service authority responsible for the program rather than to specific facilities, and that the service agency should then be permitted to use whatever treatment facility it has which will best meet the needs of the young person.

Principle 14 would assign the responsibility for the choice of service program and residential facility including closed institutions, to the service authority.

or

Principle 15

If the responsibility for placement of an individual in a particular residential facility should be that of the service agency, then, in order to protect the liberty of the individual, placement in closed institutions should require judicial sanction both for the placement and the length of the placement.

General Comments

The effect of the above principles ranges from the vesting of complete authority for the service process in the court to the vesting of complete authority in the service authorities. It is believed that the majority of the members would support principle 11(b) as it is elaborated on page 125.

The majority of the members believe that only the court should be empowered to deprive young persons of the degree of liberty entailed in the placement in closed institutions and that such placements should only be made with at least the sanction of the court.

Those favouring the complete authority of the service administrator believe that on balance, the liberty of fewer children will be restricted when these decisions are made by service authorities. They believe that disposition is a job for behavioural experts with an intimate knowledge of service resources and that few judges are so qualified.

A further possibility could be a disposition panel which would include the judge and behavioural experts.

Another point of view was that the same objective could be achieved by having a panel of experts available to advise the judge. The crucial matter is that behavioural knowledge and knowledge of resources should be brought to bear on dispositions.

Principle 16

The provision for committal to a child welfare authority should be removed from the Federal Code, since it is derived from an assessment following the court's adjudication of an offence, rather than by means of evidence presented in court to the effect that the child is neglected or in need of protection. Following such an assessment, the matter should be considered by a court under the provisions of the provincial Child Welfare Act.

It was recognized that this was a contentious point which required further discussion and study. The process involved might require a provision allowing the court to discharge the young person or to suspend disposition in order that the case might be considered under child welfare legislation.

Problems Related to Possible Differentials Between the Maximum Age for Young Offenders and Children in Need of Protection

In some provinces, there will be problems relating to the commitments of young persons between the ages of sixteen and eighteen by the juvenile court to the child welfare authority if the maximum age for young offenders is raised from under sixteen to under eighteen years and the maximum age for child welfare remains at under sixteen years.

One member suggested that child welfare services lacked the legal authority to use the degree of compulsion regarding children beyond fifteen years that is required to provide the controls needed by some young offenders. He believed that following screening and diversion, child welfare agencies could serve young persons in conflict with the law on a voluntary basis based on an agreement between the child welfare agencies, the young person and, where appropriate, his parents. He suggested that in provinces with two streams of services, that all commitments in this age group should be made to correctional services. Child welfare agencies might then assist correctional services in providing care and services to these young persons on the basis of the authority vested in the correctional services. It was recognized that this was a difficult subject requiring further study.

Problems of Interpretation and Definition Relating to Dispositions to Residential Care

At their meeting in Ottawa, representatives of the Joint Review and the members of the Deputy Solicitor General's Committee on Legislation agreed that definitions of the degrees of physical and personal restraint on the liberty and freedom of movement of the young person constituting "closed" and "open" settings needed to, and could be, worked out between federal and provincial governments in order to provide the federal and provincial legislative base for the effective implementation of the principles contained in this report.

Closed institutions have been known as "detention homes","training schools" or defined in the Federal Act, as "an industrial school or other reformative institution or refuge for children duly approved by the provincial statute or by the Lieutenant-Governor in Council in any province ...". Some provinces have remoeved any reference to this definition from their legislation in relation to their "closed" facilities, and this has made the direct disposition to a "closed" institution under the Juvenile Delinquents Act inoperative in those provinces.

Members have suggested that in any new legislation the section of the Federal Act should define facilities, services and resources by their role and function rather than designating their particular names and titles.

In the disposition committing the child to the child welfare authority, the term used in the present Juvenile Delinquents Act is "to commit to the charge of", rather than "to the care and custody of", the term used in most

Child Welfare Acts and by the Juvenile Delinquents Act in relation to the commitments to the care of a probation officer or any other suitable person. The term "commit to the charge of" has been found ambiguous and subject to different interpretations by different child welfare authorities. As a result, some child welfare authorities have not assumed the care and custody of the child or admitted the child to their care even when this was clearly intended by the court; other child welfare authorities have provided more limited care services to those young persons entering their care under this disposition of the Juvenile Delinquents Act than those entering their care under child welfare legislation. There may also be ambiguity and differences between provinces as to what "care and custody" means. It was agreed that this matter should be clarified and that the intent of the disposition should be clearly defined in any new legislation.

Other dispositions relating to residential care in the present Juvenile Delinquents Act, "cause the child to be placed in a suitable family home as a foster home subject to the friendly supervision of the probation officer and the further order of the court" and as noted above, "commit to the care and custody of a probation officer or any other suitable persons". In some jurisdictions these dispositions provide the authority to the court or to the probation services to provide a variety of residential care and services to young persons in foster homes, group homes and "open" treatment institutions.

One member expressed the view that for short-term care, that is, to a maximum of six or nine months, group homes on a "placement" basis, as a condition of probation, not as of care and custody or guardianship and without the suspension of parental rights, proved effective.

The differences in status of young persons committed to training schools, various jurisdiction and the question of wardship and the degree of suspension of parental rights, was also discussed.

The rights and responsibilities of the service authorities and the parents of the young persons should be clarified and defined in relation to young persons in conflict with the law placed in all forms of placement under the provisions of the Juvenile Delinquents Act. A clear understanding of these relationships by all parties involved is important to the effective participation of the young person and his parents in the rehabilitation process. The credibility, effectiveness and accountability of the service system requires that the definitions be based on the realities of each situation.

O - POST-DISPOSITIONAL REVIEWS

The discussion of dispositions, predispositional assessments and reports has established that dispositions should be based on a complete assessment of the young person and the service resources available.

The Group recognized that the knowledge and understanding of the young person by the staff of the juvenile service process will increase and change with further contact. Diagnosis and treatment is a dynamic not a static process. The testing of experience can prove that even the most sophisticated assessments and service plans can be incorrect. The young person himself is in a life process of maturation and this and his response to service measures, or changes in his family situation or in the services available to him, may indicate the need for a change in the type of service provided, the residential facility required or final discharge from the juvenile service process or diversion through the removal of any elements of compulsion in the service or rehabilitation process.

A continuous process of review and adjustment should be part of any service system and should foster the participation of the young person and his family in identifying and planning needed adjustments.

While many of these changes can appropriately be made by administrative decisions of the service authority, major changes from the original disposition, e.g. the change from "open" to a "closed" setting or final discharge will require the review and sanction of the court or an independent review body authorized by legislation.

The review by a court or independent body should also be required when the parties involved either disagree on the need for change or on the nature of the adjustments required;

when the young person or his family believe that he is being abused or deprived; when they believe the supervision and controls applied to him by the service authority result in restrictions on his liberty beyond that intended by the disposition of the court; and most important, when the young person or his family are of the opinion that the young person is not receiving the needed care and services intended by the disposition.

In order to facilitate this process independent reviews should be available upon the application of the young persons, his parents, or the service authority.

It was believed that in order to ensure an effective rehabilitative process and the protection of the basic rights, independent review could not depend solely on the evaluative and the participative process within the service system or the young persons or service authority's perception of the need for or willingness to initiate the review process. Thus, a provision requiring mandatory periodic reviews should be included in the new legislation.

The following principles in relation to the discussion outlined above were stated.

Principle 1

There should be post-dispositional review (consensus).

Principle 2

Any major administrative decisions and particularly those regarding constraints on freedom, should be open to review (consensus).

Principle 3

Following disposition, there should be mandatory periodic reviews based on the young persons needs and life situation, his progress and the adequacy of the treatment program in meeting his need (consensus).

Alternative mechanisms suggested:

1. An administrative process through an independent review body.
2. A judicial process, or
3. A combination of these two, in order to ensure accountability and the provision of appeal to the courts.

While a number of members favoured an independent review body others believed that, since the protection of liberty was involved, the review should be judicial or a combination of both. It was believed that judicial review would provide a useful mechanism to involve the court in the process of accountability for the part it plays in the juvenile service system and to increase and update the judge's knowledge of the service system.

Principle 4

The development of closed components within open residential facilities requires built-in checks and balances within the law and service system to protect the liberty of the young persons involved. These protections might include mandatory periodic reviews by the court or other independent bodies of the use of such components, the development of criteria for their use, maximum time limits of use and reviews by the court at the request of the young person (consensus).

This principle is essential to an effective and accountable service system. Some young persons require secure custody only occasionally and it may be preferable that they be served in open settings with adequate closed components rather than in closed facilities. However, while desirable and necessary, it is open to abuse and requires control. This is a relatively new development in the field. One member reported that his province was experimenting in this area and that this included the development of procedures for judicial and other reviews.

Principle 5

The system of disposition and rehabilitation with elements of compulsion, requires checks and balances in order to achieve the goals of rehabilitation and the protection of rights. To achieve this, the development and maintenance of effective standards of service will be needed as well as legislative and regulatory protections (consensus).

Members emphasized the need for staff training for all types of service personnel and pointed out that a high quality of staff and facilities was required to effectively protect the rights as well as to meet the needs of the young persons. It was pointed out that standards of service should be developed to assist the judges or the administrative review body in carrying out their reviews and making their decisions.

Some members suggested that the areas of inquiry open to review and the functions of the review body in relation to each area would need to be defined in order to avoid manipulation of the process and to avoid confusion for the young person or service personnel.

P - TRANSFERS TO PROVINCIAL LAW

Transfers to provincial law apply to two dispositions available to the court under the present Juvenile Delinquents Act, commitments to the child welfare authority and to training schools (closed institutions). Section 21 of the Act is as follows:

1. Whenever an order has been made under Section 20 committing a child to a children's aid society, or to a superintendent, or to an industrial school, if so ordered by the provincial secretary the child may thereafter be dealt with under the laws of the province in the same manner in all respects as if an order had been lawfully made in respect of a proceeding instituted under authority of a statute of the province; and from and after the date of the issuing of such order except for new offences, the child shall not be further dealt with by the court under the provisions of this Act.
2. The order of the provincial secretary may be made in advance and to apply to all cases of commitment mentioned in this section. 1929, c. 46, s. 21.

The effect of the transfer is to remove the child from the jurisdiction of the juvenile court to the jurisdiction of the provincial service authorities that are prescribed by the provincial legislation that is designated by the provincial secretary's order. The time period of the disposition is governed by the provincial law and may vary

from that prescribed by the juvenile court judge. Any post-dispositional review or further disposition will be made by a judge or an administrative body under the authority of the provincial law.

In some provinces, the Child Welfare Act is the designated provincial law applicable to commitments to the child welfare authority and the Training Schools Act is the provincial law applicable to commitments to training schools.

In a number of provinces, the Child Welfare Act is the designated legislation applicable to both dispositions and, in effect, the young person becomes a temporary ward of the child welfare authority. The child welfare authority may then place the young person in a variety of service resources, including a closed institution, or return the young person to his own home under supervision.

Under this system, the disposition initially intended by the judge may not even be carried out. For example, a young person initially committed by a juvenile court judge to a closed institution may be placed in a foster home, or a young person who the juvenile court judge intended to be placed in an open setting such as a group home, may be placed in a closed institution through the administrative decision of the child welfare authority.

The following principles were presented in relation to transfers to provincial law.

Principle 1

That Section 21 of the Juvenile Delinquents Act enabling transfers to provincial child welfare and correctional law should be retained in order to provide provincial flexibility and ensure a unified service system.

Principle 2

That Section 21 of the Juvenile Delinquents Act be enlarged to include paragraphs (d), (e), (f) and (g) of Section 20(1) of that Act, in addition to the present paragraphs (h) and (i).

The effect of principle 2 would be the transfer of all dispositions involving probation and the various placement provisions to provincial law, if the provincial secretary of the province so ordered. Only those dispositions relating to suspension or adjournment and the imposition of a fine would remain under the jurisdiction of the juvenile court.

Members of the Joint Review Group supporting principle 1 believed that the present transfers enabled a better integration of the delivery of all the placement provisions of the Act, and provided flexibility in the provision of appropriate services through the placement in and movements between various facilities and services by administrative decision.

Members of the Joint Review Group supporting principle 2 wished to extend the benefits described above to the other dispositions and their related services.

It was pointed out that the effect of this extension would be to reduce the role of the juvenile court judge to an adjudicator of the facts concerning the offence. Since the actual dispositions would be effectively governed by provincial law it would follow that federal law should withdraw from the assessment and dispositional processes. A majority of members accepted this as a logical conclusion, but some believed it would be an abdication of federal responsibility in the field and opposed the extension.

Principle 3

Some members considered that there should be no transfers to provincial law.

Principle 4

That federal legislation, including provisions for transfer to provincial law, and the provincial law and service system itself should be designed and coordinated in such a way as to support the effectiveness and credibility of the total system and each of its components (consensus).

Principle 5

Transfers to provincial law should not be permitted when the provincial law in question results in greater restrictions of liberty than the original disposition under federal law or when the provincial law does not carry out the intent of the disposition under federal law.

These are, in part, alternatives to principles 1 and 2. Members of the Joint Review Group were concerned about some of the effects of present arrangements concerning transfers to provincial law. They believed that the juvenile process cannot maintain the trust, understanding and

respect of either the young persons it serves or the personnel administering its various components and the public when the dispositions of the judge were not at least initially carried out or when federal and provincial laws contradicted or appeared to contradict each other.

They were particularly concerned that present arrangements make it possible to restrict the liberty of a young person to the extent of his placement in a "closed" institution by administrative decision when the disposition of the court intended that he be served in an open facility.

It was recognized that the implementation of these principles might require joint federal/provincial planning and agreement in the amendments to present and the enactment of new provincial and federal legislation.

Transfers to provincial law do provide some protections from mistaken judicial decisions and the abuse of judicial power. The principles relating to the judicial consideration of mandatory assessments, written reasons for dispositions, and maximum time limits on dispositions and appeals, will improve judicial performance. There is also the possibility of the right of appeal.

Transfers to provincial law as presently constituted would not allow the juvenile court under federal law to carry out the responsibilities outlined in some of the principles already stated regarding young persons committed to the child welfare authority or to training schools, for example, in relation to time limits on disposition or post-dispositional review. If further dispositions are made subject to transfer to provincial law, this factor will be extended.

P A R T V I

FUNDING PRINCIPLES AND OPTIONS

Principle 1

Ideally, as a fundamental principle, federal funding should be extended to include all the services that are related to young persons in conflict with the law.

Principle 2

If it is not within the realm of possibility to implement principle 1, then the federal government should at least share in the cost of any extension of existing services and resources, or the requirement to create new services and resources as a direct consequence of any changes in federal legislation.

An important aspect of funding is the matter of inclusion of capital costs and the basis on which these should be cost-shared, particularly with regards to whether it would be a grant for the putting up of a structure or whether it would be amortization of the cost of the structure.

Principle 2 creates a difficulty which could result in the federal government cost sharing only that part of a service which is directly attributable to any change in legislation but not cost-sharing existing basic services, for example, probation services. This would need to be looked at and resolved to avoid the anomaly that would be created. Another matter that bears attention is the creating of funding differentials between provinces as related to present age levels and present levels of services.

Principle 3

Services which are eligible for funding should not be disqualified or excluded on the basis of which authority or department is administering the services. This principle would permit the provinces the flexibility that is desired in their organizational structure.

Principle 4

Federal funding policies should be set up in such a way as to permit the flexible use of all public and private service resources.

Principle 5

Federal funding policies should provide incentives to develop non-custodial alternatives and community based resources.

Principle 6

Federal funding policies should encourage the use of existing community resources for young persons in conflict with the law whenever and wherever appropriate and feasible.

Principle 7

Federal funding policies should encourage the extension or establishment of service systems that are complimentary and that are as well non-duplicative and non-competitive with existing service systems within a province.

Principle 8

Federal funding should be based on minimal adequate national standards of service that are jointly developed

and defined. A federal/provincial capability or mechanism should be established to enable a regular review of the standards to ensure that these are maintained and periodically updated.

Principle 9

The federal government, in consultation with the provinces and territories, should have a role in financing research, demonstration and innovative projects including those in the private sector.

Principle 10

A federal/provincial capability or mechanism should be set-up to establish priorities in relation to the needs of young persons in conflict with the law so as to make the most effective use of the federal funds that are made available.

Principle 11

Federal funding policies should not have the effect of segregating young persons in conflict with the law from other young persons receiving services or limiting the access of young persons in conflict with the law to services available to other young persons and families.

Principle 12

The present lack of funding or personnel resources in some regions should not restrict the federal legislation from necessitating the provision of needed services where these limitations do not now exist. Furthermore, the federal legislation should provide transitional clauses and resource development assistance where such limitations do presently exist (consensus).

Present Funding Arrangements

At the present time, there are ongoing and existing programs which are funded on a cost-shared basis. Examples are the Canada Assistance Plan, Hospital Care Plan and Medicare. The cost-sharing formulas vary from one plan to the other but are, generally speaking, on a 50-50 basis.

At the present time, federal cost-sharing of services included within the parameters of this review is provided by and limited to the Canada Assistance Plan. The Canada Assistance Plan includes child welfare services but excludes correctional services.

Cost-sharing under the plan for young persons in conflict with the law is therefore limited to the costs of care and a range of services following the committal of the young person to the child welfare authority either directly or through the effects of transfer to provincial law through an order of the provincial secretary enabled under Section 21 of the Juvenile Delinquents Act.

Cost-sharing is provided and is possible for a wide range of services following diversion including family counselling and the full range of child welfare services including intake, reception, assessment, family protection services, etc.

Specifically, two provinces, Ontario and New Brunswick, provide separate correctional service for children and since young persons committed to their training schools are not in the care of the child welfare authority, costs of the care and after-care services provided to these young persons are excluded from cost-sharing under the Canada Assistance Plan.

Most of the other provinces receive cost-sharing under the plan since the young persons committed to training schools under the Juvenile Delinquents Act come into the care of the child welfare authority through the mechanism already described.

One of the issues raised by Ontario and New Brunswick is that in terms of programs and services, it is claimed that correctional services for juvenile offenders in their provinces are similar to services provided by child welfare authorities in the other provinces and should be cost-shared on the same basis.

This interrelationship between "child welfare", "juvenile corrections" and other component services points up a number of questions, problems and possible solutions. It suggests the need to identify the similarities and differences, if any, in resources and services needed for the young person who has come into conflict with the law and the young person needing care and protection. Funding models should recognize these factors, as well as the need for funding of intake, assessment, receptional and community services which are not now funded when provided to the young offender by either authority.

Funding Options

Some funding options that can be considered are:

1. Amend the Canada Assistance Plan to include some or all juvenile "correctional services". These services require definition as to what services to children are in fact "correctional" in nature.

2. The Ministry of the Solicitor General could administer a new shared-cost program for juvenile "correctional services" or services to children "correctional" in nature and in this option, it would again be necessary to define which services and what their definition of services are. Such a program should parallel and complement the Canada Assistance Plan as amended or modified to reflect the appropriate changes.

3. An "umbrella" type of funding plan which would reflect the different approaches in delivering the array of services to young persons and funding them on that basis either through the Canada Assistance Plan route or through a correctional services route.

4. Juvenile correctional services might be covered under a broader cost sharing arrangement for the total range of social services.

Some Implications of the Above Options

One of the central questions that arises is the rationale for extending federal funding to include some or all juvenile correctional services and services given to children correctional in nature which may or may not be funded at the present time under the Canada Assistance Plan. Funding could be extended beyond corrections to include such mechanisms as diversion services, police bureaus, youth authorities, and

community counselling. This, in turn, raises the question of interface with other social systems such as the educational and health fields. Another question is the extent to which the federal government should fund these related social services. For example, is it possible to share the cost of services from forensic and community mental health clinics, recognizing that mental health services are not presently shareable by the federal government? Again, is it possible to share in the cost of special juvenile counsellors in schools in the educational area? It is noted that another federal/provincial working party is examining the area of social services as part of the Joint Review of the Social Security System in Canada. In the context of a continuum of services for children, the results of this review might affect any proposed policy of federal funding of services to young persons who come into conflict with the law.

In addition, the interface with other types of programs such as the legal aid funding program must be considered in relation to this entire matter. A further question is what the rationale is for restricting funding to young persons only to the age of 18 or following commitment to age 21 and not include the entire population in the corrections field.

Possible Variations of the Above Funding Options

The following three options are possible variations of the above-mentioned:

1. That an incentive formula be established which would direct a larger proportion of federal funding to ongoing services which may be considered to be more effective and less costly. An extreme example of this option would be for the federal government to fund 100% of diversionary services down to 0% of closed custodial facilities.
2. The federal government could cost-share any increases in the cost of services above a base year. This could be similar to the arrangement under the Canada Assistance Plan for "welfare services" costs. In effect, this would be financing the improvements of the services. One implication of this option is the assumption that there is a base level of service in each province. In order to ensure that such would be the case, it would be necessary to assist those provinces who have not reached the base level of existing services. In effect, this means starting from a base level of service on a provincial basis and one sub-option would be to provide a "catch-up" formula to arrive at the base level from which funding on changes as a result of federal legislation could be funded.

   A serious problem in the base year approach is that it penalizes those provinces which have placed a high priority on the development of services for young persons in conflict with the law.
3. To take into account regional disparities that exist, the implementation of a differential cost-sharing formula which could vary for each province is a basis for funding

which the federal government should consider.*

An Alternative to a Cost-Sharing Arrangement

Instead of a cost-sharing arrangement, the method of payment with respect to funding could be in the form of block per capita grants. This method of financing has been proposed for the hospital care and medicare program.

While this type of funding would give provinces flexibility in the use of the funds, there are difficult problems in determining the base year per capita cost, whether the per capita costs should be the respective provincial or the national per capita cost, and the formula for the escalation of the per capita grants beyond the base period. In addition, there is no assurance that the monies would reach the program for which it was intended and the monies could be diverted to some other use by the province.

Other Forms of Federal Involvement

Separate from or in addition to the options that have been mentioned, the following forms of federal involvement were considered.

1. The federal government in consultation with the provinces could participate more by assuming a leadership role in the encouragement of the initiation and development of innovative and demonstrative programs and projects.

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* The Group was aware of fiscal equalization measures but did not resolve the problem of deficiencies in service resources arising from historical development.

Samples of this include the present welfare demonstration and research grants funded by the Department of National Health and Welfare and the demonstration grants funded through the Consultation Centre of the Ministry of the Solicitor General. One significant implication of this approach is the obvious need to have sustaining financial support of the project or program if it is found to be effective and there is the whole question of the relationship between this funding and ongoing funding.

2. The federal government in consultation with the provinces could participate more in such activities as acting as a research centre and a clearing house of information with emphasis on providing technical expertise and advice. Possibly, some form of assistance could be extended to include financial support in the joint federal/provincial development in such areas as statistics and information systems, research projects, and staff development and training of personnel in the juvenile process. It was noted that any support in these areas should be considered in relation to related developments in the entire criminal justice system and perhaps even broader to encompass the total range of social services.

3. The federal government could provide "thrust funds" that would have, for its objective, the encouragement or initiation of new types of services or innovative types

of services. This could be a collective decision between the federal government and individual provinces that it is desirable to shift the field in a certain direction and for that purpose, the federal government could provide special funding over a set period of time. The concept of "thrust funds" would possibly cover only the start-up or developmental costs. Again, the whole question of the relationship between this type of funding and ongoing funding has to be examined.

Some Reasons for Federal Involvement

1. To ensure development of a minimal adequate level and standard of service across Canada so that all young persons who are in conflict with the law will have equal access to reasonable quality of treatment or service.

2. The federal government should assist in developing innovative programs and improving effectiveness of existing programs that provide services to young persons in conflict with the law.

3. That the federal government, in its long-term interests, would see a preventative aspect in assisting provinces to provide services which are considered to be more effective in dealing with young persons in conflict with the law in their formative years, thereby possibly reducing the numbers that would eventually end up as adults in conflict with the law.

4. That federal participation would facilitate interprovincial cooperation and maximize utilization of services.

5. In view of the fact that the federal government under the British North America Act is charged with the responsibility of making laws in the area of criminal law, there is also an inherent mandate or responsibility placed upon them to ensure that the same federal legislation is in fact equitably administered throughout the provinces of the nation.

6. The mobility of young persons in Canada today would lend credence to the federal government becoming involved to ensure equality of services.

7. There is an obligation on the part of the federal government to finance the consequences of federal law, particularly the Federal Code. It was, however, noted that this argument could be extended to the proposition that the federal government should finance the cost of the courts and the law enforcement area as well.

The 1966 Report on Juvenile Delinquency in Canada made it clear that the federal government should attempt as far as its constitutional powers permit to ensure that there is made available for the benefit of all children dealt with under the Juvenile Delinquents Act an approximate equality of those services that are essential to the implementation of the juvenile court concept. Pursuant to this

objective, the federal government should establish standards in relation to relevant services and develop programs of financial assistance in order that the required standards of service can be provided in areas where the necessary resources are lacking. In substance, these words are still true today.

PART VII

INTERIM SOLUTION REGARDING COST-SHARING UNDER THE CANADA ASSISTANCE PLAN

In the interim report dated April 8th, 1974, the Joint Review set forth the following statement relating to the interim solution regarding cost-sharing for the Provinces of Ontario and New Brunswick under the Canada Assistance Plan.

> "At the Federal-Provincial Conference on Corrections, December 12-14, 1973, the Federal Minister of National Health and Welfare and the Solicitor General of Canada agreed to consider interim legislation to resolve the problem raised by the Ministers from Ontario and New Brunswick that care and after-care services to young persons provided by corrections services or by any other agency other than a child welfare authority are excluded from cost-sharing under the Canada Assistance Plan. Other provincial ministers supported Ontario and New Brunswick Ministers on the grounds that federal funding should not direct how provinces should organize to carry out programs which meet the objectives and criteria for cost-sharing.
>
> Both Federal Ministers agreed to consider an interim solution only after ascertaining the general direction that would likely evolve from the proposed joint review of programs, services and funding arrangements dealing with young persons in conflict with the law. Provincial Ministers were assured that they would receive an answer by March 31st, 1974, the date agreed upon by provincial corrections ministers for completion of the joint review.
>
> Federal and provincial representatives of the Joint Working Group have been devoting considerable time and effort to this review bearing in mind the March 31st deadline. Despite these efforts, it is clear that the Joint Working Group has been unable to examine fully a number of crucial issues and alternatives, and particularly, the implications of those alternatives to service and resource requirements. Consequently, the review is not in a position to indicate in a definitive way the long term direction of the development of the field and the long term

> financial implications of that direction. It is now being proposed that the joint review be extended to June 30th in order to complete its several tasks and, in particular, the study of services, resources, the financial implications of possible changes in legislation and long term funding arrangements.
>
> The Joint Working Group agreed with the representatives from Ontario and New Brunswick that the interim solution of the CAP issue should be considered as a separate problem in that Ontario and New Brunswick were only seeking cost-sharing for services to their young offenders equivalent to those that they would have received if these young persons were committed to the care and custody of the child welfare authority. It is recommended that a neutral solution be found that would solve the immediate problems of Ontario and New Brunswick without prejudicing the outcome of the review. It is suggested that an interim solution, at this time, would considerably enhance the joint review by removing from the review the impact and constraints of what is felt to be a separate matter."

Notwithstanding the above recommendation, it was decided by the federal ministers during the month of April that a decision on the above problem would not be forthcoming until the completion of the final report of the Joint Review on Young Persons in Conflict with the Law.

It is the unanimous recommendation of the Joint Review that an interim solution at this time as proposed above be carried out and should not be delayed pending completion of the studies now in process in relation to federal legislation to deal with young persons in conflict with the law and the social security review.

P A R T V I I I

PROPOSALS REGARDING MECHANISMS FOR CONTINUING REVIEW

Throughout the review, the members became increasingly cognizant of the need to establish a mechanism to permit a continuing review of all areas related to the juvenile process. Discussions in this regard which related to the matter of ongoing consultation between federal and provincial governments, led to the following suggestions being made:

1. It was concluded that the utility of available statistics concerning young people in conflict with the law was limited and that the available statistics did not contribute to the development of an accurate portrayal of the state of juvenile delinquency in Canada. The factors which qualify or inhibit the use of the statistics are noted in an earlier portion of this report and will not be reiterated here.

   It is recommended that the practices of recording and reporting statistical information regarding the group of young persons in question, be examined jointly by the concerned federal and provincial authorities, in order to establish an appropriate and uniform process for the collection of relevant data. This process could relate to newly developing capabilities for information gathering within various provinces, as well as to the interests and activities of the Ministry of the Solicitor General regarding criminal justice information and that of

the Department of National Health and Welfare regarding information on social services.

2. For the purpose of promoting a greater comprehension of the factors related to young persons in conflict with the law, the sponsorship of national annual symposia should be undertaken. The bringing together of professionals from relevant disciplines and different systems to discuss the many aspects and interrelationships that exist in the different social systems involved with youth would be a positive step in any consultation process. The Ministry of the Solicitor General should take a leadership role in this area.

3. A proposal put forth was the establishment of a permanent national assessment group or team to continue the process that the Joint Review commenced. Such a federal/provincial continuing group or team could examine the services and resources that exist and are being planned, could be responsible for defining standards of service, to review these standards, to develop priorities in relation to the needs of young persons, to identify alternatives and their implications with respect to services and resources and to generally develop an awareness of the problems and solutions in dealing with young persons in conflict with the law.

4. In the area of research and demonstration projects, appropriate federal/provincial mechanisms could be established

in order to ensure effective consultation. One suggestion envisaged a national institute being set up as a separate corporate body of federal and provincial representatives, to consider research and demonstration projects and make decisions, including funding decisions, in relation to those projects. The federal and provincial governments would have representation in the institute and could jointly fund the institute. This institute could eventually be integrated as part of an overall criminal justice research institute.

5. With respect to the implementation of changes in federal legislation, a federal/provincial mechanism should be set-up in order to study the implications, monitor the effects, identify the problems and propose solutions in relation to implementation of such legislation. An ongoing communication link would be in place to deal with these matters on a continuing basis.

6. One area that will require priority attention is the identification of the needs of young persons and it is evident that to try to get at the needs of young persons in conflict with the law, as well as the larger group of young persons who are also the subject of state intervention, that appropriate analysis, research and study are required.

With respect to the above, the members have identified this as an area of concern which should be given more thought and attention than was possible in this

Review. Consequently, it was concluded that the federal government should take the initiative in consultation with the provinces to examine and develop the necessary and appropriate mechanisms identified.

P A R T I X

GENERAL HIGHLIGHTS

The Joint Review has identified a number of principles and proposals that have particular significance in terms of the proposed legislation and in developing a future direction for the juvenile process and related service system.

In general terms, the report articulates a number of proposals that if implemented, would have the effect of further safeguarding the rights of young persons in conflict with the law, as well as of providing them with a broader range of services within the juvenile process to meet their needs.

In particular, the Joint Review has identified the following highlights:

1. Uniform minimum and maximum ages of jurisdiction to provide equality before the law and extension of services beyond the maximum intake age to provide ongoing services for the age group in question.
2. Increasing decriminalization by limiting the legislation to include only federal offences, removing the "status offences" from the legislation and excluding from criminal responsibility all children under the new minimum age of entry to the juvenile process.
3. Increasing the potential for and improving existing practices regarding diversion from the juvenile court process by creating mechanisms, including pre-court and intake and screening mechanisms, developing alternative diversion resources and proposing guidelines be developed

relating to police discretion and practices in dealing with young persons in conflict with the law.

4. Restricting the use of detention to defined circumstances and employing facilities that are separate from those provided for adults.
5. Shifting the emphasis in services to young persons in conflict with the law from an institutional approach to a coordinated community based approach.
6. Limiting transfers to adult court by specifying restrictive criteria, including a specific age group within the age range.
7. Ensuring that the individual needs of the young person will be assessed and taken into account at all stages of the process and recognizing the young person's right to treatment and the need for adequate and appropriate resources to meet his needs.
8. Proposing that young persons have the opportunity to participate in and be represented at each stage of the process and proposing the establishment of post-dispositional review processes and mechanisms.
9. Recognizing the importance of involving parents and the community in the juvenile process.
10. Recognizing the need for greater coordination of all services that relate to the juvenile process.
11. Recognizing that any legislation that is created must necessarily consider the implications to services and resources that would be required to make the legislation effective.

12. Recognizing that the federal government has a role to play in fostering equal access to treatment and equal standards of services and personnel development. This role should include the development of appropriate funding arrangements.

13. Establishing mechanisms to permit the continuing review of legislation and systems which relate to the juvenile process.

14. Recognizing the necessity of the proper balance between the rights and the needs of young persons in conflict with the law.

A P P E N D I X

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